

OEA/Ser.L/V/II.  
Doc. 202  
26 December 2018  
Original: Spanish

**REPORT No. 177/18**  
**PETITION 1433-08**  
REPORT ON ADMISSIBILITY

MARIO ANTONIO TURCIOS FLORES AND FAMILY  
EL SALVADOR

Approved electronically by the Commission on December 26, 2018.

**Cite as:** IACHR, Report No. 177/18. Petition 1433-08. Admissibility. Mario Antonio Turcios Flores. El Salvador. December 26, 2018.



**I. INFORMATION ABOUT THE PETITION**

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|-------------------------|---|
| <b>Petitioner:</b>      | Mario Antonio Turcios Flores  |
| <b>Alleged victim:</b>  | Mario Antonio Turcios Flores and family <sup>1</sup>                      |
| <b>State denounced:</b> | El Salvador   |
| <b>Rights invoked:</b>  | Articles 8 and 25 of the American Convention on Human Rights <sup>2</sup> |

**II. PROCEDURE BEFORE THE IACHR<sup>3</sup>**

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| <b>Filing of the petition:</b>   | December 9, 2008                  |
| <b>Additional information received at the stage of initial review:</b> | January 12; April 20 and 28, 2009 |
| <b>Notification of the petition to the State:</b>                      | July 18, 2014                     |
| <b>State's first response:</b>   | July 11, 2017                     |
| <b>Additional observations from the petitioner:</b>                    | August 23, 2017                   |
| <b>Additional observations from the State:</b>                         | October 1, 2018                   |

**III. COMPETENCE**

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| <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, the American Convention (instrument deposit made on June 23, 1978) and the Inter-American Convention to Prevent and Punish Torture (instrument deposit made on December 5, 1994). |

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

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| <b>Duplication of procedures and International <i>res judicata</i>:</b>              | No  |
| <b>Rights declared admissible:</b>   | Articles 3 (juridical personality), 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 11 (privacy), 19 (rights of the Child), 21 (property), 22 (freedom of movement and residence), 25 (judicial protection) of the American Convention, in relation to its Articles 1.1 (obligation to respect rights) and 2 (duty to adopt provisions of domestic law); and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture. |
| <b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b> | Yes, exceptions under Article 46.2(b) and (c) of the ACHR apply   |
| <b>Timeliness of submission:</b>   | Yes, under the terms of Section VI  |

<sup>1</sup> The petition also refers to Virgilio Flores and Maria Dolores Turcios (the alleged victim's parents); José Cecilio Turcios, José Ventura Turcios, Isidro Alfonso Turcios, and Santos Armando Turcios (the alleged victim's brothers); Oscar Umaña and Edgar Antonio Turcios (the alleged victim's cousins); Rudy Arnoldo Turcios Bolaños (the alleged victim's son); Ingrid Yamileh (the alleged victim's daughter); and his wife.

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

<sup>3</sup> The observations presented by each party were duly forwarded to the opposing party.

## V. ALLEGED FACTS

1. The petitioner, and presumed victim, alleges that he and his family are the victims of human rights violations committed by the Salvadoran State and that he is a survivor of the “Barrios Massacre,” which took place on April 18, 1982, and during which the Atlacatl Battalion of the Salvadoran Armed Forces murdered 49 people, including his father, Virgilio Flores, and two of his cousins, Oscar Umaña, aged six, and Edgar Antonio Turcios, aged ten. He alleges that, since he was a witness and claimant in the criminal investigation of the massacre and as a consequence of the complaint filed by the “Organización Tutela Legal del Arzobispado de San Salvador” (hereinafter, “Tutela Legal”), he has been persecuted, threatened, and attacked by agents of the national civil police. Therefore, he decided to travel to the United States of America<sup>4</sup> with his son Rudy Arnoldo Turcios Bolaños, where they sought for asylum. The petitioner reports human rights violations committed since the extra-judicial execution of his brother, during the Barrios massacre and later on, in addition to the murderers’ impunity.

2. The petitioner indicates that during the 80’s he lived with his parents and his four siblings in Barrios hamlet, department of Morazán. He claims that in October of that year, his brother Armando Turcios Flores was kidnapped, tortured, and murdered by agents of the Third Infantry Brigade of San Miguel. He said that when his mother went to the military facilities looking for his brother, she was threatened with death by the watch commander and that, eight days after, his brother’s body was found on the street, but it was not possible to collect it, since the military agents were guarding the location. On the following day, the body was gone.

