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REPORT No. 106/20
PETITION 993-09
REPORT ON ADMISSIBILITY

G. V. L. B
MEXICO

Approved electronically by the Commission on April 24, 2020.

Cite as: IACHR, Report No. 106/20. Petition 993-09. Admissibility. G.V.L.B. Mexico. April 24, 2020.

I. INFORMATION ABOUT THE PETITION

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| Petitioner: | María de Jesús Bautista |
| Alleged victim: | G.V.L.B |
| State denounced: | Mexico ¹ |
| Rights invoked: | Articles 11 (protection of honor and dignity) and 14 (correction or reply) of the American Convention on Human Rights ² |

II. PROCEDURE BEFORE THE IACHR³

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| Filing of the petition: | August 9, 2009 |
| Additional information received at the stage of initial review: | March 8, 2010; March 26, 2014 |
| Notification of the petition: | August 10, 2016 |
| State's first response: | December 27, 2016 |
| Notification of the possible archiving of the petition: | November 16, 2018 |
| Response to the notification regarding the possible archiving of the petition: | November 20, 2018 |

III. COMPETENCE

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| 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 March 24, 1981) and Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women ⁴ (instrument adopted on November 12, 1998) |

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

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| Duplication of procedures and international <i>res judicata</i> : | No |
| Rights declared admissible: | Articles 5 (physical integrity), 8 (due legal guarantees), 11 (protection of honor and dignity), 19 (rights of the child), 25 (judicial protection), and 26 (economic, social, and cultural rights) of the American Convention, in connection with Article 1(1) thereof, and Article 7 of the Convention of Belém do Pará; |
| Exhaustion of domestic remedies or where an exception applies: | Yes, under the terms of Section VI |
| Timeliness of the petition: | Yes |

V. SUMMARY OF THE FACTS BEING ALLEGED

1. The petitioner alleges the responsibility of the Mexican State in connection with the violation of the honor and dignity of her daughter, the adolescent G.V.L.B (hereinafter also, "the alleged victim"),⁵ as well as of her daughter's right to a correction or reply, insofar as the staff of the *Instituto Bilingüe Milenio* [Milenio Bilingual Institute], which her daughter was attending, forced the alleged victim to strip naked in order to verify

¹ Pursuant to the provisions of Article 17(2)(a) of the Commission's Rules of Procedure, Commissioner Joel Hernández García, a Mexican national, did not participate in either the debate or the decision on this case.

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

³ Each party's observations were duly forwarded to the other party.

⁴ Hereinafter, the "Convention of Belém do Pará."

⁵ The IACHR is refraining from publishing the identity of the alleged victim because G.V.L.B was a minor when the violations were said to have occurred.

whether or not she was carrying drugs on her person. The petitioner claims that this incident was filmed and also disseminated in the local media.

2. The petitioner holds that on May 13, 2009, the alleged victim, then 14 years of age, began to study at the *Instituto Bilingüe Milenio*, a private school in the city of San Miguel de Allende, Guanajuato. The petitioner claims that in her first days at the school, the alleged victim was accused of taking and selling drugs. Because of this, the school's principal subjected the alleged victim to a search in front of the staff, without her parents or another guardian present, forcing her to strip naked in order see whether she had any drugs in her clothes. The petitioner asserts that school staff used a video camera to record the incident and also forced the alleged victim to turn over her cell phone. She alleges that the incident was disseminated in the local media and uploaded to the Internet.

3. In light of this incident, the petitioner filed a criminal complaint for defamation with the Public Prosecution Ministry of San Miguel de Allende, Guanajuato, pursuant to Article 189 of the Criminal Code of the state of Guanajuato. Reports are that, at the behest of the Public Prosecution Ministry's Investigation Agency, an attempt was made to reach a conciliation agreement, but to no avail since the petitioner had requested that the principal of the *Instituto Bilingüe Milenio* hold a meeting and make a public apology, but he had refused. The petitioner indicates that the Public Prosecution Ministry proceeded to archive the case. She further claims that she filed a complaint (complaint no. 321/2009) with the state Public Prosecution Ministry's Investigation Agency I in the city of San Miguel de Allende and reported the incident to the National Human Rights Commission, noting that the Public Prosecution Ministry did reopen the case, but did not launch an investigation.

