

OEA/Ser.L/V/II.
Doc. 141
13 August 2019
Original: Spanish

REPORT No. 132/19
PETITION 1276-08
REPORT ON ADMISSIBILITY

FAIBER ANTONIO CARDEONA HERNÁNDEZ
COLOMBIA

Approved electronically by the Commission on August 13, 2019.

Cite as: IACHR, Report No. 132/19, Petition 1276-08. Admissibility. Faiber Antonio Cardona Hernández and others. Colombia. August 13, 2019.

I. INFORMATION ABOUT THE PETITION

Petitioner	Fundación Social para el Desarrollo de las Condiciones Mínimas de Vida (MINIMO VITAL)
Alleged victim	Faiber Antonio Cardona Hernández and others ¹
Respondent State	Colombia ²
Rights invoked	Articles 4 (life), 5 (humane treatment), 7 (liberty), 8 (fair trial), 19 (rights of the child) and 25 (judicial protection) of the American Convention on Human Rights ³ in relation to article 1.1 (obligation to respect rights)

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition	November 3, 2008
Notification of the petition	August 25, 2014
State's first response	February 13, 2015
Additional observations from the petitioner	June 26, 2014; October 6, 2016
Additional observations from the State	February 11, 2019

III. COMPETENCE

<i>Ratione personae:</i>	Yes
<i>Ratione loci:</i>	Yes
<i>Ratione temporis:</i>	Yes
<i>Ratione materiae:</i>	Yes, American Convention (deposit of instrument on July 31, 1973); Inter-American on Forced Disappearance of Persons (deposit of instrument on April 12, 2005); Inter-American Convention to Prevent and Punish Torture (deposit on January 19, 1999)

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 3 (juridical personality), 4 (life), 5 (humane treatment), 7 (liberty), 8 (fair trial), 19 (rights of the child) and 25 (judicial protection) of the American Convention on Human Rights in relation to article 1.1 (obligation to respect rights); article I of the Inter-American Convention on Forced Disappearance of Persons and articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture.
Exhaustion or exception to the exhaustion of remedies	Exception provided in article 46.2.c of the Convention is applicable
Timeliness of the petition	Yes, under the terms of section VI

V. SUMMARY OF ALLEGED FACTS

1. The petitioners contend that the alleged victims⁵ were detained on May 22, 2001, when they went to the Manson River village in the municipality of Tierralta. They allege that they were later tortured and executed, and that the bodies were thrown into the Sinu River, some of which were never found. They maintain that, by virtue of the *modus operandi*, the massacre was committed by members of the United Self-Defense Forces of Colombia (AUC by their Spanish acronym), paramilitary groups that operated in the area, although according to press reports, the events were attributed to the FARC guerillas. They claim that the responsible armed groups acted with the acquiescence of the State given that it were aware of the situation and of the level of violence and the constant risk that some local populations were facing due to the violent actions of the paramilitary groups, as this was an area of conflict. According to the petitioner, the facts were a direct consequence of the failure of the State to

¹ The 18 alleged victims and family members are individualized in Annex I.

² Based on article 17.2(a) of the Rules of procedure of the Commission, Commissioner Luis Ernesto Vargas Silva, a Colombian national, did not participate in the debate or decision of this matter.

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

⁴ The observations submitted by each party were duly transmitted to the opposing party.

⁵ Including an alleged victim who was a child at that time, Carlos Caldera Cardona.

comply with its obligation to protect, which did not take any action to avoid the facts. On the other hand, they maintain that the relatives of the alleged victims have lived in fear of reprisals due to the context of violence in the region, which prevented them from filing a contentious administrative action to request reparation.

2. The petitioner indicates that the relatives of the alleged victims lodged complaints with Tierralta's central police inspection in 2001⁶ and 2008,⁷ or before the 22nd Deputy Prosecutor's Office before the municipal judges of Tierralta and Valencia in 2006,⁸ for the crimes of homicide and/or forced disappearance. It alleges that the criminal investigations carried out did not constitute effective judicial remedies to guarantee access to justice and to reach the truth of the facts. It also maintains that not all the necessary formalities were complied with and that the relatives of the alleged victims did not have ample opportunities to participate and be heard. Likewise, it argues that the criminal investigation carried out before the National Human Rights and International Humanitarian Law Unit of the Office of the Attorney General of the Nation and the Criminal Court of the Specialized Circuit of Montería did not carry out their legal duty to investigate, as demonstrated by the few routine acts performed in the face of a very long downtime. Therefore, it alleges unjustified delay in the investigations.

