

**REPORT No. 158/11<sup>1</sup>**  
PETITION 512-08  
ADMISSIBILITY  
MARIANA SELVAS GÓMEZ AND OTHERS  
MEXICO  
November 2, 2011

**I. SUMMARY**

1. On April 29, 2008, the Inter-American Commission on Human Rights (hereinafter “the Commission,” “the Inter-American Commission,” or “the IACHR”) received a petition lodged by the Miguel Agustín Pro Juárez Human Rights Center A.C. (PRODH) and the Center for Justice and International Law (CEJIL) (hereinafter “the petitioners”) on behalf of Mariana Selvas Gómez, Georgina Edith Rosales Gutiérrez, María Patricia Romero Hernández, Norma Aidé Jiménez Osorio, Claudia Hernández Martínez, Bárbara Italia Méndez Moreno, Ana María Velasco Rodríguez, Yolanda Muñoz Diosdada, Cristina Sánchez Hernández, Patricia Torres Linares, and Suhelen Gabriela Cuevas Jaramillo (hereinafter “the alleged victims”). The petition was made against the United Mexican States (hereinafter “the State,” “the Mexican State,” or “Mexico”) for the alleged rape and torture by state agents of the alleged victims during the violent repression of a social conflict in the municipalities of Texcoco and San Salvador Atenco, as well as for the subsequent failure to investigate and punish those actions.

2. The petitioners claim that the Mexican State is responsible for violating the rights enshrined in Articles 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 11 (privacy), 24 (equality before the law), and 25 (judicial protection) of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”), in conjunction with the general obligation established in Articles 1(1) and 2 of that same international instrument, and for violating Articles 6 and 7 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (hereinafter “the Convention of Belém do Pará”), with respect to the alleged victims. The petitioners also allege the violation of the obligations set out in Articles 1, 2, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture with respect to the alleged victims.

3. In turn, the State maintains that domestic remedies have not been exhausted in that the alleged facts are still under investigation. It contends that the authorities in charge of the investigation have pursued various formalities to identify the persons responsible for the facts, and that the delays in the proceedings are due to the complexity of the case and not to a failure to act on the part of the investigating or judicial authorities. Consequently, it holds that the petition should be ruled inadmissible.

4. Without prejudging the merits of the case, after analyzing the positions of the parties and in compliance with the requirements set out in Articles 46 and 47 of the American Convention, the Commission decides to rule the case admissible in order to examine the alleged violation of the victims’ rights as enshrined in Articles 5, 7, 8, 11, 24, and 25, in conjunction with Articles 1(1) and 2 thereof, and in Article 7 of the Convention of Belém do Pará. It also decides to find the petition admissible with respect to the alleged violation of the rights enshrined in Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture. In addition, the Commission decides to notify the parties of this decision, to publish it, and to include it in its Annual Report to the OAS General Assembly.

**II. PROCESSING BY THE COMMISSION**

5. On April 29, 2008, the Commission received the petition and recorded it as No. 512-08. On December 10, 2009, it forwarded the relevant parts of the petition to the Mexican State and requested that it reply within a period of two months, in compliance with the provisions of Article 30(2) of its Rules of Procedure. The State requested an initial extension on February 17, 2010, which was granted on

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<sup>1</sup> In compliance with the terms of Article 17(2)(a) of the Commission’s Rules of Procedure, Commissioner José de Jesús Orozco Henríquez, a Mexican national, did not participate in discussing or deciding this case.

February 26, 2010. The State's reply was received on July 27, 2010. That communication was duly conveyed to the petitioners.

6. The IACHR received further information from the petitioners in communications dated May 19, 2010, September 30, 2010, and December 17, 2010 and May 4, 2011. Those communications were duly forwarded to the State. Similarly, it received information from the State on December 30, 2010, which was duly forwarded to the petitioners.

### **III. POSITIONS OF THE PARTIES**

#### **A. Petitioners**

7. The petitioners claim that on May 3 and 4, 2006, state security forces evicted a group of flower-sellers from a local market in the municipality of Texcoco, in an operation that involved an excessive use of force. This provoked an outburst of community support for the vendors in Texcoco and in San Salvador Atenco, with actions that included the blocking of a federal highway. A number of confrontations took place between the police and the traders and their supporters, with property invasions and mass arrests. The petitioners state that over the space of the two days, more than 200 people were arrested, two civilians lost their lives, and 67 federal police officers were injured.

