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**REPORT No. 19/14**  
**PETITION 329-06**  
REPORT ON ADMISSIBILITY

EMILIA MORALES CAMPOS Y JENNIFER EMILIA MORALES  
CAMPOS  
COSTA RICA

Approved by the Commission at its session No. 1979 held on April 3, 2014  
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ADMISSIBILITY

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COSTA RICA

April 3, 2014

**I. SUMMARY**

1. On April 7, 2006, the Inter-American Commission on Human Rights (hereinafter “the Commission”, “Inter-American Commission” or “IACHR”) received a petition filed by Mrs. Emilia Morales Campos (“the petitioner”), in which she alleges the responsibility of the Republic of Costa Rica (“the State”, “the State of Costa Rica” or “Costa Rica”) for alleged violation of guarantees upheld in the American Declaration of the Rights and Duties of Man (“the Declaration” or the “American Declaration”), in the processing of an application for a family housing voucher (a “BFV”)<sup>1</sup>, which was submitted in 1991 and which is not resolved as of the date of writing of this report. The petitioner alleged that the outcome of the above was that she and her daughter have been living in precarious conditions for many years, which has been harmful especially to the health and the rights of both.

2. The petitioner alleged that the State of Costa Rica is responsible for violating the right to establish a family and to protection thereof, to preservation of health and to wellbeing, and to property upheld in Articles VI, XI and XXIII of the American Declaration, to the prejudice of herself and her daughter, as the result of the State’s failure to provide an effective response to the handling of her application.

3. For its part, the State indicated that the petitioner has not exhausted domestic remedies, inasmuch as Costa Rican law establishes the procedure and requirements for claiming the BFV, and Mrs. Morales did not present her claim to the competent authority. The State also alleged that the facts about which the petitioner complains do not constitute a violation of the rights set out in the American Convention, and for this reason, the petition should be held inadmissible.

4. Without prejudging the merits of the complaint, and having examined the positions of the parties and compliance with the requirements established in Articles 46 and 47 of the American Convention on Human Rights (“the American Convention” or “the Convention”), the Commission decided to declare the case admissible for the purposes of examining the claim of alleged violation of rights upheld in Articles 5, 8, 19, 25 and 26 in relation to Articles 1.1 and 2 of the American Convention, to notify the parties, and to order publication of the report in its annual report to the General Assembly of the OAS.

**II. PROCEEDINGS BEFORE THE COMMISSION**

5. On April 7, 2006, the petitioner presented to the IACHR a claim and a request for precautionary measures. The petition was registered as No. P-329-06, and the request for precautionary measures was recorded under No. 75-06. On October 8, 2006, having received information from the parties and having examined the situation, the Commission decided to deny the request for precautionary measures and to continue processing the petition.

6. By note dated April 26, 2007, it was transmitted to the State. The State presented its response by note dated May 25, 2007. The State’s response was forwarded to the petitioner by note dated June 6, 2007, with a time period of one month, and the petitioner presented her observations on July 12, 2007. That information was transmitted to the State by note of August 28, 2007.

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<sup>1</sup> The family housing voucher is a subsidy for applying for social housing; it is granted on request of the party concerned in order to buy a house, plot of land, or repair or expand housing.

7. The Commission received the State's observations on October 1, 2007, and by note dated October 30 of that year, transmitted them to the petitioner, and gave her a time period of one month in which to present her observations. The Commission received the petitioner's response on December 21, 2007, and transmitted it to the State by note of January 23, 2008, granting one month for observations, which were received on February 4, 2008. The State's observations were forwarded to the petitioner by note dated April 2, 2008.

8. The petitioner sent in additional information on August 6, 2008; this information was sent to the State by note of September 9, 2008, and the State was given one month in which to present its observations. The IACHR received the State's response on October 17, 2008. By note of November 11, 2008, the State's observations were transmitted to the petitioner, who was given one month in which to present her position, which she forwarded within the time limit and the Commission received her observations on December 1, 2008. On December 5, 2008, the Commission received additional information from the petitioner, which was forwarded to the State by note of December 19, 2008, advising of a one-month period in which to make its observations.

