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**REPORT No. 98/24**  
**PETITION 504-14**  
REPORT ON ADMISSIBILITY

CARLOS SÁNCHEZ RÍOS ET AL.  
MEXICO

Adopted electronically by the Commission on June 29, 2024.

**Cite as:** IACHR, Report No. 98/24. Petition 504-14. Admissibility.  
Carlos Sánchez Ríos et al. Mexico. June 29, 2024.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioning party:</b>	Carlos Sánchez Ríos
<b>Alleged victim::</b>	Carlos Sánchez Ríos, Felipe Sánchez Román, and María Guadalupe Román Delgado
<b>Respondent State:</b>	Mexico <sup>1</sup>
<b>Rights invoked:</b>	Articles 5 (personal integrity), 7 (personal liberty), 8 (judicial guarantees), 10 (right to compensation), 17 (protection of the family), 19 (rights of the child), 21 (right to private property), 24 (equality before the law), 25 (judicial protection), and 26 (economic, social and cultural rights) of the American Convention on Human Rights, <sup>2</sup> in relation to its Article 1.1 (obligation to respect rights)

**II. PROCESSING BY THE IACHR<sup>3</sup>**

<b>Filing of the petition:</b>	April 8, 2014 <sup>4</sup>
<b>Additional information received during the initial review stage:</b>	October 22, 2020 <sup>5</sup>
<b>Notification of the petition to the State:</b>	October 30, 2020
<b>State's first response:</b>	November 29, 2021 <sup>6</sup>
<b>Warning about possible archiving:</b>	August 15, 2018 and November 28, 2023
<b>The petitioning party's response to a warning of possible archiving:</b>	October 2, 2020 <sup>7</sup> and December 12, 2023

**III. COMPETENCE**

<b>Competence <i>Ratione personae</i>:</b>	Yes
<b>Competence <i>Ratione loci</i>:</b>	Yes
<b>Competence <i>Ratione temporis</i>:</b>	Yes
<b>Competence <i>Ratione materiae</i>:</b>	Yes, American Convention (instrument of accession deposited on March 24, 1981)

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

<b>Duplication of procedures and international <i>res judicata</i>:</b>	No
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<sup>1</sup> Pursuant to Article 17(2)(a) of the Commission's Rules of Procedure, Commissioner José Luis Caballero Ochoa, a Mexican national, did not participate in the discussion or decision on this matter.

<sup>2</sup> Hereinafter "the American Convention" or "the Convention".

<sup>3</sup> Each party's observations were duly forwarded to the opposing party.

<sup>4</sup> The petition was received by the CIDH by mail on April 8, 2014.

<sup>5</sup> The IACHR sent an email to the petitioning party on October 16, 2020, and resent it on October 19, 2020, indicating that, due to the COVID-19 pandemic, the team of the Commission's Executive Secretariat was working remotely, so it asked the petitioning party to digitize the annexes of the petition in order to continue with the notification and transfer to the State. On October 22, 2020, the petitioning party digitized these documents and sent them to the IACHR.

<sup>6</sup> In a letter dated May 6, 2021, sent by the IACHR to the State, the request for the State's observations was reiterated.

<sup>7</sup> The petitioning party sent an e-mail to the Commission requesting updates on the processing of the petition by the IACHR, which was considered a response to the warning of a possible archiving.

<b><i>Rights declared admissible:</i></b>	Articles 8 (judicial guarantees), 19 (rights of the child), 21 (property), 24 (equality before the law), 25 (judicial protection), and 26 (economic, social, and cultural rights) of the American Convention, taken in conjunction with Article 1(1) thereof (obligation to respect rights).
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, November 15, 2013
<b>Timeliness of the petition:</b>	Yes

## V. POSITIONS OF THE PARTIES

### *Petitioning party*

1. The petitioning party alleges violations of the rights of the three alleged victims as a result of flooding in 2009, following extensive rainfall and the subsequent collapse of a sewage tunnel near their homes, which caused damage to their property. It considers that the authorities in charge of regulating rainwater tunnels did not comply with their supervision obligations by allowing the tunnel to carry sewage when it was built for drinking water. It also maintains that they did not provide the necessary maintenance to prevent it from breaking. Likewise, petitioning party alleges the national courts denied it its right to compensation for what happened, while third parties in the same circumstances did receive compensation for the State's liability (*responsabilidad patrimonial*).

