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**REPORT No. 77/24**  
**PETITION 2066-17**  
REPORT ON ADMISSIBILITY

AA & BB  
BRAZIL

Approved electronically by the Commission on June 3, 2024.

**Cite as:** IACHR, Report No. 77/24, Petition 2066-17. Admissibility. AA & BB. Brazil. June 3, 2024.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	AA
<b>Alleged victims:</b>	AA and her daughter BB
<b>State accused:</b>	Brazil
<b>Rights claimed:</b>	The petitioner generically reports the violation of children's rights and the right to equality and impartiality in investigations. From reading the petition, one can understand that the petitioner is referring to the rights established, inter alia, in Articles 5 (personal integrity), 8 (judicial guarantees), 19 (rights of the child) and 25 (judicial protection) of the American Convention on Human Rights; <sup>1</sup> and other international instruments. <sup>2</sup>

**II. PROCEEDINGS BEFORE THE IACHR<sup>3</sup>**

<b>Petition submitted:</b>	November 13, 2017
<b>Information received during the analysis phase:</b>	November 6, 2018, and August 24, 2021
<b>State notified about petition:</b>	October 14, 2021
<b>Request for extension:</b>	January 14, 2022
<b>First response by the State:</b>	February 8, 2022
<b>Additional observations by the petitioning party:</b>	November 23, 2021, and January 21, 2022

**III. COMPETENCE**

<b>Competence <i>Ratione personae</i>:</b>	Yes
<b>Competence <i>Ratione loci</i>:</b>	Yes
<b>Competence <i>Ratione temporis</i>:</b>	Yes
<b>Competence <i>Ratione materiae</i>:</b>	Yes, American Convention (instrument deposited on September 25, 1992) and Belém do Pará Convention (instrument deposited on November 27, 1995)

**IV. DUPLICATION OF PROCEEDINGS AND INTERNATIONAL RES JUDICATA, COLORABLE CLAIMS, EXHAUSTION OF DOMESTIC REMEDIES, AND TIMELY SUBMISSION**

<b>Duplication of procedures and international res judicata:</b>	No
<b>Declared rights admitted:</b>	Articles 5 (personal integrity), 8 (judicial guarantees), 19 (rights of the child) and 25 (judicial protection) of the American Convention, in relation to articles 1.1 (obligation to respect rights) and 2 (duty to adopt provisions of domestic law); and Article 7 of the Belém do Pará Convention.
<b>Exhaustion of domestic remedies or granting of an exception:</b>	Yes, under the terms of section VI
<b>Timely submission:</b>	Yes, under the terms of section VI

<sup>1</sup> Hereinafter "Convention" or "American Convention".

<sup>2</sup> Articles 19, 27.1 and 39 of the United Nations Convention on the Rights of the Child.

<sup>3</sup> The observations of each party were duly forwarded to the opposing party.

## V. POSITIONS OF THE PARTIES

### *Position of the Petitioner*

1. The petitioner denounces the impunity engendered by the domestic proceedings related to the sexual violence suffered by a girl at the hands of her father, despite the fact that the existence of this violence has been proven. She also points out that the girl has been re-victimized through forensics, examinations, interviews, and confrontations, in addition to the obligation to live with and seek reconciliation with her offender.

2. The petitioner claims that the alleged victim suffered sexual violation by her father during visits. On October 1, 2013, the child, who was three years old at the time, manifested pain in her anal region, allegedly attributed to her father. The following day, her mother confronted her father, who reacted aggressively by accusing the girl of lying. On October 4, 2013, the mother took the girl to a doctor for a check-up. The pediatrician talked to the girl, carried out a physical examination, found edema and hyperemia in the anal region, and concluded that abuse was suspected, given the combination of the physical examination with the girl's statement that her anus was sore and bruised after her father had hurt her with his finger. After a new confrontation, the father claimed mental illness and lack of recollection of the facts. The mother sought legal advice to file for divorce and protective measures, which were implemented on October 11, 2013 as part of a proceeding for physical separation and removal of the spouse from the home, including a restraining order and a request for custody (case 001036.20.2013.8.26.0010). Since then, and until the complaint was lodged with the Inter-American Commission, the girl has been under specialized psychological care for domestic violence.

