

REPORT No. 149/10
ADMISSIBILITY
PETITION 1147-05
M.P.C. & FAMILY MEMBERS
PERU
November 1, 2010

I. SUMMARY

1. On December 14, 2005, the Inter-American Commission on Human Rights (the "Commission" or the "IACHR") received a petition by fax alleging the international responsibility of the Peruvian State for irregularities and violations of the right to a fair trial and due process of law in the criminal investigation of the sexual assault against M.P.C. (hereinafter also the "alleged victim"),¹ a 13 year old girl, in the province of Sicuani. The petition was lodged by F.P.C., the sister of M.P.C, and by the Manuela Ramos organization (hereinafter "the petitioners").

2. The petitioners contend that the acts constitute a violation of the following rights, which are guaranteed by the American Convention on Human Rights (the "American Convention"): the right to a fair trial (Article 8), the right to judicial protection (Article 25) and the rights of the child (Article 19), as established in the American Convention. The petitioners further claim violations of Articles 1, 2, 3, 4 and 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (the "Convention of Belem do Para"), and the general violation of the provisions of the Convention on the Elimination of All Forms of Discrimination against Women ("CEDAW").

3. In response, the State is requesting that the petition be declared inadmissible on the grounds that it does not fulfill the admissibility requirements set forth in the American Convention. It also believes the petition to be inadmissible inasmuch as the facts do not tend to establish human rights violations as provided in the American Convention. The State further argues that during the criminal proceedings brought against the alleged assailant of M.P.C., all due process rights were respected, the alleged victim had the chance to pursue all available remedies, and she was granted the appropriate special protection in light of her condition as a minor. Additionally, it considers that admitting this petition would have the IACHR act as a court of "fourth instance" in order to reverse an adverse judgment against the petitioners.

4. Without prejudging the merits of the case, the finding of the IACHR in this report is that the petition is admissible in light of Articles 46 and 47 of the American Convention. Accordingly, the Inter-American Commission has decided to continue to examine the merits as to the alleged violation of Articles 2, 8(1), 24 and 25(1) of the American Convention, all in conjunction with the general obligation to respect and ensure the rights provided in Article 1(1), to the detriment of M.P.C. and F.P.C. Moreover, during the merits stage it shall examine the alleged violation of Article 19 of the American Convention and Article 7 of the Convention of Belem do Para to the detriment of M.P.C. Lastly, during the merits stage, it shall review the alleged violation of Article 5(1) of the American Convention to the detriment of M.P.C. and her next of kin. The Commission shall take Articles 1, 2, 3 and 4 of the Convention of Belem do Para into account, to the extent that they are relevant, in interpreting Article 7 of that Convention during the merits stage, and shall examine Article 9 of said Convention in the same way. Additionally, it resolves to notify the parties of this report and have its decision published in the Report to the OAS General Assembly.

II. PROCEEDINGS BEFORE THE IACHR

5. On December 14, 2005, the IACHR received the petition by fax and it was registered under the number P-1147-05. On April 12, 2006, the IACHR received additional observations from the

¹ The IACHR is keeping the identity of the alleged victim confidential at the explicit request of the petitioners. See, Additional Observations from the Petitioners, received on April 12, 2006.

petitioners. On July 7, 2009, the IACHR forwarded a copy of the relevant parts of the petition to the State, requesting it to provide information within a two-month period in accordance with Article 30 of the Rules of Procedure. The State's response was received on September 4, 2009.

6. Additionally, on December 29, 2009 and May 27, 2010, the IACHR received further comments from the petitioners, which were forwarded to the State as required.

7. The State submitted its additional observations on March 4 and July 16, 2010, copies of which were duly forwarded to the petitioners.

