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REPORT No. 323/21
PETITION 1841-14
ADMISSIBILITY REPORT

M and C
PANAMA

Electronically approved by the Commission on November 4, 2021.

Cite as: IACHR, Report No. 323/21. Petition 1841-14. Admissibility. M and C. Panama.
November 4, 2021.

I. INFORMATION ABOUT THE PETITION

Petitioner	Centro por la Justicia y el Derecho Internacional (“CEJIL”)
Alleged victim	“M” and “C” ¹
Respondent State	Panama ²
Rights invoked	Articles 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 11 (privacy), 17 (rights of the family), 19 (rights of the child), 24 (equal protection) and 25 (judicial protection) of the American Convention on Human Rights ³ in relation to articles 1.1 (obligation to respect rights) and 2 (domestic legal effects); and article 7 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women ⁴

II. PROCEEDINGS BEFORE THE IACHR⁵

Filing of the petition	December 12, 2014
Notification of the petition	March 21, 2019
State’s first response	August 7, 2019
Additional observations from the petitioner	August 19, 2020
Additional information from the State	July 25, 2021
Lifted or in force precautionary measure	PM-14-14 ⁶

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 (instrument of ratification deposited on June 22, 1978) and Convention of Belém do Pará (instrument of ratification deposited on December 7, 1995)

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

Duplication of procedures and international <i>res judicata</i>	No
Rights declared admissible	Articles 5 (humane treatment), 8 (fair trial), 11 (right to privacy), 17 (rights of the family), 19 (rights of the child) and 25 (judicial protection) in relation to article 1.1 of the American Convention on Human Rights; and article 7 of the Convention of Belem do Para

¹ In view of the nature of the events denounced and because the main victim is a girl, the IACHR has decided to keep their names under reservation of identity for the purposes of this public pronouncement.

² As established under article 17.2.a of the Rules of Procedure of the Commission, Commissioner Esmeralda Arosemena de Troitiño, a Panamanian national, did not participate in the debate or decision of the instant matter.

³ Hereinafter, “the American Convention” or “the Convention”.

⁴ Hereinafter “the Belem do Para Convention.”

⁵ The observations from each party were duly transmitted to the other party. This petition was filed against the States of Panama and Costa Rica. The Executive Secretariat of the Inter-American Commission, in response to the regulations that govern the system of petitions and cases in the Inter-American System and its uniform practice, broke it down to create two files: P-1841-14 relative to Panama (subject of this admissibility report) and P-1842-14 relative to Costa Rica.

⁶ The request for Precautionary Measures was filed by the petitioner party on January 15, 2014. On February 5, 2014, the IACHR requested information from the State on the situation of girl C. On March 25, 2014, the State indicated that the girl had been returned to her mother in February 2014. Thus, on June 8, 2015, the IACHR ordered the closure of procedure MC-14-14.

Exhaustion or exception to the exhaustion of remedies	Yes, on June 12, 2014
Timeliness of the petition	Yes

V. ALLEGED FACTS

1. The petitioners denounce the separation of girl “C” from her mother, her institutionalization in a foster home and various irregularities in the framework of the international restitution process of the girl, after her father illegally abducted her from Costa Rica to Panama.

2. The petitioners narrate that Mrs. M held a sentimental relationship between 2001 and 2008 in Costa Rica, as a result of which C was born on October 23, 2004. In September 2008, Ms. M separated from C’s father and requested a protection order before the Court of Misdemeanors of Garabito, claiming that C’s father physically and verbally assaulted her. In subsequent statements, Mrs. M also denounced that C’s father drove her to enter prostitution in Costa Rica and Mexico, forced her to have sexual relations with him in the presence of the girl, and made C watch pornography. On November 21, 2008, the Escazu Court of Pensions and Domestic Violence ordered protection and assistance to M and C. In December 2008, Mrs. M filed and withdrew a petition for suspension of parental rights against C’s father after he retained the girl irregularly after a two-week vacation with her. Mrs. M points out that she withdrew the lawsuit as a condition for seeing her daughter again and signed an out-of-court agreement of joint custody of the girl with the father.

