

OEA/Ser.L/V/II.168  
Doc. 48  
4 May 2018  
Original: Spanish:

**REPORT No. 38/18**  
**PETITION 140-09**  
REPORT ON ADMISSIBILITY

MARIA G AND FAMILY  
COLOMBIA

Approved by the Commission at its session No. 2126 held on May 4, 2018.  
168<sup>th</sup> Special Period of Sessions.

**Cite as:** IACHR, Report No. 38/18, Petition 140-09. Admissibility. Maria G. and family.  
Colombia. May 4, 2018.



**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Interdisciplinary Group for Human Rights
<b>Alleged victim:</b>	Maria G <sup>1</sup> . and Family
<b>Respondent State:</b>	Colombia <sup>2</sup>
<b>Rights invoked:</b>	Articles 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 11 (right to privacy), 22 (movement and residence) and 25 (judicial protection) of the American Convention on Human Rights <sup>3</sup> regarding article 1 (obligation to respect rights) and 2 (Domestic legal effects); article 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women <sup>4</sup> , and; Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture <sup>5</sup>

**II. PROCEEDINGS BEFORE THE IACHR<sup>6</sup>**

<b>Filing of the petition:</b>	February 11, 2009
<b>Additional information received at the stage of initial review:</b>	March 24, 2009
<b>Notification of the petition to the State:</b>	August 02, 2010
<b>State's first response:</b>	February 25, 2013
<b>Additional observations from the petitioner:</b>	May 15, 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 (deposit of instrument of ratification on July 31, 1973); Convention of Belém do Pará (instrument of accession deposited on November 15, 1996); Inter-American Convention to Prevent and Punish Torture (deposit of instrument made on January 19th, 1999)

**IV. 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
---	----

<sup>1</sup> On June 30th, 2011, the petitioner requested to maintain confidentiality regarding the name of the alleged victim, requesting that it be referred to under the name "María G.". Additionally, they requested confidentiality about the data of their relatives.

<sup>2</sup> In accordance with the provisions of Article 17.2.a of the Regulations of the Commission, Commissioner Luis Ernesto Vargas Silva, of Colombian nationality, did not participate in the debate or in the decision of the present case.

<sup>3</sup> Hereinafter "Convention" or "American Convention."

<sup>4</sup> Hereinafter "Convention of Belém do Pará".

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

<sup>6</sup> On May 25th, 2011, the Commission placed itself at the disposition of the parties for a friendly settlement within the frame of an expression of will made by the State, an expression that was accepted by the petitioner. However, on October 12th, 2012, the latter requested to close the friendly settlement process and to continue with the processing of the petition. All the observations of each party, including those sent in the frame of the friendly settlement process, were duly submitted to the counterpart.

<b>Rights declared admissible</b>	Articles 5 (personal integrity), 7 (personal liberty), 8 (fair trial), 11 (right to privacy), 22 (movement and residence), 24 (Equal Protection), and 25 (judicial protection), regarding articles 1.1 (obligation to respect rights) and 2 (Domestic legal effects) of the American Convention on Human Rights; Article 7 of the Convention of Belém do Pará; and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, in the terms of Section VI
<b>Timeliness of the petition:</b>	Yes, in the terms of Section VI

## V. FACTS ALLEGED

1. The petitioner claims that on November 26th, 2002, Maria G. (hereinafter "the alleged victim"), who at the time of the incident was 18 years old, was approached by six hooded and armed individuals, dressed in military clothing and armbands of the United Self-Defense Forces of Colombia (hereinafter "AUC"), while on her way to secondary school "Ramón Munera Lopera", in Carpielo neighborhood, in Medellín city. She indicates that the subjects blindfolded her and made her walk for about five minutes, taking her to an unknown place. The alleged victim specifies that on the way, she felt that more armed individuals approached, who were communicating by radiotelephones.

