

OEA/Ser.L/V/II.
Doc. 280
25 September 2020
Original: Spanish

REPORT No. 264/20
PETITION 1594-10
REPORT ON ADMISSIBILITY

PEDRO NUÑEZ PEREZ ET AL
MEXICO

Approved electronically by the Commission on September 25, 2020.

Cite as: IACHR, Report No. 264/20. Petition 1594-10. Admissibility. Pedro Nuñez Perez et al.
Mexico. September 25, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Centro de Derechos Humanos Fray Bartolome de las Casas, and Organizacion Xinich
Alleged victim:	Pedro Nuñez Perez and forty-nine other persons ¹
Respondent State:	Mexico ²
Rights invoked:	Articles 3 (juridical personality), 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 11 (privacy), 19 (rights of the child), 21 (property), 22 (freedom of movement and residence), 24 (equal protection) and 25 (judicial protection) of the American Convention ³ , in relation to its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects); Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture; Article I of the Inter-American Convention on Forced Disappearance of Persons; and Article 7 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (“Convention of Belem do Para”).

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition:	Petition opened by the IACHR on October 5, 2010 ⁵
Additional information received at the stage of initial review	November 8, 2010, November 9, 2010, December 3, 2010, April 14, 2011, July 18, 2011, August 18, 2011, September 19, 2011, November 14, 2011 and October 21, 2015
Notification of the petition to the State:	May 13, 2016
State's first response:	January 13, 2017

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 Convention (instrument of accession deposited on March 24, 1981); Inter-American Convention on Forced Disappearance of Persons (instrument of ratification deposited on April 9, 2002); Inter-American Convention to Prevent and Punish Torture (instrument of ratification deposited on June 22, 1987); and Convention of Belem do Para (instrument of ratification deposited on November 12, 1998)

¹ The petitioners identify the following persons as victims: (i) victims of extrajudicial execution or death as a result of the events: Filemon Benitez Perez, Antonio Mayor Benitez Perez, Maria Nuñez González, Miguel Moreno Montejo, Pedro Nuñez Perez and Petrona Nuñez Gonzalez; (ii) victims of forced disappearance: Mariano Perez Guzmán and Antonio Peñate Lopez (also known as Juan Peñate Montejo); (iii) victims of forced displacement: thirty-six people, who are not individualized; (iv) victim of arbitrary deprivation of liberty: Diego Arcos Meneses; (v) victims of arbitrary arrest warrants: Alejandro Alvaro Alvaro, Domingo Alvaro Lopez, Antonio Alvarez Lopez, Juan Peñate Diaz and Roberto Nuñez Gonzalez. The families of the victims are not individualized.

² Pursuant to article 17.2.a of the IACHR Rules of Procedure, Commissioner Joel Hernandez Garcia, a Mexican national, did not participate in the debate nor in the decision of the present case.

³ Hereinafter “Convention” or the “American Convention.”

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

⁵ This matter was originally submitted to the IACHR by means of a request for precautionary measures received in November 2006, which was assigned number MC-319-06. Subsequently, on April 30, 2010, the IACHR requested the petitioners to indicate “*whether the subject matter of their submission to the IACHR fits within the petitions and case system or whether it corresponds to a request for precautionary measures.*” On August 25, 2010 the petitioners replied and requested “*to give the facts of the case the processing established for the petitions and cases of the Inter-American System.*” Therefore, by means of a decision of October 5, 2010, the IACHR decided to close the processing of the request for precautionary measures and to open a petition for processing for the same events.

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 3 (juridical personality), 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial) 21 (property), 22 (freedom of movement and residence), 24 (equal protection), 25 (judicial protection) and 26 (economic, social, cultural and environmental rights) of the American Convention, in relation to its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects); Article I of the Inter-American Convention on Forced Disappearance of Persons; Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture; and Article 7 of the Convention of Belem do Para
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, the exception of Article 46.2.c) of the American Convention is applicable, in the terms of Section VI
Timeliness of the petition:	Yes, in the terms of Section VI

V. ALLEGED FACTS

1. The petitioners allege the international responsibility of the Mexican State for the extrajudicial executions, forced disappearances, forced displacement, tortures, arbitrary deprivation of liberty and issuance of irregular arrest warrants that allegedly occurred during, and on the occasion of, a violent conflict between the indigenous communities of Viejo Velasco and Nueva Palestina, in the municipality of Ocosingo, Chiapas, with the participation of state agents in favor of the latter community. All of which, they allege, occurred in the framework of a strategy of violent land dispossession undertaken by the Mexican authorities against indigenous communities such as Viejo Velasco and others in the same region of the country.

2. In the petition it is explained that the events took place in the context of a deep-rooted territorial conflict between the indigenous communities of Viejo Velasco and Nueva Palestina, a conflict partly derived from certain decisions adopted by the Mexican State in previous years and decades in relation to the lands of the communities settled in the region of Selva Lacandona in Chiapas⁶. The petitioners denounce that on November 13, 2006, the community of Viejo Velasco was violently attacked by a group of forty members of the community of Nueva Palestina who were armed with machetes, sticks and firearms, and who were accompanied by almost three hundred armed officers of the State Sectorial Police of Chiapas, and sixteen judicial and administrative public officers⁷. During the incursion, these armed persons killed several people from Viejo Velasco, tied up others and took them by force to an unknown destination, hit and mistreated some of the inhabitants, and stole their belongings. The petitioners claim that the result of the attack was the extrajudicial execution of three persons⁸ and the disappearance of four others —the bodies of two of the victims of disappearance were allegedly found extra-officially in 2007, positively identified and delivered to

⁶ The petition describes that although the Federal Government and the state government of Chiapas promised in 2005 to recognize agrarian rights and to regularize the situation of the community of Viejo Velasco, such agreement was broken at the beginning of 2006, "and on March 28, 2006, the Secretariat of the Agricultural Reform announced the agrarian resolution of the matter, which benefited the Lacandon people (Lacandonos) and the sub-commoners of Nueva Palestina and Frontera Corozal. The government then initiated forced resettlement processes and threats of violent eviction in the region. They concentrated their efforts on four communities: Viejo Velasco, Flor de Cacao, Ojo de Agua Tsotsil and San Jacinto Lacanjá."

