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File Number(s):	Report No. 46/08; Petition 699-03
Session:	Hundred Thirty-Second Regular Session (17 – 25 July 2008)
Title/Style of Cause:	Victoria Delgado Anaya v. Colombia
Doc. Type:	Decision
Decided by:	Chairman: Paolo Carozza; First Vice-Chairwoman: Luz Patricia Mejia Guerrero; Second Vice-Chairman: Felipe Gonzalez; Commissioners: Paulo Sergio Pinheiro, Sir Clare K. Roberts, Florentin, Melendez, Victor E. Abramovich.
Dated:	24 July 2008
Citation:	Delgado Anaya v. Colombia, Petition 699-03, Inter-Am. C.H.R., Report No. 46/08, OEA/Ser.L/V/II.134, doc. 5 rev. 1 (2008)
Represented by:	APPLICANT: The Committee of Solidarity with Political Prisoners
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## I. SUMMARY

1. On September 3, 2003, the Inter-American Commission on Human Rights (hereafter “the Commission” or “IACHR”) received a petition submitted by the Committee of Solidarity with Political Prisoners (hereafter “the petitioners”) alleging that the Republic of Colombia (hereafter “the State,” “the Colombian State,” or “Colombia”) violated its obligation to adopt proactive measures to prevent the two kidnappings and death of Victoria Delgado Anaya (or Ana Victoria Delgado Anaya), which took place on May 16, 2001 and December 23, 2001, respectively, in the municipality of San Pablo, Department of Bolívar, and to judge and punish those responsible.

2. The petitioners maintained that the State violated the rights to life, humane treatment, personal liberty, and judicial protection enshrined in Articles 4, 5, 7, 8, and 25 of the American Convention on Human Rights (hereafter “the American Convention” or “ACHR”) to the detriment of Victoria Delgado Anaya and her family members, as well as the general obligation to respect and guarantee the rights protected by the ACHR and to adopt measures in accordance with its domestic provisions to give effect to these rights, pursuant to Articles 1.1 and 2. The State alleged that the petitioners’ complaints were not admissible because domestic remedies were still being implemented, implying a failure to exhaust domestic remedies as described in Article 46.1 of the American Convention, and that the exception alleged by the petitioners, as set forth in Article 46.2c of the ACHR, is not applicable.

3. After analyzing the positions of the parties and in compliance with the requirements set forth in Articles 46 and 37 of the American Convention, the Commission decided to declare the case admissible in order to examine the alleged violation of Articles 4.1, 5.1, 7.1, 8.1, and 25, in

accordance with Article 1.1 of the American Convention. It also decided to provide the report to the parties and order its publication.

## II. PROCESSING BY THE COMMISSION

4. The IACHR registered the petition under the number P699-03. On May 11, 2004 the Commission requested additional information from the petitioners to complete the analysis provided in article 28 of its Rules of Proceedings. The petitioners sent their answer on August 25, 2004. On September 13, 2005, the Commission requested additional information from the petitioner to further complete its analysis which was sent by the petitioners with its annexes on October 11, 2005. On April 20, 2006, the Commission sent a copy of the relevant sections to the State, which had a period of two months to submit comments in accordance with Article 30.2 of the Regulations.

5. On June 21, 2006, the State requested a 30-day extension, which the IACHR granted. The State submitted information to the IACHR on August 14, 2006, which was sent to the petitioner on September 11, 2006, with a one-month deadline for submitting comments. On December 1, 2006, the petitioners requested an extension, which the IACHR granted. The petitioners sent their comments on January 16, 2007, which were transferred to the State on January 11, 2008, so that they could submit their comments within one month. On February 8, 2008, the State requested a 30-day extension to submit its comments. The IACHR granted an extension until February 28, 2008. The State presented its response on April 21, 2008.

