

Mexico: Documentation of the case of José Ramón Aniceto Gómez and Pascual Agustín Cruz – Prisoners of conscience

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José Ramón Aniceto Gómez and Pascual Agustín Cruz are indigenous human rights defenders from the Nahuan community of Atla, in the municipality of Pahuatlán, Puebla State. They have already spent more than two years in prison for a crime they did not commit as the result of their work to guarantee access to water in their community. In 2010, they were detained, tried and sentenced to almost seven years in prison by Puebla state courts.

Amnesty International has analysed the court documents and evidence, interviewed witnesses and the two men, and visited the community of Atla. On the basis of this detailed research, the organization has concluded that the case against Jose Ramon Aniceto and Pascual Cruz was brought solely in reprisal for their legitimate work to extend their community's access to water and that they were denied the right to a fair trial. The organization is calling for their immediate and unconditional release.

Their work

José Ramón Aniceto is 64 years old and is married with eight children. Pascual Cruz is 45 years old and is married with six children. Both were born and grew up in Atla and their first language is Nahuatl. At the time of their arrest, José Ramón Aniceto was the Auxiliary President and Pascual Agustín Cruz was the Justice of the Peace of Atla community. These are unpaid posts to which they were appointed by the community in May 2008. José Ramón Aniceto's duties focussed on extending access to water supplies, a key issue for many community members in Atla and a project sponsored by the federal and state governments: "I am a humble person – I have tried to serve my community and I respect everyone in it", José Ramón Aniceto told Amnesty International. As Justice of the Peace, Pascual Agustín Cruz was responsible for resolving small disputes in the community and mediated peaceful agreements. He was also involved with overseeing the works to provide running water to the community.

For many years access to water for community members had been controlled by a powerful local (cacique) group which dominated the Water Committee. The Water Committee restricted access to water, forced community members to work for up to 40 days at a time without pay, and charged connection fees which represented four months wages for many community members. José Ramón Aniceto and Pascual Cruz, as community leaders, managed to wrest control of water access from the cacique group and led measures to carry out public works to establish free mains water connections to people's homes.

The accusation

On 6 November 2009, Cristobal Aparicio Gómez, a member of the local cacique group, filed a criminal complaint with the Public Prosecutor's Office 80km away in Huauchinango against José Ramón Aniceto and Pascual Cruz, as well as a municipal police commander, Carmelo Castillo Martínez. The complaint alleged that on 27 October 2009, the three men had carried out an armed ambush on him as he drove between the communities of Atla and neighbouring Xolotla. He claimed that the three men had forced him from his car, threw him to the ground violently then drove off leaving him in a ditch at the side of the road where he fell unconscious. A formal enquiry was opened and on 10 November, Cristobal Aparicio Gómez produced two supposed eyewitnesses to support his version of events.

On 13 January 2010, José Ramón Aniceto and Pascual Cruz were arrested by Puebla state judicial police who didn't show them the judicial warrant. They were charged with aggravated vehicle robbery and

arraigned before the Huauchinango criminal court (Juzgado del lo penal del distrito judicial de Huauchinango) in Puebla state.

A week later they were committed for trial and on 12 July 2010 were found guilty and sentenced to seven years in prison and fined. On 23 November 2010, the State Superior Court rejected an appeal but reduced the sentence to 6 years and 10 months. A new defence team from the Centro de Derechos Humanos de Miguel Agustín Pro Juárez took up the case in 2011 and filed for a federal judicial review (amparo) of their sentence.

The defence case

On 22 October 2009, five days before the alleged car theft, Abraham Aparicio, the son of the man who made the complaint against José Ramón Aniceto and Pascual Cruz, attacked a water engineer in charge of construction work in Atla. He chased him with a machete and smashed his phone. A number of people witnessed the incident, including Pascual Cruz, who as Justice of the Peace, managed to detain and disarm him. In the process Abraham Aparicio hit him and ripped his shirt.

On 23 October, one of the witnesses and Pascual Cruz formally recorded a complaint with the municipal administrative authorities about Abraham Aparicio's attack on the water engineer and Pascual Cruz.