⁷ The petition states that this group was accompanied by five prosecutors from the Public Prosecutor's Office, two experts, the Regional Commander of the Selva Area of the State Investigation Agency with seven agents under his command, and a representative of the Secretariat of Social Development. This enunciation of the public officers who accompanied the group was extracted by the petitioners from the information provided by the State itself during the procedure related to request for precautionary measures MC-319-06.

⁸ The petitioners identify the following persons as victims of extrajudicial executions: Filemón Benítez Pérez; Antonio Mayor Benítez Pérez; María Núñez González.

their families in 2011⁹. Additionally, as a consequence of the attack, thirty-six people were forcibly displaced to the mountains, including eight children, who subsequently took shelter in the community of Nuevo Tila, and who had not been able by 2015 to return to Viejo Velasco, nor had they received any kind of support from the authorities, being dispersed all over the state of Chiapas¹⁰. It is also claimed that a woman from the community, Petrona Nuñez González, was a victim of kidnapping and mistreatments that day, which severely affected her physical and psychological health, and which are said to have eventually caused her death on April 29, 2010¹¹. Based on these facts, it is claimed that the State violated her right to the protection of honor and dignity, and incurred in gender-based violence.

3. The petitioners allege that to date, a serious investigation of the events has not been conducted and that, on the contrary, some innocent persons have been unfairly accused by the authorities of having been the perpetrators of the crimes in Viejo Velasco. They point out that the State opened two investigative procedures: one of them through Administrative Record 786/CAJ74-T1/2006, which was opened by the Prosecutor's Office on November 13, 2006, and was subsequently advanced to the preliminary inquiry stage, in the framework of which, on December 27, 2006, a criminal action was initiated against twenty-two innocent people, including inhabitants of the Nuevo Tila community and some of the victims of Viejo Velasco, among them Petrona Nuñez Gonzalez and Roberto Nuñez Gonzalez. And, on the other hand, a criminal complaint was presented by the surviving victims on November 15, 2006, Administrative Record 1334/CAJ74/2006, in relation to the disappeared persons and the persons deprived of liberty in the attack. They allege that this investigation has not moved forward, and that the State has not acted with due diligence to find the missing persons.

4. Petitioners report that one of the persons who was wrongfully accused, prosecuted and arrested for the events was Diego Arcos Meneses, from the neighboring community of Nuevo Tila who, on the day of the events, went to Viejo Velasco with other members of Nuevo Tila to assist any possibly injured persons; moment at which he was arrested by police agents, who forced him to pick up the corpse of one of the deceased persons, and subsequently took him by helicopter to the Public Prosecutor's Office of Palenque. The petitioners allege that there *"he was tortured for refusing to sign a document that they told him contained his declaration, which he refused to sign because he did not know what was written on it."* Subsequently, he was held in pre-charge detention for ninety days at the "Quinta Pitiquitos" location. On December 27, 2006, the Prosecutor of Palenque brought criminal proceedings against him for the offenses of aggravated homicide and organized crime. He was imprisoned at the Center for Social Re-adaptation (CERESO) No. 17 of the municipality of Playas de Catazajá, and was not released until December 4, 2007. Four other inhabitants of the community of Nuevo Tila were also allegedly subjected to arbitrary arrest warrants¹² which the Mexican State had not revoked despite knowing who the real perpetrators were; the petitioners expressly identify two of these four persons as supporters of the Zapatista Army of National Liberation (EZLN, *Ejército Zapatista de Liberación Nacional*).

5. The petitioners also report that on July 6, 2007, a commission composed of representatives of different social and human rights organizations of Chiapas -including the two petitioner organizations- travelled the route between the communities of Viejo Velasco and Paraiso, finding two human skeletons that, judging by the clothes and objects that were found next to the remains, could belong to two of the persons who disappeared on November 13, 2006. After eight months, the Ministry of Justice issued an expert opinion

⁹ The following people are identified as disappeared: Pedro Nuñez Perez -whose body was found in 2007 and handed to his relatives in 2011-; Miguel Moreno Montejo -whose body was found in 2007 and handed to his relatives in 2011-; Mariano Perez Guzman, and Antonio Peñate Lopez (also known as Juan Peñate Montejo).

¹⁰ As of the present procedural stage, the petitioners had not individualized the victims of forced displacement, who are determinable.

¹¹ The petition describes the following: *"In her testimony, Petrona mentions that she was 'violently grabbed' and taken to the community of El Paraíso. There, she was forced into a vehicle and was subsequently taken to the community of Nueva Palestina. She was sick when she was kidnapped, and her health worsened when she was incarcerated. Her captors tried to assist her. First, they took her to a private home where she was administered a substance intramuscularly. Given that her health did not improve, she was then taken to another house where someone, whose identity is unknown, gave her another injection. Since she was not recovering, her captors decided to release her after threatening her with death if she reported what had happened. On November 14, Petrona was found sick in Palenque. She was bruised and had signs of psychological damage, which affected her to the extent that on April 29, 2010, she died at the General Hospital of San Cristobal de las Casas."*

¹² The petition individualizes Alejandro Álvaro Álvaro, Domingo Álvaro López, Antonio Álvarez López and Juan Peñate Díaz.