III. POSITIONS OF THE PARTIES

A. Petitioners' Position

8. The petitioners argue that several rights of M.P.C. were violated during the criminal proceedings relating to the sexual abuse of which M.P.C. allegedly was the victim when she was 13 years old. They specifically claim that the authorities in charge failed in their duty to act with the due diligence that is required to investigate, punish and redress the acts of sexual violence endured by M.P.C, which was particularly serious in this instance in light of the victim's condition as a minor and becoming pregnant as a result of the acts. Specifically, they contend that the authorities did not properly investigate the crimes in accordance with the provisions of criminal law; that they were negligent in gathering and examining the evidence required to prove the crime of rape; that the judicial authorities were not impartial during the proceedings; and that the State did not fulfill its duty to provide special protection to M.P.C, as she was a young girl, throughout the criminal proceeding. They further argue that the assailant has placed the personal integrity of the sister of M.P.C. [F.P.C.] and their mother, F.C.C, at risk by threatening them, and that their requests to the State for protection have gone unanswered.

9. The petitioners specifically claim that 37 year-old F.U.H. raped M.P.C. on two occasions: the first time when she was 13 years old, and the second time when she was 14 years of age. Upon learning of the crimes, 23 year-old F.P.C, sister of M.P.C, filed a complaint on February 16, 2005 with the Police Station of Torocoma in the province of Sicanu (hereinafter "Police Station"), alleging that the sexual abuse took place on April 13 and May 20, 2004 when M.P.C. was sleeping, and that she consequently became pregnant. F.P.C. further charged that the alleged assailant was a family friend and assisted the parents of M.P.C. in farming activities. The interests of M.P.C. were represented during the criminal proceedings by F.P.C, who became a civil party in the case.

10. In her initial statement before the Police Station, the alleged victim M.P.C. said that she was sexually abused on two occasions while she was sleeping; that the acts took place without her consent; and that she did not talk about what had happened out of shame and because of threats made by the defendant against her and her family members. She also said that, following the acts, the alleged assailant gave her money, candy and cookies so she would not recount the events to her parents. At the Police Station, F.U.H. acknowledged on his own having sexual intercourse with M.P.C. on two occasions – in late April and late May of 2004 – at his residence while M.P.C. was sleeping. He also confirmed that the baby girl that M.P.C. gave birth to on February 20, 2005 is his daughter, and that he gave money, candy, cookies and fruit to M.P.C. He further acknowledged that having sexual intercourse with a minor is a crime. Upon learning of the pregnancy of the alleged victim in November 2004, F.U.H. asserted that he came to an agreement with the parents of M.P.C. to defray the expenses associated with raising the child, and begged them not to report him to the authorities.

11. The petitioners indicate that after lodging the complaint, the police failed to thoroughly investigate the acts of sexual violence, despite the fact that the defendant had acknowledged having sexual intercourse with M.P.C. in his initial statement at the Police Station. They claim that a forensic exam was not performed on M.P.C. until February 17, 2005, which showed no evidence of physical injury, and that not other psychological or psychiatric expert examination was performed to be able to verify any other possible side effects of the alleged sexual abuse.

12. The petitioners note that on February 24, 2005, the Police Station sent the findings of said investigation to the Second Office of the Provincial Prosecutor for Criminal and Civil Matters of Canchis (hereinafter "Second Prosecutor's Office"), who erroneously brought the criminal complaint for crimes of sexual violence committed against M.P.C. based on Article 170 of the Peruvian Criminal Code. They argue that Article 170 sets forth the punishment for rape of persons older than 14 years of age and establishes the use of violence or grave threat as elements of the legal description of the criminal behavior constituting this crime. The petitioners understand that because the first act of sexual violence occurred when the alleged victim was 13 years of age, the basis for instituting criminal proceedings should have been Article 173, which does not require the aforementioned elements to be present in order to prove the crime. They indicate that F.P.C. filed a motion to expand the investigation in the case asserting that the first rape occurred on April 13, 2004, when the victim was still 13 years of age, but said motion was denied by the Second Prosecutor's Office for insufficient evidence.