3. The petitioners state that Mrs. M filed several complaints for the sexual acts against her and her daughter and for the sexual exploitation to which she had been subjected by C’s father. The latter filed a lawsuit against M for suspension of parental guardianship. On January 26, 2009, the National Children’s Trust (hereinafter “PANI”) of Costa Rica granted provisional custody of the girl C to Mrs. M filed a counterclaim against C’s father in February 2009, requesting that the PANI declare the exclusive guardianship and upbringing of the girl in her favor.

4. On December 5, 2009, while the custody process was still pending a decision, C’s father violently broke into M’s house, attacked her and C’s nanny, abducted the girl and took her to Panama. As for the unlawful abduction of C, the petitioners state that M initiated four legal proceedings to regain custody of the girl, namely: 1) the custody process already ongoing in Garabito continued its processing; 2) a criminal proceeding in Costa Rica for the crime of abduction of C; 3) a protection process for social risk in Panama; and 4) the process of international restitution of C in Panama.

5. The petitioners state that Mrs. M traveled to Panama when she learned that C and C’s father were in that country. Consequently, on December 21, 2009, M requested protection in favor of her daughter from the Panamanian Judicial Organ, a request that was admitted and processed under a social risk protection procedure that same day. On December 22, 2009, the 1st Court of Children and Adolescents of the 1st Judicial Circuit of Panama took M’s sworn statement and ordered the prohibition of C and his father from leaving the country and ordered the authorities to locate C and her transfer to court. On December 29, 2009, C’s father and daughter were taken by police units before the court and that day a new protection measure was issued in favor of C, who was handed over for provisional custody to M. The petitioners indicate that on January 28, 2010, Mrs. M requested definitive custody of C. In February 2010, C’s father requested the establishment of a visitation regime, which was granted on April 14, 2010, in the form of supervised visits between C and his father.

6. In turn, on January 5, May 7 and June 3, 2010, C’s father lodged several requests for protection in favor of the girl, preventing her from leaving the country, and initiated a care and custody process for the girl in Panama. On the protection request presented by C’s father, on June 3, 2010, the court revoked the protection measure initially granted and ordered that C remain in a social services institution for an initial term of 15 days. On July 27, 2010, the court decided to extend C’s stay in the institutional home for three months, denying both parents provisional custody of the girl due to the conflict that existed between them and denying Mrs. M’s request that the girl stayed with her maternal grandmother because the grandmother lacked a

domicile and immigration status in Panama. On October 22, 2010, the court extended C's institutionalization for another three months. The petitioning organization states that, at the end of that period, C remained in the institutional home during the international restitution process without a court order until February 10, 2014, when she was provisionally handed over to M.

7. The petitioners state that the international restitution process began on October 1, 2010, by means of a letter sent by the PANI of Costa Rica to the Ministry of Foreign Affairs of Panama requesting the application of the 1980 Hague Convention on Civil Aspects of the International Child Abduction (hereinafter "The Hague Convention"). After resolving a conflict of jurisdiction between two courts in Panama to hear the international restitution process, on April 26, 2011, the 1st Court of Children and Adolescents of the 1st Judicial Circuit of Panama admitted the request and decided to suspend the process of custody promoted by C's father until it was decided whether the girl should be returned to Costa Rica. On May 30, 2011, the interdisciplinary team of the court conducted a psychological evaluation on C, in which it was determined that the girl wanted to live with her mother in Costa Rica and required psychological treatment because she had feelings of abandonment and frustration.

8. On October 21, 2011, the 1st Court for Children and Adolescents of Panama issued a judgment of first instance in which it granted C's request for international restitution in favor of Mrs. M and ordered the lifting of the protection measure and the exit of C from the social services institution. On December 20, 2011, C's father filed an appeal against the Court's ruling. On April 20, 2012, the Superior Court for Children and Adolescents of Panama upheld the decision of first instance. Regarding the second instance judgment, the petitioners argue that, although the court took C's statements into account in the psychological evaluations, it rejected the girl's statement in the process because under Article 908.3 of the Panamanian Judicial Code C would be unable to testify in any judicial process because of her age.

