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REPORT No. 185/18
PETITION 967-10
REPORT ON ADMISSIBILITY

G.C.A.M. AND SON
ECUADOR

Approved electronically by the Commission on December 27, 2018.

Cite as: IACHR, Report No. 185/18, Petition 967-10. Admissibility. Gardenia Cecilia Alcívar
Mendoza. Ecuador. December 27, 2018

I. INFORMATION ABOUT THE PETITION

Petitioner:	UNAMONOS Association of Persons with Disabilities (Asociación de Personas con Discapacidad UNAMONOS) ¹ and Human Rights Centre (Centro de Derechos Humanos –PUCE) ²
Alleged victim:	G.C.A.M and son ³
Respondent State:	Ecuador
Rights invoked:	Articles 5 (humane treatment), 8 (fair trial) and 25 (judicial protection) of the American Convention on Human Rights, ⁴ in relation to its Article 1 (obligation to respect rights) and other international treaties ⁵

II. PROCEEDINGS BEFORE THE IACHR⁶

Filing of the petition:	July 2, 2010
Additional information received at the stage of initial review:	April 27 and May 13, 2013
Notification of the petition to the State:	August 12, 2013
State's first response:	October 14, 2015
Additional observations from the petitioner:	September 21 and October 21, 2016
Additional observations from the State:	October 20, 2015, and July 13, 2017

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes, American Convention (deposit of instrument made on August 12, 1977) and Inter-American Convention on the Prevention Punishment and Eradication of Violence against Women of Belém do Pará ⁷ (deposit of instrument made on June 30, 1995)

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
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¹ Represented by Mr. William Diaz Pfeil, who is in fact the father of S.A.A.M, the son of the alleged victim G.C.A.M..

² The PUCE Human Rights Center joined as co-petitioner in 2016.

³ The petition is filed in favor of G.C.A.M. and her son S.A.A.M. In view of the fact that it contains allegations of sexual violence and other violations against minors, the IACHR will use their initials to identify them.

⁴ Hereinafter "the Convention" or "the American Convention".

⁵ Articles 5, 16, and 23 of the International Convention on the Rights of Persons with Disabilities. Articles 2, 8 and 9 of the Declaration on the the Rights of Disabled Persons. Articles 2, 9 and 10 of the Comprehensive and Integral International Convention to Promote and Protect the Rights and Dignity of Persons with Disabilities.

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

⁷ Hereinafter the "Convention of Belém do Pará".

Rights declared admissible	Articles 3 (juridical personality), 5 (humane treatment), 8 (fair trial), 17 (family), 18 (name), 19 (child), 24 (equal protection), 25 (judicial protection) and 26 (progressive development) of the American Convention, in relation to its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) and Article 7 of the Convention of Belém do Pará
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, in the terms of Section VI
Timeliness of the petition:	Yes, in the terms of Section VI

V. FACTS ALLEGED

1. The petitioners allege that the Ecuadorian State has failed to fulfill its role as guarantor of human rights to the detriment of G.C.A.M and her son, S.A.A.M. They allege that G.C.A.M, a person with a mental disability, was subjected to sexual abuse by her brother-in-law from 1997 to 2009, including the time when she was a minor; to physical and psychological abuse; to forced abortions and deception related to information about medical treatment. They also allege the false registration of her son S.A.A.M's birth, as well as the subsequent separation of mother and son. Additionally, they allege the lack of diligence in the treatment of the criminal complaint and maintain that G.C.A.M. had to endure the indifference and ignorance about the correct treatment of persons with disabilities by the authorities. She also suffered re-victimization because she was called on several occasions to make statements about the abuses suffered and to repeat the same medical evaluations. Finally, they allege irregularities and acts that violate the rights of G.C.A.M. in the Program for the Protection of Victims and Witnesses of the Prosecutor's Office, to which she was assigned pursuant to a court order.

2. The petitioners indicate that the alleged victim, who has a mental disability measuring 45%, moved to Quito at the age of 14 to stay with her sister Virginia and her husband, Cesar Alfonso Yépez Proaño. They argue that as from that moment she became a victim of sexual violence perpetrated by him. When she came of age, she left to live with another sister. During that time she met the father of her son, one of the petitioners in the case. They argue that when her sister and the alleged perpetrator of the sexual abuse became aware that she was pregnant, and in order to prohibit the alleged victim's contact with the father, they offered to take care of the child, cover their financial expenses and secure a job for her as a domestic worker, so she returned to live with them.

