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REPORT No. 117/20
PETITION 457-09
REPORT ON ADMISSIBILITY

MARGARETH FIGUEIREDO ALVES
BRAZIL

Approved electronically by the Commission on April 25, 2020.

Cite as: IACHR, Report No. 117/20, Petition 457-09. Admissibility. Margareth Figueiredo Alves.
Brazil. April 25, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Antonia Figueiredo Alves
Alleged victim:	Margareth Figueiredo Alves
Respondent State:	Brazil ¹
Rights invoked:	4 (life), 8 (fair trial), and 25 (judicial protection) of the American Convention on Human Rights; ² Article I of the American Declaration of the Rights and Duties of Man; ³ Articles 3, 4, 5, 6, and 7 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women ⁴

II. PROCEEDINGS BEFORE THE IACHR⁵

Filing of the petition:	August 4, 2009
Notification of the petition to the State:	May 17, 2016
State's first response:	September 21, 2016
Additional observations from the petitioner:	March 13, 2018, and December 15, 2018
Additional observations from the State:	April 5, 2019

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 (instrument adopted on September 25, 1992) and Convention of Belém do Pará (instrument deposited on November 27, 1995)

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), 11 (privacy), and 25 (judicial protection) of the ACHR, in conjunction with Article 1.1 thereof (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, as set out in section VI
Timeliness of the petition:	Yes, as set out in section VI

V. FACTS ALLEGED

1. The petitioner contends that the Brazilian State is responsible for violating the rights to life, to a fair trial, and to judicial protection of Margareth Figueiredo Alves (hereinafter, "the alleged victim"), in that

¹ In keeping with Article 17.2.a of the Commission's Rules of Procedure, Commissioner Flávia Piovesan, a Brazilian national, did not participate in either discussing or deciding on this matter.

² Hereinafter, "American Convention."

³ Hereinafter, "American Declaration."

⁴ Hereinafter, "Convention of Belém do Pará."

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

it failed to act on her accusations of domestic violence, which culminated in an attempt on her life at the hands of her former husband, an agent of the State. The petitioner further contends that the Brazilian State was negligent in investigating the facts and that there has been a delay in issuing the final judgment in the case, giving rise to impunity.

2. The petitioner claims that the alleged victim received threats from her former husband, Mr. Aluizio de Araújo Couto (hereinafter, “Mr. Couto” or “Aluizio”), the Regional Delegate of the Civilian Police in the city of Uberlândia, Minas Gerais, and that she lodged countless complaints with the authorities with no formalities being pursued until November 11, 2000, when he attempted to kill her. The petitioner claims that while the alleged victim was hospitalized, Mr. Ramon Tadeu Carvalho Bucci, the Deputy Delegate and a friend of Aluizio’s, (hereinafter, “Mr. Bucci” or “Deputy Delegate Ramon”) went to visit her and informed her that he was about to contact the Military Police so that the incident report could be prepared; that never happened, however, since in conjunction with him and with police officer Orlando Gomes de Souza (hereinafter, “Mr. Souza”), Aluizio prevented the opening of the police investigation.

3. According to the petitioner, the alleged victim reported the threats made against her to the public prosecution service (hereinafter, “MP”) on at least three occasions, requesting that Mr. Couto be placed in protective custody; that never took place, however, because although the MP requested Aluizio’s arrest, the judge declined to issue a warrant. She claims that in 2003, the MP lodged a complaint against Aluizio when it learned of the attempted murder in the case file of a suit brought to overturn the purported sale of the couple’s home, since Deputy Delegate Ramon had not prepared the police report. Thus, it was only after the second attempted murder that Aluizio’s arrest was ordered, he was a fugitive from justice for more than a year, and the alleged victim was placed under police protection for a period of 24 hours. The petitioner alleges that following that time, she lodged complaints regarding the case with all Brazil’s human rights and law enforcement agencies, as well as with the Ministry of Justice. According to her claims, the criminal proceedings brought against Mr. Couto are on hold, after he filed a motion alleging mental instability. The petitioner contends that on account of the position held by Mr. Couto—as the Regional Delegate of the Civilian Police in the city of Uberlândia, Minas Gerais—her reports were blocked and his subordinates began a defamation campaign against the alleged victim.

