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REPORT No. 228/24
PETITION 1204-14
REPORT ON ADMISSIBILITY

MARÍA ELIA GONZÁLEZ JIMÉNEZ ET AL.
MEXICO

Approved electronically by the Commission on December 5, 2024.

Cite as: IACHR, Report No. 228/24, Petition 1204-14. Admissibility. María Elia González Jiménez et al. Mexico. December 5, 2024.

I. INFORMATION ABOUT THE PETITION

Petitioners:	María Elia González Jiménez, Irene Díaz Reyes, Gabino Eduardo Castrejón García and Ana Beatriz Castrejón Díaz
Alleged victims:	María Elia González Jiménez, Francisca Burciaga Monreal, María Elia Jiménez Burciaga, Filiberto González Mendoza and Martha Elizabeth González Jiménez
Respondent State:	Mexico ¹
Rights invoked:	Articles 5 (humane treatment), 7 (personal liberty), 8 (judicial guarantees), 10 (right to compensation), 17 (protection of the family), 21 (right to private property), 24 (equality before the law), 25 (judicial protection) and 26 (economics, social and cultural rights) of the American Convention on Human Rights ² , in relation to its Article 1 (1) (obligation to respect rights)

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition:	September 3, 2014 ⁴
Notification of the petition to the State:	June 10, 2019
State's first response:	November 8, 2019
Additional observations from the petitioner:	February 16, 2021
Warning of possible archiving:	August 17, 2018
Petitioner's response to warning of possible archiving	August 21, 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 (deposit of instrument of accession done March 24, 1981)

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 8 (judicial guarantees), 21 (property), 24 (equality before the law), 25 (judicial protection) and 26 (economic, social and cultural rights) of the American Convention in conjunction with its Article 1(1) (obligation to respect rights)

¹ In keeping with Article 17(2)(a) of the Commission's Rules of Procedure, Commissioner José Luis Caballero Ochoa, of Mexican nationality, did not participate in the decision in the instant matter.

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

³ Each party's observations were duly forwarded to the other party. In communications of February 23 and August 13, 2015, the petitioner expressed his interest in the petition being considered.

⁴ The petition was received by the IACHR by regular mail on September 3, 2014.

Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, on March 20, 2014
Timeliness of the petition:	Yes, on September 3, 2014

V. THE PARTIES' POSITIONS

Petitioners

1. The petitioners, which in this case are also alleged victims, allege violations of their rights in the wake of floods that occurred in 2009, after extensive rains and the subsequent collapse of a tunnel carrying wastewater near their houses, which caused harm to their property. They consider that the authorities in charge of regulating rainwater tunnels did not carry out their supervisory obligations when they allowed the tunnel in question to also carry wastewater, though it was built for drinking water. They argue that it wasn't maintained as necessary to keep it from rupturing. In addition, they allege that the domestic courts denied them their right to compensation, while third persons in the same circumstances were paid compensation for the State's liability for harming their property.

2. According to them, on September 6, 2009, there was intense rainfall that provoked the collapse of one section of the water channel called "Túnel Emisor Poniente" ("West Discharge Tunnel"), resulting in flooding in the district of Valle Dorado, municipality of Tlalnepantla de Baz, in the state of México. The alleged victims resided in that district and reported material harm when the water current flooded their homes, reaching a height of 1.80 meters, resulting in significant damage to their homes. In addition, the streets flooded, resulting in damage to the cars; and a strong fetid odor of wastewater lingered in the air.

Domestic remedies pursued

3. On May 13, 2010, the alleged victims filed an administrative claim⁵ for liability of the State for the negative impacts suffered to their property and their persons, seeking the sum of 1,045,756.20 Mexican pesos (approximately USD\$84,097.12)⁶ from the National Water Commission⁷ (hereinafter "CONAGUA": Comisión Nacional del Agua), which admitted the claim for processing, assigning it file No. 10-2101. During the procedure, the alleged victims showed documentary evidence consisting of expert reports issued by professionals in psychology and engineering by which they sought to show moral and material harm. Also offered into evidence is an expert report issued by the Engineering Institute of the Universidad Nacional Autónoma de México (hereinafter "UNAM"), with which they sought to argue the negligence of CONAGUA, as it failed to monitor or maintain the tunnel that collapsed.

