

REPORT No. 48/13¹
PETITION 880-11
ADMISSIBILITY
NITZA PAOLA ALVARADO ESPINOZA, ROCIO IRENE ALVARADO REYES,
JOSÉ ÁNGEL ALVARADO HERRERA ET AL.
MEXICO
July 12, 2013

I. SUMMARY

1. On June 26, 2011, the Inter-American Commission on Human Rights (hereinafter “IACHR” or “the Commission”), received a petition from the Center for Women’s Human Rights (CEDEHM), the Solidarity and Human Rights Defense Commission (COSYDDHAC), Justice for Our Daughters (JPNH), all located in the city of Chihuahua, and the Paso del Norte Human Rights Center (CDHPN), located in the city of Juárez, (hereinafter “the petitioners”),² in which the responsibility of the United Mexican States (hereinafter “the State” or “Mexico”) is alleged for the presumed illegal detention on December 29, 20 09, and the later forced disappearance allegedly perpetrated by members of the Mexican Army, of Nitza Paola Alvarado Espinoza, Rocio Irene Alvarado Reyes, and José Ángel Alvarado Herrera (hereinafter “the presumed victims”), as well as the presumed lack of effective investigation and due diligence concerning these facts. Furthermore, the petitioners allege that the State has international responsibility for a series of human rights violations allegedly committed to the detriment of the relatives of the presumed victims, as a consequence of the forced disappearance of their family members and the actions taken to ascertain their whereabouts.

2. In view of the facts alleged, the petitioners argue that, with regard to the presumed victims Nitza Paola Alvarado Espinoza, Rocio Irene Alvarado Reyes, and José Ángel Alvarado Herrera, the Mexican State is responsible for the violation of the rights firmly enshrined in Articles 3, 4, 5, 7, 8 and 25 of the American Convention on Human Rights (hereinafter “Convention” or “American Convention,” all relating to Article 1.1 and 2 of that international instrument; Articles I, II, IX and XIX of the Inter-American Convention on Forced Disappearance of Persons (hereinafter “ICFDP”), and, specifically concerning Nitza Paola Alvarado Espinoza and Rocio Irene Alvarado Reyes, Articles 3, 4, 5, 7 and 9 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (hereinafter “Convention of Belém do Pará”). With regard to the relatives of Nitza Paola Alvarado Espinoza, Rocio Irene Alvarado Reyes, and José Ángel Alvarado Herrera, the petitioners argue that the Mexican State is responsible for the violation of the rights enshrined in Articles 5, 8 and 25 of the American Convention, all with regard to Articles 1.1 and 2 of that international instrument and, in accordance with Article I.a and I.b of the ICFDP, with regard to their right to know the truth. Specifically in relation to the family members Jaime Alvarado Herrera, Sandra Luz Rueda Quezada, and their children, the petitioners also allege violation of Article 11 of the American Convention. Regarding the requirement of exhaustion of domestic remedies, they allege exceptions stipulated in Article 46.2.a) and b) of the Convention.

3. The State requests that the petition be declared inadmissible inasmuch as it considers that domestic remedies have not been exhausted because a regular domestic investigation is underway to elucidate the facts and to ascertain the whereabouts of the presumed victims.

4. Without prejudging the merits of the case, after analyzing the positions of the parties, and pursuant to Articles 46 and 47 of the American Convention, the Commission decides to declare this case admissible

¹ Pursuant to Article 17.2.a of the Rules of Procedure of Commission, Commissioner José de Jesús Orozco Henríquez, a national of Mexico, did not participate in the deliberations nor in the ruling of this case.

