

**REPORT No. 26/13<sup>1</sup>**  
PETITION 1121-04  
ADMISSIBILITY  
ROGELIO JIMÉNEZ LÓPEZ AND OTHERS  
MEXICO  
March 20, 2013

**I. SUMMARY**

1. On October 25, 2004, the Inter-American Commission on Human Rights (hereinafter, the “Inter-American Commission”, “Commission”, or “IACHR”) received a complaint submitted by the Fray Bartolomé de Las Casas Human Rights Center (hereinafter, the “petitioners”). The complaint claims that the United States of Mexico (hereinafter, the “State of Mexico”, “Mexico” or the “State”) bears international responsibility for a number of violations of the American Convention on Human Rights (hereinafter, the “Convention” or “American Convention”), to the injury of the *cho’l* indigenous people, who live in the northern region of the State of Chiapas. Specifically, the petitioners allege the forced disappearance of Minerva Guadalupe Pérez Torres and Mateo Arco Guzmán, and the extrajudicial executions of Héctor Pérez Torres, Rogelio Jiménez López, Sebastián Pérez López, Domingo Vásquez Avendaño, Nicolás Mayo Gutiérrez and Miguel Gutiérrez Peñate, all of whom were indigenous persons belonging to the *cho’l* people. Therefore, the petitioners claim that the State violated the rights enshrined in Articles 1.1 (the obligation to respect rights), 2 (duty to adopt domestic legal effects), 4 (right to life), 5 (personal integrity), 7 (right to personal liberty), 8 (right to a fair trial), and 25 (right to judicial protection) of the American Convention; in Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture (the “Convention against Torture”); and in Article I of the Inter-American Convention on Forced Disappearance of Persons (the “Convention on Forced Disappearance”). The petitioners also claim that in the cases of Mateo Arco Guzmán, Rogelio Jiménez López, Miguel Gutiérrez Peñate, and Nicolás Mayo Gutiérrez, “as well as those of at least 3,618 forcibly displaced persons in the Zona Norte, out of 11,988 persons in the entire state of Chiapas<sup>2</sup>,” the State of Mexico violated Articles 1.1, 11 (protection of honor and dignity), 19 (rights of the child), 21 (right to property), 22 (freedom of movement and residence), and 24 (right to equal protection) of the American Convention.

2. The petitioners claim that the rights violations they allege were committed as a result of a counterinsurgency policy carried out between 1995 and 1999 in Chiapas and perpetrated with the acquiescence and cooperation of the State, by an allegedly paramilitary group. They argue that not all of the material and intellectual authors of the alleged acts have been punished and that, regarding the exhaustion of all remedies under domestic law, the exemptions addressed in Article 46.2.a, b, and c of the Convention are applicable.

3. The State, for its part, holds that the acts alleged in the petition were committed by members of the group “Desarrollo, Paz y Justicia”, which the State emphasizes was not a paramilitary group, but rather a group that arose out of a longstanding conflict over the control of indigenous lands in the northern part of the State of Chiapas. As for the admissibility of the petition, the State asserts that at the time it was submitted all remedies under domestic law had not been exhausted, that the petition does not characterize human rights violations because no agents of the State were involved in the alleged acts, adding that it has complied with investigating and punishing those responsible for the alleged acts. Therefore, the State requests that the petition be declared inadmissible because it fails to meet the requirements of Articles 46.1.a and 47.b and c of the American Convention.

4. Without prejudging the matter, after studying the positions of the parties and in compliance with the requirements contained in Articles 46 and 47 of the American Convention, the Commission hereby decides to

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<sup>1</sup> In accordance with Article 17.2.a of the Regulations of the Commission, Commissioner José de Jesús Orozco Henríquez, a Mexican national, did not participate in the discussion or vote on this case.

<sup>2</sup> Note by petitioners dated September 3, 2005, received by the Executive Secretariat of the IACHR on September 6, 2005.

declare the petition admissible for the purpose of examining the alleged violation of the following Articles: 3, 4, 5, 7, 8, and 25 of the American Convention as these relate to Article 1.1 of that Convention; Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture; and Article I of the Convention on Forced Disappearance of Persons, to the injury of Minerva Guadalupe Pérez Torres and Mateo Arco Guzmán, alleged victims of disappearance; Article 4 of the American Convention as it relates to Article 1.1 of that international Convention, to the injury of Héctor Pérez Torres, Rogelio Jiménez López, Sebastián Pérez López, Domingo Vásquez Avendaño, Nicolás Mayo Gutiérrez, and Miguel Gutiérrez, alleged victims of execution; Articles 5 and 7 of the American Convention as it relates to Article 1.1 of that international Convention, to the injury of Héctor Pérez Torres, alleged victim of execution; Articles 5 and 11 of the American Convention as it relates to Article 1.1 of that international Convention, Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, as well as Article 7 of the Convention of Belém do Pará, to the injury of Minerva Guadalupe Pérez Torres, alleged victim of sexual violence; Article 19 of the American Convention as it relates to Article 1.1 of that treaty, to the injury of the child Miguel Gutiérrez Peñate, alleged victim of execution; Articles 5, 8, and 25 of the American Convention as these relate to Article 1.1 of that international convention, and Article I of the Inter-American Convention on Forced Disappearance of Persons, to the injury of family members of all the alleged victims. The Commission also declares admissible Articles 2, 21, 22, and 24 of the American Convention. The Commission hereby decides to notify the parties of this decision, to publish it, and to include it in its Annual Report to the General Assembly of the Organization of American States.

## II. PROCEEDINGS IN THE COMMISSION

5. On October 25, 2004, the Commission received the petition and assigned it number 1121-04. On January 12, 2005, the Commission sent the pertinent portions of the petition to the State, requesting that it submit its response within two months, in accordance with the provisions of Article 30.3 of the Regulations of the Commission. Following a request for extension, the Commission received the State's response on April 14, 2005, and forwarded it to the petitioners.

6. The IACHR received additional information from the petitioners on the following dates: December 15, 2004, September 6, 2005, July 5, 2007, July 18, 2007, October 19, 2007, October 7, 2008, December 23, 2008, May 18, 2009, November 6, 2009, and July 14, 2010. These communications were duly forwarded to the State.

