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REPORT No. 18/15
PETITIONS 929-04, 1082-07 & 1187-07
REPORT ON ADMISSIBILITY

JOSÉ ANTONIO ARRONA SALAZAR & FAMILY, LUZ CLAUDIA
IROZAQUI FÉLIX, JOEL GUTIÉRREZ EZQUIVEL
MÉXICO

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REPORT No. 18/15¹
PETITIONS 929-04 - JOSÉ ANTONIO ARRONA SALAZAR AND FAMILY
1082-07 - LUZ CLAUDIA IROZAQUI FÉLIX
1187-07 - JOEL GUTIÉRREZ EZQUIVEL
ADMISSIBILITY
MEXICO
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I. SUMMARY

1. This report covers the following three petitions received by the Inter-American Commission on Human Rights (hereinafter “the Commission,” “Inter-American Commission,” or “IACHR”): José Antonio Arrona Salazar and his family (P 929-04)², Luz Claudia Irozaqui Félix (P 1082-07)³, and Joel Gutiérrez Ezquivel (P 1187-07)⁴ (hereinafter “the alleged victims”). The petitions allege the international responsibility of the United States of Mexico (hereinafter “the State,” the “Mexican State,” or “Mexico”). The allegations in the three petitions claim that the alleged victims were subject to illegal detention, torture, and other mistreatment, as well as subsequent prison sentences resulting from legal proceedings, in which the rules of due process were reportedly not upheld.

2. The State maintains that the three petitions are inadmissible because they do not present acts that could be characterized as human rights violations. It contends that the petitioners are asking the Commission to review the actions of domestic courts, thereby operating as a fourth instance. In relation to petition 929-04, the State alleges that the petitioner had domestic remedies available to him regarding the investigation into crimes of torture, such as the amparo appeal.

3. Without prejudging the merit of the complaints, after examining the parties’ positions in light of the requirements set forth in Articles 46 and 47 of the American Convention on Human Rights (hereinafter also referred to as “the American Convention” or “the Convention”), the Commission concludes that the cases are admissible for the purpose of examining the alleged violation of the rights enshrined in Articles 5, 7, 8, and 25 of the American Convention, in relation to Article 1.1, as well as Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, for the cases of José Antonio Arrona Salazar, Luz Claudia Irozaqui Félix, and Joel Gutiérrez Ezquivel. The Commission further decides to declare the petition admissible with regard to the alleged violation of Article 7 of the Convention of Belém do Pará in the case of Luz Claudia Irozaqui Félix.

4. In keeping with Article 29.5 of the Rules of Procedure of the Inter-American Commission on Human Rights (hereinafter “Rules of Procedure”) and given the similarity of the alleged acts in the three petitions, the Commission decides to combine the three petitions and process them jointly in the merits phase, with case number 12.992. The Commission also decides to notify the parties of this Report on Admissibility, to publish it, and include it in its Annual Report.

II. PROCEEDINGS BEFORE THE COMMISSION

Petition 929-04: José Antonio Arrona Salazar and family

5. The petition was received on September 22, 2004. On July 27, 2012, it was forwarded to the State, which was given two months to submit its observations. After two extensions, the State response was

¹ In keeping with Article 17.2a of the Rules of Procedure, Commissioner José de Jesús Orozco Henríquez, of Mexican nationality, did not participate in the debate or the decision on this case.

² Submitted September 21, 2004 on his own behalf.

³ Submitted August 6, 2007 by the Centro Fray Julián Garcés, Derechos Humanos y Desarrollo Local, A.C.

⁴ Submitted September 5, 2007 on his own behalf.

received on May 6, 2013, with an additional written statement submitted on July 5, 2013. The petitioner also sent the Commission additional information on February 22, 2013, which was duly forwarded to the State.

Petition 1082-07: Luz Claudia Irozaqui Félix

6. The petition was received on August 22, 2007. On March 16, 2010, it was forwarded to the State, which was given two months to submit its observations. The State response was received on June 11, 2010, with additional written statements submitted on October 29, 2010, August 8, 2011, and March 12, 2012. These documents were duly forwarded to the petitioners. The petitioners also sent information to the Commission on August 24, 2010, February 2, 2011, September 29, 2011, and July 6, 2012, which were forwarded to the State.

Petition 1187-07: Joel Gutiérrez Ezquivel

7. The petition was received on September 5, 2007. On May 25, 2010, it was forwarded to the State, which was given two months to submit its observations. The State response was received on September 14, 2010, with additional written statements submitted on October 14, 2010, April 19, 2011, and June 11, 2013. These notes were duly forwarded to the petitioner. The petitioner also sent information to the Commission on January 28, 2011 and September 15, 2011, which were duly forwarded to the State.

