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REPORT No. 68/17
PETITION 474-07
REPORT ON ADMISSIBILITY

REYES ALPIZAR ORTÍZ AND DANIEL RODRÍGUEZ GARCÍA
MEXICO

Approved by the Commission at its session No. 2085 held on May 25, 2017
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I. INFORMATION ABOUT THE PETITION

Petitioning party:	Reyes Alpizar Ortiz, Daniel García Rodríguez, Francisco Javier Sanchez García and Denisse Aribel García
Alleged victims:	Reyes Alpizar Ortiz and Daniel Rodríguez García
State denounced:	México
Rights invoked:	Articles 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 11 (privacy), and 25 (judicial protection) of the American Convention on Human Rights, ² in relation to Article 1.1 thereof, and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture

II. PROCEDURE BEFORE THE IACHR³

Date on which the petition was received:	April 17, 2007
Additional information received at the stage of initial review:	January 3, July 17 and August 22, 2007; January 21 and September 25, 2008; and January 12, 2009 and May 6, 2010
Date on which the petition was transmitted to the State:	August 4, 2010
Date of the State's first response:	December 2, 2010
Additional observations from the petitioning party:	September 10, 2010; April 7, 20 and 26, and May 11, 2011; February 17 and September 25, 2012; August 15 and October 2, 2013; July 29, August 1 and 11, 2014; September 28, 2015; and April 4 and December 27, 2016
Additional observations from the State:	December 2 and 21, 2010, December 28, 2011, January 17, 2014 and June 26, 2015

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes; American Convention (deposit of ratification instrument made on March 24, 1981) and Inter-American Convention to Prevent and Punish Torture (deposit of ratification instrument made on June 22, 1987)

¹ Pursuant to Article 17.2(a) of the IACHR's Rules of Procedure, Commissioner José de Jesús Orozco Henríquez, did not participate in the discussion of, or the decision on, this matter.

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

³ The observations presented by each party were duly transmitted to the opposing party.

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

Duplication of procedures and International <i>res judicata</i> :	No
Rights declared admissible	Articles 5 (humane treatment), 7 (personal liberty), 8 (fair trial) and 25 (judicial protection) of the American Convention, in relation to Article 1.1 thereof, and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, under the terms in Section VI
Timeliness of the petition:	Yes, under the terms in Section VI

V. ALLEGED FACTS

1. The petitioners claim that Mr. Daniel García Rodríguez and Mr. Reyes Alpizar Ortiz were subjected to arbitrary detention on February 25 and October 25, 2002 respectively. They also claim that the alleged victims have been in pre-trial custody for fourteen years, in the framework of an investigation into their alleged responsibility for the death of the mayor of the municipality of Atizapán de Zaragoza on September 5, 2001. The petitioners assert that Mr. Alpizar Ortiz was tortured at the moment of his detention with the aim to force him to sign incriminating statements. Moreover they submit that both Mr. Alpizar Ortiz and Mr. García Rodríguez have been victims of psychological torture during their pre-trial detention. They claim that illegal evidence has been accepted in the criminal proceedings against the alleged victims and that for eleven years, the only two witnesses for the prosecution have been called but have not appeared yet. Likewise, they assert that the judge hearing the case has made statements affirming the defendants' responsibility, violating the principle of innocence as their responsibility has not been proved yet.

2. The petitioners assert that the alleged victims lodged appeals on constitutional grounds (*amparos*) against the formal order of imprisonment, which were settled on November 26, 2006 in the case of Mr. Alpizar Ortiz, and on May 23, 2007 in the case of Mr. García Rodríguez, i.e. four and five years later respectively. The settlements were favorable as to some of the charges, but confirmed the formal order of imprisonment regarding the charge of homicide. They also submit that on November 16, 2011 they presented an incidental proceeding before the judge hearing the case, to request a diffuse conventionality control *ex officio* to review the excessively long term of pre-trial detention. They indicate that on November 24, 2011 the remedy had an adverse decision as it was claimed that the local courts were not competent to settle that type of controversies. They assert that an appeal on constitutional grounds was filed against this ruling but was dismissed on the grounds of untimeliness.

3. In 2014, Mr. Alpizar Ortiz filed a new appeal on constitutional grounds against the formal order of imprisonment, demanding a conventionality control. The appeal had a favorable decision on July 15, 2014. The petitioners submit, however, that although a new order of imprisonment was issued, the conventionality control was not undertaken. Finally, on April 12, 2015, Mr. García Rodríguez appealed against the formal order of imprisonment, and by the time of the last communication settlement was pending.

