

OEA/Ser.L/V/II.167
Doc. 19
24 February 2018
Original: Spanish

REPORT No. 15/18
PETITION 1083-07
REPORT ON ADMISSIBILITY

HÉCTOR GALINDO GOCHICOA AND FAMILY
MEXICO

Approved by the Commission at its session No. 2115 held on February 24, 2018.
167th Special Period of Sessions.

Cite as: IACHR, Report No. 15/18. Petition 1083-07. Héctor Galindo Gochicoa and Family.
Mexico. February 24, 2018.



I. INFORMATION ABOUT THE PETITION

Petitioner:	Héctor Galindo Gochicoa and <i>Centro Jurídico para la Promoción de la Justicia y los Derechos AC</i>
Alleged victim:	Héctor Galindo Gochicoa and family
Respondent State:	Mexico ¹
Rights invoked:	Articles 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 10 (compensation), 25 (judicial protection) and 63 (obligation to remedy) of the American Convention on Human Rights, ² in relation to its Articles 1.1 and 2; and Articles 5, 6, 7, 8, 9, 10 and 12 of the Inter-American Convention to Prevent and Punish Torture

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition:	August 7, 2007
Additional information received at the stage of initial review:	February 20, 2008 and December 28, 2010
Notification of the petition to the State:	November 18, 2015
State's first response:	May 5, 2016

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 on March 24, 1981) and Inter-American Convention to Prevent and Punish Torture (deposit of ratification instrument on June 22, 1987)

IV. 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), 13 (freedom of thought and expression), 16 (freedom of association) and 25 (judicial protection), in connection with Articles 1.1 of the American Convention; 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 of section VI
Timeliness of the petition:	Yes, under the terms of section VI

¹ In accordance with Article 17.2.a of the IACHR Rules of Procedure, Commissioner Joel Hernández García, a Mexican national, did not participate in the discussion or the decision on this matter.

² Hereinafter "Convention" or "American Convention."

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

V. ALLEGED FACTS

1. Mr. Héctor Galindo Gochicoa (the “petitioner” or “alleged victim”) claims that the State of Mexico is responsible for his alleged torture, arbitrary arrest and pre-trial detention in the context of serious human rights violations committed by state agents in the municipalities of Texcoco and San Salvador de Atenco, on May 3 and 4, 2006. He alleges that as the legal representative of the *Frente de Pueblos en Defensa de la Tierra* (People’s Front for the Defense of the Land) (FPDT), on May 3, 2006, he was arbitrarily arrested and held in pre-trial detention in a disproportionate and unlawful way for over four years, and was subjected to irregular criminal proceedings.

2. The alleged victim explains that on May 3, 2006, the flower growers of the local market of Texcoco were violently evicted by police officers in spite of specific agreements with the state authorities. He claims that the FPDT members supported the flower growers, and that confrontations were followed by numerous searches and massive arrests. Given this situation, the petitioner, along with other people, some of them seriously injured, sought refuge at the house of one of the flower growers, which was eventually searched after about 10 hours of police cordon. He claims that they were brutally beaten and unlawfully arrested, that he was mistreated and tortured on the way to the prison, and that none of them were told where they were. Later, they found out that they were in the state prison of “*Santiago*” in Toluca. He indicates that the hundreds of detainees were held in conditions of overcrowding and thus they started a hunger strike. He asserts that they were harassed by the guards and that, in such conditions of isolation and uncertainty inside the prison, their preliminary examination statements were taken despite their deprivation of legal assistance. He submits that all these events were reported to the National Committee on Human Rights (CNDH), which on October 16, 2006 issued its Recommendation No. 38/2006. This body certified the commission of serious human rights violations, recommending the investigation of the unlawful acts allegedly perpetrated by the Federal Preventive Police as well as the filing of investigations for alleged torture, in view of the injuries of those arrested and held in “*Santiago*.” He claims, however, that such criminal investigations were not undertaken.