III. POSITIONS OF THE PARTIES

A. Position of the Petitioners

1. Common Allegations

Length of detention, use of torture, and other treatment to obtain a confession and subjection to other mistreatment while detained

8. The three petitioners allege illegal and/or arbitrary detention, the use of torture by State agents to obtain a confession to a crime, and subjection to other mistreatment while detained. In petition 924-04, petitioner José Antonio Arrona Salazar claims that he was detained without a warrant on July 10, 2003 by State agents, who reportedly hit him with the palm of their hand in the head, the back of the neck, and in the ribs and asphyxiated him with a bag over his head. He also alleges that while he was subjected to this treatment, among others, the agents tried to force him to confess to a crime. While detained, he claims he was held incommunicado, with no medical care, food, or water. He alleges that he lodged a complaint for illegal deprivation of liberty, threats, physical and psychological torture, abuse of authority, criminal conspiracy [*asociación delictuosa*], defamation of character, calumny, and violation of his human rights. He also lodged a complaint before the National Human Rights Commission.

9. In petition 1082-07, the petitioners claim that the alleged victim Luz Claudia Irozaqui Félix was illegally and arbitrarily detained⁵ for three days, on September 10, 2003. While detained, she was reportedly transferred to several unknown locations and subjected to the following treatment, among others: i) they threw her on a mattress, stripped her, sat on her, removed her under garments, and fondled her; ii) they beat her with their fists; iii) they covered her face with a rag; iv) they put water up her nose and in her

⁵ The petitioners claim that during detention, two parallel preliminary investigations were conducted, one related to the crime of bribery and another related to homicide. They assert that the bribery file states that the alleged victim was detained in *flagrante delicto* at 23:00 on September 10 and remanded at 21:00 on September 12, after having allegedly confessed while she was detained. They argue that her detention for bribery was only approved by a judge on September 12 at 21:30, 46 hours after her detention, which violates the principle of immediacy, as provided for in the constitution for cases of in *flagrante delicto* detention. She also alleges that her detention for the crime of homicide lasted around 55 hours and she was not brought before a judicial authority until 21:00 on September 12. The petitioners argue that the alleged crime of bribery was fabricated by authorities from the prosecutor's office to justify the detention of the alleged victim and to give the appearance of legality, claiming in *flagrante delicto*, which allows them to detain someone without a written warrant from a judge.

mouth; and iv) they gave her electric shocks in her ribs, breasts, and arms. The petitioners also assert that, as she was being subjected to this treatment, they threatened to kill her to make her confess to a crime; and she did confess. They also state that the alleged victim was held incommunicado, with no access to an attorney or her family, despite her requests. She claims that she reported these acts during her initial statement and to the State Commission on Human Rights.

10. In petition 1187-07, petitioner Joel Gutiérrez Ezquivel alleges that he was illegally and arbitrarily detained on April 26, 2000, the day he went to report the death of his daughter to the Office of the Public Prosecutor. He was reportedly detained for three days, during which the petitioner was transferred to unknown locations. The petitioner also states that, while detained, he was hit in the stomach, chest, head, and ears and that they blindfolded him and bound his hands and feet to make him confess to a crime he did not commit. After being subjected to this treatment and while still detained, he signed a confession under duress and was not allowed to read it. He reported these acts in his initial statement.

2. Specific allegations

Petition 929-04: José Antonio Arrona Salazar and family

11. According to the information available in the file, the petitioner was convicted of aggravated homicide and unlawful deprivation of liberty, in the form of abduction. He claims that he was “tried and convicted based on an illegal detention, flawed procedures that violated his rights, in which the basic formalities were never carried out.” The petitioner alleges that, following the sentencing, he filed an amparo appeal, which sent the case to the Fifth Criminal Chamber of the Superior Court of Justice in Mexico City to be heard again. Regarding the new judgment handed down by said court, the petitioner alleges that his rights were violated given that “it was exactly the same conviction, based on the same structure (...).”

12. A preliminary investigation was opened into the alleged acts surrounding his detention (paragraph 8 above), against which he lodged a complaint. On August 1, the Attorney General’s Office ruled to forego criminal prosecution, which the petitioner appealed [*recurso de inconformidad*] on August 6, 2007. On January 23, 2008, the Office of the Deputy Attorney General for Decentralized Preliminary Investigations of the Federal District Attorney General’s Office, as the reviewing body, upheld the ruling to forego criminal prosecution. The petitioner alleges that he was not informed of his right to verify or expand his complaint, that he was not allowed to submit evidence, and that the decision to forego criminal prosecution was made without the due diligence called for in the Criminal Procedural Code.