3. The petitioner claimed that on April 18, 1982, a contingent of troops from the Atlacatl Battalion shot at least 49 people, among which there were his father and two of his underage cousins, and that they also sexually abused several women and destroyed the neighborhood’s houses and crops. He claimed that the said attacks were committed since the members of that neighborhood were considered as guerrilla. Moreover, he said that the survivors of the attacks had to leave the place and migrate to other states or countries, including him, who initially moved to the municipality of Rosario de Mora with his family. He indicates that after he witnessed such atrocities, he started being persecuted by authorities of the armed and police forces.

4. He alleged that on January 3, 1987, he was arrested by military agents, who obligatorily recruited him, and that during the two years of his induction, until February 23, 1989, he suffered from several tortures at the armed force’s instruction center of transmissions on the part of his superiors, including blows, abusive exercise, electric shocks, death threats, with the aim of making him confess his alleged relationship with the guerrilla fighters. He added that for fear of getting caught as a survivor of the Barrios massacre he did not allow his mother or his sister to visit him during this time.

5. The petitioner indicates that in January 2002, “Tutela Legal” started acting as representative during the investigations on the Barrios massacre. On January 22, 17 bones were exhumed in Barrios hamlet, which was authorized by the peace courts of El Divisadero. On March 31, 14 bones were exhumed, which was authorized by the peace courts of San Carlos. He indicated that on September 30, 2003, “Tutela Legal” filed a criminal complaint against the people allegedly responsible for the massacre: General José Guillermo García, Ministry of Defense and Public Security at the time of the events; Colonel Rafael Flores Lima, Chief of the Joint Staff of the Armed Forces; and Lieutenant Colonel Domingo Monterrosa Barrios, Major of the Atlacatl Battalion.

6. The petitioner alleges that they have never received answers and that the investigation had been archived, with no judicial movement whatsoever. The petitioner says that, as he was a witness for the complaint, he was persecuted by agents of the national police, acting undercover and dressed as civilians, that called him on the phone, threatening him with death. He claims that on June 8, 2004, many vehicles with license plates from the State of Texas, carrying armed men dressed as civilians, parked across his office and

<sup>4</sup> Hereinafter, “the United States.”

around the area. He indicates that since they did not find him, they left and other men stayed guarding the place.

7. The petitioner alleges that, as a consequence of the threats, he filed for a *habeas corpus* remedy, requesting the police forces to explain the reason for his persecution, claiming threats and restrictions to his freedom of movement. On July 1, 2004, the Criminal Chamber of the First Eastern Section rejected the request, since the Attorney General's Office and the National Civil Police did not inform about any charges. The petitioner mentions the absence of willingness of the governmental authorities during the investigations of crimes against humanity, by virtue of the Amnesty Law of 1993 tending to protect war criminals, which would disallow the access to justice. He alleges that, more than a year after the judgment on the unconstitutionality of the Amnesty Law, impunity still prevails. At a public hearing on the issue, he indicated that the Constitutional Chamber established that the State's institutions had not complied with the content of the unconstitutionality judgment. The petitioner says that he left the country and sought for political asylum, expressing fear for his and his family's lives in the case of being deported to their country, where he thinks he will be investigated for having participated in human rights activities, and that he will be persecuted, captured, questioned, tortured, and murdered for being a survivor of Barrios massacre, and for having participated in procedures of human rights organizations aiming at requesting the Government to prosecute the perpetrators. He alleges that in El Salvador there are illegal armed groups, tolerated by the State, that carry out intimidation or persecution acts against human rights defenders.

8. For its part, the State says that notwithstanding what was alleged by the petitioner about the reported persecutions, by means of internal decisions they determined the inexistence of the restriction of freedom of movement and the inexistence of a real or imminent threat that might limit his freedom, on the part of the National Civil Police. Regarding the alleged event of June 8, 2004, the State highlights that the events described are not coherent. The State also says that there is no state policy which supports armed groups acting with the aim of attacking witnesses or claimants in the case of the domestic armed conflict, and that there is no policy of persecution of leaders from civil society's organizations.

9. The State indicates that it has acknowledged that in the context of the past internal armed conflict, which took place between 1980 and 1991, serious human rights violations and power abuse were committed. It adds that, in the framework of this new State view, it has granted the following rights to the victims: The rights to know the truth, to access justice, and to receive appropriate reparations; therefore, it has developed several actions to achieve these objectives. In 2009, it defined a policy of reparations and acknowledgment to the dignity of victims of serious human rights violations in the context of the armed conflict. It indicated that in 2010, the *National Commission on the Search for Children who Disappeared during the Internal Armed Conflict* was created and the *Integral Program of Reparations to Victims of Serious Human Rights Violations occurred in the context of the Internal Armed Conflict* was also created in 2013, as well as a compensatory program. It indicates that through the judgment of July 13, 2016, the unconstitutionality of the *General Amnesty Law for the Consolidation of Peace* was declared. It added that in spite of this declaration, there were already antecedents of gradual innovations and judicial criteria relative to the responsibility in the light of serious cases of human rights violations. Likewise, by means of the decisions, they recognized the State obligation of investigating in a serious, exhaustive, hard-working, and concluding way, with the aim of clarifying the truth of the events regarding serious human rights violations. Finally, it indicated that in 2017, the *National Commission to Search for Disappeared Adults in the context of the armed conflict in El Salvador* was created.

