

OEA/Ser.L/V/II  
Doc. 80  
5 April 2022  
Original: English

**REPORT No. 77/22**  
**PETITION 1561-13**  
REPORT ON ADMISSIBILITY

ZAIDA TORRES AND OTHERS  
UNITED STATES OF AMERICA

Approved electronically by the Commission on April 5, 2022.

**Cite as:** IACHR, Report No. 77/22, Petition 1561-12. Admissibility. Zaida Torres and others.  
United States of America. April 5, 2022.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioners:</b>	Natasha Lycia Ora Bannan (National Lawyers Guild), Annette Martínez-Orabona (Instituto Caribeño de Derechos Humanos Clínica Internacional de Derechos Humanos Facultad de Derecho Universidad Interamericana de Puerto Rico), Lauren Carasik (International Human Rights Clinic Western New England University School of Law) and the Alianza de Mujeres Viequesenses
<b>Alleged victims:</b>	Zaida Torres and other <sup>1</sup>
<b>Respondent State:</b>	United States of America <sup>2</sup>
<b>Rights invoked:</b>	Articles I (Right to life, liberty and personal security), IV ((Right to freedom of investigation, opinion, expression and dissemination), VI (Right to a family and to protection thereof), VII (Right to protection for mothers and children), VIII (Right to residence and movement), IX (Right to inviolability of the home), XI (Right to the preservation of health and to well-being), XIV (Right to work and to fair remuneration) , XVIII (Right to a fair trial), and XXIV (Right of petition) of the American Declaration on the Rights and Duties of Man <sup>3</sup>

**II. PROCEEDINGS BEFORE THE IACHR<sup>4</sup>**

<b>Filing of the petition:</b>	Sept 23, 2013
<b>Additional information received at the stage of initial review:</b>	August 18, 2017
<b>Notification of the petition to the State:</b>	December 10, 2018
<b>State's first response:</b>	April 11, 2019
<b>Notification of the possible archiving of the petition:</b>	May 24 2017
<b>Petitioner's response to the notification regarding the possible archiving of the petition:</b>	May 24, 2017

**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 Declaration (ratification of the OAS Charter on June 19, 1951)

**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
---	----

<sup>1</sup> Wanda Bermúdez, Ivis Cintrón Díaz, Ida Vodofsky Colon, Norma Torres Sanes, Cacimar Zenón, Asunción Rivera, Ismael Guadalupe, Ilsa Ortiz Ortiz, and Nilo Adams Colón.

<sup>2</sup> Hereinafter "United States", "the U.S." or "the State."

<sup>3</sup> Hereinafter "American Declaration."

<sup>4</sup> The observations submitted by each party were duly transmitted to the opposing party.

<b>Rights declared admissible</b>	Articles I (Right to life, liberty and personal security), IV (Right to freedom of investigation, opinion, expression and dissemination) VI (Right to a family and to protection thereof), VII (Right to protection for mothers and children), XI (Right to the preservation of health and to well-being), XIV (Right to work and to fair remuneration), XVIII (Right to a fair trial), and XXIV (Right of petition)
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, in terms of section VI
<b>Timeliness of the petition:</b>	Yes, in terms of section VI

**V. ALLEGED FACTS**

1. This petition deals with the alleged long term health and environmental consequences on the alleged victims, as a result of military practices (involving toxic chemicals and warfare) of the United States Navy conducted on the island of Vieques, Puerto Rico.

2. By way of background the petitioners make the following assertions. Firstly, in 1941, the Navy set up military operations in the municipal islands of Culebra and Vieques, Puerto Rico; and that in 1942-1943 and 1947, the Navy expropriated of 75% of the land on Vieques for the use of military practices, totaling approximately 23,000 acres. The expropriation of 75% of the island involved the forced evacuation and displacement of hundreds of Viequense families who were forced to relocate to the middle of the island and leave the land they either owned or worked on.

