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REPORT No. 122/17
PETITION 156-08
REPORT ON ADMISSIBILITY

WILLIAMS MARIANO PARÍA TAPIA
PERU

Approved by the Commission at its session No. 2098 held on September 7, 2017
164th Extraordinary Period of Sessions

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REPORT No. 122/ 17¹
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 REPORT ON ADMISSIBILITY
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 PERU
 SEPTEMBER 7, 2017

I. INFORMATION ON THE PETITION

Petitioner:	Williams Mariano Paría Tapia
Alleged victim:	Williams Mariano Paría Tapia
State denounced:	Peru
Rights claimed:	Articles 7 (Right to Personal Liberty), 8 (Right to a Fair Trial) 9 (Freedom from Ex Post Facto Laws), 10 (Right to Compensation), 11 (Right to Privacy), 24 (Right to Equal Protection), 25 (Right to Judicial Protection) and 29 (Restrictions regarding interpretation) of the American Convention on Human Rights; ² Articles I (Right to life, liberty and personal security), V (Right to protection of honor, personal reputation, and private and family life), XVIII (Right to a fair trial), XXIV (Right of petition), XXV (Protection from arbitrary arrest) and XXVI (Right to due process of law) of the American Declaration of the Rights and Duties of Man; ³ and other international treaties. ⁴

II. PROCEEDINGS BEFORE THE IACHR⁵

Date on which the petition was received:	February 13, 2008
Additional information received during the stage of initial review:	May 13, 2008; November 12, 2008; April 8, 2009; October 26, 2009; August 3, 2010; September 30, 2011; February 24, 2014 and September 24, 2014
Date on which the petition was transmitted to the State:	December 30, 2014
Date of the State's first response:	April 1, 2015
Additional observations from the petitioner:	March 2, 2016
Additional observations from the State:	November 11, 2016

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
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¹ In keeping with Article 17.2.a of the Commission's Rules of Procedure, Peruvian national, Commissioner Francisco Jose Eguiguren Praeli, did not take part in the discussion or the decision-making in the instant matter.

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

³ Hereinafter "the Declaration" or "the American Declaration."

⁴ Articles 3, 8 and 10 of the Universal Declaration of Human Rights and "provisions enshrined" in the International Covenant on Civil and Political Rights.

⁵ The observations presented by each party were duly transmitted to the opposing party.

Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes, American Convention (instrument deposited on July 28, 1978)

IV. ANALYSIS ON DUPLICATION OF PROCEEDINGS AND INTERNATIONAL RES JUDICATA, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF PETITION

Duplication of proceedings and international res judicata:	No
Rights declared admissible:	Articles 5 (Humane Treatment), 8 (Right to fair trial), 24 (Right to equal protection) and 25 (Judicial protection) of the American Convention in connection with Articles 1.1 (Obligation to respect rights) and 2 (Domestic legal effects)
Exhaustion of domestic remedies:	Yes, in accordance with section VI
Timeliness of the petition:	Yes, in accordance with section VI

V. ALLEGED FACTS

1. Mr. William Mariano Paría Tapia (hereinafter, “the alleged victim,” “Mr. Paría” or “the petitioner”) claims to have been wrongfully convicted by the State of Peru since judicial authorities failed to carry out an adequate and suitable review of his situation and of the evidence during criminal proceedings carried out against the alleged victim, thus rendering them responsible for the illegal deprivation of his liberty. Moreover, he alleges that while he was incarcerated, he was beaten and tortured by prison staff and that despite denouncing these facts, a situation of impunity persists until today, since no one was charged or sanctioned for these acts.

2. According to the petitioner’s allegations, on December 12, 2005, the Mixed Chamber of Chachapoyas of the Superior Court of Justice of Amazonas sentenced him to imprisonment for a crime against sexual liberty, specifically the rape of a girl under the age of 14-years-old. He contends that the court did not take into account the fact that it was impossible for him to know the age of the minor girl at the time of the sexual and romantic relationship with her, given her physical appearance and claims she herself had made as to her age. He argues that the court ignored consistent legal precedents on acquittal of charges of sexual offenses under such circumstances.

