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**REPORT No. 355/20**  
**PETITION 1023-08**  
REPORT ON INADMISSIBILITY

JUAN RODRIGUEZ RESENDIZ AND THE COMMUNITY OF EL  
DURAZNO  
MEXICO

Approved by the Commission at its session No. XXXX held on XX XX, 201X  
1XX<sup>th</sup> Regular Period of Sessions

**Cite as:** IACHR, Report No.355/20, Petition 1023-08. Admissibility. Juan Rodriguez Resendiz  
and the community of El Durazno. Mexico. December 2, 2020.

**I. INFORMATION ABOUT THE PETITION**

Petitioner	Juan Rodriguez Resendiz
Alleged victim	Juan Rodriguez Resendiz and the Community of El Durazno
Respondent State	Mexico <sup>1</sup>
Rights invoked	Articles 21 of the American Convention on Human Rights <sup>2</sup>

**II. PROCEEDINGS BEFORE THE IACHR<sup>3</sup>**

Filing of the petition	September 2, 2008
Additional information received during initial review	December 24, 2014, January 15, 2013, January 20, 27, 30, 2015
Notification of the petition	June 15, 2016
State's first response	December 21, 2016
Additional observations from the petitioner	June 1, 8, 2017
Additional observations from the State	March 13, 2019

**III. COMPETENCE**

<i>Ratione personae:</i>	Yes
<i>Ratione loci:</i>	Yes
<i>Ratione temporis:</i>	Yes
<i>Ratione materiae:</i>	Yes, American Convention (deposit of ratification instrument on March 24, 1981)

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

Duplication of procedures and international <i>res judicata</i>	No
Rights declared admissible	None
Exhaustion or exception to the exhaustion of remedies	No
Timeliness of the petition	Not applicable

**V. SUMMARY OF ALLEGED FACTS**

1. According to the petitioner, he owns land near a community called "El Durazno" in the State of Michoacán, Mexico. He claims that roads that serve a right of way or easement (*servidumbre de paso*) to this community and neighboring villages<sup>4</sup> have been blocked since January 2006 by a private company. According to the petitioner, this has resulted in lack of access to his property.

2. In March 2006, the petitioner made a criminal complaint to the Prosecutor General of Morelia (*Procurador General de Morelia*) in which he contended that the blocking of the access road constituted crime of dispossession (*delito de despojo*). The Prosecutor General subsequently archived the investigation in 2007 on the ground that there were no elements to support the alleged crime.

3. The petitioner challenged that ruling before the Seventh District Court of the state (*Juzgado Séptimo de Distrito*); and on April 30, 2007, the court granted an *amparo*, which effectively reversed the decision of the Prosecutor General. Ultimately, the owner of the company appealed this decision up to the Seventh Region Appellate Court (*Tribunal Colegiado de Circuito del Centro Auxiliar de la Séptima Region*) which,

<sup>1</sup> In accordance with the provisions of Article 17(2)(a).a of the Commission's Rules of Procedure, Commissioner Joel Hernández García, of Mexican nationality, did not participate either in the discussions nor the decision in the present matter.

<sup>2</sup> Hereinafter "the American Convention" or "the Convention".

<sup>3</sup> The observations submitted by each party were duly transmitted to the opposing party.

<sup>4</sup> These include Jesus del Monte and San Miguel del Monte.

on February 17, 2010 granted *amparo* to the petitioner and thereby reversed the previous decision and restored the ruling of the Prosecutor General.

4. The State contests the admissibility of the petition primarily on the ground the petitioner failed to exhaust appropriate and available domestic remedies; and alternatively, that any adjudication of the petition by the IACHR would violate the “fourth instance doctrine”. Regarding domestic remedies, the State argues that at the time the filing of the petition, the petitioner had not yet exhausted domestic remedies that arose from his criminal complaint; that the invocation of criminal (as opposed to civil) remedies was inappropriate for resolving the petitioner’s complaint; that this was subsequently vindicated by the ruling of the Seventh Region Appellate Court that restored the decision which found that there were no elements to support the alleged crime of dispossession; and that the petitioner failed to invoke or exhaust civil remedies such as a legal action pursuant to the Code of Civil Procedure of the State of Michoacán.

5. The State also mentions a 2004 agreement between the owner of the private company and the communal authorities legally responsible for managing the common land (*autoridades ejidales*) of El Durazno. This agreement established an easement or right of way for the benefit of El Durazno and the neighboring village of Jesus del Monte that, according to the State, contained an undertaking by the communal authorities to make no further claims on the owner of the private company and his commercial enterprises from other claims regarding the matter of the easements. The State further alleges that this agreement was subsequently upgraded to a judicial order in 2006. Finally, the State contends that this agreement was binding on the petitioner, but that if he wanted to challenge it, he could have done so by means of a legal action under the Agrarian Law.<sup>5</sup>

## **VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION**

6. The record shows that the petitioner initiated a criminal complaint to the Prosecutor General, which ultimately ended in the archival of the complaint for failure to establish the crime of dispossession; and the vindication of the decision by the Seventh Region Appellate Court. For the State, the initiation of a criminal complaint was an inappropriate remedy, given that the petitioner’s claim was civil in nature. Accordingly, the State contends that it was open to the petitioner to pursue and exhaust civil remedies pursuant to the Code of Civil Procedure and the Agrarian Law; but that the petitioner failed to do so.

7. The available information demonstrates that the petitioner has not pursued or exhausted available, effective and appropriate legal remedies, or that an exception to this requirement is applicable. In light of the foregoing, the Commission concludes that this petition does not meet the requirement of exhaustion of domestic remedies set forth in Article 46.1.a of the American Convention, and is accordingly inadmissible. The Commission thus considers it unnecessary to analyze the other requirements for admissibility.

## **VII. DECISION**

1. To find the instant petition inadmissible;
2. To notify the parties of this decision; 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 2<sup>nd</sup> day of the month of December, 2020. Antonia Urrejola, First Vice-President; Flávia Piovesan, Second Vice-President, Esmeralda E. Arosemena de Troitiño and Stuardo Ralón Orellana, Commissioners.

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<sup>5</sup> According to the State, this law has provisions for addressing agrarian land disputes, and conducting oversight of officials responsible for managing community land. In this regard, the State refers specifically to Articles 33, 36, 73, and 163.