### *General approaches*

2. From the narrative and annexes provided by both parties, it is clear that the controversy denounced in the petition originated on September 6, 2009, when there was an intense rainfall that caused the collapse of a section of the sewage channel called "Túnel Emisor Poniente", resulting in flooding in the Valle Dorado district, Tlalnepantla de Baz, State of Mexico. The alleged victims (Carlos Sánchez Ríos, Felipe Sánchez Román, and María Guadalupe Román Delgado) resided in that district and reported material damages when the sewage flooded their homes, reaching a height of 1.80 meters, which resulted in significant damage to their homes. The petitioning party states that the gutters (*arroyos vehiculares*) were also flooded, leaving them incommunicado and damaging their automobiles. There was also an intense foul odor from the sewage.

3. On March 12, 2010, the alleged victims filed an administrative claim<sup>8</sup> for the State's liability for the damages done to themselves and their property with the National Water Commission<sup>9</sup> (hereinafter "CONAGUA"), which admitted the claim under file No. 10-1088. During the proceeding, the alleged victims exhibited documentary evidence consisting of expert opinions issued by professionals in psychology and engineering, with which they sought to prove the existence of moral and material damages. Likewise, an expert opinion issued by the Engineering Institute of the National Autonomous University of Mexico (hereinafter

<sup>8</sup> Motivated by the provisions of Articles 17 and 18 of the Federal Law on Liability (*Responsabilidad Patrimonial*) of the State of Mexico:

*Article 17 - Proceedings claiming liability of federal public entities shall be initiated by a complaint filed by the interested party.*

*Article 18 - The interested party shall file its claim before the agency or entity allegedly liable or autonomous constitutional body, in accordance with the provisions of the Federal Administrative Procedure Law.*

*In their complaint, individuals must indicate, if applicable, the public servant or servants involved in the administrative activity that is considered improper (irregular).*

*If the State's (patrimonial) liability proceeding is initiated and any of the proceedings in which the individual has challenged the act of the authority alleged to be harmful are still pending, the State's liability proceeding will be suspended until such time as the competent authority has issued a decision in the other proceedings.*

<sup>9</sup> CONAGUA is a decentralized agency of the Ministry of the Environment and Natural Resources (SEMARNAT), created in 1989 with responsibility for administering, regulating, controlling, and protecting national waters through three main operational areas: management, basin organizations, and technical assistance, with the objective of guaranteeing the sustainable use of this natural resource and the public benefits associated with it. Information found on the Mexican government website, visited on May 11, 2024 at <https://www.gob.mx/conagua> and at <https://www.gob.mx/semarnat/articulos/conagua-hacia-una-gestion-integrada-y-sustentable-del-agua#:~:text=La%20Comisi3n%20Nacional%20del%20Agua,y%20sus%20bienes%20p3blicos%20inherentes>.

"UNAM") was offered as evidence pointing to the negligence of CONAGUA in failing to monitor and maintain the tunnel that collapsed.

4. However, on July 21, 2011, the General Legal Subdirector of CONAGUA, by means of official letter BOO.00.02.03.03.1.1.04521 decided not to pay compensation for pecuniary and moral damages to the alleged victims, arguing that the event was due to an act of God or force majeure. This sub-directorate stated that the same UNAM report indicated that the rainfall events that caused the floods were extraordinary according to historical information for the past 90 to 100 years. It also indicated that another factor that caused the tunnel to rupture was the dense urbanization in the area, but this was not a situation that CONAGUA was responsible for preventing or supervising.

