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REPORT No. 183/19
PETITION 1213-12
REPORT ON ADMISSIBILITY

S.D.C.G. and D.G.R.
MEXICO

Approved by the Commission on December 5, 2019 in San Salvador, El Salvador.

Cite as: IACHR, Report No. 183/19, Petition 1213-12. Admissibility. S.D.C.G. and D.G.R. Mexico.
December 5, 2019.

I. INFORMATION ABOUT THE PETITION

Petitioner	D.G.R. ¹
Alleged victim	S.D.C.G.
Respondent State	Mexico ²
Rights invoked	The petitioner does not specify any articles, but denounces alleged violations of the American Convention on Human Rights, ³ the Inter-American Convention to Prevent, Punish, and Eliminate Violence against Women, ⁴ and other international treaties ⁵

II. PROCEEDINGS BEFORE THE IACHR⁶

Date of filing	June 21, 2012
Notification of the petition	August 7, 2017
State's first response	April 24, 2018
Additional observations from the petitioner	October 22, 2013

III. COMPETENCE

<i>Ratione personae</i>	Yes
<i>Ratione loci</i>	Yes
<i>Ratione temporis</i>	Yes
<i>Ratione materiae</i>	Yes, American Convention (deposit of instrument of ratification on March 24, 1981) and Convention of Belém do Pará (deposit of instrument of ratification on November 12, 1998)

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 8 and 25 (judicial protection) of the American Convention in relation to its Articles 1.1 (obligation to respect rights), 5 (humane treatment), 11 (private life) and 19 (rights of the child); and Article 7 of the Convention of Belém do Pará
Exhaustion or exception to the exhaustion of remedies	Yes, the exception established in Article 46.2.c of the American Convention applies
Timeliness of the petition	Yes, June 21, 2012

V. SUMMARY OF ALLEGED FACTS

1. D. G. R. (hereinafter “the petitioner”) claims human rights violations were committed against her daughter, S. D. C. G. (hereinafter “the alleged victim” or “the girl”), who she alleges was sexually abused by her father. The petitioner submits that despite her complaint to the competent authorities, the State has allowed this crime to remain unpunished and deprived the girl of effective protection, leaving her in a situation of defenselessness.

2. The petitioner states that in August 2009, the alleged victim (then aged 3) started suffering from abrasion; thus, she took her to a pediatric center where she noticed that the girl, while looking at her father, asked the doctor not to examine her vagina because she was afraid. She indicates that the pediatrician

¹ The petition was filed by D. G. R., who alleges the violation of the rights of her daughter S. D. C. G. and those of her own. Since the petition includes claims of sexual abuse and other violations against a girl, the IACHR will use initials to identify the persons involved.

² Pursuant to the provision of Article 17.2.a of the IACHR Rules of Procedure, Commissioner Joel Hernández García, a Mexican national, did not participate in the discussion or the voting on this matter.

³ Hereinafter “the American Convention.”

⁴ Hereinafter “the Convention of Belém do Pará.”

⁵ Convention on the Elimination of All Forms of Discrimination against Women and Convention on the Rights of the Child.

⁶ The observations submitted by each party were duly transmitted to the opposing party.

recommended that the girl be examined by a psychologist and gave her the telephone number of an institution. However, she claims that when she telephoned, the institution told her that it could only examine the girl if a complaint had been previously filed with the Attorney General's Office of the state of Mexico (hereinafter "PGR"). She alleges that, therefore, she had her daughter examined by a private psychologist, who verbally explained to her that the girl showed no signs of rape but did mention experiences of sexual play with her father. The petitioner submits that, knowing that the girl's father worked at the PGR, she decided to send the girl to the maternal grandmother's house in Chihuahua.

3. The petitioner moreover states that in December 2009, the father of the girl came to the maternal grandmother's house saying that he regretted what he had done and that he wanted to see his daughter and spend her birthday with her; that, therefore, the grandmother let him spend the night at her house and sleep on a sofa. The petitioner submits that in the night, on hearing the alleged victim shouting "Dad we finished," the grandmother woke up; then, the girl told her grandmother that her father had "rubbed" her and that he had placed his finger in her "wee-wee," that he had "lowered her panties" and that afterward her father had laughed. The petitioner indicates that before reporting the facts, she sought help from the Office of the Attorney for Child and Family Matters, which provided attention to her daughter in January and February 2010. She submits that an official from this body informed her that a report had been prepared according to which her daughter showed signs of sexual abuse by her father and recommended her to file a complaint. Therefore, on February 9, 2010, she came to the PGR offices in Chihuahua and filed a complaint against the father for sexual abuse. She indicates that the alleged victim underwent gynecological, social, and psychological screenings, and that the petitioner's and the maternal grandmother's statements were taken and that so was the girl's statement, who said, "It was at night because I was asleep and I was asleep by my 'chichi', and my dad took me to where he was sleeping, and I woke up, and there he rubbed my bottom, when my dad rubbed me, he lowered my clothes, my pajamas, and my panties, and so he rubbed me and I told him not to do so, and my dad said that he was going to rub me and then he rubbed me and put his finger in my wee-wee."

4. In addition, according to the petitioner, the alleged victim's father telephoned her and insulted her and said that no one would do anything to him because he had given money to the Prosecutor's Office agent leading the investigation and she, the employee, assured him that the complaint was dismissed. The petitioner indicates that afterward, she filed for at-fault divorce and a petition for loss of child custody against the father of the girl based on the investigation previously filed against him. However, she states that at the court, she was told that while a decision on the criminal responsibility of the father was pending, all she would get would be supervised visitation, which indeed she did. She indicates that while the divorce proceeding and the investigation progressed, she received telephone threats from the girl's father. She claims that the private psychologist that had first examined the girl refused to participate in the investigation as she had received death threats.

