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## **REPORT No. 212/19**

### **PETITION 488-09**

#### REPORT ON ADMISSIBILITY

DENYS DEL CARMEN OLIVERA DE MONTES AND FAMILY  
COLOMBIA

Electronically approved by the Commission on August 13, 2019.

**Cite as:** IACHR, Report No. 212/19. Admissibility. Denys del Carmen Olivera de Montes and family. Colombia. August 13, 2019.

**I. INFORMATION ABOUT THE PETITION**

Petitioner	Antonio José Contreras Hernández
Alleged victim	Denys del Carmen Olivera de Montes and family <sup>1</sup>
Respondent State	Colombia <sup>2</sup>
Rights invoked	Articles 4 (life), 5 (humane treatment), 8 (fair trial), 17 (rights of the family), 22 (movement and residence) and 25 (judicial protection) of the American Convention on Human Rights <sup>3</sup>

**II. PROCEEDINGS BEFORE THE IACHR<sup>4</sup>**

Date of filing	April 22, 2009
Additional information received during initial review	July 16, 2010; July 18, 2011; March 26, 2012; January 31, 2013; March 20, 2013; January 7, 2014
Notification of the petition	May 19, 2014
State's first response	October 6, 2014
Additional observations from the petitioner <sup>5</sup>	November 17, 18 and 21, 2014; May 29, 2015; February 9 and 29, 2016
Additional observations from the State	April 20, 2015

**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 of ratification on July 31, 1973)

**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), 8 (fair trial), 17 (rights of the family), 22 (movement and residence), 25 (judicial protection) and 26 (economic, social and cultural rights) of the American Convention, in relation to its Articles 1.1 and 2
Exhaustion or exception to the exhaustion of remedies	Yes, under the terms of Section VI
Timeliness of the petition	Yes, under the terms of Section VI

**V. SUMMARY OF ALLEGED FACTS**

1. The petitioner claims that in 1996, paramilitary groups of the United Self-defense Forces of Colombia (hereinafter "AUC") took over several parts of the town of Ovejas, department of Sucre. According to him, these groups often entered towns of the region searching for members or possible collaborators of the Revolutionary Armed Forces of Colombia ("FARC").

2. By way of context, he indicates that from 1996 to 2008 more than 276 violent murders were committed in the same region and neighboring towns. He asserts that these deaths were due to the lack of

<sup>1</sup> The alleged victims presented by the petitioner are identified in the document attached hereto.

<sup>2</sup> Pursuant to provisions in Article 17.2.a of the IACHR Rules of Procedure, Commissioner Luis Ernesto Vargas Silva, a Colombian national, did not participate in the discussion or voting on this matter.

<sup>3</sup> Hereinafter the "American Convention" or "Convention."

<sup>4</sup> The observations submitted by each party were duly transmitted to the opposing party.

<sup>5</sup> Following his last substantial communication, the petitioner has submitted several other communications to the IACHR seeking information on the petition and the adoption of a decision on its admissibility. The last of these communications dates from February 14, 2019.

police and military officers in the region since 1996, meaning that the State failed to fulfill its duty to protect the lives of people in that region. He affirms that locals specifically requested the Police and the Army to adopt preventive measures regarding the takeover by armed groups but were unsuccessful.

3. He claims that on November 2, 1998, in the rural area called La Recta, Denys del Carmen Olivera and Juan José Montes Balsanoa, a married couple, and their daughter Piedad Montes Olivera, aged 23, (hereinafter “the alleged victims”) were made to stop and get off their private vehicle, and shot dead.

4. The petitioner argues that the actions of the AUC and the lack of state protection in that place compelled the alleged victims’ relatives to leave their homes and personal effects and to be forced to move to different places in the cities of Ovejas and Sincelejos. He indicates that these paramilitary groups claimed that as the relatives aided the FARC, they would suffer the same fate of the alleged victims.

