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REPORT No. 57/18
PETITION 969-07
REPORT ON ADMISSIBILITY

KAREN MAÑUCA QUIROZ CABANILLAS
PERU

Approved by the Commission at its session No. 2127 held on May 5, 2018.
168th Special Period of Sessions.

Cite as: IACHR, Report No. 57/18, Petition 969-07. Admissibility. Karen Mañuca Quiroz Cabanillas. Peru. May 5, 2018.



I. INFORMATION ABOUT THE PETITION

Petitioner:	Segundo José Quiroz Cabanillas
Alleged victim:	Karen Mañuca Quiroz Cabanillas
Respondent State:	Peru ¹
Rights invoked:	Articles 5 (integrity), 7 (personal Liberty), 11 (privacy) and 18 (name) of the American Convention on Human Rights ² in relation to its Article 1.1 (Obligation to Respect Rights) and other international treaties ³

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition:	July 31, 2007
Additional information received at the stage of initial review:	September 7, 2011 and July 9, 2014
Notification of the petition to the State:	November 11, 2016
State's first response:	January 3, 2017
Additional observations from the petitioner:	May 10, 2017
Additional observations from the State:	October 18, 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 (deposit of instrument made on July 28, 1978)

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 3 (juridical personality), 5 (integrity), 8 (due process), 11 (privacy), 13 (freedom of thought and expression), 18 (name), 24 (right to equal protection), 25 (judicial protection) and 26 (economic, social and cultural rights) of the American Convention in relation to its Articles 1.1 and 2
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, under the terms of section VI
Timeliness of the petition:	Yes, under the terms of section VI

¹ In accordance with the provisions of Article 17.2.a of the Rules of Procedure of the Commission, Commissioner Francisco José Eguiguren Praeli, of Peruvian nationality, did not participate in the debate or in the decision of this case.

² Hereinafter "Convention" or "American Convention."

³ Articles 1, 2, 11.1 y 28 of the Universal Declaration of Human Rights.

⁴ The observations of each party were duly transferred to the opposing party.

V. ALLEGED FACTS

1. The petitioner indicates that the alleged victim, Karen Mañuca Quiroz Cabanillas, a transgender woman, made a marginal registration in her birth certificate in 1998 in order to change her name to one that was related to her "psychological gender", by virtue of a sentence that ordered the modification. He indicates that for this reason, the National Registry of Identification and Civil Status (hereinafter "RENIEC"), gave her a national identification document (hereinafter "DNI") with the rectification of the name and gender. He adds that in 2001, the National Elections Jury required the alleged victim to constitute a board for the presidential elections, being notified with his previous name - male - of which it is clear that RENIEC would not have notified the rectification of his identity to the Jury National of Elections. The information presented indicates that, in parallel, the alleged victim lost her DNI, so she was interviewed by the Chief of RENIEC in order to request a copy of it. She alleges that, after delivering the birth certificate with the names rectified and having paid for the process of issuing a duplicate of the document, officials of the entity indicated that their identity "had been questioned", which is why they would not deliver the document. She says that after this, she repeatedly requested the issuance of the DNI, receiving the refusal of the head of RENIEC, which she wielded had various impacts on her rights.

2. It is indicated that on February 9, 2005, the alleged victim filed a writ of habeas corpus before the Criminal Court No. 31 of Lima for the denial of the issuance of her identity document for 4 years, alleging violation of his right to life, identity, integrity and her free development and well-being. It affirms that on February 14, 2005, the court declared the action inadmissible, for which reason she appealed this resolution. In the second instance, the Superior Criminal Chamber of Emergency for Processes with Free Prison confirmed the decision on March 2, 2005, for which the alleged victim filed a constitutional complaint before the Constitutional Court on March 31, 2005. From the documentation provided, it appears that on April 20, 2006, the Constitutional Court considered that the delay in issuing the DNI and a written response violated the identity and dignity of the alleged victim. From the latter judgment it is also inferred that the alleged victim had had two identities before the Electoral Registry. In this regard, the Constitutional Court considered that it was not up to her to rule on it, since the possible existence of an illegal act had to be determined before the competent authorities. The Tribunal concluded that the first registration was in force and what had changed was the name "remaining unalterable the other identity elements (sex, date of birth, etc.) contained in the original registration." The alleged victim indicates that she had been notified of the Constitutional Court ruling on April 8, 2007. On the other hand, it appears from the documentation provided that during the processing of the aforementioned constitutional tort, the alleged victim filed a writ of habeas corpus against the Constitutional Court so that she can pronounce on the matter. The latter action was rejected by the Twelfth Special Criminal Court of the Superior Court of Justice of Lima on October 17, 2006, noting that the Constitutional Court had ruled on April 20, 2006 ordering RENIEC to grant it a duplicate DNI.