² After the initial petition was submitted, in the brief dated December 24, 2012, the petitioners requested that the following persons also be included as petitioners: Patricia Reyes Rueda in representation of her daughter Rocio Irene Alvarado; María de Jesús Alvarado Espinoza in representation of her sister Nitza Paola Alvarado, and Rosa Olivia Alvarado Herrera, in representation of her brother José Ángel Alvarado Herrera.

for the purpose of examining the presumed violation of rights enshrined in Articles 3, 4, 5, 7, 8, 11, 19 and 25 of the American Convention, in connection with Articles 1.1 and 2 of that instrument. Also, the IACHR considers that the facts stated would characterize possible violations of Articles I and XI of the Inter-American Convention on Forced Disappearance of Persons; and Article 7 of the Convention of Belém do Pará. The Commission further decides to notify the parties of this decision, publish it, and include it in its Annual Report to the General Assembly of the OAS.

II. PROCEEDINGS BEFORE THE COMMISSION

A. The petition

5. The Commission received the petition and registered it with the number P-880-11. After a preliminary analysis conducted on March 14, 2012, it forwarded the pertinent parts of the petition to the Mexican State, with the request that it submit its response within a period of two months, pursuant to Article 30.2 of the Rules of Procedure of the IAHR. On May 29, 2012, the State requested an extension for submitting its response, which was granted, and on July 11, 2012, it submitted its response.

6. The IACHR also received information from the petitioners on October 10, on December 24, 2012, on March 7, 2013 and on June 3, 2013. These communications were duly forwarded to the State. In addition, the IACHR received information from the State on November 27, 2012, on April 16, 2013 and on May 31, 2013. These communications were duly forwarded to the petitioners.

B. Precautionary and provisional measures

7. On January 12, 2010 and as provided under Article XIV of the Inter-American Convention on Forced Disappearance of Persons, the Commission requested the Mexican State urgently for information on the whereabouts of Nitza Paola Alvarado Espinoza, Rocio Irene Alvarado Reyes, and José Ángel Alvarado Herrera. On January 15, 2010, it received the State's response.

8. On March 4, 2010, the IACHR granted precautionary measures (MC 55-10) to Rocio Irene Alvarado Reyes, Nitza Paola Alvarado Espinoza, and José Ángel Alvarado Herrera, requiring the Mexican State to report on their whereabouts, health, and safety. Furthermore, the IACHR asked the State to report on the actions taken by State authorities to investigate the facts that motivated the adoption of the precautionary measures, and to elucidate the matter. On May 13, 2010, the Commission decided to submit a request for provisional measures to the Inter-American Human Rights Court (hereinafter "the Inter-American Court"). The Inter-American Court granted provisional measures on May 26, 2010.

9. Subsequently, the Commission submitted to the Inter-American Court applications to broaden the provisional measures to include relatives of the presumed victims and their representatives. To date, the Inter-American Court has issued five rulings on this matter, requiring the Mexican State to immediately take the actions required to ascertain the whereabouts of Rocio Irene, Nitza Paola, and José Ángel Alvarado, as well as to protect their integrity, personal liberty, and lives.³ In addition, it has partially accepted the requests for expansion submitted by the Commission, requiring the State to adopt the actions necessary to protect the life and integrity of 36 members of the Reyes Alvarado family and of some of their representatives.⁴

10. In June 2013, the IACHR informed the parties that, in view of the connections, the information contained in the files of the precautionary measures and provisional measures relating to the present matter would also be taken into account in processing the petition.

³ Orders of the Inter-American Court in the case *Alvarado Reyes et al vs. Mexico*, on the following dates: May 26, 2010, November 26, 2010, April 1, 2011, May 15, 2011 and November 23, 2012.

⁴ Inter-American Court, Order *Matter of Alvarado Reyes et al vs. Mexico*. November 23, 2012, Second operative paragraph.

III. POSITION OF THE PARTIES

A. The petitioners

11. According to the petitioners, forced disappearances have been carried out continuously and constantly in Chihuahua state, Mexico, and the incidence of this crime is highest in Chihuahua state. The petitioners argue that this occurs because criminal organizations act in collusion or complicity with elements of the State or federal police. They add that in March 2008, the authorities announced implementation of the “Chihuahua Joint Operations” with the purpose of dismantling organized crime networks and logistics. This significantly increased the number of military troops in Chihuahua and, according to the petitioners, considerably increased the forced disappearances in the area attributable to State agents, a situation that has been documented and reported by national and international organizations, and acknowledged by the State itself. The petitioners argue that the majority of complaints of forced disappearances by agents of Chihuahua state have gone unpunished, which would be an incentive for repeating this criminal practice.

