

REPORT N° 3/09
PETITION 4408-02
ADMISSIBILITY
V.R.P. and V.P.C.¹
NICARAGUA
11 de febrero de 2009

I. SUMMARY

1. On October 28, 2002, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "IACHR" or "the Inter-American Commission") received a petition lodged by Mrs. V.P.C. (hereinafter "the petitioner" or "V.P.C."), the mother of V.R.P. (hereinafter "the alleged victim" or "V.R.P."), in which they allege the international responsibility of the State of Nicaragua (hereinafter "the State," the "State of Nicaragua," or "the Nicaraguan State") for irregularities and the failure to render a final judgment in the criminal proceedings instituted on November 20, 2001 for the crime of rape allegedly perpetrated against the child V.R.P.,² aged nine.

2. The petitioner alleges that the facts denounced constitute violation of Articles I, II, III, IV, V, VI, VII, VIII, XVIII, XXIV, and XXX of the American Declaration of the Rights and Duties of Man (hereinafter "the American Declaration"); Articles 1, 2, 5(1) and (2), 7(1), 8(1), 11, 12(1) and (2), 13(1), 17(1), 19, 24, and 25 of the American Convention on Human Rights (hereinafter the "American Convention" or "the Convention"); Articles 2.c, 3, 4.b, c, d, e, f, and g, 5, 6.a, 7.a, b, e, f, and h, 8.b and f, 9, and 10 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (hereinafter the "Convention of Belém do Pará"), and Articles 1, 2.1 and 2, 3.1 and 2, 5, 6, 12.2, 14.3, 15, 16.1 and 2, 17, 19.1 and 2, 20.1, 24.1 and 2, and 27.1 and 2 of the United Nations Convention on the Rights of the Child (hereinafter "Convention on the Rights of the Child"), to the detriment of V.R.P and her mother V.P.C. The petitioner alleges irregularities in the criminal proceedings instituted on November 20, 2001 for the rape of the child V.R.P., which have resulted in impunity for the facts denounced since, to date, the Nicaraguan judiciary has not rendered a final judgment.

3. The State denies the allegations of irregularities in the proceedings, arguing that the Attorney General's Office has participated fully and actively therein as a representative of the victim and of society. It states that all authorities approached by the petitioner responded to her, although not always in her favor, where the law was not of assistance to her, and that the length of the proceedings stems from multiple *incidentes de nulidad* [motions to vacate based on procedural violations], appeals, objections, and *reposiciones de autos* [applications for reconsideration] filed by both parties with the courts.

4. Without prejudice to the merits, and having analyzed the available information and determined fulfillment of the admissibility requirements contained in Articles 46 and 47 of the American Convention, and Articles 30 and 37 of its Rules of Procedure, the IACHR concludes herein that the petition is admissible, with regard to V.R.P., in connection with the alleged violation of the

¹ Although not specifically requested by the petitioner, the IACHR is reserving the identity of the alleged victim because she is below the age of 18 years and because this is a case of alleged rape. In order to afford greater protection to the alleged victim, the IACHR is also withholding the names of the petitioner, the mother of the alleged victim, and of the father. Accordingly, the IACHR refers to the alleged victim, aged 9, as "V.R.P.," to the petitioner and mother of the alleged victim as "V.P.C.," and to the father of the alleged victim as "H.R.A."

² The American Convention on Human Rights does not contain a definition of "children." Therefore, the inter-American human rights system employs the concept established in the United Nations Convention on the Rights of the Child, which defines a child as "every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier."

right enshrined in Articles 5(1), 8(1), 11, 19, 24, and 25 of the American Convention, in conjunction with Articles 1(1) and (2) of said instrument, and with the alleged violation of Article 7 of the Convention of Belém do Pará; and, with regard to V.P.C, of Articles 5(1), 8, and 25 of the American Convention, in conjunction with Article 1(1) of said instrument. The Commission decides to inform the parties of this decision, to publish it, and to include it in its Annual Report to the General Assembly of the Organization of American States.

II. PROCESSING BEFORE THE COMMISSION

5. The petition was received on October 28, 2002 and assigned number P-4408-02.³ On December 7 2004, the Commission forwarded to the State the relevant parts of the petition, setting a period of two months for reply, in accordance with the provisions of Article 30(2) of the Rules of Procedure of the Inter-American Commission on Human Rights (hereinafter "Rules of Procedure"). A reply was received from the State on February 9, 2005, and, on February 14, 2005, it submitted an addendum to its initial reply.

6. The IACHR also received information from the petitioner on the following dates: September 27, 2005, March 7, 2006, October 17, 2006, April 25, 2007, and September 11, 2007. These communications were duly forwarded to the State.

