

Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 31/06; Petition 1176-03
Title/Style of Cause:	Silvia Arce v. Mexico
Doc. Type:	Decision
Decided by:	President: Evelio Fernandez Arevalos; First Vice-President: Paulo Sergio Pinheiro; Second Vice-President: Florentin Melendez; Commissioners: Clare K. Roberts, Freddy Gutierrez, Paolo G. Carozza, Victor E. Abramovich.
Dated:	14 March 2006
Citation:	Arce v. Mexico, Petition 1176-03, Inter-Am. C.H.R., Report No. 31/06, OEA/Ser.L/V/II.127, doc. 4 rev. 1 (2006)
Represented by:	APPLICANTS: the Justice for our Daughters, the Mexican Commission for Defending and Promoting Human Rights, and the Center for Justice and International Law
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I. SUMMARY

1. On December 30, 2003, the Inter-American Commission on Human Rights (hereinafter referred to as the Inter-American Commission, or IACHR) received a complaint alleging international responsibility of the United Mexican States (hereinafter referred to as the State) for the irregularities committed in the investigation of what happened to Silvia Arce (hereinafter referred to as the alleged victim), who disappeared on March 11, 1998 in Ciudad Juárez, state of Chihuahua. The petition was filed by Evangelina Arce, mother of the alleged victim, Justice for our Daughters (Justicia para Nuestras Hijas), the Mexican Commission for Defending and Promoting Human Rights (Comisión Mexicana de Defensa y Promoción de los Derechos Humanos—CMDPDH), and the Center for Justice and International Law (Centro de Justicia y el Derecho Internacional—CEJIL) (hereinafter referred to as the petitioners).

2. The petitioners allege that the events reported constitute a violation of Article 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (hereinafter referred to as the Convention of Belém do Pará) and of Articles I and III of the Inter-American Convention on the Forced Disappearance of Persons. Likewise, they allege that the following human rights and obligations guaranteed by the American Convention on Human Rights (hereinafter referred to as the American Convention) have been infringed: obligation to respect and guarantee all rights (Article 1); obligation to adopt domestic legal effects (Article 2); right to life (Article 4); right to personal integrity (Article 5), right to personal freedom (Article 7); right to due process (Article 8); equality before law (Article 24); and right to judicial protection (Article 25). In particular, they allege that, in regard to Evangelina Arce and

her family, there have been violations of the right to personal integrity (Article 5); right to due process (Article 8); right to protection of the family (Article 17); and right to judicial protection (Article 25), all related to the violation of the generic duty of respect and guarantee provided for in Article 1(1) of the American Convention. They also contend that they have met all the requirements of admissibility set forth in this international instrument. As for the Mexican State, it holds that the steps taken in the case show its willingness to guarantee the respect for the human rights of all persons and that the remedies under domestic law have not been exhausted. As a consequence, the State requests the Inter-American Commission to declare the petition inadmissible.

3. Without prejudging the merits of the case, in the present complaint, the IACHR concludes that the case is admissible, because it meets the requirements stipulated in Articles 46 and 47 of the American Convention. Therefore, the Inter-American Commission decides to notify the parties and continue reviewing the merits of the alleged violation of Article 7 of the Convention of Belém do Pará; Articles I and III of the Inter-American Convention on the Forced Disappearance of Persons; and Articles 2, 4, 5, 7, 8, 17, 24, and 25 of the American Convention, in connection with Article 1.1 of the above-mentioned international instrument; likewise, it decides to publish the present complaint in its Annual Report to the OAS General Assembly.

II. PROCEEDINGS WITH THE INTER-AMERICAN COMMISSION

4. The petition was submitted on December 30, 2003, by means of a communication from Justice for Our Daughters, CMDPDH, and CEJIL. After the initial study of the proceedings, on the basis of Article 30.2 of its Rules of Procedures, the Commission transmitted the relevant parts of the petition to the State on May 18, 2004 with a two-month time limit to make its observations. On January 3, 2005, the Inter-American Commission reiterated its request to the Mexican State for information made on May 18, 2004. On February 1, 2005, the State's note containing the observations on the petition was received. This information was sent to the petitioners on April 12, 2005, with one-month time limit for them to present their observations, and they did submit them on May 19, 2005. These observations were sent to the State on July 20, 2005, and the State presented its observations on August 19, 2005.

