

REPORT N° 75/07
PETITION 12.322
ADMISSIBILITY
ANTONIO GONZÁLEZ MÉNDEZ
MEXICO
17 October 2007

I. SUMMARY

1. On August 10, 2000, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "IACHR") received a complaint filed by the "Fray Bartolomé de las Casas" Human Rights Center A.C (hereinafter "the petitioners"), alleging the international responsibility of the United Mexican States (hereinafter "the State") for the presumed forced disappearance of Antonio González Méndez and the subsequent failure to investigate the case. The petitioners claimed that the acts denounced constituted violations of the rights established in Articles 4, 5, 8, 17, and 25 of the American Convention on Human Rights ("the American Convention") considered in relation to the obligations set forth in Article 1(1) of that international instrument.

2. The petitioners alleged that Antonio González Méndez was an indigenous person who belonged to the Ch'ol ethnic group, and at the time the events occurred, he was affiliated with the Democratic Revolutionary Party [Partido de la Revolución Democrática] (PRD), a member of the civilian grassroots support for the Zapatista National Liberation Army [Ejército Zapatista de Liberación Nacional] (EZLN), and in charge of the "Arroyo Frío" cooperative store in his community, El Calvario, in the Municipality of Sabanilla, Chiapas. They reported that on January 18, 1999, he left his home in the company of Juan Regino López Leoporto, apparently for the purpose of buying a firearm, and his whereabouts have been unknown since then, despite the many complaints filed by the petitioners. In support of the admissibility of this complaint, the petitioners argued that in this case, domestic remedies were duly exhausted, as the petitioners filed a writ of *amparo* for constitutional protection, registered as case No. 238/99, which was rejected on April 22, 1999. Similarly, they alleged that they had reported these facts to the appropriate authorities, resulting in Pretrial Investigation N° AL41/SIJ/030/99. According to the petitioners, that investigation was still open at the time this petition was lodged with the IACHR.

3. The State in turn argued that the petitioners had not exhausted all domestic legal remedies, because the investigations initiated in conjunction with the alleged disappearance of Antonio González Méndez were still pending resolution.

4. After examining the positions of the parties, the Commission, without prejudice to the merits of the case, concludes that it is competent to consider the petition filed by the petitioners, and that therefore the case is admissible in relation to the alleged violations of the rights contained in Articles 3, 4, 5, 7, 8, and 25 and the general obligation established in Article 2 of the American Convention, as related to Article 1(1) of that international instrument; it further declares that this petition is inadmissible in reference to the alleged violation of the right contained in Article 17 of the American Convention. All of the foregoing is considered in light of the provisions of Articles 41, 46, and 47 of the Convention, and Article 37 of the Commission's Rules of Procedure. The Commission therefore decides to notify the parties of its decision and to pursue an analysis of the merits of the case related to the alleged violations of the American Convention, and to publish this Admissibility Report and include it in its Annual Report to the OAS General Assembly.

II. PROCEEDINGS BEFORE THE COMMISSION

A. Petition

5. On August 10, 2000, the Commission received a petition filed by the "Fray Bartolomé de las Casas" Human Rights Center, registered as No.12.322 on September 19, 2000. On September 19, 2000, the IACHR forwarded the petition to the State. On September 3, 2001, the State sent its observations on the matter. On September 12, 2001, the IACHR forwarded the State's observations to the petitioners, and gave them a month to submit their observations. On October 12, 2001, the petitioners sent their observations to the IACHR and also advised it that the International Law and Justice Center (CEJIL) was a co-petitioner.

6. On October 26, 2001, the IACHR forwarded the petitioners' observations to the State and gave it one month to submit its observations. On November 28, 2001, the State sent its observations to the IACHR. On November 30, 2001, the IACHR forwarded the State's observations to the petitioners, and gave them one month to submit their observations. On January 2, 2002, the petitioners forwarded their observations to the Commission. On January 7, 2002, the IACHR forwarded to the State the observations of the petitioners and gave it one month to submit its observations. On February 11, 2002, the State sent its observations to the IACHR, and on February 25, 2002, the IACHR forwarded the State's observations to the petitioners, granting them one month to submit their observations. On March 28, 2002, the petitioners submitted their observations to the Commission.

7. On April 22, 2002, the IACHR forwarded to the State the observations submitted by the petitioners and gave it one month to submit its observations. On May 28, 2002, the State sent its observations to the Commission. On June 17, 2002, the IACHR forwarded the State's observations to the petitioners and gave it one month to submit its observations. On June 12, 2002, the petitioners forwarded their observations to the IACHR. On August 6, 2002, the IACHR submitted their observations to the State, and gave it one month to submit its observations. On September 10, 2002, the State submitted its observations to the IACHR. On September 29, 2002, the IACHR submitted the observations by the State to the petitioners. On October 29, 2002, the petitioners sent their observations to the IACHR, and on November 7, 2002, the IACHR forwarded the petitioners' observations to the State.

8. On January 2, 2003, the State requested an extension for submitting its observations. On February 25, 2003, the Commission granted the State one month to submit its observations. On March 31, 2003, the State submitted its observations. On April 17, 2003, the IACHR forwarded the State's observations to the petitioners. On July 12, 2004, the petitioners requested the Commission to provide information on the status of the case. On January 3, 2005, the IACHR reported that on April 17, 2003, it had forwarded the petitioners' March 31, 2003 observations to the Mexican Government, with the request that it comment on them. On January 12, 2005, the petitioners requested the IACHR to grant them a hearing during its 122nd session. On February 1, 2005, the IACHR denied the request for a hearing.