3. He claims that the proceeding was based on an improper assessment of the evidence inasmuch as the statements of the under-aged girl, the manifestation of her consent, their domestic partnership and the fact that they had procreated a daughter together were not taken into account and, consequently, there would be a due process violation. As such, he asserts that there was also unwarranted delay in the administration of justice, on the grounds that the remedies pursued by him to challenge the conviction were not settled within the statutory time period, but rather with delays of more than one year and, therefore, his right of defense was infringed because of the careless way the judicial officers handled the case.

4. He contends that he and the Office of the Public Prosecutor filed a motion to vacate the judgment of conviction of December 12, 2005 with the Supreme Court of Justice. He claims that on May 4, 2006, the Second Transitory Criminal Chamber of the Supreme Court amended the sentence of five years of imprisonment increasing it to 9 years. In response to this ruling, the alleged victim filed a motion for review of judgment with the Permanent Criminal Chamber of the Supreme Court of Justice, which was denied on September 7, 2007, on the grounds that the appellant’s claim was meant for the court to reexamine evidence, which had been appropriately subjected to discovery and evaluation in the Judgment of conviction issued by the trial court and the Judgment of denial of appeal issued by the Transitory Criminal Chamber. He

contends that this panel of judges was made up of three judges who had previously ruled on his original motion to vacate the judgment.

5. Additionally, on March 30, 2007, Mr. Paría filed a petition for *habeas corpus* with the Constitutional Court, in order to question the reasoning of the trial court judgment and the evidence introduced during the case proceedings. Said petition was denied on October 4, 2007, on the grounds that it sought to reexamine the judgment of conviction, and that the finding of criminal liability and assessment of evidence were aspects for which the trial court is the competent court. He claims that he subsequently filed other petitions for *habeas corpus*, as well as other motions for review of judgment. He contends that the judges, who had previously ruled on his motion to vacate the judgment in his first motion for review of judgment, continued to sit on the panels that denied his subsequent motions.

6. He asserts that on July 31, 2008, he was denied day-release by the Second Specialized Court for Criminal Matters of Chachapoyas based on the nature of the conviction, inasmuch as Law 28.704 establishes that the benefit of day-release is not applicable to crimes relating to the sexual liberty of minors, among other offenses. The petitioner argues that said ruling entails discriminatory conduct by judicial officials because the benefits of day-release and sentence reduction have been granted in more serious cases than his, such as for crimes of illicit drug trafficking and homicide.

7. He further alleges that in 2009, he was beaten and tortured by the prison staff while he was imprisoned, which he reported to the authorities of the prison facility and brought it to the attention of the Office of the Prosecutor; notwithstanding, he received no response or findings of investigations with a view to clarifying the facts. He also contends that the conviction had an adverse effect on his nuclear family members, their interpersonal relationships and support of his household.

8. Based on the foregoing allegations, the petitioner asserts that the actions of the State constitute a violation of the right to humane treatment, personal liberty, a fair trial, freedom from *ex post facto* law, compensation, privacy and equal protection, as provided for under the American Convention. He further claims that the conviction imposed on him for a crime against the sexual liberty of a minor girl has destroyed his family life and home. He adds that the woman he was married to at the time of the events separated from and divorced him. He also contends that his daughters were left unprotected and deprived a father figure during the period that he was confined to prison and he was also unable to provide adequate economic support to them during that period. He argues, therefore, that the State is also responsible for the violation of the rights of the family and the rights of the child.

9. The State, in turn, alleges that the facts giving rise to the petition do not tend to establish violations of rights protected by the American Convention as provided for under the instrument itself. It puts forward the argument that the petition calls into question the judgment issued by domestic courts, on the grounds that it views it as wrongful and violating rights because of the alleged failure of the domestic operator of justice to acknowledge that he could not have known the girl's age. As such, the State claims that the issues raised by him were previously examined in the domestic courts and, consequently, the Commission is precluded from acting as a fourth instance and therefore is legally barred from intervening and reviewing any domestic rulings issued in the case.