10. The State claims that the Attorney General's Office of the Republic nowadays conducts different investigations on the massacres occurred in El Salvador, in the context of the armed conflict. In this way, the Barrios massacre is under investigation since 2014. It claims that in the massacre's framework, among other activities, they carried out interviews and their extensions to relatives of the victims and survivors, official letters addressed to the Salvadoran Armed Force, inspections at the place of the events, and the creation of a photograph album. It adds that it participated in the exhumations referred to by the petitioner. The State says that the investigation is pending, thus, there is no exhaustion of domestic remedies.

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

11. The petitioner refers to illegal arrest, kidnapping, disappearance, torture, and the extra-judicial execution of his brother in 1980, as well as the murders of his father and cousins in 1982. Likewise, he alleges that from January 2002, “Tutela Legal” became the representative of the case of Barrios massacre and that on September 30, 2003, it filed a criminal complaint against the presumed perpetrators. He says that the events are still unpunished, the investigations are stopped, and that they have not received answers on the progress of the investigation, even after overcoming the obstacle of the Amnesty Law. For its part, the State indicates that the Attorney General’s Office of the Republic has conducted several investigations on the massacres occurred in El Salvador in the context of the armed conflict, and that the Barrios massacre has been under investigation since 2014. It also claims that through the judgment of July 13, 2016, the unconstitutionality of the Amnesty Law was declared. Therefore, it alleges that the exhaustion of domestic remedies is pending.

12. In the present case, the presumed responsibility of the members of the Salvadoran Armed Forces in the death of the petitioner’s relatives, during the domestic armed conflict in El Salvador, is alleged, as well as their responsibility in the later persecution of the petitioner and the obstacles faced so as to get justice. On the one hand, the Commission established in previously decided similar cases that at the moment of the alleged events, it was not possible or necessary to file for any remedies, determining the exception to the exhaustion of domestic remedies established in Article 46.2.b of the American Convention.<sup>5</sup> On the other hand, the IACHR observes that the State confirms that the investigation is still pending and that, after almost 36 years of the events, the main proceeding is still pending. Consequently, the exception foreseen in Article 46.2.c of the Convention applies.

13. Likewise, the Commission takes cognizance that the petition was received on December 9, 2008. The events reported in the petition happened in the 80’s, the alleged massacre took place in 1982, and the subsequent violent events and threats against the petitioner occurred throughout the following years; a criminal complaint was filed around 2003 and the State informed about the actions taken from 2009, in the framework of the events related to the armed conflict, for which the Commission considers that the petition was submitted within a reasonable term under the terms of Article 32.2 of its Rules of Procedure.

## **VII. COLORABLE CLAIM**

14. 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 considers that, if proven, the alleged illegal arrest, forced disappearance, torture, and murder of Mr. Armando Turcios, the Barrios massacre, and the extra-judicial execution of three of the alleged victim’s relatives (two of whom were underage) by the Salvadoran Armed Forces; the absence of an investigation, the unjustified delay in the identification of perpetrators, and the ongoing refusal of justice; as well as the threats against the petitioner, could all characterize potential violations of Articles 3 (juridical personality), 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 11 (privacy), 19 (rights of the Child), 21 (property), 22 (freedom of movement and residence), and 25 (judicial protection) of the American Convention on Human Rights in relation to its Articles 1.1 and 2. Likewise, regarding the events that occurred prior to the date of deposit of the instrument of ratification of the Inter-American Convention to Prevent and Punish Torture, in what refers to the alleged continuity and absence of clarification of the torture crime, the Commission considers that the presumed events could characterize potential violations to Articles 1, 6, and 8 of the said document.

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<sup>5</sup> IACHR, Report No. 24/06, Petition 10,720, El Mozote Massacre, para. 35.

## VIII. DECISION

15. To declare the present petition inadmissible in relation to Articles 3, 4, 5, 7, 8, 11, 19, 21, 22, and 25 of the American Convention on Human Rights, regarding its Articles 1.1 and 2, and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture; and

16. To notify the parties of the present decision; to continue analyzing the matter; 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 26<sup>th</sup> day of the month of December, 2018. (Signed): Margarette May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice President; Luis Ernesto Vargas Silva, Second Vice President; Francisco José Eguiguren Praeli, Joel Hernández García, Antonia Urrejola, and Flávia Piovesan, Commissioners.