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**REPORT No. 67/20**  
**PETITION 1223-17**  
ADMISSIBILITY REPORT

ROSAURA ALMONTE HERNÁNDEZ AND FAMILY MEMBERS  
DOMINICAN REPUBLIC

Approved electronically by the Commission on February 24, 2020.

**Cite as:** IACHR, Report No. 67/20, Petition 1223-17-16. Admissibility. Rosaura Almonte Hernández and family members]. Dominican Republic. February 24, 2020.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Colectiva Mujer y Salud and Women's Link Worldwide
<b>Alleged victim:</b>	Rosaura Almonte and family members <sup>1</sup>
<b>Respondent State:</b>	Dominican Republic
<b>Rights invoked:</b>	Articles 4 (life), 5 (personal integrity), 8 (judicial guarantees), 11 (right to privacy), 13 (freedom of opinion and expression) and 19 (rights of the child) of the American Convention on Human Rights <sup>2</sup> in relation to its articles 1 (obligation to respect rights) and 2 (domestic legal effects); and article 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women -Belém do Pará. <sup>3</sup>

**II. PROCEEDINGS BEFORE THE IACHR<sup>4</sup>**

<b>Filing of the petition:</b>	July 14, 2017
<b>Notification of the petition to the State:</b>	December 13, 2018
<b>State's first response:</b>	March 26, 2019
<b>Additional observations from the petitioner:</b>	June 10, 2019

**III. COMPETENCE**

<b>Competence <i>Ratione personae</i>:</b>	Yes
<b>Competence <i>Ratione loci</i>:</b>	Yes
<b>Competence <i>Ratione temporis</i>:</b>	Yes
<b>Competence <i>Ratione materiae</i>:</b>	Yes, American Convention (ratification instrument deposited on April 19, 1978) and Belém do Pará Convention (ratification instrument deposited on March 7, 1996)

**IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION**

<b>Duplication of procedures and International <i>res judicata</i>:</b>	No
<b>Rights declared admissible</b>	Articles 4 (life), 5 (personal integrity), 8 (judicial guarantees), 11 (right to privacy), 13 (freedom of opinion and expression), 19 (rights of the child), 24 (equality before the law) and 25 (judicial protection) of the American Convention on Human Rights in relation to its articles 1 (obligation to respect rights) and 2 (domestic legal effects), and article 7 of the Belém do Pará Convention

<sup>1</sup> The petition individualizes the following family members: Rosa Herminia Hernández, mother; Rafaela Hernández Díaz, grandmother; Nereida Altagracia Hernández Hernández, aunt; and Ángel Manuel Rosado Hernández, cousin.

<sup>2</sup> Hereinafter "American Convention" or "the Convention".

<sup>3</sup> Hereinafter "Belém do Pará Convention".

<sup>4</sup> The observations of each party were duly transmitted to the other party.

<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, the exception of art. 46.2.c of the American Convention applies
<b>Timeliness of the petition:</b>	Yes

## V. ALLEGED FACTS

1. The petitioners affirm that the Dominican Republic is internationally responsible for the violation of the rights of adolescent Rosaura Almonte Hernández (hereinafter “Rosaura Almonte” or “the alleged victim”) to life, personal integrity, non-discrimination, autonomy, protection against violence and health, due to the lack of medical treatment and/or the inadequate nature of the medical care that was provided to her in a public hospital, as a consequence of which Rosaura Almonte died. They also allege that the State is responsible for the lack of investigation, prosecution and punishment of the health personnel responsible for these facts, and for the lack of judicial protection and the violation of due process guarantees derived from the inadequately motivated judicial decisions that rejected the claims of State responsibility filed by the petitioners, as well as from the inadequate motivation of the ruling that decided the constitutional writ of protection of human rights presented by them to access her medical record. The aforementioned facts occurred in an alleged context of structural legal and social discrimination against women, girls and adolescents in the country.

2. The petitioners report that adolescent Rosaura Almonte, who was 16 years old, was hospitalized in July 2012 at the SEMMA Teachers’ Hospital in Santo Domingo, a public health center, with a diagnose of leukemia and a three-week pregnancy. They report that the medical personnel of that center refused to perform a therapeutic abortion that had been initially recommended by her treating physician; and they refrained from providing her in a timely manner the chemotherapy treatment she required for leukemia until almost three weeks after her admission, so as not to affect the critical period of fetal development. The petitioners allege that these medical decisions, were adopted mainly because of the absolute prohibition of abortion established in the Constitution and in the Criminal Code in force at that time.

3. They also argue that during the hospitalization of Rosaura Almonte, there were several failures in the medical service, including diagnosing delays; unjustified delays in the provision of required treatments; disregard for her right to informed consent; the economic inaccessibility of the service; the lack of provision of complete information to the patient and her family; inadequate participation of the family in the decisions about her treatment; various medical deficiencies in the services actually provided; and other behaviors that would amount to degrading and discriminatory treatment. As a consequence, the alleged victim died in the hospital due to complications of her health situation on August 17, 2012.