2. She indicates that the alleged victim was questioned about her brothers and about her activities as a youth leader, accusing her of being a guerrilla member. It is alleged that she was subjected to torture, receiving cuts with a knife, a cigarette burn, and beatings. She also states that she was raped by three persons while the rest of the group laughed and pleaded their turn to have sexual intercourse with her. She indicates that she received death threats, and was marked with a knife on her forearm with the letters "AUC". She adds that, after the humiliations she was subjected to, they made her walk back, ordering her to take a piece of paper with an intimidating phrase and to show it in her neighborhood, leaving her close to Bello-Oriente Primary School. After the events, the alleged victim was assisted by two persons who came out of a house nearby, and who took her to the school, where they provided initial care. She states that she was then transferred to Instituto Médico del Tórax (Thorax Medical Institute), and was assisted by a psychologist and a physician. She states that due to the threats by the paramilitaries who said they did not want to see her nor her family again, she and her family moved to Bogotá city, abandoning their jobs and studies. She says that, given the difficulties and hardships they had to go through, they returned to Medellín some time later.

3. She states that the day after the facts, the alleged victim filed a complaint for the crime of violent carnal access before the Emergency Response Unit of the Prosecutor's Office. She argues that a criminal investigation was opened at the 156<sup>th</sup> Sectional Prosecutor's Office of Medellín, which ordered on November 28th, 2002 the taking of laboratory samples at the National Institute of Legal Medicine and Forensic Sciences and the process was referred to the Unit of Crimes against Freedom, Integrity, Sexual Orientation and others. She indicates that on December 10th, 2010, the 102nd Sectional Prosecutor ordered the investigation to be sent to the Specialized Sectional Prosecutor's Office in consideration of the quality of the procedural subjects, being filed in the 26th Delegate Prosecutor's Office before the Criminal Judges of the Specialized Circuit of Medellín. She highlights that despite many years went by, the investigation remained in the preliminary stage without having made serious efforts to identify the alleged perpetrators, "noting that the paramilitaries of Bloque Metro who later on joined the Bloque Cacique de Nutibara, demobilized from 2004 and [they were] being heard in spontaneous declarations."

4. Regarding the alleged lack of exhaustion of domestic remedies proposed by the State, she argues that the only procedure carried out by the Prosecutor's Office was the "legal medical examination of the alleged victim," and that only when the representatives of the alleged victim brought a criminal indemnity action, the Prosecutor's Office began to take steps. She states that in this context, the proceedings carried out

in the investigation were mostly requested by the representatives of the alleged victim. Therefore, they claim that the Prosecutor's Office has made a total omission to investigate.

5. The petitioner explains that the context in which the events occurred is part of the dispute over territorial control between the Metro and Cacique Nutibara blocks of the AUC, who exercised control over Carpinelo neighborhood, which belongs to the municipality of Medellín. She states that these groups kept strong alliances with Metropolitan Police officers in Valle de Aburra, without which it would have been impossible to commit crimes such as the one in this case, since they were carried out by armed, uniformed commandos, with communication equipment, acting freely in the streets of the suburbs of Medellín. She adds that in the context of the confrontations between the different armed groups, sexual violence against women became a practice carried out mainly by officers and paramilitaries, who used this mechanism as a method of intimidation in the communities and for marking out territories. She argues that the aforementioned context "are legal and factual issues that the Inter-American Court has declared proven in various sentences," and provides evidence that would account for the connivance between the police and the army, who allowed paramilitaries to act in the most vulnerable areas of Medellín.

6. On its part, the State alleges that the matter is inadmissible. It states that there are no elements to prove that the commission of the conduct disputed was due to an action attributable to State agents and that the alleged relationship between the self-defense groups who commit crimes in the sector and the National Police are not supported in any evidence. It states that, from the account of the facts, it can be inferred that the attacks against the alleged victim were due to the action of "criminal elements, without the acquiescence or collaboration of any state entity". Additionally, it opposes the assertion of the petitioner regarding the implementation of sexual violence against women as an instrument of war by the public force. It argues that, faced with the problem of armed groups in the area and the escalation of violence, the State confronted it directly, through the implementation of all necessary actions for the promotion and protection of the human rights of inhabitants.

