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REPORT No. 177/19
PETITION 594-09
REPORT ON ADMISSIBILITY

HANYI CAROLINA DUCUARA VIEDA, JOSÉ TOMAS LADINO
TACHA AND FAMILIES
COLOMBIA

Approved by the Commission on December 5, 2019 in San Salvador, El Salvador.

Cite as: IACHR, Report No. 177/19. Petition 594-09. Admissibility. Hanyi Carolina Ducuara Vieda, José Tomas Ladino Tacha and families. Colombia. December 5, 2019.



I. INFORMATION ABOUT THE PETITION

Petitioner:	Miguel Piñeros Rey
Alleged victim:	Hanyi Carolina Ducuara Vieda, José Tomas Ladino Tacha and families
Respondent State:	Colombia ¹
Rights invoked:	Articles 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 19 (rights of the child), 22 (movement and residence) and 25 (judicial protection) of the American Convention on Human Rights ²

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition:	May 15, 2009
Notification of the petition to the State:	July 30, 2014
State’s first response:	December 4, 2014
Additional observations from the petitioner:	February 26 and August 7, 2015
Additional observations from the State:	July 16, 2015

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 (instrument of ratification deposited 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), 7 (personal liberty), 8 (fair trial), 17 (rights of the family) 19 (rights of the child), 22 (movement and residence), 25 (judicial protection) and 26 (economic, social and cultural rights) of the American Convention on Human Rights
Exhaustion of domestic remedies or applicability of an exception to the rule:	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 on Monday, May 4, 1998, at approximately 1:00pm, a group of approximately 200 armed individuals in a vehicle caravan that included trucks, dump trucks and jeeps entered the Puerto Alvira sector of the Mampiripan Municipality, Meta Department, and placed themselves in a location named “the track” near the parish house of this village. The petitioner points out that these

¹ In accordance with Article 17.2 (a) of the Commission’s Rules of Procedure, Commissioner Luis Ernesto Vargas Silva, a Colombia national, did not participate in the discussion or decision of the present matter.

² Hereinafter, the “Convention” or the “American Convention”

³ The observations of each party were duly notified to the other party.

individuals identified themselves as members of the United Self-Defence Forces of Colombia (hereinafter "AUC"). The petitioner claims that the paramilitaries moved around the whole Municipality in cars and motorcycles, covering all its entries and exits, while shooting and forcing the population to run and place itself on the track and the park. The petitioner explains that while some agglomerated the population in both locations, others were engaged in theft and robbery in the houses and shops. The petitioner adds that several of these properties were destroyed and that 13 were burned down. The petitioner reports that persons from the group of inhabitants were called from a list or pointed out by hooded paramilitaries, set aside and executed.

2. The petitioner points out that, as this was taking place, some inhabitants ran away down the river in a small boat but were shot at by the paramilitaries to prevent their escape, causing the death of the child Hanyi Carolina Ducuara Vieda, of 6 years of age, and of Tomás Ladino Tacha, of 35 years of age (hereinafter, "the alleged victims"). The petitioner adds that staff members from the Investigations Technical Body at the Oriente Regional Prosecutor's Office conducted the survey of corpses the following day.

3. The petitioner adds that the families of the alleged victims had to move out due to the threats and fear caused by the USC and that, to this date, they have not been able to return to the region and to resume their labor and economic activities.

4. The petitioner claims that the danger to which the population of the place was exposed was widely known by the State and that the latter did not protect the alleged victims. In this sense, the petitioner points out that on January 9, 1998, the inhabitants of Puerto Alvira submitted letters before the Office of the Ombudsman (*Defensoría del Pueblo*) and sent copies to the Office of the President, the Office of the Inspector General, the Ministry of the Interior and Justice and the National Police, denouncing the threats from different groups acting outside the law, as well as the situation of insecurity and anxiety that the region was suffering. The petitioner alleges, however, that the Operational Director of the National Police answered on March 5, 1998, indicating that, in accordance with information that he had received, the situation in the Municipality was completely normal. The petitioner alleges that the other state entities also failed to fulfil their duties. The petitioner also alleges that meetings of the Security Council and the Extraordinary Government Council were held in Mampiripan on February 15, 1998, in which the insecurity situation was discussed. The petitioner points out that the records from these meetings indicate that departmental authorities from the Army and the Police were present at the meetings. The petitioner alleges, however, that these institutions did not take any concrete action.

5. The petitioner claims that as a result of the facts that took place on May 4, 1998, amongst them the death of the alleged victims, on July 6, 1999, the Number 31 Court of Military Criminal Prosecution opened a preliminary investigation against Army officers for the crime of homicide by omission. The petitioner indicates that, on June 27, 2000, the Single Instance Judge found that there were no grounds to try the officers presumed to have committed the crime before the War Council and, therefore, decided to conclude the proceedings on the grounds that the military offices were not the authors of the homicides by omission as they lacked the intent to fail their constitutional duties because the information about the danger had supposedly been vague.

6. The petitioner informs that he has no knowledge of the results of the investigations undertaken by civilian justice because, due to fear or reprisals, none of the family members of the alleged victims or their lawyers were able to appear in civil proceedings.