4. For its part, the State confirms that the petitioner filed a complaint on May 13, 2009, which prompted the opening of preliminary inquiry No. 321/2009 into the crime of defamation against the alleged victim. Several actions were taken as part of the inquiry, e.g., students were interviewed and a statement was taken from the principal of the school who reserved the right to testify and asked that a conciliation hearing be held. On May 21, 2009 a conciliation hearing was held, but no agreement was reached and so the preliminary inquiry continued. The State indicates that, given a lack of evidence, a decision was made on June 25, 2009 to not bring criminal charges; the petitioner appealed that decision and on July 22, 2009, the decision was overturned and an investigation into the incident was ordered. On September 1, 2011 a decision was made to close the preliminary inquiry, and on September 25, 2011 a decision was made that that no criminal charges would be filed as it had been determined that there was not enough evidence that defamation had occurred. The State further claims that the Education Secretariat was made aware of the situation and that because the alleged victim had missed days of school, the it proposed to the petitioner that the alleged victim be transferred to another school in the state in order to guarantee her right to an education.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

5. According to the State, the petitioner failed to exhaust domestic remedies inasmuch as, pursuant to Article 355, IV of the Code of Criminal Procedure of Guanajuato, she could have challenged the September 25, 2011 decision—which called for the investigation to be shelved—by filing an appeal. The State further indicates that if the petitioner had then disagreed with the ruling on the appeal, she would have had the opportunity to pursue an indirect *amparo* remedy, in accordance with Article 114, VII of the Law on *Amparo*. The State contends that the remedies are effective—an appeal resolved the petitioner's first dispute, and the IACHR has recognized the *amparo* remedy as being effective. The State points out that the petition was lodged before the preliminary inquiry had concluded insofar as the criminal complaint filed by the petitioner was settled on September 25, 2011.

6. In this respect, the Commission notes that the rule on the exhaustion of remedies provided by Article 46(1)(a) of the American Convention establishes that remedies generally available and appropriate in the domestic legal system must be pursued first. Such remedies must be secure enough, both formally and materially; that is, accessible and effective in resolving the situation in question. The IACHR has established that the requirement to exhaust all domestic remedies does not necessarily mean that alleged victims are obligated to exhaust all remedies at their disposal. If an alleged victim pursued the matter through one of the

valid and appropriate options in accordance with the domestic legal system, and the State had the opportunity to remedy the matter in its jurisdiction, the objective of international law has been achieved.⁶

7. In the instant case, the petitioner sought, in the domestic system, to have the perpetrators of the incident against her daughter, the alleged victim, held accountable, and to that end filed a complaint with the Public Prosecution Ministry. The complaint was archived initially, but after a new request by the petitioner, it was reinstated. After the complaint was reinstated, a determination was made that there was not enough evidence to prove defamation and so no charges were brought. The Commission notes that even though the representatives of the alleged victim did not appeal that decision, the instant case involves the alleged violation of the rights of a 14-year-old girl and that the Office of the Prosecutor for the Protection of Children and Adolescents failed to open an *ex officio* investigation into the violation of the alleged victim's physical integrity.

8. In this connection, the IACHR recalls that the precedents established by the Commission indicate that whenever a crime is committed that can be prosecuted at the initiative of the prosecutorial authorities, the State has the obligation to promote and give impetus to the criminal proceeding, and that, in those cases, this is the suitable jurisdiction for clarifying the facts, prosecuting the persons responsible, and establishing the corresponding criminal sanctions.⁷ Specifically, in cases in which the alleged victims are children or adolescents, the Commission notes that all means of investigation must be pursued bearing in mind the best interests of the child in order to best protect such interests.⁸ The Commission further observes that the Convention of Belém do Pará holds that the obligation to act with due diligence takes on a special connotation in cases of violence against women. This Convention also stipulates that States must exercise due diligence in cases of violence and take special account of the vulnerability of women of minor age, among other risk factors, to violence and discrimination.⁹

9. As the instant case involves a young girl, the Commission observes that it was incumbent upon the Public Prosecution Ministry to bring a criminal case before the courts,¹⁰ and upon the Federal Prosecutor for the Protection of Children and Adolescents to investigate any incident presumed to constitute a crime against children and adolescents.¹¹ However, no *ex officio* investigations were opened into the crime against the alleged victim's honor and dignity or into the possible crime of sexual violence against G.V.L.B, due to the fact that she had been forced to strip naked in front of the school staff and that a video thereof had reportedly been disseminated. As to the *amparo* remedy, the Commission observes that as this is a case of an alleged crime against the integrity of a young girl, the Federal Prosecutor for the Protection of Children and Adolescents had the obligation to investigate it. In addition, the IACHR observes that even if the petitioner had pursued the *amparo* remedy, only the crime against the alleged victim's honor would have been considered, without any investigation into the possible violation of her physical integrity.

10. As to the timeliness of the petition, given that the exception to the exhaustion of domestic remedies applies in this case, the Commission hereby concludes that the petition was filed within a reasonable period, pursuant to Article 32(2) of its Rules of Procedure, thereby satisfying the timeliness requirement for admissibility.