3. In addition, he submits that after spending 15 days in custody he and other social leaders were taken to “*El Altiplano*” Federal Center of Social Rehabilitation No. 1, a maximum security prison. He indicates that in this prison he was mistreated again, undressed, subjected to degrading examinations, beaten on a daily basis, held incommunicado and often interrogated without legal assistance. He claims that his family was harassed and mistreated; that, in her visits, his mother was made to undress on a weekly basis, examined, subjected to X-ray scans and water was thrown at her. He asserts that later, in spite of several favorable amparo resolutions, his mother was not allowed to see him for more than a year on the grounds that, since she was not her biological mother, she was not allowed to visit him. He indicates that every week his family reported to the CNDH the degrading prison conditions that he and his family members faced. He moreover affirms that, as a result of the arbitrary refusal to sending him to another prison, the mistreatment, the harassment, the threats and the psychological torture that he and his family were exposed to, he filed several amparo complaints, protest motion, and appeals for review. He indicates that the last remedy he lodged was a suspension appeal based on the indirect amparo that included 25 complaints, and that it was dismissed by the Second Circuit Fourth Collegiate Administrative Court on April 29, 2010.

4. He submits that the authorities filed two criminal legal actions against him for the charges of “equivalent to kidnap” and “attacks to communication routes and means of transport,” criminalizing social protest through the undertaking of proceedings that violate the right of due process of law. He alleges that he was accused of equivalent to kidnap to the detriment of Mexican officials; as a result, on May 4, 2007, the First Criminal Judge of Toluca’s Judicial District sentenced him to 67 years and 6 months’ confinement. Although he impugned this decision, the court of appeals confirmed it on September 6, 2007. Consequently, he instituted amparo proceedings in the Supreme Court of Justice. On June 30, 2010, the Court ruled in his favor on the grounds that the elements of the criminal offense attributed to him had not been proved, considering his case as “a violation on the merits”; therefore, it ordered he be immediately released and acquitted. The petitioner indicates that although it was the Supreme Court itself who ruled a miscarriage of justice in his case, the domestic legal framework, particularly the state norms, does not foresee mechanisms that allow him to demand State compensation for miscarriage of justice. Finally, in his last communication in writing, he claims

that his liberty is temporary, because he is still accused in the case regarding the attacks to the communication routes filed before the District Sixth Court of the state of Mexico, which ruled his temporary release on July 1, 2006.

5. The State, for its part, claims that the petition is inadmissible and groundless. It indicates that the petitioner's arrest and prosecution were based on elements proving his connection with the offenses for which he was accused. It also indicates that his transfer to "*El Altiplano*" Federal Center was made in his interest. It asserts that the first official detention order against him was issued on May 10, 2006 for "attacks to communication routes," and that it was many times reversed in view of appeals and amparo proceedings filed by the alleged victim. It explains that the last of said remedies was settled in his favor on April 10, 2012 by Toluca's Second Collegiate Criminal Chamber, which ruled that it was impossible to prove the accused's responsibility and thus ordered his immediate release from prison. As to the action for equivalent to kidnap, the State submits that on June 30, 2010 the Supreme Court of Justice ruled that the elements of the offense for which he had been accused had not been proved, ordering that he be released immediately.

6. Furthermore, it claims that in none of the above criminal cases did the petitioner report acts of torture or file indirect amparo proceedings specifically regarding the alleged acts of torture. As a result, the State requests the Commission to declare the instant petition inadmissible, for there is no evidence that his human rights were violated in the framework of the criminal legal actions in which his release from prison was ordered, and because those were facts reported before the exhaustion of domestic remedies. With respect to the allegations of torture, it requests they be dismissed in view of the fact that they were not timely reported to the domestic authorities.

VI. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

7. The petitioner indicates that the events concerning the acts of torture and mistreatment during his arrest and confinement in the state prison of "*Santiago*" were several times reported to the CNDH and that different public institutions heard the numerous reports of violations but failed to undertake the corresponding criminal investigations. Then, with regard to the purported inhumane treatment of the petitioner and his family members in view of the alleged threats, harassments, mistreatment and psychological torture during his pre-trial detention in "*El Altiplano*" Federal Center, the petitioner claims having lodged several amparo complaints, complaints, and appeals for review, the last of which was dismissed by the Second Circuit Fourth Collegiate Administrative Court on April 29, 2010. As to the criminal legal action for the offense of equivalent to kidnap, on July 30, 2010, the Supreme Court of Justice settled the amparo proceeding filed by his legal representatives, ruling in his favor. The State alleges lack of exhaustion of domestic remedies because the criminal suits were under way when the petition was filed and because the acts of torture were not reported in the criminal suits against the alleged victim.

