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REPORT No. 58/15
PETITION 348-09
REPORT ON ADMISSIBILITY

JOSÉ ALFREDO JIMÉNEZ MOTA AND FAMILY
MEXICO

Approved by the Commission at its session No. 2046 held on October 17, 2015
156TH Regular Period of Session.

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and family. Mexico. 17 October 2015.

REPORT No. 58/15¹
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I. SUMMARY

1. On March 11, 2009, the Inter-American Commission on Human Rights (hereinafter “the Commission” or the “IACHR”) received a complaint from the Inter American Press Association (hereinafter “the petitioner” or “the IAPA”) alleging the international responsibility of the State of Mexico (hereinafter “the State” or “Mexico” or “Mexican State”) for the violation of rights enshrined in the American Convention on Human Rights (hereinafter the “American Convention” or the “Convention”), as a result of the kidnapping and disappearance of journalist José Alfredo Jiménez Mota.

2. The petition is related to the alleged kidnapping and subsequent disappearance of journalist José Alfredo Jiménez Mota of the newspaper *El Imparcial* on April 2, 2005, in the city of Hermosillo, State of Sonora, Mexico. The petitioner alleges that the disappearance was the consequence of Jiménez Mota’s kidnapping by a group with ties to organized crime, with the possible collaboration of public officials, for reasons connected to his profession. It maintained that the investigative actions taken by the State have not produced effective results; the direct perpetrators have not been identified, and the victim’s whereabouts remain unknown. Accordingly, the petitioner asked the IACHR to find the Mexican State internationally responsible for the alleged violations of Articles 4, 5, 7, 8.1, 13, and 25 of the American Convention.

3. The State asked the Commission to declare the petition inadmissible. It asserted that the facts alleged therein do not describe a human rights violation, since the State took diligent investigative measures upon learning of the alleged victim’s disappearance. It further stated that the direct participation or acquiescence of state agents in Jiménez Mota’s disappearance had not been proven.

4. Without prejudging the merits of the case, after examining the positions of the parties in light of the admissibility requirements established in Articles 46 and 47 of the Convention, the IACHR decided to declare the petition admissible with respect to the alleged violation of 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), 13 (Freedom of Thought and Expression), and 25 (Right to Judicial Protection) of the Convention, to the detriment of the alleged victim, as well as articles I and II of the Inter-American Convention on Forced Disappearance of Persons. Additionally, the Commission decided to declare the claim admissible for purposes of examining the potential violation of Articles 5 (Right to Humane Treatment), 8 (Right to a Fair Trial), and 25 (Right to Judicial Protection) of the Convention in relation to Jiménez Mota’s relatives, all in connection with the general obligations enshrined in Article 1.1 of said treaty.

5. Finally, the Commission decided to give notice to the parties of this Admissibility Report, publish it, and include it in its Annual Report to the General Assembly of the Organization of American States.

II. PROCEEDINGS BEFORE THE INTER-AMERICAN COMMISSION

6. On March 11, 2009, the Commission received the petition and assigned number P-348-09 to it. On May 7, 2009, the Commission received additional information. On May 29, 2014, the Commission forwarded the pertinent parts of the petition to the State. The State’s reply was received on September 19, 2014, and forwarded to the petitioner on March 9, 2015.

¹ Commissioner José de Jesús Orozco Henríquez, a Mexican citizen, did not take part in the deliberations or in the decision related to this petition, in accordance with Article 17.2.a of the Commission’s Rules of Procedure.

III. POSITIONS OF THE PARTIES

A. Position of the petitioner

7. The petitioner asserted that at the time the events took place Mr. Jiménez Mota was working as a journalist at the newspaper *El Imparcial*, and that the paper was investigating organized crime and public safety in the State of Sonora, Mexico.

8. The petitioner stated that at four o'clock in the afternoon on Saturday, April 2, 2005, Jiménez Mota was on his way to the offices of *El Imparcial*. When he was two or three blocks from his destination, as he crossed Plaza Hidalgo, the alleged victim was reportedly photographed by two individuals. This, according to the complaint, had frightened Jiménez Mota, and he sought refuge in a restaurant where he knew the owners. After the people who had photographed him left, the alleged victim went to the newspaper. The petitioner stated that, according to computer records, Jiménez Mota left at 8:45 p.m. The petition asserts that, at 9:00 p.m., Jiménez Mota contacted a reporter friend, with whom he planned to meet up later that night together with other friends. It affirms that the alleged victim told his friend that he was going to meet one of his contacts beforehand, and "that he was very nervous."