13. Finally, the petitioner alleges that the Mexican State violated Articles 3, 4, 8, 9, 10, 11, and 14 of the American Convention on Human Rights, Article XXVI of the American Declaration on the Rights and Duties of Man, Article 11 of the Universal Declaration of Human Rights, Article 14.2 of the International Covenant on Civil and Political Rights, and the Inter-American Convention to Prevent and Sanction Torture.

Petition 1082-07: Luz Claudia Irozaqui Félix

14. According to the information submitted, the alleged victim was convicted of homicide on December 4, 2009 by the Fourth Criminal Court of the District of Guridi and Alcocer. On February 11, 2010, the Criminal Chamber of the Superior Court of Justice upheld the conviction. Given this conviction, the alleged victim filed a direct amparo lawsuit on April 6, 2010, which was granted on May 26, 2011 and called on the Criminal Chamber to overturn the appealed ruling and issue another. The petitioners allege that the judge that heard the criminal case ratified the confession of the alleged victim, which was obtained under torture, despite the judge having knowledge of this.

15. Regarding the investigation of the acts alleged in paragraph 9 above, the petitioners indicate that a preliminary investigation was conducted into the crime of torture. The Office of the Public Prosecutor determined that the acts did not constitute a crime as the elements of the crime were not verified. On July 13, 2009, the State’s Attorney General’s Office authorized foregoing criminal prosecution. The petitioners claim that the alleged victim was not duly notified of the case having been closed, for which they were unable to

appeal the decision. They also contend that investigation procedures were not properly followed. They argue that the exceptions provided for in Article 46.2 of the American Convention are applicable, in view of lacking legal recourse to shed light on the torture-related acts. Although the State Human Rights Commission examined the situation in a 2005 statement, establishing abuse of authority and the alleged acts of torture.

16. Lastly, the petitioners allege that the Mexican State violated Articles 5, 7, and 8 of the American Convention and Articles I and XXV of the American Declaration of the Rights and Duties of Man, to the detriment of the alleged victim.

Petition 1187-07: Joel Gutiérrez Ezquivel

17. According to the file, on November 27, 2000, the Fifth Criminal Court of the First Instance of Toluca acquitted the petitioner as the elements of the crime were not verified. The Office of the Public Prosecutor appealed the acquittal and on February 20, 2001, the Second Criminal Chamber of Toluca overturned the appealed conviction and sentenced the petitioner to 27 years, six months in prison for the murder of his daughter. Following this ruling, the petitioner filed a direct amparo appeal. On October 31, 2002, the amparo was granted regarding determining the sentence, which ordered the court of appeals to issue a new decision. On November 27, 2002, the Second Criminal Chamber of Toluca handed down a new judgment, sentencing the petitioner to 25 years, seven months, and 15 days in prison. The petitioner filed a direct amparo appeal, which was rejected on April 23, 2007 by the Second Collegiate Court of the Second Circuit of Toluca. The petitioner alleged that his conviction was based on a confession obtained through torture. Lastly, he alleges that the State violated Articles 1 and 7 of the American Convention, to his detriment.

B. Position of the State

18. The State maintains that the three petitions are inadmissible because they do not present acts that could be characterized as human rights violations. It contends that the petitioners are asking the Commission to review the actions of domestic courts, thereby operating as a fourth instance.

Petition 929-04: José Antonio Arrona Salazar and family

19. As regards petition 929-04, the State drafted a detailed account of the criminal proceedings against the petitioner, from the initial investigation to the sentencing. It indicates that he was convicted of aggravated murder and unlawful deprivation of liberty on February 13, 2004, which the petitioner appealed. On April 1, 2004, the Fifth Criminal Chamber of the Federal District Superior Court upheld the conviction and amended the part of the judgment related to reparations, absolving the petitioner of payment for damages for pain and suffering. The petitioner filed an amparo appeal. On March 12, 2009, the Eighth Collegiate Court on Criminal Matters ordered the Fifth Criminal Chamber to overturn the second instance judgment handed down on April 1, 2004 and to issue a new ruling in which the responsible authority (Fifth Criminal Chamber) would assess all the evidence from the criminal proceedings as a whole, given that in the first instance ruling the evidence was only examined separately. On March 27, 2009, the Fifth Criminal Chamber conducted a comprehensive assessment of the evidence and ruled that the sentence to pay reparations for damages in the amount of \$52,248 should be amended. The petitioner did not agree with the judgment and filed an appeal for review, which the Supreme Court of Justice declared unfounded.

