

OEA/Ser.L/V/II.167
Doc. 13
February 24, 2018
Original: English

REPORT No. 9/18
PETITION 184-08
REPORT ON ADMISSIBILITY

T.L. AND BERNADETTE TAYLOR LOCKETT
UNITED STATES

Approved by the Commission at its session No. 2115 held on February 24, 2018.
167th Special Period of Sessions.

Cite as: IACHR, Report No. 9/18, Petition 184-08. Admissibility. T.L. and Bernadette Taylor Lockett. United States. February 24, 2018.



I. INFORMATION ABOUT THE PETITION

Petitioner:	Bernadette Taylor Lockett
Alleged victim:	T.L. and Bernadette Taylor Lockett
State denounced:	United States
Rights invoked:	Articles I, II, IV, V, VI, VII, IX, X, XVII, XVIII, XXIV, XXVI, XXX of the American Declaration of the Rights and Duties of Man ¹

II. PROCEEDINGS BEFORE THE IACHR²

Filing of the petition:	February 19, 2008
Additional information received at the initial study stage:	April 21 and August 30, 2011; January 25 and September 17, 2012
Notification of the petition to the State:	February 28, 2013
State's first response:	October 22, 2014
Additional observations from the petitioner:	March 24, April 1 and June 17, 2015; March 22 and October 11, 2016; March 16 and August 8, 2017
Additional observations from the State:	January 3 and May 19, 2017

III. COMPETENCE

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 Declaration (ratification of the OAS Charter on June 19, 1951)

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

Duplication of procedures and International <i>res judicata</i>:	No
Rights declared admissible	Articles I (life, liberty and personal security), II (equality before law), VII (protection for mothers and children), XVII (recognition of juridical personality and civil rights), and XVIII (fair trial) of the American Declaration
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, exception set forth in Article 31.2 (b) of the IACHR Rules of Procedure is applicable
Timeliness of the petition:	Yes, in terms of section VI

¹ Hereinafter, "Declaration" or "American Declaration."

² The observations submitted by each party were duly transmitted to the opposing party.

V. ALLEGED FACTS

1. The petitioner alleges that her daughter T.L. -born in 1998- was sexually abused by her father on numerous occasions. The petitioner indicates that she began divorce proceedings in the summer of 2000 and that she was initially granted primary custody of the child in the state of Virginia on April 20, 2000. After a hearing held on August 16, 2000, the petitioner and the father were given joint custody and the petitioner retained physical custody. The divorce became final on July 27, 2001, with the petitioner retaining physical custody of T.L. However, on June 27, 2003, the judge entered an order entrusting the physical custody to the father with weekend visitation to the petitioner. The Court based its ruling, among other things, upon evidence presented by the father that he was doing well in his treatment for paraphilia (a sexual disorder) and because the mother had not complied with a directive of the Court to obtain individual counseling "to address what the court perceives as her own serious mental health issues." The petitioner states that she contested the custody decision, but as from 2005, the courts granted sole legal and physical custody of T.L. to the father. The petitioner was restricted to supervised visits due to court findings that she had failed to comply with various court orders.

2. The petitioner recounts a series of alleged instances of sexual abuse, with specific circumstances, dates, reference to state officials who were informed, and in several instances refers to medical diagnoses that would be consistent with allegations of sexual abuse. In addition, the petitioner gives multiple examples of statements made by T.L. indicating that her father sexually abused her. Moreover, the petitioner reports that another daughter of the petitioner from a previous marriage, born in 1987, also declared having been sexually abused by her step-father between the ages of eight and thirteen, and for that reason tried to commit suicide in 2001. The petitioner indicates that, on October 25, 2006, her ex-husband settled a civil suit with the other daughter in a sexual abuse case.

3. In addition, the petitioner reports that her ex-husband's stepson was arrested and charged with aggravated sexual battery perpetrated against his biological sisters in February 2010 and that his custody was modified to ensure that he would not have any contact with his sisters. However, no special measures were taken to ensure the protection of T.L. when he visited his mother and step-father. Finally, the petitioner claims that T.L.'s step-mother has an extensive history of domestic violence against her previous spouse and children and that she subjected T.L. to race-based physical, psychological and emotional abuse while T.L. was in her father's custody. The petitioner indicates that on January 3, 2014, T.L.'s father filed for divorce and applied for an extended protective order where he asked, based on "health and safety" reasons, that his wife be prohibited from having contact with T.L.

