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REPORT No. 65/16

PETITION 404-03

REPORT ON ADMISSIBILITY

JOSÉ RAMÓN MEDINA RIVERA
MEXICO

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159th Regular Period of Sessions.

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Mexico. December 6, 2016.



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I. SUMMARY

1. On June 3, 2002, the Inter-American Commission on Human Rights (hereinafter, “the Inter-American Commission,” “the Commission,” or “the IACHR”) received a petition filed by María Josefina Medina Ramírez and José Ramón Medina Rivera (hereinafter, “the petitioners”) against the State of Mexico (hereinafter “Mexico,” “Mexican State” or “State”). The petition fundamentally alleges the international responsibility of the State for the purported illegal detention, acts of torture, and violation of the right to a fair trial, to the detriment of José Ramón Medina Rivera (hereinafter, “the alleged victim”).

2. The petitioners indicate that the alleged victim was unjustifiably deprived of his liberty and tortured by a group of police officers from the state of Nayarit in an attempt to compel him to confess to the crimes of homicide and battery, of which he claims to be innocent. They likewise note that his individual rights were violated during the case prosecuted against him. The petitioners allege that, despite having filed multiple appeals, such appeals were not effective and they therefore believe the exception to the requirement to exhaust domestic remedies set forth in Article 46(2)(a) of the American Convention on Human Rights (hereinafter, “the American Convention” or “the Convention”) applies.

3. The State claims that the case against the alleged victim was settled properly in the domestic courts—in keeping with its international obligations derived from the Convention—and thus believes that no facts have been presented that might constitute violations of his human rights. The State further alleges that despite having had access to all applicable legal remedies, the petitioners did not exhaust the appropriate remedies. In addition, the State indicates that the petition was filed past the six-month deadline provided for under the Convention and should therefore be declared inadmissible pursuant to Article 46(1)(a) and 46(1)(b) thereof.

4. Without prejudging the merits of the petition, after examining the parties’ positions in light of the admissibility requirements set forth in Articles 46 and 47 of the American Convention, the Commission has decided to declare the petition admissible for purposes of examining the alleged violation of the rights enshrined in Articles 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), and 25 (Right to Judicial Protection), in connection with Article 1(1) thereof. The Commission has likewise decided to declare 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. Lastly, the Commission has further decided to give notice of this decision to the parties, make it public, and include it in its Annual Report to the OAS General Assembly.

II. PROCEEDINGS BEFORE THE IACHR

5. The Commission received the petition on May 20, 2003 and forwarded a copy of the relevant portions thereof to the State on December 14, 2004, giving the State two months to submit its observations, in accordance with Article 30(3) of the IACHR Rules of Procedures in force at the time. The State’s response was received on March 16, 2005 and duly forwarded to the petitioners on April 26, 2005.

¹ Pursuant to the provisions of Article 17(2)(a) of the Commission’s Rules of Procedure, Commissioner José de Jesús Orozco Henríquez, a Mexican national, did not take part in either the discussion of or decision on this matter.

6. The petitioners submitted additional information and comments on February 10, June 23, July 5, September 19, and November 8 and 21, 2005, September 3 and July 12, 2006, April 18, 2007, March 31, 2009, February 18, 2010, May 16, 2011, July 28, 2014, and April 23 and June 22, 2015. The State, for its part, furnished additional comments on August 24, 2005, September 6, 2007, December 4, 2009, June 2, 2010, and November 28, 2011. Such communications were duly transferred to the opposing party.

III. POSITION OF THE PARTIES

A. Position of the petitioners

Allegations regarding the detention

7. The petitioners state that on January 3, 1997 several judicial police agents executed a violent entry into the residence of the alleged victim without any grounds whatsoever or a search warrant. They indicate that the officers aimed their rifles at the alleged victim and held him at gunpoint while they searched his home, later informing him that they had discovered three weapons used exclusively by the army as well as a .25 caliber pistol. That same day he was detained, without an arrest warrant, at approximately 8:00 and transferred to the police station five hours later. Once there, he was tortured both physically and psychologically for more than 32 hours in an effort to get him to confess to the crimes of murdering three men and committing battery against two women, which he maintains he did not do. The petitioners state that while the alleged victim was there, [the police] blindfolded him, beat him, tied his hands, laid him down on the floor, placing a wet cloth over his nose and mouth to pour water on him intermittently. They further indicate that early that morning, he was transferred to the town of Carmen, municipality of Huajirepi, and that on the way they continued to beat him and threaten to kill him.