9. In 2009, the Commission received observations from the State on January 12 and July 10, and received additional information on August 6. The IACHR received observations from the petitioner on February 17, August 27 and October 7, and received additional information from the petitioner on April 17 and September 4. The Commission also received additional information from the petitioner on January 4 and 22, 2010, which was transmitted to the State on January 25, 2010.

10. On May 27, 2011, the Commission placed itself at the disposal of the parties with a view to reaching a friendly settlement of the matter, and granted them one month in which to state their interest in beginning such a procedure. On July 7, 2011, the IACHR received the State's response in which it indicated that it was a valuable opportunity to examine a possible friendly settlement, and asked the IACHR to request Mrs. Morales to provide a specific, up-to-date statement of her claim. That communication was transmitted to the petitioner by note of September 15, 2011 and she was granted one month in which to respond. To date, she has not indicated acceptance of that expression of interest.

### **III. POSITIONS OF THE PARTIES**

#### **A. Petitioner**

11. The petitioner alleges that, since 1991, she has attempted to obtain a family housing voucher (BFV), first to buy a house, and then to make improvements to a property she received as a gift from private individuals, and that the State of Costa Rica has prevented her from having access to resources in order to obtain this benefit. The petitioner indicated that the house donated to her was in very poor condition, and represented a risk to her and her daughter, who at that time was eleven years old. The petitioner also states that she suffers from severe bronchial asthma, and that the condition of the house posed a risk to her health.

12. In her petition, the petitioner explains that between 1991 and 1997, she attempted to secure a BFV to buy a house, and contacted a number of authorities about it. However, the petitioner states that the authorities merely sent letters to the Ministry of Housing and Human Settlement ("MIVAH") and the National Housing and Urban Development Institute ("INVU") asking them to cooperate in processing the BFV, but that they had taken no action of any significance.

13. The petitioner alleges that on November 13, 1997, she and her daughter received a house as a gift from private individuals, which was 1.5 meters away from a stream. Because of the humidity and the erosion of the soil as a result of the water in the riverbed, the house was in an advanced state of deterioration and was unstable, representing a risk for her and her daughter, and aggravated her health, given that the conditions in the house were not appropriate for a person with asthma.

14. The petitioner states that, because of the above, she still needed to make improvements to the property, and therefore continued the process of obtaining the BFV. The petitioner states that the Engineering and Operations Bureau of the Municipality of Goicoechea made an inspection visit to the petitioner's property,

and had written an opinion on August 13, 1997, ruling that Mrs. Morales should give up or sell the property in order to obtain a full housing voucher that would allow her to obtain a house elsewhere.

15. The petitioner alleges that on May 16, 1998, she filed a complaint with the Ombudsman [*Defensoría de los Habitantes*], since the house was on the point of falling down, her health was deteriorating day by day, she was a female head of household, was handicapped by severe asthma and her situation had not been resolved. She indicates that she had presented documents to a public cooperative called UNIVICOOP which lost them, as a result of which she received no reply. On June 1, 1998, the Head of the Office of Admissibility and Immediate Defense of Ombudsman's Office sent a communication to the UNIVICOOP cooperative; on June 11, the Assistant Manager of UNIVICOOP responded and said that, having examined the situation, he had corroborated that the petitioner and her daughter appeared as co-owners of the building, and that the next step was to file a "use and need" proceeding [of the property], because the girl appeared as the owner of the property; that would allow the Home Mortgage Bank ("*Banco Hipotecario de Vivienda*" or BANHVI) to set the limitations. He also said that the situation had been brought to the attention of the attorney who had drawn up the deeds to the house, so that he could move the process forward.

16. The petitioner alleges that she filed the use and need proceeding with the Family Court of the II Judicial Circuit of San José, which ruled on June 15, 1998 and authorized the petitioner to encumber the property in order to take out a mortgage loan with which to build a house. In so authorizing, the judge took into consideration a study of the building dated April 1, 1998, which established that Mrs. Morales' house was not safe and was not in proper condition for habitation by a family. The petitioner alleges that even though she made various efforts to continue with the application process, her situation has not been resolved, and that the process was conducted with many irregularities, including the loss of her file by the institutions and an unreasonable delay given the condition of the house, her state of health, and the risk to herself and her family of continuing under these circumstances.