3. Furthermore, the mother initiated divorce proceedings that included requests for forfeiture of custody on the grounds of sexual abuse and division of assets, as well as proceedings for an order of separation. The father's defense argued that the anal pain was due to the girl's intestinal condition and accused the mother of instilling false memories of abuse in an attempt at parental alienation. In September 2016, the father received authorization for supervised visits. As a result of these visits, the girl developed panic attacks and nightmares, but the authorization was not revoked. In July 2017, the divorce judge ordered the mother to pay for an expert in parental alienation. The petitioner claims that this expert was a friend of the father's technical assistant. In August 2017, the judge explained that he would analyze the recognition of acts of parental alienation in the ruling.

4. On November 13, 2019, the judge held a pre-trial hearing in which he ordered a regime of weekly visits on Sundays, supervised by the mother, on the premises of the building where she lives. On February 12, 2020, in the context of a new conciliation hearing, the judge ordered fortnightly visits in the same form as the previous ones, and the Public Prosecutor's Office presented a proposal for the parents to take part in a "family constellation".

5. On November 16, 2021, the judge issued the first instance ruling. The petitioner argues that, despite evidence of abuse, including testimony from the girl and professionals (a psychologist and a pediatrician), the judge ordered her to resume living with her father, initially with therapeutic monitoring for six months and then without restrictions, threatening to sanction the mother if she obstructed visits.

6. The petitioner also informs that the alleged sexual violation was criminally investigated under police inquiry 278/2016, and then in case 0006994-61.2016.8.26.0009 of the Criminal Court of the Vila Prudente Regional Court. The court took statements from both parents and conducted a psychological evaluation of the girl, adding her testimony to the case on July 18, 2017. On November 2 and 9, 2017, the girl's pediatrician and psychologist were heard. On April 9, 2019, the Public Prosecutor's Office recommended closing the case due to insufficient evidence, and the Court proceeded to close the case two days later, on April 11. – The IACHR notes that the copies of the Public Prosecutor's Office recommendation and the court's ruling to have the case closed suggest that both were concise, essentially limiting themselves to pointing out the need to close the case due to lack of evidence. –

7. The petitioner argues that the girl's rights were violated not only by the sexual assault she suffered, but also by the judicial process which led to her re-victimization through multiple inquiries, examinations, and exposure to traumatic situations. She particularly underscores criticism of the proceedings in family court, which in peculiarly imposed the obligation to seek reconciliation and to live with her abuser. It also states that the approach of reconciliation and living together not only disregards the trauma suffered, but also, according to the petitioner, reflects a lack of diligence and depth in the criminal investigation of the facts, highlighting an apparent negligence to adequately protect the girl's rights and ensure justice in the face of the abuse she suffered.

8. The petitioner further argues that domestic laws do not guarantee due process of law, given that, in her view, Law 12.318/2010 incorporated biased criteria for analyzing so-called "parental alienation" into the domestic legal system that tend to presuppose allegations of sexual abuse as false. The petitioner also indicates that there has been unjustified delay in domestic proceedings, which is reflected in the excessive time required to schedule interviews with experts, and in excessive delay in analyzing the facts in general.

#### *Position of the Brazilian State*

9. The State clarifies, firstly, that in its interpretation the complaint submitted to the IACHR essentially refers to alleged human rights violations in court case 0010366-20.2013.8.26.0010 concerning the divorce from her spouse coupled with the loss of family power, which ruled on the custody of her minor daughter.

10. The State argues that when the complaint was lodged with the IACHR, domestic legal proceedings involving the girl's mother and father were still in progress, before the First Family and Successions Court of the Ipiranga Regional Court, with evidentiary due diligence being conducted, given the contentious circumstances of the divorce proceedings and the ruling on custody of the minor daughter. According to information from the court of jurisdiction, three proceedings involving the parties were being conducted properly before the court, in full compliance with the guarantees of due process and full defense, with the Public Prosecutor's Office acting properly at all stages of the proceedings. The parties were duly notified through their lawyers of all decisions issued by the court, even to the extent that they made use, when they deemed it necessary, of the legal remedies available, all of which were evaluated and judged by the higher court. The court did not neglect to order and guarantee the production of all evidence it considered important and necessary for the full protection of the right of defense, for the purpose of guiding the court to be convinced and to provide a reasoned judgment on the merits of the claims or proceedings.

