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**REPORT No. 80/24**  
**PETITION 558-13**  
REPORT ON ADMISSIBILITY

OSVALDO DÍAZ MILLÁN ET AL.  
MEXICO

Approved electronically by the Commission on June 7, 2024.

**Cite as:** IACHR Report No. 80/24, Petition 558-13. Admissibility.  
Osvaldo Díaz Millán et al. Mexico. June 7, 2024.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner<sup>1</sup>:</b>	Oswaldo Díaz Millán
<b>Alleged victim:</b>	Oswaldo Díaz Millán, Cristina Mireles Gallegos, and Sofía Martínez Jiménez
<b>Respondent State:</b>	Mexico <sup>2</sup>
<b>Rights invoked:</b>	Articles 3 (recognition of juridical personality), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 11 (right to privacy), 14 (right to correction or reply), 17 (rights of the family), 24 (equal protection) and 25 (judicial protection) of the American Convention on Human Rights <sup>3</sup> read in conjunction with articles 1(1) (obligation to respect rights) and 2 (duty to adopt domestic legal effects); articles 1 to 17 of the Inter-American Convention to Prevent and Punish Torture; and other international instruments <sup>4</sup>

**II. PROCEEDINGS BEFORE THE IACHR<sup>5</sup>**

<b>Filing of the petition:</b>	April 5, 2013.
<b>Additional information received at the review stage:</b>	October 31, 2014
<b>Notification of the petition to the State:</b>	March 7, 2016.
<b>State's first response:</b>	July 19, 2016.
<b>Additional comments from the petitioner:</b>	June 19, 2019, August 3, 2023, and August 24, 2023
<b>Notification of the possible archiving of the petition:</b>	October 19, 2022
<b>Petitioner's response to the notification regarding the possible archiving of the petition:</b>	August 24, 2023.

**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 (ratification instrument deposited on March 24, 1981); Inter-American Convention to Prevent and Punish Torture (ratification instrument deposited on June 22, 1987); and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, the "Convention of Belém do Pará," (instrument deposited on November 12, 1998)

<sup>1</sup> On February 17, 2024, Mr. Díaz Millán asked the IACHR to designate Lidia Santiago Martínez as "attorney and/or person of trust" so that the Commission's notifications could be sent to them jointly.

<sup>2</sup> Pursuant to Article 17(2)(a) of the IACHR Rules of Procedure, Commissioner José Luis Caballero Ochoa, a Mexican national, did not take part in the discussion or the decision-making process in this matter.

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

<sup>4</sup> The petitioner refers to the Universal Declaration of Human Rights; the Convention against Torture and Other Cruel, Inhuman, or Degrading Punishment; and the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

<sup>5</sup> The observations presented by each party were duly transmitted to the opposing party.

**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), 7 (personal liberty), 8 (fair trial), 11 (protection of honor and dignity), 17 (protection of the family), 24 (equal protection) and 25 (judicial protection) of the American Convention, read in conjunction with its articles 1(1) (obligation to respect rights) and 2 (duty to adopt domestic legal effects); articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture; and Article 7 of the Convention of Belém do Pará
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, pursuant to the terms of Section VI
<b>Timeliness of the petition:</b>	Yes, pursuant to the terms of Section VI

**V. FACTS ALLEGED**

1. The petitioner asks that the Mexican State be declared internationally responsible for the violation of the human rights of Osvaldo Díaz Millán, Cristina Mireles Gallegos, and Sofía Martínez Jiménez due to illegal detention, torture, being held incommunicado, *arraigo*, and criminal prosecution, as well as for their deprivation of liberty since 2011, which they argue is illegal.

**Arguments of the petitioner**

2. The alleged victims state that on the night of February 28, 2011, while they were at their home in Querétaro, they were violently detained without a warrant. Osvaldo Díaz Millán, Cristina Mireles Gallegos (his partner, who was also pregnant<sup>6</sup>), and Sofía Martínez Jiménez (Mr. Díaz Millán's aunt-in-law) were in the house; the minor Lizeth Alexandra Millán Martínez<sup>7</sup> (Mr. Díaz Millán's cousin) was also in the house.

3. After the arrest, Osvaldo Díaz Millán, Cristina Mireles Gallegos, and Sofía Martínez Jiménez were taken to facilities of the Office of the Attorney General of the Republic, where they allege that they were tortured and held incommunicado for days.

4. The alleged victims were apprehended in the context of criminal proceedings for the crime of aggravated kidnapping and intentional homicide in the state of Querétaro, that is, in the state jurisdiction. In addition, they were also prosecuted under federal jurisdiction for the crime of organized crime.<sup>8</sup>

5. On March 1, 2011, the Public Prosecutor's Office of Querétaro ordered the immediate release of the alleged victims "because their detention was not justified under local law";<sup>9</sup> but they allege that at no time were they released; and that, on the contrary, there was a period of 32 hours during which they remained detained and held incommunicado without being brought before the Public Prosecutor's Office. Thus, on March 3, 2011, the alleged victims were placed in "*arraigo*" (informal detention pending charges) in a building they were not familiar with by order of the Mixed Trial Court of the Sixth Judicial District of Querétaro. They

<sup>6</sup> The petitioner does not indicate how many months pregnant Cristina Mireles Gallegos was at the time of the facts.