7. Additionally, the IACHR received observations from the State on the following dates: April 22, 2005, November 4, 2005, and July 2, 2007. Said communications were duly forwarded to the petitioners.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

8. The petitioner states that her daughter V.R.P., aged 9, was sexually abused on two occasions by her father, H.R.A.. She states that on October 16, 2001, she and her daughter went to a hospital because the child could not control her bowels and the pediatrician stated that the child had polyps near the rectum, subsequently finding through a biopsy that V.R.P. had contracted the Human Papilloma Virus.⁴

9. The petitioner reports that, on that occasion, the child said that on September 14, 2000, her father had taken her to the "Las Flores" farm, had given her coffee, taken her to the woods, and that afterwards she did not know what her father had done with her because she fell asleep, and that on October 1, 2000, her father had again taken her to "Las Flores," this time to a house under construction, and had given her coffee to drink, and she felt dizzy and fell asleep. On awakening, she saw that her father was fastening his belt, straightening the front of his pants, zipping his zipper, and cleaning her rectal area. She also alleges that she felt a great deal of pain.⁵ The petitioner states that the child had not told her of these facts because she was afraid they would scold her.

³ In a communication received on April 28, 2003, the petitioner informed the IACHR that she would be represented by Mrs. Haydee Marín, and, on January 2, 2004, she advised that she was rescinding said authorization.

⁴ According to the World Health Organizations (WHO), the Human Papilloma Virus (HPV) infects the epithelial cells (mucous or skin cells), is largely a sexually-transmitted infection that may be asymptomatic, and may cause cervical cancer. The WHO indicates that the incidence of HPV-related cancer is higher among girls than among boys and that cervical cancer is the second cause of cancer deaths in women worldwide. See the WHO's web page <http://www.who.int/es/index.html>.

⁵ The petitioner attached a copy of the mental evaluation made at Jinotega Victoria Hospital on November 26, 2001. Forensic Report N° 16275/01 of November 27, 2001.

10. Upon learning of the facts related by her daughter, the petitioner states that on November 20, 2001, she filed a criminal complaint for rape against H.R.A with the Jinotega District Criminal Court. Regarding domestic remedies, she reports that on November 30, 2001, an arrest warrant was issued for H.R.A and that on December 3, 2001, the representatives of H.R.A. filed an appeal against this decision. On April 13, 2002, the Tribunal de Jurado [Jury Court] issued Verdict No. 33, acquitting H.R.A., and on April 14, 2002 the petitioner filed an *incidente de nulidad sustancial* [motion to vacate based on substantive procedural violations] against this judgment. On May 13, 2002, the acquittal was declared void⁶ and, the next day, H.R.A.'s defense filed an appeal against the latter decision.

11. The petitioner states that on January 13, 2003, in Judgment No. 001, the Appellate Court upheld the judgment in the appeal lodged by H.R.A., declared the absolute substantive nullity of the interlocutory order of May 13, 2002, and ordered the Substitute Judge *a quo* to release the accused and to open for evidence the *incidente de nulidad*.⁷ She states that, in that same judgment, the Appellate Court "sharply called to order" the Judge "for her highly irregular conduct"⁸ and ordered that the case be heard by the Substitute Judge. She states that after Judgment No. 001 was issued, five judges were disqualified from hearing the *incidente de nulidad*, and, after numerous steps taken by the petitioner, on January 13, 2005, a judge assumed jurisdiction.

12. She reports that on August 9, 2005, the Jinotega District Criminal Court issued Judgment N° 176, disallowed the *incidente de nulidad sustancial* that had been filed against the acquittal of H.R.A. by the Jinotega Jury Court (Verdict No. 33).⁹ The petitioner alleges that, on August 26, 2005, both she and the Jinotega Assistant Prosecutor filed an appeal against this decision, without thus far a judgment having been rendered in that connection.

13. The petitioner states that a series of irregularities, omissions, and delays occurred during the criminal proceedings against H.R.A. that constitute violations of the rights enshrined in the American Convention; that the higher interest of the child was not taken into account, in contravention of the provisions of the Code on Children and Adolescents,¹⁰ and that justice in the instant case has been delayed because no final judgment has been rendered in the proceedings that began with the criminal complaint she filed on November 20, 2001.

14. In that connection, she states that the Special Prosecutor for Children and Adolescents of Nicaragua investigated the case and found that "there is virtual impunity in connection with the crime perpetrated against the child V.R.P. (...), despite the fact that she has unquestionably and incontrovertibly stated who her victimizer was."¹¹ She adds that the Office of the Prosecutor for the Defense of Human Rights investigated the case, determined that irregularities

⁶ From a copy of the verdict of May 13, 2002, the Judge set said verdict No. 33, based on the provisions of Article 444.8 of the Code of Criminal Procedure, which reads: "Substantive procedural violations involving the verdict or declaration of the jury include: (...) 8. If the jurymen were bribed."

⁷ From a copy of Judgment No. 001, of January 13, 2003, issued by the Northern District Appellate Court, Criminal Chamber, Matagalpa.

