

REPORT No. 50/13¹
PETITION 1491-06
ADMISSIBILITY
GUZMÁN CRUZ FAMILY
MEXICO
July 12, 2013

I. SUMMARY

1. On October 25, 2006, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission", "the Commission," or "the IACHR") received a petition lodged by Abdallán Guzmán Cruz, *Fundación Diego Lucero*, and *Centro de Derechos Humanos Miguel Agustín Pro Juárez A.C.* (PRODH), all representing the Guzmán Cruz family (hereinafter "the petitioners") against the United Mexican States (hereinafter "Mexico," "the State," or "the Mexican State") for the alleged forced disappearance of José de Jesús Guzmán Jiménez and his four sons, Amafer, Armando, Adenauer Solón² and Venustiano Guzmán Cruz (hereinafter the "alleged victims") at the hands of agents of the state in 1974 and 1976, and for the failure to investigate, prosecute, and punish those responsible for such acts.

2. The petitioners claim that the Mexican State bears international responsibility for violation of Articles 4 (right to life), 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), 17 (rights of the family), 19 (rights of the child), and 25 (right to judicial protection) of the American Convention on Human Rights (hereinafter the "Convention" or "American Convention") in connection with Articles 1(1) and 2 thereof; Articles I, II, IX, XI, and XIX of the Inter-American Convention on Forced Disappearance of Persons (hereinafter the "Inter-American Convention on Forced Disappearance" or "IACFDP"); and Article 2 of the Inter-American Convention to Prevent and Punish Torture (hereinafter the "Inter-American Convention against Torture" or "IACPPT") to the detriment of the alleged victims. As regards the rule of prior exhaustion of remedies under domestic law, they claim denial of justice and invoke the exception envisaged at Article 46(2)(c) of the American Convention.

3. The Mexican State, for its part, did not contest the facts but challenged the petition, arguing for the subsidiary nature of the inter-American human rights system. Regarding the requirement of prior exhaustion of domestic remedies, the State claims that said remedies were not exhausted inasmuch as the relatives of the alleged victims failed to make use of a specific assistance program for reparation of the harm and because, in relation to the obligation to investigate and punish those responsible, a prosecutorial inquiry remains pending in which every reasonable effort possible has been made to conduct appropriate procedures. Based on the foregoing, the State requests that the petition be declared inadmissible.

4. Having examined the positions of the parties and compliance with the requirements set forth in Articles 46 and 47 of the American Convention, the Commission, without prejudging the merits of the petition, has decided to declare the petition admissible for the purposes of examining the alleged violations of rights enshrined in Articles I, IX, XVII, XVIII, and XXV of the American Declaration of the

¹ In accordance with Article 17(2) a. of the Rules of Procedure of the IACHR, Commissioner José de Jesús Orozco Henríquez, a Mexican national, did not participate in the discussion or decision in the present case.

² The petitioners use the names Adenauer Solón and Solón Adenauer Guzmán Jiménez to refer indistinctly to the same person.

Rights and Duties of Man (hereinafter the “American Declaration”); Articles 3, 4, 5, 7, 8, 17, 22, 19, and 25 of the American Convention, in connection with Articles 1(1) and 2 thereof; Articles I and XI of the Inter-American Convention on Forced Disappearance; and Articles 1, 6, and of the Inter-American Convention against Torture. The Commission has decided to notify the parties of this decision, make it public, and include it in its annual report to the General Assembly of the Organization of American States.

II. PROCESSING BY THE COMMISSION

5. The Commission received the petition on October 25, 2006 and numbered it 1491-06. On April 28, 2011, the Commission forwarded the pertinent portions to the State and requested it to present its comments within two months. On September 7, 2011, the State asked for an extension, which was granted, for one month, on July 15, 2011. On February 8, 2012, the IACHR reiterated its request to the State for its comments, which were received on June 4, 2012, and duly relayed to the petitioners.

6. The IACHR also received information from the petitioners on the following dates: July 31, 2007; July 15, 2010; December 16, 2011; September 26, 2012; and April 23, 2013. Those communications were duly forwarded to the State. The State also presented information on December 9, 2012, which was forwarded to the petitioners.