3. In addition, the petitioner alleges that it was not possible to initiate claims for direct reparation before the Contentious-Administrative Tribunal, since there was a general fear that resulted in the relatives of the alleged victims refraining from submitting such requests.⁹ Additionally, they indicate that on January 17, 2008, they requested an extrajudicial conciliation hearing against the Colombian Nation - Ministry of the Interior and Justice, before the Judicial Prosecutor's Office. The hearing ended without an agreement and they were notified on July 17, 2008 of the decision of the Colombian state not to conciliate, which put an end to the process.

4. For its part, the State argues that the petition does not comply with the requirements of Article 47 of the Convention, since the petitioner does not present evidence that link the State's actions with the killings of the alleged victims. On the contrary, the evidence has permitted the attribution of responsibility to illegal armed groups that do not have the status of state agents. They present no evidence that they acted with the tolerance or connivance of state agents, or that the State failed in its duty of prevention. Nor has the existence of complaints prior to the events been proven. It alleges that as soon as they learned of the commission of the facts denounced in the petition, the authorities initiated the corresponding investigations *ex officio*. Furthermore, it indicates that the obligation to guarantee and effectively protect human rights is an obligation of means and not of result.

5. It also indicates that on May 29, 2001, the First Delegate Prosecutor's Office before the Criminal Court of the Specialized Circuit of Montería ordered the opening of the preliminary investigation in order to investigate the alleged conducts of homicide, kidnapping, terrorism, rebellion and illegal use of uniforms and insignia, committed in the jurisdiction of Tierralta-Córdoba. On June 21, 2001, the investigation into these events was conducted by the National Human Rights and International Humanitarian Law Unit of the Attorney General's Office¹⁰ and the case was sent to the Criminal Court of the Specialized Circuit of Montería on February 18, 2008. On January 28, 2008, the Prosecutor issued an indictment against members of the FARC armed group and on July 2, 2009, the judge of the case handed down a conviction against six of the accused¹¹, imposing the main penalty of 40 years of prison for the crimes of aggravated homicide and rebellion¹². Thus, the State argues that the criminal proceedings count with a conviction, which effectively contributed to the clarification of what happened, as well as to the individualization and prosecution of its top officials.

⁶ Dadimer Molina Carona, Rudis Pérez Hernández, Fabián Rodríguez Builes, Manuel Atencio Piedrahita.

⁷ Carlos Caldera Carona.

⁸ Faiber Cardona Hernández, Guillermo Hernández Echavarría, Dairo Hernández Corrales, Dauris Hernández Corrales, Eduar Barrios Jaramillo, Edilma Hernández Torres, Solangel Hernández Manco, Manuel Hernández Sepúlveda, Luis Manuel Cocheró Berna, Ledys Patricia Cocheró Berna, Pedro Hernández Sepúlveda.

⁹ The petitioner refers to the Advisory Opinion of the Inter-American Court of Human Rights AO-11/90, exceptions to the exhaustion of local remedies (arts. 46.1, 46.2.a and 46.2.b American Convention on Human Rights), August 10, 1990.

¹⁰ On September 25, 2006, the National Human Rights and International Humanitarian Law Unit of the National Prosecutor's Office imposed security measures against members of the FARC armed group for the crime of aggravated homicide, confirmed on February 20, 2007 by the 34th Prosecutor's Office before the Superior Court of Bogotá.

¹¹ Regarding the defendants Pedro Antonio Marín and Luis Edgar Devia Silva, the dismissal of the criminal action was declared due to their death.

¹² By means of an official notice dated March 5, 2015, the judgment was forwarded to the Administrative Services Center of the Courts for the Execution of Penalties and Security Measures of Montería.

6. In addition, the State indicates that after the resolution of January 28, 2008, the Office of the Attorney General of the Nation ordered a procedural break, in order to continue with the preliminary investigation and to identify other authors or participants in the commission of the punishable acts perpetrated on May 22, 2001. Thus, the State alleges that it has made significant efforts to date to clarify the facts denounced. It refers to several actions carried out between 2001 and 2018, aimed at demonstrating that the Office of the Attorney General of the Nation has diligently exercised its investigative function. In addition, the State alleges that the exceptions provided for in Article 46.2 do not apply, and that the criminal proceeding has been carried out within a reasonable period of time, in accordance with the criteria of complexity of the matter and due diligence of the State.

7. Finally, the State alleges that the petitioners did not institute a direct reparation action before the competent judicial authorities at the domestic level.