<sup>7</sup> Although the petitioners mention that Lizeth Alexandra Millán Martínez was in the house at the time of the raid and arrest of the three aforementioned persons, they do not mention her again in this case file, nor do they provide facts or allegations regarding possible violations of her rights, for which reason she will not be considered a direct victim at this stage of the proceedings. However, she may be considered as such in the merits stage of this case should the petitioner provide the corresponding information.

<sup>8</sup> The State provided more details on both criminal proceedings, described in paragraphs 33 to 39 of this report.

<sup>9</sup> Through Official Communication 421/2011, "decision that resolves the legal situation of the defendants brought before it."

were held for a month, during which time they were allegedly subjected to physical and psychological torture, as well as held incommunicado.

6. On April 3, 2011, these three individuals were transferred to the Preventive Detention and Criminal Punishment Enforcement Center in San Juan del Río Querétaro. They indicate that in that center, they learned that criminal case 140/2011 was opened against them before the Third District Court in Criminal Matters of the state of Jalisco. At the time, the alleged victims did not know for which crimes they were being investigated.

7. During the processing of this petition before the IACHR, Osvaldo Díaz Millán and Cristina Mireles Gallegos provided additional specific information about what allegedly happened to them, but Sofia Martínez Jiménez did not, and the only information we have about her comes from statements made by Osvaldo Díaz Millán.

*Specific information presented by Osvaldo Díaz Millán*

8. Osvaldo Díaz Millán states that the police officers who detained him at his home came in shouting threats and cursing, smashed furniture, and ordered them to get down on the floor. Then they asked them "where they kept their weapons," to which Mr. Díaz Millán replied that they did not have any weapons. He says he heard one police officer tell another that "they had not found anything"; nevertheless, they were taken outside, where there were many police cars parked and more police officers. He says they asked him about people he did not know, and that when he was unable to answer, they put him in a large truck, where two policemen began to beat him and kick him in the body and face.

9. They then covered his face with a T-shirt and poured water on him, preventing him from breathing, while they bent his arm and kicked him; he states that at one point, he stopped feeling pain because he went into a state of shock, hearing everything as if from a distance and "everything went black." He claims that he heard one of the policemen say he thought he was dead, but the other took his pulse, verified that he was alive and kicked him even more. He was then taken in a van to a building of the Office of the Attorney General of the Republic, where he was placed in a small, cold cell; there he heard Cristina Mireles Gallegos and Sofia Martínez Jiménez in the distance, screaming, crying, and begging not to be beaten anymore.

10. Upon hearing the two women being tortured, the alleged victim indicates that he began to scream asking them to leave them alone. Then two police officers came and yelled at him. They ordered him to get on his knees and put his hands behind his back, then one officer hit him in the head while the other stepped and jumped on his feet. One of them kicked him in the stomach, upon which he fell forward and began vomiting blood. As his breathing became labored, one of the policemen said to call a doctor. The doctor requested an ambulance, but there was none available, so Osvaldo Díaz Millán was taken to a hospital in a van. On the way, they continued to threaten and beat him.

11. He states that they arrived at the emergency room of the General Hospital of Queretaro City, where he was admitted under police guard. Even there, the agents continued to strike him in the head until a nurse intervened and demanded they stop. The following day, on the evening of March 2, 2011, Osvaldo Diaz Millan was discharged from the hospital.

12. He says that back in the Office of the Attorney General of the Republic's building, he was interrogated in a way that made no sense to him, and he was shown a photo album in which he did not recognize anyone. He states that they brought him some documents to sign, and when he tried to read them, he realized that they were confessions of the other alleged victims. He therefore decided to tear them up and not sign them. After threats were made against him and Cristina Mireles, he was forced to sign fresh documents containing false confessions.

13. He indicates that on that evening, they were taken to an informal detention facility along with other people, where they were shackled by their hands and feet and tied to a bunk bed. Cristina Mireles Gallegos and Sofia Martinez Jiménez were made to mop the floor wearing ankle shackles. He indicates that

after 15 days, they removed their shackles because a "human rights lawyer"<sup>10</sup> arrived and asked them how they were doing, but because they had been threatened, they only asked for basic necessities. On the last day of the *arraigo*, April 3, 2011, they were finally allowed to make a call. They were then transferred to the Preventive Detention and Criminal Punishment Enforcement Center in San Juan del Río, Querétaro, where a public defender arrived, who did not provide them with any information, nor did she explain what would happen in the process. In addition, Osvaldo Díaz Millán claims that once the *arraigo* was over, he was harassed by the Director of Security and received very little support or information regarding his legal status.