8. According to the petitioners, on January 4, 1997, the alleged victim was held incommunicado and brought before the Public Prosecution Ministry of Tepic Nayarit. In addition, he was allegedly threatened by another police agent to not report the acts of torture; the officer in question indicated that if he [the alleged victim] did, his family would be in danger and he would suffer an accident in the prison. The petitioners further report that the alleged victim did not have a defense attorney present when giving his provisional statement and that the Public Prosecution Ministry unjustifiably doubled the constitutionally established term for his case to be heard by a judge to 98 hours. They note that on January 5, 1997 the alleged victim was taken to the *Centro de Readaptación Social "Venustiano Carranza" de Tecuala* ["Venustiano Carranza" Social Rehabilitation Center] and thereafter, the Second Trial Court of Tepic Nayarit, despite not having territorial jurisdiction to hear the case, issued a formal order for his imprisonment.

Allegations with respect to the criminal case against Mr. Medina

9. The petitioners state that various pieces of evidence were tampered with during the criminal prosecution. They note that the bodies and the shell casings found at the scene of the crime were recovered by police agents and not by experts. The petitioners also claim that the weapons found at the alleged victim's residence were not duly identified, nor handed over immediately to the legal authorities, and could therefore have been tampered with; this along with the fact that they were not consistent with the weapons that had been used at the scene of the crime. They note that there were contradictions with respect to the number of weapons found in the testimony given by the agents who had executed the search. The petitioners further indicate that expert evidence showed that, while one of the weapons found at the home of the alleged victim had been fired several times, the weapon was not consistent with the shell casings found at the scene.

10. In addition, the petitioners note that the authorities did not take different evidence that demonstrated the innocence of Mr. Medina Rivera into account. For example, the statements given by Mrs. Angelita Domínguez, wife of one of the victims of the crimes the alleged victim was being accused of—she identified and fingered the true perpetrators—or the statement given by Mrs. Clara Barrón Parra, victim of the crimes, who claimed that the judicial police of Tecuala had forced her to testify against Mr. José Medina Rivera, even though he was not guilty.

11. The petitioners report that, even though the statements of the witness and the victim indicated that five or six people had committed the murderers, the judicial police did not continue their investigations to arrest the real perpetrators. They indicate that Mr. José Medina Rivera was unjustly sentenced on March 26, 1997 to 33 years and 15 days of prison, a criminal punishment that was reduced to 30 years, 4 months, and 15 days in prison on appeal via a judgment issued on August 24, 1998. A direct *amparo* appeal filed against that judgment was subsequently rejected on May 24, 2000, though the sentence was reduced to 25 years. Unsatisfied with the decision, the petitioners filed an appeal for a special review of recognition of innocence with the Superior Court of Justice of Nayarit, which was dismissed as unfounded on July 31, 2001. Given this, on September 28, 2001 they filed an indirect *amparo* appeal, which was denied by the First District Court of Nayarit. The same court upheld such decision on March 8, 2002.

Proceedings in connection with the acts of torture and investigation into the deaths charged

12. Given the irregularities in the investigation of the crimes he was being charged with and the alleged acts of torture and intimidation perpetrated against him, the alleged victim filed a complaint on December 5, 2001 against several officials of the State Prosecutor's Office of Nayarit. On that same date, Mrs. Angelita Domínguez reported the masterminds behind and perpetrators of the death of her husband. That notwithstanding, given the inaction of the authorities in the context of the indirect *amparo* action filed by the petitioners, the Public Prosecution Ministry was ordered proceed with the process to ratify the complaints filed.