5. Then, on September 19, 2011, the alleged victims filed a liability lawsuit,<sup>10</sup> before the Eleventh Metropolitan Regional Chamber of the Federal Court of Tax and Administrative Justice under file number 22456/12-17-11-7. Said chamber, in a judgment dated October 1, 2012, recognized the validity of the resolution issued by CONAGUA denying the compensation claimed by the alleged victims. The court noted that the floods were caused by a natural hydrometeorological phenomenon recognized in a declaration of disaster zone published by the Official Gazette of the Federation on September 14, 2009. Furthermore, it considered that the alleged victims did not prove that CONAGUA had acted negligently on September 6, 2009, and even less that this alleged negligence had caused the tunnel rupture.

6. On May 23, 2013, the alleged victims filed a direct constitutional appeal (*juicio de amparo directo*) against the aforementioned judgment before the Thirteenth Collegiate Court in Administrative Matters of the First Circuit, under file number 598/2013. This amparo, however, was denied on November 15, 2013, and the alleged victims were notified of that decision on November 27, 2013. Finally, in a decision taken on January 15, 2014, an order was issued to archive the file.

7. In the amparo judgment, the court recalled that according to national legislation, in order for a compensation payment to be made for improper administrative activity, it is necessary that there be: material grounds for assigning liability to the State in the exercise of its functions; real damage; and a causal link between them. It also indicated that, according to Article 22 of the Federal Law on Liability of the State,<sup>11</sup> in order to file an administrative claim, it is up to the claimant who considers that its assets have been damaged to prove the alleged liability of the State; and that it is up to the State to prove that the damages are not a consequence of administrative activity or that they derive from force majeure. Thus, in the judgment, it was considered that a case of force majeure existed, and therefore, an exception to CONAGUA's liability.

8. The court found that the tunnel rupture was not due to an omission by CONAGUA in its oversight functions, and that the UNAM technical report pointed out that the tunnel collapse was caused by other factors, such as: (i) the extraordinary rainfall in the area of the Valle Dorado district; (ii) the dense urbanization of the area that exceeded the original design capacity of the tunnel, by receiving greater drainage discharges; (iii) the loss of conduction capacity of the Remedios, Tlalnepantla, and San Javier Rivers, which was not taken into account when the tunnel construction was designed, thereby limiting the possibility of outflows to other watercourses to avoid flooding urban areas; iv) the unrecorded drainage of the municipalities of Tlalnepantla de Baz and Atizapán de Zaragoza; and v) the delay in the construction of a parallel tunnel to

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<sup>10</sup> Pursuant to Article 24 of the Federal Law of Liability of the State: "*The resolutions of the administrative authority that deny compensation, or that, due to the amount of compensation, do not satisfy the interested party, may be challenged through an appeal for administrative review or directly through the Federal Court of Tax and Administrative Justice*".

<sup>11</sup> Article 22 of the Federal Law on State Liability states: "*The liability of the State must be proven by the claimant who considers that his patrimony has been injured, as there is no legal obligation to sustain such harm. For its part, the State will have the burden of proving, as the case may be, the participation of third parties or of the claimant himself in the causing of the damages to the claimant; that the damages are not the consequence of improper administrative activity by the State; that the damages derive from unforeseeable or unavoidable facts or circumstances given the status of scientific knowledge or technology existing at the time of their occurrence, or the existence of force majeure which exonerates it from liability for loss of assets.*"

expand the capacity of the open channel, proposed in the "Drainage Master Plan for the Mexico City Metropolitan Area 1994-2010."<sup>12</sup>

9. The court also did not consider that the petitioning party offered evidence that CONAGUA should have carried out prior technical work to prevent the malfunctioning of the tunnel or that such work would have prevented the bursting of the tunnel. Accordingly, it emphasized the importance of the alleged victims offering evidence that would "*reliably demonstrate that improper administrative activity by omission of the National Water Commission was the direct cause of the disaster that occurred [...] a necessary condition to deduce the liability of the State.*"

#### *Arguments by the petitioning party*

10. The petitioning party alleges that the collapse of the outlet tunnel and the subsequent flooding caused material damage to their homes, as well as psychological damage to them and their families, due to the negative impact caused by the loss of everything they owned. In addition, they indicate that they were exposed to unsanitary conditions due to sewage flooding. 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 the management of rainwater and not wastewater. They claim that, in a negligent and improper manner, CONAGUA allowed the tunnel to be used for sewage conduction without making the necessary technical adjustments, despite the fact that CONAGUA is responsible for monitoring, supervising, and maintaining rainwater tunnels.