8. The arrests included 47 women, 11 of whom are the alleged victims in this case. They report having suffered various forms of physical, verbal, and/or psychological violence at the hands of the police, including sexual attacks such as pinching, bites to their breasts, genital touching, and oral and vaginal rape with fingers and other objects. They contend that the sexual violence they endured constitutes a form of discrimination. They also state that the discriminatory nature of the sexual violence against the alleged victims can be clearly seen in the different kind of treatment received by the men who were arrested.

9. According to the petitioners, the alleged victims concur that the most serious violations took place during their transfer to the Santiaguito Prevention and Social Readaptation Center in Almoloya, state of México, where they were detained illegally. For the transfer, both official and nonofficial vehicles were used, and the journey took approximately four hours, when under normal conditions it should take no longer than two. They claim that the vehicles were also carrying male detainees, who, along with the women, were piled one on top of the other, as a result of which some of them felt as if they were suffocating. They were forced to cover their faces with their own clothes. The petitioners claim that some of the alleged victims were stripped naked, violently, and that when the vehicle arrived at the detention center, they were forced to get dressed. They also contend that personal items were stolen from some of the alleged victims. Upon entering the detention facility, they claim they were beaten.

10. Among the alleged victims who were arrested in Texcoco on May 3, 2006, the petitioners claim that María Patricia Romero Hernández and Cristina Sánchez Hernández, both of whom are traders, suffered acts of physical, verbal, and psychological violence at the hands of the police. They also allege that Yolanda Muñoz Diosdada, a shop employee, suffered acts of physical, verbal, and psychological violence and attacks of a sexual nature. They claim that the trader Ana María Velasco Rodríguez suffered various forms of physical, verbal, and psychological violence, sexual attacks, oral rape, and vaginal rape using the fingers, all committed by police officers.

11. Regarding the alleged victims arrested in San Salvador Atenco on May 4, 2006, the petitioners claim that they were all detained arbitrarily and that Mariana Selvas Gómez, an ethnology student at the National School of Anthropology and History, and Georgina Edith Rosales Gutiérrez, an employee of the Mexican Social Security Institute, suffered various kinds of physical, verbal, and psychological violence and sexual assault at the hands of the police. They further contend that Claudia Hernández Martínez (a student of political science at the National Autonomous University of Mexico), Suhelen Gabriela Cuevas Jaramillo (a journalism student from the University of the Valley of Mexico), Patricia Torres Linares (a student at the National Autonomous University of Mexico's Faculty of Political and Social Sciences), and Norma Aidé Jiménez Osorio (also a student) were subjected, by police

officers, to various forms of physical, verbal, and psychological violence, sexual assault, and vaginal rape with the fingers. In addition, Bárbara Italia Méndez Moreno, a worker with the New Life Foundation, allegedly suffered different kinds of physical, verbal, and psychological violence, sexual assault, and vaginal rape with the fingers and other objects, at the hands of police officers.

12. As a result of these incidents, domestic proceedings were brought at the federal and state levels. According to the petitioners, the investigations were deficient, plagued with delays, and brought for the wrong offenses, “trivializing the human rights violations” suffered by the alleged victims and giving rise to impunity. They hold that the failure to investigate and punish the persons responsible showcases the lack of due diligence that prevails in incidents involving violence against women.

13. The petitioners report that at the federal level, on May 16, 2006, the office of the Special Prosecutor for Crimes Involving Acts of Violence against Women – which in 2008 was renamed the office of the Special Prosecutor for Crimes of Violence against Women and Human Trafficking (FEVIMTRA) – (hereinafter “FEVIM”) began an *ex officio* investigation (AP/FEVIM/03/05-2006) for “public and notorious acts” in order to examine the alleged abuses committed against the women in Texcoco and San Salvador Atenco on May 3 and 4, 2006. They report that on May 17 of that year, the PRODH Center presented the Special Prosecutor’s office with a complaint and registered as a representative to assist in the proceedings, and that all the alleged victims lodged and ratified criminal complaints with the FEVIM. They further say that on July 13, 2009, the FEVIM declined jurisdiction on behalf of the office of the Attorney General for Justice of the state of México (hereinafter “México State Attorney General’s Office”); this was, claim the petitioners, in spite of acknowledging the existence of torture and the participation of police officers in the facts, which make it a federal matter.

