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REPORT No. 95/20
PETITION 100-09
REPORT ON ADMISSIBILITY

ERASMO ORDÓÑEZ RAMÍREZ AND OTHERS
GUATEMALA

Approved electronically by the Commission on March 16, 2020.

Cite as: IACHR, Report No. 95/20, Petition 100-09. Admissibility. Erasmo Ordóñez Ramírez and others. Guatemala. March 16, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Toribio Ordóñez G
Alleged victim:	Erasmus Ordóñez Ramírez and others ¹
Respondent State:	Guatemala ²
Rights invoked:	No articles are specified

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition:	January 29, 2009
Notification of the petition to the State:	April 15, 2014
State's first response:	July 15, 2014
Additional observations from the petitioner:	January 29 and 30, February 18, March 18, April 27, and July 15, 2009; August 10, and October 6, 2010; April 24 and November 6, 2014; October 14, 2016; December 28, 2017; October 15 and December 10, 2018
Additional observations from the State:	July 29, 2014

III. COMPETENCE

Competence <i>Ratione personae</i> :	Yes
Competence <i>Ratione loci</i> :	Yes
Competence <i>Ratione temporis</i> :	Yes
Competence <i>Ratione materiae</i> :	Yes, American Convention on Human Rights ⁴ (deposit of instrument made on May 25, 1978)

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) and 25 (judicial protection) of the American Convention, in conjunction with its Article 1.1 (obligation to respect rights)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Exception in Article 46.2.c applicable
Timeliness of the petition:	Yes, in the terms of Section VI

V. FACTS ALLEGED

1. The petitioner alleges the responsibility of the State for breaches of its obligations of prevention and protection, leading to the murder of Erasmo Ordóñez Ramírez, the petitioner's father, uncle, brother and the principal witness in the case of his father, at the time when each one had previously been threatened. He alleges that the criminal investigation was tainted by the corruption and complicity of state officials, leading to the lack of clarification and partial impunity, where the perpetrators have not been fully identified or prosecuted. The petitioner indicates that in three of the four murders reported, there was no investigation and none of those responsible has been sanctioned.

¹ Obdulio Franco Paredes, Liverato de Jesús Granados Acevedo and Erasmo Ordoñez Granados, all deceased; Lubia Aldina Granados, spouse of the alleged victim Ordóñez Ramírez; Toribio Ordóñez G. and Hugo Leonel Ordoñez Granados, sons of the alleged victim Ordóñez Ramírez; unidentified family members of the alleged victims.

² In accordance with the provisions of Article 17.2.a of the Commission's Rules of Procedure, Commissioner Edgar Stuardo Ralón Orellana, of Guatemalan nationality, did not participate in either the discussions or the decision in the present case.

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

⁴ Hereinafter "the American Convention" or "the Convention".

2. The petitioner indicates that on July 24, 2005, Mr. Erasmo Ordóñez Ramírez died as a result of injuries caused by a firearm projectile. The petitioner identifies three individual perpetrators related to drug trafficking⁵ – William Ulizer, Aldryn Asael and Kelmer Neftali, all surnamed Morales Acevedo – and alleges that the murder had been orchestrated by Florencio Cordón Arias, as intellectual author. He states that Mr. Ordóñez Ramírez had received threats before the events occurred, but he does not specify whether they were reported. He mentions that other members of his family also received threats.

3. On November 29, 2005, Mr. William Ulizer Morales Acevedo's house was searched, with the purpose of locating and confiscating firearms, as well as arresting Mr. William Ulizer, Kelmer Neftali and Aldryn Asael Morales Acevedo, who were subject to arrest warrants. As a result of the search, a firearm belonging to the alleged victim was found, and Mr. William Ulizer Morales Acevedo was detained. With respect to the other persons of interest, they had left the country. On March 2, 2006, William Ulizer Morales Acevedo was indicted; however, a judgment issued on October 9, 2006, by the Court of First Instance ordered his acquittal due to a lack of evidence. In light of his release, the prosecutor initiated an *amparo* appeal with the Regional Mixed Chamber of Zacapa, which was declared “well founded”. Subsequently, his defense filed an appeal with the Constitutional Court. The petitioner did not provide further information on the outcome of these proceedings. With respect to the other accused, Messrs. Kelmer Neftali Morales Acevedo and Aldryn Asael Morales Acevedo, the petitioner indicates that they were detained on July 13, 2007, after an extradition with the involvement of INTERPOL, due to the fact that they had fled to the United States of America. Both appeared before the Judge of the Zacapa First Criminal Sentencing, Drug Trafficking and Environmental Crimes Court and an order for their imprisonment and trial was issued by the Court of First Instance. On October 18, 2007, the Public Ministry filed charges for crimes of homicide and aggravated robbery. The proceedings were suspended after an appeal filed by their defense attorney with the Constitutional Court. As for Mr. Kelmer Neftali Morales Acevedo, the petitioner indicates that on August 2, 2011, he was sentenced to 15 years imprisonment for the murder of the alleged victim. The National Civil Police Commissioner's report mentions that he was released from prison in March 2015, after serving 8 years of a 15-year sentence, without giving further explanations.

