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REPORT No. 229/24
PETITION 1808-14
REPORT ON INADMISSIBILITY

CARLOS GUTIERREZ MEJIA ET AL.
COLOMBIA

Approved electronically by the Commission on December 5, 2024.

Cite as: IACHR, Report No. 229/24, Petition 1808-14. Inadmissibility. Carlos Gutierrez Mejia et al. Colombia. December 5, 2024.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Carlos Gutierrez Mejia and Omaira Tascon Gallego
Alleged victims:	Carlos Gutierrez Mejia et al. ¹
Respondent State:	Colombia ²
Rights invoked:	Articles 8 (judicial guarantees) and 25 (judicial protection) of the American Convention on Human Rights ³

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition:	October 10, 2014
Additional information received during the initial review stage	August 30, October 4, and December 23, 2015; April 22, 2016; February 23, March 7, and July 10, 2017
Notification of the petition to the State:	June 7, 2019
State's first response:	October 21, 2019
Additional observations by the petitioner:	February 29, June 22, and July 3, 2020; and October 28, 2022
Additional observations on the part of the State:	May 20, 2021

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 (deposit of instrument of ratification done 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	Does not apply
Exhaustion of domestic remedies or applicability of an exception to the rule:	No, in the terms of Section VI
Timeliness of the petition:	No, in the terms of Section VI

¹ The petition also lists as alleged victims Ms. Maria Claudia Montaña Gaitan and two girls, one the daughter of Mr. Gutierrez and the other the daughter of Ms. Montaña. The IACHR is keeping the names of the petitioners' daughters under seal as they were minors at the time of the events.

² In keeping with Article 17(2)(a) of the Commission's Rules of Procedure, Commissioner Carlos Bernal Pulido, of Colombian nationality, did not participate in the decision in the instant matter.

³ Hereinafter "the American Convention" or "the Convention."

⁴ Each party's observations were duly considered and forwarded to the other party. In communications of October 12, 2023 and August 26, 2024, the petitioners reiterated their interest in the petition being considered.

V. THE PARTIES' POSITIONS

Petitioners

1. Mr. Carlos Andres Gutierrez Mejia and Ms. Maria Claudia Montaña Gaitan (individually, "Mr. Gutiérrez" and "Ms. Montaña," and jointly "the petitioners") allege the international responsibility of the State for the deficient investigation into the threats directed against them as a result of their work as public servants with the Office of the Attorney General of the Nation, requiring them to move from their home and causing psychological harm to their respective daughters, who were minors at the time of the facts.

2. According to the petitioners, in 2011 both were assigned to the Investigation Corps (*Cuerpo de Investigación*) of the Office of the Attorney General, in particular carrying out investigative tasks in Comuna 13 of the city of Medellín. They state that during their activities there both suffered threats to their lives and integrity. Consequently, and as a measure of protection granted by the Office of the Attorney General, they were transferred to the city of Santa Marta, and subsequently to the city of Bogotá.

3. The Office of the Attorney General then initiated a criminal investigation to clarify the facts; nonetheless, the petitioners claim that as of the date the petition was filed (three years later) absolutely no progress had been made. They also claim that as a result of the threats they suffered they were forced to displace from their home, causing psychological harm to each of their daughters, based on the possible loss of life of their parents. In this regard, they state that: "...*due to so much negligence on the part of the Office of the Attorney General of the Nation, on the part of some officials and public servants of the entity, the undersigned investigator with the Technical Investigations Corps of the Office of the Attorney General had to pay out of pocket, to cover the cost of a neuropsychologist to overcome the crisis that the girl was facing.*"

4. In a communication after the initial petition, the petitioners point to the subject matter of the petition being as follows:

... "(i) the lack of guarantees by the Colombian State when it comes to offering the State's investigators to act with due diligence to prevent, investigate, and punish the persons responsible for the displacement of several families in the Comuna 13 sector of the city of Medellín, as I was threatened and displaced to the city of Bogotá with my whole family. (ii) The reasonable time that the State should take in the investigations, which as of today have been ongoing for eight years without, to date, having any substantive response in this investigation, violating Articles 8 and 25 of the Convention. And (iii) the lack of access to psychosocial care services for two minors, who suffered a negative psychological impact due to the sudden loss of the father, or the possibility that their father might suffer harm."

