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REPORT No. 122/20
PETITION 1159-08
REPORT ON ADMISSIBILITY

A.N. AND AURORA
COSTA RICA

Approved electronically by the Commission on April 21, 2020.

Cite as: IACHR, Report No. 122/20. Petition 1159-08. Admissibility. A.N. and AURORA. Costa Rica.
April 21, 2020.



I. INFORMATION ABOUT THE PETITION¹

Petitioners	Centro de Derechos Reproductivos and Asociación Ciudadana ACCEDER ²
Alleged Victims: ³	P-1159-08: A.N. P-1377-13: Aurora
Respondent State:	Costa Rica
Rights invoked:	Articles 4 (right to life), 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), 11 (right to privacy), 12 (freedom of consciences and religion), and 25 (judicial protection) of the American Convention on Human Rights, in conjunction with Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) thereof ⁴ ; Article 6 of the Inter-American Convention to Prevent and Punish Torture ⁵ ; and Article 7 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women. ⁶

II. PROCEEDINGS BEFORE THE IACHR⁷

Filing of the petition:	P-1159-08: October 3, 2008 P-1377-13: August 27, 2013
Notification of the petition to the State:	P-1159-08: December 29, 2014 P-1377-13: May 21, 2015
State's first response: ⁸	May 5, 2015
Additional observations from the petitioner:	P-1159-08: May 29, 2012; September 3, and October 10 and 15, 2013; and October 9, 2014. P-1377-13: October 7 and 9, 2014 Joint observations: July 24 and September 29, 2015; January 20, 2016; February 23, March 13, April 4, June 28, July 25, and November 27, 2017; January 30, February 8 and 23, March 4, April 23 and 27, May 16, and October 12, 2018.
Additional observations from the State:	March 23, 2016; March 6, April 10, May 5, and August 3, 2017; March 5, April 5, 9 and 18, and July 27, 2018; and December 10 and 13, 2019.

III. COMPETENCE

<i>Ratione personae</i>	Yes
<i>Ratione loci</i>	Yes
<i>Ratione temporis</i>	Yes
<i>Ratione materiae</i>	Yes, American Convention (instrument of ratification deposited on April 8, 1970) and Convention of Belém do Pará (instrument deposited on July 12, 1995)

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

Duplication of proceedings and international res judicata:	No
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¹ On September 10, 2018, the IACHR informed the parties of its decision to close the file on P-1377-13 and join petitions P-1159-08 and P-1377-13 based on the similarity of facts and aspects addressed in them and in response to the request filed by the petitioning party on September 3, 2013 and May 16, 2018.

² On September 29, 2015, the Centro de Derechos Reproductivos and Colectiva por el Derecho de Decidir informed the IACHR that Colectiva por el Derecho de Decidir had decided to withdraw its formal representation of both petitions (1159-08 and 1377-13) before the Commission.

³ The petitioning organizations asked that the names of the alleged victims be kept confidential and requested that they be referred to as "A.N." (also "Ana") and "Aurora".

⁴ Hereinafter "American Convention" or "Convention."

⁵ Hereinafter "Convention against Torture."

⁶ Hereinafter "Convention of Belém do Pará."

⁷ The observations submitted by each party were duly transmitted to the opposing party.

⁸ The parties began seeking a friendly settlement in response to the interest expressed by the State with regard to both petitions in a communication on May 5, 2015. On June 21, 2018, the Commission ended its participation in the friendly settlement proceedings and decided to continue its processing of the petition.

Rights declared admissible:	Articles 4 (right to life), 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), 11 (right to privacy), 24 (right to equal protection), 25 (judicial protection), and 26 (economic, social, and cultural rights) of the American Convention, in conjunction with Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) thereof; Article 6 of the Inter-American Convention to Prevent and Punish Torture; and Article 7 of the Convention of Belém do Pará .
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, as referred to in Section VI
Timeliness of the petition:	Yes, as referred to in Section VI