4. The petitioner alleges that both the criminal investigation and the criminal proceedings in the courts were affected by irregularities and tainted by the corruption and complicity of State officials. He attributes such failures to the supposed influence that the alleged intellectual author of the crime, Florencio Cordón Arias, had on the officials. He argues that the State deliberately omitted steps to exhaust the different lines of investigation, including a failure to investigate Mr. Cordón Arias, and that evidence was ignored. He maintains that the Public Ministry abused its power by denying any information to his family, including that the authorities failed to provide him with a copy of official witness statements.

5. Additionally, the petitioner alleges failures on the part of the State regarding its duty of protection, resulting in the murder of an eyewitness in the case of his father, Mr. Obdulio Franco Paredes, and of his uncle, Mr. Liverato of Jesús Granados Acevedo, and of one of his brothers, Mr. Erasmo Ordoñez Granados. He alleges that during the investigation into the murder of the first alleged victim, several witnesses were threatened⁶ and one, Mr. Franco Paredes, was murdered. In this regard, he argues that Paredes, after testifying, was threatened by members of a Sicaria cell, a situation that he reported to the judicial authorities without however receiving due protection from the State. He was murdered on June 25, 2006 – and as a result the petitioner alleges that the State did not fulfill its duty of prevention and protection. The petitioner also complains that, on May 26, 2007, Mr. Granados Acevedo – uncle of the petitioner, a retiree of the army, of the Treasury Guard and of the judicial branch, as well as candidate for mayor for the municipality of Zacapa and member of the *Encuentro por Guatemala* political party – was murdered. The petitioner points to William Ulizer Morales Acevedo as the perpetrator. He indicates that Mr. Granados Acevedo had received threats prior to his murder, which he did not report for fear of reprisals. Finally, he denounces the murder of his brother, Mr. Ordoñez Granados, on October 25, 2016, while serving as a police officer. Several reports of the National Civil Police Commissioner make it clear that at least since May 2015, he

⁵ The petitioner alleges that they belong to the cell of *sicarios*.

⁶ The case file includes reports of the Public Ministry referring to the threats against witnesses in the case of the alleged victim Ordóñez Ramírez.

was subject to protective measures due to threats from Mr. Kelmer Neftali Morales Acevedo, identified as the individual responsible for the murder of the alleged victim. The petitioner denounces that this murder occurred despite the fact that his brother was under protective measures from the State.

6. The petitioner alleges that although the three murders were reported to the authorities, the circumstances have not yet been clarified and those responsible haven't been sanctioned. He alleges that he reported the murder of his brother with the Office for Capital Offenses of the Public Prosecutor. However, after a year of hearing the case, it was still not resolved. Likewise, the case file shows that on December 2, 2008, the petitioner sent a letter to the Attorney General of the Human Rights Commission of Guatemala, denouncing the murders of the alleged victim, of the witness Franco Paredes and of his uncle Granados Acevedo, as well as irregularities in judicial investigations. On May 29, 2016, the petitioner also denounced the murder of Mr. Ordóñez Ramírez, and of Messrs. Franco Paredes and Granados Acevedo before the International Commission Against Impunity in Guatemala, as well as for threats received by his other brother Hugo Leonel Ordóñez Granados. Additionally, in a communication dated June 12, 2018, to the Attorney General's Office and the Public Prosecutor's Office, the widow of Erasmo Ordóñez Ramírez denounced all the assassinations and requested the appointment of a special prosecutor. The petitioner alleges that up until now, the circumstances surrounding the murders of the alleged victims have not yet been clarified, and that therefore the perpetrators remain partly unpunished.

