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REPORT No. 67/15
PETITION 211-07
REPORT ON ADMISSIBILITY

JORGE MARCIAL TZOMPAXTLE TECPILE ET AL
MEXICO

Approved by the Commission at its meeting No. 2051 held on October 27, 2015
156th Regular Period of Session.

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Tecpile et Al. Mexico. October27, 2015.



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I. SUMMARY

1. On February 23, 2007 the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission,” or “the IACHR”) received a petition presented by the Red Solidaria Década Contra la Impunidad [Solidarity Network of the Decade Against Impunity] (hereinafter “the petitioner”), representing Jorge Marcial Tzompaxtle Tecpile, Gerardo Tzompaxtle Tecpile, and Gustavo Robles López (hereinafter “the alleged victims”), the first two from the Nahuatl indigenous people. The petition was presented against the United Mexican States (hereinafter “the State” or “Mexico”) for the alleged arbitrary detention of the alleged victims, and for the lack of due process in the criminal proceedings against them.

2. The petitioner alleges that the State is responsible for violation of rights guaranteed in Articles 7 (the right to personal liberty), 8 (the right to a fair trial), 15 (the right of assembly), and 25 (the right to judicial protection) of the American Convention on Human Rights (hereinafter “American Convention”). With respect to the requirement for prior exhaustion of domestic remedies, the petitioners argue that they were exhausted with the filing of at least four requests for constitutional protection (*amparo*) during the detention of the alleged victims and an appeal against the conviction. The State, for its part, alleges that this matter does not constitute a petition as defined in the Inter-American Commission’s Rules of Procedure, but a preliminary step. The State also says there is no issue for the case because the alleged victims were released in October 2008. It also alleges the lack of exhaustion of domestic remedies and the untimely filing of the petition.

3. Without prejudging the merits of the case, after examining the positions of the parties and pursuant to the requirements established in Articles 46 and 47 of the American Convention, the Commission decided to declare the case admissible in order to examine the alleged violation of the rights contained in Articles 5, 7, 8, and 25 of the American Convention, in connection with Articles 1.1 and 2 of the same instrument, to the detriment of the alleged victims. In addition, the Commission concluded that the petition is inadmissible with respect to Article 15 of the American Convention. The Commission also decided to notify the parties of this decision, to publish it, and to include it in its Annual Report to the OAS General Assembly.

II. PROCEEDINGS BEFORE THE COMMISSION

4. On February 23, 2007, the IACHR received the petition and assigned it number 211-07. The petitioner presented additional information on February 28 and June 29, 2007, and on November 14, 2008. The IACHR forwarded the pertinent parts of these documents to the State on February 22, 2011, and asked it to submit its observations in accordance with the provisions of Article 30.3 of its Rules of Procedure. The State submitted its observations on June 2, 2011, which were duly transmitted to the petitioner.

5. In addition, the Commission received information from the petitioner on September 25, 2011, and May 15, 2013. The State submitted additional information on February 6 and 12, 2012, and on August 13, 2013. The notes sent by the parties were duly forwarded to the other party.

¹ As provided in Article 17.2.a of the Commission’s Rules of Procedure, Commissioner José de Jesús Orozco Henríquez, a Mexican citizen, did not participate in the discussion or decision of this case.

III. POSITIONS OF THE PARTIES

A. Position of the petitioner

6. The petitioner alleges that on January 12, 2006, at about 10:30 a.m., Jorge Marcial Tzompaxtle Tecpile, Gerardo Tzompaxtle Tecpile, and Gustavo Robles López were arbitrarily arrested by elements of the Federal Police when they were on the side of the Orizaba-Fortín de las Flores Highway in Veracruz State, where their car had had mechanical problems. According to the petitioner, the three alleged victims were traveling in the car with two other persons whom they did not know, but whom they had picked up. They said that when the federal officers approached to question them, the other two persons left the scene and did not return, leaving some of their belongings in the car.

