

OEA/Ser.L/V/II.161
Doc. 33
18 March 2017
Original: Spanish

REPORT No. 26/17
PETITION 1208-08
REPORT ON ADMISSIBILITY

WILLIAM OLAYA MORENO AND FAMILY
COLOMBIA

Approved by the Commission at its session No. 2077 held on March, 18, 2017.
161th Regular Period of Sessions.

Cite as: IACHR, Report No. 26/17, Petition 1208-08. Admissibility. William Olaya Moreno and Family. Colombia. March 18, 2017.



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I. INFORMATION ABOUT THE PETITION

Petitioning party:	Eliana Patricia Quintero García
Alleged victims:	William Olaya Moreno and Family ¹
State denounced:	Colombia
Rights invoked:	Articles 1 (Obligation to Respect Rights), 4 (Right to Life), 5 (Right to Humane Treatment), 8 (Right to A Fair Trial) and 25 (Right to Judicial Protection) of the American Convention on Human Rights ² and other international treaties ³

II. PROCEDURE BEFORE THE IACHR⁴

Date on which the petition was received:	October 15, 2008
Additional information received at the initial study stage:	December 12, 2008
Date on which the petition was transmitted to the State:	May 1, 2014
Date of the State's first response:	September 23, 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 (deposit of instrument of ratification on July 31, 1973); Inter-American Convention on Forced Disappearance of Persons (deposit of instrument on April 12, 2005); Inter-American Convention to Prevent and Punish Torture (deposit of instrument on January 19, 1999) under the terms of Section V

¹The petition refers to seven alleged victims: William Olaya Moreno, Carmen Elisa Moreno de Olaya, Osvaldo Olaya Santamaría, Sandra María Olaya Moreno, Luz Estella Olaya Moreno, Carmen Elisa Olaya de Acosta and Carlos Armando Moreno.

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

³International Covenant on Civil and Political Rights; Geneva Conventions of 1949 and Additional Protocols; Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and Declaration of the Rights of Man and of the Citizen.

⁴The observations presented by each party were duly transmitted to the opposing party.

IV. ANALYSIS OF 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 3 (Right to Juridical Personality), 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the Convention, in connection with Article 1.1 thereof; Article I of the Inter-American Convention on Forced Disappearance of Persons; and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture in the terms of Section VII
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes; exception foreseen in Article 46.2 (a) of the ACHR applies
Timeliness of the petition:	Yes, under the terms of Section VI

V. ALLEGED FACTS

1. The petitioner alleges that on January 9, 1993, several individuals in civilian clothes who belonged to the Security Agency of Colombia called F2 beat Mr. William Olaya Moreno as a warning in light of grudges that he had with these officials. She claims that thanks to a witness statement, the alleged victim's family members learned that on January 10, 1993, Mr. Olaya was arrested by the National Police, taken to the headquarters of the Police of Fusagasugá, abruptly beaten and taken from that location by police officers, and his whereabouts remain unknown to this date. From the information provided by the petitioner, the 65th Examining Military Judge collected several witness statements concerning the disappearance denounced by Ms. Luz Estella Olaya Moreno. As a result, the Court of First Instance of the National Police, attached to the Department of Cundinamarca ruled on December 29, 1995 to close the proceedings against the only accused of Mr. Olaya's disappearance. She argues that Mr. Olaya's disappearance has seriously damaged his mother's health, Mrs. Carmen Elisa Moreno de Olaya.

2. She alleges that on November 16, 1994, she filed a claim for direct reparations against the State before the Administrative Law Court of Cundinamarca, which ruled in favor of the alleged victim on June 29, 2000. She submits that the judgment was appealed by the Defense Ministry and that the Third Chamber of the Administrative Law Court had not ruled on this appeal at the time the present petition was filed before the IACHR.

3. In turn, the State alleges lack of competence *ratione materiae* in relation to the International Covenant on Civil and Political Rights, the Geneva Conventions of 1949 and Additional Protocols, Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Declaration of the Rights of Man and of the Citizen. Likewise, it alleges lack of competence *ratione temporis* concerning the rights enshrined in the Inter-American Convention to Prevent and Punish Torture given that Colombia ratified the treaty on January 19, 1999 –six years after the facts– and that its effects do not persist.