The Colombian State

5. Colombia supplements the information produced by the petitioners, particularly regarding the criminal investigations into the threats they are said to have suffered. It adds in this regard that on September 26, 2018, the Office of the Attorney General archived that investigation into the crime of threats based on the following:

Mindful of what was stated in the denunciation, one discards any possibility of determining the perpetrator of that deed, thus it is impossible to individually identify the perpetrator(s) of the act denounced by Mr. CARLOS ANDRES GUTIERREZ MEJIA, now comes the application of Article 79 of the Code of Criminal Procedure, a provision that orders the provisional archiving of the matter; for if any new evidence comes up the inquiry will be resumed so long as the criminal action has not extinguished.

In this respect, it notes that the investigation could reopen if supervening evidence is introduced in the proceeding, or by filing an opposition to the archiving in court.

6. It adds that Mr. Gutiérrez asked the Office of the Attorney General to form a Legal Technical Committee to follow up on the criminal proceeding initiated into the threats suffered by him and Ms. Montaña. On February 21, 2019, the Departmental Office of Medellín, the 3rd Prosecutor Delegate to the Court of Antioquia, and the lead of the Office of the 188th Departmental Prosecutor of the Unit on Liberty and Other Guarantees reviewed the order to archive and concluded that: “... *the evidence collected by the prosecutor finds that the archiving of this inquiry is in order, for it is clear that no direct threats were ever made to the victim, it also indicates that one cannot make out the crime of forced displacement, for what happened was a transfer of some public servants as a measure of protection, in addition that transfer was agreed upon with them.*”

7. Accordingly, the State asks that the petition be found inadmissible based on three challenges: (a) if the petition were admitted the Commission would be sitting as an international court of fourth instance; (b) failure of the facts alleged to make out a colorable claim; and (c) failure to exhaust domestic remedies.

8. With respect to (a), Colombia argues that the Office of the Attorney General in charge of the investigation took the following investigative steps: (i) it initiated all procedures necessary for clarifying the threats against the petitioners; (ii) it exhausted all possible means of evidence for identifying the persons responsible, including compiling statements by the petitioner and the prosecutor in the case on which they were working when they received the alleged threats; (iii) while it archived the investigation since it failed to identify the persons responsible, this decision was duly motivated as provided for in Article 79 of Law 906 of 2004 (Code of Criminal Procedure)⁵; and (iv) it did not find sufficient elements to reopen the investigation, also considering that the crime of forced displacement cannot be made out in the instant case since the petitioners, with their consent, were transferred to another city to protect them from the alleged threats to their lives and integrity. Therefore, it considers that the petitioners are turning to the IACHR with the aim of having it review the decisions made by the prosecutorial office in charge of the investigation, which were issued within the framework of its authority, based on a reasoned analysis of the evidence, and abiding by the domestic laws and regulations.

9. As for its argument (b), it asserts that the petitioners did not suffer forced displacement but were transferred from their home residence to another city as a means of protection granted by the Office of the Attorney General, with their consent. Accordingly, it considers that these facts do not, if true, tend to establish a violation of their human rights. Accordingly, it asks that the petition be found inadmissible pursuant to Article 47(b) of the American Convention.

10. Finally, with respect to their third challenge (c), regarding the alleged lack of psychological care for their two girls, the daughters of the alleged victims, the State adduces failure to exhaust domestic remedies, establishing that in response to the lack of access to mental health services the petitioner could have pursued a *tutela* action, which is an adequate and effective remedy for such alleged violations of fundamental rights, such as protecting the right to health. Therefore, it argues that the petition does not meet the requirement at Article 46(1)(a) of the American Convention.

