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**REPORT No. 140/20**  
**PETITION 127-09**  
REPORT ON ADMISSIBILITY

RAUDEL GÓMEZ OLIVAS  
MEXICO

Approved electronically by the Commission on April 26, 2020.

**Cite as:** IACHR, Report No. 140/20, Petition 127-09. Admissibility. Raudel Gómez Olivas. Mexico. April 26, 2020.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Emelia Gómez Olivas
<b>Alleged victim:</b>	Raudel Gómez Olivas
<b>Respondent State:</b>	México <sup>1</sup>
<b>Rights invoked:</b>	Articles 7 (personal liberty) and 8 (fair trial) of the American Convention on Human Rights concerning Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) thereof.

**II. PROCEEDINGS BEFORE THE IACHR<sup>2</sup>**

<b>Filing of the petition:</b>	February 5, 2009
<b>Additional information received at the stage of initial review:</b>	October 2, 2010, July 11, 20, 2012, September 25, 2012, December 22, 2012, July 1, 2013, December 17, 2013, May 5, 2014, October 2, 2015, March 7, 2016, June 16, 19, 2016
<b>Notification of the petition to the State:</b>	June 19, 2016
<b>State's first response:</b>	April 20, 2018
<b>Additional observations from the petitioner:</b>	April 23, 2018, August 21, 2018
<b>Additional observations from the State:</b>	May 7, 2019

**III. COMPETENCE**

<b>Competence <i>Ratione personae</i>:</b>	Yes
<b>Competence <i>Ratione loci</i>:</b>	Yes
<b>Competence <i>Ratione temporis</i>:</b>	Yes
<b>Competence <i>Ratione materiae</i>:</b>	Yes; American Convention (deposit of ratification instrument on March 24, 1981) and Inter-American Convention to Prevent and Punish Torture (deposit of ratification instrument on June 22, 1987).

<sup>1</sup> Pursuant to the provision of Article 17.2.a of the IACHR Rules of Procedure, Commissioner Joel Hernández García, a Mexican national, did not participate in the discussion or the voting on this matter.

<sup>2</sup> The observations submitted 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), and 25 (Judicial Protection) of the American Convention, in relation to Articles 1.1 (Obligation to Respect Rights) and 2 (Domestic Legal Effects) thereof; and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, under the terms of Section VI
<b>Timeliness of the petition:</b>	Yes, under the terms of Section VI

**V. ALLEGED FACTS**

1. This petition deals with allegations of illegal detention, custodial mistreatment/torture, and violations of due process (in the context of criminal proceedings) with respect to Raudel Gómez Olivas (hereafter “the alleged victim” or “Mr. Gómez”).

2. According to the petitioner, on November 25, 2008, the alleged victim was convicted of the *homicidio calificado* (aggravated murder) of Salvador Reyes Torres, and sentenced to a term of imprisonment of 23 years and nine months. This murder allegedly took place on May 14, 2007 in Ensenada, Baja California, Mexico, at a time that the alleged victim claims he was 1600 kilometers away in El Paso, Texas, USA. According to the record, Mr. Gómez ordinarily resided in the city of Chihuahua, Mexico.

3. The alleged victim contends that on June 11, 2007, the prosecuting authorities of Ensenada issued an “*orden de localización y presentación*” against him, and that this was executed on him on January 8, 2008 in the city of Chihuahua. The alleged victim indicates that he was detained by police from Ensenada, and transported to Ensenada by land over a period of 24 hours. According to Mr. Gómez, the police had no authority to detain him (based on the *orden de localización y presentación*), and that the requisite authority for his detention should have been an arrest warrant (*orden de aprehensión*). During the journey to Ensenada, the alleged victim claims that he was subjected to various acts of mistreatment and torture, including beatings, deprivation of food, and threats. Following his arrival in Ensenada, the alleged victim contends that he continued to be subjected to torture and mistreatment, including electric shocks, having a plastic bag placed on head, blows his body, and being kept incommunicado for five days. According to the petitioner, complaints to the authorities<sup>3</sup> did not elicit immediate medical attention and that it was not until 2014 that the alleged victim was finally diagnosed with Post Traumatic Stress Disorder – as a result of his custodial mistreatment<sup>4</sup>. The petitioner alleges that (a) Mr. Gómez was not promptly brought before a judge to determine the legality of his detention; (b) the conditions of his detention were inhumane; that this included overcrowded conditions; getting only 45 minutes of sun a week, constant anal examinations, and generally unhygienic conditions; (c) the domestic courts ultimately failed to address or redress the complaints of custodial mistreatment. The petitioners also contend that the actions of the State served to deprived the alleged victim of the presumption of innocence.