17. Because of the foregoing, the petitioner filed an application for *amparo* with the Constitutional Chamber of the Supreme Court of Justice against BANHVI and UNIVICOOP. However, on May 5, 1998 the Court ruled that the application for *amparo* was without merit, that her application was really a complaint and that the court did not have jurisdiction over the case, since other administrative bodies were responsible for investigating and subsequently admonishing government authorities, and that she should therefore file her complaints before those institutions and state her disagreement, or else approach the Ombudsman.

18. Thus, the petitioner again requested the Ombudsman to help her continue with the BFV process. The documentation provided by the petitioner shows that the Ombudsman contacted the BANHVI concerning the petitioner's application for the BFV, and was told that UNIVICOOP was no longer empowered to handle housing vouchers, and that her file had been transferred to the Housing Mutual Fund [*Mutual La Vivienda*]. The Ombudsman then contacted the Housing Mutual Fund, which advised that the procedure would be very slow because of the number of cases in the portfolio, and that the Housing Mutual Fund merely received documents to then give them to the BANHVI to proceed as appropriate.

19. On August 1, 2000, the Ombudsman issued a final report and recommendations, in which it found that the BANHVI had an obligation to monitor authorized entities, including the authority to intervene and monitor procedures in the handling of housing vouchers, and that it had the duty to keep the interested parties informed as to the progress of their applications; it was therefore improper that an application of this nature should be forgotten or set to one side when the case warranted the State's attention, particularly given that the applicant's health and socioeconomic conditions which, in and of themselves, limited her possibility of gaining her right to housing and thus to a dignified life. The Ombudsman recommended to UNIVICOOP that it inform her which entity had taken on her portfolio, so that the process could be completed. It also recommended to the BANHVI that it act diligently and rapidly in handling this file, that it make the necessary arrangements and coordinate with the authorized entity to avoid duplication of work and effort in handling the application.

20. The information attached to the petition shows that on March 21, 2001, the Ministry of Health again inspected the applicant's house and observed defects such as the unsafe condition caused by its structural weakness and deterioration and concluded that the house occupied by the petitioner did not conform to the

Urban Code, and for that reason, the house was declared uninhabitable and was recommended for demolition. The Ministry of Health had recommended to the Health Area in the location that it cooperate with Mrs. Morales in working with the appropriate authorities for construction of a new house prior to issuing the demolition order.

21. The documentation provided by the petitioner also shows that the National Commission for Risk Prevention and Emergencies conducted another assessment of the property in February 2002, finding that the house was not safe because of its proximity to the El Tanque gully, and that the greatest risk to the house was flooding. This report indicated that all of this, together with the structural characteristics of the house, posed a serious risk to its inhabitants, and it asked the authorities of the Ministry of Health and of the Social Assistance Institute ("IMAS") to intervene, in the sense that the former should make a report declaring the property uninhabitable, and the latter should relocate the family as soon as possible. In April 2002, the petitioner received a letter from the IMAS saying it did not have a response to this problem.

22. The petitioner alleges that she sent an application to the BANHVI on May 21, 2002 for the Comprehensive Program for Very Low Income Costa Rican Families in Extreme Need, in which she stated that she was receiving a disability pension and that she was living with her fifteen year old daughter; she explained that she was in need; the fact that she had been trying for ten years to obtain a BFV, and that she had been ordered to leave her house because it had been declared uninhabitable by the Ministry of Health and the National Emergency Commission. She asked to be put on the list of the Program for Families. The petitioner also stated that on July 23 and September 21, 2002, she had again asked the Ombudsman for assistance in obtaining the benefit.

