

Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 112/09; Petition 1265-06
Session:	Hundred Thirty-Seventh Regular Session (28 October – 13 November 2009)
Title/Style of Cause:	Milene Perez Lozano, Ismael Eterio Becerra Jimenez and Children v. Colombia
Doc. Type:	Decision
Decided by:	President: Luz Patricia Mejia Guerrero; First Vice President: Victor Abramovich; Second Vice President: Felipe Gonzalez; Commissioners: Paulo Sergio Pinheiro, Sir Clare K. Roberts, Florentin Melendez, Paolo Carozza.
Dated:	10 November 2009
Citation:	Perez Lozano v. Colombia, Petition 1265-06, Inter-Am. C.H.R., Report No. 112/09, OEA/Ser.L/V/II., doc. 51, corr. 1 (2009)
Represented by:	APPLICANT: Luis Donervi Ortiz Garcia
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## I. SUMMARY

1. On November 14, 2006, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received a petition that Luís Donervi Ortiz García (hereinafter “the petitioner”) lodged against the Republic of Colombia (hereinafter “the State”, “the Colombian State” or “Colombia”) alleging its responsibility for the failure to investigate the death of Ismael Eterio Becerra Jiménez, to prosecute and punish those responsible, and the subsequent harassment of his lifetime partner, Milene Pérez Lozano and their three children.

2. The petitioner alleged that the State was responsible for violation of the right to juridical personality, the right to life, the right to humane treatment, the right to personal liberty, the right to privacy, the right of assembly, the right to protection of the family, the rights of the child, the right to equal protection of the law, the right to a fair trial and to judicial protection, recognized in articles 3, 4, 5, 7, 8, 11, 15, 17, 19, 24 and 25 of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”), in relation to articles 1(1) and 2 thereof, and articles 3, 4, 6 and 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women “Convention of Belém do Pará”. The State, for its part, alleged that the petitioner’s complaint was inadmissible because of the failure to comply with the rule requiring exhaustion of local remedies, set forth in Article 46(1)(a) of the American Convention, and because the petition does not state facts that tend to establish violations of the rights guaranteed by the Convention. The petitioner, for his part, alleges that the criminal investigation was suspended over eight years ago and has not been reopened since.

3. After examining the parties' positions and the question of compliance with the requirements stipulated in articles 46 and 47 of the American Convention, the Commission decided to declare the petition admissible with respect to the alleged violation of articles 5, 8(1), 11(2), 17(1), 19 and 25 of the American Convention, in relation to the obligations established in Article 1(1) of the American Convention; and in application of the principle of *iura novit curia*, it decided to declare the petition admissible with respect to Article 22(1) of the Convention, also in relation to the obligations established in Article 1(1) of the American Convention, and to order publication of its decision.

## II. PROCESSING BY THE COMMISSION

4. The IACHR registered the petition as number P1265-06. After doing a preliminary analysis, on January 14, 2008 the Commission forwarded a copy of the relevant parts of the petition to the State, giving it two months to present information, in accordance with Article 30(2) of the Rules of Procedure. In reply, the State requested a 30-day extension on the time period for submitting its response. The Commission acceded to its request. The State filed its observations on April 28, 2008, which were then forwarded to the petitioner for his observations. The Commission received the petitioner's observations on June 17, 2008, and forwarded them to the State, which had one month in which to answer the petitioner's observations.

5. In reply, the State requested a 30-day extension to submit its observations. The Commission granted the extension. The State then asked for another 30-day extension for filing its observations. The Commission acceded to this request as well. The State submitted its observations on December 2, 2008,[FN1] which were forwarded to the petitioner for his observations. The petitioner's observations were received on December 29, 2008 and forwarded to the State, which was given one month to submit its observations. The State responded by requesting a 30-day extension for submitting its observations. The Commission agreed to the extension and on March 12, 2009, the State submitted its final observations.