13. Consequently, the petitioners claim that on June 10, 2005, the Second Prosecutor's Office issued a report deciding to close the case with prejudice, finding that there was no conclusive evidence to prove rape based on Article 170 of the Criminal Code. The Second Prosecutor's Office found that it had not been irrefutably proven that the defendant had used violence or grave threats to have sexual intercourse with M.P.C. The prosecutor's office noted that the family members' statements only referred to the fact that M.P.C. was not having a romantic relationship with the alleged assailant and the forensic medical report of the exam performed on M.P.C. only concluded that she had a "flexible hymen, no signs of acts against nature, gestation of approximately 39 weeks." The Second Prosecutor's Office allegedly attached greater weight to the alleged assailant's claim during his testimony in the criminal proceedings that he had a romantic and consensual sexual relationship with M.P.C., of which her parents were aware, and that he lived together with her, as well as to testimony provided by members of the community confirming this version of the facts. During the criminal proceeding, M.P.C. gave sworn testimony corroborating her statement at the Police Station, as well as indicating that she never had a romantic relationship with F.U.H., and that the alleged assailant sedated her in order to facilitate the sexual abuse.

14. In light of the decision to close the case, the petitioners indicate that the Judge of the Second Chamber for Criminal Matters of Canchis was asked to issue a writ of discrepancy,² and consequently the matter was certified to the Decentralized Office of the Superior Prosecutor for Criminal and Civil Matters of Sicuani (hereinafter "Superior Prosecutor's Office"). The petitioners note that on July 14, 2005, the Superior Prosecutor's Office found that no irrefutable evidence existed to objectively prove that the defendant had had sexual intercourse with the alleged victim by the use of violence or grave threats, and also ruled in favor of closing the case. Consequently, the Chamber for Criminal Matters of the Second Court of Canchis issued a final order to close the case, which allowed the crime to go unpunished. They indicate that, after this decision was handed down, an appeal was filed, which was decided by the Decentralized Chamber for Criminal and Civil Matters of Sicuani. On September 27, 2005, the Chamber for Criminal and Civil Matters upheld the appealed ruling, ordering the closing of the criminal case, on the grounds that the power to bring criminal action belonged exclusively to the Office of the Public Prosecutor and that the judicial body could not override the decisions of that body.

15. The petitioners also state that on July 6, 2005, a motion for personal protection was filed on behalf of the sister and mother of M.P.C., because the alleged assailant was released from custody and began to threaten the family. They note that they were not served notice of any decision on said motion.

16. In general, the petitioners believe that the State violated the right to a fair trial and failed to fulfill the duty to provide special protection to M.P.C., in light of her condition as a girl-child, in not taking the proper measures to investigate and punish the acts of sexual violence that were reported.

² In accordance with Article 220 section c) of the Code of Criminal Procedure in effect at the time of the incidents, in the event of a discrepancy or difference of opinion between the Judge and the Prosecuting Attorney as to closing the case, the opinion of the Superior Court should be requested. See, Initial Petition received on December 14, 2005. Annexes. Writ of Discrepancy, Resolution No. 20, dated June 28, 2005.

They contend that the criminal proceeding concluded before essential evidence could be gathered to elucidate this type of crime, and this led to the case being closed. They indicate that, as is usually the case with crimes of sexual violence against girls in Peru, the investigations “are always on the defendant’s side” and judges require evidence from the victims [that is] “impossible to produce with this type of crimes,” as proof of physical violence or the victim’s resistance to the assault.

17. Lastly, the petitioners assert that the State did not ensure equal treatment to M.P.C. in her access to judicial bodies, in violation of the American Convention, the Convention of Belem do Para and the CEDAW. They contend that the prosecutorial and judicial authorities lacked impartiality and objectivity in the investigation and assessment of the acts of sexual violence, in violation of international human rights standards. They claim that, as is usually the case with crimes of sexual violence, the statements of M.P.C. were discredited during the criminal proceedings and her credibility was assessed on the basis of gender stereotypes that discriminate against women.

B. Position of the State

18. The State requests for the petition to be declared inadmissible on the grounds that it does not fulfill the minimum admissibility requirements set forth in Article 47 of the American Convention of Human Rights and Article 34 of the Rules of Procedure, and that the facts do not tend to establish human rights violations. The State further believes that admitting this petition would have the IACHR act as a tribunal of the “fourth instance” in order to overturn a ruling against the petitioners issued by domestic courts.

