

OAS/Ser.L/V/II
Doc. 298
31 October 2023
Original: Spanish

REPORT No. 278/23

PETITION 962-18

REPORT ON ADMISSIBILITY

SONIA JANNET JIMÉNEZ ROJAS LE JEUNE
GUATEMALA

Approved electronically by the Commission on October 31, 2023.

Cite as: IACHR, Report No. 278/23. Petition 962-18. Admissibility. Sonia Jannet Jiménez Rojas Le Jeune. Guatemala. October 31, 2023.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Deissy Magalí Jiménez Rojas
Alleged victim:	Sonia Jannet Jiménez Rojas Le Jeune and Deissy Magalí Jiménez Rojas
Respondent State:	Guatemala ¹
Rights invoked:	The alleged victim does not specify the exact articles of any Inter-American treaty; however, in her petition, she expressly invokes the rights to life, humane treatment and personal liberty.

II. PROCEEDINGS BEFORE THE IACHR²

Filing of the petition:	May 18, 2018
Additional information received at the stage of initial review:	May 30, 2018
Notification of the petition to the State:	November 18, 2021
State's first response:	February 17, 2022
Notification of the possible archiving of the petition:	September 7, 2021
Petitioner's response to the notification regarding the possible archiving of the petition:	September 8, 2021

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 on Human Rights ³ (deposit of the instrument of ratification made on May 25, 1978); Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women of Belém Do Pará ⁴ (deposit of the instrument of ratification made on April 4, 1995); Inter-American Convention on Forced Disappearance of Persons (deposit of the instrument of ratification made on February 25, 2000)

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), 24 (equality) and 25 (judicial protection) of the Convention, in relation to its Article 1.1 (obligation to respect rights); Article 7 of the Convention of Belém Do Pará; and Article I of the Inter-American Convention on Forced Disappearance of Persons

¹ Pursuant to Article 17.2.a of the Commission's Rules of Procedure, Commissioner Edgar Stuardo Ralón Orellana, a Guatemalan national, did not participate in the debate or in the decision of the present matter.

² The observations of each party were duly forwarded to the opposing party.

³ Hereinafter "the Convention" or "the American Convention".

⁴ Hereinafter "the Belém Do Pará Convention".

Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, in the terms of Section VI
Timeliness of the petition:	Yes, in the terms of Section VI

V. POSITION OF THE PARTIES

Allegations of the petitioner

1. The petitioner alleges the torture, kidnapping, murder and forced disappearance of her sister, which occurred in 2003, when armed men raided the farm where she was staying, in the department of Sololá. She also claims that the criminal investigation was irregular, and that the State was never able to identify those responsible, so the case was archived, which caused her a great deal of pain. Both the petitioner and the alleged victim were Colombian nationals.

2. The petitioner holds that on the afternoon of December 9, 2003, at the "Los Paraes" farm in the department of Sololá, several heavily armed men abducted her sister Sonia Jannet Jiménez Rojas Le Jeune (hereinafter "Sonia Jiménez Rojas" or "Mrs. Jiménez Rojas") and her assistant (Oliver Barouk) in a gray pickup truck. These facts were witnessed by the butler of the residence Juan de Dios Calderón Chávez, who had been working with Mrs. Jiménez Rojas for many years.

3. At the time of this report, the whereabouts of Mrs. Sonia Jiménez Rojas and her assistant are unknown. The petitioner claims that during all the years of investigation, no Guatemalan authority has given her any answers as to the whereabouts of her sister. She also claims that a criminal complaint was filed, but the case was finally archived.

4. In her initial brief before the IACHR, the Petitioner alleges that P.M.L.J. (Mrs. Jiménez Rojas' ex-husband) is responsible for the forced disappearance, torture, kidnapping and murder of the alleged victim; and that the State of Guatemala is responsible for failures in due process.

5. She also argues that she was unable to exhaust domestic remedies due to distance, since she lives in Colombia and the events occurred in Guatemala. However, she holds that she has taken actions before the Colombian authorities in an attempt to know the whereabouts of her sister and to insist on an investigation, as follows:

Proceedings conducted by the petitioner from Colombia (mostly before Colombian authorities)

6. On October 25, 2005, the petitioner requested information on the abduction of Mrs. Sonia Jiménez Rojas from the Office of the Attorney General of Colombia/Directorate of Foreign Affairs, where she indicated that P.M.L.J. was responsible for the events, due to the resentment caused by their separation and economic interests (the two shared business and bank accounts). The Directorate of Foreign Affairs submitted a copy of the complaint filed by P.M.L.J. on December 30, 2003, to the petitioner, regarding the disappearance of the claimant's ex-wife, with the National Civil Police, Anti-Kidnapping and Extortion Section of Guatemala.