12. In this context, the petitioners allege that members of the Mexican army are responsible for the illegal detention and later forced disappearance of Nitza Paola Alvarado Espinoza, Rocio Irene Alvarado Reyes, and José Ángel Alvarado Herrera, without the State conducting an effective investigation to ascertain their whereabouts and to judge and punish those responsible for that crime.

13. Specifically, the petitioners allege that on December 29, 2009, in the night, Nitza Paola Alvarado Espinoza and José Ángel Alvarado Herrera, both 32 years of age, were on board a pick-up truck parked in front of the residence of relatives of José Ángel, when they were intercepted and detained by presumed uniformed and armed military personnel, who forced them into another vehicle with an unknown destination. These facts allegedly occurred in Ejido Benito Juárez, Municipio of San Buenaventura, Chihuahua.

14. They add that on the same December 29th, and minutes after the arrest of Nitza Paola and José Ángel, presumed military personnel arrived in a convoy at the residence of Rocio Irene Alvarado Reyes, 20 years of age, entered violently, physically attacked the persons inside the house, causing destruction, and arbitrarily and violently detaining, without judicial order, Rocio Irene Alvarado Reyes. They report that these facts were witnessed by the mother of Rocio Irene, Patricia Reyes Rueda, and by her younger brothers, who were allegedly locked in the bathroom of the house by the presumed military personnel.

15. The petitioners report and detail a series of steps taken by the relatives of Nitza Paola, Rocio Irene, and José Ángel Alvarado, to obtain information on their whereabouts and so the State authorities would investigate the facts. These include, among others, taking steps with the military authorities, filing complaints with the state and federal Offices of the Attorney General, filing an amparo appeal with the courts of law. They adduce that at first they obtained official information from ministerial authorities indicating that they had been detained by members of Battalion 35 of Nuevo Casas Grandes Infantry (hereinafter “Battalion 35”), and that they were in its custody. In this connection, they allege that, despite this information, the military authorities denied having detained the presumed victims to their family members when they went—on several occasions—to Battalion 35 to request information.

16. The petitioners allege that despite the various complaints filed with local and national authorities, the relatives of Nitza Paola, Rocio Irene, and José Ángel Alvarado have not received information on their whereabouts, health, or present situation. In this regard, they hold that the State authorities have not acted with due diligence to investigate the facts denounced and that the absence of an effective and timely response by the State aggravates the alleged situation of risk for the presumed victims after their disappearance.

17. In this regard, the petitioners argue that the State has incurred delays and inaction in the investigation into the alleged forced disappearance of Nitza Paola, José Ángel, and Rocio Irene Alvarado. They further allege that the steps required to elucidate the facts were not taken. They indicate that the National Human

Rights Commission itself, on June 30, 2011, in complaint file no. CNDH/2/2010/108/Q, instructed the responsible authorities to investigate, elucidate, and punish in relation to the facts concerning the disappearance of the three presumed victims; this recommendation has yet to be fulfilled.

18. Furthermore, the petitioners hold that, because of the actions taken by the relatives of the presumed victims to elucidate the facts and to ascertain their whereabouts, they were subjected to presumed threats, persecution, harassment, and illegal raids.⁵ They allege that a situation of risk has therefore been created for the life and personal integrity of the relatives of the presumed victims, which has aggravated their suffering regarding the disappearance of Nitza Paola, Rocio Irene, and José Ángel Alvarado. In this connection, the petitioners referred to the information submitted as part of the process requesting the precautionary and provisional measures associated with this matter.⁶