19. Firstly, the State asserts that the acts were reported to the competent authorities, which conducted the appropriate investigation and ordered the detention of the defendant in order to ensure his presence during the proceedings. It claims that after carrying out the necessary investigation to elucidate the facts, the Office of the Prosecutor concluded that the evidence gathered during the proceedings did not prove that the offense was committed and that the defendant was responsible, inasmuch as neither violence nor grave threats were irrefutably proven. The State further asserts that based on the testimonial evidence, the defendant and the offended minor lived together as a couple in the eyes of the community.

20. As evidence, the State introduced a report from the Office of the Public Ombudsman (Procuraduría Pública) of the Judiciary, dated February 26, 2010, regarding the instant claim, establishing that the entire criminal proceeding at issue has been conducted with respect not only for procedural rights but for constitutional rights as well. The report concludes that:

Consequently, we believe that the Judiciary, as the autonomous entity in charge of imparting Justice and exercising the extensive Control that our Political Constitution entrusts it with, has conducted the judicial proceedings during the preliminary investigation stage, which in a timely fashion warranted the finding that the conduct exhibited by the agent – taking into account the location where the act was carried out – did not constitute anything but stereotyped or neutral conduct, since a relationship of cohabitation between adults with persons who – such as in this case – have still not acquired the capacity of enjoyment and exercise, is common in the Peruvian highlands.³

21. The State further notes that in accordance with the crime of rape, as established in Article 170 of the Criminal Code in effect at the time of the events, violence or grave threats constitute the normative elements that must be proven for the crime to have been committed. In this case there was no suitable and adequate evidence proving that the defendant had sexual intercourse with the offended girl by using “threats or violence.” Accordingly, the causal link between the criminal phenomenon and the defendant must be irrefutably proven, and this link was not proven in this case.

³ Observations of the State received on July 16, 2010, Report 209-2010-JUS/PPES, prepared by the Office of the Specialized Public Supranational Ombudsman (Procuraduría Pública Especializada Supranacional), Annex No. 1.

22. The State claims that the Office of the Public Prosecutor has the exclusive authority to bring public criminal charges, as provided by the Constitution of Peru and the Organic Law of Public Prosecution, and the Judiciary can only decide a matter when a criminal action has been brought. Therefore, when there is no criminal action before it or any punitive claim from the Public Prosecutor, “the Judiciary cannot compel it [the prosecution] to support a claim such as the one alluded to, much less to assume the status of a party to the case in order to change such a decision.”⁴ Therefore, the State asserts that in said case all due process rights were respected, particularly if one takes into account that the aggrieved party had the opportunity to resort to a higher court to have the ruling reviewed, to pursue all available remedies in the proceedings.

23. With regard to violations of the right to a fair trial, the State understands that the right to be heard by a competent judge or court, as set forth in Article 8 of the American Convention, requires “all judges, who intervene in a case, to approach the facts of the case without any type of prejudice, [nor] in a subjective manner,”⁵ and offer objective guarantees during the proceedings. In this instance, the State believes that this case does not constitute violations of the right to judicial protection, being that the petitioners have been heard at all times by competent, impartial and independent judges. Otherwise, the State asserts that mechanisms such as recusal, as provided in Article 31 of the Code of Criminal Procedure, would have been applied.

24. The State further notes that that during the process evidence that was conclusive and was considered pertinent was collected, such as the forensic examination. With regard to the judicial inspection that the petitioners alleged to have requested, the State claims that it would not have led to establishing “the dimension of the unjust act, at least for this type of crime where the medical examination and confirmation thereof are more opportune.”⁶ Furthermore, the statements of the alleged victim, as well as those of her family, were taken into account and cross-checked with those of the witnesses and the defendant, and no proof emerged of sexual intercourse with the aggrieved party when she was 13 years of age by means of violence or threats. Accordingly, the Office of the Second Prosecutor issued a report on June 10, 2005 in which it found that the case should be closed with prejudice for lack of evidence of these elements (violence or threats) in performing the sex act.

25. The State also contends that the Judge conducted the criminal proceedings with respect for procedural and constitutional rights. It alleges that closing the case with prejudice, which was the subject of the appeal, showed that the judge, taking into account the right to judicial independence and to the presumption of innocence, provided in article 8(2) of the American Convention and the Peruvian Constitution, opted to dismiss the criminal suit and close the case inasmuch as the alleged assailant’s responsibility in the crime reported was not irrefutably proven.