El 27 October, José Ramón Aniceto, Pascual Cruz and others were carrying out works on the road out of Atla to connect water supplies to homes when Abraham Aparicio drove up. According to witnesses and the accused, he stopped the car and started shouting at José Ramón Aniceto and Pascual Cruz, threatening them with reprisals for making a complaint to the authorities about him. They asked him to calm down and he drove away. However, he returned minutes later driving directly at José Ramón Aniceto and Pascual Cruz, forcing them to jump out of the road to avoid being struck.

As a result, they called the municipal police. Abraham Aparicio tried to drive away, but a large truck blocked his path forcing him to abandon the car and flee on foot. Municipal police commander, Carmelo Castillo Martínez, took the abandoned car to the police station in nearby Pahautlán. A police record exists of the police operation and impounding of the car. The car was returned the following day to the family of Cristóbal Aparicio and members of the community observed the car in Atla for a further 10 days before it disappeared around the time Cristóbal Aparicio filed his complaint.

The day after the car was impounded Cristóbal and Abraham Aparicio, José Ramón Aniceto, Pascual Cruz and the police commander signed a conciliation agreement witnessed by the indigenous judge of the Pahautlán municipality. The agreement, which was made in Nahuatl but transcribed into Spanish, records that Cristóbal Aparicio agrees to pay damages of 3,500 pesos for damages caused by his son during his attack on the water engineer and Pascual Cruz, and in return they agree not to press charges and pardon the offender.

José Ramón Aniceto and Pascual Cruz were unaware of any criminal complaint or investigation against them until their detention in January 2010. They and numerous witnesses and members of the community have consistently denied the version of events alleged by Cristóbal Aparicio.

An investigation and trial based on fabricated evidence

Amnesty International has documented in many other cases how a complaint supported by two false witness statements may be sufficient to secure an unfair conviction and many years of unjust imprisonment, in particular if the accused come from marginalized or indigenous communities.¹

¹ UA: 25/12 Index: AMR 41/007/2012, UA: 314/08 Index: AMR 41/064/2010; Mexico: Briefing to the UN Committee on the Elimination of Racial Discrimination: 80th Session, February 2012, <http://www.amnesty.org/en/library/info/AMR41/081/2011/en>

Discrimination in the criminal justice system remains routine. Unfounded criminal charges brought against human rights defenders have also frequently been used to deter legitimate human rights activism. Courts all too frequently fail to throw out these cases and do not guarantee the rights of victims to an impartial court, a fair hearing, the presumption of innocence and an effective defence.

In Jose Ramon Aniceto and Pascual Cruz's case, the Puebla state judicial police and public prosecutor failed to carry out an impartial and independent investigation to establish the facts. No effort was made to interview multiple witnesses or to check official records of the attack by Abraham Aparicio against those carrying out works to extend water access. Nor were municipal police records on the operation to remove the abandoned car checked, and no efforts were made to establish the location of the car. Police and prosecutors only conducted one visit to the alleged crime scene but did not seek to interview other witnesses or assess the credibility of the witnesses presented by the complainant. In 2011, journalists investigating the case obtained video testimony from many of the principle participants and gathered evidence that had been ignored by the authorities, including the supposed eyewitnesses confirming they had been forced to provide testimony by the complainant and acknowledging that the conflict over water in the community was the sole reason for José Ramón Aniceto and Pascual Cruz's imprisonment.²

Amongst the defence evidence were witness statements to support José Ramón Aniceto and Pascual Cruz's version of events and statements that testified to their good character. Despite the obligation of the trial judge to evaluate impartially the evidence presented by both prosecution and defence, the judge dismissed without substantial argument the defence evidence, but validated without clear justification the prosecution case. The inconsistencies and irregularities of the prosecution witness statements which the judge ignored included, amongst other things:

- The witnesses stated that they were 10 meters from the scene, but Cristobal claimed that they were 100 meters away;
- Cristobal alleged there were as many as 15 witnesses, but the witnesses did not observe any others. No other eyewitnesses were identified;
- Both witnesses went home without reporting the crime. There was no explanation as to why they came forward later, suggesting that they may have been coerced at a later date to declare against Jose Ramón Aniceto and Pascual Cruz;
- Neither witness provided any assistance to Cristobal Aparicio, allegedly on the point of unconsciousness at the side of the road after the assailants had left;
- The witnesses are unclear about the exact location of the crime and alleged that Cristobal Aparicio was thrown into a non-existent concrete drainage ditch by the side of the road;
- The witnesses claimed it was a four door car, while the alleged victim stated it had two doors;
- One witness stated the car was travelling fast, while the other that it was moving slowly.