9. On February 8, 2005 the petitioners submitted their observations to the IACHR. On February 9, 2005, the IACHR forwarded the petitioners' observations to the State, and gave it one month to submit its observations. On March 10, 2005, the State requested the IACHR to combine this case with the case of Rogelio Jiménez López *et al.* (P-1121-04). On April 14, 2005, the State submitted additional observations. On July 15, 2005, the IACHR decided not to combine this case with the case of Rogelio Jiménez López *et al.*, on the grounds that they involved different

matters. It sent the State's observations to the petitioners and granted them one month to present observations to the Commission. On August 2, 2005, the State submitted further information. On August 19, 2005, the petitioners submitted their observations. On September 1, 2005, the petitioners requested a hearing during the 123rd session of the IACHR. On September 26, 2005, the IACHR denied the request for a hearing. On October 11, 2006, the IACHR acknowledged receipt of the observations made by the petitioners on August 19, 2005, and forwarded them to the State.

B. Request for precautionary measures

10. On April 5, 1999, the "Fray Bartolomé de las Casas" Human Rights Center requested precautionary measures in favor of Antonio González Méndez, for the purpose of clarifying his whereabouts. On May 18, 1999, the IACHR asked the State to provide information regarding the alleged forced disappearance within 15 days. On June 2, 1999, the State submitted the information requested by the IACHR. On June 7, 1999, the IACHR forwarded the State's observations to the petitioners and granted them 15 days to submit their observations. On July 14, 1999, the petitioners sent their observations to the IACHR. On July 23, 1999, the IACHR forwarded the petitioners' observations to the State and granted it 15 days to submit its observations. On August 6, 1999, the State sent its observations to the IACHR. The IACHR continued its consideration of the matter, by processing the petition.

III. POSITIONS OF THE PARTIES

A. The petitioners

11. The petitioners reported that González Méndez was an indigenous person belonging to the Cho'l indigenous ethnic group, and was 32 years of age at the time of these events. The petitioners further reported that the alleged victim was a "member of the grassroots support for the Zapatista National Liberation Army, affiliated with the Democratic Revolutionary Party (PRD), and in charge of the "Arroyo Frío" cooperative store in the community of "El Calvario," municipality of Sabanilla, Chiapas. [As a result of his political activities, he had enemies,] especially among members of the Institutional Revolutionary Party (PRI), which was the party in power in the State at the time, and which had ordered paramilitary groups to be created to attack the insurgency."¹

12. According to the petitioners, at twelve midnight on January 18, 1999, the alleged victim left his home in the company of Juan Regino López Leoporto, apparently to purchase a firearm."² The petitioners reported that the alleged victim went with Juan Regino López Leoporto to the Sabanilla River, and that is the last time he was seen. The petitioners further reported that Juan Regino López Leoporto was a minor at the time of this event, and that he belonged to the group "Desarrollo, Paz y Justicia A.C" [Development, Peace and Justice A.C.].

13. According to the petitioners, Mr. González Méndez was the victim of a forced disappearance "carried out by one or several members of the *Desarrollo, Paz y Justicia* paramilitary group (hereinafter referred to as "Paz y Justicia"), which operated in the northern part of Chiapas, Mexico, with the consent of the Mexican State."³ The petitioners further claimed that "Paz y Justicia" "is accused of many homicides, displacements, acts of aggression, and other offenses against individuals and communities that sympathize with the EZLN [Zapatista National Liberation Army]

1 Observations submitted by the petitioners on August 19, 2005, p. 2.

2 Initial petition, p. 3.

3 Initial petition, p. 2.

[...]."⁴ As for the "Paz y Justicia" organization, the petitioners made the following allegations:

"Paz y Justicia" is a paramilitary organization, according to complaints received, and it is the principal party accused of perpetrating attacks on leaders and organizations that advocate autonomy for indigenous peoples and defend their ownership of the land they occupy [...].⁵

14. The petitioners reported that on January 20, 1999, the wife of the alleged victim, Sonia López Juárez, appeared before the Municipal Judge of Sabanilla to report the alleged disappearance of her husband, and accused Juan Regino López Leoporto as being responsible for it. On January 22, 1999, Mrs. López Juárez reiterated her complaint to the *Ministerio Público* in Yajalón. On January 24 of that year, Juan Regino López Leoporto gave his statement to the authorities in which he denied any involvement in the matter denounced. Pretrial investigation N° AL41/SJI/030/99 was opened. According to the petitioners, on March 26, 1999, Juan Regino López Leoporto was released to his family on bond, as a result of the ruling by the Council for the Protection of Minors of the State of Chiapas that the crime, illegal deprivation of freedom, was not a serious offense.⁶ The petitioners allege that although as part of the aforesaid pretrial investigation, "various communications had been circulated to determine the whereabouts of the alleged victim, only one operation was carried out on February 1 and 2, 2001."⁷

15. The petitioners asserted that on March 17, 1999, they lodged a petition for *amparo* or judicial protection, which was registered as No. 238/99.⁸ However, the petitioners alleged that on March 22, 1999, "[The] State Public Security Commander in Sabanilla, Chiapas, did not make a prior report, and so [the judge] [...] presumed that the alleged act was true."⁹ The petitioners reported that on March 31, 1999, the constitutional hearing in the *amparo* proceeding was held, and that the judge "denied the request for *amparo* by virtue of the fact that there was no indication of the place where Antonio González Méndez was being held."¹⁰ According to the petitioners, the First District Judge who presided over the *amparo* proceeding, argued as follows:

[H]aving seen the records, and in view of the fact that they show that, in an interlocutory order dated March 23, 1999, Sarah Patricia Torres Lares [legal representative of the petitioners for the *amparo* proceeding] was requested to indicate the place where the directly injured party, Antonio González Méndez, was being held, with the notice that failure to do so would cause the present petition to be considered as null and void; consequently, on the grounds of Article 146, in relation to 119, of the *Amparo* Law, this *amparo* petition is considered as null and void.¹¹

16. On this point, the petitioners argued that the jurisprudence of the Inter-American system has consistently held that "the appropriate recourse for cases such as the present one [forced disappearance] is the writ of *amparo* [...]."¹² In spite of the foregoing, the petitioners initiated a criminal proceeding for the purpose of learning the whereabouts of the alleged victim.

