

REPORT No. 146/10¹
PETITION 212-05
ADMISSIBILITY
MANUEL SANTIZ CULEBRA ET AL. (ACTEAL MASSACRE)
MEXICO
November 1, 2010

I. SUMMARY

1. On March 2, 2005, the Inter-American Commission on Human Rights (hereinafter the "Inter-American Commission," "Commission," or "IACHR") received a complaint submitted by the Sociedad Civil Las Abejas and the Centro de Derechos Humanos Fray Bartolomé de las Casas A.C. (hereinafter "the petitioners") alleging the international responsibility of the United Mexican States (hereinafter the "Mexican State," "Mexico," or the "State") for the massacre said to have been perpetrated by paramilitary groups acting with the acquiescence of the State against members of a Tzotzil indigenous community in Acteal, Chenalhó, Chiapas, and for the alleged failure to sanction all the direct perpetrators and masterminds of the massacre.

2. The petitioners allege that the Mexican State violated Articles 1(1) (obligation to respect the rights), 4 (right to life), 5 (right to humane treatment), 8 (right to a fair trial), 17 (rights of the family), 19 (rights of the child), and 25 (judicial protection) of the American Convention on Human Rights (hereinafter "Convention" or "American Convention") to the detriment of 45 Tzotzil indigenous persons executed in the Acteal massacre and another 24 who were wounded, as well as their right to justice, including therein their right to obtain integral reparation for the harm suffered and the right to the truth. With respect to the admissibility requirements, they indicate, as regards exhaustion of domestic remedies, that the exception provided for at Article 46(2)(c) of the Convention applies.

3. For its part, the State does not question that the acts of violence indicated by the petitioners took place, yet it argues that they were perpetrated by civilian members of another community in the area. Moreover, it alleges the petition is inadmissible on the grounds that when it was filed criminal proceedings were under way that were still pending related to the Acteal massacre. In addition, it argues that the motives that gave rise to the complaint do not subsist, insofar as the situation was allegedly resolved by the domestic judicial bodies, and that the actions of the domestic judiciary are not subject to review by the IACHR just because the petitioners consider them unjust.

4. Without prejudging on the merits, after analyzing the petition, the Commission concludes that the petition is admissible, in light of Articles 46 and 47 of the American Convention, and Articles 30, 36, and others of its Rules of Procedure, for the alleged violation of the following articles of the American Convention, all in conjunction with Article 1(1) of the same international instrument: (i) Article 4, to the detriment of the alleged assassinated victims; (ii) Article 5, to the detriment of the alleged wounded victims; (iii) Articles 5, 8, and 25, to the detriment of the alleged surviving victims and the relatives of all the alleged victims; and, (iv) Article 19 to the detriment of the 18 children assassinated in the massacre. The Commission decides to find the petition inadmissible as regards the alleged violation of Article 17 of the American Convention. Finally, it orders that the parties be notified, and that this report be published and included in its Annual Report to the OAS General Assembly.

II. PROCEEDINGS BEFORE THE IACHR

5. The petition was received on March 2, 2005, and was recorded as P-212-05. On February 2, 2006, it was forwarded to the State, which was given two months to submit its observations.

¹ According to Article 17.2(a) of the Commission's Rules of Procedure, Commissioner José de Jesús Orozco Henríquez, a Mexican national, did not participate in the deliberations or the decision in the present case.

After the granting of an extension, Mexico's response was received by the IACHR, by email, on July 5, 2006.

6. In addition, the Commission received information from the petitioners on the following dates: November 29, 2007, September 2, 2008, November 4, 2009, and April 23, 2010. Those communications were duly forwarded to the State.

7. The IACHR received information sent by the State on January 29, August 24, and November 28, 2007; and on June 23, 2010. The notes were duly forwarded to the petitioners.

Precautionary Measures – Events at Chenalhó, Chiapas (Acteal Massacre)

8. On December 24, 1997, after applications were filed, one by the Centro de Derechos Humanos "Miguel Agustín Pro Juárez A.C." and another by the Center for Justice and International Law and Human Rights Watch/Americas, the IACHR asked the Mexican State to adopt precautionary measures to ensure the life, physical integrity, and health of the survivors of the Acteal massacre and to prevent the occurrence of new acts of violence in the zone.² On December 31, 1997, Mexico reported on the actions taken and continued to present updated information periodically.³

III. POSITIONS OF THE PARTIES

A. The petitioners

9. The petitioners allege that on December 22, 1997, at the encampment of displaced persons in Acteal, municipality of Chenalhó, state of Chiapas, 45 Tzotzil indigenous persons (four of them pregnant women and 18 children) were executed by paramilitary forces who allegedly acted with the acquiescence of the Mexican authorities, applying a state policy of fighting the insurgency. On that occasion 26 persons were also wounded.