7. The petitioner affirms that the agents arrested the alleged victims without informing them of what crime they were accused. The petitioner says they were taken to the Federal Public Prosecutor's Office of Orizaba, Veracruz, where they arrived at about 7 p.m. that same day, although it was only 13 km from the place they were arrested. The petitioner says that on that date the Federal Public Prosecutor's Office ordered their detention and began proceedings against them for the crime of bribery, identified as PGR/VER/ORI/2006.

8. The petitioner alleges that they were held incommunicado for two days without being informed of the charges against them, and that on January 14, 2006, they were transferred without cause to the offices of the Subprocuraduría Especializada en Investigación de Delincuencia Organizada [Organized Crime Special Investigation Branch](hereinafter, "SEIDO") of the Office of the Prosecutor General (hereinafter, "PGR") in the Federal District, where they made a statement to the Specialized Unit for Kidnapping Investigations without the presence of counsel. In that unit they were linked to "an alleged crime of kidnapping a Senator," although they had initially been arrested for bribery. The petitioner says that on the night of January 15, an agent of the Specialized Unit for Investigation of Terrorism, Hoarding, and Arms Trafficking (hereinafter, "UEITA") appeared at the SEIDO facility and printed several Internet articles linking the alleged victims to the guerrilla groups "Popular Revolutionary Army" (hereinafter, "EPR") and Popular Revolutionary Command "The Fatherland is First." The petitioner says that on January 16, the head of SEIDO ordered their release for lack of evidence linking them to the alleged kidnapping.

9. The petitioner says that nevertheless, before they could leave the SEIDO offices, agents of the Federal Investigation Agency (hereinafter, "AFI") took them to the UEITA, telling them that they had to sign some more documents. Once they were there, according to the petitioner, the alleged victims were told that they were accused of violating the Federal Law against Organized Crime, for the purpose of committing terrorist acts. The head of the UEITA allegedly ordered their detention and "made them sign a document that they were being held (under *arraigo*) for 90 days for the crime of 'terrorism.'" On March 31, 2006, with no warrant, there were allegedly searches of the home of the mother of Jorge Marcial and Gerardo Tzompaxtle Tecpile, as well as the house and store of Maximino Tzompaxtle Tecpile, brother of the alleged victims of the same name.

10. The petitioner argues that it was not until April 11, 2006, that a judge, the head of the Third District Court for Federal Criminal Proceedings in the Federal District, decreed the detention of the alleged victims for the probable crime of terrorism, and it was only on April 17, 2006, that the officer of the Federal Prosecutor's Office attached to the UEITA put the alleged victims at the disposal of that judge. The petitioner says that on April 22, 2006, the Third District Court for Federal Criminal Proceedings in the Federal District ordered formal incarceration, so they were taken to the North Men's Preventive Prison in the Federal District. According to the petitioner, the alleged victims filed a motion to appeal that decision to the First Circuit's First Criminal Court, identified as number 221/2006. On February 16, 2007, the Court reportedly decided on the appeal by upholding the charges for violation of the Federal Law against Organized Crime and lifting the suspension of the accused's political rights. The petitioner adds that on March 13, 2007, they were transferred to the Social Readaptation Center in Amatlán de los Reyes, Veracruz, to begin their trial.

11. The petitioner says that on May 14, 2008, the Twelfth District Court Judge in Veracruz sentenced them to four years in prison for the offense of organized crime and three months for bribery. It says that their conviction was based on newspaper articles, anonymous calls, the belongings of the persons they were transporting in their car on the day of their arrest, and other unverified elements of evidence. The decision was appealed, and on October 16, 2008, the Judge of the Second Criminal Court of the Seventh Circuit ruled on the appeal motion, absolving the alleged victims of the organized crime offense and confirming the penalty for bribery. Given that they had been incarcerated for more than three months, they had already served the sentence for bribery, and the judge ordered their immediate release.