4 Initial petition, p. 4.

5 Observations submitted by the petitioners on January 2, 2002, p. 5. Likewise, refer to the report on the human rights situation in Mexico, OEA/Ser.L/V/II.100, Doc. 7 rev. 1, September 24, 1998, para. 556.

6 Initial petition, p. 5.

7 Observations submitted by the petitioners on March 28, 2002, p. 3.

8 Observations submitted by the petitioners on March 28, 2002, p. 2.

9 Observations submitted by the petitioners on March 28, 2002, p. 2.

10 Observations submitted by the petitioners on March 28, 2002, p. 2.

11 Writ of *amparo* 238/99. Resolution of March 31, 1999.

12 Observations submitted by the petitioners on February 8, 2005, p. 5.

17. This complaint led to pretrial investigation N° AL41/SJI/030/99. On February 6, 2001, the *Ministerio Público* concluded that it did not have grounds “for continuing its investigation of Juan Regino López Leoporto; as a result, it decided to send all the records of this investigation to the reserve files.”¹³ This, in the view of the petitioners, “means that the Ministerio Público is suspending any action related to the sole witness who could provide information on the whereabouts or the fate [of the alleged victim.”¹⁴ The petitioners further argued that “the criminal investigation involved various irregularities, since the officials in charge of conducting it did not act with due diligence. As proof of this, [...] on November 11, 2001, Mrs. Sonia López was summoned to provide a photograph of her disappeared spouse.”¹⁵

18. Furthermore, petitioners reported that the authorities “never channeled their action toward investigation of the “Paz y Justicia” paramilitary group and the membership [...] of Juan Regino López Leoporto in that group, despite the insistence of the petitioners and family members in that regard. Nor did they provide reasonable arguments to justify why they rejected that line of investigation.”¹⁶

19. In addition, the petitioners reported that at the time of the events, Chiapas law “did not include provisions for the crime of forced disappearance or an equivalent offense as established in Article 2 of the Inter-American Convention on Forced Disappearance of Persons [...].”¹⁷ Thus at the time the pretrial investigation was opened, it was meant to address “illegal deprivation of freedom.” On this point, the petitioners claimed that “as long as the criminal offense of forced disappearance of persons with its own characteristics to define such an act does not exist, justice, as dictated in Article 14 of the Political Constitution of Mexico, can be neither sought nor imparted.”¹⁸

20. The petitioners asserted that the facts of the present case do not represent isolated incidents in Chiapas, but instead are part of “a deliberate policy on the part of the Mexican State to deal with the indigenous insurrection of 1994 headed by the Zapatista National Liberation Army (EZLN).”¹⁹

21. The petitioners point out that the IACHR recognized the problem in its 1998 report on Mexico:

In recent years, two situations have had an impact on the exercise of human rights: the EZLN insurgency in the South, which has led to an important presence of the Mexican Armed Forces in that area, conducting low-intensity operations; and, subsequently, especially beginning in 1995, the militarization of the North and the emergence in that area of paramilitary groups whose activities have been reported as contributing to human rights violations.

[...]

However, in the [northern] zone of [Chiapas], there have been numerous criminal acts of aggression, consisting of threats and attacks involving civilian communities and leaders, that have been imputed to groups identified as paramilitaries which operate in a coordinated manner, with the support of the authorities and ranchers in neighboring areas, and with the implicit protection

13 Observations submitted by the petitioners on October 12, 2001, p. 2.

14 Observations submitted by the petitioners on October 12, 2001, p. 2.

15 Observations submitted by the petitioners on March 28, 2002, p. 3.

16 Observations submitted by the petitioners on March 28, 2002, p. 4.

17 Initial petition, p. 11.

18 Initial petition, p. 11.

19 Observations submitted by the petitioners on February 8, 2005, p. 6.

of the Mexican Army, against groups which oppose the government or which are more favorable to indigenous interests [...].²⁰

22. The petitioners add that initially, they also filed a complaint with the National Human Rights Commission (CNDH) and that institution's program on alleged disappearances, but that they nonetheless were not aware of the results of these investigations. According to the petitioners, when Mrs. Sonia López, the wife of the alleged victim, appeared on March 6, 2001 in response to a summons by the CNDH, she was subject to abusive treatment by the officials of that institution. For instance, members of the institution told Mrs. López "that maybe your husband ran off 'with another girl' and they insinuated that Sonia had had a fight with the [alleged] disappeared person or that he had beaten her."²¹ The petitioners further allege that an official of the CNDH "suggested the possibility of prison,"²² because she said that her husband had purchased arms and he told her that "all the people in the Fray Bartolomé de las Casas Human Rights Center are Zapatistas."²³

23. With regard to exhaustion of domestic remedies, the petitioners alleged that "pretrial investigation AL41/SJI/030/99 [...] is not a remedy that is required to be exhausted."²⁴ On this point, the petitioners maintained that this "pretrial investigation did not fulfill the objective of determining the whereabouts of Antonio González Méndez and of guaranteeing his protection, [since the] criminal proceeding is fundamental for the identification, prosecution, and punishment of the parties responsible for [the alleged] disappearance of the victim; moreover [...] by its nature, the role of the *Ministerio Público* focuses on criminal legal action and not on ensuring location of the whereabouts of disappeared persons."²⁵

24. The petitioners contended that in forced disappearance cases, according to the case law of the inter-American system, the appropriate recourse is *habeas corpus*²⁶ or its equivalent. In this regard, the petitioners pointed out that in the case of Mexico, the *amparo* procedure "takes the place of *habeas corpus*,"²⁷ since "it curbs the acts of authorities or laws that could violate the rights of individuals."²⁸ On this point, the petitioners added that the *Amparo* Law states as follows:

Article 17

In the case of acts that entail the danger of deprivation of life, attacks on personal freedom outside judicial proceedings, deportation, or exile, or any of the acts prohibited by Article 22 of the Federal Constitution, and the injured party is unable to file a writ of *amparo*, any other person may do so on his behalf, even if the person is a minor. In that case, the judge shall order any measures needed to ensure the appearance of the injured party and, in whatever circumstances, shall rule that the *amparo* writ must be reiterated within a period of three days; if the interested party reiterates it, the writ will be processed; if it is not reiterated, the writ will be considered as never having been filed, and the measures ordered shall be considered null and void.

