

OEA/Ser.L/V/II
Doc. 179
18 October 2024
Original: Spanish

REPORT No. 170/24
PETITION 902-14
INADMISSIBILITY REPORT

FERNANDO RIVEROS PUENTES ET AL.
COLOMBIA

Adopted electronically by the Commission on October 18, 2024.

Cite as: IACHR, Report No. 170/24. Petition 902-14. Inadmissibility.
Fernando Rivero Puentes et al. Colombia. October 18, 2024.

I. INFORMATION ABOUT THE PETITION

Petitioning party:	José Alberto Leguizamo Velásquez
Alleged victims:	Fernando Riveros Puentes, Olga María Gutiérrez de Riveros, Cesar Fernando Riveros Gutiérrez, Diana Cristina Riveros Gutiérrez, Carlos Arturo Galarza Gutiérrez
Respondent State:	Colombia ¹
Rights invoked:	Articles 4 (life), 5 (personal integrity), 7 (personal liberty), 8 (judicial guarantees), 10 (right to compensation), 17 (protection of the family), 21 (right to private property), 22 (freedom of moving and residence), and 25 (judicial protection) of the American Convention on Human Rights, ² in conjunction with its Article 1.1 (obligation to respect rights)

II. PROCESSING BY THE IACHR³

Filing of the petition:	June 25, 2014
Additional information during the review stage:	June 19, 2018
Notification of the petition to the State:	December 22, 2020
State's first response:	June 17, 2021
Warning about possible archiving:	November 9, 2021
The petitioning party's response to a warning of possible archiving:	November 9, 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 the Convention (instrument 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
<i>Rights declared admissible</i>:	None
Exhaustion of domestic remedies or applicability of an exception to the rule:	No, under the terms of Section VI.
Timeliness of the petition:	No, under the terms of Section VI.

¹Pursuant to Article 17(2)(a) of the Commission's Rules of Procedure, Commissioner Carlos Bernal Pulido, a Colombian national, did not participate in the discussion or decision in this matter.

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

³Each party's observations were duly considered and forwarded to the opposing party.

V. POSITIONS OF THE PARTIES

Petitioning party

1. The petitioning party alleges the lack of compensation for the forced displacement of five members of the Gutiérrez-Riveros family by members of the paramilitary group Fuerzas Armadas Revolucionarias de Colombia Ejército del Pueblo (Revolutionary Armed Forces of Colombia – People's Army) (FARC-EP).

2. In the initial petition, the petitioning party states that on October 1, 1996, five members of the Gutiérrez-Riveros family, residents of the municipality of Miraflores, department of Guaviare, were forcibly displaced in a state of total defenselessness by paramilitaries of the FARC-EP. The petitioning party claims that security should be provided by military and police authorities at the place where the events occurred.

3. In its June 2018 brief, the petitioning party describes Fernando Riveros Puentes' account of the paramilitary attack that caused his displacement. According to Riveros Puentes, armed paramilitaries broke into his village at night. He and his family heard gunshots and screams from their neighbors and stayed at home praying. Some of the paramilitaries passed by shouting at them to get out because they were going to set fire to the house. The shooting continued, there were many paramilitaries, there were even children with rifles shooting towards the police station, some of whom were killed. The family took cover behind hundreds of baskets in the yard, many of which were destroyed. The shooting stopped with the arrival of the Air Force and the National Army. When they went outside, they saw houses in ruins, the hospital destroyed, dead and wounded, and businesses burned. They helped bury the dead, but some bodies were left unburied. The attack seriously disrupted their way of life: they suffered hunger, lacked social security, and their children had to work, interrupting their studies.

4. With respect to internal proceedings, the petition provides scant information. It points out that "*these crimes were reported to the authorities in Colombia, and in ordinary proceedings of which the Attorney General's Office was informed.*" The petition mentions that the instant case was addressed in a proceeding under Law 975 of 2005,⁴ also known as the 'Justice and Peace Law', under case numbers 543327, 543317, 543336, 543342, and 543319, but it does not indicate the status of said proceedings, nor does it provide other information. Generically, it argues that the Justice and Peace Jurisdiction did not achieve the objectives of truth, justice and reparation it set out to achieve, since of the 35,200 perpetrators, only eleven had been sentenced by 2013, and of the six million victims, approximately 5% had received reparations.

The Colombian State

5. After presenting a summary of the facts narrated by the petitioning party, the State reports that Prosecutor's Office 73, attached to the Directorate of Support for Investigations against Criminal Organizations, is investigating the forced displacement of the alleged victims. Regarding this investigation, it notes that on December 16, 2013, in the framework of Law 975 of 2005, the Justice and Peace Law, the alleged victims brought to the attention of the authorities the forced displacement that occurred on October 1, 1996. On the same day, the aforementioned Prosecutor's Office 73 opened an investigation (records 543342, 543336, 543327, 543319, and 543317).

6. The State clarifies that Law 975 of 2005 establishes that there must be a confession and/or statement of facts by the demobilized persons for the documentation of the facts to proceed. The competence of the transitional justice system extends only to members of organized armed groups who apply to the National Government to take part in the special procedures provided for by said law. To date, no confession

⁴ Congress of Colombia, Law 975 of 2005 - Justice and Peace Law - "Whereby provisions are issued for the reincorporation of members of organized illegal armed groups that effectively contribute to the achievement of national peace, along with other provisions for humanitarian agreements."

has been obtained regarding the facts referred to in the petition. However, the criminal investigation is still ongoing.