13. Subsequently, on August 22, 2003 the Public Prosecution Ministry announced that no criminal case would be pursued because the statute of limitations had run out in the case of the crimes reported by both Mr. José Medina Rivera and by Mrs. Angelita Domínguez. This decision was upheld by the Attorney General on August 26, 2003, prompting both individuals to independently file indirect *amparo* actions. These appeals were joined by the Third District Court, which, on August 17, 2004 ruled that *amparo* would not be granted to the alleged victim, but did order the Attorney General to continue to investigate the crimes reported by Mrs. Angelita Domínguez. However, the Public Prosecution Ministry reportedly failed to conduct any investigation whatsoever and even sent the case file to be archived, prompting the complainant to file another indirect *amparo* action with the Third District Judge, who granted the appeal so that the case file could be removed from the archives and the investigation could then continue. The petitioners note that during the proceedings, Mrs. Angelita Domínguez received threats from Public Prosecution Ministry agents in an effort to get her to retract the report she had filed, forcing her to leave the city of Tepic.

14. The petitioners claim that because of the delays in investigating the reports of torture, on May 28, 2003 the Human Rights Commission of Nayarit urged the Attorney General of that state to initiate disciplinary proceedings against several agents of the Public Prosecution Ministry for delays and misfeasance in the pursuit of justice. In the context of those proceedings, however, the Attorney General exonerated his subordinates on August 28, 2003. The petitioners filed an administrative claim against that exoneration, which was rejected by the Administrative Court of Justice on October 10, 2003; an appeal for reconsideration, which upheld the rejection on March 11, 2004; and lastly, a direct *amparo* action, which was granted by the Collegial Tribunal of the Twenty-Fourth Circuit on March 7, 2005, and which ordered the case being brought by the Office of Internal Oversight of the State Prosecutor's Office to be reinstated. Nevertheless, the Public Prosecution Ministry agents were exonerated once again, prompting the petitioners to file yet another appeal with the Administrative Court of Justice, which on May 11, 2007 declared the resolution being appealed to be invalid and ordered the issuance of a new one.

New appeals of the conviction

15. The petitioners indicate that in response to the report filed by Mrs. Angelita Domínguez, as well as to the improper actions taken by the authorities who detained and convicted the alleged victim, they filed both an appeal for special review, which was denied by the Criminal Bench of the Superior Court of Justice of Nayarit on August 11, 2006, and an indirect *amparo* action with the Third District Judge of Nayarit, who granted the appeal on January 18, 2007 and ordered a new resolution. Nevertheless, the new ruling issued on February 9, 2007 upheld the initial rejection. For the second time, the alleged victim filed an

indirect *amparo* action, which was dismissed on March 27, 2007. In light of this dismissal, he filed an appeal for review with the Collegial Tribunal of the Twenty-fourth Circuit, which upheld the district court judge's decision on April 17, 2007.

16. Based on the foregoing, the petitioners allege that the State violated the rights enshrined in Articles 5, 7, 8, and 25 of the American Convention, in connection with Article 1(1) thereof, to the detriment of the alleged victim. They further allege that the multiple appeals filed were not effective, and thus believe the exception to the requirement of exhaustion of domestic remedies stipulated in Article 46(2)(a) of the Convention applies.

B. Position of the State

17. The State indicates that it began an investigation into the murder of three men and wounding of two women, which occurred on January 2, 1997 in the municipality of Tecuala, Nayarit. In her statements, one of the victims identified the alleged victim as one of the perpetrators of the crimes, and thus the Public Prosecution Ministry, with a legal warrant, conducted a search of his residence on January 3, 1997 at 8:00 in the presence of a Civil/Criminal Trial Court Judge, an agent of the Public Prosecution Ministry, and judicial police officers. The State asserts that once the alleged victim had been informed of the grounds for the search, he allowed the police agents in; the police found firearms and live rounds. The State notes that on that same day, the alleged victim's statement was taken in the presence of a public defender and that he agreed to a doubling of the constitutionally stipulated period of 48 hours for bringing him before a judge to have his legal situation resolved inasmuch as there were elements that pointed to his being guilty of being involved in organized crime.

