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**REPORT No. 356/20**  
**PETITION 944-09**  
REPORT ON ADMISSIBILITY

JOSÉ LUIS GARCÍA ZANELLA  
MEXICO

Approved by the Commission electronically on December 2, 2020.

**Cite as:** IACHR, Report No. 356/20, Petition 944-09. Admissibility. José Luis García Zanella.  
Mexico. December 2, 2020.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Juanita García Rodríguez
<b>Alleged victim:</b>	José Luis García Zanella
<b>Respondent State:</b>	México <sup>1</sup>
<b>Rights invoked:</b>	Articles I (life, liberty and personal security). II (equality before law), V (protection of honor, personal reputation, and private and family life), IX (inviolability of the home), XVIII (fair trial) , XXV (protection from arbitrary arrest), XXVI (due process of law) of the American Declaration on the Rights and Duties of Man <sup>2</sup> ; Articles 5 (Humane Treatment), 7 (Personal Liberty) , 8 (Fair Trial), 10 (Compensation), 11 (honor and dignity), and 25 (Judicial Protection) of the American Convention on Human Rights <sup>3</sup> in conjunction with Article 1 of the same instrument; ; Articles 1, 2,3, 4, 6, 7, 8, 10, 12 of the Inter-American Convention to Prevent and Punish Torture; Articles I, II, IV, XI of the Inter-American Convention on Forced Disappearance of Persons.

**II. PROCEEDINGS BEFORE THE IACHR<sup>4</sup>**

<b>Filing of the petition:</b>	July 28, 2009
<b>Additional information received at the stage of initial review:</b>	October 22, 2012, November 13, 2013, July 30, 2014, December 12, 2014. March 27, 2015
<b>Notification of the petition to the State:</b>	September 21, 2016
<b>State's first response:</b>	June 7, 2017

**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 the 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)

**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
<b>Rights declared admissible</b>	Articles 5 (Humane Treatment), 8 (Fair Trial), and 25 (Judicial Protection) of the American Convention in relation to Article 1.1.; and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture.

<sup>1</sup> 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.

<sup>2</sup> Hereinafter "the American Declaration" or "the Declaration".

<sup>3</sup> Hereinafter "American Convention" or "Convention."

<sup>4</sup> The observations submitted by each party were duly transmitted to the opposing party.

<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes and no, in the terms of section VI
<b>Timeliness of the petition:</b>	Yes and no, in the terms of section VI

## V. ALLEGED FACTS

1. This petition deals with allegations of illegal detention, custodial mistreatment/torture, and violations of due process (in the context of criminal proceedings) with respect to José Luis García Zanella (hereafter “the alleged victim” or “Mr. García”). The petition also alleges that the alleged victim was denied early release from prison when he became eligible to be considered for such early release.

2. According to the petitioner, on August 10, 1988, the alleged victim was arrested by police at his home in Atlixco Puebla, Mexico on suspicion of having committed the crimes of aggravated murder and gang rape. The petitioner asserts that the police arrested the alleged victim without an arrest warrant. The petitioner further contends that the alleged victim was taken to a police station where (on the same day) he was subjected to torture and physical mistreatment aimed at eliciting a confession from the alleged victim. In this respect, the petition alleges that torture/mistreatment including the following acts: (a) putting his head in a toilet to try to drown him; (b) electric shocks to his genitals; (c) beating the alleged victim on the head, ears, stomach, and buttocks with pieces of wood. From the record, it appears that the alleged victim signed a confession following this alleged torture/physical mistreatment.

3. According to the petition, the police detained the alleged victim incommunicado until August 15, 1988 when his family was finally able to see him; and to procure a lawyer to represent him. The petition also states that on or about August 12, the alleged victim was seen by a doctor who confirmed that he had suffered some injuries, including bruising to the back, chest, stomach, leg, and blisters on his penis. The petitioner states that the alleged victim was taken before a judge on August 15, 1988 at which time he declared that he had been subjected to torture/physical mistreatment which had resulted in the aforementioned injuries. According to the petition, the lawyer for the alleged victim requested that the court certify these injuries. The petition states that a certificate (Fe de Lesiones) was consequently prepared by the secretariat of the court. ; Further, the petition indicates that the alleged victim recanted his confession (before the court) on the ground that it had been given under duress/torture.

