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REPORT No. 40/25
PETITION 1706-18
REPORT ON INADMISSIBILITY

D., M. & I.
BRAZIL

Approved electronically by the Commission on March 26, 2025.

Cite as: IACHR, Report No. 40/25. Petition 1706-18. Inadmissibility.
D., M. and I. Brazil. March 26, 2025.

I. INFORMATION ABOUT THE PETITION

Petitioners:	D., Luis Alberto Pulache del Rosario, Stefany Bageski Cruz
Alleged victim:	D., M. and I.
Respondent State:	Brazil
Rights invoked:	Articles 8 (judicial guarantees) and 25 (judicial protection) of the American Convention on Human Rights ¹

II. PROCEEDINGS BEFORE THE IACHR²

Filing of the petition:	August 24, 2018
Additional information received at the stage of initial review:	December 3, 2019, August 9, 2021, November 1, 2022, December 28, 2022, February 2, 2023, March 7, 2023, May 19, 2023, May 29, 2023
Warning about possible archiving:	February 7, 2023
Response of the petitioner to the warning of possible archiving:	February 9, 2023
Notification of the petition to the State:	July 18, 2023
Request for extension:	October 17, 2023
State's first response:	November 20, 2023

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 on Human Rights (instrument adopted on September 25, 1992)

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

Duplication of procedures and International res judicata:	No
Rights declared admissible:	None
Exhaustion of domestic remedies or applicability of an exception to the rule:	No, in accordance with Section VI
Timeliness of the petition:	No, in accordance with Section VI

V. POSITIONS OF THE PARTIES**Position of the Petitioning Party**

1. The petitioner alleges that Ms. D. did not have judicial guarantees and protection when she separated from her ex-partner and reported him for sexual abuse against one of the couple's daughters.

2. The petitioner reports that Ms. D. was married to Mr. F. and had two daughters with him: M. and I. Although she mentions both children, the petitioner narrates specific facts related to the daughter M. According to the petitioner, in summary, throughout the 12-year relationship with Mr. F., Ms. D. suffered

¹ Hereinafter "Convention" or "American Convention".

² The observations of each party were duly translated to the opposing party.

various forms of violence (physical, sexual, psychological, moral, and patrimonial), being isolated from family and friends. She states that her ex-partner used drugs and mixed alcohol with psychotropic medications, including in front of his daughters, without any concern for their well-being. On several occasions, he manipulated her so that she would not end the relationship. After the separation, in 2013, Ms. D. went to live with her parents in another state, which forced her to leave her job as a professor and coordinator of a higher education course. Shortly after arriving at her parents' house, Ms. D. was surprised by the information that her daughter M., a four-year-old child, was undergoing psychological counseling. Ms. D.'s mother recommended that she talk to the psychologist in charge, as she did not have the courage to tell her what was happening. The psychologist M.S., linked to the Program for Attention to Families in Situations of Violence and the Guardianship Council, reported that the girl M. had reported, in playful consultations, that she had suffered sexual abuse perpetrated by her own father. Ms. D. was then advised by the social assistance and psychology team to report the case.

3. According to the petitioner, the report was made and Ms. D. also obtained a court order determining the removal of Mr. F. from the children. However, even after protective measures, Ms. D. suffered threats and persecution from her ex-partner and his family. Mr. F. allegedly threatened to kill her, in addition to coercing his daughter M. not to report the abuse, shouting and blaming her for the possibility of him being arrested. She claims that such threats and coercion considerably worsened M.'s mental health, generating panic and feelings of guilt in the child.

4. The petitioner also reports that Mr. F., being a lawyer and having influential relatives and friends (including judges, public prosecutors, and police officers), managed to discourage numerous lawyers from representing Ms. D., who began to fear the partiality of the authorities. Also, according to the petitioner, this influence culminated in a context of fear and insecurity, since the children's father would use his economic and political power to intimidate the maternal family. She describes that the girls' paternal grandmother, Mr. F.'s mother, also practiced acts of violence and persecution against Ms. D. and her parents. There was, for example, an attempt to kidnap the children at school dismissal; on another occasion, the paternal grandmother had chased the car in which Ms. D. and her daughters were, almost causing an accident. She also narrates an episode in which the paternal grandmother physically assaulted the maternal grandfather in public, knocking out three of his teeth with punches. She reports that, although Ms. D. informed the authorities about these aggressions and threats, she was discouraged by her own lawyers from formalizing certain complaints at the police station, as they feared that the Judiciary would interpret the initiative as an attempt at parental alienation. Thus, the maternal family would have remained in constant danger, without an effective response from state institutions.

