

OEA/Ser.L/V/II
Doc. 55
7 March 2022
Original: Spanish

REPORT No. 53/22

PETITION 846-10

REPORT ON ADMISSIBILITY

MELITON MAQUERA RAMIREZ ET AL
PERU

Adopted electronically by the Commission on March 7, 2022.

Cite as: IACHR, Report No. 53/22. Petition 846-10. Admissibility. Meliton Maquera Ramirez et al.
Peru. March 7, 2022.



I. I. INFORMATION ABOUT THE PETITION

Petitioning party:	Meliton Maquera Ramirez ¹ and Luis Alberto Vargas Juarez
Alleged victim::	Meliton Maquera Ramirez et al ²
Respondent State:	Peru ³
Rights invoked:	Articles 8 (judicial guarantees), 21 (private property), and 26 (economic, social and cultural rights) of the American Convention on Human Rights ⁴ ; Article 3 (non-discrimination) of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ⁵

II. PROCESSING BY THE IACHR⁶

Filing of the petition:	June 7, 2010
Additional information received at the review stage	November 22, 2011; April 20 and July 31, 2017
Notification of the petition to the State:	August 28, 2017
State's first response:	November 29, 2017
Additional observations from the petitioner:	October 24, 2017; February 14 and April 9, 2018; August 15, 2019; and July 12, 2021.
Additional observations from the State:	July 14, 2020
Associated Precautionary Measure:	370-13 (not granted)

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes, American Convention (instrument adopted on July 28, 1978); Protocol of San Salvador (instrument adopted on June 4, 1995)

IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES, AND TIMELINESS OF THE PETITION

Duplication of procedures and international res judicata:	No
<i>Rights declared admissible:</i>	Articles 8 (judicial guarantees), 21 (private property), 25 (judicial protection), and 26 (economic, social, and cultural rights) of the American Convention, taken in conjunction with Article 1(1) thereof (obligation to respect rights).
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, under the terms of Section VI.
Timeliness of the petition:	Yes, under the terms of Section VI.

¹ In a communication dated April 17, 2017, the petitioning party reported the death of Mr. Meliton Maquera Ramirez.

² The petition refers to a group of more than 800 retired former employees of Southern Peru Copper Corporation.

³ Pursuant to Article 17(2)(a) of the Commission's Rules of Procedure, Commissioner Julissa Mantilla Falcon, a Peruvian national, did not participate in the discussion or decision in this matter.

⁴ Hereinafter the "American Convention."

⁵ Hereinafter the "Protocol of San Salvador."

⁶ The observations of either party were duly forwarded to the opposing party.

V. ALLEGED FACTS

1. The petitioner requests that the Peruvian State be declared internationally responsible for the violation of the human rights of a group of former workers of Southern Peru Copper Corporation. They mainly allege that they have not received payment of their labor shares, despite having a final judgment (*res judicata*) in their favor, which has not yet been enforced.

2. According to the petition, the alleged victims worked at the Toquepala copper mine, located in the province of Jorge Basadre, Department of Tacna, owned by Southern Peru Copper Corporation (hereinafter "SPCC"). They explain that the workers were entitled to labor shares issued by SPCC pursuant to Decree Law 22333 and Decree Law 18880, among other regulatory instruments in effect at the time of the events. However, they claim that money owed to the workers arising from their labor shares were unjustifiably withheld by SPCC.

3. The petitioners point out that on April 1, 1996 the alleged victims filed a lawsuit against SPCC for withholding their labor shares, requesting also payment of the dividends generated by such shares. In this regard, on December 22, 1999, the Twenty-Second Specialized Civil Court of Lima ordered SPCC to pay the stock certificates to the alleged victims, as well as the corresponding dividends. Subsequently, on September 21, 2000, the Specialized Court for Expedited and Proceedings heard by the Superior Court of Justice of Lima confirmed the first instance ruling. In response, SPCC filed a cassation appeal, which was granted in a judgment dated September 19, 2001, declaring the judgment issued by the Twenty-Second Specialized Civil Court null and void; it also ordered that the workers' claims be assessed in labor law proceedings.