⁵ Based on Articles 17 and 18 of the Federal Law on Economic Liability of the Mexican State:

Article 17 – The procedures for economic liability of the federal public agencies shall be initiated by a claim filed by the interested party.

Article 18 – The interested party shall file his or her claim before the office or entity presumably responsible, or autonomous constitutional agency, as established in the Federal Law on Administrative Procedure.

Private persons, in their action, should indicate, as the case may be, the public servant or servants involved in the administrative activity considered irregular.

If once the proceeding on economic liability of the State has begun, any of the procedures for which the private person has challenged the act of authority that is considered harmful is found to be pending, then the proceeding on the economic liability of the State shall be suspended until such time as the competent authority, in the other, has issued a final resolution in the other proceedings.

⁶ Depending on the exchange rate on the date, according to the webpage of the Diario Oficial de la Federación of the Ministry of Interior on October 27, 2024, available at:

https://dof.gob.mx/indicadores_detalle.php?cod_tipo_indicador=158&dfecha=01/01/2010&hfecha=31/12/2010#gsc.tab=0

⁷ CONAGUA is a deconcentrated agency of the Ministry of Environment and Natural Resources (SEMARNAT: Secretaría de Medio Ambiente y Recursos Naturales), established in 1989 with the responsibility of administering, regulating, overseeing, and protecting the nation's waters through three main operational areas – management, basin agencies, and technical assistance – with the aim of guaranteeing the sustainable use of this natural resource and the inherent public interests.

4. Nonetheless, on July 21, 2011, the Office of the Assistant Counsel of CONAGUA, by official note BOO.00.02.03.1.1.04519, decided not to pay compensation for material or moral harm to the alleged victims. This office indicated that according to Article 22 of the Federal Law on the Economic Liability of the State⁸, to lodge an administrative claim it is up to the claimant who considers he or she has suffered economic detriment to prove the alleged liability of the State; and that in the instant case an exception to liability was noted because the act was due to an act of God or force majeure. The Office of the Assistant Counsel upheld this argument in the same UNAM report, which indicated that the rainfall that gave rise to the floods was extraordinary based on historical information going back 90 to 100 years. In addition, it noted that another element that caused the rupture of the tunnel was the dense urbanization in the zone, but that it was not a situation for CONAGUA to prevent or supervise. Finally, it considered that the documentary evidence produced by the alleged victims did not show that the damages and losses to their property had been a consequence of any irregular administrative activity by the State in the form of its failure to maintain and ensure adequate oversight of the tunnel.

5. Then, on September 19, 2011, the alleged victims filed a lawsuit for economic liability⁹ before the 12th Metropolitan Regional Chamber of the Federal Court of Tax and Administrative Justice, seeking the annulment of official note BOO.00.02.03.1.1.04519 issued by CONAGUA. This lawsuit was subsequently put before the Second Auxiliary Chamber of the Federal Court of Tax and Administrative Justice¹⁰ (file 22441/11-17-10-3/735/12-SSA-7). That chamber, by judgment of August 31, 2012, denied the compensation sought and recognized the validity of the resolution issued by CONAGUA. The chamber considered that the floods were caused by a natural hydrometeorological phenomenon, which was recognized in a declaration of disaster zone published by the official register *Diario Oficial de la Federación* on September 14, 2009. In other words, the rupture of the tunnel was caused by an extraordinary rainfall. Moreover, it considered that the alleged victims did not show that CONAGUA had acted negligently, nor that said alleged negligence had caused the rupture of the tunnel.

6. On June 11, 2013, the alleged victims brought a direct *amparo* action against that judgment¹¹ before the Fifth Multijudge Court of the First Circuit for Administrative Matters, under case file number 54/2014. This *amparo* action, however, was denied on March 20, 2014.

7. In the *amparo* judgment the court did not find evidence that any irregular activity on the part of CONAGUA had caused the floods. And it recalled that according to the domestic legislation, in order for payment of compensation for irregular administrative activity to be in order there must be material imputability of the act to the State in the exercise of its functions; the existence of harm; and a causal nexus between the two. It considered that these requirements were not met in the case examined.