⁸ From a copy of Judgment No. 001, of January 13, 2003, issued by the Northern District Appellate Court, Criminal Chamber, Matagalpa (original text in upper case).

⁹ From a copy of Judgment N° 176 of August 9, 2005, issued by the Jinotega District Criminal Court (original text in upper case).

¹⁰ The rule cited by the petitioner states: "the higher interest of the child or adolescent is anything promoting his or her full physical, psychological, moral, cultural, and social development consistent with the development of his or her faculties that is of maximum benefit to him or her." Code on Children and Adolescents of Nicaragua (Law N° 287 of May 27, 1998), Article 10.

¹¹ The petitioner attaches a communication to the petitioner of September 8, 2003 from the former Special Prosecutor for Children and Adolescents, Carlos Emilio López Hurtado.

had occurred in the proceedings, and concluded that Verdict No. 33 acquitting Mr. H.R.A., issued by the Jinotega Jury Court “from any perspective is unjust and violates the human rights of the child with regard to her physical, psychological, and sexual integrity, her protection under the law, and her special protection (...) as well as all rights contained in the Code on Children and Adolescents (...) [and] the HIGHER INTEREST of the child was not taken into account.”¹²

15. With regard to the steps ordered during the trial, the petitioner reports that the Prosecutor General’s Office was not present at the reconstruction of the facts at “Las Flores” farm. She adds that V.R.P. was taken to the place of the facts in the presence of H.R.A. and the [female] judge ordered her to indicate the place where she was raped, as well as the position in which the accused placed her on that occasion, while she was photographed, which made the child burst into tears.

16. The petitioner alleges that although Forensic Report N° 16273/01 regarding V.R.P. concluded that “the presence of HUMAN PAPILLOMA VIRUS together with CONDYLOMATOSIS ACUMINATE indicates to us diseases that are only transmitted sexually, and, in such cases, the bearer may be asymptomatic and the receiver (in this case the minor child) may be the party who develops the diseases,”¹³ the judicial authorities did not take measures to establish precisely how the child had contracted said illness. She adds that they did not make a peniscopic examination of the accused, which was indicated in order to demonstrate his alleged contraction of the Human Papilloma Virus, with a view to establishing his guilt, despite the various requests submitted to the Judge.

17. The petitioner also states that despite having submitted testimony and diagnoses from the doctors who twice operated on the child V.R.P. to treat the Human Papilloma Virus vaginally and to reconstruct her anus, the Judge ordered other examinations which, because of the way in which they were conducted, caused serious injury to the child. In that connection, the petitioner attached a psychological report issued by the Institute of Forensic Medicine of the Supreme Court of Justice, sent to the Judge on November 27, 2001, which indicates “evident signs of emotional distress, trying to cry, apprehension, and fear at the medical examination.”¹⁴

18. In that connection, the petitioner alleges that the child was examined three times, on November 21, 24, 27, 2001. Regarding the first examination, when the child refused to be examined, the petitioner states that the Jinotega Department forensic physician told her “if you will not let me examine you vaginally, I wonder what you will do when I have to examine your anus.”¹⁵ The second examination was conducted in the presence of more than 11 people, and although the child did not want them to touch her, the Assistant Prosecutor did not suspend the examination. She alleges that the third examination was conducted in the Institute of Forensic Medicine of the Supreme Court of Justice, and that the child V.R.P. was not sedated, contrary to the psychiatrist’s recommendation. She also states that at the time, no judicial authority or Departmental Prosecutor’s Office existed to protect the rights of the child as part of the proceedings.

19. The petitioner alleges that on November 22, 2001, she sent a letter to the Comprehensive Health Care Systems (SILAIS) of Jinotega Department, complaining of the way in

¹² From a document annexed by the petitioner on the statement of April 25, 2002 of the Special Prosecutor for Children and Adolescents of the Office of the Prosecutor for the Defense of Human Rights.

¹³ From a document annexed by the petitioner from the Institute of Forensic Medicine, Supreme Court of Justice, Forensic Report, Sex Crime, Conclusion 2.

¹⁴ From a document annexed by the petitioner, Psychological Report No. 16275/01, of November 27, 2001, Institute of Forensic Medicine, Supreme Court of Justice.

¹⁵ Communication from the petitioner received by the IACHR Executive Secretariat on March 16, 2005.

which the examinations had been conducted, but SILAIS stated that the competent body was the Disciplinary Committee of the Supreme Court of Justice, since the forensic physician was a member of the judiciary.¹⁶ She indicates that, therefore, on April 30, 2002, she filed a complaint with the Disciplinary Committee of the Supreme Court of Justice (Complaint No. 357-2002), requesting that a judicial inspector be sent, but received no reply.