11. The State indicates that on November 16, 2021, the Court issued a joint ruling in the proceedings in which the father and mother were litigating. The judgment granted the mother's request for unilateral custody, denied the mother's request for recognition of parental alienation and ordered the conditions of the father's visitation. Due to the nature of the issues debated, to protect the rights of the parties and to protect the child, the proceedings were held under court secrecy. The State maintains that the domestic proceedings had their proper effects, and that the petition attempts, improperly and unnecessarily, to provoke the IACHR into reviewing the domestic rulings. The State also indicates that the mother had at her disposal additional appeals against the judgment of November 16, 2021, and that, therefore, she has not exhausted all domestic appeals.

12. The State also argues that none of the exceptions to the rule of prior exhaustion and to the filing deadline apply to the petition, given that domestic law robustly protects due process of law, the State did not put hinder the mother in any way from pursuing domestic judicial protection, and there were no unjustified delays to the rulings on appeals filed.

13. Additionally, the State maintains that the petition does not meet the filing deadline requirement because, at the time of the complaint to the IACHR, the petitioner had not yet exhausted the existing remedies, and the petitioner apparently jumped to the conclusion that the domestic judiciary would declare her to be an incident of parental alienation and would not consider her request for unilateral custody of the child. As a result, the international court was called upon before the domestic civil court could finalize its

analysis of the controversial situation, which had challenging factual contours that involved more than mere matters of law and required production of a hefty amount of evidence.

14. The State also considers the petition inadmissible due to the principle of subsidiarity that governs the Inter-American System for the Protection of Human Rights. It argues that the system of petitions and cases is designed to act when domestic authorities have failed to adequately protect victims, and not as a mechanism for reviewing national judicial decisions that have been issued within the scope of its powers and with the appropriate judicial guarantees. In conclusion, the State considers the petition inadmissible because it does not present facts that violate the Convention. In this regard, it indicates that the domestic judgments recognized the unilateral custody requested by the mother and rejected the allegations of parental alienation, demonstrating the State's commitment to the effective judicial protection of human rights.

## VI. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND TIMELY SUBMISSION

15. The Inter-American Commission notes that the petition refers to two main issues: i) the lack of criminal investigation and sanctions related to sexual assault committed against a girl by her father; ii) irregularities in the civil proceedings, which included inadequate measures for reconciliation and for living together between the offender and his family.

16. The Brazilian State maintains that it is necessary to exhaust domestic remedies before filing a complaint with the IACHR. However, even if a different interpretation were to be adopted regarding the timing of the exhaustion of these remedies in the case in question, they would not yet have been exhausted, given that the judgment on the merits of the civil matter was issued on November 16, 2021, and the petitioner still had the possibility of pursuing ordinary appeals against this court ruling. The State also points out that, in addition to these remedies, the petitioner still has the option of appealing to the domestic judiciary for other claims, should unresolved issues related to custody and the family power regime persist. Lastly, the State argues that the petition did not comply with the six-month submission deadline, given that it was filed with the international court before the domestic civil court had finalized its assessment of the disputed situation.

17. In view of these considerations, the IACHR reiterates that the analysis of the requirements set out in Articles 46 and 47 of the Convention must be carried out in the light of the situation in effect at the time admissibility or inadmissibility of the complaint is decided. It is very common that the status of exhaustion of domestic remedies changes during the proceedings. However, the system for petitions and cases ensures that both the state and the petitioner have full opportunity to present information and allegations in this regard.<sup>4</sup>

18. Regarding the alleged lack of criminal investigation and sanction, the IACHR underscores that, in the face of evidence of sexual assault, criminal procedure is the appropriate mechanism for clarifying the facts, judging the guilty parties, and facilitating other forms of reparation. Furthermore, in situations involving minors, the state must not only promote swift and diligent investigation, but also implement specific measures to protect the potential victim given their special vulnerability.<sup>5</sup>

19. According to the information provided by the petitioner, the alleged sexual assault was investigated under police investigation 278/2016, and then in case file 0006994-61.2016.8.26.0009 of the Vila Prudente Criminal Court. On April 9, 2019, the Prosecutor's Office recommended closing the case due to insufficient evidence, and the Court proceeded to close the case on April 11, 2019. There is no legal provision for appealing this decision. Consequently, the Commission observes that the petitioner does not have an ordinary, adequate, and effective means of judicially challenging the closure. The State, for its part, does not argue that the petitioner should have exhausted any additional remedies after the decision to close the case. Consequently, the IACHR considers it appropriate to apply the exception provided for in Article 46.2.a) of the American Convention in this case, as it has already done in other precedents in Brazil.<sup>6</sup>

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<sup>4</sup> IACHR, Report No. 169/11. Case 12.066. Admissibility and Merits. Hacienda Brasil Verde. Brazil. November 3, 2011, paragraph 43.