11. The petitioners argue that the UNAM report, presented as documentary evidence in their claim for compensation, was requested by CONAGUA itself -without specifying when-. In fact, they request that the IACHR consider the existence of a report issued by an external and recognized institution, which points to a clear omission on the part of the administrative authority regarding its supervisory and control functions.

12. In addition, the petitioning party states that other families affected by the same improper administrative conduct obtained a favorable resolution from federal courts. In this regard, it is worth noting direct amparo judgment 518/2012, in which it was determined that, administratively, CONAGUA had indeed acted improperly and should compensate the complainants. Thus, the petitioning party argues that the same decision should have been made in its case, since the cases exhibited "*the same factual and legal circumstances, [which were] submitted to the administrative and jurisdictional authorities of the State.*" It emphasizes that amparo resolution 518/2012 established that the rupture of the outlet tunnel was not only caused by rain, but also by CONAGUA's omission in not carrying out the work previously established in the 1994-2010 Master Plan for tunnel improvements. Therefore, and considering that there is a resolution on the same facts, but with a favorable outcome for third parties, the petitioning party disagrees, since, in its opinion, the same administrative authority bears the same responsibility.

13. Thus, the alleged victims argue that CONAGUA's failure to control and maintain the tunnel affected their right to decent housing, health, and a healthy environment, and consider that the State did not comply with its "*original and primary obligation to provide adequate public services to its citizens.*" Therefore, the alleged victims argue that they have the right to obtain compensation from the State, since the State incurred in improper administrative activity.

#### *The Mexican State*

14. The State presents a recapitulation of the proceedings that the alleged victims pursued in Mexican court; and argues that the IACHR should declare the petition inadmissible because it does not state facts that characterize human rights violations. On the other hand, it referred to the allegations of alleged violation of the right to equality due to the case with similar factual information within the domestic jurisdiction

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<sup>12</sup> According to amparo judgment 518/2012, submitted in the annexes to the petition by the petitioning party, paragraph 68 states that: "*The Drainage Master Plan of the Metropolitan Area of Mexico City 1994-2010 is a reference document in the planning and development of the drainage infrastructure, which contains an overall diagnosis of the conditions governing its operation and prospecting, which is made up of an updated physical-urban framework related to population growth and urban sprawl, as well as a review of drainage works and flood control.*"

that was resolved in a positive manner for third party plaintiffs, and explained the details of the domestic procedure. The State's position is as follows:

15. Firstly, it considers that, by virtue of Article 47 of the Convention and Article 34 of the Commission's Rules of Procedure, the petition should be declared inadmissible because the facts presented do not establish any human rights violation. It also recalls that the IACHR is not competent to declare a petition admissible when it refers to judgments handed down by domestic courts acting within the sphere of their competence and applying due process of law, unless it finds the possibility that a violation of the American Convention has been committed. It argues that the alleged victims did not prove in domestic courts irregularities on the part of CONAGUA, nor did they substantiate the damages supporting their claim of alleged liability, for which reason no liability on the part of the State was found.

16. Mexico also mentions that although, in accordance with the Constitution, an appeal for review is available against a direct amparo judgment, this only proceeds with respect to rulings on constitutional issues and is not applicable to other matters. In view of this, it reports that the judgments issued in direct amparo proceedings constitute the last ordinary instance for the review of judicial decisions issued by lower-level authorities - as in the present case - and therefore the State notes that the petitioning party exhausted the available domestic remedies against the judgment that recognized the validity of the decision denying it the right to compensation.

