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REPORT No. 60/23
PETITION 2211-12
REPORT ON ADMISSIBILITY

MARIO YOBANNY MENDOZA AMADOR
HONDURAS

Approved by the Commission electronically on May 12, 2023

Cite as: IACHR, Report No. 60/23, Petition 2211-12. Admissibility. Mario Yobanny Mendoza Amador. Honduras. May 12, 2023.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Under confidentiality
Alleged victim:	Mario Yobanny Mendoza Amador
Respondent State:	Honduras
Rights invoked:	Articles 4 (life), 5 (humane treatment), 7 (personal liberty) and 24 (right to equal protection) of the American Convention on Human Rights ¹ , in relation to its article 1.1 (obligation to respect rights); and the Inter-American Convention to Prevent and Punish Torture; other international treaties are also invoked ²

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition:	December 5, 2012
Additional information received at the stage of initial review:	April 19, 2018
Notification of the petition to the State:	October 15, 2018
State's first response:	February 22, 2019
Additional observations from the petitioner:	July 14, 2020, October 15, 2020; and April 29, 2022
Additional observations from the State:	April 18, 2022

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>:	Partial, American Convention (deposit of instrument of ratification on September 8, 1977). However, Honduras has not ratified the Inter-American Convention to Prevent and Punish Torture.

IV. 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
Rights declared admissible	Articles 4 (life), 5 (humane treatment), 8 (fair trial) and 25 (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, in the terms of Section VI
Timeliness of the petition:	Yes, in the terms of Section VI

¹ Hereinafter "the American Convention" or "the Convention".

² The Universal Declaration of Human Rights; the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and the International Covenant on Civil and Political Rights.

³ The observations submitted by each party were duly transmitted to the opposing party.

V. POSITION OF THE PARTIES

Position of the petitioner

1. The petitioner claims the international responsibility of the Honduran State for the alleged abuse of authority, torture and injuries caused by police officers against young Mario Yobanny Mendoza Amador (hereinafter "the alleged victim"); as well as the lack of effective investigation and punishment of those responsible.

2. The petitioners state by way of context that the alleged victim was in a vulnerable situation: he had been living on the street since he was seven years old when he became an orphan, and at the time of the events he was suffering from drug addiction and was in a situation of poverty.

3. They hold that, on the night of May 31, 2007, the alleged victim and a friend were in the La Plazuela neighborhood (also known as El Arbolito) in the city of Tegucigalpa when six policemen detained them and searched their belongings. They claim that young Mendoza Amador was carrying money, cigarettes and thinner that he was using as a narcotic; the policemen returned his belongings, except for the solvent. Then, one of the policemen began to spray the alleged victim with said substance and proceeded to light a match, burning him in several parts of his body.

4. The alleged victim's friend tried to put out the fire, but he could not. They claim that the policemen saw this and left the scene, without asking for help; even before leaving they told them: *"don't worry, because in the report [...] we are going to put attempted suicide"*⁴. The friend was eventually able to put out the fire with a sweater and spot the number of the patrol car as the police officers were leaving.

5. A woman who observed what happened called the Fire Department, who arrived to the area and transferred young Mendoza Amador to the Hospital Escuela Universitario, where he remained in the Burn Ward for twenty-eight days, with burns of I and II degree in his arms, thorax and face⁵. In addition, the alleged victim suffered from depressive symptoms while hospitalized and attempted to take his own life.

6. The friend of the alleged victim, with the assistance of the Non-Governmental Organization "Casa Alianza" and the petitioners, filed a complaint before the Public Ministry, where the intervention of the Special Prosecutor's Office for Human Rights was requested. The investigation for the crime of serious injury and attempted homicide officially began on June 5, 2007. The Public Ministry ordered the practice of anticipated evidence on June 22, 2007⁶, in view of the depression presented by the alleged victim and for the purpose of safeguarding her procedural statement.

7. The petitioners hold that, from the beginning of the investigations to date, the only documents in the casefile are: the statements of the alleged victim and his friend; the testimony of four witnesses who were located; the testimony of the police officers who were driving the patrol car with the number that the alleged victim's friend spotted; referrals of investigative measures to the General Directorate of Criminal Investigation, without any updates; and a final investigative measure of March 2, 2010, consisting of a statement by the young Mendoza Amador. The petitioners hold that although they sent different requests to

⁴ Found in document attached to the petition, regarding the extension to the statement of young Mendoza Amador before the Special Prosecutor for Human Rights, of March 26, 2009.