8. In addition, the court said that according to the technical expert report of the UNAM the collapse of the tunnel had been caused by other factors such as: (i) the extraordinary rainfall in the area of the district of Valle Dorado; (ii) the dense urbanization of the zone, which surpassed the capacity of the original tunnel design, on receiving larger discharges; (iii) the loss in conduction capacity of the Los Remedios, Tlalnepantla, and San Javier rivers, which was not considered when the tunnel construction was designed,

⁸ Article 22 of the Federal Law on Economic Liability of the State provides:

The responsibility of the State should be proven by a claimant who considers he or she has suffered economic harm, due to not having the legal obligation to bear it. For its part, it shall be up to the State to prove, as the case may be, the participation of third persons or of the claimant in causing the damages suffered; that the damages are not the consequence of the irregular administrative activity of the State; that the damages stem from unforeseeable or inevitable acts or circumstances, based on the knowledge of science or technique at the time of its occurrence, or the existence of a force majeure that would exempt it from economic liability.

⁹ According to Article 24 of the Federal law on Economic Liability of the State: "*The resolutions of the administrative authority that deny compensation, or which, due to the amount, do not satisfy the interested person, may be challenged by a motion for review before the administrative courts, or directly in the courts before the Federal Court of Tax and Administrative Justice.*"

¹⁰ In the copy of the judgment on economic liability of August 31, 2012, filed by the petitioner, it was found that on July 4, 2012, the Investigative Judge communicated to the parties the referral to the Second Auxiliary Chamber for handing down the judgment. And according to direct *amparo* judgment 54/2014 of March 20, 2014, this change was made with the "*Procedure for Redistribution of Cases for the purpose of creating the Chamber Specialized in Resolutions of Regulatory Bodies for the Activity of the State.*"

¹¹ According to the uncertified copy of direct *amparo* judgment 54/2014 of March 20, 2014, sent to the IACHR by the petitioners, they were given notice of the judgment appealed on May 27, 2013.

limiting the possibility of releases to other channels and avoiding flooding urban areas; (iv) the unregistered drainage of the municipalities of Tlalnepantla de Baz and Atizapán de Zaragoza; and (v) the delay in the construction of a parallel tunnel to expand the capacity of the open channel, proposed in the “Master Plan for Drainage of the Mexico City Metropolitan Area 1994-2010.”¹²

9. Nonetheless, the court considered that it was not shown that the housing density, the irregular connections to the Western Discharge Tunnel, the sinking or drying up of the natural channels of the area affected by the floods, or the extraordinary rainfall were attributable to CONAGUA, as they are natural or demographic phenomena, or ecological harm, that cannot be attributed directly and objectively to the authorities. Nor did the court consider that there was a causal nexus established by the petitioners in relation to the 1994 Master Plan, since they only mentioned it, without sufficient explanation of why they consider there was an irregular activity directly and objectively attributable to CONAGUA.

Petitioner’s arguments

10. The petitioners allege that the collapse of the discharge tunnel and the subsequent floods caused material damages to their homes, as well as psychological damages to them and their families, due to the negative impact they suffered as a result of the loss of all their property. In addition, they argue they were exposed to insalubrious conditions as it was a flood of wastewater. They consider that these floods were the result of irregularities committed by the State, since the original design of the tunnel that collapsed was for handling rainwater, not wastewater. And they say that CONAGUA negligently and irregularly allowed the tunnel to be used to carry wastewater, without making the technical adaptations necessary for that purpose, even though CONAGUA bears responsibility for surveillance, supervision, and maintenance of the rainwater tunnels.

11. Petitioners state that they fully carried out their procedural obligations and also showed the irregular administrative activity of CONAGUA, as well as the nexus between it and the material and moral harm they suffered. In addition, they argue that adequate evidence for showing whether there was irregular administrative activity by the State was technical in nature, given the nature of the disaster; in other words, that the expert reports on the subject (hydromechanics) were the suitable ones. Nonetheless, they state that the UNAM report, presented as documentary evidence of their claim for compensation, was not considered.

12. The petitioners also argue that other families affected by the same irregular administrative conduct obtained a favorable resolution by the federal judicial bodies. In this respect, they note that direct *amparo* judgment No. 518/2012 determined that CONAGUA had indeed engaged in irregular administrative activity and should compensate the third-party complainants.¹³ Accordingly, they adduce that the same should have been decided in their case, since the matters presented “*the same circumstances of fact and of law, [which] were put to the consideration of the administrative and judicial authorities of the State.*” They underscore that *amparo* resolution 518/2012 established that the rupture of the discharge tunnel was not caused only by the rain, but also by CONAGUA’s omission on not performing the work previously established in the “1994-2010 Master Plan” for improvements to the tunnel. Therefore, and considering that there is a resolution on the same facts, but positively for third persons, the petitioners express their disagreement since, in their view, it is the same liability by the same administrative agency.