3. They allege that when she registered the child in the Civil Registry, she was persuaded to do so only with her last name and with the name of her brother-in-law. Eventually, it was discovered that the boy had two birth certificates, one as a son of G.C.A.M., and bearing the surname of the brother-in-law, and another as the son of her sister, Virginia, and her husband, Cesar Alfonso, the alleged victim's brother in law. They also indicate that the alleged victim was prevented from seeing, holding and spending time with her son. She was again the victim of repeated sexual abuse committed by her brother-in-law while he was intoxicated. They maintain that on two occasions she became pregnant, and her sister forced her to have abortions by taking her against her will to a doctor. In addition, by deceiving her, her family members took her to a clinic where a doctor inserted a contraceptive device into her arm to prevent future pregnancies. They allege that both her sister and the doctor assured her that it was intended to prevent cancer. They assert that, as a consequence, the alleged victim suffered from headaches and nosebleeds, among other symptoms, forcing her to seek attention at medical center where it was established that these symptoms were due to the improper fitting of the contraceptive.

4. With regard to the criminal trials, the petitioners state that at the time of filing the petition, criminal proceedings No. 938-2012-CA, were pending in the Fifteenth Court of Criminal Guarantees. These proceedings were initiated after a complaint filed in June 2010, for sexual abuse, and was substantiated by the Office of Sexual Offenses and Family Violence. According to the information provided, on June 14, 2010, a preliminary investigation was started and several investigative measures were ordered. On August 2, 2012,

an indictment hearing took place where the prosecutor found sufficient grounds to initiate an investigation. However, in February 2013, the prosecutor decided that there were insufficient grounds for an indictment, which was upheld by the Superior Prosecutor on April 2, 2013. Consequently, the Fifteenth Court of Criminal Guarantees dismissed the proceedings in April 2013.

5. The petitioners maintain that G.C.A.M, who had little understanding of the proceedings, suffered offensive treatment by the Prosecutor's Office. They add that the criminal proceedings were characterized by procedural irregularities because G.C.A.M had to repeat the version of the events at least fifty times before authorities lacking experience in matters related to disabled persons and/or victims of sexual abuse. This caused her re-victimization and showed that the authorities did not perceive her as a credible party or act with due diligence.

6. In addition, the petitioners allege a lack of due diligence on the part of the State and the lack of an investigation in relation to the threats and violence by family members. They indicate that G.C.A.M. reported to the Office of the Prosecutor that throughout the criminal proceedings, her sisters, mother and alleged attackers displayed a hostile attitude towards her and committed violent acts against her. The petitioners claim that she was threatened by her family members and by public officials of the Program for the Protection of Victims and Witnesses, to which she was assigned pursuant to a court order, so that she would withdraw the complaint filed against Alfonso Yépez.

7. They also allege negligent conduct by judicial officials, for example: the transfer of G.C.A.M, against her will, from her home to the home of one of her sisters, who threatened her and where her vulnerability vis-a-vis the alleged perpetrator of sexual abuse increased; the delivery of G.C.A.M's son to the brother-in-law of the alleged victim, although he was living with his mother under a court order; as well as the fact that they allowed her to leave the protection program without psychological examination. They argue that adequate protection was not ordered for G.C.A.M. while her integrity was in danger. They also argue that she was prevented from exhausting domestic remedies due to the lack of State protection against the threats she received, thus increasing her vulnerability, and her distrust caused by her criminal proceedings. They alleged that in the case of an offense with a social stigma attached, it was the State's responsibility to verify and ensure that the rights contained in the Convention had not been violated, even more so considering that the alleged victim was an individual with a mental disability.

