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**REPORT No. 186/21**  
**PETITION 1795-11**  
REPORT ON ADMISSIBILITY

DAVID JIMENEZ FRAGOSO AND FAMILY  
MÉXICO

Approved electronically by the Commission on August 30, 2021

**Cite as:** IACHR, Report No. 186/21, Petition 1795-11. Admissibility. David Jiménez Fragoso and family. Mexico. August 30, 2021.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioners:</b>	Gloria Sarmiento Salgado, Guillermina Jiménez Fragoso, Francisco Jiménez Fragoso, Arturo Alejandro Rivas Jiménez, and the Centro de Derechos Humanos Miguel Agustín Pro Juárez A.C
<b>Alleged victim:</b>	David Jiménez Fragoso and family
<b>Respondent State:</b>	México <sup>1</sup>
<b>Rights invoked:</b>	Articles 3 (right to juridical personality), 4 (right to life), 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 on Human Rights <sup>2</sup> ; Article 6 of the Inter-American Convention to Prevent and Punish Torture; and Articles I and XI of the Inter-American Convention on Forced Disappearance of Persons.

**II. PROCEEDINGS BEFORE THE IACHR<sup>3</sup>**

<b>Filing of the petition:</b>	December 19, 2011
<b>Additional information received at the stage of initial review:</b>	June 12, 2012
<b>Notification of the petition to the State:</b>	May 23, 2017
<b>State's first response:</b>	March 14, 2018
<b>Additional observations from the petitioner:</b>	Sept 25, 2018

**III. COMPETENCE**

<b>Competence <i>Ratione personae</i>:</b>	Yes
<b>Competence <i>Ratione loci</i>:</b>	Yes
<b>Competence <i>Ratione temporis</i>:</b>	Yes
<b>Competence <i>Ratione materiae</i>:</b>	Yes, American Convention (deposit of instrument of ratification made on March 24, 1981); Inter-American Convention to Prevent and Punish Torture (deposit of instrument of ratification made on June 22, 1987); Inter-American Convention on Forced Disappearance of Persons (deposit of instrument of ratification on April 9, 2002)

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

<b>Duplication of procedures and international <i>res judicata</i>:</b>	No
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<sup>1</sup> Pursuant to Article 17.2.a of the IACHR Rules of Procedure, Commissioner Joel Hernández García, a Mexican national, did not participate in the discussion or voting on this matter.

<sup>2</sup> Hereinafter "American Convention".

<sup>3</sup> The observations submitted by each party were duly transmitted to the opposing party.

<b>Rights declared admissible</b>	Articles 3 (right to juridical personality), 4 (right to life), 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to due process), and 25 (right to judicial protection) of the American Convention in conjunction with Article 1.1 thereof; Articles 1, 6, 8 of the Inter-American Convention to Prevent and Punish Torture; and Articles I and XII of the Inter-American Convention on Forced Disappearance of Persons.
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, under the terms of Section VI
<b>Timeliness of the petition:</b>	Yes, under the terms of Section VI

## V. ALLEGED FACTS

1. The petitioners allege that in 1975 David Jiménez Fragoso (hereinafter “the alleged victim”) was subjected to unlawful arrest, torture, and ultimately disappearance by the Mexican authorities; and that since then the State has failed to undertake any adequate or conclusive investigation into his whereabouts or otherwise to provide redress to his surviving family<sup>4</sup>, also alleged victims in this matter.

2. According to the petitioners, the arrest and subsequent disappearance of the alleged victim occurred within the context and history of State repression of democratic values and political opposition during the 1960s, 1970s, and 1980s in Mexico. They submit that this this period was characterized by the breakdown in the rule of law; multiple human rights violations, including torture, forced disappearance and extrajudicial executions; the repression of social and political activists and organizations. The petitioners refer to two major events where the State alleged committed massacres of university students who were demonstrating against the government, which took place in October 1968 and June 1971, respectively. For the most part, the petitioners contend that the State used the military and the Federal Security Directorate (*Dirección Federal de Seguridad* or “DFS”) for this program of repression.

