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REPORT No. 1/18
PETITION 137-07
REPORT ON ADMISSIBILITY

MIRTA ELIZABETH CANELO CASTAÑO AND FAMILY
ARGENTINA

Approved by the Commission at its session No. 2115 held on February 24, 2018.
167th Special Period of Sessions.

Cite as: IACHR, Report No. 1/18, Petition 137-07. Admissibility. Mirta Elizabeth Canelo Castaño and Carla Paola Canelo. Argentina. February 24, 2018.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Grupo de Mujeres de la Argentina – Foro de VIH Mujeres y Familia
Alleged victim:	Mirta Elizabeth Canelo Castaño and Family
State denounced:	Argentina
Rights invoked:	Articles 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 11 (privacy) and 25 (judicial protection) of the American Convention on Human Rights, ¹ in connection with Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) thereof

II. PROCEEDINGS BEFORE THE IACHR²

Filing of the petition:	February 7, 2007
Additional information received at the stage of initial review:	April 2, 2011; April 30, 2012
Notification of the petition to the State:	June 28, 2013
State’s first response:	February 6, 2014
Additional observations from the petitioner:	February 4, 6, 27 and 28, 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 deposited on September 5, 1984), Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (instrument deposited on July 5, 1996) ³ and Inter-American Convention to Prevent and Punish Torture ⁴ (instrument deposited on March 31, 1989)

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), 7 (personal liberty), 8 (fair trial), 11 (privacy), 19 (rights of the child), 24 (equal protection) and 25 (judicial protection) in connection with Article 1.1 of the Convention; Article 7 of the Convention of Belém do Pará; and Articles 1, 6 and 8 of the IACPPT

¹ Hereinafter “Convention” or “American Convention.”

² The observations submitted by each party were duly forwarded to the opposing party.

³ Hereinafter “Convention of Belém do Pará.”

⁴ Hereinafter “IACPPT.”

Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, pursuant to section VI
Timeliness of the petition:	Yes, pursuant to section VI

V. ALLEGED FACTS

1. The petitioners assert that the alleged victim, Mirta Elizabeth Canelo Castaño, was deprived of liberty and held in Unit 8, solitary confinement section of the Buenos Aires Province Prison Service in the town of Los Hornos, Province of Buenos, under judicial order from Oral Criminal Court No. 7 of Lomas de Zamora, for the crime of simple homicide. They note that the judgment in her case was under appeal. They contend that during her detention, she was subjected to degrading treatment, persecution and lack of medical care and psychiatric treatment. It is further alleged that her daughter, who was 11-year-old at that time, was also subjected to degrading treatment during family visits. They claim that, as a result of the above-cited incidents, several complaints were brought before the court hearing her case, Oral Criminal Court No. 7, the Office of Public Defender No. 4 of Lomas de Zamora, the Office of the Public Defender for Criminal Sentence Execution and the Secretariat for Human Rights of the Province of Buenos Aires, and none of these complaints received any response.

2. Petitioners claim that on January 8, 2006, the alleged victim was moved to a punishment cell, segregated from the other inmates and was then found lifeless hours later, hanging by a sheet tied to her neck. They argue that prison authorities failed to provide the alleged victim with medical care in response to her state of depression. They note that these events unfolded in the context of a hunger strike carried out by inmates to protest the actions of the authorities at said unit, as well as the lack of medical care for Mrs. Castaño and “coercion and torture.” They further argue that the family was not immediately notified of the death of the alleged victim. Though no further details are provided, the petitioners contend that at a meeting they held with the person who at the time was the director of prison populations of the Ministry of Justice of the Province of Buenos Aires, the facts were distorted and the director alleged that the death was “because of issues with her same sex partner.” They also claim she was subjected to ideological persecution, torture and degrading treatment.

3. The petitioners note that the Office of Public Prosecutor No. 2 of La Plata, with the intervention of Oversight Court No. 4, opened a preliminary criminal investigation into the death of the alleged victim. They assert that on July 7, 2008, the investigation was closed on the grounds that no cause of death could be accurately determined. They claim that there was no willingness to investigate, given that several expert witness reports were introduced but were denied by the investigating magistrates. They contend that the Superior Court of the Province of Buenos Aires ordered the administrative proceedings to be closed on the grounds that no proof of omissions or irregularities were found, as claimed in the complaints. Additionally, they argue that they filed a complaint with the Secretariat for Judicial Oversight of the Supreme Court of Justice of the Province of Buenos Aires, to contest the closing of the investigation. They contend that, in a ruling of September 25, 2009, the Supreme Court of Justice of the Province of Buenos Aires wrote that the Public Prosecutor’s Office finds no proof of any omissions or irregularities committed by Oral Court for Criminal Matters No 7 of the Judicial District of Zamora. The petitioners also note that the Office of Audits of Internal Prison Affairs of the Office of the Under Secretary for Crime Policy of the Province of Buenos Aires opened a preliminary investigation. On this score, they allege that in 2016 the petitioners requested from the Secretary for Human Rights of the Province of Buenos Aires a report on that case and did not receive a response.