14. On May 4, 2011, Mr. Díaz Millán was transferred to CEFERESO 5 Oriente, in Villa Aldama, Veracruz, where on May 13, 2011, he gave his preparatory statement, reporting the acts of torture he had suffered. The alleged victim remained in the said penitentiary center while the criminal proceedings continued, until June 4, 2015, when he was transferred to CEFERESO 2 Oriente, in El Salto, Jalisco. The petitioner does not indicate the reasons for this transfer, nor does it detail the events that occurred during those years.

15. Mr. Diaz Millan indicates that the original criminal case against all of the alleged victims, 140/2011, was separated off into case 140/2011-IV. This was done so he could request the closure of the investigation once the experts had drafted and ratified their expert report in accordance with the Istanbul Protocol.<sup>11</sup> However, this did not apply to Cristina Mireles and Sofía Martínez, whose expert opinions were not ratified simultaneously with that of Mr. Díaz Millán.<sup>12</sup>

16. It should be noted that the petitioner does not provide a detailed account of the judicial process, nor does he clearly differentiate between what happened in the federal and state courts. However, he indicates that on October 31, 2019, in criminal case 140/2011-IV, the Third District Judge for Federal Criminal Proceedings in the state of Jalisco declared that the evidence presented by the prosecution was obtained in violation of Mr. Díaz Millán's human rights.<sup>13</sup> The prosecutor's office then filed an appeal against the ruling, but the Magistrate of the Second Unified Court of the Third Circuit upheld the ruling that the evidence was obtained in violation of the alleged victim's human rights.

17. Even so, the process continued its course,<sup>14</sup> and finally, on April 21, 2021, the Single Court of First Criminal Instance of the Judicial District of San Juan del Río, in Querétaro, convicted him of three felonies<sup>15</sup>; he was thus sent to CEFERESO 2 Occidente, in El Salto, in the state of Jalisco, to serve his sentence.

18. However, the petitioner argues that in the conviction, the judge recognized the detention as arbitrary, also acknowledging the acts of torture committed by police officers,<sup>16</sup> hence the petitioner calls it unjust that despite this, he was convicted of three criminal offenses even though his human rights were violated from the moment of his arrest, as recognized by judges in other statements.

19. Additionally, the Commission finds that while the petitioner indicates that he is able to file a writ of *amparo* directly against the trial court's guilty verdict, he does not indicate having done so.

20. Lastly, according to the petitioner's communication of July 17, 2023, as of September 29, 2020, he is currently being held in CEFERESO No. 13 CPS-Oaxaca located in Miahuatlán de Porfirio Díaz, Oaxaca, serving his sentence.

<sup>10</sup> The institution for which the lawyer worked is not indicated.

<sup>11</sup> Although a copy of the forensic medical expert opinion in accordance with the Istanbul Protocol performed on Mr. Díaz Millán, dated June 19, 2018, is in the case file, the date on which it was ratified is unknown.

<sup>12</sup> The petitioner does not indicate the exact dates on which the opinion was ratified for Cristina Mireles and Sofia Martinez.

<sup>13</sup> No legible copy of the judgment is available.

<sup>14</sup> The details of this part of the process are not known.

<sup>15</sup> There is no information on the length of his sentence.

<sup>16</sup> None of the parties provided the judgment during the processing of this petition.

*Specific information submitted by Cristina Mireles Gallegos*

21. Cristina Mireles—who was pregnant at the time of the events—states that their violent arrest took place without a warrant and that she, Mr. Díaz Millán, and Ms. Martínez Jiménez were subsequently taken to a building of the Office of the Attorney General, where they were not given the opportunity to telephone anyone. She alleges that she continued to be beaten and brutally tortured there and does not remember for how long. She indicates she was made to sign a false statement and was asked for hair and saliva, allegedly to fabricate evidence against her.

22. She also states that "afterwards [...] I don't know where they took us, but when they uncovered my face, they threw me into a room with many mattresses where they handcuffed my feet and hands for a month, without knowing anything about my family [...] while I was in the informal detention house, some people came to show me photos and recordings, and there was never a lawyer. I was always defenseless." After a month in informal custody, she was transferred to the San Juan del Río prison in Querétaro, where a hearing was held for her to testify. There, she stated that she had been tortured, and that she was "forced to do what they wanted"; also, in the written statement expanding on her statement, she indicated that she was coerced into signing a statement. She also alleges that the authorities stole documents that were part of her expert evidence, singling out the "Mixed Trial Court, for stealing my Istanbul Protocol expert report document."