10. With respect to the context of the massacre, they point out that as of 1995, in the context of the confrontation between the Zapatista National Liberation Army (hereinafter "EZLN": Ejército Zapatista de Liberación Nacional) and the national security forces in Chiapas, paramilitary groups were formed made up of peasants, indigenous persons, and landowners affiliated with the Partido Revolucionario Institucional (hereinafter "PRI"); trained by the military forces; and who allegedly acted together with the Federal Army and the Police to displace the population and destroy the alleged bases of support for the EZLN.

11. They allege that the municipality of Chenalhó was one of the zones hardest hit by the above-referenced climate of violence because the community of Acteal was considered by the Mexican authorities as one of the bases of support for the EZLN and had allegedly suffered the paramilitary action carried out as part of the counterinsurgency strategy.

² Specifically, the IACHR asked the Mexican State: (1) To provide immediate and adequate medical care to the survivors who were wounded, with the due guarantees for their physical safety (2) to adopt measures to ensure the life and physical integrity of the displaced persons who are in the municipality of Chenalhó, as well as the survivors and witnesses of the facts in question; (3) to immediately open a serious and exhaustive investigation into the facts alleged and, as appropriate, punish the persons responsible; (4) to adopt, through the competent authorities, the measures necessary to prevent such events from recurring in the zone.

³ As of that time, the State submitted information on the implementation of precautionary measures on the following occasions: December 31, 1997; February 9, March 24, April 30, May 27, June 29, July 28, and December 16, 1998; February 26, April 29, July 15 and 30, 1999; February 1 and 7, May 31, July 11 and 25, August 28, September 26, and November 27, 2000; June 6, July 12, August 3, September 6, October 3, November 5, and December 7, 2001; January 10, February 5, March 27, April 8, May 16, June 7, July 1, August 7, September 11, October 11, and November 26, 2002; March 21, June 4, August 7, and October 27, 2003; January 5, February 17, April 16, June 17 and 30, July 30, September 20, November 22, and December 10, 2004; January 28, February 18, April 11, June 1, and September 6, 2005; and January 20 and May 3, 2006.

12. They allege that as of December 18, 1997, the paramilitary group that operated in the zone⁴ had held meetings to agree upon an attack against persons who had been identified as followers of the EZLN who lived in the zone and against the members of the Sociedad de Las Abejas.

13. According to petitioners, on December 22, 1997, while a day of fast and prayer for peace was being held at the chapel of Acteal, municipality of Chenalhó, in which approximately 325 persons were participating – all members of the Sociedad Civil Las Abejas, most of whom had arrived at the encampment of displaced persons in search of refuge – a group of approximately 100 men armed with machetes, knives, and firearms – allegedly firearms whose use is restrict to the Army – had surrounded the chapel and shot at the persons who were there. They indicate that the events occurred without the police agents who were at the Public Security Police post situated 200 meters from the chapel having attempted to impede the massacre or help those who were being attacked. Once the shooting had ceased, the assailants allegedly pillaged the homes of the place and then retreated.

14. According to the petitioners, the following persons were killed in the massacre: (1) Manuel Santiz Culebra; (2) Daniel Gómez Pérez; (3) Victorio Vázquez Gómez; (4) Miguel Pérez Jiménez; (5) Ignacio Pucuj Luna; (6) Alonso Vázquez Gómez; (7) Lorenzo Gómez Pérez; (8) Antonio Vázquez Luna; (9) María Pérez Oyalté; (10) Marcela Capote Ruiz; (11) Marcela Pucuj Luna; (12) Catalina Luna Pérez (pregnant); (13) Manuela Pérez Moreno (or Manuela Paciencia Moreno); (14) Margarita Méndez Paciencia; (15) Marcela Luna Ruiz; (16) Juana Pérez Pérez (or Florinda Pérez Pérez, pregnant); (17) María Gómez Ruiz (pregnant); (18) Verónica Vázquez Luna; (19) Paulina Hernández Vázquez; (20) Susana Jiménez Luna; (21) Rosa Pérez Pérez (pregnant); (22) Antonia Vázquez Pérez; (23) Marcela Vázquez Pérez; (24) Juana Luna Vázquez; (25) Juana Gómez Pérez; (26) María Capote Pérez; (27) Marcela Capote Vázquez; and the following children: (28) Martha Capote Pérez; (29) Rosa Vázquez Luna; (30) Loida Ruiz Gómez; (31) Micaela Vázquez Pérez; (32) Josefa Vázquez Pérez; (33) Sebastián Gómez Pérez; (34) Juana Pérez Luna; (35) Roselina Gómez Hernández; (36) Lucía Méndez Capote; (37) Graciela Gómez Hernández; (38) María Luna Méndez; (39) Silvia Pérez Luna; (40) Vicente Méndez Capote; (41) Micaela Vázquez Luna; (42) Juana Vázquez Luna; (43) Alejandro Pérez Luna; (44) Juan Carlos Luna Pérez; and (45) Guadalupe Gómez Hernández.