through its Criminological and Forensic Technical Service Directorate, concluding that it had not been possible to obtain genetic material from the samples, for which reason it was not possible to carry out their comparison and identification. Thus, after a request submitted by the Centro de Derechos Humanos Fray Bartolome de las Casas, which was admitted by the Prosecutor's Office in charge of the case, the Argentine Forensic Anthropology Team concluded on October 15, 2009, that there had been serious shortcomings and inconsistencies in the process of elaboration of the expert report issued by the Ministry of Justice. Subsequently, a team of professionals coordinated by the Argentine Forensic Anthropology Team, with the authorization of the Prosecutor's Office, concluded in 2011 that the skeletons which had been found belonged to Messrs. Pedro Nuñez Perez and Miguel Moreno Montejo. Their remains were handed to their families in November 2011. The IACHR notes that the request for precautionary measures that would eventually lead to the processing of the petition under study referred both to the attack against the community of Viejo Velasco and to the finding and analysis process of these human remains.

6. Taking into account the lack of progress in the investigation, identification and prosecution of the perpetrators of these events, the petitioners claim that the State has not provided them with an effective remedy, nor has it allowed the victims to receive reparations or to conclude the search and location of the disappeared persons. They consider that this may be a sign of a possible concealment of the perpetrators by the authorities. As for the identity of the perpetrators, the petitioners include in their complaint before the IACHR a list of alleged "*material and intellectual perpetrators*," which includes members of the Nueva Palestina community and agents of the Mexican State, both those who accompanied the group of attackers and those who intervened in the subsequent investigative procedures, as well as other public officials of different rank. They allege that the deaths, the disappearances and the forced displacement remain totally unpunished. Likewise, they note that "*such event took place in the context of a process of claiming the right to territory in the field of indigenous peoples rights, and of systematic violations by the Mexican State as regards the implementation of agrarian and environmental policies, which have generated processes of territorial dispossession, forced relocation and threats of violent eviction in the region, in this case, specifically against four settlements: Viejo Velasco, Flor de Cacao, Ojo de Agua Tsotsil and San Jacinto Lacanjá.*" In this same sense, the petitioners allege the following:

These events took place after the State, the Mexican Army and the Public Security Police implemented the strategy of territorial dispossession. Moreover, at the time of the massacre, Chiapas' state police accompanied the attackers to perpetrate the assault. The Massacre of Viejo Velasco responded to a systematic policy of the Mexican State, designed with the objective of dispossessing the indigenous communities who were settled within the region known as Selva Lacandona of their territories. The community of Viejo Velasco, member of the Xinich Organization, was the target of frequent assaults, robberies and burning of homes, which resulted in deaths, disappearances and forced displacement of persons. [...] It is worth noting that the cases of disappearance of Mariano Perez Guzman and Antonio Peñate Lopez took place in the context of a strategy of territorial dispossession implemented by the Mexican State and carried out by the group of Nueva Palestina together with the state police, who deprived them of liberty, and as of today we have only received their refusal to acknowledge the victims' detention, with no knowledge of their whereabouts.

7. The petition also indicates that in the course of the attack against the community of Viejo Velasco its inhabitants were tortured, in particular those persons who were tied up and taken to the school before being disappeared or murdered, given that in that place they were subjected to physical abuse; and that Petrona Nuñez González, Pedro Nuñez Perez, Miguel Moreno Montejo, Mariano Perez Guzman and Antonio Peñate Lopez were arbitrarily deprived of liberty and, as previously indicated, were tied up and taken to the village's school, where they were beaten and abused before being executed or disappeared.

8. Lastly, the petitioners allege that the rights of the children of the community were violated, as they were victims of both the attack and the subsequent internal displacement. Moreover, the rights to property and freedom of movement and residence were also violated by the forced displacement propitiated by the alleged strategy of "indigenous deterritorialization" that they attribute to the State, which allegedly entailed the loss of the possessions of the displaced persons, in addition to multiple violations of their rights derived from their situation of displacement. The same reasons support their invocation of the right to equal protection

of the law, given that in their view that the inhabitants of the community of Viejo Velasco have been victims of both historical and structural discrimination, and because of the violent attack that they suffered.

9. In its response, the State opposes the admissibility of the petition. As its first argument, it contests the description of the events presented by the petitioners, and submits its own version of what happened, and of the context thereof. It explains that by means of a presidential resolution dated November 26, 1971, around 642 hectares of land were recognized and titled as communal property of the Zona Lacandona village, in the municipality of Ocosingo. In 1974 a census was conducted of certain indigenous communities that were irregularly located within those lands that had been assigned to the Lacandona community, and it was decided to create for them two population centers inside said lands, naming them Palestina and Corozal, which were granted recognition by a presidential resolution of December 18, 1978. On April 13, 1999 an agreement was signed between the Secretariat of the Agrarian Reform and the representatives of one of the aforementioned communities, the Viejo Velasco community (or Dr. Manuel Velasco Suárez Viejo community), in which this group expressed its will and acceptance to relocate outside the lands that were the communal property of Zona Lacandona, and an authorization was issued to buy lands in order to benefit the twenty-seven persons who composed the community. Around one hundred and thirty hectares were purchased for them in the municipality of Palenque (Chiapas). In 2005 the final blueprint of the Lacandona community was approved and certified. However, at that time there were around a hundred and ninety groups that continued to be irregularly settled within the area, including in the land-plot of Viejo Velasco, for which reason the State implemented a reorganization program. In 2006, given that many of the members of Viejo Velasco continued to illegally occupy the location of the community, the community members of Zona Lacandona filed against them a lawsuit for land restitution before the Unitary Agrarian Court of the Third District, thereby initiating agrarian judicial proceedings No. 104/2006. On March 10, 2006, members of the Viejo Velasco group submitted their response to the lawsuit, acknowledging that they effectively were in irregular possession of certain hectares of land that belonged to the communal property of Zona Lacandona. As a result of this agrarian procedure the parties signed an agreement to solve the controversy, agreeing that an economic compensation would be given to the occupiers of the Viejo Velasco area in exchange for their handing over the physical and material possession of the occupied hectares to Zona Lacandona, which was initially complied with. However, on July 30, 2006, the *“Xinich Organization, Arriera Nocturna, and supporters of the Zapatista Army of National Liberation again occupied, in an illegal manner, the Viejo Velasco land plot. For this reason, the communal authorities of Lacandona filed a criminal complaint before the Prosecutor’s Office for the crime of dispossession, and preliminary inquiry 491/CAJ74/2006 was initiated.”*

