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REPORT No. 70/17
PETITION 1346-07
REPORT ON ADMISSIBILITY

MARCOS OMAR MADRID REYES
HONDURAS

Approved electronically by the Commission on June 29, 2017.

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I. INFORMATION ABOUT THE PETITION

Petitioner:	Andrés Pavón Murillo
Alleged victim:	Marcos Omar Madrid Reyes
State denounced:	Honduras
Rights invoked:	Articles 1 (Obligation to Respect Rights), 2. (Domestic Legal Effects), 7 (Right to Personal Liberty), 5 (Right to Humane Treatment) and 8 (Right to a Fair Trial) of the American Convention on Human Rights ¹

II. PROCEDURE BEFORE THE IACHR²

Date on which the petition was received:	October 11, 2007
Date on which the petition was transmitted to the State:	September 28, 2011
Date of the State's first response:	February 17, 2014
Additional observations from the petitioning party:	May 20, 2015
Additional observations from the State:	September 14, 2016

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 (deposit of instrument of ratification dated September 8, 1977)

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 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the Convention, in connection with its Articles 1.1 (Obligation to Respect Rights) and 2 (Domestic Legal Effects)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes; May 6, 2011
Timeliness of the petition:	Yes; under the terms of Section VI

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

² The observations presented by each party were duly transmitted to the opposing party.

V. ALLEGED FACTS

1 The petitioner claims that on January 26, 1998, Mr. Marcos Omar Madrid Reyes (hereinafter “the alleged victim” or “Mr. Marcos Madrid”) was unjustifiably assaulted by members of the police in the vicinity of the United States Embassy as he approached it to file some personal documents. He states that a peaceful demonstration was taking place at the time in the area. The alleged victim states that he was seriously injured by the police and subsequently detained for three days. As a result of alleged blows to the skull, the petitioner alleges that Mr. Marcos Madrid had to undergo surgery days after the events, and that he still suffers from recurring headaches because of the injuries.

2 The petitioner states that, on January 30, 1998, the alleged victim filed a complaint with the Tegucigalpa Criminal Court of First Instance (hereinafter “the Court of First Instance”) against the alleged perpetrators of the offenses of grievous bodily harm, illegal detention and torture committed against him. The Court issued an order of detention against three police officers between January and February 2001. Subsequently, on August 16, 2001, the Court decided to amend the detention orders issued against the alleged perpetrators for the offense of grievous bodily harm against the alleged victim, and to withdraw the bail granted in their favor, issuing warrants for their arrest.

3 On August 29, 2001, the then prosecutor of the Public Prosecutor's Office filed an appeal against the sentence issued on August 16, 2001, considering that the acts committed by the aggressors against Mr. Madrid also included the offenses of illegal detention, torture and abuse of authority. On May 26, 2002, the Tegucigalpa First Court of Appeals decided to amend the detention orders to include the offenses of grievous bodily harm and illegal detention to the detriment of the alleged victim. On August 14, 2002, the alleged victim filed an appeal on constitutional grounds before the Supreme Court of Justice of Honduras against the judgment of May 26, 2002, for the offense of torture to also be added. The Court granted the request in its ruling dated March 8, 2004. As a result, on August 10, 2004, the Court of First Instance ordered the immediate arrest of the alleged perpetrators, who were free on bail at the time. The police were unable to carry out these arrests and therefore, on August 19, 2005, the Court of First Instance asked Interpol to capture the alleged perpetrators.

4 Furthermore, in a communication dated May 20, 2015, the petitioner states that the alleged events have gone unpunished because the arrest warrants against the alleged perpetrators were never executed; and that they have been acquitted - because of lack of evidence - in a surprising and malicious manner given that the alleged victim was never notified of said acquittal. The petitioner also alleges that there is an unjustified delay in the case at hand and that the Honduran State is guilty of denial of justice to the detriment of the alleged victim.