15. In addition, they indicate that 26 persons were wounded and they individually identified 24 of them as alleged victims in this petition⁵: (1) Erasto Ruiz Pérez; (2) Catarina Pérez Pérez or Pérez Quin; (3) Efraín Gómez Luna; (4) Lucía Vázquez Luna (or Lucía Vázquez Gómez); (5) Rosa Gómez Pérez; (6) Martha Oyalte Vázquez (or Martha Pérez Pérez); (7) Jerónimo Vázquez Pérez (or Gerónimo Vázquez Pérez); (8) Hermelinda Ruiz Gómez; (9) Catarina Méndez Paciencia; (10) Ernestina Luna Vázquez (or Ernestina Vázquez Luna); (11) Pedro Pérez López; (12) Zenaida Luna Pérez (or Zenaida Luna Perez); (13) Mariano Vázquez Ruiz; (14) Manuela Pérez Pérez (or Manuela Pérez Ruiz); (15) Juanito Vázquez Pérez; (16) Emilio Luna Pérez; (17) Roselia Pérez Luna; (18) Javier Gómez Pérez; (19) Javier Luna Pérez; (20) Catarina Vázquez Pérez; (21) Manuel Gómez Pérez; (22) Catarina Vázquez Gómez; (23) Rosa Luna Ruiz; and (24) María Pérez Luna.

16. As regards the inquiry, they adduce they on December 22, 1997, two investigations were opened at the initiative of the prosecutorial authorities, in one of which the “prosecutorial attestation of the crime scene, the corpses, and the official act of removing them,” was said to have been carried out irregularly and without due diligence. Those inquiries were said to have led the opening of 13 criminal investigations, on the basis of which 11 criminal proceedings were conducted. They indicate that in all, 88 indigenous civilians and 15 public servants (14 of them officials of the State Ministry of Public Security plus the former mayor of Chenalhó) were prosecuted as perpetrators of the Acteal massacre. They report

⁴ They argue that it was made up of sympathizers of the PRI and the Partido Cardenista.

⁵ In the original petition, it was alleged that 17 Tzotzil indigenous persons had been wounded, but 16 alleged victims were individually named. In a brief received on November 30, 2007, the petitioners rectified the number of persons wounded, asserting that 26 persons were wounded. On April 20, 2010, the petitioners said that they represented 24 of the 26 persons wounded in the massacre, and individually named the persons they represent.

that in an initial stage, both the public servants⁶ and 30 of the indigenous who were being prosecuted were convicted (with respect to the latter, they are said to be serving prison sentences ranging from 25 to 40 years), that six of the indigenous were acquitted, and that one of them died. They add that subsequently the other 51 indigenous persons prosecuted were convicted for direct participation in the massacre, but in 2009 the Supreme Court of Justice ruled favorably on a constitutional remedie (hereinafter *Amparo suit*) in respect of 29 of them, ordering their immediate release, and granted *amparo* actions on behalf of the other 22 for the competent courts to issue new rulings regarding their criminal liability.⁷ In addition, they state that there are 29 unexecuted arrest warrants (27 for civilians and two for public servants).

17. They argue that investigations were not initiated to determine the responsibility as masterminds of high-level state officials, and that a situation of impunity persists in relation to the massacre because there was never follow-through on the lines of investigation to determine the existence and implementation of a political counterinsurgency plan that may have led to the massacre. In particular, they indicate that the specialized prosecutorial offices created to investigate the events at Acteal – first, the Office of the Special Prosecutor for the Crimes Committed in the Municipality of Chenalhó, and, second, the Specialized Unit for Crimes Committed by Probable Armed Groups, which ceased to operate in 2000 and 2002 respectively – had not been effective in terms of guaranteeing the right to truth and justice of the alleged victims.