¹² According to *amparo* judgment 518/2012, presented in the attachments to the petition by the petitioner, paragraph 68 indicates that: “*The Master Plan for Draining of the Mexico City Metropolitan Area 1994-2010 is a reference document for the planning and development of drainage infrastructure that unifies a global assessment of the conditions of its operation and prospection, which is made up of a physical-urban context updated as regards population growth and growth of the urban footprint, as well as a description of works for drainage and flood control.*”

¹³ In this respect, according to *amparo* judgment 518/2012, third persons, after damages in their homes due to flooding on September 6, 2009, brought lawsuit for economic liability 22505/11-17-05-1 before the Fifth Metropolitan Regional Chamber of the Federal Court of Tax and Administrative Justice, which denied their claims for compensation on April 9, 2012. So on May 31, 2012, they filed direct *amparo* action 518/2012, in which they identified, as the responsible authorities, the judges of the Fifth Regional Chamber. Unlike the case of the alleged victims, this *amparo* was granted on December 13, 2012, asking that another judgment he handed down that includes an analysis of the UNAM expert report, and it established that the cause-and-effect relationship between the economic injury and the purported irregular activity of the State by omission should be analyzed. On October 7, 2013, the chamber concluded that there was irregular activity on the part of the State, because CONAGUA “*did not observe the rules that regulate its operations, nor did it act with due diligence to see to it that the public service provided met the parameters established for its correct operation.*”

13. Thus the alleged victims conclude that CONAGUA's failure to oversee and maintain the tunnel negatively affected their right to dignified housing, health, and a healthy environment, and they consider that the State did not fulfill its "*original and primary obligation to provide adequate public services to its citizens*"; and that it was and is up to CONAGUA to "*deploy and execute every activity related to the surveillance, oversight, and maintenance of all water resources in the Republic of Mexico.*" Accordingly, they consider that they have the right to obtain compensation from the State since it engaged in an irregular administrative activity.

The Mexican State

14. The State presents a recapitulation of the procedure that the alleged victims had before the domestic courts; and argues that the IACHR should find the petition inadmissible since, they are, it does not state facts that tend to establish human rights violations.

15. It argues that under Article 47 of the American Convention the petition should be found inadmissible for failure to state facts that tend to establish violations of human rights. It adduces that the petitioners did not show irregularities attributable to CONAGUA in the domestic proceedings, nor did they explain the damages that led to the claim for alleged economic liability. Mexico notes that the judgments handed down by the domestic courts coincided in that the facts of September 6, 2009, are attributable to a force majeure event – an extraordinary rainfall on a scale not seen for 90 years – and to phenomena provoked by the excessive population growth and ecological harm caused by contemporary society.

16. Along these lines, the State indicates that the force majeure events exempt the State from the obligation of compensating damages, according to Article 3 of the Federal Law on the Economic Liability of the State, which indicates:

According to this Law, an exception is made to the obligation to pay compensation not only for acts of God and force majeure, but also for those damages that are not the consequence of the irregular administrative activity of the State, as well as those that derive from facts or circumstances that could not be foreseen or prevented based on the state of scientific or technical knowledge existing at the time they occur, and in those cases in which the person seeking compensation was the only one who caused the damage.

17. In the analysis by the Fifth Multijudge Court of the First Circuit for Administrative Matters, in the *amparo* judgment of June 2013, it was observed that the chamber only took into consideration one of the various motives for the flooding, according to the UNAM report, and failed to give any weight to the others; accordingly, the Multijudge Court did proceed to weigh them. Nonetheless, the documentary proof presented by the petitioner – consisting of receipts, invoices, expert reports on the damages to the real properties and psychological harm – was sufficient to attribute an irregular activity to the State. Accordingly, it concludes that the petitioner was unable to make a showing, before the domestic courts, of the existence of a causal nexus between the alleged irregular activity of the State and the harm suffered by the alleged victims, as required by the Federal Law on Economic Liability of the State at Article 21.¹⁴

18. Finally, the State argues that the rulings by the domestic courts addressed the petitioners' rights, even though they were not favorable to their claims, thus the Inter-American Commission could not sit as a court of fourth instance.

