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REPORT No. 182/19

PETITION 308-10

ADMISSIBILITY REPORT

**ROBERTO ANTONIO GALLANGOS CRUZ AND OTHERS
MEXICO**

Approved electronically by the Commission on December 5, 2019.

Cite as: IACHR. Report No. 182/19. Admissibility. Roberto Antonio Gallangos Cruz and others. Mexico. December 5, 2019.

I. INFORMATION ABOUT THE PETITION

Petitioner	Luz Elba Gorostiola Herrera (Aleida Gallangos Vargas), José González Ruiz, Quirina Cruz Calvo, Centro de Derechos Humanos Asesoría Pueblos Indígenas y Documenta, Análisis y Acción para la Justicia Social
Alleged victim	Roberto Antonio Gallangos Cruz and others ¹
Respondent State	México ²
Rights invoked	Articles 3 (juridical personality), 4 (right to life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 11 (privacy), 13 (freedom of thought and expression), 17 (rights of the family), 18 (name), 19 (rights of the child) and 25 (judicial protection) of the American Convention on Human Rights; ³ and Articles I (life, liberty and personal security), Articles V (Right to protection of honor, personal reputation, and private and family life.), VI (right to a family and to protection thereof), XVIII (fair trial) of the American Declaration on the Rights and Duties of Men ⁴ and Articles 1,3,4,5 and 7 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women ⁵

II. PROCEEDINGS BEFORE THE IACHR⁶

Filing of the petition	March 8, 2010
Additional information received during initial review	October 26, 2010, July 15, 2011
Notification of the petition	December 26, 2012
State's first response	March 27, 2013
Additional observations from the petitioner	February 12, 2013, March 28, June 2 and August 11, 2014, March 2, 2015 and January 19, 2016
Additional observations from the State	November 19, 2014, May 15, 2015

III. COMPETENCE

<i>Ratione personae:</i>	Yes
<i>Ratione loci:</i>	Yes
<i>Ratione temporis:</i>	Yes
<i>Ratione materiae:</i>	Yes, American Convention (deposit of instrument of ratification on March 24, 1981); Inter-American Convention on Forced Disappearance of Persons (deposit of instrument of ratification on April 9, 2002); Belem do Pará Convention (deposit of instrument of ratification on November 12, 1998); Inter-American Convention to Prevent and Punish Torture (deposit of instrument of ratification on June 22, 1987) ⁷

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
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¹ The petition refers also to Carmen Vargas Pérez, Lucio Antonio Gallangos Vargas, Aleida Gallangos Vargas, Francisco Avelino Gallangos Cruz, Francisco Gorostiola Toríz, Emma Cabrera Arenas and their families as the alleged victims.

² In accordance with Article 17.2.a of the Commission's Rules of Procedure, Commissioner Joel Hernández García, a Mexican national, did not take part in the discussion or decision of the instant petition.

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

⁴ Hereinafter, the "American Declaration" or the "Declaration".

⁵ Hereinafter "the Belém do Pará convention".

⁶ The observations submitted by each party were duly transmitted to the opposing party.

⁷ Hereinafter the "CIPST".

Rights declared admissible	Articles I (life, liberty and personal security), Articles V (Right to protection of honor, personal reputation, and private and family life.), VI (right to a family and to protection thereof), XVIII (fair trial) of the American Declaration on the Rights and Duties of Men; Articles 3 (juridical personality), 4 (right to life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 11 (privacy), 13 (freedom of thought and expression), 17 (rights of the family), 18 (name), 19 (rights of the child) and 25 (judicial protection) of the American Convention in relation to Articles 1.1 and 2; Articles 1, 6 and 8 of the CIPST; Articles I, X and XI of the CIDFP and Article 7 of the Belém do Pará Convention.
Exhaustion or exception to the exhaustion of remedies	Yes, art. 46.2.c of the Convention
Timeliness of the petition	Yes, under the terms of section VI

V. SUMMARY OF ALLEGED FACTS

1. The petitioners allege that the alleged victims were forcibly disappeared and arbitrarily separated from their biological families, between June 19, 1975 and September 3, 1976, by State security forces in Mexico City. They argue that these forced disappearances and arbitrary separations have been developed in a context of violence, within the framework of the so-called "dirty war", which they define as a policy of systematic and widespread repression directed against members or supporters of social groups and dissident politicians of that time. They hold that the operations of annihilation against subversive groups were part of the policy conducted by the State and were directed by the Federal Security Directorate, which was in charge of intelligence in the Ministry of the Interior, the Attorney General's Office, the Attorney General's Office General of Justice of the Federal District, of the Attorney General of the State of Mexico and of the Mexican Army. They state that these operations sought to investigate and locate the dissenting groups, and in particular, the members of the so-called "September 23 Communist League", being the alleged victims part of that organization.