V. FACTS ALLEGED

1. The petitioning party alleges the international responsibility of the State of Costa in relation to the denial of the right to access an essential legal health service to A.N. and Aurora, compromising their right to the highest attainable standard of physical and mental health and the exercise of the rights to life; to be free from cruel, inhuman, or degrading treatment; to personal integrity and liberty; and the right not to be subjected to physical or psychological torture. Specifically, the petitioning party argues that A.N. and Aurora were forced to carry to term pregnancies with malformations incompatible with life outside the uterus, despite the fact that the pregnancies represented a clear impairment to their physical, mental, and emotional health, and as a result, both Aurora and A.N. suffer health problems. The petitioning party alleges that despite the fact that therapeutic abortion has been legal in Costa Rica since 1971 under Article 121 of the Criminal Code, in cases where the pregnancy endangers the life or health of the pregnant women, there is no regulation or mechanism to guarantee access to this health service and allow health care providers to be clear about the legality of the procedure. The aforementioned, combined with discriminatory gender stereotypes, means that women in serious physical or mental health situations are left to the discretion of public officials and are forced to carry to term a pregnancy at any cost to their personal integrity.

Allegations referring specifically to A.N.

2. The petitioning party states that A.N. was 26 years old when she became aware of her pregnancy, at that time, of six weeks. In that regard, the petitioner states that on February 7, 2007 she went to the Gynecology Unit at Hospital México, which pertains to the Costa Rican Social Security System (hereinafter "CCSS"), for a gastroscopy and ultrasound exam because she was suffering from abundant vomiting and bleeding. The petitioner describes that on that occasion the doctors diagnosed her with a high-risk pregnancy with "threat of miscarriage" ("*amenaza de aborto*"), as they had detected a fetal pathology incompatible with extra-uterine life known as occipital encephalocele: a diagnosis that was later confirmed by other medical exams.

3. The petitioning party maintains that during her pregnancy and due to the diagnosis, A.N. suffered a profound depression, continuous gastric and other ailments, and was certified by the Rodrigo Fournier Guevara Tibás Lie Clinic (hereinafter referred to as Tibas Integrated Clinic) as unfit for work as of February 7, 2007 which was later extended on multiple occasions. The petitioning party points out that A.N. had been suffering for years from a depressive-anxiety syndrome and bulimia nervosa. The petitioner maintains that forcing her to carry a "fetus destined to die" only aggravated a vulnerable mental health condition, which, combined with her poor physical condition characterized by constant contractions and bleeding, led even to episodes of suicidal thoughts. The petitioning party indicates that although all the doctors who examined her agreed on the diagnosis which required constant psychological and psychiatric care and that she was diagnosed with depression and adjustment disorder, all the public health sector personnel treating her, with the sole exception of the Director of the Cooperativa Autogestionaria de Servidores para la Salud Integral, who emphatically recommended interrupting the pregnancy, ignored the danger that the pregnancy posed to her life and health and the psychological suffering it was inflicting on her.

4. The petitioning party maintains that during her stay in Hospital México she was mistreated by the doctors attending to her, who questioned her situation, made fun of her and imposed their own personal views of her case.

5. The petitioner argues that on March 29, 2007, A.N. filed a written request for a termination of her pregnancy or therapeutic abortion with the Physicians and Surgeons Association (*Colegio de Médicos y Cirujanos*), in which she explained her situation and diagnosis. In this regard, the petitioner describes that, on April 10, 2007, the Attorney General of the Physicians' Association informed A.N. that her request had been rejected given that it could not be processed "by this institution, as it does not fall within the scope of the Association's functions" and reiterated that "under the Costa Rican Penal Code, abortions can only go unpunished if they are performed when the life of the mother is at risk." Under those circumstances, the petitioning party argues that following that refusal by the Attorney General of the Physicians' Association, most of the medical personnel continued to carry out their guidelines, and insisted that therapeutic abortion was only legal to save the life of the pregnant mother, which was not a risk she faced.

6. The petitioning party further points out that, even though on several occasions she had orally requested termination of her pregnancy, she also filed a written request for a therapeutic abortion on May 22, 2007 to the Head of the Gynecological and Obstetric Unit in Hospital México, which is part of the Costa Rican Social Security System, but she never received a formal response to her request.