18. The State asserts that on January 6, 1997 the matter was brought to the Second Judge of the Criminal Trial Court of Tepic Nayarit, who ruled that [the alleged victim] should be transferred to the "Venustiano Carranza" Social Rehabilitation Center for the crimes of aggravated homicide and battery. On January 7, 1997, the alleged victim gave his initial statement in the presence of the authorities and his private defense attorney and on January 12, 1997, a formal order for his imprisonment was issued. The State notes that although the Public Prosecution Ministry of Tepic had no territorial jurisdiction, the case was heard and decided by the Civil/Criminal Trial Court Judge of Tecuala, a competent authority who ruled that the alleged victim was criminally liable for the crimes of aggravated homicide and battery and sentenced him to 33 years on March 26, 1998. The State goes on to clarify that such judgment was issued based on direct statements against the alleged victim, on the sodium rhodizonate test administered to both of his hands, and on expert analyses that concluded that one of the shell casings found at the scene of the crime corresponded to one of the rifles found during the search.

19. As to Mrs. Clara Barrón Parra's retraction, the State indicates that it was downplayed because the judge determined that she had been coached in her statements. The first two statements, however, did have value because they were made close to the time the events occurred. In addition, the State indicates that the threats Mrs. Clara Barrón Parra reportedly suffered when she made her initial statements were never reported and therefore lack validity.

20. The State argues that the alleged victim had adequate and effective remedies available to him to assert his dissatisfaction, correct, and as the case may be, remedy whatever actions might have suffered from some legal defect. As a result of the appeals filed, his original sentence was reduced to 25 years in prison. The State further notes that the conviction was made final with the decision handed down in June 2000 inasmuch as the petitioners did not file a new *amparo* action or appeal for review, opting instead to file two special appeals, one in February 2001 and another on February 24, 2006, which, according to the State, because of their requirements and effects did not constitute remedies that needed to be exhausted.

21. Regarding the allegations of torture, the State notes that they were groundless given that they were reported by the alleged victim four years after the torture reportedly occurred and not at the time he made his statement to the Public Prosecution Ministry, or during his initial statement before the trial court judge. The State further maintains that there is no evidence that he showed signs of injury when he was

brought before those authorities. In addition, the State argues that the alleged victim also failed to state that he had been the victim of mistreatment or torture during the regular proceedings or the special appeal, and thus such acts cannot be attributed to the State. The foregoing notwithstanding, the State affirms that it did investigate the alleged torture jointly with the report filed by Mrs. Angelita Domínguez, as these were incidents related to the inquests of January 3, 1997. Accordingly, on August 26, 2003, the Public Prosecution Ministry decided against a criminal prosecution of the individuals being investigated since the statute of limitations had run out on the crimes on August 22, 2003. In light of this decision, both the petitioner and Mrs. Angelita Domínguez filed *amparo* actions that were joined once again on September 8, 2004 by the Third District Judge who decided to grant *amparo* only to Mrs. Angelita Domínguez, ordering an investigation of her complaints, something reportedly being conducted by the Public Prosecution Ministry.

22. In addition, the State points out that in fulfillment of the resolution issued on May 28, 2003 by the Human Rights Defense Commission of Nayarit, administrative proceedings were initiated against three agents of the Public Prosecution Ministry and of the [Office of the] Deputy Attorney General. Nonetheless, on August 28, 2003 the Attorney General of Nayarit determined that the defendants bore no administrative liability. Thereafter, the petitioners filed: An administrative claim that was dismissed by the Administrative Court of Justice on October 10, 2003; an appeal for reconsideration, which upheld the dismissal; and an *amparo* action, which was granted and which ruled that such judgment had to be rescinded and ordered a new one be issued. Lastly, on September 11, 2009 a formal order of imprisonment was issued for the authorities responsible for the crimes of delay and misfeasance in the procurement of justice. According to the State, these proceedings are independent of the others and do not in any way alter the criminal judgment against the alleged victim.

