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REPORT No. 71/16

PETITION 765-09

ADMISSIBILITY REPORT

Q'OQ'OB COMMUNITY OF THE MUNICIPALITY OF SANTA

MARIA NEBAJ

GUATEMALA

Approved by the Commission at its session No. 2070 held on December 6, 2016.
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DECEMBER 6, 2016

I. SUMMARY

1. On June 19, 2009, the Inter-American Commission on Human Rights (hereinafter, “the Inter-American Commission”, the “Commission”, or “the IACHR”) received a petition submitted by the Committee for Victims of the Q’oq’ob Community, Municipality of Santa Maria Nebaj, and attorney Edgar Fernando Perez Archila (hereinafter, “the petitioners”) against Guatemala (hereinafter, “Guatemala” or “the State”). The petition was submitted on behalf of the members of the Q’oq’ob Community of the Municipality of Santa Maria Nebaj (hereinafter, “the alleged victims”).

2. The petitioners claim that the State is responsible for the massacre that occurred on April 16, 1981, in the Municipality of Santa Maria Nebaj, Department of Quiche; for the detainments and acts of torture that occurred immediately following the massacre and for later deaths that have to date not been investigated; and for the forcible displacement and recruitment that took place following the massacre. For its part, the State says the petition is inadmissible because it does not meet the requirements set forth in the Commission’s Regulations, in particular, that the petitioners have not exhausted all domestic legal remedies.

3. Without prejudging the merits of the charge, after examining the positions of the parties and in compliance with the requirements provided in Articles 31 and 34 of the IACHR Regulations (hereinafter, “the Regulations”), and Articles 46 and 47 of the American Convention on Human Rights (Hereinafter, “the American Convention” or “the Convention”), the Commission decided to declare the petition admissible for the purpose of examining the alleged violation of rights enshrined in Articles 4 (right to life), 5 (right to humane treatment), 6 (freedom from slavery), 7 (right to personal liberty), 8 (right to a fair trial), 11 (right to privacy), 17 (rights of the family), 19 (rights of the child), 22 (freedom of movement and residence), and 25 (right to judicial protection) of the Convention, in the light of the general obligations contained in Article 1.1 of that instrument, as well as Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture. The Commission further decides to notify the parties of this decision, to publish it, and to include it in its Annual Report to the General Assembly of the Organization of American States.

II. PROCESSING BEFORE THE COMMISSION

4. The IACHR received the petition on June 19, 2009, and forwarded a copy of the pertinent parts to the State on November 13, 2013, giving it a three-month deadline to submit its responses, pursuant to Article 30.3 of the Regulations. On February 14, 2014, the State’s response was received and was then forwarded to the petitioners on April 21, 2014.

5. The petitioners submitted additional observations on April 21 and May 21, 2014, and on October 20, 2015. The State submitted additional comments on July 3, 2015, which were duly forwarded to the opposing party.

III. THE POSITIONS OF THE PARTIES

A. The position of the petitioners

6. The petition addresses the massacre that allegedly occurred on April 16, 1981 during Holy Week celebrations, as retaliation for an attack perpetrated by guerrilla forces in March 1981, in which an

officer of the Guatemalan army died. It also addresses alleged acts of torture, forcible recruitment, forcible displacement, and later killings in the aftermath of these incidents.

7. The petitioners assert that they are members of the Maya Ixil people, residents of the Q'oq'ob Caserio, one of 91 communities that make up the Pulay village, in the Municipality of Santa María Nebaj, Department of Quiché. They claim that on April 16, 1981, during Holy Week celebrations, the families were in their homes when, at approximately 5 p.m., members of the National Army arrived in the community dressed in camouflage uniforms or as civilians. They entered the homes they found on their way in a violent manner, shooting at residents and their animals; some houses were set on fire, on some occasions with people inside. The petitioners also state that some people, upon hearing the shots, took shelter in the vegetation.