18. They report that in 2006 the Office of the Special Prosecutor for Crimes Committed in Acteal was constituted, but that it had performed inefficiently in the investigations. They argue that there are investigations under way that have been kept under seal aimed at clarifying the liability of high-level officials of the state of Chiapas, which are said to be in the initial stage of the procedure, and they identify investigative processes in the Office of the Special Prosecutor that are going forward against public servants allegedly involved in the massacre (Initial Inquiry FECACH/02/2007) and during which, it is said, efforts are being made to hinder the survivors' right of access to information.

19. In addition, they note that the Office of the Comptroller General of the state of Chiapas, heeding Recommendation 1/98 of the National Commission on Human Rights (CNDH), initiated administrative proceedings against 16 public officials. They indicate that seven of them had been disqualified from holding jobs, positions, or commissions in the federal public service⁸, yet the rest are said to have continued performing public duties, including in high-level positions.

20. They allege that all the foregoing has contributed to an unwarranted delay in the administration of justice, which would merit application of the exception to the prior exhaustion requirement enshrined in Article 46(2)(c) of the Convention.

21. As regards characterization of the facts, they argue that the State is responsible for the events of December 22, 1997, in Acteal by act or omission. By act, because they allege that the massacre was carried out in the context of a state policy aimed at committing generalized and systematic attacks against the civilian population, allegedly carried out by paramilitary groups financed, trained, and protected by the national authorities to weaken the bases of the EZLN and the communities that had expressed their sympathy. And by omission, due to the alleged deliberate failure on the part of the Public

⁶ They argue that: (i) the 11 "low-level" officials were convicted for allowing civilians to bear arms the day of the massacre, and punished with prison terms ranging from three to seven years; ii) the Chief of Advisors to the General Coordination of the State Police and the person in charge of security at the public security operations base in Majomut were convicted of the crimes of homicide and personal injuries by omission, and sentenced to eight years in prison; and (iii) the former mayor of Chenalhó was sentenced to 36 years and three months in prison.

⁷ The *Amparo* Suit identified by them are: 8/2008, 9/2008, 10/2008, 16/2008 y 33/2008.

⁸ Two of whom are said to be the public officials against whom unexecuted arrest warrants had been issued, while two others were said to belong to the groups of public servants convicted in the criminal proceedings that ensued in the wake of the massacre.

Security Police to intervene during the consummation of the events alleged. In addition, they allege a denial of justice that persists to the date of this report.

22. In particular, they argue that Mexico is responsible for the violation of many articles of the American Convention: Article 4, for not having prevented the 45 deaths that resulted from the massacre, and for having created a propitious environment for it to be carried out; Article 17, considering that the lives of the four pregnant women were not respect and considering that 19 of the persons assassinated were women who had a fundamental role in the family because family life revolves around them; Article 5, because of the violation of the physical and psychological integrity of the persons harmed, and considering that the medical services provided by the State were deficient; and Articles 8 and 25, because the remedies pursued and the investigations carried out turned out to be ineffective; and in none of the cases with a firm judgment, with one exception⁹, had reparation been made to the alleged victims and their relatives. They state that as a result, the real causes of the massacre had not been revealed, nor were those truly responsible sanctioned, thereby violating the right to truth and justice.

23. In sum, they allege that the State is responsible for violations of Articles 1(1), 4, 5, 8, 17, 19, and 25 of the American Convention, to the detriment of the alleged fatal victims of the massacre, the survivors individually identified, and their relatives.

B. The State

24. In its communications, Mexico does not deny the facts of the massacre of December 22, 1997. Nonetheless, the State indicates that the massacre was carried out by an armed group of civilians made up of members of other communities of the municipality of Chenalhó and sympathizers of the then-mayor of that municipality; and that they had acted to avenge a homicide which, days before the massacre, had been committed by some members of Las Abejas.¹⁰ The state asserts that the alleged mastermind of the massacre had recognized his responsibility in planning the acts.

25. With respect to the massacre, it reports that the response of the investigative agencies was immediate. It indicates that in the initial inquiry stage, criminal actions went forward against 143 persons, and the corresponding autopsies and ballistic studies were performed; and that four months after the facts it was ordered that an Office of Special Prosecutor for the Municipality of Chenalhó be established, entrusted with following up on the events at Acteal and the criminal proceedings brought as a result. It argues that subsequently 13 criminal proceedings were conducted (two of which were joined), in which context 95 of the 143 persons initially accused were prosecuted (81 indigenous civilians and 14 former public officials, among them the mayor of Chenalhó) and 163 arrest warrants were issued, 29 of which have yet to be carried out.

