



REPORT Nº 53/04

PETITION 301/02

ADMISSIBILITY

RUMALDO JUAN PACHECO OSCO, FRIDA PACHECO TINEO,
JUANA GUADALUPE PACHECO TINEO, AND JUAN RICARDO PACHECO TINEO

BOLIVIA

October 13, 2004

I. SUMMARY

1. On April 25, 2002, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the IACHR") received a petition submitted by Mr. Rumaldo Juan Pacheco Osco and Mrs. Fredesvinda Tineo Godos (hereinafter "the petitioners") alleging the responsibility of the State of Bolivia (hereinafter "the State" or "the Bolivian State") for illegally restricting their freedom and violating such basic rights as the right to life and to physical, mental, and moral integrity and the rights of the child, as set forth in the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention"), duly ratified by the Government of Bolivia, and in other international instruments including the International Refugee Convention and its statute, the Convention on Rights of the Child, and others.

2. The petitioners claim that the State is responsible for violating, with respect to them and their children, the rights to humane treatment, to personal liberty, and to a fair trial, the rights of the child, and the right of freedom of movement and residence, as enshrined in Articles 5, 7, 8, 19, and 22 of the American Convention, together with the general obligation of respecting and ensuring the rights protected by the Convention set out in Article 1(1) thereof.

3. As of the date of this report the State has submitted no comments in reference to this petition.

4. After examining the petitioners' position and considering the State's silence in light of the requirements for admissibility set forth in the American Convention, the Commission decides to declare the case admissible as regards Articles 1(1), 5, 7, 8, 17.1, 19, and 22 of the Convention, to notify the parties thereof, to publish this decision, and to include it in its Annual Report.

II. PROCESSING BY THE COMMISSION

5. The Commission received the petition in question on April 25, 2002, and

acknowledged receipt of it on May 20, 2002. On December 27, 2002, the IACHR received additional information from the petitioners.

6. On January 9, 2004, the Commission forwarded the relevant parts of the complaint to the State and granted it a period of two months in which to respond. As of the date of this report the Commission has received no response from the State in connection with that communication.

III. POSITIONS OF THE PARTIES

A. Petitioners

7. The petitioners state that they traveled to La Paz, Bolivia, on February 19, 2001, in the company of their children – Juan Ricardo, of four years of age and a Chilean national, and Juana Guadalupe (8) and Frida Edith (12), both Peruvian nationals – with all their documents (passports, Chilean and Peruvian identity papers, birth certificates, academic certificates) in order as of the date of their journey. They say that on February 20, 2001, at approximately 10:00 a.m., they reported to the Immigration Office in La Paz, Bolivia, to pursue formalities relating to their stay in that country, taking with them all the documents listed above. As background information, they explain that they had been living in Chile as refugees and that, in October 1995, together with their children, they had sought permission to reside in the Republic of Bolivia through the offices of the United Nations High Commissioner for Refugees (UNHCR).^[1] The petitioners state that at the immigration office, Mr. Juan Carlos Molina, General Advisor of the Immigration Office in La Paz, received them and made offensive verbal attacks regarding the family's situation.^[2] The petitioners report that Mr. Molina was totally unaware of the petitioners' status as refugees and residents of Chile and, in spite of having secured confirmation from the Chilean Consulate in La Paz,^[3] Mr. Molina seized all the family's documents, ordered the doors of his office slammed shut, and abducted Fredesvinda Tineo Godos.^[4] The petitioners report that at around 6:00 p.m., Mrs. Tineo Godos was taken to the cells of the La Paz police headquarters, without either food or warm clothing, without being told the reason for her arrest, and without being informed of her rights. The petitioners also state that Mrs. Tineo Godos was not allowed to communicate with any person who might have acted as legitimate counsel for her defense.

8. The petitioners claim that at 8:00 p.m. on February 20, 2001, Mr. Pacheco Osco located Mrs. Tineo Godos and attempted to secure her immediate release through the intervention of a lawyer from the La Paz Permanent Human Rights Assembly. They state that at 11:00 a.m. on February 21, 2001, they secured Mrs. Tineo Godos's release through a habeas corpus remedy lodged by the La Paz Permanent Human Rights Assembly. The petitioners report that on February 22, 2001, they were harassed by the La Paz immigration office and that pressure was brought to bear on them to withdraw the habeas corpus motion, in exchange for which the documents necessary for them to leave Bolivia would be returned to them; for this, the entire family was required to report to the immigration office. The petitioners explain that the harassment and verbal pressure handed out by staff at the immigration office entailed their being told that they would do best to withdraw the habeas corpus filing, that otherwise they would be held there and imprisoned, and that their documents would not be returned. Faced with this situation, the petitioners state, the Chilean consulate intervened so they could leave the country for Arica, Chile. However, the immigration authorities said that they would have to be taken in a police vehicle; this offer was rejected by the petitioners and, consequently, they were unable to recover their documents. Irrespective of this, the petitioners report that on February 22, 2001, a judge declared that the habeas corpus injunction filed against the arrest was admissible.