Article 117

In the case of acts that entail the danger of deprivation of life, attacks on personal freedom outside judicial proceedings, deportation, exile, or any of the acts prohibited by Article 22 of the Federal Constitution, the petition shall be

20 IACHR Report on the "Human Rights Situation in Mexico, Chapter VII: The Situation of Indigenous Peoples and their Rights, Part VI: The Situation in the State of Chiapas," OEA/Ser.L/V/II.100 Doc. 7 rev. 1, September 24, 1998, paras. 544 and 555.

21 Observations of the petitioners on October 12, 2001, para. 3.

22 Observations of the petitioners on October 12, 2001, para. 3.

Observations of the petitioners on October 12, 2001, para. 3.23

24 Observations submitted by the petitioners on February 8, 2005, p. 5.

25 Observations submitted by the petitioners on February 8, 2005, p. 6.

26 I/A Court H.R., *Velásquez Rodríguez Case*. Judgment of July 29, 1988. Series C, No. 4, para. 65.

27 Observations submitted by the petitioners on March 28, 2002, p. 2.

28 Observations submitted by the petitioners on February 5, 2005, p. 2.

admitted on condition that it contains the following information: the act that is the subject of the complaint; the authority that ordered it, if possible the initiating party; the place where the injured party is located; and the authority or agent that is executing or attempting to execute the act. In such cases the request may be made by appearing before a judge, with the proceeding recorded for that purpose.

25. However, according to the petitioners, the writ of *amparo* stipulated in Mexican law is a recourse that is inherently ineffectual²⁹ in forced disappearance cases, since it requires indication of "the place where the injured party is located and the authority responsible [for the alleged deprivation of freedom]."³⁰

26. Further to this argument, the petitioners claimed that even when the *amparo* remedy has been formally exhausted, it is not adequate to rectify the damages. By virtue of the foregoing, the petitioners believe that the complaint should be examined in the light of the exception established in Article 46(2)(a) of the American Convention, namely, that in Mexico, "due process of law for the protection of the right or rights that have allegedly been violated" does not exist.

B. Position of the State

27. The State argued in the case under review that it is not a case of forced disappearance of persons, "but only [has to do with] one disappeared person [...]."³¹ The State further asserted that "it is plausible to think that one of the reasons for the absence of [Mr.] González Méndez could be that he left his home to join the EZLN [Zapatista National Liberation Army], rather than starting from the assumption that the only reason for his absence is a forced disappearance, in which Juan Regino López Leoporto participated [...]."³² The State also claimed that in the case in point, the CNDH stated in a brief that "in view of the sudden disappearance of Antonio González Méndez, the purchase of a firearm by the youth, Juan Regino López Leoporto, and the notable difference in ages and physical traits, and since the two are friends, it is probable that the injured party joined the ranks of the Zapatista National Liberation Army."³³ On this point, the State concluded that "there is insufficient information to establish the forced disappearance of a person."³⁴

28. The State maintains that, according to statements given by Sonia López Juárez and Juan Regino López Leoporto on January 18, 1999 at 12:00 a.m., Juan Regino López Leoporto went to the "Arroyo Frio" cooperative store in the community of El Calvario, Municipality of Sabanilla, Chiapas, where Antonio González Méndez was working to sell him a 20mm caliber rifle and two boxes of cartridges. The two then headed for the municipal cemetery where Juan Regino López Leoporto had hidden the firearm. The State asserts that Antonio González Méndez gave Juan Regino López Leoporto the amount of 8,000 Mexican pesos, plus 500 Mexican pesos for two boxes of cartridges. Afterwards each one went to their own homes and since then, there has been no news of the whereabouts of Antonio González Méndez.

29. In addition, the State argued that on January 22, 1999, the Chiapas official of the *Ministerio Público* opened pretrial investigation AL/41/SJI/030/1999. During this process, the State contended that various steps were taken to establish the whereabouts of the alleged victim, including the following ones: a) the pretrial investigation was referred to the Chiapas Attorney General [Procurador General de Justicia] on April 22, 2002; b) the original and a copy of the

29 Observations by the petitioners on March 8, 2005, p. 4.

30 Observations by the petitioners on March 8, 2005, p.3.

31 Observation submitted by the State on September 10, 2002, p. 1.

32 Observation submitted by the State on September 10, 2002, p. 1.

33 Observation submitted by the State on September 10, 2002, p. 1.

34 Observations submitted by the State on March 31, 2003, p. 2.

investigation of May 29, 2002 were received from the assistant director of pretrial investigations for Indigenous Justice; c) various communications were sent to the Judge of Sabanilla, Chiapas, advising him to notify Sonia López Juárez to appear at the Ministerio Público to provide more information concerning the possible whereabouts of her husband, but Mrs. López Juárez did not come forward.³⁵

30. The State went on to argue that during the pretrial investigation, "there was insufficient evidence gathered to determine the probable responsibility of any agent in the alleged disappearance of Mr. González Méndez. Nor was there enough information to support the participation of a paramilitary group in the matter denounced."³⁶ The State contended that the alleged disappearance of Antonio González Méndez has to do with "[...] acts carried out by individuals and not by officials of the State of Chiapas."³⁷

31. The State argued that during the pretrial investigation, various statements were given that "indicated that the minor Juan Regino López Leoporto was responsible for the disappearance of Antonio González Méndez,"³⁸ and so the State opened an investigation against Juan Regino López Leoporto, who at the time of the incident was a minor. The investigating agent forwarded the case records to the Council for Protection of Minors [Consejo Tutelar para Menores] in Tuxtla Gutiérrez, Chiapas, since Mexican legislation stipulated that "when a minor is accused of having committed a criminal act, he shall be assured just and humane treatment."³⁹ The State went on to assert that under Mexican legislation, "persons less than 18 years of age are considered as unindictable; [thus, the Ministerio Público] shall refrain from opening an investigation against them and its intervention shall be limited to making them immediately available to the acting representative of the unit in charge of prevention and treatment of minors."⁴⁰ In this regard, the State reported that Juan Regino López Leoporto entered the protective juvenile facility on February 6, 1999, for the probable disappearance of the alleged victim, and was released on March 25, 1999.

