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REPORT No. 72/18
PETITION 1131-08
REPORT ON ADMISSIBILITY

MOISÉS DE JESÚS HERNÁNDEZ PINTO AND FAMILY
GUATEMALA

Approved electronically by the Commission on June 20, 2018.

Cite as: IACHR, Report No. 72/18. Petition 1131-08. Admissibility. Moisés Jesús Hernández Pinto and family. Guatemala. June 20, 2018.

I. INFORMATION ABOUT THE PETITION

Petitioners:	Anatulia Hernández Escobar, Rubén Flores Monroy, and Víctor Modesto Cruz Rodríguez
Alleged victims:	Moisés de Jesús Hernández Pinto and family ¹
Respondent State:	Guatemala
Rights invoked:	Articles I (life, liberty and personal security), VIII (residence and movement), IX (inviolability of the home), XVIII (fair trial), XXIII (property), and XXIV (petition) of the American Declaration of the Rights and Duties of Man, ² and Articles 3 (juridical personality), 4 (life), 7 (personal liberty), 11 (privacy), 21 (property), 24 (equal protection), and 25 (judicial protection) of the American Convention on Human Rights ³

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition:	September 29, 2008
Additional information received at the stage of initial review:	March 29, April 5, and June 8, 2010; January 30, 2011; November 9, 2012; and July 28, 2014
Notification of the petition to the State:	December 17, 2014
State's first response:	March 19, 2015
Additional observations from the petitioner:	November 13 and December 2, 2015; and November 2, 2016
Additional observations from the State:	September 26, 2016

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes, American Declaration (instrument of ratification deposited on April 6, 1955); and American Convention (instrument of ratification deposited on May 25, 1978)

IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES, AND TIMELINESS OF THE PETITION

Duplication of procedures and International <i>res judicata</i>:	No
Rights declared admissible	Articles 4 (life), 5 (humane treatment), 8 (fair trial), 21 (property), 22 (movement and residence), and 25 (judicial protection) of the American Convention, in conjunction with Article 1.1 thereof (obligation to respect rights); and Articles I (life, liberty and personal security), VII (protection for mothers and children), VIII (residence and movement), IX (inviolability of the home), XVIII (fair trial), and XXIII (property) of the American Declaration

¹ The petition is presented on behalf of 50 alleged victims, identified in the attached document.

² Hereinafter, "the Declaration" or "the American Declaration."

³ Hereinafter, "the Convention" or "the American Convention."

⁴ The observations submitted by each party were duly transmitted to the opposing party.

Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, as indicated in section VI
Timeliness of the petition:	Yes, as indicated in section VI

V. FACTS ALLEGED

1. The petitioners claim that the Guatemalan State is internationally responsible for a series of violations suffered by the owners of the Jupilingo and San José de las Lágrimas estates (hereinafter “the alleged victims”) at the hands of members of the Army and paramilitary groups. They explain that the members of the Hernández family are the owners of those estates, which cover 24 *caballerías* (approximately 1,072 hectares) of land in the department of Chiquimula, a strategic border area where the authorities were planning to establish the Ruta Maya aerodrome. The instant petition covers, *inter alia*, alleged violations of the right to life, liberty, and personal security of the alleged victims, together with their right to property, as a consequence of the alleged theft, plundering, and usurpation of the estates.

2. As regards the violations of the right to life and security, the petitioners report that between 1971 and 1975, Humberto Casasola Lemus, Juan Ramón Peraza, Moisés de Jesús Hernández Pinto, and 15-year-old Jesús Alberto Hernández Interiano were violently murdered. They add that during 1975, at least 25 estate workers were tortured and then killed or forcibly disappeared, including Ciriaco Pérez and Pascual García López of the Chorti indigenous people, who remain disappeared. They claim that the Chief of the Military Commissioners in Chiquimula led the contingent of soldiers and armed civilians who systematically perpetrated this series of crimes against the Hernández family and the campesinos who lived on and worked their estates. They further contend that the crimes against the alleged victims have continued for decades. Thus, they claim, Boris Colindres Casasola was murdered on October 24, 2010.

