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REPORT No. 64/17

PETITION 585-06

ADMISSIBILITY REPORT

**JUAN RAMÓN MATTA BALLESTEROS AND FAMILY
HONDURAS**

Approved by the Commission at its session No. 2085 held on May 25, 2017
162nd Extraordinary Period of Sessions

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I. SUMMARY

1. On June 7, 2006, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission,” or “the IACHR”) received a petition filed by the Chairman of the Committee for the Defense of Human Rights (hereinafter “the petitioner”) against the Republic of Honduras (hereinafter “Honduras” or “the State”). The petition was filed on behalf of Juan Ramón Mattá Ballesteros and his family (hereinafter “the alleged victims” or “Mr. Mattá Ballesteros”).

2. The petitioner claims that Mr. Juan Ramón Mattá Ballesteros was illegally detained, tortured and taken to the United States of America (hereinafter “the US”) without being granted due process. He alleges that, to date, those responsible have not been convicted and his family’s request for him to be taken to Honduras has not been resolved. The State notes that a series of actions were carried out in the context of the criminal proceedings against those allegedly responsible and submits no allegations regarding the admissibility of the petition.

3. Without prejudging the merits of the complaint, after examining the petitioner’s position and pursuant to the requirements established in Articles 31 to 34 of the IACHR’s Rules of Procedure (hereinafter “the Rules”) and in Articles 46 and 47 of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”), the Commission has decided to declare the petition admissible in order to assess the allegations regarding the alleged violation of the rights enshrined in Articles 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), 22 (right to freedom of movement and residence) and 25 (right to judicial protection) of the American Convention, in accordance with the obligations set forth in Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) of said instrument. The Commission has further decided to notify the parties of this decision, to publish it, and to include it in its Annual Report to the General Assembly of the Organization of American States.

II. PROCEDURE BEFORE THE IACHR

4. The IACHR forwarded a copy of the relevant parts of the petition to the State on April 27, 2011, giving it two months to submit observations, based on Article 30.4 of the Rules in force at the time. On August 10, 2011, the IACHR received the State’s response, which was forwarded to the petitioner on October 18, 2011.

5. The petitioner submitted additional observations on December 16, 2011; on August 7, 2013; on January 28 and August 18, 2014; and on January 12, 2015. The State submitted additional observations on March 26, 2014. All observations were duly forwarded to the opposing party.

6. Over the course of procedure regarding this petition, on January 6, 2014, the IACHR requested up-to-date information from the parties, who respectively responded to that request with submissions on January 28 and March 26, 2014.

¹ Commissioner James L. Cavallaro, a citizen of the United States, considered that, based on Article 17(3) of the Rules of Procedure of the IACHR, he should abstain from participating in the deliberation and decision on this matter.

III. POSITION OF THE PARTIES

A. Position of the petitioner

7. The petition refers to the alleged illegal detention, torture and “covered-up extradition” to the United States of Mr. Juan Ramón Matta Ballesteros, without due process, carried out by Honduran agents, and to the impunity of the masterminds and the perpetrators of such deeds.

8. The petitioner notes that, on March 29, 1988, the Lieutenant Colonel of the Police and the Commander of the Seventh Regional Command of the Public Security Force filed a request before the First Criminal Trial Court in Tegucigalpa, to search Mr. Matta Ballesteros’ home, in connection with the alleged existence of a storage for arms that were allegedly used by individuals in his service.

9. The petitioner notes that the search was carried out on April 5, 1988. Mr. Matta Ballesteros was not at home. However, when he arrived after receiving a call from his daughter, he was surrounded by “Cobras elements,” who alerted two people who identified themselves as law enforcement officers of the United States of America, and a Colonel and one other person, both of them Honduran nationals who got out of a beige Land Cruiser vehicle. The petitioner alleges that one of the law enforcement officers captured him, without an arrest warrant issued by a competent judicial authority, and that electric shocks were immediately applied to his back, hips and testicles with an electric gun.

10. The petitioner says that Mr. Matta Ballesteros was forced into the vehicle in question and put on the floor of that vehicle, face down; he was handcuffed; both his legs were chained; and a torture instrument known as a “hood” was put over his head. The petitioner notes that, from that moment on, he knew they were going to Palmerola Air Base. During the drive, he was subjected to interrogation about the murder of a DEA agent in Mexico and, when he replied that he knew nothing about it, he was hit and received death threats while gun barrels were put to his head.

