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**REPORT No. 15/20**  
**PETITION 452-08**  
REPORT ON ADMISSIBILITY

ÁLVARO ENRIQUE CASTRO RAMÍREZ AND OTHERS  
COLOMBIA

Approved electronically by the Commission on March 13, 2020.

**Cite as:** IACHR, Report No. 15/20, Petition 452-08. Admissibility. Álvaro Enrique Ramírez and others. Colombia. March 13, 2020.

**I. INFORMATION ABOUT THE PETITION**

Petitioner	Eliana Patricia Quintero García
Alleged victim	Álvaro Enrique Ramírez and others <sup>1</sup>
Respondent State	Colombia
Rights invoked	Articles 4 (life), 5 (personal integrity), 8 (fair trial) and 25 (judicial guarantees) of the American Convention on Human Rights <sup>2</sup> in relation to articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) and articles I and II Inter-American Convention on Forced Disappearances of Persons and other international treaties <sup>3</sup>

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

Filing of the petition	April 16, 2008
Additional information received during initial review	April 25, 2008; December 12, 2008; August 3, 2009; February 12, 2010; February 23, 2010 and April 26, 2010
Notification of the petition	June 6, 2014
State's first response	June 2, 2015
Notification of the possible archiving of the petition	May 16, 2018
Response to the notification regarding the possible archiving of the petition	June 26, 2018

**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 (personal integrity), 7 (personal liberty), 8 (fair trial) and 25 (judicial guarantees) of the American Convention, in relation to its articles 1.1 (obligation to respect rights) and 2 (domestic legal effects)
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 argues the responsibility of the State for breach of its duties of prevention and protection, which allowed for the kidnapping of the alleged victims who served as soldiers in a military base in the Miraflores region. The petitioners also claim responsibility of the State for the lack of investigation following the taking of the base by illegal armed groups, and the lack of integral reparation of the victims and their families.

2. The petitioner alleges that as of December 1997, the military bases of the Colombian National Army located away from the city were threatened by illegal armed groups such as the Revolutionary Armed

<sup>1</sup> The petitioner transmitted to the IACHR a list of alleged victims dated April 26, 2010, which was transmitted, to the State on July 22, 2014. The 36 alleged victims and their relatives are individualized in Annex I of this report.

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

<sup>3</sup> International Covenant on Civil and Political Rights, 1949 Geneva Conventions and Additional Protocols; American Declaration on the Rights and Duties of Man and the Statute of the International Court of Justice.

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

Forces of Colombia (FARC). She argues that the authorities did not strengthen the military or tactical endowment, nor its surveillance, which resulted, on August 3, 1998, in the attack of the civilian population and the taking of the Military Base of Antinarcotics in the municipality of Miraflores, where the alleged victims were stationed, at the hands of approximately 1500 members of the FARC. The petitioner argues that, despite the public knowledge of the FARC's action, the State did not take the minimum measures sufficient to avoid and counteract this action. She indicates that despite the fact that the take of Miraflores by the FARC lasted three days, the State did not send reinforcements of personnel, weapons or logistical and technical support. She adds that a large part of the alleged victims would have been kidnapped, which would have caused them significant psychological damage such as post-traumatic stress disorder, and a severe decrease in work capacity due to the aftermath, including greater vulnerability to developing episodes of depression. Most of the alleged victims would have been kidnapped up until 2001. However, as for 15 of the alleged victims identified in the footnote,<sup>5</sup> the petitioner indicates that they would have been kidnapped between 1993 and 2001. The petitioner alleges the State's complicity by action and omission<sup>6</sup> and denounces that the facts continue in impunity.

3. The petitioner contends that on November 23, 1998, the judge of original jurisdiction in the criminal military prosecution refrained from initiating a criminal investigation in relation to the events of August 3, considering that the military involved had acted bravely and that the conduct was not constitutive of a crime. The Judge also indicated that the events did not occur as result of the omission of the commander of the base or the Infantry Battalion of the General National Army Joaquín Paris and that the military were professional enough to face the large number of attackers. The petitioner submits that the denounced facts are therefore left unpunished, without those responsible being identified and held responsible.

4. Likewise, the petitioner indicates that the alleged victims presented remedies for direct reparation but did not obtain comprehensive reparation. She argues that the Colombian State has failed to offer comprehensive reparation to the victims or relatives who are not the parents of the abductees and, that with respect to certain alleged victims, there is significant delay in the proceedings, so she requests the application of the exception of exhaustion due to unjustified delay.

