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REPORT No. 187/21

PETITION 457-13

REPORT ON ADMISSIBILITY

GEMMA MÁVIL HERNDEZ AND FAMILY MEMBERS
MEXICO

Approved electronically by the Commission on August 30, 2021.

Cite as: IACHR, Report No. 457/13. Petition 457- 13. Admissibility. Gemma Mávil Hernández and family members. Mexico. August 30, 2021.

I. INFORMATION ABOUT THE PETITION

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| Petitioners: | Pedro Manuel Mávil Martínez and <i>United for Justice</i> |
| Alleged victim: | Gemma Mávil Hernández |
| Respondent State: | Mexico ¹ |
| Rights invoked: | Article 4 (life), 5 (personal integrity), 7 (personal liberty), 8 (right to a fair trial) and 25 (judicial protection) of the American Convention on Human Rights, ² in relation to Article 1.1 (obligation to respect rights) thereof; and Article 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women. ³ |

II. PROCEEDINGS BEFORE THE IACHR⁴

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| Filing of the petition: | March 15, 2013 |
| Additional information received at the stage of initial review: | May 24, 2017; June 14, 2018; and March 26, 2019 |
| Notification of the petition to the State: | April 19, 2018 |
| State's first response: | January 22, 2020 |
| Additional observations from the petitioner: | February 12, 2021 |
| Warning about possible closing of the case: | May 1, 2017 |
| Response of the petitioner to the warning about the possible closing of the case: | May 24, 2017 |

III. COMPETENCE

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| Competence <i>Ratione personae</i>: | Yes |
| Competence <i>Ratione loci</i>: | Yes |
| Competence <i>Ratione temporis</i>: | Yes |
| Competence <i>Ratione materiae</i>: | Yes, the American Convention (deposit of the instrument of accession on March 24, 1981); and Convention of Belém do Pará (deposit of the instrument of ratification on December 11, 1998) |

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

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| Duplication of procedures and international <i>res judicata</i>: | No |
| Rights declared admissible: | Articles 4 (right to life), 5 (personal integrity), 7 (personal liberty), 8 (right to a fair trial), 17 (protection to the family), 24 (equality before the law) and 25 (judicial protection) of the American Convention on Human Rights, in relation to Article 1.1 (obligation to respect rights) thereof, and Article 7 of the Convention of Belém do Pará |

¹ In accordance with Article 17.2.a of the Rules of Procedure of the Commission, Commissioner Joel Hernández, a Mexican national, did not participate in the discussion or decision of the present case.

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

³ Hereinafter "the Convention of Belém do Pará."

⁴ The observations submitted by each party were duly transmitted to the opposing party.

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| Exhaustion of domestic remedies or applicability of an exception to the rule: | Yes, under the terms of Section VI. |
| Timeliness of the petition: | Yes, under the terms of Section VI. |

V. FACTS ALLEGED

1. The petitioners allege the kidnapping for ransom of Gemma Mávil Hernández, as well as the lack of due diligence in the investigation of the event, the disappearance of her remains and the impunity for her alleged sexual abuse and subsequent murder.

2. The petitioners report that on May 3, 2011, Mr. Pedro Manuel Martínez Mávil received a phone call telling him that his daughter, Gemma Mávil Hernández, had been kidnapped in the state of Veracruz, while she was traveling from the city of Xico to Xalapa to attend an alleged job interview. He was required to pay a million Mexican pesos (around 80,700 US dollars at that time) for the release of the alleged victim. The family then went to the Office of the Public Prosecutor to report the kidnapping. This led to an operation carried out on May 4, 2011, by the Specialized Unit for Counter-Kidnapping, during which three persons who intended to receive the ransom were detained. The petitioners allege that after the operation, the authorities committed a series of irregularities in the investigation of the whereabouts of the alleged victim, since they released a woman who was arrested and a man reportedly died during the questioning. Only the third person was brought before the Office of the Public Prosecutor and was sentenced to twenty-five years in prison for the crime of aggravated kidnapping.