23. In conclusion, the State is requesting that this petition be declared inadmissible inasmuch as the facts reported do not characterize violations of human rights and because an attempt is being made to have the Commission act as a higher court.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence

24. The petitioner is entitled, under Article 44 of the American Convention, to file complaints with the Commission. The petition names as alleged victim an individual on whose behalf the State of Mexico undertook to respect and ensure the rights enshrined in the American Convention. Regarding the State, the Commission notes that Mexico has been party to the American Convention since March 24, 1981, when it deposited the respective instrument of ratification. Mexico likewise ratified the Inter-American Convention to Prevent and Punish Torture on June 22, 1987. The Commission, therefore, has *ratione personae* to examine the petition. The Commission likewise has *ratione loci* to examine the petition inasmuch as it alleges violations of rights protected under the American Convention that are said to have taken place within the territory of Mexico, a state party to said treaties.

25. The Commission is competent *ratione temporis* because the obligation to respect and ensure the rights protected in the American Convention and the Inter-American Convention to Prevent and Punish Torture was already in force for the State when the facts alleged in the petition are said to have occurred. Lastly, the Commission is competent *ratione materiae* because the petition alleges possible violations of human rights protected by the American Convention and the Inter-American Convention to Prevent and Punish Torture.

B. Admissibility Requirements

1. Exhaustion of domestic remedies

26. Article 46(1)(a) of the American Convention states that for a petition presented to the Inter-American Commission to be admitted pursuant to Article 44 thereof, the remedies offered by domestic jurisdiction must have been pursued and exhausted in accordance with generally recognized principles of international law. The purpose of this requirement is to enable national authorities to take cognizance of an alleged violation and, where appropriate, to resolve it before it is taken up by an international body.

27. In view of the information furnished by the parties and pursuant to the case file, the Commission believes that the main thrust of this petition are the alleged irregularities in the criminal case brought against the alleged victim as well as the allegations of torture he suffered in an effort to compel him to incriminate himself. Accordingly, the petitioners indicate that the remedies were not effective either with regard to the investigation of the reported acts of torture, or in repairing the violation of the alleged victim's right to a fair trial in the criminal case prosecuted against him, and thus the exception set forth in Article 46(2)(a) of the Convention applies. The State, for its part, holds that the petitioner did not exhaust the appropriate domestic remedies available with respect to the June 2000 conviction, namely an *amparo* action and appeal for review. The State further believes that the judgment was made final in June 2000 and hence the petition was not filed by the deadline for submission established under the Convention.

28. Regarding the criminal case brought against the alleged victim, the Commission observes that several regular and special appeals were filed, culminating with the resolution of the appeal for review issued by the Collegial Tribunal of the Twenty-fourth Circuit on April 17, 2007. Accordingly, the IACHR believes that the petitioners exhausted domestic remedies pursuant to Article 46(1)(a) of the American Convention.

29. The Commission holds that in cases where torture is alleged—torture being a criminal offense subject to ex officio prosecution in Mexico—the adequate and effective remedy is normally an investigation and criminal prosecution and the State is obligated to promote and foster such actions. In this connection, with respect to offenses subject to ex officio prosecution, the IACHR has repeatedly stated that the authorities are obliged to conduct a thorough criminal investigation calculated to clarify the facts and determine blame.² According to the information available, the acts of torture reportedly committed against the alleged victim were brought to the attention of the authorities on the following occasions: (a) When he gave his preparatory statement on February 4, 1997; (b) via a brief sent to the Constitutional Governor of the state of Nayarit on February 14, 2000; (c) via a complaint lodged with the Human Rights Commission of Nayarit on April 17, 2002; and (d) in a complaint filed on December 5, 2001 against five public officials which culminated with the decision issued by the District Court of Nayarit on August 17, 2004.

30. Based on the information above, the Commission has concluded that the petitioners exhausted domestic remedies to the extent necessary to meet the requirement of exhaustion of domestic remedies set forth in Article 46(1)(a) of the American Convention.

2. Timeliness of the petition

31. Article 46(1)(b) of the American Convention requires that for a petition to be admitted by the Commission, it must be lodged within a period of six months from the date on which the alleged victim of a rights violation was notified of the final judgment.

²IACHR, Report No. 7/15, (Admissibility), Petition 547/04, José Antonio Bolaños Juárez, Mexico, January 29, 2015, paragraphs 20-23.