11. He alleges that, upon arrival at the air base, one of the US law enforcement officers ordered the Colonel to hang Mr. Matta Ballesteros, whose hands and feet were tied, so he could be “showered with a power wash without taking off the hood.” They put the vehicle in between two vans and committed such tortuous act until he was forced to board a plane that had flown in from the United States and was *en route* to the Dominican Republic. He was later taken to San Juan, Puerto Rico, and eventually to the state of Illinois, where he was detained in the United States Penitentiary at Marion until April 6, 1988. According to the petitioner, given the deplorable condition his health was in as a consequence of the alleged torture, staff members at that penitentiary arranged to take photographs of him to “spare themselves from responsibility.”

12. The petitioner notes that the alleged victim was not notified of the reasons for his detention, nor was he granted guarantees against detention nor access to a lawyer or to his family. He alleges that the fact that he was subjected to the jurisdiction of the United States undermines the legitimacy and the justice of the whole legal process, from the point of view of international law, and that Honduras and the United States had no extradition treaty in force at the time of these events.

13. Regarding remedies that were initiated domestically, the petitioner notes that, on April 5, 1988, Mr. Matta Ballesteros’ lawyer filed a writ of *habeas corpus* before Honduras’ Supreme Court of Justice where he blamed the Chief of the Public Security Force. The Chief of the Public Security Force was asked on that date to produce Mr. Matta, and on April 6, 1988, he stated that “the Cobras elements who took part in the raid to arrest him do indeed [...] belong to that armed corps [...] but that it is public knowledge that Mr. Mat[t]a del Pozo is in the United States.” The documents that were submitted in the petition indicate that, on May 31, 1988, the Public Prosecutor at the Supreme Court of Justice opined “that the appeal be granted, since it is public knowledge that the Colonel [...] has confessed that it was [...] staff [...] deployed by the Public Security Force [who] captured [Mr. Matta].” The petitioner alleges that “the outcome has to date been negative.”

14. Further, the documents that were submitted by the petitioner show that, on April 7, 1988, the Second Criminal Trial Court was notified through a media report of the alleged kidnapping of Mr. Matta Ballesteros. The court ordered that the relevant investigation be launched and that proceedings be carried out.

15. The petitioner notes that, on November 15, 1995, a complaint was formally filed before the Special Prosecutor's Office for Human Rights. Based on that complaint, on March 2, 1998, the Second Criminal Trial Court in Comayagüela was asked to launch a criminal investigation for ill-treatment, illegal detention, taking a citizen beyond the country's borders to be subjected to a foreign government, abuse of authority, and breach of official duties, to the detriment of Mr. Matta Ballesteros and of the public administration. The complaint was declared admissible on March 3, 1998. The file submitted by the petitioner indicates that, on February 24, 1999, the Trial Court unified the 1988 file with the 1999 file.

16. Based on the information submitted by the petitioner, Mr. Matta's lawyer requested, on February 7, 2003, that an arrest warrant be issued against the suspects. On February 12, 2003, the Criminal Trial Judge in the Tegucigalpa Judicial Section responded to that request by noting, "Let there be a thorough assessment of this case." The lawyer filed a motion for reconsideration of that resolution, which was rejected on June 12, 2003. On December 10, 2003, the First Court of Appeals declared inadmissible the appeal that had been filed against the ruling of February 12, 2003. On September 23, 2004, it was again requested that an arrest warrant be issued, this time before the Judge of the Tegucigalpa Unified Criminal Jurisdiction, and the request was repeated on January 16, 2006.

17. The documents submitted on August 7, 2013, by Claudia Patricia Matta, daughter of Mr. Matta Ballesteros, indicate that on April 30, 2012, they filed, before the Honduran Human Rights and Justice Department at the Secretary of State's Office, a request for the application of the Convention on the Transfer of Sentenced Persons to their countries of origin, so that the Honduran State might ask the United States' Justice Department to make arrangements for Mr. Matta Ballesteros' transfer to Honduras. Such request was repeated on two occasions by Juan Ramón Matta López, son of the alleged victim.

18. Based on the foregoing, the petitioner alleges that the State violated, to the detriment of the alleged victims, Articles 1, 2, 5.1, 5.2, 7.2, 7.3, 7.4, 7.5, 8.1 and 25.1 of the Convention.

B. Position of the State

19. The State notes that, in proceedings carried out before what was then the Second Criminal Trial Court in Comayagüela, in the Central District Municipality, criminal charges were filed against 14 people for ill-treatment, illegal detention, taking a citizen beyond the country's borders to be subjected to a foreign government, abuse of authority, and breach of official duties to the detriment of Mr. Matta Ballesteros and of the public administration.

