

OEA/Ser.L/V/II.
Doc. 82
17 March 2020
Original: Spanish

REPORT No. 72/20
PETITION 780-10
REPORT ON ADMISSIBILITY

ARIEL RAMÍREZ CASTAÑO AND OTHERS
COLOMBIA

Approved electronically by the Commission on March 17, 2020.

Cite as: IACHR, Report No. 72/20. Petition 780-10. Admissibility. Ariel Ramírez Castaño and others. Colombia. March 17, 2020.



I. INFORMATION ABOUT THE PETITION

Petitioner	Luis Francisco Peña Ramírez
Alleged victim	Ariel Ramírez Castaño and others ¹
Respondent state	Colombia
Rights invoked	Articles 4 (right to life), Article 8 (fair trial), and Article 10 (compensation) of the American Convention on Human Rights ²

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition	April 12, 2010
Additional information received during the initial study stage	January 17, 2013
Notification of the petition	May 5, 2016
State's first response:	June 22, 2017
Additional observations from the petitioner	September 13, 2017
Additional observations from the State	August 28, 2018

III. COMPETENCE

<i>Competence Ratione personae:</i>	Yes
<i>Competence Ratione loci:</i>	Yes
<i>Competence Ratione temporis</i>	Yes
<i>Competence 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 res judicata:	No
Rights declared admissible:	Articles 4 (right to life), art 5 (personal integrity), Article 8 (fair trial), and Article 25 (judicial protection) of the American Convention on Human Rights in relation to Article 1.1 and 2
Exhaustion of domestic remedies or applicability of an exception to the rule:	Exception provided in Article 46.2.b of the Convention is applicable
Timeliness of the petition:	Yes, under the terms of section VI

V. SUMMARY OF ALLEGED FACTS

1. The petitioner alleges that on February 17, 2005, Ariel Ramírez Castaño, Edinson Varela Polania, Danny Alexander Espinal Gómez, Duait Yonnier Viera Aullón and Diego Fernando Gómez López (hereinafter, "the alleged victims") were extrajudicially executed by members of the battalion of Artillery No. 8 San Mateo of the National Army in the territorial subdivision "Aurora Baja" in the municipality of Balboa, department of Risaralda. The petitioner maintains that the military patrol, stationed at the top of a farm, opened fire on two vehicles that were entering the site causing the death of the five alleged victims.

2. The petitioner alleges that on February 17, 2005, members of the army using excessive force, shot at the alleged victims while they were in cars without being given the opportunity to surrender or be intercepted to be placed under the competent authorities, even if it would have been possible to do so by way of a trip from the city of Cali to the area of Aurora Baja.

¹ The petition individualizes other victims listed in the Annex.

² Hereinafter the "Convention" or the "American Convention"

³ The observations submitted by each party were duly transmitted to the opposing party.

3. The petitioner contends that the deaths of the alleged victims occurred within the framework of the occurrence of the so-called "false positives", since it is a "massacre against civilians" who were not guerrilla members but were presented as such by the authorities. He states that the facts correspond to the common pattern according to which civilians were taken under deception to rural sites to be executed by military forces and subsequently presented as members of the guerillas who died in combat.

4. Considering the facts of the present case, a criminal investigation was initiated by the Prosecutor 28 delegated before the Mixed Jurisdiction Judge of the Circuit of the Virginia that, on February 21, 2005, forwarded the case for the death of the alleged victims to the Military Criminal Justice. The 56th Military Criminal Court opened a preliminary investigation against the members of the Special Squad of the Artillery Battalion of San Mateo and, on February 17, 2008, decided not to open a formal investigation, considering that the military personnel involved acted in strict compliance with their legal duty and in legitimate defense. The petitioner contends that the investigations carried out did not permit arriving to the truth and that there were mistakes in the evidentiary assessment reflected in the decisions issued by the criminal and administrative jurisdictions, which concluded that the events occurred in the context of a confrontation in which the military acted within the exercise of the right to self-defense.

5. On the other hand, the families of the alleged victims filed a direct reparation action against the State - Ministry of Defense - National Army before the Third Administrative Court of the Pereira Circuit, which, by means of a judgment of April 10, 2008 denied the claims of the plaintiffs. Faced with this decision, they filed an appeal before the Contentious Administrative Court of Risaralda which, on October 22, 2009, confirmed the previous decision considering that the requirements to declare the State's responsibility could not be proved.