32. As for the complaint filed with the CNDH, the State argued that said institution found "that there was no human rights violation of legal certainty on the part of Mexican government officials, through participation in the disappearance of Antonio González Méndez."⁴¹

33. As for the argument by the petitioners to the effect that the State officials did not channel the investigation to the "Justicia y Paz" organization,⁴² the State contended that "in the various steps taken during pretrial Investigation AL41/SJI/030/99, and in all the information gathered during that proceeding, there was no indication whatsoever that would imply the participation of that organization, or that the organization was responsible for the disappearance of Antonio González Méndez."⁴³ The State went on to say that in the statement that Mrs. Sonia López deposed at the *Ministerio Público*, "there was no reference to the participation of any civilian armed group in the disappearance of Antonio González Méndez; on the contrary, she specifically accused only the minor Juan Regino López Leoporto."⁴⁴ The

35 Observations submitted by the State on March 31, 2003, p. 1.

36 Observations submitted by the State on March 31, 2003, p. 2.

37 Observations submitted by the State on March 31, 2003, p. 3.

38 Observations submitted by the State on April 14, 2005, p. 2.

39 Observations submitted by the State on April 14, 2005, p. 2.

40 Observations submitted by the State on April 14, 2005, p. 3.

41 Observations submitted by the State on April 14, 2005, p. 5.

42 Refer to paragraph 20 of this report.

43 Observations submitted by the State on April 14, 2005, p. 4.

44 Observations submitted by the State on April 14, 2005, p. 4.

State went on to say that even so, "the *Ministerio Público* is continuing to take steps to [determine] the whereabouts of Antonio González Méndez." ⁴⁵

34. As to the admissibility of the petition, the State argued that pretrial investigation AL41/SJI/030/99 opened by the Chiapas Office of the Attorney General is ongoing, ⁴⁶ and so domestic remedies have not been exhausted. With regard to the allegations of the petitioners that this criminal process is not a remedy that must be exhausted, ⁴⁷ the State argued that "the pretrial investigation is the means contemplated in Mexican law to locate the whereabouts of Antonio González, and, if appropriate, determine probable responsibility for an alleged forced disappearance." ⁴⁸ On this point, the State added that the pretrial investigation is an act of judicial protection [as established in Article 25 of the American Convention] and a way of determining the party or parties responsible for the disappearance." ⁴⁹ Therefore, since the pretrial investigation is still pending in the country, this petition is not admissible.

35. As for the arguments by the petitioners to the effect that the *amparo* procedure is ineffectual in the Mexican legal system, since it is neither adequate nor effective to obtain the appearance of Antonio González Méndez before the competent authorities, ⁵⁰ the State maintained that "the writ of *amparo* is the protective recourse par excellence for the individual rights established in the Federal Constitution [...] since the writ of *amparo* covers both strictly constitutional conditions, such as control of legality, and even goes further than *habeas corpus*." ⁵¹ The State argued that in the case under review, the federal official who considered *amparo* writ 238/99 "dismissed it on the grounds that the previous reports provided by the allegedly responsible authorities denied the act on the grounds that they neither had him at their disposal nor knew the whereabouts of Antonio González Méndez." ⁵²

IV. ANALYSIS ON ADMISSIBILITY

A. Personal, territorial, temporal, and subject matter jurisdiction of the Commission

36. Article 44 of the American Convention establishes that "Any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party." Therefore, the petitioners are authorized to lodge a petition with the Inter-American Commission, and consequently the IACHR has personal jurisdiction in this case.

37. The State has been a party to the American Convention since March 24, 1981, the date on which it deposited its relevant instrument of ratification. Since the petitioners allege violations of the rights established in the Convention, the IACHR has subject matter jurisdiction in the case under consideration.

38. The Commission has territorial jurisdiction, because the human rights violations occurred within a State Party to the American Convention. Likewise, the Commission has temporal jurisdiction, by virtue of the fact that on the date the

45 Observations submitted by the State on April 14, 2005, p. 4.

46 Observations submitted by the State on April 14, 2005, p. 8.

47 Refer to paragraph 23 of this report.

48 Observations submitted by the State on April 14, 2005, p. 5.

49 Observations submitted by the State on April 14, 2005, p. 4.

50 Refer to paragraph 24 of this report.

51 Observations submitted by the State on April 14, 2005, p. 5.

52 Observations submitted by the State on April 14, 2005, p. 6.

alleged acts began, the obligation to respect and guarantee the rights protected in the American Convention was already in effect in the State of Mexico.

B. Other admissibility requirements

1. Exhaustion of domestic remedies

39. Article 46(1) of the American Convention establishes that in order for a complaint to be admissible pursuant to the terms of Article 44 of the Convention, the petitioners must have exhausted domestic remedies, in accordance with the generally recognized principles of international law. This requirement has been consistently upheld as a procedural requirement in the Commission's jurisprudence, because it permits states to take cognizance of alleged violations of a right protected by the American Convention, and if relevant, it gives them an opportunity to rectify them in their courts, before the intervention of the subsidiary jurisdiction of an international body.

40. The IACHR observes that in the case in point, the petitioners filed a writ of *amparo* or constitutional protection of rights on March 17, 1999, registered as No. 238/99. That writ was not allowed, pursuant to the decision of March 31, 1999, on the grounds that the petitioners did not indicate the place where the directly injured party was being held.⁵³ The petitioners also lodged a complaint with the *Ministerio Público*.