26. Initially, the State reported on nine criminal proceedings that had been concluded prior to the filing of this petition and in which 40 persons had been convicted.¹¹ In that regard, it reported that: (i) 27 persons were convicted of the crimes of aggravated homicide, grievous bodily injuries, possession of a firearm without a license, and possession of a firearm whose use is restricted to the Army, Navy, and Air

⁹ They allege that while in most of the criminal proceedings instituted as a result of the massacre the convictions handed down by the courts of first instance established, *inter alia*, the penalty of payment of reparations for the damage caused, the appellate courts had absolved them from having to pay that sanction.

¹⁰ The State places the facts alleged in a social context characterized by the segmentation of the inhabitants of the communities in the municipality of Chenalhó based on economic considerations and ideological differences (those who had expressed their ideological compatibility with the EZLN and those who proclaimed their support for the PRI or the Partido Cardenista). It alleges that said social confrontation increased over time, and there were many acts of aggression. It argues that due to the intervention of the local authorities, a process of dialogue between the parties had begun to seek the reestablishment of order in the region, but that at the time of the massacre that process had been seriously prejudiced, as a result of new acts of aggression in the zone.

¹¹ Criminal proceedings 27/98, 1/99, 96/98, 18/98, 3/98, 129/99, 15/98, 5/98, and 224/97. Among the persons identified by the State as having been convicted are public servants and indigenous civilians. With respect to the first, it reports that 10 availed themselves of the benefit of substitutions of the penalty.

Force, to prison sentences ranging from 35 years to 36 years and three months; (ii) one person was convicted for the crimes of aggravated homicide, grievous bodily injuries, and possession of a firearm without a license and sentenced to 42 years in prison and a fine or days of community service; (iii) one person was convicted for the crime of homicide by omission and sentenced to eight years in prison; (iv) six persons were found responsible for the crime of possession of a firearm whose use is restricted to the Army, Navy, and Air Force, for omission and sentenced to three years and eight months imprisonment, monetary fines or work in community service; (v) two persons were convicted for the crime of possession of a firearm whose use is restricted to the Army, Navy, and Air Force, and sentenced to prison terms ranging from three years and eight months, and four years and six months, a fine or work in community service; (vi) one person was convicted of the for the crime of possession and transport of a firearm whose use is restricted to the Army, Navy, and Air Force and sentenced to seven years and seven months imprisonment and community service; (vii) one person was convicted of the crimes of possession of a firearm whose use is restricted to the Army, Navy, and Air Force, and possession of a firearm without license and sentenced to seven years, one month, and 15 days imprisonment and a fine; and (viii) one person was convicted for the crime of possession of firearm without a license and sentenced to two years in prison.

27. In subsequent communications, Mexico reported on the resolutions handed down in the remaining proceedings.¹² In particular, it indicated that: (i) one person, according to the State the mastermind of the Acteal massacre, was convicted for the crimes of aggravated homicide, aggravated bodily injuries, and criminal association and sentenced to 25 years of prison and a fine; (ii) 29 persons who had been convicted for the crimes of homicide and aggravated bodily injuries, possession of firearms without a license, and whose use is restricted to the Mexican Army, Navy, and Air Force, were benefited by a by resolutions of the Supreme Court of Justice on an *amparo* suit, and were released; and (iii) 22 persons who had been convicted for the crimes of homicide and aggravated bodily injuries, possession of firearm without a license and whose use is restricted to the Mexican Army, Navy, and Air Force, were also benefited by the Supreme Court in rulings on *amparo* suit for the competent authority to issue a new resolution on their criminal liability in the events in question.¹³ It asserts that the directives of the Supreme Court were carried out by the competent courts in relation to 20 of them, without indicating how they were adopted; with respect to the other two persons, it appears from the information submitted that they were convicted in a new ruling for the crimes of aggravated homicide and aggravated bodily injuries.

28. In addition, it alleges that in the wake of the events at Acteal, the Specialized Unit for the Crimes Committed in the Municipality of Chenalhó began investigation into the likely existence of armed civilian groups¹⁴ in the state of Chiapas.¹⁵ It notes that as a result, it was determined that various indigenous or peasant groups that had been indicated as armed civilian groups indeed exist, and that other alleged armed groups did not exist.

29. Moreover, the State reports that as of 2007, two criminal investigations were opened by the Office of the Special Prosecutor for Crimes Committed in the Pursuit and Administration of Justice in the State and those committed in Acteal¹⁶, in the context of which the following matters are said to be

¹² Communication from the State of June 23, 2010. Proceedings 402/99, 223/97, and the proceedings joined thereto, 201/97 and 46/98.

