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**REPORT No. 271/21**  
**PETITION 821-09**  
REPORT ON ADMISSIBILITY

“MGAB” & FAMILY  
BOLIVIA

Approved electronically by the Commission on October 12, 2021.

**Cite as:** IACHR, Report No. 271/21, Petition 821-09. Admissibility. “MGAB” & Family. Bolivia. October 12, 2021.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	“MGAB”
<b>Alleged victim:</b>	“MGAB” and family.
<b>Respondent State:</b>	Bolivia
<b>Rights invoked:</b>	Articles 8 (fair trial) 24 (equality before the law) and 25 (judicial protection) of the Convention American on Human Rights <sup>1</sup> in relation to its article 1.1 (obligation to respect rights) and 2 (obligation to abide by domestic legal effects) thereof and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women” (“Convention of Belém do Pará”).

**II. PROCEEDINGS BEFORE THE IACHR<sup>2</sup>**

<b>Filing of the petition:</b>	July 3, 2009
<b>Notification of the petition to the State:</b>	May 5, 2017
<b>State’s first response:</b>	August 15, 2017
<b>Notification of the possible archiving of the petition:</b>	October 9, 2018
<b>Petitioner’s response to the notification regarding the possible archiving of the petition:</b>	December 22, 2020, January 13, 2021, April 21, 2021 and August 30, 2021
<b>Additional information from petitioner</b>	August 30, 2021

**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, Convention American (instrument of accession deposited on July 19, 1979) and Convention of Belém do Pará (instrument of accession deposited on December 5, 1994)

**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 8 (fair trial), 11 (right to privacy), 19 (rights of the child), 24 (equality before the law) and 25 (judicial protection) of the Convention American; and article 7 of the Belém Do Pará Convention
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, in the terms of section VI
<b>Timeliness of the petition:</b>	Yes, in the terms of section VI

<sup>1</sup> Hereinafter “the American Convention”.

<sup>2</sup> The observations submitted by each party were duly transmitted to the opposing party.

## V. FACTS ALLEGED

1. Ms. "MGAB" claims that the State discriminated and revictimized her over criminal proceedings during which judicial authorities acquitted her father, who had perpetrated unconsented sexual acts against her not properly valuating her testimony and not ensuring the concealment of her statements.

2. The petitioner narrates that since 1988, when she was five years old, until 2001, till the age of eighteen, her biological father abused her continuously and repeatedly.

3. She holds that, although it was very difficult to make the decision to initiate legal actions against her parent, on August 30, 2004 she filed a claim against him for sexual molestation.<sup>3</sup> However, upon this claim her father, in connivence with administrators of justice, began to harass her and attack her; on that line, she claims that the prosecutor in charge of the investigation systematically refused to receive the informative statement of the defendant during approximately four months; although the claimant, requested in writing and verbally to initiate the necessary proceedings. Upon this inaction, the alleged victim filed a challenge against the prosecutor, getting a new prosecutor to take the case. Nonetheless, she holds that said official acted in partial manner, conducting actions with the participation of experts who knew the defendant and who were not part of the Institute of Forensic Investigations, body in charge of providing assistance in this kind of proceedings.

4. Only in February 2005, with the participation of a new prosecutor the defendant was officially indicted for the crime of aggravated sexual molestation. Also, this prosecutor also requested the preventive arrest of her father, in considering the risk which may hinder the proceedings; the judge of the case accepted the prosecutor's request; however, her father was only four days in prison, since the Second Civil Chamber had admitted a habeas corpus filed in his favor in an irregular manner. The petitioner claims that, although a year later the Constitutional Court revoked said decision of habeas corpus, the admission of said remedy allowed the defendant to constantly hinder the proceedings for some time.

5. In July 2005, one month before concluding the preparation stage, an interim district attorney decided to separate the prosecutor from the case, who up to that moment had been conducting the investigation and placed instead another official who was cousin of the defendant. The petitioner claims that as soon as she took the proceedings, she (the defendant's cousin) denied the validity of the reports of the Institute of Forensic Investigations; and undermined the credibility of the analyses which proved that there were signs of crimes. Due to this, the petitioner challenged this prosecutor, after which the district attorney designated a new investigative authority.