*On the proceedings brought by third parties on the same factual basis as that cited by the alleged victims*

17. With respect to the case alleged to be similar, brought by third parties, the State provides a summary of its proceedings, and argues that for each case the corresponding court made its own assessment of the evidence presented. Thus, two third parties, after damages to their home caused by the flood of September 6, 2009, filed a liability lawsuit 22505/11-17-05-1 before the Fifth Metropolitan Regional Chamber of the then Federal Court of Tax and Administrative Justice, which denied their claims for compensation on April 9, 2012. On May 31, 2012, they filed amparo 518/2012, in which they named the judges of the Fifth Regional Chamber as the responsible authorities.

18. Unlike the case of the alleged victims, this amparo was granted on December 13, 2012, requesting that the decision of April 9, 2012 be set aside and that another ruling be issued analyzing the evidence in the trial, specifically the report issued by the Engineering Institute of the UNAM. Thus, the Fifth Metropolitan Regional Chamber had to analyze the cause-effect relationship between the damage to property and the alleged improper activity of the State by omission, and to study the evidentiary material of the UNAM report. Thus, on October 7, 2013, the aforementioned chamber concluded that there was indeed improper activity by the State, because CONAGUA "*did not follow the rules governing its operations nor did it perform acts of due diligence, in order to ensure that the public service granted complied with the parameters established for the correct provision of that service.*"

19. Additionally, in this other case, according to the State, the court considered that damages to property and non-material damages were caused to the party requesting the protection due to the flooding caused by the intense rain that occurred on that date, "*caused by inefficiency, due to the inadequacy, and lack of conservation and maintenance, of the hydraulic work known as the Túnel Emisor Poniente.*" Furthermore, it was considered in that amparo that the defective performance of a public administration service was a determining factor in the damages caused to the petitioning party; that these were economically quantifiable; and that there was "*a direct, immediate, and exclusive cause and effect relationship between the defective operation and the damages caused*", so that there could not be force majeure, because the event was not inevitable, since CONAGUA knew of the deficiencies of the hydraulic work and did not demonstrate that it took appropriate steps to avoid the damage caused. As the collegiate court considered that the amparo judgment had been complied with, on September 28, 2014, the case was ordered to be filed.

20. Therefore, the State asserts that, unlike this other case, the allegations of the petitioning party regarding the value given to the evidence to prove the alleged liability for damage to property were indeed addressed already at the domestic level in the direct amparo 598/2013 trial; and asserts that the fact that the

judgment was unfavorable to the alleged victims does not imply the existence of human rights violations, but rather an exercise of evaluation of the evidence provided, both in the administrative appeal and in the lawsuit for liability for damage to property. For the State, then, the evidence provided by the petitioner was considered insufficient to prove damage by CONAGUA. This decision, Mexico emphasizes, "*was not an arbitrary determination, but a ruling that was duly founded and substantiated.*"

21. Regarding the alleged unequal treatment against the alleged victims demonstrated by the result of amparo 518/2012 filed by third parties, where CONAGUA was found to be liable for similar facts, the State emphasizes that the rulings at the domestic level involve interpretative and assessment criteria employed by the jurisdictional bodies with respect to the evidence provided by the parties in their respective judicial proceedings in the various instances; and that this does not translate into unequal treatment.

22. In conclusion, the State requests that the petition be declared inadmissible because the facts presented by the petitioning party do not characterize violations of the alleged victims' rights. In particular, because the corresponding evidence was evaluated both in the administrative instance and in the direct amparo; and, therefore, it maintains that the petitioning party is asking the IACHR to act as a fourth instance. Accordingly, it emphasizes that the national courts considered that the alleged victims did not prove the existence of material or non-material damages caused by CONAGUA. And that there is no violation of the right to equality since each proceeding -that of the alleged victims and that of the third parties- was analyzed individually, according to the information in each case, and although they ended with different results, this does not imply that there was unequal treatment.

