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REPORT No. 50/14
PETITION 779-11
REPORT ON ADMISSIBILITY

JINETH BEDOYA LIMA
COLOMBIA

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I. SUMMARY

1. On June 3, 2011, the Inter-American Commission on Human Rights (hereinafter the "Commission," the "Inter-American Commission," or the "IACHR") received a petition filed by the Fundación para la Libertad de Prensa (hereinafter "FLIP" or "the petitioner"), alleging that the Republic of Colombia (hereinafter "the State" or "Columbia") is internationally responsible for the alleged violation of articles 4 (right to life) 5 (right to personal integrity), 7 (right to personal freedom), 8 (judicial guarantees), 11 (protection of honor and dignity), 13 (freedom of thought and expression), 17 (protection of the family), 22 (movement and residency), 24 (equal protection) and 25 (judicial protection) of the American Convention on Human Rights (hereinafter the "American Convention" or the "Convention"), in relation to the general obligation established in articles 1(1) and 2 of that international instrument to the detriment of journalist Jineth Bedoya Lima (hereinafter "Jineth Bedoya" or "the alleged victim"). The petitioner also alleged the violation of articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, as well as Article 7b of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (hereinafter "Convention of Belém do Pará").

2. The petition refers to the alleged kidnapping, torture, and rape of journalist Jineth Bedoya Lima on May 25, 2000, in the vicinity of the National Model Prison (*Cárcel Nacional Modelo*) in Bogotá for reasons related to her profession. According to the petitioner, at the time of the alleged facts, the journalist was working for the newspaper *El Espectador* and was reporting on the role of the National Police, the National Model Prison Guard, and domestic paramilitary forces in a massacre that took place in said prison on April 27, 2000. The petitioner alleged that as of the date she filed the petition, the facts have not been subject to a trial, for which reason she requested that the petition be exempt from the prior exhaustion of domestic remedies requirement given their unjustified delay. According to the petitioner, 11 years after the alleged incidents occurred, the State has not taken effective measures toward preventing them from remaining in impunity.

3. For its part, the State has asked the Commission to find the petition inadmissible based on parts (a) and (b) of Article 47 of the Convention because the facts presented did not represent a violation of the ACHR and certain domestic remedies have still not been exhausted due to the complexity of the case. In this regard, it explained that the proceeding is still in the inquiry stage and three individuals are being investigated. It argued that there has not been an unjustified delay, and consequently, the exception found in Article 46(2)(c) of the Convention does not apply, as the investigating authorities have taken a number of steps to determine responsibility for the facts, and the delays resulting from the process are due to the case's complexity rather than the inaction of investigating or judicial authorities. It also argued that this petition does not submit facts for which the Colombian State could be held responsible due to direct or indirect action or omission. According to the State, the facts in the petition are clearly presented as the exclusive responsibility of third parties.

4. Without prejudging the merits of the matter, after analyzing the pleadings of the parties and pursuant to the requirements established in articles 46 and 47 of the American Convention, the Commission decides to declare this petition admissible regarding the alleged violations of articles 4 (right to life) 5 (right to personal integrity), 7 (right to personal freedom), 8 (judicial guarantees), 11 (protection of honor and dignity), 13 (freedom of thought and expression), 17 (protection of the family), 22 (movement and residency), 24 (equal protection) and 25 (judicial protection) of the American Convention, in relation to articles 1(1) (obligation to respect rights) and 2 (the duty to adopt domestic measures) of that instrument. The IACHR also decides to declare the petition admissible with regard to the alleged violation of articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, as well as Article 7 of the Convention

of Belém do Pará. The Commission also decides to notify the parties of this decision, to publish it, and to include it in its Annual Report to the General Assembly of the OAS.

II. PROCEEDING BEFORE THE COMMISSION

5. The petition was received by the IACHR on June 3, 2011, and was admitted to processing on November 16, 2011. On December 2 of that year, the Commission sent the pertinent parts of the case file to the Colombian State and asked it to submit its reply within two months, pursuant to Article 30 of the Rules of Procedure of the IACHR. At the State's request, the deadline was extended to March 5, 2012. The State submitted its response to the petition in communication dated March 12, 2012. The response was forwarded to the petitioner on March 20, 2012, and she was given one month to respond to it. At the request of the petitioner, the deadline for submitting her comments on the State's response was extended by one month. The petitioner submitted her comments on June 1, 2012, and on June 20, 2012, a copy of them was forwarded to the State of Colombia. After receiving a deadline extension, the State submitted its comments in communication dated October 29, 2012. They were forwarded to the petitioner on November 14, 2012.