9. The petitioners also report that C's father filed an appeal for reconsideration against the judgment of the second instance, preventing the execution of said decision and keeping C in the Panamanian institution. Mrs. M would oppose this appeal because C had already been in Panama for almost three years and her father only wanted to delay the restitution. After resolving several challenges raised by C's father and a request for impediment that led to the appointment of an *ad hoc* judge to hear the appeal for reconsideration, on August 6, 2013, the Superior Court for Children and Adolescents upheld the judgment of second instance in the process of international restitution of C and again ordered the international restitution of C to Costa Rica. On August 20, 2013, C's father would file an appeal for clarification against this decision, which would have the effect of suspending the execution of the judgment in favor of M and C. This appeal would lead to a new request for impediment and another appointment of an *ad hoc* judge in the Court assigned by the Supreme Court, a process that would take until November 12, 2013. In addition, C's father announced that he would file an appeal for cassation against the judgment of second instance, to which Mrs. M would object again.

10. The petitioners note that on December 2, 2013, the PANI of Costa Rica sent a note to the Superior Court for Children and Adolescents expressing its concern about the delay of almost four years in the execution of C's restitution. For its part, the National Secretariat of Childhood, Adolescence and Family of Panama would join the call by means of a letter dated December 5, 2013, addressed to the Superior Court in which it expressed its deep dismay at the situation of girl C in the foster home and the excessive duration of the judicial process. On December 16, 2013, the Ministry of Foreign Affairs of Panama also addressed the Superior Court to request that the viability of handing C over to her mother be assessed as a provisional measure until the completion of the international restitution process.

11. C's father filed an appeal against the judgment of first instance, which would be declared inadmissible by the Superior Court for Children and Adolescents on December 10, 2013. On December 20, 2013, C's father filed a new appeal for clarification and reconsideration against the rejection of the appeal. On December 26, 2013, the Court confirmed the rejection of the appeal. Faced with a new request from the lawyer of C's father, on January 8, 2014, the Superior Court for Children and Adolescents recognized that C's father had abused the resources and requests presented within the framework of the judicial process and prolonged the execution of the judgments of first and second instance.

12. On January 17, 2014, C's father filed an amparo against the judgment of first instance which was admitted by the Superior Court. On January 22, 2014, the High Court for Children and Adolescents denied the amparo, considering that there was no violation of the rights invoked by C's father, and ordered the lifting of the protection measure and the delivery of C to her mother. C's father appealed the amparo judgment. The Court admitted the appeal and suspended the delivery of C on January 31, 2014. However, the court of first instance decided to order the provisional delivery of C to her mother without prejudice to the processing of the amparo judgment and ordered the lifting of the ban on C's departure from the country. On June 2, 2014, the Supreme Court of Justice of Panama upheld the international restitution of C to Costa Rica, in a decision that was notified by edict no. 847 of June 12, 2014, whereby the petitioners allege that domestic remedies were exhausted in Panama.

13. The petitioner party alleges that C's stay in a foster home violated the principle of due diligence in the international restitution process of C, as well as the reasonable period of time in the final decision to return the girl, the judicial guarantees of C in the process, and that the institutionalization decision lacked motivation. They consider that the institutionalization of C violated her rights to freedom and equality, and her and M's rights to family life, to the protection of the family and to their personal integrity. They also argue that the institutionalization of the girl was a tolerated form of continuation of the violence exercised by C's father against Mrs. M, in contravention of the duties of prevention and punishment of violence against women enshrined in Article 7 of the Convention of Belem do Pará.

14. The Panamanian State, for its part, opposes the classification of the international abduction of children as a continuing crime, since it considers that it is a phenomenon of civil law by which one of the parents alters the legal situation of the child and not of an unlawful deprivation of liberty. In this sense, the State argues that there is no record of an *ex officio* investigation or of a complaint for child abduction. Lastly, the State alleges that the petitioners assume that the necessary result of the international restitution process must be the effective restitution of the girl; however, the Hague Convention provides for several circumstances in which restitution must not be granted.