3. The petitioner alleges that the judgment of the Constitutional Court did not reestablish her rights in their totality, because although it accepted the change of registry name, it did not consider her human rights in full, since it did not allow to re-establish her gender in her DNI. She affirms that the sentence "is not clear in its resolution whenever it tries to minimize the damage that they have caused to me". She argues that this situation has continued, even after having undergone an "intervention to modify her external sexual characteristics", due to which her sex at present is female. Finally, she affirms that the habeas corpus that it exercised was the appropriate remedy in this case, since according to the Constitutional Procedural Code, the habeas corpus proceeds according to article 25 No. 10, in case of deprivation of the national identity document. In addition, she argues that thanks to the filing of habeas corpus against the plenary session of the Constitutional Court for the refusal to resolve the habeas corpus against RENIEC, the plenary was able to issue a ruling, so it cannot be argued that she did not exhaust domestic remedies as the State intends. She also states that the events affected her dignity, identity, personal freedom and integrity. She argues that the State dissociated her from her work at FONCODES because she lacked identity, and that she had not been reinstated at her work. She alleges that the lack of identification affected her personal and professional development capacity, not being able to obtain a master's or doctoral degree in her specialty (agricultural engineering). She also argues that her personal liberty was put at risk because, having no identification, she was at risk of being deprived of her liberty. She adds that to date, the identity document that was canceled was not replaced, and that it contained the identification of her gender as female.

4. The State on its behalf alleges the inadmissibility of the petition. It alleges incompetence *ratione materiae*, since it states that the petitioner alleges rights that are not part of the Convention, such as the right to identity, development and welfare. It argues that the violation of the aforementioned rights cannot be discussed under the system of petitions and cases because they are not part of the Commission's material jurisdiction, since they are not foreseen in the Convention or in the Additional Protocol to the American Convention in of Economic, Social and Cultural Rights.

5. In addition, it alleges that the remedies exhausted by the alleged victim were not suitable, since, according to domestic legislation, the procedure for contesting administrative decisions is the contentious-administrative procedure. It affirms that even in the hypothesis that the habeas corpus exercised by the alleged victim is considered as an adequate way in this case, "many of the acts that allegedly violated their rights have not been questioned internally." It indicates that the claim in the writ of habeas corpus was to be granted a duplicate DNI, however, "in the aforementioned petition for protection, the petitioner never questioned the cancellation of her registration (...), nor that was it rectified or specified that the sex that should appear was the female ". Likewise, regarding the petitioner's allegation that the Constitutional Court's decision is not clear in its decision, she could have presented the request for clarification in accordance with the Constitutional Procedural Code, but she did not do so, which shows that she did not exhaust the internal resources.

6. In addition, with regard to the petition for habeas corpus filed against the Constitutional Court for omission of acts of mandatory compliance, declared unfounded on October 17, 2006, it indicates that "the petitioner has not shown that she filed an appeal, by which it is understood that she consented to this result, without exhausting domestic remedies. " In addition, it states that she did not file a judicial appeal to determine the possible administrative responsibilities in the cancellation of the duplicate records in the RENIEC. It adds that the alleged victim did not exhaust any civil damages proceeding to request compensation for the allegedly violating acts. As an example, itsays that she could have initiated an action under the Civil Code in order to safeguard his right to the name or honor.