## III. POSITIONS OF THE PARTIES

### A. Position of the Petitioners

6. By way of background, the petitioners state that between July and October 1998, there was a campesino exodus in the south of the department of Bolívar carried out as per a signed agreement with the Administration of President Andrés Pastrana. On November 28, 1999, Edgar Quiroga and Gildardo Fuentes, leaders for the exodus, were detained and kidnapped by members of the paramilitary group, Autodefensas Unidas de Colombia (AUC).[FN1] On November 29, 1999, the IACHR adopted precautionary measures on behalf of both leaders in order to discover their whereabouts and to protect their lives and physical integrity.[FN2] The petitioners indicate that, according to information in the press, the paramilitary chief, Carlos Castaño Gil, stated that a summary judgment had been made against Edgar Quiroga, and that as result of this proceeding, he was killed, and that to date the whereabouts of Gildardo Funetes is unknown.[FN3]

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[FN1] Original petition received by the IACHR on September 2, 2003, paragraph 1 and the brief received from the petitioners on August 25, 2004, paragraph 3. In Admissibility Report No. 72/07, Edgar Quiroga and Giraldo Fuentes, of October 15, 2007, the IACHR concluded that it is competent to examine the complaints submitted by the petitioner regarding the alleged violation of Articles 3, 4.1, 5.1, 5.2, 7, 8.1, and 25, in accordance with Art. 1.1 of the ACHR and Art. I.b of the Convention on Forced Disappearance, and that they are admissible pursuant to the requirements set forth in Articles 46 and 47 of the ACHR. The report states that in May 1998,

paramilitary chief, Carlos Castaño Gil, declared an offensive against the inhabitants of southern Bolívar, which in effect began on July 11, 1998 with a paramilitary invasion in the Cerro de Burgos township, municipality of Simití, and that as a result of these threats hundreds of inhabitants had to move to the municipality of San Pablo. In August 1998, they requested that the Government form a working group and have a high-level commission visit. During the second half of 1998, there was a campesino exodus in Magdalena Medio, in which more than ten thousand campesinos took part. Edgar Quiroga, the local leader and representative in the Magdalena Medio negotiations, acted as spokesman in said exodus. On October 4, 1998, an agreement was signed with the State, in which it committed to guarantee life, humane treatment, and personal liberty for the campesinos that took part in the exodus. IACHR, Admissibility Report No. 72/07, Edgar Quiroga and Gildardo Fuentes, October 15, 2007, paragraphs 11 and 12.

[FN2] IACHR. Admissibility Report No. 72/07, Edgar Quiroga and Gildardo Fuentes, October 15, 2007.

[FN3] Petitioners' brief dated August 25, 2005, paragraph 3.

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7. In this context, the petitioners state that Victoria Delgado Anaya, the mother of Gildardo Fuentes, tried to search for her son, filing a series of complaints and actions to obtain his freedom, for which she was subject to constant threats against her life as a means of making her desist in her complaints. They say that on May 10, 2001, the paramilitaries killed campesino Uriel Arrieta in the La Rama division of the El Paraíso township, burned 16 homes, and threatened the physical integrity and lives of the inhabitants of the El Paraíso township. The petitioners point out that on May 16, 2001, Victoria Delgado was kidnapped during an AUC incursion in the El Paraíso township, and that 26 homes were burned, displacing 150 families.[FN4]

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[FN4] The petitioners informed the IACHR that on June 18, 2001, there was a paramilitary incursion in Yolombó, a half hour from the municipal seat of Puerto Tiquiso, in southern Bolívar, in which several head of cattle were stolen and motorist Roque Emilio was killed. They state that the inhabitants reported that they had identified Diógenes Rosas and Giovanny Bello as two of the men who took part in the incursion and whom they have seen as active soldiers at the Tiquiso military base. They also indicate that on June 19, 2001, there was another incursion into the San Juan township, which led to the displacement of 35 families. Petitioners' brief of July 16, 2001 in the processing of the request for information.

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8. On May 19, 2001, the petitioners sent a request to the IACHR asking that it request the following precautionary measures from the Government. Particularly, they requested preventive measures of prosecution and dismantling of the paramilitary groups; respect for and guarantee of the human rights of Victoria Delgado and the entire population of southern Bolívar and the implementation of actions to protect the life and physical integrity of Victoria Delgado and her children;[FN5] and clarification of the events and determination of who was responsible for her detention.[FN6] On May 21, 2001, the IACHR sent a request for information[FN7] to the Colombian State regarding Victoria Delgado's situation and that of the inhabitants of the El

