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**REPORT No. 166/17
PETITION 365-09
REPORT ON ADMISSIBILITY**

FAUSTO SOTO MILLER
MEXICO

Approved by the Commission at its session No. 2111 held on December 1, 2017.
166th Special Period of Sessions.

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Organization of
American States

REPORT No. 166/17¹
PETITION 365-09
REPORT ON ADMISSIBILITY
FAUSTO SOTO MILLER
MEXICO
DECEMBER 1, 2017

I. INFORMATION ABOUT THE PETITION

Petitioning party:	Fausto Soto Miller, Rosa María Soto Miller, Ana Luisa Soto Miller and Gabriela Soto Miller
Alleged victim:	Fausto Soto Miller
State denounced:	Mexico
Rights invoked:	Articles 5 (Humane Treatment), 7 (Personal Liberty), 8 (Fair Trial), 10 (Compensation), 11 (Privacy) and 25 (Judicial Protection) of the American Convention on Human Rights; ² Articles V (Protection of Honor), X (Inviolability) and XI (Health and Well-being) of the American Declaration on the Rights and Duties of Man; ³ and Articles I, III, IV, VIII, IX, XI, XIII, XXI and XXII of the Inter-American Convention on Forced Disappearance of Persons; ⁴ and the Inter-American Convention to Prevent and Punish Torture ⁵

II. PROCEDURE BEFORE THE IACRH⁶

Date on which the petition was received:	March 26, 2009
Additional information received at the initial study stage:	April 4, 2009; April 7, 2009; June 3, 2009; November 27, 2009; November 30, 2009; December 8, 2009; February 6, 2012; February 7, 2012
Date on which the petition was transmitted to the State:	December 27, 2012
Date of the State's first response:	June 25, 2013
Additional observations from the petitioning party:	November 6, 2013; March 21, 2014; February 11, 2015
Additional observations from the State:	November 30, 2015

¹ Pursuant to Article 17.2.a of the IACRH Rules of Procedure, Commissioner José de Jesús Orozco Henríquez, a Mexican national, did not participate in the discussion or the decision on this matter.

² Hereinafter "Convention" or "American Convention."

³ Hereinafter "Declaration" or "American Declaration."

⁴ Hereinafter "IACFDP."

⁵ Hereinafter "IACPPT." No specific articles are invoked.

⁶ The observations presented by each party were duly transmitted to the opposing party.

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; ACHR (deposit of ratification instrument on March 24, 1981), IACPPT (deposit of ratification instrument on June 22, 1987) and IACFDP (deposit of ratification instrument on April 9, 2002)

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

Duplication of procedures and International <i>res judicata</i>:	No
Rights declared admissible	Articles 3 (Juridical Personality), 4 (Life), 5 (Humane Treatment), 7 (Personal Liberty), 8 (Fair Trial) and 25 (Judicial Protection) of the American Convention, in connection to its Article 1.1 (Obligation to Respect Rights); Articles 1, 6 and 8 of the IACPPT; and Article I of the IACFDP
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

V. ALLEGED FACTS

1. Fausto Soto Miller (hereinafter “the petitioner” or “the alleged victim”) claims that on September 12, 1996 members of the Mexican Army subjected him to arbitrary and wrongful detention, without an arrest warrant or his being caught in *flagrante delicto*, near his domicile in Guadalajara, Jalisco. He submits that during his time in detention he was taken by military aircraft to other states (Culiacán, Sinaloa, Ensenada and Tijuana Baja California) and that he was held in isolation and subjected to several acts of psychological and physical torture to have him make a self-incriminating statement. In this regard, he describes that they tied him on a table with a rope, sprayed water all over his body, wrapped him in a blanket and canvas until he was immobilized; that as he could not defend himself, they hit him with electric shocks, poured water into his nose and his mouth, and severely hit him in his ankles and the back of his neck. He indicates that for 15 days he was a victim of forced disappearance and that on September 27, 1996, police officers simulated his arrest in the safe house where he had previously been held, in which drugs and firearms were found and evidence was fabricated to incriminate him and to file false charges against him.

2. He asserts that on October 1, 1996, criminal proceedings on case 105/96 were lodged against him before the District First Judge for Federal Criminal Matters, for crimes against public health, illicit association, criminal possession of firearms of exclusive military use and criminal storage of firearms. He indicates that on October 3, 1996 his imprisonment was ordered and he was held in the “Almoloya” Federal Center for Social Rehabilitation No. 1. He asserts that he challenged this judgment, but his appeal was rejected on January 29, 1997. He submits that the District First Judge for Federal Criminal Matters sentenced him to 40 years in prison, by a trial court’s judgment of May 29, 1998. The petitioner impugned this judgment and on July 31, 1998, the Second Circuit First Unitary Court ratified the impugned sentence.