3. Mr. Pedro Mávil states that, although the Specialized Unit for Counter-Kidnapping started prosecution investigation no. 32/UECS-DIM/2011 into the disappearance of Ms. Mávil Hernández, her family decided to investigate her whereabouts on their own. A month and a half after the kidnapping, the family was contacted again with a request for the payment of a new ransom by bank deposit. Mr. Pedro Mávil asked the bank manager for the name of the account holder and discovered that she was a woman with a criminal record. Mr. Pedro Mávil asked the Office of the Public Prosecutor to issue a subpoena to the bank account holder and to conduct an expert inquiry into the audios of the phone calls he had received with regard to his daughter's kidnapping. The Office of the Public Prosecutor provided no answer. Due to the Office of the Public Prosecutor's evident omissions and failure to act, Mr. Pedro Mávil submitted two complaints with the State Commission on Human Rights, which led to the issuance of recommendations no. 02 of 2017, and no. 53 of 2019.

4. In October 2016, the family of Ms. Mávil Hernández was informed that in August 2011 the Office of the Public Prosecutor had found the body of a woman whose physical characteristics resembled those of the alleged victim. The public prosecutor of the State of Veracruz opened investigation no. 844/2011, in which the genetic profile of the body was determined. However, the family members of the alleged victim were not informed about this, and no further investigations were conducted. In 2016, at the request of the victim's family, the Office of the Public Prosecutor compared the genetic profile of the body with that of Pedro Mávil and that of Gema Hernández Rechy. The test results confirmed that the remains were those of the alleged victim. However, the body of Ms. Mávil Hernández was reportedly buried in a mass grave, and to date it remains disappeared despite exhumation work carried out by the public prosecutor in 2016. The petitioners hold that this proves that there were several irregularities in the burial of corpses, which seriously affects the right to truth of the family members of disappeared persons.

5. Furthermore, the petitioners allege the lack of due diligence and of a gender perspective since the public prosecutor failed to investigate possible sexual violence acts and the murder of Gemma Mávil Hernández, as well as the irregularities in the prosecution of those persons allegedly responsible for the disappearance of the body. The petitioners emphasize that no study was conducted on the possible commission of sexual violence against the alleged victim, since the autopsy only pointed out that the victim had bruises and did not identify the cause of the death of the young woman. The petitioners indicate that 90 percent of kidnapped women in Mexico suffer sexual violence, so the public prosecutor had the duty to investigate with a

gender perspective if the body of Ms. Mávil presented any signs of this type of violence. In addition, the petitioners contend that there was no comprehensive administrative reparation for the victim's family.

6. The petitioners report that a criminal investigation was initiated against two officials of the Medical Forensic Service who oversaw the burying of the alleged victim's body. On February 13, 2018, a judge decided not to proceed with the accusation against them due to alleged lack of evidence. This decision was upheld in second instance on August 24, 2018. In addition, on January 31, 2018, the Executive Commission for Victim Assistance initiated an administrative process to provide reparations to the relatives of Ms. Mávil. With the legal counsel of the State Human Rights Commission of Veracruz, Mr. Pedro Mávil filed a writ of amparo because he deemed that the reparation granted to the family was not comprehensive. The petitioners allege the violation of Mr. Pedro Mávil's right of access to justice because the judge considered the writ of amparo as not filed. They report that on February 23, 2018, the court in charge of resolving the writ of amparo requested the clarification of the writ of amparo. As a result, on February 27, 2018, a judicial official went to the State Human Rights Commission of Veracruz's facilities for the service of process of Mr. Mávil's amparo, and decided to close the proceedings since the security guard of the State Human Rights Commission of Veracruz told him that he did not know Mr. Pedro Mávil. Mr. Mávil sent an official letter expressing his disagreement with the reparation measures granted to his family. Finally, the petitioners ask the Inter-American Commission to join the stages of admissibility and merits because the exceptions raised by the State are related to the merits of the case and because the parents of the alleged victim are older adults.

7. For its part, the Mexican State submitted a summary of the actions taken since the beginning of the investigation of the Office of the Public Prosecutor into the kidnapping of Gemma Mávil Hernández. It states that on May 6, 2011, the State initiated a criminal proceeding plus reparation for damages against two men who allegedly participated in the kidnapping of Ms. Mávil Hernández, one of whom was later convicted. In November 2012 and June 2013, a formal prison order was issued against one of the defendants, and both were sentenced in the first and second instance in 2014. The defendants filed a writ of amparo against the conviction, which led to the acquittal of one of them. On July 8, 2015, Mr. Pedro Mávil was recognized as an indirect victim of the crime by the court of first instance that was in charge of the criminal proceedings in response to a request filed by Mr. Mávil in June 2015. Nevertheless, this decision was not notified to him, so he filed a writ of amparo, which was dismissed on September 4, 2015, since he had already been recognized as an indirect victim in the proceedings.