41. With regard to the *amparo* writ, the IACHR notes that it was filed for the purpose of learning the whereabouts of the alleged victim, since in the Mexican legal system, a writ of *amparo* is equivalent to a writ of *habeas corpus*. The Inter-American Court has maintained that "exhibition of the person or *habeas corpus* is normally the adequate [recourse] for finding a person detained by the authorities, determining if the person is being held legally, and, if applicable, providing for his or her release [...]." ⁵⁴ In such circumstances, *habeas corpus* performs a critical function in a case of forced disappearance, since "it can be an effective recourse for locating the whereabouts of a person or clarifying if there is a situation injurious to a person's freedom, despite the fact that the person in whose favor the writ is filed is not in the custody of the State, but has instead been placed in the custody of an individual, or despite the fact that a long period of time has elapsed since the person disappeared."⁵⁵

42. However, the petitioners also lodged a complaint with the *Ministerio Público*; here, reference should be made to the pretrial investigation opened in response to that complaint on January 24, 1999. According to both parties, that investigation is still open, in a preliminary stage, eight years following the disappearance of Antonio González Méndez, without producing conclusive results on the possible whereabouts of Mr. González Méndez and the possible motives of his disappearance.

43. On this point, the IACHR notes that the rule of exhaustion of domestic remedies has exceptions established in Article 46(2), which states that this rule is not applicable when the domestic legislation does not have a remedy for protection of the right recognized in the American Convention, or if the alleged victim was denied access to the domestic remedies, or if there was an unwarranted delay in rendering a judgment under said remedy. Article 31(3) of the Commission's Rules of Procedure stipulates that when the petitioner alleges one of the exceptions to the rule of

53 Writ of *amparo* 238/99, Resolution of March 31, 1999.

54 I/A Court H.R., *Velásquez Rodríguez Case*. Judgment of July 29, 1988. Series C, No.4, para. 65.

55 I/A Court H.R., *Case of the Serrano Cruz Sisters*. Judgment of March 1, 2005. Series C, No. 120, para. 79.

exhaustion of domestic remedies, it is up to the State to demonstrate that the domestic remedies have not been exhausted, unless that is clearly evident from the record.

44. In situations such as the one described herein, the case law of the inter-American system has established that the State that alleges that its domestic remedies have not been previously exhausted must, before approaching the international system of protection, indicate the appropriate remedies to rectify the damages and provide proof of their effectiveness.⁵⁶

45. As regards the writ of *amparo* filed by the petitioners, the IACHR considers that this recourse is equivalent to a writ of *habeas corpus* under Mexican law. In this case, the IACHR notes that this writ was filed for the purpose of learning the whereabouts of the alleged victim, but it was rejected *in limine* because it did not provide information that would make it possible to establish the place where Antonio González Méndez was presumably being detained. Therefore, the IACHR is of the view that despite the fact that *habeas corpus* is the adequate recourse to determine the whereabouts of a presumably disappeared person, in the present case, this recourse was not capable of guaranteeing the protected right for which it was conceived, and for this reason the petitioners opened a pretrial investigation. On this matter, the Inter-American Court has maintained that "use of the remedy of *habeas corpus* does not rule out a possible criminal proceeding based on the information sought in it."⁵⁷

46. The Commission holds that states, pursuant to their international obligations, have the duty to investigate incidents denounced and, if appropriate, to prosecute the responsible parties. In the procedure before the Commission, the State did not justify why the investigations remain open in their initial stage, even though that is part of its obligations. On this point, the Inter-American Court has upheld that "the duty to investigate is an obligation of means, not results. It must be performed by the State as one of its duties under the law, and not as a mere formality doomed in advance to be unproductive."⁵⁸In other words, "[...] once State authorities take cognizance of a matter, they must *ex officio* and without delay, conduct a serious, impartial, and effective investigation."⁵⁹

47. Without prejudice to the merits of the case, the IACHR concludes that the writ of *amparo* filed by the petitioners was the appropriate recourse to locate the whereabouts of a presumably disappeared person. However, in the case under consideration, that recourse proved to be ineffectual, due to the requirement stipulated in Mexican legislation that the place of detention be indicated. The Commission further notes that in this case, the petitioners filed a complaint with the Mexican authorities, which opened pretrial investigation AL/41/SJI/030/99, which is

56 IACHR, Report Nº 55/06, petition 12.380, Admissibility, Members of the "José Alvear Restrepo" Collective Corporation of Attorneys, Colombia, July 20, 2006, para. 36; Report Nº 32/05, petition 642/03, Admissibility, Luis Rolando Cuscul Pivaral and other persons affected by HIV/AIDS, Guatemala, March 7, 2005, paras. 33-35; I/A Court H.R., *Case of the Mayagna (Sumo) Awas Tingni Community, Preliminary Objections*. Judgment of February 1, 2000. Series C No. 66. para. 53; *Durand and Ugarte Case, Preliminary Objections*. Judgment of May 28, 1999. Series C No. 50, para; and, *Cantoral Benavides Case, Preliminary Objections*. Judgment of September 3, 1998. Series C, No. 40, para. 31.

57 I/A Court H.R., *Case of the Serrano Cruz Sisters*. Judgment of March 1, 2005. Series C, No. 120, para. 82.

58 I/A Court H.R., *Case of Penal Miguel Castro Castro*. Judgment of November 25, 2006, Series C No. 160. para. 255; *Case of Ximenes Lopes*. Judgment of July 4, 2006. Serie C No. 149, para. 148; *Case of the Ituango Massacres*, judgment of July 1, 2006. Series C No. 148, para. 296; *Case of Baldeón García*. Judgment of April 6, 2006, Series C No. 147, para. 93.

59 I/A Court H.R., *Case of Penal Miguel Castro Castro*. Judgment of November 25, 2006. Series C No. 160. para. 256; *Case of Goiburú et al.* Judgment of September 22, 2006. Series C No. 153, para. 117; *Case of Baldeón García*. Judgment of April 6, 2006, Series C No. 147, para. 93; *Case of fthe Massacre of Pueblo Bello*. Judgment of January 31, 2006. Series C No. 140, para. 144.

still in its initial stage approximately eight years later. Therefore, the Commission concludes that the exception of unwarranted delay stipulated in Article 46(2) of the American Convention applies.

