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REPORT No. 73/16
PETITION 2191-12
REPORT ON ADMISSIBILITY

ALEXA RODRÍGUEZ
EL SALVADOR

Approved by the Commission at its session No.2070 held on December 6, 2016.
159th Regular Period of Sessions.

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REPORT No. 73/16
PETITION 2191-12
 ADMISSIBILITY REPORT
 ALEXA RODRÍGUEZ
 EL SALVADOR
 DECEMBER 6, 2016

I. PETITION DATA

Petitioner:	Alexa Rodríguez and International Human Rights Law Clinic (WCL, American University)
Alleged victims:	Alexa Rodríguez
Respondent State:	El Salvador

II. PROCEEDINGS BEFORE THE IACHR

Date of petition:	November 30, 2012
Date of petition notification to the State:	August 29, 2013
Date of first reply by the State:	May 8, 2014
Petitioner's additional observations:	April 15, 2014 and April 10, 2015
State's additional observations¹:	June 20, 2016

III. ANALYSIS ON COMPETENCE AND ADMISSIBILITY

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes, American Convention on Human Rights ² (deposit of instrument of ratification made on June 23, 1978) and Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ³ (deposit of instrument of ratification made on January 26, 1996)

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

Duplication of proceedings and international <i>res judicata</i>	No
Rights found admissible:	Articles 5 (personal integrity), 8 (fair trial), 11 (protection of honor and recognition of dignity), 13 (freedom of thought and expression), 24 (equality before the law) and 25 (judicial protection) of the American Convention in accordance with its Article 1.1. Article 7 of the Convention of Belém do Pará

¹ All observations were duly transmitted to the other party.

² Hereinafter, "Convention" or "American Convention".

³ Hereinafter "Convention of Belém do Pará".

Exhaustion of domestic remedies or applicability of exceptions:	Yes, exception set forth in art. 46.2 (b) is applicable
Timeliness of the petition:	Yes, in terms of section VI

V. ALLEGATIONS

1. The petitioners argue that the facts in this petition are part of a generalized context of discrimination suffered by transgender people in El Salvador by state officials. In particular, they allege that Alexa Rodríguez, a Salvadoran national and transgender woman, was victim of attacks against her life from gangsters and National Civil Police officers, in two different circumstances.

2. They allege that in June 2008, a man called “El Chino,” who was member of the gang “Mara Salvatrucha (MS-13),” beat her brutally outside the restaurant where she worked, in Usulután department. They declare that another man intervened in the attack to hold her while she was beaten. They argue that the owners of the restaurant called the police, and that therefore, “El Chino” and his colleague left the place. According to the petition, the police officers that showed up in the place did not register a police report on the grounds that what happened was “simply a fight between queers.”

3. According to the petition, on top of that violent episode, there was another incident two months later. It was one evening in August 2008 that the alleged victim, wearing clothes socially associated with her female gender identity, was eating with a girl friend at a gas station when the leader of the Mara Salvatrucha of Usulután, known as “El Animal,” approached them and started beating the alleged victim, insulting her and taking her belongings. The petitioners argue that when the police arrived, the officers disbelieved Alexa Rodríguez’s account of facts; consequently, the officers let the perpetrator go, but registered the alleged victim’s name and began mocking her by calling her offensive names. Moreover, while she was sit on the edge of the pavement, an officer started to kick her until he made her fall on the floor; the officers warned that if she filed a report, no one would believe her and that they already knew where she lived.

4. According to the petition, the night of the second attack against her, Alexa Rodríguez tried to file a police report by telephone but was told that she had to do it in person. When she went to the police station, she was told that it was impossible that she had been attacked by officers, because that night, there were no police officers in the area she mentioned; and that probably “she had been in a fight with homosexuals like her.” The petitioners allege that the Prosecutor General’s Office did not want to register the report either on the grounds that the National Civil Police would never harm her and the surely she must have “been in a fight among homosexuals.” They argue that given the alleged victim’s insistence on filing her complaint, the prosecutor made her leave the office escorted by the security staff. The petitioners declare that given the lack of response from the Salvadoran officials, Alexa Rodríguez decided to leave her country and move to the United States, where she sought asylum on January 28, 2010, which was granted in February 12 of the same year. Based on the foregoing, the petitioners allege that the State of El Salvador violated th rights embodied in Articles 1, 5, 11, 24 and 25 of the American Convention on Human Rights.