4. According to the petitioner, the judge took no steps to investigate the allegations of torture/physical mistreatment, and that ultimately, the alleged victim was, in August 1989, tried and convicted for the crimes of aggravated murder and gang rapes. On August 24, 1989, the alleged victim was sentenced to a prison term of 26 years. According to the record, the alleged victim appealed his conviction to *La Tercera Sala Penal del Tribunal Superior de Justicia del Estado de Puebla*, but this appeal was dismissed on December 7, 1989. The petition asserts that the alleged victim subsequently filed amparo proceedings in or about July 1995. According to record, it appears that this action was dismissed on July 12, 1995.. However, the petitioner claims that there was no notification of this decision until 2003.

5. The petition also asserts that the alleged victim applied for early release in April 1999 and June 2003, but was refused by the State on both occasions. According to the petitioner, the applications were made pursuant to the *Law for the Execution of Sanctions Privative of Liberty for the State of Puebla*. The petitioner further submits that Article 19 of this law contemplates the benefit of pre-release, which consists in the granting of freedom to the inmates who have effectively served a third of the sentence imposed, being a requirement also that the inmate has observed good conduct and has effectively participated in educational activities at the social rehabilitation center. The petitioner argues that the alleged victim had met these requirements, but was not ultimately released from prison until 2010.

6. The State broadly dismisses for the petition as inadmissible because of (a) failure to exhaust domestic remedies; (b) failure to submit the petition in timely manner; and (c) the petition violates the fourth instance formula.

7. By way of procedural background, the State indicates the alleged victim was arrested in August 1988 together with Fernando Alonso Tlaxcalteca for the crimes of aggravated homicide and gang rape. The State further indicates that (a) on August 13, 1988 preliminary investigations/criminal proceedings were initiated against the alleged victim; (b) on August 15, 1988, the alleged victim was taken before the criminal courts where he presented a statement with the assistance of his lawyer; and (c) that on August 16, 1988, the criminal courts issued a formal order of detention against the alleged victim.

8. The State further affirms that the alleged victim was ultimately convicted of the crimes of aggravated homicide and gang rape, and on August 24, 1989, sentenced to a term of imprisonment of 26 years. Subsequent to the conviction, the State indicates that the alleged victim challenged his conviction by way of appeal and various amparo proceedings. According to the State, an appeal to the *Tercera Sala Penal del Tribunal Superior de Justicia del Estado de Puebla* was dismissed on December 7, 1989. On January 1990, the State indicates that the alleged victim filed amparo proceedings before the *Segundo Tribunal Colegiado del Sexto Circuito*, which on February 16, 1990, granted an amparo to the alleged victim, and referred the matter back to the *Tercera Sala Penal del Tribunal Superior de Justicia del Estado de Puebla* for reconsideration. On March 26, 1990, the *Tercera Sala Penal del Tribunal Superior de Justicia del Estado de Puebla*, reaffirmed the term of imprisonment of 26 years imposed on the alleged victim. In May 1990, another amparo suit was filed on behalf of the alleged victim before the *Primer Tribunal Colegiado del Sexto Circuito*, which was dismissed on December 21, 1990. Finally, on July 7, 1995, the alleged victim filed another amparo suit, but this was dismissed on July 12, 1995, as being inadmissible.

9. With respect to complaints about the refusal of the State to grant early/pre-release to the alleged victim, the State makes a number of observations. Firstly, the State indicates that on April 30, 1997, the State initiated the early/pre-release process. The State indicates that this step was taken without being prompted by the alleged victim. In this regard, the State indicates that the Director General of the *Centros de Readaptación Social del Estado de Puebla*, requested the Director of *Centro de Readaptación Social Regional de Cholula, Puebla*, to initiate early/pre-release procedures in respect of the alleged victim. Secondly, the State that this process was carried out in five phases between 1997 and 2010, which ultimately led to the release of the alleged victim on November 22, 2010.

