

OEA/Ser.L/V/II.166
Doc. 199
1 December 2017
Original: Spanish

REPORT No. 168/17
PETITION 1502-07
REPORT ON ADMISSIBILITY

MIGUEL ÁNGEL MORALES MORALES
PERU

Approved by the Commission at its session No. 2111 held on December 1, 2017.
166th Special Period of Sessions.

Cite as: IACHR, Report No. 168/17, Petition 1502-07. Admissibility. Miguel Ángel Morales Morales. Peru. December 1, 2017.

REPORT No. 168/17¹
PETITION P-1502-07
 REPORT ON ADMISSIBILITY
 MIGUEL ÁNGEL MORALES MORALES
 PERU
 DECEMBER 1, 2017

I. INFORMATION ABOUT THE PETITION

Petitioner:	Enrique Ediberto Morales Cañahua
Alleged victim:	Enrique Ediberto Morales Cañahua
State denounced:	Peru
Rights invoked:	Articles 1 (obligation to respect rights), 2 (adopt measures of domestic law), 5 (personal integrity), 7 (individual liberty), 8 (judicial guarantees) and 25 (judicial protection) of the American Convention on Human Rights ²

II. PROCEDURE BEFORE THE IACHR³

Date on which the petition was received:	November 22, 2007
Additional information received at the stage of initial review:	December 15, 2009
Date on which the petition was transmitted to the State:	January 10, 2011
Date of the State's first response:	March 15, 2011
Additional observations from the petitioner:	June 26, 2011; March 12, March 24 and May 22, 2014; January 4, 2017
Additional observations from the State:	March 25, 2011; June 18, 2014; January 4, 2017

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 deposit made on July 28, 1978)

¹ In accordance with the provisions of Article 17.2^a of the Commission's Rules of Procedure, Commissioner Francisco José Eguiguren Praeli, of Peruvian nationality, did not participate in either the discussions nor in the decision in the present matter.

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

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

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
Rights declared admissible	Articles 5 (personal integrity), 7 (individual liberty), 8 (judicial guarantees) and 25 (judicial protection) of the Convention, in connection with its Articles 1 and 2
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, July 6, 2007
Timeliness of the petition:	Yes, November 22, 2007

V. ALLEGED FACTS

1. The petitioner states that Miguel Ángel Morales Morales (hereinafter "the alleged victim") lived in Oaxaca, Mexico, where he worked as a mechanic. He points out that he traveled to Lima, Peru, on May 5, 2002, to repair a boat engine. He states that on June 7, 2002, he was detained in the Chimbote bus terminal, along with two other people traveling with him, by members of the National Anti-Drug Directorate charged with activities related to illicit drug trafficking, and was transferred to the said police institution's facility, where he was detained until June 21, 2002.

2. He states that during his detention he and his companions were the victims of physical and verbal abuse by police personnel to force them to sign self-incriminating statements, without the aid of a lawyer or the presence of the Prosecutor. He adds that the Prosecutor in charge of the case, as was his duty, was not present in any of the proceedings. Nevertheless he signed all the minutes as if he had been present. In particular, he notes that the Prosecutor signed two co-processed interview records with the same date and time, the domicile record registration of the property where the drug was found, the weighing of the seized drug and the inspection of the tanker that transported it. He argues that it was impossible for the Prosecutor to be present at the same time in all the aforementioned proceedings. He indicates that these facts were duly reported to different jurisdictional bodies in all their instances (allegations, requests for liberty, habeas corpus, grievances, and complaints) without any outcome. He indicates that a co-defendant filed a challenge to the Minutes of the Prosecutor's Interrogation due to the absence of the Prosecutor during these proceedings. The alleged victim also joined with this challenge at a later date. The petitioner states that by virtue of said Interview Minutes, the court framed an argument that aggravated the alleged victim's legal situation, identifying him as the head of the group.