– Precautionary measures (MC 132-00)

6. In light of the incidents that presumptively took place, in communication received, on May 30, 2000, the petitioner asked the IACHR to adopt precautionary measures to protect the life and physical integrity of Jineth Bedoya Lima, a journalist with *El Espectador*; Hollman Morris Rincón, the newspaper's peace section editor; and Jorge Cardona Alzate, the legal editor. Pursuant to Article 29 of its Rules of Procedure, the Commission granted the precautionary measures on June 2, 2000, and asked the Colombian State to take steps to protect the life and personal integrity of the alleged victim and the other journalists mentioned, as well as to investigate the alleged incidents.

III. POSITION OF THE PARTIES

A. Position of the petitioner

7. The petitioner argued that the facts leading to this petition took place in the context of risk to those who exercise of journalism in Colombia as a result of the ongoing armed conflict. This risk was exacerbated by the overwhelming impunity in the investigation of crimes committed against journalists. The petitioner reported that the facts also form part of a context of constant threats against Jineth Bedoya and her family, which began in 1998 and whose purpose was to stop her from exercising her profession.

8. The petitioner indicated that at the time of the alleged facts, Jineth Bedoya Lima was working for the newspaper *El Espectador* as its lead prisons reporter. In that capacity, the alleged victim had to cover a massacre that took place on April 27, 2000, in the National Model Prison in Bogotá in which 25 inmates died following a confrontation between members of paramilitary groups and inmates convicted for common crimes. According to the petitioner, following her reporting, Jineth Bedoya was threatened by inmates in that prison belonging to paramilitary groups who thought based on her reporting that she sympathized with the FARC guerrilla group. According to the petitioner, the alleged victim reported the situation to the sitting Defense Minister, who promised he would pass the information on to the Chief of Police to start an investigation.

9. On May 24, 2000, the alleged victim received a phone call from an individual named "Ramiro" who identified himself as speaking on behalf of of an inmate in the National Model Prison of Bogotá, alias "The Baker," asking that she interview him about the aforementioned massacre. The alleged victim agreed to do the interview on the condition that her safety be guaranteed. The petitioner said that "Ramiro" promised that the prison warden was aware of the situation and had authorized the journalist to enter the prison on May 25. The petitioner also stated that during that conversation, the alleged victim asked that the newspaper photographer be allowed to accompany her, to which "Ramiro" agreed. The petitioner stated that on the morning of May 25, 2000, it was agreed at the newspapers headquarters that for reasons of security, the newspaper's legal editor, Jorge Cardona, a photographer, and a driver would go with her.

10. According to the petitioner, when they arrived at the National Model Prison of Bogotá, Jineth Bedoya went to the prison's main entrance while her coworkers stayed behind awaiting instruction. The petitioner added that during one of the alleged victim's various attempts to answer the prison, an unidentified individual recognized her as the journalist who would do the interview, took her by force, and threatening her, took her to a nearby house. According to the petitioner, Jineth Bedoya then heard other men approach who verbally and physically attacked her. The petitioner stated that the men tied the alleged victims' hands and pushed her into an SUV. During the ride, Jineth Bedoya was the victim of sexual violence and suffered a number of physical and verbal assaults, during which reference was constantly made to her status as a journalist. The alleged victim also heard threats directed at other journalist colleagues. The petitioner stated that the individuals communicated constantly with their boss by cell phone, keeping him informed about the operation. According to the information provided, the journalist was kidnapped during 16 hours. According to the information provided, the individuals then left her in an isolated place. Jineth Bedoya was able to get help from a taxi, who transported her to an urgent care center in Catama. Agents with the Criminal Investigation and Interpol Directorate (*Dirección de Investigación Criminal e Interpol*, DIJIN) came and took her to a police hospital so she could be cared for by staff physicians.

11. The petitioner reported that during the kidnapping and in response to the journalist's disappearance, Jorge Cardona, the newspaper's legal editor, filed a criminal complaint with Public Prosecutor 103 Gaula de Bogotá.

12. The petitioner indicated that a month after the alleged facts took place, the alleged victim was assigned a security detail. According to the petitioner, a communication device provided by the Ministry of the Interior has been the only State support received by the alleged victim. The petitioner stated that it was the newspaper that provided her with an armored car and a driver. However, in February of 2002, when the journalist began working for the newspaper *El Tiempo*, the security detail was removed, as the authorities no longer believed that the communicator faced significant risk. According to the petitioner, in May of 2003 received threats from unknown sources. On the initiative of the director of the National Police, she was once again assigned a security detail.