26. With respect to the violation of the rights of the child, the State condemns all forms of violation of the rights of children since their condition requires special state protection, which must be understood as an additional right to the other rights of the individual recognized in the Convention. It believes that the state [judicial] system provided the petitioners with access to remedies, due process and appropriate judicial protection and, consequently, the requisite attention was provided during the criminal proceeding in her condition as a minor.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. *Ratione Personae, Ratione Loci, Ratione Temporis* and *Ratione Materiae* Competence of the Commission

27. The petitioners are entitled, in principle, under Article 44 of the American Convention to submit petitions to the Commission. The petition names M.P.C as the alleged victim, with regard to whom

⁴ Response of the Peruvian State received September 4, 2009.

⁵ Additional Comments of the State received on March 4, 2010.

⁶ Additional Comments of the State received on March 4, 2010.

the Peruvian State has accepted the commitment to respect and ensure the rights enshrined in the American Convention. Regarding the State, the Commission notes that Peru has been a State Party to the American Convention since July 28, 1978, when it deposited the respective ratification instrument, and has also been a party to the Convention of Belem do Para since June 4, 1996. Therefore, the Commission is competent *ratione personae* to examine the petition. The Commission is competent *ratione loci* to entertain the petition, inasmuch as alleged therein are violations of the human rights protected in the American Convention and the Convention of Belem do Para which had taken place within the territory of Peru, a State Party to said treaty.

28. The Commission is competent *ratione temporis* inasmuch as the obligation to respect and ensure the rights protected in the American Convention and the Convention of Belem do Para were already in force for the State on the date that the acts alleged in the petition had occurred. The Commission is competent *ratione materiae*, because the petition alleges violations of human rights, which are protected by the American Convention and the Convention of Belem do Para.

29. The Commission is not competent *ratione materiae* to directly rule on violations of the articles of the Convention to Eliminate All Forms of Discrimination against Women (CEDAW). However, as provided by Article 29 of the American Convention, as well as the Vienna Convention on the law of treaties,⁷ in certain circumstances, the Commission must refer to other obligations under international law in order to interpret and apply those [obligations] of the treaties of the Inter-American human rights system.⁸

⁷ Vienna Convention on the law of treaties, U.N. Doc A/CONF.39/27 (1969), 1155 U.N.T.S. 331, effective date, January 27, 1980, Article 31.

⁸ See IACHR, Admissibility Report No. 93/09, Samanta Nunes da Silva, Brazil, Petition 337-07, September 7, 2009, par. 35.

B. Exhaustion of Domestic Remedies

30. Article 46(1)(a) of the American Convention establishes that for a petition to be admitted, it is required “that remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law.” This requirement is established to ensure the State in question the chance to resolve disputes within their own legal framework.

31. The petitioners indicate that on September 27, 2005, the Decentralized Chamber for Criminal and Civil Matters of the province of Sicuani decided the appeal to not close the criminal case brought against the alleged perpetrator F.U.H. that had been filed by them and, therefore, domestic remedies were exhausted. The Commission notes that, based on the documents submitted by the petitioners, it has been proven that they have pursued the remedies available under domestic law.

32. Based on the foregoing factors, the Commission finds that remedies pertaining to the claims of the petitioners have been duly exhausted in accordance with Article 46(1)(a) of the American Convention.

C. Timeliness of the Petition

33. Article 46(1)(b) of the American Convention establishes that all petitions must be lodged within a period of six months from the date on which the petitioner was notified of the final judgment, which exhausts domestic remedies. The petitioners indicate that on October 2, 2005, the decision on the appeal was served, which constituted the last remedy under domestic law. The State does not dispute the argument of the petitioners. The Commission notes that the petition was lodged on December 14, 2005, and is therefore within the period of six months from the date on which the victim was notified of the final judgment, as provided by the American Convention.

D. Duplication and *Res Judicata*

34. Nothing in the case file suggests that the subject of the petition is pending before any other international settlement proceeding, or that it is substantially the same as any petition previously examined by this or any other international body. Hence, the requirements set forth in Article 46(1)(c) of the American Convention must be considered fulfilled.

