

OEA/Ser.L/V/II.166  
Doc. 193  
30 November 2017  
Original: Spanish

## **REPORT No. 162/17**

### **PETITION 627-08**

#### REPORT ON ADMISSIBILITY

MARÍA DEL PILAR SULCA BERROCAL AND FAMILY  
PERU

Approved by the Commission at its session No. 2110 held on November 30, 2017  
166<sup>th</sup> Regular Period of Sessions

**Cite as:** IACHR, Report No. 162/17, Petition 627-08. Admissibility. María del Pilar Sulca  
Cerrocal. Peru. November 30, 2017.



**REPORT No. 162/17<sup>1</sup>**  
**PETITION P-627-08**  
 REPORT ON ADMISSIBILITY  
 MARÍA DEL PILAR SULCA BERROCAL AND FAMILY  
 PERU  
 NOVEMBER 30, 2017

**I. INFORMATION ABOUT THE PETITION**

|                         |   |
|-------------------------|---|
| <b>Petitioner:</b>      | María del Pilar Sulca Berrocal  |
| <b>Alleged victim:</b>  | María del Pilar Sulca Berrocal and family   |
| <b>State denounced:</b> | Peru  |
| <b>Rights invoked:</b>  | Articles 4 (life), 7 (personal liberty), 10 (compensation), 11 (honor and dignity), 19 (rights of the child) and 25 (judicial protection) of the American Convention on Human Rights <sup>2</sup> |

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

|   |                              |
|---|------------------------------|
| <b>Date on which the petition was received:</b>   | May 2, 2008 <sup>4</sup>     |
| <b>Additional information received at the stage of initial review:</b>  | July 19, 2009; June 30, 2011 |
| <b>Date on which the petition was transmitted to the State:</b>   | May 1, 2014                  |
| <b>Date of the State's first response:</b>  | October 28, 2014             |
| <b>Date on which the petitioner was notified of the possible archiving of the petition:</b>                         | May 26, 2017                 |
| <b>Date on which the petitioner responded to the notification regarding the possible archiving of the petition:</b> | June 21, 2017                |

**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 deposit made on July 28, 1978); Inter-American Convention to Prevent and Punish Torture <sup>5</sup> (deposit of instrument made on March 28, 1991); and Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women <sup>6</sup> (deposit of an instrument on June 4, 1996) |

<sup>1</sup> In accordance with the provisions of Article 17.2.a of the Commission's Rules of Procedure, Commissioner Francisco José Eguiguren Praeli, of Peruvian nationality, did not participate in either the discussions or the decision in the present matter.

<sup>2</sup> Hereinafter "the American Convention", "Convention" or "ACHR".

<sup>3</sup> The observations presented by each party were duly transmitted to the opposing party.

<sup>4</sup> The petition was sent by the petitioner to the Inter-American Court of Human Rights and received on the date indicated; this body in turn sent it to the Commission, being received on May 21, 2008.

<sup>5</sup> Hereinafter "IACPPT".

<sup>6</sup> Hereinafter "Convention of Belem do Pará".

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

|  |   |
|--|---|
| <b>Duplication of procedures and International <i>res judicata</i>:</b>              | No  |
| <b>Rights declared admissible</b>  | Articles 5 (integrity), 7 (personal liberty), 8 (judicial guarantees), 11 (honor and dignity), 17 (family), 19 (rights of the child), 21 (property), and 25 (judicial protection) of the ACHR, in relation to its articles 1.1 and 2; Articles 1, 6 and 8 of the IACPPT; and Article 7 of the Convention of Belem do Pará |
| <b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b> | Yes, in terms of Section VI   |
| <b>Timeliness of the petition:</b>   | Yes, in terms of Section VI   |

**V. ALLEGED FACTS**

1. The petition states that in August 1983 María del Pilar Sulca Berrocal –a craftswoman— suffered a robbery and denounced to the authorities the theft of her working materials, sewing-machines and handicraft. She indicates that as a result thereof, she was accused of being a terrorist, imprisoned, tortured and raped during the period of her detention. She maintains that, to date, she still bears the injuries from her mistreatment and that product of the rape she had a son, whose surname she changed due to the threats she received, among others, from the agent who raped her. She adds that, in this context, her other daughter was raped aged eight and her mother was run over in Ayacucho. She relates, without giving details, that her children could not study because of the theft where she lost all the articles used in her work, including looms, sewing machines and personal household items. Additionally, she argues that for years she was labeled a terrorist and harassed.