20. The petitioner states that the child is severely traumatized, not only from the crime of which she was the victim, but also because of the arbitrary acts she suffered at the hands of the authorities. In that connection, she alleges that the child V.R.P. has received psychological and psychiatric care since October 2003 and that her symptoms are depression, anxiety, high alert, and self-mutilation because she thinks constantly of the sexual abuse.¹⁷ She also states that the psychiatrist who evaluated V.R.P. at the request of the Substitute Judge of Jinotega District Criminal Court considered that V.R.P. "will virtually always need (...) psychotherapeutic support, (...) [owing to] the physical and psychological injury suffered. (...) Therefore, so as not to further damage her, it is indicated to avoid revictimization of the patient, not allowing her to dwell on the memories of the act that occurred or the injury caused her, and not questioning her about it."¹⁸

21. The petitioner also alleges violations of judicial guarantees and due process through the actions of the Assistant Prosecutor, since she did not attend the visual inspection and reconstruction of the facts, in guarantee of the rights of the child as a victim and witness in the process; did not repudiate the way in which the forensic medical examinations were conducted, and was not present at the November 2001 appeal hearing or the May 2002 appeal against the nullification of the jury's acquittal.¹⁹ She states that she has filed complaints and applications against the Assistant Prosecutor in connection with the violation of her daughter's constitutional guarantees, with the Inspector General's Office of the Attorney General's Office, and (on October 21, 2002) with the Prosecutor General of the Republic (on July 29, 2002); as well as complaints against different state officials, including the Judge and the Assistant Prosecutor, with the Disciplinary Committee of the Supreme Court of Justice (on November 8, 2002).

22. Lastly, the petitioner states that justice administration officials in Nicaragua are highly prejudiced against women and have little knowledge of the laws protecting children and women. She also, alleges that there are no specialists to treat rape victims and that jury members do not receive training in this area. She states that there is impunity in the cases of most crimes of sexual violence against minors in Nicaragua.

B. Position of the State

23. The State denies the allegations submitted by the petitioner regarding the irregularities in the proceedings and the denial of justice. It also indicates that the petitioner did not provide convincing and objective evidence of the alleged violation of the human rights of the child V.R.P. With regard to the allegations of procedural delay, the State indicates that the Code of Criminal Procedure in force at the time established a very slow, written, investigate procedure,

¹⁶ Communication from the petitioner of February 11, 2005, received in the IACHR Executive Secretariat on March 16, 2005.

¹⁷ Communication from the petitioner of January 10, 2005, annexing a communication of January 3, 2005, from the organization alleging that it gave psychological assistance to V.R.P.

¹⁸ See the document sent by the petitioner on the follow-up report of February 21, 2002, prepared by Dr. María Delma Terán Caldera of Victoria Motta of Jinotega Hospital, in a communication sent to the Substitute Judge of Jinotega Criminal District.

¹⁹ Document annexed to the communication of the petitioner, received on March 16, 2005 by the IACHR Executive Secretariat.

wherein the operative power of the parties was very limited, this accounting for the delay in the judgment of the Collegiate Court.

24. The State also indicates that the right to personal integrity of the child V.R.P. was not violated by the authorities because "the social reality is that any victim of a sexual crime, in undertaking proceedings against his or her aggressor, is revictimized," since "such individuals have experienced a traumatic situation with profound psychological sequelae and, in undertaking criminal proceedings, the victim must undergo a series of situations that contribute to augmenting his or her suffering and the sequelae of any sex crime."²⁰ In that connection, it notes that in cases such as this, it is essential to establish that rape occurred, and therefore "there is no deliberate violation of any human right when the victim is subjected to the expert examination required to prosecute the accused and necessary for the defense of rights, in this case, of the minor child [V.R.P]."²¹

25. The State indicates that H.R.A., accused of rape, was prosecuted in accordance with the legal procedure. In that connection, it states that the petitioner's complaint and the child's statement were received, 21 affidavits were taken, among them the testimony of the doctors who treated the child prior to the complaint, a warrant was issued for the arrest of H.R.A. at his home, a defense attorney was appointed for him, and his statement was taken.

26. It also states that the Jinotega Departmental Prosecutor appeared at the trial and requested during the preliminary investigation stage the relevant evidence to demonstrate the criminal liability of the accused. To that end, the State alleges that the medical examination of the child was conducted at the Institute of Forensic Medicine, a visual examination was conducted, the facts reconstructed in two stages, in the presence of the accused, and secondly, in the presence of the child, the inspection was illustrated with photo tableau taken at the site of the facts, the medical documents were annexed, and a forensic medical examination was made of the accused to determine vestiges of the presence of Human Papilloma Virus.