3. The alleged victim was born on April 26, 1932, and he married Gloria Sarmiento Salgado in 1948; they had children David, Carlos, Gloria, Lilia, Alejandro, and Antonio Jiménez Sarmiento. The petitioners submit that David and Carlos Jiménez Sarmiento got involved in the student movements of the time, and that both subsequently joined a left-wing group known as *Liga Comunista 23 de Septiembre*. The petitioners allege that the State harassed the family of because of the activities of the Jiménez Sarmiento brothers; and that in 1974, The alleged victim chose to join his sons in their activism with the *La Liga Comunista 23 de Septiembre*. Additionally, the petitioners submit that the harassment of the authorities caused the wife of the alleged victim and their children to go into exile in the United States. During this period of State repression, the petitioners allege that some of the alleged victim’s relatives were victims of human rights violations, such as Teresa Hernández Antonio, wife of David Jiménez Sarmiento, who was executed extra-judicially on June 15, 1975, in the main campus of the National Autonomous University of Mexico (*Ciudad Universitaria*); and David Jiménez Sarmiento, who was assassinated on August 11, 1976, in the context of an armed conflict.

4. According to the petitioners, on May 7, 1975, the DFS conducted a raid on a house located in the town of San Pedro Juárez, Municipality of Atizapán de Zaragoza, State of Mexico. The alleged victim was at this house at the time of the raid, together with three other persons, all of which were allegedly arrested and taken into detention. They further hold that starting from May 8, 1975, the alleged victim was subject to various interrogations by DFS officials regarding his political activism; he ultimately made a formal declaration on May 24, 1975, which was recorded by the security agency. The petitioners mention that during May 1975, another detainee saw him alive, and that his body showed visible signs of torture and physical mistreatment.

<sup>4</sup> The family members who appear as alleged victims with Mr. Jiménez Fragoso in this petition are Gloria Sarmiento Salgado (wife); Gloria Jiménez Sarmiento (daughter); Lilia Jiménez Sarmiento (daughter); Alejandro Jiménez Sarmiento (son); María Teresa Jiménez Fragoso (sister); Eva Jiménez Fragoso (sister); Guillermina Jiménez Fragoso (sister); Francisco Jiménez Fragoso (brother); José Pilar Jiménez Fragoso (brother); and Arturo Alejandro Rivas Jiménez (nephew).

Subsequently, another detainee who was also a member of the *Liga Comunista 23 de Septiembre* arrested on May 19, 1975, allegedly saw the alleged victim between June 15 and 19, 1975.

5. According to the DFS, all the persons arrested with the alleged victim were taken before a district judge (*Juez Cuarto de Distrito*) on June 19, 1975; however, the petitioners assert that Mr. Jimenez Fragoso was not taken with this group. The petitioners denounce that since then the whereabouts of the alleged victim have remained unknown and that despite evidence showing that he was alive up to June 1975, on April 16, 1979 --almost four years later-- the DFS reported that he had died in an accident while resisting his arrest on May 7, 1975. The petitioners contend that the contradictions between the security agency and the testimonies of the detained persons suggest that the alleged victim has been the victim of forced disappearance, attributable to agents of the Mexican State.

6. The petitioners assert that in the aftermath of the disappearance the family was afraid to file official complaints or initiate any legal actions for fear of reprisals by the State. They further submit that the fear of approaching the authorities was exacerbated by human rights violations committed against other family members as stated above, and mention that in previous cases the IACHR found that during this period there was a climate of hostility to family members that inhibited them from approaching the authorities. In any event, they argue that the State was under the obligation to investigate the disappearance of the alleged victim *ex officio*, regardless of the actions of relatives; they argue that the duty to investigate cases of forced disappearance and punish those responsible has been classified by the Inter-American Court of Human Rights as part of *jus cogens*.

7. In 1988, the State initiated an investigation into human violations that had taken place during the period of repression; according to the petitioners, this was not criminal in nature and ultimately proved to be ineffective. The investigation was conducted initially under the auspices of the Ministry of the Interior, before it was turned over to the newly established National Human Rights Commission (*Comisión Nacional de Derechos Humanos*, or "CNDH"), who issued a report in 1992 that was not made public. Subsequently, the CNDH restarted its investigations in 1999, which led to the recognition of systematic human rights violations as part of State policy. However, the petitioners contend that the investigation by the CNDH at that time was insufficient because the State did not adopt any measures aimed at redressing any of the mass human rights violations; to promote the prosecution of those responsible; or to determine or clarify the whereabouts of persons who had been detained and disappeared, such as the alleged victim.