6. The petitioner argues that, after the six days during which she conducted a vigil out of the Prosecutor's Office and raised public claims on mass media, the prosecutor in charge of the proceedings filed a claim against her father. Upon this, she holds that the First Sentencing Court dictated substitutive measures to preventive arrest to which the defendant was subjected. Upon this decision the petitioner requested the revocation of the substitutive measures; but the First Sentencing Court dismissed her request; and as she claims, mistreated her at the hearing, in which her request of revocation of the substitutive measures granted to her father, was disclosed. In concrete terms, she holds that one of the judges had a "*prepotent and bold*" attitude, and showed interest in favoring her father, since she expelled a couple of witnesses who could allow to confirm the violence she suffered when she was a child, by means of shouts.

7. Afterward, she found the accused "celebrating with an official" of the First Sentencing Court, for which reason she filed a challenging remedy. She holds that part of those who comprised said court adhered to the request, causing that in May 2006 the casefile be forwarded to the Second Criminal Sentencing Court of Santa Cruz. She holds that at the oral trial before said instance several violations to due process and her human rights took place and, as such she had to declare before her father, whom upon her narration performed a series

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<sup>3</sup> Criminal Code. Art. 312.- (SEXUAL MOLESTATION). Who under the same circumstances and by the means cited on article 308 perform libidinous acts not constituting intercourse, shall be punished with deprivation of liberty from one to three years. The sentence shall be aggravated in one half, should the circumstances of article 310 concur.

of gesticulations and pronounced frightening phrases toward her; and the defendant's witnesses were allowed to look at her directly and shout at her while giving their statements.

8. She holds that on December 11, 2006 the Second Criminal Sentencing Court of Santa Cruz acquitted her father, arguing that there was reasonable doubt as to his culpability. On this point, she affirms that the cited body held that *"we only have the version of the alleged victim [...] apart from two expert reports which intend to confirm that she didn't lie to be interviewed by the psychologists not being any further proof which may be considered important for the proceedings"*. In addition, she held that *"it is evident that during the development of the oral trial, apart from the particular plaintiff, other prosecution witnesses have appeared, yet no eye witness but merely referential ones"*.

9. On January 20, 2007 the plaintiff filed an appeal, contesting the decision and claiming that las domestic authorities did not respect her right to non-disclosure, recognized in article 116 of the Criminal Procedural Code.<sup>4</sup> On this point, she indicates that said remedy held that *"while it is true that the Court provided that I give my statement in private, it did not admit that the following acts be conducted privately, allowing the persons who were carrying camcorders and recorders, to record even the most painful moments of the trial such as the statement of the defendant -who denigrated me- [...], without the slightest respect for my dignity"*. However, on April 17, 2007 the Higher Court dismissed said action, in considering that the first instance judge proceeded correctly and pursuant to the law, given the lack of evidence to sustain a criminal sentence.

10. On May 3, 2007 the plaintiff filed a cassation remedy against the second instance decision; nonetheless, on November 17, 2008 the Supreme Court, by means of Supreme Decision N° 242, dismissed such remedy; the authorities notified said decision on January 2, 2009 via a note on the board of the Supreme Court; the petitioner holds that, on her part, she acknowledged the decision on January 16, 2009 when she attended the premises of said judicial body to ask about the status of her case.

11. By virtue of the referred considerations, the petitioner party claims that the bodies of justice failed to provide her duly judicial protection, since they disregarded her testimony as well as the psycho-forensic reports which credited that she suffered violence. Likewise, she argues that the authorities undermined said evidence through arguments which discriminated and revictimized her. As an example, she asserts that the first instance decision held the following:

An aspect worthy of being stressed is that by offering a statement at the oral earing, the particular plaintiff proved to have theatrical skills to manage her speech with enviable ease to go from one emotional status to another and that in spite of her theatrical skills she incurred in contradictions. She even got to say at the hearing: *"that it was difficult to speak about what had happened"*. [...] Despite her intelligence and theatrical talents, she incurred in a series of inconsistencies and contradictions as we have already noticed [...] confirming that in the mass media she did it with details and no anguish, saying that this takes credibility away from her affirmations concerning the sexual molestation that her parent had allegedly inflicted on her.