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

23. The IACHR issues a reminder that, pursuant to the Commission's consolidated and reiterated practice, in order to identify the appropriate remedies that should have been exhausted by a petitioning party before resorting to the inter-American system, the first methodological step in the analysis consists of distinguishing the various claims formulated in the corresponding petition in order to proceed to examine them one by one.<sup>13</sup> In the instant case, the petitioning party has presented the Commission with two main claims: (i) the violation of their right to compensation for state liability for damages caused by the floods of September 2009, which occurred after fierce rains and the rupture of a sewage tunnel, which caused them property damage; and (ii) unequal treatment in the decisions of the courts, since persons who were victims of the same facts, and who brought a factually similar case before the national courts, did receive compensation when CONAGUA was found liable for the rupture of the tunnel and the subsequent flooding.

24. With respect to these claims, both parties agree that the alleged victims filed and exhausted the domestic remedies available to them. Thus, it is noted that on March 12, 2010, they filed an administrative claim before the General Legal Subdirectorato of CONAGUA, alleging liability of the State for the damages suffered after the floods; on July 21, 2011, said subdirectorato decided not to pay the compensation for damage to property, considering that the event was due to a situation of force majeure. Subsequently, on September 19, 2011, they filed a liability lawsuit with the Eleventh Metropolitan Regional Court of the Federal Court of Tax and Administrative Justice, which on October 1, 2012 confirmed the resolution issued by CONAGUA. Finally, on May 23, 2013, the alleged victims filed the direct amparo lawsuit 598/2013 before the Thirteenth Collegiate Court in Administrative Matters of the First Circuit, which was denied on November 15, 2013 and notified on November 27, 2013. On January 15, 2014, the file was archived.

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

25. In this regard, and given that the State does not raise questions regarding the exhaustion of domestic jurisdiction or the deadline for filing the petition, the Commission considers that the instant case meets the requirement set forth in Article 46(1)(a) of the American Convention. Likewise, given that the petition was received by the IACHR by ordinary mail on April 8, 2014, the IACHR also concludes that the time limit requirement under Article 46(1b) of the Convention is met.

## VII. ANALYSIS OF COLORABLE CLAIM

26. For admissibility purposes the Commission the IACHR must also decide, pursuant to Article 47(b) of the American Convention, whether the facts alleged could characterize a violation of rights, or, pursuant to paragraph (c) of the same article, whether the petition is "manifestly groundless" or "obviously out of order". The criterion used to evaluate those requirements differs from that used to pronounce on the merits of a petition. Likewise, within the framework of its mandate, the Inter-American Commission is competent to declare a petition admissible when it refers to domestic proceedings that could violate rights guaranteed by the American Convention. That is to say that, based on the aforementioned conventional norms, in keeping with Article 34 of its Rules of Procedure,<sup>14</sup> the admissibility analysis focuses on the verification of such requirements, which refer to elements that, if true, could constitute *prima facie* violations of the American Convention.

27. The alleged victims state that a tunnel near their homes broke after heavy rains in September 2009, flooding their homes with sewage. They allege that this occurred due to CONAGUA's omission in its obligation to check and supervise tunnels, for which they should be compensated. Likewise, they argue that they were subject to unequal treatment by the national courts, since in an amparo lawsuit with similar factual characteristics to theirs, a positive decision was rendered for third parties, declaring the liability of CONAGUA. They claim that this alleged inequality impacted their right to due compensation, due process, certainty, and legal security.

28. The State, for its part, requests the inadmissibility of the petition for lack of substantiation, assuring that in the domestic decisions the evidence corresponding to the administrative proceeding and the direct amparo was evaluated. Therefore, it considers that the petitioning party seeks to have the IACHR act as a fourth instance. It also notes that the Mexican courts that heard the case noted that the alleged victims did not substantiate the existence of material or non-material damages, nor did they prove any irregularities on the part of CONAGUA. And that the rulings at the domestic level were based on criteria of interpretation and evaluation of the evidence provided by the parties in their respective judicial proceedings in the various instances, which does not translate into unequal treatment.