20. In relation to said trial, they state that the petitioner “is attempting to claim to the IACHR alleged omissions committed by the State and baselessly request that the Inter-American Commission exercise authority it does not have, such as amend and order a new judgment and, what is most surprising, that this new judgment would be in his favor.” It also notes that “the deprivation of liberty of Mr. José Antonio Arrona Salazar is the result of the criminal penalty that he is fulfilling, after the judge determined his criminal liability and that “the petitioner had and filed appropriate and effective appeals to protect his rights; when he was in the right, the outcome was favorable for him, but none of them changed the assessment of his criminal liability.”

21. As regards the investigation into the crimes of torture and legal [*sic*] deprivation of liberty, the State requests that the Commission “not disregard the fact that the petitioner was perfectly aware of and had the domestic remedies available to him to appeal the decision against him to forego criminal prosecution. Nevertheless, the petitioner did not challenge the decision through an amparo appeal, which he had at his disposal to him to contest this decision.” It also states that “it is not possible to conclude whether or not there was torture.”

Petition 1082-07: Luz Claudia Irozaqui Félix

22. In response, the State recalls the investigation and criminal proceedings and argues that “all of the merits of the case were examined by the competent legal bodies of the Judicial Branch, the State agency that, through appropriate and effective resources provided for in the Mexican judicial system, concluded that there were no irregularities in any part of the criminal proceedings against the alleged victim.”

23. Similarly, regarding the investigation into possible torture, it alleges that “after examining the evidence provided, pursuant to the law, the Office of the Public Prosecutor agent concluded that the elements of the crime were not verified” and that “once the file was reviewed by the Attorney General’s Office of the State of Tlaxcala, they reiterated that the crime of torture was not verified, for which it decided to archive the case.”

Petition 1187-07: Joel Gutiérrez Ezquivel

24. In its response, the State provided details on the investigation and criminal proceedings, including the evidence used by the domestic courts to sentence the alleged victim and the arguments they used to validate the alleged victim’s confession. The State claims that “the matter at hand has been examined and resolved via the judgments in the courts of first and second instance and appeals, in which the [petitioner’s] criminal liability was confirmed and concluded. These judgments were the result of criminal proceedings in which judicial guarantees were respected.⁶” Regarding the allegations as to the Office of Public Prosecutor actions, the State “underscores that they were in keeping with the law and observance of human rights. Throughout the preliminary investigation, the petitioner was assisted by a public defender, and informed of the accusations against him; he had the right to submit evidence; and he received the necessary information for his defense, among other procedural guarantees.”

25. Regarding the allegations of the reported acts of torture to obtain a confession of the crime, the State argues that “said acts were not substantiated by the [petitioner] with sufficient evidence, nor is the evidence sufficient to deem the entire criminal prosecution against him as contrary to the law.⁷” It goes on to say that in the proceedings in both the first and second instance and the amparo appeal, the allegations of torture were comprehensively addressed and examined, but were not able to be verified. It further notes that, according to the evidence on record in the prosecution that led to the sentencing of the petitioner, the petitioner, at the time of his initial statement, “underwent a medical evaluation performed by a medical examiner, who determined that he did not have any external injuries and that he was of normal psychophysical condition.”

IV. ANALYSIS OF ADMISSIBILITY

A. The Commission’s Competence *ratione personae*, *ratione materiae*, *ratione temporis* and *ratione loci*

26. The petitioners are authorized, in principle, to present petitions to the Commission pursuant to Article 44 of the American Convention. The petitions state that the alleged victims are individuals with regard to whom Mexican State committed to respecting and ensuring the rights enshrined in the American

⁶ State response, September 14, 2010

⁷ State response, September 14, 2010

Convention. The Commission notes that Mexico has been a State party to the American Convention since March 24, 1981, the date on which it deposited its instrument of ratification, to the Inter-American Convention to Prevent and Punish Torture since June 22, 1987, and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará) since November 12, 1998. Therefore, the Commission is competent *personae ratione* to review the petitions. Furthermore, the Commission is competent *ratione loci* to hear the petitions insofar as they allege violations of rights protected under the American Convention, the Inter-American Convention to Prevent and Punish Torture, and the Convention of Belem do Pará that are said to have taken place on the territory of Mexico, a State party to said treaties.