8. With regard to the disappearance of the alleged victim's body, the State indicates that on June 3, 2016, Mr. Pedro Mávil informed the Office of the Public Prosecutor of a possible link with a body found as part of investigation no. 844/2011, which began on August 13, 2011. On June 9, 2016, the Prosecutor's office conducted the proceedings of exhumation of the corpse, however, Ms. Mávil Hernández's body was not found in the municipal pantheon. On July 21 and September 2, 2016, two exhumation proceedings were carried out with no results on the location of the alleged victim's body. The State stresses that it complied with the protocols and that it ensured the proper handling and identification of the corpses during each of the exhumation proceedings. It indicates that on November 7, 2016, Mr. Pedro Mávil filed an indirect writ of amparo due to the fact that his daughter's body had not been exhumed nor handed over to the family. Mr. Mávil's writ was considered extemporaneous and thus dismissed.

9. The State contends that the petition is inadmissible since, in its view, it does not present facts that constitute human rights violations in the context of the criminal proceedings conducted to investigate the kidnapping of Gemma Mávil Hernández. It argues that two persons were convicted for the kidnapping of Ms. Mávil Hernández, although one of them was later acquitted after having presented a writ of amparo. The State sets forth that Mr. Pedro Mávil participated and filed remedies in the criminal proceeding and was recognized as an indirect victim of the crime, so that he could have access to reparation. The State therefore considers that it complied with its human rights obligations under the principle of subsidiarity.

10. In addition, the State argues domestic remedies have not been exhausted, since the authorities continue to carry out investigations to find the body of the alleged victim and identify the persons responsible for the crime. Further, it emphasizes that the petitioners have not exhausted domestic remedies with respect to the search and handing over of Gemma Mávil Hernández's body.

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

11. The Commission notes that the petitioners allege the lack of due diligence in the investigation into the kidnapping of the alleged victim; the existence of irregularities in the context of the burial of the corpse and in the criminal proceedings due to the improper handling of the body; and the lack of access to justice and comprehensive reparation for the family members of Gemma Mávil Hernández. The petitioners raise the exception to the exhaustion of domestic remedies of unwarranted delay in rendering a final judgement in the criminal proceedings. The State indicates that the investigations to find the whereabouts of the alleged victim's body are still ongoing, so that domestic remedies would not have been exhausted.

12. In this regard, the Commission recalls that, in cases of serious human rights violations, such as kidnapping or enforced disappearance, the domestic remedies to be taken into account for the purposes of the admissibility of a petition are those related to the criminal proceedings, since it is the pathway to clarify the facts and establish the corresponding criminal sanctions, as well as to allow for other forms of pecuniary reparation.⁵ In this regard, the criminal investigation into the kidnapping of Gemma Mávil Hernández began in May 2011, and after ten years there is only one conviction against a man who confessed to his involvement in the facts. Although the State has identified one of the persons responsible for the facts, there has been an unwarranted delay in clarifying the facts in which the alleged victim died and in punishing all of those responsible for the alleged victims' kidnapping and death.

13. When there are specific elements pointing to partial impunity in cases of serious human rights violations, as in this case, the Commission found the exception to the exhaustion of domestic remedies provided for in Article 46.2(c) of the American Convention applicable.⁶ In addition, the Commission notes that the petitioners argue that there is no investigation into possible sexual violence acts and the murder of the alleged victim. The State has not contested this claim, nor has it provided elements to the Commission that demonstrate that the alleged femicide of Gemma Mávil Hernández is being investigated.

14. With respect to the allegations of lack of due diligence in the investigation into the disappearance of the alleged victim's body, the exception of unwarranted delay in the resolution of domestic remedies arises as well. Although the State contends that it is conducting the investigation to find the whereabouts of the body of Ms. Mávil Hernández, it has not specified what steps it has taken since 2016 to find the body and to punish the persons responsible for its disappearance. Therefore, from this perspective, the exception to exhaustion of domestic remedies provided for in Article 46.2(c) of the American Convention is also applicable.