¹⁴ Article 21- *The harm that is caused to the economic interests of private persons due to the irregular administrative activity must be shown mindful of the following criteria:*

(a) *In those cases, in which the cause of causes producing the harm are identifiable, the cause-and-effect relationship between the economic injury and the irregular administrative action imputable to the State must be proven conclusively, and*

(b) *In its absence, sole causality or the concurrence of facts and causal conditions, as well as the participation of other actors in generating the injury claimed, should be proven through precisely identifying the acts that produced the final outcome, rigorously examining the original or supervening conditions or circumstances that may have attenuating or aggravated the economic injury claimed.*

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

19. The IACHR recalls that according to its consolidated and reiterated practice, for the purposes of identifying the suitable remedies that should have been exhausted by a petitioner before turning to the inter-American system, the first methodological step of the analysis is to distinguish the claims made in the respective petition, so as to proceed to examine each individually.¹⁵ In the instant case, the petitioners have presented two fundamental claims to the Commission: (i) the violation of their right to compensation for state liability for the damages caused after the September 2009 floods, which occurred after ferocious rains and due to the rupture of a tunnel carrying wastewater, which caused them economic damages; and (ii) unequal treatment in the decisions of the courts, since persons who were victims of the same facts, and who put forward a similar factual case to the courts, did receive compensation as it was found that CONAGUA bore responsibility for the rupture of the tunnel and the subsequent flooding.

20. With respect to these claims, both parties agree that the alleged victims filed and exhausted the remedies available to them. Accordingly, one observes that on May 13, 2010, they filed an administrative claim with the Office of the Assistant Counsel of CONAGUA, adducing the economic liability of the State for the negative impacts suffered after the floods. On July 21, 2011, the Office of the Assistant Counsel decided not to pay compensation for material and moral damages, considering that the incident was due to a situation of force majeure. Subsequently, on September 19, 2011, alleged victims filed a lawsuit for economic liability before the 12th Metropolitan Regional Chamber of the Federal Court of Tax and Administrative Justice, which was subsequently lodged with the Second Auxiliary Chamber of that court, which on August 31, 2012, affirmed the resolution issued by CONAGUA. Finally, on June 11, 2013, the alleged victims brought direct *amparo* action 54/2014 before the Fifth Multijudge Court of the First Circuit on Administrative Matters, which was denied on March 20, 2014.

21. In that regard – and considering that the State does not raise questions about the exhaustion of domestic remedies or the timeliness of the petition – the Commission considers that this matter meets the requirement at Article 46(1)(a) of the American Convention. In addition, given that the petition was received by the IACHR by regular mail on September 3, 2014, the IACHR also concludes that it meets the deadline provided for at Article 46(1)(b) of the Convention.

VII. ANALYSIS OF COLORABLE CLAIM

22. First, the Commission reiterates that the criterion for evaluation in the admissibility phase is different from that used to rule on the merits of a petition; the IACHR should, at this stage, undertake a *prima facie* evaluation to determine whether the petition establishes the basis of a violation, possible or potential, of a right guaranteed by the Convention, but not to establish the existence of a violation of rights. The determination as to whether the facts stated tend to establish a violation of the American Convention is a primary analysis that does not entail prejudging the merits issues. For the purposes of admissibility, the Commission must decide whether the facts alleged tend to establish a violation, in the terms of Article 47(b) of the American Convention, or whether the petition is “manifestly groundless” or “obviously out of order,” in the terms of Article 47(c) of the American Convention.

¹⁵ For example, see the following reports by the IACHR: Report No. 117/19, Petition 833-11. Admissibility. Workers released from the Boa-Fé Caru Plantation. Brazil. June 7, 2019, paras. 11 and 12; Report No. 4/19. Petition 673-11. Admissibility. Fernando Alcântara de Figueiredo and Laci Marinho de Araújo. Brazil. January 3, 2019, paras. 19 ff.; Report No. 164/17. Admissibility. Santiago Adolfo Villegas Delgado. Venezuela. November 30, 2017, para. 12; Report No. 57/17. Petition 406-04. Admissibility. Washington David Espino Muñoz. Dominican Republic. June 5, 2017, paras. 26 and 27; Report No. 168/17. Admissibility. Miguel Ángel Morales Morales. Peru. December 1, 2017, paras. 15 and 16; Report No. 122/17. Petition 156-08. Admissibility. Williams Mariano Paría Tapia. Peru. September 7, 2017, paras. 12 ff.; Report No. 167/17. Admissibility. Alberto Patisthán Gómez. Mexico. December 1, 2017, paras. 13 ff.; and Report No. 114/19. Petition 1403-09. Admissibility. Carlos Pizarro Leongómez, María José Pizarro Rodríguez and family members. Colombia. June 7, 2019, paras. 20 ff.

