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REPORT No. 20/17
PETITION 1500-08
REPORT ON ADMISSIBILITY

RODOLFO DAVID PIÑEYRO RÍOS
ARGENTINA

Approved by the Commission electronically on March 12, 2017.

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Argentina. March 12, 2017.

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I. INFORMATION ABOUT THE PETITION

Petitioners:	Martha Inés Miravete Cicero (<i>Grupo de Mujeres de la Argentina – Foro de VIH, Mujeres y Familia</i>)
Alleged victim:	Rodolfo David Piñeyro Ríos
State denounced:	Argentina
Rights invoked:	Articles 3 (Right to Juridical Personality), 4 (Right to Life), 5 (Right to Personal Integrity), 7 (Right to Personal Liberty) and 8 (Right to A Fair Trial) of the American Convention on Human Rights ¹ and Articles 1 and 12 of the Inter-American Convention to Prevent and Punish Torture

II. PROCEDURE BEFORE THE IACHR²

Date on which the petition was received:	December 22, 2008
Additional information received at the initial study stage:	October 30, 2011
Date on which the petition was transmitted to the State:	June 5, 2012
Date of the State's first response:	September 19, 2013
Additional observations from the petitioning party:	August 3, 2012; February 8 and August 3, 2013; October 27, 2014; July 21, 2015; and September 9, 2016
Additional observations from the State:	September 23, 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 instrument on September 5, 1984) and Inter-American Convention to Prevent and Punish Torture (deposit of instrument on March 31, 1989)

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
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¹ Hereinafter “the Convention” or “the American Convention.”

² The observations presented by each party were duly transmitted to the opposing party.

Rights declared admissible:	Articles 5 (Right to Personal Integrity), 7 (Right to Personal Liberty), 8 (Right to A Fair Trial) and 25 (Right to Judicial Protection) 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, in the terms of Section VI
Timeliness of the petition:	Yes, in the terms of Section VI

V. ALLEGED FACTS

1. The petitioner declares that the alleged victim was attacked and tortured while he was serving a prison term in the Prison of Buenos Aires. She says that on December 4, 2004 there was a fight in Wing 11 of the 28th Unit of Magdalena, and that the alleged victim lost his right eye due to the wounds caused by pellets or shots from a riot gun. She also declares that health reports showed that he had 16 bruises and wounds resulting from shots on the left side of his head. She says that although these events occurred in a detention center, judicial authorities did not investigate them or sanctioned the people responsible. Moreover, she declares that in retaliation for the attempts she and the alleged victim's family made to denounce the acts of violence from the prison staff, security officials and inmates subjected the alleged victim to systematic torture, threats, and physical and psychological violence. In this regard, she says that he was transferred to different prisons where inmates that did not know him harassed him and brutally attacked and beat him; once they even threw boiling water at him.

2. She declares that following such incidents, he was taken to the 45th Unit of La Plata on August 12, 2008 where another inmate beat him, and stabbed him nine times in the back. These attacks were neither investigated by the Argentine judicial system. Consequently, the petitioner filed a *habeas corpus* on the grounds of torture and a situation of risk. Finally, on January 7, 2009 the alleged victim was granted house arrest. Likewise, she says that the alleged victim has not received suitable medical and psychological treatment particularly concerning the visual impairment caused while he was under State custody in prison. In her latest communication, the petitioner says that the alleged victim was again deprived of liberty and that in 2016 he was attacked in prison again.

3. The State declares that the petition is inadmissible, since domestic remedies were not exhausted. Concerning this, it says that the petitioner did not pursue the domestic mechanisms that could have given an adequate solution to the situation described and that she hastened the international complaint. In this regard, it says that the alleged victim was taken off the Prison of Buenos Aires and was granted the benefit of house arrest, where he was safe from any attack. It also declares that the meetings with, or the letters to, provincial or national authorities are not a substitute for the domestic remedies available. Moreover, the State argues that the petition does not meet the requirement of due identification established in Article 46.1 (d) of the American Convention inasmuch as it does not contain the signature of the legal representative lodging said petition.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

4. The petitioner declares that the several physical and psychological attacks suffered by the alleged victim in different prisons were not investigated despite the complaints filed to state authorities, and remain completely unpunished until now. In turn, the State says that domestic remedies were not exhausted inasmuch as neither the meetings between the petitioner and national authorities nor her letters addressed to them are legal remedies.