8. The petitioners indicate that in November 2001 the administration of President Vicente Fox established a Special Prosecutor's Office to investigate possible crimes committed by civil servants against persons linked to social and political movements of the past (*Fiscalía Especial para Movimientos Sociales y Políticos del Pasado* or "FEMOSPP"). According to the petitioners, this ultimately provided an opportunity to submit a criminal complaint in July 2005 regarding the disappearance of the alleged victim, which led to the opening of a preliminary investigation in 2006. The petitioners allege that the investigation by the FEMOSPP was largely ineffective because it was limited in scope to the crime of illegal deprivation of liberty and did not include the crime of forced disappearance. They note that this limited scope was kept despite the federal criminalization of forced disappearance in 2002, as well as the ratification of the Inter-American Convention on Forced Disappearance of Persons by Mexico in that same year.

9. The Federal Public Prosecutor (*Procurador General de la República*) decided in November 2006 to reassign the investigation from the FEMOSPP to another unit called General Coordination of Investigations (*Coordinación General de Investigaciones* or "CGI"). According to the petitioners, the investigation had been with the CGI for more than five years up to the date of filing of the petition with the IACHR yet has produced no results to determine the whereabouts of the alleged victim. In this regard, the petitioners also mention that the other investigations have produced no concrete results after more than three decades since the initial arrest of the alleged victim.

10. The petitioners claim that there has been an unwarranted delay in conducting and concluding investigations, which justifies the exception to exhaustion of domestic remedies contemplated in Article 46.2(c) of the American Convention; that the six-month deadline requirement prescribed by Article 46.1(b) does not apply; and that the petition has been presented within a reasonable time pursuant to Article 32.2 of the IACHR Rules of Procedure. They further emphasize that the exemption is also warranted given that the allegations in the petition reflect violations that are continuing in nature; and because more than five years have elapsed since the investigation was reassigned to the CGI, without producing any concrete results.

11. With respect to temporal jurisdiction, the petitioners acknowledge that the detention of the alleged victim that led to his alleged disappearance took place on May 7, 1975, before the ratification by Mexico of the American Convention on March 24, 1981; the Inter-American Convention to Prevent and Punish Torture on June 22, 1987; and the Inter-American Convention on Forced Disappearance of Persons on April 9, 2002. However, they argue that this does not prevent the IACHR from taking cognizance of the violations alleged in the petition, since they are continuous violations in accordance with the jurisprudence of the Inter-American human rights system. In this regard, the petitioners emphasize that the alleged violations of the rights to life, liberty, physical integrity that arise from the forced disappearance of the alleged victim. As regards the right to due process and judicial protection, the petitioners contend that aspects of these alleged violations took place after the ratification of the American Convention and the Inter-American Convention to Prevent and Punish Torture. The petitioners mention this particularly about the investigative process that started in 2005 and which remains pending with the CGI.

12. The petitioners affirm that the only relevant remedy is a diligent criminal investigation and search for the alleged victim and contend that after more than 13 years of investigation, the State has not provided any explanation about the failure to conclude it, particularly given the availability of official documentation that shows that he was detained by authorities. They submit that the State's response demonstrates that it has not undertaken a diligent investigation with respect to the facts denounced; and that attempting the remedies mentioned by the State would be at variance with Article 46 of the American Convention and serve to block them from challenging the unwarranted delay in criminal investigations. Further, it would result in and even greater delay in redressing the alleged human rights violations, given that the remedies proposed by the State could go on for an indeterminate period.

13. For its part, the State rejects the petition as inadmissible because of lack of exhaustion of domestic remedies, principally because the investigation relating to the alleged victim is still ongoing. The State points out that an investigation was initiated by the FEMOSPP in 2005 and was later taken over by the CGI in 2007 and concedes that to date, the whereabouts of the alleged victim have not been determined, nor have any criminal proceedings been initiated against any person. However, it contends that the investigation is continuing and that multiple steps have been taken to advance this process. In this regard, the State mentions the testimony obtained from various persons connected to the alleged victim or persons familiar with the circumstances of his detention; the inspection of the location where he was detained; inquiries made of various federal and state entities, as well as civil society organizations with a view to determining his whereabouts; and the recruitment of a criminologist to assist with investigations. The State also asserts that the events that led to the investigation took place more than 25 years before, and that it was not in position to address the complaint of the petitioners until 2005, when a formal criminal complaint was filed.

14. The State also contends that there are other domestic remedies that could have been invoked by the petitioners if dissatisfied with the nature or progress of the investigation, such as and appeal provided for in the Federal Code of Criminal Procedure of the time. If this remedy were unsuccessful, the State submits that they could have invoked a recourse of rejected appeal (*recurso de denegada apelación*). In case of a failure of this remedy, then the petitioners could file an indirect constitutional motion (*amparo indirecto*); and if this were denied, they still had the possibility of the appeal for review (*recurso de revision*); and ultimately, the complaint remedy (*recurso de queja*).

