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**REPORT No. 102/18**  
**PETITION 1720-11**  
REPORT ON ADMISSIBILITY

ANA MARGARITA VIJIL GURDIÁN  
NICARAGUA

Approved by the Commission electronically on September 16, 2018.

**Cite as:** IACHR, Report No. 102/18, Petition 1720-11. Admissibility. Ana Margarita Vijil Gurdían. Nicaragua. September 16, 2018.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Nicaraguan Center for Human Rights
<b>Alleged victim:</b>	Ana Margarita Vijil Gurdían
<b>Respondent State:</b>	Nicaragua
<b>Rights invoked:</b>	Articles 8 (Fair Trial), 16 (Freedom of Association), 23 (Participation in Government), 24 (Equal Protection) and 25 (Judicial Protection) of the American Convention on Human Rights, <sup>1</sup> in relation to Articles 1.1 (Obligation to Respect Rights) and 2 (Domestic Legal Effects) thereof; and Articles XX (Right to vote and to participate in government) and XXI (Right of assembly) of the American Declaration of Human Rights <sup>2</sup>

**II. PROCEDURE BEFORE THE IACHR<sup>3</sup>**

<b>Filing of the petition:</b>	November 30, 2011
<b>Additional information received at the stage of initial review:</b>	April 28, 2017
<b>Notification of the petition to the State:</b>	June 28, 2017
<b>State's first response:</b>	August 15, 2017
<b>Additional observations from the petitioner:</b>	February 13, 2018

**III. COMPETENCE**

<b>Competence <i>Ratione personae</i>:</b>	Yes
<b>Competence <i>Ratione loci</i>:</b>	Yes
<b>Competence <i>Ratione temporis</i>:</b>	Yes
<b>Competence <i>Ratione materiae</i>:</b>	Yes, American Convention (deposit of ratification instrument on September 25, 1979)

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

<b>Duplication of procedures and International <i>res judicata</i>:</b>	No
<b>Rights declared admissible</b>	Articles 8 (Fair Trial), 16 (Freedom of Association), 23 (Participation in Government), 24 (Equal Protection) and 25 (Judicial Protection) of the Convention, in relation to Articles 1.1 (Obligation to Respect Rights) and 2 (Domestic Legal Effects) thereof
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, exception in Article 46.2.a is applicable
<b>Timeliness of the petition:</b>	Yes, under the terms of Section VII

<sup>1</sup> Hereinafter "Convention" or "American Convention."<sup>2</sup> Hereinafter "Declaration" or "American Declaration."<sup>3</sup> The observations submitted by each party were duly transmitted to the opposing party.

## V. ALLEGED FACTS

1. The petitioner alleges the international responsibility of the State of Nicaragua because of the Supreme Electoral Council's refusal to register Ms. Ana Margarita Vijil (hereinafter "the alleged victim" or "Ms. Vijil") as a candidate for the office deputy congresswoman for Managua department, representing the Alianza Partido Liberal Independiente political party (Alianza PLI), and the lack of legal remedies to challenge resolutions from said electoral institution.

2. The petitioner indicates that in connection with the elections held in November 2011, the Supreme Electoral Council, by a decree of June 1, 2011, refused to register the alleged victim as a candidate due to her purported failure to meet the residency requirement provided for in article 134 of the Nicaraguan Constitution. This rule establishes that one of the qualifying requirements for the office of deputy of the Republic is "*residency for four consecutive years in [Nicaragua] prior to the elections, except when in said period [...] the applicant has been studying abroad; and to be born, or to have resided for the two years immediately prior to the elections, at the department or region which the applicant seeks to be elected for.*" Given the legal obstacles to challenge that resolution, Alianza PLI substituted Ms. Vijil in order not to lose the opportunity to participate in the elections for said office, which is an alternative provided for by the Electoral Law.<sup>4</sup>

3. As for the alleged victim's purported failure to meet the qualifying requirement, the petitioner claims that she was born in the department of León, but had lived in Managua for 32 years. It indicates that her residency in Managua had been interrupted for one year and seven months, because from August 2008 to May 2010 she pursued a master's degree in the United States, therefore she was a "student" at that time. The petitioner submits that under article 134 of the Constitution studying abroad constitutes an exception to the requirement of two-year residency prior to the date of registration of the statement of candidacy. The petitioner claims that the Supreme Electoral Council arbitrarily determined that this exception applies only in regard to congressmen candidates at the national and not the departmental level. The petitioner considers this a restrictive and discretionary interpretation that violates article 48 of the Constitution, which provides for the unconditionally equal exercise of political rights.