8. With respect to the allegations of torture and mistreatment suffered by the alleged victim on his way to "*Santiago*" and during his confinement in said prison, the Commission reiterates that whenever a purported offense subject to prosecution ex officio is committed, the domestic remedy to be pursued and exhausted is criminal investigation, and that it must be undertaken and furthered by the State. The Commission notes that the judicial authorities were aware of these facts due to the recommendations made by the CNDH on October 16, 2006. Despite this, the available information, not controverted, indicates that to date there have been no criminal investigations aimed at clarifying the events alleged and the identification of those responsible. Therefore, the Commission believes that the exception set forth in Article 46.2.c of the Convention applies to this case. Given the context and the characteristics of the facts included in the instant report, the Commission believes that the petition was presented within a reasonable period.

9. With regard to the alleged violations of the petitioner and his family's right to humane treatment, in view of the threats, the mistreatment and the acts of torture faced during his pre-trial detention in "*El Altiplano*" Federal Center, the Commission notes that several remedies were lodged, the last of which was settled by the Second District's Fourth Collegiate Administrative Court on April 29, 2010. Concerning the purported excessive period of pre-trial detention, the Commission establishes that for the purpose of the

exhaustion of domestic remedies, it suffices to present the request for conditional release and its denial.⁴ Therefore, the Commission rules that the petition meets the requirement of exhaustion of domestic remedies concerning the allegations about the petitioner and his family's right to humane treatment as a result of his pre-trial detention and the prison conditions in "El Altiplano" Federal Center.

10. With regard to the criminal proceedings, the IACHR notes that the lawsuit for equivalent to kidnap concluded with an amparo resolution issued by the Supreme Court of Justice on June 30, 2010, and that the lawsuit for attacks to communication routes was settled by the Second Collegiate Criminal Chamber of Toluca on April 10, 2012. In light of these considerations, the Commission concludes that domestic remedies were pursued and exhausted in accordance with Article 46.1.a of the American Convention.

11. Regarding the date of presentation, the requirement is met because the petition was filed to the IACHR on August 7, 2007 and because the domestic remedies concerning the alleged violations of the petitioner and his family's right to humane treatment in view of his pre-trial detention and imprisonment conditions, on the one hand, and the criminal proceedings, on the other, were settled on April 29, 2010, June 30, 2010 and April 10, 2012, respectively. Pursuant to the IACHR doctrine, the analysis of the requirements set forth in Articles 46.1.b of the Convention and Article 32.1 of the Rules of Procedure must be done in the light of the situation existing at the time it rules the admissibility or inadmissibility of a complaint.

VII. ANALYSIS OF COLORABLE CLAIM

12. In view of the elements of fact and law presented by the parties and the nature of the matter brought to its attention, the Commission believes that, if proved, the petitioner's alleged arbitrary detention by state officers during a protest and the following mistreatment and torture, the alleged excess of pre-trial detention, the purported infringements of the right of due process of law and the alleged mistreatment and violations that he faced during his confinement and that his family members faced in their visits all may establish violations of the rights enshrined in Articles 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 13 (freedom of thought and expression), 16 (freedom of association) and 25 (judicial protection) of the Convention, in relation to its Article 1.1, to the detriment of the alleged victim. These may also establish violations of Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, in the light of all its other provisions concerning the relevant aspects of the instant case, to the detriment of the alleged victim.

13. Concerning the alleged violation of Article 10 of the Convention, which enshrines the right to compensation in cases of miscarriage of justice, the Commission believes that this case lacks the elements necessary to establish a violation in the terms of said norm, for there was no final judgment of guilt. However, if the State's international responsibility is proved, the Commission will analyze in the merits stage the possibility of reparations in connection with the alleged facts.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 5, 7, 8, 13, 16 and 25 of the American Convention, in connection with its Article 1.1; and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture; and

2. To find the instant petition inadmissible in relation to Articles 2 and 10 of the American Convention; and

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

⁴ IACHR, Report No. 61/15. Petition 1241. Admissibility. Gabriel Benítez. Argentina. October 26, 2015, par. 22

Done and signed in the city of Bogotá, Colombia, on the 24th day of the month of February, 2018.
(Signed): Margarete May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice President; Luis Ernesto Vargas Silva, Second Vice President; Francisco José Eguiguren Praeli, Antonia Urrejola, and Flávia Piovesan, Commissioners.