The fact that both Cristobal and Abraham Aparicio voluntarily signed a conciliation agreement before a municipal authority with the supposed perpetrators of the crime without making any reference to the alleged theft of the car was also not taken into consideration by the judicial authorities as evidence of the fabrication of Cristobal Aparicio's complaint.

Due process and indigenous identity denied

The Mexican Constitution states that "in all trials and proceedings in which [Indigenous Peoples] participate, individually or collectively, their customs and cultural specificities must be taken into account,

²http://centroprodh.org.mx/index.php?option=com_content&view=category&layout=blog&id=206&Itemid=62&lang=en

respecting the precepts of this constitution. Indigenous Peoples have at all times the right to be assisted by interpreters and defence-counsels that have knowledge of their language and culture.”³

Jose Ramon Aniceto and Pascual Cruz are both indigenous Nahuatl peoples living according to their traditions in Atla. Their first language is Nahuatl and the Public Prosecutor’s Office recognised that they are only able to express themselves in limited Spanish. Despite this, they were never afforded an interpreter or defence lawyer with knowledge of their language or culture. In fact, police, prosecutors and judges failed to take any steps to ensure that both men understood their rights or the nature of the case against them in a manner that they clearly understood. The use of Spanish throughout all stages of the process, despite acknowledgements of the limited ability of the accused and witnesses to express themselves in Spanish placed them at a severe disadvantage. The failure of the judge and prosecutor to uphold this constitutional right severely undermined their right to a fair trial.

In fact, when making their initial statement, the public defender that was assigned to the men failed to identify himself, and only signed the record of their statement. When they later received the assistance of a private lawyer, the judge dismissed the defence witness statements on the grounds that the lawyer had asked questions during the interview and “prepared”⁴ the witnesses. The lack of impartiality with which the judge weighed the evidence violates the fundamental fair trial rights to equality between defence and prosecution and the presumption of innocence. Amnesty International believes that the men were charged and convicted on the basis of fabricated evidence, but the denial of a fair trial was also the result of discrimination against indigenous defendants in criminal proceedings.⁵

The current situation of the case and access to water in Atla

The criminal wing of the National Supreme Court of Justice (Suprema Corte de Justicia de la Nación, SCJN) has decided to consider the petition for federal judicial review filed by the new defence lawyers. Amnesty International hopes the SCJN will overturn their conviction and order their immediate release.

Since the detention of Jose Ramon Aniceto and Pascual Cruz, the cacique group, according to some community members, has re-exerted partial control over water supplies to the community and once again is limiting access. The municipal, state or federal government have failed to take any measures to ensure fair and equitable water access.

Amnesty International calls on the Mexican government and Puebla state government:

- To ensure the immediate and unconditional release for José Ramón Aniceto and Pascual Cruz;
- To carry out a full and impartial investigation into the judicial process which allowed the two men to be unfairly tried and convicted of a crime that they didn’t commit in reprisal for their lawful efforts to increase access to water in Atla and for those responsible to be held to account.

Amnesty International calls on the Supreme Court of Justice of the Nation:

- To ensure that justice is done in this case, in line with international human rights obligations and standards and the Mexican constitution.

³ en todos los juicios y procedimientos en que sean parte, individual o colectivamente, se deberán tomar en cuenta sus costumbres y especificidades culturales respetando los preceptos de esta constitución. Los indígenas tienen en todo tiempo el derecho a ser asistidos por interpretes y defensores que tengan conocimiento de su lengua y cultura.” (Mexican Constitution Art 2, VIII)

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⁵ Mexico: Briefing to the UN Committee on the Elimination of Racial Discrimination: 80th Session, February 2012, <http://www.amnesty.org/en/library/info/AMR41/081/2011/en>.