10. Additionally, the State asserts that the petitioner had access to justice and to judicial remedies, which turned out to be unfavorable to him. It further contends that the judicial proceedings brought by the petitioner in order to exhaust domestic remedies are only relevant to the right to personal liberty and judicial protection. With respect to the alleged violation of the right to freedom from *ex post facto* law, compensation, privacy, family, rights of the child, equal protection and the rules of interpretation, as enshrined in the American Convention, it argues that the remedies exhausted in domestic courts were not related to the potential violation of those rights and, as such, there is no evidence that Mr. Paría has fulfilled the requirement of prior exhaustion of domestic remedies. As for the complaints for the crimes of bodily injury and abuse of authority filed against a prison guard, the State asserts that these incidents are the subject of a preliminary investigation at this time.

11. Moreover, with regard to the alleged discrimination resulting from the denial of the prison benefit of day-release, the State argues that said court decision is fully justified under special provisions of law prohibiting the application of some prison benefits to persons who have been convicted of the crime of statutory rape. It further contends that the defense was careless, inasmuch as it requested a benefit that was expressly prohibited under a law that it should have been aware of.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

12. The petitioner submits that he filed a motion to vacate the judgment of December 12, 2005, which was denied by the Second Transitory Criminal Chamber of the Supreme Court on May 4, 2006. He asserts that on November 6, 2006, he filed a motion for review of the judgments from 2005 and 2006 issued by the lower Court Chamber, which was denied as inadmissible on September 7, 2007. He also submits that he filed a petition for habeas corpus with the Constitutional Court on March 30, 2007, which was found inadmissible on October 4, 2007. While the State recognizes that Mr. Paría exhausted the above-cited remedies, it argues that the motion to review judgment and habeas corpus were not suitable remedies. As such, it contends that through these remedies the alleged victim requested reevaluation of the evidence and that these remedies are not meant for this purpose. Therefore, it claims that the conviction became final on November 6, 2006, and that the petition lodged with the IACHR on February 13, 2008, is untimely.

13. With respect to the suitability of the motion for review and the petition for habeas corpus filed by the alleged victim, the Commission notes that the judicial authorities cited the circumstances in which these remedies could be used to satisfy the claims of the alleged victim but concluded in the specific case that the alleged victim had not proven that his situation matched any of these circumstances. The Commission finds that the unfavorable result does not prove in and of itself the lack of suitability of these remedies. Additionally, Mr. Paría filed the petition for habeas corpus in relation to his right to freedom, which in principle provides for a chance to protect said right.

14. In view of the foregoing, the Commission finds that domestic remedies were exhausted on October 4, 2007, the date when the petition for habeas corpus was denied. Also, taking into account the petition of February 13, 2008, the Commission finds that the petition fulfills the requirement under Article 46.1.b of the American Convention as to his deprivation of liberty and the alleged violations of due process in the proceedings brought in the trial and appeals courts.

15. The IACHR further notes that the allegations of a potential violation of due process rights by virtue of the participation of the same three judges in the decision on the motion to vacate judgment and in the successive motions for review, only materialized on September 7, 2007, when the same judges participated in the ruling on the petitioner's first motion for review. After the present petition was received, the IACHR received documentation which show the filing of other motions for review over the years and that in these motions repeated requests were made to the Supreme Court of Justice for the judges that ruled on the motion to vacate to recuse themselves from deciding the motion for review. In view of the foregoing, the IACHR finds that the petitioner brought these facts to the attention of the judicial authorities on several occasions, even while the petition was already under consideration before the IACHR. Consequently, the IACHR finds that the requirements provided for in Articles 46.1.a and 46.1.b of the American Convention have been met with respect to these allegations.