23. In May 2011, Cristina Mireles Gallegos was transferred to Federal Center No. 4 in Tepic Nayarit, where she learned the crimes of which she was accused; she states: "I cannot properly write down all the ways my procedural guarantees were violated. If I ask for help it is because I am a victim [of] corruption of the State of Queretaro." Subsequently, Ms. Mireles was convicted<sup>17</sup> and has been serving her sentence for 12 years. She is currently being held at the CEFERESO Women's Facility CPS 10 in Coatlán del Río, Morelos. Lastly, she stated that, "My only remaining recourse is direct writ of *amparo*. I don't know if it is retaliation, I don't know, I only know that I am afraid." As in the case of Mr. Díaz Millán, she does not specify whether she filed a direct writ of *amparo*.

24. The petitioner also reports that Cristina Mireles Gallegos was pregnant when she was detained, and that she lost her pregnancy as a result of torture.<sup>18</sup>

*Authorities who learned of the alleged torture*

25. The alleged victims, for their part, emphasize that in their preparatory statements and their extensions, they informed the authorities about the torture they suffered and how they were coerced to confess—they do not indicate to which crimes. They therefore indicate that the control judge had full knowledge of these acts of torture. They also allege that the timely investigations needed to determine if torture took place were not carried out for five years, until finally a psychological examination of Mr. Díaz Millán was performed in accordance with the Istanbul Protocol on June 19, 2018. The Commission notes that the dates on which the examinations of Cristina Mireles Gallegos and Sofía Martínez Jiménez were conducted are unknown. The petitioner alleges that this delay in the examination was the result of unjustified delays on the part of judicial authorities—both in appointing the experts and in paying their fees.

26. Additionally, the petitioners indicate that they reported the torture to the National Human Rights Commission, which sent representatives to CEFERESO 5 Oriente on April 3, 2012. They told Mr. Díaz Millán that he should contact the Querétaro State Human Rights Commission, as the facts took place in that state. The State Commission opened case file CEDH/1872/2012/PJ; and after approximately one year, they informed the alleged victims that "violations of their human rights" were "presumed" and that it was therefore appropriate to conduct the corresponding investigations. However, they allege that this state commission gave them five days to respond and provide evidence, which was impossible since they were

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<sup>17</sup> In the handwritten letter presented by the alleged victim, dated May 23, 2023, the length of her sentence is illegible, and its date is not indicated.

<sup>18</sup> The alleged victim does not indicate how many months pregnant she was at the time of the facts.

deprived of their liberty. Thus, the petitioner indicates that because this deadline was not met, there was deemed to be a lack of legal interest and the investigation did not continue.

27. Also, the alleged victims indicate that they filed a complaint with the Jalisco State Human Rights Commission, where the First Inspector General's Office initiated an investigation under case file number 6464/2015/I. Subsequently, a lawyer from the commission visited Mr. Osvaldo Díaz Millán. However, after that visit, he heard no more about the investigation.

28. Likewise, on August 7, 2017, they submitted a brief to the President of the Supreme Court of Justice of the Nation, informing him of the delay in getting the expert opinion in accordance with the Istanbul Protocol. The office of the high court responded in a note dated December 11, 2017, that it lacked jurisdiction to hear the complaint; however, it referred the matter to the District Court of Criminal Amparo in the state of Jalisco.<sup>19</sup>

#### *Central arguments of the petitioners*

29. The alleged victims state that they suffered severe physical and psychological torture during their detention, in the following days, and for a full month during the *arraigo*, and they allege that as a result of the alleged torture, Cristina Mireles Gallegos lost the baby she was pregnant with at the time of the facts. They also allege a failure to diligently investigate and punish the torture even though they reported it to multiple authorities. They likewise argue that the State is required and has the responsibility to train its personnel in charge of detentions and custody to prevent cases of torture.

30. Additionally, the alleged victims report a series of irregularities in their criminal processes. They allege that they were apprehended without a prior arrest warrant, and that they did not have access to legal assistance during the initial stage of their prosecution. They claim that they were held incommunicado from the time of their arrest until their transfer to a detention center and were given no opportunity to contact their relatives or a legal representative. They also indicate that the presumption of their innocence was violated, as the evidence used against them was obtained through torture and threats, which they argue the judges should have taken into account during their criminal prosecution.

#### **Arguments of the Mexican State**

31. At the time of this report, the only communication available from the State is its written response to the transfer of the petition, received at the IACHR on July 19, 2016. Therefore, the information presented in this section corresponds to the internal actions taken up to that date. However, despite this, the information provided by Mexico up to that time provides a more detailed account of the criminal proceedings brought against the alleged victims, which complements the information provided by the petitioner.

##### *a) Criminal proceedings before state courts*

32. Following a complaint of kidnapping filed on January 31, 2011, the Public Prosecutor's Office of Querétaro initiated preliminary investigation SC/11/2011. On March 2, 2011, it ordered the urgent detention of Osvaldo Díaz Millán, Sofía Martínez Jiménez and Cristina Mireles Gallegos for the criminal offenses of aggravated kidnapping and intentional homicide.