14. As for the investigations at the state level, the petitioners claim that on May 10, 2006, the First Panel of the Directorate of Responsibilities of the México State Attorney General’s office initiated *ex officio* preliminary inquiry TOL/DR/1/466/2006 against the individuals responsible for the incidents of May 3 and 4 in Texcoco and San Salvador Atenco, covering any and all persons who were victims of the facts. Those proceedings were combined with preliminary inquiry TOL/DR/1/470/2006, begun on May 11, 2006, as a result of the *ex officio* complaint filed by the National Human Rights Commission (hereinafter “the CNDH”).

15. In connection with the formalities pursued, the petitioners report that on May 12, 2006, personnel from the office of the México State Attorney General visited the Santiaguito Social Readaptation Center, where five of the alleged victims were being held, in order for them to ratify the sexual assault allegations. According to the petitioners, the medical examinations carried out were not done by experts trained in dealing with women who had suffered sexual violence. On June 13, 2006, some of the alleged victims who had been released were summoned by the First Panel for Public Servants’ Responsibilities to ratify their complaints and, upon their arrival, were presented with an album containing photographs of officers who had participated in the operations. The petitioners state that two of the alleged victims, Ana María Velasco Rodríguez and María Patricia Romero Hernández, were able to identify their assailants.

16. They report that on April 4, 2007, the suspension and archiving of state proceedings TOL/DR/1/466/2006 was ordered until new evidence of torture could be found; according to the petitioners, this was in spite of the findings of the CNDH, the medical certificates, the statements given, and other elements.

17. The petitioners report that in spite of lodging a number of requests, they were denied access to the case file covering the state-level preliminary inquiry; they were only given a summary case file from preliminary inquiry TOL/DR/1/466/06, enclosed with the main file, because, they claim, the Public Prosecution Service told them that the remaining volumes had either been archived or were with the Investigating Commission of the Supreme Court, etc.

18. They state that the case file of the preliminary inquiry by the FEVIM (federal jurisdiction) was received by the local justice system through the México State Attorney General’s Office on July 15,

2009, and that it was not until March 10, 2010, that the office of the Assistant Attorney General sent the General Directorate of Inspectors the preliminary inquiry for its “pursuit” and “determination in accordance with the law.” In spite of the time that has passed, they maintain that the investigations have not progressed. They also claim that despite having registered as representatives to assist in the proceedings, they were denied access to the investigations.

19. They also report that the alleged victims have also filed individual complaints, which, they claim, have so far been ineffective. The state authorities have pursued criminal action in only two of the 11 cases. Specifically, in the case of Ana María Velasco Rodríguez, a prosecution was brought against a police officer whom she identified as one of her assailants. In connection with this, they note that under the criminal law in force in the state of México, coercing a person to perform fellatio did not constitute rape at the time of the incident, and so the officer was prosecuted for the crime of “lewd acts.” They state that the alleged assailant was acquitted of all the charges on February 19, 2009, under an *amparo* resolution that voided the judgment and decision handed down by the appeal court that had convicted him, on the grounds that the officer’s criminal liability had not been established in full despite – according to the petitioners – having been identified by the alleged victim.

20. In the case of María Patricia Romero Hernández, they report that on June 15, 2006, 21 police officers from the state of México were arraigned for the crime of abuse of authority (proceedings 59/06, before the Criminal Court of Tenango del Valle), but not for the crime of torture. They state that the agent of the Public Prosecution Service in this case on various occasions treated the alleged victim as a complainant and not as a victim, which curtailed her participation in the proceedings. According to the petitioners, most of them were dismissed from the proceedings and, on February 19, 2010, the first-instance judge handed down acquittals for all the defendants. In addition, they claim that the complainant and the assisting representative were not allowed to participate in the proceedings.

