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REPORT No. 220/20
PETITION 1592-10
REPORT ON ADMISSIBILITY

LUZ MARINA MORENO PEÑUELA AND FAMILY
COLOMBIA

Approved electronically by the Commission on August 29, 2020.

Cite as: IACHR, Report No. 220/20, Petition 1592-10. Admissibility. Luz Marina Moreno Peñuela and Family. Colombia. August 29, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner	Luz Marina Moreno Peñuela
Alleged victim	Luz Marina Moreno Peñuela and her family
Respondent State	Colombia
Rights invoked	Articles 4 (life), 5 (humane treatment), 8 (fair trial), 11 (privacy), 13 (freedom of thought and expression), 16 (assembly), 23 (participation in government), and 25 (judicial protection) of the American Convention on Human Rights ¹

II. PROCEEDINGS BEFORE THE IACHR²

Date of filing	November 5, 2010
Additional information received during initial review	May 23, 2014; February 11, March 30, and October 18 and 21, 2016; January 6, 2017; June 26, 2019
Notification of the petition	August 29, 2017
State's first response	May 28, 2019
Additional observations from the petitioner	June 26, July 15, and August 12, 2019

III. COMPETENCE

<i>Ratione personae</i>	Yes
<i>Ratione loci</i>	Yes
<i>Ratione temporis</i>	Yes
<i>Ratione materiae</i>	Yes

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

Duplication of procedures and international <i>res judicata</i>	No
Rights declared admissible	Articles 4 (life), 5 (humane treatment), 8 (fair trial), 21 (property), and 25 (judicial protection) of the American Convention, in relation to Article 1.1 (obligation to respect rights) thereof
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 FACTS ALLEGED

1. Luz Marina Moreno Peñuela (hereinafter "the petitioner") reports alleged violations of her and her family's human rights claiming that her father was murdered by illegal armed forces, that she and her relatives were victims of aggravated robbery at their house, and that the State has not yet identified or punished the perpetrators. She also claims that she and her relatives were threatened by illegal armed forces and that as the State had failed to provide them with security measures, they were forced to flee the region to save their lives. Moreover, she alleges that a private bank and a private individual took advantage of her family's having been threatened and displaced in order to seize the assets of her family and that neither the courts nor the other state authorities protected them from these abuses or investigated the complaints filed in this regard.

2. The petitioner recounts that in 1994, her father, Juvenal Moreno, established a business company called *Construyendo y Vendiendo Ltda.* (a limited liability company) for construction and real estate development. She explains that one of the partners in this company was an individual alien to the family. Allegedly, this partner applied for a loan with a private bank on behalf of the company and behind her father's back, for a commercial real estate project called *El Paraíso de Balmoral*. She alleges that after the loan was approved, problems arose between her father and this partner, and the whole family started to be threatened by the illegal armed group FARC. She says that, accordingly, her father established another company, made up of his relatives only, called *Inversiones Balmoral Moreno Ltda.*

¹ Hereinafter "American Convention" or "Convention."

² The observations submitted by each party were duly transmitted to the opposing party.

3. The petitioner explains that her father wanted to dissolve *Construyendo y Vendiendo Ltda.* and that having told this to his partner, he arranged to meet him to discuss the dissolution. She alleges that the men could not meet because the FARC killed her father on February 17, 1996, just three days before the date of the meeting. She says that following her father's death, the bank told the heirs in the family of a debt that *Construyendo y Vendiendo Ltda.* had and for which they would be partly liable. She reports that the debt should have been covered by a life insurance policy bought upon the approval of the loan and which benefited the bank in the event of her father's death and that the bank, however, refused to claim the debt back on the insurance. She says that the life insurance policy had been sold by an insurance company belonging to the same business group as the bank. She submits that after the family had told the bank that they had enough money in cash to cancel their part of the debt, a group of individuals speaking with a Cali accent burgled the family's house with violence and were heard to say on their mobile phone, "Engineer, we can't find the money." She says that the burglars gagged and beat Emilio Cruz, the man keeping the house, as they asked him about her and her mother—both out of town then. She claims that given this theft, the family could not but repay their debt by surrendering a few apartments and premises to the bank on February 13, 1997.

4. The petitioner says that following the repayment of the loan taken by *Construyendo y Vendiendo Ltda.* and this company's dissolution, *Inversiones Balmoral Moreno Ltda.* applied with the same private bank for a loan secured by an open-end mortgage to finish the second part of the real estate project. She reports that in this loan, the bank included a promissory note for the debt of *Construyendo y Vendiendo Ltda.*, which had already been repaid, and that it did not lend them the stipulated funds for concluding the second stage of the project. Allegedly, *Inversiones Balmoral Moreno Ltda.* was, therefore, unable to cancel its debt, and the bank filed a foreclosure proceeding, which concluded in 2004 with eight apartments of the real estate project being sold in a court auction. She explains that her right of defense was curtailed because, in 2000, she and her family had been forced to flee the region after criminals had threatened with having them suffer the same fate of her father, followed them, and warned that they knew where her children attended school. She claims to have reported these threats to the Public Prosecutor's and the Attorney General's Offices in Fusagasugá, the Ombudsman's Office in Bogotá, the Bank Superintendency, the Army, and the Police and that as this proved unsuccessful, all her family could do was flee the region or even the country. She alleges having been recognized as a displaced person and that her mother, compelled to move to Costa Rica, was granted refugee status. She submits that a lawyer was appointed to represent the family remotely in the foreclosure proceeding and that the judge hearing the case ignored the substantive defenses raised by the family's lawyer.