Paraíso township. On May 30, 2001, the State told the IACHR that the information sent had been made known to the appropriate authorities, in particular to the Office of the Inspector General of Colombia, the Vice Presidency of Colombia, the Office of the Attorney General of Colombia, the Ministry of National Defense, the Ministry of the Interior, the National Police, and the Administrative Department of Security (DAS), indicating that the Colombian State would be conscientious with regard to protection measures adopted and the investigations being carried out into the reported events and would provide timely information about the same.[FN8]

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[FN5] The nine children of Victoria Delgado Anaya and her husband, Vicente Fuentes Méndez, are: Gildardo, Gilberto, Lisandro, Luis Alfredo, Juan Carlos, Vicente, Sandra Milena, Liliana, and Javier Fuentes Delgado. Petitioners' brief of August 25, 2004.

[FN6] The petitioners provide as evidence the file of documents produced in processing the request for information from the IACHR to the Colombian State with regard to Victoria Delgado Anaya and the inhabitants of the El Paraíso township. Petitioners' brief of September 21, 2005, page 7.

[FN7] As grounding for its request the petitioners present the situation in the South of Bolivar and state that: "the detention and disappearance of Edgar Quiroga and Gildardo Fuentes and the detention of Victoria Delgado, mother of peasant Gildardo Fuentes, that took place yesterday - May 16, 2001- [...], and the conduct that the Colombian authorities have assumed with regards to this fact, make us think on the repetition of these unfortunate facts. [..]. The petitioners explain that "the difficulties to receive more information that allow us to be more explicit with the H. Commission are due to the fact that we can not go to that place, because of the threats of paramilitary groups to humanitarian commissions, -who have been declared military targets-, another difficulty being that since yesterday the communication with the communities its been lost because of its displacement to other areas..."

[FN8] Information provided by the State to the IACHR via Note EE. 18850 from the Office of Special Affairs of the Ministry of Foreign Affairs on May 30, 2001.

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9. The petitioners stated that Victoria Delgado was freed in June 2001 as a result of pressure from the inhabitants on her captors.[FN9] On June 19, 2001, the State informed the IACHR that there was no investigation of the events at the Offices of the Prosecutor of Cartagena de Indias and Simití, and that Offices of the Prosecutor of the Cartagena de Indias Section transferred the request made by the International Affairs Office of the Office of the Attorney General to the Inheritance office of that Section so that an investigation would be initiated into the kidnapping of Victoria Delgado. On September 11, 2001, the Government informed the IACHR that it gave instructions to move forward preventative plans in order to preserve the integrity of the inhabitants of the El Paraíso community in the municipality of San Jacinto.[FN10] The petitioners state that the measure adopted by the State was not effective because it was poorly implemented as the result of a serious error, because the order was carried out more than 400 kilometers from the El Paraíso township, municipality of San Pablo, even though authorities were aware of the exact location of the place.[FN11]

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[FN9] Brief submitted by the petitioners in the processing of the request for information of June 29, 2001. Brief submitted by the petitioners on September 21, 2001, page 2.

[FN10] The State said that it ordered preventative plans for the El Paraíso division located in the municipality of San Jacinto, including installation of a control post in the San Jacinto municipal seat and coordinating patrols to have a presence on the road from San Jacinto to the El Paraíso division. The petitioners state that the El Paraíso division is located in the municipality of San Pablo in southern Bolívar, more than 400 km. from San Jacinto. Petitioners' brief of September 21, 2001, page 3. Information provided by the State to the IACHR in Note EE.32642 from the Office of Special Affairs of the Ministry of Foreign Relations on September 11, 2001.

[FN11] Petitioners' document of September 21, 2005, page 3.

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10. The petitioners state that the State was aware of the incursions of self-defense groups in the El Paraíso township, which were carried out on repeated occasions in 2001, as shown in reports from the Administrative Department of Security (DAS) and in reports from Colombian Military Forces to the Ministry of Foreign Affairs on certain measures designed to keep the area under control, which did not include protection of Victoria Delgado.[FN12] They also indicate that the Ministry of Defense stated that in response to the request for information from the Ministry of Foreign Affairs on November 29, 2001 it sent the complaint –submitted by the Committee of Solidarity with Political Prisoners—to the Commandant General of the Military Forces.[FN13] They state that the comments submitted by the State mention the problems in the area during the period when the events took place and show the panorama of threats, harassment, murders, and selective disappearances carried out by paramilitaries against inhabitants of the El Paraíso township.[FN14]

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[FN12] They state that this is shown for example in the report from the Administrative Department of Security (DAS) dated November 27, 2001 included in official letter 6730 signed by the Private Secretary of DAS based on intelligence report No. 042 of November 15, 2001 and the Official Letter of August 29, 2001 from the Military Forces to the Ministry of Foreign Affairs. Petitioners' brief of August 25, 2004.

