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REPORT No. 7/15
PETITION 547-04
REPORT ON ADMISSIBILITY

JOSÉ ANTONIO BOLAÑOS JUÁREZ
MEXICO

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I. SUMMARY

1. On May 4, 2004, the Inter-American Commission on Human Rights (hereinafter, “the Commission,” “the Inter-American Commission,” or “the IACHR”) received a petition lodged by José Antonio Bolaños Juárez (hereinafter, “the petitioner,” or “the alleged victim”), in which he claims the international responsibility of the State of Mexico (hereinafter, “the State,” or “Mexico,” or “the Mexican state”) for reported violations of the rights enshrined in the American Convention on Human Rights (hereinafter, “American Convention” or “Convention”), stemming from his alleged illegal arrest and torture, and the purported violation of his right to a fair trial.

2. The petitioner contends that he was unduly deprived of his liberty and tortured by a group of police officers so he would admit to having been involved in committing crimes for which he claims to be innocent. He further alleges various irregularities with respect to the case that was reportedly brought against him. Based on the foregoing, the petitioner asserts the international responsibility of the Mexican state for the alleged violation of Articles 1 (Obligation to Respect Rights), 7 (Right to Personal Liberty), and 8 (Right to a Fair Trial) of the American Convention.

3. The State is asking the IACHR to declare this petition inadmissible because otherwise, in examining errors alleged to have been made by domestic courts, the Commission would be acting as a fourth instance, which it lacks the authority to do.

4. Without prejudging the merits, and having analyzed the positions of the parties and verified compliance with the requirements set forth in Articles 46 and 47 of the Convention, the Commission concludes that the petition is admissible for purposes of examining the alleged violation of the rights enshrined in Articles 5, 7, 8, and 25 of the Convention, in conjunction with Article 1(1) thereof, to the detriment of the petitioner. The Commission likewise decides to declare the petition admissible with respect to the alleged violation of the rights enshrined in Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture. Lastly, the Commission agreed to notify the parties of this decision and order that it be published and included in its Annual Report to the OAS General Assembly.

II. PROCESSING BY THE COMMISSION

5. The Commission received the petition on May 4, 2004, and assigned it number 547-04. On May 25, 2010, the relevant portions of the petition were forwarded to the State along with a request that it submit its response within two months, in keeping with Article 30(2) of the IACHR’s Rules of Procedure. The State’s response was received on July 29, 2010, and forwarded to the petitioner on August 31, 2010. In addition, information was received from the petitioner on the following dates: October 15, 2012, March 21, 2013,² and September 9, 2013. Such communications were duly forwarded to the State. For its part, the Mexican state sent information on May 6, 2014, which was duly forwarded to the petitioner.

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

² This communication was sent by Mauricio Alejandro Hernández Bringas of the *Comité de Ex Reos para la Defensa de los Derechos Humanos* [Committee of Former Prisoners for the Defense of Human Rights].

III. POSITION OF THE PARTIES

A. The Petitioner

6. The petitioner, a general practitioner by profession, states that on July 17, 2001, he arrived as he always does at his medical office, which is located in Mexico City, and found the windows and doors of his office broken. His neighbors are said to have informed him that at approximately 10:00 a.m., a group of 40 police officers—hooded and dressed in black—from the *Procuraduría General de la República* [Office of the Attorney General] (PGR) allegedly came looking for him and violently broke into his place of work, thus causing the aforementioned damage.

7. Approximately 10 days following the alleged break in at his office, the petitioner claims that as he was about to get into his vehicle, four police officers stopped him, and deceptively took him to the basement of the parking lot of the PGR's Specialized Unit on Organized Crime (UEDO). There, the petitioner states, he was allegedly the victim of abuse and torture. He specifically claims they beat him on the head and all over his body and placed a plastic bag over his face, reportedly causing him to start to suffocate and go into convulsions. At that moment, the police then allegedly removed the bag from his face and started chest compressions. The petitioner maintains that while all of this was happening, using shouts and insults, they were provoking him and threatening to shoot his fingers if he refused to admit he was a kidnapper who amputated his victims' fingers. The petitioner claims he was later transferred to other offices where they reportedly asked him several questions and beat him again. He claims that because of a blow he received around where his kidney is—which was reportedly operated on recently—he fell to the floor where one of his aggressors allegedly kicked him in the rectum and then shoved a pole inside of it. The petitioner states that he felt “something rupture inside of him” and reportedly began to bleed through his rectum.