13. The petitioner stated that on several occasions, the security service provided by the State posed an unnecessary risk to the journalist. For example, the petitioner stated that one of the police officers in charge of guarding her was later arrested for crimes of theft and kidnapping and was accused of being part of the "Los Calvos" criminal gang, which may have been responsible for the kidnapping, torture, and sexual assault of Jineth Bedoya.

14. The petitioner reported that Jineth Bedoya continued to exercise her profession as a journalist and continued to receive threats. For example, the petitioner stated that on August 18, 2003, the alleged victim was kidnapped again with her equipment in Puerto Alvara, this time by the FARC. She was released after five days. The National Police remain in charge of the protection program until 2007 without the participation of any other authority or agency. The petitioner added that on November 26, 2008, she filed a disciplinary complaint with the Office of the Attorney General of the Nation against the military after she found out through confidential sources within State security bodies that military officials had ordered her followed and ordered that her mail and communication be intercepted.

15. The petitioner stressed that at the time she filed her complaint with the IACHR, the investigation of the events that took place in the year 2000 was only in its preliminary phases. She expressed concern over the absence of real results and the lack of diligence and exhaustiveness that should characterize every investigation according to international standards. She said that although the State was made aware of the violation of Jineth Bedoya's human rights in a timely fashion, it had not performed a serious investigation. The petitioner stated that the approaches to the investigation were inconsistent, which is evident in the excessive length of the investigation without conclusive results, the lack of a legal qualification for the sexual violence that the victim experienced, the shallowness of the other theories proposed, the marginalization of seemingly dedicated State agents, procedures that repeatedly revictimize the victim, denial of access to the victim's legal counsel, and denial of probative requests by Jineth Bedoya's representatives. The petitioner

indicated that in response to the situation, on June 8, 2011, it asked the Office of the Attorney General of the Nation to assign a new public prosecutor given that the one who had been in charge for more than 11 years was not able to make progress in resolving the facts and the investigation lacked rigor, diligence, and exhaustiveness.

16. According to the petitioner, the request was granted on August 23, 2011, and the 49th Human Rights Unit of the Office of the Attorney General of the Nation was assigned to the investigation. The petitioner stated that on December 12 and 13, 2011, the Unit made the first arraignment in the investigation, which formally charged Jesús Emiro Pereira Rivera in the crime of "aggravated criminal kidnapping in teleological connection with the torture of a protected individual and violent sexual assault." On February 8, 2012, Mario Jaimes Mejía, alias "the Baker," was arraigned for the same crimes. The petitioner added that on February 8, 2012, Alejandro Cárdenas Orozco was arraigned for the same crimes, and that he accepted the charges of kidnapping and torture. The petitioner recognized that after 11 years without significant progress in the investigation, these actions on the part of the State demonstrated for the first time a willingness to investigate. Nevertheless, the petitioner noted that obstacles to the effective administration of justice persist, which is why it requested application of the exception to the rule of exhaustion of domestic remedies on the basis of unjustified delay.

17. The petitioner argued that the alleged violations of articles 4 and 5 of the Convention took four different forms: i) the failure to comply with the duty to guarantee given awareness of the threats being made to the alleged victim, as well as the fact that the place where she was kidnapped - the National Model Prison of Bogota - is State property; ii) the existence of evidence that state agents actively participated in the order to kidnap, torture, and sexually assault Jineth Bedoya Lima; iii) the death threats made during the approximately 16 hours during which the journalist was kidnapped; and iv) the absence of a full and effective investigation.

18. With regard to the alleged violation of Article 7, the petitioner stated that the journalist was illegally deprived of her freedom despite being in a place controlled by the State - the model prison - and having spoken with the guards there. The petitioner added that the alleged participation of State agents in the facts supports the claim that this right was infringed.