5. He affirms that on the same date of the facts, the relatives filed a complaint with the National Police in Ovejas and Public Prosecutor’s Office No. 9 in Corozal. However, he asserts that the officials at these bodies refrained from cooperating in the removal of the bodies claiming fear of reprisal from illegal groups. He alleges that the relatives, having found the alleged victims’ bodies on the road, they themselves—without legal support—proceeded to remove the bodies and take them to the morgue in the town of Ovejas.

6. The petitioner further claims that Ovejas Ombudsman’s Office certified the alleged victims’ death but did not undertake an investigation. He claims that the relatives filed a request for information with the Attorney General’s Office. According to him, on December 14, 1999, the said body replied that it would initiate proceedings; yet no proceedings have been held so far. He adds that on December 24, 2008, he lodged a request for information with the Police in Ovejas to access a copy of the complaint filed on November 2, 1998. He alleges that on December 25, 2008, Police informed him that there was no record of the case.

7. The petitioner submits that on May 24, 1999, Public Prosecutor’s Office No. 9 in Corozal suspended the investigation as the deadline for the preliminary investigation was due without anyone having been found guilty of the facts; that it decided to close the criminal investigation accordingly. Allegedly, in 1999 and 2006, he repeatedly asked the Prosecutor’s Office for information on the case. He claims that on December 29, 2009, he lodged a request for information with the Prosecutor’s Office for Human Rights in Cartagena to obtain a copy of all the documents concerning the investigations undertaken and information on the judicial inquiries and their results. However, on April 28, 2010, the said body notified him that in the database of the Prosecutor’s Office Legal Information System, there was no record of any investigation into the facts.

8. He also states that on November 2, 2000, he filed a direct claim for damages in the contentious administrative jurisdiction, which Sucre Administrative Court rejected on February 21, 2008. The court argued that the State could not be held responsible for damage because while the unlawful damage allegedly entailing responsibility was proven, the said failure to fulfill an obligation was unproven. The court added that given the evident state of war in the country since then, Police was not obliged to be present everywhere. He submits that he filed an appeal before the same court. On April 17, 2008, the court ruled to dismiss the appeal because of its low amount of damages. He indicates that, therefore, he lodged an appeal, which the Administrative Court in Sucre dismissed on May 29, 2008. The decision was notified on June 4, 2008. He asserts that he requested copies of the proceedings in order to file a complaint before the State Council.

9. The petitioner alleges while decades have passed, none of the persons responsible for the facts have been identified, investigated, or punished, which reveals judicial inaction and authorities’ delay.

10. The State contends that the facts alleged by the petitioner do not establish human rights violations in that acts committed by third parties do not entail international responsibility for the State. In this regard, it argues that in this case, the petitioner does not specify how the State has purportedly cooperated with or supported illegal self-defense groups. It asserts that it was impossible to foresee the existence of a certain, immediate and specific risk to the alleged victims’ life; that, consequently, it was reasonably unlikely that the State could have prevented it.

11. The State alleges that the acts reported were analyzed through domestic remedies and the proceedings duly and effectively settled. It indicates that the criminal trial developed according to the

complexity of the case and that given the lack of reasonable prospects of success, the prosecutor decided to close the investigation. It submits that despite that decision, the matter did not become *res judicata* and that should there be new elements, the case can be reopened. It claims that the direct claim for damages was decided according to substantive and procedural norms and that the petitioner seeks to question legal and factual elements as in a court of appeals.

## **VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION**

12. The Commission reiterates that in petitions where violations of the right to life are involved, the domestic remedies to be considered for the purpose of admissibility are those concerned with the criminal investigation and punishment of the persons responsible. In this case, the Commission observes that the alleged victims' relatives came to the Prosecutor's Office on the date of the facts and that this body decided to close the criminal investigation on May 28, 1999, without giving them any information until 2010 despite their constant requests. Based on the previous consideration, the IACHR notes the claim that the criminal investigation was suspended without the facts having been established or the persons responsible being identified, setting a situation of impunity. Moreover, despite the complaints filed with the Municipal Ombudsman's Office and the Police in Ovejas, nothing indicates that these state bodies have filed an investigation. Thus, the Commission concludes that the exception to the requirement of exhaustion of domestic remedies foreseen in Article 46.2.c of the American Convention applies regarding this part of the petition.