16. The Commission also notes that in 2009, the petitioner reported to the authorities that he was the target of beatings and torture at the penitentiary facility by a prison guard, upon which he bases the allegation that his right to humane treatment was violated. According to the information received from both parties, an investigation into these incidents was opened by the Office of the Prosecutor in 2009. On April 1, 2015, the State reported to the IACHR that an investigation was underway and that it would request information about it in order to inform the Commission about the course of the investigation. On November 11, 2016, the State submitted additional observations on the petition without making any reference to the investigation opened in 2009. Based on the foregoing, the IACHR finds that the exception to the requirement for exhaustion provided for in Article 46.2.c of the American Convention is applicable with respect to the alleged victim's allegations about the supposed assault inflicted upon him in prison and the

denial of justice, because there is no indication that the investigation into the incidents opened in 2009 has been completed as of the date of the present report. Additionally, taking into account that the events took place while the petition was already under review by the IACHR and the consequences of the alleged failure to investigate and punish those responsible persist up to the present time, it is fitting to find the requirement of Article 32.2 of the IACHR Rules of Procedure to have been met. The causes and effects preventing exhaustion of domestic remedies in the instant case shall be examined, as appropriate, in the report on the merits of the dispute which may be adopted by the Commission, in order to ascertain whether there have been violations of the Convention.

17. Additionally, with respect to the alleged inability to obtain the benefit of day-release, the IACHR notes that the petitioner requested this benefit and it was denied on July 31, 2008, by the 2nd Specialized Court for Criminal Matters of Chachapoyas. Based on the documentary evidence provided by Mr. Paría, at the special hearing on day-release, he argued to the judge that the Peruvian law prohibiting the granting of the benefit of day-release to persons convicted of the crime of rape is incompatible with the Peruvian Constitution and with international treaties ratified by the Peruvian State. The State, in response, claims that the accused's defense was careless, inasmuch as he requested a prison benefit that was expressly prohibited by a law that he should have known and notes that the petitioner called into question the denial of the benefit of day-release at the time the decision to deny was read to him, thus using a method to challenge the ruling that is not provided for by law. The Commission recalls that the purpose of the requirement of prior exhaustion of domestic remedies is to allow national authorities to hear alleged violations and have a chance to resolve them. Based on the foregoing, the Commission finds that the petitioner brought to the attention of the State authorities the alleged incompatibility of the provisions of Law 28.704 with the Political Constitution of Peru and with international treaties ratified by the State, including the American Convention, and, taking into account that the State does not mention any other suitable means to have raised these issues, the IACHR finds that the alleged victim has met the requirement of Article 46.1.a on July 31, 2008. The Commission further notes that domestic remedies were exhausted on July 31, 2008 while the petition was under review of admissibility and recalls that in these circumstances it is appropriate to find the requirement of Article 46.1.b of the Convention to have been met.⁶

VII. COLORABLE CLAIM TO ALLEGED FACTS

18. In light of the elements expressed by the parties, the Commission considers that the alleged torture suffered by Mr. Paría while incarcerated and the impunity of those responsible could tend to establish a violation of the rights enshrined in Articles 5 (Right to Humane Treatment), 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the American Convention in connection with Article 1.1 of said instrument to the detriment of Mr. Paría and warrant an analysis on the merits. Additionally, the Commission shall examine during the merits stage whether or not the repeated intervention of judges, who had previously ruled on the motion to vacate the judgment and then ruled again in successive motions for review could constitute a violation of the rights enshrined in Articles 8 and 25 of the American Convention in connection with Article 1.1 of said instrument to the detriment of Mr. Paría. Likewise, during the merits stage, the IACHR shall examine whether Mr. Paría's preclusion from access to the benefit of day-release based on the crime he was convicted of could tend to establish a violation of the right enshrined in Article 24 (Right to Equal Protection) of the Convention in connection with Articles 1.1 and 2 of said instrument.