III. POSITION OF THE PARTIES

A. The petitioners

7. The petitioners allege the forced disappearance of Amafer Guzmán Cruz, Armando Guzmán Cruz, José de Jesús Guzmán Jiménez, Adenauer Solón Guzmán Cruz, and Venustiano Guzmán Cruz, all of them members of the Guzmán Cruz family and the Purhépecha indigenous community of Tarejero, located in the Municipality of Zacapu, Michoacán State, Mexico. They claim denial of justice and hold that, despite having reported the acts, the investigations opened exceeded a reasonable time without any punishment of the masterminds and actual perpetrators, or reparation for the family members of the alleged victims.

8. They argue that the alleged acts were committed within a context of repression against opposition social and political movements that occurred in Mexico between 1960 and 1980, known as the “Dirty War.” They say that specifically in the State of Michoacán student-led movements arose between 1963 and 1966, which period saw the formation of the Student and Rural Laborers Popular Front (*Frente Popular Obrero Campesino Estudiantil*). They say that on August 2, 1968 and June 10, 1971, two massacres were carried out against young people struggling for spaces for political participation. According to the petitioners, following the repression of October 2, 1968, a number of activists from that movement formed a politico-military organization known as the Revolutionary Action Movement [*Movimiento de Acción Revolucionaria*] (hereinafter the “MAR”), in which, they say, the young Amafer Guzmán Cruz played a significant role. They say that to exterminate such opposition movements, the Mexican Government of the day perpetrated large numbers of forced disappearances (between 500 and 1200 according to estimates), extrajudicial executions, and acts of torture.

9. According to them, such acts were mainly carried out by the Army and the Federal Security Directorate [*Dirección Federal de Seguridad*] (hereinafter the “DFS”), which was attached to the

Ministry of the Interior; as well as irregular groups created *ex profeso*, such as the so-called “White Brigade” [*Brigada Blanca*]. They say that the modus operandi of those entities and groups are widely documented and recognized by the National Human Rights Commission [*Comisión Nacional de Derechos Humanos*] (hereinafter the “CNDH”) in its Recommendation 26/2001.

10. With regard to the acts that affected the Guzman Cruz family, they note, in particular, that Amafer Guzmán Cruz had been a student leader since adolescence, participated actively in social protest activities, and joined the MAR in the early 1970s. They say that, as official documents produced by the State itself record, he had been under surveillance by the DFS since July 9, 1972, and that at approximately 10:00 p.m. on July 16, 1974, he and two other individuals were detained by members of the DFS in the city of Morelia, Michoacán. They say that he was taken first to the 21st Military Area of Michoacán and then to the DFS in Mexico City where he was interrogated, and that his whereabouts have remained unknown ever since. They say that following the detention of Amafer Guzmán Cruz, his family was subjected to ferocious persecution.

11. In that regard, they say that on July 19, 1974 his brother, Armando Guzmán Cruz, was arrested by the DFS in the city of Netzahualcóyotl, México State, and that his whereabouts have been unknown since then. Five days later, on July 24, 1974, elements of the Mexican Army and the DFS besieged the Puhépecha community of Tarejero, Zacapu Municipality, Michoacán; assaulted and humiliated villagers; stole possessions of historical value for the community; and raided the Guzmán Cruz family home. The petitioners say that, inside the home, in the presence of several family members they beat and detained José de Jesús Guzmán Jiménez—Amafer’s father—and two of his sons: Adenauer Solón Guzmán Cruz, age 17; and Venustiano Guzmán Cruz, age 15. The latter was questioned and released, while José de Jesús and Adenauer Solón were initially taken to Mexico City, where they were interrogated and held against their will. The petitioners say that the last record of their whereabouts is a DFS document dated July 27, 1974, which reports that they were questioned and data sheets drawn up for them. They say that the boy Venustiano Guzmán Cruz was detained again in 1976 and disappeared in the State of Guerrero.

