

OEA/Ser.L/V/II.
Doc. 27
7 March 2019
Original: Spanish

REPORT No. 24/19
PETITION 947-10
REPORT ON ADMISSIBILITY

CELIA EDITH RAMOS DURAND AND FAMILY
PERU

Approved electronically by the Commission on March 7, 2019.

Cite as: IACHR, Report No. 24/19. Petition 947-10. Admissibility. Admissibility. Celia Edith Ramos Durand and family. Peru. March 7, 2019.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Estudio para la Defensa de los Derechos de la Mujer (DEMUS) ¹ , Marisela del Carmen Monzón Ramos, Emilia Edith Monzón Ramos, Marcia Mirabel Monzón Ramos and Baltazara Durand widow of Ramos
Alleged victim:	Celia Edith Ramos Durand ² and family ³
Respondent State:	Peru ⁴
Rights invoked:	Articles 4 (life), 8 (fair trial), 13 (freedom of thought and expression), 24 (equal protection) and 25 (judicial protection) of the American Convention on Human Rights, ⁵ in relation to its Article 1.1 (obligation to respect rights); article 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, “Belém do Pará”; ⁶ Articles 2 (equality before law) and 11 (preservation of health and well-being) of the American Declaration of the Rights and Duties of Man ⁷

II. PROCEDURE BEFORE THE IACHR⁸

Filing of the petition:	June 11, 2010
Additional information received at the stage of initial review:	October 17, 2016
Notification of the petition to the State:	May 23, 2017
State’s first response:	August 25, 2017
Additional observations from the petitioner:	January 10, 2018
Additional observations from the State:	June 15, 2018

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 (deposit of instrument on July 28, 1978) and Convention of Belém do Pará (deposit of instrument on June 4, 1996)

¹ Hereinafter “DEMUS.”

² The petitioner originally requested that the identity of the victim be protected. However, in a communication dated October 17, 2016, the petitioner indicated that the family decided to publicize the alleged victim’s story, and, accordingly, renounced to having her identity withheld.

³ Marisela del Carmen Monzón Ramos, Emilia Edith Monzón Ramos, Marcia Mirabel Monzón Ramos, the alleged victim’s daughters; Baltazara Durand widow of Ramos, the alleged victim’s mother, and Jaime Enrique Monzón Tejada, the alleged victim’s husband.

⁴ In accordance with Article 17.2.a of the IACHR Rules of Procedure, Commissioner Francisco José Eguiguren Praeli, a Peruvian national, did not partake in the discussion or the decision on this matter.

⁵ Hereinafter “Convention” or “American Convention.”

⁶ Hereinafter “Convention of Belém do Pará.”

⁷ Hereinafter “American Declaration.”

⁸ The observations submitted by each party were duly transmitted to the opposing party.

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 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 13 (freedom of thought and expression), 24 (equal protection), 25 (judicial protection) and 26 (progressive development) of the Convention regarding its Article 1.1 (obligation to respect rights); and article 7 of the Convention of Belém do Pará
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, exception in Article 46.2.c of the American Convention applies
Timeliness of the petition:	Yes, under the terms of Section VI

V. ALLEGED FACTS

1. The petitioners allege that Mrs. Celia Edith Ramos Durand (“the alleged victim” or “Mrs. Ramos Durand”) was forced to undergo a sterilization procedure in precarious conditions. They claim that the alleged victim died from that surgery. They indicate that the events occurred in the framework of the National Reproductive Health and Family Planning Program of 1996-2000 (“PNSRPF”), passed in 1996 by Ministerial Resolution No. 071-96 SA/DM and executed under the administration of former President Alberto Fujimori Fujimori. They submit that this policy consisted in providing voluntary surgical contraception (“VSC”) especially for women, particularly those coming from a poor economic background, to reduce poverty.