9. The petitioners state that on February 23, 2001, an official of the Chilean consulate visited the immigration office and reached a verbal agreement with Mr. Molina, whereby the family would leave for Arica, Chile, on February 24, by means of regular road passenger transportation. However, the petitioners note that this was accepted after intense pressure from the immigration office in La Paz for an agreement to be reached and for them to be removed from Bolivian territory. The petitioners add that their illegally confiscated documents were not returned to them until they were handed over to the Peruvian police. The petitioners recall that on Friday, February 23, they were about to leave and were given bus tickets for the journey from La Paz to the Chilean city of Arica at 7:00 a.m. the following day.

10. The petitioners report that at 6:30 a.m. on February 24, 2001, two 4WD Jeeps with tinted windows, carrying six individuals dressed as civilians and two armed police officers, led by Mr. Molina – who was utterly inebriated – intercepted them as they were on their way to the bus station with their children. They say firearms were pointed at them and that they were beaten, insulted, and humiliated, that their hands were tied behind their backs and their faces were covered with their coats, and that no explanations were offered. They were brutally forced into the vehicles: the children in one and the adults in the other. In response to the petitioners' repeated requests for an explanation, the agents of the State merely replied with insults, physical violence, and death threats and by pointing their guns at them. Their journey in the Jeeps lasted more than two hours. The vehicles were then parked, and they were only let out after another hour had passed. When they got out they saw that they had been taken to the Río Desaguadero international bridge on the border between Peru and Bolivia. The petitioners claim they were locked in a room and all their belongings confiscated; after waiting another hour they were taken out and led to the border, with some of the suitcases they had initially been carrying.

11. The petitioners relate that upon crossing the border, they were handed over to the Peruvian police and described as terrorists who had been found with subversive material; the public prosecutor on duty at the border expressed great surprise at this, since their papers were both in order and current. Because of the charges leveled at the petitioners, the prosecutor had to consult with Lima about the family's previous case; consequently, she could neither order their release or receive the new accusation. The petitioners say that they were kept under arrest with their children in the border town of Puno until March 3, 2001, when the minors were handed over to relatives. The petitioners were taken to Lima, where the criminal police kept them incommunicado in uncomfortable cells. Mrs. Tineo Godos was kept in detention until March 6 and then transferred to the Santa Mónica de Chorillos Penitentiary, and Mr. Pacheco Osco was, on March 8, transferred to the Miguel Castro Castro Penitentiary. Both of these are maximum security facilities with severe restrictions that undermine human rights. Mrs. Tineo Godos and Mr. Pacheco Osco were released on July 3, 2001, once their innocence had been proven. The petitioners add that the sequence of events described caused their children serious psychological harm, including nightmares and nighttime sobbing attacks, loss of speech, frequent crying jags, and regular exclamations that someone wanted to kill them.

12. With reference to the exhaustion of domestic remedies, they state they were unable to pursue the habeas corpus remedy, lodged on February 21, 2001, by the La Paz Permanent Human Rights Assembly to secure the release of Mrs. Tineo Godos, because they were illegally, unfairly, and abusively expelled from Bolivia on February 24, 2001.

B. State

13. No reply regarding the admissibility of the petition has been received from the State, even though due notice was served on January 13, 2004.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Preliminary Questions

14. The IACHR notes that the State has neither responded to the petitioners' allegations nor questioned the admissibility of the petition with respect to the events that took place in Bolivia on February 19, 2001. The IACHR also points out that the complaint deals exclusively with the incidents that took place in Bolivia on that date. Although later incidents that occurred in Peru are referred to, the petitioners have lodged no complaint against that State and so the IACHR will not address those allegations. The IACHR would like to note that Bolivia has assumed a series of international obligations under the terms of the American Convention on Human Rights, including those set forth in Article 48(1)(a) thereof, to wit: "When the Commission receives a petition or communication... (a) ... it shall request information from the government of the state indicated as being responsible for the alleged violations... This information shall be submitted within a reasonable period... (e) The Commission may request the states concerned to furnish any pertinent information." States parties are thus required to provide the information that the Commission requests for the purpose of processing a case.^[5]

15. The Commission believes it is important to note that the information it requests will presumably enable it to reach a decision in a case brought before it. The Inter-American Court of Human Rights has ruled that cooperation by states is a basic obligation in international proceedings under the inter-American system:

In contrast to domestic criminal law, in proceedings to determine human rights violations the State cannot rely on the defense that the complainant has failed to present evidence when it cannot be obtained without the State's cooperation.