8. The petitioners state that, after having executed between 67 and 79 individuals¹, 27 of who were boys and girls between newborn and six years old, and 17 of which were between the ages of seven and 13 years, the military personnel departed. That night, the survivors left their shelter to search for family members while others went to the municipal capital and to neighboring villages to report what had happened. The petitioners add that, according to the Report of the Commission for Historical Clarification (CEH), during the incident some individuals were captured and taken to the Reeducation Center in Xemamatze, where they were tortured, interrogated, and executed or imprisoned. They state that some individuals were forced to kneel and say prayers before dying, and that others suffered genital beatings. They add that the dead body of Gabriel Ramirez Chavez, whom the military personnel accused of being a guerilla, was found bleeding from his testicles. They state that Magdalena Chavez fled the scene of the massacre with wounds caused by bullets from a firearm, and that family members do not know where she is. The petitioners state that the day after the massacre members of the community reported it to the mayor of Nebaj, who went to the village in the role of Justice of the Peace to record the cause and date of death of the deceased in their death certificates; he also ordered a search for human remains to be interred, for which several graves were dug on a plot of land. In a related incident, the petitioners claim that approximately one and half months after the massacre, members of the guerrilla forces murdered Mr. Jacinto de Leon, and that his corpse revealed that his genitals had been destroyed.

9. The petitioners claim that the army threatened the surviving families, which therefore fled to neighboring communities, where the National Army forcibly recruited them, primarily children and teenagers, into the "Patrullas de Autodefensa Civil" [civil self-defense patrols] (PACs). They claim that in 1990 groups of resettled families requested that the Commander of the Nebaj military outpost authorize their return to Q'oq'ob; and that he agreed, under the condition that they remain organized as a PACs; and that he provided them with 11 rifles. They state that the village was redesigned to facilitate military control over it; that their use and possession of their own lands and crops was restricted and reduced; and that over 95% of the survivors of the massacre, who previously had been Catholic, were forced to join "evangelical sects", given the stigmatization that existed against those who practiced the Catholic religion.

10. They further claim that in June 1997, members of the army returned to the community and executed Pedro Brito. They also claim that a girl, Jacinta Sanchez, had been displaced with her family as a result of the massacre, and that approximately two years later she died because of nutritional deficiencies related to the need to displace.

11. The petitioners argue that because of the terror imposed by the army at the time of the massacre, and because of the detainments and torture committed within the military outpost in Nebaj, members of the community feared lodging "any type of accusation with any authority", in addition to the fact that the maximum authority was the Commander of the Military Outpost. They claim that they did not lodge a complaint to the Prosecutor's Office of Santa Maria Nebaj until 2000, and that in 2004 they realized that the

¹ The Commission takes note that the petitioners provided a list of 77 alleged victims who died during the massacre, along with their family groups.

report had been lost, and therefore lodged a new complaint on April 27, 2004. They say the only thing this achieved was the coordination of exhumation of their family members' remains.

12. They add that on April 12, 2005, the Prosecutor's Office appointed experts from the Center for Forensic Analysis and Applied Sciences (CAFCA) to conduct a forensic anthropological study the claimants had requested. The final report was delivered to the Prosecutor's Office on March 15, 2007, and interment was conducted on June 10, 2008.

13. According to the petitioners, in 2004 offices of the National Program for Integral and Collective Reparations (PNR) were opened in Nebaj. Nevertheless, the petitioners state that those offices focused exclusively on paying reparations to family members of some of the victims, it having been decided that those who appeared on the rolls of the PACs had no right to reparations. This led the petitioners to submit to the PNR a "Brief of Grievances", requesting recognition of their right to sue for and obtain reparations through administrative procedures. They claim they requested that the Human Rights Prosecutor's Office monitor [the process] and by doing so were able in 2007 to get the PNR "to open and initiate procedural actions on a collective case focused on the integral nature of treatment for [the members of the Q'eq'ob community]".

14. The petitioners also state that in 2006 several victims' organizations requested that the Human Rights Prosecutor's Office "investigate the experiences of victims in their relationship with the PNR", and on February 8, 2007 the Prosecutor's Office issued a resolution stating that everything the PNR had done since its founding and through that date had been a violation of the interests and rights of the victims.

15. Lastly, the petitioners state that the new chair of the National Commission on Reparations prepared a plan of work for integral, collective redress for the facts alleged in this petition. They claim, however, that the plan has not been implemented and that since June 10, 2008, the date on which the human remains of their family members were interred and the burial niches that were built were delivered as an initial part of the plan, none of the actions set forth in the records of the National Commission on Reparations have been carried out.