8. With regard to the child's custody, the petitioners indicate that the alleged victim commenced Action No. 0372-2010, before the Eighth Court of Childhood and Adolescence. In October 2010, the judge ordered that S.A.A.M should be delivered to the court. However, they mention that on that day, her brother-in-law and sister appeared accompanied by at least 30 people, and brutally assaulted the alleged victim, despite the fact that she allegedly enjoyed judicial protection. They also point out that on June 3, 2011, in parallel with the transfer of the alleged victim to a sister's house, the social worker in charge of G.C.A.M.'s case delivered the child to the brother-in-law of the alleged victim, after fetching him from his school. The alleged victim was only able to leave her sister's house and recover her son on June 10, with the intervention of two officials from the Ministry of the Interior. On the other hand, they indicate that Preliminary Inquiry No. 09-412-31004 was initiated in order to promote the investigation into the alleged double registration of the child, and that it had not progressed procedurally at the time of filing the petition.

9. For its part, the State maintains that the petition is groundless given that there are no State actions or omissions characterizing violations of the alleged victims' human rights. In its view, the facts alleged were investigated and resolved by the State in the domestic courts. Likewise, it alleges that the petition intends for the Commission to review judgments issued according to law by the national courts. Finally, the State argues that the petitioners' allegations regarding re-victimization, the lack of due diligence and the investigation of threats and acts of violence, as well as threats and negligence of the Victim and Witness Protection Program's officials are extemporaneous claims and, therefore, inadmissible. In addition these claims are related to the merits of the controversy, but not to admissibility.

10. The State indicates that on February 20, 2013, the Preliminary Indictment Hearing was held, where Public Prosecutor refrained from issuing an indictment due to uncertainty as to the perpetrators given

the contradictions between the versions provided by the victim, the psychological report and the medical examinations. This opinion was confirmed by the Superior Provincial Prosecutor of Pichincha. On April 13, 2013, the Fifteenth Judge of Criminal Guarantees issued an order definitively dismissing proceedings against the suspect, on the grounds of a lack of criminal responsibility. Likewise, regarding the recovery of her son, the State mentions Proceeding No. 03720-2010, initiated with the Eighth Court of Childhood and Adolescence of Quito on May 19, 2010, with the filing of the application whereby the alleged victim requested the recovery of her son, who at that time lived with her sister and her brother-in-law. On May 20, 2010, the Judge ordered the Technical Office of the Court to report on the issue and ordered DINAPEN to locate S.A.A.M. By resolution of July 7, 2010, this court ordered the child to remain with his aunt and uncle and granted weekend visitation rights to the mother. On September 13, 2010, the Judge ruled in favor of the alleged victim, ordering that the child be delivered to his mother and that the defendants be granted a supervised visitation regime. The State alleges that this summary proceeding shows that the alleged victim had expeditious access to justice, and a swift resolution of the child's legal situation. Therefore there is no necessity to review and determine possible violations of her rights.

11. The State requests that the petition be declared inadmissible with respect to the alleged acts of family violence mentioned by the petitioners, since it maintains that the alleged victim did not initiate any judicial or administrative proceedings for the acts of family violence, thus evidencing the lack of exhaustion of domestic remedies. The State has a specialized court structure for dealing with the victims of violence; however, G.C.A.M., although having expedited legal channels, did not use them, as the petitioners acknowledge. Contrary to what she has alleged, a condition of disability does not prevent, but favors priority and preferential attention by public entities. Finally, a fear of or distrust in the jurisdictional organs is not a valid justification for failure to exhaust domestic remedies.

12. It also argues that international jurisdiction is only of a reinforcing nature and that it is not an appeal court on domestic *res judicata*, thereby lacking jurisdiction to examine errors of fact and law. The State argues that both the public prosecutors and the courts acted within their sphere of competence and, in general, that the trials were conducted with a strict application of judicial guarantees for the parties and in accordance with due process.

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

13. The petitioners indicate that the criminal proceedings for sexual abuse concluded without the prosecution's indictment and with the dismissal of the suspect in April 2013. They point out that the proceedings were not carried out with due diligence and that the alleged victim was not treated as a reliable party because of her mental disability. With respect to the identity of the child and his birth registration, proceedings were started on May 19, 2010. From the information provided, it appears that on September 13, 2010, the Judge ruled in favor of the alleged victim, ordering that the child be delivered up to the mother. However, the petitioners allege that in June 2011, officials of the victim protection program took the child and delivered him to the alleged perpetrator, for a period of eight days. With respect to the alleged acts of family violence, the petitioners argue that the alleged victim was prevented from pursuing domestic remedies due to her distrust in the system of justice generated by the State during the criminal trial for the offense of rape, in which she was not heard, as a woman victim of violence nor as a person with a disability, a group in need of special attention. For its part, the State maintains that, despite having initiated proceedings in connection with sexual abuse and for the recovery of the minor – both of which were resolved by the national courts – the alleged victim failed to exhaust domestic remedies in connection with the family violence.