3. Secondly, using the island as a practice ground for military warfare, the Navy routinely bombed the island—including dropping 500-pound bombs from aircraft—and used known deadly chemicals and toxins such as napalm, Agent Orange, depleted uranium (DU), white phosphorous, arsenic, lead, mercury, cadmium, copper, magnesium, lithium, cobalt, nickel, perchlorate, TNT (Trinitrotoluene), PCBs (Polychlorinated Biphenyls), solvents, pesticides, and high explosives. Thirdly, for decades, Viequenses have been exposed to lethal contaminants exuded from munitions that have contaminated their bodies, their land and the neighboring sea, and continue to live with the long lasting effects to their health and environment. As a result of these harmful practices, generations of Viequenses suffer inflated rates of cancer, hypertension, asthma, birth defects, higher infant mortality rates and low birth weights, respiratory illnesses, kidney failure and skin rashes. Despite the high incidence of illness on Vieques, the island currently has no adequate health services, including general and specialized physicians, equipment, laboratories and diagnostic and treatment facilities on Vieques to adequately diagnose and treat various serious conditions, including cancer. The overwhelming majority of Viequenses must travel to mainland Puerto Rico whenever they need medical attention, whether it consists of generalized care, follow-up care or treatment for their health conditions. Fourthly, the fishing industry in Vieques comprises approximately 40% of the local economy. Fishermen have often complained about the great number of unexploded bombs in the coastal waters of Vieques and the destruction caused to coral reefs and other elements of the marine environment harmed by stray bombs from jets and ships. The Navy’s activities interfered with the ability of local fishermen to practice their trade, both because the military practices leaked toxins and contaminants into the surrounding waters and because the Navy would routinely block water routes that the fisherman followed daily in order to carry out their warfare practices.

4. Fifthly, the Navy has refused to formally acknowledge any wrongdoing or liability on their part or admit a connection between 60 years of bombing and biochemical warfare practices and the resulting health consequences suffered by thousands of Viequenses. Instead, the federal government has blamed these illnesses on Viequenses’ choice of diet, grooming and hygiene habits. The Navy has never fully admitted to the types of weapons, chemicals, arms, and munitions used in Vieques throughout its decades of military practices, nor the frequency, duration and location such munitions were used. Without full knowledge of the toxic

chemicals and materials used, a full assessment, cleanup, and adequate civilian and governmental oversight are stunted, as well as the ability of civilians to diagnose and treat subsequent illnesses as a result of their exposure to unknown toxins.

5. Sixthly, while the Navy officially closed the base for military practices in 2003 to begin the official process of environmental cleanup, the past ten years have shown a tremendous reluctance by the U.S. government to fund a full, adequate and appropriate decontamination effort that would restore the land to the pristine state that predated its military activities and address the continued harm to the health of Viequenses. In this regard, the Navy has hired a military contractor to carry out the cleanup, who has in turned hired local Viequenses to assist in picking up both exploded and unexploded munitions. The Viequenses are paid a high hourly wage and are required to waive all potential claims of liability against the Navy. Residents assist in picking up munitions without knowing whether they are active, despite the Navy's claims that using workers to do such work by hand could be unsafe.

6. Against this background, the particulars of the 10 alleged victims (and their families - where appropriate) are set out in the following paragraphs.

7. Zaida Torres was born on June 20, 1954. Her husband worked as a plumber on the Naval base for 27 years and developed high blood pressure and a prostate cyst. Her daughter, Liza Torres, was diagnosed with acute lymphocytic leukemia (type of cancer) at the age of 15. After being hospitalized and treated with radiation and then chemotherapy every three weeks for two years, she died from cancer at the age of 17 years. In approximately 2005, Zaida's uncle died of pancreatic cancer, her aunt of breast cancer and her aunt's son of cerebral cancer.

8. Wanda Bermúdez was born on August 13, 1962 and is fourth generation Viequense. From approximately age 15, she began having pain in her right ear with occasional nasal bleeding. She was diagnosed at age 23 with nasopharyngeal cancer with masses in her nasal passage and throat. She continues to suffer from respiratory illnesses that require periodic hospitalization. Her cousin who grew up next to her was diagnosed with a rare form of cancer of the nervous system and subsequently died three years later.

9. Ivis Cintrón Díaz was born on November 27, 1964. She has three daughters, two of whom suffered from chronic asthma since they were newborns. They continue to be asthmatic. Her youngest daughter, age 27, is legally blind in her left eye as a result of a rare ophthalmological disease. Ivis has recently been diagnosed with an abnormal pap smear that has been determined to be pre-cancerous.

10. Ida Vodofsky Colón was born on June 11, 1962. She was raised in Vieques and still has memories of having her house shake from the impact of nearby bombing. She was diagnosed with cancer at 25 years old when she was eight months pregnant with her fourth child. In 2005, she was diagnosed with heavy chemicals in her lungs.

11. Norma Torres Sanes was born on March 1, 1947. Her family's land was expropriated by the Navy and they were forced to move to Luquillo, Puerto Rico on the mainland island. In 2003 she was diagnosed with breast cancer and underwent chemotherapy and radiation.

12. Cacimar Zenón was born on September 1, 1979. He is a scuba-diver and fisherman, as was his father. He has seen the reduction in sea life in the surrounding waters of Vieques which he attributes to the military's practices. His father, other fishermen and he have had their livelihoods affected by the Navy's practices which have often included closing off safer and closer water zones where fishermen routinely fish in order to carry out military practices, or more recently to clean up environmental damage as a result of such practices.