2. They argue that as part of this policy, the Mexican government prevented family members from accessing legal remedies to investigate the acts of institutional violence and punish those responsible. They affirm that added to the state's refusal to accept the existence of the violations of these rights, there was also the hostility of institutions responsible for procuring and delivering justice in the context of the dirty war towards the relatives of missing persons.

Specific allegations in relation to the Gallangos-Vargas family

3. The petitioners point out that Mr. Roberto Antonio Gallangos Cruz was married to Mrs. Carmen Vargas Pérez, with whom he had two children, Lucio Antonio and Aleida Gallangos Vargas. Petitioners affirm that Mr. Roberto Antonio was arrested by the Preventive Police in the Federal District of Mexico on June 19, 1975. They point out that, according to the investigations of the National Human Rights Commission⁸ (hereinafter "CNDH"), a policeman would have identified that Mr. Roberto Gallangos Cruz was hiding a gun in his waist and, upon requesting it, he would have shot the policeman injuring him in the arm, hence, other troops who were nearby stopped him and interrogated him. The petitioners allege that before their arrest, the intelligence services had already gathered information about his movements and activities, beginning with his participation in the student protest in June 1968. They indicate that the latest documentary information that evinces his whereabouts and demonstrates that he was held by the authorities, is his statement before the office of the General Directorate of Police and Traffic of the Federal District of June 30, 1975. In addition, they warn that on May 6, 2003, the National Security and Research Center of the Ministry of the Interior sent them a personal identification card from when the facts took place, with photographs showing physical injuries.

4. They affirm that Mrs. Carmen Vargas Pérez was arrested by the Agents of the General Directorate of Police and Traffic in the Federal District of Mexico on July 26, 1975, while she was in the presentation of a film at the Cuitláhuac cinema. The petitioners report that when she was with a couple, the agents intercepted them and asked the women to show the contents of their portfolios, to which they refused, while the man who accompanied them shot the security forces. They indicate that this man and the other

⁸ Based on Report 26 issued during 2001 by the National Commission on Human Rights.

woman were able to escape from the scene, but that Mrs. Carmen Vargas Pérez was arrested and identified as a Member of the Red Brigade, of the September 23 Communist League. The petitioners affirm that on August 1, 1975, the alleged victim made a statement before the Legal Office of the General Directorate of Police and Traffic of the Federal District, being this the last information on her whereabouts. They report that no record was found to confirm that after the interrogation, she was put before a judge.

5. They also state that on June 12, 1975, the then three-year-old Lucio Antonio Gallangos Vargas was arbitrarily separated from his parents and his biological family by agents of the Federal Security Directorate while in the care of Mrs. Violeta Tecla Parra, who is still missing. They indicate that the boy was transferred to the Moctezuma Children's Hospital and that on that same day he was delivered to the Casa Cuna de Tlalpan, with the name of "Tony". They state that in February 1976, the minor was handed over for adoption to the Hernández Valadéz family, under irregular conditions, being registered under the name of Juan Carlos Hernández Valadéz.

6. In that same sense, they allege that in May 1976, Mr. Carlos Gorostiola Toríz, a friend of the Gallangos Vargas spouses, gave the two-year-old Aleida Gallangos Vargas to her brother Alejandro Gorostiola Toríz and his wife María del Pilar Herrera Silvestre for her care, arguing that her biological parents had been disappeared. They state that Mr. Gorostiola Toríz was extrajudicially executed by members of the Federal Security Directorate on August 7, 1976, losing with him all information regarding the biological family of Aleida. They point out that due to the situation of widespread violence, persecution and lack of data, approximately 6 years later the girl was registered with the name Luz Elba Gorostiola Herrera, in order to prove her legal personality and grant her access to the education system.

