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**INFORME No. 42/20**  
**PETICIÓN 1473-08**  
INFORME DE ADMISIBILIDAD

GLADYS ELENA JARAMILLO SUÁREZ, OTHERS AND FAMILIES  
COLOMBIA

Approved electronically by the Commission on April 24, 2020.

**Cite as:** IACHR, Report No. 42/20, Petition 1473-08. Admissibility. Gladys Elena Jaramillo Suárez, others and families. Colombia. April 14, 2020

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Oscar Dario Villegas Posada
<b>Alleged victim:</b>	Gladys Elena Jaramillo, others and families <sup>1</sup>
<b>Respondent State:</b>	Colombia
<b>Rights invoked:</b>	Art. 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 11 (privacy) of the American Convention on Human Rights <sup>2</sup> and; I (life) IV (freedom of investigation, opinion, expression and dissemination), XVIII (justice), VIII (residence and movement) and XI (preservation of health and wellbeing) of the American Declaration of the Rights and Duties of Man. <sup>3</sup>

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

<b>Filing of the petition:</b>	July 1, 2008
<b>Additional information received at the stage of initial review:</b>	December 2, 2010
<b>Notification of the petition to the State:</b>	February 10, 2014
<b>State's first response:</b>	June 12, 2014 and October 22, 2014
<b>Additional observations from the petitioner:</b>	July 17 and December 29, 2014
<b>Additional observations from the State:</b>	October 22, 2014 and May 12, 2015
<b>Notification of the possible archiving of the petition:</b>	November 9, 2018
<b>Petitioner's response to the notification regarding the possible archiving of the petition:</b>	December 19, 2018
<b>Precautionary measure granted:</b>	

**III. COMPETENCE**

<b>Competence <i>Ratione personae</i>:</b>	Yes
<b>Competence <i>Ratione loci</i>:</b>	Yes
<b>Competence <i>Ratione temporis</i>:</b>	Yes
<b>Competence <i>Ratione materiae</i>:</b>	Yes, American Convention ((instrument deposited on July 31, 1973)

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

<b>Duplication of procedures and International <i>res judicata</i>:</b>	No
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<sup>1</sup> The petition is about 3 deceased individuals and the alleged victims' family members, who are individually identified by name in the annex to the following petition.

<sup>2</sup> Hereinafter "Convention" or "American Convention."

<sup>3</sup> Hereinafter "American Declaration" or "Declaration." The articles of the Declaration were invoked by the petitioner in the initial petition; nonetheless, in subsequent written submissions, he requested that only the rights invoked relating to the American Convention be taken into account.

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

<b>Rights declared admissible</b>	Articles 4 (life), 5 (humane treatment), 8 (fair trial), 22 (movement and residence), 25 (judicial protection) and 26 (economic, social and cultural rights) in connection with Articles 1.1 and 2 of the American Convention on Human Rights.
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, under Section VI
<b>Timeliness of the petition:</b>	Yes, under Section VI

## V. FACTS ALLEGED

1. The instant petition is about the murders of Luis Holguín Jurado, Oscar Upegui Saldarriaga and Carlos Rendón Naranjo (hereinafter “the alleged victims,” or “Mr. Holguín,” “Mr. Upegui,” “Mr. Rendón”) allegedly carried out by the “social cleansing” group known as *Los Doce Apóstoles* or the “Twelve Apostles” in 1993 in the municipality of Yarumal, department of Antioquia, Colombia. The petitioner claims that the Twelve Apostles operated in the region between 1992 and 1994 and was made up of local hitmen, was organized and sponsored by local businessmen and land owners, with ties to the police and the national army in this municipality. He contends that full reparation has not be awarded to the family members of the alleged victims stemming from the crimes charged in the petition and that more than 22 years have elapsed since the crimes were committed and no effective criminal investigation has been conducted to identify all those responsible as actual perpetrators or masterminds.

### Allegations regarding Luis Armando Holguín Jurado

2. Luis Armando Holguín Jurado lived with his family in a squatter’s settlement in Yarumal on a plot of land that allegedly belonged to a member of the Twelve Apostles group. According to reports, the night of August 12, 1993, a group of hooded individuals killed Mr. Holguín in front of his family members, his wife went to the Police Headquarters to report the crime, and the police did not go to the scene of the crime to remove the body until the next day. Mr. Holguín’s wife and children were evicted by the occupants and, because of the murder of Mr. Holguín and threats leveled against them, they feared for their lives and had no other choice than to move to another municipality to not meet the same fate as the alleged victim.