5. The petitioner emphasizes that, from 2013 to 2017, the children M. and I. went through approximately nine psychologists, many of them appointed by the Judiciary at the request of the father, in a repetitive search for "new reports". In all documents, the sexual abuse to the detriment of M. was confirmed, with indication of its authorship by the father. However, the ex-partner and his family continued to question these conclusions, and the Family Judge would have requested new evaluations, without this resulting in effective protection for the children. According to the petitioner, there was also a report prepared by the psychologist of a public body specialized in sexual abuse that pointed to the worsening of M.'s psychological condition and the need to cancel paternal family visits, especially the grandmother's visits. However, this document would not have received due attention from the competent authorities.

6. For the petitioner, the judicial authorities, despite evidence that the abuse occurred, did not protect the girl M. In this sense, the petitioner argues that the investigation of the abuse was deficient, and that the internal civil and criminal proceedings were lengthy and partial. She argues that Ms. D. did everything she could and fought with all her strength, facing a legal battle to have custody of her daughters and prohibit the father's visit, but that the Brazilian justice, until 2018, had not resolved the situation. She points out that the father would have "manipulated" the judiciary, that justice would not listen to her arguments and evidence, and that the children M. and I. went through a cruel judicial torture. Given the aforementioned context, because she no longer believed in Brazilian justice, Ms. D. decided to flee the country accompanied by the children M. and I., having sought "humanitarian refuge" in another country.

7. The petitioner alleges that, abroad, the daughters were evaluated in hospitals and specialized agencies, confirming once again the picture of child sexual abuse and post-traumatic stress; and that, in the country where they are, a national commission on refugees would have recognized Ms. D. and her daughters as humanitarian refugees based on persecution for gender violence, risk of death, and evidence presented.

8. The petitioner also informs that Ms. D.'s parents continue in Brazil being the target of threats, home invasions, and intimidation; that Ms. D.'s mother is in a fragile state of health, hospitalized for depression; and that the father would also be ill, fearing for the life of his daughter and granddaughters. She also informs that, in a Brazilian judicial process, requests for search and seizure of the minors and accusations of intellectual abandonment were issued; and that the alimony, previously recognized in favor of the daughters, was suspended by the judge in 2018 due to the failure to appear in court for the delivery of the children.

9. The petitioner claims that the judiciary is biased and advocates in favor of the father and paternal grandmother, preventing full access to the case files, ignoring technical reports favorable to the victims, and using deadlines and decisions unequally. She argues that humanitarian refuge was the only way to ensure safety and seek shelter for the alleged victims, and that the feeling is of abandonment by the Brazilian State.

10. Alleging violation of children's rights, delay, and partiality of the Brazilian justice system, the petitioner requests the Inter-American Commission to rescind any decision issued by the Brazilian justice system" in civil proceedings 0006143-88.2014.8.16.0035 and 0006149-95.2014.8.16.0035 and in criminal proceeding 0003987.36.2015.8.2.24-0007, with the issuance of a new impartial, speedy judgment respecting the best interests of the minor, the adversarial system, and full defense, and to recommend the granting of sole custody of the infants to Ms. D.

Position of the Brazilian State

11. The State emphasizes that the petition refers to a series of events arising from the termination of the marital partnership between Ms. D. and Mr. F. in May 2013, which involves various issues of family law (separation, child custody, visitation, alimony, etc.) and criminal law (investigation of sexual abuse). Both issues, the State points out, have received due attention from state bodies, within legal deadlines and in a legal manner, and with respect for the fundamental rights of the children involved.

Criminal Investigation and Proceedings

12. According to the information provided by the State, in 2015 the Public Prosecutor's Office of the State of Santa Catarina filed a criminal complaint requesting the conviction of Mr. F. because, in 2013, when he was still living with his wife and daughters, he allegedly committed sexual abuse against his daughter M., then a four-year-old child. On June 16, 2016, the Court of the Criminal Division of the District of Videira accepted the complaint. On July 4, 2016, it summoned the defendant. On July 13, 2016, the defendant presented his preliminary defense. After the inclusion of Ms. D. in the proceedings as Assistant Prosecutor, the questioning of the defendant, the questioning of three witnesses called by the prosecution, and an expert report, the Public Prosecutor's Office changed its understanding and asked the judicial authority to dismiss its initial request, consequently acquitting the defendant.