23. The alleged victims indicate that a tunnel by their homes broke after heavy rains in September 2009, flooding their houses with wastewater. They allege that this occurred due to the failure of CONAGUA to carry out its obligation to oversee and supervise tunnels, so they should be compensated. In addition, they argue that they were subjected to unequal treatment by the domestic courts, since in an *amparo* proceeding with similar facts the court ruled in favor of third persons, declaring the economic liability of CONAGUA. They affirm that this alleged inequality impacted their right to proper compensation, due process, legal certainty, and juridical security.

24. The State, for its part, asks that the petition be found inadmissible for failure to state facts that tend to establish a violation of rights, affirming that in the domestic decisions weight was given to the evidence corresponding to the administrative procedure and the direct *amparo* action. Accordingly, it explains that the petitioner seeks to have the IACHR act as a court of fourth instance. In addition, it indicates that the courts that heard the case noted that the alleged victims did not show the existence of material or moral damages, nor did they show irregularities by CONAGUA. It should be noted that the Mexican State did not refer to the alleged unequal treatment due to the *amparo* judgment in favor of third persons in similar factual circumstances.

25. With respect to the State's argument invoking the "fourth instance formula," the Commission emphasizes the complementary nature of the inter-American system and notes that, as the Inter-American Court has explained, for a "fourth instance" objection to be in order, it would be necessary "*to apply to the Court to review the decision of the domestic court, based on its incorrect assessment of the evidence, the facts or domestic law without, in turn, alleging that such decision was a violation of international treaties....*"¹⁶ In the instant case, the Commission observes that as the Inter-American Court has indicated, "*it is up to the Court to ascertain whether or not the State, in the steps effectively taken at the domestic level, violated its international obligations stemming from those inter-American instruments that grant authority to the Court.*"¹⁷ In addition, it must examine "*whether ... the actions of the judicial bodies constitute a violation of the State's international obligations [which] may lead the Court to examine the corresponding domestic proceedings in order to establish their compatibility with the American Convention.*"¹⁸ In this regard, the analysis as to whether the State violated that treaty is a matter that must be decided when considering the merits of this claim. Accordingly the IACHR, on admitting a petition, does not seek to supplant the domestic judicial authorities; rather, within its mandate, it is competent to find a petition admissible and rule on the merits when it refers to domestic proceedings that may be in violation of the rights guaranteed by the American Convention.

26. As regards the petitioners' allegation of a violation of Article 24 of the Americana Convention (right to equality before the law), on the basis of the courts having rejected their claims for compensation when in a similar proceeding brought by third persons they did receive such compensation, the Commission observes the following about the two proceedings:

Proceeding with the alleged victims	Proceeding with third persons
<i>Administrative Claim</i> Before the Office of the Assistant Counsel of CONAGUA.	<i>Administrative Claim</i> Before the Office of the Assistant Counsel of CONAGUA.
On July 21, 2011, it decided not to pay compensation for economic harm through official note number BOO.00.02.03.1.1.04519.	On July 8, 2011, it decided not to pay compensation for economic harm through official note number BOO.00.02.03.1.1.04235.
<i>Proceeding for economic liability</i> 22441/11-17-10-3/735/12-SSA-7	<i>Proceeding for economic liability</i> 22505/11-17-05-1

¹⁶ I/A Court HR, Case of Cabrera García and Montiel Flores v. Mexico, Preliminary Objection, Merits, Reparations and Costs, Judgment of November 26, 2010, Series C No. 220, para. 18.

¹⁷ I/A Court HR, Case of Cabrera García and Montiel Flores v. México, Preliminary Objection, Merits, Reparations and Costs, Judgment of November 26, 2010, Series C No. 220, para. 19.

¹⁸ I/A Court HR, Case of Palma Mendoza et al. v. Ecuador, Preliminary Objection and Merits, Judgment of September 3, 2012, Series C No. 247, para. 18; Case of Rosadio Villavicencio v. Peru, Preliminary Objections, Merits, Reparations and Costs, Judgment of October 14, 2019, Series C No. 388, para. 24; Case of Cabrera García and Montiel Flores v. Mexico, Preliminary Objection, Merits, Reparations and Costs, Judgment of November 26, 2010, Series C No. 220, para. 19.