III. POSITIONS OF THE PARTIES

A. The petitioners

5. The petitioners allege that the State is responsible, among other reasons, for irregularities and inconsistencies in the investigation of the facts involved in the disappearance of Silvia Arce. According to the complaint, Silvia Arce, 29 years of age, was last seen alive by her family on Wednesday, March 11, 1998. The day of her disappearance, Silvia Arce left her home at 7:00 PM for her job as a dancer in a bar called the "El Pachangas"[FN1] and never returned. Octavio Atayde, father of Silvia Arce's children, went to the bar to ask about her, and one of the waiters expressed surprise that she had still not arrived at home. The petitioners emphasize that, at the same time that Silvia Arce disappeared, Griselda Mares Matas, one of her close friends, also disappeared.[FN2]

[FN1] Statement by Atayde Palomino, father of Silvia's three children.

[FN2] The petitioners do not provide further information about the status of the investigations on the whereabouts of Griselda Mares; they only point out that, on March 17, 1996, the mother of Griselda Mares reported her disappearance to the authorities.

6. On March 13, Oscar Atayde went to the house of Mrs. Evangelina Arce, Silvia Arce's mother, to inform her that her daughter had not returned home. The following day, Evangelina Arce went to the Attorney General's Office of the state of Chihuahua (Procuraduría General de la Justicia del Estado—PGJE) and filed the corresponding complaint. Relatives also managed to obtain information that would help them clarify the facts and determine her whereabouts. The night of March 14, Mr. Atayde returned to the bar, but those present were unable to provide him with any further information. On March 15, one of the security guards of the bar told them that, on the night of the event, Mr. Avilio Melgarejo had offered to take Silvia back to her house.[FN3] The relatives reported this information to the PGJE and, after observing that the motor vehicle of Mr. Melgarejo was in his home, they reported this fact to the Criminal Investigation Department so that the police would proceed to look for him. Nevertheless, no steps were taken until March 23, 1998, 10 days after the disappearance. During the proceedings, the owner of the house repeated to the officers the same thing she had said to the relatives of the alleged victim: that on the date of the event "a woman fitting the description of Silvia Arce had come looking for Avilio Melgarejo and that she was with another individual in a white car."

[FN3] Avilio Melgarejo Rivero worked in El Pachangas as a security guard since the end of 1997 and afterwards was Silvia Arce's boyfriend. Communication by the petitioners dated December 30, 2003, page 5.

7. The petitioners contend that the police officers in charge of the investigation omitted lines of investigation that, *prima facie*, could have led to useful results for clarification of Silvia Arce's disappearance.[FN4] On the contrary, the petitioners claim that "the investigations have focused on the victim's private life." [FN5] In 2002, some of the petitioners became the legal representatives for third-party proceedings, and a review of the inquest enabled them to notice various omissions. Among others, they were able to observe that, from 1998 up to that time, no steps had been taken, and as a result it was requested that fresh investigations be conducted. Evangelina Arce adds that, at first, some of the evidence that she presented did not appear in the inquest; for example, she mentions a tape recording in which an unidentified person states that "Silvia Arce was murdered by Avilio Melgarejo, and that afterwards they dumped her body in the Municipality of Parral;" this tape recording appeared later on and was only transcribed recently on June 15, 2002. Among the irregularities of the investigation, the petitioners observe that the officers failed to gather relevant information on the main suspect; [FN6] nor were investigations carried out on the persons who might in some way have been related to the disappearance; [FN7] nor was anything done to find these persons.