13. On December 5, 2017, the Court notified the defendant's defense and the Assistant Prosecutor to present their final arguments. On February 23, 2018, the expiration of the deadline without a statement from the Assistant Prosecutor was certified. On March 12, 2018, the Public Prosecutor's Office reiterated its final arguments, calling for the acquittal of the defendant. There was a new notification to the Assistant Prosecutor to present her final arguments within five days. On the last day of the deadline, the Assistant Prosecutor requested the granting of additional time to present her final arguments. On May 15, 2018, the Court notified the Assistant Prosecutor and the defense to present their final arguments within five days. The determination was published on June 8, 2018. On June 11, 2018, the Assistant Prosecutor requested that the proceedings be declared null and void because the child's testimony had not been taken by a specialized team.

14. On August 15, 2018, the judge of the Criminal Division of the District of Videira issued a sentence acquitting the defendant, Mr. F., after considering that: i) the child's testimony was taken in an environment without the presence of the accused and the mother and in the company of a Childhood and Youth Officer, ensuring her safety, privacy, and comfort; ii) although there were indications of improper conduct and reports that, at first glance, would suggest the occurrence of sexual abuse, there was no conclusive evidence of the occurrence of the abuse and the defendant's responsibility, with the child denying the accusation and suggesting that the act, if it occurred, would have been provoked by the maternal grandfather; iii) in light of the principles of the presumption of innocence and due process of law, and considering that the body of evidence did not reach the level required for conviction, the existence of concrete and unequivocal evidence linking the accused to the commission of the crime was not demonstrated.

Civil Proceedings

15. The State presents information on the internal civil proceedings. It mentions that action 0006143-88.2014.8.16.0035 has as its object the recognition and dissolution of the stable union of F. and D., with the establishment of alimony and regulation of visits of the daughters. In the records of this proceeding, there was a preliminary granting of the request for regulation of visits, with the establishment of provisional alimony for the children.

16. Proceeding 0006149-95.2014.8.16.0035, in turn, refers to an action for regularization of visits with a request for preliminary injunction by L.L., paternal grandmother of the aforementioned minors, against Ms. D. In the records of this proceeding, the regulation of visits in favor of the paternal grandmother was preliminarily granted.

17. Subsequently, both in proceeding 0006143-88.2014.8.16.0035 and in proceeding 0006149-95.2014.8.16.0035, the preliminary injunctions were revoked in view of the news of the existence of a protection measure with the juvenile court of the minor M., whose object would be the investigation of possible sexual abuse committed by the child's father.

18. After carrying out investigations and social studies in favor of the children in the records of proceeding 0006149-95.2014.8.16.0035, there was an agreement in a hearing, establishing the right of visits of the minors in favor of the paternal grandmother. The proceeding became final on February 25, 2016. However, in November 2017, the plaintiff informed that the visits were not being complied with, which led to a court order that the approved agreement be complied with. After repeated non-compliance, the judicial authority ordered the search and seizure of the children. Subsequently, provisional custody was granted to the paternal grandmother.

19. Considering that the factual situation of the children and the custody relationship came to have the same object, both proceedings were joined. The procedural steps began to be carried out jointly. During the investigation phase, there was a psychological evaluation. Afterwards, there was a hearing for instruction and judgment, and during the hearing, the absence of Ms. Daniele Piccoli da Silva was recorded. The judicial authority made different attempts to locate Ms. Daniele Piccoli da Silva and both children; none of them were successful.

20. The State emphasizes that Daniele herself informed the IACHR, in her writings of August 2018 and February 2023, that she left Brazil and that she is in another country with her daughters in a situation of "humanitarian refuge." The State considers that the petitioner evaded the country with her daughters, in a unilateral decision and possibly in contempt of Brazilian Justice, because the proceedings that were still pending in Brazil had not been favorable to her.