10. The State explains that on November 11, 2006, in the community of Viejo Velasco, *“a group of approximately 18 people, members of the organization named Xinich, arrived and retained 5 persons, who were members of the neighbor community of Lacandona.”* In response, the inhabitants of Nueva Palestina blocked a local road in order to obtain their liberation. On November 12, 2006, the General Prosecutor’s Office of the Chiapas state went to the San Javier community, in the municipality of Ocosingo, to confirm and certify these events, and it initiated preliminary inquiry ZS96/012/2006 for the offense of illegal deprivation of liberty. That same day it received the complainants’ declarations, *“recounting that on November 11, 2006, a group of approximately 15 persons removed approximately 40 inhabitants of Viejo Velasco from their homes, demanding that they abandon that place and abstain from returning. Due to his anatomy and way of walking, they recognized the man known as Roberto Nuñez González, a leader and supporter of the EZLN.”* The roadblock was lifted on November 12, and those who had made it gathered at the Nueva Palestina community, together with members of other communities of the Zona Lacandona area, *“agreeing to enter the areas that had been invaded by the EZLN supporters. Following said agreement, in the early morning of November 13, 2006, a group of members of the Lacandona community decided to expel the persons who were occupying the land plot named Viejo Velasco, which actually happened on that same day, and resulted in a confrontation between the community members of Lacandona and the people who were in Viejo Velasco.”* The State alleges that the extrajudicial executions and forced disappearances indicated in the petition took place as a consequence of this violent confrontation between the communities, which did not involve the participation of state agents.

11. Because of the violent conflict between the communities, the President of the Commission of Communal Property of Zona Lacandona (*Comisariado de Bienes Comunes de la Zona Lacandona*) called the Regional Prosecutor’s Office of the Selva Region (*Fiscalía Regional Zona Selva*) and informed them that there

were injured and dead people in Viejo Velasco. Therefore, on November 13, 2006, the Prosecutor's Office of the Selva Region carried out an operation in which the following people participated: five prosecutors from the Prosecutor's Office, two experts, the Commander of the Selva Region (*Comandante Regional Zona Selva*) of the State Investigation Agency with seven agents under his command, 300 agents of the state police, and a representative of the Secretariat of Social Development, "with the aim of preserving the peace in the Lacandona region and trying to avoid another confrontation." The State reports that, since the confrontation between the two communities had resulted in fatal casualties, preliminary inquiry 786/CAJ74-T2/2006 was initiated for the crime of homicide, the victims of which were Vicente Perez Cruz, Antonio Mayor Benitez Perez (or Artemio Mayor Benito Perez), Filemon Benitez Perez and Maria Nuñez Gonzalez.

12. As for the detention of Diego Arcos, the State reports that on November 14, 2006, "the Secretariat of Security and Citizen Protection of the state of Chiapas was conducting an aerial monitoring of the of Viejo Velasco when it noticed that a group of approximately 6 persons was close to the lifeless body of a woman. When they became aware of the police presence, they fled, and it was only possible to detain Diego Arcos Meneses, who was placed at the disposal of the General Prosecutor's Office." On February 5, a criminal investigation against Diego Arcos Meneses and Felipe Díaz López was formalized for the criminal offenses of aggravated homicide and organized crime (casefile 11/2007). On February 14, 2007, an arrest warrant was issued against twenty-two persons, including Diego Arcos Meneses and Felipe Díaz López, for the offense of aggravated homicide. These persons filed a suit for *amparo* which was granted to 12 of them; therefore, the authorities issued a new arrest warrant against 10 persons on September 26, 2007. The arrest warrant was executed against Felipe Díaz López and Diego Arcos Meneses since February 15, 2007, for which reason, on February 21, 2007, a formal imprisonment decision was issued against them for the criminal offense of aggravated homicide. Mr. Arcos filed an appeal against the formal imprisonment decision, but it was declared inadmissible on April 24, 2007 for not having expressly filed an appeal. On May 15, 2007, Mr. Arcos filed a suit for *amparo* against the formal imprisonment decision, which was ruled in his favor on June 7, 2007; consequently, on October 18, 2007, a new formal imprisonment decision was issued against him. However, on December 7, 2007, Mr. Arcos was released by virtue of a relinquishment of the criminal action, and criminal proceedings 11/2007 were dismissed. On the other hand, an absolution judgment was adopted in favor of Felipe Diaz Lopez on October 23, 2008.

13. As regards the rest of the accused, the State indicates that on October 4, 2013, Antonio Alvarez, Juan Peñate, Domingo Alvaro and Alejandro Alvaro filed an *amparo* suit against the arrest warrant issued against them. A judgment was pronounced in their favor on September 4, 2014. Therefore, on October 15, 2014 a new arrest warrant was issued against them as probable perpetrators of the criminal offense of aggravated homicide. Taking into account these developments, the State points out that the arrest warrant dated September 26, 2007 against Jeronimo Gomez Silvano, Roberto Nuñez Gonzalez, Carlos Lopez Diaz and Petrona Nuñez Gonzalez is currently in force. The State does not refer to the death of Mrs. Petrona Nuñez, denounced by the petitioners.