4. In turn, the State contends that the Commission lacks competence *ratione materiae* to analyze Articles 1, 3, 4, 5, and 6 of the Convention of Belém do Pará and can only examine a possible violation of Article 7 of that instrument. It notes that two criminal suits were brought against Mr. Couto: public criminal action No. 1.0702.03.082263-0/002 of 2003, against Mr. Couto for the crime of attempted murder, and against Mr. Bucci and Mr. Souza, for the crime of malfeasance. In those proceedings, Aluizio was found guilty and lodged a strict appeal against the judgment, which was ruled inadmissible by the Court of Justice of Minas Gerais (hereinafter, “TJMG”); subsequently, he filed a motion for mental instability that suspended further progress with the proceedings. In addition, another suit was lodged in 2007, on account of the second attack on the alleged victim, in which the MP again accused Mr. Couto of attempted murder.

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

5. The petitioner claims that the petition triggers an exception to the exhaustion of domestic remedies requirement on account of the unwarranted delay in issuing final judgment in the case, in that the incidents occurred more than eighteen years ago and, to date, no final judgment has been handed down. The State contends that domestic remedies have not been exhausted and that Brazilian law affords the alleged victim several procedural mechanisms that are suitable and effective for protecting the violated right. It claims that the decision on the special appeal lodged by Mr. Couto in the criminal proceedings for the 2003 attack remains pending. It contends that there is no evidence of the petitioner having sought civil restitution through the domestic courts and that neither the Public Defense Office nor the Ombudsperson for the Civilian Police and the Judiciary were contacted by the alleged victim. According to the State, the investigations and criminal proceedings carried out were effective, and the time taken to process them was justified by the number of remedies lodged by Mr. Couto.

6. The Commission notes that in the case at hand, three persons were reportedly involved in the attempted murder of the alleged victim and in the failure to conduct an investigation and that because of the positions all three held in the Civilian Police, it took more than three years for the public prosecution service to be made aware of the incident. Thus, according to the available information, the Commission notes that between 2000 and 2003, Messrs. Couto, Bucci, and Souza used their positions as agents of the State to prevent any investigation into the violence suffered by the alleged victim. Moreover, the IACHR also notes that although the MP lodged a complaint against Mr. Couto, the alleged victim's assailant, and against two other state agents in 2003, the case could not be resolved until 2015 since the special appeal lodged by Mr. Couto in 2011 meant the dismissal of the proceedings. In addition, according to public information available on the TJMG website,⁶ the Commission notes that as of June 5, 2019, the jury court had not yet convened, indicating that 19 years after the incident, no decision had yet been adopted in the case. Furthermore, the TJMG website states that on June 17, 2019, the proceedings were again suspended under a motion for mental instability lodged by Mr. Couto, with which the alleged victim has been unable to obtain any result since 2000. Consequently, the IACHR concludes that the exception to the exhaustion of domestic remedies rule is applicable, in keeping with the terms of Article 46.2.c of the American Convention.⁷

7. In connection with the State's argument regarding the need to wait for a decision to be reached on the special appeal, the Commission points out that it has held that while such remedies may be suitable for dealing with human rights violations in certain cases, the general rule is that the only remedies that require exhaustion are those with functions, within the legal system, suitable for providing protection that can repair the violation of a given right. In principle, that function is served by regular remedies and not special ones.⁸ In the case at hand, the IACHR believes that the special appeal did not require exhaustion. Under the Brazilian legal system, the special appeal provided for in Article 102, section III, of the Federal Constitution and in Articles 637 and 638 of the Code of Criminal Procedure is not the correct remedy for upholding the alleged victim's rights, in that it is intended to challenge the constitutionality of lower-order provisions, to recognize the validity of a law or action of a local government, or to rule on the validity of a local law that contradicts a federal law. As the State claims, this remedy was filed by the alleged victim's assailant to challenge the TJMG's ruling on the public prosecution service's investigative competence, and not as a remedy intended to safeguard the alleged victim's rights.