Petitioners' reply

11. The petitioners, in response to the State's arguments, indicate that they had to use their own resources to obtain medical-psychological care for the minors, diminishing their economic status and their quality of life. As regards the failure to exhaust domestic remedies, they indicate that they exercised their right to seek public information (*derecho de petición*) with the aim of obtaining access to mental health services and securing the resumption of the investigations into the threats they suffered. On this point, the Commission notes that the petitioners have not specified what the *derecho de petición* entailed that was related to the lack of

⁵ ARTICLE 79. ARCHIVING OF PROCEEDINGS. When the Office of the Attorney General learns of a fact with respect to which it finds that there is no motive or factual circumstance that allows one to characterize it as a crime, or that indicates its possible existence as such, it shall order that the action be archived. Nonetheless, if new evidence arises, the inquiry shall reopen so long as the criminal action has not extinguished.

medical-psychological care nor have they produced any documentation establishing any response by the competent state authorities.

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

12. For analyzing the exhaustion of domestic remedies, the IACHR recalls that according to its consolidated and reiterated practice, for the purpose of identifying the suitable remedies that should have been exhausted by a petitioner before turning to the inter-American system, the first methodological step is to distinguish the various claims, so as to then examine them one by one.⁶ In this case, the petitioners have put three claims to the Commission: (i) the lack of a diligent investigation into the threats to the life and integrity of the petitioners while they were doing their jobs as investigators with the Office of the Attorney General of the Nation; (ii) the lack of access to mental health services for the minors; and (iii) the consequent forced displacement suffered by them and their immediate family.

13. Regarding point (i), the IACHR notes that the Office of the Attorney General initiated a criminal investigation to clarify the facts. Nonetheless, on September 26, 2018, it archived it, due to the impossibility of individually identifying the persons purportedly responsible. Then, on February 21, 2019, at the request of Mr. Gutiérrez, a technical committee was formed made up of the Departmental Office of Medellín, 3rd Prosecutor Delegate before the Court of Antioquia, and the principal of the 188th Departmental Prosecutor's Office of the Unit of Liberty and other Guarantees, in which they concluded that Mr. González did not suffer threats directly; and that the crime of forced displacement had not taken place, since the petitioners consented to being transferred to another city as a measure of security granted by the Office of the Attorney General. The State argues that the prosecutorial office in charge of the investigation took all possible actions to clarify the threats suffered by the petitioners. Nonetheless, it was not possible to identify the persons responsible, plus Mr. Gutiérrez was not the direct victim of those threats, according to his own statement.

14. On this argument, the Commission recalls “that in situations such as this one—which involves crimes against life and security—the domestic remedies that must be taken into account for the purposes of the petition’s admissibility are those related to the criminal investigation and punishment of the persons responsible.”⁷ And that, as a general rule, a criminal investigation should be carried out promptly to protect victims’ interests, to preserve the evidence, and even to safeguard the rights of every person who, in the context of the investigation, might be considered a suspect.⁸

15. In this regard, one observes that the threats occurred in 2011, that in the same year an investigation was initiated into these facts, and that it was archived on September 26, 2018. In response, Mr. Gutiérrez, in the use of his right to seek public information (*derecho de petición*), asked that a technical committee be formed made up of different entities of the Office of the Attorney General for the purpose of evaluating the case *de novo*; nonetheless, on February 21, 2019, the decision to archive the matter was maintained. On this point, the IACHR observes that the petitioners did not use any means to challenge or revoke the writ of prohibition, and with an explanation, proffered by the Office of the Attorney General, nor do they offer any facts or arguments that indicate that they were impeded from challenging this decision, or that any