33. On March 16, 2011, the preliminary investigation of the three alleged victims was filed before the Mixed Judge of Criminal Trial Court of Amealco Bonfil, under criminal case 19/2011. On March 31, 2011, the alleged victims filed a preparatory statement, assisted by a public defender. Subsequently, on April 1, 2011, they were formally ordered placed in pretrial detention in connection with the crimes of aggravated rape, homicide, and kidnapping.

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<sup>19</sup> No information is provided regarding any actions this body may have taken.

34. In its communication—which, as mentioned above, is dated July 2016—Mexico indicated that the criminal case was still under preliminary investigation, and that “multiple appeals and motions filed by the petitioners have been resolved. Currently, the process is paused, waiting for them to present a number of pieces of evidence they proposed before it can continue.”

*b) Federal criminal proceedings*

35. The State indicates that the Federal Public Prosecutor's Office of the Office of the Assistant Attorney General for Specialized Investigation into Organized Crime, Specialized Kidnapping Unit, filed preliminary investigation PGR/SIEDO/UEIS/256/2011, in which it brought a criminal action against the alleged victims and other persons, accused of the crime of organized crime and stockpiling firearms reserved exclusively for use of the Army; in addition, a criminal action was brought against Osvaldo Díaz Millán of the crime of possession of firearms reserved exclusively for the use of the Army, Navy and Air Force.

36. On April 1, 2011, the First District Court for Federal Criminal Proceedings filed case 140/2011, and on April 2, 2011, issued a warrant for the arrest of the three alleged victims. This arrest warrant was served on Sofia Martínez Jiménez and Cristina Mireles Gallegos on May 4, 2011, leaving them at the disposal of the Second District Court of Federal Criminal Proceedings; and on May 5, 2011, for Osvaldo Díaz Millán, leaving him at the disposal of the First District Court of Federal Criminal Proceedings.

37. Following the preparatory statements of the three alleged victims, on May 15, 2011, Mr. Osvaldo Díaz Millán was ordered placed in pretrial detention for the crimes of organized crime and stockpiling of firearms reserved exclusively for the use of the Army. Osvaldo Díaz Millán filed an appeal before the Second Unitary Court of the Third Circuit; however, on September 27, 2011, the court upheld the order. On May 15, 2011, Sofia Martínez and Cristina Mireles were ordered placed in pretrial detention for the crimes of organized crime and stockpiling firearms reserved exclusively for the use of the Army. Their public defender appealed the decision before the Second Unitary Court of the Third Circuit; however, on September 29, 2011, the court ruled to uphold the order.

*State arguments on the inadmissibility of the petition*

38. The State asks that the petition be declared inadmissible because at the time of its communication (in 2016) both proceedings were in the pretrial stage and were awaiting the presentation of evidence by the alleged victims. Thus, it argues that admitting the petition would violate the complementarity principle. In addition, it emphasized that should the petitioners disagree with the eventual decision of the national courts, they would still have the opportunity to file an appeal and subsequently a writ of *amparo*.

39. In the same sense, it stated that domestic remedies had not been exhausted regarding the alleged torture, since following the alleged victims' complaints, the Mixed Criminal Trial Court of Amealco Bonfil forwarded the information to the Attorney General's Office of Querétaro and the Federal Public Prosecutor's Office. The latter declined competence to the Public Prosecutor's Office of the state of Querétaro, which initiated the preliminary investigation AESP/45/2014, which, as of 2016, was still in process.

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

40. To analyze the exhaustion of domestic remedies in this case, the IACHR recalls that, according to its settled and standard practice, in order to identify the suitable remedies that should have been exhausted by a petitioner before resorting to the Inter-American System, the first methodological step in the analysis consists of separating the different claims made in the petition in order to proceed to examine them individually.<sup>20</sup> In the instant case, the petitioners have presented the Commission with two fundamental

<sup>20</sup> For illustrative purposes, the following IACHR reports may be consulted: Report 117/19. Petition 833-11. Admissibility. Workers released from Boa-Fé Caru Farm. Brazil. June 7, 2019, paras. 11, 12; Report 4/19. Petition 673-11. Admissibility. Fernando Alcântara de Figueiredo and Laci Marinho de Araújo. Brazil. January 3, 2019, para. 19 et seq; Report 164/17. Admissibility. Santiago Adolfo [continúa...]



claims, which constitute the object of their petition: (i) acts of unlawful deprivation of liberty, torture, consequences of torture, and the failure to properly investigate and punish these violations; and (ii) specific procedural violations in criminal cases brought domestically.

