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REPORT No. 90/17
PETITION 1066-07
REPORT ON ADMISSIBILITY

CARLOS FRANCISCO CERVANTES RODRIGUEZ
AND FAMILY
MEXICO

Approved by the Commission at its session No. 2093 held on July 7, 2017.
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I. INFORMATION ABOUT THE PETITION

Petitioning party:	Alberto Cervantes Rodriguez
Alleged victims:	Carlos Francisco Cervantes Rodriguez and Family
State denounced:	Mexico
Rights invoked:	Articles 1 (Obligation to Respect Rights), 4 (Life), 8 (Fair Trial), 11 (Privacy) and 25 (Judicial Protection) of the American Convention on Human Rights; ² Inter-American Convention on Forced Disappearance of Persons ³

II. PROCEDURE BEFORE THE IACHR⁴

Date on which the petition was received:	August 16, 2007
Additional information received at the initial study stage:	November 6 and 29, 2007; February 9, September 30, October 5 and 11, December 6, 2011; and February 10, 2012
Date on which the petition was transmitted to the State:	February 28, 2012
Date of the State's first response:	July 13, 2012
Additional observations from the petitioning party:	March 29, September 26, October 9, 2012; March 7, 2013; March 3 and December 17, 2014
Additional observations from the State:	December 3, 2012; March 27, July 11, 2013 and March 23, 2015

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes; American Convention (instrument of ratification was deposited on March 24, 1981)

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

Duplication of procedures and International <i>res judicata</i>:	No
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¹ In accordance with Article 17.2(a) of the IACHR's Rules of Procedure, Commissioner Luis Ernesto Vargas Silva, a Colombian national, did not participate in the discussion or the decision on this matter.

² Hereinafter "the Convention" or "the American Convention."

³ The petitioner does not specify the articles.

⁴ The observations presented by each party were duly transmitted to the opposing party.

Rights declared admissible	Articles 4 (Right to Life), 5 (Right to Humane Treatment), 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the American Convention, in relation to its Article 1.1 (Obligation to Respect Rights)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes; exception to Article 46.2.c of the ACHR applies
Timeliness of the petition:	Yes; under the terms of Section VI

V. ALLEGED FACTS

1. The petitioner submits that on November 17, 2005 his brother Carlos Francisco Cervantes Rodriguez (“the alleged victim”) was kidnapped by private individuals in Guanajuato State. On November 20, 2005, the alleged victim’s wife lodged a complaint with the Prosecutor’s Office Division Specialized in Serious Offenses in Guanajuato. This complaint opened preliminary inquiry 2925/2005.

2. According to the petitioner, on December 16, 2005 three young people found a dead body that resembled his brother, in a hill in Silao, Guanajuato. On December 22, 2005, the Attorney General’s Office of Guanajuato confirmed the body’s identity and concluded that the alleged victim died of a gunshot wound in the skull. The petitioner asserts that he was never given any information on the results of the investigation and that the only way he stayed informed was through the newspapers.

3. The petitioner indicates that he filed a complaint to the Ombudsman’s Office of Guanajuato, arguing that the special prosecutor leading the investigation, Armando Vallejo, committed serious irregularities during the investigation while he covered up those actually responsible for the denounced facts. The Ombudsman’s Office resolved on February 18, 2008, that there were not sufficient elements in the petitioner’s complaint. Then, the petitioner resorted to the National Commission on Human Rights, whose decision of September 30, 2008 was similar to that of its state counterpart.

4. The petitioner indicates that, apart from the preliminary inquiry begun in the state of Guanajuato, on April 18, 2006 a preliminary examination statement was made before the Unit Specialized in Investigation and Kidnap (UEIS) of the Attorney General’s Office of the Republic (PGR) for the offenses of organized crime and kidnap, which are federal crimes (preliminary inquiry PGR/SIEDO/UEIS/079/2006). As a result of that statement, nine people were identified as persons possibly responsible; they confessed having participated in the events. Therefore, the Federal Police brought them before the Second District Court for Federal Criminal Matters of Mexico state. Said Court issued an arrest order in relation to the offense of organized crime, and those purportedly responsible were detained. In regards to the offense of kidnap, said Court ruled that the competent authority to establish the facts was the judge of the ordinary jurisdiction (the state jurisdiction). After being transmitted to the ordinary court, the proceedings for the offense of kidnap were successively forwarded to three different courts; finally, the Judge of the Second Judicial District Court of Guanajuato settled the case. The petitioner claims that such constant changes made it difficult for him to follow the proceedings.