7. The State also submitted additional information on the following dates: July 6, 2007, August 30, 2007, September 28, 2007, October 10, 2007, September 4, 2008, March 13, 2009, July 15, 2009, March 5, 2010, and October 26, 2010. These communications were duly forwarded to the petitioners.

8. On July 18, 2007, during the 128<sup>th</sup> ordinary period of sessions of the IACHR, a public hearing was held<sup>3</sup> in which both parties submitted allegations concerning the admissibility of the petition.

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<sup>3</sup> Go to: CIDH, [Audio y video de Audiencia Pública "Petición 1121/04 – Rogelio Jiménez López y otros, México", 128° periodo ordinario de sesiones, 18 de julio de 2007.](#)

– **Precautionary Measure 1016-04**

9. On October 29, 2004, based on a request submitted by the Fray Bartolomé de Las Casas Human Rights Center together with petition 1121-04, the IACHR requested that the State of Mexico adopt precautionary measures to protect the lives and personal integrity of five members of displaced communities in the northern region of Chiapas and that of Armando Díaz López and family – a former member of the “Paz y Justicia” group who had been cooperating with the General Prosecutor of the Republic since 1999 – because, there were allegations that they had been the objects of harassment and threats by members of the “Paz y Justicia” group.<sup>4</sup> On November 17, 2004, Mexico reported on the actions it had taken and continued periodically to submit information.

**II. POSITIONS OF THE PARTIES**

**A. The petitioners**

10. The petitioners allege the forced disappearances of Minerva Guadalupe Pérez and Mateo Arco Guzmán, and the extrajudicial executions of Héctor Pérez Torres, Rogelio Jiménez López, Sebastián Pérez López, Domingo Vásquez Avendaño, Nicolás Mayo Gutiérrez and Miguel Gutiérrez Peñate, all indigenous persons of the *cho’l* people. These acts were allegedly committed in the State of Chiapas, between July 1995 and August 1997, allegedly by members of a paramilitary group named “Paz y Justicia”. The petitioners state that, despite having reported the acts, investigations had taken longer than is reasonable without resulting in the punishment of the material or intellectual authors or in reparations being made to family members of the alleged victims.

11. The petitioners assert that the acts they allege are part of a pattern of human rights violations that resulted from the counterinsurgency strategy carried out between 1995 and 1999 that sought to combat the insurgency of the *Ejército Zapatista de Liberación Nacional* [Zapatista National Liberation Army] (EZLN). They contend that paramilitary groups made up of militants of the *Partido Revolucionario Institucional* [Institutional Revolutionary Party] (PRI), trained and supported by military forces, acted jointly with the Federal Army and the police to displace the population and destroy the presumed support bases of the EZLN. They state that, because of the foregoing, the indigenous lands became militarized and paramilitarized. In some cases the lands were illegally occupied. In others, they were expropriated after occupation, and given to the National Secretariat of Defense.

12. The petitioners claim that this counterinsurgency strategy was contained in an official document titled, “Chiapas Campaign Plan 94”, allegedly dated at the National Secretariat of Defense in October 1994 and made public in January 1998. Based on this document, the petitioners hold that the “Paz y Justicia” group was created in 1995. They indicate that the connection between “Paz y Justicia” and State authorities has been proven through the testimony provided by former members of the group to various prosecution authorities. The petitioners add that in August 2009 documents of the United States of America Defense Intelligence Agency were declassified, documents that verify the alleged role of the State of Mexico in training and supporting paramilitary groups in the State of Chiapas.

13. The petitioners state, specifically, that the actions of the “Paz y Justicia” group were conducted in the municipalities of Tila, Tumbalá, Sabanilla, Yajalón, and Salto de Agua, where the population is mostly made up of the *cho’l* people. They assert that, between 1995 and 2004, the Fray Bartolomé de Las Casas Human Rights Center recorded 85 extrajudicial executions and 37 forced disappearances allegedly perpetrated by members of

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<sup>4</sup> On October 29, 2004, the IACHR granted precautionary measures in favor of witness Armando Díaz López and his family members – Micaela Torres Gutiérrez, María Consuelo Díaz Torres, Magdalena Díaz Torres and José Armando Díaz Torres— and in favor of Reynaldo Gómez Martínez, Mario Torres, Ricardo Martínez Martínez, Mariano Sánchez Montejo and Gilberto Jiménez López, members of the Kichán Kichañob organization in the State of Chiapas. The beneficiaries allege that they have been the object of constant threats and acts of harassment because they have complained about activities of the paramilitary group “Paz y Justicia” in the municipality of Tila, Chiapas. In light of the risk to which the beneficiaries were exposed, the Commission requested that the State of Mexico adopt precautionary measures to protect the lives and integrity of the persons listed above and their families, and to investigate the threats against them. The State and the beneficiaries have reported on agreements reached on the matter of precautionary measures. The Commission continues to monitor the situations of the protected persons. See: [IACHR Precautionary Measures, 2004](#).

that group. They state that actions by that group caused over 10,000 persons to be displaced between 1995 and 2000, persons who at the time of the petition were living in overcrowded conditions, with no drinking water, electricity, health care, or education services.

14. In this context, the petitioners identify the eight alleged victims, who belonged to the *cho'* indigenous people, claiming that the acts against them happened in communities located in the municipality of Tila, in the northern region of the State of Chiapas. For each case, the petitioners state the time, date, place, and description of the acts; the members of the "Paz y Justicia" group who committed the acts; eyewitnesses of the acts; the complaints filed by families of the alleged victims; and any investigations that were opened. Summarizing, the petitioners mention the following acts: (1) On July 14, 1995, Héctor Pérez Torres was allegedly removed from a vehicle to be interrogated and beaten in several places on his body during several hours. He was then taken to the El Crucero community where [they] shot him after wounding him with a machete. His body was found by police officers. (2) On September 4, 1995, Rogelio Jiménez López was allegedly executed near the community of Usipá – moments before members of the "Paz y Justicia" group entered that community and caused the forced displacement of approximately 95 families – Rogelio's body was delivered to the Prosecutor's Office by members of the group. (3) On June 20, 1996, Minerva Guadalupe Torres Pérez was allegedly taken against her will to the community of Miguel Alemán, where she was beaten, undressed, raped by at least 50 men on several occasions, and wounded with a machete, before finally being shot in the back. Her body was dismembered and hidden under a rock. She has never been found. (4) On June 20, 1996, Sebastián Pérez López was allegedly shot several times by firearms and died while walking with other individuals along the path from Masojá Yoxijá to Masojá Shucjá. (5) On April 14, 1997, Domingo Vásquez Avendaño was allegedly executed while walking from Masojá Shucjá to Masojá Grande, where he worked as a teacher.