6. The petitioner argues that there are elements of evidence contained in the ballistics report of the technical body of the Attorney General's Office that show that the alleged victims did not fire from inside their vehicles. Specifically, the report argues that the vehicles were hit by more than forty shots, to establish that the alleged victims fired from inside the vehicle. In addition, the report highlights that the military incurred multiple contradictions in their statements about the combat and said discrepancies were not adequately assessed by the Administrative Tribunal. Finally, the petitioner invokes that the relatives of the alleged victims were forced to take refuge in other countries for fear of reprisals.

7. For its part, the State maintains that the deaths of the alleged victims do not constitute violations of human rights because they occurred while in combat with the alleged victims and framed in a legitimate military operation to combat terrorism against subversive groups. Regarding the facts, it refers to the documentary, expert and testimonial evidence on which the judgments of the military and administrative jurisdictions are based. It indicates that on February 16, 2005, the mobilization of the Special Squad was ordered through the operation "Grandioso II" to inspect the rural sector of Baja Aurora "in search of insurgent groups or common crime that was endangering the life and property of the inhabitants of the area". It notes that on February 17, 2005, the victims opened fire from a wooded area against the military stationed there since the day before, who responded to the attack in self-defense. The State indicates that the deceased were holding weapons of war and mobilized in vehicles, in one of which armbands of the illegal armed group "ELN" were found. It adds that the truck in which the alleged victims were transported was stolen at gunpoint in the city of Cali on the same date that the events occurred and that some of the alleged victims carried false identity documents and had a criminal record.

8. The State maintains that the Administrative and Military Criminal jurisdiction were the appropriate forum for the investigation of what happened and considers that the remedies that were exhausted before said jurisdictions were adequate and effective to investigate the alleged violations of alleged human rights. It declares that the judgments are based on solid evidence, contested in accordance with the current procedure and without any irregularity that could be incompatible with the Convention. Therefore, the State alleges that the petition is inadmissible, since, in reviewing domestic procedures, the Commission would act as the fourth instance.

VI. EXHAUSTION OF LOCAL REMEDIES AND TIMELINESS OF THE PETITION

9. The petitioner states that it has exhausted domestic remedies through a direct action of reparation. For its part, the State has not disputed the exhaustion of domestic remedies. It considers that

the military jurisdiction constitutes the ideal forum to investigate and punish the alleged human rights violations in this case, so that the direct action of reparation is an adequate and effective remedy to establish the responsibility of the State for alleged human rights violations and achieve compensation for material damages that may have been caused as a result of these.

10. In relation to the administrative contentious process, the Commission reiterates that, for the purposes of determining the admissibility of a claim of the nature presented in the instant case, the direct reparation action does not constitute the appropriate route nor is its exhaustion necessary, given that it is not adequate to provide comprehensive reparation and justice to the relatives of the alleged victims.⁴

11. On the other hand, the Commission recalls that military jurisdiction does not constitute an appropriate forum and therefore does not provide an adequate recourse to investigate, prosecute and punish the alleged human rights violations enshrined in the Convention, allegedly committed by members of state military forces. Regarding the occurrence of cases of “false positives,” the Commission has highlighted the incompatibility with the American Convention of the application of the military criminal jurisdiction to human rights violations, indicating how problematic it is for the guarantee of independence and impartiality that the armed forces themselves be responsible for judging their peers for the execution of civilians.⁵ In this regard, the Commission considers that, in the present case, having carried out the process for the alleged extrajudicial executions before the military criminal justice, the exception established in Article 46.2.b of the Convention is applicable.⁶ Regarding the deadline for submission, the Commission considers that the petition was presented within a reasonable period of time under the terms of Article 32.2 of its Regulations.