23. The information provided by the petitioner also shows that she sent a request for information to the Quality Audit Bureau of the MIVAH, and that in December 2003, she received a note from MIVAH indicating: "attached please find a list of the requirements that you should provide to the financial entity of your choice for the program for the purchase of existing housing, or purchase of land and construction"<sup>2</sup>. However, the note did not include any information about the status of her application.

24. The petitioner alleges that in January 2004, the National Commission on Risk Prevention had paid another visit to the petitioner's property, and issued a report stating that the risk situation and the inhabitants' lack of safety had worsened, as the result of considerably more erosion and washing away of the land. The Commission therefore requested that the IMAS, the INVU and the MIVAH provide their cooperation in the case.

25. The petitioner alleged that she sent letters to the Mayor of the Municipality of Goicoechea, and that he said, in May 2004, that the municipality could not help her, but that he would write to the INVU and to the IMAS recommending that they help her. The Mayor also informed her on June 3, 2004 that she was the beneficiary of a voucher from INVU and that she should present documentation in order to proceed with the process.

26. On June 26, 2005, the petitioner filed an application for *amparo* with the Constitutional Chamber of the Supreme Court of Justice, against IMAS and INVU for violating her right to dignified housing. According to the information provided by the petitioner, the response from IMAS was that it did not grant BFV benefits; that that responsibility lay with entities authorized by the National Housing Finance System. In its response to the application for *amparo*, the INVU alleged that on May 17, 2005, the BANHVI had ordered that no new cases should be received, in light of which, until such time as the BANHVI issued another directive, the INVU was unable to receive them, and that any exception had to be, in turn, authorized by the BANHVI. The INVU also alleged that Mrs. Morales had made no efforts with its offices to solve her housing problem and that it did not at that time have the means necessary to deal with her case.

27. The Constitutional Chamber issued its ruling on February 22, 2006, in which it stated:

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<sup>2</sup> Note DAC o3-2119 of December 2, 2003 of the Ministry of Housing and Human Settlements.

Although Article 65 of the Political Constitution provides that the State “shall promote the construction of social housing”, that does not mean that it must provide housing to all inhabitants. ... [in the specific case], this appeal should be denied since no harm to the appellant’s fundamental rights has been verified. Indeed, as stated above, although the Political Constitution establishes the State’s obligation to promote the construction of public housing and a fair distribution of wealth, that is substantially different from an obligation to purchase land and give it to individuals who lack housing and to provide a direct solution to the housing problem: what in fact it entails is that given that State institutions are available to help solve the problem, access to them should be afforded to all individuals who meet the requirements, but that does not mean that a solution will be found for everyone who applies, because that will depend, *inter alia*, on the institution’s budget, legal capacity, and on whether the applicant fully meets all the requirements. In the case of the appellant, the facts as we have determined them show that she did in fact have access to the State’s mechanisms for finding a solution to her housing problem, and if it has not yet been resolved, it is because she has not presented all of the prerequisites, as noted also by the Ombudsman in its study of the case<sup>3</sup>.

28. The petitioner alleges that her application for a family housing voucher (BFV) has not been resolved and that the irregularities in the handling of her case can be seen not only in the absence of a result, but also in the disorganization of the administrative process. As an example of the above, she points out that, on November 25, 2008, she had been notified of legal collections proceedings resulting from an executive case against her that had been filed by the INVU on December 9, 2003, of which she was unaware until the date of this notification. When she asked in the INVU offices about the reason for this debt, they told her that a plot of land at site 15- B Finca CAPRI III had appeared in her name since 1993, and that she would have to pay the money even if she hadn’t used it and, indeed, if the land was inhabited, she would have to assume the cost of a legal case to evict the individuals. The second option that had been proposed to her was that she relinquish the plot of land and let INVU be responsible for the eviction, and that they would give her another plot of land, but it was not certain that another plot was available at that time. That is to say, the petitioner had been assigned a plot of land since 1993, but she had not been notified of that, nor had the BFV voucher been processed so that she could build a new house.