7. In this regard, the petitioning party argues that on June 5, 2007, A.N.'s mother filed an amparo action on behalf of her daughter before the Constitutional Chamber of the Supreme Court of Justice of Costa Rica against the Office of the Head of Obstetrics at Hospital México and the Executive President of the CCSS, requesting the necessary treatment and therapeutic abortion and denouncing the impairment of A.N.'s fundamental rights to life, health and to "provide her with the necessary and appropriate treatment to terminate her pregnancy since the fetus is a non-viable product (*un producto no viable*) that is endangering her physical and mental health, and her life, all according to medical opinion without this being a crime in the light of Article 121 of the Criminal Code. The petitioning party adds that on June 7, 2007, A.N. also submitted a written statement to the Constitutional Chamber requesting that she be included as a party of the amparo action and arguing that the nonexistence of a procedure for requesting a legal abortion constituted a violation of her rights.⁹

8. The petitioning party states that the Constitutional Chamber of the Supreme Court of Justice issued its ruling on June 7, 2007, and that A.N.'s mother was notified on April 4, 2008. The petitioner argues that the Court did not take into account the brief submitted by A.N. and only alluded to what was submitted by her mother. The petitioner states that the Court considered that the fetus conceived was a person therefore had the right to be protected by the legal system and "could not, in the interest of protecting the mental integrity of the mother, deprive the right to life of the unborn child, even if its prospects of life post partum are remote or non-existent." According to the petitioning party, the Supreme Court argued, in order to support its reasoning, that it could not, through jurisprudence, impose limitations on the right to life that were not provided in the Constitution or by law. Accordingly, the petitioner argues that, although the judicial authority reiterated the constitutionality of Article 121 of the Criminal Code and recognized that the Criminal Code allowed abortions when medical opinion indicated that the pregnancy constituted a danger to the life or health of the pregnant woman that could not otherwise be avoided, the judicial authority found that in the instant case A.N. did not meet the requirements for performance of a legal abortion inasmuch as opposing medical opinions existed, from which it transpired that the danger to A.N.'s life stemmed from her suicidal thoughts and not from her pregnancy, implying an indirect threat to her life. In addition, the petitioning party points out that the Supreme Court was of the opinion that the fear of criminal prosecution of doctors for performing abortions should be

⁹ The petitioning party stresses that, apart from the constitutional rights invoked by her mother, A.N. alleged violation of Costa Rica's international obligations under the American Convention, the International Covenant on Civil and Political Rights and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, and violation of her right not to be tortured or subjected to cruel, inhuman, or degrading treatment; her right to have her physical, psychological, and moral integrity respected; the right to personal liberty and security, the right to respect for the inherent dignity of the human person and to protection of her family, the right to equal protection before and of the law, and the right to simple and prompt recourse before competent courts, all of which had been violated by forcing her to continue a pregnancy in which the fetus had been diagnosed with occipital encephalocele; along with violation of her rights to dignity, liberty, and privacy by physicians at the Hospital who mistreated her while she was under their care.

understood in line with the fact that A.N. did not meet the requirements established in the Criminal Code for a legal abortion.

9. Finally, the petitioning party describes how on June 30, 2007, A.N. was admitted to the emergency unit in Hospital México, where she underwent a 7-hour excruciatingly painful labor after which a stillborn girl was born with "anencephalic fasciae." The petitioner argues that to date, A.N. has continued to suffer from depression, acute anxiety attacks, chronic diarrhea, and increasingly severe social phobia.

Allegations referring specifically to Aurora

10. In relation to this case, the petitioner states that Aurora was a 32-year-old married woman when, in June 2012, after a year spent trying to conceive, she found out that she was pregnant. The petitioner describes that Aurora had a pre-natal medical check-up on August 9, 2012, at the Dr. Rafael Ángel Calderón Guardia hospital (hereinafter "Rafael Calderón Hospital") in San José, Costa Rica, when she was told about the diagnosis of her pregnancy after an ultrasound. The petitioning party states that she was told that she had an "abdominal wall disorder", along with multiple other malformations. However the doctor told her that she should wait until the 12th week of pregnancy to be about the disorder and to be able to determine what to do next. The doctor added that, if the diagnosis were to be confirmed, the fetus had no chance of life outside the womb. The petitioning party stresses that the doctor did not explain to Aurora what options she had available to her in that event, despite the fact that she went on several occasions to the Rafael Calderon Hospital for pre-natal check-ups, where she underwent several ultrasounds and other tests that confirmed the "abdominal wall disorder" and other complications that would have fatal consequences for the fetus. The petitioner maintains that each new ultrasound revealed that the fetus had more and more malformations, precluding the possibility of the fetus surviving outside the uterus.