12. According to the petitioners, Abdallán Guzmán Cruz was arrested in the city of Morelia, Michoacan State, in November 1974 and taken to different government facilities (Attorney General's office, military facilities, and DFS offices). While under arrest he was interrogated and tortured on a number of occasions, and one of his interrogators made a reference to the members of his family who had been detained and disappeared: “Fucking Indians! You're all the same. You deny everything. You're just like your father and brothers.” [*“pinches indios, todos son iguales, todo lo niegan estás igual que tu padre y tus hermanos”*] Abdallán Guzmán Cruz was kept in prison until 1979. The petitioners add that, as a result of the detention and disappearance of their relatives, in mid-1976, the remaining members of the Guzmán Cruz family³ decided to abandon their Puhépecha community of origin and moved to the city of Morelia.

13. They claim that the information about the arrest and subsequent forced disappearance of the five members of the Guzmán Cruz family appears, *inter alia*, in documents found in the National Archive [*Archivo General de la Nación*] and Recommendation 026/2001 of November 27, 2001, issued by the National Human Rights Commission.

³ According to information from the petitioners, José de Jesús Guzmán Jiménez and his wife, Mrs. Marpia Salud Cruz had the following children: Alexander, Amafer, Armando, Abdallán, Adenauer Solón, Venustiano, Cuahutémoc Huber, Herolina, Laribel, Coralia, and Graciela.

14. They say that it was impossible in practice for the family members of the alleged victims to denounce the facts and institute legal proceedings for fear of reprisals by the State, given the context of repression of anyone involved in political organizations and their families, and bearing in mind that five family members had disappeared and a sixth was in custody and that, according to them, the State authorities themselves were responsible for the situation. The petitioners say that in spite of the foregoing, on July 24, 1974, Salud Cruz, Amafer's mother, filed a complaint with the local authorities in Tarejero alleging the illegal detention of her family members, a fact recorded, they say, in the administrative record drawn up. They say that on the basis of that complaint, the family made various efforts to determine the whereabouts of the alleged victims, but to no avail.

15. They say that after years of systematic denial of justice to the Guzmán Cruz family, in 1988, the State launched the first investigations into the acts connected with the government repression. The investigations, which were not of a criminal nature, were conducted by the Human Rights Directorate of the Ministry of the Interior. They say that subsequently, the National Human Rights Commission was created and that the records were transferred to that entity, which, in September 1990, created the Program for Allegedly Disappeared Persons. According to the petitioners, on August 15, 1991, not long after the CNDH was created, the family filed a complaint for the alleged offenses and that the inquiries carried out resulted in a report in 1992, which was not made public. They say that in 1999, the CNDH reopened the investigations, which culminated in Recommendation 26/2001, in which "for the first time an organ of the State recognized the systematic violation of human rights in Mexico's recent past." Despite that, however, they say that this investigation was insufficient because the State did not take steps to provide reparation for the harm caused to the victims, prosecute those responsible, elucidate the facts fully, and determine the whereabouts of the disappeared detainees.

16. They add that in 2001 the "Special prosecution unit to investigate acts that probably constitute crimes committed by public servants against persons linked to social and political movements of the past" (hereinafter FEMOSPP) was created, with which they filed a criminal complaint on May 29, 2002, that gave rise to preliminary inquiry 24/2002. They say that the above prosecution unit characterized the facts as constituting the crime of illegal deprivation of liberty and that after four years of investigation the ministerial authority refused to refer the inquiry to the judicial branch and take steps to determine the whereabouts of the alleged victims. They say that on November 30, 2006, by Decision A/317/06, the Attorney General of the Republic decided to close FEMOSPP and the ministerial and historical information was transferred to the Office of the Coordinator General for Investigations, an administrative unit of the Attorney General's Office. They say that with that, the preliminary inquiry into the charges became investigation SIEDF/CGI/502/2007, which remains open 10 years after it began.

17. The petitioners claim that during the processing of the petition before the IACHR, members of the Guzmán Cruz family have been subjected to harassment on a number of occasions, with increasing intensity since November 2012, presumably on account of their continuing demands for justice. In particular, they say that in July 2008 and November 2012, in simulated burglaries unidentified persons broke into the homes of members of the family and made off with information connected with the search for truth and justice regarding the fate of their relatives. They report that preliminary inquiry A.P.P. 408/2012/XI-II was opened in connection with the events of November 2012. They say that on March 17, 2013, the son of Abdallán Guzmán Cruz was the victim of "extortion, bodily harm, threats, intimidation, and mistreatment" at the hands of the state police.