15. The petitioners also state that on August 1, 1997 the "Paz y Justicia" group allegedly conducted an invasion of the Cruz Palenque and Aguascalientes communities. According to the petitioners, when they entered the first community they executed (6) Nicolás Mayo Gutiérrez, who was from the Hidalgo Joshil community and was visiting his brother. Moments later, they allegedly detained and questioned (7) Miguel Gutiérrez Peñate, a 15-year-old, whom they subsequently executed on the path that leads to the community of Aguascalientes. When [the "Paz y Justicia" group] arrived in the community, they allegedly forced (8) Mateo Arcos Guzmán to come out of his house. They slit the veins on his wrist and stabbed him in the back. Subsequently, they took him toward Masojá Chico. To this day his whereabouts are unknown.

16. The petitioners state that criminal investigations into the acts above were opened as follows: two in 1995, two in 1996, and four in 1997. They add that these preliminary inquiries have taken longer than is reasonable given that six years from the date the petition was submitted the investigations have not resulted in "punishment of those directly and indirectly responsible that were involved in these events." The petitioners add that, as of 2007, of the 85 executions and 37 disappearances recorded by the Fray Bartolomé de Las Casas Center, committed by the "Paz y Justicia" group between 1994 and 1999, only two criminal cases were in the trial phase against members of the "Paz y Justicia" group for the murders of six individuals: Domingo Vásquez Avendaño, Sebastián Pérez Pérez, Mateo Arcos Guzmán – these three are alleged victims in this petition – and Romeo Pérez Pérez, Mateo Vásquez Sánchez y Mateo Hernández López. In other words, between 1994 and 1999, investigations were opened in only three of the eight cases of alleged victims named in the petition. For this reason, the petitioners claim that remedies under domestic law have been ineffective, as they have not punished the material authors, nor have reparations been made to the alleged victims' families.

17. The petitioners claim there is no investigation underway that seeks to punish the intellectual authors who armed, trained, and funded the "Paz y Justicia" group. They also argue that preliminary inquiries into the acts that are the subject of this petition are conducted in ordinary courts and as isolated cases. They state that the crimes committed are closely connected, "given that they were all perpetrated during a specific period (1995–1997), that is, after the indigenous insurrection of 1994 in the State of Chiapas, [and they were carried out] by the same paramilitary armed organization known as "Paz y Justicia", which as part of a military counterinsurgency strategy has the mission to persuade civilian populations that support the insurgents (...)".

18. Regarding the exhaustion of all remedies under domestic law, the petitioners claim that no adequate investigations have been conducted to punish those directly and indirectly responsible, and that in each case there is unjustified delay in explaining the murders and disappearances.

19. Regarding the disappeared persons [Minerva Guadalupe Pérez Torres and Mateo Arco Guzmán], they petitioners state that due to their indigence and fear, family members were hindered from filing an amparo appeal. In the former case, the petitioners say the family could not afford the expense involved in legal proceedings, given that the appeal could only be filed in federal courts, which are located far from where they live, in marginalized rural communities and in extreme poverty. In the latter case, the petitioners indicate that the State's strategy for fighting insurgency in the region generated an atmosphere of generalized fear, leading family members of the alleged victims and attorneys to believe their own lives and those of their family members could be in danger if they pursued the cases. The petitioners state that, this fear notwithstanding, the amparo appeal is not an effective remedy, given that for the Law of Amparo to have standing, both the location of the injured party and the party responsible must be identified, requirements that are impossible to meet in cases of forced disappearance. For these reasons, the petitioners argue that the exceptions to the exhaustion of all remedies under domestic law contained in Article 46.2, items b and c, of the American Convention are applicable.

20. In light of the foregoing, the petitioners argue that the State is responsible for the violations of Articles 1.1, 2, 4, 5, 7, 8, 11, 19, 21, 22, 24, and 25 of the American Convention, to the injury of the alleged victims. Furthermore, the petitioners claim that the State is responsible for the violation of Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, and Article I of the Convention on Forced Disappearance of Persons, to the injury of the alleged victims of disappearance.

#### **A. The State**

21. The State of Mexico does not deny the acts of violence reported in the petition. However, it argues that the alleged victims were executed by the "Desarrollo, Paz y Justicia" group, made up of PRI militants and teachers who belonged to the "Solidaridad Campesino-Magisterial" (SOCAMA) organization, whose actions were motivated by a long-standing dispute over control of indigenous lands. The State emphasizes that this was not a "paramilitary group", but rather a PRI-affiliated social organization that, between 1995 and 1999, operated against EZLN sympathizers and those of the San Cristóbal de las Casas diocese.

22. In particular, the State points out that the "Desarrollo, Paz y Justicia" group is located in the jungle region of the state of Chiapas, particularly in the municipalities of Palenque, Salto de Agua, Sabanilla, Tila, Tumbalá, and Yajalón, the first five populated by the *cho'l* people and the last by the *tzeltal* people. The State asserts that lumber companies have existed in these municipalities since the 19<sup>th</sup> Century, and that early in the 20<sup>th</sup> Century coffee and cattle farms were established there. The State indicates that in the 1930s several properties in the region were expropriated to create lands that benefited the indigenous peoples who had worked in the companies as "housed farmhands". The State indicates that despite this, ownership of the land remained in the hands of a few landowners, which gave rise to conflicts over control of the land. The State reports that, as of the mid-1990s, the conflicts between landowners and indigenous peoples and peasants increased, causing social organizations to become radicalized, and materializing in the form of the armed EZLN uprising of 1994. The State adds that, between the 1970s and 1990s several plantations in the *cho'l* region were expropriated, which significantly increased the number of people living on public lands set aside for indigenous peoples.