19. Regarding the exhaustion of domestic remedies, the petitioners allege that the exceptions provided in Article 46.2.a and c. of the American Convention apply. Concerning the exception defined in Article 46.2.a of the Convention, they propose that the amparo appeal is not be an effective mechanism for denouncing a disappearance because the domestic legal framework requires that, in order to be considered lodged and in process, the “direct complainants” must ratify the appeal. In other words, in this case, the people reported as detained and missing must ratify the amparo appeal. The petitioners therefore argue that, while the relatives of the presumed victims filed an amparo appeal on a timely basis—on January 6, 2010—it could not have been effective. With regard to this same exception, they indicate that domestic investigations had been undertaken into “abuse of authority” and “illegal deprivation of liberty,” and not into the crime of forced disappearance. Accordingly, they hold that the Mexican legal system does not afford due process of law for the protection of the rights allegedly violated.

20. With regard to the exception provided in Article 46.2.c of the Convention, the petitioners hold that the alleged forced disappearance of Nitza Paola, José Ángel, and Rocio Irene Alvarado has not been clarified, and that in spite of the severity of the facts and the amount of time that has transpired, the processes initiated at the domestic level at the request of the relatives of the presumed victims have not progressed past the initial stage of investigation. This means that, to date, no regular legal authority has heard the matter. In this regard, they report that on December 31, 2009 relatives of the presumed victims filed a complaint with the Office of the Attorney General of Justice of Chihuahua state, and on January 6, 2010 with the Office of the Attorney General of the Republic, which declined competence in light of the military court, a level of jurisdiction in which they would not have been able to have effective participation and/or representation.

21. Accordingly, the petitioners hold that, given the ongoing nature of the alleged forced disappearances, their effects extend into the present because the whereabouts of the presumed victims have not been established, and as was indicated with regard to the domestic processes, the petition was submitted within a reasonable period of time.

B. The State

22. In response to the claim, the State indicates that proceedings are under way under regular law and that the responsible authorities have made the necessary efforts to ascertain the whereabouts of the presumed victims. In this connection, the State includes in its response details on the investigative activity carried out by the different authorities who have had knowledge of the investigation into the alleged disappearance of

⁵ Specifically, they allege that on August 28, 2011, federal police broke into the home of Jaime Alvarado Herrera, brother of José Ángel Alvarado. These alleged facts were reported to the Human Rights Court in processing the provisional measure related with this case. See: Order of the Inter-American Court. *Matter of Alvarado Reyes et al. vs. Mexico*. November 23, 2012, paragraph 17.g).

⁶ See: Orders of the Inter-American Court in the matter of *Alvarado Reyes et al. vs. Mexico*, dated May 26, 2010; November 26, 2010; April 1, 2011; May 15, 2011; and November 23, 2012.

Rocio, Nitza, and José Ángel Alvarado. The State adduces that these steps have yielded significant criminalistic findings for ascertaining the whereabouts of the presumed victims.

23. The State indicates that several lines of investigation have been pursued, including to establish the possible participation of military officials and/or members of organized crime. It also describes the joint efforts conducted by local and federal authorities to collect data relevant to the investigation. In addition, the State refers to the steps taken in response to the complaint filed with the National Human Rights Commission (“CNDH”). It reports that on June 30, 2011, the CNDH issued Recommendation 43/2011—which is in the compliance stage—and instructs several State authorities to ascertain the whereabouts of the presumed victims and to elucidate the facts.

24. In addition, the State indicates that although investigations were initially undertaken under military law, currently only one investigation is open, under the responsibility of the Office of the Attorney General of the Republic. It states that the military investigation did not yield any information that would have made it possible to establish the possible participation of military personnel in the alleged disappearance of the presumed victims. Therefore, the military ministerial authority ordered that the investigation be closed, and the proceedings were forwarded to the Office of the Attorney General of the Republic.

25. The State reports that the process under the responsibility of the Office of the Attorney General of the Republic is in the preliminary inquiry stage, begun on November 16, 2011. It indicates that in 2012, the authorities continued to taking different actions to ascertain the whereabouts of the three presumed victims, among which was to include them on the National Register of Missing Persons, and to order the beginning of an investigation, with the representation of the Federal Agency of Investigation in Chihuahua state.

