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REPORT No. 349/21
PETITION 1557-11
REPORT ON ADMISSIBILITY

FRANCISCO ARNULFO VENTURA REYES AND JOSÉ HUMBERTO MEJÍA
EL SALVADOR

Approved electronically by the Commission on November 22, 2021.

Cite as: IACHR, Report No. 349/21, Petition 1557-11. Admissibility. Francisco Arnulfo Ventura Reyes and José Humberto Mejía. El Salvador. November 22, 2021.

I. INFORMATION ABOUT THE PETITION

Petitioner:	José Benjamín Cuéllar Martínez, Javier Alberto Melgar Molina, Silvia Patricia Cuéllar Iraheta, Human Rights Institute of the Universidad Centroamericana "José Simeón Cañas" (IDHUCA)
Alleged victim:	Francisco Arnulfo Ventura Reyes and José Humberto Mejía
Respondent State:	El Salvador
Rights invoked:	Articles 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial) and 25 (judicial protection) of the American Convention on Human Rights ¹ in relation to its article 1.1 (obligation to respect rights)

II. PROCEEDINGS BEFORE THE IACHR²

Filing of the petition:	November 4, 2011
Notification of the petition to the State:	December 14, 2017
State's first response:	May 21, 2018
Additional observations from the petitioner:	August 30, 2018

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 June 23, 1978)

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

Duplication of procedures and International <i>res judicata</i>:	No
Rights declared admissible	Articles 3 (juridical personality), 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), and 25 (judicial protection) of the American Convention, in relation to its articles 1.1 (obligation to respect rights) and 2 (obligation to abide by domestic legal effects)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, in the terms of section VI
Timeliness of the petition:	Yes, in the terms of section VI

¹ Hereinafter "the American Convention".² The observations submitted by each party were duly transmitted to the opposing party.

V. FACTS ALLEGED

1. The petitioner party claims the forced disappearance of Francisco Arnulfo Ventura Reyes and José Humberto Mejía (hereinafter, jointly, "the alleged victims") and the subsequent impunity.

2. The petitioner narrates that between 1980 and 1991 a war took place in El Salvador between the government's armed forces and insurgents, during which over seventy-five thousand extrajudicial executions of the non-fighting civilian population were perpetrated as well as over eight thousand forced disappearances; and severe and systematic human rights violations such as arbitrary detentions and torture, which also produced countless victims. The petitioner party refers also that in January 1992, after the end of the war, a Commission for Truth was created, whose report holds that the list of severe human rights violations was part of a systematic State policy in a context of exacerbated political violence; and that the pressure from the State officially assimilated the concept of political opponent with subversive and enemy, for which reason any person who in some way were to question the government was considered a "terrorist delinquent" and had to be either eliminated or submitted.

3. The petitioner party narrates that Francisco Arnulfo Ventura Reyes was a student of the School of Jurisprudence and Social Studies of the Universidad de El Salvador, when on January 22, 1980 he participated in a popular manifestation which went from said School to downtown San Salvador, and which was then violently dissolved by security forces. When returning to the university accompanied by another student, José Humberto Mejía, they were both arrested at one of the doors of the United States Embassy by members of the National Guard and by American military who guarded the diplomatic representation. The petitioner party holds that the security agents took the students to the parking lot, where they remained some minutes under the surveillance of Salvadorian military; and shortly after both men were handed over to some men who were wearing olive green pants, military style, and civil shirts. They were put into the trunk of a private vehicle in the parking lot and that was the last time they were seen.

4. The petitioner party also holds that Santos René Ventura Reyes, brother of Francisco, conducted different actions to look for the missing students as of the afternoon of that very January 22, 1980, including the filing of habeas corpus remedy. The lawyers of the family informed that the Director of the International Communications Agency and the Chief of Security of said diplomatic quarters agreed in manifesting that they had knowledge of the capture, but that no American military had participated in it; that it had been the members of the National Guard who were guarding the Embassy who took the students into the patio for purposes of recording and kept them in said place; and that shortly after they were taken out of the embassy in a private vehicle by agents of the same security body.