[FN13] Petitioners' brief of September 21, 2005.

[FN14] Petitioners' brief received at the IACHR on January 17, 2007.

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11. The petitioners state that in spite of requests to the State to prevent new acts of violence in the area, Victoria Delgado was kidnapped for a second time on December 23, 2001 when approximately 200 paramilitaries launched an incursion between 11:00 and 11:30 at night in the La Vigencia township, municipality of San Pablo. They point out that the paramilitaries entered homes violently, physically assaulted inhabitants, and kidnapped several people, one of whom was Victoria Delgado.

12. They state that on December 24, 2001, family members of Victoria Delgado Anaya went to the location where the paramilitaries had been holding Victoria Delgado captive, and discovered that she had been killed, and they recovered the body.[FN15]

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[FN15] In addition, the petitioners indicate that on August 28, 2002, Luis Alfredo Fuentes Delgado received threats from paramilitary groups for reporting his mother's murder to the authorities. Petitioners' brief of August 25, 2004. See also IACHR Admissibility Report No. 72/07, Edgar Quiroga and Gildardo Fuentes of October 15, 2007, paragraph 31: Moreover, the petition states that the mother of Gildardo Fuentes, Victoria Delgado (52), who was to provide testimony before the Office of the Prosecutor was kidnapped for several hours by paramilitaries in May 2000, who said that nothing was going to happen to her and that they only took her, so that she could explain to them clearly everything she had down with regard to Gildardo's disappearance. It mentions that her lifeless body was found on the highway. It should be pointed out that these actions are covered in petition 699-03 currently being processed before the IACHR.

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13. The petitioners maintain that the State, which had prior knowledge of the threats against the inhabitants of El Paraíso and against Victoria Delgado in particular, did not fulfill its duty to respect and protect their basic rights. In this regard and in light of the double kidnapping and later death of Victoria Delgado, the petitioners maintain that the State is liable for violating the rights to personal liberty, human treatment, and to life for Victoria Delgado, pursuant to Articles 7, 5, and 4 of the ACHR, as per Articles 1.1 and 2 of the same instrument.[FN16] With regard to the alleged violation of Article 2, the petitioners maintain that the State failed in its duty to adopt, in accordance with its constitutional provisions, the measures needed to enforce these rights.

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[FN16] Petitioners' brief of September 21, 2005, pages 4-6.

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14. With regard to exhaustion of domestic remedies, the petitioners state that in response to the request for information from the IACHR to the State, an investigation was begun into the first kidnapping of Victoria Delgado under case number 7104 in the Offices of the Prosecutor of the Cartagena de Indias Section, which was in the preliminary investigation phase.[FN17] With regard to the second kidnapping and later murder of Victoria Delgado, they say that the State informed them three years after the events took place that the investigation was in the preliminary phase, and that it still had not been able to identify the perpetrators.[FN18]

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[FN17] Official Letter No. 3605 of November 15, 2000, sent by the National Director of Fiscalías to the Director of International Affairs at the Colombian Office of the Attorney General.

[FN18] Petitioners' brief dated September 21, 2005, page 4.

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15. In response to the State's position that procedures currently are in process and that domestic remedies have not been exhausted, the petitioners state that more than six years of investigation without results are evidence of the impunity of these acts at the domestic level. Thus, the petitioners maintain that the State is responsible for violating the rights to judicial

protection and judicial guarantees of the family members of Victoria Delgado, as set forth in Articles 8 and 25 of the ACHR.[FN19] They also believe that existing remedies in Colombia have been neither adequate nor effective, and that there is an unwarranted delay in this case, leading to application of the exception to the duty to exhaust domestic remedies, pursuant to Article 46.2.a, b, and c of the ACHR.[FN20]

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[FN19] Petitioners' brief received at the IACHR on January 17, 2007.