7. Additionally, regarding the allegation that her "female sex" had not been reestablished, she affirms that without prejudice to the alleged lack of exhaustion that the State raises, in case the Commission considers that the Constitutional Court ruling of April 20, 2006, the internal instance would have exhausted, the term of presentation of the denunciation should be counted from the date of notification of the latter judgment. It affirms that although the alleged victim claims to have been notified on April 8, 2007, "she has not attached the document that allows corroborating the corresponding notification date of the latter resolution." It indicates that, considering the date of issuance of the judgment, "it is possible to deduce more than reasonably that the submission of the petition before the IACHR far exceeded the term of 6 months - in more than a year - and therefore does not comply with this requirement of admissibility." It adds that on the website of the Constitutional Court the sentence was published on October 13, 2006 and in the official newspaper El Peruano on October 24, 2006. It also indicates that the notification charges to RENIEC and the petitioner were issued on October 21, 2006, and that her address is in the same city and district as the RENIEC, it being reasonable to consider that they were notified "if not on the same date, on very close dates". It adds that, in accordance with the RENIEC ruling of April 2, 2008, on November 13, 2006, the alleged victim initiated a rectification procedure for the inscription, requesting a change of name, supporting the request in the Constitutional Court ruling, attaching a copy of it, so that by November 13, 2006, she had full knowledge of the sentence. It adds that, in this case, there is no special circumstance to apply the flexibility criterion of the deadline to submit petitions to the Commission.

8. It affirms that the inter-American system is subsidiary, coadjuvant and complementary, and that regardless of the results of an internal judicial process, the Commission is not authorized to intervene and review internal rulings issued in the context of a regular proceeding even when have not been favorable to the appellant. It adds that on the basis of the fourth instance, the Commission cannot review the rulings issued by the national courts that act within its sphere of competence and applying due judicial guarantees, which is what the petitioner intends in this case.

9. Finally, it refers that the petition does not include any fact that constitutes a violation of the alleged rights. It affirms that the fact that generated the alleged violations was the lack of issuance of the DNI of the alleged victim and that RENIEC issued the aforementioned DNI on November 20, 2006, which has not been questioned by the petitioner. It affirms that, when the DNI was issued, the event generating the controversy was corrected, there being no violation of any right at present.

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

10. The petitioner states that, after having requested a copy of her DNI before the RENIEC and after several years of denial, she filed a writ of habeas corpus in two instances, and that the Constitutional Court partially granted the requisite, ordering to the RENIEC that will grant him the duplicate of his DNI with the name of Karen Mañuca Quiroz Cabanillas, but maintaining the intangibility of the other elements of her identity. The alleged victim indicates that she was notified of the aforementioned sentence on April 8, 2007 and that she had to file a habeas corpus in order for the Constitutional Court to rule. She argues that the habeas corpus was the appropriate remedy in this case, because according to the Constitutional Procedural Code, it comes in case of deprivation of the national identity document.

11. On its behalf, the State affirms that the appropriate and effective domestic remedies were not filed or exhausted, deducting the exception of lack of exhaustion. It alleges that the alleged victim did not exhaust the administrative remedy, and that even if the habeas corpus was considered an adequate remedy, some of the facts alleged were not alleged in the domestic proceeding, indicating that it did not question the cancellation of its registration, nor did it require the rectification of the sex. It adds that there was no appeal for clarification if it was considered that the judgment was unclear and that the judgment of October 17, 2016 issued by the Twelfth Special Criminal Court of the Superior Court of Justice of Lima was also not challenged. It affirms that no resources were exercised to pursue administrative responsibility for the facts denounced, nor the civil action in order to obtain compensation or in order to safeguard their right to the name or honor as provided by the Civil Code. In addition, it alleges that the petition was presented extemporaneously, stating that the petitioner did not offer elements that detract from his knowledge of the judgment issued by the Constitutional Court on April 20, 2006, at least on November 13, 2006, in which the alleged victim implemented the registration rectification procedure, requesting the change of name, supporting the request in the aforementioned ruling of the Constitutional Court, which is why the petition was filed after the deadline.

12. According to the petitioner's allegations and the information available, the Commission identifies that what the alleged victim alleged at the domestic level was obtaining a copy of her DNI that reflected her change of name and sex, for which, after the request for a duplicate before the RENIEC filed a writ of habeas corpus. According to the information, in that appeal he alleged violations of her right to identity, integrity and free development among others. In the same sense, the Constitutional Court observed that the claim presented would not "be limited to the formal issuance of the aforementioned identity document", but that it would be "a new way of identifying oneself" as already indicated in the copy written down in her DNI. The Commission also notes that the Constitutional Court, although partially accepting the request made by the alleged victim and ordering the name to be modified on her ID, decreed that the other elements of her identity, including sex, should not be modified. Given the above, the Commission considers that the procedure that the alleged victim had at the domestic level did not allow her to fully adapt her gender identity in her ID. The Commission also notes that the request for a copy of the DNI, which had her name and female gender, sufficed to understand that the application covered both the correction of the female name and gender.