<sup>5</sup> IACHR, Report No. 420/21. Petition 1564-14. Admissibility. J.Z and S.Z. Brazil. December 31, 2021, paragraph 19.

<sup>6</sup> Similarly: IACHR, Report No. 79/23. Petition 1388-14. Admissibility. Márcio José Sabino Pereira and family. Brazil. June 7, 2023, paragraph 12 ("The Public Prosecutor's Office requested that the case be closed, which was granted by the Judiciary, and there is no legal [continúa...]

20. In cases where exceptions to the requirement of prior exhaustion of domestic remedies apply, the petition must be filed within a reasonable time, at the Commission's discretion, in accordance with Article 32 of the IACHR Rules of Procedure. The facts reported began in 2013. The alleged consequences of the lack of investigation and criminal sanctions extend to the present. Considering the above and given that the petition before the IACHR was filed on November 13, 2017, the IACHR concludes that it was timely submitted.

21. In light of these considerations, it is pertinent to remember that Article 46.2 of the Convention, by its nature and purpose, is a norm with autonomous content in relation to the substantive norms of the American Convention. Therefore, the determination of whether the exceptions to the rule of exhaustion of domestic remedies are applicable to the case in question must be made previously and separately from the analysis of the merits of the matter, since it depends on a different standard of assessment from that used to determine the possible violation of Articles 8 and 25 of the Convention.

22. Regarding the civil proceedings, the petitioner indicates, in summary, that the judge authorized supervised visits with the father since September 2016, ordered an expert opinion on parental alienation in July 2017, established weekly visits supervised by the mother in November 2019, changed them to biweekly in February 2020, and issued the judgment on November 16, 2021. For its part, the State also indicates that on November 16, 2021, the judge issued a ruling clarifying that the decision accepted the mother's request for unilateral custody, rejected the father's accusation that the mother had practiced parental alienation, and determined the conditions for the father's visitation.

23. The Inter-American Commission points out that, to date, the parties have not provided information on whether any appeal has been filed against this first instance ruling. Nor have they specified whether the ruling concluded the civil proceedings. Thus, the Commission considers that this complaint does not meet the requirement that domestic remedies be exhausted, as established in Article 46(1)(a) of the Convention, and therefore the complaints relating to this judicial proceeding do not form part of the factual framework of this case.

## VII. ASSESSMENT OF COLORABLE CLAIMS

24. The State argues that the petition is inadmissible based on the IACHR's lack of competence *ratione materiae* to act as an appellate forum regarding domestic judicial decisions and maintains that the petition does not demonstrate human rights violations under the relevant treaties. It emphasizes that, from its perspective, the domestic judicial mechanisms have been effective and adequate.

25. For the purposes of admissibility, the Commission must decide whether the facts alleged can be characterized as rights violations, as stipulated in Article 47(b) of the American Convention, or whether the petition is "manifestly unfounded" or is "evidently unfounded", in accordance with subsection (c) of that article. The criteria for assessing these requirements differ from those used to rule on the merits of a petition; the Commission must make a *prima facie* assessment to determine whether the petition establishes the grounds for a possible or potential violation of a right guaranteed by the Convention, but not to establish the existence of a violation of rights. This determination constitutes a preliminary analysis, which does not imply prejudging the merits of the matter.<sup>7</sup>

26. The petition includes allegations about the lack of investigation and sanction in relation to sexual assault suffered by a minor at the hands of her father. The petitioner also specifically denounces that

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provision that allows for an appeal of this decision. Consequently, the Commission notes that the petitioner does not have an ordinary, adequate, and effective means of challenging closure of the investigation. Consequently, the IACHR considers it appropriate to apply the exception provided for in Article 46.2.a of the American Convention in this case."); IACHR, Report No. 226/20. Petition 32-07. Admissibility. Márcio Antônio Maia de Souza and family members. Brazil. September 6, 2020, paragraphs 8 and 9 ("since the Public Prosecutor's Office requested that the investigation be closed and this request was granted by the Judiciary, the petitioner was not allowed to exhaust other remedies. Therefore, the exception is contained in Article 46.2.b of the American Convention. [...] In addition, the Commission notes that the alleged victim's family members were prevented from appealing the decision to close the police investigation and that they were also unable to request that it be closed, as they are prevented from doing so by Brazilian law. In circumstances such as these, the Commission considers that without prejudging the merits and as it has done in cases of a similar nature, the exception to exhaustion referred to in Article 46.2.a of the American Convention is applicable to the present petition."); IACHR, Report No. 351/22. Petition 1387-12. Admissibility. Alberto Castillo Cruz and family. Mexico. May 19, 2022, paragraphs 22 to 24.