3. The petitioner points out that during the investigation stage, various extensions of time were requested, thereby unduly prolonging the alleged victim's preventive detention. He states that after 3 years of preventive detention, on June 16, 2005, the First Specialized Chamber for Criminal Proceedings for Detainees in the Prison of the Superior Court of Justice of Lima illegally and improperly extended the term of preventive detention for an additional 20 months. On June 27, 2005, he lodged an appeal for annulment against this decision which was decided by the Second Transitory Criminal Chamber of the Supreme Court of Justice on November 6, 2006 -that is, 17 months later when the legal time limit is 72 hours - denying the appeal and declaring that the extension did not affect any fundamental right.

4. At the same time, he claims to have filed a writ of habeas corpus on June 17, 2005 for excessive detention, which was found admissible on June 24, 2005; the alleged victim was released and placed under house arrest. The Procurator's Office lodged an appeal against this decision, and on August 11, 2005, the decision was taken to place the alleged victim back in detention. On the same day, the alleged victim filed a constitutional infringement suit and a writ of habeas corpus before the Constitutional Tribunal. On January 3, 2006, this Court declared both actions inadmissible.

5. Regarding the criminal proceedings, he states that proceedings began on June 21, 2002, and that the alleged victim was identified in the investigation as the head of the organization. He indicates that as hearings were held and the evidence was evaluated, it was found that he had not acted as the ringleader, for which reason the First Chamber, by resolution dated November 21, 2006, decided to divest itself of the initial Prosecutor's accusation, a decision with which the Superior Prosecutor in charge of the process concurred. After accepting the benefit of voluntary confession, on January 30, 2007, the First Criminal Chamber of the Lima Superior Court of Justice sentenced the alleged victim as a primary accomplice to nine years in prison for offenses against Public Health- and Illicit drug trafficking against the State. The decision was challenged by the Prosecutor and the Public Procurator and by the alleged victim. The appeal was decided by the Permanent Criminal Chamber of the Supreme Court of Justice on June 8, 2007, which declared the judgment under appeal partially void, and increased the sentence to 25 years imprisonment for the crime of Illicit Drug Trafficking as co-author, departing from the opinion of the Prosecutor who had requested a sentence of 12 years.

6. Alongside the appeal for annulment, the alleged victim filed a writ of habeas corpus on February 17, 2007, before the Special Court of Villa María del Triunfo, which was admitted on February 27, 2007, for having completed the requisite prison term necessary for requesting release, and this court ordered his release with a prohibition on leaving the country. After several appeals, on July 6, 2007, the Third Criminal Chamber for Criminal Proceedings for Detainees in the Prison of the Superior Court of Justice of Lima declared the appeal without merit due to the fact that his sentence had been increased the sentence to 25 years, leaving the release order without effect.

7. The petitioner states that the alleged victim was transferred to the Castro Castro maximum security prison, thereafter to the Piedras Gordas prison, where his life was in danger due to the presence of some co-accused prejudiced by the alleged victim's voluntary confession. He was later transferred to the Challapalca prison, located 1,515 km from Lima and 4,500 meters above sea level. He points out that in this prison he was beaten by the guards, placed in isolation for 30 days without visitors and whenever he complained was the victim of reprisals. Besides this, he was left without appropriate clothes and blankets to protect himself from the cold, and "to file a complaint, the closest city was Puno, 200km away and there was no transportation." The petitioner indicates that all this caused him serious health problems, such as loss of hearing, rhinitis, injuries to the auditory nerves, difficulty in sleeping due to an intense buzzing in the left ear, a situation that led to severe physical and psychological suffering. He notes that the incessant buzzing has led him to despair and to consider suicide, and that the physical suffering he endures has not been duly addressed by the prison authorities, despite numerous written requests for medical appointments. He adds that in 2009 he had to request a habeas corpus to be taken to the hospital to remove stitches after surgery. He also states that he was never taken to the rehabilitation appointments needed after a rupture of a shoulder tendon in jail, and it took 6 months to operate on an infected tooth. The petitioner indicates that at present the alleged victim was returned to the Piedras Gordas maximum security facility but has been threatened with transfer back to Challapalca where his personal integrity is in danger.