5 Meanwhile, the State argues that the petition is inadmissible. It states that the alleged victim has had access to justice and that the Honduran State has complied with its obligation to carry out the corresponding judicial proceedings in the case in question while respecting the rights established in the American Convention.

6 It indicates that on August 3 and November 29, 2006, the Judicial Division of the Tegucigalpa Criminal Court of First Instance issued final acquittals in favor of two of the alleged perpetrators because of lack of evidence, revoking the order of detention issued against them. Furthermore, it states that on May 6, 2011, the same court issued a final acquittal in favor of the third police officer allegedly involved in the events, also because of lack of evidence, revoking the order of detention issued against him and annulling the order for his capture.

7 The State affirms that the alleged events have not gone unpunished given that the corresponding judicial proceedings have been carried out and the applicable judgments have been issued based on the evidence or statements provided, thus the revocation of the order of detention issued against the alleged perpetrators was neither surprising nor malicious as stated by the petitioner. It also states that the evidence provided in this case does not prove the active participation of the alleged perpetrators in the commission of the offenses under investigation.

8 Finally, the State questions the admissibility of the petition on the grounds that, at the time it was submitted to the IACHR, Mr. Marcos Madrid had not exhausted all domestic remedies.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

9 The petitioner upholds that the alleged facts remain unpunished given that, although arrest warrants were issued against the alleged perpetrators, the alleged perpetrators were never arrested or brought before the Court of First Instance and that, over a decade later, the State is yet to carry out a diligent investigation leading to the effective prosecution and punishment of those responsible, for which reason the petitioner argues that the exception to the exhaustion of domestic remedies applies in this case due to unjustified delay. Meanwhile, the State argues that domestic remedies had not been exhausted at the time the petition was submitted given that the domestic criminal proceedings concluded on May 6, 2011, almost four years after the petition was submitted to the IACHR.

10 In view of these considerations and the information available in the file, the IACHR notes that the domestic remedies were formally exhausted by way of the final acquittal issued by the Judicial Division of the Tegucigalpa Criminal Court of First Instance on May 6, 2011, in favor of the third police officer allegedly involved in the events. In the case at hand, the Commission notes that the appropriate remedy in relation to the events set forth in the petition was, in fact, to carry out criminal proceedings against those allegedly responsible for the assaults suffered by the alleged victim. In this regard, the Commission takes the view that the petitioner did everything within his power to get justice using this route, therefore, for the purposes of the admissibility of the petition, the Commission considers the domestic remedies to have been exhausted with the aforementioned ruling; notwithstanding, within the analysis of the merits of this petition, it shall analyze whether the domestic investigations and criminal proceedings were carried out with due diligence in accordance with the standards applicable under the Inter-American System.

11 With regard to the State's questioning of the fact that exhaustion of domestic remedies occurred after 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, because the time of filing the complaint differs from that of the ruling on admissibility."³ As such, the Inter-American Commission concludes that this petition meets the admissibility requirements established in Articles 46.1.a and 46.1.b of the American Convention.

VII. DESCRIPTION OF THE ALLEGED FACTS

12 The Commission rules that, if the alleged acts of physical aggression, unlawful detention and the failure to investigate and punish those responsible are proven, they could be considered violations of the rights set forth in Articles 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the American Convention in connection with the obligations of its Articles 1.1 and 2.

VIII. DECISION

1. To declare the petition admissible in relation to Articles 5, 7, 8 and 25 of the American Convention in connection with the obligations of Articles 1.1 and 2 of the same instrument;
2. To notify the parties of this decision;
3. To continue with the analysis of the merits of the matter; and

³ Among others, see IACHR. Report 4/15, Admissibility, Petition 582/01, Raúl Rolando Romero Feris, Argentina, January 29, 2015, para. 40.

4. To publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved electronically by the Commission on the 29 day of the month of June, 2017. (Signed): Francisco José Eguiguren, President; Margarete May Macaulay, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice President; José de Jesús Orozco Henríquez, Paulo Vannuchi, James L. Cavallaro, and Luis Ernesto Vargas Silva, Commissioners.