21. The petitioners state that although torture is a criminal offense under both federal and state law, the inquiries were opened to investigate the offenses of “abuse of authority” or “lewd acts.” According to the petitioners, the authorities do not investigate torture allegations. Also as information they note that the office of the Attorney General of the Republic, between January 1994 and July 2010, reported two convictions for torture and 81 judgments in abuse of authority cases.

22. The petitioners report that the Supreme Court of Justice of the Nation investigated the facts of this case through an Investigating Commission and issued a nonbinding resolution finding human rights violations but without establishing criminal liability or punishments for any specific individuals. According to the petitioners, the Supreme Court’s involvement was extraordinary in nature and unrelated to its jurisdictional functions. They further report that the National Human Rights Commission opened an *ex officio* complaint regarding the facts and that, on October 16, 2006, it issued recommendation 38/2006, finding that several human rights violations had taken place, including the sexual assaults suffered by the alleged victims.

23. Regarding the exhaustion of domestic remedies, they contend that the exceptions to the exhaustion rule apply since there has been an unwarranted delay in resolving them and no legal process exists for the pursuit of a suitable, impartial investigation. They claim that the State seeks to justify the delay in the proceedings on account of the complexity of the investigations. However, the petitioners point out that the proceedings opened at the state level were for minor offenses and were shelved in April 2007. At the federal level, the office of the Special Prosecutor failed to bring charges against the alleged perpetrators and declined competence in favor of the state of México on July 13, 2009. They report that on March 10, 2010, after a long period of inaction, the office of the Assistant Attorney General referred the proceedings to the General Directorate of Inspectors for further action. In other words, they contend that more than four years after the incidents occurred, the investigations have produced no results and the authorities have acted negligently.

24. The petitioners question the impartiality of the investigation in light of public statements made by the Mexican authorities reportedly discrediting the alleged victims. They hold that the lack of due

diligence on the part of the authorities in the proceedings and the inaccurate prosecution of the offenses gives rise to a situation where the possibilities of justice and redress for the alleged victims are illusory.

25. The petitioners further contend that the *amparo* remedy which the State claims has to be exhausted is a special remedy that does not require exhaustion since the alleged victims filed for criminal action, which the State itself must pursue. That notwithstanding, they hold that with respect to the filing of an *amparo* remedy in connection with the federal system's declination of jurisdiction in favor of the state system, the prevailing case law of the Supreme Court indicates that such a transfer of competence does not violate individual guarantees. Furthermore, they contend that *amparo* is not admissible with respect to a decision to shelve an investigation, since Article 158 of the Amparo Law states that direct *amparo* may be admitted solely against final judgments or decisions. Regarding filings for *amparo* by the victims in criminal proceedings, they note that they are limited to redress for damages or civil responsibility and to resolutions of the Public Prosecution Service deciding to cease or refrain from pursuing criminal action, and that they are not admissible with respect to an unfavorable judgment.

26. They add that the resolutions of the National Human Rights Commission and of the Supreme Court of Justice referred to above are not binding, and that neither are they appropriate remedies for rectifying the human rights violations described. They note that the Supreme Court's intervention was by means of a special investigation that was separate from its jurisdictional duties.

## **B. State**

27. The State holds that the petition should not be admitted because the petitioners have not exhausted the available domestic remedies and the investigation remains ongoing. It further contends that the exceptions to the rule requiring the exhaustion of domestic remedies have not been triggered.

28. According to the State, on May 3 and 4, 2006, clashes occurred between the security forces of the state of México and the federal preventive police on the one hand, and market traders, local residents, and members of civil society organizations on the other, following the eviction of a group of florists who had set up stalls without permission outside the market in Texcoco, state of México, culminating in the blocking of highways. During the confrontation, 11 municipal police officers and six members of the public were injured, and 207 people were arrested and brought before the judicial authorities.

29. Mexico reports that as a result of the facts, investigations were begun by the offices of the Attorney General of the Republic and the Mexico State Attorney General. According to the State, at the federal level, the investigations were led by the FEVIM, which carried out 350 formalities, including taking statements and ratifications from the alleged victims, conducting medical and psychological examinations, etc. It also contends that steps were taken to corroborate the alleged commission of the crime of torture. Since the probable responsibility of local-level state agents was identified, on July 15, 2009, the México State Attorney General's Office was sent all the documents in preliminary inquiry PGR/FEVIM/03/05-2006, and it was combined with a preliminary inquiry (TOL/DR/I/466/2006). That preliminary inquiry at the state level was begun to investigate the probable commission by state agents of the crime of abuse of authority. At the same time, the México State Attorney General's Office had initiated another preliminary inquiry (TOL/DR/I/470/2006) against those individuals responsible for the events of May 3 and 4 in Texcoco and San Salvador Atenco; this was also combined with preliminary inquiry TOL/DR/I/466/2006 because the facts of both were related.