8. The petitioner reports that, because of the injuries he suffered, he was taken to Gea González de Tlalpan Hospital in Mexico City where he was allegedly told that the assault against him had left his rectum totally destroyed. He states that an emergency operation was done on him and that he remained in the hospital for a month until he recovered all the blood he had lost. Despite this, due to the complexity of the operation, he indicates that he was operated on once again.

9. Later (he does not specify when), the petitioner was reportedly brought to a *casa de arraigo* [an unofficial detention facility], where he allegedly remained for two months and where his health is said to have declined due to the damage to his internal organs. He claims that throughout this time, he was never told why he was being detained. According to the petitioner, he was subsequently transferred to Mexico City's *Reclusorio Sur* [Mexico City's Southern Detention Center] where the judge assigned to his case (No. 166/2001) reportedly informed him that he was to be accused, along with two other individuals, of having committed the crimes of false imprisonment in the form of kidnapping, aggravated battery, and carrying a firearm without a license. The petitioner claims that the PGR trumped up these charges against him in order to calm the media and the relatives of individuals who had allegedly been kidnapped by a group known as *Los Colmeneros*.

10. The petitioner claims that, based on statements made by the two witnesses identified as co-defendants, as well as on “narrow” evidence concocted by the PGR, he was sentenced to 60 years in prison and assessed a fine through a March 20, 2003 judgment issued by the Thirteenth District Court for Federal Criminal Proceedings in Mexico City (Thirteenth District Court). The petitioner indicates that he appealed this ruling and that a decision on his appeal was issued on August 13, 2004, by the Third Unitary Court for Criminal Matters of the First Circuit of the Federal District (Third Unitary Court for Criminal Matters), which upheld the sentence, changing only the amount of the fine. The petitioner contends he later filed an *amparo* action, which was granted on July 17, 2013, by the First Collegiate Tribunal for Criminal Matters of the First Circuit of the Federal District (First Collegiate Tribunal for Criminal Matters). With this, he was acquitted of the charges he had been “unjustly accused of” and was released on July 18, 2013.

11. As to the legal case against him, the petitioner alleges there were several irregularities, among which the following stand out: No investigation was done to prove that the weapon found in his

automobile belonged to him; no one from the Public Ministry and no court clerk signed off on his arrest; there were false statements and judicial reports; phony documents were used; settlement of the dispute was delayed; intimidation by means of cruelty was used, and there was negligence in processing the case as well as a failure to consider different pieces of evidence that would have proven his innocence.

12. Regarding the torture to which the petitioner was allegedly subjected by the PGR and the Federal Judicial Police, the information submitted to the IACHR by the parties indicates that he had apparently reported it in his September 25, 2001 pretrial statement to the PGR and in different case-related dealings with the police. In addition, the petitioner notes that the alleged torture was reported to different authorities including the President of Mexico, the Secretariat of the Interior, the Supreme Court of Justice of the Nation, the Federal Judicial Council, the National Human Rights Commission, and the Human Rights Commission of the Federal District. The petitioner claims that, despite the foregoing, he never received a response from the authorities in order to access justice and seek redress for the harm suffered.

B. The State

13. The State alleges that on September 21, 2001, the Public Ministry of the Federation assigned the Thirteenth District Court the preliminary inquiry PGR/UEDO/058/2001 against the petitioner for the crimes of violating the Federal Law against Organized Crime, false imprisonment in the form of kidnapping, carrying a firearm without a license, and aggravated battery. That same day, the [Third] Unitary Court for Criminal Matters was notified and the respective arrest warrants were issued for the petitioner and two other defendants. The State notes that on September 24, 2001, Judicial Police agents reportedly brought the petitioner before the Thirteenth District Court and on September 28, 2001, he was allegedly remanded to prison. The State took no position with respect to the arrest of the petitioner or with regard to the fact that he had allegedly been held in a *centro de arraigo*; nor was any mention made of the petitioner's stay at the Gea González de Tlalpan Hospital.