[FN4] The petitioners point out that another dancer at the bar, Verónica Rivera, personally reported that she had been kidnapped by Atilio Melgarejo and two other persons, one of whom she identified as an officer of the Criminal Investigation Department. Ms. Rivera had allegedly been kept all night and they let her out the next day as long as she did not tell anyone. Nevertheless, despite her fear, Verónica Rivera provided information about the persons responsible for her kidnapping and about the place where she had been kept at that time. On April 14, 1996, an indictment was issued for the crime of kidnapping of Verónica Rivera, and Atilio Melgarejo, Carlos Cárdenas, and Jorge García Paz were identified out as those allegedly responsible for this crime. Nevertheless, on May 4, 1998, the order of arrest was turned down because it was felt that elements were missing to substantiate the crime and attribute responsibility; among other things, it was established that what Verónica River had said had no validity because she was a prostitute.

[FN5] Communication by the petitioners dated December 30, 2003.

[FN6] The petitioners contend that “necessary and fundamental support was not requested from the related institutions to obtain further information about the telephones and addresses... nor was information requested from the Federal Police Force to learn the names of the persons that might have been involved in investigating drug dealing to build up the investigation and act with the promptness required.” Communication by the petitioners dated December 30, 2003.

[FN7] The petitioners assert that an officer of the Criminal Investigation Department might have been involved in the disappearance, but that the investigations of this alleged connection have not been exhausted. Communication by the petitioners dated December 30, 2003.

8. The petitioners assert that the facts are consistent with the pattern of disappearances of women in the region of Chihuahua at that time. They claim that the State is responsible for the uncertainty of Silvia Arce’s relatives about her whereabouts. Because of the time that has elapsed without any news of Silvia Arce, the petitioners believe that she may have lost her life in circumstances that till now have not been clarified. They assert that the State is responsible for not having conducted due investigation at the time of the disappearance, and they point out that, similar to what occurred to Verónica Rivera, Silvia Arce may have been first kidnapped. They add that the information gathered by her relatives provide clues pointing to the possible involvement of a State police officer. Furthermore, they point out that the family broke up as result of Silvia Arce’s disappearance and uncertainty about her whereabouts. The petitioners allege that the mother’s physical and emotional health declined and that she was “constantly harassed and discredited because of the efforts she made through various organizations in which she participated to make public her complaints in her country and internationally.”[FN8]

[FN8] Communication by the petitioners dated December 30, 2003, page 21.

9. In short, the petitioners claim that there are unwarranted delays in the investigations, because eight years after the event no reasonable explanation has been forthcoming for not having located Silvia Arce nor have those responsible for the events reported been punished, whereas her family has been tirelessly calling for justice and has even started up their own investigations. They also claim that the absence of the offense of the forced disappearance of

persons in country's domestic legal system prevents the victims from benefiting from any suitable remedy and, as a result, the State has not fulfilled its duty to adopt domestic law provisions to protect persons under its jurisdiction. They identify the gender factor as a crucial factor for the lack of exhaustive investigative actions, although the State has recognized and accepted its duties to respect and guarantee the rights of women.

10. In addition to claiming that the case constitutes a denial of justice, the petitioners invoke exception to the rule that domestic remedies, as provided for in Article 46(2) of the American Convention, must have been exhausted, as the remedies available in the domestic jurisdiction have not been effective or expeditious and unwarranted delays and the absence of due process of law are apparent.

B. The State

11. In response to the complaint, the Mexican State claims that the murder and disappearance of women in Ciudad Juárez, Chihuahua, are the result of a complex, multi-faceted, and multi-factor social phenomenon that cannot be addressed merely by police investigation and the administration of justice. It affirms that it is a problem that requires an integral vision tackling the social and structural causes leading to this phenomenon. It recognizes that, in the specific situation of Ciudad Juárez, factors such as drug trafficking, drug abuse, migration, and organized crime aggravate the culture of discrimination against women.[FN9]

[FN9] Communication by the Mexican State dated February 1, 2005.

12. The State refers to the actions to tackle the problem of the murder of women in Ciudad Juárez. Among others, it mentions that, in the framework of prevention, the Chihuahua Women's Institute (Instituto Chihuahuense de la Mujer—ICHIMU) was established by decree of the Governor of the State of Chihuahua; this Institute has been promoting various activities to respond to this problem. In coordination with the Office of the Special State Prosecutor for the Homicide of Women in Ciudad Juárez, this institute has followed up on every investigation and the attention given to the victims' relatives. The State also mentions the establishment of the Coordination and Liaison Commission to Prevent and Eliminate Violence against Women in Ciudad Juárez, Chihuahua (Comisión de Coordinación y Enlace para Prevenir y Erradicar la Violencia contra las Mujeres en Ciudad Juárez, Chihuahua). It also points out that the State Congress amended the Criminal Code to address crimes that are identified as repetitive in each case.