12. The State, on its part, replies that the petition must be declared inadmissible, since the petitioner party filed her petition in an untimely fashion. It holds that on November 21, 2008 the authorities notified of legally Supreme Decision N° 242, by means of a sign. Therefore, it claims that the petitioner should have filed her petition up to May 21, 2009, as a final deadline. Also, it holds that on December 19, 2008, the petitioner party requested the members of the First Chamber of the Higher Court of the District of Santa Cruz legalized photocopies of the cited decision, which proves that at least since that date she was aware of the

<sup>4</sup> Criminal Procedural Code. Article 116<sup>o</sup>.- (Publicity). The acts of the proceedings will be public. Within the responsibilities set forth by the Printing Act, the journalistic information on criminal proceedings shall refrain from portraying the defendant as guilty, as long as there is no firm enforceable sentence against him or her. The investigating judge or sentencing court judge may order, by means of a founded resolution, that some acts of the proceedings be conducted totally or partially in private, when: 1. The shame or private life of one of the parties or of some other summoned person may be affected; 2. The physical integrity of the judges, of one of the parties or of some other summoned person were at risk; 3. An official, particular, commercial or industrial legally foreseen secret may be in jeopardy; and, 4. The defendant or the victim be under eighteen years of age. The judicial authority may impose upon the participants to keep the facts witnessed or learned as classified. When the concealment is declared during trial, the publicity shall be reinstated as soon as the reason for concealment ceases to exist.

decision. As a result, it holds that the requirement set forth in article 46.1.b) of the American Convention is not met.

13. In addition, it argues that the facts claimed do not no characterize human rights violations. It holds that at the oral hearing, the petitioner party at no time requested to dismiss the defendant from the court room. Likewise, it affirms that the petitioner affirmed, in her speech of appeal, that the Court proposed the dismissal of the defendant, since she stated in her brief “*although the court provided that I give my statement in private [...]*”. Based on the foregoing, it holds that all that the petitioner seeks is the criminal responsibility of the defendant, without the existence of a breach to due process.

14. Bolivia holds that domestic authorities conducted the criminal proceedings under the strictest international guidelines of due process, in safeguard of the principle of juridical security, and that the petitioner has been unable to prove with enough evidence the alleged partiality in favor of the defendant. In this sense, it holds as improbable to suppose that a common citizen as the father of the petitioner could have exerted any kind of pressure or coercion over the judiciary. Also, that at no stage of the criminal proceedings was there any delay from any operator or administrator of justice. On the contrary, it holds that the constant dilations of the proceedings were attributable to the insistent challenges made by the petitioner party against the prosecutors and judges, for simply not meeting her claims. It adds that the bodies of justice acted pursuant to the deadlines set forth by domestic legislation.

15. Finally, it holds that all the decisions had a due motivation, including the resolution which modified the regime of preventive detention of the defendant; and that the petitioner had suitable and effective remedies available to raise her objections to the proceedings. Consequently, it requests that the petition be declared inadmissible based on article 47(b) of the American Convention since it regards that the aim of the petitioner is that the Commission act as a higher court, countering its complementary nature.

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

16. The petitioner, and alleged victim, claims mainly the lack of a suitable investigation and punishment of acts of sexual violence perpetrated against her by her biological father during her childhood. The State controverts this approach via arguments intended to show that the criminal proceedings initiated by the petitioner against her father were conducted in a timely fashion pursuant to domestic regulations and in full respect of due process by the parties. It also raises that the petition was filed in an untimely manner.

17. On this matter, the Commission observes that there is no controversy between the parties as to the definitive conclusion of the criminal proceedings by means of Supreme Decision N°242, issued by the Supreme Court of Justice. In attention to the latter and to the information present in the casefile, the Commission concludes that the present petition meets the requirement of exhaustion of domestic remedies in accordance with article 46.1.a) of the American Convention.

18. In regard to the timeliness of the filing of the petition, the Commission notes that the State argues, on one hand, that on November 21, 2009 the authorities legally notified the cited decision, by means of notes on the board of the Supreme Court of Justice, located in Sucre; and, in addition, that the petitioner party was aware of the resolution since December 19, 2008, since she had requested copies of it to the members of the First Chamber of the Higher Court of the District of Santa Cruz. Nonetheless, the State only attaches as documentary support a certificate of notification dated November 21, 2009, providing no documentary support concerning its second argument, for which reason the IACHR shall only take the first date into account.