7. They indicate that on September 16, 2001, the magazine "Día Siete" published a report on the disappearance of the Gallangos Cruz family and that, when read by the adoptive father of the alleged victim, he identified that she could be the daughter they were trying to locate. Consequently, they indicate that Aleida Gallangos Vargas knew that she was the daughter of missing parents, that she undertook with her adoptive family the search for her biological grandmother, and that she managed to meet with her paternal family on September 19, 2001. They report that at the end of 2001, a former member of the September 23 Communist League informed them that Lucio Antonio Gallangos Cruz had been taken to the Casa Hogar on the Tlalpan road. They specify that they denounced the situation before the Special Prosecutor for Social and Political Movements of the Past (hereinafter, the "FEMOSPP"), which after an expert opinion, determined that the child had been given up for adoption. They inform, with respect to Aleida Gallangos Vargas that said entity undertook to carry out a DNA test to begin the process of clarification of the name, examination that at the date of filing the petition, had not been practiced.

8. They allege that in August 2004, given the slow pace of the FEMOSPP, Aleida contacted her brother's adoptive family, which denied any information on the whereabouts of the alleged victim. They state that without state support, she obtained information that affirmed that Lucio Antonio was in the United States and that on January 27, 2005, he agreed to have a DNA test conducted through the Mexican consulate in Washington DC. Finally, they express that on February 9, 2005, FEMOSPP announced the results of genetic tests, identifying the relationship between the Gallangos Vargas siblings.

Specific allegations in relation to Francisco Avelino Gallagos Cruz

9. They allege that in the context of the persecution against the aforementioned family, Mr. Francisco Avelino Gallangos Cruz, brother of Roberto Antonio Gallangos Cruz, was arrested on August 22, 1975 in Mexico City, by three members of the Preventive Police. They indicate that the latest information available points out that on August 23, 1975, he was in the General Directorate of Police and Traffic of the Federal District. They note that since then they do not know his whereabouts.

Specific allegations from the Gorostiola Toríz-Cabrera Arenas family

10. The petitioners state that after the extrajudicial execution of Carlos Gorostiola Toríz committed by agents of the Federal Security Directorate on August 7, 1976, his brother, Mr. Francisco Gorostiola Toríz, tried to go to the town of San Martín Cuautlalpan to notify their parents on what happened. However, petitioners indicate that he and his partner Emma Cabrera Arenas were arrested on August 28, 1976 by agents of the Federal District Judicial Police. They allege that Mrs. Emma Cabrera was six months

pregnant at the time of her arrest. They report that both resulted injured when they confronted two police officers.

11. They say that the mother of the Gorostiola Toríz brothers reported that on August 30, 1976, a judicial agent showed up at his home and handed him a bag with clothes stained with the blood of his son Francisco, informing him that he and his couple were injured at the Red Cross. They claim that she went to the aforementioned hospital on August 31, 1976, where she was informed that the alleged victims had been transferred to the Military Hospital.

12. They point out that the CNDH managed to gather information that shows that Francisco Gorostiola was convalescing at the Military Hospital of Mexico City on September 3, 1976, and that on September 6, 1976 he was subjected to an interrogation, as stated in a document of that date. They allege that with respect to Emma Cabrera, the CNDH investigation established that she was transferred to the Military Hospital between August 23 and 30, 1976, after which there is no data on her whereabouts, since that medical center did not provide more information. They explain that in 2002, the relatives of the alleged victims accessed the nation's archives, which confirmed that Francisco and Emma were admitted to the Central Military Hospital.

Common allegations

13. They indicate that the disappearances of Roberto Antonio Gallangos Cruz, Francisco Avelino Gallangos Cruz, Lucio Antonio Gallangos Cruz, Aleida Gallangos Vargas and Carmen Vargas Pérez were reported by their relatives on October 22, 1992 to the CNDH. They affirm that said agency was in charge of investigating the complaints of detentions, torture and disappearances of persons during the 70s and 80s. They state that Recommendation 26/2001 recognized and accredited their case together with other 532 causes of forced disappearance.

14. Additionally, they affirm that in the same complaint filed on October 22, 1992 before the CNDH, the grandmother of the children Lucio Antonio and Aleida Gallangos Vargas presented the facts related to the arbitrary separation of her grandchildren. Petitioners state that the CNDH concluded that public servants of the former General Directorate of Police and Traffic of the Federal District and the Federal Security Directorate, acting jointly in an operation against the September 23 Communist League, carried out the abduction of the minor Lucio Antonio Vargas in June 1975. On the other hand, with respect to Aleida Gallangos Vargas, the CNDH acknowledged that "there wouldn't have been responsibility of the Mexican State for its disappearance unless later, some document appeared that disputed the assertion." Likewise, the situation of both children was denounced on August 28, 2001 before the Attorney General's Office of the Republic of Mexico, case that was in turn handed in to the FEMOSPP without any results in the investigation.