14. Regarding the criminal case, the State notes that the Thirteenth District Court judge issued a ruling on January 30, 2004, that held the petitioner criminally liable for the crimes of which he had been accused and imposed a 60-year prison sentence as well as a fine. The State goes on to indicate that the petitioner reportedly filed an appeal against such decision with the Third Unitary Court for Criminal Matters, and that an August 13, 2004 judgment apparently upheld the ruling being challenged, only making a change with regard to the fine. The State later notes that via a judgment issued on July 15, 2013, the First Collegiate Tribunal for Criminal Matters granted an *amparo* to the petitioner as well as his release. According to the State, this would serve as evidence that "an effective remedy exists for reviewing acts of authority for which violations of fundamental rights are alleged."

15. With respect to the acts of torture, the State claims that once it became aware of them, the physician assigned to the Federal Public Ministry Agency as well as the Medical Service at Mexico City's Southern Detention Center conducted medical exams and certified—on July 27, 2001, and September 24, 2001, respectively—that the petitioner presented no external injuries. Because of this, the State concludes that no acts or evidence exist to indicate that state agents had tortured the petitioner. As to the alleged violations of the petitioner's right to a fair trial, the State claims that the case against the petitioner was pursued in accordance with the formal procedures established by law and with respect for his human rights. Specifically, the State notes that the petitioner had access to domestic remedies and, as a matter of fact, by means of the respective criminal case, was apparently able to prove his innocence, at which time he was immediately released. In short, the State claims that all the guarantees and procedural stages provided for in the case of a trial were observed, to wit: Procedural economy, fairness for the all the parties, cross-examination, and speediness.

16. The State is asking the IACHR to declare this petition inadmissible because otherwise, in examining errors alleged to have been made by domestic courts, the Commission would be acting as a higher court.

IV. ANALYSIS OF JURISDICTION AND ADMISSIBILITY

A. Competence of the Commission *ratione personae*, *ratione temporis*, *ratione loci*, and *ratione materiae*

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

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

B. Other Admissibility Requirements

1. Exhaustion of domestic remedies

19. Article 46(1)(a) of the American Convention states that for a petition presented to the Inter-American Commission to be admitted pursuant to Article 44 thereof, the remedies offered by domestic jurisdiction must have been pursued and exhausted in accordance with generally recognized principles of international law. The purpose of this requirement is to enable national authorities to take cognizance of an alleged violation and, where appropriate, to resolve it before it is taken up by an international body. Article 46(2) of the American Convention, for its part, recognizes three circumstances in which the rule of prior exhaustion of domestic remedies does not apply: (a) When 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) when the party alleging violation of his or her rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or (c) when there has been unwarranted delay in rendering a final judgment under the aforementioned remedies. These circumstances refer not only to the formal existence of such remedies, but also that these be adequate and effective.

20. In the instant case, the Commission observes that the petitioner's main allegations center on the fact that, despite having brought the torture to which he was reportedly subjected to the attention of different authorities, in addition to alleged legal irregularities in the case brought against him for crimes he allegedly did not commit, he seemingly never received an effective response to his claims. The State, for its part, notes that if this petition were to be admitted, the Commission would be acting as a court of fourth instance since it has been demonstrated that in this case, there was an effective remedy available in Mexico to review the authorities' acts and decisions.

21. Regarding the case brought against the petitioner (criminal case 166/2001), this Commission observes that a March 20, 2003 judgment issued by the Thirteenth District Court sentenced the petitioner to 60 years in prison and assessed him a fine for the crimes of violating the Federal Law against Organized Crime, false imprisonment in the form of kidnapping, carrying a firearm without a license, and aggravated battery. According to information provided by the parties, this judgment was appealed by the petitioner's public defender (Criminal Appeal File 226/2003). In its August 28, 2003 ruling,

the Third Unitary Court for Criminal Matters vacated the trial court's judgment and ordered the proceeding to be reversed. In compliance with the ruling, the Thirteenth District judge, by means of a January 30, 2004 decision, upheld the judgment issued on March 30, 2003. Following the appeal lodged by the petitioner and his public defender (Criminal Appeal File 104/2004), the Third Unitary Court for Criminal Matters of the First Circuit upheld the sentence and changed the amount of the fine on August 13, 2004. Later, on July 15, 2013, the First Collegiate Tribunal for Criminal Matters granted the direct *amparo* requested by the petitioner (8/2013). In its decision, the Tribunal concluded that because of "insufficient evidence" in this case, the sentence against the petitioner should be lifted and proceeded to order "his immediate release." Regarding this aspect of the petition, the Commission believes that remedies were exhausted.