23. The State informs that in the early 1990s the territorial conflict focused on the control of public lands set aside for indigenous peoples by opposing groups who had differing views about development. On one hand, says the State, was the "Abuxu" organization, which was made up of militants of the Democratic Revolution Party, advised by the San Cristóbal de las Casas diocese, and presumably linked to the EZLN. On the other hand was the organization "Desarrollo, Paz y Justicia", which was created on August 5, 1995 by PRI militants and "bilingual teachers with links to a state organization" that were part of SOCAMA. The State explains that since the creation of "Desarrollo, Paz y Justicia", the municipal councils of Tila, Sabanilla, Tumbalá, and Salto de Agua were

presided by militants of that group who would win local elections through PRI, which means, "It is possible that through public positions resources may have been funneled to fund the organization."

24. The State says that as a result of the actions of these groups, by 2000 "the toll of violence was clearly visible: several Catholic churches closed, displaced members of Abuxu and Paz y Justicia, a hundred people who belonged to both groups had been murdered, conflicts between indigenous and peasant peoples over land, duplicity of authorities, dread, fear (...)". The State says that in November 2004, when a member of the opposition to PRI took office in the local government, the Commission for Reconciliation of Communities in Conflict (CRCC) was established. The State says that since that time actions by the State Government have focused on dialogue and political negotiation, keeping in mind that the situation is "a social conflict that involved stakeholders of various kinds that did not have institutional and legal channels through which to resolve their disputes and therefore turned to violence as recourse." The State indicates that these spaces for dialogue have made it possible to sign a number of community agreements which have resulted in the returns of displaced persons, the reopening of Catholic places of worship, the reunification of community and indigenous authorities, and the resolution of conflicts over land.

25. That State adds that along with the foregoing, law enforcement actions have been taken against the leaders of the "Desarrollo, Paz y Justicia" group.<sup>5</sup> Regarding the prosecutorial investigations and criminal prosecutions that have been opened into the alleged acts, the State indicates the following about each case:

**Rogelio Jiménez López.** On September 5, 1995, preliminary inquiry 172/26/995 was opened for the crime of homicide, and was added to preliminary inquiry 350/41/995. On November 3, 2005, the General Prosecutor's Office for the State of Chiapas opened an investigation of the facts, and on August 13, 2007, charges were brought against 16 individuals before the Second Criminal Court in Tuxtla Gutiérrez, opening criminal case 206/2007. On October 26, 2007, that Court ruled that the file be returned to the Prosecutor's Office, from where it was subsequently sent to the Special Prosecutor for Attention to Crimes Involving Public Servants (hereinafter, "FESP"), which on January 21, 2008 declared that it did not have jurisdiction. The investigations were then sent to the Special Prosecutor for Criminal Procedures. On March 17, 2010, the preliminary inquiry was submitted to the Second Criminal Court for Attention to Felonies, in Tuxtla, which issued arrest warrants for 16 individuals, who remain at large.

**Héctor Pérez Torres:** On July 14, 1995, preliminary inquiry AL41/SJI/261/995 was opened. On March 13, 2007, the Prosecutor's Office charged seven individuals with the crime of aggravated homicide, opening criminal case 83/2007 in the First Criminal Court of the Judicial District in Tuxtla Gutiérrez. The Court returned the case to the Prosecutor's Office on two occasions, due to improper assignment of the preliminary inquiry. After that issue was resolved, the criminal case was prosecuted on August 29, 2007.

**Sebastián Pérez López.** By agreeing to prosecute the case on January 30, 2003, preliminary inquiry UESP/017/2003-01 was opened, which led to criminal case 18/2004 before the First Criminal Court in Tuxtla Gutiérrez, for the crimes of aggravated homicide and organized crime. On May 3, 2004, the Court issued arrest warrants for 29 individuals, and on April 14, 2004, the charges were expanded to include other offenders, which ultimately increased to 43 the number of arrest warrants issued. Four individuals were arrested, the trials for two of which have not yet reached a verdict, while the other two were absolved. The arrest warrants for the remaining individuals are still awaiting execution.

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<sup>5</sup>Specifically, the State indicates that in April 2000 the Special Unit for Attention to Crimes Committed Against Probable Civilian Armed Groups was created to investigate charges of crimes committed by members of the aforementioned organization. The State asserts that this Special Unit conducted the following operations: (i) on October 27, 2000 it arrested 11 members of the Union of Indigenous, Agricultural, and Forest Communities of the *Cho'*, *Tzeltal*, and *Tzotzil* peoples A.C. (UCIAF), which was made up of a group that split off from "Desarrollo, Paz y Justicia", for the charges of unlawful weapons possession, during an operation conducted on the El Paraíso land, in Yajalón; (ii) on February 15, 2002, Diego Vásquez Pérez, leader of the group, was arrested on charges of unlawful privation of liberty and injury to Pedro Jiménez López; and (iii) on September 13, 2002, Sabelino Torres Martínez and 26 other members of "Paz y Justicia" were arrested on charges of violent theft, unlawful privation of liberty, unlawful weapons possession, injury, harm, and criminal association.

**Domingo Vásquez Avendaño.** On April 28, 1997, preliminary inquiry 1968/CA-41/96 was opened. As in the preceding case, by agreeing to prosecute the case on January 30, 2003, preliminary inquiry UESP/017/2003-01 was opened for the crimes of aggravated homicide and organized crime. Prosecution of the criminal case began on April 14, 2005, as case 110/2005. On April 15, 2005, the First Criminal Court of the Judicial District of Tuxtla Gutiérrez issued arrest warrants for 49 individuals. Five were arrested and tried, with verdicts pronounced on May 28, 2008, for the crime of aggravated homicide. They received sentences of 31 years and 3 months of prison and payment of reparations. The criminal process is still in the discovery phase for the other 44 individuals, for whom arrest warrants are still awaiting execution.