16. Based on the foregoing, the petitioners claim that the State violated, to the injury of the alleged victims, Articles 1, 4, 5, 8, 11, 17, 19, 21, 24, 63.1, and 63.2 of the American Convention on Human Rights; and Articles 1, 3, 5, 6, 7, 8, 9, 10, 12, 17, 20, and 26 of the Universal Declaration of Human Rights.

B. The position of the State

17. First, the State questions the representation of the petitioners. The State indicates that the representative of the Committee for Victims of the Community of Q'eq'ob, the petitioning organization, is Jacinto Paz Rodriguez, though the person representing the organization in this petition is Edgar Fernando Perez Archila. Second, the State indicates that there is no evidence proving that the individuals named in the petition as "surviving victims" are aware of the petition or have authorized the Committee or the attorney Perez Archila to represent them. The State adds that the petition is not signed by all members of the Committee and therefore does not meet the requirements set forth in Article 28 of the Commission's Regulations.

18. Additionally, the State rejects inclusion and use of the CEH report, given that it is part of the Peace Agreements that allowed the cessation of internal armed conflict. The State claims that, pursuant to those agreements and to the National Law on Reconciliation, the State is "not obliged to determine criminal responsibility", in particular for events the proof of which is derived from the CEH reports. The State adds that this does not mean that it does not have the obligation to make reparations to the victims, for which purpose it created the PNR.

19. The State indicates that it was not aware of a situation of risk for the residents of the Q'eq'ob community and that the petitioners have not provided any proof supporting the claim that those responsible were members of the army. The State further indicates that it has adopted provisions of domestic law that

ensure and guarantee respect for human rights, and that it has taken the necessary measures to ensure that incidents such as those that occurred during the internal armed conflict do not happen again.

20. It is observations of July 3, 2015, the State expressed “that it is fully aware that the international protection of human rights does not have the same purposes as criminal justice”, but that, this notwithstanding, “to satisfy the claims of the alleged victims the State would have to violate the principle of non-determination of responsibility, [the principle] upon which the CEH report was created.”

21. Furthermore, the State claims that if the petition is admitted, the case could not be sent to the Inter-American Court of Human Rights, as the events occurred prior to the date on which Guatemala accepted the Court’s jurisdiction.

22. In conclusion, the State holds that the petition does not demonstrate that the alleged victims have knowledge of it or that they authorized the Committee to represent them; that the events that originated the petition claim to be proven by the CEH reports, which is not compatible with the object of its creation; and that domestic remedies have not been exhausted, given that [the petitioners] have not submitted to the PNR their request for integral reparations. Based on this, the State believes the petition is inadmissible and requests the IACHR to declare it so.

IV. ANALYSIS ON COMPETENCE AND ADMISSIBILITY

A. JURISDICTION

23. The petition was submitted by the Committee for Victims of the Q’oq’ob Community of the Municipality of Santa Maria Nebaj, and by the attorney, Edgar Fernando Perez Archila, on behalf of the members of the Q’oq’ob Community, Municipality of Santa Maria Nebaj, identified in the annex of this petition. Regarding the State’s argument that questioned the representation of the petitioning organization, the IACHR observes that Article 44 of the Convention allows any person or group of persons, or a nongovernmental entity that is legally recognized in one or more of the member states of the Organization, to report allegations of violations of the Convention, without requiring that they have the authorization of the alleged victims or that they provide a power of attorney as their legal representative.² Thus, the Commission is competent *ratione personae* to hear this petition.

24. The State committed itself to respect and guarantee these rights as of the date it deposited its Convention ratification instrument. Furthermore, the alleged violations occurred in the territory of a State that is party to this treaty and subsequent to May 25, 1978, the date its ratification instrument was deposited. Thus, the IACHR concludes that it competent *ratione materiae*, *ratione loci* and *ratione temporis* to examine the petition.

25. Additionally, Guatemala committed itself to respect and guarantee the rights enshrined in the Inter-American Convention to Prevent and Punish Torture as of February 28, 1987, the date the treaty entered into force. Thus, the Commission is also competent *ratione temporis* to hear the alleged violations that were ongoing as of that date.

26. Regarding the alleged violations of rights enshrined in the Universal Declaration of Human Rights, the Commission lacks jurisdiction related to that instrument except as provided in Article 29 of the American Convention.

² IACHR, Report No. 92/03 (Inadmissibility), Petition 0453/01, Elias Santana, et. Al, Venezuela, October 23, 2003, paragraph 45 and following.