14. With regard to the disappearances of Messrs. Pedro Nuñez Perez, Mariano Perez Guzman, Miguel Moreno Montejo and Juan Peñate Montejo, administrative record 1334-CAJ-T1/2006 was initiated on November 15, 2006, and the declarations of the relatives of the alleged victims were received. In addition, on July 6, 2007, it was reported that on one side of the road that leads to Viejo Velasco possible human skeletons had been found, and a detailed record of the events (*acta circunstanciada*) was initiated as 004/CAJ74-T1/2007. The remains, and some of the pieces of clothing and personal belongings that were said to belong to two of the missing persons, were recovered. The Office of the General Prosecutor of the Federal District analyzed the DNA samples, but "it was not possible to perform the comparative analysis due to lack of collaboration from the family to provide blood samples." The families and representatives of the disappeared persons expressed that they did not want any institution of the Mexican state to carry out the expert analysis, and requested that the Argentine Forensic Anthropology Team perform it, which was accepted by the State. The Argentine Team concluded that the remains corresponded to Pedro Núñez Pérez and Miguel Moreno Montejo, and on November 18, 2011, the bone remains were delivered to their families. The aforementioned administrative records were sent to the Prosecutor's Office, which is still investigating the whereabouts of Mariano Perez Guzman and Antonio Peñate Lopez (or Juan Peñate Lopez).

15. The State also informs that the State Human Rights Commission of Chiapas initiated *ex officio* an investigation on June 29, 2012 (casefile CEDH/0885/2012), in which *“it was established that there was no forced displacement, given that those who now say they were forcibly displaced from the land plot of Viejo Velasco, had invaded it months before the date of their eviction carried out by the members of the Lacandona community.”* On the other hand, the investigation concluded that since no state agents had participated in the attack of November 13, 2006, and given that it had been a conflict between communities, the criminal offenses of extrajudicial executions or forced disappearances had not been configured. Consequently, it issued recommendation CEDH/06/2016-R, which was transmitted to the General Prosecutor of the State of Chiapas on July 15, 2016.

16. Based on these facts, the State formulates two inadmissibility arguments in relation to the instant petition: lack of exhaustion of domestic remedies, and lack of characterization of violations of the American Convention. As regards the lack of exhaustion of domestic remedies, the State alludes to the alleged extrajudicial executions and forced disappearances mentioned in the petition; it notes that as a consequence of the events, the authorities initiated preliminary inquiry 786/CAJ74-T2/2006 for the criminal offense of homicide and any other resulting crimes, and that the aforementioned procedural actions were taken in the framework of such investigation, including: Diego Arcos' detention and subsequent release, Felipe Díaz' detention and subsequent acquittal, the arrest warrant issued against twenty-two people with the subsequent *amparo* and its reinstatement, and the arrest warrants issued against the rest of the suspects. It also notes that with regard to the disappeared persons, administrative record 1334-CAJ-T1/2006 was initiated, and that in the course of the investigation, the statements of the families of the missing persons were received and the process of identification of the bones found on the road was conducted. Therefore, the State holds that it *“initiated the corresponding investigations, during which two people were detained; that the process has not been completed yet, since it has not been possible to execute the arrest warrants,”* therefore, the domestic remedies are still ongoing and were not exhausted before submitting the petition to the IACHR in 2010. As regards the exhaustion of domestic remedies in relation to the alleged acts of torture inflicted on Diego Arcos Meneses and the alleged forced displacement of the Viejo Velasco community members, it holds that no complaint or remedy has been filed in relation to these two events, for which reason the petitioner organization only presented its claim before the IACHR, and not before the Mexican authorities.

17. In accordance with the above, the State claims that the exception of unwarranted delay set forth in Article 46.2.c) of the American Convention has not been configured in this case; and it notes that the petition argues that such unwarranted delays allegedly took place in the criminal proceedings regarding the investigations derived from the finding of the human bones. The State acknowledges in this regard that *“there was an extended period between the date in which the human bones were found and the date in which they were delivered to their respective families”*, but it attributes such delay to the positions, demands and actions of the victims, who required the intervention of a foreign entity and refused to provide their biological samples. It also indicates that the petition was submitted to the IACHR before the Argentine Forensic Anthropology Team issued its conclusions, and before the State was able to carry out the actions necessary to deliver the remains to their relatives. On this matter, Mexico concludes that *“it is evident that since the exception to the exhaustion of domestic remedies for unwarranted delay is not applicable, the petitioner organization initiated the matter at hand without providing the State an opportunity to resolve the case at the domestic level.”*

18. As for the lack of characterization of violations of the American Convention, the State relies on the aforementioned conclusions of the State Human Rights Commission of Chiapas, in the sense that neither extrajudicial executions, forced disappearances, nor internal displacement or torture took place in this case, given that the conflict of November 13, 2006 was between private individuals without participation of state agents; and that those who were occupying the Viejo Velasco land plot had only been there for a few months when they were expelled by the community members. In relation to the detention of Mr. Diego Arcos, the State *“acknowledges that as a result of having found Mr. Arcos Meneses in the scene of the events, next to a female body on November 14, 2006, he was detained and brought before the General Prosecutor's Office.”* However, after his processing he was released by virtue of a voluntary closure of the criminal proceedings by the relevant Prosecutor, which was ratified by the Prosecutor of the Selva District. In this way, he was initially detained because he was found at the crime scene. Subsequently, criminal proceedings were brought before him based on the evidence collected; the complaints filed by him were heard and resolved in his favor, among others, by

means of an *amparo* suit; and in the end he was released. In this line, the State alleges that if the IACHR admits this complaint, it would be acting as a fourth instance to evaluate the actions related to the criminal proceedings that the Mexican authorities brought against Diego Arcos Meneses.