7. It indicates that the petition is inadmissible due to lack of characterization of the facts of a violation of human rights in accordance with Article 47.b of the Convention. It argues that in the specific case there are no elements showing a collaboration or acquiescence of state agents, through actions or omissions, in regards to the actions of the illegal armed group that allegedly raped the alleged victim. It states that the complaint shows that the acts were committed by members of the AUC, without being evidence of the alleged alliances with police officers. It adds that it has not been demonstrated that the State knew the risk situation and did not adopt effective prevention measures to avoid its realization.

8. In addition, it states that domestic remedies were not exhausted and that the existence of an unjustified delay in the administration of justice cannot be alleged and the exception of article 46.2.c of the Convention applies, since the facts surrounding the subject matter contain multiple difficulties related to the seriousness of the facts, the plural number of participants and the difficulties that have arisen for their individualization. It states that the Fiscalía General de la Nación (Office of the Attorney General) has taken all the necessary actions to identify the aggressors of the alleged victim and argues that, taking into account the complexity of the case and the diligent action of the judicial authorities, it cannot be said that there is an unjustified delay in the administration of justice.

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

9. The petitioner argue that there is an unjustified delay by the State in complying with its investigative obligations, with the exception to the exhaustion of domestic remedies contained in Article 46.2.c of the Convention. For its part, the State argues that the criminal investigation has been carried out diligently and that, according to the complexity of the case, there would be no exception to the requirement of exhaustion of domestic remedies, but rather, domestic remedies have not been exhausted, which is why the petition is inadmissible.

10. The Commission considers that in situations such as the one proposed, the domestic remedies that must be taken into account for purposes of admissibility of the petition are those related to the criminal investigation. Based on the information available, the Commission notes that at the time of the issuance of the admissibility report, 15 years have elapsed since the events occurred without them having been judicially determined, not having individualized the authors and no sanctions having been established, the investigation being still in preliminary progress. In view of the foregoing, the Commission considers that the exception contemplated in Article 46.2.c of the Convention is verified.

11. Regarding the timeline for submission, since the petition was filed to the Commission on February 11th, 2009, and the facts allegedly occurred on November 26th, 2002, the investigation is still open at the initial stage, and the alleged effects would be extended to the present, the Commission considers that the admissibility requirement should be considered satisfied.

## **VII. ANALYSIS OF COLORABLE CLAIM**

12. In light of the factual and legal arguments provided by the parties and the nature of the matter being heard, the Commission deems that, were proof to be established of the lack of due diligence in the investigation and punishment of those responsible for the alleged violations of freedom and integrity, torture, rape and threats suffered by María G. and her internal displacement, as well as the alleged participation or acquiescence of state agents in the events, could characterize possible violations of Articles 5, 7, 8, 11, 22, 24 and 25 of the American Convention, in accordance with Articles 1.1 and 2 of said treaty, as well as Article 7 of the Convention of Belém do Pará, and Articles 1, 6 and 8 of the CIPST to the detriment of the alleged victim. Additionally, with regard to the allegations related to internal displacement and its effects, as well as the effects that the alleged denial of justice has on the family, the facts could characterize violations of Articles 5, 8, 22 and 25 to the detriment of her relatives.

## **VIII. DECISION**

1. To declare this petition admissible regarding Articles 5, 7, 8, 11, 22, 24 and 25 of the American Convention in accordance with Articles 1.1 and 2 of said treaty; Article 7 of the Convention of Belém do Pará; and Articles 1, 6 and 8 of the CIPST; and

2. To notify the parties of this decision; to continue with the analysis on the merits; and to publish this decision as well as to include it in the General Meeting Annual Report of the Organization of American States.

Done and signed in the city of Santo Domingo, Dominican Republic, on the 4<sup>th</sup> day of the month of May, 2018. (Signed): Margarete May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice President; Francisco José Eguiguren Praeli, Joel Hernández García, and Flávia Piovesan, Commissioners.