20. The State notes that, on April 21, 2009, the Criminal Court in the Tegucigalpa Judicial Section dismissed the criminal investigation, permanently in favor of 13 suspects and provisionally in favor of a further suspect. The Public Prosecutor's Office and the private plaintiff appealed that ruling before the First Court of Appeals, which, on June 2, 2011, revoked the permanent and temporary dismissal of the investigation in favor of the 14 suspects, and ordered the Court to issue the arrest warrants against them, except for one who was already deceased, and pursue further proceedings in this case. On January 16 and 24, 2014, the investigation was dismissed for two of the suspects, since they were deceased.

21. The documents submitted by the State indicate that, on September 27, 2011, an arrest warrant was issued against seven suspects for crimes related to taking a citizen beyond the country's borders to be subjected to a foreign government, illegal detention, abuse of authority, and breach of official duties.

22. On March 13, 2012, the suspects' defense requested that the criminal action be declared barred by the statute of limitations. On December 6, 2012, the Court rejected the request. An incidental

issue was raised and, on October 30, 2013, the Criminal Trial Court for the Tegucigalpa Section issued an incidental ruling to address the partial nullity of proceedings that the defense attorneys for the suspects presented, in the sense of allowing them to plea the charges or not do so at all.

IV. ANALYSIS ON COMPETENCE AND ADMISSIBILITY

A. Competence

23. Under Article 23 of the Rules, the petitioner is entitled to file petitions before the Commission. In the petition, the alleged victim is an individual person whose rights are protected under the American Convention on Human Rights. The State of Honduras agreed to respect and enforce the rights enshrined in said Convention. It is a State Party to the Convention since September 8, 1977, when it deposited its instrument of ratification. The Commission is therefore competent *ratione personae* to examine the petition. In addition, the Commission is competent *ratione loci* to hear the petition, in that it alleges rights violations that would have occurred within the territory of Honduras.

24. The Commission is competent *ratione temporis* in that the obligation to respect and guarantee the rights protected in the American Convention was already in effect for the State on the date the events alleged in the petition are said to have occurred. Finally, the Commission is competent *ratione materiae* regarding the alleged violations of human rights protected by said Convention.

B. Admissibility requirements

1. Exhaustion of domestic remedies

25. Under Articles 31.1 of the Rules and 46.1(a) of the American Convention, for a petition to be admissible, domestic remedies must have been pursued and exhausted, in accordance with generally recognized principles of international law. This requirement is aimed at enabling national authorities to take cognizance of the alleged violation of a protected right and, if applicable, reverse the situation before it is heard by an international body. For their part, Articles 31.2 of the Rules and 46.2 of the Convention establish that the requirement of prior exhaustion of domestic remedies does not apply when: (a) the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated; (b) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or (c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

26. The petitioner notes that, more than 28 years after the alleged events, Honduran courts have not tried the masterminds and the perpetrators of the illegal detention, “banishment” and torture committed against Mr. Juan Ramón Matta Ballesteros. The State only provides an account of the criminal proceedings against the suspects, without submitting allegations regarding the exhaustion of domestic remedies.

27. The IACHR has established that, whenever an alleged crime is committed in which State authorities are involved, the State has the obligation to promote and encourage the criminal proceedings, and that in such cases this is the proper way to establish the facts, assign any responsibilities, and impose criminal penalties as required, as well as enabling other types of reparations of a financial nature. The two parties note that criminal proceedings about the matter remain open.

28. The Commission notes that the events that allegedly happened in the initial stage, that is, between the alleged victim’s detention and his removal from Honduras, were carried out summarily, which would have prevented any chance of invoking judicial remedies in order to prevent his removal.

29. In this case, the requirement for prior exhaustion of domestic remedies cannot be interpreted as preventing access to the Inter-American system for a long time or in an unjustified way. Based on that, the Commission concludes that, in the initial stage of these events, Mr. Matta Ballesteros did

not have access to domestic remedies and, regarding criminal proceedings that remain open, that there has been an unjustified delay in the investigation and the imposition of criminal penalties on the suspects, so the exceptions recognized in Articles 46.2(b) and (c) of the American Convention apply in this case.

30. Articles 46.2 of the American Convention and 31.2 of the Rules are, by their nature and purposes, self-contained with respect to the substantive provisions held in the Convention. Therefore, the determination as to whether the exceptions to the rule on the exhaustion of domestic remedies stipulated in that provision apply in this case should be made separately, and prior to the examination on the merits, since it depends upon a standard of judgment distinct from that used to determine the violation of Articles 8 and 25 of the Convention. It should be clarified that the causes and effects that have prevented the exhaustion of domestic remedies in this case will be examined, where pertinent, in the report that the IACHR adopts on the merits of the dispute, in order to determine whether they constitute violations of the American Convention².