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[FN1] Note DDH.GOI/60847/2872 from Colombia's Ministry of Foreign Affairs, dated November 27, 2008.

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## III. THE PARTIES' POSITIONS

### A. The petitioner

6. The petition states that on April 16, 2001, Ismael Eterio Becerra, José Alcibiades Reina, Alirio Clavijo Velázquez and Mario Hernando Méndez Lugo were together at the "Guaro, Kola y Pola" tavern in Bogotá when, according to press accounts, a man entered, approached the table where the four men were sitting and shot them dead.

7. The petitioner alleges that after the murder of Ismael Eterior Becerra, his lifetime partner, Milene Pérez Lozano, began to be harassed by police agents, who allegedly stopped her on numerous occasions to find out whether she had instituted any legal action over her lifetime

partner's death. The petitioner alleges that the harassment forced Milene Pérez Lozano and her three children to move from Bogotá to Cartagena, the city where she was born. He alleges further that they are living in constant fear and lack the economic means to meet their basic necessities.

8. The petitioner contends that petitions were filed with the Office of the Prosecutor General of the Nation, the Director of the National Police and the Attorney General of the Nation to request information about any criminal proceedings and disciplinary measures being pursued in connection with the events. The petitioner observes that the information requested was supplied only by the Office of the Prosecutor General of the Nation and the National Police; no substantive response was received from the Attorney General's Office.

9. The petitioner also alleges that Milene Pérez Lozano filed a petition with the Presidential Agency for Social Action and International Cooperation seeking economic aid. Her petition was denied on the grounds that her circumstances did not fit the prerequisites of Law 418 of 1997, which "establishes a number of tools for community living, the efficacy of justice and other provisions." Another reason given for denying the request was that it was not filed within the time period prescribed by law, which is one year following the date on which the events occurred.[FN2]

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[FN2] The petitioner is referring to the Presidential Agency for Social Action and International Cooperation, RSS-AGM-35484 of October 18, 2005. Annexed to the original petition, which the IACHR received on November 14, 2006.

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10. The petitioner points out that the Office of Sectional Deputy Prosecutor 31, Rapid Response Unit, had instituted investigation No. 9623-562937 into the death of Ismael Eterio Becerra. He notes that by a resolution dated September 18, 2002, Deputy Prosecutor 31 ordered copies sent to the Juvenile Criminal Court because of false testimony and false statements made against the investigation's principal witness to the effect that the latter had allegedly used false identification and had allegedly given testimony implicating the sole suspect in the murder of Messrs. Becerra, Reina, Clavijo and Méndez. The petitioner states that on May 6, 2002, Prosecutor 31 issued an order dismissing the case against the sole suspect.

11. The petitioner contends that by Memorandum No. 4005 of June 28, 2008, Prosecutor 31 allegedly had referred the matter to the Military Criminal Justice System in order to have a criminal and disciplinary investigation done of two members of the National Police presumably involved in the case by virtue of false testimony given against the person who initially testified in the investigation into the death of Ismael Eterio Becerra. The petitioner alleges that preliminary inquiry No. 642, conducted in Military Criminal Examining Court 144 against two members of the National Police, culminated in a decision in which the presiding officer dismissed the case through an interlocutory decree dated March 13, 2003. The petitioner also contends that the National and Metropolitan Police found no record of any disciplinary actions against the two members of the National Police. The petitioner states that Deputy Prosecutor 31 continued the investigation to identify those responsible, under inquiry no 635086. On June 27, 2003, the inquiry was suspended and closed without prejudice.

12. As for compliance with the rule set forth in Article 46(1)(a) of the American Convention, which stipulates that in order for a petition to be admissible, internal remedies must be pursued and exhausted, the petitioner argues that eight years have passed since the events of this case transpired and to this day they have not been effectively investigated and the responsible parties have not been brought to justice. He further contends that the inquiry has been shelved since 2003 and that the State has taken no steps to reopen it.

