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REPORT No. 201/19
PETITION 611-12
REPORT ON ADMISSIBILITY

MUMIA ABU-JAMAL
UNITED STATES OF AMERICA

Approved by the Commission on December 6, 2019 in San Salvador, El Salvador.

Cite as: IACHR, Report No. 201/19, Petition 611-12. Admissibility. Mumia Abu-Jamal. United States of America. December 6, 2019.



I. INFORMATION ABOUT THE PETITION

Petitioner	International Concerned Family and Friends of Mumia Abu-Jamal (ICFFMA)
Alleged victim	Mumia Abu-Jamal
Respondent State	United States of America
Rights invoked	Articles I (life, liberty and personal security), IV (freedom of investigation, opinion, expression and dissemination), X (inviolability and transmission of correspondence) and XXVI (due process of law) of the American Declaration on the Rights and Duties of Man ¹

II. PROCEEDINGS BEFORE THE IACHR²

Filing of the petition	April 11, 2012
Notification of the petition	January 14, 2016
State's first response	August 26, 2016
Additional observations from the petitioner	December 5, 2018
Additional observations from the State	April 24, 2019
Notification of the possible archiving of the petition	September 27, 2018
Response to the notification regarding the possible archiving of the petition	December 5, 2018

III. COMPETENCE

<i>Ratione personae:</i>	Yes
<i>Ratione loci:</i>	Yes
<i>Ratione temporis:</i>	Yes
<i>Ratione materiae:</i>	Yes, American Declaration (ratification of the OAS Charter on June 19, 1951)

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 I (life, liberty and personal security), IV (freedom of investigation, opinion, expression and dissemination), X (inviolability and transmission of correspondence), XVIII (right to fair trial), XXV (protection from arbitrary arrest) and XXVI (due process of law) of the American Declaration
Exhaustion or exception to the exhaustion of remedies	Yes, on October 11, 2011
Timeliness of the petition	Yes, on April 11, 2012

V. SUMMARY OF ALLEGED FACTS

1. The alleged victim was arrested, indicted, convicted and sentenced to death penalty for the murder of the police officer Daniel Faulkner, which took place in Philadelphia, on December 9, 1981. The petitioner alleges errors in the criminal investigation and the judicial processes³, which would have resulted in the alleged victim spending 30 years on the death row, with two scheduled execution dates, before the order being finally vacated, for a crime he has always denied having committed. The petitioner additionally contends that the alleged victim was subjected to extreme social isolation and deprivation of environmental stimulation, amounting to cruel and unusual punishment.

¹ Hereinafter "the American Declaration" or "the Declaration".

² The observations submitted by each party were duly transmitted to the opposing party.

³ The petitioner refers to a report issued by Amnesty International, in which the organization would have concluded that the case of the alleged victim had "failed to meet the minimum international standards safeguarding the fairness of legal proceedings".

2. The petitioner alleges that the depicted events took place in the context of the FBI launching, in 1967, the Counterintelligence Program, targeting civil rights movement leaders and black power advocates – including the alleged victim⁴ – with the intent of neutralizing them, notably by using the criminal justice system. He alleges that he was the victim of surveillance, harassment and repression, motivated by his political associations. He submits that the testimonies of witnesses diverge regarding the chain of events leading to the death of Officer Faulkner. The petitioner alleges that the jury was not presented with all the relevant facts, including that an alternate shooter was identified on two occasions in a lineup by one of the witness or that pressure was exerted on witnesses, that there was apparent manufacture of evidence by the police and that the police failed to perform routine test on the alleged victim's person and belongings. Additionally, the petitioner contends that the confession from the alleged victim that would have been received by the police was only mentioned two months after the incident and that it is in contradiction with a police report written at the time of the shooting. The petitioner denounces that the alleged victim is in isolation for 22 to 24 hours a day and is not allowed to touch his family members or friend. He contends that the alleged victim's correspondence, including legal correspondence, was opened and sent to the governor. He adds that despite the death sentence being vacated by a judge in 2001, the alleged victim stayed on the death row until 2012. As a result, the alleged victim spent 30 years in extreme detention conditions, constitutive of cruel, inhuman or degrading treatment or punishment.

3. The petitioner indicates that on March 6, 1989, the Pennsylvania Supreme Court rejected the alleged victim's appeal of his conviction and sentence. In 1990 and 1991, the US Supreme Court refused to hear appeals of such decision. On June 1, 1995, the Governor of Pennsylvania set the execution date for August 17, 1995⁵. That same year, following a hearing of the Pennsylvania Post-Conviction Relief Act (PCRA), the judge turned down the alleged victim's appeal. The petitioner claims that this hearing was held by the original trial judge, despite the objections of the alleged victim's attorneys. The PCRA's decision was upheld by the Pennsylvania Supreme Court and the US Supreme Court declined to hear an appeal on such decision. In 1999, a second date was set for the alleged victim's execution.