13. As for prosecution and the administration of justice, the State indicates that the instrumentation of an Integral Public Security Plan is being envisaged, as well as the establishment of a joint investigative agency comprised of the Public Prosecutor's Office of the Republic and the Attorney General's Office of the State of Chihuahua, the instrumentation of measures to protect victims and their families, attracting federal investigative actions; and that steps have been taken to secure the support of the U.S. Federal Bureau of Investigation (FBI) so it can provide technical assistance in investigations.[FN10]

[FN10] Communication by the Mexican State dated February 1, 2005, pages 3-8.

14. The State also mentions the creation of a Special Federal Attorney General's Office to investigate the murder and disappearance of women in the Municipality of Ciudad Juárez, which submitted its reports to the IACHR in June and October 2004. It points out that the Second Report of the Special Prosecutor[FN11] indicates that, out of the 155 cases reviewed, to date probable responsibility on the part of public servants directly involved in the investigations and who might have been administratively and/or criminally liable has been detected. As a whole, there were 100 officials of the PGJE who were dismissed from their posts and are facing various criminal and/or administrative charges.[FN12] The State considers that, as a result of these measures, it has been able to address one of the main concerns of the relatives of the victims, namely, mistreatment and neglect by various public officials.[FN13]

[FN11] Submitted at the hearing held on October 21, 2004, in the framework of the 121st Regular Session.

[FN12] This list includes 8 prosecutors, 8 officers of the Ministry of Justice, 10 deputy officers, 2 deputy chiefs of the Pretrial Investigation Bureau, 27 officers of the Criminal Investigation Department, and 25 legal experts.

[FN13] Communication by the Mexican State dated February 1, 2005, pages 7-8.

15. Furthermore, the State points out:

[T]he Mexican Government wishes to clarify what was pointed out by this distinguished Commission, namely, that it has not received information about this petition, because [...] the submittal of information to this inter-American body has been permanent, showing the willingness of the Mexican Government to keep in close touch with the Commission about the integral treatment being provided to address the problems in Ciudad Juárez, Chihuahua.[FN14]

[FN14] Communication by the Mexican State dated February 1, 2005, page 2.

16. As for the disappearance of Silvia Arce, the State points out that this case was included in the first package reviewed by the Special Federal Prosecutor.[FN15] It adds that, on July 7, 2004, because of incompetence, the case was referred to the Deputy Prosecutor's Office Against Organized Crime (Subprocuraduría contra la Delincuencia Organizada—SIEDO), because it was deemed that more than three persons had intervened. The above-mentioned agency started up a pretrial investigation of the crimes of violating the Federal Law against Organized Crime (unlawful imprisonment, against health and injuries). They add that various steps are being taken to find the possible whereabouts of Silvia Arce.

[FN15] Communication by the Mexican State dated February 1, 2005, page 8.

17. The State claims that one of the alleged suspects is an inmate at the Judicial Rehabilitation Center since October 1998, who is completing a prison sentence of 13 years and 6 months for proven theft and kidnapping. At the same time, the State provided specific information about the status of the investigations and requested that they remain confidential because it was at the inquest stage and so as not to jeopardize its development. The petitioners were apprised of the information, which appears in the case file of the Inter-American Commission.

18. Finally, the State points out that, in the case of Silvia Arce, it has documented the support provided to her relatives in the two above-mentioned reports by the Special Prosecutor's Office (Fiscalía Especial). This support consisted of a family grocery allowance for the months of July to September 2004, granted by the General Department of Municipal Public Security (Dirección General de Seguridad Pública Municipal) and the Special Prosecutor's Office. Likewise, it mentions that the Chihuahua Women's Institute and Special Prosecutor's Office provided them with economic, medical, and psychological support, assistance, and legal counsel during these months.