The State controls the means to verify acts occurring within its territory. Although the Commission has investigatory powers, it cannot exercise them within a State's jurisdiction unless it has the cooperation of that State.^[6]

16. The IACHR and the Inter-American Court of Human Rights have also said that: "the silence of the accused or elusive or ambiguous answers on its part may be interpreted as an acknowledgment of the truth of the allegations, so long as the contrary is not indicated by the record or is not compelled as a matter of law."^[7] The Commission therefore reminds Bolivia that it is obliged to cooperate with the organs of the inter-American human rights system in the interests of the optimal performance of its duties in protecting human rights.

B. Competence of the Commission *Ratione Personae*, *Ratione Materiae*, *Ratione Temporis*, and *Ratione Loci*

17. First of all, the petitioners are entitled, under Article 44 of the American Convention, to lodge complaints with the IACHR. The petition names, as its alleged victims, individual persons with respect to whom the Bolivian State had assumed the commitment of respecting and ensuring the rights enshrined in the American Convention. With respect to the State, the Commission notes that Bolivia has been a party to the American Convention since July 19, 1979, when it deposited its corresponding instrument of ratification. The Commission therefore has competence *ratione personae* to examine the complaint.

18. The Commission has competence *ratione loci* to deal with the petition since it alleges violations of rights protected by the American Convention occurring within the territory of a state party thereto. The Commission has competence *ratione temporis* since the obligation of respecting and ensuring the rights protected by the American Convention was already in force for the State on the date on which the incidents described in the petition allegedly

occurred. Finally, the Commission has competence *ratione materiae* since the petition describes violations of human rights that are protected by the American Convention. However, the Commission does not have competence with respect to the alleged violations of the International Refugees Convention and of the Convention on the Rights of the Child, as indicated by Article 29 of the American Convention. The Commission will consider both those instruments in its analysis of the State's international obligations under the American Convention.

C. Admissibility Requirements

1. Exhaustion of domestic remedies

19. Article 46(1) of the American Convention rules that for a petition to be admissible, the remedies available under the State's domestic jurisdiction must first have been exhausted.

20. The Commission's jurisprudence, and that of the Inter-American Court of Human Rights, has repeatedly set out the purpose or ultimate goal of habeas corpus remedies, saying that such remedies are "designed to protect personal freedom or physical integrity against arbitrary detentions by means of a judicial decree ordering the appropriate authorities to bring the detained person before a judge so that the lawfulness of the detention may be determined and, if appropriate, the release of the detainee be ordered."^[8]

21. The State lodged no preliminary objections alleging the failure to exhaust domestic remedies. Consequently, the Inter-American Commission rules that with respect to the instant petition, the Bolivian State did not argue that domestic remedies were not exhausted in the first phases of the procedure.

22. The Inter-American Court of Human Rights has maintained, on repeated occasions, that: "the objection asserting the non-exhaustion of domestic remedies, to be timely, must be made at an early stage of the proceedings by the State entitled to make it, lest a waiver of the requirement be presumed."

23. The Commission therefore holds that the Bolivian State waived its right to argue that domestic remedies had not been exhausted, in that it failed to do so at the first available opportunity in the proceedings – that is, in its reply to the petition with which the proceedings began.

2. Timeliness of the petition

24. In the instant case, the IACHR has established that the Bolivian State tacitly waived its right to argue that domestic remedies were not exhausted, and so the requirement contained in Article 46(1)(b) of the American Convention does not apply. However, the Convention's requirements that domestic remedies be exhausted and that the petition be lodged within six months following the judgment exhausting domestic jurisdiction are independent. The Inter-American Commission must therefore decide whether this petition was submitted within a reasonable delay. Consequently, the IACHR notes that, according to the petition, the victims were released on July 3, 2001, and that the original complaint was received on April 25, 2002. The IACHR therefore holds that it was lodged within a reasonable time in light of the characteristics of the case.^[9]

3. Duplication of proceedings and *res judicata*

25. The case file does not indicate that the substance of the petition is pending in

any other international settlement proceeding or that it is substantially the same as any other petition already examined by this Commission or any other international body. Hence, the requirements set forth in Articles 46(1)(c) and 47(d) of the Convention have been met.