22. The IACHR further observes that in cases where torture is alleged—torture being a offense subject to ex officio prosecution in Mexico—the adequate and effective remedy is normally an investigation and criminal prosecution and the State is obligated to promote and foster such actions. In this regard, with respect to offenses subject to ex officio prosecution, the IACHR has repeatedly stated that "the authorities are obliged to conduct a thorough criminal investigation calculated to clarify the facts and determine blame."³ The Commission notes that the alleged acts of torture committed against the petitioner were apparently reported to different authorities at the following times: (a) During his pretrial statement on September 25, 2001 at the PGR; (b) during various case-related dealings with police officers and with one of the individuals who accused him of having cut off his fingers; (c) in communications with different authorities between September 10, 2001 and April 14, 2005;⁴ (d) in a compliant filed with the National Human Rights Commission on June 3, 2002; and (e) in complaint 378/2005, filed with the Federal Judicial Council on June 21, 2004.

23. Based on the information available, there is no evidence to suggest that the authorities to whom the alleged acts of torture were reported ever undertook the corresponding investigations. As a result, the IACHR concludes that the exception to the exhaustion of domestic remedies applies pursuant to the provisions of Article 46(2)(c) of the Convention.

C. Timeliness of the Petition

24. Article 46(1)(b) of the Convention requires that for a petition to be admitted by the Commission, it must be lodged within a period of six months from the date on which the alleged victim of a rights violation was notified of the final judgment. In the case at hand, the IACHR observes that the petition was submitted on May 4, 2004, before domestic remedies had been exhausted in terms of the criminal proceeding. In this respect, the Commission has held that in situations where the evolution of the facts initially presented at the domestic level implies a change in the compliance or noncompliance with admissibility requirements [...], the admissibility requirements of a petition must be examined at the moment at which the Commission rules on its admissibility.⁵ As a result, the IACHR considers the requirement established under Article 46(1)(b) of the Convention to have been met.

D. International Duplication of Proceedings and *Res Judicata*

25. For purposes of admissibility, Article 46(1)(c) of the Convention requires that the substance of the petition may not pending in any other international settlement proceeding and Article 47(d) holds that the petition may not be substantially the same as another petition already examined by this Commission or any other international body. In this case, the Commission observes that neither party has alleged the existence of either of these grounds for inadmissibility, nor does the case file suggest they may exist. Hence,

³ IACHR. Report No. 14/06 (Admissibility), *Raquel Natalia Lagunas and Sergio Antonio Sorbellini*, Argentina, March 2, 2006, paragraph 44.

⁴ The Commission's case file includes the following communications sent by the petitioner and his wife to different authorities: (a) To then President Vicente Fox, dated September 10, 2001; (b) to the Chief Justice of the Supreme Court of Justice of the Nation, dated July 1, 2004; (c) to the Federal Judicial Council, dated March 9, 2005; and (d) to the Secretariat of the Interior, dated April 14, 2005.

⁵ IACHR. Report No. 2/08, Petition 506/05, Inadmissibility, *José Rodríguez Dañín* (Bolivia), March 6, 2008.

the IACHR believes that the requirements set forth in Articles 46(1) and 47(d) of the Convention have been met.

2. Characterization of the alleged facts

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

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

28. The petitioner claims he was stopped by the Judicial Police and taken, without any legal warrant, to the offices of the UEDO, where he was reportedly subjected to torture and abuse in an effort to get him to confess to having been involved in a crime that he alleges he was not even aware of. The State, for its part, claims that, based on medical reports, there is no evidence to indicate torture. It likewise states that the petitioner always enjoyed his rights to due process pursuant to international standards. The events reported, *in limine*, would characterize violations of Articles 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), and 25 (Right to Judicial Protection) of the American Convention, in conjunction with Article 1(1) thereof, to the detriment of the petitioner, as well as of Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.

V. CONCLUSIONS

Based on the foregoing considerations of fact and law,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare this petition admissible with regard to [the potential violation of] Articles 5, 7, 8, and 25 of the American Convention, in conjunction with Article 1(1) thereof, to the detriment of the petitioner, and of Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.
2. To notify the State of Mexico and the petitioners.
3. To continue with its analysis of the merits of the complaint.
4. 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 29th day of the month of January, 2015. (Signed): Tracy Robinson, President; Felipe González, Second Vice President; Rosa María Ortiz, Paulo Vannuchi and James L. Cavallaro, Commissioners.