¹³ The State argues that the Supreme Court, in those *amparo* suit judgments, analyzed matters such as procedural violations, unlawful evidence, absence of an interpreter, and testimony not taken freely and spontaneously for the purpose of ensuring respect for the fundamental rights of the persons against whom criminal proceedings were conducted.

¹⁴ Mexico denies the existence of paramilitary groups in their territory and affirms that said concept does not have meaning within the domestic law. Nonetheless, it recognizes the existence of armed civilian groups operating outside the law.

¹⁵ Initial Inquiry FEACH/35/98, initially entrusted to the Specialized Unit for the Crimes Committed in the Municipality of Chenalhó and subsequently known as the Specialized Unit for Crimes Committed by Alleged Armed Civilian Groups (established April 17, 2000).

¹⁶ It reports that in December 2006 the "Office of the Special Prosecutor for the Crimes Committed in Acteal" was established to investigate the crimes that took place in the town of Acteal on December 22, 2007. On April 30, 2008, it was renamed the "Office of the Special Prosecutor on Crimes Committed in the Pursuit and Administration of Justice in the State and those

under investigation: the identities of the masterminds and/or direct perpetrators of civilians or former officials of the state or federal government; the possible omission on the part of former state or federal officials; and the participation of persons against whom the Office of the Attorney General of the Republic did not bring any criminal action previously.

30. The State also reports that measures were adopted in the administrative area. It indicates that in observance of Recommendation 1/98 of the CNDH, administrative proceedings were brought against public servants who may have been involved in the massacre, and administrative liability was found in the case of 10 public servants, who were sanctioned with penalties of temporary disqualification from holding positions or commissions in the public service for six to 10 years.¹⁷ In addition, it asserts that the remaining recommendations made by the CNDH to the Ministry of Interior of Chiapas – which included, among others, compensatory payments, continuing medical care for the persons wounded, and the implementation of social development policies in the community – as well as the recommendation made to the Office of the Attorney General of the Republic to expand the lines of investigation so as to clarify and determine the criminal liability of public servants were fully implemented, and that as much had been recognized by the CNDH.

31. With respect to the measures adopted to benefit the surviving victims of the massacre, the State reported that: (i) immediately after the attack, it offered medical assistance to the wounded; (ii) permanent care programs were implemented to assist in the recovery and rehabilitation of the seven persons with sequelae of physical disability; (iii) psychological assistance plans were carried out in the area of psychological assistance, social work, nutrition, and community health to benefit the surviving victims and the relatives of the deceased victims; (iv) there was coordination with the board of directors (*mesa directiva*) of “Las Abejas” to design a “Plan of Actions” for attending to the needs of the persons affected. In addition, it said that 40 persons have been benefited from compensation payments as “economic support for the relatives of the victims of Acteal, municipality of Chenalhó, Chiapas.”

32. The State asserts that the petition is inadmissible, considering that when it was submitted domestic remedies had not yet been exhausted, as some of the criminal proceedings brought based on the facts reported by the petitioners had not concluded. In addition, it argues that the motives that gave rise to the complaint no longer subsist, insofar as they were resolved by the domestic judicial mechanisms, and that the actions of domestic judicial organs may not be reviewed by the IACHR merely because the petitioners consider them unjust.

33. The State further asserts that there are no violations of the rights set forth in the Convention. It states that there was no denial of the petitioners’ right of access to justice, that their appearance as third-party claimants in the criminal proceedings had been inadequate and that the authorities had acted legally at all times, and with respect for the judicial guarantees and judicial protection established in the American Convention.

34. It denies that any policy was implemented to commit generalized and systematic attacks against the civilian population in Chiapas; it rejects having had control over the perpetrators of the massacre; it asserts that it has not been shown that the attackers were a paramilitary group; and it argues that the existence of groups of persons with different objectives from the petitioners cannot be alleged as a basis for state responsibility, and that much less can it be used to assert that the State has recognized or formed paramilitary groups in its territory.

...continuation

committed in Acteal.” since it was given the authority to prosecute offenses by act or omission that had been committed by public servants in the exercise of their function of pursuing and administering justice.

¹⁷ It reports that the public servants sanctioned were the Secretary General of the Government of the State of Chiapas, the Deputy Secretary of the Government of the State of Chiapas, the General Coordinator of the State Police and his Chief Adviser, the Attorney General for the State, the Executive Secretary of the State Council of Public Security, the Deputy Prosecutor for Indigenous Justice, the Director of the State Public Security Police, the first an officer of the State Public Security Police, and the second an officer of the State Public Security Police.