12. The petitioner says that during their detention the alleged victims filed at least four *amparo* (protection) motions with the First District Criminal *Amparo* Court in the Federal District: *amparo* 240/2006, filed on March 6, 2006, protesting the deprivation of liberty by arbitrary detention (*arraigo*); *amparo* 279/2006, filed on March 15, 2006, protesting obstacles to access of their lawyer to the actions of the preliminary investigation; *amparo* 350/2006, against the detention order issued by the PGR extrajudicially; and *amparo* 413/2006 against the order and authorization for transfer to a Federal Maximum Security Prison. The petitioner says that the first two appeals were dismissed because at the time of the ruling the alleged victims had already been presented to the judge in the case, while 350/2006 was rejected with the argument that the detainees were deprived of liberty because of the *arraigo* order issued by the Judge of the Fourteenth Federal and Criminal Proceedings District Court in the Federal District. This decision was appealed and the First Collegiate Court in Criminal Matters in the Federal District upheld it. The fourth appeal was also dismissed. The petitioner adds that they filed an *amparo* motion R.P. 2131/2006, which at the time the petition was submitted to the IACHR was being reviewed by the First Collegiate Court in Criminal Matters in the Federal District. However, it did not indicate which act of the authority was being challenged, and did not give the date the motion was filed.

13. In addition, the petitioner reports that on February 2, 2006, it presented a note to the Secretariat of the Interior indicating “fears for the physical and psychological security” of the alleged victims, when they had been in *arraigo* for nine days. It also says that on January 27 and February 2, 2006, they filed a complaint with the National Human Rights Commission, in which they “identified human rights violations” affecting the alleged victims, a case identified as 2006/444/1/Q. It added that the Commission found that there had been “violations of rights to legality and legal certainty” by the Federal Preventive Police during the detention of the alleged victims.

14. Finally, although she is not identified as an alleged victim in the petition, the petitioner reports—by way of context—that Elena López Hernández, a member of the petitioning organization, received repeated telephone death threats, especially in January and March of 2007, which were allegedly related to her work in defending the alleged victims in this case. The petitioner says that in February of the same year it made complaints about those threats to the National Human Rights Commission and the Central Investigations Prosecutor’s Office for Security of Persons and Institutions, which opened a preliminary investigation.

15. The petitioner argues that the detention conditions of the alleged victims were arbitrary, and that their arrest and subsequent *arraigo* violated their right to personal liberty, established in Article 7.1 of the American Convention. It says that the lack of initial information and the delay in informing them of the reason for their detention violates Article 7.4 of the Convention, and that the State also violated Article 7.5 of the Convention because they were not brought promptly before a judge and tried within a reasonable time. It also alleges that Mexico violated their right to a fair trial, especially their right to be presumed innocent, established in Article 8.2 of the American Convention. It also says the State violated their right to judicial protection, contained in Article 25, by not offering a simple recourse against their acts that violate their fundamental rights in their arrest, *arraigo*, and criminal proceeding. Finally, it alleges that the State violated their right of assembly, established in Article 15 of the American Convention, due to the vagueness in the definition of “organized crime” contained in Article 2 of the Federal Law against Organized Crime. This law establishes the presence of three or more people as one of the elements that make up the crime of “terrorism”, definition which provided the ground for charging the alleged victims with engaging in organized crime.

B. Position of the State

16. In this admissibility stage, the State says that it will not deal in depth with the petitioner's obligations. However, it states that when the alleged victims were questioned about the subversive material found in their car, they refused to give explanations and offered money to the federal agents if they would let them continue their trip.

17. Mexico argues that the petition submitted by the petitioner should be declared inadmissible. In the first place, it maintains that the complaint received by the IACHR on February 23, 2007 does not constitute a petition as defined in the American Convention, because in its original communication the petitioner reserved "the right to request that it be admitted at a later time." According to the State, the complaint is not a petition, but a mere prelude to a possible petition, so that there was no petition on which the IACHR could rule on admissibility.

18. In the second place, the State argues that there is no issue for the case, because the alleged victims were released on October 16, 2008, by the Second Central Court of the Seventh Circuit in Veracruz. The State says that the alleged victims found favorable resolution for their claims in domestic courts, so there is no issue.