3. The petitioners contend that for years, the alleged victims were unable to secure access to justice because of the military repression existing in Guatemala and that when they pursued legal action, those efforts were fruitless. They state that on March 23, 2006, Mélida Hernández Interiano reported the murders of Moisés Hernández, Jesús Hernández, and Humberto Casasola, which had taken place between 1971 and 1975, to the Municipal Prosecution Service in Esquipulas. They report that the investigation was referred to the Human Rights Prosecution Section of the Prosecution Unit for Special Cases during the Internal Armed Conflict, where it remains at the committal stage. They state that as a part of that investigation, on March 12, 2010, the next-of-kin of Humberto Casasola and Jesús Hernández were given the exhumed remains of their loved ones. Similarly, they indicate that the murder of Boris Colindres and the subsequent threats made against his mother and other family members were reported to the District Prosecution Service of Chiquimula on October 24, 2010. The petitioners hold that more than three decades after the crimes against the Hernández family began, the facts and the perpetrators thereof remain unpunished.

4. With regard to the alleged violations of the right of property, the petitioners state that following the murder of Moisés Hernández on November 11, 1975, most of the members of the Hernández family fled to Honduras while others went into hiding in Guatemala, abandoning their property. On November 21, 1975, the alleged victims learned that the Army had ransacked, dynamited, and set fire to their warehouses, for which reason they filed a complaint with the Consulate General of Guatemala in Honduras. The petitioners claims that in 1980, the alleged victims were forced, by threats, to travel to Guatemala to meet with authorities from the Ministry of Defense. On June 2, 1980, the 13 owners of the estates met with the Vice Minister of Defense at the National Palace, where they were reportedly coerced into selling the Ministry of Defense 10.5 of their *caballerías* plus one *manzana* for the laughable price of 250,000 quetzals (approximately US\$37,719 at the time). They claim that after signing the sale contract, they were violently threatened and again forced to flee to Honduras. They state that although the alleged victims were coerced into selling 10.5 of their *caballerías*, the 24 *caballerías* are under the control of the Army, some of which it rents out while others have been occupied by members of the Campesino Unity Committee.

5. The petitioners report that following the signing of the Peace Accords, the alleged victims brought a series of actions to regain control of their land. Thus, they filed double intestate succession proceedings before the Second Court of First Instance of Chiquimula for the estates, which was resolved in their favor on November 19, 1996, when Mélida Hernández—in her capacity as the family’s representative—was awarded the preventive possession of the 24 *caballerías*. However, they report that in December 1996, the judgment was referred for execution to the Court of Peace in Esquipulas, which arbitrarily refused to execute it. The petitioners claim that the denial of justice has been permanent, to the extent that on October 5, 2005, Manuel Francisco Cordón y Cordón, the alleged victims’ legal representative, was murdered, purportedly for his role in the legal proceedings brought to regain control of their land.

6. They add that in 2007, members of the Hernández family went before the First-instance Coactive Civil and Economic Court of the Department of Chiquimula and lodged proceedings No. 38-07 to secure the absolute annulment of the transaction conducted with the Ministry of Defense in 1980 and of its registration in the General Property Register, to assert their ownership and possession, and to seek damages. They report that the proceedings were ruled groundless, and that that judgment was upheld by the Sixth Appeals Chamber and the Supreme Court, which on August 28, 2009, rejected the appeal for annulment lodged by the alleged victims’ representatives, with notification thereof served on the alleged victims on December 10, 2009. They add that in parallel, they fruitlessly lodged suits related to the dispossession of their lands, including on August 6, 2007, with the Attorney for Human Rights and the Secretary for Agrarian Affairs, and on February 28, 2008, with the Attorney General of the Nation.

7. The State contends that the IACHR is not competent to hear the petition on material grounds, given that it alleges violations of the American Declaration and not of the American Convention. It adds that Guatemala ratified the American Convention on May 25, 1978; thus, the Commission lacks the authority to hear the petition because the alleged facts reportedly began in 1975. The State therefore requests that the Commission rule the petition inadmissible, in that it does not have competence *ratione materiae* or *ratione temporis* to hear the alleged facts.

8. Additionally, Guatemala notes that some 35 years went by for the Public Prosecutor's Office to be informed of the alleged murders, and that the investigations remain ongoing. Regarding the sale of the 10.5 *caballerías*, it maintains that the operation was validly notarized and recorded. It holds that the petitioners could have filed regular proceedings to secure damages, summary proceedings for eviction and vacation, summary proceedings for the civil responsibilities of public officials, or an *amparo* relief suit to reinstate the use and enjoyment of the property, but that they chose to pursue none of those actions that were available domestically. It therefore requests that the IACHR rule the petition inadmissible because the domestic remedies were not exhausted.