27. The Commission is competent *ratione temporis* insofar as the obligation to respect and ensure the rights protected under the American Convention, the Inter-American Convention to Prevent and Punish Torture, and the Convention of Belem do Pará were in force for the State at the time when the facts alleged in the petitions occurred. Finally, the Commission is competent *ratione materiae* as the petition makes claims of potential violations of human rights protected under the American Convention, the Inter-American Convention to Prevent and Punish Torture, and the Convention of Belem do Pará.

28. Additionally, as regards the alleged violation of Articles X, XXV and XXVI of the American Declaration, it should be noted that as of the American Convention's entry into force for Mexico, this instrument and not the Declaration became the applicable source, provided that the petition referred to an alleged violation of rights that are fundamentally identical in both instruments. In this case, the rights that the State purportedly violated under the Declaration are protected under the Convention; furthermore, the facts that gave rise to the petition took place after the American Convention entered into force for Mexico. Therefore, the Commission shall only refer to the alleged violations of the Convention and not the Declaration.⁸

29. In petition 929-04 the alleged victim argues that the Mexican State should be found to have disregarded Article 14(2) of the International Covenant on Civil and Political Rights and Article 11 of the Universal Declaration of Human Rights. Although the Commission lacks competence in this regard, it can and must use said instruments to guide interpretation of conventional obligations, in light of the provisions set forth in Article 29 of the Convention and the principles of the Vienna Convention on the Law of Treaties.⁹

B. Other admissibility requirements

1. Exhaustion of domestic remedies

30. Article 46(1)(a) of the American Convention, in keeping with the generally recognized principles of international law, requires prior exhaustion of domestic remedies as a requirement for admitting claims regarding alleged violations of the American Convention. The purpose of this requirement is to enable national authorities to hear alleged violations of a protected right, and where appropriate, to remedy such violations before they are heard by an international body. Article 46(2) of the Convention provides for three situations in which the rule regarding exhaustion of domestic remedies does not apply: (a) the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated; (b) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or (c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

Petition 929-04: José Antonio Arrona Salazar and family

31. In keeping with the information submitted by the parties, the exhaustion of domestic remedies in relation to the criminal proceedings is not disputed regarding petition 929-04. The State has

⁸ See IACHR, Report No. 38/99, Petition 38/99, Admissibility, *Víctor Saldaño*, Argentina, March 11, 1999, para. 13.

⁹ See IACHR, Report No. 49/08, Petition 261-04, Admissibility, *Ricardo Ucán Seca*, Mexico, July 24, 2008, para. 42.

expressly stated that the petitioner “has exhausted domestic remedies.” The Commission observes that in accordance with its review of the case record domestic legal remedies were exhausted with the decision of the Criminal Division of the Eighth Circuit Collegiate Court of the First Circuit on May 27, 2010. Based on the foregoing, the Inter-American Commission considers that with regard to Petition 929-04 the requirement for exhaustion of domestic remedies has been met in relation to the criminal proceedings brought against the petitioners, pursuant to Article 46(1)(a) of the American Convention.

32. With respect to the criminal investigation regarding torture, the State indicates that the petitioner had an amparo appeal available to him to challenge the ruling to forego criminal prosecution. The State specifically requests that the Commission “not disregard the fact that the petitioner had available to him and was perfectly aware of the domestic remedies to appeal the decision against him to forego criminal prosecution. Nevertheless, the petitioner did not challenge the decision through an amparo appeal, which he had at his disposal to contest the decision issued.”

33. The IACHR observes that in cases alleging torture, which is a publicly actionable criminal offense in Mexico, the appropriate and effective remedy is normally an investigation and criminal prosecution. The State has the obligation to promote and go forward with both. The IACHR has repeatedly stated that in the case of publicly actionable criminal offenses “authorities are to conduct an effective criminal investigation aimed at clarifying what the facts are and who is liable.”¹⁰

34. The Commission takes note that the petitioner filed a complaint for illegal deprivation of liberty, psychological and physical torture, abuse of authority, criminal conspiracy [*asociación delictuosa*], defamation of character, calumny, and violation of his human rights. The case record reveals that an investigation was initiated regarding these facts and the agent of the Investigating Office of the Public Prosecutor proposed foregoing criminal prosecution on July 1, 2005, which was upheld by the Coordinating Office for Agents of the Office of the Public Prosecutor Assisting the Attorney General in its capacity as a review body, subsequent to the petitioner filing an appeal [*recurso de inconformidad*].