19. With regard to the alleged violation of articles 11 and 24 of the Convention and 7b of the Convention of Belem do Pará, the petitioner stated that the alleged victim was subjected to an act of violence against women of a physical, mental, and sexual nature as a means of humiliation, punishment, and repression for her work as a journalist. The petitioner argued that the *modus operandi* of this type of attack is different from armed attacks against male victims, and as a consequence it represents "a disproportionate gender-based violation." The petitioner added that this attack took place in the context of an armed conflict in which, as a result of her publications, the journalist was seen by her captors as sympathizing with the FARC. The petitioner held that the facts also affected the alleged victim's right to equality, as members of the public prosecutor's office contributed to re-victimizing treatment by building a theory that the journalist was the lover of a FARC guerrilla and undervaluing the charges involving violent criminal conduct based on sex. At the same time, the petitioner alleged that the fact that in the context of the investigations, the authorities made assumptions to conclude that the journalist had a romantic relationship with a member of the FARC reveals the projection of a recurring stereotype in cases of violence against women, that "it happened because of something she herself was looking for." In this sense, the petitioner argued that with these procedural assumptions, investigators also violated the alleged victim's right to privacy and honor. Finally, the petitioner alleged that under the Convention of Belem do Pará, the State has a greater duty to investigate and punish, a duty that has not been fulfilled.

20. Regarding the alleged violation of articles 8 and 25, the petitioner alleged that the investigation carried out by State authorities was characterized by long periods of inactivity, proceedings that were unnecessary for obtaining relevant results, and delays in performing relevant proceedings. Petitioners stated that not only was there an unjustified delay in the administration of justice, but the Office of the Attorney General failed to perform an investigation that measured up to international standards and the gravity of the rights violations involved.

21. With regard to the violation of Article 13 of the Convention, the petitioner indicated that both dimensions of the right to freedom of expression were violated, given that Jineth Bedoya was attacked directly and disproportionately for the fact of exercising her profession. In addition, the petitioner argued that the social dimension was violated because the facts represent a clear threat to other communicators and to society as a whole in terms of the consequences that publishing on certain topics can have. Effectively, the petitioner argued that those responsible for the facts alleged sought to send a message to journalists to censor them and prevent them from covering news related to the armed conflict. The petitioner highlighted that the case in question is a reflection of the fact that the professional activities of communicators in Colombia are not protected by effective judicial guarantees.

22. Regarding the alleged violation of articles 17 and 22 of the Convention, the petitioner indicated that the journalist had to leave the country on one occasion during two weeks and later on for a month, in order to protect her integrity in light of the numerous threats from unknown individuals and the FARC, respectively. The petitioner also stated that the alleged kidnapping, torture, and sexual assault have had a prolonged effect on the stability of the victim's family, and the absence of a serious, diligent, exhaustive, and effective investigation has prevented her from beginning to repair this damage to her family life.

23. With regard to the alleged violation of articles 1 and 2 of the Convention, the petitioner stated that although at the time of the facts, the State of Colombia had mechanisms for guaranteeing, preventing, investigating, and punishing regarding what happened to the journalist, they have proved to be ineffective.

24. With regard to the alleged violation of articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, the petitioner indicated that on May 25, 2000, the alleged victim was gagged, her hands and feet were tied, and she was subjected to "torturous body positions" over an extended period of time, representing physical torture. At the same time, the journalist's captors subjected her to psychological torture. According to the petitioner, the purpose of these violations was to intimidate and punish the alleged victim for her journalism activity. The petitioner also added that the investigation launched by government authorities had not been looking into this angle.

B. Position of the State

25. In communication dated March 12, 2012, and October 29, 2013, the State asked the Commission to find the petition inadmissible based on Articles 47(a) and (b) of the Convention, as the facts presented do not represent a violation of the ACHR and domestic remedies have still not been exhausted due to the complexity of the case. In this regard, it stated that the proceeding is in the preliminary investigation stage and three people have been linked to the facts alleged. It argued that there has not been an unjustified delay, and consequently, the exception found in Article 46(2)(c) of the Convention does not apply, as the investigating authorities have taken a number of steps to determine responsibility for the facts, and the delays resulting from the process are due to the case's complexity rather than the inaction of investigating or judicial authorities. It also argued that this petition does not submit facts for which the Colombian State could be held responsible due to direct or indirect action or omission. The facts in the petition are clearly presented as the exclusive responsibility of third parties.