**Nicolás Mayo Gutiérrez.** On August 1, 1997, preliminary inquiry AL91/037/SJI/997 was opened, assigned to the Mixed Trial Court of Yajalón on September 11, 1997. The material author, Domingo Montejó Pinto, was sentenced and held in the Yajalón jail, obtaining freedom in 2003. New investigations produced other individuals that are probably responsible for the acts, so on November 21, 2004 preliminary inquiry FESP/098/2005-11 was opened for the probably commission of the crime of homicide. On August 22, 2007, charges were filed against seven individuals. On September 21, 2007, the Judge issued arrest warrants for these individuals. The process is still in the discovery phase.

**Miguel Gutiérrez Peñate.** On August 1, 1997, preliminary inquiry AL41/SJI/278/997 was opened. This case derived from preliminary inquiry UESP/017/2003-01. On June 21, 2007 the Prosecutor's Office charged 42 individuals with aggravated homicide, opening criminal case 229/2007. On June 26, 2007, the Third Criminal Court of the Judicial District of Tuxtla Gutiérrez issued arrest warrants for 42 individuals. Of those, four were arrested and are now serving sentences. Of the remaining persons charged, 19 filed amparo appeals that nullified the arrest warrants. Arrest warrants for the remaining 19 individuals have yet to be executed.

**Minerva Guadalupe Torres Pérez.** The Prosecutor's Office of Yajalón opened preliminary inquiry 1968/CA-41/96. On November 21, 2005, the General Prosecutor of the Republic for the State of Chiapas opened another preliminary inquiry, FESP/095/2005-11, for commission of the crime of homicide. On August 15, 2006, charges were filed for the probably commission of the crime of unlawful privation of liberty in the modality of abduction or kidnapping, rape, and aggravated homicide. Case 234/2006 was opened in the Third Criminal Court of the Judicial District of Tuxtla Gutiérrez, Chiapas. On August 18, 2006 arrest warrants were issued for 49 individuals, and three were arrested. Of those remaining, 27 filed amparo appeals against the arrest warrants, and arrest warrants for the remaining 19 individuals have yet to be executed.

**Mateo Arcos Guzmán.** On August 3, 1997, the Prosecutor's Office of Yajalón opened preliminary inquiry AI41/SJI/279/997 for the crimes of unlawful privation of liberty and search of a residence, with charges filed on January 3, 1998 in the Mixed Trial Court of the Judicial District of Yajalón. Later, the acts were treated in the framework of the aforementioned preliminary investigation UESP/017/2003-01, which led to criminal case 18/2004 now underway, as has been mentioned previously.

26. Regarding the cases of those indicated as disappeared persons, the State adds that there is no evidence that establishes that they were victims of forced disappearance, and therefore investigations have been opened and filed with the courts treating them as crimes of homicide.

27. Furthermore, regarding the trials of public officials, the State indicates that Carlos Torres López, former president of the municipal council of Tila, was arrested in October 2002, for the crimes of embezzlement and improper exercise of duties. Likewise, the State asserts that "the General Prosecutor's Office of the State of Chiapas, in conducting investigations into the homicides and/or disappearances in question, observed that Prosecutor's Office personnel in charge of these investigations were negligent in the investigations, which led to the opening of preliminary inquiry FESP/019/2005. The State indicates, however, that statutes of limitations made prosecution impossible.

28. Regarding the alleged existence of a "Chiapas Campaign Plan 94", the State asserts that the petitioners submitted a simple copy that contained no seals or signatures and, therefore, "it cannot be considered

as an evidentiary document that proves the existence of paramilitary groups.” The State also adds that the State of Mexico is unaware of its existence and origin, and that “competent investigative authorities concluded that no armed groups had been associated with military authorities.” Regarding the alleged declassified files of the United States of America Defense Intelligence Agency, the State questions their “official nature, veracity, and authenticity.”

29. Regarding the exhaustion of all remedies under domestic law, the State holds that, at the time the petition was lodged not all remedies under domestic law had been exhausted, given that some of the criminal cases related to the reported acts were still open. The State asserts that the exception for unjustifiable delays is not applicable because the matter being examined is extremely complex and that no excessive delays have occurred in the various phases of prosecution. The State requests that “the IACHR take into account the progress made by the investigations and court proceedings in clarifying the murders reported by the petitioners, and that [the IACHR] rule that internal remedies have not been exhausted and, to the contrary, that these are being effectively handled by State authorities.” Furthermore, the State mentions as remedies not yet exhausted the “direct amparo and indirect amparo, regarding some of the criminal cases; and appeal, direct amparo and review, regarding some of the criminal cases.” The State adds that, according to Mexican law, the amparo appeal is suitable to contest the inclusion or non-inclusion of preliminary inquiries, an appeal the petitioners have not pursued.

30. In the matter of characterization, the State claims that no conventional rights violations exist, affirming that, no State agent “acted directly in preparing or committing the unlawful acts the ministerial authorities have investigated.” The State contends that because no State agents participated directly in the acts in question, and by the State having investigated and punished those responsible for the acts, it is not possible to hold the State of Mexico internationally responsible. For these reasons, the State requests that the petition be declared inadmissible for not having met with the requirements of Articles 46.1a, 47b, and 47c, of the American Convention.

### **III. ANALYSIS OF ADMISSIBILITY**

#### **A. Jurisdiction of the Commission: *ratione personae*, *ratione loci*, *ratione temporis* y *ratione materiae***

31. The petitioners are qualified by Article 44 of the American Convention to submit petitions to the Commission. The petition lists as alleged victims individuals whose rights enshrined in the American Convention the State of Mexico has made a commitment to respect and guarantee. As for the State, the Commission recognizes Mexico as being a State Party to the American Convention since March 24, 1981, the date it deposited its ratification instrument. Therefore, the Commission has *ratione personae* jurisdiction to examine this petition.

