

OEA/Ser.L/V/II.
Doc. 107
23 August 2018
Original: Spanish

REPORT No. 94/18
PETITION 1402-10
REPORT ON ADMISSIBILITY

NADIA ALEJANDRA MUCIÑO MÁRQUEZ AND FAMILY
MEXICO

Approved by the Commission electronically on August 23, 2018.

Cite as: IACHR, Report No. 94/18, Petition 1402-10. Admissibility. Nadia Muciño Márquez and Family. Mexico. August 23, 2018.

I. INFORMATION ABOUT THE PETITION

Petitioner:	María Antonia Márquez Hernández, <i>Oficina de Defensoría de los Derechos de la Infancia</i> (ODI, by the Spanish acronym), and <i>Comisión Mexicana de Defensa y Promoción de los Derechos Humanos</i> (CMDPDH, by the Spanish acronym)
Alleged victims:	Nadia Alejandra Muciño Márquez and family ¹
Respondent State:	Mexico ²
Rights invoked:	Articles 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 17 (family), 19 (child), 24 (equal protection) and 25 (judicial protection) of the American Convention on Human Rights, ³ in relation to Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) thereof; Article 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of All Forms of Violence against Women ⁴

II. PROCEDURE BEFORE THE IACHR⁵

Filing of the petition:	October 5, 2010
Additional information received at the stage of initial review:	August 1, 2013; October 16, 2015 and February 4, 2016
Notification of the petition to the State:	August 12, 2016
State's first response:	January 12, 2017
Additional observations from the petitioner:	July 28, 2017 and March 5, 2018
Additional observations from the State:	July 13, 2018

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 ratification instrument on March 24, 1981) and Convention of Belém do Pará (deposit of ratification instrument on November 12, 1998)

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

Duplication of procedures and International <i>res judicata</i>:	No
---	----

¹ The petition was lodged in favor of Nadia Alejandra Muciño Márquez and 11 relatives of hers, who are identified in the document attached hereto.

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

³ Hereinafter "Convention" or "American Convention."

⁴ Hereinafter "Convention of Belém do Pará."

⁵ The observations submitted by each party were duly transmitted to the opposing party.

Rights declared admissible:	Articles 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 17 (family), 19 (child), 24 (equal protection) and 25 (judicial protection) of the American Convention, in relation to Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) thereof; and Article 7 of the Convention of Belém do Pará
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, under the terms of Section VI
Timeliness of the petition:	Yes, under the terms of Section VI

V. ALLEGED FACTS

1. The petitioners claim that in the State of Mexico, in a context of several murders of women involved in a generalized situation of gender-based violence, Nadia Alejandra Muciño Márquez (hereinafter “the alleged victim” or “Ms. Muciño”), aged 24, was murdered by her partner and his brother on February 12, 2004. They submit that she was killed in front of the three children of the couple: Carlos Rafael, José Uriel, and Fernanda, aged 5, 4 and 2 respectively. They affirm that her death was the last of the continuous acts of domestic violence the alleged victim had sustained, which had been unsuccessfully reported to state authorities. They allege that her family members have been victims of institutional violence, for the State has infringed their right of due process and access to justice, preventing them from knowing the truth, revictimizing them and placing them in a situation of risk by ensuring impunity for the persons responsible.

2. The petitioners explain that, from 1998, Ms. Muciño had been a victim of economic abuse and physical and psychological violence from her partner. They indicate that on May 17, 2003 he kidnapped her for six days, during which Ms. Antonia Márquez Hernández (hereinafter “Ms. Márquez”), her mother had unsuccessfully asked several state bodies for help—which refused to search for her. As an example, she reported that she went to the Support Centre for Missing and Absent Persons of the General Attorney’s Office of the Federal District, who verified her daughter’s age, they answered to her “she must have gone with the boyfriend”, they also told her that they could not seek her until after 72 hours. On June 5, 2003 the alleged victim and her mother reported said deprivation of liberty before the Public Prosecutor’s Office (1501/2003), but no measures were adopted to protect her. They submit that on February 12, 2004 the alleged victim was killed by her partner and his brother in front of the children of the couple, and that when the children were alone, these asked a neighbor for help and that this person alerted the relatives. The police attested that the dead body lied in the bathroom, with the feet covered in mud, and the neck tied with a rope with three knots and an electrical cable. After the body was lifted, on January 6, 2005 the Prosecutor’s Office of the Municipality of Cuautitlán Izcalli filed a preliminary investigation (827/2004) in which the hypothesis of suicide was ruled out, and on March 9, 2005 it requested that a warrant was issued for the arrest of the allegedly responsible persons.