4. The principal complaint presented by the petitioner alleges that Prince William County Police and the Department of Social Services failed to investigate the allegations of sexual abuse on the person against T.L. despite petitioner's numerous denunciations between 2000 and 2007. She believes that "they based their decision not to investigate the allegations of abuse because of [T.L.'s] race, Black-American, and because the father is Caucasian." In 2005, the petitioner filed a complaint of police misconduct with the Police Internal Affairs Office requesting an investigation of what she characterized as alleged perjury committed by a Detective of Prince William County Police. She claims that she subsequently received a letter in 2005 informing her that the Detective "did not violate any law by not conducting an investigation." In 2008 she filed a petition with the Federal Bureau of Investigation regarding the alleged police corruption surrounding T.L.'s case, but the outcome was no intervention. In 2009, she filed a petition for assistance with the Department of Justice but was allegedly informed that the Department would not intervene. In 2011, she sought the assistance of the Attorney General but was informed that she would receive no further assistance on this issue. The petitioner also filed a complaint with the Judicial Inquiry and Review Commission in June 7, 2007, against the judge in charge of T.L.'s custody proceedings alleging judicial misconduct.

5. Petitioner finally alleges that Prince William County police officials violated the American Declaration by retaliating against her, due to her work to raise awareness of alleged police missteps in child abuse cases involving African-American children. Petitioner claims moreover that police, social workers, and Virginia state judges have all contributed to the current situation of alleged continued child abuse, denial of justice, and violation of rights of African-American women and children in Virginia.

6. The State alleges that the petition is inadmissible a) for failure to pursue and exhaust domestic remedies; b) because it does not state facts that tend to establish a violation of the American Declaration; c) because it is manifestly groundless; and d) because supervening information renders the petition inadmissible. The State argues that there is nothing in the record that demonstrates that petitioner has ever sought a judicial remedy for her claims against the United States, nor that she has even attempted to appeal the decisions of the lower courts in the initial custody matter, despite the fact that decisions of the Circuit Courts -such as the Prince William County Circuit Court, which issued the custody orders relevant to the Petition- are reviewable by the Virginia Court of Appeals.

7. As regards administrative remedies, the State argues that the petitioner provides limited documentation to demonstrate that she did raise at least some of the allegations of abuse of T.L. with law enforcement authorities, and that documentation shows that each of these claims was investigated and determined to be unfounded. Moreover, the petitioner provides no explanation or evidence of whether she attempted to pursue the ample opportunities she has under state law to bring a civil tort suit or to seek criminal charges against those private actors she claims are responsible for her injuries and the injuries to her children. It adds that both the law and the circumstances permit petitioner to exhaust domestic remedies despite her alleged indigence, and the exceptions to the exhaustion requirement are not met.

8. It argues that the petition also fails to state facts that tend to establish a violation of rights set forth in the American Declaration and the United States thus may not be found to have failed to honor a commitment under the Declaration based on the conduct of private individuals acting with no complicity or involvement of the government.

9. The State emphasizes that T.L. and her other daughter are all now above the age of 18 thus presumably emancipated adults legally empowered to make their own decisions about where and with whom they live. It states that the petitioner in this matter has asked the Commission to involve itself in a private dispute between her and her ex-husband over the custody of a child combined with vague allegations against state and local officials in the U.S. State of Virginia, for alleged actions and inaction related to that custody dispute, with little or no supporting evidence or other substantiation, despite having transmitted to the Commission a large number of documents. It also states that reviewing the merits of this petition would require the Commission to delve into sensitive family matters governed by domestic family law, involving significant evidentiary records and testimony, including from expert witnesses. It considers that the Commission does not have the resources, the mandate, or the requisite expertise to perform such a task.

10. It concludes that the Commission must also dismiss the petition to the extent it asserts violations based on generalized allegations of bias against African-Americans and women by law enforcement and within the U.S. judicial system. Petitioner alleges that many of the actions or omissions of law enforcement and other state officials, were, at least in part, motivated by racial and/or gender biases; therefore the petitioner asks the Commission to entertain an *actio popularis*, something the State emphasizes the Commission cannot do within its mandate.

VI. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

11. The petitioner indicates that between 2000 and 2007 she filed at least five complaints of sexual abuse against her ex-husband (to the Prince William County Police Department, Fairfax County social services and US Department of Health and Human Services) and that in some cases no investigation was conducted and the few times one was initiated it was closed without diligent investigations. She further argues that she and her daughter T.L. did not have effective access to justice because of racial discrimination. For its part, the State alleges that domestic remedies in the custody proceedings have not been exhausted. It also argues that the petitioner did not bring civil suits against state or local governments or officials, nor has she cited any attempt to pursue civil suits under other statutes against federal, state, or local governmental authorities.