⁵ According to the Clinical File 2051377 and the Medical Opinion of July 10, 2007, made at the request of the Special Prosecutor's Office for Human Rights. The latter indicates about the alleged victim: *"male, 20 years old, unemployed, single, with a history of having been physically assaulted by the police by throwing Tinner (chemical irritant) and setting him on fire, on physical examination there is external evidence of injuries [...] Grade I burns (formation of phlyctenas in the dermis skin layer with 25% of the total body surface damaged), nowadays the danger to life can be up to a loss of 80% of the body surface [...] Type of injuries: Burns (face, neck thorax, abdomen, left arm and forearm, right forearm and hand) compatible to those produced by flammable liquid (chemical).*

⁶ According to the State, this statement was rendered and registered under number 984-2007-J-18.

the Prosecutor's Office -without specifying the dates of these requests-, they only received a verbal reply indicating that no progress was being made in the investigation because "*witnesses would not testify*".⁷

8. The petitioner also holds that young Mendoza Amador suffered threats from police officers after the criminal investigation was opened, for which reason he always fled from them. In a document attached to the petition regarding the amplification of Mendoza Amador's statement of March 26, 2009, the petitioner states that: "*every now and then the police take me away for nothing, whenever they find me they take me away, when they look at me every three days, so I live hidden from the police because I am afraid, because they have told me that next time they will not throw thinner at me but gasoline, the patrol car is from Manchen*".

9. Due to the facts denounced, the petitioners claim that there was a lack of diligence and commitment to the investigation by authorities, as well as a failure to comply with a reasonable period of time in the preparatory stage of the process, which resulted in impunity that has lasted for years. Therefore, they ask the IACHR to apply the exception of exhaustion of domestic remedies.

10. On the other hand, and in response to the State's assertion that "*the investigative proceedings are still in progress*", the petitioner contests that no progress or results were indicated; they consider that the State continues to violate the reasonable time period for an investigation after more than fifteen years, without any real effort from the authorities to find those responsible.

11. With regard to the State's assertion that "*it is not possible to prove, even with minimal evidence, that the act was committed by police officers*", the petitioner recalls that the lack of diligence and unwarranted delay in the investigation of the facts and punishment of those responsible is also being denounced, and not only the responsibility of the agents involved.

12. The petitioner also refers to the administrative investigation -which the State pointed out in its response to the petition- conducted by the Directorate of Police Disciplinary Affairs (hereinafter "DIDAPOL") in case 121-2007; and assures that this has nothing to do with the subject matter of the petition.

13. It should be noted that the petitioning party reports that young Mario Yobanny Mendoza Amador was murdered on April 4, 2018; however, it does not seek to establish a link between the alleged victim's homicide and the facts denounced in the petition.

14. Finally, they request that the investigation of the facts be completed; that measures of reparation be established "*consisting of public recognition by the State for the violation of human rights through written and oral means of communication; posthumous recognition; greater protection by the State for vulnerable victims, especially when they are orphans or live on the streets; that this case be cited in the Honduran Police Academy as an example of police malpractice*".

Position of the Honduran State

15. The State, for its part, argues that the petition should be dismissed for: i) failure to characterize violations; and ii) failure to exhaust domestic remedies.

16. It holds that in the pleadings there is no precise characterization of the facts that are considered to be injured and that admissibility is not appropriate in accordance with the principle of complementarity that governs the Inter-American Human Rights System. It argues that although the complaint was filed against police officers after the proceedings, there are no elements to assert that they

⁷ In the same sense, there is an attached document from the Special Prosecutor's Office for Human Rights dated November 27, 2008, addressed to the Inspector General's Office of the National Police, in which the following is stated: "*We wish to state that since we do not have a witness who could identify the aggressors, we have not achieved the desired effect in the investigations carried out by this Prosecutor's Office, requesting through Official Letter FEDH-1047 the file prepared for this purpose by Internal Affairs, since there is secrecy from police officers who heard the rumor of those who had participated in such an abominable act, which cannot go unpunished due to the magnitude of the crime*".

were responsible for the facts, making it impossible to attribute responsibility to the State for the violations to the humane treatment of the alleged victim.

17. In order to support the assertion that *"it is not possible to prove, even with minimal evidence, that the act was committed by police officers"*, the State asserts that even in the statement of young Mendoza Amador, he was unable to identify the agents, and refers that the alleged victim was under the influence of an inhalant during the events that occurred. The State also reports that DIDAPOL conducted an investigation into the facts in case 121-2007, and that the internal investigation concluded that there was no evidence implicating the police officers in the patrol car under investigation.

18. Likewise, Honduras considers that equality was always maintained in the treatment of the alleged victim, as evidenced by the medical care provided to him, the fact that he had access to file a complaint, and the fact that the corresponding investigation was initiated.