5. According to the petitioner, said affirmations on the capture were proven false before the lawyers of the family by the at the time Commander of the National Guard. In those days a claim was filed before the Second Criminal Court of San Salvador for the disappearance of the students, proceedings at which their families declared; said court requested information to the United States Embassy with no response whatsoever. On January 22, 1980 the Supreme Court of Justice forwarded a certification to the Second Criminal Judge to order a process pursuant to finding out the whereabouts of the missing youth. However, at the first hour of the following day the Attorney General of the Poor was murdered at his home by a military commando and a death squadron.

6. No remedy whatsoever was filed after this event, although the families of the alleged victims kept looking for them, even amongst the bodies which appeared in the streets of San Salvador. They also undertook several actions looking for information, inter alia, visits to the offices of the Red Cross International Committee; letters to officials of the American Embassy; and the aforesaid habeas corpus remedy. However, they were unable to locate the alleged victims.

7. In conclusion, the petitioner party claims that the alleged victims were subjected to arbitrary detention, torture and forced disappearance; and that no criminal casefile was ever opened to establish the truth of the facts, including the identification of the material and intellectual authorship. Santos René Ventura Reyes once again claimed for the forced disappearance of his brother at the Attorney General of the Republic

on April 7, 2010; one year later he requested information on the progress of the investigations, but until the filing of the present petition before the IACHR he had no information.

8. The State, on its part, claims that at the time of the facts the habeas corpus had limited effects regarding forced disappearance, but that said constitutional remedy has been reformulated in its procedural and Jurisprudential aspects in regard to said matter. It also informed of the creation of the National Commission for the Search of Adult Persons Missing in the context of the Armed Conflict in El Salvador (CONABUSQUEDA) by Executive Decree N° 33 of August 21, 2017, body with powers to de investigate ex officio or by petition, the forced disappearances perpetrated during the internal armed conflict, in order to locate the victims for their reunion or release of bodies to their families. According to the State, the present claim has been transferred to said body.

9. Likewise, the State specifies that after November 4, 2011, when the present petition was notified, different institutions were requested information. On this matter, it refers that the report issued by the Supreme Court of Justice holds it was possible to identify in the Section of Specialized Archive of Chambers and Offices the habeas corpus claim in favor of the alleged victims, against the Directorate of the National Guard. In accordance with said record, on January 28, 1980 the habeas corpus decision was decreed in favor of both young men so that the authority which held them deprived of liberty would justify the corresponding reasons. The report by the Supreme Court adds that on February 2, 1980 the proceedings were submitted to the designated executing judge in order to once again accuse the Director of the National Guard, the General Director of the National Police or any other authority or person who were to have the alleged victims under custody. It also holds that on February 13, 1980 the Supreme Court ordered the certification of the habeas corpus proceedings decreed in favor of the alleged victims to the Second Criminal Court of San Salvador, in order to locate heir whereabouts.

10. As for the Attorney General of the Republic, the State informs that an investigation was activated on April 7, 2010 resulted from the claim of the facts; and that the Unit for Life Vida and Physical Integrity of San Salvador opened a casefile to investigate the disappearance de the alleged victims. The State informs that said casefile was forwarded to the Prosecuting Specialized Anti-Gang and Homicide Unit of San Salvador, where currently it is conducted under casefile 125-UFEADH-SS-2018 for forced disappearance of persons.

11. After its last communication from 2018, the State has not provided additional information during the processing of the present petition.

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

12. The petitioner party considers that the demand for prior exhaustion does not apply on the present claim, by virtue of the proven inefficiency of domestic remedies to meet the demands of the victims in terms of truth, justice and reparation, as well as the evident contempt of the Salvadorian State upon decisions, recommendations and sentences from international systems of protection of human rights. On this last point, the petitioner party refers to the recommendations formulated by the IACHR to El Salvador concerning its duty to investigate the facts and punish those responsible for human rights violations committed during the armed conflict. In addition, petitioner claims inactivity from the State upon the claim filed by the brother of Francisco Arnulfo Ventura Reyes before the Attorney General's Office, which would prove lack of diligence and willingness from the Salvadorian justice system to move the process forward in order to clarify the responsibilities and prosecute whomever corresponds.