13. Asunción Rivera was born on August 11, 1955. She was born and raised in Vieques and was diagnosed with breast cancer in 2005. Her father suffered and died from lung cancer and her sister was diagnosed with gastrointestinal cancer and also subsequently died. Her daughter, age 33, was diagnosed with colon cancer in 2012.

14. Ismael Guadalupe was born on July 23, 1944. He was born and raised in Vieques. He has participated actively in civil disobedience and protest activities against the Navy's presence for forty years. In 2000, he was diagnosed with kidney failure and in 2005, approximately, was found to have high concentrations of mercury in his system. He also suffers from hypertension and diabetes.

15. Ilsa Ortiz Ortiz was born on June 8, 1958. She was born and raised in Vieques. Isla has two children who are now adults, both of whom continue to suffer from chronic asthma that has plagued them since they were newborns, as well as from skin conditions including frequent rashes.

16. Nilo Adams Colón was born on November 13, 1947. He was born and raised in Vieques. In 2010, he was diagnosed with abdominal lymphoma cancer. He received chemotherapy and radiation after largely covering his own health expenses and continues to take daily medication. He will need to be treated for a total of 5 years. He also suffers from diabetes.

17. Relying on various studies<sup>5</sup>, the petitioners provide quantitative data on the risks to health faced by residents of Vieques. In this regard, the petitioners assert that a) the cancer rate in Vieques is almost 30% higher than the mainland of Puerto Rico; (b) a study published by the Puerto Rico Health Department in 2000 analyzing the incidence of cancer from 1960 – 1994 found that 609 cases were diagnosed during that period, with breast and uterine cancer being the most frequent among women (20.9% and 20.5% respectively) and prostate cancer being most frequent among men (22.6%); (c) beginning in the late 1970s and 1980, the cancer rate in Vieques became 27% higher than the rest of Puerto Rico.<sup>33</sup>; (d) from 1985 -1989, the risk of developing cancer for children up to nine years old was double the risk for children of the same age in the rest of Puerto Rico, while children from 10 to 19 years old had 3.5 times the risk of developing cancer.

18. With regard to other illnesses, the petitioners allege that (a) Viequenses suffer from a 381% higher hypertension rate than the rest of Puerto Rico and it is among the leading causes of death and that from 1995 – 1998, 21% more Viequenses died from heart-related disease than the rest of Puerto Rico; (b) Respiratory illnesses, including asthma, have become highly prevalent in Vieques, especially among children, and that from 1995 – 1998, 33% more Viequenses died of respiratory and lung-related illnesses than the rest of Puerto Rico; (c) Viequenses suffer from a 41% higher diabetes rate than the rest of the island, and from 1995 – 1998 approximately 15% more Viequenses died as a result of diabetes than the rest of Puerto Rico; (d) from 1975 – 1995, Vieques experienced a 55% higher infant mortality rate than the rest of Puerto Rico; and (e) from 1995 – 1999, general mortality rates were 34% higher on Vieques than the rest of Puerto Rico, including Fajardo, which is where the majority of Viequenses access health services.

19. The petitioners also allege that numerous contaminants and heavy metals have also been detected in hair samples obtained from thousands of residents on Vieques, including: (a) toxic levels of mercury; (b) toxic levels of lead contamination; (c) arsenic contamination; (d) cadmium contamination; (e) aluminum contamination; and (f) antimony contamination.

20. In support of their claims under the American Declaration, the petitioners also cite various international instruments/jurisprudence such as the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the Convention on the Rights of the Child.

21. According to the petition, in 2005, the alleged victims filed a complaint against the United States Navy in the United States District Court of Puerto Rico under the Federal Tort Claims Act (FTCA) for the illegal use of explosives, ordinance and contaminants on the island over several decades, which caused "chronic, long term, negligent and/or deliberate exposure to toxic dust and contamination, hazardous waste and environmental damage. The petitioners indicate that the District Court dismissed the complaint on grounds of lack of subject matter jurisdiction. In dismissing the case, the petitioners contend that the District Court

<sup>5</sup> Nayda R. Figueroa, MD, MPH, et al., *Incidencia y Mortalidad de Cáncer en Vieques 1990 – 2004*, at 13, 15 (Nov. 25, 2009).

Déborah Santana, Cruz Maria Nazario and John Lindsay-Poland, *Vieques, Puerto Rico In Focus Environmental and Health Impacts of Navy Training A Crisis and its Causes*, Second National People of Color Environmental Leadership Summit, at 5 (Oct. 23, 2002).