19. As for the exhaustion of domestic remedies, the State notes that the alleged victim's friend reported the events before the Public Ministry on June 5, 2007, under file number 2561-2007. As of that moment, administrative file 6651-200 was opened, initiating an investigation against the police officers assigned to the patrol car that had coverage at the scene of the crime. In addition, the State reports that the Public Ministry, through the Special Prosecutor's Office for Human Rights, instructed the General Directorate of Criminal Investigation to investigate the facts, and holds that *"the investigative proceedings are still in progress"*. Thus, it holds that domestic remedies have not been exhausted, because there are proceedings to be exhausted and the Public Ministry is conducting the corresponding investigations.

20. Honduras considers that the necessary measures have been taken to comply with its international obligations, and that the State's obligation is one of means and not of result. It evokes that the reasonable time period may vary depending on the complexity of the matter, and that in the facts narrated there is no clarity because it has not been possible to individualize the participation of police agents.

21. With regard to the articles invoked by the petitioner from the Universal Declaration of Human Rights, it considers that the petitioner did not specifically describe what the violation is centered on and did not indicate a correlation with the facts denounced. With regard to the Convention against Torture, the Inter-American Convention to Prevent and Punish Torture, and the Covenant on Civil and Political Rights, the State reiterates that it has not been possible to reasonably infer that the facts are attributable to the State; furthermore, that it has complied with its obligation to prevent the violations set forth in the various international instruments recognized by the State.

22. Finally, the State reports that, although it is not the subject of the petition, the homicide of the alleged victim is being investigated by the Special Prosecutor's Office for Crimes against Life, registered under number 0801-2018-0185.

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

23. The Commission observes that the subject matter of the petition consists, on the one hand of a claim regarding the abuse of authority and violations of the alleged victim's right to life and humane treatment, after being allegedly assaulted and tortured by members of the police. On the other hand, the petition refers to the alleged lack of adequate and expeditious investigation and punishment of those responsible. For its part, the State alleges the lack of exhaustion of these investigations, inasmuch as the investigations before the Prosecutor's Office are still active.

24. In view of these facts, the Commission recalls that, in situations involving crimes against life and humane treatment, the domestic remedies that must be taken into account for purposes of the

admissibility of petitions are those related to the investigation and punishment of those responsible⁸. In this regard, the Commission has previously held that in cases such as the present one, which involve possible human rights violations, i.e., which can be prosecuted *ex officio*, and especially when agents of the State are implicated in the alleged facts, the State has the obligation to investigate them. This burden must be assumed by the State as its own legal duty, and not as a management of private interests or depending on the initiative of the latter or on their own provision of evidence⁹.

25. In the instant case, the IACHR notes that, according to the information presented by the petitioner and reiterated by the State, the events that are the subject of the instant petition occurred on May 31, 2007; and that, following a complaint by the petitioners, the Prosecutor's Office began an investigation on June 5, 2007, for the crimes of injury and attempted murder, and that the investigations are still open and inconclusive. In addition to the fact that part of the petitioners' allegations are precisely related to possible acts of police harassment of the alleged victim, subsequent to the assaults to which he was subjected. Thus, more than fifteen years have passed, and the circumstances of the serious injuries of the alleged victim have still not been clarified, nor have those responsible been determined. Despite the fact that it was a concrete event, involving one victim, and that it occurred in the capital of the State itself, in the presence of at least two witnesses; and that immediately after the events the alleged victim went to a public hospital. Consequently, the IACHR concludes that the exception to the exhaustion of domestic remedies applies, in accordance with Article 46.2.c) of the Convention.

26. On this matter, the Commission first reiterates, as it has consistently done, that Article 46.2 of the Convention, by its nature and purpose, is a norm with autonomous content *vis-à-vis* the substantive norms of the American Convention. Therefore, the determination of whether the exceptions to the rule of exhaustion of domestic remedies are applicable to the case in question must be conducted prior to and separate from the analysis of the merits of the case, since it depends on a different standard of appraisal from that used to determine the possible violation of Articles 8 and 25 of the Convention. The IACHR has also stressed that there are no conventional or regulatory provisions that specifically regulate the period of time that constitutes unwarranted delay, for which reason the Commission assesses on a case-by-case basis to determine whether such delay is configured¹⁰. Along these lines, the Inter-American Court has established as a guiding principle for the analysis of the possible unwarranted delay as an exception to the rule of exhaustion of domestic remedies, that "*in no way should the rule of prior exhaustion lead to the international action in aid of the helpless victim to be stopped or delayed to the point of futility*"¹¹. In other words, in the Commission's opinion, the complementary nature of the international protection provided for in the American Convention also implies that the intervention of the bodies of the Inter-American System must be timely in order for it to have any kind of useful effect in the protection of the rights of the alleged victims.