19. If the IACHR should decide to analyze the case's admissibility—despite the State's contention that there is no petition on which to rule—it argues that domestic remedies have not been exhausted. According to the State, the ultimate resolution applicable to the alleged victims was the appellate ruling issued by the Second Central Court of the Seventh Circuit on October 16, 2008. It states that said decision absolved the defendants of the offense of organized crime, confirmed the penalty for bribery, and ordered their immediate release. Mexico says that if Messrs. Tzompaxtle Tecpile and Mr. Robles López had considered that this resolution violated their human rights, the appropriate remedy to protect their rights would have been an *amparo* appeal. However, the State says they did not file any such appeal of the decision, so they haven't exhausted domestic remedies.

20. Finally, the State argues that a petition was not presented within the period established by Article 46 of the American Convention. It says that the parties were notified of the final decision in this case on October 16, 2008, and two and a half years later—when the State submitted its observations on June 2, 2011—the petitioner had not presented any *amparo* appeal of the decision. Moreover, it argues that if the petitioner decided to request the admissibility of this case at that time, i.e., when the State presented its observations, the request would be late and should be rejected because it would be after the six months period established in the American Convention.

IV. ANALYSIS ON ADMISSIBILITY AND COMPETENCE

A. Existence of a petition

21. The Commission notes that in the petitioner's initial communication presented on February 23, 2007, it reserved the right "to request that it be admitted at a later time." Based on that statement, the State argues that this matter is not a petition as defined in the Rules of Procedure of the Inter-American Commission, and that the petitioner did not subsequently request that it be admitted.

22. On this matter, the IACHR observes that in the same note of February 23, 2007, the petitioner said that it informed the Commission about the "following case, because it considers that it violates the American Convention on Human Rights" and said "[...] we respectfully request that the IACHR: [...] issue an opinion that the Mexican State violated articles of the American Convention on Human Rights, Articles 7(1)(2)(3)(4)(5)(6), Article 8(1)(2)(b)(c), and Articles 15 and 25." On November 14, 2008, the petitioner submitted additional information including a note in which it said it was "hoping that the Inter-American

Commission would consider accepting this case[...].”² This information was passed on to the State at the same time as the initial complaint, on February 22, 2011.

23. The IACHR notes that, as provided in the American Convention and the Commission’s Rules of Procedure, it is competent to determine processing of a petition, based on the petition or information provided by the petitioners, or *motu proprio*.³ In this case, the Commission considers that the first alternative is applicable, taking into account the initial petition and the notes presented by the petitioner before the opening, so it will proceed to analyze whether admissibility requirements have been met.

B. Competence

24. The petitioner is entitled, in principle, by Article 44 of the American Convention to present petitions to the Inter-American Commission. The petition identified as alleged victims individual persons for whom the State of Mexico was obligated to respect and guarantee the rights established in the American Convention. Mexico has been a State party to the American Convention since March 24, 1981, the date on which it deposited its instrument of ratification. Therefore, the Commission has *ratione personae* competence to examine the petition. The IACHR has *ratione temporis* competence, because the petitioner alleges violations that occurred starting in 2006, when the American Convention was in force for Mexico.

25. The Commission has *ratione loci* competence to examine the petition, given that it alleges rights protected by the American Convention that allegedly took place in the territory of de Mexico, a State party to that treaty. The Commission also has *ratione materiae* in this case, because the petition alleges facts that could tend to establish a violation of rights protected by the American Convention.

C. Requirements for Admissibility

1. Exhaustion of domestic remedies

26. Article 46.1.a of the American Convention stipulates, as a requirement for admission of a petition presented to the Inter-American Commission under the terms of Article 44 of that treaty, that remedies under domestic law have been exhausted in accordance with generally recognized principles of international law. This is a procedural requirement to inform national authorities of alleged violations of a protected right so that they have the opportunity, if possible, to correct them within their jurisdiction before they are considered at the international level.

