

OEA/Ser.L/V/II.168  
Doc. 58  
May 4, 2018  
Original: Spanish

**REPORT No. 48/18**  
**PETITION 148-07**  
REPORT ON ADMISSIBILITY

MARÍA ISABEL MORÁN BAJAÑA  
ECUADOR

Approved by the Commission at its session No. 2126 held on May 4, 2018.  
168<sup>th</sup> Special Period of Sessions.

**Cite as:** IACHR, Report No. 48/18, Petition 148-07. Admissibility. María Isabel Morán Bajaña.  
Ecuador. May 4, 2018.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	María Isabel Morán Bajaña
<b>Alleged victim:</b>	María Isabel Morán Bajaña
<b>Respondent State:</b>	Ecuador
<b>Rights invoked:</b>	Articles 7 (Personal Liberty), 8 (Fair Trial), 11 (Privacy), 13 (Freedom of Thought and Expression), 15 (Assembly), 16 (Freedom of Association), 24 (Equal Protection) and 25 (Judicial Protection) of the American Convention on Human Rights <sup>1</sup>

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

<b>Filing of the petition:</b>	February 8, 2007
<b>Additional information received at the stage of initial review:</b>	June 24, 2011
<b>Notification of the petition to the State:</b>	December 12, 2011
<b>State's first response:</b>	March 23, 2012
<b>Additional observations from the petitioner:</b>	May 1, 2012 and May 5, 2017
<b>Additional observations from the State:</b>	February 4, 2016 and August 29, 2017

**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 December 28, 1977)

**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), 9 (Freedom from <i>Ex Post Facto</i> Laws), 11 (Privacy), 13 (Freedom of Thought and Expression), 15 (Assembly), 16 (Freedom of Association), 24 (Equal Protection) and 25 (Judicial Protection) of the American Convention on Human Rights, in connection with its Article 1.1 (Obligation to Respect Rights)
<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

<sup>1</sup> Hereinafter "the Convention" or "the American Convention."

<sup>2</sup> The observations submitted by each party were duly transmitted to the opposing party.

## V. ALLEGED FACTS

1. Ms. María Isabel Morán Bajaña (“Ms. Morán,” “the petitioner” or “the alleged victim”) affirms that on January 22, 2007 she, along with thousands of people, attended a demonstration outside the Attorney General’s Office of Guayas, in Guayaquil city, in disapproval of the appointment of the then new Attorney General of Ecuador, as they considered it unconstitutional. She indicates that she and other women went on a 10-day peaceful hunger strike until the Attorney General quit his office on January 31, 2007, and she voluntarily ended said strike. However, she claims that on January 25, 2007 a member of the prosecution staff who publicly supported the Attorney General filed a wrongful investigation against her and other demonstrators for terrorism and sabotage as a way of retaliation for their disapproval of the Attorney General. She indicates that she belongs to a political movement called “*Impunidad Jamás*” (No More Impunity), which protests against corruption in Ecuador and that this explains why she is politically persecuted.

2. The petitioner asserts that in the framework of said lawsuit—at the end of which her case was dismissed—there were several irregularities that hindered her defense. In this regard, she claims that neither she nor her attorney was notified of the hearings and that the Prosecutor’s Office continuously requested her pretrial detention. She affirms that all notifications were sent to an attorney unknown to her who did not represent her, and that she managed to appear at the hearings to present her defense from pretrial detention requests because she had learnt about the hearings through the media. She indicates that the abovementioned member of the prosecution staff “defamed her in the media and formally accused her” and that “her honor, image and reputation were tarnished.” She moreover claims that on February 16, 2007 she was arrested without a warrant and beaten “while she was expressing her support towards older men and women who sought legal action in a state body.” She also affirms that she was released thanks to the head of the police department and the governor.

3. She alleges inability to demand compensation for the abuses in the criminal proceedings because since she was not notified of the final stay of the proceedings, she could not file a complaint for frivolous and malicious prosecution, a prerequisite for demanding compensation. She adds that she was also unable to file a criminal complaint for unlawful attacks on her honor and reputation, as the criminal proceedings were dismissed almost two years after they began and the Code of Criminal Procedure establishes a maximum period of six months following the date of the infringement to summon the prosecuted party.

4. For its part, the State claims that the petition is inadmissible in view of the lack of exhaustion of domestic remedies and of a colorable claim. As to the lack of exhaustion of domestic remedies, it submits that when the petition was lodged, the criminal proceedings were still under way and a trial resolution was still pending. It also affirms that the petitioner could have filed an administrative complaint and a complaint for damages against the state officers she believes failed to comply with their duty.