26. In light of the information provided, the State alleges that the investigation being carried out by the Office of the Attorney General of the Republic is the suitable remedy for ascertaining the whereabouts of the presumed victims and for elucidating the facts related to their alleged disappearance. The State holds that this investigation has been carried out with due gravity, exhaustively, and impartially, in accordance with international standards on the matter. In other words, it considers that it has met its international obligations regarding the subject matter of this petition, and holds that the petition should be declared inadmissible because it does not meet the requirement of prior exhaustion of domestic remedies.

IV. ADMISSIBILITY ANALYSIS

A. Jurisdiction of the Commission *ratione personæ, ratione loci, ratione temporis* and *ratione materiæ*

27. Under Article 44 of the American Convention, the petitioners are empowered to submit petitions to the Commission. The petition indicates individual people as the presumed victims, in regards to whom the Mexican State pledged to respect and guarantee the rights enshrined in the American Convention.⁷ As to the State, the Commission notes that Mexico has been a State Party to the American Convention since March 24, 1981, when it deposited its instrument of ratification. In addition, Mexico ratified the Convention of Belém do Pará on

⁷ In the brief dated December 24, 2012 the petitioners identified as victims the following relatives of Nitza Paola Alvarado Espinoza, Rocío Irene Alvarado Reyes, and José Ángel Alvarado Herrera: i) Relatives of José Ángel Alvarado Herrera: José Ángel Alvarado Favela (father), Concepción Herrera Hernández (mother), Obdulía Espinoza Beltrán (wife), J.A.E. (daughter, 12 years), J.A.A.E. (son, 7 years), A.E.B. (daughter, 2 years), Jaime Alvarado Herrera (brother) and his wife Sandra Luz Rueda Quezada, and their children J.O.A.R. (16 years), R.G.A.R. (16 years); C.N.A.R. (9 years) and J.E.A.R. (3 years); Rosa Olivia Alvarado Herrera (sister) and her husband Félix García García and their children Karina Paola Alvarado Espinoza, F.A.H. (15 years), J.G.A. (4 years), and A.G.A. (minor); Manuel Melquiades Alvarado Herrera (brother) and his wife Mayra Daniela Salais Rodríguez and the children D.J.A.S. (minor) and X.A.S. (minor); ii) Relatives of Nitza Paola Alvarado Espinoza: Asención Alvarado Fabela (father), María de Jesús Espinoza Peinado (mother), N.S.A.E. (daughter, 16 years), M.P.A.E. (daughter, 16 years), D.A.E. (daughter, 13 years), María de Jesús Alvarado Espinoza (sister) and her husband Rigoberto Ambriz Marrufo and children R.A.A. (14 years), I.A.A.A. (11 years), J.E.A.A. (9 years), and A.Y.A.A. (7 years); iii) Relatives of Rocío Irene Alvarado Reyes: A.M.U.A (daughter, 4 years), Patricia Reyes Rueda (mother), A.A.R. (brother, 15 years), R.A.A.R. (brother, 14 years), Manuel Reyes Lira (grandfather) and María de Jesús Rueda Villanueva (grandmother).

November 12, 1998, and the Inter-American Convention on Forced Disappearance of Persons on April 9, 2002. Therefore, the Commission has *ratione personae* jurisdiction to examine the petition. Furthermore, the Commission is also competent *ratione loci* to hear the petition inasmuch as it alleges violations of rights protected in the American Convention that would have occurred within the territory of Mexico, a State Party to that instruments.

28. The Commission is also competent *ratione temporis* in that the obligation to respect and guarantee the rights protected in the American Convention were in effect for the State on the date when the events alleged in the petition would have occurred. Finally, the Commission is competent *ratione materiae*, because the petition reports possible violations of human rights protected by the American Convention.