2. They allege that on July 3, 1997, Mrs. Ramos Durand was subjected to a voluntary surgical contraceptive procedure at the health clinic in the hamlet of La Legua, Catacaos, as part of the PNSRPF. They claim that the alleged victim suffered medical complications during surgery hence was taken to Clínica San Miguel health center, in the city of Piura. When she arrived, she was unconscious (in a coma) and had signs of serious brain injury. She died on July 22, 1997. The petitioners contend that a nurse from the health clinic had previously visited the alleged victim thrice a week, for four successive weeks. They assert that the nurse told her that it would be a minor procedure and that she would be able to walk on the same day. The petitioners indicate that the alleged victim’s next-of-kin do not know if she signed a consent form before the surgery. However, they claim that both the preoperative testing (showing on the appointment sheets), the VSC form and the consent form date from July 1, 1997; that is, less than 48 hours before surgery. They argue that the health clinic lacked the necessary equipment and drugs for the surgery, as the nurses had to buy them at the pharmacy once the alleged victim began to complain of pain. It was found that the alleged victim had suffered from brain injury as a result of prolonged, severe and insufficient oxygen supply to the brain. According to the petitioners, the health clinic failed to inform the alleged victim’s next-of-kin of the events.

3. On July 30, 1997, the alleged victim’s husband filed a complaint to the Third Provincial Criminal Prosecutor’s Office in Piura against the medical staff that participated in the procedure, for serious injury and wrongful death. On December 17, 1997, the Prosecution shelved the complaint because it could not determine the true causes of the alleged victim’s death. The Ombudsman’s Office complained of the responsible prosecutor for perverting the cause of justice by shelving the complaint on the case of the alleged victim despite the conclusive evidence and information in the investigation. On August 8, 2000, the Superior Prosecutor’s Office in Piura found the criminal complaint against the Prosecutor groundless.

4. The petitioners indicate that in 2002 the Public Prosecutor’s Office opened an investigation led by the Prosecutor’s Office Specializing in Human Rights Violations, in which the injured party was 2074 people, most of them women, including the alleged victim. After seven years of investigation, a decision was made that ordered to dismiss the complaint permanently. DEMUS appealed the dismissal, claiming that the existence of a state policy including funds and instructions for medical staff evidenced gross human rights

violations against women and a crime against humanity. Likewise, the Ad Hoc Public Prosecutor's Office for the Fujimori and Montesinos Cases appealed the dismissal, arguing that there was proof indicating top-level government planning. However, on December 11, 2009, a court of appeals issued a final resolution to dismiss the complaint about the case on forced sterilization procedures. The court considered that the matter did not establish a gross human rights violation because it was not a generalized or systematic attack, but wrongful acts committed by a few medical staff, whose liability should have been determined in each case. The resolution also indicated that, given the elapsed time, it was impossible to criminally prosecute the persons responsible, because of the application of the statute of limitation of action.

5. The petitioners claim the violation of the alleged victim's right to access complete information on contraceptive methods and their effects, as contemplated in the law, and to decide freely. They allege that although the PNSRPF was aimed at all the population in childbearing age, in practice, the Ministry of Health set coverage goals for the family planning procedures by exclusively aiming at women—never at men—, particularly women from a poor economic background. Therefore, they affirm that the State is responsible for discrimination against women in that it violated their right to reproductive health by the arbitrary limitation of their choices or decisions. Likewise, they claim that the State failed to take diligent measures to prevent, investigate and punish the events occurred in the alleged victim's case and the general case described in case file 18-2002. Therefore, they allege that the State did not guarantee the right to access justice through fair and effective legal remedies, compensation, or other fair and effective means of reparation. They submit that it was the Prosecutor's Office, which let seven years pass since the beginning of the investigations, that caused the federal criminal offenses to be barred by the statute of limitation; and that the state policy of forced sterilization was not considered a crime against humanity because of the authorities' failure to apply international rules. The petitioners thus allege lack of due investigation of their case both at the level of the Criminal Prosecutor's Office and within investigation 18-2002. They argue that domestic remedies were exhausted when the court confirmed the dismissal of investigation 18-2002, on December 11, 2009. They moreover indicate that although the investigation was reopened in 2011, the situation of Mrs. Ramos Durand has not changed and that the dismissal of the case on December 17, 1997, remains in force. Finally, they submit that, on December 24, 2017, the authorities granted Alberto Fujimori Fujimori a pardon and the right to grace on humanitarian grounds, thus preventing an investigation against him as an indirect perpetrator of forced sterilization procedures on the alleged victim and thousands of other women.