8. Furthermore, the Commission notes that in situations that involve crimes against life and personal integrity, such as the one described in this petition, the domestic remedies that must be considered in ruling on a petition's admissibility are those related to the criminal investigation and the punishment of the guilty.⁹ Thus, as regards the alleged need to exhaust the domestic remedies for civil redress in cases of serious human rights violations, alleged victims do not need to involve civil venues in pursuit of redress before involving the Inter-American system, since remedies of that kind do not respond to the core issues of the petition.¹⁰

9. Additionally, the Commission concludes that the petition was presented within a reasonable time, in accordance with Article 32.2 of its Rules of Procedure. That conclusion is based on the fact that although the incident occurred in 2000 and the petition was received in 2009, some of its effects—such as the absence of a final judgment and the failure to convict the perpetrators of the violations—extend into the present. Therefore, given the context and characteristics of the facts described in this report, the Commission believes that it was presented within a reasonable time and that the admissibility requirement regarding the timeliness of its presentation must be deemed met.

⁶ Information available at:

https://www4.tjmg.jus.br/juridico/sf/proc_movimentacoes.jsp?comrCodigo=702&numero=1&listaProcessos=03082263.

⁷ IACHR, Report No. 39/18, Report No. 196-07, Admissibility, José Ricardo Parra Hurtado, Félix Alberto Páez Suárez, and Families, Colombia, May 4, 2018, para. 12.

⁸ IACHR, Report No. 161/17, Petition 29-07, Admissibility, Andy Williams Garcés Suárez and Family, Peru, November 30 2017, para. 12.

⁹ IACHR, Report No. 72/18, Petition 1131-08, Admissibility, Moisés de Jesús Hernández Pinto and Family, Guatemala, June 20, 2018, para. 10.

¹⁰ IACHR, Report No. 105/17, Petition 798-07, Admissibility, David Valderrama Opazo and Others, Chile, September 7, 2017, para. 11; IACHR, Report No. 78/16, Petition 1170-09, Admissibility, Amir Muniz da Silva, Brazil, December 30, 2016, para. 32.

VII. ANALYSIS OF COLORABLE CLAIM

10. The Commission sees that the instant petition includes allegations regarding domestic violence suffered by Margareth Figueiredo Alves that led to two attempts on her life by her former husband, an agent of the State. The Commission further sees that the petition at hand involves allegations regarding failings on the part of the Brazilian State, in that despite being aware of the threats made against the alleged victim it did not take the proper steps to prevent those violations and in that it has failed to reach a final judgment in the criminal proceedings brought in connection with the attempted murder that took place in 2003.

11. In consideration whereof and after examining the questions of fact and law set out by the parties, the Commission finds that the petitioner's contentions are not manifestly groundless and that an examination of the merits is warranted, given that the alleged facts, if proven, could tend to establish violations of the rights protected by Articles 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 11 (privacy), and 25 (judicial protection) of the ACHR, in conjunction with Article 1.1 thereof (obligation to respect rights), and by Article 7 of the Convention of Belém do Pará.

12. Regarding the petitioner's allegations of violations of the American Declaration, the Commission notes that it has previously established that once the American Convention has come into effect for a given State, it is that instrument and not the Declaration that is the primary source of the applicable law, provided that the petition describes an alleged violation of rights that are identical in both documents and does not entail a situation of ongoing violations.

13. Finally, as regards the alleged violations of Articles 3, 4, 5, and 6 of the Convention of Belém do Pará, the IACHR notes that the competence established in Article 12 of that instrument¹¹ for ruling in the context of an individual case is limited to Article 7. Regarding the other articles, in keeping with Article 29 of the American Convention, the Commission may take them into consideration for the interpretation and enforcement of the American Convention and other applicable instruments.¹²

VIII. DECISION

1. To admit the instant petition as regards Articles 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 11 (privacy), and 25 (judicial protection) of the ACHR, in conjunction with Article 1.1 thereof (obligation to respect rights), and as regards Article 7 of the Convention of Belém do Pará;

2. To notify the parties of this decision; to continue with its analysis of the merits; and to publish this decision and to 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 25th day of the month of April, 2020. (Signed): Joel Hernández, President; Antonia Urrejola, First Vice President; Margarete May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, and Stuardo Ralón Orellana, Commissioners.

¹¹ Article 12 of the Convention of Belém do Pará provides: "Any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Inter-American Commission on Human Rights containing denunciations or complaints of violations of Article 7 of this Convention by a State Party, and the Commission shall consider such claims in accordance with the norms and procedures established by the American Convention on Human Rights and the Statutes and Regulations of the Inter-American Commission on Human Rights for lodging and considering petitions."

¹² IACHR, Report No. 174/17, Petition 831-11, Admissibility, Hester Suzanne Van Nierop and Family, Mexico, December 30, 2017, para. 11.