5. The State alleges that the facts described in the petition are not registered as complaints in none of the state institutions competent to investigate offenses or human rights violations. It argues that the lack of such record is not in and of itself proof of denial of access to domestic remedies by the State as a generalized practice against transgender people, since there are institutional antecedents concerning investigations open after complaints according to which transgender people were victimized. The State adds, however, that according to the information received about this petition, the Inspector General has started a prior investigation.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

6. The petitioners allege that the Salvadoran authorities straightforwardly denied the alleged victim access to domestic remedies and that, given the circumstances, there is reasonable fear of trying any

other judicial action. The alleged victim declares that both at the police station and the Prosecutor General's Office, authorities rejected to register her complaint, treating her offensively, mocking her and forcing her to leave the place. In turn, the State argues that domestic remedies have not been exhausted, as there are no records of complaints filed by the alleged victim, neither at the prosecutor's office nor the police station. As to the alleged criminal action open after the petition, the State does not provide any details on this.

7. The IACHR concludes that authorities' alleged denial to receive complaints from the alleged victim, consisting in discriminatory treatment for her gender identity, and police officers' alleged comments aimed at discouraging her from filing a complaint and threatening the alleged victim, taken as a whole, are sufficient elements to believe that the exception set forth in Article 46.2 (b) of the Convention is applicable in this case. On the other hand, the Commission takes note that the State declares that it started an investigation after receiving this petition in 2013, but does not give information on the adoption of measures or progress made; and the rule of prior exhaustion of domestic remedies should not make that international actions to help the victims stop or become useless.

8. This petition was filed on November 30, 2012 and the facts allegedly took place between June and August 2008, and the consequences concerning the alleged lack of results from justice administrators have allegedly extended over the years. Therefore, the Commission declares that the petition was filed in a timely manner.

VII. COLORABLE CLAIM

9. According to the allegations, the alleged victim was physically and verbally attacked on several occasions, by private parties and state officials, due to her gender identity and expression. After these alleged facts, it appears that she was not allowed to access domestic remedies given that her complaints were not received or duly registered by domestic authorities, who seem to have treated her in a discriminatory way to her detriment on the grounds of her gender identity and expression. As a result, if proved, the facts alleged could establish a possible violation of rights protected by Articles 5, 8, 11, 24 and 25 of the American Convention, in accordance with its Article 1.1. In addition to this, the Inter-American Commission believes that the allegations may establish violations of Article 7 of the Convention of Belém do Pará, considering that by virtue of said Convention, States are obliged to prevent, punish and eradicate all forms of violence against women, including lesbian, bisexual, transgender and intersex women⁴. Lastly, in the assessment of merits, the IACHR will also examine the possible applicability of Article 13 of the Convention concerning the alleged violation of the alleged victim's expression of gender⁵.

VIII. DECISION

1. To declare this petition admissible with regard to Articles 5, 8, 11, 13, 24 and 25 of the American Convention in accordance with its Article 1.1; and Article 7 of the Convention of Belém do Pará;

2. To notify the parties of this decision;

3. To proceed to the analysis of the merits of the matter; and

4. To publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of Panama, on the 6th day of the month of December, 2016. (Signed): James L. Cavallaro, President; Francisco José Eguiguren, First Vice President; Margarete May Macaulay, Second Vice

⁴ IACHR, Report "Violence against LGBTI Persons in the Americas," OAS/Ser.L/V/II.rev.2 Doc. 36 November 12, 2015, par. 282.

⁵ IACHR, Report "Violence against LGBTI Persons in the Americas," OAS/Ser.L/V/II.rev.2 Doc. 36 November 12, 2015, par. 217.

President; José de Jesús Orozco Henríquez, Paulo Vannuchi, Esmeralda E. Arosemena Bernal de Troitiño and Enrique Gil Botero, Commissioners.