5. Regarding Carlos Andrés Vanegas Hernández, the petitioner alleges that on June 15, 2005, the Ministry of Defense decided to pay him a monthly disability pension. Direct reparation action was also filed, which culminated in a conciliation agreement between the alleged victim and the Ministry of Defense, approved by the Second Administrative Judge of the Villavicencio Circuit on April 24, 2007. As for André González Orozco, the petitioner alleges that an appeal for direct reparation was filed and that, in a decision dated November 23, 2005, the judge decided on the responsibility of the State and sentenced it to the recognition of moral damage in favor of the alleged victim in monetary form. From the file, it appears that the sentence was appealed by the Ministry of National Defense. However, on November 2, 2007, the Ministry of Defense decided to provide a payment in favor of the alleged victim, pursuant to the judgment of November 23, 2005. The petitioner alleges that in both cases the right to an integral reparation was violated since the material damage suffered by the alleged victims and their families was not recognized.

6. Regarding 15 of the alleged victims<sup>7</sup>, the petitioner indicates that in 2002 they filed a direct remedy action before the Meta Administrative Court. She alleges that conciliation hearings were held in the magistrate's office, with the last one taking place on May 8, 2008, during which the Ministry of Defense presented a conciliatory proposal, approved by the Internal Conciliation Committee of the Ministry. The petitioner affirms that such a proposal was unfair and illegal, for not offering integral reparation and not recognizing damages to the relatives of the alleged victims. The petitioner also alleges that an exception to the

<sup>5</sup> Tito Velásquez León, Rubén Ayala Parada, José Alexander Poveda Laverde, Milton Fabio Ramírez, Carlos Javier Bernal, William Ricardo Rodríguez Quiroga, Yesid Alejandro, Penagos López, Norbey Arias, Luis Alexander Cifuentes, Raúl Rojas Merchán, Wilton Jamir Ávila Olmos, Rodolfo Mauricio Mina Castro, Robinson Ruiz Sánchez, Libert Rodríguez Chaguala, Robinson Ruiz Sánchez.

<sup>6</sup> The petitioner also makes reference to two similar events that took place in the previous years that demonstrate the State's complicity due to its acts or omission to act during that time. They affirm that on December 20, 1997, the south bloc of the FARC attacked Patascoy military base and kidnapped two members of the National Army and that on March 3, 1998 after combating with FARC members, 5 members of the National Army were kidnapped in the "Billar creek" in Caguán.

<sup>7</sup> Tito Velásquez León, Rubén Ayala Parada, José Alexander Poveda Laverde, Milton Fabio Ramírez, Carlos Javier Bernal, William Ricardo Rodríguez Quiroga, Yesid Alejandro, Penagos López, Norbey Arias, Luis Alexander Cifuentes, Raúl Rojas Merchán, Wilton Jamir Ávila Olmos, Rodolfo Mauricio Mina Castro, Robinson Ruiz Sánchez, Libert Rodríguez Chaguala, Robinson Ruiz Sánchez.

exhaustion domestic remedies requirement applies due to the delay of internal mechanisms, and non-integral reparation.

7. Regarding Álvaro Enrique Castro Ramírez and Juan Carlos Ramos Rojas, the petitioner indicates that they avoided being kidnapped by playing dead. They filed a direct reparation action in 2000, which was dismissed on July 18, 2008 by the Contentious Administrative Court, which considered that the damages recognized were not unlawful as the alleged facts were inherent to the functions performed by the alleged victims and that it had not been proven that the State would have failed to anticipate combat. The petitioner alleges that said judgment is unfounded, since the Court erroneously indicates that the alleged victims were not conscripted, but rather regular soldiers, establishing a legal regime of responsibility different from the one corresponding to them. They appealed the decision but they indicate that the process will last a minimum of 7 years, which makes a total of 15 years of procedure, claiming that the exception to the exhaustion of domestic remedies must be applied.