5. The Commission notes that in cases with allegations of torture, which in Argentina is a criminal offense subject to ex officio prosecution, the adequate and effective remedy is a criminal investigation and proceedings which the State is obliged to promote and foster. In this regard, concerning

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.”³ From the documents submitted by the State, it appears that the alleged torture and maltreatment were reported in the *habeas corpus* filed in the context of case 34995/08 heard by Chamber I of the Federal Chamber of La Plata. In addition, from the information presented by the parties, the Commission notes that the alleged acts of torture and attacks against the alleged victim’s integrity were known or should have been known to the authorities in the moments as follows: a) when Mr. Piñeyro was taken to the hospital in the prison due to the alleged wounds that he suffered in the fight of December 4, 2004; b) when he was in hospital at Hospital Ross for his right eye removal surgery as a result of the alleged serious injuries caused by rubber pellets during said fight; c) when he was moved to the health center of the 45th Unit on August 12, 2008 due to the nine stabs he suffered in that prison; and d) throughout the communications that the petitioner sent to different authorities.

6. From the information available, there is nothing to indicate that the authorities to whom the alleged acts of torture were reported have started the corresponding investigations. In addition, though the State declares that domestic remedies were not exhausted, it does not specify any investigation or criminal proceedings open or in progress concerning any of the serious attacks allegedly suffered by the alleged victim. Consequently, the IACHR concludes that the exception to the requirement of prior exhaustion of domestic remedies applies according to Article 46.2(c) of the Convention.

7. Furthermore, the petition to the Commission was received on December 22, 2008 and the alleged facts that are the matter of this complaint allegedly started on December 4, 2004 and certain effects last to this date. Therefore, given the context and the characteristics of this case, the Commission believes that the petition was timely and that the admissibility requirement concerning timeliness is met.

8. Lastly, regarding the State’s argument referring to the lack of the petitioner’s signature on the petition, the Commission believes that the petition meets the requirement set in Article 47.1(d) of the American Convention inasmuch as it was filed through the online form available, which is a valid mechanism for filing complaints. And concerning the State’s allegation about the delay between the date that the petition was lodged and the date that it was transmitted to the State, the Commission reminds that once a petition has been received, there is no deadline for transmitting it to the State in neither the American Convention nor the Rules of the Commission, and that the deadlines established by the Rules and the Convention for other processing stages do not apply.⁴

VII. COLORABLE CLAIM

9. In view of the elements of fact and law presented by each of the parties and given the nature of the matter brought to it, the Commission believes that the alleged facts could establish possible violations of Articles 5 (Right to Personal Integrity), 7 (Right to Personal Freedom), 8 (Right to A Fair Trial) and 25 (Right to Judicial Protection) of the American Convention in conformity with Article 1.1 of the same treaty, as well as a violation of Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of the alleged victim.

VIII. DECISION

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

³ IACHR. Report No. 7/15, Petition 547-04. Admissibility. José Antonio Bolaños Juárez. Mexico. January 29, 2015, para. 22; and Report No. 14/06, Petition 617-01. Admissibility. Raquel Natalia Lagunas and Sergio Antonio Sorbellini. Argentina. March 2, 2006, para. 44.

⁴ IACHR, Report No. 56/16, Petition 666-03. Admissibility. Luis Alberto Leiva. Argentina. December 6, 2016, para. 29.

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

Approved electronically by the Commission on the 12 day of the month of March, 2017. (Signed): James L. Cavallaro, President; Francisco José Eguiguren, First Vice President; Margarete May Macaulay, Second Vice President; José de Jesús Orozco Henríquez, Paulo Vannuchi, and Esmeralda E. Arosemena Bernal de Troitiño, Commissioners.