21. On March 15, 2019, the Public Prosecutor's Office issued an opinion in proceeding 0006143-88.2014.8.16.0035. The extensive and detailed opinion provides a summary of the proceedings up to that point: i) Mr. F., the children's father, filed the lawsuit in April 2014, alleging difficulties in living with his daughters and offering alimony; ii) the mother accused the father of alleged sexual abuse against one of the daughters, the girl M.; this resulted in a protection measure by the Childhood and Youth Court, which removed initial paternal

contact; iii) despite court decisions regulating visits by the father and paternal grandmother (first alternate weekends; then in assisted form), the visits never materialized, as the mother, on successive occasions, prevented or hindered the meetings; iv) reports from protection agencies (PAEFI, CREAS), social study reports were requested, and, subsequently, a psychological and psychiatric evaluation was ordered; v) the accusation of sexual abuse was investigated in criminal proceedings in the District of Videira, the Public Prosecutor's Office of Santa Catarina opined for the acquittal of the father, and the Santa Catarina Judiciary, in the end, acquitted him, with the decision becoming final; vi) in relation to the evaluations, the sexual abuse against the minor was not demonstrated, and the experts concluded that it was advisable to gradually resume the daughters' contact with the father, in an assisted manner and with professional accompaniment, so as not to aggravate the psychological state of the minors.

22. The evidence and the progress of the proceedings, according to the analysis of the Public Prosecutor's Office, indicated that the mother presented typical behaviors of parental alienation, especially by preventing contact with the father or paternal family; insisting on accusations of abuse that were not confirmed; repeatedly failing to comply with court orders for assisted visitation; and ending up disappearing with her daughters, to an unknown location, making any contact impossible. In view of the strong indications of parental alienation and the successive non-compliance with court orders, the Public Prosecutor's Office requested the reversal of custody to the paternal grandmother, with the adoption of a plan for the daughters' re-approximation with the father in a gradual and assisted manner, aiming at the best interests of the children and the effective protection of their fundamental rights to family coexistence.

23. On August 5, 2019, the judge of the Family and Succession Court of São José dos Pinhais ruled in favor of Mr. F. in proceeding 0006143-88.2014.8.16.0035. The judge found that, as the proceedings progressed, a series of attitudes typical of parental alienation on the part of the mother and maternal grandparents were verified, such as hindering the daughters' contact with the father and paternal grandmother, omitting information about the children, repeatedly disqualifying the paternal figure, failing to comply with orders for assisted visitation, and moving to an unknown location, without notice. Regarding the issue of the reported sexual abuse, the judge pointed out that: i) the maternal grandmother made the initial referral of the child M. to the Guardianship Council for the reason that the girl had had superficial contact with the genitals of her maternal grandfather on the grounds that she behaved this way when she was in the company of her father and at his request; ii) sometime later, however, the same maternal grandmother gave a contradictory testimony to the judge according to which the child had arrived at the grandparents' house with red genitals, raw; this testimony, in addition to being contradictory to the original complaint, is also incompatible with the forensic examination; iii) with the passage of time, the stories told by the maternal grandmother were unfolded, becoming increasingly serious and incoherent, only confirming the acts of parental alienation practiced by the maternal family nucleus. In view of the foregoing, the judge ruled the action justified, reversing custody of the minors in favor of the paternal grandmother, who showed herself willing to provide a balanced environment and collaborate in the gradual re-approximation with the father, whose image was unduly deconstructed throughout the proceedings. The judge also ordered assisted maternal visits, to avoid new obstacles and emotional damage to the children.

Conclusions of the State

24. The State considers that the petition is inadmissible due to the lack of prior exhaustion of available domestic remedies. It alleges that the civil and criminal proceedings were still pending in the first instance when the petition was filed before the IACHR. It further argues that the exceptions to the conventional rules on the need to demonstrate the exhaustion of domestic remedies are not applicable to the specific case.

25. Furthermore, the State considers that Ms. D., instead of filing valid appeals against the domestic law decisions that were unfavorable to her, unilaterally decided to leave the country, taking her minor daughters with her. It informs that the Family and Succession Court of São José dos Pinhais has been employing various efforts aimed at locating the minors, without success. It denounces that Ms. D. intends to convince the Inter-American Commission to endorse her illegal behavior, emphasizing that she does not accept the results obtained by the internal instances and wants the Inter-American body to review them, which is inadmissible.

26. In conclusion, the State considers that the petition does not expose facts that characterize violations of the American Convention. In this sense, it states that i) the petitioner makes generic accusations against the internal proceedings, alleging "deficiencies" and impunity, but does not present evidence, arguments, and explanations of what these deficiencies would be and how they would have influenced the quality and time of the state response to the case; ii) the jurisdictional provision, although contrary to the interests of Ms. D., was given in a legitimate and justified manner, with no evidence of the delay or partiality alleged by the petitioner; iii) the judge of the civil custody proceeding did not oppose the carrying out of complementary expert evidence regarding the alleged sexual abuse, and the issue was the subject of police investigation and evidentiary extensions in the civil and criminal spheres; iv) the hypothesis that was used to prevent the father from living with his own daughters was not confirmed in the criminal court; v) the decision on custody was made after the father was acquitted of the accusations of sexual abuse and, therefore, the judicial authorities did not fail to protect the children's rights.