3. The petitioner indicates that there were numerous irregularities in the proceedings. He asserts that he was coerced into signing statements in which he confesses facts in relation to the offenses attributed to him. He adds that the investigation stage lasted only two months and that he was not allowed to submit evidence to disprove the charges, or, in other words, submit evidence to challenge the two statements that he was forced to sign and the police report concerning his alleged detention on September 27, 1996 and

the witness statements supporting the alleged facts. Furthermore, he claims that in the proceedings he was assisted by a public defense counsel who had never worked as a federal counsel nor was entitled to work as a lawyer. He alleges negligence in the counsel's performance of duties because she submitted relevant proof beyond the established deadline and because at the same time, she worked as an executive secretary at the regional office of the Federal Judicial Police Department of Jalisco, of the Republic's Attorney General's Office (hereinafter "PGR"). Likewise, he asserts that he was not allowed to appoint a lawyer that he trusted, since through the only telephone call he was allowed to make he could not reach a lawyer or a family member.

4. The petitioning party indicates that on May 28, 2008 the alleged victim filed an appeal for legal protection on the grounds that in the criminal proceedings on case 105/96 there were procedures contrary to his right of defense, that the sentence issued was unfounded and that in the appeal proceedings his claims of infringements were not examined. His appeal for legal protection was rejected on September 25, 2008 by the Second Circuit Second Collegiate Court for Criminal Matters, which concluded that the criminal proceedings had been conducted in accordance with the rules of due process. In view of this rejection, on October 7, 2008 the alleged victim lodged an appeal for review before the Supreme Court of Justice, and it was ruled out of order on October 23, 2008. Finally, on November 6, 2008 the alleged victim lodged a complaint which, on January 14, 2009, the Supreme Court's First Chamber declared groundless, a decision notified on February 24, 2009.

5. The petitioner asserts that he denounced several times the acts of torture and the inhumane and degrading treatment that he was subjected to between September 12 and 27, 1996. The first time was on October 2, 1996, in the preliminary examination before the Judge in charge of case 105/96; then, on November 26, 1997, he filed a suit before the Republic's Attorney General; on October 18, 1996, he filed a complaint to the Jalisco State Human Rights Commission, which was referred to the National Human Rights Commission ("CNDH") but had no favorable results; on July 21, 1997, he lodged another complaint with the CNDH, but it was archived for lack of supporting evidence; finally, he filed a complaint before the Internal Comptroller's Office, but this body declared itself unable to investigate because three years had passed since the facts had taken place. Moreover, the alleged victim indicates that his name appears on the 1999 Human Rights Watch (HRW) Report, on the list of victims of forced disappearance and torture. The petitioner also submits that HRW reported that in another case against a former general, a sergeant testified that he had seen Fausto Miller under custody on a plane on September 15, 1996.

6. To conclude, he claims that the time elapsed from the issuance of the judgment that confirmed the ruling of May 29, 1998 to the presentation of the appeal for legal protection -ten years- was due to the need to collect new and relevant supporting evidence that would allow him to prove the violation of his rights. He indicates that most of such information was gathered in the course of a second case filed against him in 2003 as a result of the statements he made under coercion during criminal case 105/96.

7. For its part, the State claims that the petition is inadmissible because the facts were heard by the domestic courts in proceedings that conformed to the rights of due process; that, therefore, a review by this Commission would lead to the establishment of a fourth instance. It asserts that the alleged victim was arrested on September 27, 1996, according to the information available from the police report. It indicates that on that date the police and the army were conducting an aerial survey of the region of Hidalgo, Guadalajara (Jalisco) when they noticed a van that was identical to a vehicle connected with an attack. Based on the police report, when the officers approached, the alleged victim ran out from the place and was intercepted. It claims that the alleged victim was armed and that he declared being in charge of the safe house of the criminal group led by the Arellano Félix brothers. The State submits that the alleged victim was assisted by a public defense counsel both at the time of his statement and at the time of its extension.