3. On August 11, 1995, the family members of the alleged victim resorted to the Administrative Court to file suit for direct reparation. The Court denied their claim in a judgment of June 29, 2001, on the grounds that even though the Twelve Apostles group existed, there was insufficient evidence to claim that the State could be held responsible for such a crime, which was an “*act of a third party*.” Additionally, the Court found that there were no reports of threats against their lives or sufficient grounds for the authorities to consider their lives to be at risk. On June 14, 2012, the Council of State, the court of review, heard the case on appeal and overturned the decision of the trial court noting in its judgment “the existence of the “social cleansing” group known by the name “The Twelve Apostles whose criminal conduct was not only tolerated by the members of the public security forces but some of its members belonged to it, sowing death and terror in the municipality of Yarumal, department of Antioquia between June 1993 and March 1994.” Based on the aforementioned judgment, it ordered the Ministry of Defense – National Police to: (i) pay compensation for pecuniary and non-pecuniary damages, (ii) take non-pecuniary measures to fully redress the damages, (iii) provide psychological treatment, (iv) publish the operative portion of the judgment in two widely circulated, national daily newspapers, and, (v) hold a public ceremony of recognition of responsibility, presided over by the Minister of Defense.

### Allegations regarding Oscar Hernan Upegui Saldarriaga

4. On September 7, 1993, Oscar Hernan Upegui Saldarriaga was in his hotel room in Yarumal, which was located two blocks from the Police Headquarters, in an area patrolled by the police, when he was murdered at night by several hooded individuals. The crime was reported by his father so that his death would

be investigated, and this situation led to many threats against his father, forcing him to move away from the municipality of Yarumal with his whole family to another municipality.

5. On November 2, 1995, the alleged victim's family members filed a claim for direct reparation, which was denied in a judgment of March 13, 2001 by the Court for Administrative Claims, whose grounds were similar to those laid out in the case of Luis Armando Holguín Jurado. This judgment was also appealed and it was not until May 28, 2012 that the Council of State ruled against the Ministry of Defense – National Police in both situations, likewise ordering reparation to the families and overturning the trial court judgment.

#### Allegations regarding Carlos Emilio Rendón Naranjo

6. The petitioner argues that on November 7, 1993, several hooded individuals entered the residence of Carlos Emilio Rendón Naranjo, and, in front of his pregnant wife, children and other family members shot him in the head, which caused his death. His family members identified one of the murderers as a member of the F2<sup>5</sup> police division, which allegedly operated within the Twelve Apostles group.

7. According to documents attached to the petition, the Investigation Unit of the Judicial Police of Yarumal sent the evidence collected from the murder of the alleged victim to the Sectional Unit of the Office of the Attorney General of the Nation, which opened a preliminary investigation into the murder of Mr. Rendón. In June 2000, Sub Unit Two (terrorism) of the Special Unit of Prosecutor's Offices of the Sectional Directorate of Prosecutor's Offices of Medellín established that the events under investigation constitute the criminal conduct of homicide and forming illegal armed groups and ordered the arrest of the person allegedly responsible and requested police institutions of the municipality of Yarumal to forward a copy of the roster of members of the police corps, who served between 1992 and 1993, among other things.

8. On November 2, 1995, the family of the alleged victim filed a claim for direct reparation with the administrative claims court to hold the State responsible. The petitioner notes that on February 3, 2005, the Court of Administrative Claims denied the claims on the grounds that the victim should have gone to the authorities to ask for protection and, as for the positive identification of the alleged police agent, it argued that he did not belong to the police institution at that time. The judgment was appealed; however, we do not have the ruling of the Council of State.

#### Common allegations of the petitioner

9. The petitioner asserts that the situation of violence in the municipality of Yarumal and the illegal activities of "social cleansing" groups at the time were publicly known and that the involvement of members of the public security forces had been reported prior to and during the time the murders of the alleged victims took place. He contends that, in response to the wave of violent deaths and murders of several people in the municipality of Yarumal, that were perpetrated by the Twelve Apostles group over the period of June 1993 to June 1994, the Office of the Ombudsman of the Municipality of Yarumal sent a report to the Regional Judges of the Prosecutor's Office Unit about the increased violent deaths, including information about alleged victims Holguín and Upendi, in order for an investigation to be opened into repeated human rights violations. Additionally, together with eye witnesses to the crimes, the Ombudswoman made statements to the Office of Special Investigations of the Office of the Chief Oversight Officer of the Nation (*Procuraduría General de la Nación*), providing accounts of the actions of the death squad the Twelve Apostles. The petitioner contends that despite the efforts of Ombudswoman, because of the Military and Police Forces' failure to act, the lives of the inhabitants of the town went unprotected, as they were in jeopardy of being killed by the "social cleansing" group. He further asserts that the State did not take special measures of protection that were required, it also failed to conduct or was late at conducting the investigations relating to the deaths tied to "social cleansing" in the area and, particularly, those of the alleged victims. He also reports that in this context of violence and the lack of State protection, even after the crimes were reported, the Ombudswoman received death threats and was forced to leave her position to protect her own life.

