

OEA/Ser.L/V/II.
Doc. 326
16 October 2020
Original: Spanish

REPORT No. 309/20
PETITION 1521-10
REPORT ON ADMISSIBILITY

NANCY DEL CARMEN APRAEZ CORAL, CARLOS ALBERTO APRAEZ AND FAMILY
COLOMBIA

Approved electronically by the Commission on October 16, 2020.

Cite as: IACHR, Report No. 309/20. Petition 1521-10. Admissibility. Nancy del Carmen Apraez, Carlos Alberto Apraez and family. Colombia. October 16, 2020.



I. INFORMATION ABOUT THE PETITION

Petitioner	Nydia Erika Bautista Foundation
Alleged victim	Nancy del Carmen Apraez Coral, Carlos Alberto Apraez and family ¹
Respondent State	Colombia
Rights invoked	Articles 3 (right to juridical personality), 4 (right to life), 5 (right to humane treatment), 7 (right to personal liberty), 11 (right to privacy), 17 (rights of the family), 18 (right to a name) and 19 (rights of the child) of the American Convention on Human Right ² , in relation to Article 1.1 (obligation to respect rights); Articles I (b), III, IV, V and XII of the Inter-American Convention on Forced Disappearance of Persons and Article 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ³

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition:	October 29, 2010
Notification of the petition:	May 13, 2016
State's first reply:	March 16, 2018
Additional observations by the petitioner:	June 18, 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 (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 3 (right to juridical personality), 4 (right to life), 5 (right to humane treatment), 7 (right to personal liberty), 8 (judicial guarantees), 11 (right to privacy), 17 (rights of the family), 18 (right to a name), 19 (rights of the child) and 25 (judicial protection) of the American Convention, in relation to Article 1.1 and 2; and Article 7 of the Belem do Pará Convention
Exhaustion or exception to the exhaustion of domestic remedies	Yes, as discussed in Section VI
Timeliness of the petition	Yes, as discussed in Section VI

V. SUMMARY OF ALLEGED FACTS

1. The petitioner denounces the international responsibility of the Colombian State in relation to the alleged detention and forced disappearance of Nancy del Carmen Apraez Coral and the alleged detention, disappearance and subsequent irregular adoption of her son, Carlos Apraez Coral, which could amount to

¹ The petitioner identifies Pedro Gerardo Apraez López, Amparo del Carmen Coral de Apraez, Doris Amparo Apraez Coral, Ana Lucía Apraez Coral, José Gerardo Apraez Coral, Pedro Gerardo Apraez Coral and Carlos Alberto Apraez Coral as relatives.

² Hereinafter, "Convention" or "American Convention".

³ Hereinafter "Belem do Pará Convention".

⁴ The observations from each party were duly notified to the other party.

violations the rights protected by the American Convention, the Inter-American Convention on Forced Disappearance of Persons, and the Bélem do Pará Convention. The petitioner maintains that the alleged events occurred in Colombia in a general context of systematic and persistent human rights violations against children and women, both at the national and regional levels, in the department of Cauca and that, in this regard, the State did not guarantee measures of special protection enshrined in international law. It claims that the State did not investigate the disappearance of the child and his mother with due diligence and expediency, which led to the specific and special conditions that permitted Carlos Alberto Apraez to be adopted.

2. The petitioner describes that on December 9, 1992, members of the Anti-Extortion and Kidnapping Unit Group (hereinafter, "UNASE"),⁵ heavily armed and hooded, carried out a raid on a house located in the Yanaconas neighborhood of Popayán, in the department of Cauca, during an operation to capture César Augusto Chanci Becerra, alleged head of a gang of kidnappers responsible for the kidnapping of a businessman on November 28, 1992. The petitioner alleges that, after verifying that César Chanci Becerra was not in the house, the members of UNASE ordered his partner, Nancy Apraez, his eleven-month-old son, Carlos Alberto Apraez and Cesar's brother, Campo Elías Chanci Becerra, to leave the residence, they placed them into a truck and left with them. The petitioner alleges that they were transferred to the UNASE facilities in Popayán where Campo Elías Chanci Becerra died. Allegedly, his body was found on the bank of the Palace river outside Popayán on December 29, 1992 with signs of torture. The petitioner adds that later, after the death of Campo Chanci Becerra, they took the alleged victims out of the UNASE facilities and created, out of newspaper clippings, a letter addressed to César Augusto Chanci Becerra with the aim of bartering detainees, which read: "Greetings from Nancy and Carlos A, Let go of what you have or you will not see them again. "