B. Other requirements for admissibility of the petition

1. Exhaustion of domestic remedies

29. Article 46.1.a) of the American Convention stipulates that for a complaint on the presumed violation of the American Convention to be admissible, prior exhaustion of remedies available in domestic jurisdiction is required, in keeping with generally recognized principles of international law. Article 46.2 of the Convention provides that the requirement of prior exhaustion of domestic remedies is not applicable when: (i) 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; (ii) 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 (iii) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

30. In this petition the State alleges lack of exhaustion of domestic remedies, by virtue of the fact that an open investigation is underway under regular criminal jurisdiction. For their part, the petitioners hold that there has been unwarranted delay in the domestic processes, given the severity of the facts denounced and that initially the matter was heard in a military court. They also allege the nonexistence of an effective legal appeal for denouncing the alleged forced disappearance of the presumed victims.

31. In view of the allegations of the parties, in the first place, it behooves the Commission to clarify which domestic remedies should have been exhausted in the present petition in light of the jurisprudence of the Inter-American system. The Commission observes that the purpose of the present petition relates to the facts concerning the alleged forced disappearance of Nitza Paola, Rocío Irene, and José Ángel Alvarado and to aspects related to the legal elucidation of same. The precedents established by the Commission point out that whenever a crime can be prosecuted *ex officio*, the State has the obligation to promote and further the criminal proceedings⁸ and that, in those cases, it is the appropriate means to elucidate the facts, judge the responsible parties, and establish the corresponding criminal penalties, as well as to make other forms of pecuniary reparation possible.

32. With regard to the requirement under study, the IACHR bears in mind that the relatives of the presumed victims filed complaints with the following, among others: i) the Office of the Public Prosecutor of regular jurisdiction of Buenaventura on December 31, 2009; ii) the Office of the Attorney General of the Republic, the Office of the Public Prosecutor of the Federation, on January 6, 2010.

33. In this regard, the IACHR notes that the matter was initially heard in military criminal court and in regular court. In military court, the Office of the Attorney General of Military Justice ordered initiation of

⁸ IACHR, Report No. 52/97, Case 11.218, *Arges Sequeira Mangas*, 1997 IACHR Annual Report, paragraphs 96 and 97. See also Report No. 55/97, Case 11.137, *Abella et al.*, paragraph 392.

preliminary inquiry No. 5ZM/04/2010 on February 26, 2010, in view of the decline of assumption of jurisdiction by the ministerial authority of the Office of the Attorney General of the Republic. The investigation was initiated into the presumed perpetration of the crime of abuse of authority, and later it was ordered to be definitively closed. On December 29, 2011, the proceedings of the military court were forwarded to the Office of the Attorney General of the Republic.

34. Under regular jurisdiction, inquiries were begun by the Unit for the Investigation of Absent, Misplaced and Missing People, and by the Special District Attorney's Office for Violent Crimes against Women and Human Trafficking. According to the available information, the investigation is currently under the responsibility of the Office of the Attorney General of the Republic, which is conducting preliminary inquiry AP/PGR/CHIH/JUA/3634/2011 for the presumed crime of deprivation of liberty to the detriment of Nitza Paola, Rocio Irene, and José Ángel Alvarado.

35. Secondly and with regard to the legal proceedings, the Commission observes that on January 6, 2010, an amparo appeal was lodged with the Sixth District Court, denouncing the "illegal detention and subsequent disappearance" of Nitza Paola, Rocio Irene, and José Ángel Alvarado. In processing the appeal, it was determined that "[the] military garrison does not hold regular authority." Moreover, by a ruling dated June 6, 2011, the file was ordered definitively closed since the complaint was determined not to have been lodged because it had not been ratified by the direct aggrieved parties.