[FN20] Petitioners' brief received at the IACHR on January 17, 2007.

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## B. The State's Position

16. The State indicates it shall not address the events related to the disappearance of Edgar Quiroga and Giraldo Fuentes included in this petition, on which a decision was issued as part of petition no. 319-01. The State indicates that this should not be understood as a tacit recognition of the facts, given that there could be an opportunity for its debate during the merits' stage.[FN21]

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[FN21] Note DDH GOI 39.392/1900 received by the IACHR on August 11, 2006 and note DDH.GOI. 19267/1032 dated April 24, 2008.

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17. To provide context, the State explains that politically, southern Bolívar has been under guerilla influence, and there are many armed actors in the area. It states that its geographic location offers advantages for the guerillas, allowing them to retreat and evade the Police. It points out that there is a prevailing illegal economy in the area based on coca cultivation, which provides major resources for both the guerillas and the self-defense groups. The State indicates that the presence of the Fuerzas Armadas Revolucionarias de Colombia (FARC) and the Ejército de Liberación Nacional (ELN) date back to the 1970s and 1980s.[FN22] It points out that in an effort specifically to counteract this situation in southern Bolívar, the Fifth Brigade of the Army carried out several operations between December 2001 and February 2002 to combat illegal armed groups operating in the area.[FN23]

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[FN22] The State cites certain sections of the "Panorama Actual de Bolívar" Report from the Observatorio of the Presidential Human Rights and International Humanitarian Law Program in its Note DDH GOI 39.392/1900 received at the IACHR on August 11, 2006.

[FN23] Note DDH GOI 39.392/1900 received at the IACHR on August 11, 2006.

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18. In response to the petitioners' claim, the State alleges failure to exhaust domestic remedies because an investigation is still pending, and that this investigation has been carried out with due diligence by the authorities. It also counters the petitioners' argument regarding the unwarranted delay, alleging that the mere passage of time is not sufficient to conclude

unwarranted delay as described in Article 46.2.c, for which reason it believes that the IACHR must declare the petition inadmissible in accordance with Article 47 of the ACHR.

19. The State points out that military operations have been coordinated to improve the safety of people in southern Bolívar and indicates that a criminal investigation is being carried out into the kidnapping and death of Victoria Delgado at the National Human Rights Unit of the Office of the Attorney General of Colombia, which is in the preliminary investigation phase. With this regard. It indicates that despite all efforts and due to the complexity of the case, it has not been possible to individualize the ones responsible, till today.[FN24]

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[FN24] Note DDH.GOI. 19267/1032 from the Colombian Ministry of Foreign Affairs dated April 21, 2008.

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20. With regard to the events, the State indicates that it became aware of the threats against Victoria Delgado Anaya and against the inhabitants of the El Paraíso township on June 1, 2006, the date on which the request for information was received from the IACHR. The State points out, as stated by members of DAS, the San Pablo municipal police, the Municipal Judge, and the Municipal Representative, that Victoria Delgado's disappearance was not reported at the domestic level. In addition, it states that the Municipal Representative did confirm the incineration of homes and displacement of twelve families from the El Paraíso division.

21. The State alleges that the delay in the investigation meets the reasonableness criteria established by the Inter-American Court, which take into account the complexity of the matter, the procedural activity of the interested party, and the activity of the judicial authorities. In this regard, the State alleges that it in a case such as this one, the procedural activities of the interested party must be viewed as determining criteria for defining the reasonableness of the term of the criminal proceeding.[FN25] With regard to the complexity of the matter, the State indicates that this case took place within the violent situation in the south of the department of Bolívar and that at the time when these events took place, FARC and ELN were present there.[FN26] It points out that the judicial authorities are carrying out an investigation into the death of Victoria Delgado within the context of this problematic situation, which must be taken into account in assessing whether there has been a delay in the investigation.

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[FN25] Inter-American Human Rights Court, The Pueblo Bello Massacre Case. Judgement of January 31, 2006. Series C No. 140, paragraph 185. Cited by the State in its Note DDH GOI 39.3921/1900 from the Colombian Ministry of Foreign Affairs on August 14, 2006.

[FN26] The State indicates that the municipality of San Pablo is part of the municipalities in which 70% of the activities of the illegal armed groups were concentrated from 1997 to 2004. Note DDH GOI 39.3921/1900 from the Colombian Ministry of Foreign Affairs dated August 14, 2006.