Before the Second Auxiliary Chamber of the Federal Court for Tax and Administrative Matters. On August 31, 2012, it was denied.	Before the Fifth Metropolitan Regional Chamber of the Federal Court for Tax and Administrative Matters. On April 9, 2012, it was denied.
<i>Direct amparo proceeding 54/2014</i> Before the Fifth Multijudge Court of the First Circuit for Administrative Matters. On March 20, 2014, it was denied.	<i>Direct amparo proceeding 518/2012</i> Before the Fourth Multijudge Court for Administrative Matters of the First Circuit. On December 13, 2012, it was granted, asking the Fifth Chamber to issue another judgment in which it analyzed all of the evidence in the record, particularly the expert report by the UNAM.
	<i>Decision of the Fifth Metropolitan Regional Chamber</i> On October 7, 2013, compensation was awarded to the third persons, finding that there was indeed irregular activity on the part of CONAGUA.

27. In this respect, the IACHR recalls that in response to this type of argument, it has already indicated that the right to equality before the law is not the same as the right to an equal outcome in judicial proceedings referring to the same subject matter.¹⁹ The mere invocation of other judgments on the same subject matter with different outcomes is not sufficient to characterize *prima facie* a possible violation of Article 24 of the Convention.²⁰ The petitioner must produce other information and evidence that make it possible to show that the State, by act or omission of its judicial bodies, became internationally responsible for the breach of its duties to respect or guarantee the right to equality before the law.

28. Addressing these criteria, the IACHR observes that in the instant matter the alleged victims turned to the same administrative and judicial remedies as the third parties, who were given reparations; the facts behind both proceedings were the same (harm to their housing due to the natural events that occurred in 2009 and the alleged negligence of CONAGUA); and in both cases the decisive evidence was the above-cited report by the UNAM, which determined responsibility for the breach by the competent authorities of their duty to prevent. Therefore, mindful of the similarities identified, the claim raised by the petitioners is not limited to merely invoking divergent judgments nor is it manifestly unfounded. Accordingly, the IACHR finds that the consideration as to whether the purported differential treatment given the alleged victims should be analyzed in the merits phase of this case.

29. Thus, the IACHR concludes that the alleged responsibility of the State in the cases that led to the collapse of the Western Discharge Tunnel, due to the alleged omissions on the part of CONAGUA in its function of supervising and maintaining the water channel, which is said to have provoked flooding in the district of Valle Dorado and the negative impact on the alleged victims' homes, without adequate judicial protection of their rights, could constitute violations of the rights protected at Articles 8 (judicial guarantees), 21 (right to private property), 24 (equality before the law), 25 (judicial protection), and 26 (economic, social, and cultural rights) of the American Convention, in conjunction with its Article 1(1) (obligation to respect rights), to the detriment of María Elia González Jiménez, Francisca Burciaga Monreal, María Elia Jiménez Burciaga, Filiberto González Mendoza, and Martha Elizabeth González Jiménez.

30. Finally, as regards the alleged violation of Articles 5 (humane treatment), 7 (personal liberty), 10 (right to compensation), and 17 (protection of the family), the Commission notes that no information or evidence has been provided that makes it possible to determine, *prima facie*, their possible violation.

¹⁹ IACHR, Report No. 39/96, Case 11,673, Admissibility, Santiago Marzioni, Argentina, October 15, 1996, published in the 1996 Annual Report of the IACHR, para. 43; and IACHR, Report No. 221/19, Admissibility, Francisco Pompeyo Ramos Marrau, Argentina, October 24, 2019, para. 17.

²⁰ IACHR, Report No. 221/19, Admissibility, Francisco Pompeyo Ramos Marrau, Argentina, October 24, 2019, para. 17.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 8, 21, 24, 25, and 26 of the American Convention, in keeping with its Article 1(1).
2. To find the instant petition inadmissible in relation to Articles 5, 7, 10, and 17 of the American Convention.
3. 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 5th day of the month of December, 2024. (Signed:) Roberta Clarke, President; Arif Bulkan, Andrea Pochak, and Gloria Monique de Mees, Commissioners.