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REPORT No. 25/17
PETITION 86-12
REPORT ON ADMISSIBILITY

BRISA LILIANA DE ANGULO LOSADA
BOLIVIA

Approved by the Commission at its session No. 2077 held on March 18, 2017.
161th Regular Period of Sessions.

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REPORT No. 25/17¹
PETITION P-86-12
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 BRISA LILIANA DE ANGULO
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I. INFORMATION ABOUT THE PETITION

Petitioning party:	Child and Family Advocacy Clinic; Hughes Hubbard & Reed LLP; Equality Now; <i>Oficina Jurídica para la Mujer</i> and Maria Leonor Oviedo Bellott ²
Alleged victim:	Brisa Liliana de Angulo Losada
State denounced:	Bolivia
Rights invoked:	Articles 5 (Right to Personal Integrity), 8 (Right to A Fair Trial), 11 (Right to Privacy), 19 (Rights of the Child), 24 (Right to Equal Protection) and 25 (Right to Judicial Protection) of the American Convention on Human Rights; ³ and Article 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women ⁴

II. PROCEDURE BEFORE THE IACHR⁵

Date on which the petition was received:	January 18, 2012
Date on which the petition was transmitted to the State:	November 18, 2013
Date of the State's first response:	March 7, 2014
Additional observations from the petitioning party:	July 2, 2014
Additional observations from the State:	October 18, 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 Convention (the instrument of ratification was deposited on July 19, 1979); and Belém do Pará Convention (the instrument of ratification was deposited on December 5, 1994)

¹ Commissioner James L. Cavallaro, a citizen of the United States, considered that, based on Article 17(3) of the Rules of Procedure of the IACHR, he should abstain from participating in the deliberation and decision on this matter.

² This petition was initially lodged also by the International Human Rights Law Clinic, American University Washington College of Law; however, on May 8, 2015 the alleged victim informed the IACHR that it would no longer continue as a petitioner.

³ Hereinafter "the American Convention" or "the Convention."

⁴ Hereinafter "Belém do Pará Convention."

⁵ The observations presented by each party were duly transmitted to the opposing party.

IV. ANALYSIS OF 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 5 (Right to Humane Treatment), 8 (Right to a Fair Trial), 11 (Right to Privacy), 19 (Rights of the Child), 24 (Right to Equal Protection) and 25 (Right to Judicial Protection) of the American Convention, in connection with Articles 1.1 and 2 thereof; and Article 7 of the Belém do Pará Convention
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes; exception in Article 46.2(c) of the ACHR applies
Timeliness of the petition:	Yes, under the terms of Section VI

V. ALLEGED FACTS

1. The petitioners declare that the alleged victim is an American and Colombian citizen living in Bolivia. They declare that between 2001 and 2002, at age 16 and living in the city of Cochabamba, she was sexually abused by her cousin (ten years older than her) on several occasions. They indicate that she was also mistreated and beaten, but that she hid this from her family due to the threats from the offender. In 2002, after noticing her severe physical and psychological decline, her parents took her on a trip to the United States so that she could see her siblings. It was then that they learned about the facts and returned to Bolivia to file a police report. They assert that the alleged victim was re-victimized by police officers, prosecutors and judges and that over fourteen years later the perpetrator is still free since no criminal conviction was ever imposed on him.

2. They claim that on July 15, 2002 the alleged victim's father initially filed a complaint to the NGO Defence for Children International, which after a psychological exam of the alleged victim concluded that she had been sexually abused. Moreover, the Prosecutor's Office demanded a medical examination, which was carried out on July 31, 2002, by a forensic physician and five male students without the consideration and care that was required, even though she cried during the whole procedure. The petitioners declare that throughout the investigations, she had to repeatedly give her account of the facts to the prosecutor, who often tried to blame her for provoking the sexual assault and who also threatened to imprison her if they found she was lying.

3. Moreover, they claim that the judicial authorities did not take any measures to keep the offender in pre-trial detention, putting the alleged victim's personal integrity at risk. They say she was threatened and harassed and that there were two attempts to set fire to her house. They allege that on March 28, 2003, the Fourth Trial Court convicted the accused to seven years in prison for statutory rape, despite charges having been filed for rape. On June 5, 2003, after examining the appeals lodged by the parties, the First Criminal Chamber of the High Court of Cochabamba annulled the judgment and ordered another court to reconsider the matter. On July 2, 2004, after the alleged victim's parents filed an appeal to vacate the judgment and two constitutional writs of *amparo*, the Constitutional Court annulled the proceedings and ordered the trial court to once again take the alleged victim's statement in the presence of the accused's defense counsel.