⁶ By way of illustration, see the following admissibility reports of the IACHR: Report No. 117/19. Petition 833-11. Admissibility. Workers released from the Boa-Fé Caru Plantation. Brazil. June 7, 2019, paras. 11 and 12; Report No. 4/19. Petition 673-11. Admissibility. Fernando Alcântara de Figueiredo and Laci Marinho de Araújo. Brazil. January 3, 2019, paras. 19 ff.; Report No. 164/17. Admissibility. Santiago Adolfo Villegas Delgado. Venezuela. November 30, 2017, para. 12; Report No. 57/17. Petition 406-04. Admissibility. Washington David Espino Muñoz. Dominican Republic. June 5, 2017, paras. 26 and 27; Report No. 168/17. Admissibility. Miguel Ángel Morales Morales. Peru. December 1, 2017, paras. 15 and 16; Report No. 122/17. Petition 156-08. Admissibility. Williams Mariano Paría Tapia. Peru. September 7, 2017, paras. 12 ff.; Report No. 167/17. Admissibility. Alberto Patishtán Gómez. Mexico. December 1, 2017, paras. 13 ff.; and Report No. 114/19. Petition 1403-09. Admissibility. Carlos Pizarro Leongómez, María José Pizarro Rodríguez and family members. Colombia. June 7, 2019, paras. 20 ff.

⁷ IACHR, Report No. 72/18, Petition 1131-08. Admissibility. Moisés de Jesús Hernández Pinto and family. Guatemala. June 20, 2018, para. 10.

⁸ IACHR, Report No. 44/18, Petition 840-07. Admissibility. Pijiguay Massacre. Colombia. May 4, 2018, para. 11.

other exception to the exhaustion of this remedy applies. Accordingly, the IACHR considers that this part of the petition does not meet the requirements established in Articles 46(1)(a) and (b) of the American Convention.⁹

16. With respect to point (ii), the State argues that there is no record of complaints regarding forced displacement, and that indeed such criminal conduct never existed, as the petitioners were transferred to another city with their consent, as a security measure adopted by the Office of the Attorney General.

17. The IACHR considers, as it has on other occasions, that the suitable remedy to be exhausted in relation to the crime of forced displacement is the lodging of a criminal complaint.¹⁰ Nonetheless, the petitioners have not produced any evidence that would make it possible to establish that in effect they turned to the criminal justice system, nor exhausting the corresponding procedures regarding their allegations of displacement. Mindful of these considerations, the Inter-American Commission finds that this part of the petition does not comply with the requirement established at Article 46(1)(a) of the American Convention. In light of the foregoing, it is not necessary to analyze the issue of colorable claim in relation to the facts alleged as possible violations of the alleged victims' judicial guarantees.¹¹

18. Finally, with respect to argument (iii), based on a detailed analysis of the record, the Commission emphasizes that the petitioners did not pursue any judicial remedy whatsoever, regular or extraordinary, with the aim of making a claim domestically for the violations of the right to health to the detriment of the two minors. Accordingly, the Commission does not have any basis for considering that any judicial remedy was exhausted for the purpose of securing access to mental health services. And it is thus not possible to show compliance with the requirement set forth at Article 46(1)(a) of the American Convention.

19. In conclusion, the Inter-American Commission considers that in this matter the petitioners have not complied with the prior exhaustion requirement established at Article (1)(a) of the American Convention.

VII. DECISION

1. To find the instant petition inadmissible.
2. To notify the parties of this decision and to publish 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 5th day of the month of December, 2024. (Signed:) Roberta Clarke, President; José Luis Caballero Ochoa, Second Vice President; Arif Bulkan, and Gloria Monique de Mees, Commissioners.

⁹ Similarly: IACHR, [Report No. 153/22. Petition 1466-08. Inadmissibility. Ana Delia Campo Peláez and family members. Colombia. June 30, 2022](#), para. 11.

¹⁰ IACHR, Report No. 11/17. Admissibility. María Hilaria González Sierra et al. Colombia. January 27, 2017, para. 4; IACHR, Report No. 89/18. Petition 1110-07. Admissibility. Juan Simón Cantillo Raigoza, Keyla Sandrith Cantillo Vides and Family. Colombia. July 27, 2018, para. 10; IACHR, Report No. 44/18. Admissibility. Pijiguay Massacre. Colombia. May 4, 2018, para. 11.

¹¹ Similarly: IACHR, Report No. 8/22. Petition 1889-10. Admissibility. Jairo Rocha González and family. Colombia. Jairo Rocha González and family. February 9, 2022, para. 15.