IV. ANALYSIS ON COMPETENCE AND ADMISSIBILITY

A. Competence *ratione personae*, *ratione temporis*, *ratione loci* and *ratione materiae*

35. The petitioners are authorized by Article 44 of the American Convention to submit petitions to the Commission. The petition describes the alleged victims as individual persons with respect to whom the Mexican State undertook to respect and ensure the rights enshrined in the American Convention. As regards the State, the Commission notes that Mexico has been a state party to the American Convention since March 24, 1981, the date on which it deposited its instrument of ratification. Therefore, the Commission is competent *ratione personae* to examine the petition. In addition, the Commission is competent *ratione loci* to take cognizance of the petition insofar as it alleges violations of rights protected in the American Convention in the territory of Mexico, a state party to that treaty.

36. The Commission is competent *ratione temporis* insofar as the obligation to respect and ensure the rights protected in the American Convention had already come into force for the State as of the date on which the facts alleged in the petition are said to have occurred. Finally, the Commission is competent *ratione materiae* because the petition alleges possible violations of human rights protected by the American Convention.

B. Exhaustion of domestic remedies

37. Article 46(1)(a) of the American Convention provides that in order for a complaint submitted to the Inter-American Commission to be admissible under Article 44 of the Convention, one must first have pursued and exhausted domestic remedies, in keeping with generally recognized principles of international law. The purpose of this requirement is to give the national authorities a chance to hear the alleged violation of a protected right, and, if appropriate, resolve it before it is heard by an international body. In addition, Article 46(2) of the Convention provides that the requirement of prior exhaustion of domestic remedies does not apply when: (a) the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated; (b) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or (c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

38. In this case, the State alleged that as of the moment the petition was presented, criminal proceedings were pending, and that at present the motives that gave rise to the complaint no longer subsist. The petitioners, for their part, argue that there was unwarranted delay in the judicial proceedings brought as a result of the massacre, and that not all the direct perpetrators and masterminds of the massacre had yet been identified and punished, nor had fair and equitable reparation been made to the alleged victims.

39. With respect to the State's first argument, it should be noted that the IACHR decides on this requirement of the Convention when effectuating the admissibility analysis, and not at the time the complaint is submitted.¹⁸

40. In the instant case, the IACHR observes that as a result of the events of December 22, 1997, in Acteal, investigative steps were taken and multiple criminal proceedings ensued to establish the liabilities. In addition, it notes that the State set investigative mechanisms in motion in the days following the consummation of the events alleged, and also initiated new investigations in subsequent years.

41. Nonetheless, the IACHR understands that when drawing up this report the investigations have not concluded in their entirety. While the information in the record before the IACHR indicates that

¹⁸ IACHR, Report No. 25/04, Case 12.361 ("Ana Victoria Sánchez Villalobos *et al.*"), March 11, 2004, Costa Rica, para. 45; Report No. 50/04 (Admissibility – Petition 12,056, Gabriel Oscar Jenkins v. Argentina); October 13, 2004; para. 50; Report No. 20/05, Petition 714/00 ("Rafael Correa Díaz"), February 25, 2005, Peru, para. 32.

several of the criminal proceedings have concluded, there are also other proceedings that continue without a final ruling having been handed down. Such is the case of the two initial inquiries that have been opened by the Office of the Special Prosecutor for Crimes Committed in the Pursuit and Administration of Justice in the State, and those committed in Acteal (FECACH/001/2007 and FECACH/002/2007), where the possible criminal liability – as mastermind or direct perpetrator – of civilians or former officials of the state government, against those who had not previously been the subject of a criminal action, is being investigated. In addition to what is indicated, one observes the existence of arrest orders which, having been issued at least 10 years ago, have not been executed.

42. In conclusion, the Commission observes that more than 12 years after the Acteal massacre, various investigative steps are still being carried out to determine responsibilities. The IACHR considers that this is long enough to apply the exception to the requirement to exhaust domestic remedies provided for at Article 46(2)(c) of the American Convention.

43. Finally, it should be noted that citing the exceptions to the rule of prior exhaustion of domestic remedies provided for at Article 46(2) of the Convention is closely related to the establishment of possible violations of rights enshrined therein, such as the rights to a fair trial and judicial protection. Nonetheless, Article 46(2), by its nature and purpose, is an autonomous provision, in contrast to the substantive provisions of the Convention. Therefore, a determination as to whether the exceptions to the rules of prior exhaustion of domestic remedies provided for therein are applicable in the case at hand must be made prior to and independently of the analysis of the merits, since the standard by which to assess this requirement is different from the one needed to establish a violation of Articles 8 or 25 of the Convention. It should be noted that the causes and effects that have prevented the exhaustion of domestic remedies in the instant case will be considered, to the extent that they are relevant, in any report on the merits adopted by the Commission to establish whether they do, in fact, constitute violations of the American Convention.