4. In 1999, the alleged victim filed a habeas corpus petition. On December 18, 2001, a District Judge overturned the alleged victim's death sentence, ruling that the alleged victim's constitutional rights had been violated by faulty jury instructions, but rejected the appeal on the conviction. On March 27, 2008, a three-judge panel of the US Court of Appeals for the Third Circuit, in a 2-1 decision, rejected the appeal to overturn the alleged victim's conviction on the grounds of racist jury selection, while upholding the District Judge's decision overturning the death penalty. The US Supreme Court declined to hear an appeal on said decision. However, on January 12, 2010, the U.S. Supreme Court asked the Third Circuit to reconsider its decision on the alleged victim's death sentence in light of the Supreme Court's upholding the death sentence of an Ohio white supremacist. The Third Circuit nonetheless reaffirmed its decision on April 26, 2011. The Commonwealth challenged this decision and, on October 11, 2011, the U.S. Supreme Court refused to hear the Philadelphia district attorney's petition to reinstate the death penalty, the later announcing on December 7, 2011, that he was dropping all efforts to pursue death penalty for the alleged victim. The alleged victim remained on death row, and thus in solitary confinement, until released to general population in January 2012. Finally, the petitioner alleges that on March 26, 2012, the Pennsylvania Supreme Court rejected the alleged victim's latest appeal⁶.

5. The alleged victim is now serving a life sentence with no possibility of parole in Frackville, Pennsylvania. The petitioner indicates that, as of December 2018, there is a new legal proceedings pending in the Pennsylvania state court of Common pleas, challenging the lack of due process in the alleged victim's state appeals from 1998-2014, on the grounds of conflict of interest and bias of Pennsylvania Supreme Court

⁴ The petitioner contends that the alleged victim, a member of the Black Panther Party, supporter of MOVE (a radical organization in Philadelphia), activist newsperson, notably elected president of the Philadelphia chapter of the National Association of Black Journalists, and human rights advocate, was placed under surveillance by the FBI, which amassed an almost 800 page file on him. Despite constant surveillance, at the time of his arrest, he had no criminal record.

⁵ The petitioner alleges that this followed the AG's office illegally reading the alleged victim's confidential communications with his lawyer.

⁶ In which the alleged victim argued that his conviction should be overturned because a ballistics test procedure which was used in his case was now considered invalid.

Justice Ronald Castille. The petitioner indicates that a favorable decision would not reverse or uphold the conviction, but rather re-open the appeals.

6. For its part, the State alleges that the petition is inadmissible for failure to exhaust the domestic remedies. It indicates that the alleged victim is still engaged in domestic US litigation, as, in August 2016, he filed a renewed petition in Pennsylvania state court for post-conviction relief.

7. The State additionally contends that the petition is inadmissible under article 34(a) of the American Declaration, for failure to establish a violation of such instrument. The alleged victim fails to provide specific evidence to support his claims, and to specifically address any of the findings of the domestic courts in that regard. Specifically, regarding Article I, the State recalls that the American Declaration does not prohibit capital punishment – accordingly, the initial imposition of death sentence was not inconsistent with such treaty. Regarding Article IV, the State indicates that the alleged victim was not tried for his affiliation with any group, but rather for the murder of a police officer. Finally, regarding Article XXVI, the State contends that the record does not support the assertion that the alleged victim has spent all, or even a substantial portion, of his period of incarceration in solitary confinement; further, conditions of confinement in death row are consistent with US constitutional protection and do not constitute cruel and unusual punishment. Furthermore, the State contends that the Commission lacks competence to make determinations as to whether particular provisions of US domestic law regarding the conviction and death sentence were violated.