27. With regard to the deadline for filing, the Commission observes that the facts that are the subject of the complaint began on May 31, 2007, and the investigation of the facts began on June 5, 2007; that the petition was received at the IACHR on December 5, 2012, and that the effects of the violations, in terms of the alleged impunity, would extend to the present. Thus, the Commission concludes that the petition was filed within a reasonable period of time in accordance with Article 32.2 of the IACHR Rules of Procedure.

VII. ANALYSIS OF COLORABLE CLAIM

28. The Commission observes that the instant petition includes claims concerning the alleged abuse of authority and the violation of the integrity and life of Mario Yobanny Mendoza Amador, due to the alleged torture perpetrated by the police officers when they set him on fire; as well as the lack of effective judicial protection, investigation of such acts, and punishment of those responsible. The State holds that there

⁸ IACHR, Report No. 72/18, Petition 1131-08. Admissibility. Moisés de Jesús Hernández Pinto and family. Guatemala. June 20, 2018, para. 10.

⁹ IACHR, Report No. 159/17, Petition 712-08. Admissibility. Sebastián Larroza Velázquez and family. Paraguay. November 30, 2017, para. 14; and IACHR, Report No. 68/08, Petition 231-98, Admissibility, Ernesto Travesi, Argentina, October 16, 2008, para. 32.

¹⁰ IACHR, Report No. 14/08, Petition 652-04. Admissibility. Hugo Humberto Ruíz Fuentes. Guatemala. March 5, 2008, para. 68.

¹¹ Inter-American Court of Human Rights, Velásquez Rodríguez v. Honduras, Preliminary Exceptions, Judgment of 26 June 1987, para. 93.

are no violations against the alleged victim inasmuch as it could not be established that it was the police who attacked young Mendoza Amador; furthermore, that access to complaints and to a criminal investigation into the facts has been respected, since said investigation is still active.

29. With regard to the State's affirmations concerning the lack of characterization, the Commission reiterates that, for purposes of admissibility, it must determine whether the alleged facts could characterize a violation of rights in accordance with Article 47.b of the American Convention, whether the petition is "manifestly unfounded" or whether it is "obviously out of order" in accordance with Article 47.c) of the American Convention. The criteria for assessing these requirements differ from those used to rule on the merits of a petition. Similarly, within the scope of its mandate, the Commission has the competence to declare a petition admissible if it refers to domestic proceedings that could violate rights guaranteed by the American Convention. In other words, in light of the aforementioned conventional norms, in accordance with Article 34 of the Commission's Rules of Procedure, the analysis of admissibility focuses on the verification of such requirements, which refer to the existence of elements that, if true, could *prima facie* constitute a violation of the American Convention¹²

30. In view of these considerations and after examining the elements of fact and law put forward by the parties, the Commission considers that the facts presented by the petitioner are not manifestly unfounded. In particular, the Commission considers that the claims concerning the alleged acts of torture and injuries against young Mendoza Amador, allegedly caused by police officers; abuse of authority; the threats subsequently received by the alleged victim from the police; and the State's failure to act with due diligence within a reasonable time to investigate and clarify the facts after more than fifteen years, could constitute violations of Articles 4 (life), 5 (humane treatment), 8 (fair trial), and 25 (judicial protection) of the American Convention in relation to its Article 1. 1 (obligation to respect rights).

31. With respect to the other international instruments alleged by the petitioners, the Commission lacks competence to establish violations of the norms of said treaties, without prejudice to the fact that it may take them into account as part of its interpretative exercise of the norms of the American Convention in the merits stage of the present case, in the terms of Article 29 of the American Convention.¹³

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 1.1, 4, 5, 8 and 25 of the American Convention;

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 10th day of the month of May 2023. (Signed:) Margarete May Macaulay, President; Roberta Clarke, Second Vice President; Julissa Mantilla Falcón and Carlos Bernal Pulido, Commissioners.

¹² IACHR. Report No. 143/18, Petition 940-08. Admissibility. Luis Américo Ayala Gonzales. Peru, December 4, 2018, para. 12; and IACHR. Report No. 293/20, Petition 434-09. Admissibility. Gabriel Ulises Valdez Larqué and family. Mexico, October 13, 2020, para. 22.

¹³ IACHR, Report No. 111/17. Petition 883-07. Admissibility. Rosario Bedoya Becerra. Colombia. September 7, 2017, para. 15.