18. With regard to exhaustion of domestic remedies, they claim unwarranted delay in the investigation of the facts and, therefore, invoke the exception contained in Article 46(2)(b) of the Convention. In that connection, they underscore that despite the fact that nearly 45 years have passed since the first disappearance was reported, none of the remedies sought at the domestic level has proved effective in getting to the bottom of the facts, punishing those responsible, establishing the whereabouts of the victims, and providing full reparation for the harm caused.

19. Based on the foregoing, they hold that the State is responsible for violation of the rights of the alleged victims recognized in Articles 4, 5, 7, 8, 17, and 25 of the American Convention, in connection with the obligations contained in Articles 1(1) and 2 thereof; Articles I, II, IX, XI, and XIX of the CISDFP; and Article 2 of the CIPST.

B. The State

20. The State does not contest the facts described by the petitioners but confirms that the human rights violations denounced have been accredited at the domestic level and that in regard thereto it has met the obligation to repair the harm caused by making available to the alleged victims and their families a specific assistance program of which they have not availed themselves. The State argues with respect to the obligation to investigate and punish those responsible that an investigation is underway to clarify the facts alleged in the petition, in which all the appropriate procedures have been carried out in an as reasonable a manner as possible. Accordingly, it argues a failure to exhaust domestic remedies and requests that the petition be declared inadmissible.

21. In particular, it says that, by presidential decree, the Mexican State created the National Human Rights Commission (CNDH) in 1990, which entity was elevated to constitutional rank in 1992 and granted budgetary and administrative autonomy in 1999. The State notes that the responsibilities of the CNDH include to receive complaints of human rights violations and to make recommendations, and that in the event that said provisions are not implemented, the authorities are required to justify and make public their reasons for not doing so.

22. Specifically concerning the facts alleged in the petition, the State says that on November 27, 2001, the CNDH issued Recommendation 026/2001, which includes a description of the international political context from the late 1960s until the early 1980s. The State says that the Recommendation describes the activities of a number of political groups and the State's reaction to them; the Recommendation also recognizes the human rights violations committed in that context and recommends that the Mexican State investigate the facts and repair the harm caused to the victims. The State points out that that decision was based on a review of 532 claimed cases, among which were those of the five alleged victims. The State says that, in keeping with Recommendation 026/2001, a specific program of assistance for the victims was designed that the Ministry of the Interior began to implement in 2011. Applications for assistance under the program are made by petition and the only requirement is that the applicant be included in the aforementioned recommendation. The State mentions that the program has four core objectives: (i) Compensation for non-material damages and loss of earnings; (ii) a guarantee of non-repetition; (iii) recognition of the responsibility of the Mexican State; and (iv) comprehensive assistance to the victims and their families in the areas of health, education, and employment.

23. The State claims that the alleged victims did not make use of this procedure, which "was created under inter-American standards of justice, which make it the effective remedy for obtaining the

results that would be expected from a judgment under the inter-American system.” The State adds that while the aforementioned reparations program “does not strictly speaking constitute a legal proceeding within the terms established by the admissibility criteria of the IACHR,” the exhaustion requirement applies so long as disagreement between the parties persists. It says that the foregoing does not arise in the case at issue, given that the State does not contest the facts and is prepared to recognize its responsibility and that, in keeping with the recommendation of the CNDH that found that human rights violations had been committed, the appropriate measures were adopted for ensuring reparation for the harm caused and non-repetition of the acts, in accordance with its international obligations.

24. As far as investigation of the facts and punishment of those responsible are concerned, the State indicates that the petitioners recognize that there are proceedings still under way aimed at identifying the culprits. It adds that in March 2012, a series of procedures were undertaken with the aim of locating the disappeared, which consisted, in particular, in requests for information about records on the alleged victims to various government agencies, including the Secretariat for Public Security of the Federal District, the General Secretariat of the Federal District, the Office of the Coroner of the Federal District [*Director del Servicio Médico Forense del Distrito Federal*], the Secretariat of the Navy, the Secretariat for National Defense, the Office of the Military Advocate General [*Procuraduría General de Justicia Militar*], and the First District Court of First Instance for Federal Criminal Matters [*Juzgado Primero de Distrito de Procesos Penales Federales*], among others. The State notes that in November 2012, investigators visited the home of the petitioners to inform them about progress in the preliminary inquiry and request additional information that might contribute in the necessary investigative procedures; however, they were unable to locate them.