32. The Commission has *ratione loci* jurisdiction to hear the petition because it contains allegations of the violation of rights protected under the American Convention that took place within the territory of Mexico, a State Party to the Convention. The Commission has *ratione temporis* jurisdiction because the obligation to respect and guarantee rights protected under the American Convention was already in force for the State on the date the acts alleged in the petition occurred. Lastly, the Commission has *ratione materiae* because the petition claims possible violations of human rights protected by the American Convention.

33. The IACHR also has the jurisdiction to rule on violations of rights enshrined in the Inter-American Convention to Prevent and Punish Torture, because the alleged acts occurred after June 22, 1987, the date Mexico deposited the document ratifying that Convention. Likewise, the IACHR has the jurisdiction to study the allegations of the petitioners regarding alleged violations of the Inter-American Convention on Forced Disappearance of Persons, ratified by the State of Mexico on April 9, 2002, given that the alleged crime of forced disappearance is considered ongoing or permanent as long as the destination or whereabouts of the victim are not established, pursuant to Article III of that instrument. Given that the State of Mexico ratified the Convention of Belém do Pará on November 12, 1998, the IACHR has jurisdiction to study compliance with the obligations to investigate, punish,

and make reparations, as contained in Article 7 of that instrument, by virtue of the alleged acts of sexual violence perpetrated against Minerva Guadalupe Torres Pérez.

**B. Other requirements for admissibility of the petition**

**1. Exhaustion of all remedies under domestic law**

34. Article 46.1 of the American Convention provides that, for a complaint submitted to the Inter-American Commission to be admissible pursuant to Article 44 of the Convention, all remedies under domestic law must have first been pursued and exhausted, in accordance with generally recognized principles of international law. This purpose of this requirement is to allow national authorities to hear a case of an alleged violation of a protected right and, if appropriate to resolve it, before it is heard in an international court. Additionally, Article 46.2 of the Convention provides that the requirement of prior exhaustion of all remedies under domestic law is not applicable when: a) the State has no domestic legislation that provides due process for the protection of the allegedly violated right or rights; b) the alleged victim has not been afforded his or her rights of access to all remedies under domestic law or has been impeded from exhausting them, and c) there has been an unjustified delay in rulings on those remedies.

35. The State claimed that at the time this petition was submitted, criminal proceedings were underway and were being effectively handled by State authorities. The State added that there had been no unjustified delays in processing the cases and that, given that this is a complex matter, the authorities in charge had not caused any excessive delays. Furthermore, the State pointed to “direct amparo and indirect amparo related to some criminal proceedings; and appeal, direct amparo and review related to some of the criminal proceedings” as remedies that had not yet been exhausted. Concerning this, the State went on to say that under domestic law there are grounds for an amparo appeal against the inclusion or non-inclusion of preliminary inquiries, an appeal the petitioners had not pursued.

36. For their part, the petitioners assert that there was unjustified delay in prosecutorial investigations and in legal proceedings initiated as a result of the acts that are the subject of the petition, that not all of those who are materially and intellectually responsible for the acts have been identified and punished, and that reparations have not been made to the families of the alleged victims. The petitioners state that the remedies mentioned by the State as not yet exhausted are not suitable remedies, given that those remedies are of an extraordinary character the purpose of which is to review a “ruling made by an administrative or judicial authority within a proceeding that is already underway.” Regarding the remedies related to individuals who were allegedly disappeared, the petitioners state that they were unable to file an amparo appeal, which in Mexican law is the equivalent of a *habeas corpus* appeal, because of their indigence and fear. They assert that, regardless of this fact, the amparo appeal is not an effective remedy because for the Law of Amparo to have standing, both the location of the injured party and the party responsible must be identified, requirements that are impossible to meet in forced disappearance cases.

37. Regarding the State’s first point, it is fitting to note that the IACHR makes its decision on this Convention requirement when it evaluates admissibility, and not at the time the petition is lodged.<sup>6</sup> It is worth noting that according to the design of the American Convention, the Commission decides on admissibility after having requested pertinent information of the State, not before, and that the Regulations of the Commission allow for the exchange of additional information prior to making that decision.

38. In this case, the IACHR observes that between July 1995 and August 1997, the competent prosecutorial offices opened preliminary inquiries in response to the alleged executions and disappearances. However, according to the information obtained by the Commission, only one of the inquiries opened during that

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<sup>6</sup> IACHR, Report N° 25/04, Case 12.361, *Ana Victoria Sánchez Villalobos and other* (Costa Rica), March 11, 2004, paragraph 45; Report N° 50/04, Petition 12.056, *Gabriel Oscar Jenkins* (Argentina), October 13, 2004, paragraph 50; Report N° 20/05, Petition 714/00, *Rafael Correa Díaz* (Peru), February 25, 2005, paragraph 32.

period led to the punishment of one materially responsible person, whereas the remaining preliminary inquiries remained open, and nothing is known about what actions prosecution or court authorities have taken to determine where responsibility lies for the acts.

39. Additionally, the IACHR notes that between January 2003 and November 2005, the State opened new investigations into the acts reported in the petition. However, it is IACHR's understanding that at the time this report was prepared those investigations had not been concluded. Though the information contained in the IACHR file may show that verdicts have been pronounced in some of the cases, against some of the accused, in those same cases there are other individuals identified as probably responsible who have not yet been arrested. In the case of Domingo Vásquez Avendaño, arrest warrants were issued for 49 individuals, of which five are serving sentences. In the case of Miguel Gutiérrez Peñate, arrest warrants were issued for 42 individuals, of which four are serving sentences. There are several other cases that are still working their way through the courts that have not yet received a final verdict. This is the case for the preliminary inquiries into the alleged execution of Rogelio Jiménez López, which were assigned to the courts on March 17, 2012, that is, over 14 years after the alleged acts took place, with the various phases of the criminal proceeding still ahead. Furthermore, the IACHR observes that there are numerous arrest warrants that, despite having been issued over eight years ago, have not yet been executed.