5. The State also claims that Ms. Morán’s rights were not infringed. It indicates that the alleged victim was able to demonstrate and participate in a hunger strike for several days in a public street, outside the Attorney General’s Office with no interference. Therefore, it claims, her right to assembly and freedom of association were not violated. It moreover asserts that she was not held in pretrial detention during the proceedings and that these had a reasonable duration because on January 26, 2008 the judge announced her acquittal and on August 20, 2008 the Superior Court confirmed the decision to dismiss the case. Also, it affirms that the legal procedures were always notified to her attorney to the judicial mailbox number given by the alleged victim, that the procedural irregularities alleged, if proved, did not cause her any damages, for she admitted having heard of the hearings and appeared in court, and that the criminal proceedings were eventually dismissed.

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

6. Concerning the purported violations of due process of law, the State alleges that the petition is inadmissible because by the time it was filed domestic remedies had not been exhausted. In this regard, the IACHR notes that on August 20, 2008, while the petition was being processed before the Commission, the criminal proceedings were dismissed by the Second Criminal Chamber of the Superior Court, as a result of which domestic remedies were exhausted on said date and the requirement in Article 46.1.a of the American Convention was met. Consequently and in accordance with the IACHR's jurisprudence, the requirement set forth in Article 46.1.b<sup>3</sup> of the Convention must be declared met.

7. Regarding the purported lack of reparation, the alleged victim indicates that she was unable to file the claim indicated by the State because she was not notified of the decision to dismiss the criminal proceedings. The Commission notes that the parties controvert over the correct notification of the procedures in the framework of the criminal proceedings. The information submitted by the State indicates that the Twenty-fourth Criminal Court of Guayas sent five notifications to Ms. Morán to the mailbox number provided by the alleged victim's attorney. However, the Commission notes that said notifications were addressed to a third party whose name is not listed in the information presented by the attorney for the purpose of receiving notifications and whom the alleged victim affirms she does not know. Based on said information and after a *prima facie* review at the stage of admissibility, the IACHR considers that it appears that the alleged victim was unable to exhaust domestic remedies concerning the allegations about the lack of reparation, thus the exception regarding the exhaustion of domestic remedies, set forth in Article 46.2.b of the Convention, is applicable to this matter. Where applicable, the circumstances that hindered the exhaustion of domestic remedies will be analyzed by the Commission in its merits report. Moreover, the petition meets the requirement established in Article 32.2 of the IACHR Rules of Procedure since the alleged irregularities took place when the petition was under study at the Commission.

8. About her purported arbitrary detention on February 16, 2007, the petitioner indicates that she was arrested without a warrant and beaten and that two state agents intervened to obtain her release. In this regard, taking into account that the head of the police department and the governor were apparently acquainted with this situation—and allegedly intervened in her favor—the Commission *prima facie* believes that the State had the opportunity to hear and settle the matter of the alleged victim's purported unlawful deprivation of liberty. Therefore, the Commission finds the instant petition admissible under the terms of Article 46.1(a) and (b) of the Convention.

## VII. ANALYSIS OF COLORABLE CLAIM

9. The IACHR believes that the claims concerning the alleged victim's criminal prosecution for terrorism and sabotage in view of her participation in a demonstration, the purported stigmatizing statements against her by members of the prosecution staff during the criminal proceedings, the violation of her right of defense, the inability to sue the State for damages in light of procedural errors attributable to the judicial authorities and her alleged arbitrary detention and the alleged beating, if proved, may establish violations of the rights enshrined in Articles 5 (Humane Treatment), 7 (Personal Liberty), 8 (Fair Trial), 9 (Freedom from *Ex Post Facto* Laws), 11 (Privacy), 13 (Freedom of Thought and Expression), 15 (Assembly), 16 (Freedom of Association), 24 (Equal Protection) and 25 (Judicial Protection) of the American Convention, in accordance with Article 1.1 of the same treaty.

## VIII. DECISION

1. To declare the instant petition admissible in relation to Articles 5, 7, 8, 9, 11, 13, 15, 16, 24 and 25 of the American Convention, in relation to its Article 1.1; and

---

<sup>3</sup> IACHR, Report No. 10/16, Petition 387-02. Admissibility. Carlos Andrés Fraticelli, Argentina, April 14, 2016, par. 46.

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.

Done and signed in the city of Santo Domingo, Dominican Republic on the 4<sup>th</sup> day of the month of May, 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, y Flávia Piovesan, Commissioners.