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REPORT No. 102/20
PETITION 1058-13
REPORT ON ADMISSIBILITY

CLAUDIA BARACALDO BEJARANO AND FAMILY
COLOMBIA

Approved electronically by the Commission on April 24, 2020.

Cite as: IACHR, Report No. 102/20, Petition 1058-13. Admissibility. Claudia Baracaldo Bejarano and family. Colombia. April 24, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner	Claudia Baracaldo Bejarano
Alleged victim	Claudia Baracaldo Bejarano and family
Respondent State	Colombia
Rights invoked	None specified

II. PROCEEDINGS BEFORE THE IACHR¹

Filing of the petition	June 21, 2013
Additional information received during initial review	July 18, 2014, July 15, 2015, April 4, 15, 2016, May 13, 2016
Notification of the petition	June 26, 2018
State's first response	April 9, 2019
Additional observations from the petitioner	April 25, 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 on Human Rights ² (deposit of instrument of ratification on July 31, 1973) and the Inter-American Convention on the Prevention Punishment and Eradication of Violence against Women ³ (deposit of instrument made on November 15, 1996)

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 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), 22 (right to freedom of movement and residence) 25 (right to judicial protection) and 26 (right to economic, social and cultural rights) of the American Convention on Human Rights, in connection with Articles 1(1); and Article 7 of the Convention of Belem do Pará
Exhaustion or exception to the exhaustion of remedies	Yes, under the terms of section VI
Timeliness of the petition	Yes, under the terms of section VI

V. SUMMARY OF ALLEGED FACTS

1. This petition alleges the State failed to take adequate steps to protect the physical integrity of the petitioner after she was threatened and attacked by a guerilla group.

2. According to the petition, Claudia Baracaldo Bejarano (hereinafter "the petitioner" or "the alleged victim") was the victim of attacks in 2008 and 2010 by a guerilla group associated with the Revolutionary Armed Forces of Colombia (hereinafter "FARC"), and claims that the State was aware of the threats to her personal security, and ultimately failed to take steps to protect her or to provide redress for the violation of her right to physical security and other associated rights. From May 2006, the petitioner affirms that she was a teacher of Spanish and English at a school in in Puerto Santander-Araracuara (Department of Amazonas). According to the petitioner, on June 9, 2008, her younger son Juan David was playing football when he accidentally hit the face of the daughter of a guerrilla commander. Subsequently this led to a major incident on June 22, 2008, when the petitioner alleges that (a) a group of men (from the guerilla group) came

¹ The observations submitted by each party were duly transmitted to the opposing party.

² Hereinafter "the American Convention" or "the Convention".

³ Hereinafter the "Convention of Belem do Pará"

to her home and demanded that the petitioner hand over her son; (b) the men took the petitioner away and physically abused her, including smearing cocaine all over her body. As a follow up to the June attack, the petitioner alleges that in October 2008, she was physically abused by a student (who was not part of her class) at her school, who threatened retaliation for what had happened to the daughter of the guerilla leader.

3. Following this incident, the petitioner states that she was forced to leave – initially for Bogotá, and ultimately for Leticia capital of the Department of Amazonas). According to the petitioner, she complained to various authorities, including the prosecutor of Letitia and the Public Defender of Leticia. The petitioner also affirms that she contacted the relevant department of education to ask for a transfer to another school but was unsuccessful in this endeavor. Petitioner claims that in her discussion with these various authorities that they dismissed her claim that she remained at risk of harm. The petitioner states that she subsequently moved to Puerto Nariño (Department of Amazonas) where she continued to receive death threats by telephone, despite changing her number many times.

4. The petitioner alleges that in February 2010, she was kidnapped, raped, tortured by members of the same guerilla group associated with FARC and left for dead in a jungle not far from Letitia. According to the petitioner, she was hospitalized as a result of injuries suffered during this attack. The petitioner claims that she made a criminal complaint to the relevant judicial/prosecuting authorities – in particular, the prosecutor assigned to Leticia. However, the petitioner alleges that that her matter was passed to different offices with no indication that an investigation was initiated or concluded. The petitioner mentions that she was able to identify the assailants by name, so she is unable to comprehend the lack of conclusive investigation resulting in the arrest and prosecution of her assailants. The petitioner indicates that she also raised her complaint with *La Unidad para la Atención y Reparación Integral a las Víctimas* (hereafter “Victims’ Unit), but that this Victims Unit has treated her with indifference and negligence. The petitioner also alleges that she filed suit for reparation before *el Juzgado Único Administrativo del Circuito Judicial de Leticia*, but that her suit was dismissed as inadmissible on January 30, 2013 for failure to comply with certain procedural requirements. According to the petitioner, she did not discover that her suit had been dismissed until three years later (because she had been hospitalized at or around the time of the dismissal, and that her lawyer failed to inform her of the dismissal in a timely way). The petitioner also alleges that her lawyer at the time failed to take the corrective steps to avoid dismissal of her suit.

