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REPORT No. 182/18

PETITION P-09-07

REPORT ON ADMISSIBILITY

GIOVANNA MARILÚ ANAYA NALVARTE AND FAMILY
PERU

Approved electronically by the Commission on December 26, 2018

Cite as: IACHR, Report No. 182/18. Admissibility. Giovanna Marilú Anaya Nalvarte. Peru.
December 26, 2018.



I. INFORMATION ABOUT THE PETITION

Petitioner:	Bertha Flores Zúñiga
Alleged victim:	Giovanna Marilú Anaya Nalvarte and family
State denounced:	Peru ¹
Rights invoked:	Articles 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 9 (principle of legality), 11 (honor and dignity), 25 (judicial protection) of the American Convention on Human Rights, ² in connection with Article 1(1) thereof.

II. PROCEDURE BEFORE THE IACHR³

Filing of the petition:	January 4, 2007
Notification of the petition to the State:	June 28, 2010
State's first response:	August 28, 2010
Additional observations from the petitioner:	March 22 and 23 and September 29, 2011, July 10 and December 5, 2012, and October 7, 2013
Additional observations from the State:	July 14, 2011, July 25, 2013, and March 20 and April 7, 2014
Notification of the possible archiving of the petition:	June 14, 2018
Petitioner's response to the notification regarding the possible archiving of the petition:	July 10, 2018

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 (instrument of ratification deposited on July 12, 1978); Inter-American Convention to Prevent and Punish Torture ⁴ (instrument deposited on March 28, 1991); and Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women ⁵ (instrument deposited on June 4, 1996)

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
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¹ Pursuant to the provisions of Article 17(2)(a) of the Commission's Rules of Procedure, Commissioner Francisco José Eguiguren Praeli, a Peruvian national, did not participate in either the debate or the decision on this case.

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

³ Each party's observations were duly forwarded to the other party.

⁴ Hereinafter, "IACPPT."

⁵ Hereinafter, "Convention of Belém do Pará."

Rights declared admissible:	Articles 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 9 (principle of legality), 11 (honor and dignity), 19 (rights of the child), 24 (equal protection), 25 (judicial protection), and 26 (economic rights) of the American Convention, in connection with Articles 1(1) and 2 thereof; Articles 1, 6, and 8 of the IACPPT, and Article 7 of the Convention of Belém do Pará
Exhaustion of domestic remedies or where an exception applies:	Yes, under the terms of Section VI.
Timeliness of the petition:	Yes, under the terms of Section VI.

V. FACTS BEING ALLEGED

1. The petitioner states that Giovanna Marilú Anaya Nalvarte (hereinafter, “the alleged victim” or “Ms. Anaya”), has been imprisoned at the Chorrillos maximum-security prison⁶ in Lima since 2002. The petitioner maintains that since the time of her arrest and subsequent prosecution, Ms. Anaya’s rights to humane treatment and personal liberty, a fair trial, honor and dignity, and judicial protection have been violated by the Peruvian State.

2. The petitioner asserts that on August 22, 2002, the alleged victim was resting at her home, in the province of Callao, due to her delicate condition—she was six months pregnant at the time—when a group of police officers and a woman claiming to be her neighbor knocked on her door and then stormed in. The petitioner alleges that the police were armed and did not have a search warrant and that they covered the alleged victim’s mouth, placed her face down on the bed, and threatened her while others went through her belongings in search of supposed evidence. She maintains that they told the alleged victim she was wanted based on a 1993 warrant; Ms. Anaya responded that that was impossible since she was just 12 years old back then. The petitioner indicates that meanwhile, neighbors saw uniformed men place a bag beside the alleged victim’s house while she was being subdued. The petitioner observes that the search of the Ms. Anaya’s home lasted nearly nine hours, and that she was subsequently transferred—blindfolded—to Peru’s National Counter-terrorism Directorate (hereinafter, “DINCOTE”). The petitioner indicates that there, without being informed of the charges against her and unable to communicate with her relatives, the alleged victim was subjected to intense interrogations; was forced to witness her former partner being abused; and was injected with sodium pentothal to secure a statement, all of this despite her being pregnant. The petitioner adds that that injection, known as “truth serum,” caused health problems in [the alleged victim’s] daughter, who was born with brittle bones.

