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REPORT No. 196/19
PETITION 326-10
REPORT ON ADMISSIBILITY

DANNY DARLES TORRES CUBIDES AND FAMILY
COLOMBIA

Electronically approved by the Commission on December 6, 2019 in San Salvador, El Salvador.

Cite as: IACHR, Report No. 196/19. Petition 326-10. Admissibility. Danny Darles Torres Cubides. Colombia. December 6, 2019.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Luz Marina Barahona Barreto ¹
Alleged victim:	Danny Darles Torres Cubides and family ²
Respondent State:	Colombia ³
Rights invoked:	No articles specified

II. PROCEDURE BEFORE THE IACHR⁴

Filing of the petition:	March 5, 2010
Notification of the petition to the State:	August 4, 2010
State's first response:	October 29, 2010
Additional observations from the petitioner:	December 4, 2010
Additional observations from the State:	January 31, 2011
Notification of the possible archiving of the petition:	January 15, 2015
Petitioner's response to the notification regarding the possible archiving of the petition:	April 11, 2016

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 ⁵ (deposit of ratification instrument on July 31, 1973); Inter-American Convention on Forced Disappearance of Persons (deposit of the ratification instrument on April 12, 2005)

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), 8 (fair trial), 11 (privacy), and 25 (judicial protection) of the American Convention, in relation to its Article 1.1 (obligation to respect rights); article I of the Inter-American Convention on Forced Disappearance of Persons
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, exception established in Article 46.2(b) of the Convention applies
Timeliness of the petition:	Yes, under the terms of Section VI

¹ Formerly, the petitioner was Nelson De Jesús Ríos Santamaría, murdered on May 4, 2015.

² Eunice Cubides Torres (mother), Yudy Maryory Torres Cubides (sister), Franklin Ges Torres Cubides (brother).

³ Pursuant Article 17.2(a) of the IACHR Rules of Procedure, Commissioner Luis Ernesto Vargas Silva, a Colombian national, did not partake in the discussion or the decision on this matter.

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

⁵ Hereinafter "Convention" or "American Convention."

V. ALLEGED FACTS

1. The petitioner claims violations of the human rights of Danny Darles Torres Cubides (hereinafter “the alleged victim” or “Mr. Torres”), aged 19, and the alleged victim’s family. She argues that Mr. Torres was killed by members of the Self-Defense Forces of Colombia (“AUC”) and that the State showed no diligence in adopting measures to identify and punish the persons responsible, which has created a situation of impunity.

2. The petitioner indicates that a paramilitary soldier known as “*Drácula*,” invited Mr. Torres to San Martín, department of Meta (“Meta”), to pressure him to join his paramilitary group. She alleges that after his refusal to join the paramilitary group, AUC members wounded and presented Mr. Torres as a member of the guerrilla, introducing him as such to the community, although it was known that he was a false positive from the town of Puerto Rico, Meta. She moreover explains that he was wounded with a long-range gun, a type of gun “for the exclusive use of the Colombian Army,” was taken to *Clínica Martha* private hospital, in Villavicencio, and died on October 8, 2013.

3. The petitioner alleges that it was widely known that AUC members gathered in this town, for this was where the AUC commanding staff for the Meta department were headquartered. She argues that despite knowing that “the paramilitary group had been controlling the town in cooperation with local authorities,” the State failed to fulfill its duty to prevent this situation and to protect the community and the alleged victim. She explains that, given such a context, the alleged victim’s relatives and the people from the region did not report the events, because of a general code of silence and a fear of retaliation coming from both the military forces and the illegal armed groups operating in that region.

4. She submits that after his death, the alleged victim was taken to the main cemetery and buried as an unidentified person without a previous comparison of his fingerprints with those on the records at the civil registration system. She asserts that it was not until five years after he was disappeared that Mr. Torres’ dead body was identified, and his relatives were reached. She emphasizes that on August 29, 2008, the alleged victim’s relatives finally received his mortal remains. She indicates that afterward, a request was lodged with the 39th Prosecutor’s Office of San Martín, Meta, which had already conducted and concluded the investigations.

5. The petitioner alleges that the State has treated Mr. Torres’ case with impunity even though all the national media outlets had spread the news of his murder. She claims that the recruitment method of paramilitary groups consisted in inviting young people to join their ranks and killing those who refused so these would not reveal the location of the training camps. She calls into question the State’s decision not to interview the former leading commander of the paramilitary group, Manuel de Jesús Piraban, who is in prison and could confirm that “*Dracula*” was a recruiter for this armed group. She also alleges that the State has had a permissive attitude towards the AUC and that paramilitary soldiers have recognized that they received weapons from commanders of the army. She also questions the delay in identifying Mr. Torres’ dead body, stressing that this subjected the relatives to five years of anguish. She submits that no comprehensive reparations have been provided to alleged victim’s relatives.