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

19. The IACHR observes that, aside from the discrepancies between the parties regarding the reported events and their possible legal classification, the subject matter of the petitioners' claim has three fundamental elements: (i) the attack carried out against the Viejo Velasco community on November 13, 2006, in the course of which the following offenses were allegedly committed: the murders of Filemon Benitez Perez, Antonio Mayor Benitez Perez, Maria Nuñez Gonzalez, Miguel Moreno Montejo, Pedro Nuñez Perez and Petrona Nuñez Gonzalez; the disappearances of Mariano Perez Guzman and Antonio Peñate Lopez (or Juan Peñate Montejo); the displacement of thirty-six members of the Viejo Velasco community -described by the State as the eviction of irregular occupants-; and the mistreatments to which members of the Viejo Velasco community were subjected before they were tied up, taken away and forcibly disappeared -described by the petitioners as acts of torture-; (ii) the detention of Mr. Diego Arcos, the torture that he allegedly suffered and his preventive custody for over a year; together with the issuance of unjust arrest warrants against other persons, including Alejandro Alvaro Alvaro, Domingo Alvaro Lopez, Antonio Alvarez Lopez, Juan Peñate Diaz and Roberto Nuñez Gonzalez; and (iii) the alleged impunity for the lack of proper identification, prosecution and punishment of the persons responsible for these events.

20. The murders of Filemon Benitez Perez, Antonio Mayor Benitez Perez, Maria Nuñez Gonzalez, Miguel Moreno Montejo, Pedro Nuñez Perez and Petrona Nuñez Gonzalez, regardless of their legal classification -as homicides or as extrajudicial executions- implied the deaths of persons who were bearers of the right to life. On this matter, the Inter-American Commission has consistently held that in cases where violations of the right to life are claimed, the adequate remedy that must be exhausted at the domestic level is the criminal justice route, through the *ex officio* and diligent conduction of investigations to identify those responsible for the violation, prosecute and punish them in accordance with the American Convention¹³. This burden must be assumed by the State as its own legal duty, and not as the management of private persons' interests, or as a task that depends on their initiative or on the provision of evidence by them¹⁴. As the Inter-American Court has indicated, even though every criminal investigation must satisfy a series of legal requirements, the rule of prior exhaustion of domestic remedies must not lead to a halt or delay of the international action in support of the victims that would render it useless¹⁵.

21. In this sense, the IACHR notes that a criminal investigation was initiated with regard to these deaths (casefile 786/CAJ74-T2/2006) for the criminal offense of homicide, and that the State has provided information about some actions carried out within these criminal proceedings, specifically: the detention and subsequent release of Diego Arcos Meneses; the detention and subsequent acquittal of Felipe Diaz Lopez; and the issuance of arrest warrants against several people, some of which were been the subject-matter of an *amparo* suit and were subsequently reissued. The State has also noted that the arrest warrants against several persons —Jeronimo Gomez Silvano, Roberto Nuñez Gonzalez, Carlos Lopez Diaz and Petrona Nuñez Gonzalez— are currently still in force, even though the latter woman was reported by the petitioners to have died as a consequence of her detention and abuse (the State has not commented on this point). In sum, the IACHR observes that thirteen years after the events took place, the Mexican State still has not identified those responsible for the deaths of these five persons, for which reason in this case the exception of unwarranted

¹³ IACHR, Report No. 72/18, Petition 1131-08. Admissibility. Moisés de Jesús Hernández Pinto and family. Guatemala. June 20, 2018, par. 10. CIDH, Report No. 70/14. Petition 1453-06. Admissibility. Maicon de Souza Silva. Renato da Silva Paixão et al. July 25, 2014, par. 18; Report No. 3/12, Petition 12.224. Admissibility, Santiago Antezana Cueto et al. Peru, January 27, 2012, par. 24; Report No. 124/17, Petition 21-08, Admissibility, Fernanda López Medina et al. Peru, September 7, 2017, par. 3, 9-11.

¹⁴ IACHR, Report No. 159/17, Petition 712-08. Admissibility. Sebastián Larroza Velázquez and family. Paraguay. November 30, 2017, par. 14.

¹⁵ IACHR, Report No. 34/15, Petition 191-07 and others. Admissibility. Álvaro Enrique Rodríguez Buitrago and others. Colombia. July 22, 2015, par. 245.

delay to the duty of exhaustion of domestic remedies, set forth in article 46.2.c) of the American Convention, has been configured.

22. As for the alleged disappearances of Mariano Perez Guzman and Antonio Peñate Lopez (or Juan Peñate Montejo), the Inter-American Commission recalls that whenever the forced disappearance of persons is claimed, the adequate remedy to exhaust at the domestic level is the criminal complaint of the events in order for the authorities to, *ex officio* and proactively, conduct the corresponding investigation, prosecute and punish those responsible, identify the whereabouts of the missing persons and provide full reparations to the surviving victims¹⁶. This investigative burden must be assumed by the State as its own legal duty, and not as the management of private interests, or as a task that depends on private initiative or on the provision of evidence by the victims¹⁷. Thus, with regard to the four allegedly disappeared persons, the State informs that an investigation was initiated through administrative record 1334-CAJ-T1/2006, and that in the course of the investigation, the declarations of the family members of the missing persons were received, and the procedure of identification of the skeletons took place, which were eventually proven to correspond to Pedro Nuñez Perez and Miguel Moreno Montejo and were delivered to their relatives. However, besides the facts that these human remains were found by a delegation of civil society and human rights organizations and that the forensic examination was conducted by the Argentine Forensic Anthropology Team, the IACHR notes that thirteen years after the events occurred, their perpetrators have still not been identified for the purpose of criminally prosecuting them and finding the whereabouts of the two persons whose bodies have not yet been found. Therefore, the IACHR considers that in relation to these forced disappearances, the exception of unwarranted delay in the resolution of the domestic remedies, established in Article 46.2.c) of the American Convention, has been configured.