4. To prove its point, the petitioning party refers to a historical context marked by electoral fraud in Nicaragua in the last years, and to alleged interference from politicians in the decisions of the Supreme Electoral Council, which violates not only the rights of candidates representing political parties but also the rights of electors. It alleges that Ms. Vijil, a member of the Movimiento Renovador Sandinista which worked alongside Alianza PLI, is a victim of reprisals from the ruling party because in the media she criticized the candidacy of who was then, and is now, the president of Nicaragua. In this regard, the petitioner claims that the arbitrary refusal to register Ms. Vijil as a candidate is a reprisal for her membership in the Movimiento Renovador Sandinista, which was belligerent in criticizing the administration of President Daniel Ortega, thus violating her right of free association with political aims.

5. Likewise, the petitioner reports that under article 173 of the Constitution, resolutions from the Supreme Electoral Council cannot be appealed neither through ordinary or special remedies, and that the Law on Amparo states that constitutional appeals are inadmissible to contest decisions from said body. The petitioner alleges that in spite of the fact that the Inter-American Court of Human Rights, in its judgment of June 23, 2005 on the case of *Yatama*, established among its measures of satisfaction and guarantees of non-repetition, "*the adoption of legislative measures to establish a simple, prompt and effective recourse against the decisions of the Supreme Electoral Council,*" the State has not implemented such remedy. In the alleged victim's case, this has translated into her being deprived of the possibility to have a court of law review the judgment that harmed her rights. The petitioner submits that the State of Nicaragua refused to appear at the hearing for monitoring compliance with that judgment, held before the Inter-American Court on May 28, 2013; and that it

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<sup>4</sup>Article 84 of the Electoral Law establishes: "When the Supreme Electoral Council denies a request or rejects a candidate, because they do not comply with legal requirements, it shall notify the political party or alliance of parties within the three days following the resolution, so that they may proceed to correct the defects or to substitute the candidates. If the notification takes place within the last five days of the registration period, the Council shall give the applicant an additional period of five days for corrections or substitutions."

has failed to inform this court, in writing, about the measures taken to comply with that judgment. As a result, the petitioner claims that it is impossible to exhaust domestic remedies, and that the exception set forth in Article 46.2.a of the Convention applies. It indicates that this moreover violates the rights of the alleged victim's right to judicial protection and to a fair trial, in particular, her right to be heard by an administrative or judicial court.

6. For its part, the State argues that the claims brought by the petitioning party involve speculation and political views that are not actually related to the alleged victim's case, and that her registration as a candidate was lawfully denied in view of her not meeting the requirements. The State indicates that the Supreme Electoral Council's refusal to register Ms. Vijil as a candidate for the office of deputy for Managua department was based on her lack of compliance with the requirements set forth in article 134 of the Constitution, implemented administratively through the Electoral Law applicable norms. It submits that Ms. Vijil, in the procedure for her registration as a candidate, explicitly stated that it was one year and seven months that she had been living in Managua department, and that, therefore, it is clear that she did not meet the requirement of residency for two years in that electoral district prior to her registration as a candidate.