26. In regard to the facts leading to the petition, the State said that as a result of the criminal complaints that were filed, it has performed a serious investigation into both the facts alleged to have taken place on May 25, 2000, and the facts alleged to have taken place prior to and after that date. In this regard, the State indicated that on May 26, 2000, a preliminary investigation was opened, and on June 7, 2000, once the inquiry was assigned, the public prosecutor took over the case and ordered a number of measures to identify those responsible for the facts. The State said that statements were collected and inspections were made of the Model Prison of Bogota and its visitor sign-in book. The place where the facts took place was also inspected and forensic medicine test results were requested. The State indicated that in 2001, a photo lineup was done and copies were collected of the statements of certain individuals. The State highlighted that in 2003, the Forensic Investigation Team of the Office of the Public Prosecutor (*Cuerpo Técnico de Investigación*)

de la Fiscalía, CTI) issued a report, and the alleged victim and others provided statements. It also reported that in 2004, the CTI and the Security Administration Department (*Departamento de Administración de Seguridad*, DAS) issued reports, and a statement was ordered to be collected from one individual. According to the State, in 2006, a person was called to give a statement, and in 2007, Jineth Bedoya and other individuals gave statements, an inspection of documents was performed at a bank, and the CTI issued a new report.

27. According to the State, in 2008, the security cameras in the National Model Prison of Bogota were ordered inspected, and in 2009, another statement and judicial inspection were ordered. In 2010, among other steps, the prison guards who were supervising the Model Prison's entrance on the day of the alleged facts were ordered to give a statement, as was the inspector of the National Institute for Penitentiaries and Jails (*Instituto Nacional Penitenciario y Carcelario*, INPEC). The statement of Jineth Bedoya Lima was also ordered expanded.

28. The State indicated that Jineth Bedoya gave sworn statements at several different points: specifically, on May 30, June 8, and June 19, 2000; May 22, 2003; August 28, 2007; August 11, 2010; and September 8 and November 26, 2011. It also reported that on January 18, 2011, the alleged victim's civil suit was admitted, and it detailed the investigative actions ordered subsequently. The State highlighted that it was able to identify a number of suspects, which allowed it to accelerate and intensify the investigation. It indicated that it was able to get one of the accused, who was subject to the Justice and Peace Act, to confess his participation in the crimes against the journalist.

29. The State held that as a result of these measures, on December 12 and 13, 2013, the investigation identified Jesus Emiro Pereira Rivera and charged him with "aggravated criminal kidnapping in teleological connection with the torture of a protected individual and violent aggravated sexual assault of a protected person." It also stated that on February 6, 2012, Alejandro Cárdenas Orozco testified from the La Picota prison in Bogota and agreed to plead guilty to the crime of "aggravated criminal kidnapping in teleological connection with the torture of a protected individual and violent aggravated sexual assault of a protected person." in exchange for a reduced sentence. It also stated that on February 8, 2012, its investigation identified Mario Jaimes Mejia of the National Human Rights Unit of Bucaramanga and charged him with "aggravated criminal kidnapping in teleological connection with the torture of a protected individual and violent aggravated sexual assault of a protected person."

30. Based on this, the State highlighted that since the case was reassigned to Specialized Public Prosecutor 49 of the National Human Right and International Humanitarian, it has gotten significant results. According to the State, these actions have allowed it to "solve a case that has been stuck for a number of years, not due to lack of activity in the investigation or to State apathy, but due to special circumstances beyond government control that blocked and permanently torpedoed the investigation's normal progress due to the fact that the case is a special one in which members of paramilitary forces figure as possible perpetrators."

31. As far as the petitioner's pleading of unjustified delay, the State argued that the duration of the investigation was due to the complexity of the case given the absence of evidence that would allow for the identification and punishment of those responsible. The State explained that the alleged masterminds probably belong to a self-defense group, increasing difficulty "as a result of the special status of that organization within the process that the State of Colombia is pursuing." The State argued that this is evidenced by the fact that the only person confessing participation in the crimes took refuge in the Justice and Peace Act. In that sense, the State added that there is no deadline for complying with the obligation to pursue an investigation, try, and punish those responsible for the violations. It emphasized that the State's management should focus on continuous action in the search for justice, "by moving forward with an investigation as the scope of each case dictates. Otherwise, the State would be subjected to impossible obligations." Based on this, the State argued that the exception contained in Article 46(2)(c) of the Convention does not apply, and that therefore the petition is inadmissible due to a failure to exhaust domestic remedies.

32. Finally, the State asserted that the petition does not describe any facts that might tend to establish the violation of any of the rights guaranteed by the Convention, as the participation of State agents

has not been demonstrated. The State indicated that although the petitioner gave indications regarding the possibility that State agents were involved, they "were mere statements and not conclusive or convincing enough to address this hypothesis."