3. The petitioner describes that, on December 10, 1992, Mrs. Amparo Coral de Apraez, mother of Nancy Apraez and grandmother of Carlos Alberto Apraez, denounced the kidnapping and disappearance of the alleged victims before different police stations of the Administrative Security Department (hereinafter "DAS") and before the Regional Prosecutor's Office, the Office of the Attorney General, the Office of the Ombudsman of Popayán, as well as before the local media. However, the petitioner alleges that none of the State entities carried out an immediate investigation to find the whereabouts of the alleged victims in the department of Cauca or in neighboring departments.

A. On the abandonment and irregular adoption of the child

4. In these circumstances, the petitioner maintains Nancy Apraez was executed on December 16, 1992 with two shots to the head and that her body was left on a cliff on the road from Popayán to Pasto. The petitioner also maintains that Nancy's son, Carlos Alberto Apraez, was abandoned on a residential street on December 17 of the same year, in a popular neighborhood in Pasto, after which he was found by Mr. Conrad España. The petitioner indicates that months later, in September 1993, as a result of an anonymous telephone call in which someone assured to them that they were going to deliver their grandson, Amparo Coral de Apraez and a relative, both with limited economic resources, exhaustively searched for the child and after 3 days located Conrad España's family. However, the petitioner maintains that, at the time, Carlos Alberto Apraez had already been given up for adoption and had left the country on June 20, 1993, bound for Sweden. In this sense, the petitioner argues that after the child was found by Conrad España and placed under the custody of the Colombian Institute of Family Welfare (hereinafter "ICBF"), this authority disseminated through local media, including the *Diario del Sur* on December 18, 1992, that the child was abandoned by "an unnatural mother." The petitioner alleges that the ICBF limited itself to issuing three public notices on a local radio station in Pasto on January 14, 15 and 18, 1993, looking for the family of a boy named "Conrad España" and did not take any steps to cross-reference regional information with complaints of missing children. The petitioner maintains that the director of the Pasto ICBF concluded the search and officially declared the child's abandonment on February 4, 1993. Subsequently, on June 4, 1993, the ICBF concluded the legal process of adoption delivering the child to a Swedish couple. The petitioners describe that Carlos Alberto Apraez left Colombia on June 20, 1993, and on August 4 of that year his adoption was recognized and ratified by the Swedish State.

⁵ The petitioner highlights that the UNASE functioned as a coalition between the police, the army and the Administrative Security Department created in 1990.

5. The petitioner argues that the efforts of the ICBF in Pasto to locate the child's next of kin shows that actions were taken as a mere formality and that the disappearance was never the subject of a criminal investigation by the State. In relation to the dissemination of information, the petitioner maintains that the adjectives used against the mother of the child were disseminated in the city of Pasto based on the assumptions of abandonment declared by the ICBF that were echoed in the main regional newspaper and which directly affected the prestige of the alleged victim, without it having been corrected by the State to date.

6. The petitioner argues that the separation of the child from his family lasted 16 years due to the lack of resources of the Apraez family and the lack of support by the State when facing the case. In this regard, it should be noted that Mrs. Amparo Coral de Apraez requested the annulment of the civil process of adoption of Carlos Alberto Apraez in Colombia as soon as she became aware of the situation, which is why, in February 1994, the Superior Court of Pasto ordered the lifting of the reservation of information on the adoption and ordered the ICBF to inform the family of the whereabouts of the child, the information on the adopting family and the country of destination. Likewise, the petitioner indicates that the Family Chamber of the Superior Court of Pasto annulled the civil process of adoption of the child on June 9, 1995, ordering the ICBF to carry out the necessary procedures to return the child to his maternal grandparents in Colombia. However, the petitioner argues that this decision was adopted too late when the child was almost 4 years old and 2 years had elapsed since his adoption and recognition as a citizen of Sweden, therefore, upon hearing the decision of the civil court in Colombia, the competent adoption authority in Sweden considered the adoption to be an accomplished fact and that the acquired citizenship of the child protected him.