15. Additionally, the State disputes that the international restitution process has violated the invoked articles of the American Convention, since the measure of institutionalization of the girl and the separation from her mother were due to complaints of serious facts presented by C's father against M. Although it acknowledges that the institutionalization of C in the foster home was not the most appropriate measure, the State argues that it was adopted in consideration of the best interests of the girl. It also argues that the petitioners' questioning of the court's decision on supervised visitation by C's father is inadmissible and seeks to make the Commission a substitute to the judgment of the national courts in matters involving the interpretation of domestic law. In this sense, it argues that it acted based on the best interests of the girl in accordance with the circumstances that surrounded her, since the internal procedures were aimed at guaranteeing the best possible protection for girl C and avoiding an error in the decision on restitution, given that both parties in the process accused each other about the care of girl C, which raised doubts for the judge and made the international restitution process complex. Thus, the judge did not have the necessary elements of conviction that would allow him to establish which of the parents exercised the right of custody over girl C, in accordance with the Hague Convention. It argues that the court's actions responded to the principles of necessity, exceptionality, and temporality.

16. Regarding the violation of the right to personal integrity of the girl and M, Panama states that it is not possible to determine that the integrity of both was affected due to their separation, because they had weekly visits during the time that C remained at the institution, and because the girl would have received psychological care. Likewise, the State asserts that it did not violate Article 7 of the Convention of Belem do Para, since Mrs. M's requests for protection were admitted and granted, and, in fact, the Panamanian authorities located C's father and made him appear in the social protection process. The State rejects the argument that the complaints filed by C's father have been exploited to continue exercising violence to the detriment of M, since the Panamanian authorities had a duty to investigate the complaints filed in their territory and acted in accordance with domestic law. In addition, it emphasizes that Mrs. M did not formalize a complaint before the Panamanian Public Ministry for the abduction of C. The State requests that the Inter-American Commission not admit this petition since the rights of C and M have already been restored.

17. Lastly, the State emphasizes that on the same day that M presented a request for protection before the Panamanian judicial body, it was granted and became effective. It argues that the State acted diligently at the beginning of the process, since the delay was due to the fact that although the abduction of C took place in December 2009, only until October 1, 2010, the Costa Rican Central Authority required the initiation of the international restitution procedure. It maintains that Mrs. M could have requested the initiation of the international restitution process on its own initiative, but she did so through the Costa Rican Central Authority, which delayed its initial processing. It concludes that all the Panamanian authorities who learned about the process took appropriate measures to guarantee her protection and general well-being in order to avoid emotional damage. In addition, the state representation reports that on December 30, 2009, the Panamanian Public Ministry initiated an *ex officio* investigation in favor of girl C for the crime against freedom and sexual integrity as a result of the events denounced by M in the framework of the social risk protection process, although it does not indicate how this process culminated.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

Preliminary issue

18. The petitioning organization requests that this matter be processed against Panama and Costa Rica jointly based on the argument that the alleged human rights violations had been committed continuously and that the authorities of both countries exercised concurrent jurisdiction over the unlawful abduction of C. For its part, the Panamanian State considers that there are no grounds to unify the processing of this petition against both countries because the alleged responsibility of each State is not shared. It argues that the internal procedures of each State were independent, except for the administrative international restitution process. It argues, then, that in a case like the present one, the actions of each State are independent, and therefore, if the findings on the international responsibility of each State should also be examined independently.

19. In this regard, the Inter-American Commission notes that Article 44 of the American Convention establishes that petitions must be lodged for violations committed by a single State party to the American Convention, in accordance with the regulation of the processing of petitions provided for in Article 23.1 of the IACHR Statute and Article 30 of its Internal Rules. None of the constituent instruments of the petition and case system of the Inter-American System of Human Rights sets forth the possibility to jointly process petitions against two or more States.

20. In its Admissibility Reports No. 270/20 and 53/21 concerning petitions P-728-13 and P-729-13 respectively, the Commission declared the admissibility of two cases derived from a single petition filed against Peru and Ecuador, concerning the alleged detention, torture, and disappearance of an Ecuadorian foreign service officer amid an operation in Peru. In this case, although the Commission considered that it had competence *ratione loci* to hear the complaint filed against Ecuador because the alleged human rights violations resulted from the omissions and extraterritorial actions of Ecuador regarding the disappearance of the alleged victim in Peru;⁷ the Commission processed the matter against each State separately to analyze international responsibility for the actions attributable to each one of them.