*Alleged acts of unlawful deprivation of liberty, torture, consequences of torture, and the failure to properly investigate and punish these violations*

41. The petitioner alleges that in the course of the two criminal cases against him before state and federal courts, a formal arrest warrant was issued against him based on evidence that he considers flawed because it was based on confessions obtained through threats and torture. On April 1, 2011, the alleged victims were also prosecuted under federal jurisdiction before the First District Court for Federal Criminal Proceedings for the crimes of organized crime and stockpiling of firearms reserved exclusively for the use of the Army.

42. In this regard, according to the information provided by both parties, the criminal proceeding before the state jurisdiction was initiated based on a complaint alleging a criminal offense of aggravated kidnapping filed in January 2011, and following investigation by the Public Prosecutor's Office of Querétaro, the three alleged victims were ordered arrested, an order that was carried out on February 28, 2011. On April 1, 2011, the Mixed Criminal Trial Court of Amealco Bonfil issued a formal warrant for the arrest of the alleged victims for the crimes of gang rape, homicide, and aggravated kidnapping.

43. As a result, on April 2, 2011, the court issued a warrant for the arrest of the three alleged victims. Sofia Martínez Jiménez and Cristina Mireles Gallegos were placed at the disposal of the Second District Court of Federal Criminal Proceedings, and Osvaldo Díaz Millán at the disposal of the First District Court of Federal Criminal Proceedings. On May 15, 2011, the three alleged victims were ordered placed in pretrial detention. Osvaldo Díaz Millán then filed an appeal before the Second Unitary Court of the Third Circuit; however, on September 27, 2011, the court upheld the order of pretrial detention. Sofia Martínez and Cristina Mireles appealed the order before the Second Unitary Tribunal of the Third Circuit, which on September 29, 2011, ruled to uphold the order. As a result, the alleged victims have exhausted the corresponding avenues with respect to these claims.

44. They also claim that they were repeatedly tortured and threatened by police officers in order to extract a confession that had been pre-arranged from the start of the investigations, and that the torture extended throughout the month-long informal detention. As a result, Cristina Mireles lost her unborn child.

45. The record states that the alleged victims informed multiple authorities about the alleged torture they suffered and attempts to force confessions. They first alleged this when they gave their initial statements and the extensions to them, such that the Second District Court for Federal Criminal Proceedings was aware of the alleged torture—in the case of Cristina Mireles and Sofia Martínez—as was the First District Court for Federal Criminal Proceedings—in the case of Osvaldo Díaz. Likewise, Osvaldo Díaz Millán states that his torture was recognized by the psychological profile prepared pursuant to the requirements of the Istanbul Protocol on June 19, 2018. He even indicates that the torture he experienced was acknowledged in the judgment issued by the Third District Court for Federal Criminal Proceedings in the State of Jalisco on October 31, 2019, as part of criminal case 140/2011-IV, a judgment that declared the evidence presented by the prosecutor's office inadmissible because it was obtained in violation of his human rights. The alleged victims also filed petitions before the National Human Rights Commission, and the State Human Rights Commissions of Querétaro and Jalisco reporting the alleged torture and forced confession. At the same time, the alleged victims say they sent a letter to the Supreme Court of Justice of the Nation in August 2017 reporting the alleged torture.

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Villegas Delgado. Venezuela. November 30, 2017, para. 12; Report 57/17. Petition 406-04. Admissibility. Washington David Espino Muñoz. Dominican Republic. June 5, 2017, paras. 26, 27; Report 168/17. Admissibility. Miguel Ángel Morales Morales. Peru. December 1, 2017, paras. 15-16; Report 122/17. Petition 156-08. Admissibility. Williams Mariano Paría Tapia. Peru. September 7, 2017, paras. 12 et seq; Report 167/17. Admissibility. Alberto Patishtán Gómez. Mexico. December 1, 2017, paras. 13 et seq; or Report 114/19. Petition 1403-09. Admissibility. Carlos Pizarro Leongómez, María José Pizarro Rodríguez and relatives. Colombia. June 7, 2019, paras. 20 and following.

46. In this regard, the State indicated at the time that domestic remedies had not been exhausted with respect to the alleged torture. It indicates that investigations were launched into the allegations of torture, threats, and abuse when the Mixed Criminal Trial Court of Amealco Bonfil forwarded the information to the Attorney General's Office of Querétaro and the Federal Public Prosecutor's Office. However, that office simply declined jurisdiction to the Public Prosecutor's Office of the state of Querétaro, which in 2014 finally launched preliminary inquiry AESP/45/2014. According to information provided by the State in 2016, that inquiry remains ongoing.