6. For its part, the State claims that the alleged victim, of his own free will, met with AUC members operating in the region where the facts took place and that his death is attributable to actions by an illegal armed group. It indicates that the alleged victim was wounded on September 24, 2003, he came to the hospital in San Martín, Meta, on September 25, 2003, was transferred to the hospital of Granada, Meta, then to the hospital of Villavicencio, and finally to *Clínica Martha*, Villavicencio, where he died on October 8, 2003.

7. The State denies that the alleged victim’s body has been treated as an unidentified person’s body, claiming that the Meta Regional Unit of the National Institute of Legal Medicine and Forensics received the request for a medicolegal autopsy on October 8, 2003, and that this procedure was undertaken on October 9, 2003. It submits that the alleged victim’s mortal remains were buried by order of the Villavicencio unit of the Institute of Legal Medicine given that none of his relatives was with him in the hospital nor claimed his dead body when he died. It claims that, before ordering the burial of the alleged victim’s body, the National Institute

of Legal Medicine collected his fingerprints. It explains that around that time there were delays in the manual body identification process, for the Institute was in charge of analyzing some 35500 postmortem fingerprints, which is why Mr. Torres' fingerprints were submitted on April 26, 2004, and his body identified on June 27, 2007. The State alleges that on being notified of the identification of Mr. Torres' remains, it reached the City Hall of Puerto Rico, Meta on August 12, 2008, in order to find the alleged victim's relatives, who were notified on August 26, 2008.

8. Regarding the criminal proceedings, the State affirms that the 39th Prosecutor's Office of San Martín, Meta, began an investigation for an alleged homicide on the same date of the alleged victim's death, that is, October 8, 2003. It indicates that on January 21, 2005, the 39th Prosecutor's Office Unit of San Martín, Meta, issued an inhibitory resolution concluding the impossibility to identify the persons responsible.

9. Lastly, the State contends that it should not be held to account for an illegal group's actions. It argues that there is nothing to indicate alleged cooperation or acquiescence by state agents with regard to the persons responsible for Mr. Torres' death. It submits that the investigation into the facts referred to in the instant petition was conducted with due diligence and that the National Institute of Legal Medicine and Forensics duly and properly maintained the chain of custody of the body and the information that eventually allowed Mr. Torres' relatives to identify his mortal remains. It also considers that the petitioning party intends to have the Commission work as a court of appeals to review the proceedings of the 39th Prosecutor's Office of San Martín, which issued an inhibitory resolution in accordance with the due process of law and other legal guarantees.

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

10. The petitioner affirms that to date the facts remain unpunished, that the State failed to hold the criminal proceedings effectively because the 39th Prosecutor's Office of San Martín, Meta, declared the investigation concluded on January 21, 2005, before the relatives were informed that the alleged victim's body had been found. In this regard, the petitioning party claims that no one was arrested for the events connected with the alleged victim's death nor were investigations filed against the civil and military authorities who might have been responsible for acts or omissions.

11. For its part, the State holds that the petition does not meet the requirement of exhaustion of domestic remedies, and thus requests that the instant petition be dismissed based on Article 46 of the American Convention. It stresses that the alleged victim's relatives have not lodged a claim for damages, an adequate and effective remedy available in the national legal framework to obtain compensation for the alleged material and non-material damage sustained by the victims as a result of state agents' actions or omissions. Moreover, it argues that the instant petition does not meet the timeliness requirement established in Article 46.1(b) of the American Convention, for the last judgment that exhausted the adequate domestic remedy was the inhibitory resolution issued by the 39th Prosecutor's Office of San Martín on January 21, 2005, while the petition was presented over five years later.

12. The Commission reiterates that, regarding claims of crimes against life and integrity, the domestic remedies to be considered in deciding on the admissibility of a petition are those concerned with the criminal investigation and punishment of the persons responsible.⁶ Likewise, the Commission has consistently established that to determine the admissibility of a petition concerned with the right to life and legal guarantees, a claim for damages is neither adequate nor necessary, as it does not provide full reparations and justice to the relatives.⁷ The Commission moreover stresses that the determination of reparation, whether determined judicially or administratively (without the two jurisdictions being mutually exclusive), does not exempt the State of its obligations regarding the component of justice for the violations caused, which obligates

⁶ IACHR, Report No. 72/18, Petition 1131-08. Admissibility. Moisés de Jesús Hernández Pinto and family. Guatemala. June 20, 2018, para. 10.

