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REPORT No. 178/18
PETITION 1522-08
REPORT ON ADMISSIBILITY

HÉCTOR RENÉ REYES PÉREZ AND FAMILY
GUATEMALA

Electronically approved by the Commission on December 26, 2018.

Cite as: IACHR, Report No. 178/18. Petition 1522-08. Admissibility. Petition 1522-08. Guatemala.
December 26, 2018.



I. INFORMATION ABOUT THE PETITION

Petitioner:	Sergio Fernández Morales Alvarado (Human Rights Ombudsman from Guatemala)
Alleged victim:	Héctor René Reyes Pérez and family ¹
State denounced:	Guatemala
Rights invoked:	Articles 4 (life), 5 (personal integrity), 7 (personal liberty), 8 (judicial guarantees), and 25 (judicial protection) of the American Convention on Human Rights, ² in relation to its Article 1.1 and Article I of the Inter-American Convention on Forced Disappearance of Persons

II. PROCEDURE BEFORE THE IACHR³

Filing of the petition:	December 29, 2008
Notification of the petition to the State:	March 25, 2015
State's first response:	July 9, 2015
Additional observations from the petitioner:	December 22, 2016

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes, the American Convention (instrument deposit made on May 25, 1978) and the Inter-American Convention on Forced Disappearance of Persons (instrument deposit made on February 25, 2000)

IV. ANALYSIS OF 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 (recognition of legal personality), 4 (life), 5 (personal integrity), 7 (personal liberty), 8 (judicial guarantees), 13 (freedom of expression), 16 (freedom of association), and 25 (judicial protection) of the American Convention on Human Rights in relation to its Article 1.1 and Article I of the Inter-American Convention on Forced Disappearance of Persons
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, exception under Article 46.2 c) of the ACHR applies
Timeliness of submission:	Yes, under the terms of Section VI

¹ Floridairma Toledo Chávez (wife), Karen Lorena Reyes Chávez (daughter), Floridairma Elizabeth Reyes Chávez (daughter), Bianca Natalí Reyes Toledo (daughter), Rosa Esther Reyes Toledo (daughter), René Eustaquio Reyes Toledo (son), Alex Rainel Reyes Toledo (son), and Mónica Aimé Reyes Toledo (daughter).

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

³ The observations presented by each party were duly forwarded to the opposing party.

V. ALLEGED FACTS

1. The petitioner claims that Mr. Héctor René Reyes Pérez (hereinafter, “Mr. Reyes” or “the alleged victim”) was seen alive for the last time on September 5, 2003, when he left in a car with a security officer of the country house where he worked. From that date and in spite of the procedures carried out by his relatives, the people responsible for his disappearance have not been identified or punished, and his corpse was not found or judicially identified.

2. The petitioner indicates that Mr. Reyes, aged 52, worked and lived with his wife and six of his children in the country house Finca Nueva Linda, located in the city of Retalhuleu. This country house was the property of a planter family, who also owned several country houses in the country’s Southern region. He also indicates that the alleged victim was a community leader, member of the “Mayas sin Tierra” movement, which aimed at demanding the government for collective farming land and houses for the farmers in the area. Likewise, he said that during the months prior to his disappearance, Mr. Reyes had experienced several tension situations with the owners of the country house and with one of the private security officers, Mr. Víctor Chinchilla (hereinafter, “Mr. Chinchilla”), due to administrative matters regarding the country house. Moreover, he indicated that even during the investigations after the facts, Mr. Reyes’ wife declared that five days before his alleged disappearance, Mr. Chinchilla had threatened him with death. In general terms, the petitioner alleges that these facts are within the framework of labor violence and exploitation, which has historically governed the relationships among farmers of the Southwestern region of Guatemala and the country houses’ owners.

3. Regarding the chronology of the facts, the petitioner claims that on September 5, 2003, around 4:00 a.m., Mr. Chinchilla showed up at the presumed victim’s house, allegedly complying with the country house’ owner’s orders of taking him to another of his country houses, located in Esquintla Department, to work. Mr. Reyes got dressed, gave some instructions to the workers he was in charge of, and left together with Mr. Chinchilla in a red Toyota Hilux pick-up truck. From that moment until now, his whereabouts are still unknown.