7. The State also claims that the instant petition is inadmissible because the alleged facts do not tend to establish violations of the American Convention, for under the Nicaraguan Electoral Law, the legal person is the political party or association and not the candidate as an individual. Hence, refusing Ms. Vijil's registration as a candidate did not harm her political party's right to participate in the elections, since after being notified that Ms. Vijil's statement of candidacy had been rejected, the party proceeded to substitute her with another candidate in order to participate in the elections of November 2011. The State moreover claims that Alianza PLI did not file any claim before the Supreme Electoral Council for the latter's decision in regard to the alleged victim. It submits that Alianza PLI was the legal person lawfully entitled to challenge the resolution denying the alleged victim's registration as a candidate; and that said party, however, did not contest or appeal this decision, replacing Ms. Vijil for another a candidate.

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

8. As for the prior exhaustion of domestic remedies, the petitioning party alleges the applicability of the exception set forth in Article 46.2.a of the Convention in view of the inadmissibility of appeals, provided for in article 173 of the Constitution, in relation to resolutions from the Supreme Electoral Council, which is the matter of the instant petition. For its part, the State argues that in the domestic legal framework political parties and associations (like coalitions of parties) are the only legal persons entitled to allege harm by resolutions from the Electoral Council and to present recourses; and that in the instant case, Alianza PLI did not file complaints or recourses regarding the exclusion of the alleged victim's registration as a candidate. With respect to this last point, the petitioner argues that in the domestic jurisdiction no remedies can be filed against judgments from the Supreme Electoral Council, either by individual persons or political parties.

9. In view of the foregoing, and considering that the State has not indicated which were the remedies that should have been lodged against the Supreme Electoral Council's resolution, either by the alleged victim or by Alianza PLI, or contested the claim that said resolution is unappealable under the Constitution, the Inter-American Commission believes that the exception to the requirement of prior exhaustion of domestic remedies established in Article 46.2.a of the Convention is applicable to this petition.

10. As for the date of filing of the petition, based on the information on the case file, the Supreme Electoral Council's decision rejecting the alleged victim's registration as a candidate is dated June 1, 2011, and the petition to the Commission was received on November 30, 2011. Thus, in accordance with the exception in Article 46.2.a of the American Convention, the IACHR concludes that the instant petition was timely presented, and declares the requirement of timeliness met under the provisions of Article 32.2. of the IACHR Rules of Procedure.

## VII. ANALYSIS OF COLORABLE CLAIM

11. 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 believes that, if proven, the alleged impossibility to contest the refusal to register Ms. Vijil as a candidate for substitute deputy at the departmental level, and the consequent violation of her political rights could establish<sup>5</sup> possible violations of the rights protected through Articles 8 (Fair Trial), 16 (Freedom of Association), 23 (Participation in Government), 24 (Equal Protection) and 25 (Judicial Protection) of the American Convention, in connection with Articles 1.1 and 2 thereof, to the detriment of Ms. Ana Margarita Vijil Gurdián.

12. The Inter-American Commission has previously established that once the American Convention takes effect in relation to a State, it is the Convention and not the Declaration that becomes the primary source of law applicable by the Commission, provided that the petition concerns alleged violations of identical rights established in both instruments and that ongoing violations are not involved. In the instant case, the IACHR notes that the right to vote and to participate in government, enshrined in Article XX of the Declaration and claimed by the petitioning party, is specifically protected by the Convention. As for the complaint regarding the alleged violation of the right of assembly, established in Article XXI of the Declaration and Article 15 of the Convention, the Commission observes that the petitioner did not submit allegations or evidence sufficient for the Commission to *prima facie* consider the possible violation.

## VIII. DECISION

1. To find the instant petition admissible in relation to Articles 8, 16, 23, 24 and 25 of the American Convention, in connection with Articles 1.1 and 2 thereof;

2. To declare the instant petition inadmissible in relation to Article XXI of the American Declaration; and

3. 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 16<sup>th</sup> day of the month of September, 2018. (Signed): Margarette May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice President; Luis Ernesto Vargas Silva, Second Vice President; Francisco José Eguiguren Praeli, Joel Hernández García, Antonia Urrejola, and Flávia Piovesan, Commissioners.

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<sup>5</sup> In this regard, please see. I/A Court H.R., Case of Yatama v. Nicaragua. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 23, 2005. Series C No. 127, pars. 254-259.