<sup>5</sup> An Office of the National Police which is in charge of everything relating to information, Crime and Crime Statistics.

10. According to the documentation appearing in the case file before the Commission, on November 25, 2008 the Office of the Delegate of the *Procuraduría* for the Defense of Human Rights conducted a disciplinary investigation of several agents attached to the Yarumal Police Station, for multiple homicides, which took place in that municipality beginning in June 1993. According to reports, as a result of these disciplinary investigations and recognition that a systematic situation of “extrajudicial executions” existed at the time, involving a number of victims, including Mr. Holguín and Mr. Upegui, four agents of the National Police, who were under investigation, were punished with permanent removal from their post or with a request for removal, except for one of them, who was punished with a 30-day suspension.

11. As for the criminal investigation, the petitioner alleges that it has not been effective, because the facts relating to the context and the deaths of Messrs. Luís Armando Holguín Jurado, Oscar Hernán Upegui Saldarriaga, and Carlos Emilio Rendón Naranjo, have not been elucidated, inasmuch as this case is at the preliminary investigation phase and, as of the present date, those responsible have not been prosecuted and arrested, even though more than 22 years have elapsed since the date of the crimes that are subject of the petition and despite the precedent of the disciplinary proceeding, the testimonies and reports of the witnesses and the ombudspersons.

12. As for the two reparation judgments in the cases of Mr. Holguín and Mr. Upegui, the petitioner asserted that even though the State was held responsible on appeal for failure in its duty by act and omission, he notes that in these judgments no recognition was made of the damages to the lives of the victim and, consequently, full reparation for the harm was not granted. He contends that the damages for their lives were not requested in the direct reparation claim, because when the claims were filed this damage was not recognized in the Colombian State; nonetheless, in recent rulings of the Council of State, it was recognized without it being requested in the claim, under the principle full interpretation of the claim. Also, as for the direct reparation claim brought by the family of Carlos Emilio Rendón Naranjo, the petitioner alleges unwarranted delay on the grounds that as of the present date the Council of State has issued no ruling.

#### Allegations of the State

13. In its response, the State contests the petitioner’s claims and requests the petition to be declared inadmissible. It argues as its grounds: (i) lack of competence *rationae materiae* for the Commission to hear the alleged violations of rights set forth in the American Declaration because the State has been a party to the American Convention since July 31, 1973; (ii) lack of competence *rationae personae* with respect to the right of movement and residence in relation to abandoning homes after the death of Mr. Holguín, because the State understands the petitioner’s allegation to have made *in abstracto* without individually identifying the specific victims; while the petitioner argued that it was confined to Mr. Holguín’s nuclear family; and (iii) the formula of the fourth instance with respect to the cases of Messrs. Holguín and Upegui and their families before the administrative claims court, because the Council of State in both instances recognized full reparation. On this last point, it further contended that the Council of State heard two of the cases and ruled against the Ministry of Defense –National Police and ordered reparation to the families under the criteria of full reparation in the administrative sphere, noting that it is not appropriate to order additional reparation for the claim, either for pecuniary, non-pecuniary damages and/or symbolic measures on behalf of the families of the deceased victims.

14. Furthermore, the State does not believe the petition fulfills the requirement of prior exhaustion of domestic remedies, because: (i) in the area of administrative law, with regard to the direct reparation claim brought by the family members of Mr. Rondón, the appeals ruling of the Council of State is still pending; and (ii) in the criminal proceedings of the three cases, investigatory steps are still being taken. Particularly with respect to the case of Mr. Rendón, it is noted that the day after the events took place an investigation was opened *ex officio* and that from the very moment of the removal of the body, evidence was gathered, and the case was initially assigned to Prosecutor 43 of the sectional Unit of Prosecutor’s Offices. Additionally, the State emphasized that, given that the *modus operandi* of the groups operating outside the law is to conceal their criminal conduct, this makes it more complex to investigate and elucidate the truth for each one of the cases and, therefore, it considers that the judicial authorities are carrying out the investigations within a reasonable period of time.

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

15. The petitioner claims that the criminal proceeding is still at the preliminary investigation stage more than 22 years after the murder of the alleged victims took place in the municipality of Yarumal, and the authorities have still not individually identified the actual perpetrators and masterminds of the killings. With respect to the direct reparation claim settled by the Council of State for Mr. Holguín and Mr. Upegui, he contends that it does not meet the standard for full reparation of damages and that with respect to Mr. Rondón's claim, there has been no ruling and, therefore, it is unwarranted delay. The State, for its part, contends that, given the complexity of the case, the criminal proceeding has been conducted within a reasonable time and has had significant developments over the course thereof. Additionally, the State argues failure of exhaustion of domestic remedies with respect to the direct reparation claim brought by Mr. Rondón's family because the Council of State's ruling is still pending.