23. In relation to the alleged internal displacement of thirty-six members of the community of Viejo Velasco—whom the State alleges were people who had been irregularly occupying this location for some months— the IACHR considers that the criminal justice route was also the effective remedy to exhaust in relation to these events¹⁸, and that the events should have been legally classified in the course of the respective judicial proceedings, based on the duly collected investigative elements, so as to determine whether there had been forced displacement or an eviction of irregular occupants. However, *prima facie* it is observed that the judicial authorities have not conducted any investigative task in relation to this complaint of displacement. In connection with this, and with regard to the torture that the inhabitants of Viejo Velasco were allegedly subjected to in the course of the attack, the uniform IACHR jurisprudence indicates that, in cases of torture, the State has the *ex officio* duty to initiate, conduct and complete a criminal investigation which can allow for prosecuting and punishing the perpetrators of such crime¹⁹. In the case under review, the acts constituting the attack, in the course of which the inhabitants of Viejo Velasco might have been inflicted a degree of suffering equivalent in intensity to torture, were brought to the attention of the criminal justice authorities, who initiated the respective investigations. However, although these events occurred more than thirteen years ago, it is observed that no investigation has been conducted in relation to the allegations of torture. Consequently, both in relation to the lack of investigation of the reported forced displacement, and in relation to the lack of investigation of the above-described allegations of torture, the exception of unwarranted delay to the rule of exhaustion of domestic remedies has also been configured, in the terms of Article 46.2.c) of the Convention.

24. With regard to Mr. Arcos' detention and the allegedly unjust arrest warrants issued against other persons, including Alejandro Alvaro Alvaro, Domingo Alvaro Lopez, Antonio Alvarez Lopez, Juan Peñate Diaz and Roberto Nuñez Gonzalez, the IACHR considers that the domestic judicial remedies have been duly

¹⁶ IACHR, Report No. 78/16, Petition 1170-09. Admissibility. Almir Muniz Da Silva. Brazil. December 30, 2016, par. 31; Report No. 161/17. Admissibility. Andy Williams Garcés Suárez and family. Peru. November 30, 2017, par. 12.

¹⁷ IACHR, Report No. 159/17, Petition 712-08. Admissibility. Sebastián Larroza Velázquez and family. Paraguay. November 30, 2017, par. 14.

¹⁸ IACHR, Report No. 11/17. Admissibility. María Hilaria González Sierra and others. Colombia. January 27, 2017, par. 4; IACHR, Report No. 89/18. Petition 1110-07. Admissibility. Juan Simón Cantillo Raigoza, Keyla Sandrith Cantillo Vides and Family. Colombia. July 27, 2018, par. 10; IACHR, Report No. 44/18. Admissibility. Pijiguay Massacre. Colombia. May 4, 2018, par. 11.

¹⁹ IACHR, Report No. 37/18 Admissibility. Patricio Germán García Bartholin. Chile. May 4, 2018, par. 19; Report No. 156/17. Admissibility. Carlos Alfonso Fonseca Murillo. Ecuador. November 30, 2017, par. 13.

exhausted in the terms of Article 46.1.a) of the American Convention²⁰. With regard to Diego Arcos' detention, it has been informed that the arrest warrant issued against him on February 14, 2007 was executed on February 15, 2007, and a formal imprisonment decision was issued against him on February 21, 2007. Mr. Arcos filed a motion for reconsideration against this formal imprisonment decision, which was declared inadmissible on April 24, 2007. Subsequently, he filed a suit for *amparo* against the formal imprisonment decision, which was ruled in his favor on June 7, 2007, although on October 18, 2007, another formal imprisonment decision was issued against him; after which he was released on December 7, 2007, and the criminal case was dismissed by virtue of relinquishment of the criminal action. In this sense, the IACHR considers that the adequate domestic remedies in relation to his detention were initiated and exhausted. The IACHR notes that petitioners have alleged that, at the initial stage of his detention, Mr. Arcos was tortured after refusing to sign a prefabricated confession; however, there is no information about any criminal complaints or reports presented by Mr. Arcos regarding this alleged torture. Nevertheless, this is a complaint that, for the purposes of the current inter-American procedure, is subsumed within the broader claim of violation of Mr. Arcos' rights in the course of his criminal prosecution and detention, prior to his release after one year of an alleged arbitrary and unjust imprisonment.

25. On the other hand, the other persons who were subjected to the arrest warrants mentioned in the petition: Antonio Álvarez, Juan Peñate, Domingo Álvaro and Alejandro Álvaro, filed an *amparo* suit against the initial warrant and a judgment was pronounced in their favor on September 4, 2014, for which reason on October 15, 2014, a new arrest warrant was issued against them, as probable perpetrators of the crime of aggravated homicide. The State has also informed that the arrest warrant issued against Roberto Nuñez Gonzalez is currently in force, having been reissued on September 26, 2007 after a judge ordered its annulment in granting the *amparo* remedy that he had lodged. In the case of Mexico, the IACHR has accepted that the effective domestic remedies to be exhausted in these cases also include the *amparo* remedies that have effectively been filed by persons against the procedures and actions of the criminal justice that they consider detrimental of their fair trial guarantees²¹. Consequently, in relation to the arrest warrants issued against these five persons, the domestic remedies are also considered to have been initiated and exhausted, in light of Article 46.1.a of the American Convention.