5. As a result of attacks, petitioner says now under psychiatric treatment for depression, anxiety, and Post Traumatic Stress Disorder; and that she is no longer able to work. Ultimately, the petitioner complains that despite the many years that have elapsed, that the State has taken no measures or no adequate measures to investigate the attacks against her in 2008 and 2010, with a view to holding the perpetrators criminally responsible, or to otherwise redress the violations of her right to physical security. The petitioner rejects the State’s contentions, and in particular contends that it was ultimately responsible for the acts of the guerrilla group, given that she had brought the threats and the attacks to the State’s attention in a timely manner.

6. The State rejects the petition as inadmissible primarily on the grounds that (a) the petitioner has failed to exhaust domestic remedies; (b) the attacks on the petitioner were committed by third parties – which are outside of the ambit of State responsibility. With regard to exhaustion of domestic remedies, the State argues that criminal proceedings are ongoing with regard to the events of 2008 and 2010. However, the State indicates that on August 28, 2012, the investigations were suspended, but that subsequently, on August 2, 2018, the investigation was revived and transferred to the Special Prosecutor 1 of Cundinamarca. According to the State, the investigation is currently active, and therefore this remedy has not been exhausted. More generally, the State contends that given the complexity of the allegations, there has been no undue delay in carrying these criminal investigations/proceedings. The State also contends that a suit for reparation is an available and adequate remedy for the petitioner. In this respect, the State argues that it was open to the petitioner to appeal the dismissal of her suit for reparation, but that she failed to do so (and therefore failed to exhaust this remedy).

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

7. The petitioner maintains that after more than a decade (in the case of the 2008 attack) and almost a decade after the second (2010), there has been a failure (on the part of the State) to advance criminal investigations with a view to clarifying the facts, and securing the identification, arrest, prosecution and

punishment of all the assailants. Based on the record, the investigations are still ongoing as of 2018. The State argues that the criminal investigation is still pending due to its complexity, so that domestic remedies have not been exhausted. The IACHR has long established that whenever a prosecutable crime the State has the obligation to initiate and/or conduct criminal proceeding, as this constitutes the suitable means for clarifying the facts, prosecuting the persons responsible, and establishing the corresponding criminal sanctions, in addition to making possible other forms of monetary reparation. In addition, the Commission has established that as a general rule a criminal investigation should be carried out promptly to protect the interests of the victims, to preserve the evidence, and even to safeguard the rights of every person who, in the context of the investigation, is considered a possible suspect. The State has provided no evidence to support its claim of complexity as a cause of the incomplete criminal investigation after the many years that have elapsed since the two attacks against the petitioner. Therefore, the IACHR concludes that there has been a delay in the investigations and consequently that the exception to the exhaustion of domestic remedies set out at Article 46.2.c of the American Convention is applicable. Moreover, the IACHR recalls that for the purposes of determining the admissibility of a claim like this one, the action for reparation is not a suitable remedy, and need not be exhausted, given that it is not adequate for providing integral reparation and justice for alleged victims.

8. Finally, the petition was lodged on June 21, 2013, the acts alleged in the petition are said to have begun in June 2008, and their purported effects continue to this day. Therefore, in view of the context and characteristics, the Commission considers that the petition was lodged within a reasonable time and that the admissibility requirement must be deemed met.

VII. COLORABLE CLAIM

9. In the light of the factual and legal arguments set out by the parties, the Commission finds that the instant petition is not manifestly groundless and that a report on the merits is required to determine if the State has fulfilled its duty to investigate and, if applicable, punish the purported violations of the alleged victim's rights under the terms of Articles 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), and 25 (right to judicial protection) of the American Convention on Human Rights, in connection with Articles 1(1). In addition, during the merits stage, the IACHR will analyze the circumstances in which the alleged victim was allegedly displaced internally to determine if said circumstances could constitute a violation of the right enshrined in Article 22 (movement and residence) of the American Convention in relation to articles 26 and 1.1 of the same instrument to the detriment of the alleged victim. Finally, the Commission wishes to address the State's contention that the petitioner's complaint arose from acts committed by third parties, and therefore fall outside of the State's international responsibility. However, the record demonstrates that the petitioner informed the authorities of not only the attacks, but the threats made against her. As mentioned before, there is no evidence that the State took steps to promptly initiate criminal investigations to hold third parties accountable or to take any other steps to protect the physical integrity of the petitioner. Accordingly, the Commission finds no merit in this contention of the State.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 5, 7, 8, 22, 25 and 26 of the American Convention on Human Rights, in connection with Articles 1(1); and Article 7 of the Convention Inter-American Convention on the Prevention, punishment and eradication of violence against women (Convention of Belem do Para), and

2. To notify the parties of this decision; to continue with the analysis on the merits; and to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 24th 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.