29. With respect to the "fourth instance formula" argument, the Commission stresses the complementary nature of the inter-American system and emphasizes that, as indicated by the Inter-American Court, in order for a "fourth instance" exception to proceed, it would be necessary 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 [...]."<sup>15</sup> In the present case, the Commission considers that, as indicated by the Inter-American Court, "it is up to the Court to ascertain whether or not the State, in the steps effectively taken at domestic level, violated its international obligations stemming from those inter-American instruments that grant authority to the Court."<sup>16</sup> It is also up to the Court to determine "whether or not the actions of judicial organs constitute a violation of the State's international obligations [which] may mean that the Court [...] must examine the respective domestic proceedings to

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<sup>14</sup> Article 34 of the Rules of Procedure of the IACHR reads: The Commission shall declare any petition or case inadmissible when: a. it does not state facts that tend to establish a violation of the rights referred to in Article 27 of these Rules of Procedure; b. the statements of the petitioning party or of the State indicate that it is manifestly groundless or out of order; or c. supervening information or evidence presented to the Commission reveals that a matter is inadmissible or out of order.

<sup>15</sup> I/A Court H.R. Case of Cabrera García and Montiel Flores v. Mexico. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 26, 2010. Series C No. 220 par. 18.

<sup>16</sup> I/A Court H.R. Case of Cabrera García and Montiel Flores v. Mexico. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 26, 2010. Series C No. 220 par. 19.



establish their compatibility with the American Convention."<sup>17</sup> Accordingly, the analysis of whether the State incurred in violations of the American Convention in this case is a matter to be decided at the merits stage. Therefore, the IACHR, in admitting a petition, does not intend to supplant the competence of the domestic judicial authorities; the Commission is, however, competent within the framework of its mandate to declare a petition admissible when it refers to domestic proceedings that could violate rights guaranteed by the American Convention.

30. With respect to the petitioning party's allegation of violation of Article 24 of the American Convention (right to equality before the law) on the grounds that the courts rejected its claims for compensation when, in a similar proceeding brought by third parties, the latter did receive compensation, it is noted first of all that the cases followed the following procedural steps:

The alleged victims proceeding	The third parties proceeding
<p style="text-align: center;"><i>Administrative Claim</i></p> <p>Before CONAGUA's General Legal Subdirectorato</p> <p>On July 21, 2011, it decided not to pay compensation for property damage through official letter number BOO.00.02.03.1.1.04521</p>	<p style="text-align: center;"><i>Administrative Claim</i></p> <p>Before CONAGUA's General Legal Subdirectorato</p> <p>On July 8, 2011, the Subdirectorato decided not to pay compensation for damages through official letter number BOO.00.02.03.1.1.-04235</p>
<p style="text-align: center;"><i>Liability for damages trial</i> 22456/12-17-11-7</p> <p>Before the Eleventh Metropolitan Regional Chamber of the Federal Court of Tax and Administrative Justice (<i>Tribunal Federal de Justicia Fiscal y Administrativa</i>)</p> <p>On October 1, 2012, the claims were denied</p>	<p style="text-align: center;"><i>Liability for damages trial</i> 22505/11-17-05-1</p> <p>Before the Fifth Metropolitan Regional Chamber of the Federal Court of Tax and Administrative Justice.</p> <p>On April 9, 2012, the claims were denied</p>
<p style="text-align: center;"><i>Direct Amparo lawsuit 598/2013</i></p> <p>Before the Thirteenth Collegiate Court in Administrative Matters of the First Circuit</p> <p>On November 15, 2013, the claims were denied</p> <p>The case was set aside on January 15, 2014</p>	<p style="text-align: center;"><i>Direct Amparo lawsuit 518/2012</i></p> <p>Before the Fourth Collegiate Court in Administrative Matters of the First Circuit</p> <p>On December 13, 2012, the amparo was granted, with a request to the Fifth Chamber to issue another ruling analyzing the entire body of evidence, particularly the report issued by UNAM</p>
	<p style="text-align: center;"><i>Decision of the Fifth Metropolitan Regional Chamber</i></p> <p>On October 7, 2013, compensation was granted to the third parties, concluding that there was improper activity by CONAGUA</p>