VI. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

9. Regarding the alleged violations of the right to life and security purportedly committed by state agents during the internal armed conflict, the petitioners report that on March 23, 2006, a complaint was filed with the Public Prosecutor's Office, the investigation of which is currently at the committal stage before the Human Rights Prosecution Section of the Prosecution Unit. The State, in turn, claims that the available domestic remedies have not been exhausted because the proceedings remain ongoing, and it adds that some 35 years went by before the Public Prosecutor's Office was apprised of the alleged murders.

10. The Commission notes that in situations such as this one—which involves crimes against life and security—the domestic remedies that must be taken into account for the purposes of the petition’s admissibility are those related to the criminal investigation and punishment of the persons responsible. The Commission notes that according to the information furnished by the parties, once the alleged military repression in the area came to an end, a criminal complaint was filed to bring about an investigation of the alleged deaths, which is still at the preliminary stage. In consideration whereof, the IACHR concludes that as regards that aspect of the petition, the exception to the exhaustion of domestic remedies provided for in Article 46.2.c of the American Convention is applicable.

11. In addition, as an exception to exhaustion applies, the Commission concludes that the petition has been submitted within a reasonable period based on Article 32.2 of its Rules. This, given that although the events have taken place since 1971 and the petition was received on September 29, 2008, some of its effects, such as the alleged denial of justice, would extend to the present. Consequently, considering the context and characteristics of the facts set out in this report, the Commission believes that the petition was lodged within a reasonable time and that the admissibility requirement regarding the timeliness of the petition must be deemed met.

12. Regarding the alleged violations of the right to property, the petitioners report that the Court of Peace in Esquipulas refused to execute the order issued on November 19, 1996, by the Second Court of First Instance of Chiquimula that would have given the Hernández family preventive possession of the estates. They also state that on December 10, 2009, they received notification of the Supreme Court's resolution upholding the dismissal of the application for annulment lodged against the allegedly coerced land sale of 1980. The State, in turn, contends that the alleged victims failed to exhaust the available domestic remedies, in that they did not pursue regular proceedings to secure damages, summary proceedings for eviction and vacation, summary proceedings for the civil responsibilities of public officials, or an *amparo* relief suit to reinstate the use and enjoyment of the property.

13. In the case at hand and for the purposes of the admissibility analysis, the Commission notes that the alleged victims have lodged repeated and timely denunciations of the violations of their right of property over the estates with the judicial authorities, that those authorities have been made aware of the situation described in the petition, and that there allegedly exists a verdict in the alleged victims' favor that has not been enforced. In this regard, the Inter-American Commission has maintained that the exhaustion of domestic remedies requirement does not mean that the alleged victims are obliged to exhaust all the possible available remedies to meet that requirement; accordingly, the Commission believes that as regards this aspect of the petition, the requirement set in Article 46.1.a of the Convention has been met.

14. As regards the timeliness of the petition, domestic remedies were exhausted with the Supreme Court's resolution of which notice was served on December 10, 2009, while the admissibility of the petition was still being studied. In keeping with the IACHR's doctrine, the analysis of the requirement set in Article 46.1.b of the Convention must be performed in light of the situation prevailing at the time it rules on the admissibility or inadmissibility of a claim. In consideration whereof, the requirement must be seen as having been met.

VII. ANALYSIS OF COLORABLE CLAIM

15. Having seen the elements of fact and law presented by the parties, the nature of the matter placed before it, and the context surrounding the complaint, the IACHR finds that if the alleged violations of the alleged victims' rights to life, security, and property and the consequences thereof are proven, together with the failure to investigate and punish those responsible, they could tend to establish possible violations of the rights protected by Articles 4 (life), 5 (humane treatment), 8 (fair trial), 21 (property), 22 (movement and residence), and 25 (judicial protection) of the American Convention, in conjunction with Article 1.1 (obligation to respect rights) thereof. Similarly, as regards the facts that allegedly occurred or began prior to the entry into force of the American Convention, the Commission believes that they could tend to establish possible violations of Articles I (life, liberty, and personal security), VII (protection for mothers and children), VIII (residence and movement), IX (inviolability of the home), XVIII (fair trial), and XXIII (property) of the American Declaration.