4. Concerning the admission of illegal evidence, the petitioners claim that on September 14, 2012 they requested the judge that a diffuse conventionality control be undertaken, and that the request was rejected on the grounds that said control is exclusively under the federal courts' jurisdiction. They indicate that on September 28, 2012 they filed an appeal on constitutional grounds that was later rejected on the grounds that the alleged violation was not of an irreparable nature inasmuch as a favorable decision could still be issued or an appeal on constitutional grounds could be filed. They submit that, therefore, they filed an application for review in which the judgment was confirmed, establishing that the judge is not bound to

resort to international rules for the analysis of the alleged human rights violations since constitutional provisions are enough for that purpose.

5. As to the lack of proof for the prosecution, the petitioners assert that the inquisitive system lacks the remedies that are available in the adversarial system to question the ineffectiveness of subpoenas. They submit that they requested the judge a conventionality control so that, in view of the *pro personae* principle, the most favorable rules would be applied. They claim that this request was dismissed on February 15, 2013 based on the principle of legality. They assert that the appeal for legal protection filed against this ruling was discontinued in May 2014.

6. The petitioners further indicate that during the preventive detention (*arraigo*), Mr. Alpizar Ortiz was victim of physical and psychological torture by judicial police officers attached to the State Attorney General's Office (PGJE) of Mexico, by which he was forced to sign three incriminating statements, stamp his fingerprint and read their content on camera. They also claim that for many years the State refused to allow Mr. Alpizar Ortiz to undergo an expert assessment in order to document the acts of torture in light of the Istanbul Protocol. They submit that Mr. Alpizar many times made such a request, not only in the framework of the criminal proceedings but also through claims lodged with the National Human Rights Commission, the Human Rights Commission of the state of Mexico, and the PGJE of Mexico. They assert that though he had undergone some medical assessments, none of them met the Istanbul Protocol's standards. Based on the latest communications, Mr. Alpizar Ortiz eventually underwent said assessment in 2016, in which the acts of torture he suffered thirteen years ago were documented.

7. The petitioners claim that the acts of torture were initially denounced by Mr. Reyes Alpizar Ortiz during the hearing of November 28, 2002 in the framework of the criminal proceedings against him, and were also filed in writing. They indicate that many times they asked the judge to refer those claims to the Public Prosecutor's Office for a criminal investigation, but that the requests were not processed on the grounds that they had to be presented before the competent authority. They submit that there was no criminal investigation into said facts. They assert that in 2006 Mr. Reyes Alpizar filed a complaint before the Republic's Attorney General Office (PGR) that was referred to the PGJE of the state of México inasmuch as the officers denounced belonged to that institution. The petitioners claim that an investigation is open but has no guarantee of impartiality since the denounced officers belong to the body undertaking the investigation. They indicate that, in any case, the investigation was inactive for four years, that they have had to face several obstacles to further it, that the judicial authorities refused to include in said investigation some of the proceedings of the criminal case, and that ten years later, the persons responsible have not yet been punished.

8. With regard to the admissibility requirements, the petitioners request that an exception to the exhaustion of domestic remedies be applied in relation to the pleadings about the criminal proceedings against the alleged victims, in view of the lack of effective remedies and unwarranted delays in the legal system. They submit that after fourteen years, the criminal proceedings remain unresolved and that the alleged victims remain in arbitrary pre-trial detention. Concerning the alleged acts of torture to the detriment of Mr. Alpizar Ortiz, the petitioners also request the application of an exception to the requirement of exhaustion of domestic remedies since, although the facts were denounced in 2002, no criminal investigation was ever open and the investigation conducted by the PGJE of the state of México, starting four years later, offers no guarantee of impartiality and has been ineffective anyway.

9. In sum, the petitioners assert that the State has not ensured the rights protected by Articles 5, 7, 8, 11 and 25 of the American Convention during the investigation into the alleged responsibility of Mr. Alpizar Ortiz and Mr. García Rodríguez, and has failed to comply with its obligation to investigate and punish acts of torture, established in Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture.

10. They submit that apart from Mr. Alpizar Ortiz and Mr. García Rodríguez several other persons, most of whom are members of their family, have been subjected to arbitrary detention, long-term of preventive detentions, torture, persecution and coercion.