Dr. Carmen Ortiz Roque, Jose Ortiz Roque, Ph.D., and Dr. Dulce Albandoz Ortiz, *Exposición a contaminantes y enfermedad en Vieques: Un trabajo en progreso ("Exposición")* (Sept. 14, 2000).

found that the act or omissions attributed to the United States Navy that resulted in the harms to the environmental and health of the island and residents of Vieques were “discretionary,” therefore not subject to the waiver of immunity under the FTCA. The petitioners indicate that an appeal was filed but ultimately dismissed by the Court of Appeals for the First Circuit. According to the petitioners, on September 13, 2012, the alleged victims then appealed this determination to the US Supreme Court (by way of writ of certiorari), which, on March 25, 2013, declined to address the claim. The petitioners add that the claims of the alleged victims were part of larger claim brought by 7125 residents of Vieques (known as “the Sanchez litigation”). For the petitioners, this decision of the Supreme Court signified the exhaustion of domestic remedies, and that the subsequent petition to the IACHR on Sept 23, 2013 was therefore timely.

22. The petitioners indicate that the State has established a community board identified as the Restoration Advisory Board (“RAB”), which is composed of representatives of the Navy, the Environmental Protection Agency (EPA), representatives of the Planning Board from the Commonwealth of Puerto Rico and local residents of Vieques. However, the petitioners assert the RAB is a quasi-administrative entity, not a judicial process, and hence traditional due process protections are not available. According to the petitioners, the residents of Vieques who attend the quarterly meetings are informed of the steps being taken regarding the surface removal and cleanup actions by the Navy, but that they are not allowed to make discovery requests of the RAB. Accordingly, the petitioners conclude that this mechanism is not a substitute for a judicial remedy.

23. State rejects petition on the following grounds: (a) the claims are beyond the jurisdiction of the Commission, *ratione temporis*, *ratione personae*, and *ratione materiae*; (b) the petitioners have failed to exhaust domestic remedies as required by Article 31 of the Rules of Procedure; (c) the petitioners have failed to set out facts that tend to establish violations of the American Declaration pursuant to Article 34 (a) and is manifestly groundless under Article 34 (b).

24. By way of background, the State confirms that the United States Navy acquired land and built facilities on Vieques Island between 1941 and 1943. In this regard, the State further indicates that (a) the Navy used 22,000 of the island's 33,000 acres as a training ground and live ordnance range at various points between 1941 and 2003; (b) the Navy established an ammunition facility on the western end of the island and used the eastern half of the island as a training range, which included a “live impact area” and an adjacent “maneuver area; and (c) training exercises incorporated live munitions to simulate combat conditions, including artillery, mortar, small arms fire, naval surface fire, and aircraft strikes. The Navy also operated an open burning/open detonation facility on the island, where it incinerated and detonated unused ordnance. The State indicates that in May 2000, the Navy discontinued all live-fire training exercises; all military exercises in Vieques were terminated as of April 30, 2003.

25. The State further asserts that following the termination of military exercises in 2003, the Navy/US government initiated an environmental clean-up operation in Vieques pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601-9675 (“CERCLA” or “the Act”). According to the State This law was enacted in response to the dangers of uncontrolled releases or threatened releases of hazardous substances and releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. As part of this whole of United States Government response, the Navy has to date spent over \$280 million dollars on the cleanup operation. Pursuant to this clean-up operation, the State asserts that it has initiated or completed a number of measures including identification of total of 54 sites: 16 in west Vieques and 38 on in east Vieques. According to the State, to date, 51 of the sites are at a “Site Closure status”, whereby the sites are suitable for unrestricted use and require no further action; and that for the three remaining sites, two sites have final remedies ongoing, and the final remedy for one site is anticipated to begin in 2021.

26. The State further affirms that the Navy also identified 19 additional munitions response sites associated with former Navy activities on Vieques: 18 sites are on land, while underwater areas offshore are grouped as one site. Significant efforts to remove munitions have been ongoing since 2005. Approximately 4,000 acres have been surface cleared of munitions, and 23 miles of roads and beaches have been subsurface cleared. During this effort, over 7.7 million items of Material Potentially Presenting an Explosive Hazard