26. The State has claimed that in this case, the exception of unwarranted delay in the course of the criminal investigations has not been configured, because the delay which it expressly admits took place in the identification and delivery of the remains of the two disappeared persons, was due to the obstacles posed by their family members themselves in relation to the collection of genetic samples and the action of the Mexican authorities. However, the IACHR disagrees with the State's interpretation of the petition, since the unwarranted delay set out therein, which has just been declared, is not only referred to the State actions regarding the identification and delivery of the skeletal remains of these two persons, but refers in broader terms to the investigation of the facts, the identification of those responsible, their prosecution and punishment, specifically with regard to the possible offenses of homicide or extrajudicial execution, forced disappearance, forced displacement and torture. Reasoned allegations have been made about the possible participation of state agents in the perpetration of these crimes by act or omission.

27. With regard to the requirement of timeliness in the presentation of the petition, the IACHR observes that the attack against the community of Viejo Velasco took place on November 13, 2006; that the petitioners submitted to the IACHR the request for precautionary measures, which would subsequently lead to initiating the present processing of the case as a petition, two weeks later, on November 27, 2006; that on that same month the criminal complaints were filed and the prosecutorial investigations into the facts were initiated, which to date have not made progress in the identification of those responsible for their prosecution and punishment; that on October 5, 2010, the IACHR decided to close the precautionary measures procedure

²⁰ IACHR, Report No. 168/17. Admissibility. Miguel Ángel Morales. Peru. December 1, 2017, par. 15; Report No. 108/19. Petition 81-09. Admissibility. Anael Fidel Sanjuanelo Polo and family. Colombia. July 28, 2019, par. 6, 15; Report No. 92/14, Petition P-1196-03. Admissibility. Daniel Omar Camusso and son. Argentina. November 4, 2014, par. 68 and ff.; IACHR, Admissibility report No. 104/13, Petition 643-00. Admissibility. Hebe Sánchez de Améndola and children. Argentina. November 5, 2013, par. 24 and ff.; IACHR, Report No. 85/12, Petition 381-03. Admissibility. S. et al., Ecuador. November 8, 2012, par. 23 and ff.

²¹ IACHR, Report No. 166/17. Admissibility. Fausto Soto Miller. Mexico. December 1, 2017, par. 10; Report No. 165/17. Petition 86-08. Admissibility. Dionicio Cervantes Nolasco and Armando Aguilar Reyes. Mexico. December 1, 2017, par. 5.

and to open the processing of the present matter as a petition; and that the effects of the alleged impunity of the events allegedly extend to the present time. Therefore the IACHR considers that the situation was brought to its notice within a reasonable time in the terms of Article 32.2 of its Rules of Procedure, in accordance with Article 46.1.b) of the American Convention.

VII. ANALYSIS OF COLORABLE CLAIM

28. The petitioners have reported several violations of the rights protected by the American Convention, which have been challenged by the State through the presentation of a different version of what happened, in legal and factual terms. Therefore, a legal and factual controversy has been established between the parties with regards to the events, which requires an analysis on the merits in light of the American Convention and other applicable legal instruments, and of the evidence that appears in the casefile at that time. The Commission recalls that the criterion for evaluating admissibility differs from the one used to issue a pronouncement on the merits of a petition; at the admissibility stage the Commission must conduct a *prima facie* evaluation to determine whether the petition establishes the grounds for the violation of a right protected by the Convention. This determination constitutes a primary analysis that does not imply a prejudgment of the merits of the matter²².

29. In view of these considerations, and after examining the legal and factual elements set forth by the parties, the Commission considers that the petitioner's allegations are not manifestly unfounded, and that the alleged facts could constitute violations to the rights established in Articles 3 (juridical personality), 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 21 (property), 22 (freedom of movement and residence), 24 (equal protection), 25 (judicial protection) and 26 (economic, social, cultural and environmental rights) of the American Convention, in relation to its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects); as well as Article I of the Inter-American Convention on Forced Disappearance of Persons; Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture; and Article 7 of the Convention of Belém do Pará, to the detriment of the alleged victims in the terms of this report.

30. In the specific case of Mr. Diego Arcos, Mexico claims that the IACHR cannot act as a court of fourth instance to assess the actions corresponding to the criminal proceedings brought against him by the competent jurisdictional authorities. However, the Commission disagrees with this position. The situation of Mr. Diego Arcos was brought to the IACHR as a possible case of violation of the right to personal liberty pursuant to Article 7 of the American Convention; the IACHR has not been requested to rule upon the decision of releasing him after having held him in preventive detention for more than a year, but to rule upon the circumstances in which he was detained.

31. Lastly, the Commission does not observe factual elements or allegations that may *prima facie* establish the possible violation of the right to honor and reputation established in Article 11 of the American Convention to the detriment of Mrs. Petrona Núñez González.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 3, 4, 5, 7, 8, 21, 22, 24, 25 and 26 of the American Convention in relation to its Articles 1.1 and 2; Article I of the Inter-American Convention on Forced Disappearance of Persons; Articles 1, 6 and 8 of The Inter-American Convention to Prevent and Punish Torture and Article 7 of Convention of Belém do Pará; and

2. 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 25th day of the month of September, 2020. (Signed): Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President;

²² IACHR, Report No. 69/08, Petition 681-00. Admissibility. Guillermo Patricio Lynn. Argentina. October 16, 2008, par. 48.

Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, Julissa Mantilla Falcón, and Stuardo Ralón Orellana, Commissioners.