11. The petitioners claim that Elvia Moreno Rodríguez, Martín Moreno Rodríguez and Antonio Domínguez Zambrano were detained and physically and psychologically tortured, criminally prosecuted and then acquitted. Likewise, they claim that Isaías García Godínez, Isaías García Rodríguez, Francisco Javier Sánchez García, Narciso Urbina Castillo, Martín Gachuz Santiago, Samuel Márquez Vera, Porfirio Pérez Bonilla and Arturo Ledo Ortiz were detained, presented to the media as offenders, criminally prosecuted and finally acquitted. In particular, García Godínez, Gachuz Santiago, Márquez Vera and Pérez Bonilla served an injunction order for 60 days without being brought before a judge. The petitioners assert that Ernesto Hernández Tapia, Marisol Pérez Ibáñez and Raúl Loyola Malagón were tortured during their cross-examination as witnesses. They submit that the latter in particular was forced to sign statements ignoring their content.

12. The petitioners submit that Daniel García Rodríguez's wife, sons and daughters, mother, sisters, niece and other relatives, as well as Reyes Alpizar Ortiz's mother, wife and ex-wife, sons and daughters, together with Alejandra Cabildo de la O, Armando Sánchez Castañeda, Gerardo Sánchez García, Guadalupe Sánchez García, Verónica Sánchez García, Manuel Viveros García were subjected to persecution and psychological coercion. They also assert that the principle of innocence was infringed to the detriment of Jaime Martínez Franco inasmuch as he was accused of perpetrating the murder of the mayor, though at the time of her death he was held in prison. Lastly, they claim that the mayor's father and mother are victims of the failure to conduct an effective criminal investigation into the facts.

13. Regarding the aforementioned complaints, the petitioners indicate that the State has violated the rights embodied in Articles 5, 7, 8, 11 and 25 of the American Convention. They broadly inform that complaints or appeals on constitutional grounds were lodged in some cases; but they submit no information as regards other cases.

14. On the other hand, the State contests the petitioners' pleadings. As to the extended duration of pre-trial detention and the duration of the criminal proceedings, the State asserts, in the first place, that Mr. Alpizar Ortiz and Mr. García Rodríguez waived their constitutional right to be prosecuted within a year since they wanted to present further evidence. Secondly, the State claims that the extended duration of the criminal proceedings has been due to the intense judicial activity by the defendants. The State asserts that throughout the proceedings Daniel García Rodríguez has filed eleven indirect appeals on constitutional grounds, one direct appeal on constitutional grounds, seven appeals in review, two complaints and two second-instance federal criminal proceedings, whereas Reyes Alpizar Ortiz has lodged eight indirect appeals on constitutional grounds, seven appeals in review and two complaints. The State submits that its will to further the proceedings is evidenced by the fact that it requested to close the investigation phase filed by the Public Prosecutor's Office, and that it has nevertheless been possible to achieve as the alleged victims continuously submit evidence.

15. The State invokes the jurisprudence of the Inter-American Court on Human Rights to claim that in order to determine the reasonability of the delays in jurisdictional proceedings, it is necessary to consider the interested party's procedural activity as a determining factor in procedural delays. It asserts that the exception to the requirement of exhaustion of domestic remedies is not applicable since the alleged victims themselves, in the exercise of their right to defense, have presented a series of remedies that have prevented the settlement of the proceedings.

16. The State submits that said aspect of the petition is inadmissible since domestic remedies have not been exhausted. It indicates that the criminal proceedings against Mr. Alpizar Ortiz and Mr. García Rodríguez are in the investigation stage and have not been settled yet. It also submits that, once a judgment is issued, the victims will be able to resort to legal appeals and appeals on constitutional grounds appeal to debate the rights they consider were violated.

17. Concerning the purported acts of torture, the State asserts that in the framework of the criminal case against Mr. Alpizar Ortiz and Mr. García Rodríguez, based on the reference made during the first evidentiary hearing in 2002, the judge forwarded the claim to the Public Prosecutor's Office, and ordered and executed the necessary procedures to confirm its accuracy. It submits that Mr. Alpizar Ortiz has had the

opportunity to lodge evidence and contest those presented by the Public Prosecutor. It asserts that later, in 2006, there began a preliminary investigation filed by the PGJE of the state of México, in the framework of which several medical assessments and different investigation procedures were conducted. The State stresses that this procedure is now in the integration stage. In this regard, the State claims that domestic remedies have not been exhausted in relation to said part of the petition.