4. Unhappy with that finding, the alleged victims appealed said judgment. However, on July 27, 2005, the Sixth Civil Chamber of the Superior Court of Justice of Lima declared the lawsuit unfounded, considering that the appealed decision had been issued in accordance with due process. The alleged victims were not satisfied with this decision and filed a writ of amparo, which was granted by the Constitutional Court on June 19, 2007, in their favor, declaring the decision null and void. SPCC again filed a cassation appeal against said resolution, which was declared unfounded by the Transitory Constitutional and Social Law Chamber of the Supreme Court of Justice of the Republic in a judgment dated January 7, 2009.

5. SPCC filed a writ of amparo against the denial of the cassation appeal. Thus, on June 17, 2009, the Fifth Constitutional Court of the Superior Court of Justice of Lima granted the amparo in favor of the company. That resolution ordered, *inter alia*, the reopening of the proceedings initiated in 1997 before the Twenty-Second Specialized Civil Court of Lima, mainly due to evidentiary issues.

6. Subsequently, the petitioning party states that, as a result of the reinstatement of those proceedings, it was again determined to return the labor shares in favor of the workers, leaving the proceedings at the execution of judgment phase. Specifically, from the information provided in the file, it is evident that in a resolution dated August 9, 2013, the Twentieth Civil Court of the Superior Court of Lima determined to continue with execution of the judgment handed down on December 22, 1999, ordering the return of the labor shares in favor of the alleged victims. Likewise, in a resolution dated September 23, 2015, the Twentieth Civil Court declared the precautionary measure regarding the request for an embargo/withholding of a set of labor shares that would correspond to the payment to the workers to be well founded.

7. In short, the petitioning party alleges that the process initiated by the alleged victims with the purpose of obtaining their labor shares continues without conclusion since its initiation in 1997. It alleges that during that process, the alleged victims' rights to judicial guarantees, private property and economic, social and cultural rights were violated, due to the unjustified withholding of their private property and as a consequence of a proceeding that, more than twenty-two years later, has not complied with the delivery of said shares recognized as pertaining to them.

8. The State, for its part, alleges that domestic remedies have not been exhausted. It argues that the proceeding initiated by the alleged victims, regarding the return of their labor shares, is in an execution phase that has not yet been completed. Likewise, it indicates that in a resolution dated November 23, 2015, the Twentieth Civil Court ordered a precautionary measure in favor of the alleged victims, namely, embargoing the

alleged labor shares, thereby addressing their claims in the domestic sphere. With that, it considered that the petition should be inadmissible based on Article 47 of the American Convention because the facts set forth therein do not constitute human rights violations.

9. The State also alleges that the alleged victims are not properly identified in the petition, which was filed on behalf of a group of former SPCC workers entitled to the alleged labor shares. Finally, it alleges that, after the death of the initial petitioner, no power of attorney granted by the alleged victims to Mr. Vargas to act on their behalf and represent them before the Inter-American System has been presented.

VI. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

10. The petitioning party alleges that there has been unwarranted delay in the execution of the judgment of December 22, 1999, the proceedings for which culminated on August 9, 2013 with the order to execute the judgment by the Twentieth Civil Court of the Superior Court of Lima, without there being, to this day, compliance with the first instance judgment ordering the delivery of the labor shares to the alleged victims. In this regard, the State, far from disputing this fact, bases its allegation of non-exhaustion of domestic remedies precisely on the acknowledgment that a final decision is still pending in the process of execution of the aforementioned first instance judgment.

11. In view of these considerations, the Commission observes, first, that the alleged victims activated the appropriate legal avenue to assert their rights, which was a lawsuit initiated through civil proceedings, as well as the subsequent filing of the amparo recourse, a fact that has not been denied by the State. Subsequently, as is clear from the parties' own arguments, the judgment issued on December 22, 1999 by the Twenty-Second Specialized Civil Court of Lima has not yet been complied with. In this regard, the Commission concludes that the exception established in Article 46(2)(c) of the American Convention is applicable.

12. Furthermore, taking into account that the petition was received on June 7, 2010, and that the effects of the denial of the alleged victims' rights by judicial authorities have reportedly continued until now; and taking into account that the alleged victims have been litigating and claiming their rights at the domestic level from 1997 to the years immediately subsequent to the lodging of the present petition, the Commission considers that the petition was filed within a reasonable period of time pursuant to Article 32(2) of its Rules of Procedure.