7. On November 29, 2007, the petitioner filed a letter with the Guatemalan ambassador in Colombia to obtain information on Mrs. Sonia Jiménez Rojas, who disappeared in Guatemala. There, the petitioner again indicated P.M.L.J. as a suspect; and requested, in the event that her sister had died, that at least the mortal remains be delivered to her so that she could receive a dignified burial.

8. On October 5, 2009, the Coordination for Assistance to Colombian Nationals Outside of Colombia informed the petitioner, based on the communication it had had with the Prosecutor's Office in charge of the case in Guatemala, that the case was still being investigated and that those responsible had not been identified. On November 9, 2010, the petitioner asked the Colombian Chancellery to request Guatemala to provide her with more information about the disappearance of her sister.

9. On January 20, 2012, the Directorate of Foreign Affairs informed the petitioner that it is not competent to analyze the case in question, since Colombian criminal law applies to any person who violates the law in Colombian territory; and the investigation corresponds to Guatemala. However, it held that a communication was sent to the consulate in that country to obtain information on the case.

10. In this regard, on March 27, 2012, the Colombian Directorate of Foreign Affairs informed the petitioner, based on the communication with the Colombian consulate in Guatemala on March 8 of the same year, that the investigation was still ongoing and that there were still no detainees.

11. On May 15, 2017, the petitioner also filed a request for information with the Coordination of Assistance to Conationals of the Colombian Chancellery, to find out the status of the investigation into the whereabouts of her sister; and to find out if she had bank accounts or any movable or immovable property in Guatemala. On June 1, 2017, said agency informed the petitioner that information was requested to know the status of the process in Guatemala, and that she will be provided with guidance as to the procedures for claims regarding possible property.

12. Given the lack of answers and information on the disappearance of her sister, the petitioner decided to file the present petition before the IACHR. She also alleges that this situation of uncertainty is deeply affecting her; and she requests compensation because she has few economic resources.

Allegations of the Guatemalan State

13. The State holds that there was a criminal investigation into the possible kidnapping of Sonia Jiménez Rojas on December 9, 2003. The investigating entity also held that Mr. P.M.L.J. reported that he was contacted by one of Mrs. Sonia Jiménez Rojas' workers, who informed him that seven heavily armed men entered her residence, located in the department of Solalá, and searched the entire property, taking electrical appliances with them, and forcibly placed Mrs. Jiménez Rojas inside a pickup truck. He also held that Mr. Oliver Barouk was at the scene of the crime, who was subdued and beaten by the armed men, and was later taken to an unknown destination in the same vehicle as Mrs. Jiménez Rojas.

14. The Public Ministry initiated proceedings to find the identity of those responsible; the investigations were the responsibility of the Public Ministry. On March 17, 2004, several raids, inspections and searches were authorized in residences located in the Calvario neighborhood. The records were obtained from alleged witnesses of the events occurred, specifically from the worker of Mrs. Jiménez Rojas' property, who according to what they say was present on the day and place of the events. P.M.L.J.'s statement was obtained on February 10, 2004, and on February 19, 2004, his arrest was ordered; however, by resolution of March 1, 2004, issued by the Judge of First Criminal Instance of the Department of Sololá, the measure was declared inadmissible due to lack of evidence against him. Regarding the petitioner's suspicions against Mr. P.M.L.J., the State reports that there were no charges against him.

15. Likewise, the State holds that steps were taken to identify the alleged assailants. However, the investigation file was archived on August 16, 2006, pursuant to Article 327 of the Guatemalan Criminal Procedural Code⁵, since it was not possible to establish the identity of the perpetrators of the crime, as witnesses were unable to identify those responsible for the crime, and therefore there were no further lines of investigation.

16. Guatemala holds that there are several remedies capable of addressing the subject matter of the petition, which the petitioner would not even have pursued. In this sense, she could have filed the writ of *habeas corpus* to initiate the criminal investigation. It also argues that the petitioner has worked in the Office

⁵ Article 327 of the Procedural Code of Guatemala (Archive): "When the accused has not been identified or when his or her contempt has been declared, the Public Ministry shall order, in writing, the archiving of the proceedings, without prejudice to the continuation of the proceedings for the other accused". Source: Procedural Code of Guatemala.

of the Attorney General of Colombia, and therefore had the legal knowledge and financial resources to be able to go to Guatemala; or, failing that, to appoint a representative to carry out her actions in that country.