7. The petitioner maintains that they went to a private conciliation with the adoptive family and reached an agreement under the observation and assistance of international non-governmental organizations. The petitioner argues that the State did not adopt any measure or assistance in favor of the family to respond to the multiple consequences of the crime resulting from the lack of a regulatory framework that adequately protects the disappeared children, children of victims of forced disappearance.

B. Initiated judicial processes

8. Regarding the investigation of the facts, the petitioner maintains that the Cali Regional Prosecutor's Office did not carry out any immediate investigation to establish the whereabouts of the alleged victims or the identity of the perpetrators of the crime, despite the fact that, in the following days, a sheet of paper with a list of UNASE members who participated in the house raid appeared around the house, which was delivered to the Attorney General's Office.⁶ The petitioner reports that later the investigation was conducted by the Bogotá Regional Prosecutor's Office and, at the request of the family, it was reassigned to the Human Rights Unit of the Attorney General's Office. In this regard, the petitioner maintains that in the framework of the judicial investigations, the body of Nancy Apraez was found as a result of the confession in the judicial file of one of those responsible for the events, and her full identity was confirmed by virtue of the exhumation, the results of the forensic identification and the result of DNA analysis.

9. With regard to the criminal process, the petitioner emphasizes that despite having exhausted domestic remedies and resorting to all instances and jurisdictions, the conducts that constituted responsibility of the State by action and omission were not investigated or condemned, while only 9 of the at least 18 responsible individuals were punished and of these, several convicted agents have not been effectively captured. The petitioner argues that on December 4, 1998, the Santiago de Cali Regional Judge convicted 13 members of the UNASE of Popayán as co-perpetrators or accomplices of different crimes and decided to acquit one of the accused. The petitioner also indicates that, in response to appeals filed by the Regional Prosecutor's Office and the defense, the Superior Court of the Bogotá Judicial District resolved to convict 9 agents of the National Police and the DAS for the crimes of triple aggravated extortive kidnapping in concurrence with homicide against Campo Elías Chanci and falsification of public document. Likewise, the Superior Court acquitted some defendants, modified the sentence of others, and revoked the acquittal granted by the Regional Judge of Cali. Finally, the petitioner indicates that on December 19, 2001, the Criminal Cassation Chamber of

⁶ The petitioner affirms that based on that list the Attorney General's Office called all agents on the list to make a statement but, despite the evidence provided, the Office didn't open a disciplinary investigation or brought a case against the public officials and archived the complaint.

the Supreme Court of Justice ruled the extraordinary appeals for cassation presented by the defense inadmissible for not meeting the minimum legal requirements, and by means of a judgment of March 24th 2004, resolved that the statute of limitations applied to the criminal action prescribed for crimes of ideological falsification of a public document and to modify the privative sentence in relation to different defendants.⁷ The petitioner maintains that, in the framework of another criminal proceeding, the Specialized Criminal Judge of the Popayán Circuit sentenced Fredy Hernando Serrano and Claudia Alexandra Muñoz of the UNASE, and ordered them to compensate the moral and material damages caused to the Apraez family by the extortive kidnapping and subsequent murder of Nancy. However, the petitioner alleges that the reparation was never made. The petitioner explains that the Judge refrained from ordering compensation to other authors and failed to order compensation due to Carlos Alberto Apraez for his own kidnapping and the loss of his mother.