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22. With regard to the activity of the judicial authorities, the State points out that the Office of the Attorney General has made its best efforts to investigate the facts of the case and since it issued the decision to open up the preliminary investigation phase, numerous procedures have been carried out, which on many occasions were delayed due to problems arising during the investigation.[FN27] As per progress in the investigation into the kidnapping and death of Victoria Delgado, the State indicates that it was assigned to the Special Prosecutor's Office for GAULA[FN28] in Cartagena, which on June 14, 2001 issued the decision to open the preliminary investigation and ordered evidence gathering[FN29] and other procedures.[FN30] It states that on February 4, 2002, the investigation was reassigned to the National Human Rights Unit of the Office of the Attorney General, which gathered evidence in April 2002, as part of which statements were taken from family members and composite sketches were made of the alleged perpetrators. It indicated that in May 2002, the people present when Victoria Delgado was kidnapped for a second time did not appear to give their statements and in 2004, a photographic line up was ordered. It states that during 2005, several people were summoned who did not appear; these people gave a statement in February 2006, when a photographic lineup was also carried out to identify the alleged perpetrators. Thus, the State views its actions as diligent in trying to uncover the truth and punish those responsible for the kidnapping and death of Victoria Delgado. Based on the foregoing, the State asks that the IACHR declare the petition inadmissible.

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[FN27] Note DDH GOI 39.3921/1900 from the Colombian Ministry of Foreign Affairs dated August 14, 2006.

[FN28] Grupo de Acción Unificada por la Libertad Personal [Unified Action Group for Personal Liberty].

[FN29] The State indicates that the evidence-gathering ordered included: carrying out intelligence efforts to verify the kidnapping of Mrs. Delgado, requesting the battle order from the illegal self-defense groups operating in San Pablo and southern Bolívar, and working and using intelligence to identify the illegal armed groups that prompted the investigation through their actions. Note DDH GOI 39.3921/1900 from the Colombian Ministry of Foreign Affairs dated August 14, 2006.

[FN30] The State indicates that the record of removing the body and autopsy report were added to the file. According to the latter, the cause of death for Victoria Delgado was fatal wounds caused by close-range weapons. Note DDH GOI 39.3921/1900 from the Colombian Ministry of Foreign Affairs, dated August 14, 2006.

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23. On the other hand, the State considers that with regards to this case where state responsibility is alleged, the petitioners must exhaust the judicial claim for reparations before the contentious administrative jurisdiction prior to present any claims before international forum. Therefore, the State considers that the lack of this exhaustion configures the lack of exhaustion of internal remedies and it "configures a tacit declination of this aspiration before local and Inter-American instances".

24. Final, the Sate considers that the events are the responsibility of third parties and not of State agents, given that there are no sufficient elements to conclude even in a preliminary manner

that Mrs. Delgado was in a true, real and present risk that was known by the State. Also, it concludes that since the IACHR “did not order precautionary measures in favor of Mrs. Victoria Delgado, it is reasonable to conclude that in this case there was not a real and imminent danger to her life and human integrity. In consequence, it is not true that the State was informed of a real and imminent risk for Mrs. Delgado, and therefore it is wrong to sustain, prima facie, the existence of the international responsibility of Colombia for an alleged lack of protection.” [FN31]

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[FN31] Note DDH.GOI. 19267/1032 dated April 21, 2008.

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#### IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

##### A. Competence

25. As per Article 44 of the American Convention, the petitioners have the power to submit petitions to the Commission. The petition mentions individuals as the alleged victims, and the Colombian State has committed itself to respecting and guaranteeing the rights enshrined in the American Convention. With regard to the State, the Commission points out that Colombia has been a State Party to the American Convention since July 31, 1973, the date it deposited its ratification instrument. Therefore the Commission has *ratione personae* competence to examine the petition.

26. The Commission also has *ratione loci* competence to study the petition because it alleges violations of rights protected under the American Convention that would have taken place within the territory of Colombia, a State Party to said convention.

27. The Commission has *ratione temporis* competence with regard to the obligation to respect and guarantee the rights protected under the American Convention because it was in force on the date that the events alleged in the petition took place.