IV. REVIEW OF ADMISSIBILITY

A. Jurisdiction *ratione loci*, *ratione personae*, *ratione temporis* and *ratione materiae* of the Commission

19. Article 44 of the American Convention entitles the petitioners to lodge complaints with the IACHR. The petition points out that the alleged victims are Silvia and Evangelina Arce, individual persons whose rights, as enshrined in the American Convention, Mexico has pledged to respect and guarantee. As for the State, Mexico is a party to the American Convention since March 24, 1981, the date on which it deposited the respective ratification instrument. Therefore the Commission has jurisdiction *ratione personae* to examine the petition.

20. Furthermore, the Mexican State ratified the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Belém do Pará Convention) on November 12, 1988. Although the events that gave rise to the petition being examined took place in March 1998, before the above-mentioned instrument came into force for Mexico, the petitioners claim that violations of due process have been continuous, and therefore these claims would have to be examined on the basis of the applicability of the Convention of Belém do Pará.[FN16] A similar criterion is observed regarding the Inter-American Convention on the Forced Disappearance of Persons ratified by Mexico on April 9, 2002, because likewise, this offense has been widely recognized as continuing in Inter-American case law. Therefore, the IACHR has jurisdiction *ratione temporis* to examine the grounds for the claims of alleged violations of international instruments.

[FN16] In this regard, see IACHR, Case 11,516, Ovelario Tames, Annual Report 1998, (Brazil), paragraphs 26 and 27, Case 11,405 Newton Coutinho Mendes and others, Report 1998 (Brazil), Case 11,598 Alonso Eugenio da Silva, Annual Report 1998 (Brazil), paragraphs 19 and 20, Case 11,287 João Canuto de Oliveira, Annual Report 1997 (Brazil). Case 12,051, Maria Da Penha Maia Fernandes, Annual Report 2001 (Brazil). Also see I/A Court H.R., Blake Case. Preliminary Exceptions Judgment of July 2, 1996, paragraphs 39 and 40; I/A Court H.R., Velásquez Rodríguez Case. Judgment of July 29, 1988, paragraph 155; and I/A Court H.R., Case of Godínez Cruz, Judgment of January 20, 1989, paragraph 163. Likewise, in the Genie Lacayo Case (paragraphs 21 and 24, Preliminary Exceptions), it has accepted to review the violation of Articles 2, 8, 24 and 25, which was part of a denial of justice that started prior to the non-retroactive acceptance of the Court's jurisdiction but then continued after it. In addition, the notion of continuing situation is also legally recognized by the European Court of Human Rights, in decisions on imprisonment cases going back to the sixties; and by the Human Rights Committee whose proceedings under the United Nations International Covenant on Civil and Political Rights and its first Optional Protocol, as of the early eighties, contain examples of the examination of continuing situations generating events that occurred or persisted after the date of entry into force of the Covenant and Protocol regarding the State concerned and which constitute in themselves violations of the rights enshrined in the Covenant.

21. The Inter-American Commission has jurisdiction *ratione loci* to be apprised of the petition as claims of violations of rights protected by the American Convention, the Convention of Belém do Pará, and the Inter-American Convention on the Forced Disappearance of Persons and taking place inside the territory of Mexico, which is a State party to these treaties, have been made in it.

B. Other requirements for admissibility of the petition

1. Exhaustion of remedies under domestic law

22. Article 46.1.a of the American Convention provides that admission by the Commission of a petition shall be subject to the following requirement: "that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law." Article 46.2 of the Convention specifies three cases in which the rule of exhaustion of domestic remedies does not apply: a) if the legislation of the state concerned fails to afford due process for the protection of the right or rights allegedly violated; b) if the party alleging violation has not been allowed to gain access to domestic remedies or has been hindered in exhausting these remedies; and c) if there has been unwarranted delay in the issuance of a final judgment on the above-mentioned remedies. It must be emphasized that these principles do not merely refer to the formal existence of these remedies, but also to their adequacy and effectiveness. If they are to be adequate, their functioning in the domestic law system must be suitable for protecting the legal situation infringed. An effective remedy is one that is capable of producing the outcome for which it was established.[FN17]

[FN17] I/A Court H.R., Case of Velásquez Rodríguez. Judgment of July 29, 1988. Series C No. 4, paragraphs 63-64; I/A Court H.R., Case of Godínez Cruz. Judgment of January 20, 1989. Series C No. 5, paragraphs 66-67; I/A Court H.R., Case of Fairén Garbi and Solís Corrales. Judgment of March 15, 1989. Series C No. 6, paragraphs 87-88.