9. According to the petition, the alleged victim was with the then-Assistant Director of the State Penitentiary System of Sonora between 9:00 and 10:00 that night. According to the petitioner, the alleged victim conversed with this person about matters he was investigating, and upon his departure he said that he had to go see another contact.

10. The petitioner stated that there were no other witnesses to provide an account of what happened next. According to the petitioner, the alleged victim's cell phone shows that the last call he received that Saturday was at 23:04 hours. It was reportedly a call from the then-deputy director of the Mexican Attorney General's Office in Sonora, who—according to the petition—was "one of his main sources of information." It stated that in the investigation process undertaken following Jiménez Mota's disappearance the then-deputy director of the Mexican Attorney General's Office in Sonora denied having a close relationship with the alleged victim, although he backpedaled upon learning of the existence of the record of their phone conversation; he later stated that he may have called Jiménez Mota, but that he had not answered. Nevertheless, according to the petition, the phone records showed a two-minute conversation. In view of this information, the deputy director responded that Jiménez Mota had called him to ask for some information, but, according to the petition, the deputy director told the reporter that he had to ask the Communications Office. According to the complaint, Jiménez Mota never arrived at the gathering with his friends as he had planned that night. He has remained disappeared since that time.

11. The petitioner stated that for several days no one suspected that the alleged victim had disappeared. It was on Tuesday, April 5, 2005 that Jiménez Mota's relatives reported his disappearance to the State Office of the Attorney General. The case was registered under number 90/05, for the offense of unlawful deprivation of liberty and other offenses resulting from the investigation. The petitioner provided an account of various reactions from public authorities regarding the journalist's disappearance, as well as the statements of journalists demanding his return.

12. On April 25, 2005, the case file on the disappearance of journalist José Alfredo Jiménez Mota was taken over for investigation by federal authorities, and was assigned to the Office of the Deputy Attorney General for Special Investigation into Organized Crime (*Subprocuraduría de Investigación Especializada de Delincuencia Organizada*, SIEDO²). The petitioner stated that from that point forward there were numerous changes in the prosecutors in charge of investigating the facts. Indeed, one prosecutor was assigned on May 2, 2005, and then removed 23 days later because of errors in the proceedings and a lack of diligence. The next

² In 2012, the Office of the Deputy Attorney changed its name to *Subprocuraduría Especializada en Investigación de Delincuencia Organizada*, SEIDO. See: [Reglamento de la Ley Organica de la Procuraduria General de la Republica. 23 de julio de 2012.](#)

prosecutor assigned to the case was later removed, according to the petition, because he was "very exposed" and had been identified by organized crime groups. The following prosecutor was also removed. According to the petitioner, no reasons were given publicly to explain these removals; it was just reported that a new prosecutor had been appointed who would work, according to the petition, from Mexico City. In the petitioner's opinion, the change in prosecutors "was interpreted as a brake on the investigations, as that last prosecutor's investigations were reportedly aimed at federal public servants as co-perpetrators."

13. The petitioner stated that SIEDO reported having 10 lines of investigation linked to drug trafficking in Sonora. It stated that one of them attributed responsibility for the kidnapping and disappearance of the alleged victim to the then-director of the Sonora State Preventive Police, as well as eight alleged drug traffickers. It added that in a February 2006 report the weekly newspaper *Zeta de Tijuana* ran a story reporting that numerous public servants of the State de Sonora were tied to drug trafficking, including the State Attorney General and the director of the State Preventive Police. The petitioner stated that the article published in *Zeta de Tijuana* was allegedly based on an internal report of the National Security and Investigation Center (CISEN) detailing the links between employees of the State de Sonora and drug trafficking. The petitioner also stated that Jiménez Mota had reportedly been investigating the facts in this report prior to his disappearance, but that "it is unknown whether the PGR is investigating whether this report could be one of the motives for his disappearance." It further stated that Jiménez Mota's disappearance has also been connected to the actions of hit men from the organization "Los Números."

14. Finally, the petitioner indicated that there had been no significant progress in the investigation since then. It stated that as of June 2005, 36 individuals had been questioned, and that in the following 3 years, until April 2008, statements had only been taken from 14 more people. It noted that a statement issued by the Attorney General's Office on April 1, 2008 stated that "the lines of investigation require additional evidence that may be provided by the public in order to further the current investigations or open others."