31. Thus, in cases of allegations of this type, the IACHR has pointed out that the right to equality before the law cannot be assimilated to the right to an equal outcome of judicial proceedings concerning the same subject matter.<sup>18</sup> The mere invocation of other rulings on the same matter with different results is not

<sup>17</sup> I/A Court H.R. Case of Palma Mendoza et al. v. Ecuador. Preliminary Objection and Merits. Judgment of September 3, 2012, Series C No. 247, par. 18; I/A Court H.R. Case of Rosadio Villavicencio v. Peru. Preliminary Objections, Merits, Reparations, and Costs. Judgment of October 14, 2019. Series C No. 388, par. 24; I/A Court H.R. Case of Cabrera García and Montiel Flores v. Mexico. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 26, 2010. Series C No. 220 par. 19.

<sup>18</sup> IACHR, Report No. 39/96, Case 11.673, Admissibility, Santiago Marzoni, Argentina, October 15, 1996, published in the IACHR Annual Report 1996, par. 43; and IACHR Report No. 221/19. Admissibility. Francisco Pompeyo Ramos Marrau. Argentina. October 24, 2019, par. 17.

sufficient to characterize *prima facie* a possible violation of Article 24 of the Convention.<sup>19</sup> It is necessary for the petitioning party to provide additional elements to demonstrate that the State, by action or omission of its judicial institutions, incurred in international responsibility for failure to comply with its duties to respect or guarantee the right to equality before the law. Based on these criteria, the Commission observes that the alleged victims resorted to the same administrative and judicial remedies as the third parties to whom reparation was granted; the facts that motivated both processes were the same (damage to their homes due to the natural events that occurred in 2009 and the negligence of CONAGUA); in both cases, the aforementioned report of the UNAM was presented as decisive evidence that showed the responsibility of the competent authorities for failure to comply with their prevention duties. Therefore, the claim raised by the petitioning party is not limited to the mere invocation of divergent judgments, nor is it manifestly unfounded. Consequently, the examination of whether there was indeed differential treatment of the alleged victims under the terms of the aforementioned conventional norm corresponds to the analysis of the merits of this case.

32. Thus, in view of the elements of fact and law presented by the parties and the nature of the matter brought before it, the IACHR considers that, if the alleged responsibility of the State in the causes that led to the collapse of the Emisor Poniente Tunnel is proven, due to alleged omissions by CONAGUA in the supervision and maintenance of the water channel, which reportedly caused flooding in the Valle Dorado district and affected the alleged victims' homes, without adequate judicial protection of their rights, this could characterize violations of the rights protected in Articles 8 (judicial guarantees), 19 (rights of the child), 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 Carlos Sánchez Ríos, Felipe Sánchez Román, and María Guadalupe Román Delgado.

33. Finally, with regard to the alleged violation of Articles 5 (right to personal liberty), 7 (personal freedom), 10 (right to compensation), and 17 (protection of the family), the Commission notes that no evidence has been provided to determine *prima facie* their possible violation.

## VIII. DECISION

1. To find the instant petition admissible in relation to Articles 8, 19, 21, 24, 25, and 26 of the American Convention, taken in conjunction with Article 1(1) thereof.

2. To declare the petition inadmissible with respect to Articles 5, 7, 10, and 17 of the American Convention.

3. To notify the parties of this decision; continue with the analysis of the merits; and 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 29<sup>th</sup> day of the month of June, 2024. (Signed:) Roberta Clarke, President; Arif Bulkan, Andrea Pochak, and Gloria Monique de Mees, Commissioners.

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<sup>19</sup> IACHR, Report No. 221/19. Admissibility. Francisco Pompeyo Ramos Marrau. Argentina. October 24, 2019, par. 17.