2. From the documentation provided, it is clear that whoever was living with the alleged victim and was the father of her two daughters, Milagros and Janet, was friendly with individuals linked to Shining Path (also known as “Sendero Luminoso”). Regarding the aforementioned robbery, she alleges that in August 1983 a man entered her store and stole goods and money from her sales; that she reported this theft to a police officer who happened to be a “friend” of the accused, and that as a consequence she became a target of reprisals. She indicated that in November of that year, while she was in Cuzco selling her products, two men came to where she was staying and stole her goods, and detained her with her two daughters, then 1 and 3 years old. She claims she was detained for about three months with her younger daughter and that she was accused of being a terrorist, raped and tortured. She indicates that, as a result of the rape, she became pregnant with a child. She gave birth in 1984 and raised it. She adds that her other daughter was found some time later with a friend of hers, and that she finally lived in prison with her two daughters and her newborn son. It is alleged that, during her detention, her mother’s home was searched, property taken away and that her mother was mistreated.

3. With regard to the alleged sexual assault on Mrs. Sulca, from the documentation sent by the petitioner, it appears that on April 1, 1985, the Superior Council of Justice of the IV Judicial Zone of the Cuzco Police Force imposed on a sergeant first class a conditional sentence of three months military imprisonment, along with the payment of a sum of money, for offenses against military honor, decorum and military duties, aggravated by the crime against the duty and dignity of his office. In this regard, the petitioner indicates that she has never received compensation from the monetary penalty imposed on the policeman who raped her. It also appears from the documentation that on May 13, 1986, the Thirteenth Correctional Court of Lima acquitted the alleged victim of the crime of terrorism.

4. On the other hand, it appears from the documentation provided that in May 2000 she was arrested once more and transferred to the National Counter-Terrorism Directorate No. 3 (hereinafter DINCOTE), beaten and held incommunicado, and subsequently transferred to hospital, after which she was

released. She alleges that in the same month she was kidnapped in the vicinity of her house by a group of strangers, whom she later identified as members of the DINCOTE. She indicates that during her abduction she was tortured and interrogated about the human rights organizations that had supported her during her detention. She received death threats and was subsequently released. She alleges that she reported the kidnapping to the Surco Police Station and to the Seventh Region but they did not want to acknowledge her complaint. In addition, she alleges that in 2001, a police officer extorted money from her and made her sign a document regarding the events in connection with her mother, confirming that she was a terrorist. Finally, according to the written records of the Reparations Council, as a result of the events that took place between 1980 and 2000, the alleged victim appears in the Single Victim Registry, session agreed on June 3, 2009.

5. For its part, the State maintains that the petition is confusing, imprecise and unclear when describing the allegations of fact. It argues that, with regard to competence *ratione personae* --although the petitioner has referred to two children as alleged victims in the complaint form-- her claims focus on what happened to herself, and that what occurred to her children is addressed to emphasize their own alleged suffering.

6. It maintains that both Mrs. Sulca and her son, Jorge Cristian Aguilar, are registered in the Unified Victim Registry, and that thereby they have access to reparations. As regards the economic reparations, the State maintains that Mrs. Sulca was included in the seventh list of beneficiaries, entitled to the amount of \$10,000 soles, which were paid out in October 2012. In addition, regarding her son, the State indicates that he is a beneficiary of the Program of Reparations in Education. It emphasizes that at the time of filing the complaint, the petitioner and her son had not had access to the reparations granted, and that both were now affiliated with the Comprehensive Health Insurance – the mother since May 2011, and her son since October 2013. From the above, the State requests the IACHR to evaluate the reparations granted.

7. The State requests that the IACHR declare the petition inadmissible since, although the petitioner claims that she has "filed several complaints," she does not indicate the contents thereof, the dates in which they were submitted, which were the authorities petitioned, and what was their end result. Therefore it is impossible from her statements to determine whether she has reported or brought claims on what happened. The State argues that the adequate remedies to examine her detention were the criminal proceedings or habeas corpus. It adds that the adequate remedy to investigate, prosecute and punish those responsible for the rape she suffered is the criminal proceeding. Additionally, it maintains that if she intended to receive compensation for the damages suffered, the criminal judge could have established reparations in her favor in the aforementioned criminal proceedings, or she could have sought it independently, in civil proceedings through a lawsuit for damages. Therefore, the State argues that the petitioner has failed to exhaust domestic remedies and has failed to comply with the provisions of Article 46.1.a of the ACHR.

8. Regarding the allegations on the right to life, the State maintains that she does not detail the breach that must be addressed, for which reason it must be declared inadmissible. With regard to the allegations relating to personal liberty, the State observes that upon her arrest in 1983, after proving she had not committed a terrorist offense, she was released. As to her second arrest, also in 1983, it indicates that the criminal proceedings were concluded with an acquittal on May 13, 1986, and the court ordered her immediate release. It states that both arrests were fully substantiated and that after a brief investigation and criminal trial, the alleged victim was released. With regard to the other two detentions (1986 and 2000), given the lack of precision about the dates and circumstances in which such events occurred, as well as the absence of information from the petitioner about whether such events were brought to the attention of the national authorities, the State indicates that it is not in a position to defend itself. Regarding the right to compensation alleged by the petitioner, the State alleges that this claim does not correspond to the right established in Article 10 of the ACHR that is applicable only in cases of persons convicted by final judgment due to judicial error; however the alleged victim was acquitted in the only process started against her. The State affirms that in any case, the economic reparation should have been claimed in a civil damages suit.