6. The State alleges lack of exhaustion of domestic remedies because the investigation is still open after resolution No. 2073-2011-MP-FN of October 21, 2011, under which the investigation of the case known as "María Mamérita Mestanza Chávez and mass forced sterilization," based on case file 18-2002, was reopened. The State claims that on July 27, 2016, the Second Supraprovincial Prosecutor's Office issued Resolution No. 16, in which it ordered to separate the proceedings concerning the people whose names appear in Appendix 19, including the alleged victim. Both the petitioners and the Anticorruption Public Prosecutor's Office filed a complaint, on August 3 and 4, 2016, respectively. On August 10, 2016, the Second Supraprovincial Prosecutor's Office granted the complaints and transmitted them to the Third Federal Superior Criminal Prosecutor's Office. On August 18, 2016, this Office decided to return all the proceedings to the original Prosecutor's Office so that it would issue a new single and comprehensive pronouncement in that respect. On December 6, 2016, the Second Supraprovincial Prosecutor's Office issued Resolution No. 21 ruling to dismiss unresolved proceedings permanently, including the alleged victim's case. The State asserts that on December 12, 2006, the petitioners and the Anticorruption Public Prosecutor's Office appealed that resolution, which proves that it was not a final decision.

7. Consequently, the State claims that the investigation is still underway and that the petitioners' appeals have not been resolved yet, and that said investigation will allow the State to solve the issue on its own. It alleges that such is an appropriate and effective remedy because it will allow the State to investigate, prosecute, and—if applicable—punish the persons responsible for the instant matter. Therefore, domestic remedies have not been exhausted hence the instant petition should be declared inadmissible.

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

8. The petitioners indicate that on July 30, 1997, the alleged victim's husband filed a complaint to the Third Provincial Criminal Prosecutor's Office in Piura against the medical staff participating in the surgery, for serious injury and wrongful death. The complaint was shelved on December 17, 1997. On August 8, 2000, the Superior Prosecutor's Office decided that the criminal complaint against the prosecutor dismissing the case was groundless. However, in 2002, the Public Prosecutor's Office filed an investigation led by the Prosecutor's Office Specializing in Human Rights Violations, case file 18-2002, which include the alleged victim. On December 11, 2009, a court of appeals ruled to dismiss the complaint permanently. The State indicates that on October 21, 2011, a decision was made to reopen the investigation, and that the petitioners appealed the dismissal of December 6, 2016. It claims that domestic remedies have not been exhausted because there is not a final decision on the matter.

9. The Commission observes that in 2002, the Public Prosecutor's Office opened an investigation led by the Prosecutor's Office Specializing in Human Rights Violations, which includes the alleged victim's case. The investigation was shelved on December 11, 2009, reopened on October 21, 2011, and shelved again on December 6, 2016. The Commission takes note of the complaint appeal presented by the petitioners back then. However, the Commission observes that the reported events occurred in 1997, over 20 years ago, yet the facts have not been established nor have responsibilities been attributed. Consequently, the exception set forth in Article 46.2.c of the Convention applies to this case. The Commission further observes that it received the petition on June 11, 2010. In view of the context and the characteristics of the case, the Commission deems that the petition was filed within a reasonable period hence meets the admissibility requirement concerning timeliness.

VII. ANALYSIS OF COLORABLE CLAIM

10. In view of the elements of fact and law presented by the parties and the nature of the matter brought to its attention, the Commission considers that, if proven, the purported sterilization on the alleged victim in precarious conditions, without her prior, free and informed consent; which allegedly caused her death, as well as the unwarranted delay in the identification of the persons responsible and persistent denial of justice, could establish violations of Articles 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 13 (freedom of thought and expression), 24 (equal protection), 25 (judicial protection) and 26 (progressive development) of the American Convention on Human Rights, under its Article 1.1 (obligation to respect rights), and article 7 of the Convention of Belém do Pará. Moreover, the Commission has established that once a State has ratified the American Convention, it is the Convention—not the American Declaration—that becomes the primary source of obligations on human rights when both may be applicable.

VIII. DECISION

1. To find the instant petition admissible in connection with Articles 4, 5, 7, 8, 13, 24, 25 and 26 of the American Convention, in relation to its Article 1.1, and article 7 of the Convention of Belém do Pará; 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 7th 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; Margarette May Macaulay, Luis Ernesto Vargas Silva, and Flávia Piovesan, Commissioners.