B. Admissibility requirements

1. Exhaustion of domestic remedies

30. Articles 31.1 of the Regulations and 46.1 of the American Convention require the prior exhaustion of available remedies in the domestic jurisdiction, in keeping with generally recognized principles of international law, as a prerequisite for admission of the complaints submitted in the petition. The purpose of this prerequisite is to allow national authorities to know about an alleged violation of a protected right and, when appropriate, to resolve the situation before it is heard in an international venue. Articles 31.2 of the Regulations and 46.2 of the Convention provide that the prerequisite of prior exhaustion of domestic remedies is not applicable when: i) the domestic legislation of the State in question contains no due legal process for the protection of the right or rights that have been allegedly violated, ii) the alleged victim of rights violations has not been allowed access to the remedies of domestic jurisdiction or has been blocked from exhausting them; or iii) there is an unjustified delay in the ruling on those remedies.

31. The petitioners claim that on the day after the massacre, residents of the community reported it to the mayor of Nebaj, who came to the village in the role of Justice of the Peace and recorded the cause and date of the deaths of the deceased in death certificates. They say that because of fear and because of the military presence in the area, the residents of the community did not take any other steps until 2000, when they filed a complaint with the Prosecutor's Office of Santa Maria Nebaj. They state that when they learned in 2004 that the complaint had been "lost", they filed a new complaint on April 27, 2004. They claim that the only action that has been taken was the forensic anthropological study conducted by the CAFCA, the final report on which was delivered to the Prosecutor's Office on March 15, 2007. The State, on the other hand, says that domestic remedies have not been exhausted and that the appropriate step would be to submit to the PNR their request for integral reparations.

32. Regarding the criminal complaint that was filed, the Commission recalls that the precedents it has established indicate that any time an alleged crime is committed that could be prosecuted *ex officio*, the State has the obligation to prosecute and drive criminal procedure, and that in those cases criminal procedure is the appropriate avenue for clarifying the facts, judging those responsible, and affixing the appropriate criminal punishment, in addition to making possible other modes of financial reparations.

33. The Commission observes that the mayor of Nebaj became aware of the alleged massacre on April 17, 1981, and the Prosecutor's Office of Nebaj [became aware of the massacre] as of 2000, and that to the date of adoption of this report, more than 25 years after the alleged events, not even the investigative phase has been concluded. Therefore, in this case, the prerequisite that all domestic remedies be exhausted cannot be interpreted in such a way that produces a prolonged or unjustified hindrance to access to the Inter-American system. Therefore, the IACHR determines that there has been unjustified delay in reaching definitive resolution and that the exception provided in Article 46.2.c of the American Convention is applicable to this case.³

34. As relates to the State's argument about the failure to exhaust domestic legal remedies because the petitioners have not submitted to the PNR their request for integral reparations, the Commission reiterates that because the events in question are alleged to have been crimes, it is appropriate that they be treated through criminal procedure when seeking to clarify the facts, judge those responsible, and affix appropriate punishment, in addition to making possible other modes of reparation for family members. The IACHR considers it pertinent to clarify that for the purposes of determining the admissibility of the complaint, a request for integral reparations submitted to the PNR is not the appropriate procedure, nor is it necessary that it be exhausted.⁴

³ IACHR, Report No 71/12 (Admissibility), Petition 1073-05, Residents of the "Barão de Mauá" housing complex, Brazil, July 7, 2012, Paragraph 22.

⁴ IACHR, Report No. 18/14 (Admissibility), Petition 1625-07, Y.C.G.M. and relatives, Colombia, April 3, 2014, Paragraph 43.

35. Therefore, the Commission concludes that the exception to the exhaustion of domestic remedies provided in Article 46.2.c of the American Convention and 31.2 of the Regulations does apply to this case.

2. Timeliness of the petition

36. Article 32.1 of the Regulations sets forth that for the Commission to deem a petition admissible it must be submitted within six months of the date the alleged victim was notified of a definitive ruling. In the complaint in question, the IACHR has established the applicability of the exception to the exhaustion of domestic legal remedies, pursuant to Article 31.2.c of the Regulations. In this regard, Article 32.2 of the Regulations sets forth that in cases to which the exceptions to the prerequisite that all domestic legal remedies be exhausted are applicable, the petition may be submitted within a reasonable period of time, according to the judgment of the Commission. To determine this, the Commission shall consider the date the alleged rights violations occurred and the circumstances of each case.