27. The State indicates that it would have been best if another prosecutor had taken the case owing to personal problems with the petitioner and to avoid the suspicions that have arisen. It indicates that "account must be taken of the shortage of staff in the Attorney General's Office, especially in departments far from the capital, such as Jinotega."²² The State also mentions that the prosecutor had indicated that, despite having had personal difficulties with the mother of the child, this was not going to prevent her from accusing the accused during the proceedings. In that connection, it alleges that at no time did the statements issued by the Office of the Special Prosecutor for Children and Adolescents indicate any misconduct on the part of the prosecutor, still less that the case had been lost through her mishandling of it, although she had not participated in Appellate Court proceedings such as answering charges of lower court error. This, however, "does not indicate partiality or dereliction of duty in the case."²³

28. The State indicates that it acted lawfully, and diligently arranged for most of the evidence in the case, such as the forensic medical examination, taking the necessary steps to avoid negative impact on the child. It alleges that rape, "is established by means of a report by a physician specializing in this area; accordingly, there is no deliberate violation of any human right when the victim is subjected to the expert examination required."²⁴ In that connection, it states

²⁰ Note from the State of June 29, 2007, MRE/DGO/1570/06/07.

²¹ Note from the State of February 14, 2005, MRE/DM-DGOI/218/02/05.

²² Note from the State of December 15, 2005, MIRE/SREC-DGOI/842/12/05.

²³ Note from the State of December 15, 2005, MIRE/SREC-DGOI/842/12/05.

²⁴ Note from the State of February 9, 2005, MRE/DM-DGOI/196/02/05.

that the earlier examinations that had been contributed to the proceedings were made by private doctors hired by one of the parties, and, therefore, under the provisions of Nicaraguan law, they had no legal value, which made necessary an evaluation by the forensic physician, the only physician authorized to issue legal reports of evidentiary value.

29. The State alleges that unproductive efforts were made to examine the child and that, because she refused, the procedure was suspended, a situation beyond the control of the officials. In view of that situation, it states that V.R.P. was transferred to the Managua Institute of Forensic Medicine because it had better facilities to make such an examination. It reports that the child was examined under sedation, and in accordance with proper procedure, to ensure that evidence was obtained of the crime perpetrated against the child and seeking not to pressure her or cause any further impact or psychological and moral trauma. It also states that the medical examinations conducted confirmed the presence of vestiges or traces of a sexually transmitted illness "compatible with that presented by the child, resulting from the vaginal and anal carnal penetration to which she had been subjected."²⁵ With regard to the alleged mistreatment by the forensic physician, the State indicates that the forensic report issued by the Institute of Forensic Medicine did not refer to any mistreatment, but rather indicates that the child complained of great pain and would not allow herself to be evaluated. Therefore, it was decided to conduct the medical examination under anesthetic. The State denies the petitioner's allegation that the child was not sedated during the medical examinations.

30. Regarding the lack of protection by the Attorney General's Office of the rights of the child, the State indicates that "this statement is highly subjective,"²⁶ since the file shows that throughout the process, the Prosecutor was fully and actively involved, as was incumbent upon her as the representative of the victim and of society. Neither is the Attorney General's Office obliged to adhere steadfastly to all actions of the victim in the proceedings.²⁷ It further alleges that the victim was also represented by her private prosecuting attorney, who acted in accordance with his judgment, not implying that the human rights of the child were being violated. The State indicates that it has fulfilled its function of protecting the rights of the child since, when the petitioner availed herself of remedies with the aim of defending the human rights of her daughter, the authorities responded to her complaints, despite the fact that not all were resolved in her favor where the law was not of assistance to her.

31. With regard to the petitioner's allegation regarding the action of the Judge, the State indicates that the Office of the Prosecutor for the Defense of Human Rights sent a communication to her on May 14, 2002, recognizing her work in the case. It also indicates that there is no evidence for the petitioner's allegation that the judge was removed for acts of corruption or her conduct in these proceedings.

32. It also alleges that the petitioner and the child V.R.P. have been afforded, through the different entities involved, the judicial protection enshrined in Article 25 of the American Convention, as well as access to remedies and to a fair trial. With regard to the length of the proceedings, it states that "this is due to multiple motions to vacate, appeals, objections, and applications for reconsideration filed by both parties with the courts (...), as well as the recusal by some judges from considering and adjudicating the case, since they considered that no procedural errors or conflicts of interest were present therein."²⁸

²⁵ Note from the State of February 14, 2005, MRE/DM-DGOI/218/02/05.

²⁶ Note from the State of December 15, 2005, MRE/SREC-DGOI/842/12/05.

²⁷ In that connection, the State indicates that the prosecutors of the Attorney General's Office must be governed by the principle of objectivity in carrying out their actions, seeking only proper and impartial application of the law.

²⁸ Note from the State of December 15, 2005, MRE/SREC-DGOI/842/12/05.