(MPPEH) have been safely recovered and processed. According to the State, to date, the Navy has removed approximately 102,000 munitions items, including 39,000 projectiles, 32,000 bombs, 4,300 mortars, 1,300 rockets, 16,000 submunitions; and 9,400 grenades, flares, pyrotechnics, and other munitions. The remaining 7.6M items were scrap metal or other material documented as safe. Approximately 57,000 munitions items have been destroyed in controlled detonations, and 45,000 munitions items have been processed by other means. Approximately 18.7 million pounds of munitions-related scrap metal have been safely processed, and 16.4 million pounds of scrap metal have been shipped off-site for recycling. Further, the State submits that in 2017 a comprehensive assessment was completed across 12,000 underwater acres to investigate the general location of underwater munitions around Vieques. As a follow-up to the assessment, more detailed underwater investigations have been initiated, and these CERCLA investigations are anticipated to be completed by 2027. In addition, a CERCLA removal action for underwater munitions was initiated in 2017. As the first step, underwater munitions were safely removed from the offshore area near a public beach. This underwater removal action is programmed to continue through 2031 in areas around Vieques that have the greatest potential exposure to underwater munitions. Finally, CERCLA remedial actions for the underwater sites are expected to be completed by 2032.

27. The State submits that in conformity with the requirements of CERCLA, that it has incorporated community involvement in the clean-up process and has done so through mechanisms such as Restoration Advisory Boards (RAB). According to the State, throughout the cleanup process, the community is provided information and opportunities to participate as active partners in the decisions that affect the cleanup activities in their community.

28. The State denies the claim of petitioners the Navy has followed unsafe cleanup processes such as detonating unexploded ordnances and initiating open-air burning as a low budget alternative to safe and effective decontamination efforts. According to the State, in an Environmental Restoration Fact Sheet the Navy explained to the public why controlled burning is sometime necessary for safety reasons and that over 12 years of extensive air sampling have shown that the smoke from these burn events does not contain toxic chemicals and does not reach Vieques residences or businesses.” The State argues that the Navy has sampled and modeled air quality at Vieques throughout the remediation process, and the results show that the open detonations are conducted in a manner that is protective of human health and the environment.

### ***Ratione temporis***

29. According to the State, the Commission may not consider claims in the Petition relating to alleged “expropriation” that occurred between 1941 and 1943 in violation of Petitioners’ “right of residence and movement” (alleged violations of Article VIII of the American Declaration) because these events do not fall within the Commission’s competence *ratione temporis*. These events occurred before the adoption of the American Declaration and the establishment of the Commission, and they do not constitute continuing acts that would otherwise bring them within the Commission’s jurisdiction. The State emphasizes that the acquisition of property in 1941-1943 was a discrete act, and not a continuing act. The argues that the events during and after the acquisition of land on Vieques are outside the competence *ratione temporis* of the Commission and therefore may not be considered by the Commission, either directly or indirectly through a legal argument that the alleged harm suffered as a result of the acquisition somehow brings that acquisition itself within the Commission’s jurisdiction. For the State, such an argument is without foundation in the American Declaration or international jurisprudence more broadly.

30. The State contends that in some respects, this claim resembles the petition in *Isamu Carlos Shibayama et al. v. United States*, where the Commission was asked to consider alleged violations related to a World War II-era internment program, and the petitioners attempted to argue, as they do in the instant Petition, that the violations dating from the 1940s were continuing acts. In its decision on admissibility, the Commission rejected that argument and correctly concluded that these events were outside of its competence *ratione temporis*. The Commission should do the same in this case with regard to the acquisition of land by the Navy on Vieques in 1941-1943.

### ***Ratione materiae***

31. The State notes that the petitioners have anchored their claims in specific provisions of the American Declaration but allege that they have simultaneously attempted to expand the competence of the Commission by invoking an array of other international instruments to substantiate their claims that international legal obligations have been violated. For the State, such recourse to international instruments and authorities beyond the American Declaration reflects the reality that petitioners' claims do not implicate provisions of the American Declaration, leaving them to look to other instruments in their attempt to construe cognizable claims. As a result, the State concludes that the Commission lacks the competence *ratione materiae* to entertain the claims contained in the Petition.

### ***Ratione personae***

32. The State contends that the petitioners have articulated generalized claims that go beyond those that specifically relate to the alleged victims (for example references to "the commercial fishing industry" and "the people of Vieques"). Accordingly, the State argues that such any such generalized claims constitute an *actio popularis* and are therefore outside of the Commission's competence *ratione personae*. For the State, the Commission only has competence to review particularized claims with respect to alleged victims.

33. According to the State, the petitioners have failed to exhaust any domestic remedies to redress their claims. In this regard, the State contends that the petitioners merely refer to litigation filed by 7,125 residents of under the Federal Tort Claims Act (FTCA) in 2005 ("the Sanchez litigation"). For the State, on that basis alone, the petition should be deemed inadmissible. The State further argues the petition does not disclose that the alleged victims participated in the Sanchez litigation or that they lodged their particularized claims against the United States. The State also argues that even if the alleged victims had participated in the Sanchez litigation, the requirement of exhaustion of domestic remedies requires that that individual alleged victims pursue their specific claims under domestic law to address their concerns before invoking the Commission's authority.