17. The State further argues that the six-month time limit of Article 46.1.b) of the Convention and 32.1 of the IACHR Rules of Procedure was not followed by the petitioner. The only remedy she filed was with the Colombian State, which consisted of a complaint dated January 12, 2011, eight years after the events. In this regard, the Colombian State resolved to issue an inhibitory resolution on May 24, 2017, stating that it lacks competence and jurisdiction to initiate criminal prosecution in Guatemala. In the event that this resolution was considered a suitable means of exhausting domestic remedies, the State claims that the petitioner should have turned to the IACHR in November 2017, and not in May 2018, almost a year later. In this regard, with respect to the application of the reasonable time period, in cases of exceptions to exhaustion, of Article 32.2 of the IACHR Rules of Procedure, it is noted that the events that occurred were in 2003, and the initial petition filed was received by the IACHR in 2018, fifteen years later. The domestic file for the disappearance of Mrs. Sonia Jiménez Rojas was filed in 2006, and no opposition was filed at the national level; however, twelve years later, it is brought before the Commission to hear the case.

18. With respect to the violation of Article 4 of the Convention, the State argues that it is not concisely established in the initial petition how the State violated the right to life. In addition, there was a formal investigation into the events that occurred in 2003. Actions were performed, such as taking witness statements, searches and communications with State institutions, and letters requesting information from INTERPOL in Guatemala and El Salvador, but it was not possible to find those responsible for the crime. In relation to Articles I and II of the Inter-American Convention on Forced Disappearance of Persons, it argues that the petitioner did not conduct any analysis of the rights which may have been violated. The State argues that the element of deprivation of liberty cannot be established with certainty, and in order for an enforced disappearance to be established, it must be certain that there was a deprivation of her liberty by agents of the State or by groups with the acquiescence of the latter.

19. In addition, the petitioner did not identify the individuals who allegedly kidnapped her sister; she relies solely on presumptions, without any support or argumentation whatsoever. In this sense, the events described were apparently committed by private actors, without any type of relationship or support from the State. It also argues that there was no violation of Article 5 of the Convention, since the petitioner did not explain how Guatemala committed acts of torture against the alleged victim. Likewise, Articles 8 and 25 of the Convention were not violated, since the State promoted due process, the investigation by the Public Ministry, and no obstacles were posed in the process.

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

20. For the purposes of evaluating the adequacy of the remedies available in the domestic legal system, the Commission establishes the specific claim that has been formulated, and then identifies the judicial remedies provided by the domestic legal system that were available and adequate to ventilate that particular claim. This is precisely the adequacy and effectiveness of each remedy considered in particular, in that it provides a real opportunity for the alleged human rights violation to be remedied and resolved by the national authorities before the Inter-American system of protection can be invoked⁶. In this particular case, the IACHR considers that the object of the petition is centered on the claim for the alleged forced disappearance of the alleged victim that occurred in Guatemala in 2003.

21. In this regard, the petitioner took action from Colombia, since she is a Colombian national and lives there. The majority of the proceedings were before Colombian authorities, with the purpose of requesting, through diplomatic channels, that the Guatemalan authorities provide information regarding the disappearance of Mrs. Sonia Jiménez Rojas. On October 5, 2009, the Coordination of Assistance to Colombian

⁶ IACHR, Report No. 173/23. Petition 118-12. Admissibility. Relatives of Jaime Guzmán Errázuris and Christian Edwards del Río, Argentina, August 20, 2023, paragraph 19. IACHR, Report No. 279/21. Petition 2106-12. Admissibility. Huitosachi, Mogótavo and Bacajípare communities of the Rarámuri indigenous people. Mexico. October 29, 2021, paragraph 29; IACHR, Report No. 89/21, Petition 5-12, Mining Workers of Cananea and their families. Mexico. March 28, 2021, paragraph 32.

Nationals Outside of Colombia informed the petitioner, based on the communication it had had with the Prosecutor's Office in charge of the case in Guatemala, that the case was still under investigation. On March 27, 2012, the Colombian Directorate of Foreign Affairs informed the petitioner, based on the communication with the Colombian consulate in Guatemala on March 8 of the same year, that the investigation was still ongoing and that she did not yet know of any detainees. Also, on May 15, 2017, the petitioner filed a complaint with the Specialized Prosecutor's Office against Organized Crime in Colombia, and a request for information with the Colombian Embassy in Guatemala. In response, the Prosecutor's Office declared an inhibitory resolution of the case, for lack of jurisdiction; and the embassy informed the petitioner that the required information on the current status of the process in Guatemala was requested.