21. Therefore, the Commission reiterates its practice of breaking down petitions containing complaints against more than one State. This does not prevent the IACHR from declaring the responsibility for the human rights violations attributable to each State depending on their degree of involvement in the facts. In this case, the Inter-American Commission decides to uphold its uniform and consistent practice as described above and will proceed to process each petition separately.

Exhaustion of domestic remedies and timeliness of the petition

22. In the instant case, the Commission observes that the petitioners' main claim refers to the institutionalization of C in a foster home and the unjustified delay in executing the restitution of the girl from

⁷ IACHR, Report N. 270/20, Petition 728-13. Admissibility. Enrique Roberto Duchicela Hernández and Family. Ecuador. October 7, 2020m par. 27 and IACHR, Report N. 112/10, PI-02, Franklin Guillermo Aisalla Molina. Ecuador – Colombia. October 21, 2010, par. 90.

Panama to Costa Rica. The petitioner party argues that the international restitution claim was the ideal remedy to raise the claims of the alleged victims in the Panamanian jurisdiction. They point out that the decision that exhausted said remedy was the one issued by the Supreme Court of Justice in the second instance of the amparo process promoted by C's father, which was notified by edict on June 12, 2014. The Panamanian State does not dispute the arguments of the petitioner party regarding the exhaustion of domestic remedies.

23. The Commission notes that Mrs. M filed two appeals before the Panamanian jurisdiction, namely: protection for social risk and international restitution. In turn, C's father would have started a care and custody process that would be suspended while the international restitution process was being resolved. Given that the situation that Mrs. M considered violated her rights and those of her daughter arose from the unlawful abduction of her daughter by C's father, the Commission considers that the remedy provided for by domestic legislation and the Convention of The Hague to repair the denounced act was that of international restitution. It also notes that, within the framework of this process, Mrs. M filed an appeal against C's institutionalization measure, which was rejected on July 27, 2010, for which reason C's internment in the social services institution was only resolved when the international restitution judgments became enforceable.

24. In view of these considerations, the IACHR considers that the final decision that exhausted domestic remedies was the one issued by the Supreme Court of Justice in a second instance judgment of the amparo process filed against C's international restitution decision, notified on June 12, 2014. Consequently, and given that the petition was filed on December 12, 2014, the Commission concludes that this petition meets the requirements of Article 46.1 (a) and (b) of the American Convention.

VII. ANALYSIS OF COLORABLE CLAIM

25. The petitioner party alleges the non-compliance of the principle of due diligence in the process of international restitution of C; failure to comply with the reasonable time in restitution of the girl; the violation of C's judicial guarantees in the process; and lack of motivation in the institutionalization decision; which, in turn, it considers violated C's rights to liberty and equality, to family life, to the protection of the family and to personal integrity with respect to M and C. The petitioners also allege that C's stay in a social services institution was a tolerated form of continuation of the violence exercised by C's father against Mrs. M, in contravention of the duties of prevention and punishment of violence against women enshrined in Article 7 of the Convention of Belem do Para. In turn, Panama argues that this petition should not be admitted because it raises issues that have already been decided and remedied in accordance with domestic law and that what is alleged does not characterize the violation of the articles invoked by the petitioners. It argues that the decision to place C in a home was adopted considering that both parents made serious accusations about the care of the girl, based on which the institutionalization measure took into consideration the best interests of C. It asserts that the case was very complex, and that the institutionalization measure was adopted to guarantee the rights of the girl while the judge decided on her restitution. The State explains that the girl was constantly monitored by her mother, who visited her on a weekly basis.

26. The Commission reiterates that, for the purposes of admissibility, it must decide whether the alleged facts may characterize a violation of human rights, as established in Article 47 (b) of the American Convention, or whether the petition is "manifestly unfounded" or if it is "evident its total inadmissibility", pursuant to subsection (c) of said article.