10. On the other hand, the petitioner emphasizes that the Apraez family presented an action for direct reparation on December 9, 1994, requesting financial compensation for moral and material damages against the Ministry of Defense and the DAS for the conduct of their agents. In this regard, the petitioner details that in a hearing held on August 3, 1998, the Cauca Contentious Administrative Court approved a partial conciliation between the representatives of the Ministry of Defense and the National Police and the families of the alleged victims, in which they agreed to the payment of compensation for non-pecuniary damages to the parents and siblings of Nancy Apraez, the non-recognition of material damages and the continuation of the process regarding the claims presented in the lawsuit by the family regarding the kidnapping and irregular adoption of Carlos Alberto Apraez and those presented by Carlos Apraez, in relation to the kidnapping and death of his mother, Nancy Apraez. It should be noted that the Cauca Contentious Administrative Court declared, through a ruling issued on February 10, 2000, that the Ministry of Defense and National Police were responsible for the kidnapping and murder of Nancy Apraez and the kidnapping of the child Carlos Apraez and ordered the plaintiffs to pay to the child financial compensation for moral and material damages. In this regard, the petitioner reports that the State Council modified said judgment by virtue of a resolution issued on March 29, 2012, expanding the spectrum of patrimonial responsibility to the DAS at the request of the National Police. The petitioner argues that the DAS has not paid what was due to them for non-pecuniary damages and that the payment of material damages has not materialized in any of the instances.

11. The petitioner argues that the context at that time did not provide any guarantee or security to the family that was faced with threats and persecution, and in relation to the child, the distance impeded him to personally present a claim. The petitioner details that none of the instances recognized the pecuniary damages, nor were reparation measures adopted in any of the internal decisions geared to issues other than compensation.

12. Lastly, the petitioner denounces that the Apraez family, in particular Mrs. Amparo Coral de Apraez and her granddaughter Julieth Marcela Muñoz, have been subjected to harassment over the course of these years for having denounced the alleged facts. In this regard, the petitioners describe that they have received telephone calls since March 25, 2007 in which they threaten their personal integrity and life and have even reported men asking neighbors about the location of Mrs. Amparo Coral of Apraez. This has led the family to change residence 4 times during 2008 and 2009 and also change their phone number. The petitioner maintains that, despite the fact that they have reported these incidents to the authorities and that the prosecution has informed them that three men who in their time were part of the UNASE Group, responsible for the disappearance of their daughter and grandson, have been released, no other inquiry has been made.

State's claims

13. For its part, the State argues that in the present case it is evident that the petitioner intends to go before the IACHR as a court of appeal insofar as the petitioner's brief has limited his arguments to retaking what was analyzed in the decisions ruled in the domestic jurisdiction with all the guarantees of due process

⁷ The Criminal Cassation Chamber declared the appeals presented by the defense of José Enrique Parra Cuadrado, Carlos Orlando Granja Suárez inadmissible for not meeting the minimum requirements of the law. With respect to the appeals of cassation presented by the defense of the defendants Ricardo Alfonso Arzuaga Salazar, Juan Ramón Gómez Puerto and Carlos Iván Ramírez Yáñez, the Criminal Cassation Chamber decided, by a judgment of March 25, 2004, to declare the criminal action prescribed with respect to the crimes of ideological falsification of a public document and modify the years of prison for those convicted.

which resulted in decisions favoring the interests of the victims. In this regard, the State affirms the lack of a colorable claim of the violation of the rights protected by the Convention insofar as the alleged victims have had access to legal remedies which have been duly exhausted judging from the internal decisions taken by competent, independent and impartial bodies, which gave an adequate and effective response to the petitioner's requests.

14. Likewise, the State argues that the compensation recognized not only repaired the damage resulting from the kidnapping of Nancy del Carmen Apraez, but also took into account the damage caused by the kidnapping and abandonment of the child Carlos Alberto Apraez, therefore the direct reparation action was established as the adequate and effective remedy in potential cases of human rights violations. Regarding the convicted person's failure to comply with the compensation for damages ordered by the Criminal Judge in 2004, the State maintains that it is the responsibility of the affected parties to carry out an executive process, however, in the present case it has not been proven that the alleged victims pursued an action to obtain payment.

15. Regarding the exercise of the direct reparation action, the State argues that the parties reached a conciliatory agreement that recognized different amounts in favor of the parents and siblings of Nancy Apraez for moral damages, which was validated by the Contentious Administrative Court del Cauca in a conciliation hearing held on August 3, 1998. Additionally, the State maintains that, by virtue of the judgment issued on February 10, 2000, which declared the Ministry of Defense and National Police administratively responsible for the kidnapping and subsequent murder of Nancy Apraez and due to the kidnapping and subsequent abandonment of Carlos Apraez, and the decision of the Council of State of March 29, 2012 that expanded the spectrum of patrimonial responsibility to the DAS, the Ministry of National Defense issued Resolution No. 0475 of May 22, 2013 making the corresponding payment to all the recognized victims in response to the judicial orders made in the contentious-administrative process.