19. However, with respect to the criminal proceedings carried out against Mr. Paría, his conviction and the deprivation of his liberty, the IACHR considers that Mr. Paría is requesting the Commission to act as an appeals court with the objective of obtaining a new evaluation of the evidence that has already been analyzed and interpreted in an unfavorable manner by national tribunals. In this regard, the Commission notes that during Mr. Paría's trial proceedings, the defense moved for his acquittal of the charges of raping a girl under the age of 14 years old based on: i) the sexual relationship being consensual; ii) the girl's sexual history with third parties; iii) the girl having looked like she was 16 years of age and having led him to believe that she was that age; and iv) Mr. Paría having lived with the girl in domestic partnership.

⁶ IACHR, Report No. 46/15, Petition 315-01. Admissibility. Cristina Britez Arce. Argentina. July 28, 2015, para. 47.

Once Mr. Paría was convicted, he filed a motion to vacate the conviction on these same grounds. Subsequently, in several motions for review of the judgment filed before the Supreme Court he maintained that he was innocent and that the courts had mistakenly convicted him because it had not acknowledged his lack of *mens rea* due to the impossibility of knowing that the girl was under the age of 16 and it had not taken into account the girl's statement. In the habeas corpus proceedings brought by him before the domestic courts, he argued that his detention was illegal. Now, before the IACHR, he is claiming that he is innocent, that the courts wrongfully convicted him by ignoring the girl's statement and failing to acknowledge his lack of knowledge of the girl's age and that his detention is illegal.

20. The IACHR recalls that it cannot act as a court of review to examine alleged errors of law and of fact, which may have been committed by domestic courts, under the scope of its mandate to ensure observance of the rights enshrined in the American Convention. As such, the Commission is only competent to find a petition admissible and rule on the merits when the petition involves domestic cases that could run afoul of the rights ensured by the Convention.⁷ In view of the foregoing, the IACHR finds that the facts recounted by Mr. Paría pertaining to ordinary criminal proceedings which resulted in his conviction and the actions of the judicial authorities do not tend to establish violations of the rights enshrined in Articles 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), 9 (Freedom from Ex Post Facto Laws), 10 (Right to Compensation), 11 (Right to Privacy) and 25 (Right to Judicial Protection) of the Convention.

21. Likewise, the Commission finds that the facts as stated by the petitioner do not prove any potential colorable claim to violation of the rights enshrined in Article 17 (Rights of the Family) and 19 (Rights of the Child) of the American Convention.

22. The Inter-American Commission has previously established that, once the American Convention comes into force on a State, the American Convention, and not the American Declaration, becomes the primary source of law applicable by the Commission, provided that the petition involves the alleged violation of rights identical to both instruments and does not involve a situation of ongoing violation. Therefore, in the present case it is not necessary to declare admissible the articles of the American Declaration invoked by the alleged victim.

23. Lastly, the Commission recalls that it is not competent to declare violations of rights enshrined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, but it does have the legal authority to resort to the standards thereof for purposes of interpreting the provisions of the American Convention, by virtue of Article 29 of the Convention.

VIII. DECISION

1. To declare the instant petition admissible with regard to Articles 5, 8, 24 and 25 of the American Convention, in connection with Articles 1.1 and 2 of the same instrument;
2. To declare the instant petition inadmissible with regard to Articles 7, 9, 10, 11, 17 and 19 of the American Convention;
3. To notify the parties of the instant decision;
4. To proceed to the examination of the merits of the matter; and
5. To publish this decision and include it in the IACHR's 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 México, on the 7 day of the month of September, 2017. (Signed): Margarette May Macaulay, First Vice President; Esmeralda E. Arosemena

⁷ IACHR, Report No. 37/13. Petition 1279-04. Admissibility. M.V.M. y P.S.R. Brazil. July 11, 2013, para.32.

Bernal de Troitiño, Second Vice President; José de Jesús Orozco Henríquez, Paulo Vannuchi, James L. Cavallaro, and Luis Ernesto Vargas Silva, Commissioners.