29. The petitioner alleges that in addition to all the communications mentioned above, she went personally to these institutions, where they gave her wrong or contradictory information, in the sense that some officials told her that she qualified for the voucher and others assured her that that was not the case. In particular, regarding the INVU, the petitioner states that they refused on several occasions to receive documents that she was providing; told her that her disability pension was a very small amount and for that reason, she would not qualify for the voucher, and more recently, they had told her that she no longer qualified for the BFV because she now lives alone with her daughter and would have to wait until she was 65 to reapply for the voucher.

30. The petitioner further alleges that she has been prevented from realizing her right to dignified housing upheld in the Constitution, not only because of the procedural obstacles that she had encountered, but also because the requirements set by the INVU are impossible for her to meet. In addition, the fact her property was declared uninhabitable made it impossible for her to dispose of it. Finally the petitioner mentioned that she had had to pay for expert reports, opinions, attorneys, registrations, appraisals and in general, a large number of documents, many of which she had paid for out of loans, and that her situation has not been resolved.

31. In light of the foregoing, the petitioner considers that her rights to protection of the family, preservation of health and wellbeing, and property enshrined in Articles VI, XI and XXIII of the American Declaration have been violated.

## **B. The State**

32. The State alleged that the facts set out by the petitioner were not a violation of rights protected in the American Convention pursuant to Article 47 b) thereof, and that the petition did not conform to the

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<sup>3</sup> Res. No. 002619-2006 of the Constitutional Chamber of the Supreme Court of Justice of February 28, 2006.



provisions of Article 1 of the Statute of the IACHR and Article 27 of its Rules of Procedure and that therefore, the Commission lacks competence *ratione materiae*.

33. The State observed that the petitioner's desire to obtain housing tailored to certain conditions is one of the ideals of human rights, but that those objectives derive from program goals and are not rights, directly speaking, "but rather are potential rights, expectations that have been set out in the Political Constitution of Costa Rica (Article 65) but that are not expressly covered in the American Convention on Human Rights or in the Declaration of the Rights and Duties of Man, and therefore, for the State, the justiciability of those expectations in international fora is questionable".

34. The State also alleged that the petition should be ruled inadmissible on the grounds of failure to exhaust [domestic] remedies, inasmuch as the petitioner did not go to the direct, immediate mechanism designed to resolve her situation, namely, go to the authorized institutions, particularly to the INVU, which is the institution responsible for housing relocation, to apply for her housing process and provide the prerequisites required by law.

35. According to the State, Costa Rica has committed to implementing social actions that enable the Costa Rican population to have access to dignified housing; this is done by means of subsidies and lending programs designed to ensure that the poorest classes may obtain financing at a low monthly cost to enable them to meet their financial obligations and provide for their basic needs. According to the State of Costa Rica, the BANHVI is the entity of the National Housing Finance System ("SFNV") that provides financing for the poor, whose low incomes mean that they need government support to obtain housing; it is the body responsible for authorizing public and private entities to manage matters related to the BFV. The State noted that the BANHVI is not the institution responsible for granting or denying the housing benefit, but rather, it is responsible for monitoring the institutions that are authorized to process the vouchers, and for promoting housing development, expansion and improvement programs on preferential lending terms.

36. In its observations, the State also mentioned that UNIVICOOP initially had the responsibility of handling BFV applications, but that it was taken over because of financial problems and the petitioner's case was transferred to the Home Mutual Fund [*Mutual La Vivienda*]. The State indicated that Mrs. Morales had never complied with the essential prerequisites, such as indicating a plot of land for construction, or a house that had already been built and that could be purchased by the State for donation, so that the process in the Home Mutual Fund could be completed.

37. The State added that, in the petitioner's situation, given that her house was declared uninhabitable in 2001, the INVU would be the entity responsible for rehousing the petitioner, subject to her complying with certain requirements. The State alleges that Law No. 1788 of 1954 authorized the INVU to deal, insofar as possible, with the problem of rehousing persons displaced from the slums when that law was applied, but that such action by the INVU is not unofficial but rather requires the presentation of the formal application requirements.