13. With regard to the State's allegations concerning the individual identification of the alleged victims, the Commission reiterates that Article 44 of the American Convention, which authorizes "any person or group of persons or non-governmental entity [...] to submit petitions to the Commission containing denunciations or complaints of violations [...] by a State party", does not contain any limitations in terms of the "full and total" identification of the persons affected by the violation [...], but rather allows for the examination of human rights violations that by their characteristics may affect a specific person or group of persons, but who are not necessarily fully identified.⁷ In the instant case, although the petitioning party has identified one alleged victim throughout the proceedings (Mr. Melitón Maquera Ramírez), the Commission deems that the process of exhausting domestic judicial remedies covers all the victims referred to in the instant petition; and that in the merits stage of the instant case the petitioners will have the opportunity and the responsibility to duly identify all the victims.⁸

14. The IACHR also recalls that Article 44 of the Convention allows any person or group of persons, or non-governmental entity legally recognized in one or more member states of the Organization, to file

⁷ IACHR, Report N° 51/10 (Admissibility), Petition 1166-05, Tibú Massacres, Colombia, March 18, 2010, par. 102; IACHR, Report No. 86/06 Marino López et al. (Operation Genesis), par. 34 and Report No. 15/09, Massacre and Forced Displacement of the Montes de María, par. 47).

⁸ IACHR, Report No. 61/16, Petition 12.325. Admissibility. San José de Apartadó Peace Community. Colombia. December 6, 2016, par. 62; IACHR, Report No. 64/15 Petition 663-04. Admissibility. Pueblos Mayas and members of the communities of Cristo Rey, Belluet Tree, San Ignacio, Santa Elena, and Santa Familia. Belize, par. 27; IACHR, Report N° 51/10 (Admissibility), Petition 1166-05, Tibú Massacres, Colombia, par. 102; IACHR, Report No. 86/06 Marino López et al. (Operation Genesis), par. 34.

complaints of alleged violations of the Convention without requiring that they have the authorization of the alleged victims or that they present powers of attorney testing that they represent the alleged victims.”⁹

VII. ANALYSIS OF COLORABLE CLAIM

15. The petitioning party alleges the lack of execution of the judgment that ordered the delivery of the labor shares acquired as SPCC employees to the alleged victims, as well as the payment of the corresponding dividends, in the context of a lawsuit that more than twenty-two years later has not concluded, since it is in the judgment execution phase.

16. The State argues that the facts described do not characterize a violation of the rights guaranteed by the American Convention, as provided for in Article 47(b) thereof. In this regard, the Commission considers that it is not appropriate at this stage of the proceedings to determine whether or not the alleged violations of the rights of the alleged victims actually took place. For admissibility purposes, the IACHR must only decide whether deeds are alleged that, if proven, would amount to violations of the American Convention as stipulated in Article 47(b)) and whether the petition is “manifestly groundless” or “obviously out of order” (Article 47.c).¹⁰

17. In view of these considerations, and after examining the elements of fact and law presented by the parties, the Commission considers that the petitioning party’s allegations are not manifestly unfounded and require a study of the merits, since the alleged facts, if corroborated as true, could constitute violations of the rights recognized in Articles 8 (judicial guarantees), 21 (private property), 25 (judicial protection), and 26 (economic, social and cultural rights) of the American Convention, in conjunction with Article 1(1) (obligation to respect rights) of the same treaty.

18. Regarding the allegations of violations of Article 3 (non-discrimination) of the Protocol of San Salvador, the IACHR notes that the competence provided for under Article 19(6) of said treaty to establish violations in the context of an individual case is limited to Articles 8 and 13. With respect to the other articles, in accordance with Article 29 of the American Convention, the Commission may take them into account in interpreting and applying the American Convention and other applicable instruments.

VIII. DECISION

1. To declare the instant petition admissible in relation to Articles 8, 21, 25, and 26 of the American Convention, taken in conjunction with Article 1(1) thereof.

2. To notify the parties of this decision; proceed to the analysis of the merits, and to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 7th day of the month of March, 2022. (Signed:) Stuardo Ralón Orellana, First Vice President; Margarette May Macaulay, Second Vice President; Esmeralda E. Arosemena Bernal de Troitiño, and Joel Hernández, Commissioners.

⁹ IACHR, Report No. 71/16, Petition 765-09. Admissibility. Q’oq’ob Community of the Municipality of Santa María Nebaj. Guatemala. December 6, 2016, par. 23.

¹⁰ IACHR, Report No. 49/13, Petition 1225-04, Admissibility, Gerardo Cruz Pacheco, Mexico, July 12, 2012, par. 42.