34. The State further contends that (a) with respect to claims based on property rights (expropriation of property), the alleged victims have not pursued or exhausted constitutional/ legal remedies; (b) with respect to claims based on environmental contamination, the alleged victims have not pursued or exhausted statutory mechanisms for judicial review; and (c) more broadly, the alleged victims have not pursued or exhausted avenues to challenge U.S. Government action; and (d) with respect to claims based on access to information, the petitioners have failed to pursue existing mechanisms to receive the information they appear to desire. Regarding the issue of property, the State contends that if property was taken without just compensation, a remedy was available in the form of claim for compensation (prior to the expiration of the applicable statute of limitations) in the U.S. courts with jurisdiction over such claims, most likely the Court of Federal Claims. The State contends that there is no evidence that this remedy was pursued or exhausted.

35. With respect to the environmental claims, the State contends that the CERCLA provides a statutory remedy, though the State acknowledges that the petitioners cannot, at this time, challenge the activities that the Navy is undertaking, because section 113(h) of CERCLA deprives federal courts of jurisdiction to review "challenges to removal or remedial action[s]; and that accordingly, the petitioners' ostensible environmental claims may become ripe under CERCLA once the environmental remediation efforts being conducted by the United States under the CERCLA are complete.

36. With respect to challenges to U.S government action, the State asserts that The Federal Tort Claims Act ("FTCA") provides a judicial remedy for personal injury or property damage resulting from negligent government conduct. According to the State, although the petition asserts that a claim was made under the FTCA, the alleged victims have not established that they were parties to the Sanchez litigation, or that that their individual claims against the United States were pursued under the FTCA. Accordingly, the State concludes that this remedy under the FTCA was neither pursued nor exhausted by the alleged victims.



37. Regarding the claim that the State refused to divulge important information concerning its military practices in Vieques, the State asserts that it was open to the petitioners to file a claim under Freedom of Information Act (“FOIA”). According to the State, there is no indication that Petitioners have pursued and exhausted the mechanisms available under FOIA to seek and obtain the information to which they believe they are entitled.

### **Dismissal of claims as manifestly groundless**

38. The State argues that the petitioners have failed to establish any facts that might support a claim of violations of the American Declaration. In this respect the State expressly repudiates the claims made under Articles I (Right to Life, Liberty, and Security of Person), XI (Right to Preservation of Health through Sanitary and Social Measures), VI (Right to Freedom of Expression), XVIII (Right to a fair trial), VIII (Right to residence and movement), and XIV (Right to work and to fair remuneration) of the American Declaration.

39. With respect to Article I, the State reiterates that it has conducted extensive efforts to address the issue of contamination. To the extent that contamination in connection with military activity has impacted enjoyment of this right, the State argues that it has been actively engaged in providing a compressive remedy to address this contamination. In the circumstances, the State concludes that the claims of the petitioners are now moot.

40. With respect to Article XI, the State rejects the claims of the petitioners, contending that the State and independent researchers have analyzed whether health on the island is impacted by historic naval activities; and that these studies have shown no causal link.<sup>6</sup>

41. With respect to Article VI, the State argues that the petitioners’ claim that they have been denied access to information about the Navy’s military operations at Vieques is plainly baseless. In this regard, the State asserts that (a) a vast amount of information is publicly available about the Navy’s cleanup at Vieques, including information about the military munitions used during military operations at Vieques; (b) the Navy engages the public in a manner that exceeds those required by law and regulation and that the Navy has been active in the community, sharing information, and soliciting comment since the remediation began. The State emphasizes that the petitioners’ claim that the Navy “is intentionally withholding information regarding its activities, including the use of depleted uranium,” is simply untrue.

42. With respect to Article XVIII, the State contends that the petitioners have failed to articulate any violation of their right to resort to courts in the United States. The State further contends that (a) the petition contains no facts to support that alleged victims have pursued or exhausted their domestic remedies or been denied resort to the courts; and (b) there is no indication that alleged victims were the plaintiffs in the Sanchez litigation—thereby compromising the premise of their claim. As mentioned previously, the State also states that there are administrative and legal remedies are available to Petitioners which they have simply not pursued.

43. With respect to Article VIII, the State argues that the allegations contained in this claim are predicated on events which predate the Commission’s competence as to claims brought against the United States. Accordingly, the State submits that the Commission does not have the competence *rationae temporis* to review Petitioner’s claims related to the transfer of land on the island of Vieques. Further, the State contends that there is no evidence that alleged victims have been denied the right to fix their residences in the territory of the United States, to move about freely within the United States, or to leave the United States except by their own will.