11. The petitioning party points out that during the seven months of pregnancy, Aurora had various symptoms, had "episodes of bleeding, lower back pain, and pelvic pain", and suffered from a condition of severe vomiting that was never treated or examined to see whether the causes were physical or psychological. The petitioner alleges that as the pregnancy progressed, Aurora's suffering increased considerably, due to the combination of physical pain, severe stress, constant sadness, depression, insomnia, nightmares, among other symptoms. The petitioner argues that, even though Aurora repeatedly told medical personnel about these pains and asked for a diagnosis and medical care, there is no record on her medical history to show that she was given any medication to alleviate the symptoms. Thus, according to the petitioning party, the doctors only explained to her verbally -- placing nothing on record in the file -- that the symptoms were the result of stress due to the situation she was living and that there was no organic reason or cause for them, which was why they were not treating them.

12. On that same subject, the petitioning party argues that many aspects of Aurora's clinical profile were omitted in her medical records inasmuch as symptoms, diagnoses, and treatment were under-recorded in the file kept by the Rafael Calderón Hospital, despite the alleged victim's repeated complaints.¹⁰ The petitioner maintains that it was not until November 1, 2012 that a doctor agreed to give them information regarding the abdominal wall disorder diagnosis and told them that the fetus would not survive. The petitioning party argues that on that same day, November 1, 2012, Aurora formally requested in writing a copy of her medical file and of the analytical summary of her condition to the Rafael Calderón Hospital,¹¹ in order to be able to ascertain whether the symptoms and diagnoses she had received, as well as her requests, had been recorded in the medical file. The petitioning party maintains that, despite asking for it several times, Aurora was not given access to it and was simply told that "the file still had to be reviewed, that it belonged to the hospital, and that she had to file a formal application." The petitioning party reports that it was not until November 19, 2012 that Aurora was able to access her file.

¹⁰ The petitioner maintains that on numerous occasions the alleged victim complained that the medical file did not reflect the real state and development of her pregnancy.

¹¹ The petitioner reports that the Obstetrics Unit issued Certificate "JSO-217-11-12 Epicrisis dated November 5, 2012, where it certified that Aurora's pregnancy was "High Risk II", and that her prenatal control was adequate to her case.

13. The petitioner argues that, on a number of occasions, Aurora requested information about the available options to her and about the possible termination of the pregnancy. However, the doctors provided no information about the implications of the diagnosis she had been given, nor did they provide further details regarding that diagnosis in the file. Specifically, the petitioning party argues that on November 1, 2012 Aurora went to a medical appointment in the company of her legal representative to explicitly request a therapeutic termination of her pregnancy, given that her previous requests for help had not been answered. Nevertheless, according to the petitioning party, the doctor who saw her that day let her know that, although medically speaking interruption was recommended, due to national regulations it was impossible to perform the abortion under Costa Rican law. The petitioner describes that the next day, November 2, Aurora submitted a written request for a therapeutic abortion to the Head of the Obstetrics Unit at the Hospital, the Services Oversight Unit (*Contraloría de Servicios*), the Head of Gynecology and Obstetrics, and the Head of the Bio-Ethics Department, due to the suffering caused to her by the diagnosis that the fetus would not survive. Nevertheless, on November 7, 2012, she was informed that her application had been rejected inasmuch "eugenic abortion is not regulated under our regulations, that is to say when it is presumed that the product of conception, the embryo or fetus, is going to be born with physical or mental limitations," and that at the time, "there is no risk from the medical-obstetrical point of view of any pathology that would complicate her health compared to pregnancies of normal course."

14. In addition, the petitioning party argues that Aurora filed a request on November 7, 2012 to the Bioethics Committee to issue a recommendation taking into consideration the state of her pregnancy, the impossibility of the diagnosis improving, and the risk this was posing to her physical and mental health. The petitioner highlights that on November 28, 2012, after being notified by e-mail, Aurora was informed of document No. CLOBICHCG-001-201272 of the Bioethics Committee, in which it was determined that such decision is a matter for the person involved and/or health professional in charge.