27. In the instant case, the IACHR notes that the parties disagree with respect to compliance with this requirement of the Convention. The State alleges failure to exhaust internal remedies, given that the alleged victims did not file an *amparo* appeal against the appellate judgment of October 16, 2008, issued by the Second Central Court of the Seventh Circuit, which absolved the defendants of the offense of organized crime, confirmed the penalty for bribery, and ordered their immediate release. The petitioners says that at least four *amparo* motions and two appeals were filed to protect the right to liberty and due process guarantees of the alleged victims, none of which proved effective.

28. After analyzing the information and documents supplied by the parties, the IACHR notes that at different times the alleged victims filed various motions to challenge the measures of deprivation of their

² Petitioner’s note of November 14, 2008, p. 2 (“Without anything more at the moment, we will end this note but not without first reiterating the assurances of our highest consideration and the hope that the Inter-American Commission would consider accepting this case because of the systematic violations of due process and especially because of the illegality of the procedure of *arraigo* to which Messrs. Jorge Marcial Tzompaxtle Tecpile, Gerardo Txompaxtle Tecpile, and Gustavo Roble López were subjected for three months.”)

³ Specifically, the IACHR notes Article 48 of the American Convention, which stipulates: “When the Commission receives a petition or communication alleging violation of any of the rights protected by this Convention, it shall proceed as follows: [...] a) if it considers the petition or communication admissible, it shall request information from the government of the state indicated as being responsible for the alleged violations [...]” In addition, Article 24 of the IACHR Rules of Procedure states: “The Commission may also, *motu proprio*, initiate the processing of a petition which, in its view, meets the necessary requirements.”

personal liberty. In fact, the available information indicates that after their arrest on January 12, 2006, on March 6, 2006, the alleged victims filed an *amparo* motion, identified as 240/2006, protesting the deprivation of liberty by arbitrary detention (*arraigo*), which was dismissed by the First District Criminal *Amparo* Court in the Federal District because at the time of the ruling the alleged victims had already been presented to the judge in the case. The Commission also notes that on April 5, 2006, the alleged victims presented an *amparo* motion, identified as 350/2006, against the detention order issued by the PGR extrajudicially, which was denied by the First District Criminal *Amparo* Court in the Federal District because the detainees were deprived of liberty under the *arraigo* order issued by the Judge of the Fourteenth Federal and Criminal Proceedings District Court in the Federal District. Based on the available information, this decision was appealed to First Collegiate Court in Criminal Matters in the Federal District, which upheld it. In addition, *amparo* motion 413/2006, which was filed against the order and authorization for transfer to a Federal Maximum Security Prison, was rejected by the First District Criminal *Amparo* Court in the Federal District.

29. Similarly, the IACHR notes that at various stages of the process, e.g., the various *amparo* and appeal motions, the alleged victims challenged aspects related to due process guarantees. Specifically, the available information indicates that on March 15, 2006, the alleged victims presented an *amparo* motion, identified as 279/2006, protesting obstacles to access by their lawyer to the actions of the preliminary investigation against them. That remedy was dismissed by the First District Criminal *Amparo* Court in the Federal District because as stated by the petitioner and not challenged by the State, “at the time of the ruling the alleged victims had already been presented to the judge in the case.” The available information also indicates that the alleged victims filed an appeal motion against the formal prison order to the First Criminal Court of the First Circuit, which decided to reiterate the charges for violation of the Federal Law against Organized Crime and lift the suspension of the accused’s political rights. In addition, to challenge the conviction of May 14, 2008, by the Twelfth District Court Judge in Veracruz, the alleged victims filed an appeal motion. That appeal was resolved on October 16, 2008, by the Judge of the Second Criminal Court of the Seventh Circuit, absolving the alleged victims of the organized crime offense and confirming the penalty for bribery. The Commission understands that with this partially favorable appellate sentence, the criminal proceeding against the alleged victims was concluded.

30. In this case, the State said that if the alleged victims considered that this resolution violated their human rights, they should have filed an *amparo* appeal to challenge that legal decision. On this point, the Commission notes that the human rights violations alleged by the petitioner did not stem from that verdict, but from a series of allegations throughout their allegedly arbitrary detention, *arraigo*, and supposed irregularities in their criminal proceeding, allegations with respect to which the IACHR notes that the alleged victims exhausted ordinary remedies and presented at least four *amparo* appeals that were denied or dismissed. Based on the available information, the Commission notes that the result of the bribery conviction contained in the appellate verdict had apparently been accepted by the alleged victims, since it was not challenged at the domestic level, so the IACHR considers that matter excluded from the merits phase.