15. In this case, the petitioners have carried out actions such as the request for genetic matching in 2016, the writ of amparo to request the exhumation and handing over of the body in 2016, the administrative proceeding to request reparation in 2018, and the complaint to the State Commission in 2019. Considering that the alleged facts began to take place in mid-2011; that this petition was filed on March 15, 2013; and that the effects of the alleged violations have extended until the present day, the Commission concludes that this petition was filed within a reasonable period of time in accordance with Article 32.2 of its Rules of Procedure in relation to the above-mentioned claims.

16. Moreover, the petitioners allege that reparation was not comprehensive, and that they did not have access to justice through the writ of amparo. Although the appropriate remedy to complaint about impunity in the kidnapping, sexual violence and femicide of the alleged victim is the criminal proceeding, since specific violations concerning the administrative proceeding of reparation to victims and the subsequent writ

⁵IACHR, Report No. 131/21. Petition 784- 10. Admissibility. Wilson Mario Taborda Cardona and family. Colombia. May 13, 2021; para. 12.

⁶IACHR, Report No. 240/20. Petition 399- 11. Admissibility. Over Jose Quila *et al.* (La Rejoya Massacre). Colombia. September 6, 2020; para. 12; Report No. 129/18, Petition 1256/ 07. Admissibility. Cornelio Antonio Isaza Arango *et al.* (Massacre of El Retiro Sawmill), Colombia, November 20, 2018; and Report No. 104/18, Petition 221/08, Admissibility. Delis Palacio Herrón *et al.* (Bojayá Massacre), Colombia, September 20, 2018.

of amparo were also alleged, the Commission must evaluate compliance with the admissibility requirements in this petition.

17. The administrative proceeding for reparation for the family of Gemma Mávil Hernández began on January 31, 2018, through an order issued by the Executive Commission for Victim Assistance. On February 21, 2018, Mr. Pedro Mávil filed a writ of amparo against said order because he considered that it did not grant any reparation to the direct victim and that the reparation measures did not consider the evidence filed by the family regarding material and equitable damages. On March 9, 2018, the writ of amparo was considered as if it had not been submitted, a decision which was confirmed on March 23, 2018. The Commission understands that this decision led to the exhaustion of domestic remedies. As a result, in view of the fact that the petition was lodged on March 15, 2013, it is estimated that it meets the requirements set forth in Articles 46.1(a) and (b) of the American Convention.

VII. ANALYSIS OF COLORABLE CLAIM

18. The IACHR notes that the main objective of this petition is to resolve the impunity in the kidnapping and subsequent femicide of Ms. Mávil Hernández, as well as the lack of due diligence during the investigation into her kidnapping and murder, and the subsequent disappearance of her body. On the one hand, the petitioners also include allegations regarding the lack of impartiality in the criminal proceedings on the loss of the body, the violation of the right to personal integrity of the alleged victim's family members and the lack of access to comprehensive reparation. On the other hand, Mexico argues that the petition does not contain human rights violations, since the authorities convicted a person for the kidnapping of the alleged victim; and that the petitioners reportedly had access to and participated in the criminal investigation and obtained administrative reparation.

19. The Commission recalls that States have the duty to investigate *ex officio* any cases of disappearance of persons, as an intrinsic legal obligation, and shall not shift the burden of this initiative to the family members.⁷ One of the guiding principles of the obligation of due diligence is to follow up on the logical lines of inquiry in any criminal investigations into human rights violations.⁸

20. In addition, in case of violence against women, the general obligations established in Articles 8 and 25 of the American Convention are complemented and enhanced for the States Parties by the obligations arising from the specific inter-American treaty, the Convention of Belém do Pará. Article 7(b) of this Convention specifically obliges States parties to apply due diligence to prevent, punish and eradicate violence against women.⁹ Indeed, the obligation to investigate is reinforced in the case of a woman who is killed or suffers ill-treatment, or whose personal liberty is violated in a general context of violence against women, since it is required that the State clarify whether the act was perpetrated based on gender.¹⁰ This obligation is particularly important in widespread contexts of violence against women. In this regard, the Commission has found that the forced disappearance of women, girls and adolescents has been a recurrent phenomenon in different parts of Mexico.¹¹ Thus, although the lack of prevention of enforced disappearance in a generalized context does not imply *per se* the responsibility of the State in a specific case, when the State is aware of an enforced disappearance in this context, it has a reinforced obligation of due diligence since it knows that there is a real and imminent risk that women victims are sexually abused, subjected to ill-treatment and killed. The Inter-American Court of Human Rights has determined that "*in this context, an obligation of strict due diligence arises in regard to reports of missing women, with respect to search operations during the first hours and days.*"¹²

⁷IAHR Court. Guachalá Chimbo *et al.* v. Ecuador. Merits, reparations and costs. Judgement of March 26, 2021. Series C No. 423, para. 200.