47. The IACHR recalls here that its stance in cases of torture is always that the State has a duty to diligently initiate, pursue, and complete a criminal investigation to identify, prosecute, and punish the perpetrators of such a crime.<sup>21</sup> In multiple of its decisions, the Inter-American Commission has concluded that the State's duty to act with diligence is triggered immediately when the victim or someone acting on their behalf brings the alleged torture or abuse to the attention of the authorities by any suitable means.<sup>22</sup> Such means may include a criminal complaint, a communication to the prison or administrative authorities,<sup>23</sup> a report to a judicial authority,<sup>24</sup> or even the findings of national human rights bodies.<sup>25</sup> When news of torture has been brought to the attention of the authorities through one or more of these channels, and the criminal justice system has failed to initiate the corresponding investigation, the IACHR has declared the unjustified delay exception applies to the duty to exhaust domestic remedies.<sup>26</sup>

48. For these reasons, the Commission understands that the conditions for the exception to the requirement of exhaustion of domestic remedies set forth in Article 46(2)(c) of the American Convention have been met, since more than 13 years have elapsed since the alleged torture began with the arrest of the alleged victims on February 28, 2011, and—for the purposes of this admissibility analysis—there has been an unjustified delay in investigating, prosecuting, and punishing the alleged acts of torture, threats, and forced confession.

49. Taking into account that the alleged victims reported that they had been subjected to torture since 2011 as part of their criminal prosecution; that this issue was raised to various authorities and human rights commissions; and that there was no attempt to address their complaints until 2014; that the petition was received by the IACHR on April 5, 2013; and that the physical and psychological effects of the crime, as well as the impunity of the aforementioned torture to which the alleged victims were allegedly subjected, persist to this day, the IACHR concludes that, with regard to this aspect of the petition, it was presented within a reasonable period of time, pursuant to the terms of Article 32(2) of the Rules of Procedure.

*Regarding the criminal proceedings conducted domestically*

50. The alleged victims argue that their right to a fair trial was violated insofar as they were detained without a warrant and for several weeks, they were subjected to criminal prosecution without a defense attorney.

51. In 2016, the criminal proceeding against the alleged victims was active and in the evidence stage. In 2018, the expert opinion was issued for Osvaldo Díaz as required by the Istanbul Protocol, but not for Cristina Mireles Gallegos or Sofía Martínez Jiménez. The criminal case was therefore separated off into case 140/2011-IV so that Mr. Osvaldo Díaz Millán could request the closure of the preliminary investigation

<sup>21</sup> IACHR, Report No. 37/18. Admissibility. Patricio Germán García Bartholin. *Chile*. May 4, 2018, para. 19; Report 156/17. Admissibility. Carlos Alfonso Fonseca Murillo. Ecuador. November 30, 2017, para. 13.

<sup>22</sup> IACHR Report No. 20/17. Admissibility. Rodolfo David Piñeyro Ríos. Argentina. March 12, 2017, para. 5.

<sup>23</sup> IACHR Report No. 128/18. Petition 435-07. Admissibility. Antonio Lucio Lozano Moreno. Peru. November 19, 2018, para. 10; Report No. 166/17. Admissibility. Fausto Soto Miller. Mexico. December 1, 2017, para. 11

<sup>24</sup> IACHR Report No. IACHR, Report No. 14/08, Petition 652-04. Admissibility. Hugo Humberto Ruiz Fuentes. Guatemala. March 5, 2008, para. 64; Report 11/18. Admissibility. Nicolás Tamez Ramírez. Mexico. February 24, 2018, para. 6.

<sup>25</sup> IACHR Report No. 15/18. Petition 1083-07. Héctor Galindo Gochicoa and family. Mexico. February 24, 2018, para. 8.

<sup>26</sup> IACHR Report No. 166/17. Admissibility. Fausto Soto Miller. Mexico. December 1, 2017, paras. 5, 11; Report No. 4/19. Petition 673-11. Admissibility. Fernando Alcântara de Figueiredo and Laci Marinho de Araújo. Brazil. January 3, 2019, para. 22; Report 122/17. Petition 156-08. Admissibility. Williams Mariano Paría Tapia. Peru. September 7, 2017, para. 16; Report 20/17. Admissibility. Rodolfo David Piñeyro Ríos. Argentina. March 12, 2017, para. 5.

following the ratification of the expert opinion. On October 31, 2019, the Third District Judge of Federal Criminal Proceedings in the state of Jalisco issued a statement describing its finding that the evidence of the Prosecutor's Office was obtained in violation of Osvaldo Díaz Millán's human rights; after an appeal by the Prosecutor's Office, the Magistrate of the Second Unitary Court of the Third Circuit confirmed the statement. Nevertheless, the process continued, and on April 21, 2021, the Unified Criminal Trial Court of the Judicial District of San Juan del Río, in Querétaro, found Mr. Osvaldo Díaz Millán guilty of three crimes. For her part, Ms. Mireles Gallegos was sentenced—without any further information being available—and has been serving her sentence for 12 years in the CEFERESO Women's Facility CPS 10 in Coatlán del Río, Morelos.