16. The State argues that the adoption process was approved by a judgment of June 4, 1993, by the Second Family Court of Pasto, which legally granted civil kinship to the adopting parents. In this regard, the State indicates that the Family Chamber of the Superior Court of the Judicial District of Pasto, through a judgment issued on June 9, 1995, accepted the claims of the appellants, for which the State undertook steps at the head of the Ministry of Foreign Affairs to recover the child. The State maintains that, although it considers the judicial ruling that declared the nullity of the adoption process valid, the particularities of the case generated various difficulties that made it impossible to comply with the measures ordered.

17. Likewise, the State argues the restricted competence of the Commission in relation to the Bélem do Pará Convention, since it is confined solely and exclusively to the violations related to Article 7 of said instrument. On the other hand, in view of the Convention on the Rights of the Child, it maintains that the IACHR does not have any contentious jurisdiction to hear the alleged violations of the rights enshrined in this instrument. Lastly, the State points out that the petitioner failed to provide the documentation to prove they represent Carlos Alberto Apraez.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

18. In view of the facts alleged in this petition, the IACHR recalls that whenever acts that imply the violation of the right to life and personal integrity are committed, the State has the obligation to promote and expedite the criminal process and that this constitutes the ideal way to clarify the facts, prosecute those responsible and establish the corresponding criminal penalties, in addition to enabling other forms of pecuniary reparation.⁸ In the instant case, the Commission observes that the alleged victims filed criminal complaints with the corresponding authorities by virtue of which two criminal proceedings were pursued. The Commission notes that, according to the information in the file, some agents of the UNASE were sentenced to custodial sentences.

⁸ IACHR. Report No. 39/18. Petition 196-07. Admissibility. José Ricardo Parra Hurtado, Félix Alberto Páez Suárez and families. Colombia. May 4, 2018, par.12.

19. Along these lines, the Commission also notes that, according to the information available in the file, the criminal proceeding culminated with the judgment of March 24, 2004 of the Criminal Cassation Chamber of the Supreme Court of Justice, condemning those indicted to custodial sentences as co-perpetrators or accomplices of the crimes of aggravated extortion kidnapping to the detriment of Campo Elías Chanci Becerra, Nancy Apraez and Carlos Alberto Apraez, and felony homicide of Campo Elías Chanci Becerra. In this regard, the Commission emphasizes that, in view of the documentation attached by the parties, criminal responsibility for the alleged facts relating to the murder and disappearance of the remains of Nancy Apraez was adjudicated to a police officer in the framework of the criminal proceeding concluded by the judgment issued on January 31, 2006 by the Superior Court of the Popayán Judicial District.

20. The Commission takes into account that, even though there have been definitive convictions, according to the information presented, to date no sanction has been imposed for all those responsible for the alleged facts⁹ and that, according to the petitioners' allegations, at least two of the condemned are still at large and have not served their sentences. In this regard, the Commission considers it pertinent to recall that the Inter-American Court has indicated that it is essential that the States effectively investigate the deprivation of life and punish all those responsible, especially when State agents are involved, since if not, it favors impunity for this type of act and repetition, which is contrary to the duty to respect and guarantee the right to life.¹⁰ In this sense, given the characteristics of the petition and the lapse of 28 years since the alleged facts and 16 years since the conviction of several of those responsible, the IACHR concludes, as it has done in other precedents in which partial impunity has been alleged,¹¹ which in this case applies the exception to exhaustion of domestic remedies provided for in Article 46.2.c of the American Convention.