VI. EXHAUSTION OF LOCAL REMEDIES AND TIMELINESS OF THE PETITION

8. The petitioners maintain that the investigations have not concluded, that all those responsible for the facts have not been punished, and that the bodies of several of the presumed victims have not been found. They argue that, as a result, there is an unjustified delay of justice. For its part, the State argues that the criminal proceeding has been carried out within a reasonable period of time, in accordance with the criteria of complexity of the matter and due diligence of the State. The Commission notes that on July 2, 2009, the judge handling the case sentenced to prison six of those responsible for the massacre. However, the Commission notes that more than 17 years after the facts, investigations are still pending regarding some of those responsible, as well as on finding the whereabouts of some of the alleged victims. In view of the foregoing, the Commission considers that there has been a delay in criminal investigations and the exception provided for in Article 46.2 (c) of the American Convention applies¹³.

9. On the other hand, the IACHR recalls that, for purposes of determining the admissibility of a claim of a nature such as the present one, the reparation action does not constitute an appropriate remedy nor does it require its exhaustion, since it is not adequate to provide integral reparation that includes clarification and justice for the relatives¹⁴.

10. In the same way, the Commission observes that the petition was received on November 3, 2008; the facts reported therein occurred on May 22, 2001; some of those responsible were sentenced on July 2, 2009 while a preliminary investigation is still pending regarding other responsible persons since 2008, and the effects of the alleged violations would extend to the present, for which the Commission considers that the petition was filed within a reasonable period of time under the terms of Article 32.2 of the Rules of Procedure of the IACHR, and in compliance with Article 46.1 (b) of the Convention.

VII. COLORABLE CLAIM

11. Based on the factual and legal arguments presented by the parties, and the nature of the matter brought to its attention, the IACHR considers that the allegations in relation to the alleged responsibility of the State on its duty to prevent, related to the alleged illegal detentions, forced disappearances and violent deaths, purportedly committed by illegal armed groups that acted in the region with the acquiescence of the State and the unjustified delay in the identification of the authors and the continued denial of justice, could amount to possible violations of the rights enshrined in articles 3 (juridical personality), 4 (life), 5 (humane treatment), 7 (liberty), 8 (fair trial), 19 (rights of the child) and 25 (judicial protection) of the American Convention, in accordance with its articles 1.1 (obligation to respect rights) and article 1 of the Inter-American Convention on Forced Disappearance of Persons; and of articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture. Likewise, considering that Carlos Caldera Cardona was allegedly 16 years-old at the time the facts took place the facts could also account for a violation to article 19 (rights of the child) of the American Convention.

¹³ IACHR, Report No.61/16. Case 12.325. Admissibility. Community of Paz San José de Apartadó, Colombia. December 6, 2016, par. 74 and 76.

¹⁴ IACHR, Report No. 72/16. Case 694-06. Admissibility. Onofre Antonio de La Hoz Montero and family. Colombia. December 6, 2016, par. 32.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 3, 4, 5, 7, 8, 19, 25 of the American Convention, in accordance with articles 1.1; as well as article I of the Inter-American Convention on Forced Disappearance of Persons; and articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture;

2. To notify the parties of the decision; to continue with the analysis on the merits and to publish this decision and to 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 13th day of the month of August, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández García, First Vice President; Antonia Urrejola, Second Vice President; Margarete May Macaulay, Francisco José Eguiguren Praeli and Flávia Piovesan, Commissioners.

LIST OF ALLEGED VICTIMS INCLUDED IN THE PETITION

ANNEX I

1. Faiber Cardona Hernández and family

- Carlos Cardona Polo, father
- Petrona Palacio Guerra, partner
- Jamer Cardona Palacio, Rosa Cardona Palacio, Faider Sanir Cardona Palacio, daughters
- Nancy Cardona Hernández, Idelda Cardona Hernández, Betilda Cardona Hernández, Sonia Cardona Hernández, Maria Cardona Hernández, Alcira Cardona Hernández and Beatriz Cardona Hernández, sisters

2. Guillermo Hernández Echavarría and family

- Pedro María Hernández Mora, father
- Pastora Tapias Echavarría, mother
- Airlines Hernández Cardona, Viviana Hernández Cardona, Zuly Hernández Cardona, Beydi Luz Hernández Cardona and Guillermo Hernández Cardona, sons and daughters
- Pedro Hernández Echavarría, Eneida Hernández Echavarría, María Hernández Echavarría, Nacor Hernández López, Enadis Hernández Torres, Yulis Hernández Torres, Danis Hernández Torres, Daimer Hernández Torres and Edilsa Hernández Pereira, brothers and sisters
- Idelda Cardona Hernández, partner