IV. ANALYSIS OF JURISDICTION AND ADMISSIBILITY

A. Jurisdiction *ratione materiae*, *ratione personae*, *ratione temporis* and *ratione loci* of the Commission

33. In accordance with Article 44 of the American Convention and Article 23 of the Rules of Procedure of the IACHR, the petitioner has *locus standi* to submit petitions before the Inter-American Commission. As for the State, Colombia is a party to the American Convention. The alleged victim is a natural person whose rights enshrined in the American Convention the State has committed itself to guaranteeing. Therefore the Commission has jurisdiction *ratione personae* to examine the petition.

34. Colombia ratified the American Convention on July 31, 1973, the Inter-American Convention to Prevent and Punish Torture on December 2, 1998, and the Convention of Belém do Pará on October 3, 1993; in other words, the treaties invoked were in force for the State when the violations described in the petition were allegedly committed. Consequently, the Inter-American Commission has jurisdiction *ratione materiae* and *ratione temporis* to hear this matter.

35. Finally, the Inter-American Commission has jurisdiction *ratione loci* to hear the petition because it alleges violations of the rights protected in the aforementioned treaties that took place in Colombia's territory.

B. Requirements for Admissibility of the Petition

1. Exhaustion of remedies under domestic law

36. In order for a claim to be admitted for the alleged violation of the provisions of the American Convention, it must meet the requirements established in Article 46(1) of that international instrument. Article 46(1)(a) of the American Convention holds that in order for a complaint submitted before the Inter-American Commission under Article 44 of the Convention to be admissible, all domestic remedies must first be pursued and exhausted, in keeping with generally accepted principles of international law. The purpose of this requirement is to allow domestic authorities to hear cases of alleged violations of protected rights and, where appropriate, have the opportunity to resolve them before they are brought before an international authority.

37. For its part, Article 46(2) of the Convention stipulates that the requirement to exhaust domestic remedies is not applicable when a) the domestic legislation of the State concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated; b) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or c) there has been an unjustified delay in the ruling on the aforementioned remedies. The Commission has reiterated that in situations in which the domestic development of the facts initially presented represent a change in compliance or non-compliance with admissibility requirements, the case should be analyzed based on its status at the moment it was granted admissibility.¹ According to the Inter-American Court, whenever a State alleges a lack of exhaustion of domestic remedies by the petitioners, it has the burden of demonstrating that the remedies that have not

¹ IACHR, Report 2/08, Petition 506-05, *José Rodríguez Dañín* (Bolivia), March 6, 2008, para. 56. Citing: IACHR, Report No. 20/05, Petition 714-00, *Rafael Correa Díaz* (Peru), February 25, 2005, para. 32; IACHR Report No. 25/04 Case 12,361, *Ana Victoria Sánchez Villalobos et al.* (Costa Rica), March 11, 2004, para. 45; IACHR, Report No. 52/00. Cases 11,830 and 12,038, *Dismissed Employees of the Congress of the Republic* (Peru), June 29, 1992, para. 21.

been exhausted are "adequate" for rectifying the violation alleged - namely, that the function of these remedies within the domestic legal system is sufficient for protecting the juridical situation infringed upon.²

38. The invocation of exceptions to the rule of exhaustion of domestic remedies set forth in Article 46(2) of the Convention is closely linked to the determination of possible violations of certain rights set forth in the Convention, such as the guarantee of access to justice. However, Article 46(2), by its nature and purpose, is a provision whose content is autonomous *vis-a-vis* the substantive provisions of the Convention. Therefore, the determination of whether exceptions to the rule of exhaustion of domestic remedies are applicable to the case in question must be carried out prior to and apart from the analysis on the merits of the matter, as it depends on a standard of examination that is different from the one used to determine a possible violation of articles 8 and 25 of the Convention. That is to say that the requirement of prior exhaustion of domestic remedies or of an exception to this requirement is developed in the analysis on the admissibility of the petition, without prejudice to whether in the report on the merits, the existence or nonexistence of violations of the articles of the American Convention on judicial guarantees and protections are analyzed.

39. In this case, the State argued that the petitioner failed to exhaust domestic remedies, meaning that the requirement established in Article 46(1)(a) of the American Convention has not been met. It argued that in this case, the exception to this rule is not verified pursuant to the provision in Article 46(2)(c) given that pertinent judicial actions have not been taken and three individuals have been charged under the regular system of justice. For its part, the petitioner emphasized that more than 11 years have passed since the incidents referenced in the petition, the investigation remains in the preliminary phase without conclusive results. It reiterated that the investigation has been characterized by a lack of rigor, diligence, and thoroughness. For the petitioner, the progress made in recent years is late and does not represent conclusive results that would indicate that the State has adequately complied with its international obligations.

