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REPORT No. 169/20
PETITION 623-10
REPORT ON ADMISSIBILITY

FRANCISCO JAVIER CISNEROS PRIETO AND FAMILY
MEXICO

Approved by the Commission electronically on June 29, 2020.

Cite as: IACHR, Report No. 169/20, Petition 623-10. Admissibility. Francisco Javier Cisneros Prieto and Family. Mexico. June 29, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Persons with reserved identity ¹
Alleged victim:	Francisco Javier Cisneros Prieto and family
Respondent State:	México ²
Rights invoked:	None specified.

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition:	April 10, 2010
Additional information received at the stage of initial review:	April 15, 2010 , April 27, 2010 ,May 18, 2010, September 21, 2010, October 5, 2010, December 04, 2010, October 23, 2011
Notification of the petition to the State:	November 17, 2015
State's first response:	April 14, 2016
Notification of the possible archiving of the petition:	October 13, 2018
Petitioner's response to the notification regarding the possible archiving of the petition:	November 21, 2018

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 on Human Rights (deposit of ratification instrument on March 24, 1981) and Inter-American Convention to Prevent and Punish Torture (deposit of ratification instrument on June 22, 1987)

IV. 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 By the petitioners' request, the Commission reserves their identity based on Article 28.2 of its Rules of Procedure.

² Pursuant to the provision of Article 17.2.a of the IACHR Rules of Procedure, Commissioner Joel Hernández García, a Mexican national, did not participate in the discussion or the voting on this matter.

³ The observations submitted by each party were duly transmitted to the opposing party.

Rights declared admissible	Articles 5 (humane treatment), 7 (personal liberty), 8 (fair trial and 25 (judicial protection) of the American Convention on Human Rights in relation to Article 1.1.; 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 terms of Section VI
Timeliness of the petition:	Yes, in terms of Section VI

V. ALLEGED FACTS

1. This petition refers to claims of illegal detention, torture, and violations of due process with respect to the alleged victim Francisco Javier Cisneros Prieto (“Mr. Cisneros”).

2. According to the petitioners, on December 28, 2008 at around 10:30 AM - in the city of Chihuahua - the alleged victim was taken from his home by military personnel without an order of arrest. The petitioners claim that the alleged victim was detained by the military personnel at the request of the *Procuraduría General de la República* (PGR) (prosecutor) to face questioning. The petitioners indicate that at the time of the detention they were not informed about the subject matter of the questioning. According to the petitioners, the commanding officer of the military personnel assured the petitioners that the alleged victim he would be returned to his home within a few hours. The petitioners state that after many hours had elapsed, the alleged victim did not return. According to the petitioners, they then visited the base of the military personnel to inquire about the non-release of the alleged victim. At that time, the petitioners state that the military personnel gave no reason for the non-release of the alleged victim. Subsequently, one of the petitioners visited the military base again later that evening when he/she was told that Mr. Cisneros had been transferred to the custody of the PGR (in Chihuahua).

3. The petitioners claim that in violation of the law, for a period of more than 72 hours, the petitioners were unable to see or make contact with the alleged victim, and that he was deprived of any access to a lawyer or to the courts. According to the petitioners, they subsequently spoke with military commanders at the same military base, who assured them that the alleged victim would shortly be released, and that there had been some misunderstanding. Despite this assurance, the petitioners alleged that the family later discovered that Mr. Cisneros had been transferred to Mexico City - to the custody of the *Subprocuraduría Especializada en Investigación de Delincuencia Organizada* (SEIDO). One of the petitioners states that he/she was able to see the alleged victim at the SEIDO on January 23, 2009 (Mexico City), where the alleged victim complained of being tortured by military personnel in Chihuahua. This petitioner affirms that he/she saw signs that alleged victim had been physically assaulted. Generally, the petitioners say they brought the situation of the alleged victim to the attention of various officials, including the governor of the State (Chihuahua), the Subprocurador General de Justicia del Estado (Chihuahua), and the municipal president (Chihuahua).

4. Based on the record, in February 2009, criminal proceedings were initiated against the alleged victim for offenses relating to organized crime. In this regard, he was taken before the *Juzgado Segundo de Distrito en el Estado de Nayarit*, which, on February 12, 2009, issued a formal order of imprisonment against the alleged victim. The alleged victim appealed the order of imprisonment but the petitioners complain that this appeal was not resolved until after April 2010, more than a year later. According to the record, the appeal was dismissed on May 31, 2010, with the *Juzgado Unitario de TEPIC* affirming the order of imprisonment. The alleged victim then filed an *juicio de amparo indirecto* - which was ultimately decided on October 26, 2010. The court issued a new decision which essentially reaffirmed the order of imprisonment. The alleged victim again filed another *juicio de amparo* that was resolved on September 28, 2011. The court also issued a new decision, but the effect was to retain the status quo - imprisonment, based on suspicion of having committed offenses relating to organized crime.