15. The petitioner states that Aurora filed a second written request on November 14, 2012 before the Head of the Obstetrics Unit at the Rafael Calderón Hospital, the Medical Director, the Head of Gynecology and Obstetrics, the Services Oversight Unit, and the Office of Legal Counseling and Social Management, for "a review of her case and for immediate therapeutic termination of the pregnancy by inducing labor due to the condition of the fetus and the impossibility of its surviving, and the harm being done to her physical and emotional health." On this, the petitioning party reported that Aurora asked for advance inducement of labor because it was too late for a therapeutic abortion. The petitioner maintains that on November 20, 2012, the Office of the Head of Obstetrics simply replied that the request had already been answered. The aforementioned Office also stated that, regardless of the unviability of the fetus, it would not bring forward Aurora's delivery, at her request, to any point before the 37th week of pregnancy.

16. The petitioning party also alleges that Aurora and her legal representative filed a request for intervention with the Ombudsperson's Office (*Defensoría de los Habitantes*), on November 14, 2012, explaining the situation, including the absence of information regarding developments in the malformations of the fetus and the procedure to be followed in such cases, as well as pointing out the physical pain, depression, and stress Aurora was suffering. The petitioner states in this regard that the Ombudsperson's Office notified the Medical Director of the Dr. Rafael Ángel Calderón Hospital via Official Letter No. 13373-2012- DHR- [MU], dated November 19, 2012, and asked for information regarding Aurora's situation and what measures would be taken to guarantee a reply to the requests for information and to safeguard Aurora's right to health.

17. The petitioning party argues that Aurora attempted orally and in writing on three occasions to obtain a response to her situation and once those requests were officially denied by the hospital authorities, Aurora filed an amparo action on December 17, 2012 before the Supreme Court of Justice arguing that it was the "duty (of the health authorities of the Calderón Guardia Hospital) to ensure access to legal health procedures without any discrimination, [such as] therapeutic termination of the pregnancy," pursuant to Article 121 of the Costa Rican Criminal Code. In her brief, Aurora described, inter alia, the numerous violations of her rights she was subjected to when seeking counseling about the state of her pregnancy and the

repercussions of those violations on her physical and mental health.¹² The petitioner explains that on January 9, 2013, the Constitutional Chamber of the Supreme Court asked the Rafael Calderón Hospital to report on "the current state of health of the mother appealing for constitutional protection (*la madre amparada*), as well as the condition of the fetus, and recent procedures or treatments carried out on both of them". The Rafael Calderón Hospital replied that Aurora's child had been born on December 30 following a caesarean delivery at the medical center and had died immediately. Accordingly, the Constitutional Chamber of the Supreme Court of Costa Rica considered, in resolution No. 2013002331 of February 22, 2013, communicated via e-mail on February 26, 2013, that "the appellant's request was in effect granted, so that the matter is now no longer a matter of current interest, especially since, irrespective of the outcome, the claim of the defendant has already been satisfied.

18. Lastly, the petitioning party claims that as a result of this situation Aurora's mental health deteriorated, leading to social inhibition, anxiety, and constant vomiting, in addition to severe depression.

Joint allegations

19. The petitioning party highlights the fact that the State of Costa Rica acts in the belief that once an egg has been fertilized, there is a person with an inviolable right to absolute protection by the legal system. Therefore, when a woman is pregnant her human rights are suspended to the extent that they may conflict with this absolute protection of the life in gestation, including peremptory norms (*derechos ius cogens*). The petitioner maintains that, even though the petitioning party has repeatedly requested certified copies of the clinical records for both Ana and Aurora, which are to be found in a series of hospitals in Costa Rica, the competent health authorities have not responded to those requests due to "administrative hurdles."

20. Regarding the State's claims that internal remedies were not exhausted, the petitioning party argues that the alleged victims had no administrative remedy that they could file for rapid processing of their application for a therapeutic abortion. The petitioner maintains that, in the instant case, given that the purpose of an amparo action in Costa Rica is to protect persons' fundamental rights, and since there is no other remedy specifically for claiming the right to legal abortion before administrative bodies, the amparo was the only option possible for claiming that right, even when it might not be the appropriate or ideal channel. The petitioning party states that this remedy was duly exhausted by virtue of the unappealable judgments handed down by the Supreme Court of Justice on June 7, 2007 and February 22, 2013 regarding Ana and Aurora, respectively. At the same time, the petitioning party specifies that the possibility of exhausting domestic remedies, given that it is still possible that a future technical provision on therapeutic abortion may be issued, does not constitute a remedy for access to justice and is therefore neither appropriate nor effective for redressing the violations committed.