18. As regards the purported denial to conduct the medical assessment under the Istanbul Protocol's standards, the State asserts that in the casefile there appear fifty four medical examinations confirming that Mr. Alpizar Ortiz was in good health during his time in detention. The State claims that there is even a statement by the victim in which he declared that the injuries he had were the result of his resisting arrest. It indicates that the assessments were undertaken in light of the standards requested by the interested party. It concludes that these arguments are a defense strategy of Mr. Alpizar Ortiz.

19. The State does not submit any pleadings as to the alleged violations committed against the other alleged victims mentioned by the petitioners.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

20. As regards the requirement of exhaustion of domestic remedies in connection with the purported violations of due process in the framework of the criminal proceedings against Mr. Alpizar Ortiz and Mr. García Rodríguez, the Government indicates that the petitioners waived their constitutional right to be prosecuted within a year, submitted several remedies and requested the undertaking of additional assessments. However, the Commission notes that more than fourteen years have passed since their detention and yet there is no first-instance judgment. Therefore, based on this information, the Commission believes that the exception established in Article 46.2(c) of the Convention applies in this case, under the proviso that the causes and the effects preventing the exhaustion of domestic remedies will be analyzed, as appropriate, in the Commission's report on the merits of the matter, to verify if these establish violations of the Convention.

21. In respect of the petitioners' arguments about the excessively long pre-trial detention, the Commission notes that the alleged victims filed appeals on constitutional grounds against the formal order of imprisonment and requested a diffuse conventionality control *ex officio*. As a result, with regard to these pleadings, the Commission notes that the requirement set forth in Article 46.1(a) of the American Convention and Article 31.1 of the Rules is met.

22. Concerning the pleadings in relation to the purported acts of torture, the Commission notes that although they were denounced, and reported to the State, it was only four years later, when Mr. Alpizar Ortiz directly resorted to the Attorney General's Office of the Republic, that there was an investigation into them. Likewise, the Commission notes that this investigation has taken ten years but had no results. The Commission believes that, in view of this, the exception set forth in Article 46.2(c) of the Convention applies.

23. As to the requirement of exhaustion of remedies concerning the purported violations against the other alleged victims, the Commission notes that the information filed by the petitioners is general and insufficient to analyze the fulfilment of the instant requirement.

24. For the purpose of analyzing the fulfilment of the requirement of reasonable time, the Commission notes that, concerning the arguments about the extended pre-trial detention and the alleged violations of due process, remedies were lodged before and after the filing of the petition. The last remedies presented were the appeals on constitutional grounds against the formal order of imprisonment; in the case of Mr. Alpizar Ortiz, a settlement was reached on July 15, 2014, and in the case of Mr. García Rodríguez, the processing of the appeal was underway by the time of the latest communication. In this regard, the Commission considers that the instant requirement is met in relation to these pleadings.

25. Finally, as regards the alleged acts of torture, the Commission notes that the petition was lodged on April 17, 2007, five years after the facts were denounced and one year after the preliminary

investigation began. Consequently, the Commission believes that, in relation to these pleadings, the petition was filed within a reasonable time.

VII. COLORABLE CLAIM

26. In view of the elements of fact and law filed by the parties and the nature of the matter brought to its attention, the Commission believes that, if proved, the facts denounced, in particular the unwarranted extension of the pre-trial detention and the violations to due process in the criminal proceedings against Mr. Alpizar Ortiz and Mr. García Rodríguez, as well as the purported acts of torture and the alleged failure to investigate and punish the persons responsible for these facts, all of this may establish violations of the rights protected in Articles 5 (humane treatment), 7 (personal liberty), 8 (fair trial) and 25 (judicial protection), in connection with Article 1.1, of the American Convention; and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture.

27. The Commission notes that the information submitted by the petitioners does not contain elements that *prima facie* demonstrate that the facts denounced may establish violations of Article 11 of the Convention.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 5, 7, 8 and 25, in connection with Article 1.1 of the American Convention, and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture;
2. To find the instant petition inadmissible in relation to Article 11 of the Convention;
3. To find the instant petition inadmissible in relation to the pleadings concerning the other alleged victims;
4. To notify the parties of this decision;
5. To continue with the analysis on the merits; and
6. To publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights in the city of Buenos Aires, Argentina, on the 25 day of the month of May, 2017. (Signed): Francisco José Eguiguren, President; Margarete May Macaulay, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice President; Paulo Vannuchi, James L. Cavallaro, and Luis Ernesto Vargas Silva, Commissioners.