9. As to the allegation regarding the violation of the rights contemplated in Article 19 of the ACHR, it states that Mrs. Sulca's minor son could not have been a victim of the detentions that occurred in 1983 since he had not been born. With regards to her arrests in 1986 and 2000, the pleadings do not mention

him as an alleged victim. It states that only Mrs. Sulca was mentioned as an alleged victim of rape. Finally, regarding the right to judicial protection, the State maintains that the information provided does not clarify how this right could be affected, since the legislation provides for appeals that were not invoked. It adds that, in the framework of the criminal proceedings for terrorism, the alleged victim was offered the opportunity to present various defense briefs in her favor.

10. In conclusion, the State requests that the petition be declared inadmissible in accordance with Articles 46.1.a and 47.b of the ACHR, since the appropriate and effective remedies were not exhausted; the petition was not filed within a reasonable time; and the facts described do not constitute a violation of the rights alleged by the petitioner.

## **VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION**

11. From the documentation before the Commission, it is clear that on April 1, 1985, the Superior Council of Justice of the Fourth Judicial Zone of the Cuzco Police Force convicted a staff sergeant with a conditional sentence of three months' military imprisonment for crimes against the honor, decorum and duties of the military. On the other hand, on May 13, 1986, the alleged victim was acquitted in the proceedings for terrorism against her. The petitioner reports that she had filed complaints with the police authorities regarding the robbery, deprivation of liberty and assaults suffered, without any investigation being undertaken. For its part, the State alleges a failure to exhaust domestic remedies.

12. According to the information provided by the parties, the Commission considers that, since the only investigation was that conducted within the framework of the criminal police justice system, the exception to the exhaustion of domestic remedies provided for in Article 46.2.b of Convention is applicable. As for the complaints filed with police authorities, the information available does not show that an investigation was ever initiated, so the exception to the exhaustion of domestic remedies provided for in Article 46.2.c of the Convention is applicable.

13. On the other hand, the IACHR received the petition on May 2, 2008 and the facts presented as the subject of the claim started in 1983 with the detention and prosecution on terrorism charges of the alleged victim, criminal process ended in 1986. In this context the alleged victim supposedly suffered rape, and later, in 2000 allegedly suffered new detention and torture. Therefore, in view of the link between the alleged facts and certain effects are still being felt to date, giving the context and characteristics of the present case, the Commission considers that the petition was presented within a reasonable time.

## **VII. COLORABLE CLAIM**

14. In view of the factual and legal elements presented by the parties and the nature of the matter brought to its attention, the Commission considers that, if the allegations relating to the violation of integrity, arbitrary deprivation of liberty, due process, interference with private life, children's rights, judicial protection, property, and effects on family rights suffered by the petitioner and her family, the facts reported could characterize possible violations of Articles 5, 7, 8, 11, 17, 19, 21 and 25 of the ACHR, in relation to Articles 1.1 and 2. Additionally, the Commission considers that the allegations on the rape of María del Pilar Sulca Berrocal, as well as her daughter, may constitute a violation of Article 7 of the Convention of Belém do Pará in connection with the lack of investigation of said facts after the date of ratification and deposit. On the other hand, with respect to the claims relating to the violation of Articles 4 and 10 of the American Convention, the Commission observes that the petitioner does not offer arguments or evidence in support of the allegations and therefore it is not appropriate to declare such claims admissible. Additionally, the allegations could characterize possible violation of Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture to the detriment of Mrs. Sulca, in connection with the claims of mistreatment by state agents after the date of ratification and deposit of said instrument, as well as the duty to investigate.

15. Regarding the State's argument on the identification of the alleged victims, the Commission observes that the complaint and the attached documentation refer to the situation of Mrs. Sulca as well as that

of her family, and therefore her family members should also be considered as victims in the allegations of the petition.

#### **VIII. DECISION**

1. To find the instant petition admissible in relation to Articles 5, 7, 8, 11, 17, 19, 21, and 25 of the American Convention, in relation to Articles 1.1 and 2 of the same instrument; and to Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture; and to Article 7 of the Convention of Belém do Pará;

2. To find the instant petition inadmissible in relation to Articles 4 and 10 of the American Convention;

3. To notify the parties of this decision;

4. To continue with the analysis on the merits; and

5. 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 Washington, D.C., on the 30<sup>th</sup> day of the month of November, 2017.  
(Signed): Margarette May Macaulay, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice President; José de Jesús Orozco Henríquez, Paulo Vannuchi, James L. Cavallaro, and Luis Ernesto Vargas Silva, Commissioners