15. Based on these facts, the petitioner alleged the violation of the rights enshrined in Articles 4, 5, 7, 8.1, 13, and 25 of the American Convention, to the detriment of journalist José Alfredo Jiménez Mota. With respect to the right to personal liberty, the petitioner stated that the alleged victim was deprived of his liberty in an action in which "state and federal public servants allegedly took part, at the behest of drug trafficking organizations in the region." With regard to the alleged violation of the right to life, the petitioner recalled that, given the time that has elapsed and the insufficiency of the measures taken to find the journalist alive, it is possible that he may have been murdered. In relation to the right to freedom of expression, it alleged that the victim's disappearance was connected to his work as a journalist—an allegation accepted even by the public authorities in charge of the investigation. It maintained that, in fact, the disappearance was intended to thwart the alleged victim's journalistic work and, secondly, to impede the work of all journalists in Sonora, who—given the alleged victim's disappearance and the situation of impunity surrounding the event ever since—decided to stop investigating issues related to drug trafficking. It added that the impunity that has prevailed in this case and the uncertainty of Jiménez Mota's fate has resulted in harm to the physical, psychological, and emotional welfare of his relatives, and violated their right of access to justice.

B. Position of the State

16. The State alleged that the investigations have been conducted in accordance with the inter-American standards, since they have been undertaken without delay, with due diligence, and with the objective of ascertaining the truth and locating journalist Jiménez Mota. It explained that the investigation into Jiménez Mota's disappearance began as soon as it was reported, in preliminary investigation No. 90/2005, which was taken over by federal authorities on April 21, 2005, under investigation PGR/SIEDO/UEITA/031/2005 and preliminary investigation PGR/SIEDO/UEIS/177/2005. It maintained that the investigation was conducted with due diligence and that the case file contains the records of 41 official interrogations, 25 certificates from the prosecution's investigation, two on-site inspections, seven informational reports, seven expert opinion reports, five anonymous complaints, and six official attestations. It also stated that 89 telephone numbers had been linked to the investigation.

17. In addition, the State maintained that the authorities had pursued a considerable number of “lines of investigation of different kinds” into the disappearance of journalist Jiménez Mota. It explained that some lines of investigation pursued with the aim of establishing the facts surrounding Mr. Jiménez Mota’s disappearance include: a) the possible disappearance of Mr. Jimenez Mota at the hands of the group “Los Seris”; b) the theory that the journalist was alive and hiding out in a village near San Blas, in the State of Nayarit; c) the theory that the journalist had romantic relationship troubles; d) the possible disappearance of the journalist at the hands of the criminal organization “Los Güeritos” or “Los Números”; e) the theory that the journalist was disappeared by the criminal drug trafficking organization “Los Salazar,” because of his journalistic work; f) the possible disappearance of Mr. Jimenez Mota by the criminal organization known as the “Sinaloa Cartel,” and g) the potential involvement of alias “Mi Niño.” The State explained that these lines were explored with specific investigative actions, but that none yielded any evidence that implicated state agents directly or indirectly in Jiménez Mota’s disappearance.

18. Mexico reported on future perspectives for the investigation and the actions that would be taken to establish potential new lines of investigation, and affirmed that “Ever since the Mexican State learned of the disappearance of Mr. Jimenez Mota it has taken, and continues to take, multiple actions to investigate the facts and determine his whereabouts.”

19. The State added that, “Parallel to the investigations to determine who is responsible for his disappearance, the Mexican State has continuously taken actions and steps designed to ascertain Mr. Jiménez Mota’s whereabouts.” The State reported various actions undertaken with that purpose. Regarding the most recent, it stated that, “On April 3 and July 3, 2013, and March 25, 2014, requests were made for the PGR’s Division of Expert Services to compare the genetic profiles of Mr. Jiménez Mota’s relatives to the PGR’s data bank, but no positive results have been obtained.”

20. The State maintained that, “The fact that the criminal responsibility of whomever disappeared Mr. Jimenez Mota has not been determined thus far, in spite of the exhaustiveness of the investigations conducted by the State, is not grounds for the Commission to conclude that the State failed to comply with its obligations under Articles 8 and 25 of the American Convention, as these are obligations of means rather than ends.”