35. The State holds that the alleged victim “had available to him and was perfectly aware of domestic remedies to fight the ruling”—i.e., an amparo appeal—but that he did not do so. However, the State does not provide any information on the investigations conducted,¹¹ nor does it provide a copy of the opinions that were grounds for the decision to forego criminal prosecution or of the ruling of the review body. Furthermore, the information furnished by the petitioner reveals that he was not allowed to provide or present evidence and the decision to forego criminal prosecution was issued without conducting the inquiries provided for in the Code of Criminal Procedure.

36. In keeping with the information available, and given that in cases of torture authorities are to conduct an effective criminal investigation aimed at clarifying what the facts are and who is liable, the Commission finds that the alleged irregularities in the investigation into acts of torture require analysis in the merits stage.¹² Thus, the IACHR concludes, *prima facie*, that the exception to exhaustion of domestic remedies applies, pursuant to the provisions of Article 46(2)(a) of the Convention.

Petition 1082-07: Luz Claudia Irozaqui Félix

37. In keeping with the information the parties provided there is no dispute about the exhaustion of domestic remedies regarding petition 1082-07. Although the State raised an objection regarding the exhaustion of domestic remedies in its brief of April 8, 2011, stating that a ruling on a direct

¹⁰ See IACHR. Report No. 14/06 (Admissibility), Raquel Natalia Lagunas and Sergio Antonio Sorbellini, Argentina, March 2, 2006, para. 44.

¹¹ The State simply alleges that the decision by the Agent of the Investigating Office of the Public Prosecutor to forego criminal prosecution stemmed from the scientific and technical review of the facts established during the preliminary investigation which proved that there was no torture.

¹² See IACHR, Report No. 49/13, Petition 1225-04, Admissibility, *Gerardo Cruz Pacheco*, Mexico, July 12, 2013, para. 37.

amparo lawsuit was still pending. In a later brief dated March 25, 2012, the State indicates that the amparo was granted on March 26, 2010 for purposes of modifying the operative part of the judgment regarding the punishment imposed on the alleged victim. The Court decided to impose a sentence of 20 years and 3 months of imprisonment and 55 days of the current minimum wage in the state of Tlaxcala. The Commission observes that this ruling exhausted domestic remedies. In the State's brief of March 25, 2012, it does not raise the objection regarding exhaustion of domestic remedies; therefore, it has been interpreted that the State tacitly desisted from presenting that plea.¹³ Based on the foregoing, the Inter-American Commission considers that with regard to petition 1082-07 the requirement to exhaust domestic remedies in the criminal proceedings brought against the alleged victim has been met in keeping with Article 46(1)(a) of the American Convention.

38. As for the criminal investigation into torture, the Commission observes that the petitioners argue that the exceptions provided for in Article 46(2) of the American Convention are applicable "in light of the ineffectiveness of the legal remedies in clarifying the facts in this case" and the failure to notify the alleged victim of the decision that authorized foregoing criminal prosecution, which meant "he was not afforded the opportunity to lodge an appeal of this decision." The State has remained silent on this matter. As a result, the Commission considers that, *prima facie*, the exception to the rule provided for in Article 42(2)(a) of the American Convention applies, given that the alleged victim was not notified of the decisions to forego criminal prosecution.

39. It only remains to highlight that invoking the exception to the rule of exhaustion of domestic remedies provided for in Article 46(2) of the Convention is closely linked to the determination of potential violations of certain rights enshrined therein, such as guarantees of access to justice. However, Article 46(2), by its nature and purpose, is a provision whose content is independent *vis-á-vis* the substantive provisions of the Convention. Therefore, the decision as to whether the exceptions to the rule of exhaustion of domestic remedies provided for in said provision are applicable to the case at hand must be made prior to and separate from the analysis of the merits of the case as its hinges on a standard of assessment that is different from the one used to determine the violation of Articles 8 and 25 of the Convention. It is to be clarified that the causes and effects that have hindered the exhaustion of domestic resources in the instant case shall be analyzed, as relevant, in the report the Commission adopts on the merits of the dispute in order to confirm whether they indeed constitute violations of the Convention.¹⁴

Petition 1187-07: Joel Gutiérrez Ezquivel

40. In keeping with the information the parties have furnished, there is no dispute about the exhaustion of domestic remedies with respect to petition 1187-07 and the State has not raised any objection in this regard. The Commission observes that according to such information, domestic remedies were exhausted with the decision of April 23, 2007 of the Second Collegiate Court of the Second Circuit of Toluca. Based on the foregoing, the Inter-American Commission considers that in relation to petition 1187-07 the requirement to exhaust domestic remedies has been fulfilled pursuant to Article 46(1)(a) of the American Convention.