14. The Commission observes that, in situations such as this, which involve crimes against the right to life and integrity, as well as the alleged abduction of a child, the domestic remedy that must be exhausted is the criminal investigation. In this case, both parties agree that the alleged victim pursued the allegations of sexual violence and abduction of her son through the courts. However, there was a lack of a diligent investigation or criminal indictment regarding the allegations of rape and violations of integrity suffered by G.C.A.M, as well as the alleged abduction of S.A.A.M.

15. In this regard, the Inter-American system has established that there are certain categories of vulnerable groups, including indigenous peoples, persons living in poverty, persons living with disabilities, and children for whom that vulnerability has an effect on their access to justice and due process guarantees. In that regard, the *“Brasilia Regulations Regarding Access to Justice for Vulnerable People”* establish that the State has a reinforced obligation to ensure access to justice to all persons who are in a vulnerable condition, on equal terms and the duty to adapt the procedures and all due process guarantees to protect their rights.⁸

16. In the present case, the alleged lack of due diligence in the judicial proceedings and in considering the alleged victim as a reliable party, on the basis of discriminatory treatment due to her mental disability, and the alleged actions designed to discourage reporting and to intimidate her, taken as a whole, constitute sufficient elements to consider that the exception provided for in Article 46.2.b) of the Convention applies to this petition.⁹

17. With regard to the timeliness for submission, the Commission concludes that, with the application of the aforementioned exception, the petition has been filed within a reasonable time based on Article 32.2 of its Rules of Procedure. This last determination derives from the fact that although the various offenses perpetrated against G.C.A.M commenced during 1997, and the abduction of S.A.A.M. was carried out in 2010, some of the effects of the alleged events continue up to the present, such as the lack of any punishment against the perpetrators.

VII. ANALYSIS OF COLORABLE CLAIM

18. In view of the factual and legal elements alleged by the parties and the nature of the matter brought to its attention, the Commission considers that, if proven, the allegations regarding lack of due diligence and investigation by the State, as well as the prejudice and negligence on the part of officials from the Program for the Protection of Victims and Witnesses, with respect to sexual abuse, family violence and impediment to the custody of the child to the detriment of the alleged victim, as well as to the alleged risk to the life and integrity of G.C.A.M. and her son, and taking into account her status as an individual with a mental disability, as well as the allegations about the fraudulent registrations of the child’s birth, could characterize violations of the rights protected in Articles 3 (juridical personality), 5 (human treatment), 8 (fair trial), 17 (family), 18 (name), 19 (child), 24 (equal protection), 25 (judicial protection) and 26 (progressive development) of the American Convention, in relation to its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) and of Article 7 of the Convention of Belém do Pará.

19. With respect to the State’s argument of a fourth instance, the Commission notes that admitting this petition is not an attempt to supersede the competence of domestic judicial authorities. The question of whether domestic judicial proceedings complied with the provision of due process guarantees and judicial protection and ensured access to justice for the alleged victims will be analyzed during the merits stage of this petition.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 3, 5, 8, 17, 18, 19, 24, 25 and 26 of the American Convention, in conjunction with its Articles 1.1 and 2 of the same instrument; and Article 7 of the Convention of Belém do Pará;

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.

⁸ IACHR, Report N° 89/13 (Admissibility), Petition 879-07, Loni Edmonds and children, Canada, November 4, 2013, paras. 58 and 59.

⁹ IACHR, Report No. 73/16. Petition 2191-12. Admissibility. Alexa Rodríguez. El Salvador. December 6, 2016, para.7.

Approved by the Inter-American Commission on Human Rights on the 27th day of the month of December, 2018. (Signed): Margarette May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice President; Luis Ernesto Vargas Silva, Second Vice President; Francisco José Eguiguren Praeli, Joel Hernández García, Antonia Urrejola, and Flávia Piovesan, Commissioners.