2. Deadline for presentation of petitions

48. Pursuant to Article 46(1)(b) of the American Convention, in order for a petition to be admitted and considered by the Commission, it must be lodged within a period of six months from the most recent judicial decision. However, Article 46(2) of the American Convention establishes exceptions to the rule of presentation within a period of six months. In this case, the IACHR concludes that the present case is covered by the exception established in Article 46(2)(c), or in other words, there is an "unwarranted delay in rendering a final judgment under the aforementioned remedies."

49. By virtue of the provisions of Article 32(2) of the IACHR Rules of Procedure referring to the case of an exception to the requirement of exhaustion of domestic remedies, the petition must be presented within a reasonable period of time, as determined by the Commission. In accordance with this Article, the Commission will include in this analysis "[consideration of] the date on which the alleged violation of rights occurred and the circumstances of each case."

50. In the present case, the Commission has concluded that application of the exception to the requirement of exhaustion of domestic remedies is appropriate, due to the unwarranted delay in rendering a judgment. Thus, the IACHR must analyze whether the petition was lodged within a reasonable period of time, in accordance with the specific circumstances of the situation under consideration.

51. The Commission notes that the petition was lodged on August 10, 2000, approximately one year following the events in question, and after various legal actions were pursued by the petitioners with a view to clarifying the matter,⁶⁰ all of which proved to be of no assistance in determining the whereabouts of the alleged victim. The IACHR concludes that one year following the alleged disappearance of the presumed victim is a reasonable period of time.

3. Duplication of international proceedings and *res judicata*

52. Article 46(1)(c) establishes that admission of petitions is subject to the requirement that the subject of the petition "is not pending in another international proceeding for settlement," and Article 47(d) of the Convention stipulates that the Commission shall consider inadmissible any petition that "is substantially the same as one previously studied by the Commission or by another international organization." In the case in point, neither of these two causes of inadmissibility apply to the action by the parties, nor can they be deduced from procedures.

4. Characterization of the alleged facts

53. It is the responsibility of the Inter-American Commission to determine whether the acts described in the petition characterize violations of the rights established in the American Convention, pursuant to the requirements of Article 47(b), or whether the petition, pursuant to Article 47(c), should be denied as "manifestly groundless" or "obviously out of order." In this procedural stage, it is the duty of the IACHR to make a *prima facie* assessment, not for the purpose of establishing alleged violations of the American Convention, but rather to examine

⁶⁰ See paragraphs 14, 15, and 22 of this report.

whether the petition reports acts that could potentially constitute violations of rights protected by the American Convention. This analysis does not entail prejudgment, nor does it have a bearing on the merits of the case.

54. According to the analysis of statements by the two parties, the Commission does not find the allegations of the petitioners to be “manifestly groundless” or “obviously out of order.” If proven to be true, they could constitute violations of rights established in the American Convention, in its Articles 4, 5, 7, 8, 25, and 2, which refer to the right to life, right to humane treatment, right to personal liberty, right to a fair trial, right to judicial protection, and the obligation to adopt domestic legislation to give effect to Article 1(1) of this international instrument.

55. Forced disappearance is “an illicit act that generates a multiple and continuous violation of various rights protected by the American Convention and puts the victims in a situation of complete defenselessness, entailing other related crimes. [...] In brief, it is a crime against humanity that involves crass abandonment of the essential principles underlying the inter-American system.”⁶¹ In light of the foregoing, without prejudging the merits of the case, the presumed disappearance of Antonio González Méndez, allegedly at the hands of members of the “Justicia y Paz” Organization, would, if the alleged acts are proven, constitute a violation of the right to life, the right to humane treatment, and the right to personal freedom established in Articles 4, 5, and 7 of the American Convention.

56. Similarly, in accordance with the case law of the inter-American system, the alleged forced disappearance of a person entails a violation of the right contained in Article 3 of the American Convention.⁶² Based on the principle of *iura novit curiae*, which establishes the “duty to apply the relevant legal provisions in a case, even when the parties do not expressly evoke them,”⁶³ the IACHR, without prejudice to the merits of the case, finds the complaint alleging a violation of the right to recognition before the law to be admissible.

57. As for the right to a fair trial and judicial protection contained in Articles 8 and 25 of the American Convention, respectively, the jurisprudence of the organs of the inter-American system has established that whenever a crime prosecutable by law is committed, the State has the obligation to initiate and support the criminal proceeding to its final consequences.⁶⁴

58. With regard to the alleged violation of the duty to adopt the domestic legal provisions stipulated in Article 2 of the American Convention, the Commission

61 I/A Court H.R., *Case of Goiburú et al.* Judgment of September 22, 2006. Series C No. 153, para. 82; *Case of Gomez Palomino.* Judgment of November 22, 2005. Series C No. 136, para. 92; *Case of the Serrano Cruz Sisters, Preliminary Objections.* Judgment of November 23, 2004. Series C No. 118, paras. 100-106; *Case of Molina Theissen.* Reparations (Art. 63.1, American Convention on Human Rights). Judgment of July 3, 2004. Series C, No. 108, para. 41; and *Case of the 19 Merchants.* Judgment of July 5, 2004. Series C No. 109, para. 142.

62 I/A Court H.R., *Case of Bámaca Velásquez.* Judgment of November 25, 2000, Series C No. 70, paras. 180 and 181. Moreover, in its judgment issued in response to a state recognition on January 26, 2000, the Inter-American Court declared that the respondent state had violated Article of the American Convention in the case of the forced disappearance of José Carlos Trujillo Oroza, as follows:

[t]he Court considers [...] that, as expressly recognized by the State, it incurred international responsibility for violations of rights protected by Articles 3 (right to juridical personality), 4 (right to life), 5.1 and 5.2 (right to humane treatment, (right to personal liberty), 8.1 (right to a fair trial), and 25 (right to judicial protection), considered in light of Article 1.1 (obligation to respect rights), all of which are contained in the Convention, to the detriment of the persons cited in paragraph 1 of the judgment, [...], Inter-American Court, *Case of Trujillo Oroza vs. Bolivia*, judgment of January 26, 2000, Series C No. 64; para. 41.