25. The State underscores that, in accordance with international jurisprudence, the duty to investigate is an “obligation of means, not ends” that consists of using all possible means in an attempt to reach a result through the diligent pursuit of investigative procedures. In that sense, it says that “the Mexican State has clearly carried out all the appropriate procedures in as reasonable as manner as possible, bearing in mind the particular circumstances of the case.” It reiterates its interest in continuing the investigation, seeking to narrow differences with the interested parties, and staying in constant communication with them. For those reasons, it requests that the petition be declared inadmissible.

IV. ANALYSIS OF ADMISSIBILITY

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

26. Mexico has been a member of the Organization of American States since November 23, 1948, when it deposited its instrument of ratification of the OAS Charter. Therefore it is subject to the Commission's jurisdiction with respect to individual complaints, given that that jurisdiction was established by statute in 1965 with respect to the American Declaration of the Rights and Duties of Man. The State of Mexico has been subject to the Commission's jurisdiction under the provisions of the American Convention since March 24, 1981, when it deposited its instrument of ratification. Therefore, the Commission has *ratione personae* competence to examine the petition lodged.

27. Some of the alleged human rights violations occurred before March 24, 1981, the date that the State deposited its instrument of accession to the American Convention. Therefore, the source of applicable law is the American Declaration of the Rights and Duties of Man. Both the Court and the Commission have ruled that the American Declaration is a source of international obligations for OAS

member states. Once Mexico ratified it, the American Convention became the primary source of legal obligations, applicable to the rights and obligations expressly mentioned by the petitioner, among others. Accordingly, the IACHR is competent *ratione temporis* inasmuch as the obligation to respect and ensure the rights protected in the American Declaration--initially--and the American Convention--subsequently--was already in force for the State on the date that the facts alleged in the petition are said to have occurred.⁴ The Inter-American Commission also has competence under the Inter-American Convention on Forced Disappearance of Persons, in that the alleged incidents constitute a situation of continuity that persists as of the date of this report.⁵

28. The Commission is competent *ratione loci* to examine the petition because it alleges facts that could amount to violations of rights protected in the American Declaration and American Convention that are purported to have occurred within the jurisdiction of a state party to said instruments. Finally, the Commission is competent *ratione materiae* because the petition concerns alleged violations of human rights protected by the American Declaration and the American Convention. The petition also alleges violations of rights protected in the IACFDP, for which Mexico deposited its instrument of ratification on April 9, 2002; and in the IACPPT, the instrument of ratification of which Mexico deposited on June 22, 1987.

B. Other admissibility requirements for the petition

1. Exhaustion of domestic remedies

29. Article 46(1)(a) of the American Convention provides that admission of petitions lodged with the Inter-American Commission in keeping with Article 44 of the Convention shall be subject to the requirement that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law. The prior exhaustion rule applies when there are actually available in the national system suitable and effective remedies to repair the alleged violation. In this sense, Article 46(2) specifies that the requirement is not applicable when: (a) domestic law does not afford due process of law for the protection of the right or rights that have allegedly been violated; (b) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; and (c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

30. In this case, the IACHR notes that the parties disagree with respect to compliance with the requirement contained in the Convention. Indeed, the State opposed the exception on grounds of failure to exhaust domestic remedies because the petitioners did not avail themselves of the Interior Ministry's reparations program created to provide assistance to the victims identified by the CNDH in Recommendation 026/2001, and because of the existence of an open investigation aimed at apportioning the appropriate responsibilities. For their part, the petitioners argue that the Mexican State has not ensured the effectiveness of remedies against the forced disappearance of the alleged victims and they invoke the exception contained in Article 46(2)(c) of the American Convention on Human Rights.