⁷ IACHR, Report No. 72/16. Petition 694-06. Admissibility. Onofre Antonio de La Hoz Montero and Family, Colombia, December 6, 2016, para. 32; IACHR, Report No. 40/18. Admissibility. Nelson Enrique Giraldo Ramírez and Family. Colombia. May 4, 2018, para. 15.

the State to guarantee the victims that there will be an investigation into and punishment of the persons responsible for those violations, as per the requirements of international law.⁸ Therefore, the Commission believes that, in the present case, the petitioner needs not to exhaust a claim for damages.

13. As for the criminal investigation, the Commission notices that the inhibitory resolution was passed in 2005 and that Mr. Torres' death was notified to his relatives only on August 26, 2008; and that the alleged victim's relatives were thus unable to participate in the criminal investigation. Therefore, and considering that there is nothing to indicate that the investigation has been resumed after 2005, the Commission finds that the exception to the requirement of prior exhaustion of domestic remedies established in Article 46.2(b) of the Convention applies to the instant petition.

14. Pursuant to Article 46.2 of the Convention, the six months established for filing a petition does not apply when an exception to the requirement of prior exhaustion of domestic remedies applies. In such cases, the Commission shall analyze whether the petition was lodged within a reasonable time following the date when the alleged violation took place, and the circumstances of each case, under Article 32.2 of the IACHR Rules of Procedure. In the present case, the Commission notes that Mr. Torres' relatives were notified of his death on August 26, 2008, and that the IACHR received the petition on March 5, 2010. It also observes that the alleged denial of justice and the situation of partial impunity persist to date. Therefore, and given the context and the characteristics of this case, the Commission finds that the instant petition was lodged within a reasonable time.⁹

VII. ANALYSIS OF COLORABLE CLAIM

15. Considering the factual and legal elements submitted by the parties, and the nature of the matter brought to its attention, the Commission believes that, if proven, the alleged facts pertaining the State's knowledge about the risk situation where the alleged victim lived, its responsibility on his subsequent death, the lack of adequate legal protection regarding these facts, the relatives' five years lack of information that the alleged victim had been buried and their impossibility to participate in the investigation, could establish violations of Articles 3 (juridical personality), 4 (life), 5 (humane treatment), 8 (fair trial), 11 (privacy) and 25 (judicial protection) of the American Convention, in relation to its Article 1.1 (obligation to respect rights); and article I of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of the alleged victim and his relatives.

16. Finally, regarding the State's claim of the application of the fourth-instance formula, the Commission recognizes its lack of competence to review decisions by domestic courts acting within the sphere of their jurisdiction and following the principle of due process and legal guarantees. However, the Commission reiterates that, according to its mandate, it is competent to find a petition admissible and rule on the merits of the case when said petition concerns domestic proceedings that may be contrary to the rights enshrined in the American Convention.¹⁰

VIII. DECISION

1. To find the instant petition admissible in connection with Articles 3, 4, 5, 8, 11 and 25 of the American Convention, in relation to its Article 1.1; and article I of the Inter-American Convention on Forced Disappearance of Persons; and

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.

⁸ IACHR, Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia, December 31, 2013, para. 467.

⁹ IACHR, Report No. 40/18. Admissibility. Nelson Enrique Giraldo Ramírez and Family. Colombia. May 4, 2018, para. 16; IACHR, Report No. 89/18. Petition 1110-07. Admissibility. Juan Simón Cantillo Raigoza, Keyla Sandrith Cantillo Vides and Family. Colombia. July 27, 2018, para. 11.

¹⁰ IACHR, Report No. 40/18. Admissibility. Nelson Enrique Giraldo Ramírez and Family. Colombia. May 4, 2018, para. 20; IACHR, Report No. 81/18. Petition 190-07. Admissibility. Edgar José Sánchez Duarte. Colombia. July 7, 2018, para. 18.

Approved by the Inter-American Commission on Human Rights on the 6th day of the month of December, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández García, First Vice-President; Antonia Urrejola Noguera, Second Vice-President; Margarete May Macaulay, Francisco José Eguiguren Praeli and Flávia Piovesan, Members of the Commission.