⁸IAHR Court. Vicky Hernández *et al.* v. Honduras. Merits, reparations and costs. Judgement of March 26, 2021. Series C No. 42, para. 106.

⁹IAHR Court. Velásquez Paiz *et al.* v. Guatemala. Preliminary objections, merits, reparations and costs. Judgement of November 19, 2015. Series C No. 307, para. 145.

¹⁰IAHR Court. Velásquez Paiz *et al.* v. Guatemala. Preliminary objections, merits, reparations and costs. Judgement of November 19, 2015. Series C No. 307, para. 146.

¹¹ IACHR, Situation of Human Rights in Mexico. December 31, 2015. OAS/Ser.L/V/II., Doc. 44/15, paras. 179 and 180.

¹²IAHR Court. González *et al.* (Cotton Field) v. Mexico. Judgment of November 16, 2009, para. 282 and 283.

21. In light of these standards, and under the *prima facie* approach inherent to admissibility assessment, the Commission considers that the State failed to undertake essential steps when it could still be assumed that the alleged victim was alive. The Office of the Public Prosecutor released a person who had been detained in the operation carried out after the kidnapping of the alleged victim and did not follow the line of investigation of the bank account holder demanding the ransom. Neither did it carry out expert reports on the audios nor track the phone calls to collect evidence essential to the investigation, despite the requests and efforts made by Mr. Pedro Mávil.

22. Moreover, once the body of Ms. Gemma Mávil Hernández was recovered by the Office of the Public Prosecutor, said entity had the obligation to identify the alleged victim, determine the cause of death, and find out whether she had been subjected to sexual violence, as well as to preserve and collect relevant physical evidence. The gender perspective in the investigation into what had happened to the alleged victim imposed an obligation on the Office of the Public Prosecutor to clarify whether the facts were perpetrated on the basis of gender and to investigate other specific violations of personal integrity, such as torture, any acts of sexual violence and any possible sexual motive.¹³ The Commission considers *prima facie* that the alleged improper handling and treatment of the body, and the lack of investigation into possible sexual violence acts and into the cause of the death of the alleged victim could constitute an absence of due diligence in the criminal investigation and a lack of a gender perspective in the clarification of the facts.

23. The petitioners further allege that the administrative reparation was not comprehensive and that there was no reparation to Ms. Mávil Hernández as a direct victim. They argue that the reparation failed to consider the evidence provided by the family, such as the fact that Mr. Pedro Mávil quit his job, and it was limited to performing a valuation in equity contrary to what had been proven.

24. The IACHR also recognizes the investigative work undertaken by Mr. Pedro Mávil and his family in order to locate the whereabouts of Gemma Mávil Hernández, and the fact that Mr. Mávil even quit his job for this reason. Therefore, the Commission considers *prima facie* that it is possible to establish a violation of the right to personal integrity and the right of the family to the detriment of the victim's family members in the instant case, for the alleged omissions of the State in the prevention and due investigation of the facts had several impacts on the victim's family nucleus and on the dynamics of their lives, which were affected by the disappearance of the alleged victim.

25. In view of these considerations and after examining the elements of fact and law set forth by the parties, the Commission considers that the claims of the petitioners are not unfounded and need to be studied on the merits since the alleged facts, if corroborated, could imply violations of Articles 4 (life), 5 (personal integrity), 7 (personal liberty), 8 (right to a fair trial), 17 (protection of the family), 24 (equality before the law) and 25 (judicial protection) of the American Convention, in relation to Article 1.1 (obligation to respect rights) thereof, and Article 7 of the Convention of Belém do Pará to the detriment of alleged victims established in this report.

VIII. DECISION

1. To declare this petition admissible in relation to Articles 4, 5, 7, 8, 17, 24 and 25 of the American Convention in accordance with Article 1.1 thereof, and Article 7 of the Convention of Belém do Pará.

2. To notify the parties of this decision; to proceed with the merits of the case; 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 30th day of the month of August, 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, and Stuardo Ralón Orellana, Commissioners.

¹³IACHR Court. Velásquez Paiz *et al.* v. Guatemala, *supra* note 9, paras. 146 and 147.