2. Timeliness of the petition

31. Under Articles 46.1(b) of the American Convention and 32.1 of the Rules, for a petition to be declared admissible by the Commission, it must be lodged within a period of six months from the date on which the alleged victim was notified of the final judgment. Concerning the complaint under assessment, the IACHR has established that the exceptions to the requirement of exhaustion of domestic remedies pursuant to Articles 46.2(b) and 46.2(c) of the American Convention are applicable. In this regard, under Article 46.2 of the Convention, in those cases where exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable term, as determined by the Commission. For this purpose, the Commission must consider the date on which the alleged violation of rights occurred and the circumstances in each case.

32. In the case under assessment, regarding the alleged conditions of detention, torture and later transfer to the United States of Mr. Juan Ramón Matta Ballesteros, along with the request for a transfer that was later made to Honduras, the IACHR has established that the exceptions to the requirement of exhaustion of domestic remedies pursuant to Articles 46.2(b) and 46.2(c) of the American Convention are applicable. The IACHR received the petition on June 7, 2006, while the alleged facts that are the subject of the complaint started on April 5, 1988, and their effects allegedly persist at present. Consequently, in view of the context and the characteristics of the case, the Commission believes that the petition was filed within a reasonable time frame and that the admissibility requirement of timeliness has been met.

3. Duplication of proceedings and international *res judicata*

33. There is nothing in the record to suggest that the subject matter of the petition is pending for settlement in other international proceedings or that it is substantially the same as one previously studied by this or any other international organization. Therefore, the causes for inadmissibility set forth in Articles 46.1(c) and 47(d) of the Convention and 33.1(a) and 33.1(b) of the Rules do not apply.

4. Colorable claim

34. For the purposes of admissibility, the IACHR must decide, pursuant to Articles 47(b) of the American Convention and 34(a) of the Rules, whether the facts alleged, if proven, would tend to establish a violation of rights, or, pursuant to Articles 47(c) of the American Convention and 34(b) of the Rules, whether the petition is “manifestly groundless” or “obviously out of order.” The standard by which admissibility is assessed is different from the one needed to decide the merits of a petition, since the Commission must only perform a *prima facie* evaluation to determine whether the petition provides grounds for an apparent or potential violation of a right enshrined in the American Convention on Human

² IACHR, Report No. 48/15, Petition 79-06. Admissibility. Yaqui People. Mexico. July 28, 2015, paragraph 56.

Rights. This examination is a general analysis that does not imply a prejudgment or a preliminary opinion on the merits of the matter.

35. Furthermore, the corresponding legal instruments do not require petitioners to identify the specific rights allegedly violated by the State in a matter submitted to the Commission, although the petitioners may do so. It is for the Commission, based on the system's jurisprudence, to determine in its admissibility report which provisions of the relevant Inter-American instruments are applicable and could be found to have been violated if the alleged facts are sufficiently proven.

36. The petitioner claims that Mr. Matta Ballesteros was illegally detained, tortured and taken to the US without being granted due process and that, to date, those responsible have not been prosecuted and, when applicable, convicted. The information submitted by the petitioner further indicates that attempts made by relatives to have Mr. Matta Ballesteros taken back to Honduras have not been effective. The State did not submit any allegations about the characterization requirement.

37. In light of the elements of fact and law filed by the petitioner and the nature of the matter brought to its attention, the IACHR believes that, if proved, the facts alleged may tend to establish possible violations of the rights enshrined in Articles 5, 7, 8, 22 and 25 of the Convention, in accordance with the obligations set forth in Articles 1.1 and 2 of said instrument, to the detriment of Mr. Juan Ramón Matta Ballesteros and his family.

V. CONCLUSIONS

38. Based on the arguments of fact and law set forth above, the Commission concludes that the petition meets the admissibility requirements set forth in Articles 31 and 34 of the Rules and 46 and 47 of the American Convention and, without prejudging the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare this petition admissible with regard to Articles 5, 7, 8, 22 and 25 of the Convention, in accordance with the obligations set forth in Articles 1.1 and 2 of said instrument;
2. to notify the parties of the present decision;
3. to continue examining the merits of the case; and
4. 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 in the city of Buenos Aires, Argentina, on the 25 day of the month of May, 2017. (Signed): Francisco José Eguiguren, President; Margarette May Macaulay, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice President; José de Jesús Orozco Henríquez, Paulo Vannuchi, and Luis Ernesto Vargas Silva, Commissioners.