31. Taking into account the remedies applied and exhausted in this matter, based on Article 46 of the Convention, the Commission concludes that the requirement for prior exhaustion of domestic remedies has been satisfied, in the terms set forth above. Therefore, the IACHR confirms that domestic remedies afforded by Mexican legislation have been exhausted and the petition satisfies the requirement established in Article 46.1.a of the Convention.

2. Deadline for presentation of the petition

32. Article 46.1 of the American Convention requires that in order for petitions to be admissible they be submitted within six months of the date the petitioner is notified of the final judgment that exhausts domestic remedies. In this case, the petition was submitted to the IACHR on February 23, 2007, and domestic remedies were exhausted on October 16, 2008 with the verdict of the Second Criminal Court of the Seventh Circuit, which resolved the appeal motion. Therefore, domestic remedies were exhausted while the case was being examined for admissibility. Under these circumstances, the Commission has consistently held that

compliance with the requirement for timely presentation of the petition is intrinsically linked to the exhaustion of domestic remedies, and therefore it has been met.⁴

3. Duplication of proceedings and international *res judicata*

33. Article 46.1.c of the Convention says that admission of a petition requires “that the subject of the petition or communication is not pending in another international proceeding for settlement,” and Article 47.d of the Convention stipulates that the Commission shall consider inadmissible any petition that is substantially the same as one previously studied by the Commission or by another international organization. From the information supplied by the petitioner, the IACHR notes that on April 11, 2007, the United Nations Working Group on Arbitrary Detention (“Working Group”) issued an opinion in which it said that the detention of Jorge Marcial Tzompaxtle Tecpile, Gerardo Tzompaxtle Tecpile, and Gustavo Robles López was arbitrary, and called upon the State “to take the necessary measures to remedy the situation in accordance with the norms and principles of the International Covenant on Civil and Political Rights.” The State has not alleged the duplication of proceedings or international *res judicata*.

34. In order to consider that a situation of duplication or international *res judicata* exists in a case, besides the identity of the subjects, the object, and the intent, it is required that the petition is being considered, or has been decided, by an international body with competence to adopt decisions concerning the specific facts contained in the petition, and measures for the effective resolution of the dispute involved.⁵

35. In the present case, the IACHR notes that according to its regulations, the UN Working Group on Arbitrary Detention was established by resolution 1991/42 as a Special Procedure, and fulfills the mandate of investigating cases of deprivation of liberty imposed arbitrarily.⁶ Furthermore, the mandate of the Inter-American Commission on Human Rights in this case derives from a conventional source, the American Convention on Human Rights.

36. In accordance with the above, the Commission finds that this case does not refer only to the arbitrary detention of the alleged victims, but also to the alleged violation of other rights. The Working Group was unable to pronounce on these alleged violations, as they fall outside its competence. In addition, the Commission considers that possible violations of due process were not subject to review by the Working Group, since some of the decisions questioned were issued after the Working Group’s pronouncement. Indeed, the Working Group issued its opinion in April 2007, one year and a half before the final decision that ordered the immediate release of the alleged victims (October 2008). During this period, as alleged by the petitioner, the reported violations to judicial protection, fair trial and humane treatment of the alleged victims persisted, in addition to the continuing arbitrary detention.

37. Therefore, the IACHR notes that given the mandate of the abovementioned Working Group regarding allegations of arbitrary detention, and taking into account the alleged facts that occurred after the publication of the Working Group’s Opinion, the present petition has a distinct purpose and intent as compared to the one presented before the Working Group on Arbitrary Detention. In this regard, the Commission considers that there are no grounds for considering the petition inadmissible based on Articles 46.1.c and 47.d of the Convention and Article 33 of the IACHR Rules of Procedure.