4. Following her death, a criminal proceeding was initiated against the doctors and medical personnel who participated in the treatment, but as reported in the petition, that process remained inactive for four years in the investigation stage, despite the efforts made by the petitioners themselves to make the case advance. Indeed, it is documented that on July 15, 2013, Rosaura Almonte’s mother filed a criminal complaint with request for civil damages against the medical staff of the SEMMA Hospital for the crime of involuntary manslaughter. This complaint was assigned by the Prosecutor of the National District to its Department of Crimes and Offences against Persons, and the investigation was initiated, but the last investigative actions were carried out in 2014, and since then there have been no significant procedural developments, despite the petitions and requests for information submitted by the victims, including through a constitutional writ of protection of human rights they presented so as to gain access to the criminal judicial file, which was declared inadmissible on the grounds that there were other judicial channels to access the file; in addition, a request for resolution of petitions was filed before the Investigative Court of the National District requesting a complete copy of the file, which was also denied on the grounds that the request fell within the exclusive jurisdiction of the Prosecutor’s Office that carried out the investigations. The petitioners hold in their additional observations to the IACHR of June 2019 that, as a result of these and other unsuccessful efforts, they still do not have access to the criminal judicial file – a complaint that the State has not contested.

5. The petitioners also state that on May 7, 2013, the mother of the alleged victim filed a constitutional writ of protection of human rights to access the adolescent's medical information after her death, since the SEMMA Hospital had failed to provide her with her daughter's complete file. However, her claim was denied by a judgment of May 21, 2013 of the Court of First Instance of the National District. Petitioners report that this decision was not appealed because shortly afterwards, the hospital authorities effectively delivered the complete medical file to the applicants.

6. Likewise, Rosaura Almonte's mother filed a civil damages lawsuit against the State before the Superior Administrative Tribunal on August 16, 2013 to obtain pecuniary compensation; nevertheless, this claim was rejected as inadmissible and poorly motivated by a first instance judgment delivered on November 27, 2014. An extraordinary appeal was filed against this decision before the Supreme Court of Justice on February 12, 2015; given the Court's delay in adopting a decision, on April 17, 2019, the petitioners filed a procedural impulse request.

7. The State, for its part, limits its reply to describing some investigative actions carried out by the Public Prosecutor during the criminal proceedings initiated by the complaint filed by Rosaura Almonte's mother in July 2013. After listing such actions, it concludes that the information obtained by virtue of the different investigation procedures carried out was corroborated and analyzed, however, such information was insufficient for the investigative body to attribute the conduct referred to in the complaint presented by the victim to any specific person. And it adds: "*We are currently analyzing other variables with the aim of issuing a conclusive opinion.*"

8. The State does not make any pronouncement on the admissibility of the petition, nor does it respond to the different allegations of the petitioners.

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

9. After analyzing the information available in the petition, the Commission observes that the fundamental purpose of the petition relates to the alleged international responsibility of the State for the death of Rosaura Almonte Hernández, *inter alia* on account of the denial of access to the therapeutic abortion that she required, and for the lack of provision of a timely and adequate treatment for leukemia that was belatedly diagnosed; as well as for the lack of investigation, judgment or punishment of these facts. In this regard, the Commission considers that the appropriate remedy to be exhausted in a case such as this is the criminal investigation of the facts, which can lead to the determination, prosecution and punishment of those responsible, and to the provision of reparations for the victims.

10. In this regard, it is clear from the file that the criminal proceedings were activated by the petitioners through a criminal complaint filed in July 2013, but after a brief initial period where the case was active, the investigation efforts declined and were halted in 2014, without any significant developments in the file reported to date. Given that the investigation has been inactive for almost six years, a fact that is corroborated by the information provided by the State itself in its response to the present petition, the IACHR concludes that the unjustified delay exception is applicable to the requirement of exhaustion of domestic remedies, as provided for in Article 46.2.c of the American Convention. Likewise, the Commission considers that the facts denounced began in 2012 with the internment and death of the alleged victim, they were the subject of a criminal complaint and other judicial proceedings by the petitioners, and their effects persist until the present time due to the alleged lack of effective investigation. Therefore, the Commission considers that the petition was presented within a reasonable period of time under the terms of Article 32.2 of the Rules of Procedure of the Inter-American Commission on Human Rights.

## **VII. ANALYSIS OF COLORABLE CLAIM**

11. As already indicated, the petitioners allege that the State is responsible for the violation of the rights to life, personal integrity, and protection of the privacy of the girl Rosaura Almonte Hernández, on account of the refusal to perform a therapeutic abortion and to provide an adequate medical service, in their opinion, as a result of a context of structural gender discrimination in the country. One of the important

elements of this context would be the lack of an adequate regulatory framework regarding the sexual and reproductive rights of women and girls. On the other hand, they allege that the State is responsible for the lack of investigation, prosecution and punishment of these facts given the lack of progress of the criminal investigation during years; and for violation of the rights of access to justice within the framework of a civil damages claim against the State, and of access to the criminal investigation file. The State, for its part, has limited its response to a report on the various actions constituting the criminal proceeding against the health providers who participated in the treatment received by Rosaura Almonte; and it has not provided any factual elements or legal arguments aimed at refuting the rest of the allegations made by the petitioners.

12. In view of these considerations, and after examining the factual and legal elements set forth by the parties, the Commission considers that the petitioners' allegations are not manifestly unfounded and require a study of the merits, because if the facts denounced are corroborated, they could amount to violations of the rights protected in Articles 4, 5, 11, 13, 19, 24, 25 and 26 of the American Convention, in connection with its Articles 1.1 and 2; and in Article 7 of the Belém do Pará Convention, in the terms of this report, to the detriment of the alleged victims.

### **VIII. DECISION**

1. To find the instant petition admissible in relation to articles 4, 5, 8, 11, 13, 24, 25 and 26 of the American Convention in relation to its articles 1.1 and 2; and article 7 of the Belém do Pará Convention; and

2. To notify the parties of the present decision; to continue with the analysis of the merits of this matter; 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 24<sup>th</sup> day of the month of February, 2020. (Signed): Joel Hernández, President; Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, and Julissa Mantilla Falcón, Commissioners.