7. The petitioner informs that two direct reparations actions were filed before administrative tribunals. The petitioner informs that the first was filed on March 8, 1999, by Mary Luz Vieda Villanueva and her sons, in relation to the death of the child Hanyi Carolina Ducuara Vieda and that the second was filed on May 5, 2000, by Blanca Cecilia Moreno and her son, in relation to the death of José Tomás Ladino Tacha. The petitioner alleges that on June 25, 2002, the Administrative Tribunal of Meta decided to join both actions in a single proceeding and that, by a judgment issued on January 17, 2006, and notified on March 9, 2006, the Administrative Tribunal of Meta recognized moral damages but denied material damages to the families of the alleged victims. The petitioner indicates that the reasoning of the tribunal was that, as Hanyi Carolina was

6 years old at the time of the facts there was no evidence of any material damaged caused by her death and that, in relation to Tomás Ladino Tacha, there was no evidence of his employment or his income. The petitioner informs that on March 15, 2006, the public entity sued filed an appeal, which was rejected by the Administrative Tribunal of Meta on May 3, 2005, on account of the amount claimed and the substance of laws 446, approved in 1998, and 954, approved in 2005.

8. For its part, the State alleges that criminal local remedies were not exhausted as the investigation of the facts has not yet concluded. The State points out that the proceedings have been active and that the legal status of several persons involved has been resolved, with these persons being subjected to security measures to ensure that they appear in the proceedings and they do not continue to engage in criminal activity. Thus, the State informs that between 199 and 2014, 33 accused were subjected to pre-trial detention and that 10 individuals were convicted up until 2015, including the brothers Fidel Antonio and Carlos Castaño Gil.

9. In addition, the State informs that the decisions adopted by Administrative Tribunals enjoy presumptions of legality and conventionality and, in this sense, alleges that the petition seeks the IACHR to act as an appeals tribunal.

VI. EXHAUSTION OF LOCAL REMEDIES AND TIMELINESS OF THE PETITION

10. The petitioner alleges that criminal investigations on the massacre and the forced relocation suffered by the families of the alleged victims have to this date failed to provide clear, broad and concrete information on definitive results and that they have not received notices from it. For its part, the State alleges that local remedies have not been exhausted as the criminal proceedings are ongoing.

11. The Commission has pointed out that, as a general rule, a criminal investigation must be undertaken in a prompt manner to protect the interests of the victims, preserve the evidence and even safeguard the rights of all persons that are deemed to be suspect in the context of the investigation. The information afforded by the parties evinces that the investigation undertaken to clarify the facts remains open without them being fully clarified or responsibility for the material and intellectual authorship of the crimes that are the substance of this petition being fully established, despite 17 years having gone by since the time in which the facts took place. Therefore, given the characteristics of the petition and the period of time that has elapsed since the facts that are the substance of this claim, the Commission considers that the exception established under Article 46.2 (c) of the Convention is applicable.

12. On the other hand, the IACHR reminds that, for the purposes of determining the admissibility of a claim of a nature like the present one, an action for reparation is not the appropriate remedy, nor is its exhaustion necessary, as it is not adequate to provide for integral reparation and justices to the family members. Regardless of this, while in the present case the criminal proceedings are the suitable remedy for the investigation of the facts, it is observed that the petitioner also alleges concrete violations in the context of the direct reparation actions. Therefore, the Commission notes that, on May 3, 2006, the Administrative Tribunal of Meta decided to reject the appeal of the case on the grounds that no appeal proceedings were available due to the amount claimed. Such situation configured the exception established under Article 46.2(a) of the American Convention.

13. Finally, the Commission considers that the petition was filed during a reasonable period of time and that the admissibility requirement concerning the timeliness of the petition must be considered to have been met, in accordance with Article 32.2 of its Rules of Procedure as, while the facts have taken place since May 4, 1998, and the petition was filed on May 15, 2009, some of their effects, such as impunity for the death of the alleged victims and the lack of integral reparation, continue to this day. Therefore, in light of the context and characteristics of the facts that are form part of this report, the Commission considers that the petition was filed in a timely manner and that the admissibility requirement concerning the timeliness of the petition must be considered to have been met.

VII. ANALYSIS OF COLORABLE CLAIM

14. In light of the factual and legal elements submitted by the parties, of the nature of the matter brought before it and of the context in which the petition is framed, the IACHR considers that, if proved, the alleged infringement of the life and integrity of the alleged victims, one of them a 6 years girl, by groups operating outside the law with State acquiescence; the lack of judicial protection and integral reparation; as well as the forced displacement, whose multiple, complex and continuous nature would have caused direct infringements, among others, of the right to housing,; and the social and cultural uprooting; could be characterized as violations of the rights protected under Article 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 17 (rights of the family) 19 (rights of the child), 22 (movement and residence), 25 (judicial protection) and 26 (economic, social and cultural rights), in relation to Articles 1.1 and 2 of the American Convention.

15. Finally, with regards to the allegations of the State concerning the fourth instance formula, the Commission observes that, in declaring this petition admissible, it does not purport to replace the competence of domestic judicial authorities but to, during the merits phase of this petition, analyze whether the domestic judicial proceedings fulfilled the due process and judicial protection guarantees, in accordance with the rights protected by the American Convention.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 4, 5, 7, 8, 17, 19, 22, 25 and 26 in relation to Articles 1.1 and 2 of the American Convention.

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 5th day of the month of December, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández García, First Vice President; Antonia Urrejola, Second Vice President; Margarette May Macaulay, Francisco José Eguiguren Praeli and Flávia Piovesan, Commissioners.