5. Likewise, he asserts that in view of the many changes of courts, the term in jail for the detainees prescribe; consequently, on October 25, 2010, they were released and fully acquitted. The petitioner indicates that, although many times he asked in writing why the proceedings before Guanajuato’s Second Judicial District Court did not make any progress, he never got an answer. Moreover, he states that on March 23 and May 17, 2011 he presented a request to the Prosecutor’s Office attached to the Second District Court for criminal matters, in order to access the case files; and that on May 25, 2011, by an official communication, the Prosecutor’s Office rejected both requests on the grounds that the representing attorney was not duly authorized by the petitioner.

6. As regards to the investigations underway in Guanajuato for the offense of kidnap, the petitioner denounces that the persons responsible have not yet been identified nor prosecuted; and that the

investigation underway at the federal level for the offense of organized crime has not produced any specific results either. He asserts that, despite the latter, some important examinations were made in the framework of investigation PGR/SIEDO/UEIS/079/2006 to the people linked to those proceedings; and that later the authorities of Guanajuato did not use these examinations in the state proceedings. Most importantly, the petitioner stresses that said examinations proved that the perpetrators of the kidnap –who the petitioner claims are the alleged victim’s widow and brother-in-law– had paid the then Special Prosecutor for Serious Offenses, so that the latter would ensure their impunity. In 2007 this official was promoted to the post of Deputy Attorney of Guanajuato. According to the petitioner, this is the reason why the criminal proceedings in Guanajuato have not been settled yet even though it’s been over ten years since the facts. In this regard, he denounces that in the framework of said open investigation in Guanajuato neither the alleged victim’s widow nor his brother-in-law have ever been summoned for a preliminary examination or investigated.

7. At the same time, in the framework of intestate succession proceedings before the Second District Civil Court of Guanajuato, the judge asked for some copies to the Second Judicial District Court; however, on August 30, 2011, the latter refused to comply with the request, arguing that the information concerning preliminary inquiries is confidential and that, otherwise, they would be held administratively accountable as public officials. Likewise, the petitioner asserts that on November 17, 2011 he met with Guanajuato’s Attorney General to request him to further the investigation into the kidnap and murder of his brother; he says, however, that it was an unsuccessful request as one of the deputy attorneys was directly involved in the denounced facts.

8. The petitioner asserts that on September 11, 2011 he filed an appeal for legal protection before the Twelfth District Constitutional Appeal Court for Criminal Matters of the Federal District. On October 31, 2012, said Court ordered the Federal Prosecutor’s Office to insist on the criminal proceedings for the offense of kidnap before Guanajuato’s District Judge. This resolution is allegedly under review before the Eighth Collegiate Criminal Court of the First Circuit. In addition, on July 27, 2012, he filed another appeal for legal protection before the Second District Court of Guanajuato, which recognized him as a party to the proceedings as well as his right to be informed on the results.

9. The petitioner also lodged an appeal against the release of the detainees, before the Eighth Criminal Chamber of the High Court of Justice of Guanajuato state. This appeal was dismissed on July 9, 2014 on the grounds that the elements of the *corpus delicti* had been proved but that the detainees’ possible responsibility had not been proved. Consequently, on July 30, 2014, the petitioner presented a legal protection appeal against said ruling, but the First District Court of Guanajuato rejected it by its resolution of December 19, 2014.

10. On the other hand, the State requests the IACHR to find this petition inadmissible in view of the fact that the petitioner has not exhausted the domestic remedies. It claims that any discontent with the decisions made by judicial authorities that the petitioner believes are contrary to due process of law or the right to a fair trial can be objected by means of a trial for the protection of fundamental rights. The State considers that said remedy has not been filed against the judicial rulings denounced. Moreover, it asserts that the autonomous institutions on human rights assisted the petitioner and did not find any irregularities in the proceedings.

11. The State also submits that the detainees in the federal investigation were released as their confessions were not sufficient to prove their responsibility for the facts attributed to them. It further asserts that one of the detainees said that he had been forced by federal authorities to admit responsibility for the facts, which is inadmissible in a criminal investigation. The State indicates that it continues searching for one of the accused (the alleged victim’s brother-in-law) to record his statement as an indictée, since after his release it has been impossible to find him.

12. Likewise, Mexico recalls the subsidiary nature of the Inter-American System on the basis that it cannot work as a fourth instance and that based on such subsidiarity, the I/A System cannot interfere with matters that exclusively pertain to the State, like criminal proceedings. It also indicates that the facts are still investigated by the Deputy Attorney’s Office of Specialized Investigation of the Attorney General’s Office

of Guanajuato state, and that the investigations have been delayed by the complexity of the case, which is not attributable to the State. Furthermore, it submits that the judicial authorities of Guanajuato have always been in contact with the alleged victim's family members, who were informed of which prosecutor's office of the Attorney General's Office is in charge of the investigation.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

13. In this case, the petitioner claims that the proceedings before the judicial authorities of the state of Guanajuato for the alleged victim's kidnap are still underway, and that along the years following the start of these proceedings, he has filed several appeals for legal protection in order to further the proceedings and ensure his right of access to justice. The State, for its part, indicates that the petitioner, in view of his discontent with the judicial authorities' judgments, should have filed legal proceedings for the protection of fundamental rights; and it submits that the open criminal investigation due to the alleged victim's kidnap is still underway in view of the complexity of the facts; therefore, it believes that domestic remedies have not been exhausted.