3. Dairo Hernández Corrales and family

4. Dauris Hernández Corrales and family

- Carmen Corrales de la Ossa, mother
- Lucinda Molina Cardona, Dairo's partner
- Airlines Hernández Cardona, Dauris's partner
- Orleidis Fernández Corrales, brother
- Divier Hernández Molina, Doraines Hernández Molina, Dayira Hernández Molina and Daniris Hernández Molina, Dairo's sons
- Keimer Hernández Hernández and Marisol Hernández Hernández, Dauris' sons and daughters

5. Daidimer Molina Carona and family

- Nancy Cardona Hernández, mother
- Jirnes Molina Cardona, Lucinda Molina Cardona, Lidian Molina Cardona, Diani Molina Cardona, Patricia Molina Cardona, Sandri Molina Cardona and Jorge Molina Cardona, brothers and sisters

6. Rudis Pérez Hernández and family

- Eneida Hernández Tapias, mother
- Flabio Pereza Cervantes, father
- Luz Pérez Mercado, daughter
- Eleiden Pérez Hernández, Enith Pérez Hernández, Fabio Pérez Hernández, Tatiana Pérez Hernández, Sandra Pérez Hernández and Eliana Pérez Hernández, brothers and sisters

7. Fabián Rodríguez Builes and family

- Nancy Osorio Martínez, partner
- Fabián Rodríguez Arango, Jaquelina Rodríguez Arango and Cristina Rodríguez Arango, sons and daughters

8. Eduar Barrios Jaramillo and family

- Nubia Jaramillo Hernández, mother
- Yurelis Cabrera Jaramillo, Yoimer Cabrera Jaramillo, Joe Cabrera Jaramillo and Dubis Cabrera Jaramillo, brothers

9. Edilma Hernández Torres and family

- Rigoberto Hernández Lopez, father
- Mirian Torres Hernández, mother
- Rigoberto Hernández Torres, Leider Hernández Torres, Jader Hernández Torres and Ivan Darío Hernández Torres, brothers
- Luis Hernández Torres, son
- Alberto Hernández Torres, grandfather
- Elvia Maria Hernández Montes, grandmother

10. Solangel Hernández Manco and family

- Elvia Maria Hernández Montes, sister

11. Manuel Atencio Piedrahita and family

- Luz Marina Palacio Guerra, partner
- Dary Luz Atencio Palacio, Jenis Elena Atencio Palacio, Victo Atencio Palacio and Patricia Atencio Palacio, sons and daughters
- María de los Santos Piedrahita, mother
- Luis Atencio Piedrahita, Aníbal Atencio Piedrahita, José Atencio Piedrahita, Luz Marina Atencio Piedrahita and Avelina Atencio Piedrahita, brothers and sisters

12. Manuel Hernández Sepúlveda and family

- Leider Hernández Torres, partner
- José Hernández Sepúlveda, brother

13. Jesús Echavarría Zapata and family

- Jesús Echavarría Araiza, father
- Rosalba Echavarría Arena, Cesar Echavarría Zapata y Minerva Echavarría Zapata, brothers and sisters

14. Wilmar Barrios Tamayo and family

- Rafael Antonio Barrios Mestra, father
- Luzdary Tamayo Quiceno
- Jhon Barrios Tamayo, Viviana Maria Barrios Tamayo, Johaneider Barrios Tamayo, Nelsi Juliana Barrios Tamayo and Luz Elenis Varela Quiceno, brothers and sisters

15. Luis Manuel Cochero Berna and family

- Maribel Cochero Berna, Wilmer Manuel Cochero Berna and Yunis Aideth Cochero Berna, brothers and sisters

16. Ledys Patricia Cochero Berna and family

- Maribel Cochero Berna, Wilmer Manuel Cochero Berna and Yunis Aideth Cochero Berna, brothers and sisters

17. Carlos Caldera Cardona and family

- Betilda Cardona Hernández, mother
- Carlos Antonio Carona Polo, grandfather

- Betty Yazmin Caldera Cardona, Gilberto Caldera Cardona, Alexander Caldera Cardona, Sandy Karina Caldera Cardona, Jair Cardona Hernández, Aura Cristina Romero Cardona and Wendy Romero Cardona, brothers and sisters

18. **Pedro Hernández Sepúlveda and family**

- Manuel Hernández Gomez, father
- Carlina Flores Sepúlveda, sister