8. Finally, the State contends that the alleged victim seeks to re-litigate his domestic conviction and sentencing in an international forum, improperly re-characterizing alleged errors of internal law as violations of the American Declaration. However, the Commission is not a court of fourth instance and should decline this alleged victim's invitation to do so. The State contends that the domestic courts have closely considered and squarely rejected each allegation. The alleged victim benefited from an extensive judicial review process in both state and federal court and at all levels of appeal, including by way of appeal of its conviction in front of the Pennsylvania Supreme Court⁷, which rejected his arguments. The further writ of *certiorari* was rejected by the US Supreme Court. The alleged victim additionally had its case reviewed under the PCRA, following which a trial court denied the petition, after a lengthy and comprehensive review of the evidence. Such decision was affirmed by the Pennsylvania Supreme Court and the writ of *certiorari* denied by the US Supreme Court. The petitioner filed a habeas corpus remedy, which was partly granted. On that basis, after review by the Third Circuit and the US Supreme Court, the case was remanded to Pennsylvania's trial court for consideration, regarding the sentence. In response, the alleged victim filed a request that he be sentenced to life imprisonment without the possibility of parole, which was imposed on him on August 2012. The State contends that the alleged victim however moved to reconsider the sentence⁸, motion that was denied on October 2012, as well as the subsequent appeal, in July 2013. The State also refers to three untimely PCRA petitions, filed concurrently with the habeas corpus petition, dismissed respectively on December 2001, June 2005 and November 2009, the latest being confirmed by the Pennsylvania Supreme Court in March 2012.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

9. On March 6, 1989, the Pennsylvania Supreme Court rejected the alleged victim's appeal of his conviction and sentence, and on June 1, 1996, the Governor of Pennsylvania set the execution date for August 17, 1995. Following a hearing of the Pennsylvania Post-Conviction Relief Act (PCRA), the judge turned down the alleged victim's appeal and in 1999, a second date was set for the alleged victim's execution. The

⁷ He alleged, inter alia, that the prosecution used peremptory challenges in a racially discriminatory manner, the court erred in denying his challenge for cause as to an alternate juror, the trial court abused its discretion by conducting *voir dire* for half a day, the court erred in permitting the state to cross-examine character witnesses, the prosecutor's comments during closing arguments and the penalty phrase were improper, the prosecutor should not have been able to cross-examine him at the penalty hearing, and the death penalty is unconstitutional.

⁸ The alleged victim argued that the trial court's action was taken without notice to Mr. Abu-Jamal or his counsel, and without affording him the opportunity to be present and heard at a sentencing hearing—and therefore allegedly violated due process protections under federal, state, and international law.

alleged victim then filed a habeas corpus petition and on December 18, 2001, a District Judge overturned the alleged victim's death sentence, maintaining the conviction. Such decision was upheld on March 27, 2008, by the US Court of Appeals for the Third Circuit, and reaffirmed on April 26, 2011. Subsequently, on October 11, 2011, the US Supreme Court refused to hear the Philadelphia district attorney's petition to reinstate the death penalty, the later announcing on December 7, 2011, that he was dropping all efforts to pursue death penalty for the alleged victim. The State has not questioned the sequence of remedies filed, and indicated that the alleged victim had access to justice and his appeals were duly heard, although with results that were unfavorable to him.

10. However, the State contends that there is still an ongoing procedure at the domestic level, rendering the petition inadmissible. The Commission accepts that a proceeding is still pending before a national court. Though, the requirement of exhaustion of domestic remedies does not mean that the alleged victim has the obligation to exhaust every possible remedy available to them. The Inter-American Commission has maintained that if the alleged victim endeavored to resolve the matter by making use of a valid, adequate alternative available in the domestic legal system and the State had an opportunity to remedy the issue within its jurisdiction, the purpose of the international legal precept is fulfilled. The Commission therefore concludes that the domestic remedies were exhausted with the US Supreme Court's decision of October 11, 2011. The petition to the IACHR was filed on April 11, 2012 and thus meets the requirement set in Article 32.1 of the Rules of procedure.

11. Lastly, with respect to the State's fourth instance allegation, the Commission notes that by admitting this petition, it is not claiming to supersede the competence of domestic judicial authorities; rather, it will examine at the merits stage of the instant petition whether domestic judicial proceedings complied with all of the guarantees of due process and judicial protection and offered proper protection of access to justice for the alleged victim, as provided for under the American Declaration.

VII. COLORABLE CLAIM

12. In view of the factual and legal elements alleged by the parties and the nature of the matter brought to its attention, the Commission considers that, if proven, the allegations regarding flaws in the investigation and judicial processes, as well as the inadequate conditions of detention, could characterize violations of the rights protected in Articles I (life, liberty and personal security), IV (freedom of investigation, opinion, expression and dissemination), X (inviolability and transmission of correspondence), XVIII (right to fair trial), XXV (protection from arbitrary arrest) and XXVI (due process of law) of the American Declaration.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles I, IV, X, XVIII, XXV and XXVI of the American Declaration;

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.

3. Approved by the Inter-American Commission on Human Rights on the 6th day of the month of December, 2019. Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández García (dissenting opinion), First Vice President; Antonia Urrejola Noguera, Second Vice President; Margarete May Macaulay, Francisco José Eguiguren Praeli, Luis Ernesto Vargas Silva and Flávia Piovesan, Commissioners.