2. Timeliness of the petition

41. Article 46(1)(b) of the Convention provides that for a petition to be admissible, it must be presented within six months of the date on which the interested party was notified of the final judgment that exhausted domestic remedies. This rule does not apply when the Commission finds that any of the Article 46(2) exceptions to the rule requiring exhaustion of domestic remedies applies. In such cases, the Commission must determine whether the petition was filed within a reasonable period of time, as provided in Article 32(2) of its Rules of Procedure, which states that the Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case.

¹³ The State's plea revolves around the fourth instance doctrine.

¹⁴ See IACHR, Report No. 49/13, Petition 1225-04, Admissibility, *Gerardo Cruz Pacheco*, Mexico, July 12, 2013, para. 38.

42. The Commission observes there are no factual or legal arguments that might call into question fulfillment of this requirement in the case of petition 929-04. Indeed, the Commission notes that the criminal proceedings brought against the petitioner concluded in 2010, after the petition was submitted to the Commission.¹⁵ Therefore, the Commission deems that the requirement regarding timeliness of the petition has been fulfilled under the terms of Article 46(1)(b) of the American Convention. The Commission further notes that the investigation into acts of torture concluded in 2008, after the petition was submitted, and therefore the admissibility requirement regarding timeliness of the petition's submission has been fulfilled.

43. The Commission observes there are no factual or legal arguments that might call into question fulfillment of this requirement in the case of petition 1082-07. Indeed, in keeping with the information the State furnished, the Commission notes that the criminal proceedings brought against the alleged victim concluded in 2010, after the petition was submitted to the Commission.¹⁶ Therefore, the Commission deems that the requirement regarding timeliness of the petition has been fulfilled under the terms of Article 46(1)(b) of the American Convention. The Commission further notes that the investigation into acts of torture concluded in 2009, after the petition was submitted, and therefore the admissibility requirement regarding timeliness of the petition's submission has been fulfilled.

44. The Commission observes there are no factual or legal arguments that might call into question fulfillment of this requirement in the case of petition 1187-07. Indeed, in keeping with the information the State furnished, the Commission notes that the criminal proceedings brought against the petitioner concluded on April 23, 2007. Given that the petition was submitted on September 5, 2007, the Commission concludes that this petition has fulfilled the requirement set forth under Article 46(1)(b) of the American Convention.

3. Duplication of international proceedings and res judicata

45. Nothing in the case file suggests that the subject matter of the petition is pending settlement in another international proceeding or is the same as one already examined by this or some other international body. Therefore, the requirements established in articles 46(1)(c) and 47(d) of the American Convention are deemed to have been satisfied in the three petitions.

4. Characterization of the facts alleged

46. The Commission deems that this is not the stage of the proceedings to decide whether the purported violations harming the alleged victims took place. For purposes of admissibility, the IACHR at this point is only to decide whether the facts stated, if proven, could constitute violations of the American Convention, as stipulated in Article 47(b) thereof, or whether under Article 47(c) of the same the petition is "manifestly unfounded" or "obviously out of order."¹⁷

47. The State holds that the three petitions should be found inadmissible because they do not state facts that constitute human rights violations. The State further hold that the petitioners seeks to have the Commission act as a fourth instance by reviewing the rulings of the domestic courts.

48. With regard to this argument put forward by the State, the IACHR reiterates what has been established in its case law, which affirms that it is not competent to review judgments issued by domestic courts that act within the purview of their competence and ensure due process and a fair trial. The Commission may not act as a court of appeal to review purported legal or factual errors that domestic courts

¹⁵ The petition was submitted on September 21, 2004, and received on September 22 of that same year (*supra*, para. 5)

¹⁶ The petition was submitted on August 6, 2007, and received on August 22, 2007 (*supra*, para. 6)

¹⁷ See IACHR, Report No. 49/13, Petition 1225-04, Admissibility, *Gerardo Cruz Pacheco*, Mexico, July 12, 2012, para. 42.

may have made. Nevertheless, under the purview of its mandate to ensure compliance with the rights enshrined in the American Convention, the Commission is competent to find a petition admissible and rule on its merits when such petition refers to a domestic legal judgment that is issued in the absence of due process or that violates any right protected under the American Convention or the Inter-American Convention to Prevent and Punish Torture.¹⁸