30. The State indicates that various formalities have been pursued but that the complexity of the matter has delayed the criminal proceedings. In addition, because of the absence of evidence for determining criminal responsibility, the state prosecution service resolved to shelve the investigation on March 8, 2007. It also notes that later, on February 11, 2008, the agent of the Public Prosecution Service charged with preparing the preliminary inquiries into the Texcoco and San Salvador Atenco incidents again resolved to shelve the proceedings. On June 1, 2010, a legal study of the preliminary inquiry by the General Directorate of Inspectors was presented, ordering the immediate reopening of the case. It was therefore decided to reactivate the criminal proceedings, in order to determine the involvement of the

guilty parties. Following that reactivation, the México State Attorney General's Office has taken statements from 25 of the 30 police officers traveling in the three buses where possible acts of sexual abuse were reported. In addition, the State details a series of steps that have been suggested for furthering the investigation.

31. Regarding the criminal prosecution brought against a state police officer for allegedly committing lewd acts on Ana María Velasco Rodríguez, the State reports that the proceedings concluded with an acquittal handed down by the Second Single-member Criminal Chamber of the Superior Court of Justice of the State of México.

32. Criminal prosecutions were also brought against several state officers for their probable responsibility in the crime of abuse of authority to the detriment of the public administration (criminal case 59/2006). In this case, Mexico reports that on November 27, 2009, the preliminary inquiry was ordered closed and, later (no date specified), an acquittal was issued because of a lack of legal certainty regarding the alleged commission of the offenses in question.

33. According to the State, the participation of the petitioners in the criminal proceedings has not been hindered. It notes that although the petitioners assisted in the investigations, they did not always cooperate. Specifically, Mexico notes the refusal of some of the alleged victims to undergo psychological examinations for cases of possible torture following the Istanbul Protocol, which has contributed to the delay in the investigation.

34. The State also notes that the Supreme Court of Justice of the Nation – using its powers of investigation – and the National Human Rights Commission conducted investigations in order to determine possible human rights violations. Mexico reports that the Supreme Court's investigation found that violations of individual guarantees did take place during the events of May 3 and 4, 2006, in Texcoco and San Salvador Atenco, but that those violations were not the result of compliance with deliberate instructions issued by state authorities, but were instead caused by a *de facto* situation that escaped their control.

35. Regarding the investigation conducted by the National Human Rights Commission, it indicates that the CNDH sent assistant inspectors and medical experts attached to the Commission to the site of the incidents and to the Santiaguito Detention Center to carry out assessments in accordance with the Istanbul Protocol. It reports that individual records were prepared of all the people who were arrested, including the alleged victims. It notes that in its preliminary report of May 22, 2006, the CNDH documented the existence of possible human rights violations and, in its recommendation 38/2006, it issued recommendations for the authorities of the state of México and other authorities. Subsequently, it notes, the CNDH acknowledged that the state authorities took sufficient actions to follow up on the recommendations and ruled that they had been complied with.

36. Mexico further contends that domestic remedies have not been exhausted and, consequently, that the petition should be declared inadmissible. Specifically, it notes that the petitioners did not file for indirect *amparo* proceedings or the review remedy they could have lodged subsequently should they have failed to secure a favorable result in the indirect *amparo* judgment. In addition, were the indirect *amparo* to be admitted and were new proceedings to be ordered, if the judge were to issue an unfavorable final judgment then direct *amparo* would be available to the petitioners. Mexico contends that the criminal investigation remains ongoing and it reaffirms its commitment to continue the investigations until the truth of the matter is revealed, individual responsibilities are determined, and the guilty are punished.