4. According to the petitioner, the prosecuting authorities produced a witness - Guillermo Casillas Arias (“Casillas”) who initially claimed that he witnessed the murder of Salvador Reyes Torres by Mr.

<sup>3</sup> The petitioner states that he complained to the trial judge on January 15, 2008. He also made a complaint to the Public Ministry, but provides no date when this complaint was made.

<sup>4</sup> The petitioner provides a medical certificate to this effect.

Gómez (by shooting). The petitioner alleges that the process by which Casillas identified the alleged victim was flawed and unlawful. In this regard, the petitioner contends that (a) Casillas was initially shown a photo of the alleged victim; and (b) that Casillas subsequently identified Mr. Gómez in an identification parade where Mr. Gómez was the only person in handcuffs; and that the other persons in the parade had no similar physical characteristics to Mr. Gómez. In the subsequent trial (that took place in November 2008), the petitioner argues that Casillas indicated that he could not be certain that the person who killed Salvador Reyes Torres was indeed Mr. Gómez. During the trial, the alleged victim produced alibi evidence to show that he was in El Paso Texas, USA at the time of the murder. In this regard, the alleged victim produced (a) credit card receipts showing that he was a guest at an Embassy Suites Hotel in El Paso, Texas; (b) the evidence of his girlfriend– who was staying with him in El Paso; and (c) the evidence of his girlfriend’s sister (who lives in El Paso). Ultimately, however, the trial court<sup>5</sup> convicted the alleged victim of aggravated murder principally on the evidence of Casillas and imposed a sentence of 23 years and nine months. In this regard, the court applied the principle of immediacy (*principio de inmediatez*) which essentially accorded validity to the initial statement of Casillas, notwithstanding his subsequent contrary evidence. The petitioner also asserts that the trial court dismissed the alibi evidence offered by Mr. Gómez, without adequate consideration or analysis, holding that it was not sufficient to invalidate the evidence of Casillas.

5. The petitioner states that Mr. Gómez appealed his conviction to the *Tribunal Superior de Justicia del Estado de Baja California*, but this court affirmed the decision of the trial court, and accordingly, his appeal was dismissed on July 17, 2009. Subsequently, Mr. Gómez challenged the dismissal of his appeal by way of *amparo* before the *Tribunal Colegiado del Décimo Quinto Circuito*. However, this challenge was dismissed by the Tribunal on February 10, 2011. The alleged victim insists that (a) he was illegally arrested and subjected to custodial mistreatment; (b) the State did not conduct any investigation into his allegations of mistreatment; (c) he exhausted all available domestic remedies, during which he raised allegations of illegal detention, custodial mistreatment and violations of his right to due process (including the acceptance of the evidence of Casillas, and the dismissal of the alibi evidence adduced (by the alleged victim); and (d) the State has had numerous opportunities to redress his claims, but has so far failed to do so.

6. The State rejects the petition as inadmissible principally on two grounds: (a) failure to exhaust domestic remedies and (b) adjudication of the petition by the IACHR would violate the fourth instance formula. In regard to domestic remedies, the State argues that the petitioner had not exhausted domestic remedies at the time of the filing of the petition (in 2009). Further the State contends that it was open to the petitioner to challenge his detention and alleged acts of custodial mistreatment/torture by way of indirect *amparo*; but that this step was never taken. With regard to the alleged acts of custodial mistreatment/torture, the State asserts that the alleged victim was medically examined while in custody, and that such examination failed to reveal any evidence of injury. The State denies that the alleged victim was unlawfully detained, (or detained in inhumane conditions) contending that he was detained in full compliance with the law and international human rights standards.

7. The State argues that the Mr. Gómez was accorded a fair trial during which his allegations illegal detention, custodial mistreatment, and violation of due process were all raised before domestic judicial tribunals and dismissed. The State also notes that these domestic tribunals considered the alibi evidence of the petitioner, and rejected it. In the circumstances, the State asserts that based on the fourth instance formula, the Commission lacks the competence to review these decisions.