4. In view of the alleged victim's absence, on the next day, his wife called Mr. Chinchilla to ask him where he had left her husband, but he said that “she had better not piss him off, because he had dropped him off at Retalhuleu terminal on September 5, at 10:00 a.m.” On the same day, September 6, 2003, the alleged victim’s wife, Ms. Floridalma Toledo went to the Citizens Services Bureau of the Sub-Station 34-11 of Retalhuleu’s National Civil Police (hereinafter, “PNC”) to report her husband’s disappearance. During the subsequent days, Mr. Chinchilla was summoned by the Public Ministry to provide statements, through which he said that he was not aware of the alleged victim’s whereabouts and that he had left to the United States with a lover.

5. The petitioner says that Mr. Reyes’ family and the farmers’ movement he belonged to blame Mr. Chinchilla for being the perpetrator of his murder and the country house’s owners for being the masterminds. Regarding the investigation, he claims that nobody has been accused of Mr. Reyes’ disappearance; and that throughout the investigation, five public prosecutor's offices have been successively in charge of the case, being Retalhuleu’s public prosecutor's office the one currently conducting the investigation. The petitioner alleges that these changes of public prosecutor's offices were unjustifiably carried out as ordered by the Attorney General of the Republic.

6. The petitioner indicates that the PNC, on its corresponding report of October 15, 2003, considered that Mr. Chinchilla and the owners of the country house where the alleged victim worked at were the main suspects; and that in December 2003, after the information requirements ordered by Retalhuleu’s public prosecutor's office, the Directorate-General for Migration certified that the alleged victim never left the country. Later on, between July and December 2005, several processes were carried out in relation to the vehicle in which Mr. Reyes was seen for the last time, that had five firearm bullet entry holes and that the second Luminol test conducted on this vehicle turned out to be positive; however, there has been no follow-up on these findings. Likewise, the petitioner alleges that in December 2005, the prosecutor in charge of the case took statements from an anonymous witness, who indicated that days after Mr. Reyes’ disappearance, a corpse was

found on a hill of that region, and that it might be the presumed victim's corpse because of the clothes and the jewels it carried; however, that investigation was filed without making any decisions on the matter and without even verifying if the necropsy and the death certificate were linked to Mr. Reyes' disappearance. These are some examples of a long list of procedures and tests that were not carried out by the corresponding public prosecutor's offices, among other alleged irregularities.

7. The petitioner alleges that the State has not guaranteed the rights to an effective remedy and to be heard by a competent and impartial court within a reasonable term, and that the investigating bodies were not impartial and willing to discover the facts' material truth. In this sense, he cites several reports of bodies in charge of monitoring human rights matters, such as the report issued on June 15, 2004, by the Assistant Human Rights Procurator in Retalhuleu, Alexander Toro Maldonado, which includes in its findings the absence of investigation and refusal of justice regarding Mr. Reyes' disappearance; and that these same conclusions were also reached by the Human Rights Commission of the National Congress in one of its reports (dateless) relative to the violence facts occurred at the country house where the alleged victim worked. These documents are included in the petition's case file.

8. In addition, he says that from Mr. Reyes' disappearance, his relatives and acquaintances have been the victims of multiple threats and intimidation by the country house's owner and his security officers. These facts, which are detailed in the petition, were not allegedly investigated or punished by the competent authorities. The petitioner indicates that, in the context of the events, the culprits acted with the State's acquiescence, with its tacit consent due to the inactivity of the authorities in charge of serious violent acts perpetrated by local power groups. And that because of this general passivity, the perpetrators previously knew that the authorities would not persecute them; therefore, the petitioner says that they acted with the State's acquiescence.

9. Furthermore, the Guatemalan State considers that this petition is inadmissible due to the absence of exhaustion of judicial domestic remedies, since, according to its only communication of July 9, 2015, the domestic criminal proceeding is still at the investigation stage before the Public Ministry. In this sense, it indicates that no supporting evidence was found so as to lodge an accusation and initiate proceedings against people who might be responsible for the reported events. The State indicates that, during the investigation, several procedures and interventions were carried out so as to clarify the facts and that it was not possible to prosecute the people responsible so far, since there are no sufficient elements allowing to clarify the facts related to Mr. Reyes' disappearance, to locate his whereabouts, and to eventually individualize the culprits.

10. The State also claims that if the alleged victims considered that there was an unjustified delay in the processing of the criminal action, they had a series of rights and controls included in the domestic regulations with the aim of effectively dealing with the said circumstance, propelling the judicial investigation. It says that favorable decision has been taken on the procedural actions and remedies directly filed for by the alleged victims and their legal guardians, and that they were never refused the right to an effective remedy.

