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REPORT No. 26/19
PETITION 1666-11
REPORT ON ADMISSIBILITY

IDALIA HOLLAND AND DAUGHTERS
UNITED STATES OF AMERICA

Approved electronically by the Commission on March 11, 2019.

Cite as: IACHR, Report No. 26/19, Petition 1666-11. Admissibility. Idalia Holland and daughters. United States of America. March 11, 2019.



I. INFORMATION ABOUT THE PETITION

Petitioner:	Idalia Holland
Alleged victim:	Idalia Holland and daughters ¹
Respondent State:	United States of America ²
Rights invoked:	Articles I (life, liberty and personal security), VI (right to a family and to protection thereof), VII (protection for mothers and children), XVII (recognition of juridical personality and civil rights), and XVIII (fair trial) of the American Declaration of the Rights and Duties of Man ³

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition:	November 20, 2011
Additional information received at the stage of initial review:	September 9, 2012
Notification of the petition to the State:	November 13, 2013
State's first response:	October 22, 2014
Additional observations from the petitioner:	November 20, 2014

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), VI (right to a family and to protection thereof), 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
Timeliness of the petition:	Yes

V. FACTS ALLEGED

1. Petitioner, Ms. Idalia Holland, alleges that in 2003 her ex-husband brutally attacked her daughters physically and sexually. She indicates that the youngest daughter, C.R., age 6 at the time, was allegedly rendered mentally and emotionally disabled from the attack, and as a result had to be

¹ Petition identifies the alleged victim's daughters as M.N. and C.R. age 12 and 6 respectively. In this report, the IACHR reserves the identity of them by using initials in order to safeguard their identity on the grounds that it contains allegations of sexual violence and other abuses against children.

² Hereinafter "United States."

³ Hereinafter "Declaration" or "American Declaration."

⁴ The observations submitted by each party were duly transmitted to the opposing party.

homeschooled and continues to require home care for life. The older daughter, M. N., aged 12, was allegedly brutally raped and sodomized.

2. Ms. Holland claims that on October 10th, 2003, the Petitioner, M.N., and a witness reported the sexual abuse Of M.N. to the Pocono Mountain Regional Police of the State of Pennsylvania (hereinafter “Police Department”) and were referred to Children and Youth Services (hereinafter “CYS”) in Monroe County, Pennsylvania, with an appointment scheduled for October 11, 2003. The Petitioner alleges that CYS questioned the children without medical examination and deemed the case unfounded despite the police report filed by the alleged victims. The Petitioner claims that the Police however never investigated or filed the police report of sexual abuse made on October 10, 2003, and instead recorded a report lodged on that same date -claiming to be by the Petitioner- stating a breach of a Protection from Abuse Order by her husband, affirming that she had received threats and was harassed. She indicates that because of these discrepancies, the alleged abuser was not prosecuted.

3. Prior to November 13, 2003, the Petitioner alleges that the accused was granted “custody” rights over C.R., and had her with him in New Jersey for a weekend. During this time, C.R. was allegedly abused to the extent of being mentally challenged. On November 13, 2003, the Petitioner claims that her lawyer entered a Praecipe and requested an emergency hearing, explaining the sexual abuse and requesting an expedited disposition. It is indicated that the accused did not appear for the custody hearing on November 25, 2003.

4. The Petitioner moved to Florida, and claims that after speaking with representatives of her daughters’ school, she was referred to Children Advocacy Center (hereinafter CAC), which began an investigation along with Child Protective Services (hereinafter CPS) in Florida; which included audio –visual recordings of their interviews and medical examinations. The agencies then allegedly concluded that there was abuse by the alleged perpetrator⁵.

5. Ms. Holland claims that in 2007 the Governor of the State of Pennsylvania reopened the case and had CYS investigate the matter. Via letter dated May 30, 2007, the agency indicated that M.N. was abused, a conclusion confirmed by further notification in letter June 26, 2007. However, CYS concluded that C.R. was abused in New Jersey and made a referral to Newark Children and Families agency in Essex County. M.N.’s matter was reported to the Childline Abuse Registry but, as indicated, no contact with law enforcement authorities was made, despite child protection laws mandating information sharing between child welfare authorities and law enforcement.

6. On April 4th, 2011 the petitioner allegedly filed a civil lawsuit with the Lackawanna Court, as a suit for more than \$50,000 could not be filed with the Monroe County Court of Common Pleas. The lawsuit was filed against the alleged agencies in violation of Ms. Holland’s civil rights, for supposed negligence in the handling of the matter and failing to act; and on June 2nd 2011 she filed a default judgment entered as a result of neither agency responding to suit and failing to appear at the court hearing. On June 2, 2011 a Praecipe for judgment was entered in favor of Ms. Holland against the Police Department and CYS in the sum of seven million dollars and one million dollars in interest from 2003 until the date of the Default Judgment order. On June 13th 2011, CYS filed to have the judgment stricken off, which was granted by the Court on August 23, 2011, along with an order for the case to be transferred to the lower County Court of Common Pleas, which did not have jurisdiction to hear claims for the amount contained within said lawsuit.