33. Moreover, the State indicates there was no abusive interference in V.R.P.'s private life, or any other assault by the State on her personal honor or dignity. It also indicates that no discriminatory act occurred that might affect the interests of V.R.P. With regard to the alleged violation of Articles 17 and 19 of the American Convention, it states that:

... the State has not interfered in any way in Mrs. V.P.C.'s family unit. Rather, her rights have been respected and they have been afforded protection. The State has only acted as necessary in connection with the crime that was the subject of the proceedings, where her family unit was at stake, all taking into consideration the exercise of the rights of the minor child and the petitioner.²⁹

34. In a communication of February 16, 2005, the State alleges that the Disciplinary Committee of the Supreme Court of Justice studied the complaint filed by the petitioner against the Prosecutor and the forensic physician, but, in accordance with the provisions of Article 72.7 of the Organic Law of the Judiciary, the Supreme Court decided not to admit it, although the petitioner has indicated that she did not obtain a reply to this appeal. Subsequently, on June 29, 2007, regarding the alleged accusations or complaints that V.P.C. alleges to have lodged against the Jinotega Departmental Prosecutor or the forensic physician who handled the case of the minor child V.R.P., the State indicates that "they do not exist, or at least they were not lodged with the competent authority."³⁰

35. With regard to exhaustion of domestic remedies, in its initial observations on the petition, the State indicated that these were exhausted by petitioner through the motion to vacate the verdict of the Jury Court, which was processed in accordance with the law and the order to disallow was issued.³¹ However, in a subsequent communication, of February 14, 2005, the State indicates that domestic remedies have not been exhausted because a final disposition has not been made of the motion to vacate the Jury Court's acquittal of the accused. It adds that if the case is resolved unfavorably to V.R.P., the State will appeal as appropriate in accordance with the available legal remedies.

IV. ANALYSIS

A. Competence of the Commission *ratione personae*, *ratione materiae*, *ratione temporis*, and *ratione loci*

36. Under Article 44 of the American Convention, the petitioner is entitled to present petitions to the Commission. The petition names as the alleged victim the child V.R.P. and her mother V.P.C., whose rights enshrined in the American Convention Nicaragua undertook to respect and guarantee. With regard to the State, Nicaragua has been a Party to the American Convention since September 25, 1979, the date of deposit of its respective instrument of ratification, and has also been Party to the Convention of Belém do Pará since December 12, 1995. Therefore, the Commission has competence *ratione personae* to consider the petition.

37. The Commission has competence *ratione loci* to consider the petition as in it alleged violations of rights protected in the American Convention and the Convention of Belém do Pará that occurred within the territory of Nicaragua, a State Party to said treaties. The Inter-American Commission also has competence *ratione temporis* since the obligation to respect and

²⁹ Note from the State of December 15, 2005, MRE/SREC-DGOI/842/12/05.

³⁰ Note from the State of June 29, 2007, MRE/DGOI/1570/06/07.

³¹ Note from the State of February 9, 2005, MRE/DM-DGOI/196/02/05.

guarantee the rights protected in the American Convention and the Convention of Belém do Pará were in force for the State on the date that the facts alleged in the petition occurred.

38. Lastly, the Commission has competence *ratione materiae*, since the petition refers to alleged violation of human rights protected by the American Convention and the Convention of Belém do Pará. With regard to the American Declaration, the Inter-American Commission has held that, once the American Convention enters into force in a State, the primary source of applicable law will be that treaty rather than the American Declaration,³² provided the petition refers to a violation of essentially identical rights enshrined in both instruments,³³ and does not involve an ongoing violation.³⁴ In the instant case, the articles of the American Declaration cited by the petitioner are incorporated in the cited articles of the American Convention.

B. Admissibility of the petition

1. Exhaustion of domestic remedies

39. Article 46(1)(a) and (2) of the Convention establishes as a requirement for admission of a petition lodged with the Inter-American Commission that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law, unless (a) the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated; (b) the party alleging violation of his rights has been denied access to the remedies under domestic law; or (c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies. The Inter-American Court has repeatedly held that “the State claiming non-exhaustion has an obligation to prove that domestic remedies remain to be exhausted and that they are effective.”³⁵

40. The Inter-American Court of Human Rights has also observed that in accordance with generally recognized principles of international law, domestic remedies must be adequate, that is, they are suitable to address an infringement of a violated legal right, and must be effective, that is, capable of producing the result for which they were designed.³⁶

41. In the instant case, the petitioner alleges delay in rendering justice, since to date no final judgment has been rendered in the criminal proceedings that were instituted with her criminal complaint of November 21, 2001, and she claims that the State authorities committed a series of

³² See IACHR, Report N° 03/01, Case 11.670, Amilcar Menéndez, Juan Manuel Caride *et al.* (Social Security System), Argentina, January 19, 2001, para. 41.

³³ I-A Court H.R., Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights. Advisory Opinion OC-10/89 of July 14, 1989. Series A No. 10, para. 46.

³⁴ See, for example, IACHR, Report N° 1/01, Case 12.085, Ana Elena Townsend Diez-Canseco *et al.*, (intercepted telephone conversation), Peru, January 19, 2001, para. 23 and IACHR, Annual Report 1998, Report N° 38/99, Argentina, March 11, 1999, para. 13.