38. The State indicated that the petitioner is entitled to access the system, whether to buy a house or a plot of land, or to repair or expand her housing; but that in order to do so, she must file an application that meets the formal requirements, and submit it for evaluation to the loan analysts in the financial entities to determine her eligibility. The State added that "the procedure is extremely simple and interested persons should not have to pay any money beyond the building experts, inspections and qualifications needed to complete the process"<sup>4</sup>. However, the State affirmed that the INVU does not have an application from Mrs. Morales, even though some institutions had counseled her to approach any of the entities authorized by the BANHVI. The State indicated that pursuant to the ruling of the Constitutional Chamber of the Supreme Court of Justice, Mrs. Morales had in fact had access to the government mechanisms for finding a solution to her housing problem, and that if her situation had not yet been resolved, it is because the petitioner had not presented all of the prerequisites required of all persons interested in obtaining the benefit.

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<sup>4</sup> The State's response to the petition, DJO- 253-07, received by the IACHR on May 29, 2007.

39. The State observed that the inter-American human rights system is subsidiary in nature, and that the petition should not be heard inasmuch as the State has not yet had the possibility of de safeguarding the petitioner's situation since "she has not done her part in exercising her right, not to dignified housing exclusively by the State, but to accessing the mechanisms provided by the State to facilitate her obtaining dignified housing."

40. For the foregoing considerations, the State of Costa Rica requested the Inter-American Commission to declare the petition inadmissible because it does not comply with the requirements for admissibility under Articles 47 b) and 46 a) of the Convention and Articles 27, 30 and 31 of the Rules of Procedure of the IACHR.

#### **IV. ANALYSIS OF ADMISSIBILITY AND COMPETENCE**

##### **A. Competence**

41. The petition identifies as the alleged victims individuals for whom the State of Costa Rica undertook to respect and ensure the rights enshrined in the American Convention. The petitioner is entitled under Article 44 of the American Convention to lodge petitions before the Commission. Costa Rica has been a Party to the American Convention since April 8, 1970, the date on which it deposited its instrument of ratification. Therefore, the Commission is competent *ratione personae* to examine the petition.

42. The Commission is competent *ratione materiae*, given that the petition claims possible violations of human rights protected by the American Convention. As to the alleged violation of Articles VI, XI and XXIII of the American Declaration, the Commission observes that the rights that the State pledged to preserve as Party to the OAS Charter are those stipulated in the American Declaration, which is the source of international obligations. However, the State of Costa Rica ratified the American Convention on April 8, 1970 and therefore, as of that date, that instrument became its principal source of legal obligations. Bearing in mind that the rights claimed by the petitioners are found in the Convention, the analysis of the merits of the present case will center on the American Convention.

43. Without prejudice to the analysis of whether the State of Costa Rica incurred international responsibility under the American Convention, the IACHR may take into consideration other instruments that form part of the *corpus juris* in the area of the rights of children and adolescents as regards the situation of Jennifer Emilia Morales Campos.

44. The events that allegedly impacted on Emilia Morales Campo and Jennifer Emilia Morales Campo occurred starting in 1991 and continue to the present day; the competence of the Inter-American Commission on Human Rights was in effect at the time of those acts. In consequence, the Commission is competent *ratione temporis* with respect to the claims presented by the petitioner.

45. Lastly, given the fact that the petition alleges violations of rights protected under the American Convention that took place in the territory of Costa Rica, a member state of the OAS, the Commission concludes that it is competent *ratione loci* to hear the matter.

##### **B. Admissibility requirements**

###### **1. Exhaustion of domestic remedies**

46. Article 46.1.a of the American Convention provides that in order for a petition to be lodged with the Inter-American Commission pursuant to Article 44 of the Convention, domestic remedies must have been pursued and exhausted in accordance with generally recognized principles of international law. The purpose of this requirement is to allow the national authorities to take cognizance of the alleged violation of a protected right and, if appropriate, to have the opportunity to resolve it before it is heard by an international body.