63 I/A Court H.R., *Case of Hilaire, Constantine y Benjamin, et al.* Judgment of June 21, 2002. Series C No. 94, para. 107.

64 I/A Court H.R., *Case of Baldeón García.* Judgment of April 6, 2006, Series C No. 147; *Case of the Massacre of Pueblo Bello.* Judgment of January 31, 2006. Series C No. 140; Also refer to Report N° 52/97, Case 11218, *Arges Sequeira Mangas*, 1997 IACHR Annual Report.

notes that the petitioners did not allege the violation of this obligation. However, the IACHR will consider the presumed violation of Article 2 of the American Convention, in light of the principle of *iura novit curiae*, which establishes the “duty to apply the relevant legal provisions in a case, even when the parties have not expressly invoked them.”⁶⁵ In this regard, the IACHR finds that the writ of *amparo*, as a means of protection in the case of forced disappearance, may, *prima facie*, prove to be ineffective, in consideration of Articles 17 and 117 of the *Amparo* Law.⁶⁶ In forced disappearance cases, the function of the recourse of exhibition of the person is to learn the whereabouts of the allegedly disappeared person. On this point, the Inter-American Court has maintained as follows:

[I]f the recourse of exhibition of the person requires [...] identification of the place of detention and the pertinent authority, it would not be appropriate for finding a person clandestinely detained by state agents, since, in those cases, there is only referential evidence of detention and the whereabouts of the victim are unknown.⁶⁷

59. With regard to the violation of the right to protection of the family alleged by the petitioners, the IACHR recognizes that the right to family life includes both positive and negative action by the State, and that any intervention must be justified and must strike a balance between the general interest of a community and the interest of the persons concerned.⁶⁸ In this case, there is neither factual or legal evidence that would allow the IACHR to determine that the State had undertaken action (both positive and negative) for the purpose of violating the right to protection of the family, to the detriment of Antonio González Méndez and his family.

60. By virtue of the functions established in Article 41 of the American Convention and Article 37 of the IACHR’s Rules of Procedure, the Commission declares the petition under consideration admissible for the alleged violations of the rights contained in Articles 3, 4, 5, 7, 8, and 25 and the obligation contained in Article 2 of the American Convention, considered in relation to Article 1(1) of that international instrument, and declares the petition inadmissible with respect to the right established in Article 17 of the American Convention. Without prejudging the merits of the case, the Commission finds that the requirements established in Articles 47(b) and 47(c) of the American Convention have been met.

V. CONCLUSION

65 Inter-American Court, *Case of Hilaire, Constantine y Benjamin, et al.* Judgment of June 21, 2002. Series C No. 94, para. 107.

66 Article 17 of the *Amparo* Law establishes: “In the case of In the case of acts that entail the danger of deprivation of life, attacks on personal freedom outside judicial proceedings, deportation, or exile, or any of the acts prohibited by Article 22 of the Federal Constitution, and the injured party is unable to file a writ of *amparo*, any other person may do so on his behalf, even if the person is a minor. In that case, the judge shall order any measures needed to ensure the appearance of the injured party and, in whatever circumstances, shall rule that the *amparo* writ must be reiterated within a period of three days; if the interested party reiterates it, the writ will be processed; if it is not reiterated, the writ will be considered as never having been filed, and the measures ordered shall be considered null and void. For its part, Article 117 states: “In the case of In the case of acts that entail the danger of deprivation of life, attacks on personal freedom outside judicial proceedings, deportation, or exile, or any of the acts prohibited by Article 22 of the Federal Constitution, , the petition shall be admitted on condition that it contains the following information: the act that is the subject of the complaint; the authority that ordered it, if possible the initiating party; the place where the injured party is located; and the authority or agent that is executing or attempting to execute the act. In such cases the request may be made by appearing before a judge, with the proceeding recorded for that purpose.

67 I/A Court H.R., *Velásquez Rodríguez Case*. Judgment of July 29, 1988. Series C No. 4, para. 65.

68 IACHR, Petition in the *case of Ernestina and Erlinda Serrano Cruz* (Case 12132), El Salvador, June 14, 2003. On this point, refer to the European Court of Human Rights, *X and Y vs. the Netherlands*, judgment of March 26, 1985, para. 23; *López Ostra v. Spain*. Judgment of December 9, 1994, para. 51, in fine; *McGinley and Egan v. United Kingdom*. Judgment of June 9, 1998, para. 98; *Guerra et al. v. Italy*. Judgment of February 19, 1998, para. 58.

61. The Commission concludes that this petition is admissible and that it has jurisdiction to examine the complaint filed by the petitioners regarding the alleged violations of the rights contained in Articles 3, 4, 5, 7, 8, and 25 of the American Convention, and the obligation established in Article 2 of that international treaty, all to be considered in relation to the obligations stemming from Article 1(1) of the Convention.

62. The IACHR concludes that this case is inadmissible insofar as the right contained in Article 17 of the American Convention is concerned.

63. On the basis of the arguments of fact and of law set forth in this report, and without prejudice to the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this petition admissible in relation to the rights contained in Articles 3, 4, 5, 7, 8, and 25 of the American Convention, and the obligation established in Article 2 of that international instrument, all considered in relation to Article 1(1) of the Convention.

2. To declare the petition inadmissible in relation to the right contained in Article 17 of the American Convention.

3. To forward this report to the petitioners and to the State.

4. To continue its analysis of the merits of the case.

5. To publish this report and include it in the Commission's Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 17th day of the month of October, 2007. (Signed): Florentín Meléndez, President; Sir Clare K. Roberts, Evelio Fernández Arévalos, and Freddy Gutiérrez, Members of the Commission.