13. Summarizing, the petitioner alleges that the State is responsible for violation of the right to life, the right to humane treatment, the right to personal liberty, the right to have one's honor respected and dignity recognized, the right of assembly, the rights of the family, the rights of the child, and the right to equality before the law, recognized in articles 3, 4, 5, 7, 11, 15, 17, 19, and 24 of the American Convention. He alleges that the failure to conduct a judicial investigation of the facts surrounding the death of Ismael Eterio Becerra constitutes a violation of the right to a fair trial and the right to judicial protection, recognized in articles 8 and 25 of the American Convention. He further contends that the State has failed to fulfill its generic obligations to ensure respect for the Convention-protected rights and to adopt domestic legislative measures, as stipulated in articles 1(1) and 2 of the Convention. Finally, he alleges that the State is responsible for violation of the rights protected in articles 3, 4, 6 and 7 of the Convention of Belém do Pará.

#### B. The State

14. The State alleges that the facts recounted in the petition do not tend to establish violations of the rights recognized in the American Convention. It argues that the facts as described in the petition and uncovered in the criminal investigation reveal that Ismael Eterio Becerra's murder is exclusively the work of private parties, not agents of the State.[FN3] It further contends that one cannot claim a violation of the rights protected in articles 8 and 25 of the Convention based solely on the fact that the person responsible for the death of four persons has not been found. It observes that a serious, impartial and effective investigation, readily accessible to the victims or their next of kin but unable to find the perpetrators of the crime, can hardly be counted a violation of any right protected under the American Convention. As for the alleged violations of the rights protected in articles 3, 4, 5, 7, 11, 15, 17, 19 and 24 of the American Convention, the State's contention is that the petitioner did not articulate or support the reasons why he believes that these rights have been violated.

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[FN3] The State's brief of observations DDHHGOI/No. 18158/963, from the Ministry of Foreign Affairs of Colombia, dated April 14, 2008, paragraph. 40.

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15. On the subject of the criminal investigation, the State points out that given the events, on April 17, 2001 the Office of Deputy Prosecutor 281, with the First Unit for Crimes against Life and Personal Integrity, ordered that a preliminary investigation be instituted and evidence taken. It observes that on June 8, 2001, the examining phase of the proceedings commenced and a civilian was indicted.[FN4] His preliminary statement was taken on June 11, 2001; on June 15, 2001, he was ordered taken into custody pending trial. The evidence that was the basis for the

preventive detention order included testimony given by someone who claimed to have heard the defendant say that it was he who had killed the four people who were at the “Guaro, Kola y Pola” tavern.

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[FN4] The State is referring to Carlos Barón Alvarado. The State’s brief of observations DDHHGOI/No. 18158/963, from the Ministry of Foreign Affairs of Colombia, dated April 14, 2008, paragraph 16.

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16. The State observes that subsequently various judicial proceedings were conducted and managed to establish that the witness had used an identification number that was not hers.[FN5] It observes that in a decision dated August 23, 2001, the preventive detention order was revoked based on the fact that the witness who had incriminated the defendant had used false identification and had made other contradictory statements. The State alleged that given these circumstances, she was no longer a credible witness. The State asserts that by a resolution dated May 3, 2002, the Prosecutor’s Office closed the investigation against the accused and ordered copies of the proceedings sent to the Military Criminal Justice System for a criminal and disciplinary investigation of two members of the National Police. The Prosecutor’s Office was of the view that there were inconsistencies and contradictions in the way in which the two police officers had gone about the investigation; the two police officers were alleged to have been instrumental in finding the witness who had used false identification.

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[FN5] The State observes that witness Leidy Sorangel Ardila Hernández had, on numerous occasions, identified herself to the courts with an identification number belonging to Leidy Johann Ramírez Cifuentes. The State’s brief of observations DDHHGOI/No. 18158/963 from the Ministry of Foreign Affairs of Colombia, dated April 14, 2008, paragraph 19.