28. Lastly, the Commission has *ratione materiae* jurisdiction because the possible violation of human rights protected by the American Convention were reported in the petition.

##### B. Admissibility Requirements

###### 1. Exhaustion of Domestic Remedies

29. Article 46.1.a of the American Convention requires prior exhaustion of remedies available in the domestic jurisdiction, as per generally recognized principles of international law, as a requirement for admission of complaints regarding alleged violation of the American Convention.

30. Article 46.2 of the Convention states that the requirement for prior exhaustion of domestic remedies does not apply if:

- a) the domestic legislation of the State concerned does not afford due process of law for the protection of the right or rights that allegedly have been violated;
- b) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or
- c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

In accordance with the Regulations of the Commission, as well as the Inter-American Court, if a State alleges failure to exhaust domestic remedies on the part of the petitioner, it has the obligation to show that the remedies that have not been exhausted are “adequate” for rectifying the alleged violations. It should be stated that the domestic legal remedies are suitable for addressing infringement of the legal rights in question.[FN32]

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[FN32] Inter-American Human Rights Court, Velásquez Rodríguez Case, Judgment of July 29, 1988, paragraph 64.

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31. In this case, the State alleges that the petition does not satisfy the requirement of prior exhaustion of remedies within the domestic jurisdiction, as set forth in Article 46.1 of the ACHR because there is still an open investigation. The petitioners allege that the authorities have not investigated the events in an efficient and timely manner. This is based on application of the exception set forth in Article 46.2.c, due to the unwarranted delay in the process.

32. In light of the positions of the parties and the circumstances surrounding this case, the IACHR also deems it pertinent to determine the purpose of the complaint submitted. The Commission views the purpose of this petition correctly refers to the events related to the kidnappings and death of Victoria Delgado Anaya and to the aspects related to the investigations into the circumstances under which said events took place.

33. The Commission’s case law recognizes that whenever a crime is punishable by law, the State is obligated to promote and carry through the criminal process to its conclusion[FN33] and in those cases, this is the ideal way to clarify the facts, judge those responsible, and establish the corresponding criminal sanctions, in addition to making possible other means of monetary reparations. The Commission deems that the facts alleged by the petitioners in this case involve the alleged weakening of basic inalienable rights, such as life and humane treatment, which in domestic legislation are crimes punishable by law and that therefore it is this process, initiated by the State itself that must be considered in determining admissibility of the complaint.

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[FN33] Report No. 52/97, Case 11.218, Arges Sequeira Mangas, IACHR Annual Report 1997, paragraphs 96 and 97. See also Report No. 55/97, paragraph 392. Report No. 62/00, Case 11.727, Hernando Osorio Correa, IACHR Annual Report 2000, paragraph 24.

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34. In this case, the State officially initiated an investigation into the first kidnapping of Victoria Delgado as case number 7104 at the Offices of the Prosecutor of the Cartagena de Indias Section, which is in the preliminary investigation phase. With regard to the second kidnapping and later murder of Victoria Delgado, Special Prosecutor's Office for GAULA in Cartagena, issued a decision to open up the investigation on June 14, 2001 and order evidence gathering and other procedures. On February 4, 2002, the investigation was reassigned to the National Human Rights Unit of the Office of the Attorney General, which has been gathering evidence since 2002. The last procedures in this investigation were carried out in February 2006, the investigation is still in the preliminary phase, and the alleged perpetrators still have not been identified.

35. In this regard, the Commission points out that as a general rule, a criminal investigation must be carried out promptly to protect the interests of the victims, preserve evidence, and even safeguard the rights of all people who are considered suspects within the context of the investigation. As the Inter-American Court has indicated, even though all criminal investigations must comply with a series of legal requirements, the rule of prior exhaustion of domestic resources must not lead to international actions to help victims being halted or delayed to the point of being useless.[FN34] As per the Inter-American Court, for a remedy to be considered effective, it must be able to produce the result for which it was intended.[FN35]

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[FN34] Inter-American Human Rights Court, Velásquez Rodríguez Case, Preliminary Exceptions, Judgment of June 26, 1987, paragraph 93.

[FN35] Inter-American Human Rights Court, Velásquez Rodríguez Case, Judgment of June 29, 1988, paragraph 66.