3. The petitioner indicates that Ms. Anaya’s arrest occurred when the government of Peru was publicly offering a reward of one million dollars for the capture of the members of the “Shining Path” who were allegedly behind a terrorist attack at the “El Polo” shopping mall across from the United States embassy in Lima. She maintains that this motivated the arbitrary arrest and subsequent prosecution of the alleged victim since a number of officers acknowledged that they had received a reward in the amount of S/3.5 million soles from the Interior Ministry for the arrest of Ms. Anaya and four other defendants.

4. The petitioner states that the alleged victim was held at DINCOTE for a month and thereafter, Criminal Court Number 18 of Lima opened up an investigation against her on charges of terrorism. She observes that subsequently, without Ms. Anaya’s knowledge, the case was referred to the First Special Court for Crimes of Terrorism. The petitioner claims that such action violated the alleged victim’s right to a fair trial and her right to a natural judge as this was not a standing court, but rather a special one. The petitioner adds that the alleged victim’s release on the grounds of an excessively long detention was rejected on June 9, 2004, thus prolonging her time in pretrial detention. The petitioner indicates that the National Criminal Chamber issued its judgment on August 5, 2005, sentencing the alleged victim to 15 years in prison. In this regard, she indicates that the investigation was plagued with false evidence and statements made by state agents. In this connection, she notes that the bag found on the side of the Ms. Anaya’s house was

⁶ Last communication received from the petitioner on July 10, 2018.

considered to be damning evidence in her conviction, even though the alleged victim had seen the police plant that evidence. The petitioner indicates that the National Criminal Chamber acknowledged that both the home search and everything obtained from inside the residence were unlawful; it did, however, determine that since the bag with explosive material was found outside [the home], it was presumed to be the property of the occupants and therefore had to be considered as evidence in determining the guilt of the alleged victim.

5. The petitioner indicates that in light of that decision, the alleged victim filed an appeal that was rejected by the Supreme Court of Justice's Second Provisional Criminal Chamber on May 24, 2006, under the argument that the illegal acts had been duly proven. The petitioner states that the appeal of that judgment was dismissed by the Sixth Civil Chamber of Lima's Superior Court of Justice on July 7, 2008.

6. The State, for its part, holds that the alleged victim was convicted of crimes against public order and terrorism for having been an active member of the "Shining Path" at the time of her arrest and, therefore, criminally tied to the terrorist acts committed by that organization. Accordingly, the State indicates that no internationally protected rights were violated and that the arrest was made and the investigation pursued following due process. It underscores that current prosecutions of individuals accused of terrorism adhere to human rights standards, including the right to competent, independent, and impartial remedies. As to the alleged violation of domicile, the State acknowledged that the National Criminal Chamber had stated in its 2005 judgment that members of the national police had entered the alleged victim's residence unlawfully, without a warrant, which is why the evidence collected inside the home had been thrown out. The State further maintains that the right to a natural judge was respected inasmuch as the Special Court was comprised of regular judges who were discharging their duties as part of the Judiciary. The State indicates that the nullification action filed by the alleged victim was denied by the Supreme Court's Second Provisional Criminal Chamber on May 24, 2006, after confirming that the illegal acts had been duly proven.