40. Regarding the State's second point, the IACHR reminds that it is a constant in all bodies of the Inter-American system of jurisprudence that, in cases of extrajudicial executions, forced disappearances, and other serious human rights violations, the States have the obligation to conduct an *ex officio* investigation, one that is without delay, serious, impartial, and effective. Though indeed the victims or their family members must have the ability to participate and be heard in the process, "the effective search for the truth is incumbent on the State, and does not depend on the procedural initiative of the victim or his or her family members, or on evidence provided by him or her<sup>7</sup>." Therefore, the Commission considers that, in determining the admissibility of the petition, the onus to pursue the remedies the State mentions cannot be laid on the petitioners or the family members of the victims. On the other hand, the IACHR notes that, according to the information it has been provided to this point, the criminal cases that have been opened have focused on establishing the responsibility of the material authors; it is not clear to what extent the prosecutions have sought to establish the responsibility of the intellectual authors.

41. In conclusion, the Commission notes that, more than 15 to 17 years after the alleged acts occurred, cases of criminal prosecution are still seeking to determine material responsibility. The IACHR considers that this amount of time is sufficiently long to allow the application of the exception to exhaustion of all remedies under domestic law, in accordance with the provisions in Article 46.2.c of the Convention.

42. Regarding the amparo appeal the petitioners mention for the case of those individuals that were allegedly disappeared, the IACHR understands that the appeal for amparo of freedom, equivalent to the *habeas corpus* appeal, is the appropriate appeal under the Mexican legal system, when applied to account for the whereabouts of a disappeared person. However, the IACHR notes that Articles 17 and 117 of the Law of Amparo require, for filing and pursuing this appeal, the identification of the location of the injured party, of the authority that allegedly ordered the commission of the act that is claimed, and of the individual that committed or attempted to commit the act. The Commission considers, for the purpose of admissibility, that because it is impossible to meet these domestic legal requirements in this specific case, the remedy is ineffective for providing the protection it might be able to provide in other situations<sup>8</sup>. Based on the foregoing considerations, the Inter-American Commission concludes that the exception in Article 46.2.b of the Convention is applicable.

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<sup>7</sup> Cf. Inter-American Court of Human Rights. *Case Juan Humberto Sánchez vs. Honduras*. Preliminary Exceptions, Merits, Reparations, and Costs. Ruling of June 7, 2003, paragraph 112; *Case Heliodoro Portugal vs. Panamá*. Preliminary Exceptions, Merits, Reparations, and Costs. Ruling of August 12, 2008, paragraph 115; and *Case Valle Jaramillo and others vs. Colombia*. Preliminary Exceptions, Merits, Reparations, and Costs. Ruling of November 27, 2008, paragraph 157.

<sup>8</sup> CIDH. Report N° 65/05, Petition 777-01, *Rosendo Radilla Pacheco* (México), October 12, 2005, paragraph 20; Report N° 75/07, Petition 12.322, *Antonio González Méndez* (México), October 15, 2007, paragraph 45.

43. Lastly, [the Commission] points out that invoking the exceptions to the rule on exhaustion of all remedies under domestic law in Article 46.2 of the Convention is tightly bound to the determination of possible violations of specific rights enshrined therein, such as the rights to equal protection. However, Article 46.2, by nature and object, is a standalone rule *vis-à-vis* the substantive rules of the Convention. Therefore, the decision on whether or not the exceptions that article provides to the rule on exhaustion of all remedies under domestic law are applicable to the case under study must be made prior to, and apart from, analysis of the merits of the case, given that the decision relies on a different standard of appreciation than the one used to determine the violation of Articles 8 and 25 of the Convention. It is important to clarify that the causes and effects that impede the exhaustion of all domestic remedies in this case will be studied, where pertinent, in the Commission's report on the merits of the dispute, for the purpose of determining if these were actual violations of the Convention.

## **2. Deadline for lodging the petition**

44. In accordance with the provisions in Article 46.1.c of the Convention, for a petition to be admissible, it must be lodged within six months of the date on which the claimant party was notified of the definitive ruling by national courts. The six-month rule ensures juridical certainty and stability once a decision has been made. Article 32 of the Regulations of the Commission establishes that in cases for which the exceptions to exhaustion of all remedies under domestic law are applicable, the petition must be lodged within a reasonable period of time, in the Commission's judgment. For this purpose, the Commission must consider the date on which the alleged rights violation occurred and the circumstances of each case.

45. In the complaint now under study, the IACHR has established the applicability of the exceptions to exhaustion of all remedies under domestic law, in accordance with Article 46.2.b and 46.2.c of the American Convention. Taking into consideration: the dates of occurrence of the alleged acts that motivate this petition; that a number of judicial investigations are still open; and the particular context and characteristics of this petition, the IACHR concludes that the petition, received on October 25, 2004, was lodged within a reasonable period of time and, therefore, meets the requirement established in Article 46.1.b of the Convention.

## **3. Duplication of procedures and prior examination by another international body**

46. For a petition to be declared admissible, the Convention requires, in Article 46.1.c, that the subject of the petition not pending in another international proceeding for settlement and, in Article 47.d, that the subject of the petition not duplicate the content of a petition previously studied by the Commission or by another international organization. In the case under examination, the Commission observes that the parties have not claimed the existence of any of these causes of inadmissibility, neither is it possible to deduce as much from the petition file. Therefore, the IACHR considers the requirements established in Articles 46.1.c and 47.d of the Convention to have been met.