22. With regard to the criminal proceeding brought in Guatemala to find Mrs. Sonia Jiménez Rojas, Guatemala has reported that on March 7, 2004, different raids, inspections and searches were authorized in residences located in the El Calvario neighborhood; and witness statements were obtained on February 3 and 6, 2004, from alleged witnesses to the facts. Similarly, on February 10, 2004, the statement of P.M.L.J. was obtained, but there was not enough evidence against him to justify his detention. After other proceedings, allegedly conducted by Guatemala, the investigation file was archived on August 16, 2006, as it was not possible to determine the identity of the perpetrators of the crime, since the witnesses were not able to identify the persons responsible, and there were no further lines of investigation.

23. Based on the foregoing, the IACHR considers that although the State took steps to identify those possibly responsible for the incident, it did not succeed. In addition, after the case was closed, the sister of the missing woman was not notified by the Guatemalan State, so she was unable to contest or appeal the decision. In this regard, on October 5, 2009, and March 27, 2012, the petitioner was informed, through diplomatic communications between Colombia and Guatemala, that the case was still ongoing. However, according to information provided by the Guatemalan State, the case was archived on August 16, 2006. Therefore, not only did the petitioner not know that the case had been archived, but she was also informed that the investigation was still ongoing and was harmed by this inaccurate information. But beyond these considerations, it is clear that the Guatemalan authorities were aware of the petitioner's interest in knowing the whereabouts and progress in the investigation of the alleged victim's death; and they knew that the Colombian authorities, through the corresponding channels, were assisting the petitioner in obtaining the information they could provide; however, she was not informed in a timely manner of the closure of the criminal investigations in Guatemala; therefore, the Inter-American Commission considers that the exception contained in Article 46.2.b) of the American Convention is applicable⁷, because in these circumstances it would be unreasonable to demand the petitioner to have appealed or contested the decision to close the case.

24. With respect to the reasonable time requirement, according to Article 46.2 of the American Convention, the specific requirement of Article 46.1.b)⁸ thereof shall not apply when any of the exceptions to the rule of exhaustion of domestic remedies provided for in that same article are applicable. In this regard, Article 32.2 of the Rules of Procedure of the IACHR is applicable, which provides that in these cases: "*the petition shall be presented within a reasonable period of time, as determined by the Commission. For this purpose, the Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case*".

25. In the instant case, the Commission observes that the facts denounced regarding the forced disappearance of Mrs. Sonia Jannet Jiménez Rojas Le Jeune, occurred on December 9, 2003; the petitioner filed from 2005 until May 15, 2017, several petitions with Colombian and Guatemalan authorities; and the consequences of these facts, in terms of the alleged impunity in which they would remain would extend to the

⁷ IACHR, Report 214/22, Admissibility, Petition 867-09, Aberlardo Arevalo Choque and others, Bolivia, August 13, 2022; Report 303/22, Admissibility, Petition 958-15, John Sotomayor Pinuer, Chile, November 8, 2022; and Report 378/21, Admissibility, Petition 1835-14, Juan Antonio Miralles Fernandez and E.L.M.F., Ecuador, December 1, 2021. IACHR, Report 420/21, Admissibility, Petition 1564-14, J.Z and S.Z, Brazil, December 31, 2021; and Report 46/22, Admissibility, Petition 1009-13, Silvestre González Pedrotti, Mexico, March 9, 2022. IACHR, Report 420/21, Admissibility, Petition 1564-14, J.Z and S.Z, Brazil, December 31, 2021; and Report 46/22, Admissibility, Petition 1009-13, Silvestre González Pedrotti, Mexico, March 9, 2022.

⁸ Article 46.1.b) of the American Convention provides: 1. Admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the following requirements: b) that the petition or communication 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.

present, therefore, in view of all these considerations, the Commission considers that the present petition was presented within a reasonable time in the terms of Article 32. 2 of the American Convention.