8. It claims that the criminal proceedings were undertaken in accordance with the right of due process and the judicial safeguards, because when the alleged victim was taken to court, the authorities confirmed the lawfulness of his detention. It alleges that, in the criminal proceedings, all the procedural safeguards were respected, all the remedies were settled pursuant to the law and the alleged victim was always assisted by a counsel. In addition, it indicates that all the evidence submitted was accepted, except for the information declared out of order. Likewise, it affirms that the alleged victim accessed all the judicial

remedies available in the Mexican legal framework, all of which were promptly settled in accordance with the rules of its legal framework.

9. With regard to the investigations into the claims of torture, the State asserts that the Republic's Attorney General's Office in Jalisco received the inquiry filed for the charges of purported injuries, abuse of authority and torture, which the alleged victim denounced, and lists the procedures appearing in said document. Moreover, it submits many health certificates showing the alleged victim's healthy conditions, both in physical and psychological terms.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

10. As to the criminal proceedings, the Commission notes that based on the available information, the trial court's judgment of May 29, 1998 was ratified by the Second Circuit Unitary Court on July 31, 1998. Then, the alleged victim filed an appeal for legal protection but it was dismissed on September 25, 2008. On October 23, 2008 and January 14, 2009, the Supreme Court of Justice rejected an appeal for review and a complaint, respectively. The last of these decisions was notified on February 24, 2009. The State, for its part, does not submit any observations on the exhaustion of domestic remedies. As a result, the Commission concludes that, in this case, domestic remedies have been pursued and exhausted pursuant to Article 46.1.a of the American Convention.

11. Regarding the alleged acts of torture, the case file indicates that the alleged victim lodged several complaints to the Judge in charge of case 105/96 and to the Republic's Attorney General's Office. For its part, the State does not provide information on the current state or the result of the investigation undertaken into those facts. Considering the available information, the Commission notes that the purported acts of torture were reported to many authorities and that to this date these investigations have not produced any results yet. Consequently, the IACHR rules the application of the exception to the requirement of exhaustion of domestic remedies foreseen in Article 46.2.c of the Convention.

12. Concerning the presentation requirement, the petition was lodged on March 26, 2009 and the remedies connected with the criminal proceedings were exhausted on February 24, 2009, which is within the six-month term established in Article 46.1.b of the Convention. With regard to the investigation into the acts of torture, the IACHR notes that the facts matter of this complaint allegedly began on September 12, 1996 and their effects in terms of purported failures in the administration of justice appear to continue in the present. Therefore, in light of the context and the characteristics of this petition, the Commission believes that the requirement of timely presentation of the petition is met as far as this claim is concerned.

VII. COLORABLE CLAIM

13. 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 alleged victim's purported arbitrary and unlawful detention by the army and subsequent forced disappearance for 15 days, the purported violations of judicial safeguards and due process in relation to the criminal proceedings, the lack of proper defense, and the purported acts of torture by military officers all could establish possible violations of the rights enshrined in Articles 3 (Juridical Personality), 4 (Life), 5 (Humane Treatment), 7 (Personal Liberty), 8 (Fair Trial) and 25 (Judicial Protection) of the Convention, in relation to its Article 1.1. The claims could also tend to establish violations of Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, and of Article I of the Inter-American Convention on Forced Disappearance of Persons, from its ratification date, in view of the alleged lack of investigation into the purported act of forced disappearance.

14. As to the claims of violations of the American Declaration, according to the provisions in the Commission's Statute and Article 23 of its Rules of Procedure, the Commission, in principle, is competent *ratione materiae* to examine violations of rights enshrined in said Declaration. However, the Commission has previously established that once the American Convention is effective in relation to a State, it is the Convention –not the Declaration– that becomes the specific source of law that the Inter-American Commission will enforce provided that the petition indicates violations of substantially identical rights

enshrined in both instruments. In this petition, Articles V and X concern rights substantially identical to those protected by the American Convention. Moreover, with regard to the claim of the alleged violation of Articles 10 (Compensation) and 11 (Privacy), the Commission notes that the petitioner does not submit arguments or evidence sufficient to *prima facie* consider their possible violation.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 3, 4, 5, 7, 8 and 25 of the American Convention on Human Rights, in connection with its Article 1.1; Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture; and Article I of the Inter-American Convention on Forced Disappearance of Persons;
2. To find the instant petition inadmissible in relation to Articles 10 and 11 of the American Convention;
3. To notify the parties of this decision;
4. To continue with the analysis on the merits; and
5. To publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of Washington, D.C., on the 30th day of the month of November, 2017.
(Signed): Francisco José Eguiguren, President; Margarette May Macaulay, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice President; Paulo Vannuchi, James L. Cavallaro, and Luis Ernesto Vargas Silva, Commissioners