37. The alleged lack of impartiality is, it says, based on statements made to the media. Regarding the classification of the offenses, it points out that torture was criminalized in the state of México's Law to Prevent and Punish Torture, enacted in 1994. Regarding the unwarranted delay, Mexico points out that this particular case poses a challenge on account of the difficulty in establishing the specific identities of the probable perpetrators and in linking them with given acts.

#### **IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY**

##### **A. Competence**

38. First of all, the petitioners are entitled, under Article 44 of the American Convention, to lodge complaints with the Commission. The petition names, as its alleged victims, individual persons with respect to whom the Mexican State had assumed the commitment of respecting and ensuring the rights enshrined in the American Convention. With reference to the State, the Commission notes that Mexico has been a state party to the American Convention since March 24, 1981, when it deposited its instrument of ratification. Similarly, Mexico ratified the Convention de Belém do Pará on November 12, 1998, and the Inter-American Convention to Prevent and Punish Torture on June 22, 1987. The Commission therefore has competence *ratione personae* to examine the complaint. In addition, the Commission has competence *ratione loci* to examine the petition, in that it alleges violations of rights protected by the American Convention, the Convention of Belém do Pará, and the Inter-American Convention to Prevent and Punish Torture, which took place within the territory of Mexico, a state party to those treaties.

39. The Commission has competence *ratione temporis* in that the obligation of respecting and ensuring the rights protected in the American Convention, the Convention of Belém do Pará, and the Inter-American Convention to Prevent and Punish Torture was already in force for the State on the date that the incidents described in the petition allegedly took place. Finally, the Commission has competence *ratione materiae*, because the petition alleges possible violations of human rights violations protected by the American Convention, the Convention of Belém do Pará, and the Inter-American Convention to Prevent and Punish Torture.

##### **B. Admissibility requirements**

###### **1. Exhaustion of domestic remedies**

40. Article 46(1)(a) of the American Convention states that for a complaint lodged with the Inter-American Commission to be admissible under Article 44 of the Convention, the remedies available under domestic law must have first been pursued and exhausted in accordance with generally recognized principles of international law. That requirement is intended to facilitate the domestic authorities' examination of the alleged violation of a protected right and, if appropriate, to enable them to resolve it before it is brought before an international venue. Article 46(2) of the Convention establishes three situations in which the rule requiring the exhaustion of domestic remedies does not apply: (a) when the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated, (b) when the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them, and (c) when there has been an unwarranted delay in rendering a final judgment under the aforementioned remedies. Those precepts address not only to the formal existence of such remedies, but also their adequacy and effectiveness.

41. In the case at hand, the State maintains that the investigation of the incidents remains pending, that the remedies offered by domestic jurisdiction have not been exhausted, and that the petitioners failed to pursue a suit for indirect *amparo*. In turn, the petitioners contend that the exceptions to the exhaustion of domestic remedies apply because there has been an unwarranted delay.

42. The Commission notes that five years have passed since the alleged incidents and, as of the date of the drafting of this report, the State has presented no specific information on the steps taken to further the investigation. At the federal level, both parties indicate that the FEVIMTRA declined competence in favor of the state authorities on July 13, 2009, that is, three years after the investigation was opened. The IACHR notes that from that date until March 10, 2010, when the proceedings were forwarded to the General Directorate of Inspectors, the available information indicates that the investigation was inactive. At the same time, at the state level, the IACHR notes that the First Panel of the Directorate of Responsibilities of the México State Attorney General's Office opened two preliminary

inquiries that were later combined with preliminary inquiry TOL/DR/I/466/2006 on May 11, 2006. However, on account of the lack of evidence for establishing criminal responsibility and for determining the crime of torture, the prosecution service resolved to shelve the investigation on March 8, 2007.

43. Regarding the progress toward casting light on the incident and punishing the guilty taken since March 10, 2010, the State only reports that statements have been taken from 25 of the 30 police officers who were traveling on the buses on which several of the sexual assaults allegedly took place. In addition, it merely refers to a number of formalities pending implementation, but it provides no specific information that would indicate that the investigation is being processed in a timely fashion.