19. Without prejudice of the foregoing, the IACHR appraises that said notification was only made by means of some notes on the board in Sucre, city where the Supreme Court is based. In said sense, considering that the alleged victim resides in Santa Cruz, given the distance between both cities, the Commission deems that it would be unreasonable to assume that the alleged victim acknowledged said decision on November 21, 2009, since she could not know about that on the same day of its publication on the board. By virtue of this, the IACHR regards that the petitioner party holds that she only learned of said decision, at least, near January 2,

2009; therefore, if the petition was filed in the IACHR on July 3, 2009, it is regarded as timely filed pursuant to article 46.1.b) of the American Convention.

## VII. ANALYSIS OF COLORABLE CLAIM

20. As it has been previously stated, the Commission observes that the subject matter of the present petition is to question a series of irregularities and omissions which were the base of deficient criminal proceedings, that there would be a pattern of revictimization to the detriment of the alleged victim, due to the alleged absence of judicial impartiality and the presence of stereotypes of gender on different decisions. In particular the petitioner party claims that, due to said situation, the authorities disregarded the value of her testimony, as well as the expert analyses which corroborated her statements. All of which kept alleged facts of sexual violence perpetrated by the father of the alleged victim in impunity during thirteen years of her life, time during which she was still a child.

21. In this sense, in cases such as the present one, it is fit to recall that the general obligations of articles 8.1 and 25 of the American Convention are reinforced by the provisions of the Convention of Belém do Pará, whose article 7.b) imposes the specific duty to use due diligence to prevent, punish and eradicate violence against women.<sup>5</sup> Thus, pursuant to the jurisprudence of the Inter-American Court, *“upon an act of violence against a woman, it is particularly important that the authorities in charge of the investigation conduct it with determination and efficiency, taking into account the duty of society to reject violence against women and the obligations of the State to eradicate it and grant confidence upon the victims in the bodies of the State for their protection”*.<sup>6</sup> Likewise, the IACHR, held in the report on merits of the case Brisa Liliana of Angulo Lozada vs. Bolivia, that in the cases of violence against girls and teenagers, by virtue of article 19 of the Convention, a reinforced obligation activates, by means of which the States must adopt particularized measures and special protection.<sup>7</sup>

22. By virtue of these standards, and after examining the factual and legal elements set forth by the parties, the IACHR considers that the petitioner’s claims are not manifestly unfounded and require a study on the merits, since the alleged facts, if corroborated, may characterize violations of rights established in articles 8 (fair trial), 11 (right to privacy), 19 (rights of the child), 24 (equality before the law) and 25 (judicial protection) of the American Convention, in relation to its articles 1.1 (obligation to respect rights) and 2 (obligation to abide by domestic legal effects); as well as article 7 of the Convention Belém Do Pará, to the detriment of the alleged victim and her family duly identified at the merits stage of the processing of the present case.

## VIII. DECISION

1. To find the instant petition admissible in relation to Articles 8, 11, 19, 24 and 25 of the Convention American, and article 7 of the Convention 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 12<sup>th</sup> day of the month of October, 2021. (Signed:) Antonia Urrejola, President; Julissa Mantilla Falcón, First Vice President; Flávia Piovesan, Second Vice President; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitño, Joel Hernández, and Stuardo Ralón Orellana, Commissioners.

<sup>5</sup> IHR Court. Case of Velásquez Paiz and others Vs. Guatemala. Preliminary Exceptions, Merits, Reparations and Costs. Sentence of November 189, 2015. Serie C No. 307, para. 145.

<sup>6</sup> IHR Court. Case of Fernández Ortega and others Vs. México. Preliminary Exceptions, Merits, Reparations and Costs. Sentence of August 30, 2010, para. 193; and Case of Favela Nova Brasília Vs. Brazil. Preliminary Exceptions, Merits, Reparations and Costs. Sentence of February 16, 2017. Serie C No. 333, para. 244.

<sup>7</sup> IACHR. Report No. 141/19. Report on merits. Brisa Liliana of Angulo Lozada. Bolivia. September 28, 2019, para. 26.