VII. CHARACTERIZATION OF THE FACTS ALLEGED

11. The Commission observes that this petition includes allegations of a lack of judicial guarantees and protection on the part of the State in connection with the fact that the alleged victim, a 14-year-old girl, was forced to strip naked at her school, and, when she refused, had her clothing forcibly removed while others video

⁶ IACHR, Report No. 16/18, Petition 884-07. Admissibility. Victoria Piedad Palacios Tejada de Saavedra. Peru. February 24, 2018, paragraph 12.

⁷ IACHR, Report No. 99/09, Petition 12.335, Gustavo Giraldo Villamizar Durán. Colombia. October 29, 2009, paragraph 33; IACHR, Report No. 74/16, Petition 568-06, H.O.V.T et al. Guatemala. December 6, 2016, paragraph 39.

⁸ Article 19(2), Convention on the Rights of the Child; I/A Court H.R. Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/02 of August 28, 2002, Series A No. 17, paragraphs 101-102

⁹ Article 9, Convention of Belém do Pará; IACHR, Report No. 3/09, Petition 4.408-02, V.R.P and V.P.C. Nicaragua. February 11, 2009, paragraph 43.

¹⁰ Article 3 of the Code of Criminal Procedure of Guanajuato.

¹¹ Article 122, V of the *Ley General de los Derechos de Niñas, Niños y Adolescentes para las Procuradurías de Protección* [General Law on the Rights of Children and Adolescents for Protection Prosecutors].

recorded the scene. There are further allegations of a failure to duly investigate, prosecute, and punish the incident and of the Public Prosecution Ministry to act.

12. In view of these considerations and after examining the elements of fact and law put forth by the parties, the Commission considers that the allegations made by the petitioner are not manifestly groundless and require a study of the merits insofar as, should the facts alleged shown to be true, they may constitute violations of Articles 5 (physical integrity), 8 (due legal guarantees), 11 (protection of honor and dignity), 19 (rights of the child), and 25 (judicial protection) of the American Convention, in connection with Article 1(1) thereof. The Commission also considers that the alleged lack of an investigation into the crime against the [alleged victim's] integrity, if proven, could constitute sexual violence, and that the lack of investigation into what were characterized as "crimes against honor"¹² may constitute violations of Article 7 of the Convention of Belém do Pará to the detriment of G.V.L.B.

13. In addition, bearing in mind the allegation made by the petitioner that the staff of the private school perpetrated the acts, the IACHR considers that, if shown to be true, the State's failure to act in accordance with its duties to regulate and exercise oversight over any practices engaged in by school personnel that might undermine the right to receive an education in a safe environment vis-à-vis the best interests of the child may constitute a violation of Article 26 (economic, social, and cultural rights) of the American Convention.

14. As to the alleged violation of the right to correction or reply, the Commission observes that the petitioner has not offered sufficient arguments or evidence to prompt a *prima facie* consideration of the potential violation of such right.

15. Lastly, with respect to the State's fourth instance allegation, the Commission observes that in admitting this petition, it is not seeking to supersede the jurisdiction of the domestic authorities. Rather, during the merits stage for this petition, the Commission will examine whether domestic judicial processes provided due process and judicial protection guarantees and offered guarantees of access to justice to the alleged victims under the terms of the American Convention.

VIII. DECISION

1. To declare this petition admissible with regard to Articles 5 (physical integrity), 8 (due legal guarantees), 11 (protection of honor and dignity), 19 (rights of the child), 25 (judicial protection), and 26 (economic, social, and cultural rights) of the American Convention, in connection with Article 1(1) thereof; and Article 7 of the Convention of Belém do Pará;

2. To declare this petition inadmissible with regard to Article 14 (correction or response) of the American Convention; and

3. To notify the parties of this decision; to continue with its analysis of the merits of the complaint; and to publish this decision and include it in its Annual Report to the OAS General Assembly.

Approved by the Inter-American Commission on Human Rights on the 24th day of the month of April, 2020. (Signed): 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.

¹² I/A Court H.R. Case of V.R.P., V.P.C. et al. v. Nicaragua. Preliminary Objections, Merits, Reparations, and Costs. Judgment of March 8, 2018. Series C No. 350., paragraph 313; I/A Court H.R. Case of the Miguel Castro-Castro Prison v. Peru. Merits, Reparations, and Costs. Judgment of November 25, 2006. Series C No. 160, paragraph 306; United Nations. Committee on the Elimination of Discrimination against Women – General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19. CEDAW/C/GC/35, 26 July 2017, paragraph 29.