44. With respect to Article XIV, the State contends the Petition is replete with sweeping generalizations—without substantiation— about how the United States “has interfered with the livelihood of

---

<sup>6</sup> The State cites the following studies: “An Evaluation of Environmental, Biological, and Health Data from the Island of Vieques, Puerto Rico” by the Agency for Toxic Substances and Disease Registry (ATSDR) (published March 19, 2013); and Civilian Exposure to Munitions-Specific Carcinogens and Resulting Cancer Risks for Civilians on Puerto Rican Island of Vieques Following Military Exercises from 1947 to 1998, Sanderson et al., *Global Security: Health, Science, and Policy*, at 56 (2017).

local fishermen” and how the actions of the United States “have resulted in the decimation of Vieques’ commercial fishing industry. The State argues that respect to the alleged victim Cacimar Zenón, a scuba-diver and fisherman, the petition contains no facts to substantiate a claim that Mr. Zenón has been denied his “right to work, under proper conditions” or to “follow his vocation freely, insofar as conditions of employment permit. The State also asserts that the prevailing facts about Vieques coastal waters sharply refute Petitioner’s unsubstantiated claims. In this regard the State contends that contrary to petitioners’ claims, studies of fish, invertebrates, and sediment by the National Oceanic and Atmospheric Administration (NOAA) have shown no elevated levels of contaminates different from the overall region.

## VI. ANALYSIS ON COMPETENCE

45. As a preliminary consideration, the Commission notes that State disputes the jurisdiction of the IACHR *ratione temporis*, *ratione materiae* and *ratione personae* to adjudicate the claims of the petitioners.

46. Regarding the issue of *ratione temporis*, the State argues that the acquisition of property in Vieques took place in 1941-1943 in Vieques which was prior to the State ratification of the OAS Charter in 1951. The State contends that this was a discrete act, and not a continuing act; and that the events during and after the acquisition of land on Vieques are outside the competence *ratione temporis* of the Commission. While the Commission considers that it lacks jurisdiction *ratione temporis* that occurred prior to 1951, the allegations presented by the petitioners relate to events that took place after 1951 as a result of the alleged military activities of the State. The Commission accordingly concludes that it does have jurisdiction *ratione temporis* as it relates to those allegations. The Commission notes that the State cites the Commission's decision of Isamu Carlos Shibayama et al<sup>7</sup> in support of its position. However, the Commission notes that contrary to the State's contention, the Commission did in fact find that that the claims of the petitioners’ claims did fall within the jurisdiction *ratione temporis* of the Commission.

47. Regarding the issue of *ratione materiae* issue, the record demonstrates that the petitioners have relied on other international instruments to buttress their claims under American Declaration. It is clear from the record that the petitioners have grounded their claims in the American Declaration and not these other international instruments. The Commission has no jurisdiction to pronounce on these other instruments, but it may take them into account in interpreting the American Declaration. In the circumstances, the Commission considers that it does have jurisdiction *ratione materiae* regarding the claims of the petitioners made under the American Declaration.

48. With respect to the issue of *ratione personae*, the State contends that the petitioners have articulated generalized claims that go beyond those that specifically relate to the alleged victims. While the Commission acknowledges that the petitioners have used general information to buttress its case, they have done so while specifying particular alleged victims. These alleged victims are all natural persons and therefore they do fall under the jurisdiction of the IACHR *ratione personae*.

## VII. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

49. The Commission notes that the parties are at variance on the issue of exhaustion of domestic remedies. The principal point of contention revolves around the Sanchez litigation of 2005. This litigation was initiated to seek relief against the State for illegal use of explosives, ordnance and contaminants on the island over several decades, which caused “chronic, long term, negligent and/or deliberate exposure to toxic dust and contamination, hazardous waste and environmental damage. According to the State, there is no indication that the petitioners were part of this litigation, whereas the petitioners state the contrary. From the record, the Commission notes that the petitioners have affirmed that they were part of this litigation. Accordingly, the Commission considers that as it relates to the claims of the petitioners relating to alleged long-term health and environmental consequences on the alleged victims, that the petitioners did exhaust domestic remedies on

<sup>7</sup> IACHR REPORT N° 26/06 PETITION 434-03 Admissibility Isamu Carlos Shibayama Et Al. UNITED STATES, March 16, 2006, para. 42.

March 25, 2013, when the US Supreme Court declined to address the claim. The State does not dispute that a lawsuit under the Federal Torts Claims Act would be a suitable and effective remedy for redressing the petitioners' claims. The State, however, contends that the petitioners have not demonstrated that they made a claim under the Federal Torts Claim Act. The petitioners, however, contend that they were part of a group of more than 7000 persons who filed a claim under the Federal Torts Claims Act.