⁴ IACHR, Report No. 174/11, Petition 342-02, Inadmissibility, Joel Arriaga Navarro v. Mexico, November 4, 2011, par. 21.

⁵ IACHR, Report No. 65/05, Petition 777-01, Admissibility, Rosendo Radilla Pacheco v. Mexico, October 12, 2005, par. 16.

31. In view of the arguments offered by the parties, the Commission must determine with respect to the object of the petition which domestic remedies need to be exhausted. Further to the foregoing, the Commission notes that the purpose of the petition in this case concerns that alleged forced disappearance of five members of the Guzmán Cruz family, allegedly at the hands of agents of the State; as well as the failure to investigate and punish those responsible, the failure to establish the whereabouts of the alleged victims, and lack of reparation for their family members.

32. In that regard, it is worth noting that the precedents established by the Commission indicate that when a publicly actionable offense is committed, the State has the obligation to institute criminal proceedings and pursue them and that in such cases that is suitable means to clarify the facts, try those responsible, and establish the suitable criminal penalties, in addition to providing for other appropriate forms of reparation. Therefore, the facts described by the petitioners concerning the alleged disappearance of five members of the Guzmán Cruz amount, under domestic law, to criminal conduct whose investigation and prosecution should be initiated and pursued *ex officio* by the State, and therefore this is the process that constitutes the suitable remedy in the instant case.

33. Moreover, according to the system's jurisprudence, filing a petition for *habeas corpus* or similar relief constitutes the appropriate remedy in the search for an allegedly disappeared person.⁶

34. In light of the foregoing, the State's argument that the petitioners were required first to avail themselves of the Interior Ministry's reparations program should be discarded. That program, as Mexico notes, is not a legal proceeding and would not result in full clarification of the alleged facts, verification of the whereabouts of the alleged victims, prosecution of those responsible and, as appropriate, their punishment. In addition, the IACHR notes that, as the State mentioned, that program has been in operation since 2011, and therefore was not available at the time the petition was lodged. The Commission further notes that the program is under the direction of the Ministry of the Interior and that, according to the petitioners, the Federal Security Directorate, which is attached to the Ministry of the Interior, was involved in the alleged facts.

35. In addition, the Commission finds that, despite the fear of the family members of the alleged victims based on the alleged context of State repression and, in particular, numerous acts reputedly committed against the Guzmán Cruz family, the petitioners have filed several complaints since the alleged forced disappearances occurred. Specifically, according to submissions by the petitioners not contested by the State, on July 25, 1974, Salud Cruz reported the illegal detention of her family members to the local authorities in Tarejero; in 1988 the Human Rights Directorate of the Ministry of the Interior conducted the first criminal investigations; on August 15, 1991, members of the Guzmán Cruz family filed a complaint with the National Human Rights Commission; and on May 29, 2002, they lodged a complaint with the FEMOSPP, the investigation of which by the Office of the Coordinator General for Investigations remains open. According to information available to the IACHR, despite the fact that nearly 45 years have passed since the first disappearance was reported, none of these remedies has proved effective in getting to the bottom of the facts, punishing those responsible,

⁶ As the Inter-American Court has consistently held, "habeas corpus would be the normal means of finding a person presumably detained by the authorities, of ascertaining whether he is legally detained and, given the case, of obtaining his liberty." I/A Court H.R. *Velásquez Rodríguez v. Honduras Case*. Judgment of July 29, 1988. Series C No. 4, par. 65. The Court has also found that procedural requirements can make the writ of habeas corpus ineffective; if it is powerless to compel the authorities; if it presents a danger to those who invoke it; or if it is not applied impartially. I/A Court H.R., *Godínez Cruz v. Honduras Case*. Judgment of January 20, 1989, para. 69.

establishing the whereabouts of the allegedly disappeared victims, and providing reparation for the harm caused.