16. Based on the foregoing considerations and viewing the criminal proceedings as a whole, the IACHR notes that nearly twenty years have elapsed since the crimes took place and, as of the present date, the case is still at the investigation phase. In this regard, the Commission has repeatedly held that the authorities of the criminal justice system must conduct and pursue criminal investigations on their own initiative and with diligence and that this burden must be borne as their own legal duty, and not as an instrument of the interests of private individuals or one that is contingent upon the initiative of those individuals or the evidence they provide.<sup>6</sup> Furthermore, the Commission has established that, as a general rule, a criminal investigation must be conducted promptly in order to protect the interests of the victims, preserve the evidence and even safeguard the rights of all persons who, in the context of the investigation, may be deemed suspects.<sup>7</sup> Based on the foregoing and on the time that has elapsed since the events occurred, that are the subject of the claim, the Commission concludes that there has been an unwarranted delay in the criminal investigation and, consequently, the exception to exhaustion of domestic remedies provided for in Article 46.2.c of the Convention is applicable. Lastly, the IACHR recalls that, for the purpose of assessing the admissibility of a complaint of this nature, an action for reparation is not the suitable means nor must it be exhausted, given that it is not adequate to provide full redress and justice to the family.<sup>8</sup> Additionally, the IACHR has held that the determination of reparation does not relieve the State of its obligations related to the component of justice for violations caused.<sup>9</sup>

17. In connection with the foregoing, the Commission notes that the petition was received on December 18, 2008, while the alleged facts took place in 1993 and, in terms of a lack of results of the administration of justice, the effects thereof would extend into the present. Therefore, in view of the context and the characteristics of the instant petition, the Commission understands the petition to have been filed within a reasonable time and that the admissibility requirement is deemed fulfilled with reference to the filing deadline as provided in Article 32.2 of its Rules of Procedure and pursuant to Article 46.1.b of the Convention.

## **VII. ANALYSIS OF COLORABLE CLAIM**

18. In view of the elements of fact and law presented by the parties and the nature of the case being examined, the Commission finds that the petitioner's allegations are not manifestly groundless and warrant an examination of the merits inasmuch as, if proven, the purported facts related to the alleged failure to prevent the death of the three alleged victims in the municipality of Yarumal, as a result of the omission and actions of the military and police forces, as well as the lack of an effective criminal investigation of everyone potentially responsible, and the internal displacement of the families of Mr. Holguín, and Mr. Upegui, as a consequence of the reported crimes, whose multiple, complex and continuous nature directly impacted and

<sup>6</sup> IACHR, Report No. 159/17, Petition 712-08, Admissibility, Sebastián Larroza Velázquez and Family, Paraguay, November 30, 2017, para. 14; IACHR, Report No. 108/19, Petition 81-09, Admissibility, Anael Fidel Sanjuanelo Polo and Family, Colombia, July 28, 2019, paras. 17-19.

<sup>7</sup> IACHR, Report No. 113/17, Petition 1141-07, Admissibility, Alfredo Manuel Martínez Meza et al. Colombia. September 7, 2017, para. 24.

<sup>8</sup> IACHR, Report No. 72/16. Petition 694-06. Admissibility. Onofre Antonio de La Hoz Montero and Family, Colombia, December 6, 2016, para. 32.

<sup>9</sup> IACHR, Truth, Justice and Reparation: Fourth Report on the situation of Human Rights in Colombia, December 31, 2013, para. 467.

uprooted them, in economic, social and cultural terms, could tend to establish potential violations of the rights protected in Articles 4 (life), 5 (humane treatment), 8 (fair trial), 22 (movement and residence), 25 (judicial protection) and 26 (economic, social and cultural rights) of the American Convention, in connection with Articles 1.1 and 2, with respect to the alleged victims and their families.

19. Lastly, with respect to the State's allegation of the fourth instance, the Commission reiterates that within the scope of its mandate it is competent to examine the instant petition at the merits state, when it involves domestic proceedings that could violate rights protected by the American Convention.

## **VIII. DECISION**

1. To declare admissible the instant petition in relation to Articles 4, 5, 8, 22, 25 and 26 in connection with Articles 1.1 and 2 of the American Convention on Human Rights; and

2. To notify the parties of this decision; to continue with the analysis on the merits; 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 24<sup>th</sup> day of the month of April, 2020. (Signed): Joel Hernández, President; Antonia Urrrejola, First Vice President; Flávia Piovesan, Second Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Margarete May Macaulay, Julissa Mantilla Falcón, and Stuardo Ralón Orellana, Commissioners.