E. Colorable Claim

35. The petitioners allege multiple omissions and irregularities by the prosecutorial and judicial authorities in charge of the investigation and punishment for the acts of sexual violence against M.P.C. The State, in response, believes that the petitioners’ allegations are groundless and seek to have the Commission act as a tribunal of the “fourth instance”, for which it is not competent, since the petitioners seek for the IACHR to reverse an adverse ruling to the victim issued under domestic law.

36. With respect to the allegations of the State, the Commission highlights its case law in affirming that it is not competent to review judgments issued by national courts, which act within the scope of their competence and apply due process of the law and the right to a fair trial.⁹ The Commission cannot act as a court of review to examine alleged errors of law or of fact that may have been committed by national courts. Nonetheless, within the scope of its mandate to ensure the enforcement of the rights enshrined in the American Convention and other international human rights instruments, the Commission is competent to declare a petition admissible and rule on the merits of the case when said petition involves domestic proceedings that could violate the rights ensured by the American Convention and the Convention of Belem do Para.¹⁰

⁹ See IACHR, Report No. 52/02, Case 11.753, Merits, Ramón Martínez Villareal, United States, October 10, 2002, par. 53; IACHR, Report No. 39/96, Santiago Marzióni v. Argentina, Annual Report of the IACHR 1996, pars. 48 – 51.

¹⁰ See IACHR, Report N° 42/08, Petition 1271-04, Karen Atala & Children v. Chile, July 23, 2008, par. 59; IACHR, Report No. 52/02, Case 11.753, Merits, Ramón Martínez Villareal, United States, October 10, 2002, par. 53; IACHR, Report No. 39/96,

37. According to this doctrine, the Commission notes that in admitting this petition it is not seeking to supplant the competence of domestic judicial authorities in order to reverse an adverse ruling to an alleged victim, and to examine errors of judgment that may have been committed by national courts, which in principle is the responsibility of the domestic courts. During the merits stage, the Commission shall determine whether the domestic judicial proceedings¹¹ fulfilled the due process of the law and judicial protection requirements, and the right to live a life free of discrimination and violence according to the rights protected by the American Convention and the Convention of Belem do Para.

38. During this admissibility stage, the Commission finds that it is not appropriate to determine whether or not the alleged violations took place. For the purposes of admissibility, the IACHR must decide whether the facts tend to establish possible violations of the American Convention, as provided by Article 47(b) of the American Convention. The standard for these matters is different from the standard that must be used to decide the merits of a judgment issued in a criminal trial. The Inter-American Commission must conduct a *prima facie* evaluation to examine whether the allegations of the petitioners are grounds for an apparent or potential violation of a right ensured in the American Convention.¹² This analysis is of a preliminary nature and does not entail any prejudice or preview of the opinion on the merits of the dispute. The difference between an examination for the declaration of admissibility and that required to determine a violation is reflected in the actual Rules of Procedure of the IACHR, which clearly differentiates between the stages of admissibility and merits.¹³

39. Regarding the elements of fact and law introduced by the petitioners and the nature of the matter brought before it, the IACHR finds that in the instant case it is appropriate to establish that the petitioners' allegations relating to the irregularities and violations of the right to a fair trial and to due process may tend to constitute violations of the rights protected under Articles 8(1) and 25 of the American Convention, to the detriment of M.P.C. and her sister F.P.C. The petitioners further allege that the State failed in its duty to provide special protection to M.P.C. as a girl-child by not taking the necessary measures to investigate and punish the crimes of sexual violence that were reported, which would amount to a violation of Article 19 of the American Convention.

40. The Commission also believes that the facts tend to establish a violation of Article 7 of the Convention of Belem do Para, because the petitioners contend that the Peruvian judicial system did not act with the due diligence required to investigate and punish the alleged acts of sexual violence. They specifically claim that the Public Prosecutor closed the case based on the absence of evidence of "violence or grave threat" to prove the crime of sexual violence, in violation of international human rights standards, allowing the crime to go unpunished. On this issue, the Commission will also examine at the merits stage possible violations established in article 2 of the American Convention, by virtue of the principle of *iura novit curia*, regarding the inclusion of "violence or grave threat" as necessary normative elements to constitute the crime of rape under Article 170 of the Peruvian Criminal Code.