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

27. The Inter-American Commission notes that the petition addresses two central issues: i) the alleged lack of adequate investigation and protection, in the criminal sphere, in relation to the sexual abuse allegedly suffered by the child M., and ii) alleged irregularities in the civil proceedings relating to the custody of the children and the regulation of visits.

28. Regarding the first point (criminal investigation), the IACHR reiterates that, in the face of indications of sexual violation, the appropriate mechanism to clarify the facts, prosecute those responsible, and facilitate other forms of reparation is the criminal process. Furthermore, in situations involving minors, the State must not only promote a prompt and diligent investigation, but also implement specific measures to protect the potential victim given their special vulnerability³.

29. In the case under analysis, the information provided by the parties indicates that: i) the report of sexual abuse against M. resulted in the initiation of criminal proceedings; ii) after investigative steps, the Public Prosecutor's Office initially filed a complaint against Mr. F.; however, after the procedural instruction, the Public Prosecutor's Office changed its understanding and requested the acquittal of the defendant, due to insufficient evidence; iii) on August 15, 2018, the judge of the Criminal Division of the District of Videira issued a sentence acquitting Mr. F., based on the absence of conclusive evidence of the occurrence of the abuse and the defendant's responsibility. The Inter-American Commission notes that Ms. D. could, as an assistant prosecutor, file an appeal against the acquittal sentence⁴. However, Ms. D.'s procedural inaction prevented the effective exercise of this right.

30. This circumstance reflects the non-exhaustion of available domestic remedies. Furthermore, there is no sufficient allegation in the petition that one of the exceptions to prior exhaustion applies. Although the petitioner mentions fear of the father's alleged influence on the Judiciary, or even fear of violence, it is not verified, from the elements presented, the absence of procedural channels or the impossibility of using them. The report is predominantly generic. The petitioner does not clarify whether she reported the alleged threats and persecutions and does not present evidence or proof of state partiality.

31. In the civil sphere, it is verified that an action for recognition and dissolution of a stable union with a request for alimony and regulation of visits (Proceeding No. 0006143-88.2014.8.16.0035) and an action for regularization of visits filed by the paternal grandmother (Proceeding No. 0006149-95.2014.8.16.0035) were processed. The claims were later joined. In 2019, there was a judgment establishing provisional custody of the minors in favor of the paternal grandmother, with assisted maternal visits. Even before the judgment, Ms. D. left the country with her daughters, not having appeared at the hearings or filed the appropriate appeals.

³ IACHR, Report No. 420/21. Petition 1564-14. Admissibility. J.Z and S.Z. Brazil. December 31, 2021, paragraph 19.

⁴ Under the terms of Precedent 210 of the Federal Supreme Court, "[t]he assistant of the Public Prosecutor's Office may appeal, including extraordinarily, in the criminal action, in the cases of arts. 584, § 1, and 598 of the Code of Criminal Procedure."

The available information indicates that no appeal was filed to challenge the final decision, nor was the adoption of other procedural measures that could reverse or suspend the effects of the judgment demonstrated.

32. Thus, in light of the elements contained in the records, the IACHR understands that the petitioner did not exhaust domestic remedies in the criminal and civil spheres. The allegation of partiality or delay of the Judiciary, by itself, does not prove the absolute inexistence or ineffectiveness of the available remedies. Nor was it demonstrated that the situation described in the petition would constitute any of the exceptions provided for in Article 46.2 of the American Convention. Therefore, as the requirement of prior exhaustion of domestic remedies, provided for in Article 46.1.a of the American Convention, has not been met, the Commission concludes that the petition is inadmissible for this reason.

VII. DECISION

1. To declare the present petition inadmissible;
2. To notify the parties of this decision, publish it, 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 26th day of the month of March, 2025. (Signed:) José Luis Caballero Ochoa, President; Arif Bulkan, Second Vice President; Roberta Clarke, Carlos Bernal Pulido and Gloria Monique de Mees, Commissioners.