21. With regard to the alleged irregular adoption, the Commission takes into account the allegations presented by the petitioner regarding the incident to lift the legal reservation of the child's adoption process and the appeal for review in order to challenge the decision of 4 of June 1993 that legally granted civil kinship to the adoptive parents, both filed by the Apraez family. In this regard, and in the absence of specific allegations on this point by the State, the Commission observes that the alleged victims exhausted the domestic remedies contemplated in civil matters, and concludes that in this regard the present petition meets the requirement established in Articles 46.1.a of the Convention.

22. With regard to the threats to the life and personal integrity of Mrs. Amparo Coral de Apraez and her family, the Commission observes that this situation was brought to the attention of State authorities through different complaints made on various occasions, among them, before the Office of Special Investigations of the Office of the Attorney General of the Nation on October 31, 1994; subsequently, before the Office of the Ombudsman on April 27, 2007. In this regard, the Commission observes that the State does not present any arguments or indicates any other remedy that the alleged victims should exhaust. Based on the aforementioned factors, the Commission concludes that the petitioner has exhausted the ordinary remedies of the criminal system and, therefore, satisfy the requirement of prior exhaustion of domestic remedies set forth in Article 46.1.a of the American Convention.

23. In relation to the action for direct reparation and the payment of compensation, the Commission has repeatedly held that said remedy does not constitute an appropriate remedy for the purposes of analyzing the admissibility of a claim of the nature of the present, since it is not adequate to provide comprehensive reparation and justice to the next of kin.¹² Notwithstanding the aforementioned, in the present case it is observed that the petitioning party alleges specific violations within the framework of the demand for direct reparation. In particular, the petitioner maintains that, to date, the sentence issued by the Council of State has not been fully complied with, while the DAS has not granted the corresponding payment for moral damage and the conviction in the second criminal proceeding that recognizes the convicted person's duty to repair.

⁹ IACHR, Report No. 81/18. Petition 190-07. Admissibility. Edgar José Sánchez Duarte. Colombia. July 7, 2018, par. 13.

¹⁰ I/A Court H.R., Case of Myrna Mack Chang v. Guatemala. Merits, Reparations and Costs. Judgment of November 25, 2003. Series C No. 101, par. 156.

¹¹ In this vein see, for instance: IACHR, Report No. 129/18, Petition 1256/07, Admissibility. Cornelio Antonio Isaza Arango and others (Masacre de los Aserraderos de El Retiro), Colombia, November 20, 2018; and Report No. 104/18, Petition 221/08, Admissibility. Delis Palacio Herrón and others (Masacre de Bojayá), Colombia, September 20, 2018.

¹² IACHR. Report No. 17/14. Petition 394-06. Admissibility. José Orlando Giraldo Barrera and family. Colombia. April 3, 2014, par. 44.

Given the link between the two processes, the IACHR takes into account that in the contentious-administrative jurisdiction, domestic remedies were exhausted with the resolution issued on March 29, 2012 by the State Council.

24. On the other hand, the Commission concludes that the petition has been presented within a reasonable time based on Article 32.2 of its Rules of Procedure. This, given that, although the events have taken place since 1993 and the petition was received on October 29, 2010, some of its effects would extend until today. Therefore, in view of the context and the characteristics of the facts included in this report, the Commission considers that the petition was presented within a reasonable period of time and that the admissibility requirement regarding the period of presentation must be satisfied.

VII. COLORABLE CLAIM

25. The Commission observes that the present petition includes allegations regarding the detention, execution, and forced disappearance of Nancy Apraez; the arrest and abandonment of Carlos Apraez; the lack of a timely search and investigation; the lack of effective judicial protection in relation to the alleged facts; the irregular adoption process, its effects and the lack of adoption of measures in favor of the family; as well as the threats to Mrs. Apraez and her family. In this regard, the State argues that the alleged victims have had access to legal remedies and they have been duly exhausted while there are internal decisions taken by the competent bodies which gave an adequate and effective response to the petitioner's requirements.