36. In this regard, the IACHR understands that the amparo appeal is the equivalent of habeas corpus appeal under Mexican law. It observes that the latter was filed for the purpose of ascertaining the whereabouts of the presumed victims, but that it was rejected *in limine* due to a lack of ratification of the complaint by the directly affected parties, which, in the present case, would have been the persons alleged to have been disappeared. In view of the above, the Commission considers that although the petitioners exhausted the appropriate appeal for the situation denounced, the appeal was not effective under the terms of Article 46.2.a for ascertaining the whereabouts of Nitza Paola, Rocio Irene, and José Ángel Alvarado.⁹

37. Further, the Commission observes that in spite of the steps taken by domestic authorities, the investigation into the alleged disappearance of the presumed victims has not advanced to determine their whereabouts three years after the facts occurred. Within this framework, the Commission reiterates that special jurisdictions, such as the military or the police, do not constitute appropriate forums and as a result do not provide an appropriate appeal for investigating, judging, and punishing possible violations of the human rights enshrined in the American Convention.¹⁰ In this regard, the IACHR bears in mind the time that the investigation related to the facts of this petition was under the responsibility of military authorities. Given the characteristics of this petition and the available information, the Commission considers that the exceptions stipulated in Article 46.2.c) of the American Convention concerning unwarranted delays in the development of domestic legal processes are applicable, and the requirement on exhaustion of domestic remedies is not enforceable.

38. It only remains to mention that invoking the exceptions to the rule of exhaustion of domestic remedies stipulated in Article 46.2 of the Convention is closely linked to the determination of possible violations of certain rights enshrined in the Convention, such as the right to a fair trial. However, due to its nature and purpose, Article 46.2 is autonomous as compared to the substantive standards of the Convention. Therefore, determination of whether the exceptions to the rule of exhaustion of domestic remedies are applicable in this case must be carried out previously and separately from the analysis of the substance of the matter, since it depends on a different standard of appraisal than that used to determine possible violation of Articles 8 and 25 of the Convention. It should be pointed out that the causes and effects that impeded exhaustion of domestic remedies

⁹ IACHR, Admissibility Report No. 75/07, Petition 12.322. Antonio González Méndez vs. Mexico. October 15, 2007, paragraph 47.

¹⁰ IACHR, Report No. 64/01, Petición 11.712, Leonel de Jesús Isaza Echeverry et al., Colombia, April 6, 2001, paragraph 22. See also, Inter-American Court, *Case of Durand and Ugarte*. Judgment of August 16, 2000, Series C No. 68, paragraph 117.

will be analyzed in the Commission's report on the substance of the dispute, to determine if they constitute violations of the American Convention.

2. Deadline for submitting the petition

39. According to the American Convention, in order to be admitted, a petition must be lodged within a period of six months from the date on which the presumed injured parties were notified of the final judgment. In the complaint under analysis, the IACHR has established the applicability of the exceptions to exhaustion of domestic remedies in accordance with Article 46.2.c) of the American Convention. For its part, Article 32 of the Commission's Rules of Procedure establishes that in those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition must be presented within a reasonable period of time, to be determined by the Commission. For this purpose, the Commission should consider the date on which the presumed violation of rights occurred and the circumstances of each case.

40. The petition of the case under study was received on June 26, 2011, and the alleged forced disappearance of Nitza Paola, Rocio Irene, and José Ángel Alvarado would have occurred in December 2009. Up to the date the petition was submitted, the relatives of the presumed victims had presented multiple complaints and the amparo appeal in an effort to elucidate the facts and ascertain their whereabouts. Taking into account that the preliminary inquiry of the Office of the Attorney General of the Republic remained open in an initial stage for approximately three years, the IACHR concludes that the petition was presented within a reasonable period of time and therefore considers fulfilled the requirement established in Article 46.1.b) of the Convention.

3. Duplication of proceedings and international *res judicata*

41. The case file does not indicate that the issue addressed in the petition is pending before any other international proceeding, nor that it repeats a petition that has already been heard by this or any other international body. Accordingly, the requirements established in Articles 46(1)(c) and 47(d) of the American Convention have been met.

4. Characterization of the alleged facts

42. For the purpose of admissibility, the Commission must decide if the petition states facts that would characterize a violation, as stipulated in Article 47(b) of the American Convention, if the petition is "manifestly groundless" or "evidently out of order," according to paragraph c) of that article. The standard for appraising these points is different than the standards for deciding the merits of a complaint. The Commission must make a *prima facie* evaluation to determine if the complaint substantiates the apparent or potential violation of a right guaranteed by the Convention, and not to establish the existence of a violation. This evaluation is a summary analysis which does not imply prejudgment or a preliminary opinion on the merits.