12. According to the information provided, the five complaints of sexual abuse filed by the petitioner against her ex-husband were deemed unfounded. The IACHR observes that the proceedings initiated both to determine responsibility in relation to the alleged acts of sexual abuse to the detriment of T.L. and in relation to the alleged discrimination by the police, were either closed in the investigative stage or no investigation was initiated. Moreover, according to the information available, it appears that no investigation was conducted with regard to the complaints filed with the Police Internal Affairs Office and the Department of Justice regarding the alleged failure of the police and the Department of Social Services of Virginia to investigate allegations of sexual abuse. The requirement of exhaustion of domestic remedies does not mean that the alleged victims have the obligation to exhaust every possible remedy available to them. The Inter-American Commission has maintained that “if the alleged victim endeavored to resolve the matter by making use of a valid, adequate alternative available in the domestic legal system and the State had an opportunity to remedy the issue within its jurisdiction, the purpose of the international legal precept is fulfilled.”³ The Commission therefore concludes that it has sufficient elements to believe that the exception set forth in Article 31.2 (b) of its Rules of Procedure is applicable in this case.

13. The petition was filed on February 19, 2008, and the facts denounced allegedly began in 2000 and the consequences concerning the presumed lack of investigation have allegedly extended over the years. Therefore, the Commission declares that the petition was filed in a timely manner in accordance with Article 32.2 of the IACHR’s Rules of Procedure.

14. Finally, the Commission concurs with the State’s assessment that the procedure set forth in Article 26 of the IACHR’s Rules of Procedure for the examination and determination of possible state responsibility in individual cases cannot be invoked to examine general or abstract situations. However, this is not an assessment applicable to the matter under analysis. The claim presented by the petitioners does not constitute an abstract complaint, given that it alleges concrete violations of the rights of specific individuals, specifically the petitioner and her daughter.

VII. ANALYSIS OF COLORABLE CLAIM

15. According to the allegations, the alleged victim was sexually abused by her father on multiple occasions, and the Prince William County Police Department and Social Services in Virginia failed to investigate the complaints. The petitioner claims that she was denied access to domestic remedies to protect her daughter given that her complaints were not duly investigated by domestic authorities, who allegedly treated her in a discriminatory way on the grounds of her race. As a result, if proved, the facts alleged could establish a possible violation of the rights protected by Articles I (life, liberty and personal security), II (equality before law), VII (protection for mothers and children), XVII (recognition of juridical personality and civil rights), and XVIII (fair trial) of the American Declaration.

16. The Commission admits the present petition with respect to the principal complaint presented, the allegations that denunciations of sexual and other forms of abuse were not addressed with due diligence. This analysis will consider the claims that race played a role in the allegedly deficient response. The Commission finds that, in contrast to the specific information presented with respect to alleged sexual abuse and lack of investigation, the information about the custody proceedings is general and limited, and does not provide a basis to characterize possible violations of the American Declaration. The fundamental complaint at issue is whether the alleged failure of the authorities to respond to the allegations of sexual abuse placed T.L. in a situation of danger.

17. Lastly, the IACHR finds that the petitioner has not sufficiently substantiated allegations so as to permit the Inter-American Commission to determine, for the purposes of the admissibility of this petition, that the facts tend to establish *prima facie* violations of Articles IV, V, VI, IX, X, XXIV, XXVI, XXX of the American Declaration.

³ IACHR, Report N° 73/12, Petition 15/12, Admissibility, Edgar Tamayo Arias. United States, July 17, 2012, para. 37.

18. Regarding the State's pleadings on the doctrine of fourth instance, the Commission recognizes that it lacks competence to review judgments handed down by domestic courts acting in the realm of their own competence, in observance of the rights to due process and judicial guarantees. However, it reiterates that, within the framework of its mandate, it is competent to declare a petition admissible and rule on its merits when the petition addresses domestic proceedings that could violate rights protected by the American Declaration.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles I, II, VII, XVII, and XVIII of the American Declaration;

2. To find the instant petition inadmissible in relation to Articles IV, V, VI, IX, X, XXIV, XXVI, XXX of the American Declaration; and

3. To notify the parties of this decision; to continue with the analysis on the merits; and 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 Bogotá, Colombia, on the 24th day of the month of February, 2018.
(Signed): Margarete May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice President; Luis Ernesto Vargas Silva, Second Vice President; Francisco José Eguiguren Praeli, Joel Hernández García, Antonia Urrejola, y Flávia Piovesan, Commissioners.