VII. COLORABLE CLAIM

12. After examining the factual and legal elements presented by the parties and the nature of the matter brought to their attention, the Commission considers that the alleged extrajudicial executions of the alleged victims by the agents of the National Army, as well as the transfer of jurisdiction from ordinary criminal justice to the military justice and the alleged breach of the duty to investigate, prosecute and punish those responsible in order to guarantee the right to truth,⁷ justice and reparation to the relatives of the alleged victims is not manifestly unfounded and requires a substantive study on the merits because if the alleged facts are corroborated as true, could characterize violations of Articles 4 (life), 5 (personal integrity), 8 (fair trial) and 25 (judicial protection) of the Convention in relation to Articles 1.1 and 2 to the detriment of Mr. Ariel Ramírez Castaño, Edinson Varela P olania, Danny Alexander Espinal Gómez, Duaith Yonnier Viera Aullón and Diego Fernando Gómez López and their relatives.

13. Likewise, the Commission concludes that the claims presented by the petitioner regarding the alleged violation of the right to compensation for judicial error enshrined in Article 10 of the American Convention are inadmissible, because the said norm does not apply in cases such as those raised by the petitioner.

14. Regarding the State's allegations over the fourth instance formula, the Commission reiterates that within the framework of its mandate it is competent to declare a petition admissible and to rule on the merits when it refers to internal processes that could be violating rights guaranteed by the Convention.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 4, 5, 8, and 25 of the American Convention, in accordance with Articles 1.1 and 2 of the same instrument;

⁴ IACHR, Report N. 40/18, Petition 607-07. Admissibility. Nelson Enrique Giraldo Ramírez and family. Colombia. May 4, 2018, par. 15.

⁵ IACHR, Report N. 41/15, Case 12.335; 12.336; 12.757, merits. Gustavo Giraldo Villamizar Durán and others. Colombia. July 28, 2015, par. 215.

⁶ IACHR, Report N. 78/18, Petition 1025-07. Admissibility. Gregorio Cunto Guillén and others. Peru. June 28, 2018, par. 15.

⁷ I/A Court H.R., Case of Villamizar Durán et al. v. Colombia. Preliminary Objection, Merits, Reparations and Costs. November 20, 2018, par. 190; IACHR, Report N. 41/15, Case 12.335; 12.336; 12.757, merits. Gustavo Giraldo Villamizar Durán and others. Colombia. July 28, 2015, par. 310.

2. To find the instant petition inadmissible in relation to Article 10 of the American Convention.

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 17th day of the month of March, 2020. (Signed): Joel Hernández, President; Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Julissa Mantilla Falcón, and Edgar Stuardo Ralón Orellana, Commissioners.

Annex
List of of alleged victims and relatives

A. Diseased alleged victims

1. Ariel Ramírez Castaño
2. Edinson Varela Polania
3. Danny Alexander Espinal Gómez
4. Duaith Yonnier Viera Aullón
5. Diego Fernando Gómez López

B. Relatives of Ariel Ramírez Castaño

1. Arturo De Jesus Ramirez Loaiza
2. Maria Obeira Castaño De Ramirez
3. Carlos Arturo Ramirez Castaño
4. Luis Fernando Ramirez Castaño
5. Liliana Agudelo Rivera
6. Juan Carlos Ramirez Agudelo

C. Relatives of Edinson Varela Polania

1. Ulpiano Cornelio Varela Marmolejo
2. Maria Stella Polania De Varela
3. Margie Stella Varela Polania
4. Ana Maritza Varela Polania
5. Rafaela Del Carmen Varela Polania
6. Edinson Ferney Varela Ortiz
7. Rocio Mejia Victoria
8. Johel Steven Varela Mejia
9. Juan Felipe Mejia Victoria
10. Angie Vanessa Mejia Victoria

D. Relatives of Danny Alexander Espinal Gómez

1. Juver Antonio Espinal
2. Luz Mary Gomez De Espinal
3. Leslie Alejandra Espinal Gomez
4. Dorian Yineth Martinez Cano
5. Carol Dayana Espinal Martinez

E. Relatives of Duaith Yonnier Viera Aullón

1. Rosa Alba Aullon
2. Braen Giovanni Viera Aullon
3. Stiven Escobar Aullon
4. Paola Andrea Tovar
Dilan David Viera Tovar

F. Relatives of Diego Fernando Gómez López

1. Reynaldo Gomez Agudelo
2. Maria Teresa Vinasco Toro
3. Rosa Marcela Gomez Vinasco
4. Maribelly Gomez Vinasco
5. Dora Libia Gomez Lopez
6. Jazarmina Tellez Narvaez
7. Diego Fernando Tellez Narvaez