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

15. The parties are at variance on the issue of exhaustion of domestic remedies. The petitioners argue that there has been unwarranted delay in the criminal investigation, which exempts them from the requirement to exhaust domestic remedies; for its part, the State argues that there was there was lack of exhaustion given that the criminal investigation is still underway, and that the petitioners failed to invoke and exhaust other available domestic remedies.

16. As preliminary consideration, the IACHR has reiterated that in cases involving crimes against life and security the domestic remedies that must be considered for the purposes of admissibility are those related to the criminal investigation and punishment of the persons responsible. Accordingly, the Commission does not accept the argument that the petitioners in the instant matter were required to exhaust any other domestic remedies as a condition of admissibility.

17. The petition deals with allegations of illegal detention, torture and disappearance that took place in 1975. In a similar case, in which there were similar allegations dating back to 1974, the Inter-American Commission accepted that there was a repressive political situation in Mexico, which in turn generated a well-grounded fear of making any complaints to the authorities<sup>5</sup>. The IACHR considers that such context also applies to the facts described in the instant matter, and therefore accepts the petitioners' claim that the relatives of the alleged victim were unable to pursue any complaint until 2005, following a change of government and the establishment of a special prosecutor.

18. The Inter-American Commission notes that the criminal investigation initiated by the State is still pending after more than a decade, with no indication that the persons responsible for the alleged violations have been identified, much less prosecuted or punished. The foregoing is sufficient to conclude that there is an unwarranted delay and apply the exception to exhaustion of domestic remedies provided for in Article 46.2(c) of the American Convention.

19. The petition was received on December 19, 2011, and the alleged events began on May 7, 1975, with certain effects continuing to the present day. Therefore, in view of the context and characteristics of the present matter, the IACHR considers that the petition was filed within a reasonable period pursuant to Article 32.2 of its Rules of Procedure, and that the admissibility requirement regarding timeliness is satisfied.

## **VII. ANALYSIS OF COLORABLE CLAIM**

20. The petitioners claim illegal detention, torture, and forced disappearance, all of which originated in events that took place in 1975. They also claim the State has failed to undertake any adequate or conclusive investigation into the whereabouts of the alleged victim, or to prosecute or punish those responsible for these violations denounced. The Inter-American Commission notes that these events took place prior to the ratification of the American Convention, the Inter-American Convention to Prevent and Punish Torture, and the Inter-American Convention on Forced Disappearance of Persons. However, having regard for the facts of this matter and its previous jurisprudence, the IACHR considers that the effects of these events continued after the ratification of those instruments, and therefore constitutes a juridical basis for it to take cognizance of the claims arising from them.

21. In view of the arguments of fact and law put forward by the parties and the nature of the matter, the Commission finds that the facts alleged by the petitioners are not manifestly groundless. If proven, the alleged illegal detention, torture, forced disappearance, as well as the failure to adequately investigate, would constitute violations of the rights recognized in Articles 3 (right to juridical personality), 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial) and 25 (judicial protection) of the American Convention in connection with Article 1.1 thereof, to the detriment of the alleged victim and his surviving family members identified in this report.

<sup>5</sup> IACHR Report N° 65/05, Petition 777-01. Admissibility. Rosendo Radilla Pacheco, México, October 12,2005.

22. Further, the allegations regarding torture, if established, would constitute violations of Articles 1, 6, 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of the alleged victim and his surviving family. Similarly, the allegations regarding forced disappearance, if proven to be true, would violate Articles I and XII of the Inter-American Convention on Forced Disappearance of Persons to the detriment of the alleged victim and his surviving family.

#### **VIII. DECISION**

1. To find the instant petition admissible in relation to Articles 3, 4, 5, 7, 8. and 25 of the American Convention in connection with Article 1.1 thereof; Articles 1, 6, 8 of the Inter-American Convention to Prevent and Punish Torture; and Articles I and XII of the Inter-American Convention on Forced Disappearance of Persons.

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

Approved by the Inter-American Commission on Human Rights on the 30th day of the month of August, 2021. (Signed:) Antonia Urrejola, President; Julissa Mantilla Falcón, First Vice President; Flávia Piovesan, Second Vice President; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño and Stuardo Ralón Orellana, Commissioners.