³⁵ I-A Court H.R., *Case of Velásquez Rodríguez. Preliminary Objections*. Judgment of June 26, 1987. Series C No. 1, para. 88; *Case of Fairén Garbí and Solís Corrales, Preliminary Objections*. Judgment of June 26, 1987, Series C No. 2, para. 8; *Case of Godínez Cruz, Preliminary Objections*. Judgment of June 26, 1987, Series C No. 3, para. 90; *Case of Gangaram Panday, Preliminary Objections*. Judgment of December 4, 1991, Series C No.12, para. 38; *Case of Neira Alegría et al., Preliminary Objections*. Judgment of December 11, 1991, Series C No.13, para. 30; *Case of Castillo Páez, Preliminary Objections*. Judgment of January 30, 1996, Series C No. 24, para. 40; *Case of Loayza Tamayo, Preliminary Objections*. Judgment of January 31, 1996, Series C No. 25, para. 40; I-A Court H.R., Exceptions to the Exhaustion of Domestic Remedies (Arts. 46(1), 46(2)(a) and 46(2)(b) American Convention on Human Rights). Advisory Opinion OC-11/90 of August 10, 1990. Series A No. 11.

³⁶ I-A Court H.R., *Case of Velásquez Rodríguez*. Judgment of July 29, 1988. Series C No. 4, paras. 64-66.

irregularities in the criminal proceedings that have prevented clarification of the facts and determination of criminal responsibility.

42. For its part, the State claims that domestic remedies have not been exhausted and that the delay in the proceedings stems from multiple steps taken by both parties. It indicates that the criminal proceedings were conducted in accordance with the law and that the judicial authorities acted lawfully.

43. The Commission notes that the documents submitted by the petitioner and the State establish that the petitioner has sought all remedies available to her under domestic law to further the criminal proceedings. In that regard, the domestic criminal legislation in force at the time the facts occurred established that it is incumbent upon the Office of the Prosecutor General of the Republic to bring criminal charges for the crime of rape when the victim is under age 16, without prejudice to any complaint that may have been filed or charges brought by the injured party or her representatives.³⁷ The Commission has repeatedly held that when a crime is committed which is publically prosecutable, the State is under the obligation to set the criminal law system into motion and to process the matter until the end.³⁸ Both the Inter-American Court and the Inter-American Commission have reaffirmed the obligation of the State to investigate all violations of human rights, to try those responsible, indemnify the victims, and avoid impunity.³⁹ In that connection, the Commission notes that the Convention of Belém do Pará affirms that the obligation to act with the due diligence necessary takes on a special meaning in cases of violence against women. Said instrument also stipulates that the State, in applying due diligence in connection with violent acts, shall take special account of the vulnerability of women subjected to violence and discrimination, among other risk conditions, while of minor age.⁴⁰

44. The Commission notes that in the instant case, over six years have passed since the alleged sexual abuse of the child aged 9, without conclusion of the criminal investigation. The IACHR also notes that a judgment has yet to be rendered by the Nicaraguan courts in connection with the appeal lodged by the petitioner on August 29, 2005. It also notes that the State has confined itself to alleging that domestic remedies have not been exhausted, but presents no specific information from which it could be concluded that the remedy has the adequacy and effectiveness required by international human rights parameters to resolve in a timely manner the situation denounced.

45. Based on the foregoing considerations and on the information contained in the file, the Inter-American Commission concludes for the purpose of admissibility that there has been unwarranted delay by the competent bodies in rendering a final judgment and that domestic remedies have been ineffective in resolving in a timely manner the situation denounced. Therefore, in the

³⁷ Article 205, Law No.150, Amendments to the Code of Criminal Procedure of the Republic of Nicaragua (L.G., September 9, 1992).

³⁸ See, for example, IACHR, Report N° 94/06, Petition 540-04, Admissibility, Inés Fernández Ortega *et al.*, Mexico, October 21, 2006, para. 23; IACHR, Report N° 93/06, Petition 972-03, Admissibility, Valentina Rosendo Cantú *et al.*, Mexico, October 21, 2006, para. 27; IACHR, Report N° 52/97, Case 11.218, Arges Sequeira Mangas, Nicaragua, Annual Report of the IACHR 1997, paras. 96 and 97; IACHR, Report N° 55/97, Case 11.137, Argentina, Annual Report of the IACHR 1997, para. 392.

³⁹ IACHR, Report N° 94/06, Petition 540-04, Admissibility, Inés Fernández Ortega *et al.*, Mexico, October 21, 2006, para. 23; IACHR, Report N° 93/06, Petition 972-03, Admissibility, Valentina Rosendo Cantú *et al.*, Mexico, October 21, 2006, para. 27; IACHR, Report N° 54/01, Maria Da Penha Maia Fernandes, Brazil, April 16, 2001, para. 43, citing I-A Court H.R., *Case of Velásquez Rodríguez*, Judgment of July 29, 1988, Series C No. 4., para. 176 and *Case of Godínez Cruz*, Judgment of January 20, 1989. Series C No. 5, para. 175; IACHR, Merits, N° 53/01, Ana, Beatriz and Celia González Pérez, Mexico, April 4, 2001, para. 84.