37. The IACHR has established that the exception to the prerequisite that all domestic legal remedies be exhausted applies to this case, as provided in Article 31.2.c of the Regulations. The petition before the IACHR was received on June 19, 2009, and the alleged events addressed by the complaint began on April 16, 1981, with effects ongoing to the present day. Therefore, given the context and the characteristics of this case, the Commission considers that the petition was submitted within a reasonable period of time and that the admissibility requirement of timely submission has been satisfied.

3. Duplication of procedures and international *res judicata*

38. There is no evidence that that the matter of the petition is pending in any other international proceeding, nor that it is a duplicate of any petition already examined by this or any other international body. Therefore, the causes for inadmissibility set forth in Articles 46.1.c and 47.d of the Convention, and Articles 33.1.a and 33.1.b of the Regulations are not applicable.

4. Colorable claim

39. To determine admissibility, the Commission must decide if the facts alleged could characterize a violation of rights, as stipulated in Articles 47.b of the American Convention and 34.a of the Regulations, or if the petition is “manifestly groundless” or “obviously out of order”, pursuant to Articles 47.c of the American Convention and 34.b of the Regulations. The criteria for examining admissibility differs from that used to examine the merits of the petition, given that the Commission performs merely a *prima facie* examination to determine if the petitioners have established an apparent or possible violation of a right guaranteed by the American Convention on Human Rights. This is a superficial examination that does not mean to prejudge or to issue a preliminary opinion on the merits of the matter.

40. Additionally, the applicable legal instruments do not require the petitioners to identify the specific rights they claim the State violated in a matter submitted to the Commission, though they may do so. It is incumbent on the Commission, based on the jurisprudence of the system, to determine in their admissibility reports which relevant provisions in the Inter-American instruments are applicable and could establish a violation if the alleged facts are proven by sufficient elements.

41. The petitioners maintain that the State is responsible for the massacre that occurred on April 16, 1981, for the detainments and acts of torture perpetrated immediately afterwards, and for subsequent deaths that to date have not been investigated, as well as for the forcible displacement and recruitment that took place as part of that context. For its part, the State asserts that it was not aware of a situation of risk related to the members of the Q’oq’ob community, and that the petitioners do not have proof establishing that those responsible were members of the army. The State further indicates that it has taken the measures necessary to ensure that events such as those that occurred during the internal armed conflict will not happen again.

42. Given the elements of fact and law presented by the parties, and the nature of the matter placed before it, the IACHR believes that, if proven, the alleged facts could characterize possible violations of the rights protected in Articles 4, 5, 6, 7, 8, 11, 17, 19, 22, and 25 of the American Convention, as pertains to the general obligations contained in Article 1.1 of that instrument, to the injury of the residents of the Q'ooq'ob Community of the Municipality of Santa Maria Nebaj, identified in this petition, as well as those identified in the merits phase. Furthermore, the failure to investigate the alleged acts of torture that occurred in the context of the massacre, if proven, could characterize possible violations of Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, to the injury of the alleged victims of torture.

V. CONCLUSIONS

42. Based on the considerations of fact and law presented, the Inter-American Commission concludes that this petition does meet the requirements of admissibility enunciated in Articles 31 and 34 of the Regulations, and Articles 46 and 47 of the American Convention, without prejudging the merits of the matter.

THE INTER-AMERICAN COMMISSION FOR HUMAN RIGHTS

DECIDES TO:

1. Declare this petition admissible as relates to Articles 4, 5, 6, 7, 8, 11, 17, 19, 22, and 25 of the American Convention on Human Rights, as pertains to the general obligations contained in Article 1.1. of that instrument, as well as Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.
2. Notify the parties of this decision;
3. Continue with the examination of the merits of the matter; and
4. Publish this decision, and include it in the Commission's Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of Panama, on the 6th day of the month of December, 2016. (Signed): James L. Cavallaro, President; Francisco José Eguiguren, First Vice President; Margarette May Macaulay, Second Vice President; José de Jesús Orozco Henríquez, Paulo Vannuchi, Esmeralda E. Arosemena Bernal de Troitiño and Enrique Gil Botero, Commissioners.