13. The State holds that at the time of filing of the petition the requirement of exhaustion of domestic remedies contemplated by articles 46.1(a) of the American Convention and 31.1 of the IACHR's Rules of Procedure had not been met. It holds that the petition was filed one and a half years after filing the claim for the same facts before the Attorney General of the Republic; and that at the moment in which CONABUSQUEDA

was activated, a new mechanism created with the specific purpose of investigation of facts such as those of the present matter.

14. According to Article 31.3 of the Inter-American Commission's Rules of Procedure, it is the State's duty to prove that domestic remedies have not been exhausted whenever the petitioner claims the impossibility to prove the compliance of such cited requirement. Also, the IACHR has set forth that the analysis on the requisites foreseen in articles 46 and 47 of the American Convention is to be made in light of the current situation at the moment when it decides on its admissibility. It is frequent that during the processing of a matter before the Inter-American Commission, changes occur in regard to the status of exhaustion of domestic remedies, but the system of petitions and cases ensures that both the State and the petitioner party have full opportunity to submit information and allegations³.

15. In this sense, and after analyzing the information provided by both parties, the IACHR observes that it is not a contested fact that the alleged victims were subjected to forced disappearance in a context which leads to consider that the act was perpetrated by State agents, or by persons who acted under its instructions. It is not controverted either between the parties that the families formally claimed the facts at the moment when they occurred, with no result due to the cited context; and that they did it again in 2010, in a democratic context and in the framework of other international obligations assumed by the State. The casefile also yields that a decade after, at the date of adoption of the present report, the State has not informed of any relevant progress at all in the investigation of the disappearance of the alleged victims.

16. As a result, the Inter-American Commission applies on the present matter the exception foreseen in Article 46.2(c) of the American Convention, concerning unjustified delay in the resolution of domestic remedies. In accordance with the aforesaid, Article 32 of the IACHR's Rules of Procedure contemplates that when any exception to the requirement of exhaustion of domestic remedies applies, the petition shall be filed within a reasonable time. On this matter, the Inter-American Commission observes that the initial facts occurred in 1980; which were claimed at that time and again in 2010; that the petition was filed before the IACHR in 2011; and that the consequences of the violations claimed, in terms of the lack of a proper investigation and punishment of those responsible would remain until the present. Consequentially, the IACHR concludes that the present petition was filed within a reasonable time in the terms of Article 32.2 of its Rules of Procedure.

VII. ANALYSIS OF COLORABLE CLAIM

17. The subject matter of the present Petition consists of the alleged forced disappearance of the alleged victims, and the consequent lack of investigation and punishment of the perpetrators. After examining the factual and legal elements set forth by the parties, the IACHR considers that the petitioner's claims are not manifestly unfounded and require a study on the merits, since the alleged facts, if corroborated, may characterize violations of rights established in articles 3 (juridical personality), 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial) and 25 (judicial protection) of the American Convention, in connection to its article 1.1 (obligation to respect rights), to the detriment of the alleged victims and their duly identified families at the merits stage of the present matter.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 3, 4, 5, 7, 8 and 25 of the American Convention in connection to its articles 1.1.

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.

³ IACHR, Report No. 35/16, Petition 4480-02. Admissibility. Carlos Manuel Veraza Urtusuástegui. Mexico. July 29, 2016, para. 33.

Approved by the Inter-American Commission on Human Rights on the 22nd day of the month of November, 2021. (Signed:) Antonia Urrejola, President; Julissa Mantilla Falcón, First Vice President; Flávia Piovesan, Second Vice President; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, Joel Hernández, and Stuardo Ralón Orellana, Commissioners.