16. As regards the claims alleging violations of Articles 3 (juridical personality), 7 (personal liberty), 11 (privacy), and 24 (equal protection) of the American Convention, and of Article XXIV (petition) of the American Declaration, the Commission notes that the petitioners have submitted no grounds that would allow their violation to be examined on a *prima facie* basis.

17. As regards its competence *ratione temporis*, the Commission notes that some of the alleged violations occurred before Guatemala's ratification of the American Convention on May 25, 1978. Consequently, the American Declaration represents the applicable source of law.⁵ Nevertheless, the IACHR points out that with respect to incidents occurring after that date, or those that could be considered an ongoing violation of rights still taking place thereafter, the Commission also has competence *ratione temporis* to examine the petition in light of the American Convention. Similarly, the IACHR enjoys, in principle, competence *ratione materiae* to examine violations of rights enshrined in the American Declaration.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 4, 5, 8, 21, 22, and 25 of the American Convention, in conjunction with Article 1.1 thereof; and Articles I, VII, VIII, IX, XVIII, and XXIII of the American Declaration;

2. To find the instant petition inadmissible in relation to Articles 3, 7, 11, and 24 of the American Convention; and Article XXIV of the American Declaration; and

3. To notify the parties of this decision; to continue with the analysis on the merits; and to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 20th day of the month of June, 2018. (Signed): Margarette May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice President; Luis Ernesto Vargas Silva, Second Vice President; Francisco José Eguiguren Praeli, Joel Hernández García, Antonia Urrejola, and Flávia Piovesan, Commissioners.

⁵ See: I/A Court H. R. Advisory Opinion OC-10/89, July 14, 1989, Ser. A No. 10, paras. 35-45.

Annex
List of alleged victims⁶

1. Moisés de Jesús Hernández Pinto (killed on November 11, 1975)
2. Jesús Alberto Hernández Interiano (killed on February 14, 1972)
3. Humberto Casasola Lemus (killed on March 17, 1971)
4. Boris Colindres Casasola (killed on October 24, 2010)
5. Humberto Hernández Interiano
6. María Magdalena Interiano de Hernández
7. Melida Hernández Interiano
8. Anatulia Hernández Interiano
9. Emma Hernández Interiano
10. Elsa Hernández Interiano
11. Guillermina Hernández Interiano
12. José Manuel Hernández Interiano
13. Saúl Hernández Interiano
14. Juan Angel Hernández Sagastume
15. Enrique Hernández Pinto
16. Edna Elizabeth Casasola Hernández
17. Margaria Interiano de Hernández
18. José Antonio Hernández Interiano
19. Cesar Augusto Hernández Interiano
20. Juliana Hernández Interiano
21. Esther Hernández Interiano
22. Erasmo Hernández Interiano
23. Adelmo Hernández Interiano
24. Rosaura Margarita Hernández Interiano
25. Miguel Hernández Interiano
26. Manuel Enrique Hernández Interiano
27. Carlos Humberto Hernández Pinto
28. Floresmila Sandoval de Hernández
29. Dolores Hernández Sandoval
30. María de Carmen Hernández Sandoval
31. Marcial de Jesús Hernández Sandoval
32. Alexis Hernández Sandoval
33. Bertha Alicia Hernández Sandoval
34. Carlos Hernández Sandoval
35. Zulema Hernández Sandoval
36. Gilda Amabilia Hernández Sandoval
37. Karen Jeannette Hernández Sandoval
38. Guillermo Hernández Pinto
39. María del Carmen Aguilar de Hernández
40. Guillermo Geovany Hernández Aguilar
41. Manuel Antonio Hernández Aguilar
42. Bayron Jesús Hernández Aguilar
43. Juan Carlos Hernández Aguilar
44. Maria Anita Hernández Pinto
45. Vidal Mina Hernández Nufio
46. Elizabeth Hernández Nufio
47. Juan Ángel Hernández Sagastume
48. Fantina Martínez de Hernández
49. Juan Ángel Hernández Martínez

⁶ The petition was initially presented on behalf of the 49 alleged victims identified herein; following his murder, Boris Colindres Casasola was added to the list. In addition, as context, the petitioners alleged that other persons had been killed and disappeared; because they were not expressly identified as victims in this petition, they are not included in this annex.

50. Edgar Ovidio Hernández Martínez