11. Regarding the petition's substantive matters, the State considers that this is not a forced disappearance, since, in its view, it was not possible to prove the participation in the event of state officials or people who had acted with the State's authorization, support, or acquiescence. The foregoing is also based on the fact that the investigations are still in force and that there is no legal certainty so far regarding the culprit of the alleged illegal act.

12. Furthermore, the State alleges that "there is no certification proving that the named surviving victims were aware of the complaint remitted to the IACHR, much less that they had given their consent or authorization to be represented by the Human Rights Ombudsman." The foregoing, based on the fact that, in its view, all the alleged victims had to sign the petition.

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

13. The petitioner claims that this petition is admissible, based on the exceptions to the exhaustion of domestic remedies requirement, established in Articles 46.2.b (impediment to exhaust domestic remedies) and 46.2.c (unjustified delay in the resources' resolutions) of the American Convention, based on the reasons related to the alleged negligence and idleness of the judicial authorities and the absence of access to justice of the alleged victims. Furthermore, the State alleges that the exhaustion of domestic remedies requirement is not fulfilled, since, as it acknowledges, it is still at the investigation stage in charge of the Public Ministry through its corresponding public prosecutor's offices.

14. In this case, the Commission observes that the alleged disappearance of the presumed victim took place on September 5, 2003, and that this event was reported to the police by his wife, Ms. Floridalma Toledo, on the following day. Likewise, it observes that, as the State itself recognizes, the said investigation was at its investigation stage in charge of the Public Ministry, at least until March 25, 2015, without having identified or punished the culprits. In this sense and taking into account that this is a fact consisting of potential serious violations of rights, such as life and personal integrity, the Commission considers that the State should have earnestly assumed the said investigation as its own legal duty and propel it on its own motion. Likewise, in view of the State's pleadings regarding the alleged burden of the presumed victims to accelerate and propel the proceeding, through existing legal mechanisms to that end, the Commission reiterates that in the procedural regimes in which the victims or their relatives might have the authentication so as to intervene in criminal proceedings, its enforcement is not mandatory but optional, and the state action is not replaced in any way, since every time a prosecutable crime on its own motion is committed, such as homicide, the State is the one obliged to promote and propel the criminal action.⁴ Therefore, the fact that more than eleven years have passed without the said investigation surpassing its initial investigation stage constitutes an exception to the exhaustion of domestic remedies in the terms of Article 46.2.c of the American Convention.

15. Regarding the submission term, the Commission observes that the facts reported took place from September 5, 2003, that the petitioners filed the corresponding complaint on the day after the presumed victim's disappearance, and that the consequences of the said facts, such as the absence of investigation and punishment to the culprits, as well as the absence of their reparation, still remain to date. In this way, taking into account that this petition was submitted on December 29, 2008, the Inter-American Commission considers that the petition was submitted within a reasonable period, under the terms of Article 32.2 of the IACHR's Rules of Procedure, according to Article 46.1.b of the American Convention.

VII. COLORABLE CLAIM

16. Considering the findings of fact and law filed by the parties and the nature of the matter brought to its attention, the IACHR considers that, if proven, the pleadings relative to Mr. Héctor Reyes' disappearance might constitute violations to the rights established in Articles 3 (recognition of legal personality), 4 (life), 5 (personal integrity), 7 (personal liberty), 8 (judicial guarantees), 13 (freedom of expression), 16 (freedom of association), and 25 (judicial protection) of the American Convention, in relation to its Article 1.1 and Article I of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Mr. Reyes. As well the rights established in Articles 5 (personal integrity), 8 (judicial guarantees), and 25 (judicial protection) of the American Convention, in relation to its Article 1.1 to the detriment of his family duly individualized in this report. Likewise, the Commission observes, regarding the context of the events, that the State does not question Mr. Reyes' role of community leader as a member of the "Mayas sin Tierras" movement.

VIII. DECISION

1. To declare the present petition admissible, regarding Articles 3, 4, 5, 7, 8, 13, 16, and 25 of the American Convention in relation to its Article 1.1;

2. To declare the present petition admissible, regarding Article I of the Inter-American Convention on Forced Disappearance of Persons, and

⁴ IACHR, Report No. 33/18. Admissibility. Amanda Graciela Encaje and family. Argentina. May 4, 2018, para. 12.

3. To notify the parties of the present decision; to continue analyzing the matter, 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 26th day of the month of December, 2018. (Firmado): Margarete May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice-President; Luis Ernesto Vargas Silva, Second Vice-President; Francisco José Eguiguren Praeli, Joel Hernández García, Antonia Urrejola y Flávia Piovesan, Members of the Commission.