⁴⁰ Article 9, Convention of Belém do Pará.

instant case, the IACHR invokes the exception to the exhaustion of domestic resources set forth in Article 46(2)(c) of the American Convention.

2. Timeliness of Petition

46. Article 46(1)(b) of the American Convention provides that admission of a petition shall be subject to the requirement that it is "lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment." In the instant case, a final decision has not been rendered from whose date of notification a period of six months may be counted. Bearing in mind that the petitioner filed a complaint under domestic law on November 20, 2001, and that the investigation remains pending of the rights that the alleged victim alleges were violated during said investigation, and taking account of the date of lodging the petition with the IACHR, the Commission considers that it was lodged within a reasonable period. Therefore, the requirement regarding the period for submission under the provisions of Article 32 of its Rules of Procedure has been met.

3. Duplication

47. Article 46(1)(b) of the American Convention provides that admission of petitions shall be subject to the requirement that the matter "is not pending in another international proceeding for settlement," and Article 47(d) of the Convention stipulates that the Commission shall consider inadmissible any petition that "is substantially the same as one previously studied by" the Commission or by another international organization. In the instant case, the parties have not adduced the existence of either of these two requirements of inadmissibility, nor may they be deduced from the proceedings.

4. Colorable Claim

48. For purposes of admissibility, the IACHR must decide whether the petition states facts that tend to establish a violation of the Convention, as stipulated in Article 47(b) of the American Convention, and whether the petition is "manifestly groundless" or "obviously out of order," in accordance with Article 47(c). The standard of evaluation of these two questions is different from that required to decide on the merits of a complaint. The IACHR must make a *prima facie* evaluation in order to consider whether the complaint is based on an apparent or potential violation of a right guaranteed by the Convention and not to establish the existence of a violation. Such evaluation constitutes a summary review that does not prejudge the merits of the matter discussed.

49. The petitioner alleges that a series of irregularities were committed by the judicial authorities in investigating a serious crime committed against V.R.P., especially (a) inappropriate treatment of a child in her condition as the victim of a sex crime; and (b) negligence on the part of the respective authorities, thus fostering a situation of impunity. For its part, the State denies the facts denounced.

50. The Commission notes that, in the instant case, as regards the conduct of the authorities, the petition refers to the judicial investigation of a serious sex crime perpetrated against a child nine years of age who was treated inappropriately by the judicial authorities.

51. If established, the facts denounced tend to establish a violation of Articles 5(1), 8(1), 11, 19, and 25 of the American Convention, in conjunction with Articles 1(1) and 2 of said instrument, and Article 7 of the Convention of Belém do Pará, to the detriment of V.R.P. The petitioner alleges that the child V.R.P. was subjected to discriminatory treatment during the criminal proceedings, based on her gender and age, and the Commission will also consider those allegations

and the information submitted by the two parties, in light of the possible application of Article 24 of the American Convention.

52. The Commission also notes, regarding V.P.C. as the mother of V.R.P. and plaintiff in the criminal proceedings, that the facts alleged tend to establish a violation of Articles 5(1), 8, and 25 of the American Convention, in conjunction with Article 1(1) of said instrument.

53. The IACHR considers that the available information does not tend to establish a violation of the rights guaranteed in Articles 5(2), 7(1), 12(1) and (2), 13(1), and 17(1) of the American Convention.

54. Based on the foregoing considerations, the IACHR concludes that the petitioners have fulfilled *prima facie* the requirements of Article 47(b) of the American Convention.

V. CONCLUSIONS

55. Based on the foregoing considerations of fact and law, and without prejudging its merits, the Commission concludes that the instant case meets the admissibility requirements established in Article 46 of the American Convention.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. With regard to V.R.P., to declare the instant petition admissible in connection with the alleged violations of the rights protected under Articles 5(1), 8(1), 11, 19, 24, and 25 of the American Convention, in conjunction with Articles 1(1) and 2 of said instrument; and of Article 7 of the Convention of Belém do Pará; and, with regard to V.P.C., under Articles 5(1), 8, and 25 of the Convention in conjunction with Article 1(1) of said instrument.

2. To declare the petition inadmissible with respect to the alleged violations of Articles 5(2), 7(1), 12 (1) and (2), 13(1) and 17(1) of the American Convention.

3. To notify the State and the petitioner of this decision.

4. To publish this decision and include it in its Annual Report to the General Assembly of the OAS.

Approved by the Inter-American Commission on Human Rights on February 11, 2009. (Signed): Paolo G. Carozza, Chairman; Luz Patricia Mejía Guerrero, First Vice Chairwoman; Felipe González, Second Vice-Chairman; Sir Clare K. Roberts, Paulo Sérgio Pinheiro, Florentín Meléndez, and Víctor E. Abramovich, members of the Commission.