23. In the present case, the parties claim a controversy regarding compliance with the requirement that domestic remedies must have been exhausted as provided for in Article 46.1.a of the American Convention, and therefore the IACHR must issue a ruling regarding this. The State contends that this requirement has not been met, whereas the petitioners are invoking the applicability of the exception to this rule because they deem there has been unwarranted delay in taking substantive steps aimed at clarifying the circumstances of the facts and at identifying and punishing those responsible.

24. When a State alleges that domestic remedies have not been exhausted, the burden shifts to the Government to point out which specific domestic remedies remain to be exhausted and to demonstrate their effectiveness.⁷ In this case, the petitioners must demonstrate that these remedies were exhausted or that one of the exceptions set forth in Article 46.2 of the American Convention is applicable.

25. In the matter being reviewed herein, the Mexican State has confined itself to asserting that domestic remedies have not been exhausted and provides information about the actions that were taken to address the problem of violence against women in Ciudad Juárez.⁸ It also mentions some of the steps that were taken in Silvia Arce's case file in 2004, but it does not present specific information that would lead to the conclusion that the remedy is adequate and effective as required by international human rights parameters.

26. Without starting to analyze the arguments developed by each party about the alleged violation of the right to due process and judicial protection, the Inter-American Commission's preliminary observation is that, on the date of the acceptance of the present complaint, eight years have elapsed since the day on which Silvia Arce disappeared and that this event was reported to the competent authorities. According to the information that the IACHR has available, to date the events that were reported have not been completely clarified nor has it been determined whether responsibility has been imputed to public officials, as reported by the petitioners. Likewise, the Inter-American Commission notes that the State has not provided specific information about progress in this investigation in particular that would clarify the facts and punish those responsible.

27. Likewise, the Inter-American Commission observes that the petitioners claim that the facts of the present case occurred in a context of numerous murders and disappearances of women in Ciudad Juárez, which have remained unpunished for reasons imputable to the authorities.

28. In the light of all that was indicated above and the evidence appearing in the file of this case, the Inter-American Commission finds, for the purpose of admissibility, that there has been unwarranted delay in taking decisions by the Mexican jurisdictional bodies regarding the events

reported. As a result, the IACHR applies the exception to the exhaustion of domestic remedies as set forth in Article 46.2.c of the American Convention.

2. Deadline for the presentation of petitions

29. Article 46.1.b of the American Convention provides that the petition must be lodged within six months after the victim has been notified of the definitive decision that all domestic remedies have been exhausted. The Inter-American Commission does not consider that this requirement for the petition being examined is enforceable, because the exception indicated in Article 46.2.c has been applied and the petition was submitted before a final judgment was issued, but within a reasonable period of time as indicated in Article 32.2 of the Rules of Procedure.

3. Duplication of proceedings and res judicata

30. The file of the petition does not contain any information that might lead to the understanding that the present case is pending in another international proceeding for settlement or that it has been previously ruled on by the Inter-American Commission. Therefore, the IACHR concludes that the exceptions set forth in Article 46.1.d and Article 47.d of the American Convention are not applicable.

4. Characterization of the alleged events

31. In the present case, the petitioners claim that the State is responsible for alleged violations of the right to life, personal integrity, personal freedom, due process, equality before law, judicial protection, the right of women to a life without violence, principles guaranteed by the American Convention, the Convention of Belém do Pará, and the Inter-American Convention on the Forced Disappearance of Persons. As for the State, it alleges that the petitioners have not exhausted domestic remedies and therefore do not meet the requirements for admissibility.