10. Regarding the issue of exhaustion of domestic remedies, the State argues that during the preliminary investigative/criminal proceedings it was open to the alleged victim to file a *recurso de apelación* to challenge the initiation of criminal proceedings, and to redress his complaints relating to the alleged illegal detention and due process violations. 1. The State also argues that if this *recurso de apelación* were dismissed, the alleged victim would also have available to him the remedy of *recurso de queja*. According to the State, the alleged victim ultimately failed to initiate or exhaust either remedy. The State also contends that if the alleged victim was unsuccessful with either the *recurso de apelación* or the *recurso de queja*, he could have initiated proceedings for indirect amparo. The State argues that the alleged victim also failed to initiate or exhaust this remedy. In relation to the early/pre-release process, the State argues that the alleged victim failed to exhaust domestic remedies with respect to the early/pre-release process. In this respect, the State reiterates that the early/pre-release process was initiated by the State and not by the alleged victim. The State further contends that, if the petitioner considered that the early/pre-release process violated his human rights, or that, in his opinion, there had been a delay in the resolution of this process, he could have initiated an indirect amparo lawsuit, which he failed to do.

11. Regarding the timeliness of the petition, the State contends that the domestic proceedings initiated by the alleged victim culminated on July 7, 1995, with the dismissal of an application for amparo. The State asserts that the alleged victim was notified of this judgment on this date. The State argues that the petition was not presented until July 28, 2009 (14 years later) which is outside of the six-month deadline prescribed by the IACHR. Accordingly, the State argues that the petition is inadmissible on the ground of untimeliness.

12. The State contends that the alleged victim is requesting the IACHR to exercise fourth instance jurisdiction with respect to the early/pre-release process. In this respect, the State emphasizes that the early/pre release process is governed by the *Law on the Execution of Privative Sanctions of Liberty* that prescribes certain requirements. These requirements include (a) completion of two-thirds of the prison sentence; (b) good behavior; and (c) the completion of various psychological studies (on the person being considered for early/pre-release). For the State, a review of this process by the IACHR is entirely outside of its remit, and that if the IACHR were to review the administrative procedures that ultimately had the effect of releasing the alleged victim, it would be acting as a court of fourth instance,

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

13. The Commission notes that this petition raises three claims: (1) arbitrary detention and the violation of procedural guarantees, (2) torture/custodial mistreatment and the lack of criminal investigation thereof, and (3) the lack of response to the request for early release.

14. In relation to the first claim, the State claims that there was a failure to exhaust domestic remedies. In this regard, the State contends that the alleged victim failed to initiate or exhaust remedies aimed at challenging the initiation of criminal proceedings (i.e. *recurso de apelacion*, *recurso de queja* and indirect amparo. The alleged victim states that he sought redress by way of appeal and amparo proceedings which culminated in a dismissal (of an amparo lawsuit) on July 12, 1995. The Commission notes that the rule on the exhaustion of remedies provided by Article 46.1(a) of the American Convention establishes that remedies generally available and appropriate in the domestic legal system must be pursued first. Such remedies must be secure enough; that is, accessible and effective in resolving the situation in question. The IACHR has established that the requirement to exhaust all domestic remedies does not necessarily mean that alleged victims are obligated to exhaust all remedies at their disposal. If an alleged victim pursued the matter through one of the valid and appropriate options in accordance with the domestic legal system, and the State had the opportunity to remedy the matter in its jurisdiction, the objective of international law has been achieved.<sup>5</sup> The Commission considers, on the basis of the foregoing, that the alleged victim has exhausted the domestic remedies relating to the first claim and that it accordingly meets the requirement established in Articles 46.1.a of the Convention and 31.1 of the Commission's Rules of Procedure.

15. The Commission notes, however, that the State is simultaneously contending that the petitioner did not exhaust domestic remedies, with the dismissal of the amparo lawsuit in July 1995. The State further contends that this claim is untimely, given that (a) the alleged was notified of this judgment on this date and (b) the petition containing this claim was not presented until 14 years later – on July 28, 2009. On this issue, the petition states that the alleged victim was not notified of the judgment until 2003. The Commission takes the view, that whether the period is calculated from 1995 or 2003, the first claim is untimely, given that it was submitted outside of the six month period prescribed by Article 46.1.b of the Convention and Article 32.1 of the Commission's Rules of Procedure. Accordingly, the Commission's concludes that the first claim is inadmissible for untimeliness.