C. Timeless for the petition

44. Pursuant to Article 46(1)(b) of the American Convention, for a petition to be admissible it must be submitted within six months of the date on which the party filing it was notified of the final decision handed down in the domestic courts. The six-month rule ensures certainty and legal stability once a decision has been adopted. At the same time, Article 32 of the Commission's Rules of Procedure establishes that in those cases in which the exceptions to the prior exhaustion rule apply, the petition must be submitted within a time that the Commission considers reasonable. In such cases, the Commission should consider the date of the alleged violation of the rights and the circumstances of each case.

45. In the claim being analyzed, the IACHR has established application of the exception to exhaustion of domestic remedies provided for at Article 46(2)(c) of the American Convention. Bearing in mind the date of the facts underlying the petition, the lack of any conclusion in some of the judicial investigations pending, the context, and the particular characteristics of the petition, the IACHR concludes that the petition, submitted May 2, 2005, was presented within a reasonable time and, therefore, it considers that the requirement established at Article 46(1)(b) of the Convention has been met.

D. Duplication and international *res judicata*

46. For the purposes of declaring a petition admissible, the American Convention requires at Article 46(1)(c) that the subject matter thereof not be pending before any other international procedure for settlement and, at Article 47(d), that it not reproduce the content of a petition already examined by this or any other international organization. In the instant case, the Commission observes that the parties have not alleged the existence of any of these grounds of inadmissibility, and that it is not possible to deduce them from the record of the case. Therefore, the IACHR considers that the requirements established at Articles 46(1)(c) and 47(d) of the Convention have been satisfied.

E. Colorable claim

47. For purposes of admissibility, the Commission must decide whether the facts alleged, if proven, tend to establish a violation of rights, as stipulated in Article 47(b) of the American Convention, or if the petition is "manifestly groundless" or "obviously out of order," as per Article 47(c). The criterion for evaluating those requirements differs from that used to rule on the merits of a petition; the Commission must perform a *prima facie* evaluation to determine whether the petition establishes the basis for a possible or potential violation of a right guaranteed by the Convention, but not to establish the existence of a violation of rights. This determination constitutes a preliminary analysis that does not imply prejudging on the merits.

48. After this analysis of admissibility, the Commission concludes that it should analyze the arguments related to the duty to prevent, protect, and respond, with regard to the facts alleged, during the merits stage. It will also analyze the judicial proceedings with a view to establishing whether the State offered the protection and guarantees necessary under the American Convention within a reasonable time.

49. The IACHR concludes that if the allegations made by the petitioners are proven, they would tend to establish violations of the following articles of the American Convention, all in relation to Article 1(1) thereof: (i) Article 4, to the detriment of the alleged victims who were assassinated; (ii) Article 5 to the detriment of the alleged victims who were wounded; (iii) Articles 5, 8, and 25, to the detriment of the alleged surviving victims and the relatives of all the alleged victims; and (iv) Article 19 to the detriment of the 18 children assassinated in the massacre. In addition, it concludes that the arguments do not tend to establish an alleged violation of Article 17 of the American Convention. Therefore, the Commission considers that the requirements established at Article 47(b) and (c) of the American Convention have been met.

V. CONCLUSIONS

50. The Commission concludes that it is competent to hear the complaint presented by the petitioners and that the petition is admissible, in keeping with Articles 46 and 47 of the American Convention, for the alleged violation of Articles 4, 5, 8, 19, and 25 of the American Convention in connection with Article 1(1) of the same international instrument. In addition, it decides to declare the petition inadmissible with respect to the alleged violation of Article 17 of the American Convention.

51. On the basis of the above-mentioned arguments of fact and law, and without prejudging on the merits,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To find this petition admissible with respect to Articles 4, 5, 8, 19, and 25 of the American Convention in connection with Article 1(1) of the same Convention.
2. To find this petition inadmissible in relation to the alleged violation of Article 17 of the American Convention.
3. To transmit this report to the petitioners and the State.
4. To continue with the analysis of the merits of the case.
5. To publish this report and include it in the Annual Report of the Commission to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 1st. day of the month of November 2010.
(Signed): Felipe González, President; Dinah Shelton, Second Vice-President; Luz Patricia Mejía Guerrero, María Silvia Guillén, and Rodrigo Escobar Gil, members of the Commission.