5. The petitioner holds the State accountable for depriving her family of security measures and protection from these abuses as the interests of the bank prevailed. Moreover, she says that Fusagasugá's Regional Public Prosecutor's Office filed an investigation into her father's death and that it was unsuccessful and eventually "disappeared." She claims that the murder remains unpunished because while it has been over 20 years since then, the only thing the Public Prosecutor's Office can attest is that none of the demobilized individuals has claimed responsibility for this. She submits that the Public Prosecutor's Office has officially recognized her father as a "victim of the conflict." Furthermore, she says that Fusagasugá's Public Prosecutor No. 3 filed an investigation into the violent theft at her house—she does not say what its results were, though—and a criminal action regarding her family's extortion. Allegedly, the latter led to the imprisonment of three individuals that, on being released from prison for overcrowding, vowed revenge.

6. The State contends that Public Prosecutor's Office No. 43 to the Circuit Courts investigated the murder of the petitioner's father through several proceedings aimed at identifying, prosecuting, and punishing the perpetrators. It says the case was so complex that the Prosecutor's Office was unable to identify the perpetrators and had to suspend the investigation by a resolution. It claims that the Public Prosecutor's Office also filed an investigation into the theft from Emilio Cruz and Jasmín Romero Peñuela that did not succeed in identifying the thieves either despite the authorities' efforts; that, therefore, the Public Prosecutor's Office had to issue a resolution to suspend the investigation and provisionally file it in the archives. The State also submits that the alleged victims filed four complaints with the mechanisms provided by the Justice and Peace Law, Law No. 975 of 2005, concerning the petitioner's father's death and the threats, the extortion, and the forced displacement that the petitioner and her family sustained at the hands of the FARC. It contends that the Unit for Victim Support and Reparations has assisted and supported the alleged victims and that in 2012, the petitioner and other members of her family received administrative compensation.

7. As to the claims about the petitioner's father's death, the threats, and the theft from the family, the State alleges that the purported offenses were committed by third parties and that nothing indicates that these are attributable to the State. It also notes that the evidence and the arguments do not indicate that state agents have been tolerant of, acquiescent, or involved in the crimes at issue. It claims not to have failed in its duty to protect or incurred responsibility since it has not been proven that before the facts took place, the State was already aware of an actual or impending risk situation that would oblige it to protect the alleged victims. The State alleges that domestic remedies have not been exhausted regarding this part of the petition since the alleged victims did not file a direct claim for damages. According to the State, this would have been the appropriate remedy for obtaining full redress domestically under the inter-American standards should it be proven that they sustained damage because of state agents' acts or omissions. Moreover, it claims that the relevant complaints that the alleged victims filed with the Justice and Peace proceedings are still in progress awaiting statements that will contribute to clarifying the facts and the perpetrators' prosecution and punishment, which proves the lack of exhaustion of domestic remedies.

8. As to the auction sale of eight apartments of the *Paraíso de Balmoral* real estate project, the State believes that this does not involve a human rights violation as this was the outcome of a private business deal and a decision that the court made in accordance with the guarantees of due process. It says that the petitioner appeals to the Inter-American Commission because of her dissatisfaction with the national courts' decision and her expectation that the Commission will adjudicate as a fourth instance of jurisdiction in contravention of its subsidiary nature. It also contends that the rejection of the alleged victims' application to have the eight apartments included in the Register of Forcibly Dispossessed and Abandoned Lands did not involve a human rights violation. It explains that the loss of the apartments did not meet the criteria of this register because the loss was the legal outcome of a private business deal and not the result of arbitrary dispossession or a situation of abandonment due to forced displacement. The State also claims that the petitioner does not explain what "substantive defenses" were presented in the foreclosure proceeding nor how the rejection of those defenses may constitute violations of the American Convention. Additionally, the State stresses that it was not the petitioner or her relatives themselves that lost the apartments but the juridical person *Inversiones Balmoral Moreno Ltda.*

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

9. The Commission notices that allegedly the petitioner reported to several state officers, situations that she deemed violated her rights but was not given any satisfactory remedy. The State contends that the alleged victims have not exhausted the domestic remedies because they did not file a direct claim for damages, and the complaints lodged with the Justice and Peace authorities remain open awaiting statements that will contribute to clarifying the facts. It also submits that the petitioner did not explain what "substantive defenses" her representative submitted in the foreclosure process, following which eight apartments of the *Paraíso del Balmoral* project were auctioned.