<sup>7</sup> IACHR, Report No. 41/07. Petition 998-05. Admissibility. Lazinho Brambilla da Silva. Brazil. June 23, 2007, paragraphs 74-75.

domestic legislation on parental alienation causes harm and violates rights during domestic proceedings (Law 12.318/2010). The IACHR considers that this point also merits analysis at the merits stage, in order to assess whether this legislation has brought about concrete effects contrary to the international human rights standards applicable to the case, taking into account the obligation to adopt provisions of domestic law that are compatible with and promote human rights.

27. In light of the foregoing, after examining the elements of fact and law presented by the parties, the Commission considers that the petitioner's allegations are not manifestly unfounded and require analysis of the merits, since the facts alleged, if corroborated as true, could characterize fundamental violations of Articles 5 (personal integrity), 8 (judicial guarantees), 19 (rights of the child) and 25 (judicial protection), all related to Articles 1 (obligation to respect rights) and 2 (duty to adopt domestic law provisions) of the American Convention, to the harm of AA and BB. 1 (obligation to respect rights) and 2 (duty to adopt provisions of domestic law) of the American Convention, and Article 7 of the Convention of Belém do Pará, to the detriment of AA and BB, in the terms of this report.

28. As for the other international instruments invoked by the petitioner, in accordance with Article 29 of the American Convention, the Commission may take them into account to interpret and enforce the American Convention and other applicable instruments.

29. Finally, regarding the State's argument about the incompetence of the IACHR to act as an appellate body concerning domestic judicial decisions, the Commission underscores the complementary nature of the Inter-American system and highlights that, as indicated by the Inter-American Court, for a "fourth instance" exception to proceed, it would be necessary to "*seek to review the judgment of a domestic court based on its incorrect assessment of evidence, facts, or domestic law, without simultaneously alleging that such judgment involved a violation of international treaties [...]*."<sup>8</sup> In the present case, the Commission considers that, as indicated by the Inter-American Court, "*[it] is competent to verify whether the steps effectively taken at the domestic level did or did not violate the State's international obligations derived from the Inter-American instruments that grant it competence.*"<sup>9</sup> Furthermore, it is incumbent upon it to examine "*whether the actions of judicial bodies constitute a violation of the State's international obligations, [which] may lead it to examine the respective domestic processes to establish their compatibility with the American Convention.*"<sup>10</sup> In this regard, the analysis of whether the State incurred violations of the American Convention is a matter to be decided on the merits of the present case.

## VIII. DECISION

1. Declare this petition admitted relative to Articles 5, 8, 19 and 25 of the American Convention, in connection with Articles 1.1 and 2; and Article 7 of the Convention of Belém do Pará.

2. Notify the parties of this decision, continue with the examination of the merits of the matter, publish the 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 3<sup>rd</sup> day of the month of June, 2024. (Signed:) Roberta Clarke, President; Carlos Bernal Pulido, Vice President; Arif Bulkan, and Gloria Monique de Mees, Commissioners.

<sup>8</sup> Inter-American Court of Human Rights. Case of Cabrera García and Montiel Flores Vs. Mexico. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 26, 2010. Series C No. 220, para. 18.

<sup>9</sup> Inter-American Court of Human Rights. Case of Cabrera García and Montiel Flores Vs. Mexico. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 26, 2010. Series C No. 220, para. 19.

<sup>10</sup> Inter-American Court of Human Rights. Case of Palma Mendoza and others Vs. Ecuador. Preliminary Objection and Merits. Judgment of September 3, 2012. Series C No. 247, para. 18; Inter-American Court of Human Rights. Case of Rosadio Villavicencio Vs. Peru. Preliminary Objections, Merits, Reparations, and Costs. Judgment of October 14, 2019. Series C No. 388, para. 24; Inter-American Court of Human Rights. Case of Cabrera García and Montiel Flores Vs. Mexico. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 26, 2010. Series C No. 220, para. 19.