44. In addition, the IACHR notes that the authorities have brought criminal prosecutions in only two of the 11 complaints covered by this case. In the case of Ana María Velasco Rodríguez, her alleged assailant was acquitted of the charges of “lewd offenses” by an *amparo* resolution of February 19, 2009, that voided the conviction handed down in the appellate court’s judgment and decision. That information has not been disputed by the State. In the case of María Patricia Romero, an investigation into the crime of abuse of authority was opened, but with respect to the public administration and not the alleged victim; on June 15, 2006, 21 police officers from the state of México were arraigned and subsequently acquitted by means of a first-instance judgment of February 19, 2010. That information has not been disputed by the State.

45. On this point, the IACHR notes that in cases involving torture – a publicly actionable offense in Mexico – the appropriate and effective remedy is normally an investigation and a criminal trial, and the State has the obligation of bringing and pursuing such action. In this case, none of the prosecutions brought were for the crime of torture, but rather for “abuse of authority” or “lewd acts.” In addition, the Commission recalls that when the state authorities resolved to shelve the investigation on March 8, 2007, they noted the lack of evidence for establishing the crime of torture.

46. Regarding the involvement of the Supreme Court of Justice of the Nation, the IACHR notes that its participation was not jurisdictional in nature. Regarding the involvement of the National Human Rights Commission, the IACHR notes that the CNDH is not a jurisdictional organ and thus does not afford a judicial remedy in the sense of Article 46 of the American Convention.

47. The Commission notes that more than five years after the facts of the case occurred, various formalities to determine responsibilities are still being carried out. The IACHR holds that that period of time is sufficient to trigger the exception to the rule requiring the exhaustion of domestic remedies, pursuant to the provisions of Article 46(2)(c) of the Convention.

48. Finally, the triggering of the exceptions to the domestic remedy exhaustion rule provided for in Article 46(2) of the Convention is closely related to the finding of possible violations to certain rights provided for therein, such as guarantees of access to justice. However, Article 46(2), by nature and purpose, is a norm with autonomous content vis-à-vis the substantive norms of the Convention. Therefore, the determination as to whether the exceptions to the exhaustion of domestic remedies rule stipulated in that provision apply in this case must be made separately, and prior to the examination on the merits, since it depends upon a standard of judgment distinct from that used to determine the violation of Articles 8 and 25 of the Convention. Note that the causes and effects that have prevented the exhaustion of domestic remedies in the case at hand will be analyzed, as relevant, in the Commission’s report on the merits of the controversy, in determining whether or not the American Convention was in fact violated.

## **2. Filing period**

49. Regarding the requirement set in Article 46(1)(b) of the Convention, whereby petitions must be lodged within a period of six months after the victim is notified of the final judgment with which domestic remedies are exhausted, the Commission finds that compliance with that deadline is not applicable and that the petition was lodged within the reasonable time referred to in Article 32(2) of its



Rules of Procedure for cases in which final judgment has not yet been handed down at the time the petition is presented.

### 3. Duplication of international proceedings and *res judicata*

50. Nothing in the case file indicates that the substance of the petition is pending in any other international settlement proceeding or that it is substantially the same as any other petition already examined by this Commission or another international body. Hence, the requirements set forth in Articles 46(1)(c) and 47(d) of the Convention have been met.

### 4. Colorable claim

51. The Commission believes that at this stage in the procedure it is not appropriate to rule on whether or not the purported violations of the alleged victims' rights actually took place. For the purposes of admissibility, the IACHR must at this time determine solely whether the petition describes facts that, if proven, could tend to establish violations of the American Convention, as provided by Article 47(b) thereof, and whether the petition is "manifestly groundless" or "obviously out of order," as indicated in section (c) of that same article.

52. The level of conviction regarding those standards is different from that which applies in deciding on the merits of a complaint. The Committee has to make a *prima facie* assessment and determine whether the petition tends to establish violation of a right guaranteed by the Convention, not whether it actually establishes said violation.<sup>2</sup> At this stage, what is called for is a summary analysis that implies no prejudgment or advance opinion on the merits. The Rules of Procedure of the Inter-American Commission, by establishing separate phases for admissibility and merits, reflects that distinction between the evaluation the Inter-American Commission is to conduct in order to rule a petition admissible and the examination needed to determine whether a violation for which the State is responsible was committed.<sup>3</sup>

53. Neither the American Convention nor the IACHR Rules of Procedure require a petitioner to identify the specific rights allegedly violated by the State in the matter brought before the Commission, although petitioners may do so. It is for the Commission, based on the system's jurisprudence, to determine in its admissibility report which provisions of the relevant Inter-American instruments are applicable and could be found to have been violated if the alleged facts are proven by sufficient elements.