7. For its part, the State alleges that the national judicial and constitutional system heard and resolved the issues in accordance with the Guatemalan legal system, according to the principle of legality and due process. The necessary procedural steps were carried out, including the autopsy performed on the alleged victim Ordóñez Ramírez, the collection of witness statements, and the search of Mr. William Ulises Morales Acevedo's house where two firearms were found. Likewise, it indicates that on October 26, 2006, the agent of the Public Ministry Unit on Appeals filed a special appeal on formal grounds against the acquittal of William Ulizer Morales Acevedo, dated October 9, 2006. On January 31, 2007, the Mixed Regional Chamber of the Court of Appeals decided to dismiss the appeal and ordered the immediate release of the accused William Ulises Morales Acevedo. The State points out that on August 2, 2011, the Criminal Sentencing, Drug Trafficking and Environmental Crimes Court sentenced Kelmer Neftali Morales Acevedo to 15 years in prison for the homicide of the alleged victim and acquitted Aldryn Asael Morales Acevedo of the same charge. Therefore there is an actual conviction in this case. The State did not submit observations regarding the situation of the other alleged victims, in relation to their investigation or criminal proceedings.

8. Additionally, the State argues that the IACHR lacks the authority to review the judgments issued by national courts in full compliance with the guarantees, principles and legal norms of each State party. It alleges that the petitioner is asking the IACHR to act as a fourth instance tribunal. Finally, it alleges that the petition is manifestly unfounded and inadmissible and must be declared so in accordance with Article 34.b of the Rules of Procedure, because the petitioner allegations are completely groundless.

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

9. The IACHR recalls that whenever an alleged crime prosecutable *ex officio* is committed, the State has the obligation to promote the criminal proceedings⁷ and that, in these cases, this is the adequate avenue to clarify the facts, prosecute those responsible and establish the appropriate criminal punishment. With respect to the alleged victim Erasmo Ordóñez Ramírez, the Commission notes that on August 2, 2011, Mr. Kelmer Morales Acevedo was sentenced to prison. Likewise, with respect to Messrs. William Ulises Morales Acevedo and Aldryn Asael Morales Acevedo, the Commission observes that they were acquitted due to a lack of evidence, on January 31, 2007 and August 2, 2011, respectively. However, the petitioner alleges deliberate omissions and irregularities in the different avenues of investigation, such as the corruption and complicity of state agents, with the result that some of the perpetrators, including the intellectual authors,

⁷ See, IACHR, Report No. 105/17. Petition 798-07. Admissibility. David Valderrama Opazo and others. Chile. September 7, 2017.

remain unpunished. Therefore, the Commission considers that the exception set out in Article 46.2.c of the American Convention applies.

10. With respect to the alleged victims Obdulio Franco Paredes and Erasmo Ordoñez Granados, the petitioner alleges that the judicial authorities were made aware of the threats against them. Likewise, regarding alleged victim Liverato of Jesús Granados Acevedo, the Commission notes that their murders were brought to the attention of the State, through the Attorney General's Office and the Public Ministry, the General Procurator of the Human Rights Commission of Guatemala and the International Commission Against Impunity in Guatemala. The petitioner alleges that due to omissions and irregularities in the investigation, the circumstances surrounding the death of the three victims are still unclear. Therefore, given the characteristics of the petition and the time elapsed since the events in the complaint, the Commission considers that the exception provided for in Article 46.2.c of the Convention is applicable.

11. In addition, the Commission considers that the petition was filed within a reasonable period of time and that the timeliness requirement regarding for submission must be considered satisfied.

VII. ANALYSIS OF COLORABLE CLAIM

12. In view of the elements of fact and law presented by the parties and the nature of the matter brought to its attention, and of the context of these claims, the IACHR considers that the allegations regarding the scope of State responsibility vis-a-vis the duty of prevention and protection in relation to the alleged events surrounding the extrajudicial killing of the alleged victims, such as irregularities and the unjustified delay in the investigation and criminal proceedings, could characterize possible violations of the rights protected in Articles 4 (life), 5 (humane treatment), 8 (fair trial) and 25 (judicial protection) of the American Convention, in relation with its Article 1.1 (obligation to respect rights).

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 4, 5, 8 and 25 of the American Convention, in relation to its Article 1.1;

2. To notify the parties of this decision; to continue 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 March, 2020. (Signed): Joel Hernández, President; Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President; Esmeralda E. Arosemena Bernal de Troitiño, and Julissa Mantilla Falcón, Commissioners.