16. Regarding the second claim (relating to torture and custodial mistreatment), the Commission has long established that under international standards applicable to cases like this one, where serious human rights violations such as torture and physical mistreatment 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. Further, as a general rule, the IACHR considers that a criminal investigation must be conducted promptly in order to protect the interests of the victims, preserve the evidence and also safeguard the rights of anyone deemed a suspect in the framework of the investigation. Based on the record, it appears that the alleged victim brought these allegations of torture and physical mistreatment to the relevant authorities, but that no investigative action was undertaken by the State.

<sup>5</sup> IACHR, Report No. 16/18, Petition 884-07. Admissibility. Victoria Piedad Palacios Tejada de Saavedra. Peru. February 24, 2018, para. 12.

17. The Commission notes that more than 30 years have elapsed since the alleged torture/custodial mistreatment took place and was reported to the authorities. Given the delay or absence of an effective criminal investigation aimed at clarifying the facts and, if necessary, individualizing and prosecuting the persons responsible for the alleged torture/ custodial mistreatment of the alleged victim, the IACHR concludes that the claim relating to torture/custodial mistreatment as meets the exception to the requirement of prior exhaustion of domestic remedies, in accordance with Article 46(2) (b) and (c) of the Convention. In addition, due to the context and characteristics of the present case, the Commission considers that in relation to this claim, the petition was filed within a reasonable time and that the admissibility requirement regarding timeliness must be considered satisfied.

18. With regard to the third claim (the petitioner's complaints regarding early/pre-release), the Commission notes that the petitioner has not demonstrated that any domestic remedies were invoked to challenge the alleged refusal of the State to grant early/pre-release in 1999 and 2003. The Commission also notes the State's position that it ultimately did grant early/pre-release in 2010 – acting on its own initiative. The petitioner has acknowledged that the alleged victim was released in 2010. In the absence of any indication that the petitioner took any steps to challenge the alleged refusal, the Commission considers that the petitioner has failed to exhaust domestic remedies, and that accordingly the claims made in this regard are inadmissible. In any event, the IACHR does not consider itself equipped to review the deliberations or decisions of the State on the process of early/pre-release, and that any such review would constitute a violation of the fourth instance formula.

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

19. The Commission notes that the petitioner has cited various provisions of the American Declaration with respect to the complaints contained in the petition. These complaints include torture and physical mistreatment while in police custody. However, the IACHR has previously established that, once the American Convention enters into force with respect to a State, the latter and not the Declaration becomes the primary source of applicable law for the Commission; as long as the petition refers to the alleged violation of rights that are identical in both instruments and does not deal with a situation of continued violation. In the present case, the Commission considers that the alleged violations of the American Declaration are not outside the reach of the protection provided by the American Convention. Therefore, the Commission shall examine these allegations in light of the American Convention. Additionally, given that, the State is also a signatory to the Inter-American Convention to Prevent and Punish Torture, the Commission will consider these allegations in light of this Convention.

20. In view of the factual and legal elements presented by the parties and the nature of the matter brought to its attention, the Commission believes that the alleged facts presented by the petitioner regarding: (a) the alleged torture and custodial mistreatment of the alleged victim; (b) the failure of the State to act with due diligence or within reasonable time to investigate and clarify the facts the alleged torture/mistreatment), are not manifestly unfounded and could characterize possible violations of Articles 5 (humane treatment), 8, and 25 (Fair Trial), and 25(Judicial Protection) of the American Convention in relation to its Article 1.1 (obligation to respect rights). Further, the alleged torture and custodial mistreatment and together with the failure of the State to act with due diligence to investigate and clarify the facts of the alleged torture – could possibly establish violations 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. In relation to the claim of torture/custodial mistreatment, to find the instant petition admissible in relation to Articles 5, 8, and 25 in relation to Articles 1.1 of the American Convention; and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture; and

2. To find the petition inadmissible in relation to the claim relating to arbitrary detention and the violation of procedural guarantees for being untimely; and

3. To find the petition inadmissible in relation to the claim regarding early/pre-release for failure to exhaust domestic remedies; and

4. 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 2nd day of the month of December, 2020. (Signed): Antonia Urrejola, First Vice-President; Flávia Piovesan, Second Vice-President; Esmeralda E. Arosemena Bernal de Troitiño, and Stuardo Ralón Orellana, Commissioners.