36. Regarding the State's argument concerning the existence of an open investigation aimed at determining the corresponding responsibilities, the IACHR notes, based on the information available, that this investigation was apparently launched in response to the complaint lodged with the FEMOSPP by the family members of the alleged victims on May 29, 2002. When that specialized prosecution unit was closed in November 2006, the investigation was apparently transferred to the Office of the Coordinator General for Investigations, an administrative unit of the Office of the Attorney General of the Republic, which, according to the State has undertaken a series of procedures, in particular, requests for information dispatched between March and June 2012. In that regard, the IACHR recalls that in keeping with the consistent case law of the organs of the inter-American system, in cases of forced disappearance and other gross violations of human rights, states have a duty to conduct a serious, impartial, and effective investigation *ex officio* and without delay. Although the victims or their families must have the possibility of participating and being heard in the proceeding, "the search for the truth is the responsibility of the State and does not depend on the procedural initiative of the victim or his family or upon their offer of proof."⁷

37. In view of the foregoing, the IACHR notes that more 40 years after the facts described in the petition allegedly occurred an investigation that was opened over 10 years ago is still under way at the Office of the Attorney General, without the competent authorities having determined the whereabouts of the of the alleged victims or the fate of their remains, or identified and punished those responsible. For the purposes of admissibility, therefore, the IACHR finds that there has been unwarranted delay in this case, as envisaged at Article 46(2)(c) of the Convention.

38. As regards the remedy of *amparo* (constitutional relief), the IACHR understands that the petition for "relief through freedom" (*recurso de amparo de la libertad*), equivalent to *habeas corpus*, is the suitable remedy under Mexican law when applied for the purpose of ascertaining the whereabouts of a disappeared person. However, the IACHR notes that, under Articles 17 and 117 of the Amparo Law, filing and pursuing the suit requires that the aggrieved "ratify the amparo action" lest it "be deemed not brought." That law also requires an indication as to the location of the aggrieved as well as the official that ordered the complained-of act and the official executing or seeking to execute the act. The Commission finds, for the purposes of admissibility, that the impossibility of satisfying those domestic requirements in this specific case renders said remedy ineffective in terms of providing the protection that it might have afforded in other circumstances.⁸ Based on the foregoing considerations, the Inter-American Commission concludes that the exception contained in Article 46(2)(a) of the Convention is applicable.

39. Therefore, given the characteristics of this case, the Commission to considers that the exceptions envisaged in Article 46(2)(a) of the American Convention are applicable and, therefore, the

⁷ Cf. I/A Court H.R. *Juan Humberto Sánchez v. Honduras Case. Preliminary Objections, Merits, Reparations and Costs*, Judgment of June 7, 2003, par. 112; *Heliodoro Portugal vs. Panama Case. Preliminary Objections, Merits, Reparations and Costs*, Judgment of August 12, 2008, par. 115; and *Valle Jaramillo et al. v. Colombia Case. Merits, Reparations and Costs. Judgment of November 27, 2008*, par. 157.

⁸ IACHR. Report on Admissibility No. 65/05, Petition 777-01, *Rosendo Radilla Pacheco* (Mexico), October 12, 2005, par. 20; Report on Admissibility No. 75/07, Petition 12.322, *Antonio González Méndez* (Mexico), October 15, 2007, par. 45; Report on Admissibility No. 26/13, Petition 1121-04, *Rogelio Jiménez López et al.* (Mexico), March 20, 2013, par. 42.

requirement concerning exhaustion of domestic remedies need not be met in this matter. The Commission reiterates that invocation of the exceptions to the rule of exhaustion of domestic remedies provided in Article 46(2) of the Convention is closely linked to the determination of possible violations of certain rights set forth therein, such as guarantees of access to justice. However, Article 46(2), by its nature and purpose, is a self-contained provision vis á vis the substantive provisions contained in the Convention. Accordingly, the determination as to whether the exceptions to the prior exhaustion of remedies rule apply to the case in question must precede the analysis of the merits, for it rests upon a separate standard of appreciation from that employed to determine whether Articles 8 and 25 of the Convention have been violated.

2. Timeliness of the petition

40. Pursuant to Article 46(1)(b) of the American Convention, for a petition to be admissible it must be lodged within a period of six months from the date on which the party alleging a human rights violation was notified of the judgment that exhausted domestic remedies. This rule shall not apply when the Commission finds that one or more of the exceptions to the exhaustion of domestic remedies set forth in Article 46.3 of the Convention are applicable. In such cases, the Commission must determine whether the petition was presented within a reasonable period of time, in accordance with Article 32 of its Rules of Procedure.