4. Nature of the alleged violations

26. The Commission believes that the petitioners' allegations – to the effect that Mr. Rumaldo Juan Pacheco Osco and Mrs. Fredesvinda Tineo Godos, together with their three children, were subjected to inhumane and degrading treatment, arbitrarily denied their freedom, and refused access to justice and freedom of movement and residence – could constitute violations of the right to humane treatment, to personal liberty, and to a fair trial, of the rights of the child, and of the right of freedom of movement and residence, enshrined in Articles 5, 7, 8, 19, and 22 of the American Convention, and of the general obligation of respecting and ensuring the rights protected by the Convention set forth in its Article 1(1). Additionally, according to the general principle of international law *iura novit curia* international bodies have the power and even the duty to apply all pertinent legal provisions, even if these have not been invoked by the parties^[10]. In light of this principle, the CIDH considers that the facts invoked by the petitioners might be characterized a violation of article 17.1 (Right of the Family) of the American Convention.

V. CONCLUSIONS

27. The Commission concludes that the case is admissible and that it is competent to examine the complaint made by the petitioners regarding the suspected violation of Articles 1(1), 5, 7, 8, 17.1, 19, and 22 of the American Convention, in accordance with the requirements set out in Articles 46 and 47 thereof.

28. Based on the foregoing considerations of fact and law, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the case at hand admissible with respect to Articles 1(1), 5, 7, 8, 17.1, 19, and 22 of the American Convention.
2. To give notice of this decision to the State and to the petitioners.
3. To begin its processing of the merits of the case.
4. To publish this decision and to include it in its Annual Report, to be presented to the General Assembly of the OAS.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., on the 13 day of October 2004. (Signed): Clare K. Roberts, First Vice-President; Susana Villarán, Second Vice-President; Commissioners Evelio Fernández Arévalos, Paulo Sergio Pinheiro, Freddy Gutiérrez, and Florentín Meléndez.

[1] According to information provided by Mr. Pacheco, UNHCR began to study their case in October 1995 and, one year later, told them their request was being processed. Almost two years later, in March 1997, the Bolivian government gave them refugee visas. In August 1998 the Chilean government gave them refugee visas.

[2] According to information furnished by the petitioners, some years earlier Juan Pacheco Osco and Fredesvinda Tineo had been prosecuted in Peru on charges of "terrorism"; they were acquitted in the initial proceedings, which were later annulled. During his arrest Juan Pacheco Osco survived the actions taken against political prisoners at Castro Castro Penitentiary on May 6 to 9, 1992, in which 50 selected inmates were murdered; as a result of that incident, Juan Pacheco Osco still carries multiple pieces of shrapnel in his body. Following his release, the Pacheco Tineo family sought protection by taking refuge first in Bolivia and, later, in Chile. Mr. Pacheco and his wife were imprisoned from June 19, 1991, to April 8, 1994.

[3] On February 20, 2001, the Chilean Consul himself paid a visit on Mr. Molina.

[4] On February 19, 2001, the Godos family had arrived at the home of friends of theirs in Bolivia, and had left the three children there.

[5] See, for example, IACHR Nº 129/01, Case 12.389, Admissibility, Jean Michel Richardson, Haiti, December 3, 2001, paragraph 11.

[6] Inter-Am.Ct.H.R., *Velásquez Rodríguez Case (Honduras)*, Series C Nº 4, Judgment of July 29, 1988, paragraphs 135-36.

[7] *Ibid.*, paragraph 138; IACHR, Report Nº 28/96, Case 11.297, Guatemala, October 16, 1996, paragraph 45.

[8] Inter-Am.Ct.H.R., *Habeas Corpus in Emergency Situations* (Articles 27(2) 25(1), and 7(6) of the American Convention on Human Rights), Advisory Opinion OC-8/87, January 30, 1987, Series A Nº 8, paragraphs 33-35.
Inter-Am.Ct.H.R., *Judicial Guarantees in States of Emergency* (Articles 27(2), 25, and 8 of the American Convention on Human Rights), Advisory Opinion OC-9/87 of October 6, 1987, Series A Nº 9, paragraph 31.
Inter-Am.Ct.H.R., *Case of Neira Alegría et al.*, Judgment of January 19, 1995, Series C Nº 20, paragraph 82.
Inter-Am.Ct.H.R., *Suárez Rosero Case*, Judgment of November 12, 1997, Series C No. 35, paragraph 63.

[9] IACHR, Report Nº 31/03, Petition 12.195, Chile, March 7, 2003; IACHR, Report Nº 57/03, Petition 12.337, Chile, October 10, 2003; IACHR, Report Nº 3/02, Petition 11.498, Argentina, February 27, 2002.

[10] IACHR, Report Nº 38/96, Case 10.506 – Argentina, October 15, 1996.