21. As for administrative channels and/or actions under administrative law, the petitioning party points out that the State has not specified the remedy or specific way in which they would have served to protect rights in time. On the contrary, it restricts itself simply to stating that those channels allegedly exist for compensating violations thereof. In particular, the petitioning party argues that no remedy that the State suggests should be submitted to the CCSS, the governing body for the provision of public health care, can be suitable and effective inasmuch as it is not a competent judicial authority, by their very nature its decisions are not enforceable, and there is no pre-established procedure for channeling requests for access to legal abortions. The petitioner maintains that the CCSS's response was already deficient in light of the responses received by A.N. and Aurora from the hospitals under its authority and where they had no judicial guarantees for asserting their rights under domestic law.

¹² It also stated that Aurora had argued that she had been emotionally disturbed by the refusal to allow a "therapeutic termination of the pregnancy while there was still time for it, as well as the current refusal to bring delivery forward; that she continued to be mentally and physically affected by the ongoing refusal to allow the medical procedure of premature delivery (*adelanto de parto*); that she still had no access to medical assessments, with details of the diagnoses, since the doctors at the Hospital had omitted to record them in the file; and delay in her obtaining access to that file, the lack of documentation, the absence of a health care protocol, and the delay in responses to emergency situations.

Allegations by the State

22. For its part, the State argues that, even though friendly settlement proceedings were conducted in order to facilitate access to individual reparation measures, it does not mean an State's acceptance of international responsibility.

23. Thus, the State deems that there are domestic remedies available that have yet to be exhausted. The State argues that, under Costa Rican law, any person who feels that their rights have been impaired by acts committed by the public administration, in this case the CCSS, has at their disposal administrative channels for filing a complaint against the institution concerned and may, if need be, pursue actions under administrative law to determine the direct impairments they may have suffered. In particular, it points to the existence of the ordinary procedure available when subjective rights are denied or in the event of any other form of serious and direct impairment of a person's rights or legitimate interests. The State likewise maintains that neither of the alleged victims made use of the administrative complaints procedure against the Costa Rican Social Security Fund.

24. Lastly, the State provides information regarding the publication of Executive Decree No. 42113-S "Official Adoption of the Technical Provision for the Medical Procedure relating to Article 121 of the Criminal Code" on December 12, 2019, and adds that the text of the Decree acknowledges that the establishment of the provision is linked to the friendly settlement proceedings from the present petition. Accordingly, the State asserts that the issuance of the Technical Provision for application of legal and unpunished abortion in Costa Rica and the issuance of a protocol for care to be followed in public health care services constituted part of the reparation measures discussed during the friendly settlement process. Consequently, the State argues that the conditions may exist in the instant case constituting non-exhaustion of domestic remedies.

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

25. The Commission observes that the State claims the possibility of filing administrative complaints against the corresponding institution and may eventually resort to contentious administrative proceedings to determine the direct effects. In particular, it points out that none of the alleged victims made use of the administrative complaint procedure against the Costa Rican Social Security Fund. For its part, the petitioner maintains that the remedy of amparo was the only possible option for claiming the right even though it was not adequate or suitable inasmuch as the alleged victims did not have an administrative remedy to be filed in order to quickly process the request for legal access to therapeutic abortion. With regard to administrative and/or contentious-administrative channels, the State simply indicates that these channels would exist to compensate for the violations committed against them.

26. In light of the above, the Commission recalls that the requirement to exhaust domestic remedies does not mean that the alleged victims are necessarily obliged to exhaust all available remedies. Both the Court and the Commission have repeatedly held that the rule requiring the prior exhaustion of local remedies is designed in the interest of the State, since it seeks to exempt it from responding before an international body for acts that are imputed to it, before it has had the opportunity to remedy them with its own means. Consequently, if the alleged victims raised the issue through one of the valid and adequate alternatives under the domestic legal system and the State had the opportunity to remedy the issue within its jurisdiction, the purpose of the international norm is fulfilled¹³.