32. Regarding this, the Commission considers that it does not pertain to the present stage of the proceedings to determine whether the alleged violations did take place or not. For the purpose of admissibility, the IACHR must decide whether the facts presented tend to characterize possible violations of the Conventions, as stipulated by Article 47.b of the American Convention.

33. The criterion for evaluating these points is different from the one required to decide on the merits of a complaint. The Inter-American Commission must conduct a *prima facie* evaluation to examine whether the complaint substantiates the apparent or potential violation of a right guaranteed under the American Convention.[FN18] This analysis is of a preliminary nature and does not involve any prejudgment or early opinion on the substance of the controversy. The distinction between the study pertaining to the statement on admissibility and the one required to determine a violation is reflected in IACHR's Rules of Procedure themselves, which clearly establish the difference between the stage of admissibility and that of the merits of the case.[FN19]

[FN18] See IACHR, Report No. 128/01, Case 12.367, Herrera y Vargas (“La Nación”), Costa Rica, December 3, 2001, paragraph 50.

[FN19] See IACHR, Report No. 31/03, Case 12.195, Mario Alberto Jara Oñate et al., Chile, March 7, 2003, paragraph 41.

34. The allegations of the petitioners refer to events which, if true, would constitute violation of various rights guaranteed by the American Convention, the Convention of Belém do Pará, and the Inter-American Convention on the Forced Disappearance of Persons. The IACHR deems that the facts presented merit closer and more complete examination in the substantial stage. Furthermore, although the petitioners have not invoked Article 3 of the American Convention, by virtue of the *iura novit curia* principle, the Commission shall admit allegations referring to violations of this article.

35. The IACHR considers that, if the facts are proven, they would constitute violations of the rights guaranteed under Articles 3, 4, 5, 7, 8, 24, and 25 of the American Convention, in connection with Article 1.1 and 2 of said instrument. Likewise, it considers that the facts presented would constitute possible violations of Article 7; as well as of Articles II and III of the Inter-American Convention on the Forced Disappearance of Persons. With respect to Evangelina Arce, the Commission considers that if proven, the facts might characterize violations of the rights guaranteed under Articles 5, 8, 17 and 25 of the American Convention.

36. Regarding the duty to adopt domestic law provisions, the IACHR understands that, in this case, it must analyze in the stage of the substance whether the State fulfilled its obligation to take the measures needed to ensure the effectiveness of the rights protected under the American Convention. Particularly, this stage shall examine whether the State adopted the measures or policies needed at the time of the events.[FN20]

[FN20] See IACHR, Report No. 16/05, Petition 281/02, Admissibility, Claudia Ivette González, Mexico, 2005, paragraph 32; Report No. 17/05, Petition 282/02, Admissibility, Esmeralda Herrera Monreal, Mexico, 2005, paragraph 32; and Report No. 18/05, Petition 283/02, Admissibility, Laura Berenice Ramos Monarrez, Mexico, 2005, paragraph 31.

37. Considering all of the above, the IACHR concludes that the petitioners have demonstrated *prima facie* the points required in Article 47.b of the American Convention.

V. CONCLUSIONS

38. The Inter-American Commission concludes that it is competent to examine the merits of this case and that the petition is admissible in accordance with Articles 46 and 47 of the American Convention. On the basis of the legal and factual arguments indicated above and without prejudging the substance of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the present case admissible in terms of alleged violations of the rights protected by Articles 3, 4, 5, 7, 8, 24 and 25 of the American Convention, in connection with Article 1.1 and 2 of said instrument; Article 7 of the Convention of Belém do Pará; and Articles I and III of the Inter-American Convention on the Forced Disappearance of Persons. As regards Evangelina Arce, it declares admissible Articles 5, 8, 17, and 25 in connection with Article 1.1 of the American Convention.
2. To notify the parties of this decision.
3. To continue examining the merits of the case.
4. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 14th day of the month of March, 2006.
(Signed): Evelio Fernández Arévalos, President; Paulo Sérgio Pinheiro, First Vice-President; Florentín Meléndez, Second Vice-President; Clare K. Roberts, Freddy Gutiérrez, Paolo G. Carozza and Víctor E. Abramovich, Members of the Commission.