40. The Commission notes that the petitioner's central allegations address both the possibility that State agents participated in the commission of the crimes of kidnapping, torturing, and sexually assaulting Jineth Bedoya, and the State's failure to prevent, investigate, and punish these crimes as a consequence of its lack of due diligence, its gender discrimination and bias, and the resulting impunity. According to the scholarship on the Inter-American System, the appropriate and effective remedy in these matters is a criminal investigation and trial pursued through the criminal justice system.³

41. The IACHR notes that the facts in this matter led to the opening of an investigation assigned in 2000 to the 6th National Unit for Human Rights and International Humanitarian Law of the Office of the Attorney General of the Nation. Eleven years later and in response to the allegation of a lack of diligence in conducting the investigation, the petitioner requested the case be reassigned. The 49th National Human Rights Unit is now in charge of the case. The unit launched an investigation into the crimes of kidnapping and sexual violence and has been able to identify three suspects. According to the State, efforts have also been made to involve members of paramilitary groups in the facts in this case in the context of the proceedings carried out by the Justice and Peace Unit of the Office of the Public Prosecutor. According to the information available, as of the publication date of this report, the investigation remains in its preliminary stage.

42. The Commission observes that as a general rule, a criminal investigation should be carried out promptly in order to protect the interests of the victims, preserve the evidence, and even protect the rights of every individual who is considered a suspect in the context of the investigation. Also, as indicated by the Inter-American Commission and the Inter-American Court in their earliest decisions, although all criminal investigations should meet a series of legal requirements, the rule of exhaustion of domestic remedies should not stop or delay international action in the interest of victims to the point of uselessness. This rule is

² Inter-American Court. *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para. 64.

³ IACHR, Report No. 52/97, *Arges Sequeira Mangas*, February 18, 1998, para. 96; and Report No. 2/10, *Fredy Marcelo Núñez Naranjo et al.*, March 15, 2010, para. 29.

reinforced with the State obligation to combat with due diligence all forms of discrimination of and violence against women.⁴

43. In this regard, and for the purposes of admissibility, the Commission considers that in this case, the period of 14 years during which the investigation has been in its preliminary phase does make it possible to apply the exception to exhaustion of domestic remedies for unwarranted delay set forth in Article 46(2)(c) of the American Convention, meaning that for this petition, the requirement of exhaustion of domestic remedies cannot be invoked.

2. Time-limits for submitting the petition

44. The American Convention establishes that for a petition to be admissible by the Commission, it must be lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment. In the claim under analysis, the IACHR has established that exceptions to the exhaustion of domestic remedies apply, pursuant to Article 46(2)(c) of the American Convention. In these cases, the Commission must decide whether or not the petition was lodged within a reasonable period of time in accordance with Article 32(2) of its Rules of Procedure, which provides that:

In those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time, as determined by the Commission. For this purpose, the Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case.

45. The petition was received on June 7, 2011; and the alleged acts that are the subject of the claim began with threats in 1998 and her kidnapping and sexual assault on May 25, 2000; the subsequent threats and attacks that cause her to leave the country and the effects resulting from the alleged failure to administer justice that reportedly extend to the present. Therefore, in view of the context and the characteristics of this petition, the Commission finds that the it was presented within a reasonable period of time and that the admissibility requirement on the submission deadline is satisfied.

3. Duplication of international proceedings and international *res judicata*

46. The case file does not indicate that the issue addressed in the petition is pending before any other international proceeding, nor that it repeats a petition that has already been heard by this or any other international body. Accordingly, the requirements established in articles 46(1)(c) and 47(d) of the American Convention have been complied with.