4. Nature of the allegations

38. To rule on a petition’s admissibility, the Commission must decide whether the facts described in it would tend to establish a violation, as provided in Article 47.b of the American Convention, and

⁴ IACHR, Report No. 46/15, Petition 315-01. Cristina Britez Arce. Argentina. July 28, 2015, para. 47.

⁵ See, for example, IACHR, Report Nº 96/98 (Admissibility), Petition 11.827, *Peter Blaine*, December 17, 1998, para. 42; IACHR, Report on Inadmissibility 89/05 of October 24, 2005. Petition 12.103, Cecilia Rosana Nuñez Chipana, Venezuela; IACHR, Report Nº 01/09 (Admissibility), Petition 1491-05, *Benito Antonio Barrios et al*, January 17, 2009, para. 66.

⁶ See UN Commission on Human Rights. Available at: <http://www.ohchr.org/EN/Issues/Detention/Pages/WGADIndex.aspx>

whether the petition is “manifestly groundless or obviously out of order,” as provided in Article 47.c. At this stage of the proceeding, the level of conviction regarding those standards is different from that which applies in deciding on the merits of a complaint. The Commission must conduct a *prima facie* assessment to examine whether the complaint entails an apparent or potential violation of a right protected by the Convention and not to establish the existence of such a violation. That examination is a summary analysis that does not imply prejudging the merits or offering an advance opinion on them.

39. Neither the American Convention nor the Rules of Procedure of the IACHR require the petitioner to specify the rights allegedly violated by the State in the matter submitted to the Commission, although petitioners may do so. It is up to the Commission, based on the system’s jurisprudence, to identify in its admissibility reports which provisions of the relevant inter-American instruments are applicable and would be violated if the alleged facts are sufficiently proved.

40. The petitioner alleges that the Mexican State violated the right to personal liberty of the three alleged victims by arresting them without informing them of the charges, and detaining them (under *arraigo*) for 90 days. The petitioner also alleges that the alleged victims were not brought promptly before a judge, and were not informed of the reasons for their arrest or the charges against them. Furthermore, the petitioner says that the alleged victims’ presumption of innocence was not respected, and their attorney was not allowed to have access to the actions of the preliminary investigation, in violation of their right to a fair trial. According to the petitioner, the State also violated their right to judicial protection by not affording them a simple recourse against the acts that violated their fundamental rights by their detention, *arraigo*, and criminal proceeding. The petitioner argues that the State did not respect the alleged victims’ right of assembly, because the participation of three persons is one of the elements that constitutes a violation of the Federal Law against Organized Crime. Mexico, for its part, holds that the matter is without an issue because of the release of the alleged victims.

41. Considering the elements of fact and law presented by the parties, and the nature of the matter brought before it, the IACHR considers that, if proven, the alleged facts tend to establish violations of the rights protected in Articles 5 (humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), and 25 (judicial protection) of the American Convention, in connection with Articles 1.1 and 2 of the same international instrument.

42. With respect to the petitioner’s complaint of the alleged violation of Article 15 (right of assembly) of the American Convention, the Commission notes that the petitioner does not offer allegations or evidence to support that alleged violation, so it is not possible for the Commission to declare the petition admissible with respect to that Article.

V. CONCLUSIONS

43. Based on the foregoing arguments of fact and law, and without prejudging the merits of the case, the Inter-American Commission concludes that the present case satisfies the requirements for admissibility established in Articles 46 and 47 of the American Convention, and therefore,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the petition under study admissible with respect to Articles 5, 7, 8, and 25 of the American Convention in connection with the obligations established in Articles 1.1 and 2 of the same instrument.

2. To declare the present petition inadmissible with respect to Article 15 of the American Convention.

3. To notify the parties of this decision;

4. To continue with the analysis of the merits of the case; and
5. To publish this decision and include it in the Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 27th day of the month of October, 2015. (Signed):
Rose-Marie Belle Antoine, President; James L. Cavallaro, First Vice President; Felipe González, Rosa María Ortiz,
Tracy Robinson and Paulo Vannuchi, Commissioners.