43. Moreover, neither the American Convention nor the Rules of Procedure of the IACHR require that the petitioner identify the specific rights allegedly violated by the State in the matter submitted to the Commission, although they may do so. It falls to the Commission to determine in its admissibility reports, based on the jurisprudence of the system, what provision of the relevant Inter-American instruments is applicable and could establish violation if the alleged facts are sufficiently proven.

44. Given the arguments of fact and law submitted by the petitioners and the nature of the matter before it, the IACHR finds that in the present petition it must establish that the allegations related to the presumed forced disappearance of Nitza Paola, Rocio Irene, and José Ángel Alvarado, could characterize violations to the rights enshrined in Articles 3, 4, 5, 7, 8 and 25 of the American Convention, relative to Article 1.1 of that instrument. Similarly, bearing in mind the nature of the facts denounced, the Commission will analyze in the merits stage the Mexican State's possible failure to comply with the obligations assumed under Articles I and XI of the Inter-American Convention on Forced Disappearance of Persons. With regard to Nitza Paola and Rocio Irene

Alvarado, the Commission will analyze the State's possible responsibility due to noncompliance with the obligations established in Article 7 of the Convention of Belém do Pará.

45. Furthermore, the IACHR considers that the allegations related to the lack of legal elucidation of the facts denounced, the infringements caused to the relatives of the presumed victims as a result of their alleged disappearance, taking into account the facts of threats and harassment against them that motivated the adoption of international protection measures in their favor could characterize violations to the rights protected by Articles 5, 8 and 25 of the American Convention to its detriment.¹¹

46. Concerning Jaime Alvarado Herrera, his wife Sandra Luz Rueda Quezada, and their children J.O.A.R., R.G.A.R., S.A.R., and J.E.A.R, the Commission will also examine the presumed violation of Article 11 of the American Convention in connection with the alleged entry and search of their home presumably carried out by members of the federal police on August 28, 2011. With regard to A.A.R and R.A.A.R, minor children of Rocio Irene Alvarado, the Commission will also examine the facts related to the alleged detention of the latter in the presence of her siblings, and the alleged abuses against them, in light of Article 19 of the American Convention, interpreted in accordance with the corpus juris on the rights of children and adolescents.

47. Finally, the Commission considers that the allegations on the ineffectiveness of the amparo appeal as a means of protection in light of a forced disappearance require a substantive analysis since they raise matters related to the scope of the obligation contained in Article 2 of the American Convention.¹²

48. With regard to whether the claim is out of order or inadmissible, the IACHR concludes that the petitioners have demonstrated prima facie the points required under Article 47.b of the American Convention.

V. CONCLUSIONS

49. Based on the arguments of fact and law set forth herein, and without prejudging the merits of the case, the Inter-American Commission concludes that this petition fulfills the admissibility requirements set out in Articles 46 and 47 of the American Convention and accordingly:

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare this petition admissible with regard to the presumed violations of rights established in Articles 3, 4, 5, 7, 8, 11, 19 and 25 of the American Convention, in connection with Articles 1.1 and 2 of that instrument; Articles I and XI of the Inter-American Convention on Forced Disappearance of Persons; and Article 7 of the Convention of Belém do Pará.

2. To notify the parties of this decision.

3. To publish this decision and include it in its Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 12th day of July 2013. (Signed): Tracy Robinson, First Vice-President; Rosa María Ortiz, Second Vice-Presidente; Felipe González, Dinah Shelton, Rodrigo Escobar Gil and Rose-Marie Antoine, Commissioners.

¹¹ The family members identified in paragraph 2 of this report are held as presumed victims.

¹² IACHR, Admissibility Report No. 75/07, Petition 12.322. *Antonio González Méndez vs. Mexico*. October 15, 200, paragraph 59.