15. They report that the forced disappearance of Francisco Gorostiola and Emma Cabrera was denounced by Alejandro Gorostiola Toríz, who also requested the intervention of the President of Mexico, on July 20, 1989, so that in the framework of the amnesty decree, the President would provide information about his brother's sister-in-law and his sister-in-law, without receiving answer. As in the previous cases, their complaints were filed in 1992 before the CNDH.

16. They report that on August 28, 2001, they denounced again the forced disappearance of the alleged victims before the Office of the Attorney General of the Republic of Mexico, the cases being referred to the FEMOSPP, a special entity created by the presidential agreement of November 27, 2001. They allege that the complaints were maintained in the FEMOSPP from 2001 to 2006, without obtaining any results. They hold that in 2006, the State dissolved the FEMOSPP and that the investigations were transferred to the General Research Coordination, an administrative unit of the Attorney General's Office. They point out that previous research has been open for 12 years without effective results.

17. They allege that in 2012, they learned that the Ministry of the Interior initiated a family compensation procedure,⁹ which only covered approximately 50 cases of the more than 270 mentioned in the

⁹ In Article 4 of the Presidential agreement of November 27, 2001 it commends the Governance Secretary to conform an interdisciplinary Committee to study, analyze and present proposals to determine the way, proceedings and terms to provide, when pertinent, a fair administrative reparation to the victims for the past facts referred to in the Agreement.

CNDH's recommendation. They also argue that the way the Ministry of Interior paid compensation had many irregularities, so the payments were suspended in 2012.

18. In turn, the State contends that it was not aware of the events that occurred until the CNDH issued Recommendation No. 26/01 and that since then it undertook immediate actions. It argues that the investigation processes are open and that all necessary procedures have been carried out as reasonably as possible. Accordingly, it alleges the lack of exhaustion of domestic remedies. It informed that due to the passage of time, it is difficult to determine with certainty those responsible and the whereabouts of the victims, which entails a difficulty in executing the criminal action and consigning the process to the stage of instruction. Consequently, it indicates that the process was delayed due to the complexity of the matter and not due to causes attributable to the State.

19. Regarding the arbitrary separation of Lucio Antonio Gallangos Vargas, the State informs that due diligence was carried out to locate the alleged victim.

20. The State expresses that it has fulfilled its obligation to repair the damage caused, by making available to the alleged victims and their families a specific reparation program since 2011. It informs that the Reparation Program is based on compensation for immaterial damage and loss of earnings; the guarantee of non-repetition, the recognition of Mexican responsibility and the integral attention to the victims and their relatives in relation to health, education and employment. It argues that the alleged victims did not make use of this instance, which was created "following Inter-American standards of justice that make it the effective remedy to achieve the expected results of an Inter-American decision." It indicates that the procedure is carried out at the request of the party and the only requirement for the petitioners to access the program is that the direct victims are recognized in Recommendation 26/01, as is the case in the present petition.

VI. EXHAUSTION OF LOCAL REMEDIES AND TIMELINESS OF THE PETITION

21. The petitioners indicate that the State had knowledge of the events since the time they occurred as they were of public knowledge. They state that the cases remain in impunity and that since the closure of the FEMOSPP, there is no jurisdictional body to resolve cases of forced disappearance, in the context of persecution of social movements. With respect to the proceedings in the location of Lucio Antonio Gallangos, they emphasize that the encounter between him and his sister Aleida, was achieved by the actions undertaken by the family itself. They indicate that even with the creation of the FEMOSPP, the prosecution did not send any information for the location of the alleged victims. Regarding the Reparation Program in charge of the Ministry of the Interior, they hold that the investigation offered is not adequate nor does it allow the opening of the space for constructive dialogue between the State and the alleged victims.