8. The State asserts that it has made efforts to ameliorate the situation of Mr. Gómez, pointing out that it authorized the relocation of Mr. Gómez from a prison in Ensenada to another prison in Chihuahua – where he would be closer to his family. The State also indicates that in December 2018, it placed Mr. Gómez on conditional release from prison.

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<sup>5</sup> Juez Tercero de Primera Instancia de lo Penal (Ensenada).

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

9. The petitioner contends that domestic remedies were exhausted with respect to his claims, and further, that there was never any investigation into his allegations of custodial mistreatment/torture. On the other hand, the State contends that the domestic remedies had not been exhausted at the time of the filing of the petition; and that further, it was open to the alleged victim to initiate indirect amparo proceedings regarding his claims. Further the State repudiates the allegations of torture as untrue. Regarding the State's contention that exhaustion of domestic remedies had not occurred at the time that the petition had been filed, the IACHR reaffirms its position that what should be taken into account in determining whether domestic remedies have been exhausted is the situation at the time of the ruling on admissibility.

10. The Commission notes that this petition includes allegations regarding illegal detention, custodial mistreatment/torture, and violations of due process (in the context of criminal proceedings). With respect to the allegations of custodial mistreatment/torture, the Commission has long established that under international standards applicable to cases like this one, where serious human rights violations such as torture are alleged, the appropriate and effective remedy is precisely the undertaking of an effective criminal investigation aimed at clarifying the facts and, if necessary, individualize and prosecute the persons responsible. The Commission notes the State's claim that the medical examinations of the alleged victim did not reveal any evidence of torture. However, in the Commission's view, medical examinations alone are not tantamount to a comprehensive and effective criminal investigation into the allegations of torture. Based on the information supplied by both parties, it appears no such investigation has been undertaken by the State despite the passage of more than ten years since the alleged acts of custodial mistreatment/torture took place. The Commission believes that such a period constitutes an unwarranted delay for the purpose of admissibility; and that accordingly, the petition meets the exception of the requirement of prior exhaustion of domestic remedies, in accordance with Article 46.2.c of the Convention. Also, the Commission believes that the petition was filed within a reasonable time and that the requirement set forth in Article 32.2 of the IACHR Rules of Procedure has been met.

## VII. ANALYSIS OF COLORABLE CLAIM

11. The Commission notes that this petition includes allegations regarding illegal detention, custodial mistreatment/torture, and violations of due process (in the context of criminal proceedings). In view of the elements of fact and law presented by the parties and the nature of the matter brought to its attention, the Commission believes that the claims of the petitioner are not manifestly unfounded and require a substantive study on the merits as the alleged facts, to be corroborated as certain could characterize violations of articles if proved. In this regard, the Commission takes special note of the allegations regarding (a) the detention executed on the basis of an *orden de localización y presentación* (and not on the basis of an arrest warrant); (b) custodial mistreatment and torture, together with the lack of investigation; and (c) the circumstances in which the alleged victim was identified by Casillas, together with the later recantation by this witness; (d) the acceptance of the initial statement of Casillas by the domestic courts together with the dismissal of the alibi evidence presented on behalf of the alleged victim —could establish possible violations of the rights protected by Articles 5 (Humane Treatment), 7 (Personal Liberty), 8 (Fair Trial), and 25 (Judicial Protection) of the American Convention, in relation to Articles 1.1 (Obligation to Respect Rights) and 2 (Domestic Legal Effects) thereof; and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Mr. Gómez.

12. With respect to the State's arguments regarding the fourth-instance formula, the IACHR reiterates that, within the framework of its mandate, it is competent to declare a petition admissible and to rule on the merits when it refers to domestic proceedings that could be in violation of rights guaranteed by the American.

## VIII. DECISION

1. To find the instant petition admissible in relation to Articles 5, 7, 8, and 25 in relation to Articles 1.1 and 2 of the American Convention; and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture.

2. To notify the parties of this decision; to continue with the analysis on the merits; and to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 26<sup>th</sup> day of the month of April, 2020. (Signed): Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President; Margarete May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, Julissa Mantilla Falcón, and Stuardo Ralón Orellana, Commissioners.