14. The Inter-American Commission notes that in cases that involve purported offenses liable to investigation *ex officio*, like this case, the State must promote and further the criminal proceedings, which, in cases like this, are the appropriate remedy to establish the facts, prosecute the persons responsible and determine the criminal punishment applicable. Likewise, the Commission notes that, as a general rule, a criminal investigation must be conducted promptly in order to protect the interests of the victim, preserve the evidence and even ensure the rights of anyone who, in the context of the investigation, is considered a suspect.⁵

15. In this case, the Commission notes that the petitioner presented several remedies to challenge and further the investigation. In this regard, the petitioner filed an appeal against the resolution ordering the release of the detainees, which was rejected on July 9, 2014; and that he lodged three appeals for legal protection in different occasions. One of these protection appeals was settled on September 11, 2011 and urged the Federal Prosecutor's Office to insist on the criminal proceedings and further the investigation; however, to this date and based on the information submitted by the parties, the case at the federal level is still in the investigation stage.

16. In addition, the Commission notes that, as indicated by the State, the investigation is still open at the Deputy Attorney's Office of Specialized Investigation of the Attorney General's Office of Guanajuato, and it has been over eleven years since the alleged victim was kidnapped and killed. In this regard, the IACHR concludes that this situation leads to the exception for unwarranted delay foreseen in Article 46.2.c of the American Convention. Likewise, the Commission notes that the petition was received on August 16, 2007; that the facts denounced here allegedly took place starting in November 2005; and that certain effects persist to date. Therefore, the Commission believes that the petition was filed within a reasonable period, in accordance with Article 32.2 of the IACHR's Rules of Procedures and Article 46.1.b of the Convention.

VII. COLORABLE CLAIM

17. In view of the foregoing considerations, the information available in the files of the petition and its precedents, the IACHR considers that the alleged facts *prima facie* establish possible violations of the rights embodied in Articles 4 (Right to Life), 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the American Convention, in relation to its Article 1.1 (Obligation to Respect Rights), to the detriment of Mr. Alberto Cervantes Rodriguez (the alleged victim's brother) and the family members that will be identified in the merits stage. In the merits stage, the Commission will also analyze if the alleged facts concerning a

⁵ In this regard, see IACHR, Report No. 31/16, Petition 326-03, Admissibility, Aristides Soto Soto and Family, Honduras, July 22, 2016, par. 29; and IACHR, Report No. 38/14, Admissibility, Petition 1089-06, Leonardo Rene Morales Alvarado and Others, Honduras, July 3, 2014, par. 22.

purported denial of justice may establish a violation of the alleged victims' right to humane treatment under Article 5 of the Convention.⁶

18. As regards to the complaint about the purported violation of Article 11 (Right to Privacy) of the American Convention, as well as of the Inter-American Convention on Forced Disappearance of Persons, the IACHR notes that the petitioner did not submit arguments or evidence sufficient to *prima facie* consider their alleged violation by the State. In this regard, the Commission notes that the subject matter of this petition is the purported lack of an effective investigation into the alleged kidnap and subsequent murder of the alleged victim by private individuals, as well as the alleged violations of due process and judicial protection.

19. Lastly, as to the State's argument concerning a fourth instance, the Commission notes that by declaring this petition admissible, it does not seek to replace the domestic authorities' competence. Conversely, the Commission will analyze in the merits stage whether the domestic judicial proceedings conformed to the rights of due process and judicial protection and ensured the alleged victims' right of access to justice under the terms of the American Convention.

VIII. DECISION

1. To declare the instant petition admissible in relation to Articles 4, 5, 8 and 25 of the American Convention, in relation to its Article 1.1;
2. To find the instant petition inadmissible in relation to Article 11 of the American Convention;
3. To notify the parties of this decision;
4. To continue with the analysis on the merits; and
5. 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 in the city of Lima, Peru, on the 7th day of the month of July, 2017. (Signed): Francisco José Eguiguren, President; Margarette May Macaulay, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice President, and Luis Ernesto Vargas Silva, Commissioners.

⁶ In this regard, see IACHR, Report No. 31/16, Petition 326-03, Admissibility, Aristides Soto Soto and Family, Honduras, July 22, 2016, par. 29; and IACHR, Report No. 38/14, Admissibility, Petition 1089-06, Leonardo Rene Morales Alvarado and Others, Honduras, July 3, 2014, par. 22.