## **4. Characterization of the alleged acts**

47. The Commission believes it is not appropriate at this stage of the proceeding to decide whether or not the reported violations of the alleged victims' rights occurred. For the purposes of determining admissibility, at this moment the IACHR must resolve only whether the petition exposes acts that, if proven, would characterize violations of the American Convention, as stipulated in Article 47.b of the Convention, and also whether the petition is "manifestly groundless" or "obviously out of order", pursuant to Article 47.c of the Convention. The criteria for determining these extremes is different from the criteria required to rule on the merits of the petition. The IACHR must conduct a *prima facie* assessment and decide if the complaint provides reasonable cause for an apparent or potential violation of a right guaranteed by the American Convention, but not determine that such a violation exists.<sup>9</sup> In this phase, a summary analysis must be made that does not involve prejudging or drawing

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<sup>9</sup> See IACHR, Report No. 128/01, Case 12.367, *Mauricio Herrera Ulloa and Fernán Vargas Rohrmoser of the "La Nación" Newspaper* (Costa Rica), December 3, 2001, paragraph 50; Report No. 4/04, Petition 12.324, *Rubén Luis Godoy* (Argentina), February 24, 2004, paragraph 43; Report No. 32/07, Petition 429-05, *Juan Patricio Marileo Saravia and others* (Chile), April 23, 2007, paragraph 54.

premature conclusions about the merits. The Regulations of the Inter-American Commission, when it provides for one stage for admissibility and another for merits, reflects this distinction between the assessment the Inter-American Commission must conduct before it declares a petition admissible and the assessment required to determine if the State has committed a violation.<sup>10</sup>

48. Neither the American Convention nor the Regulations of the IACHR require a petitioner to identify in the petition lodged with the Commission the specific rights he or she claims the State has violated, although petitioners may do so. It is incumbent on the Commission, based on the jurisprudence of the system, to determine in its reports on admissibility which of the Inter-American instruments is applicable and may have been violated if the alleged acts are proven with sufficient evidence.

49. The Inter-American Commission concludes that, if the claims by the petitioners are proven through sufficient evidence, the following violations could be characterized:

- i) Articles 3, 4, 5, 7, 8, and 25 of the American Convention as these relate to Article 1.1 of that instrument; Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture; Article I of the Convention on Forced Disappearance of Persons, against Minerva Guadalupe Pérez Torres and Mateo Arco Guzmán, alleged victims of disappearance;
- ii) Article 4 of the American Convention as it relates to Article 1.1 of that international instrument, to the injury of Héctor Pérez Torres, Rogelio Jiménez López, Sebastián Pérez López, Domingo Vásquez Avendaño, Nicolás Mayo Gutiérrez, and Miguel Gutiérrez, alleged victims of execution;
- iii) Articles 5 and 7 of the American Convention as these relate to Article 1.1 of that international instrument, to the injury of Héctor Pérez Torres, alleged victim of execution;
- iv) Articles 5 and 11 of the American Convention as these relate to Article 1.1 of that international instrument, Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, and Article 7 of the Convention of Belém do Pará, to the injury of Minerva Guadalupe Pérez Torres, alleged victim of sexual violence;
- v) Article 19 of the American Convention as it relates to Article 1.1 of that treaty, to the injury of the child Miguel Gutiérrez Peñate, alleged victim of execution;
- vi) Articles 5, 8, and 25 of the American Convention as these relate to Article 1.1 of that international instrument, as well as Article I of the Inter-American Convention on Forced Disappearance of Persons, to the injury of family members of all alleged victims;
- vii) Additionally, Article 2 of the American Convention as it relates to the claims about the requirements by the Law of Amparo about complaints related to disappeared persons; Articles 21 and 22 of the American Convention as it relates to the alleged forced displacement of indigenous communities, and Article 24 of the American Convention as it relates to the claims about access to justice.

#### **IV. CONCLUSION**

50. The Commission concludes that it has the jurisdiction to hear the petition lodged by the petitioners and that the petition is admissible, in accordance with Articles 46 and 47 of the Convention, in the alleged violation of the laws and instruments specified in paragraph IV of this report, "Characterization of the alleged acts".

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<sup>10</sup> See IACHR, Report No. 31/03, Case 12.195, *Mario Alberto Jara Oñate and others* (Chile), March 7, 2003, paragraph 41; Report No. 4/04, Petition 12.324, *Rubén Luis Godoy* (Argentina), February 24, 2004, paragraph 43; Petition 429-05, *Juan Patricio Marileo Saravia and others* (Chile), April 23, 2007, paragraph 54; Petition 581-05, *Víctor Manuel Ancalaf Laupe* (Chile), May 2, 2007, paragraph 46.

51. By virtue of the arguments of fact and law herein expounded, and without prejudice regarding the merits of the subject,

**THE INTER-AMERICAN COMMISSION FOR HUMAN RIGHTS**

**DECIDES TO:**

1. Declare admissible Articles 3, 4, 5, 7, 8, and 25 of the American Convention, as these relate to Article 1.1 of that instrument; Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture; Article I of the Convention on Forced Disappearance of Persons, against Minerva Guadalupe Pérez Torres and Mateo Arco Guzmán, alleged victims of disappearance.

2. Declare admissible Article 4 of the American Convention as it relates to Article 1.1 of that international instrument, to the injury of Héctor Pérez Torres, Rogelio Jiménez López, Sebastián Pérez López, Domingo Vásquez Avendaño, Nicolás Mayo Gutiérrez, and Miguel Gutiérrez, alleged victims of execution.

3. Declare admissible Articles 5 and 7 of the American Convention, as these relate to Article 1.1 of that international instrument, to the injury of Héctor Pérez Torres, alleged victim of execution.

4. Declare admissible Articles 5 and 11 of the American Convention as these relate to Article 1.1 of that international instrument, Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, and Article 7 of the Convention of Belém do Pará, to the injury of Minerva Guadalupe Pérez Torres, alleged victim of rape.

5. Declare admissible Article 19 of the American Convention as it relates to Article 1.1 of that treaty, to the injury of the child Miguel Gutiérrez Peñate, alleged victim of execution.

6. Articles 5, 8, and 25 of the American Convention as these relate to Article 1.1 of that international instrument, as well as Article I of the Inter-American Convention on Forced Disappearance of Persons, to the injury of family members of all the alleged victims.

7. Declare admissible Articles 2, 21, 22, and 24 of the American Convention.

8. Forward this report to the petitioners and the State.

9. Continue with its examination of the merits of the case.

10. Publish and submit this report, and include it in the Annual Report of the Commission to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 20th day of March 2013. (Signed): Tracy Robinson, First Vice-President; Rosa María Ortiz, Second Vice-President, Felipe González, Dinah Shelton, Rodrigo Escobar Gil, and Rose-Marie Belle Antoine, Commissioners.