8. For its part, the State argues the lack of exhaustion of criminal action in the domestic jurisdiction. It indicates that the facts denounced in the petitions are under the jurisdiction of the Special Prosecutor 43 of Human Rights and International Humanitarian Law. Thus, it alleges that several proceedings were carried out in the domestic jurisdiction in order to determine those responsible for the events that occurred between August 3 and 5, 1998 at the Miraflores military base. It refers to several convictions against members of the FARC regarding such events, issued by the Second Criminal Court of the Specialized Circuit of Villavicencio-Meta,<sup>8</sup> the Fourth Criminal Court of the Deputy Circuit of Relief of Villavicencio-Meta<sup>9</sup> and the First Criminal Court of the Adjunct Circuit of Villavicencio-Meta.<sup>10</sup> It also indicates that, on August 2, 2013, the Second Criminal Court of the Specialized Circuit of Villavicencio-Meta rendered an acquittal, based on the principle of *in dubio pro reo*. This decision was appealed by the Office of the Special Prosecutor 43 and is currently in progress before the Superior Court of the Judicial District of Villavicencio. The State maintains that in the course of these processes, the Special Prosecutor's Office 11 of the National Human Rights and International Humanitarian Law Unit of Villavicencio established that the takeover of the Miraflores military base occurred as result of directives from the Commanders of the Secretary of the FARC.

9. Therefore, the State alleges that due diligence has been demonstrated as the reported facts were clarified, as several of those responsible have been punished. It also argues that the judicial processes have not yet been completed and the Colombian justice is still conducting the necessary test in order to identify other authors. Thus, domestic remedies have not been exhausted. Likewise, the State alleges that the exceptions provided for in Article 46.2.c of the Convention do not apply and that the criminal proceedings have been carried out within a reasonable period of time, in accordance with the complexity of the matter and due diligence of the State.

10. Regarding the administrative remedy, the State indicates that the direct reparation action constitutes the adequate and effective remedy to determine the responsibility of the State. However, to date has not provided specific allegations regarding the claims of the alleged victims.

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

11. The Commission notes that the petitioner alleges the State's failure on its duty of prevention, arguing that the State knew of the vulnerability of the military base, and that after the initial takeover, the base did not receive reinforcements of personnel, weapons or logistical and technical support. The Commission notes that in 2012 and 2013, several FARC members responsible for the attack on August 3, 4 and 5, 1998, and subsequent kidnapping of the alleged victims were sentenced to prison. However, the Commission observes that more than 20 years after the events, investigations are still pending regarding other responsible parties, and that the circumstances regarding the taking of the base and the kidnapping of the alleged victims have still not been clarified, nor has the State condemned all those responsible. Therefore, the Commission considers that a delay in criminal investigations has been set and that the exception provided for in Article 46.2.c of the

<sup>8</sup> July 11, 2012: 480 months in prison, among other sanctions for the crime of aggravated homicide in conjunction with aggravated terrorism and aggravated qualified robbery and were ordered to cancel the moral damages caused; March 8, 2013: 60 months in prison, among other sanctions, for the crime of rebellion.

<sup>9</sup> May 21, 2013: 80 months of prison, among other sanctions for the crime of kidnapping; June 18, 2013: 87 months in prison for the crimes of rebellion and kidnapping.

<sup>10</sup> July 24, 2013: 15 years for the crime of kidnapping

American Convention applies. Likewise, in view of the context and the characteristics of the present case, the Commission considers that the petition was presented within a reasonable period of time and that the admissibility requirement regarding the submission period must be satisfied.

12. The Commission notes that the petitioners also allege specific violations in the context of the demands for direct reparation in relation to the following petitioners. Therefore, given the link between the two processes, the Commission takes into account that in the contentious administrative jurisdiction, there is a direct reparation process since 2002 in relation to 15 of the alleged victims<sup>11</sup>, without a final decision yet. Likewise, in relation to the alleged victims Álvaro Enrique Castro Ramírez and Juan Carlos Ramos Rojas, the Commission notes that an appeal was filed against the decision of the Contentious Administrative Court of July 18, 2008, rejecting its claims, which to date would not have been resolved. Therefore, the Commission concludes that the exception provided for in article 46.2.c of the Convention applies. In view of the context and the characteristics of the present case, the Commission considers that the petition was presented within a reasonable period of time and that the admissibility requirement regarding the deadline for submission regarding those alleged victims is satisfied.