8. The petitioner maintains that the State has violated the guarantees of due process, since no reasons have been provided for his preventive detention, which has lasted for almost 5 years. He further observes that it was not until the first oral hearing on August 23, 2006, that the judge informed the accused that they could benefit from a voluntary confession. Consequently, their right to defense had been violated. He indicates that the extensions and delays in the ordinary trial proceedings constitute a violation of his right to be judged within a reasonable time. He asserts that increasing the sentence to 25 years imprisonment in the second instance is a violation of the *reformatio in peius* prohibition. He adds that there were irregularities in the decisions, since the State used the jurisdictional organs to prevent the alleged victim from benefitting from his right to be released. The Judicial Control Body separated and investigated the judges that granted the habeas corpus filed by the alleged victim. Prior to trial, a malicious image of the alleged victim was presented to the public, all with the purpose of exerting pressure on the judges in charge of his case.

9. For its part, the State affirms that the petition is inadmissible since the allegations do not characterize a violation of the rights guaranteed in the Convention. It indicates that the allegations regarding violations of judicial guarantees lack legal and factual support. It reiterates that there is a confession in which

the alleged victim has accepted responsibility for the commission of the crime charged. In this regard, it points out that dissatisfaction with the sentence imposed has not contravened any guarantee of the Convention, especially when the courts, in the framework of their powers, examined the facts and collected all relevant evidence to determine the penal sanction.

10. Regarding the irregularities in the recording of the minutes, the State affirms that this was an issue resolved in the domestic judicial process. It states that during the proceedings, procedural objections may be presented to the records raised to diminish or eliminate the probative value of the same, a facility to which the alleged victim had access throughout the proceedings. It adds that every prosecutor works jointly with deputy prosecutors supporting him in his tasks, therefore procedural steps are carried out simultaneously by the same prosecutor, in accordance with the Organic Law. Based on the foregoing, the State affirms that it has not violated the alleged victim's presumption of innocence.

11. On the other hand, the State indicates that the alleged victim never reported deficiencies regarding the absence of a lawyer, the threats and mistreatment at the time of his arrest, unlike other defendants who did. It affirms that people deprived of their liberty and those who are being prosecuted have the resources to denounce the illegitimate use of force against them, such as, for example, examinations by forensic doctors.

12. With reference to the alleged prolonged detention, the State maintains that the plurality of defendants (around 48), the complexity of the matter, the type of crime, the fact that the criminal organization operated nationally and internationally, as well as the death of one of the judges of the Criminal Chamber who was examining proceedings against the alleged victim, affected the normal processing of the case and the determination of the reasonable time, a circumstance that is not attributable to the court. In this sense, it indicates that the extension of the term of preventive detention is reasonable and the domestic legal system, as well as national jurisprudence, envisages this exception.

13. Regarding the prohibition against altering a conviction "in peius", the State affirms that, according to the Code of Criminal Procedure, if a nullity appeal is filed by the Public Ministry and also by the accused "the Supreme Court may modify the sentence or security measure challenged; increasing or decreasing it, when this is inappropriate to the circumstances of the commission of the crime ". In this case, both parties filed an appeal for annulment before the Supreme Court against the first instance judgment. It indicates that the Superior Prosecutor requested the imposition of 35 years imprisonment and the Supreme Court Judges increased the sentence to 25 years. The State observes that only Supreme Court Judges have the power to reduce or confirm a conviction. Therefore, it points out that the increase in the sentence is legal and justified.