52. The State argued that remedies had not been exhausted with respect to the criminal proceedings. However, regardless of the fact that the Mexican State's response was issued prior to the trial court's ruling, the State clearly indicated that the alleged victims had the remedies of appeal and direct *amparo* available to them as effective remedies in their criminal cases. For their part, the alleged victims acknowledged that direct *amparo* was available to them, but do not provide any information as to whether they attempted to file this or any other remedy against their criminal convictions. It should be noted that this Commission forwarded information related to this petition to the State after the sentences of October 31, 2019, which indicated that the evidence from the Prosecutor's Office was obtained in violation of the rights of Mr. Osvaldo Díaz Millán, and on April 21, 2021, when the mentioned alleged victim was found guilty. However, the State did not comment on these decisions; the only response from the State regarding this petition is dated July 19, 2016.

53. Finally, regarding the claims related to the criminal processes, since the petitioner argues that the conviction of the alleged victims was based on evidence obtained under torture, the Commission notes that these allegations are closely linked to the obligation to investigate and clarify possible acts of torture and the duty not to give probative value to such evidence to determine a person's criminal responsibility. Therefore, the Commission considers that it is not possible for the alleged victims to properly challenge their criminal conviction without first clarifying whether the alleged acts of torture were committed. Based on this, the Commission estimates that this aspect of the petition is inextricably linked to the merits of the matter; and it implicates a broader analysis of these processes themselves in light of Articles 8 and 25 of the American Convention. Therefore, a more detailed analysis of this aspect of the petition is necessary at the merits stage; consequently, for the purposes of this admissibility decision, the IACHR observes that domestic remedies were exhausted in the criminal processes against the alleged victims, in accordance with Articles 46.1.(a) and 46.1.(b) of the American Convention.

## VII. ANALYSIS OF COLORABLE CLAIM

54. The Commission finds that the petition describes *prima facie* possible violations of the human rights of Osvaldo Díaz, Cristina Mireles, and Sofía Martínez, inasmuch as, according to the petitioner, (a) they were detained in a violent and threatening manner; (b) they were tortured to make them sign forced confessions; (c) they were held in informal detention for a month, in degrading conditions and held incommunicado; and (d) despite the fact that they informed multiple authorities at different points in the process, there was no investigation or punishment of these violations.

55. It should be noted that the Commission does not constitute a fourth instance that can evaluate the evidence regarding the possible guilt or innocence of the alleged victims in this case.<sup>27</sup> The purpose is not to determine the innocence or guilt of the alleged victims, but to define whether the judicial authorities have violated obligations stipulated in the American Convention, particularly the principle of presumption of innocence, the duty not to use evidence obtained under torture, and the right to judicial protection. In this sense, at the merits stage of the present case, the Inter-American Commission will not rule on the guilt or innocence of the alleged victims concerning the criminal charges brought against them at the domestic level.

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<sup>27</sup> See for example, I/A Court H.R., Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits. Judgment of November 19, 1999. Series C No. 63, para. 222; Case of Moya Solís v. Peru. Preliminary objections, merits, reparations and costs. Judgment of June 3, 2021. Series C No. 425, para. 28; and Case of Manuela et al. v. El Salvador. Preliminary objections, merits, reparations and costs. Judgment of November 2, 2021. Series C No. 441, para. 147.

Instead, it will establish the factual framework of its pronouncement based on any specific violations attributable to the State concerning the American Convention.

56. In view of the foregoing considerations, the Inter-American Commission concludes that the allegations of the petitioner, *prima facie*, are not manifestly groundless and require a study of the merits, since if corroborated, they could constitute violations of articles 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 11 (protection of honor and dignity), 17 (protection of the family), 24 (equal protection) and 25 (judicial protection) of the American Convention, read in conjunction with its articles 1(1) (obligation to respect rights) and 2 (duty to adopt domestic legal effects); and articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Osvaldo Díaz Millán, Sofía Martínez Jiménez, and Cristina Mireles Gallegos (pregnant at the time of the facts), and Article 7 of the Convention of Belém do Pará to the detriment of Cristina Mireles Gallegos and Sofía Martínez Jiménez.

57. Regarding the claim of alleged violation of Articles 3 (recognition of juridical personality) and 14 (right to rectification or reply) of the American Convention, the Commission observes that the petitioners have not provided sufficient arguments or support for a *prima facie* conclusion that a violation may have taken place.

### **VIII. DECISION**

1. To declare this petition admissible regarding articles 5, 7, 8, 11, 17, 24, and 25 of the American Convention, read in conjunction with articles 1(1) and 2.

2. To declare this petition admissible with respect to articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.

3. To declare this petition admissible with respect to Article 7 of the Convention of Belém do Pará.

4. To declare this petition admissible with respect to articles 3 and 14 of the American Convention.

5. To notify the parties of this decision; continue with analysis of the merits of the matter; and 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 7<sup>th</sup> day of the month of June, 2024. (Signed:) Roberta Clarke, President; Arif Bulkan, Andrea Pochak, and Gloria Monique de Mees, Commissioners.