13. However, in relation to the alleged victim André González Orozco, the Commission observes that on November 2, 2007, the Ministry of Defense decided to arrange a payment in favor of the alleged victim, in compliance with the judgment of November 23, 2005. Regarding the alleged victim Carlos Andrés Vanegas Hernández, the Commission observes that on April 24, 2007, the Second Administrative Judge of the Villavicencio Circuit approved a conciliation agreement between him and the Ministry of Defense. It does not appear from the file that those decisions were challenged by the petitioners, and therefore, the Commission cannot conclude that domestic remedies were exhausted. Finally, with regard to the other alleged victims,<sup>12</sup> the Commission considers that it cannot be verified from the file that they filed appeals at the domestic level. Therefore, the Commission concludes that those petitioners did not exhaust domestic remedies in accordance with article 46.1.a of the Convention.

## VII. COLORABLE CLAIM

14. The Commission observes that this petition includes allegations regarding the taking of the Miraflores base and the subsequent kidnapping of the alleged victims, as a result of the State's failure on its duty to prevent and protect,<sup>13</sup> as well as the unjustified delay in the criminal investigations and administrative proceedings, plus the lack of comprehensive reparation to certain victims and their relatives.<sup>14</sup> In view of these considerations and after examining the factual and legal remedies presented by the parties, the Commission considers that the claims of the petitioner are not manifestly unfounded and require a substantive study on the merits since the alleged facts, if corroborated as true, could characterize violations of articles 4 (life), 5 (personal integrity), 7 (personal liberty), 8 (fair trial) and 25 (judicial protection) of the American Convention, in relation to its article 1.1. (Obligation to respect rights) and 2 (domestic legal effects).

15. Regarding the claim on the alleged violation of Articles I and II of the Inter-American Convention on Forced Disappearance of Persons; the Commission observes that the petitioners have not offered allegations or sufficient support to consider their possible violation *prima facie*.

16. Additionally, in relation to the other international instruments alleged by the petitioner, the Commission has no competence to establish violations of the rules of said treaties. However, the IACHR may consider them when interpreting the rules established in the American Convention at the merits stage of this case, in accordance with Article 29 of the American Convention.

<sup>11</sup> Tito Velásquez León, Rubén Ayala Parada, José Alexander Poveda Laverde, Milton Fabio Ramírez, Carlos Javier Bernal, William Ricardo Rodríguez Quiroga, Yesid Alejandro, Penagos López, Norbey Arias, Luis Alexander Cifuentes, Raúl Rojas Merchán, Wilton Jamir Ávila Olmos, Rodolfo Mauricio Mina Castro, Robinson Ruiz Sánchez, Libert Rodríguez Chaguala

<sup>12</sup> Benjamín Buitrago Burgos, Carlos Hernán Rivera, Carlos Mario Tovar Jiménez, Ciro Alfonso Velasco Delgado, Diter Ávila Hernandez, Edgar Bueno Afanador, Edgar Rodríguez Rincón, Efrén Rojas, Franklin Pérez, Jesús Geovanny Alvarado Alvarado, Jhon Fredy Ariza Rincón, José Yesid Buitrago Burgos, Luis Eduardo Almonacid Barahona, Nilton Gobert Delgado, Oviedo Gallego Marín, Roberto Patino Bejarano, Simón Ardila Palacios, Yovani Beltrán Lugo

<sup>13</sup> IACHR, Report N. 150/08, Case 12.954. Merits. Jineth Bedoya Lima and others. Colombia. December 7, 2018.

<sup>14</sup> Tito Velásquez León, Rubén Ayala Parada, José Alexander Poveda Laverde, Milton Fabio Ramírez, Carlos Javier Bernal, William Ricardo Rodríguez Quiroga, Yesid Alejandro, Penagos López, Norbey Arias, Luis Alexander Cifuentes, Raúl Rojas Merchán, Wilton Jamir Ávila Olmos, Rodolfo Mauricio Mina Castro, Robinson Ruiz Sánchez, Libert Rodríguez Chaguala, Álvaro Enrique Castro Ramírez and Juan Carlos Ramos Rojas.

## **VIII. DECISION**

1. To find the instant petition admissible in relation to Articles 4, 5, 7, 8 and 25 of the American Convention, in accordance with articles 1.1 and 2;
2. To find inadmissible the present petition in relation to articles I and II of the Inter-American Convention on Forced Disappearances of Persons; and
3. 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 13<sup>th</sup> day of the month of March, 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.