47. Article 46.2 of the same instrument sets out the exceptions to the general principle of exhaustion of domestic remedies, namely: a) the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated; b) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

48. In the present case, the State alleges that the petitioner did not exhaust domestic remedies because she did not present the application for the Family Housing Voucher to the INVU, nor did she comply with the other requirements established in Costa Rican law. For her part, the petitioner alleges that she had presented all of the documents and had, over twelve years, gone to many bodies, including filing two legal cases, and that none of the procedures had been effective.

49. The Commission observes that the petitioner has reported this alleged situation to various administrative authorities since 1991, among which the MINVAH, el INVU, UNIVICOOP, the Home Mutual Fund, the Ombudsman, the BANHVI, the Municipality of Goicoechea, the National Commission for Risk Prevention and Emergencies, the IMAS and the Ministry of Health. She has also reported the alleged facts to court authorities, filing proceedings of usefulness and need with the Family Court in 1998 and via two applications for protection on constitutional grounds (*amparo*), one filed on May 5, 1998 and the other filed on July 26, 2005, respectively. The latter application was dismissed by the Constitutional Chamber of the Supreme Court of Justice on February 22, 2006. Furthermore, on various occasions she resorted to the Office of the Human Rights Ombudsman, a body that recognized the existing risk and the absence of a timely response and coordination by the authorities.

50. IACHR observes that none of these proceedings have resulted in the coordination of authorities so as to provide a timely solution to her situation. On the basis of the review above, the IACHR concludes that, although there are elements indicating that there were remedies available to address the situation of Mrs. Morales, in practice these were not accessible to her and that, despite all the authorities who have intervened throughout 22 years of proceedings, including the Executive President of INVU, the matter has not been resolved. In light of the foregoing, the IACHR concludes that the exception contained in Article 46 (2) b of the American Convention applies.

## **2. Timeliness of the petition**

51. Since one of the exceptions provided for in Article 46.2 applies, the requirement in Article 46.1.b is not applicable in this matter. The petition was presented in April 2006, after the Constitutional Chamber of the Supreme Court of Justice had ruled on the last application for *amparo* presented by the petitioner in February of that year. According to the information presented, the alleged victims are still living in the same place. The Inter-American Commission deems that the petition was filed within a reasonable time, in the terms of Article 32 of its Rules of Procedure.

## **3. Duplication and *Res Judicata***

52. Nothing in the case file indicates that the subject of the petition is pending decision in another international settlement proceeding, or that it duplicates a petition already examined by this or any other international body. Therefore, the requirements of Articles 46.1.c and 47.d of the Convention have been met.

## **4. Characterization of the alleged facts**

53. The Commission considers that at this stage in the proceedings, it is not pertinent for it to decide whether or not the alleged violations took place or not to the prejudice of the alleged victims. For purposes of admissibility, the IACHR must at this time decide only whether the petition states facts that, if proven could tend to establish a violation, as provided in Article 47.b of the American Convention, and whether the petition is “manifestly groundless” or “obviously out of order,” in accordance with paragraph (c) of the same Article. The standard for evaluating these requirements is different from the one used to judge the merits of a complaint. The IACHR must undertake a *prima facie* evaluation to determine whether the complaint gives grounds for an

apparent or potential violation of a right protected by the American Convention, but not whether such a violation occurred.<sup>5</sup>

54. Neither the American Convention nor the Rules of Procedure of the IACHR require petitioners to identify the specific rights allegedly violated by the State in matters submitted to the Commission, even though the petitioners may do so. However, it is the duty of the Commission, in following the System's legal precedents, to determine in its admissibility reports, which provision of relevant Inter-American instruments is applicable and could be concluded to have been violated, should the alleged facts be proven by means of sufficient evidence.

55. The petitioner claims alleged violation of her right to protection of the family, preservation of health and wellbeing, and property, on account of the ineffectiveness of the administrative procedures to ensure access to dignified housing. The State alleged that the facts as stated do not constitute a violation of the guarantees in the Convention since the petitioner's "desire to obtain housing tailored to certain conditions is related to program goals that do not constitute rights set forth in the American Convention or in the Declaration of the Rights and Duties of Man."