49. In keeping with this doctrine, the Commission notes that by admitting this petition it is not seeking to supplant the competence of domestic legal authorities to determine the alleged victims' criminal liability or to review factual and legal errors that domestic courts may have made. The Commission shall only determine in the merits stage whether the decisions and measures taken by Mexican courts and authorities were issued in the absence of guarantees of due process and in violation of the rights protected under the American Convention and the Inter-American Convention to Prevent and Punish Torture.¹⁹

50. The Commission considers that at the admissibility stage it is not appropriate to decide whether the alleged violations occurred. For purposes of admissibility, the IACHR is to decide whether the facts stated could potentially constitute violations of the American Convention, as stipulated in Article 47(b) thereof. The standard for weighing these facts is different from that required for deciding on the merits of a complaint. The Inter-American Commission is to conduct a *prima facie* evaluation to determine whether the complaint establishes apparent or potential violations of a right guaranteed under the American Convention, the Inter-American Convention to Prevent and Punish Torture, and the Convention of Belém do Pará. This analysis is of a summary nature and does not imply any prejudgment nor does it advance any opinion as to the merits of the case. The difference between the review that is necessary for admissibility and that required to establish a violation is provided for in the IACHR's Rules of Procedure, which sets forth in a clearly distinguishable manner the admissibility and merits stages.

51. Neither the American Convention nor the IACHR's Rules of Procedure require the petitioner to identify the specific rights alleged to have been violated by the State in the matter brought to the Commission's attention, although the petitioners are free to do so. Based on the system's case-law, in its admissibility reports the Commission must determine what provision of the relevant inter-American instruments is applicable, and whose violation could be established if the facts alleged are proven through sufficient evidence.²⁰

52. In view of the foregoing considerations, the IACHR deems that the facts alleged, if proven, constitute potential violations of the rights protected under Articles 5, 7, 8, and 25 of the American Convention, read in conjunction with Article 1(1) of said international instrument, as well as the rights enshrined in Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, all of the foregoing to the detriment of José Antonio Arrona Salazar, Luz Claudia Irozaqui Félix, and Joel Gutiérrez Ezquivel. The Commission further deems that the petitioners' allegations could constitute the violation of rights enshrined of Articles 5, 8, and 25 of the American Convention, read in conjunction with Article 1(1) thereof, to the detriment of these individuals' family members.²¹ The Commission has also decided to declare the case regarding Luz Claudia Irozaqui Félix admissible with respect to the alleged violation of Article 7 of the Convention of Belém do Pará.

¹⁸ See Report No. 42/08, Petition 1271-04, Admissibility, *Karen Atala and daughters*, Chile, July 23, 2008, para. 59.

¹⁹ See Report No. 42/08, Petition 1271-04, Admissibility, *Karen Atala and daughters*, Chile, July 23, 2008, para.60.

²⁰ See Report No. 49/13, Petition 1225-04, Admissibility, *Gerardo Cruz Pacheco*, Mexico, July 12, 2012, para. 43.

²¹ See Report No. 8/11, Petition 302-03, Admissibility, *Aníbal Alonso Aguas Acosta and Family*, Ecuador, March 22, 2011, para. 40.

V. CONCLUSION

53. Based on the arguments of fact and law stated above, and without prejudging the merits of the matter, the Inter-American Commission concludes that petitions 929-04, 1082-07, and 1187-07 fulfill the admissibility requirements provided for in Articles 46 and 47 of the American Convention, and therefore,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS DECIDES:

54. To declare the present petition admissible as regards alleged violations of the rights protected under Articles 5, 7, 8, and 25 of American Convention, read in conjunction with Article 1(1) of said treaty and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture with respect to José Antonio Arrona Salazar, Luz Claudia Irozaqui Félix, and Joel Gutiérrez Ezquivel. It decides to declare the case admissible with respect to the alleged violation of the rights enshrined in Articles 5, 8, and 25 of the American Convention in relation to Article 1(1) thereof, to the detriment of these individuals' family members. It likewise decides to declare the case admissible regarding the alleged violation of Article 7 of the Convention of Belém do Pará with respect to Luz Claudia Irozaqui Félix.

1. To notify the parties of this decision.
2. To consolidate the three petitions reviewed in this Admissibility Report, pursuant to the provisions set forth in Article 29(5) of the Rules of Procedure, under case number 12.992 and proceed to analyze the merits of the case.
3. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 24th day of the month of March, 2015.
(Signed): Rose-Marie Belle Antoine, President; James L. Cavallaro, First Vice President; Felipe González, Rosa María Ortiz, Tracy Robinson and Paulo Vannuchi, Commissioners.