22. The IACHR has established that whenever an alleged prosecutable crime is committed *ex officio*, such as the crime of forced disappearance, the State has the obligation to promote the criminal process and that, this constitutes the ideal route to clarify the facts, judge those responsible and establish the corresponding criminal sanctions, as well as enable other forms of monetary reparation. In addition, the Commission has indicated that, as a general rule, a criminal investigation must be carried out promptly to protect the interests of the victims, preserve the evidence and even safeguard the rights of any person who is considered suspicious in the context of the investigation.¹⁰ From the information provided by the parties, it is observed that the relatives of the alleged victims denounced the events in 1992 before the CNDH and in 2001 before the Attorney General's Office, which referred the cases to the FEMOSPP. However, more than 35 years after the alleged events occurred and 20 years after the first complaint, the Commission observes that investigations are still being carried out before the General Coordination of Investigations of the Office of the Specialized Attorney for Human Rights, Crime Prevention and Services to the Community of the Attorney General's Office, without the competent authorities having determined the whereabouts of the alleged victims or the destination of their remains; and without having individualized or sanctioned those responsible. It also notes that in relation to the arbitrary separation of the children Lucio Antonio and Aleida Gallangos Vargas, from their biological families, a complaint was filed on October 22, 1992 before the CNDH and that despite the fact that the case was subsequently taken over by the FEMOSPP, so far has not presented progress. Therefore, the IACHR concludes that with respect to the alleged forced disappearances and arbitrary separations, the

¹⁰ IACHR, Report N. 49/14. Petition 1196/07. Admissibility. Juan Carlos Martínez Gil, Colombia, July 21, 2014, par. 29.

exception to the exhaustion of domestic remedies provided for in Article 46.2.c of the American Convention is applicable.

23. In addition, the IACHR recalls that, in order to determine the admissibility of a claim such as the nature of the present, the reparation action does not constitute the appropriate route and its exhaustion is not necessary, since it is not the adequate tool to provide a comprehensive reparation and justice to family members.¹¹

24. Finally, as regards the deadline for submission, the Commission takes into account the continued nature of the alleged forced disappearance and the arbitrary separation of the alleged victims since 1975, and which to date the responsible ones have not been effectively investigated, tried and sanctioned. Consequently, the IACHR concludes that the petition was presented within a reasonable period of time, and has met the requirement of Article 32.2 of its Rules of Procedure.

VII. COLORABLE CLAIM

25. In relation to the competence *ratione temporis* and *ratione materiae*, the Commission will analyze the facts of this case in the light of the obligations established in the American Convention, in the Inter-American Convention on Forced Disappearance of Persons and in the Inter-American Convention to Prevent and Punish Torture, concerning those facts that occurred after its entry into force or its execution continued after the entry into force of the mentioned instruments for the Mexican State. The Commission will analyze the facts completed prior to the entry into force of the American Convention for the State, in the light of the obligations arising from the American Declaration.

26. In this regard, in view of the factual and legal elements set forth by the parties, the nature of the matter brought to their attention, and the context in which the complaints are framed¹², the IACHR considers that, if proven, the alleged illegal detentions, torture, subsequent forced disappearances and arbitrary separations of the alleged victims, as well as the lack of effective judicial protection could amount to violations of the rights enshrined in Articles I (life, liberty, security and integrity of the person), VI (Constitution and protection of the family) XVIII (justice) and XXV (protection against arbitrary detention) of the American Declaration, to the detriment of the alleged victims and their families. As regards the alleged continuity and lack of clarification of these crimes, the Commission considers that the alleged facts could amount to possible violations of Articles 3 (legal personality), 4 (life), 5 (personal integrity), 7 (personal freedom), 8 (judicial guarantees), 11 (protection of honor and dignity), 18 (name), 19 (rights of the child) and 25 (judicial protection) of the American Convention in relation to its Articles 1.1 (obligation to respect the rights) and 2 (duty to adopt provisions of domestic law), such as Articles 1, 6 and 8 of the CIPST, Article I, X and XI of the CIDFP and Article 7 of the Belem Do Pará Convention, to the detriment of the alleged victims and their families.

VIII. DECISION

1. To declare the present petition admissible in relation to Articles I, VI, XVIII and XXV of the American Declaration; Articles 3, 4, 5, 7, 8, 11, 13, 17, 18, 19 and 25 of the American Convention, in accordance with Articles 1.1. and 2 of the same instrument; Articles 1, 6 and 8 of the CIPST; Articles I, X and XI of the CIDFP and Article 7 of the Belem do Pará convention;

2. To notify the parties of the decision; to continue with the analysis on the merits and to publish this decision and to 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 5th day of the month of December, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Antonia Urrejola, Second Vice President; Margarette May Macaulay, Francisco José Eguiguren, Luis Ernesto Vargas Silva, and Flávia Piovesan, Commissioners.

¹¹ IACHR, Report N. 72/16. Petition 694/06. Admissibility. Onofre Antonio de la Hoz Montero and family, Colombia, December 6, 2016, par. 32.

¹² IACHR, Report N. 65/05. Petition 777/01. Admissibility. Rosendo Radilla Pacheco. Mexico. October 12, 2005, par.29.