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36. The Commission notes that the main events of this case took place on May 16, 2001 and December 23, 2001, and that more than six years have passed without determining guilt or punishing the perpetrators of the crimes in question, which implies an unwarranted delay as per Article 46.2.c of the American Convention and therefore the petitioners must be excepted from exhausting domestic remedies before petitioning the inter-American system in search of protection.

37. Application of the exceptions to the rule on exhaustion of domestic remedies set forth in Article 46.2 of the Convention is closely tied to the determination of possible violations of certain rights enshrined therein, such as guarantees of access to justice. However, Article 46.2, as per its nature and purpose, is a norm whose content is autonomous vis-à-vis the substantive norms of the Convention. Therefore, determination of whether exceptions to the rule of exhaustion of domestic remedies should be applied must be made beforehand and separately from in-depth analysis of the matter because it relies on a standard of perception different from that used to determine the possible violation of Article 8 and 25 of the Convention. It should be clarified that the causes and effects that prevented exhaustion of domestic remedies shall be analyzed in the Commission's report on the grounds of the controversy, in order to determine if there are violations of the American Convention.

## 2. Deadline for Submission of the Petition

38. The American Convention states that for the Commission to admit a petition, it must be submitted within six months from the date in which the alleged victim was notified of the final decision. In the case in question, the IACHR has applied exceptions to the exhaustion of domestic remedies in accordance with 46.2.c of the American Convention. Therefore, Article 32 of the Commission's Regulations states that in cases in which exceptions are applied to the prior exhaustion of domestic remedies, the petition must be submitted within a reasonable period, in the opinion of the Commission. To this end, the Commission must take into account the date on which the alleged violation of rights took place and the circumstances of each case.

39. In this case, the petition was received on September 3, 2003, and the kidnappings and death of Victoria Delgado took place on May 16, 2001 and December 23, 2001, and their effects in terms of the alleged lack of results in the administration of justice extend to the present. Therefore, given the context and characteristics of this case, as well as the fact that those responsible for these acts still have not been identified and punished, the Commission deems the petition to have been submitted within a reasonable time frame and states that the submission deadline as an admissibility requirement has been satisfied.

## 3. Duplication of procedures

40. The file does not show that the material covered by the petition is subject to another international proceeding, nor that it is a reproduction of a petition already reviewed by this or another international organization. Therefore, the requirements in Articles 46.1.c and 47 of the Convention are deemed satisfied.

## 4. Characterization of the Alleged Facts

41. Thus, based on the elements of fact and law submitted by the parties and the nature of the matter brought before it, the IACHR finds that in this case the petitioner's allegations regarding the alleged violation of the right to life, to humane treatment, to personal liberty, to judicial protection, and to judicial guarantees, could represent possible violations of the rights protected under Articles 4.1, 5.1, 8.1, and 25, in accordance with Article 1.1 of the American Convention.

42. In this case, the allegations of the petitioners concerning the alleged violation of the right to humane treatment for Victoria Delgado Anaya, as set forth in Article 5 of the Convention, and the alleged violation of the duty to adopt measures in accordance with their domestic provisions to give effect to the rights of the ACHR, as set forth in Article 2 of this same instrument, have not been duly substantiated. Therefore, the Commission deems that these claims should not be admissible.

## V. CONCLUSIONS

43. The Commission concludes that it is competent to examine the complaints submitted by the petitioner with regard to the alleged violation of Articles 4.1, 5.1, 7.1, 8.1, and 25, in

accordance with Article 1.1 of the American Convention, and that they are admissible, pursuant to the requirements set forth in Articles 46 and 47 of the American Convention.

44. Based on the arguments of fact and law examined herein and without prejudice to the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this case admissible with regard to Articles 4.1, 5.1, 7.1, 8.1, and 25, in connection with Article 1.1 of the American Convention;
2. To notify the Colombian State and the petitioner of this decision;
3. To continue analyzing the grounds of the matter;
4. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 24th day of the month of July, 2008. (Signed: Paolo G. Carozza, Chairman; Luz Patricia Mejía Guerrero, First Vice-Chairwoman; Felipe González, Second Vice-Chairman; Paulo Sérgio Pinheiro, Sir Clare K. Roberts, Florentín, Meléndez, and Víctor E. Abramovich, members of the Commission).