56. The Commission observes that the petitioner alleges that she has not been given an effective response from the authorities to her application for a Family Housing Voucher for 22 years. Here, the IACHR observes that a number of United Nations bodies have stressed the need to speed up procedures in the area of access to economic, social or cultural rights, and have stressed that they should be resolved as quickly as possible, with the maximum resources available<sup>6</sup>. With regard to administrative processes, particularly in the case of children, the Committee on the Rights of the Child has said that States should assess the child's best interests, which should be a primary consideration in administrative or judicial proceedings that directly or indirectly affect the child, including measures related to living conditions and housing<sup>7</sup>, with particular attention paid to marginalized and underprivileged children in order to give priority to them<sup>8</sup>. The petitioner's allegations could therefore be characterized as a violation of Articles 8 and 25 in relation to Articles 19, 1.1 and 2 of the American Convention. At the merits stage, the IACHR will also examine possible violation of Article 26 of the Convention.

57. In addition, the Commission finds that the allegations about the health condition of both Emilia Morales Campos and Jennifer Morales Campos that were adversely affected by the poor condition of the house could constitute alleged violations of the rights to personal integrity and the special protection of children upheld in the Convention, namely in Articles 5 and 19 of the American Convention.

58. Having seen the points of fact and of law presented by the parties, and the nature of the matter before it, the Commission finds that the petitioner's allegations, if proven, could be characterized as violations of the rights protected in Articles 5, 8, 19, 25 and 26 in relation to Articles 1.1 and 2 of the American Convention to the prejudice of Emilia Morales Campos and her daughter Jennifer Emilia Morales Campos. The Commission will also examine the alleged facts in light of Article 19 of the American Convention, specifically in regard to the States' special duty to protect pursuant to the principle of the primary interests of the child and the *corpus juris* in the matter of the rights of children and adolescents.

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<sup>5</sup> See IACHR, Report No. 128/01, Case 12.367, *Mauricio Herrera Ulloa and Fernán Vargas Rohrmoser of "La Nación" Newspaper* (Costa Rica), December 3, 2001, para. 50; Report No. 4/04, Petition 12.324, *Rubén Luis Godoy* (Argentina).

<sup>6</sup> Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Doc. A/67/286 of 10 August 2012, paras. 17-18 and 47. See also United Nations Special Rapporteur on extreme poverty and human rights, Doc A/67/278 of 9 August 2012.

<sup>7</sup> Committee on the Rights of the Child, General Comment No. 14, The right of the child to have his or her best interests taken as a primary consideration (Art. 3, para. 1). Doc. CRC/C/GC/14 of May 29, 2013, paras. 13, 14, 19 and 30.

<sup>8</sup> Committee on the Rights of the Child, General Comment No. 5, General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6). Doc. CRC/GC/2003/05 of November 27, 2005, paras. 8, 30 and 37.

59. For the reasons set out above, and inasmuch as the claim is not manifestly groundless or obviously out of order, the Commission finds that the requirements established in Articles 47. b. and c. of the American Convention have been fulfilled.

**V. CONCLUSIONS**

60. The Commission concludes that it is competent to examine the claims submitted by the petitioner for the alleged violation of Articles 5, 8, 19, 25 and 26 in accordance with Articles 1(1) and 2 of the American Convention, and that they are admissible pursuant to the requirements established in Articles 46 and 47 of the American Convention.

61. Based on the foregoing considerations of fact and of law,

**THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS**

**DECIDES:**

1. To rule the present case admissible with respect to Articles 5, 8, 19, 25 and 26 of the American Convention pursuant to Articles 1.1 and 2.
2. To notify the State of Costa Rica and the petitioner of this decision.
3. To continue the analysis of the merits of the case.
4. To publish this decision and to include it in its annual report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C. on the 3<sup>rd</sup> day of April, 2014. (Signed): Tracy Robinson, President; Rose-Marie Belle Antoine, First Vice-President; Felipe González, Second Vice-President; José de Jesús Orozco Henríquez, Rosa María Ortiz, Paulo Vannuchi, James L. Cavallaro, members of the Commission.