13. Additionally, as for reparation proceedings in the contentious administrative jurisdiction, the Commission has repeatedly argued that this is not an adequate means to assess the admissibility of a complaint of this nature, in that it is inadequate to provide full redress including clarification of the facts and justice to the family members. Without prejudice to the above consideration, while in this case, a criminal action is an adequate remedy to investigate the facts, the Commission observes that the petitioner also alleges specific violations concerning the claim for damages. Therefore, given the connection between the two proceedings, the Commission takes into consideration that on May 29, 2008, Sucre Administrative Court dismissed the appeal filed by the petitioner through which the latter sought to challenge the impossibility to appeal a judgment because of the bill of damages. The IACHR believes that the exception to the requirement of exhaustion of domestic remedies, established in Article 46.2.a of the American Convention applies in this case.

14. As for the requirement on timeliness, the Commission finds that, the exceptions in Article 46.2 paragraphs a and c of the Convention having been recognized, the petition was filed within a reasonable time based on Article 32.2 of the IACHR Rules of Procedure. This last consideration is based on the fact that although the facts alleged in this petition date from November 2, 1998, and the IACHR received the petition on April 22, 2009, some of the consequences of the facts alleged here seem to persist, such as the lack of identification and punishment of the persons responsible and the lack of reparation to the victims.

## **VII. COLORABLE CLAIM**

15. In view of the elements of fact and law presented by the parties and the nature of the matter brought to its attention, the Commission deems that, if proven, the alleged extrajudicial killing of the alleged victims at the hands of paramilitary groups operating in the region; the purported lack of state protection given the threats against the relatives; the lack of judicial protection and inability to appeal a decision on a claim for damages in view of the low amount of damages, all could establish possible violations of the rights protected through Articles 4 (life), 5 (humane treatment), 8 (fair trial), 17 (family) and 25 (judicial protection) in connection with Articles 1.1 and 2 of the American Convention. Also, taking into account the multiple, complex and continuous nature of the forced displacement of people, and the direct effects that derive from it on the rights to free movement and residence, housing and personal integrity as well as the uprooting that in social and social terms Cultural issues can be presented, the Commission considers that the allegations regarding this phenomenon may require an analysis of Articles 5 (humane treatment), 22 (freedom of movement and residence) and 26 (economic, social and cultural rights) of the American Convention jointly and interconnectedly.

16. Lastly, as for the State's claim regarding the fourth instance of jurisdiction, the Commission establishes that in declaring this petition admissible, it does not seek to replace the competence of national

judicial authorities. Instead, this means that in the merits stage the Commission will analyze whether the domestic proceedings were held pursuant to due process and judicial protection in accordance with the rights protected through the American Convention.

### **VIII. DECISION**

1. To declare the instant petition admissible in relation to Articles 4, 5, 8, 17, 22, 25, and 26 of the American Convention, in accordance with its Articles 1.1 and 2; 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.

Approved by the Inter-American Commission on Human Rights on the 13<sup>th</sup> day of the month of August, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández, First Vice President; Antonia Urrejola, Second Vice President; Margarett May Macaulay, Francisco José Eguiguren, and Flávia Piovesan, Commissioners.

**Annex 1**  
**List of Alleged Victims**

1. Juan José Montes Balsanoa
2. Denys Olivera de Montes
3. Piedad Maria Olivera
4. Amparo del Carmen Montes
5. Juan José Montes Olivera
6. Bernanrda Berena Montes Olivera
7. Jarold David Montes Olivera
8. Astolfo Nain Montes Olivera
9. Libia del Socorro Olivera de Perez
10. Prudencia Olivera de Perez
11. Maria Auxiliadora Olivera Paniza
12. Marlene Isabel Olivera de Estrada
13. Cenayda Isabel Mendivioli de Perez
14. Roni Manuel Salcedo
15. Silvio Jose Salcedo Montes