41. Additionally, the petitioners contend that the State's lack of due diligence to investigate and punish the person allegedly responsible for the acts of sexual violence of which M.P.C. was the

Case 11.673, Santiago Marzoni v. Argentina, Annual Report of the IACHR 1996, pars. 48 – 51; IACHR, Report N° 54/01, Case 12.051, Maria da Penha Maia Fernandes v. Brazil, April 16, 2001, par. 28; IACHR, Admissibility Report No. 93/09, Samanta Nunes da Silva, Brazil, Petition 337-07, September 7, 2009, par. 47.

¹¹ The Inter-American Court has established that the "clarification as to whether or not the State has violated its International obligations as a result of the actions of its judicial bodies, can lead to the Court having to examine the respective domestic proceedings, to establish their compatibility with the American Convention [...] In light of the foregoing, domestic proceedings must be considered as a whole. The function of the court is to determine whether the proceeding, viewed comprehensively, conforms to the Convention." IA Court of HR, Escher et al v. Brazil. Preliminary Objections, Merits, Reparation and Costs. Judgment of July 6, 2009. Series C No. 199, par. 44; IA Court of HR, Case of the "Street Children" (Villagrán Morales et al v. Guatemala). Merits. Judgment of November 19, 1999, Series C No. 63, par. 222.

¹² See IACHR, Report No. 128/01, Case 12.367, Herrera and Vargas ("La Nación"), Costa Rica, November 3, 2001, par. 50; Admissibility Report No. 93/09, Samanta Nunes da Silva, Brazil, Petition 337-07, September 7, 2009, para. 49.

¹³ See IACHR, Report No. 31/03, Case 12.195, Mario Alberto Jara Oñate et al, Chile, March 7, 2003.

victim, constituted a form of discrimination and contributed to the breach of the duty of the State to not discriminate and to ensure equal access to justice. Therefore, even though the petitioners have not invoked the violation of Article 24 of the American Convention, by virtue of the principle of *iura novit curia* the Commission shall examine claims pertaining to alleged violations of said article during the merits stage.

42. Furthermore, the Commission notes that it is appropriate to examine, by applying the principle of *iura novit curia* during the merits stage of this matter, the possible responsibility of the State for violations of Article 5(1) with regard to M.P.C. and her next of kin. In this analysis, the IACHR shall take into consideration the claims of the petitioners regarding the failure of the State to act with the due diligence required to punish the alleged acts of sexual violence; to respond appropriately to the threats received by M.P.C. and her family members; and to the long term effects on the family environment of M.P.C as a result of the alleged acts of sexual violence, and the corresponding impunity.

43. Articles 1, 2, 3, and 4 of the Convention of Belem do Para do not constitute a legal basis to admit the petition, but the Commission shall take these articles into account, as relevant, in its interpretation of Article 7 of the Convention of Belem do Para during the merits stage, and shall similarly examine Article 9 thereof.

V. CONCLUSIONS

44. The Inter-American Commission concludes that it is competent to examine the merits of this case and that the petition is admissible in accordance with Articles 46 and 47 of the American Convention. Based on the arguments of fact and law put forth in this report, and without prejudice to the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

RESOLVES TO:

1. Declare the instant petition admissible with regard to alleged violations of the rights recognized by Articles 2, 8(1), 24 and 25(1) of the American Convention, in connection with Article 1(1), to the detriment of M.P.C. and her sister F.P.C.

2. Declare the instant petition admissible as to the alleged violation of Article 19 of the American Convention and Article 7 of the Convention of Belem do Para, to the detriment of M.P.C.

3. Declare admissible the instant petition with regard to the alleged violations of Article 5(1), in connection with Article 1(1), to the detriment of M.P.C. and her next of kin.

4. To notify this decision to the parties;

5. To continue to examine the merits of this matter; and

6. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Approved on the 1st day of the month of November, 2010. (Signed): Felipe González, President; Dinah Shelton, Second Vice-President; María Silvia Guillén, José de Jesús Orozco Henríquez and Rodrigo Escobar Gil, members of the Commission.