7. In addition, the State reports that the alleged victims, so far, have not filed a direct reparation suit, nor have they gone before the State authorities to access the administrative compensation benefits contemplated in Law 1448 of 2011.

8. The State considers the petition inadmissible for failure to exhaust domestic remedies for four different reasons. First, because the facts are still under investigation by the aforementioned Prosecutor's Office 73, and therefore, the criminal prosecution procedure has not been fully exhausted. The State requests the Commission to disregard any of the exceptions to the exhaustion of domestic remedies, insofar as it has been demonstrated that there is a domestic legal framework that allows for the protection of the rights allegedly violated, such as the Justice and Peace Law. In addition, the alleged victims have not been prevented from accessing this remedy.

9. Secondly, the alleged victims did not file a direct reparation action to analyze the responsibility of the State and possibly obtain comprehensive reparation. The State points out that the initial petition mentioned that the victims of the forced displacement had not been compensated, which shows that the claims were intended to elicit compensation. It argues that the action for direct reparation is a suitable and effective remedy to obtain compensation for material and immaterial damages caused by the action or omission of state agents.

10. Third, Colombia argues that the alleged victims did not apply for administrative compensation under Law 1448 of 2011, which created the National System of Attention and Comprehensive Reparation to Victims and the Single Registry of Victims, administered by the Victims Unit.

11. And, fourthly, that at the domestic level, the action for protection (*acción de tutela*) is contemplated as a preferential and summary proceeding, available to those who consider that their fundamental rights are at risk or have been violated by authorities or individuals.

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

12. In order to assess the adequacy of the remedies available in the domestic legal system, the Commission usually establishes the specific claim that has been made, and then identifies the judicial remedies provided by the domestic legal system that were available and adequate to address that particular claim. This is precisely where the suitability and effectiveness of each specifically contemplated remedy lies, in that it provides a real opportunity for the alleged human rights violation to be remedied and resolved by the national authorities before recourse can be had to the Inter-American System for the Protection of Human Rights⁵.

13. Thus, the Commission observes that the main claim of the petitioning party is the lack of compensation provided by the State for the forced displacement of the alleged victims. In effect, it emphasizes in its initial petition that "*the State of Colombia has not fairly compensated the victims for the non-material and financial damages caused, thereby failing to comply with its international human rights obligations.*" Thus, the IACHR considers that the remedy provided by domestic legislation to address a claim for compensation for human rights violations in Colombia is a suit against the State for direct reparation, i.e., the litigious-administrative remedy.⁶

⁵ IACHR, Report No. 279/21. Petition 2106-12. Admissibility. Huitosachi, Mogótavo, and Bacajipare communities of the Rarámuri indigenous people. Mexico. October 29, 2021, par. 29; and, IACHR, Report No. 89/21, Petition 5-12, Cananea Mine Workers and their families. Mexico. March 28, 2021, par. 32.

⁶ IACHR, Report No. 241/22. Petition 2377-12. Inadmissibility. Zuluaga Obando Family. Colombia. September 26, 2022, par. 18; IACHR, Report No. 236/22. Petition 1828-12. Inadmissibility. Relatives of Julio César Cardona Lozano. Colombia. September 17, 2022, par. 12; and IACHR, Report No. 328/22. Petition 657-08. Inadmissibility. Relatives of Julio Roldán Burbano Lasso. Colombia. November 29, 2022, par. 10.

14. However, if the petitioning party decides to resort to the administrative remedy of reparation, it must exhaust this procedure, as well as the ordinary judicial remedies available under the administrative procedure in order to obtain fair compensation. In this regard, the State reported that the petitioning party did not file any lawsuit at the domestic level to claim this outcome, despite the fact that the petitioning party argues that the State should have provided security to prevent forced displacement. It also indicated that the alleged victims did not seek administrative compensation from the Victims Unit.

15. Given that the petitioning party did not demonstrate that it had exhausted the claim for direct reparation, nor the administrative and judicial remedies for reparation before the Victims Unit, the Commission cannot consider that the requirement of prior exhaustion of domestic remedies, established in Article 46(1)(a) of the American Convention, has been met. Consequently, the present petition should be declared inadmissible.⁷

16. Lastly, the Inter-American Commission recalls that, although the exercise of filing contentious cases with the organs of the inter-American human rights system is not in itself overly formalistic compared to other legal proceedings at the domestic level, it does require that a series of minimum requirements and conditions be met, and it demands a level of commitment and ethics on the part of petitioners towards the organs of the inter-American system and, most particularly, towards the victims themselves, who are ultimately the object and *raison d'être* of international human rights law.⁸

VII. DECISION

1. To declare the present petition inadmissible.
2. To notify the parties of this decision, publish it, 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 18th day of the month of October, 2024. (Signed:) Roberta Clarke, President; José Luis Caballero Ochoa, Second Vice President; Arif Bulkan, and Gloria Monique de Mees, Commissioners.

⁷ In the same vein, see: IACHR, Report No. 22/24. Petition 2030-13. Inadmissibility. Lucero Sarria Reyes and Alón Esthewar Sarria Reyes. Colombia. April 30, 2024, par. 17.

⁸ IACHR, Report No. 193/22. Petition 1153-12, Inadmissibility. Luis Alejandro Cárdenas Tafur and Family. Colombia. August 3, 2022, par. 15.