5. The petitioner claims that in the framework of the legal proceeding for aggravated sexual abuse, the criminal judge of the judicial district of Morelos of the State of Chihuahua ordered the arrest of the father of the girl. Then, on September 12, 2011, the girl's father presented an amparo action against his arrest warrant, but a trial court dismissed it on October 31, 2011. Nevertheless, the accused lodged an appeal for review and, as a result, the Collegiate Court for Administrative and Contentious Matters No. 1 for the Seventeenth Circuit granted his amparo action on March 6, 2012. The petitioner submits that the authorities ruling on the amparo proceedings and the appeal for review never notified her of these remedies and that she was unaware of them until June 12, 2012. She argues that, as the custodian of the alleged victim's rights, she was an indispensable party; that, therefore, the judges presiding these proceedings should have subpoenaed her to present her claims if applicable. In her latest writing, dated October 22, 2013, she stated that as a result of the amparo action granted on the arrest warrant, the accused was unreachable. In that same writing, she informed that a decision on her petition for the father's loss of custody was still pending and that as a result of bad legal advice, she withdrew her petition for divorce and accepted a no-fault divorce agreement establishing a visitation schedule for the father to see the girl, and child support. She further stressed that

despite this agreement, the father was not in touch with the girl because he had not tried, and she would have never allowed so either.⁷

6. For its part, the State claims that when the alleged victim's mother filed a complaint, an investigation was officially opened, and several proceedings were carried out, including psychological and medical expert reports. Likewise, it highlights that the Special Unit for Crime Victim Assistance provided the alleged victim with psychological support. In its writing dated April 24, 2018, it contended that the amparo action granted on the arrest warrant did not mean closing the inquiries and that these remained open. It highlighted that on October 19, 2017, an application was filed to formally accuse the alleged victim's father of aggravated sexual abuse.

7. It considers that the domestic remedies have not been exhausted as there hasn't been a situation of impunity, and the criminal trial against the alleged responsible remains underway, meaning that there is not even a trial court judgment. It contends that in order to abide by the principle of presumption of innocence, it cannot assure the outcome of the criminal trial; and that even if the accused is acquitted, the petitioner would still be able to file appeals and amparo actions. Accordingly, it requests that the petition be declared inadmissible under Articles 46 and 47 of the American Convention.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

8. The Commission reiterates that in cases like the instant petition, alleging violations of a girl's physical integrity, criminal proceedings are the appropriate remedy to clarify the facts, prosecute those purportedly responsible, and establish appropriate criminal penalties.⁸ The State alleges that the domestic remedies have not been exhausted as the criminal trial against the alleged perpetrator remains underway. The Commission observes that the criminal complaint was presented on February 9, 2010, and that, based on the latest information submitted by the State on April 24, 2018, it appears that there is not yet a judgment from the trial court, the case still being in the pretrial stage. Under these circumstances and without prejudging the merits of the case, the Commission finds that the exception to the requirement of exhaustion of domestic remedies provided for in Article 46.2.c of the American Convention applies to this petition and that this was filed within a reasonable period under Article 32.2 of the IACHR Rules of Procedure.

VII. COLORABLE CLAIM

9. The Commission considers the legal and factual elements submitted by the parties as well as the fact that over eight years have elapsed since the filing of the criminal complaint, despite which no judgment has been passed, according to the latest information on the record. Based on the above considerations and the nature of the matter brought to its attention, the Commission finds that the instant petition is not manifestly groundless and that a report on the merits is required to determine if the State has fulfilled its duty to investigate and, if applicable, punish the purported violations of the alleged victim's rights under the terms of Articles 8 (fair trial) and 25 (judicial protection) of the American Convention, in relation to its Articles 1.1 (obligation to respect rights), 5 (humane treatment), 11 (privacy), and 19 (rights of the child), and Article 7 of the Convention of Belém do Pará.

10. The Commission also takes note of the petitioner's claim that the State has violated the American Convention in failing to notify her of the amparo action lodged against the arrest warrant on the alleged perpetrator of human rights violations against her daughter or of the subsequent appeal for review. In this regard, the Commission recalls the Inter-American Court criterion that "Article 8 of the Convention entails that the victims of human rights violations, or their next of kin, should have wide-ranging possibilities of being heard and taking part in the respective proceedings."⁹ Thus, the Commission believes that this claim is not manifestly groundless and that a report on the merits is needed to determine if the lack of notification

⁷ As for child support, she said that up until then, she had not done anything to receive it.

⁸ IACHR, Report No. 74/16. Petition 568-06. Admissibility. H. O. V. T. and others. Guatemala. December 6, 2016, par. 39.

⁹ I/A Court H.R., Case of Fernández Ortega *et al.* v. Mexico. Preliminary Objection, Merits, Reparations, and Costs. Judgment of August 30, 2010. Series C No. 215, par. 192.

of these proceedings to the alleged victim or her representative violated Article 8 of the American Convention.

VIII. DECISION

1. To declare this petition admissible with regard to Articles 8 and 25 of the American Convention, in relation to its Articles 1.1, 5, 11 and 19; and Article 7 of the Convention of Belém do Pará; and

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.

Approved by the Inter-American Commission on Human Rights on the 5th day of the month of December, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Antonia Urrejola, Second Vice President; Margarette May Macaulay, Francisco José Eguiguren Praeli, Luis Ernesto Vargas Silva and Flávia Piovesan, Commissioners.