10. As to the part of the petition concerning the petitioner's father's death and the violent theft at the petitioner's family's house, the Commission reiterates that the domestic remedies considered in the admissibility of petitions involving alleged violations of the rights to life and humane treatment are those regarding the criminal investigation and punishment of those responsible.³ In the instant case, it is alleged that although it has been approximately 24 years since the petitioner's father's death and at least 23 years since the theft at the family's house, the investigations by the state authorities have not succeeded in identifying the perpetrators or clarifying the facts. Although the State has claimed the non-exhaustion of the direct claim for damages, the Commission believes that this remedy would not be effective regarding the main allegation in this petition, which concerns a lack of due diligence in the investigation and a lack of prosecution and punishment of those responsible.⁴ The Commission also notices the State's observation that the proceedings filed by the alleged victims with the Justice and Peace authorities remain open, awaiting the submission of statements that will contribute to clarifying the facts. In this regard, the IACHR restates that the Inter-American Court of Human Rights has held that the prior exhaustion rule must never "lead to a halt or delay that would render

³ IACHR, Report No. 72/18, Petition 1131-08. Admissibility. Moisés de Jesús Hernández Pinto and Family. Guatemala. June 20, 2018, par. 10.

⁴ IACHR, Report No. 71/17, Petition 271-07. Admissibility. Jorge Luis de la Rosa Mejía *et al.* Colombia. June 29, 2017, par. 49.

international action in support of the defenseless victim ineffective.”⁵ Therefore, and without prejudging the merits of the case, the Commission finds that the exception to the requirement of exhaustion of domestic remedies provided in Article 46.2.c of the American Convention is applicable to this petition.⁶ Given the nature of the facts and the petitioner’s allegations that as a victim of threats and forced displacement, it was difficult to access justice despite her having been recognized as an internally displaced person, the Commission concludes that this petition meets the requirement of timeliness under the terms of Article 32.2 of the IACHR Rules of Procedure.

11. As to the claim about the legal proceeding that led to eight apartments’ being auctioned and in which the State allegedly did not take any measures to protect the alleged victims’ procedural guarantees as threatened displaced persons, the Commission notes that the information submitted by the petitioner only says that, in that proceeding, their attorney presented “substantive defenses” that the judge ignored. Accordingly, the Commission reiterates that under Article 28.8 of the IACHR Rules, petitions must contain “any steps taken to exhaust domestic remedies, or the impossibility of doing so.” In the instant case, the Commission deems that a mere reference to the filing of “substantive defenses” ultimately rejected is insufficient for an assessment of the requirement of exhaustion of domestic remedies. Similarly, as to the allegations of purported irregularities committed by a private bank, the Commission deems it impossible to analyze the requirement of exhaustion of domestic remedies as the petitioner merely mentions an unsuccessful complaint to the Bank Superintendence. Therefore, the Commission finds that these allegations in the petition are inadmissible, for they do not meet the requirements provided in Article 46.1.a of the American Convention.

VII. COLORABLE CLAIM

12. The Commission observes that the instant petition involves allegations that the State has incurred in a lack of due diligence in investigating the circumstances surrounding the petitioner’s father’s death and a violent theft at the petitioner’s and her family’s house and duly protecting the family from the threats they had reported.

13. Regarding this type of allegations, the Commission restates that, according to the Inter-American Court, “an illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention.”⁷

14. Given these considerations and having analyzed the legal and factual elements submitted by the parties, the Commission deems that the allegations by the petitioner are not manifestly groundless and require a substantive analysis. If proven to be true, the facts alleged here may establish violations of Articles 4 (life), 5 (humane treatment), 8 (fair trial), 21 (property), and 25 (judicial protection) of the American Convention, in connection with Article 1.1 (obligation to respect rights) thereof.

15. As to the alleged violations of Articles 13 (freedom of thought and expression), 16 (freedom of assembly), and 23 (participation in government) of the American Convention, the Commission deems that the petitioner did not submit enough elements or evidence for a *prima facie* consideration of their violation.

16. The Commission will not analyze those parts in the petition declared inadmissible in section VI of this report.

VIII. DECISION

1. To declare this petition admissible with regard to Articles 4, 5, 8, 21, and 25 of the American Convention in relation to Article 1.1 thereof;

⁵ IACHR, Report No. 71/12, Petition 1073-05. Admissibility. Inhabitants of the *Barão de Mauá* Residential Complex. July 17, 2012, par. 22.

⁶ IACHR, Report No. 141/17. Petition 1617-07. Admissibility. Geminiano Gil Martínez and Family. Colombia. October 26, 2017, par. 11.

⁷ I/A Court H.R., Case of Velásquez Rodríguez v. Honduras. Merits. Judgment of July 29, 1988. Series C No. 4, pars. 172-174.

2. To declare this petition inadmissible regarding Articles 13, 16, and 23 of the American Convention and the allegations of irregularities committed by a private bank and a lack of adequate access to justice in the context of a foreclosure proceeding.

3. 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 29th day of the month of August, 2020. (Signed): Joel Hernández, President; Antonia Urrejola, First Vice-President; Flávia Piovesan, Second Vice-President; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, and Stuardo Ralón Orellana, Commissioners.