54. In this regard, the IACHR believes that the claims regarding the alleged victims, if proven, could tend to establish violations of the rights guaranteed by Articles 5, 7, 8, 11, and 25 of the American Convention, in conjunction with Articles 1(1) and 2 thereof. In addition, it believes that the claims made regarding the discriminatory nature of the sexual violence purportedly perpetrated against the alleged victims, together with the treatment they received while under arrest and, later, as complainants, could tend to establish a violation of Article 24 of the American Convention, in conjunction with Articles 1(1) and 2 thereof. Similarly, the IACHR believes that the alleged facts could tend to establish violations of Article 7 of the Convention of Belém do Pará. The IACHR further decides to rule the case admissible as regards the alleged violation of the rights enshrined in Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.

## V. CONCLUSIONS

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<sup>2</sup> See: IACHR, Report No. 128/01, Case 12.367, *Mauricio Herrera Ulloa and Fernán Vargas Rohrmoser of La Nación Newspaper* (Costa Rica), December 3, 2001, para. 50; Report No. 4/04, Petition 12.324, *Rubén Luis Godoy* (Argentina), February 24, 2004, para. 43; Report No. 32/07, Petition 429-05, *Juan Patricio Marileo Saravia and Others* (Chile), April 23, 2007, para. 54.

<sup>3</sup> See: IACHR, Report No. 31/03, Case 12.195, *Mario Alberto Jara Oñate and Others* (Chile), March 7, 2003, para. 41; Report No. 4/04, Petition 12.324, *Rubén Luis Godoy* (Argentina), February 24, 2004, para. 43; Petition 429-05, *Juan Patricio Marileo Saravia and Others* (Chile), April 23, 2007, para. 54; Petition 581-05, *Víctor Manuel Ancalaf Llaupe* (Chile), May 2, 2007, para. 46.

55. The Commission concludes that it has competence to examine the merits of this case and that the petition is admissible under Articles 46 and 47 of the American Convention, and it decides to continue with its analysis of the merits regarding the alleged violation of Articles 5, 7, 8, 11, 24, and 25, in conjunction with Articles 1(1) and 2 thereof, and of Article 7 of the Convention of Belém do Pará, with respect to Mariana Selvas Gómez, Georgina Edith Rosales Gutiérrez, María Patricia Romero Hernández, Norma Aidé Jiménez Osorio, Claudia Hernández Martínez, Bárbara Italia Méndez Moreno, Ana María Velasco Rodríguez, Yolanda Muñoz Diosdada, Cristina Sánchez Hernández, Patricia Torres Linares, and Suhelen Gabriela Cuevas Jaramillo. The IACHR further decides to rule the case admissible as regards the alleged violation of the rights enshrined in Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.

56. Based on the foregoing considerations of fact and law,

### **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS**

#### **DECIDES:**

1. To rule this petition admissible as regards the alleged violations of the rights enshrined in Articles 5, 7, 8, 11, 24, and 25 of the American Convention, in conjunction with Articles 1(1) and 2 thereof, and in Article 7 of the Convention of Belém do Pará, with respect to Mariana Selvas Gómez, Georgina Edith Rosales Gutiérrez, María Patricia Romero Hernández, Norma Aidé Jiménez Osorio, Claudia Hernández Martínez, Bárbara Italia Méndez Moreno, Ana María Velasco Rodríguez, Yolanda Muñoz Diosdada, Cristina Sánchez Hernández, Patricia Torres Linares, and Suhelen Gabriela Cuevas Jaramillo. Additionally, to rule the case admissible as regards the alleged violation of the rights enshrined in Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.

2. To notify the parties of this decision.

3. To publish this decision and to include it in its Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., a los 2<sup>nd</sup> day of the month of November, 2011.  
(Signed): Dinah Shelton, President; Rodrigo Escobar Gil, Second Vice-President; Paulo Sérgio Pinheiro, Felipe González, Luz Patricia Mejía Guerrero, and María Silvia Guillén, Commissioners.