VII. ANALYSIS OF COLORABLE CLAIM

26. The Inter-American Commission reiterates that for purposes of admissibility it must decide whether the alleged facts may characterize a violation of rights, pursuant to Article 47(b) of the American Convention; or whether the petition is manifestly unfounded or obviously out of order under paragraph (c) of said article. The criterion for evaluating such requirements differs from that used to rule on the merits of a petition. Likewise, within the scope of its mandate, the Inter-American Commission is competent to declare a petition admissible when it refers to domestic proceedings that could violate rights guaranteed by the American Convention. That is to say, in accordance with the aforementioned conventional norms, pursuant to Article 34 of its Rules of Procedure⁹, the admissibility analysis focuses on the verification of such requirements, which refer to elements that, if true, could constitute *prima facie* violations of the American Convention.

27. The State had the obligation to investigate the disappearance of Mrs. Sonia Jannet Jiménez Rojas Le Jeune, since, in cases of serious human rights violations, as in the instant case, it must investigate *ex officio*; without the need for any action by a private individual. In this sense, the IACHR has expressed itself on numerous occasions.¹⁰ In this particular case, we are dealing with the forced disappearance of a person, specifically of a woman, which constitutes a very serious act of relevance for the international community, whose duty to investigate and punish is duly established in at least two international treaties: the Convention of Belém Do Pará and the Inter-American Convention on Forced Disappearance of Persons. These international instruments have been ratified by the Guatemalan State itself.

28. Likewise, the Inter-American Commission is competent under the Inter-American Convention on Forced Disappearance of Persons, insofar as the alleged facts constitute a situation of continuity which subsists up to the date of the present report¹¹.

29. The Commission stresses that the relevant legal instruments do not require the petitioner to identify the specific rights alleged to have been violated by the State in a matter submitted to the Commission, although petitioners may do so. It is up to the Commission, based on the jurisprudence of the system, to determine in its admissibility reports, which provision of the relevant inter-American instruments is applicable and could be established to have been violated if the alleged facts are proven by sufficient evidence¹². Therefore, it is not necessary for the petitioner to have indicated precisely the allegedly violated norms.

30. In view of these considerations and after examining the elements of fact and law presented by the parties, the Commission considers that the petitioner's allegations are not manifestly unfounded and require a study on the merits, since the facts alleged, if corroborated as true, could constitute violations of Articles 4 (right to life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 24 (equality), and 25 (judicial protection) of the Convention; Article 7 of the Convention of Belém Do Pará; and Article I of the Inter-American Convention on Forced Disappearance of Persons.

⁹ Article 34 of the Rules of Procedure of the IACHR provides: The Commission shall declare any petition or case inadmissible when: a. it does not state facts that tend to establish a violation of the rights referred to in Article 27 of these Rules of Procedure; b. the statements of the petitioner or of the State indicate that it is manifestly groundless or out of order; or; c. supervening information or evidence presented to the Commission reveals that a matter is inadmissible or out of order.

¹⁰ For illustrative purposes, the following sources may be consulted: Admissibility and Merits Report No. 56/19, Case 13.392, Julien-Grisonas Family, Argentina, May 4, 2019, para. 26. Report No. 310/20, Petition 1104-11, Admissibility, José Luis Lemus Solís and family members, Guatemala, October 16, 2020, para. 17.

¹¹ IACHR, Report No. 65/05, Petition 777-01. Admissibility. Rosendo Radilla Pacheco. Mexico. October 12, 2005, para. 16.

¹² See, for example: IACHR, Report No. 143/22. Petition 1350-13. Admissibility. Luis Guillermo Catalán Arriagada. Chile. June 27, 2022, para. 18; IACHR, Report No. 27/16, Petition 30-04. Inadmissibility. Luis Alexander Santillán Hermoza. Peru. April 15, 2016, para. 29; and IACHR, Report No. 7/12. Petition 609-98. Admissibility. Guillermo Armando Capó. Argentina. March 19, 2012, para. 26. In the same sense, see *mutatis mutandis*: IACHR Court. Case of Hilaire vs. Trinidad and Tobago. Preliminary Exceptions. Judgment of September 1, 2001. Series C No. 80, paras. 40 to 42.

VIII. DECISION

1. To declare the present petition admissible in relation to Articles 4, 5, 7, 8, 24 and 25 of the Convention; as well as Article 7 of the Convention of Belém Do Pará; and Article I of the Inter-American Convention on Forced Disappearance of Persons.

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 31st day of the month of October 2023. (Signed:) Esmeralda Arosemena de Troitiño, Vice President; Julissa Mantilla Falcón, Carlos Bernal Pulido and José Luis Caballero Ochoa, Commissioners.