41. As noted in the preceding paragraphs, the Commission has concluded that the exceptions contained in Article 46(2)(a) and (c) of the American Convention are applicable in this case. Bearing in mind the continuing nature of the alleged forced disappearance of the alleged victims, which reportedly began between 1974 and 1976, the failure to clarify their whereabouts, the failure to apportion responsibilities, the apparent ineffectiveness of the multiple remedies sought at the domestic level, the existence of a still-open investigation by the Office of the Attorney General, and the lodging of the petition on October 25, 2005, the Commission considers that the petition was filed within a reasonable time.

3. Duplication of international proceedings and *res judicata*

42. Article 46(1)(c) of the Convention provides that admission of a petition is subject to the requirement that the matter “is not pending in another international proceeding for settlement,” and Article 47(d) stipulates that the Commission shall not admit a petition which “is substantially the same as one previously studied by” it “or by another international organization.” There is nothing in the record in this case to suggest that those grounds for inadmissibility exist.

4. Colorable claim

43. For the purposes of admissibility, the IACHR must decide, pursuant to Article 47(b) of the American Convention, whether the petition states facts that could constitute a violation of same, or, pursuant to paragraph (c) of the same article, whether the petition is “manifestly groundless” or “obviously out of order. The standard by which to assess these scenarios is different from the one needed to decide the merits of a petition. The IACHR must perform a *prima facie* evaluation and determine if the complaint provides grounds for an apparent or potential violation of a right guaranteed by the American Convention, although not whether the violation has in fact occurred. This examination is a summary analysis that does not imply a prejudgment or preliminary opinion on the merits.

44. Neither the American Convention nor the Rules of Procedure of the IACHR requires that the petition identify the specific rights allegedly violated by the State in a matter submitted to the Commission, though the petitioners may do so. It is up to the Commission, based on the case-law of the system, to determine in its admissibility reports which provision of the relevant inter-American instruments is applicable or could be established as having been violated, if the facts alleged are sufficiently proven.

45. The Inter-American Commission concludes that, if proven, the submissions of the petitioners could characterize violations of the following provisions: (i) Articles I, IX, XVII, XVIII, and XXV of the American Declaration; Articles 3, 4, 5, and 7 of the American Convention, taken in conjunction with Article 1(1) thereof; Articles 1, 6, and 8 of the CIPST; and Articles I and XI of the CISDFP to the detriment of the allegedly disappeared victims; (ii) Article 19 of the American Convention, taken in conjunction with Article 1(1) thereof, to the detriment of Adenauer Solón and Venustiano Guzmán Cruz, who were children when their alleged forced disappearance began; (iii) Articles 5, 8, and 25 of the American Convention, taken in conjunction with Article 1(1) and 2 thereof, to the detriment of the family members of the alleged victims. Furthermore, the IACHR considers that the effects on the Guzmán Cruz family of the alleged forced disappearance of five of their kin, presumably on the basis of their family connection, and the alleged threats and prolonged persecution that they reportedly endured, could amount to a violation of Article 17 of the American Convention in connection with Article 1(1) thereof. In addition, the IACHR finds that the displacement of the surviving members of the Guzmán Cruz family from their Puhépecha community of origin could constitute a violation of Article 22 of the American Convention in connection with Article 1(1) of same.

46. Finally, inasmuch as the facts alleged by the petitioners do not appear to be obviously out of order or manifestly groundless, the Commission concludes that the complaint satisfies the requirements set forth in articles 47(b) and (c) of the American Convention.

V. CONCLUSION

47. Based on the above factual and legal considerations and without prejudging the merits of the matter, the Inter-American Commission concludes that this case meets the admissibility requirements set forth in Articles 46 and 47 of the American Convention and, therefore,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the petition admissible in relation to Articles I, IX, XVII, XVIII, and XXV of the American Declaration; 3, 4, 5, 7, 8, 17, 22, 19, and 25 of the American Convention, taken in conjunction with Articles 1(1) and 2 thereof; Articles I and XI of the Inter-American Convention on Forced Disappearance of Persons; and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.

2. To notify the parties of this decision.

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

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