7. Lastly, the State alleges that the Commission cannot examine alleged errors of law made by national courts acting within their purview. The State therefore asks the Commission to declare this petition inadmissible pursuant to Article 47(b) of the American Convention, in application of the fourth-instance formula.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

8. The petitioner alleges that Ms. Anaya's arrest was arbitrary and a result of the unlawful and violent search of her home. She underscores the fact that the illegal nature of that home search was even recognized by the National Criminal Chamber, which decided the criminal case brought against the alleged victim. The petitioner further indicates that despite the fact that Ms. Anaya was six months pregnant at the time her home was searched and she was arrested, and during her subsequent detention at DINCOTE, she was the victim of intense interrogations and abuse. In turn, the State has not contested the exhaustion of domestic remedies in connection with the specific allegations of violation of the right to humane treatment being argued by the petitioner. The Commission takes note of the context in which the alleged violations occurred, including the prison system established by law for persons tried and convicted for crimes of terrorism and high treason, as well as the context and conditions of detention in DINCOTE facilities, aspects upon which it has already ruled in previous cases.⁷

9. The petitioner further maintains that in the context of the criminal case pursued against Ms. Anaya for the crime of terrorism, the alleged victim's right to a fair trial was violated, for which reason she filed a nullification action and an appeal, both of which were rejected by judicial authorities. In this connection, the State alleges that those authorities did not violate the alleged victim's human rights, adding that the arrest and investigation were carried out in adherence with international standards on due process. The Commission observes that both the nullification action filed by the alleged victim and her appeal [of the decision thereon] were rejected on May 24, 2006 and July 7, 2008, respectively. Moreover, the IACHR observes that, according to official information, the alleged victim filed a constitutional remedy with the

⁷ IACHR, Report No. 8/15. Admissibility, Gloria Beatriz Jorge López et al. Peru. January 29, 2015. Paragraph 339.

Constitutional Court, which was declared inadmissible in August 2010. Consequently, the Commission believes the petition under review meets the requirements of Articles 46(1)(a) of the Convention and 31(1) of its Rules of Procedure.

10. Lastly, this petition was received by the IACHR on January 4, 2007, and the facts being alleged therein are said to have begun on August 22, 2002, while certain effects reportedly persist. Therefore, in light of the context and characteristics of the instant case, the Commission considers the petition to have been submitted within a reasonable timeframe and thus deems the admissibility requirement regarding the timeliness of the petition to have been met.

VII. CHARACTERIZATION OF THE FACTS ALLEGED

11. In view of the elements of fact and law put forth by the parties and the nature of the matter under its review, the Commission considers that the reportedly unlawful search of the alleged victim's residence, her subsequent arbitrary arrest, and the purported torture and abuse she endured while pregnant, the use of drugs as an investigative method to obtain statements or confessions, which also allegedly caused damage to her health and that of her daughter, as well as the alleged violation of her right to a fair trial in the context of the criminal prosecution against her for the crime of terrorism, could constitute potential violations of Articles 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 9 (principle of legality and of retroactivity), 11 (honor and dignity), 19 (rights of the child), 24 (equal protection), 25 (judicial protection), and 26 (economic, social, and cultural rights) of the American Convention, in connection with Articles 1(1) and 2 thereof, to the detriment of the alleged victim and her family members; as well as of Article 7 of the Convention of Belém do Pará and Articles 1, 6, and 8 of the IACPPT.

12. As to the State's arguments regarding the fourth-instance formula, the Commission acknowledges that it is not competent to review judgments issued by national courts acting within their purview and applying due process and judicial guarantees. The IACHR nevertheless reiterates that under its mandate, it is competent to declare a petition admissible and rule on the merits when such petition refers to domestic proceedings that might violate the rights enshrined in the American Convention.

VIII. DECISION

1. To declare this petition admissible with regard to Articles 5, 7, 8, 9, 11, 19, 24, 25, and 26 of the American Convention, in connection with Articles 1(1) and 2 thereof, Article 7 of the Convention of Belém do Pará, and Articles 1, 6, and 8 of the IACPPT;

2. To notify the parties of this decision; to continue with its analysis of the merits of the complaint; and to publish this decision and include it in its Annual Report to the OAS General Assembly.

Approved by the Inter-American Commission on Human Rights on the 26 day of the month of December, 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.