21. It further asserted that, “The records of the investigations into disappearance of Mr. Jimenez Mota do not provide sufficient evidence to meet the three requirements to establish a case of forced disappearance. This is because: (a) It has been impossible to establish in the investigations that any state agent was involved either directly (through acts) or indirectly (by acquiescence or tolerance of the acts) in the disappearance of Mr. Jiménez Mota; and (b) Given the lack of evidence to conclude that a state agent is responsible for Mr. Jiménez Mota’s disappearance, it is impossible for the State to acknowledge his detention and disclose his fate or whereabouts.” Therefore, the State was of the opinion that it cannot be considered responsible for the violation of the rights guaranteed in Articles 4, 5, 7, and 13 of the American Convention.

22. It concluded that “In this regard, the facts alleged by the petitioner do not describe a human rights violation and therefore, according to Article 47 of the American Convention, the Commission must declare the petition inadmissible.” Without prejudice to the foregoing, it affirmed “its commitment to continue with the investigation into the disappearance of Mr. Jimenez Mota with the aim of locating [him], as well as those responsible for the criminal acts committed against him.”

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence of the Commission *ratione materiae, ratione personae, ratione temporis, and ratione loci*

23. Under Article 44 of the American Convention, the petitioner has *locus standi* to file petitions before the Inter-American Commission. The petition names an individual person as the alleged victim, with respect to whom the State agreed to guarantee the rights enshrined in the American Convention. With respect to the State, the Commission notes that Mexico has been a State Party to the American Convention since

March 24, 1981, on which date it deposited its instrument of ratification.

24. The IACHR has jurisdiction *ratione materiae* because the petition concerns alleged violations of human rights protected by the American Convention that reportedly took place in Mexico, a State Party thereto.

25. The Commission has jurisdiction *ratione temporis* insofar as the State's obligation to respect and guarantee the rights protected in the American Convention was in force at the time the acts alleged in petition reportedly took place. Finally, the Commission has jurisdiction *ratione materiae*, because the petition complains of the possible violation of human rights protected by the American Convention.

B. Admissibility requirements

1. Exhaustion of domestic remedies

26. Article 46.1.a of the American Convention provides that for a petition submitted to the Inter-American Commission to be admissible under Article 44 of the Convention, the petitioner must first have pursued and exhausted domestic remedies, in keeping with generally recognized principles of international law. This requirement is intended to allow national authorities to consider an alleged violation of a protected right and, when applicable, to give them the opportunity to correct it before it is heard and decided by an international body.

27. Article 46.2 establishes that this requirement does not apply when: a) the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated; b) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies. Both the Commission and the Inter-American Court have indicated that only those remedies that are adequate to redress the alleged violations must be exhausted.

28. The Commission finds that the facts alleged by the petitioner constitute criminal offenses under the domestic law that the government must investigate and prosecute on its own initiative,³ which in such cases is the suitable way to establish the facts, prosecute the perpetrators, and impose the appropriate criminal penalties, as well as to facilitate other means of adequate reparation. That is to say, the events relating to the alleged disappearance of José Alfredo Jiménez Mota are criminal acts under the domestic law that must be investigated and prosecuted by the State on its own initiative.

29. In this case, the available information leads to the determination that, although a criminal investigation was opened (PGR/SIEDO/UEIS/177/2005) following the disappearance of journalist José Alfredo Jiménez Mota, the domestic investigations are still at the preliminary stage 10 years after the events. The Commission observes that the effectiveness of the domestic remedies is part of the dispute between the parties. For purposes of admissibility, the Commission finds that the fact that the case has been at the investigative phase for 10 years allows for the application of the exception contained Article 46(2) (c) of the Convention, on the grounds of unwarranted delay. In any case, the Commission must examine the effectiveness of the remedies in relation to the rights to protection and the right to a fair trial at the merits phase.

2. Timeliness of the petition

30. Article 46.1.b of the American Convention states that petition must be "lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final

³ IACHR. Report No. 56/13, Petition 80-02, *Herminio Deras García et al.* 2013 Annual Report of the IACHR, para. 34; Report No. 38/13, Petition 65-04, *Jorge Adolfo Freyter Romero et al.*, 2013 Annual Report of the IACHR, para. 32.

judgment.” This rule does not apply when the Commission finds that the case falls under one of the exceptions to the exhaustion of domestic remedies set forth in Article 46.2 of the Convention. In such cases, the Commission must determine whether the petition was filed within a reasonable period of time in accordance with Article 32.2 of its Rules of Procedure, which establishes that:

In those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time, as determined by the [Inter-American] Commission. For this purpose, the Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case.