14. The State indicates that a voluntary confession is a benefit and not a right. This benefit was not granted to the alleged victim since he "had to a certain extent tried to minimize the facts, the participation of characters of greater significance in the criminal organization, its sources of funding and the contacts of the organization." It alleges that the multiple remedies filed by the alleged victim throughout the proceedings demonstrates the exercise of the right to a defense and that there has been no violation of that right. The State points out that the alleged victim had a defense attorney throughout the proceedings. Finally, regarding the alleged violation of the right to personal integrity, it states that the various transfers to different detention centers were motivated by administrative acts for reasons of prison security, and were not arbitrary measures. As to the allegation of a lack of medical assistance, it reiterates that he has been given constant treatment and, based on medical recommendations, a new transfer of the alleged victim to the Challapalca Penal Institution has been ruled out. The State provides a medical report indicating that the alleged victim has been adequately treated on multiple occasions for different ailments.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

15. The petitioner states that the alleged victim was detained on June 7, 2002, and remained in preventive detention throughout all the criminal proceedings. On January 30, 2007, he was convicted at first instance as an accomplice for the crime against Public Health and Illicit Drug Trafficking. On June 8, 2007, the

Permanent Criminal Chamber of the Supreme Court of Justice annulled this decision, sentencing him instead to 25 years imprisonment for the commission of the same offense as co-author. On July 6, 2007, the Third Criminal Chamber for Proceedings for Detainees in the Prison of the Superior Court of Justice of Lima decided the writ of habeas corpus filed to obtain his release after the first instance judgment. The State has not questioned the exhaustion of domestic remedies, so the Commission concludes that in relation to the criminal proceedings, domestic remedies have been filed and exhausted in accordance with Article 46.1.a of the Convention.

16. According to the documentation provided, the petitioner had challenged his preventive detention and requested his release by filing several habeas corpus writs and appeals for annulment. Because of this, the Commission considers that the requirement established in Article 46.1.a of the Convention has been met in relation to the alleged application of preventive detention. In relation to the deadline for submission, given that the petition was filed on November 22, 2007, and domestic remedies were exhausted on July 6, 2007, the Commission considers that the petition meets the requirement of Article 46.1.b of the Convention.

17. With respect to the allegations concerning the alleged victim's transfer to prison facilities located far away from his home, the alleged mistreatment, unjustified isolation and other acts of harassment in prison and the alleged lack of medical attention, the Commission observes that the alleged victim presented several requests to the prison wardens and filed a writ of habeas corpus in 2009. The State, while providing information regarding the medical care provided, does not object to the exhaustion of domestic remedies with respect to these facts. In light of the foregoing, the Inter-American Commission considers that the requirement of exhaustion of domestic remedies set out in Article 46.1.a of the American Convention has also been met with respect to these aspects of the petition.

18. With respect to the alleged mistreatment during his detention and the alleged lack of defense counsel, the State alleges failure to exhaust domestic remedies because, unlike the other defendants, the alleged victim did not file a complaint. The IACHR observes that the petitioner did not dispute what has been alleged and does not provide information tending to demonstrate that he reported the facts in relation to himself. In this regard, he merely states that "the accused were victims of physical and verbal abuse to force them to sign documents in which self-incriminating statements were made" and that a co-defendant, in the police interview, indicated that "it was obtained under threats and without the presence of a defense lawyer." In this regard, the Commission considers that, according to the information provided, domestic remedies have not been exhausted in relation to these points.

VII. COLORABLE CLAIM

19. In view of the factual and legal elements put forward by the parties and the nature of the matter brought to their attention, the Commission considers that, if the alleged extension of preventive detention, the alleged lack of medical attention during his imprisonment and the alleged irregularities in the criminal proceedings be proven, this could characterize a violation of the rights enshrined in Articles 5 (personal integrity), 7 (individual liberty), 8 (judicial guarantees) and 25 (judicial protection) of the American Convention, in accordance with its Articles 1.1 and 2.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 5, 7, 8, and 25 of the American Convention on Human Rights, in accordance with its Articles 1.1 and 2;
2. To notify the parties of this decision;
3. To continue with the analysis on the merits; and
4. To publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of Washington, D.C., on the 30th day of the month of November, 2017.
(Signed): Margarete May Macaulay, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice President; Paulo Vannuchi, James L. Cavallaro, and Luis Ernesto Vargas Silva, Commissioners.