4. The petitioners allege irregularities in the proceedings opened to investigate the death. They contend that there was conflicting evidence, such as the fact that the prison doctor stated in his testimony that he had injected the alleged victim with anti-anxiety medication, but the expert chemist’s report concluded that no remnants of any chemical substances were found in her body; and that cardio-pulmonary resuscitation was administered to her when she was found, though no indication of this was even mentioned in the expert’s report. They further argue that the forensic chemical evidence determined the presence of

semen in the undergarment of the alleged victim, but that any possibility of a sexual crime being committed on the alleged victim was ruled out, because the alleged victim was under “exit regime” (i.e. she was able to leave the prison) and, therefore, it was not deemed pertinent to conduct DNA testing on the male prison staff. They argue that certain pieces of evidence were not admitted and this evidence would have shed light on the truth. They also contend that a copy of the investigation report was requested and, for administrative reasons, it took an inordinate length of time for it to be provided to them. They also note that the State “did not provide the family with the necessary tools to request review of the case.” They allege that Article 46.1.a of the Convention has been fulfilled, because the case involves responsibility of the State for the protection of the rights of a person deprived of liberty.

5. In response, the State argues that the notification of petition was forwarded too after the deadline had lapsed, inasmuch as more than 6 years elapsed between the filing of the petition and the forwarding thereof to the State. It further contends that the petition is inadmissible. It claims that the petitioners have not fulfilled the requirement of pursuing and exhausting domestic remedies, as provided in Article 46.1.a of the Convention, inasmuch as based on a reading of the case proceedings before Oral Criminal Court No. 7 of Lomas de Zamora, there was no complaint filed with the courts to report the degrading treatment sustained by the alleged victim during her incarceration or by her daughter during the visits. It contends that there was an administrative complaint filed with the Secretariat for Judicial Oversight of the Supreme Court of Justice of the Province of Buenos Aires, following the death of the alleged victim. It adds that the Attorney General of that Court concluded in his decision that there is no evidence in the case file of any report of persecution, torture or any other treatment. Accordingly, the State argues that, because the omissions and irregularities reported by them were not proven, the Supreme Court of Justice ordered the case to be closed on September 16, 2009. Regarding the preliminary investigation opened into the death of the alleged victim, it further asserts that the prosecutor ordered the case to be closed without prejudice to reopening it, should new background information come to light, and that the family members did not file for review of the decision to close the case before the next highest judicial body. It also contends that the decision denying the request of the president of the Grupo de Mujeres de la Argentina to be considered as an offended party to the case was not challenged through an appeal before the competent Chamber of Appeals and Constitutional Guarantees.

6. As for the alleged irregularities in conducting the preliminary criminal investigation, the State claims that domestic courts have respected fair trial rights and its rulings have not been at odds with due process of law nor have any rights protected under the conventions been violated. It also contends that the lead prosecutor requested the production of several pieces of evidence and that on July 7, 2008, he decided to close the case because, based on the testimony, clinical history of the alleged victim, the autopsy report, as well as other expert witness reports, there was insufficient evidence to determine the existence of a crime. The State further argues that even though the Grupo de Mujeres de la Argentina did not have standing to be a party to the case, the prosecutor assessed whether or not the measures requested by them were in order, granting some of the measures and denying others. It alleges that the case decisions are grounded in evidence, which adhere to the standards of due process of law. Therefore, it argues that it does not fall under the purview of international human rights protection bodies to review the decisions of domestic courts and act as a court of fourth instance.

7. The State also claimed that the preliminary investigation into the death of the alleged victim is ongoing, and the examination of the case to determine potential liability has been entrusted to the Office of Audit of Internal Prison Affairs.

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

8. The petitioners claim that the complaints of torture and mistreatment during Mrs. Canelo’s incarceration and the mistreatment of her daughter during visits were filed with Oral Criminal Court No. 7, the Office of Public Defender No. 4 of Lomas de Zamora, the Office of the Public Defender for Criminal Sentence Execution and the Secretariat for Human Rights of the Province of Buenos Aires, and no response was received. As to the criminal investigation opened into the death of the alleged victim, they contend that it

was closed without the causes of the death having been determined. In response, the State argues failure to exhaust domestic remedies with respect to the alleged mistreatment of the alleged victim and her daughter reported by the petitioners. As to the death of the alleged victim, it claims that an investigation was conducted in accordance with due process of the law and that the family members did not appeal the decision to close the investigation to the next highest authority.