31. In this case, the disappearance of Alfredo Jiménez Mota reportedly occurred on April 2, 2005; the petition was filed on March 11, 2009, and as of the date of this report the State has not concluded the necessary investigations to establish the facts and prosecute the perpetrators, or determine the journalist’s whereabouts. Given the characteristics of this case, particularly that, to this day, the whereabouts of the alleged victim has not been determined and the criminal investigation is at the initial stages, the Commission finds that the petition was filed within a reasonable period of time and that the admissibility requirement concerning the timeliness of the petition has been met.

3. Duplication of proceedings and international *res judicata*

32. Under Article 46.2.c) of the Convention, the admission of petitions is subject to the requirement that the matter “is not pending in another international proceeding for settlement,” and Article 47.d) of the Convention stipulates that the Commission shall not admit a petition that is substantially the same as one previously studied by the Commission or by another international organization. In the petition under consideration in this report, the parties have not asserted either of these two circumstances, nor are such circumstances evident from the case file.

C. Colorable claim

33. For purposes of determining admissibility, the Inter-American Commission must decide whether the alleged facts amount to a violation of the rights enshrined in the American Convention pursuant to the requirements of Article 47.b, or whether the petition is “manifestly groundless” or “obviously out of order,” as described in Article 47.c. At this stage of the proceedings, the Commission must perform a *prima facie* evaluation, not to establish the alleged violations of the American Convention, but to examine whether the petition alleges acts that could potentially constitute violations of the rights guaranteed in the American Convention. This determination does not entail the prejudgment of the merits of the case.⁴

34. Neither the American Convention nor the IACHR’s Rules of Procedure require petitioners to identify the specific rights alleged to have been violated by the State in the matter submitted to the Commission, although they may do so if they wish. It falls to the Commission, on the basis of the system’s jurisprudence, to determine in its reports on admissibility which provisions of the pertinent inter-American instruments are applicable, and the violation thereof may be established if the facts alleged are demonstrated with sufficient evidence and legal arguments.

35. In this case, the petitioner alleged that journalist José Alfredo Jiménez Mota was disappeared because of the exercised of his right to freedom of expression, due to the articles he published in the newspaper *El Imparcial*, and that State agents are involved in his disappearance. The petitioner also stated that, to date, the open investigations have yielded no specific results and the journalist’s fate remains unknown. It asserted that the State has not taken effective measures to exhaust the lines of investigation connected to the alleged victim’s practice of journalism, or to identify and punish the direct perpetrators or masterminds.

⁴ See, IACHR, Report No. 21/04, Petition 12.190, Admissibility, José Luís Tapia González et al., Chile, February 24, 2004, para. 33.

36. In view of the legal and factual elements presented by the parties and the nature of the matter brought before it, the Commission finds that, if proven, the petitioner's allegations could describe violations of the rights enshrined in 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), 13 (Freedom of Thought and Expression), and 25 (Right to Judicial Protection) of the Convention, to the detriment of the alleged victim. In addition, at the merits phase, the Commission will examine the potential violation of Articles 5 (Right to Humane Treatment), 8.1 (Right to a Fair Trial), and 25 (Right to Judicial Protection) of the Convention in relation to Jiménez Mota's relatives. All of the above is in relation to Article 1.1 of the Convention. Similarly, it considers that articles I and II of the Inter-American Convention on Forced Disappearance of Persons may be applicable.

37. In conclusion, the IACHR finds that this petition is neither "manifestly groundless" nor "obviously out of order," and therefore declares that the petitioner has met *prima facie* the requirements established in Article 47.b. of the American Convention with respect to potential violations of Articles 3, 4, 5, 7, 8, 13, and 25 of the American Convention, in relation to the general obligations enshrined in Article 1.1 thereof and articles I and II of the Inter-American Convention on Forced Disappearance of Persons, as stated above.

V. CONCLUSIONS

38. Based on the foregoing legal and factual considerations, and without prejudging the merits of the case, the Inter-American Commission concludes that the petition at issue in this report satisfies the admissibility requirements set forth in Articles 46 and 47 of the American Convention of the American Convention, and therefore,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To find this petition admissible with respect to the rights protected in Articles 3, 4, 5, 7, 8, 13, and 25 of the American Convention, in relation to Article 1.1 thereof, and articles I and II of the Inter-American Convention on Forced Disappearance of Persons may be applicable.

2. To provide notice of this decision to the parties, continue with the analysis of the merits of the case; and

3. To publish this decision and to include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 17th day of the month of October, 2015. (Signed): Rose-Marie Belle Antoine, President; James L. Cavallaro, First Vice President; Felipe González, Rosa María Ortiz and Tracy Robinson, Commissioners.