32. The petition to the IACHR was filed on May 20, 2003 and the remedies in connection with the criminal proceeding against the alleged victim were exhausted with the appeal for review filed with the Collegial Tribunal of the Twenty-fourth Circuit on April 17, 2007. At the same time, the remedies having to do with the alleged acts of torture were exhausted on August 17, 2004 with the decision issued by the Third District Judge of Nayarit. As a result, domestic remedies were exhausted while the case was being examined for admissibility. In such circumstance, the Commission has consistently taken the view that fulfillment of the requirement regarding the time period for lodging a petition is intrinsically linked to the exhaustion of domestic remedies³ and should therefore be regarded as having been met in the instant case.

3. International duplication of proceedings and *res judicata*

33. There is nothing in the case file to suggest that the subject matter of the petition is pending in another international proceeding for settlement or that it has been previously studied by the Inter-American Commission or any other international body. Therefore, the grounds for inadmissibility set forth in Articles 46(1)(c) and 47(d) of the Convention do not apply.

4. Colorable claim

34. For purposes of admissibility, the Commission must decide whether the alleged facts might constitute a violation of rights pursuant to the provisions of Article 47(b) of the American Convention, or if the petition is “manifestly groundless” or “obviously out of order,” pursuant to Article 47(c). The criteria for evaluating those requirements differ from the ones used to rule on the merits of a petition; the Commission must conduct a *prima facie* evaluation to determine whether the petition establishes the grounds for the possible or potential violation of a right guaranteed by the American Convention. Such determination constitutes a preliminary analysis, but does not prejudice the merits of the case.

35. Additionally, neither the American Convention nor the IACHR’s Rules of Procedure require the petitioner to identify the specific rights allegedly violated by the State in the matter submitted to the Commission, although petitioners may do so. Rather, it falls to the Commission, based on the system’s jurisprudence, to determine in its admissibility reports what provision of the relevant inter-American instruments applies and could establish a violation in the facts are proven sufficiently.

36. The petitioners hold that the Judicial Police conducted a violent search of the home of the alleged victim without a search warrant; they detained him without an arrest warrant and subjected him to torture for more than 30 hours in an attempt to compel him to confess to having participated in a crime, which they claim he did not commit. The petitioners further note that the appeals filed were ineffective and that there was unwarranted delay by the Mexican authorities in the processes and investigations having to do with the acts of torture. For its part, the State indicates that the Commission cannot act as a court of fourth instance inasmuch as the rights of the alleged victim were respected at all times and as a result nothing in this petition can be characterized as a violation of his human rights.

37. In view of the considerations of fact and law presented by the parties as well as the nature of the matter brought to its attention, the IACHR believes that, if proven, the facts alleged could characterize potential violations of the rights protected under Articles 5, 7, 8, and 25 of the American Convention, in connection with Article 1(1) thereof, as well as Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of the alleged victim. During the merits stage of the instant case, the Commission will examine whether the facts reported by the petitioners constitute violations of the aforementioned rights by the Mexican State, which does not mean that the IACHR would be acting as a “court of fourth instance” regarding decisions handed down domestically.

³ IACHR, Report No. 46/15 (Admissibility), Petition 315-01, Cristina Britez Arce, Argentina, July 28, 2015, paragraph 47.

V. CONCLUSIONS

38. Based on the foregoing considerations of fact and law, the Inter-American Commission concludes that this petition meets the admissibility requirements set forth in Articles 46 and 47 of the American Convention, and, without prejudging the merits,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare this petition admissible with regard to the rights protected under Articles 5, 7, 8, and 25 of the American Convention, in connection with the obligations set forth in Article 1(1) thereof, as well as under Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of the alleged victim.
2. To notify the parties of this decision;
3. To continue with its analysis of the merits of the complaint; and
4. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Panama, on the 6th day of the month of December, 2016. (Signed): James L. Cavallaro, President; Francisco José Eguiguren, First Vice President; Margarette May Macaulay, Second Vice President; Paulo Vannuchi, Esmeralda E. Arosemena Bernal de Troitiño and Enrique Gil Botero, Commissioners.