4. On September 27, 2005, the Second Trial Court acquitted the accused on the grounds that there were no signs of violence or threat, which, according to the judges, are elements required in order for the facts to constitute rape. Consequently, the alleged victim filed an appeal that was rejected by the First Criminal Chamber of Cochabamba on March 6, 2006. She later lodged an appeal to vacate the judgment, which the First Criminal Chamber of the Supreme Court accepted, ruling that new oral proceedings were to be conducted.

5. During the third trial, the Third Trial Court ordered the victim to subject herself to a second forensic examination, which was carried on August 20, 2008 (6 years after the first exam). The petitioners submit that the hearings did not take place since the accused fled to Colombia and was declared to be in default on October 28, 2008. They also claim that the offender has never been captured and continues to threaten the alleged victim through telephone calls. Finally, they submit that there is an unwarranted delay of justice, given that the accused has yet to be criminally sanctioned after over fourteen years of proceedings.

6. The State asserts that the petition is inadmissible given that domestic remedies have not been exhausted. In this regard, it says that the criminal proceedings against the assailant of the alleged victim have not yet concluded and that there are other remedies that can be lodged during the remaining stages of the proceedings until a final judgment is entered against the accused. Likewise, the State argues that on October 28, 2008, the defendant was declared to be in default and proceedings were therefore suspended and an arrest warrant was issued against him. It claims that in complying with the said warrant, the Third Court of Cochabamba took measures to arrest the accused and on February 28, 2014, the Prosecutor's Office requested INTERPOL Bolivia, in cooperation with INTERPOL Colombia, to issue a report describing the measures taken to arrest the defendant.

7. Furthermore, it asserts that in the framework of the criminal proceedings, the rights of each party have been safeguarded in accordance with domestic and international norms. Concerning the alleged violations of the rights enshrined in the Convention, it submits that after assessing the facts denounced, the competent authorities intervened according to their functions and competencies. Likewise, it claims that for several years now, the State has a policy on the protection of children and adolescents, and on the prevention of family violence. The State asserts that it has developed extensive legislation and issued administrative provisions to safeguard the rights of women, children and adolescents.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

8. The petitioners submit that the alleged victim filed a criminal complaint as a suitable domestic remedy. However, they claim the State is responsible for an unwarranted delay of justice in protecting her rights, since after over fourteen years the criminal proceedings have not yet finished and the offender has fled and remains at large and unpunished. In turn, the State submits that domestic remedies have not been exhausted inasmuch as a final judgment from the criminal proceedings has not yet been issued; consequently, there are procedural stages pending.

9. The Commission notes that the alleged acts of sexual violence against the alleged victim were reported to the Bolivian authorities in July 2002; nevertheless, to this date no criminal conviction has been entered against the person allegedly responsible. Moreover, from the information submitted by each party, the IACHR notes that given that the accused fled, the Bolivian judicial authorities declared him to be in default on October 28, 2008, but that it was not until February 28, 2014 that the Prosecutor's Office requested INTERPOL Bolivia to report the actions taken to apprehend him. Therefore, in view of the characteristics of this case, the Commission believes that the exception to the requirement of prior exhaustion of domestic remedies set forth in Article 46.2(c) of the American Convention applies to the present case. At the same time, the Commission considers that the petition was filed in a reasonable time; thus, the admissibility requirement of timeliness is met.

VII. COLORABLE CLAIM

10. In view of the elements of fact and law presented by each party and given the nature of the matter brought to its attention, the Commission finds that, if proved, the alleged acts of revictimization and the lack of effective judicial protection of the alleged victim during the criminal investigation proceedings opened as a result of the sexual assault suffered at age sixteen, could tend to establish violations of Articles 5 (Right to Humane Treatment), 8 (Right to a Fair Trial), 11 (Right to Privacy), 19 (Rights of the Child), 24 (Right to Equal Protection) and 25 (Right to Judicial Protection) of the American Convention, in connection with Articles 1.1 and 2 thereof, to the detriment of the alleged victim; as well as a violation of Article 7 of the Belém do Pará Convention.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 5, 8, 11, 19, 24 and 25, in connection with Article 1.1 and 2 of the American Convention, as well as Article 7 of the Belém do Pará Convention;
2. To notify the parties of this decision;
3. To continue with the analysis on the merits; 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 Washington, D.C., on the 18th day of the month of March, 2017. (Signed): Francisco José Eguiguren, President; Margarete May Macaulay, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño; Second Vice President, and Paulo Vannuchi, Commissioner.