7. The petitioner additionally alleges that a Writ of Execution granted was not served by the Monroe County Sheriff’s Department onto the Pocono Mountain Regional Police Department contrary to the service of writ of execution rules; and submits this as evidence of the perpetuation of a corrupt “buddy system” where State agencies protect the wrong actions of other agencies by barring the execution of justice.

⁵ No further information on the alleged perpetrator was contained within the Petition.

8. The petitioner alleges the existence of a corrupt legal system and corrupt protection agencies of the Monroe and Lackawanna Counties within the State of Pennsylvania. She further alleges falsified police reports; errors and omissions in recordings on the part of the Police Department; and acceptance by the Court of incorrect information as fact, such as the contact and address data contained within reports. Ms. Holland claims specifically that during preliminary objections, in relation to a 1st Amendment complaint filed by her on September 9th 2011, CYS claimed to have no knowledge of a police report filed for sexual abuse on or around October 2003, but during oral argument on November 7th, 2011 CYS stated that the sexual abuse police report was recovered, the matter had been investigated and it found no reason to investigate further.

9. Ms. Holland asserts that on December 9, 2011, the Petitioner's motion for continuance was denied, further on December 21, 2011 the amended order for her notice to appeal was denied. On May 10, 2012, the Lackawanna County Court issued an order prohibiting the Petitioner from further filings.

10. Ms. Holland was notified December 19th, 2011 that her claim for leave to file an Amended Complaint was rejected by the Monroe County Court of First Instance, ruling that there was no constitutional duty on the State to protect children from a non-state actor, after receiving reports of abuse. Further the Court ruled, as the public agencies could only be liable under federal law for policies or customs which caused deprivation of civil or constitutional rights, there was no substantial claim as the Petitioner did not plead any actionable policy, procedure or systematic act by the public agencies in her pleadings.

11. The State found the matter to be unfounded according to the Rules of Procedure of the Commission, however no specific rules were specified.

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

12. The petitioner claims that several attempts were made to build a criminal case against the alleged perpetrator, but through false reporting, and poor or no investigations by the appropriate authorities her attempts failed. It was in 2007, as alleged, that more thorough investigations were carried out in Florida and thereafter the alleged abuse was indicated by CAC, CPS and CYS thereafter. However, she alleges that there was no sharing of information with law enforcement, and therefore the alleged perpetrator was not arrested and prosecuted.

13. Ms. Holland asserts that she submitted a series of complaints filed between 2003 and 2007, with several claims of negligence and misfeasance by the public agencies to various domestic courts until December 2011. Further, despite several civil claims regarding failure of the Police Department and the CYS to investigate allegations of child abuse, the petitioner alleges and the State does not contend otherwise, that the judicial system in partnership with the law enforcement and protective services agencies facilitated the dismissal of claims and barred any actions against the agencies responsible. Her civil claim against the Police Department and CYS was rejected on August 23, 2011 and by virtue of an Order on May 10, 2012 she was prohibited from further filings.

14. The facts alleging the violation of the victims' rights under the American Declaration allegedly began in 2003 with the alleged lack of investigation by the protective services and extended over the years. As regards criminal remedies the petition falls within the exceptions of Article 46.2.b as the Petitioner alleges to have been denied access to remedies and further, as regards her civil remedies, was prevented from exhausting remedies. Moreover, the petitioner was notified on August 23, 2011 that her civil claim against the Police Department and CYS (due to a consolidation order of the cases) were struck off and therefore the petition was filed within six months to the date of notification of her last attempt at recourse through the domestic legal system; being filed on November 20th, 2011. Therefore the Petition was overall filed in a timely manner.

VII. ANALYSIS OF COLORABLE CLAIM

15. According to the allegations, State agencies failed in their duty to protect citizens especially children; in their failure adopt protective measures to prevent new acts of sexual violence or to adopt reparation measures; and in their failure to diligently investigate complaints of alleged acts of physical and sexual violence against minors. Further the non-responsiveness and irregularities alleged in the law enforcement and judicial process caused undue delay in protection; and accordingly it is alleged that State agencies failed to investigate complaints of breach of duty by the alleged public agencies.

16. 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), VI (right to a family and to protection thereof), VII (protection for mothers and children), XVII (recognition of juridical personality and civil rights), and XVIII (fair trial) of the American Declaration.

VIII. DECISION

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

2. 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.

Approved by the Inter-American Commission on Human Rights on the 11th day of the month of March, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández García, First Vice President; Antonia Urrejola, Second Vice President; Margarete May Macaulay, Francisco José Eguiguren Praeli, Luis Ernesto Vargas Silva, and Flávia Piovesan, Commissioners.