27. In cases like the present one, the Commission considers that there is a duty of exceptional diligence and speed in the processes of international restitution of children and adolescents in view of the effects that a delay in the adoption of a final decision in the proceedings may cause to family ties. Likewise, the Inter-American Court has determined that diligence in judicial proceedings is a fundamental element to protect the best interests of the child, and that the latter, in turn, cannot be invoked to justify the delay or errors in the judicial proceedings.⁸ Likewise, the European Court of Human Rights has indicated, with respect to custody and abduction procedures, that these require urgent handling, since the passage of time can have irreparable

⁸ I/A Court H.R., Case of Fornerón and daughter v. Argentina. Merits, Reparations and Costs. Judgment of April 27, 2012. Series C No. 242, par. 105.

consequences for the relationships between the child and the father or mother of whom he/she was separated from.⁹

28. Thus, the Commission notes that C's international restitution process lasted three years and eight months, a fact that was also pointed out by Costa Rica to the Panamanian authorities, all of which, in view of the cited standards, implies that *prima facie*, the claim presented is not manifestly unfounded and justifies a substantive analysis insofar as there was a significant delay.

29. On the other hand, the Inter-American Court has affirmed that the child must remain in her family nucleus, unless there are determining reasons, based on the superior interest of the former, to choose to separate her from her family. In any case, the separation must be exceptional and preferably temporary.¹⁰ In this sense, the institutionalization of C in Panama for more than three years is also a fact that deserves a substantive examination by the IACHR in light of the principles of necessity, exceptionality, and temporal determination that should govern any decision on the separation of children and their parents for reasons of protection;¹¹ especially if it is taken into account that the measure did not have a periodic judicial control. As well as the eventual emotional, psychological, and family damages to the detriment of both alleged victims.

30. In view of these considerations and after examining the factual and legal elements presented by the parties, the Commission concludes that the allegations of the petitioner party are not manifestly unfounded and require an in-depth study. The alleged facts, if corroborated as true, could characterize violations of articles 8 (fair trial), 11 (right to privacy), 17 (protection of the family), 19 (rights of the child), and 25 (judicial protection) of the American Convention, in relation to its article 1.1 (obligation to respect rights), and article 7 of the Convention of Belem do Para to the detriment of the alleged victims under the terms of this report.

31. In the other hand, the Commission considers that the petitioners have not provided sufficient elements to determine that the institutionalization of C was a form of institutional gendered-based violence to the detriment of M. The Commission observes that the institutionalization measure was adopted based on complaints that the lower court had to corroborate, and it was not based on prejudices or stereotypes that constituted a form of discrimination against women. On the contrary, Panama executed the protection order issued in favor of Mrs. M immediately and located girl C in a timely and diligent manner. On the other hand, up to now, the petitioner party does not allege or provide information that allows the IACHR to conclude that the treatment that C received while she was in the institution was, as such, contrary to the respect for her physical integrity.

VIII. DECISION

1. To declare the instant petition admissible in relation to articles 8, 11, 17, 19 and 25 of the American Convention, in relation to articles 1.1;

2. To declare inadmissible the instant petition in relation to article 7 of the Convention of Belem do Para; and

3. To notify the parties of this decision; to continue with the analysis on the merits; and to publish this decision and include 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 4th day of the month of November, 2021. (Signed:) Antonia Urrejola, President; Julissa Mantilla Falcón, First Vice President; Flávia Piovesan, Second Vice President; Margarette May Macaulay, Joel Hernández, and Stuardo Ralón Orellana, Commissioners.

⁹ European Court of Human Rights, Marie v. Portugal case, Application N. 48206/99. Judgement of June 26, 2003.

¹⁰ I/A Court H.R., Juridical Condition and Rights of the Undocumented Migrants. Advisory Opinion OC-18/03 of September 17, 2003. Series A No.18, par. 77.

¹¹ IACHR, The right of girls and boys to a family. Alternative care. Ending institutionalization in the Americas. OEA/Ser.L/V/II. Doc. 54/13. October 17, 2013, par. 66.