26. Faced with the information presented by the parties and the nature of the matter brought to its attention, the Commission recalls that the criteria for evaluating admissibility differs from that used to rule on the merits of a petition; the Commission must carry out a *prima facie* evaluation to determine whether the petition establishes the basis for the possible or potential violation of a right guaranteed by the Convention, but not to establish the existence of a violation of said rights. This determination on the characterization of violations of the American Convention constitutes a *prima facie* analysis, which does not imply prejudging the merits of the matter.¹³

27. Given the nature of the allegations, the Commission considers it pertinent to recall that the Inter-American Court has recognized that “the victims’ next of kin have the right, and the States the obligation, to ensure that what happened to the victims is investigated effectively by the State; that proceedings are filed against those presumably responsible for the unlawful acts; that, if applicable, the latter receive the pertinent punishment, and that the damage suffered by the said next of kin is repaired”.¹⁴

28. With regard to the State's argument regarding what it calls a “fourth international instance,” the Commission reiterates that, for the purposes of admissibility, it must decide whether the alleged facts may characterize a violation of rights, as stipulated in Article 47 (b) of the American Convention, or if the petition is “manifestly unfounded” or it is “clearly inadmissible,” pursuant to subsection (c) of said article. The criteria for evaluating these requirements differ from that used to rule on the merits of a petition. Likewise, within the framework of its mandate, it is competent to declare a petition admissible when it refers to internal proceedings that could violate rights guaranteed by the American Convention¹⁵.

29. In this regard, the IACHR finds that the claims of the petitioner do not include a request to review the content as such of the convictions, in their evidentiary or legal aspects. In this regard, the Commission reiterates that within the framework of its mandate it is competent to declare a petition admissible when it refers to internal proceedings that could violate rights guaranteed by the American Convention. Notwithstanding the foregoing, the IACHR takes into consideration the measures that the Colombian State has already taken in relation to the events reported in this case, which have been described in this report, including the fact that it has already delivered certain monetary compensation to the alleged victims. These measures, as a whole, form part of the factual framework of the present case.

¹³ IACHR, Report No. 69/08, Petition 681-00. Admissibility. Guillermo Patricio Lynn. Argentina. October 16, 2008, par. 48.

¹⁴ C I/A Court H.R., Case of Garibaldi v. Brazil. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 23, 2009. Series C No. 203, par. 117.

¹⁵ IACHR, Report No. 143/18, Petition 940-08. Admissibility. Luis Américo Ayala Gonzales. Perú. December 4, 2018, par. 12.

30. In view of these considerations and after examining the factual and legal elements presented by the parties, the Commission considers that the allegations of the petitioner are not manifestly unfounded and require a thorough study, since the alleged facts, if corroborated as true, could characterize violations of Articles 3 (right to juridical personality), 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (judicial guarantees), 11 (privacy), 17 (rights of the family), 18 (right to a name), 19 (rights of the child) and 25 (judicial protection) the American Convention in relation to Article 1.1 and 2 to the detriment of the alleged victims. Taking into account the aforementioned allegations, in the merits stage the IACHR will analyze the possible violation of Article 7 of the Convention of Belem do Pará.

31. In view of the allegations of the parties, the Commission recalls that it is not competent to declare violations of rights enshrined in the Convention on the Rights of the Child, but it is empowered to resort to its standards in order to interpret the norms of the American Convention by virtue of Article 29 of the Convention. Likewise, the Commission indicates that it is competent under the Inter-American Convention on Forced Disappearance of Persons, to the extent that the alleged facts constitute a continuous situation that subsists until the date of this report. In the present case, the Commission observes that it is an undisputed fact that the remains of Nancy del Carmen Apraez were found in the framework of the criminal investigations. In this regard, the Commission points that, although there is no specific information on the exact moment of recovery of the remains of Nancy Apraez, her forced disappearance continued for several years. However, taking into account the date of ratification by the State of the Inter-American Convention on Forced Disappearance, the IACHR considers that it is not applicable as long as the concurrent and constitutive elements to consider a forced disappearance do not subsist.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 3, 4, 5, 7, 8, 11, 17, 18, 19 and 25 of the American Convention in relation to Article 1.1 of the same instrument; and

2. To notify the parties of this decision; to proceed 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 16th day of the month of October, 2020. (Signed): Joel Hernández, President; Antonia Urrejola, First Vice-President; Flávia Piovesan, Second Vice-President; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, Julissa Mantilla Falcón, and Stuardo Ralón Orellana, Commissioners.