13. Additionally, taking into account the time elapsed since she had requested a copy of her ID card until obtaining it, during which time she would not have had an identity document, the procedure would not have been expeditious. In this regard, the Inter-American Court of Human Rights in its Advisory Opinion OC-24/17 has established that the procedures for requesting the adaptation of identity data in accordance

with the self-perceived gender identity must be expedited and carried out with as quickly as possible, given the degree of affectation that these procedures can have⁶. For purposes of admissibility, the Commission observes that, through the writ of habeas corpus, the Constitutional Court analyzed the situation raised and ruled in favor of the change of name according to the ruling that ordered its modification years earlier. However, it was indicated that the other elements of identity, including sex, remain "unalterable". In this regard, the Commission concludes that, prima facie, it appeared that there was no due process or appropriate remedy to protect the rights allegedly violated, which is why the exception to exhaustion contemplated in Article 46.2.a of the American Convention is applicable.

14. In addition, the Commission notes that the petition was received on July 31, 2007, and that the alleged facts that were the subject of the claim would have occurred at least since 2005 and some of the effects would extend to the present. Therefore, in view of the context and characteristics of the present case, the Commission considers that the petition was filed within a reasonable period of time and that the admissibility requirement regarding the filing period must be satisfied. Given the previous one, the Commission will not pronounce on the claim of the State regarding the extemporaneity of the petition.

VII. ANALYSIS OF COLORABLE CLAIM

15. In view of the factual and legal elements presented by the parties and the nature of the matter brought to its attention, the Commission considers that the facts alleged in relation to the various administrative and judicial difficulties experienced by the alleged victim in order to obtain copy of her DNI that reflects the name and gender with which she identifies herself, as well as the allegation of having been several years without an identification document, as well as the possible consequences that this entailed in various areas of her life, including in the field labor and education, could characterize possible violations of articles 3 (juridical personality), 5 (personal integrity), 8 (judicial guarantees), 11 (honor and dignity), 13 (freedom of thought and expression), 18 (name), 24 (equality before the law), 25 (judicial protection) and 26 (economic, social and cultural rights) of the American Convention, in relation to its Articles 1.1. and 2.

16. Regarding the petitioner's claim about the alleged violation of Article 7 (personal liberty) of the Convention, the Commission observes that the petitioner does not raise specific arguments for her alleged violation, so it is not appropriate to declare this claim admissible.

17. In addition, with regard to the State's claim regarding incompetence *ratione materiae* for alleging rights that would not be foreseen in the Convention, such as the right to identity, development and well-being, the Commission must analyze the merits stage if the latter rights are included in the Articles mentioned above.

18. Finally, with regard to the argument of the State of the fourth instance, the Commission observes that admitting this petition does not intend to supplant the jurisdiction of the domestic judicial authorities. It will analyze at the merits stage of the present petition, whether the domestic judicial processes complied with the guarantees of due process and judicial protection, and offered due guarantees of access to justice for the alleged victims under the terms of the American Convention.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 3, 5, 8, 11, 13, 18, 24, 25 y 26 of the American Convention, in accordance with articles 1.1 and 2 of the latter;

2. To find the instant petition inadmissible in relation to Article 7 of the American Convention;
and

⁶ I/A Court H.R. Gender identity, and equality and non-discrimination with regard to same-sex couples. State obligations in relation to change of name, gender identity, and rights deriving from a relationship between same-sex couples (interpretation and scope of Articles 1(1), 3, 7, 11(2), 13, 17, 18 and 24, in relation to Article 1, of the American Convention on Human Rights). Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 142.

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.

Approved by the Inter-American Commission on Human Rights in the city of Santo Domingo, Dominican Republic, on the 5th day of the month of May, 2018. (Signed): Margarete May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice President; Luis Ernesto Vargas Silva, Second Vice President; Joel Hernández García, Antonia Urrejola, and Flávia Piovesan, Commissioners.