3. Ms. Márquez holds the State responsible for the irregularities taking place in the preliminary investigation (827/2004). She alleges negligence in both the lifting of the body and the crime scene preservation. She claims that the Prosecutor’s Office authorities failed to inspect or preserve the scene, and that two days later it was burnt, most of the evidence being destroyed. She alleges the lack of chains of custody, that the piece of cable and the rope used in the murder, along with a shirt stained with blood, have gone missing, and that no expert’s report was aimed at proving the commission of sexual abuse. She claims having reported said events to the Attorney General’s Office Special Unit for the Prevention of Offenses Committed by public servants (161/2012), that it decided to not bring the criminal action; therefore, she filed an appeal for legal protection that was dismissed as was the subsequent appeal for review.

4. The petitioners report that the long and unsuccessful criminal action before the Third Criminal Judge of First Instance of the judicial district of Cuautitlán has taken more than a decade, ensuring impunity for the persons responsible. As for the brother of the alleged victim’s partner (criminal case no.

62/05), the petitioners submit that a warrant for his arrest was issued on July 25, 2005 and executed on September 27, 2007. Later, on September 30, 2007 a detention order was issued, and on October 8, 2009 he was convicted to 42 years and six months in prison for the aggravated murder of Nadia Muciño. They assert that after an appeal was lodged, on February 5, 2010 the First Collegiate Criminal Chamber of Tlalneplantla of the Superior Court of Mexico state (1027/2009) dismissed the children's witness statements and took account of those expert's reports confirming the hypothesis of suicide; thus it revoked the guilty verdict on the grounds that the *corpus delicti* had not been proved, acquitting the defendant. In view of this, on March 2, 2010 the alleged victim's mother presented a direct *amparo* for legal protection, which on April 5, 2010 was flatly rejected by the Second Circuit Third Court arguing that she was not entitled to bring this action because she was an indirect victim, and that the defendant's acquittal did not expose her to direct or personal harm.

5. The petitioners allege that the court of appeals arbitrarily dismissed the testimony of the alleged victim's eldest children, who, being the only eyewitnesses of the events, identified the persons responsible. The court argued that the children were unable to distinguish reality from fantasy, in that they were "unable to provide a well-organized and clear account of the events." They submit that this decision ignored the children's right to be heard and ensured impunity for one of the defendants. Given the impossibility to challenge this decision, Ms. Márquez presented a criminal claim (162/2012) against the magistrates of the First Collegiate Chamber; however, the Attorney General's Office decided to not bring a criminal action.

6. With regard to the alleged victim's former partner (criminal case no. 187/2012), the petitioners indicate that on July 25, 2005 an warrant was issued for his arrest, and was executed on June 14, 2012. They submit that on October 17, 2013 a detention order was issued and on October 13, 2017 a trial court convicted him to 42 years and six months in prison for aggravated murder; however, this resolution was challenged by both parties and the appeal proceeding is pending settlement. The petitioners assert that so many years of wait violate any interpretation of timely justice; that the imprisonment sentence is not final; and that the court of appeals might follow the same reasoning applied in the acquittal of the partner's brother. They explain that Ms. Márquez was not allowed to intervene in said criminal proceeding, despite the legal amendments made on January 9, 2013 in favor of indirect victims. Thus, they claim that on July 4, 2016 the trial judge failed to recognize Ms. Márquez's right to partake in the criminal proceeding, by claiming that she was not legally entitled to challenge the judge's resolutions. This decision was overturned on December 13, 2016 by the District Fourth Court when it settled an indirect *amparo* for legal protection (1055/2016) filed by Ms. Márquez.

7. The petitioners request that, in regard to the requirement of prior exhaustion of domestic remedies, the exception set forth in Article 46.2.c of the Convention be applied to the instant petition. They submit that the several remedies Ms. Márquez has had to file are based on the delays in the proceeding, the disregard for her right to partake in these, and her interest in challenging those resolutions whereby her grandchildren were made to confront their father. Moreover, they add that Ms. Márquez was not allowed to present an effective remedy against the sentence acquitting one of the defendants; therefore, they request the application of the exception established in Article 46.2.b of the Convention.

8. For its part, the State affirms that the remedies available in the domestic jurisdiction have not been exhausted. It explains that the criminal proceeding is still pending settlement because of the matter's complexity and the continual filing of remedies by the parties. As for Ms. Márquez's allegation of purported omissions in the preliminary investigation, it claims that although these led to the decision of not bringing criminal action, it asserts that said investigation is under review by the Special Prosecutor; consequently, domestic remedies have not been exhausted.