4. Characterization of the alleged facts

47. It is the responsibility of the Inter-American Commission to determine if the facts described in the petition comprise a violation of the rights enshrined in the American Convention in keeping with the requirements of Article 47(b), or if the petition, in keeping with Article 47(c), must be rejected for being “manifestly groundless” or “obviously out of order.” In this procedural stage, it is the IACHR’s responsibility to do a *prima facie* evaluation, not with the purpose of establishing alleged violations of the American Convention, but rather to examine whether the petition denounces facts that could potentially comprise

⁴ Cf. IACHR, Report No. 80/11, Case 12,626, Merits, *Jessica Lenahan (Gonzales) et al.*, July 21, 2011. (United States), para. 110; IACHR, Report No. 28/07, Cases 12,496-12,498, *Claudia Ivette González et al.*, (Mexico), March 9, 2007; IACHR, Report No. 54/01, Case 12,051, *Maria Da Penha Maia Fernandes* (Brazil), Annual Report of the IACHR 2001; IACHR, Access to justice for women victims of sexual violence in Mesoamerica, OEA/Ser.L/V/II, Doc. 68 (January 20, 2007); Inter-American Court *Case of González et al. (“Cotton Field”) v. Mexico. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 16, 2009. Series C No. 205; Inter-American Court. *Case of Fernández Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs.* Judgment of August 30, 2010. Series C No. 215, and Inter-American Court. *Case of Rosendo Cantú et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs.* Judgment of August 31, 2010. Series C No. 216.

violations of rights guaranteed in the American Convention. This examination does not imply a prejudgment or an anticipation of the ruling on the merits in this matter.⁵

48. Neither the American Convention nor the Rules of Procedure of the IACHR require the petitioner to identify the specific rights that the State is allegedly violating in the case submitted to the Commission, although the petitioners may do so. It pertains to the Commission, on the basis of the System's case law, to decide in its admissibility reports which provision of the relevant inter-American instruments is applicable or could establish its violation if the allegations are proven on the basis of sufficient evidence.

49. The petitioner alleged international State responsibility for the violation of articles 4, 5, 7, 8, 11, 13, 17, 22, 24, and 25 of the Convention to the detriment of Jineth Bedoya Lima, in relation with the general obligation established in articles 1(1) and 2 of the aforementioned international instrument, as well as the violation of articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture and Article 7 of the Convention of Belém do Pará to the detriment of the alleged victim. The State asserted that the petition does not describe any facts that might tend to establish the violation of any of the rights guaranteed by the Convention, as the participation of State agents has not been demonstrated.

50. As it has been mentioned previously, the claim under review presents a number of alleged violations of the rights of the alleged victim; that reportedly began with threats in 1998 and her kidnapping and sexual assault on May 25, 2000; the subsequent threats and attacks that cause her to leave the country; the alleged lack of adequate protection with regards to these events, as well as the alleged failure to administer justice that reportedly extend to the present. According to the petitioner all these events give rise to the State's international responsibility, either for its actions or its omissions.

51. Therefore, in view of the elements of fact and law submitted by the parties and the nature of the case submitted to its review, the Commission deems that, if proven, the petitioner's allegations about the scope of the alleged responsibility of the State in the incidents set forth in the petition could tend to establish a violation of the rights enshrined in Articles 4, 5, 7, 8, 11, 13, 17, 22, 24 and 25 of the Convention to the detriment of Jineth Bedoya Lima, in relation to articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture and Article 7 of the Convention of Belém do Pará. The Commission shall examine the merits of the possible violation of these provisions in the light of the general obligation enshrined in Article 1(1) of the Convention, as well as the obligation to adopt measures under domestic law in accordance with the provisions of Article 2 of the American Convention.

52. In conclusion, the IACHR decides that the petition is not "manifestly groundless" or "obviously out of order," and therefore declares that the petitioner has met *prima facie* the requirements set forth in Article 47(b) of the American Convention in connection with potential violations of the rights enshrined in articles 4, 5, 7, 8, 11, 13, 17, 22, 24 and 25 of the American Convention, in concordance with articles 1(1) and 2 thereof, with articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, and with Article 7 of the Convention of Belém do Pará.

V. CONCLUSION

53. The Inter-American Commission concludes that it has jurisdiction to hear the merits of this case and that the petition is admissible under articles 46 and 47 of the American Convention. Based on the arguments of fact and law herein set forth, and without prejudging the merits of the issue,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

⁵ IACHR. Report No. 21/04. PETITION 12.190 ADMISSIBILITY José Luís Tapia González and others. Chile. February 24, 2004. Paras. 33 and 52.

1. To declare the present petition admissible as regards the alleged violation of the rights protected by Articles 4, 5, 7, 8, 11, 13, 17, 22, 24, and 25 of the American Convention, in connection with Articles 1(1) and 2 thereof; articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture; and Article 7 of the Convention of Belém do Pará.
2. To notify the parties of this ruling, and to continue with the analysis of the merits of the matter; and
3. To publish this ruling and include it in its Annual Report to the General Assembly of the OAS.