50. The State also claims that the petitioners failed to invoke judicial remedies under CERCLA. Whenever a State alleges that a petitioner has not exhausted domestic remedies, it has the burden of identifying the remedies to be exhausted and demonstrating that the remedies that have not been exhausted are "appropriate" for redressing the alleged violation—in other words, that the function of those remedies within the national legal system is suitable for protecting the legal right infringed<sup>8</sup>. However, the Commission notes that (a) this remedy relates only to the issue of clean-up operations (as opposed to the claims of long term impact on health and environment of the alleged victims); and (b) that according to the State, this remedy would not generally be available until the clean-up operations are complete. The Commission considers that the State has not demonstrated how or why this said remedy would be effective, and in fact, has conceded that at this stage, the remedy would not be effective in redressing the petitioners' claims. In the circumstances, the Commission considers that this would be an ineffective remedy that the petitioners would not be obliged to initiate or exhaust. In any event, the IACHR has established that the requirement to exhaust all domestic remedies does not necessarily mean that alleged victims are obligated to exhaust all remedies at their disposal. If an alleged victim pursued the matter through one of the valid and appropriate options in accordance with the domestic legal system, and the State had the opportunity to remedy the matter in its jurisdiction, the objective of international law has been achieved.<sup>9</sup>

51. With respect to the claim of the petitioners regarding the withholding of information by the State, the Commission notes that the petitioners have not denied the State's contention that they failed to avail themselves of a request under the Freedom of Information Act (FOIA). However, the so called "obligation of active transparency" imposes on the State the obligation to provide the necessary information for individuals to be able to exercise other rights, and this is particularly relevant in relation to environmental issues. This information must be complete, understandable, in an accessible language and updated. However, the Commission notes that the State has already acknowledged the suitability and effectiveness of the judicial remedies pursued by the petitioners, which would incorporate the issue of damage or injury caused by explosives and toxic chemicals. Accordingly, the Commission does not consider it necessary for the petitioners to exhaust this remedy.

52. Having regard for the foregoing, the Commission therefore considers that the final judicial decision was issued on March 25, 2013, and that the petition to the IACHR was submitted on Sept 23, 2013. Accordingly, the Commission deems that the petition was submitted within the six-month deadline prescribed by Article 32.1 of the Commission's Rules of Procedure.

## VIII. ANALYSIS OF COLORABLE CLAIM

53. The claims of the petitioners relate primarily to alleged long term health and environmental consequences on the alleged victims, as a result of military practices (involving toxic chemicals and warfare) of the United States Navy.

54. In view of these considerations and after examining the elements of fact and law presented by the parties, the Commission considers that most of the claims of the petitioners are not manifestly unfounded and if corroborated could characterize violations of (a) Articles I (Right to life, liberty and personal security), VI (Right to a family and to protection thereof), VII (Right to protection for mothers and children.), XI (Right to the preservation of health and to well-being), XVIII (Right to a fair trial) and XXIV (Right of petition) with

<sup>8</sup> IACHR, Report No. 26/16, Petition 932-03. Inadmissibility. Rómulo Jonás Ponce Santamaría. Peru. April 15, 2016, para. 25.

<sup>9</sup> IACHR, Report No. 16/18, Petition 884-07. Admissibility. Victoria Piedad Palacios Tejada de Saavedra. Peru. February 24, 2018, para. 12.

respect to the alleged victims Zaida Torres, Wanda Bermúdez, Ivis Cintrón Díaz, Ida Vodofsky Colon, Asunción Rivera, and Ilsa Ortiz Ortiz; (b) Articles I, XI, XVIII, and XXIV with respect to the alleged victims Ismael Guadalupe and Nilo Adams Colón; (c) Article XIV (Right to work and to fair remuneration) with regard to the alleged victim Cacimar Zenón; and (d) Articles I, XI XVIII, and XXIV with regard to the alleged victim Norma Torres Sanes; and ( e) Article IV (Right to freedom of investigation, opinion, expression and dissemination). in relation to all of the alleged victims.

## **IX. DECISION**

1. To find the instant petition admissible in relation to Articles I, IV, VI, VII, XI, XIV, XVIII, and XXIV of the American Declaration;

2. To notify the parties of this decision; to continue with the analysis on the merits; and to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 5<sup>th</sup> day of the month of April, 2022. (Signed:) Julissa Mantilla Falcón, President; Stuardo Ralón Orellana, First Vice President; Margarete May Macaulay, Second Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Joel Hernández, and Roberta Clarke, Commissioners.