9. Regarding the contention about the incidents occurring prior to the death of the alleged victim, the IACHR identifies that the petitioners claim to have undertaken several efforts to bring them to the attention of the authorities. While there is a dispute between the parties as to whether these incidents were alleged in the context of the case heard before Oral Criminal Court No. 7 against the alleged victim, the petitioners contend that the incidents were also brought to the attention of the Office of Public Defender No. 4 of Lomas de Zamora, the Office of the Public Defender for Criminal Sentence Execution and the Secretariat for Human Rights of the Province of Buenos Aires, and no response was received. They also note that the death of the alleged victim took place in the context of a hunger strike carried out by the inmates protesting the actions of the authorities of said unit, as well as the lack of medical attention for Mrs. Castaño and “coercion and torture.” Based on the foregoing, the incidents prior to the death of the alleged victim were reported to different authorities, without any of them providing a response. Therefore, the Commission concludes that, with regard to this point of contention, the exception of Article 46.2.b of the Convention is applicable.

10. Additionally, because the death of the alleged victim took place during her deprivation of liberty, it is the duty of the State to open a serious and impartial investigation and follow any lines of investigation to ascertain whether the inmate took her own life or whether other factors were involved.⁵ In the instant case, the investigation was closed and, as of the present date, the cause of death of the alleged victim has yet to be identified. With respect to the State’s argument about the fact that the family members did not challenge the decision to close the investigation, the Commission notes that because the case involves a crime that must be prosecuted *ex officio* and also involves a person who at the time of her death was under the custody of the State, rather than the family member’s, it is the State’s duty to open the investigation. In view of the foregoing and, given that as of the present date the causes of death, as well as the persons who may be responsible, have not been determined, the Commission concludes that with regard to this aspect of the death of the alleged victim, the exception to the requirement set forth in Article 46.2.c. of the Convention is applicable.

11. Moreover, the petition before the Commission was received on February 7, 2007, and the alleged events that are the subject of the claim reportedly took place during the deprivation of her liberty, including the death on January 8, 2006, and certain effects have extended into the present. Therefore, in view of the context and the characteristics of the instant case, the Commission finds that the petition was lodged within a reasonable period of time and that the requirement of admissibility as to timely filing has been fulfilled.

12. Additionally, with respect to the State’s argument about the delay between the filing of the petition and the forwarding thereof to the State, the Commission notes that neither the American Convention nor the Rules of Procedure of the Commission establish any deadline for the forwarding of a petition to the State from the time the petition is received from the State, and that the time periods established in the Convention and the Rules of Procedure for other stages of proceedings are not applicable.⁶

VII. ANALYSIS OF COLORABLE CLAIM

13. In view of the considerations of fact and law set forth by the parties and the nature of the matter brought before it, the Commission finds that, should the acts alleged in the petition as to mistreatment, lack of medical attention and death during incarceration of the alleged victim, as well as the alleged

⁵ IACHR, Report on the Human Rights of Persons Deprived of Liberty in the Americas, OEA/Ser.L/V/II, approved on December 31, 2011, Para. 325.

⁶ IACHR, Report No. 20/17. Admissibility. Rodolfo David Piñeyro Ríos. Argentina. March 12, 2017, par. 8.

deficiencies in the context of the investigations opened, be proven as true, they could tend to establish violations of the rights set forth in Articles 4, 5, 7, 8, 11, 24 and 25 of the American Convention, in connection with Article 1.1 of said instrument. Additionally, the Commission finds that the allegations require further examination at the merits stage with regard to Article 7 of the Convention of Belém do Pará, and Articles 1, 6 and 8 of the IACPPT. Also, with respect to the alleged victim's daughter, who at the time of these events was a minor, these same acts could also tend to establish violations of the rights set forth of Article 19 of the Convention. Furthermore, as to the family members of the alleged victim, should the allegations be proven true as to infringements of humane treatment, lack of access to justice and judicial protection, the facts alleged in the petition could tend to establish violations of Articles 5, 8 and 25 of the Convention.

14. As for the alleged violation of Article 2 of the American Convention, the Commission notes that the petitioners do not offer any arguments or support for the alleged violation thereof and, therefore, it is out-of-order to find said claim admissible.

15. With respect to the State's fourth instance claim, the Commission notes that in admitting this petition, it does not purport to supersede the competence of domestic judicial authorities, but shall examine during the merits stage of the instant petition whether domestic judicial proceedings fulfilled the requirements of due process of law and judicial protection, and offered protection of access to justice to the alleged victims in keeping with the American Convention.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 4, 5, 7, 8, 11, 19, 24 and 25 of the American Convention, in connection with Article 1.1 of said instrument, as well as Article 7 of the Convention of Belém do Pará, and Articles 1, 6 and 8 of the IACPPT;

2. To find the instant petition inadmissible in relation to Article 2 of the American Convention;
and

3. 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.

Done and signed in the city of Bogotá, Colombia, on the 24th day of the month of February, 2018.
(Signed): Margarette May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice President; Luis Ernesto Vargas Silva, Second Vice President; Francisco José Eguiguren Praeli, Joel Hernández García, Antonia Urrejola, and Flávia Piovesan, Commissioners.