27. The IACHR notes that, with respect to A.N. and Aurora, the petitioning party maintains that they submitted various requests to terminate the pregnancy pursuant to Article 121 of the Criminal Code, which were either rejected or went unanswered. It further observes that the petitioning party alleges that both

¹³ IACHR, Report No. 16/18, Petition 884-07. Admissibility. Victoria Piedad Palacios Tejada de Saavedra. Peru. February 24, 2018, par. 12; and IACHR, Report No. 10/18. Admissibility. Familias Indígenas Maya Achí. Guatemala. February 24, 2018, par. 17.

resorted to the Constitutional Chamber with amparo actions based on the alleged facts' direct impairment of their exercise of various rights. The Commission notes that, pursuant to Article 29 of Costa Rica's Constitutional Jurisdiction Law, an amparo action "guarantees the fundamental rights and freedoms referred to in this law, except those protected by habeas corpus," and is admissible "against any provision, decision, or resolution, and, in general, against any action, omission, or any simple material undertaking not based on an effective administrative act, on the part of public servants or bodies, that violated, violates, or threatens to violate any of those rights (...). It shall (...) also be admissible against acts or omissions based on erroneously interpreted or improperly applied norms."

28. In view of these considerations and of the information in the petition file, the Inter-American Commission considers that the present petition meets the requirement to exhaust domestic remedies under the terms of Article 46.1.a of the Convention. Regarding timeliness of the petition, the Commission observes that the final rulings of the Supreme Court regarding the alleged victims were officially communicated to A.N.'s mother and to Aurora on April 4, 2008 and February 26, 2013, respectively, and the petitions were received, also respectively, on October 3, 2008 and May 29, 2012. Therefore, the Commission considers that the petition complies with the requirement set forth in Article 46.1.b of the Convention.

VII. ANALYSIS OF COLORABLE CLAIM

29. The Commission notes that the present petition includes allegations regarding lack of access to health care, serious threats to life in relation to the serious deterioration of mental and physical health,¹⁴ impairment of personal integrity, interferences in private life, discrimination, violations of due process, lack of access to justice and judicial protection, and failure to adopt domestic legal provisions to make access to legal abortion effective in Costa Rica. In light of those considerations and after examining the matters of fact and law submitted by the parties, the Commission deems that the petitioning party's allegations are not manifestly groundless and require in-depth study because, if corroborated, the alleged facts could characterize violations of Articles 4 (right to life), 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to judicial guarantees), 11(right to privacy), 24 (equality before the law), 25 (judicial protection), and 26 (economic, social, and cultural rights) of the American Convention on Human Rights, in conjunction with Articles 1.1 and 2 thereof; as well as Article 6 of the Inter-American Convention to Prevent and Punish Torture; and Article 7 of the Convention of Belém do Pará.¹⁵

30. As regards the allegation of a violation of Article 12 (freedom of conscience and religion) of the American Convention, the Commission notes that the petitioning party does not submit arguments or sufficient indications for identifying or determining, *prima facie*, violation of this provision of the American Convention.

VIII. DECISION

1. To find the instant petition admissible as regards of Articles 4, 5, 7, 8, 11, 24, 25, and 26 of the American Convention, in conjunction with Articles 1(1) and 2 thereof; as well as Article 6 of the Inter-American Convention to Prevent and Punish Torture; and Article 7 of the Convention of Belém do Pará; and
2. To find this petition inadmissible in relation to Article 12 of the American Convention; and
3. To notify the parties of this decision; to proceed 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 21st day of the month of April, 2020. (Signed): Joel Hernández, President; Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, Julissa Mantilla Falcón, and Stuardo Ralón Orellana, Commissioners.

¹⁴ I/A Court HR. Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, Reparations and Costs. Judgment of June 17, 2005. Series C No. 125, par. 162. "In this regard, the State has the duty to take positive, concrete measures geared toward fulfillment of the right to a decent life, especially in the case of persons who are vulnerable and at risk, whose care becomes a high priority."

¹⁵ IACHR Report No. 120/17. Petition 2003-13. Admissibility. Beatriz. El Salvador. September 7, 2017, par. 18.