5. The petitioners claim that the alleged victim has been accused of offences, for which there is no evidence. The petitioners also argue that there has been no conclusive judicial investigation into the allegations against the alleged victim, or into the allegations of maltreatment at the hands of State agents. Accordingly, the petitioners argue that an exception to the requirement to exhaust domestic remedies is justified given unwarranted delays in (a) conducting investigations into the alleged maltreatment of the alleged victim; (b) providing access to judicial remedies or delays in issuing decisions made during the course of the criminal proceedings. According to the record, the alleged victim was ultimately acquitted in April 2013, and subsequently released from custody. The petitioners also indicate that Mr. Cisneros initiated a federal law suit for compensation in or about 2014, but that he died in 2016. According to the petitioners, they have taken steps to continue the lawsuit, but it has not yet been resolved.

6. The State rejects the petition as inadmissible principally on the ground of (a) failure to exhaust domestic remedies; and (b) failure to state facts that could characterize a violation of the rights of the alleged victim. With regard to exhaustion of domestic remedies, the State does not contest the chronology of criminal/judicial proceedings, but contends that at the time of the filing of the petition, domestic remedies had not yet been exhausted. In particular, the State asserts that at the time of the presentation of petition on 10 April 2010, the appeal against the order of imprisonment had not been resolved by the courts. According to the State, the alleged victim was ultimately acquitted of the charges on April 18, 2013, and released from custody. With respect to the allegation of torture, the State asserts that it never received any complaint in this regard. However, on the other hand, the State submits that the alleged victim was examined by medical officials at the PGR facilities, and that the officials found no signs of torture. With regard issue of failure to characterize violations, the State contends that (a) the alleged victim was lawfully detained (on suspicion of being a member of a criminal organization called “La Linea”); (b) the alleged victim was provided access to adequate remedies at all times (such as judicial proceedings relating to appeal and amparo); (c) the judiciary ultimately acquitted the alleged victim of the charges relating to organized crime and released him. The State also reiterates its position that there was no complaint or evidence of torture regarding the alleged victim.

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

7. According to the State, at the time of petition, criminal proceedings were still ongoing - and that accordingly, domestic remedies had therefore not been exhausted. On the hand, the petitioners argue for an exception to requirement for exhaustion based on failure to investigate allegations of torture, and delays in the judicial proceedings (particularly the period of more than a year between the appeal filed in February 2009 and the decision issued in April 2010). The State denies that the alleged victim was subjected to torture, contending that (a) it received no complaint about torture; and (b) that a medical examination conducted on the alleged victim revealed no signs of torture.

8. The Commission has long established that under international standards applicable to cases like this one, where serious human rights violations such as torture are alleged, the appropriate and effective remedy is precisely the undertaking of an effective criminal investigation aimed at clarifying the facts and, if necessary, individualize and prosecute the persons responsible.

9. The Commission notes the State’s claim that the medical examination of the alleged victim did not reveal any evidence of torture. However, in the Commission’s view, medical examinations alone are not tantamount to a comprehensive and effective criminal investigation into the allegations of torture. Further, the Commission notes that the petitioners allege that they made complaints to various officials in the city of Chihuahua regarding the situation of Mr. Cisneros. This would suggest that the State was indeed aware of the complaint of torture, supplemented by the fact the State acknowledges that a medical examination of the alleged victim did take place. Based on the information supplied by both parties, it appears no such investigation has been undertaken by the State despite the passage of more than ten years since the alleged acts of torture took place. The Commission believes that such a period constitutes an unwarranted delay for the purpose of admissibility; and that accordingly, the petition meets the exception of the requirement of prior

exhaustion of domestic remedies, in accordance with Article 46.2.c of the American Convention on Human Rights. Having regarding for the foregoing the Commission believes that the petition was filed within a reasonable time and that the requirement set forth in Article 32.2 of the IACHR Rules of Procedure has been met.

10. Regarding the State's questioning of the fact that at the time of the presentation of petition on 10 April 2010, criminal proceedings were still ongoing (in respect of the order of imprisonment) and therefore not exhausted the IACHR reaffirms its position that "what should be taken into account in determining whether domestic remedies have been exhausted is the situation at the time of the ruling on admissibility. Accordingly, in this respect, the IACHR considers that the decision issued on April 18, 2013 constituted exhaustion of domestic remedies (with respect to the issue of imprisonment), and as such, the Inter-American Commission concludes that this petition meets the admissibility requirements established in Articles 46.1.a and 46.1.b of the American Convention.

VII. ANALYSIS OF COLORABLE CLAIM

11. The Commission notes that this petition includes allegations regarding unlawful detention, torture, and the failure to initiate a criminal investigation with regard to the complaints of torture. After examining the elements of fact and law presented by the parties, the Commission considers that the claims of the petitioner are not manifestly unfounded; and that if corroborated, could characterize violations of Articles 5 (humane treatment), 7 (personal liberty), 8 (fair trial) and 25 (judicial protection) of the American Convention on Human Rights in relation to Article 1.1.; and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture.

VIII. DECISION

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

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 29th day of the month of June, 2020. (Signed): Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President; Margarete May Macaulay, and Esmeralda E. Arosemena Bernal de Troitiño, a Commissioners.