9. In addition, the State asserts that the alleged lack of due diligence does not establish a violation of rights. In regard to the complaint filed by Ms. Marquez, it indicates that the antecedents were timely sent to the special unit of the Attorney General's Office. As for the investigation of the murder, although the State recognizes a delay of seven years in the execution of the warrant for the arrest of Ms. Muciño's former partner, it argues that this does not establish a human rights violation, for it is an obligation of means and that in the end the arrest warrant was executed. It adds that several proceedings were undertaken and

that Ms. Márquez, as a contributing party, was able to submit any evidence she deemed relevant, through the Public Prosecutor. In regard to the lack of remedies, it indicates that eventually, because of an indirect appeal for legal protection, the courts recognized her right to partake as a victim in criminal case no. 187/2012.

10. Finally, the State submits that the petitioners have lodged several amparo proceedings, rejected by the judicial authorities—who argue that the criminal proceeding has conformed to due diligence. As for the court of appeal’s decision to dismiss the children’s testimonies, it affirms that it was based on “the incoherence of their accounts, and the children’s maturity level, as they are unable to give a coherent account of the events.” Therefore, it asserts that the decisions of the domestic authorities are final and that the IACHR is not entitled to review them.

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

11. The petitioners claim that the requirement of prior exhaustion of domestic remedies does not apply to this petition because of the applicability of the exception set forth in Article 46.2 paragraphs b and c of the Convention. The State, in turn, alleges the lack of exhaustion of domestic remedies because the criminal action is still underway.

12. The Commission observes that, in situations involving offenses against life and humane treatment, the domestic remedies to be exhausted for the purpose of admissibility are those concerning the investigation and the punishment of the persons responsible. Likewise, the Commission recalls that in procedural systems where victims or family members may partake in criminal proceedings, under no circumstance should their procedural activity be a substitute for state intervention. Therefore, considering that, as a general rule, an investigation into the alleged violent death of a person must be conducted promptly in order to protect the interests of the victims, and preserve the evidence, the Commission believes that given that more than a decade has passed since the murder took place and yet the judicial authorities have not clarified the facts or punished the persons responsible, the exception to the requirement of prior exhaustion of domestic remedies provided for in Article 46.2.c of the Convention applies to this case.⁶

13. As for the requirement of timeliness, the Commission believes that the petition was been filed within a reasonable time in accordance with Article 32.2 of the Rules. This decision is based on the fact that, although the facts matter of this petition began in May 2003, some of the consequences of the alleged events persist to date, such as the lack of identification and punishment of the persons responsible.

VII. ANALYSIS OF COLORABLE CLAIM

14. In view of the elements of fact and law presented by the parties, and the nature of the matter brought to its attention, the IACHR finds that, if proven, the purported failure, on the part of the State, to adopt prevention and protection measures in relation to the abuse, deprivation of liberty, and death of Nadia Alejandra Muciño Márquez occurred in a context of gender-based discrimination and violence, within the family or domestic unit; the obstacles for the family members to access justice; as well as the alleged lack of due diligence in the investigation, prosecution and punishment of the reported events all could establish violations of the rights protected through Articles 4 (life), 5 (humane treatment), 7 (personal liberty) and 24 (equal protection) of the American Convention, in relation to Ms. Muciño; and Articles 5 (humane treatment), 8 (fair trial), 17 (family), 19 (child) and 25 (judicial protection) in regard to the family members, all the articles in connection with Articles 1.1 and 2 thereof. Likewise, the Inter-American Commission believes that the allegations can establish violations of Article 7 of the Convention of Belém do Pará to the detriment of Ms. Muciño.

15. Lastly, as for the State’s claim about the establishment of a court of “fourth instance,” the Commission observes that in declaring this petition admissible it does not seek to overstep domestic courts’

⁶ IACHR, Report No. 57/13, Petition 12,229. Admissibility. Digna Ochoa *et al.* Mexico, July 16, 2013, par. 55.

authority. In the merits stage, the Commission will analyze whether the domestic proceedings conformed to the safeguards of due process and judicial protection in accordance with the rights enshrined in the American Convention.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 4, 5, 8, 17, 19, 24, and 25 of the American Convention, in connection with Articles 1.1 and 2 thereof; and article 7 of the Convention of Belém do Pará; and

2. To notify the parties of this decision; to continue with the analysis on the merits; and to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 23rd day of the month of August, 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, Antonia Urrejola, and Flávia Piovesan, Commissioners.

Annex
List of alleged victims

1. Nadia Alejandra Muciño Márquez
2. Carlos Rafael López Muciño
3. José Uriel López Muciño
4. Fernanda López Muciño
5. María Antonia Márquez Hernández
6. Rafael Muciño Sánchez
7. Rocío Elizabeth Muciño Márquez
8. Viviana Guadalupe Muciño Márquez
9. Rafael Muciño Márquez
10. Mauro Muciño Márquez
11. Isaac Muciño Márquez
12. Jaciel Muciño Márquez