4. Furthermore, it alleges that on January 26, 2011, the Court of Cundinamarca ruled that the National Police bore no responsibility for Mr. Olaya's disappearance. It submits that the petitioner intends to use the Commission as a court of fourth instance inasmuch as the subject matter of this petition has already been settled by the competent authorities of the State of Colombia. It argues that from the evidence collected throughout the domestic proceedings, it was impossible to prove that Mr. Olaya was arrested, let alone killed, by members of the National Police. It argues that the Commission is not competent to examine the decisions made by the domestic legal framework of a State; otherwise, it would act as a court of appeals overruling principles such as legal certainty and judicial autonomy.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

5. From the information available, Ms. Luz Estella Olaya Moreno lodged a complaint for Mr. Olaya's disappearance with the Regional Prosecutor's Office of Fusagasugá. The Regional Prosecutor's Office notified the Military Criminal Court of the complaint, since the facts allegedly took place on the premises of the barracks of the Police of Fusagasugá. The Court of First Instance of the National Police, attached to the Department of Cundinamarca, ruled on December 29, 1995, to close the proceedings against the only person accused of Mr. Olaya's disappearance. At the same time, from the information provided by the State, on January 26, 2011, the court of appeals revoked the judgment that had granted reparations for the family of the alleged victim, as the court concluded that the National Police is not responsible for the facts denounced.

6. The IACHR recalls that whenever there is an offense liable to prosecution *ex officio*, the State is obliged to promote and further the criminal prosecution and that this is the appropriate remedy to exhaust in an ordinary jurisdiction.⁵ In this regard, the Commission also establishes that special jurisdictions, like the military, are not a suitable venue and consequently do not afford adequate remedies to investigate, prosecute and punish alleged violations of rights protected by the American Convention.⁶ In this case, the Commission believes that given that the criminal investigation was conducted by the military jurisdiction and that the only accused of the case was acquitted by the National Police Court of First Instance attached to the Department of Cundinamarca, the exception to the requirement of exhaustion of domestic remedies set forth in Article 46.2(a) of the American Convention applies to the present case.

7. Upon determining the application of the exception to the requirement of exhaustion of domestic remedies established in Article 46.2(a), the Commission must analyze if the petition was filed in a reasonable time. The petition before the IACHR was received on October 15, 2008; the purported facts described allegedly started in 1993 and their purported effects allegedly continue to this date. In this regard, the family lodged a complaint for the alleged disappearance of Mr. Olaya and later filed a claim for direct reparations. Therefore, in view of the allegations of forced disappearance and given the context and the characteristics of this case, the Commission believes that the petition was filed in a reasonable term and the admissibility requirement concerning its timeliness is met.

VII. COLORABLE CLAIM

8. In view of the elements of fact and law presented by each of the parties and given the nature of the matter brought to its attention, the IACHR believes that the arguments presented by the petitioners concerning the alleged victim's forced disappearance, the military jurisdiction's knowledge of the investigation, the unwarranted delay in the settlement of the administrative proceedings as well as the State's omission to identify and punish the persons responsible could tend to establish violations of the rights enshrined in Articles 3, 4, 5, 7, 8 and 25 of the Convention, in accordance with Article 1.1 thereof; of Article I of the Inter-American Convention on the Forced Disappearance of Persons; and of Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture,⁷ to the detriment of Mr. William Olaya Moreno; and of Articles 5, 8 and 25 of the Convention, in accordance with Article 1.1 of the same treaty, to the detriment of the alleged victim's family members.

⁵ IACHR, Report No. 12/16, Petition 11.888. Admissibility. Alfredo Acero Aranda and Others (Red de la Armada). Colombia. April 14, 2016, par. 128.

⁶ IACHR, Report No. 12/16, Petition 11.888. Admissibility. Alfredo Acero Aranda and Others (Red de la Armada). Colombia. April 14, 2016, par. 133; and IACHR, Report No. 32/15, Case 11.100. Admissibility. Ayure Quintero Family. Colombia. July 22, 2015, par. 38.

⁷ Concerning the Inter-American Convention to Prevent and Punish Torture, the IACHR is competent *ratione temporis* only from January 19, 1999 –the date that the treaty came into effect in Colombia.

9. The IACHR lacks competence *ratione materiae* to decide on violations of rights embodied in treaties outside the Inter-American System, notwithstanding that it may resort to the standards established in other treaties in order to interpret the Convention by virtue of Article 29 of the said treaty

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 3, 4, 5, 7, 8 and 25 of the American Convention, in connection with Article 1.1 thereof; Article I of the Inter-American Convention on the Forced Disappearance of Persons; and of Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture under the terms of this report;

2. To notify the parties of this decision;

3. To continue with the analysis on the merits; and

4. To publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of Washington, D.C., on the 18th day of the month of March, 2017. (Signed): Francisco José Eguiguren, President; Margarette May Macaulay, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice President, Paulo Vannuchi and James L. Cavallaro, Commissioners.