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17. The State claims preliminary investigation 635086 continued for the purpose of identifying other supposed perpetrators. It contends that in Mission 0394, the Second Unit Specializing in Homicides and Assaults “took steps to locate eyewitnesses to the events that occurred and to discover new facts that would help identify the murderer.”[FN6] The State observes that the Mission found that family members of the four murder victims provided no information that would shed light on the facts in the case, while others said that they were not interested in the Prosecution’s proceedings. The State also notes that by an order dated June 27, 2003, the Prosecution suspended the preliminary investigation without prejudice, pending the discovery of some new evidence or new facts to justify a reopening of the case.[FN7] It goes on to observe that contrary to what the petitioner alleges, the decision to suspend the investigation does not mean that the criminal investigation was closed once and for all.

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[FN6] The State’s brief of observations DDHHGOI/No. 18158/963, from the Ministry of Foreign Affairs of Colombia, dated April 14, 2008, paragraph 23.

[FN7] The State is referring to Article 326 of Decree 2700 of 1991 (Code of Criminal Procedure): “Suspension of the preliminary inquiry by Prosecution officials. The head of the prosecution unit may suspend the preliminary inquiry if, at the end of one hundred eighty days, there is insufficient cause either to institute the evidentiary phase of proceedings or to dismiss, with the prosecutor’s authorization. (Article 323 of 1991 Decree 2700 applies inasmuch as Article 326 of Law 600 of 2000 was declared unenforceable).” The State’s brief of observations DDHHGOI/No. 18158/963, from the Ministry of Foreign Affairs of Colombia, dated April 14, 2008, footnote 1.

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18. The State confirms that on March 13, 2003, Military Criminal Examining Court 144 decided to dismiss the case against the two members of the National Police accused of fraud committed by use of legal procedure inasmuch as the court found that the two police officers had acted in accordance with the laws in force and had not had a hand in identifying the witness.

19. As for the rule requiring exhaustion of local remedies, the State contends that the petitioner did not avail himself of all domestic resources available to remedy the situation being alleged. Its contention is that the victim never became a civil party to the criminal case, which is the proper mechanism for victims of crime to assert their rights. On the other hand, the State argues that on several occasions the victims exercised their right of petition. And while the authorities fully addressed those petitions, the State argues, the latter are no substitute for the domestic remedies available to protect the legal rights in question.

20. As for the petitioner’s claims concerning the financial difficulties and change of residence of Milene Pérez Lozano as reasons why she did not become a civil party in the criminal case and why the internal remedies were not exhausted, the State observes that none of these claims could be grounds for any of the exceptions allowed under Article 46(2) of the Convention. The State further asserts that in ruling C-875, Colombia’s Constitutional Court expanded legal aid protection to cover any person that the court recognizes as a civil party to a case.[FN8]

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[FN8] The State is referring to Ruling C-875/02 of the Constitutional Court, Justice Rodrigo Escobar Gil writing for the majority, October 15, 2002.

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21. Concerning the petition for financial assistance filed with the Office of Social Action of the Presidency of the Republic, which was denied on October 18, 2005 on the grounds that the Office was not authorized to grant the financial assistance because the request was filed after the deadline, the State contends that this petition procedure cannot be regarded as a factor in establishing whether local remedies were exhausted.[FN9]

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[FN9] The State’s brief of observations DDHHGOI/No. 60847/2772 from the Ministry of Foreign Affairs of Colombia, dated November 27, 2008, paragraph 35.

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22. It also alleges that if the petitioner believed that State agents were involved, he should have filed a suit for direct redress in the contentious-administrative law courts. The State is therefore asking the Commission not to admit the petitioner's claims seeking pecuniary and non-pecuniary damages, because no suit was filed in the domestic courts seeking direct redress.

23. The State argues that the petition was filed after the prescribed time period had expired, inasmuch as the facts at the heart of the petition filed with the Commission occurred on April 16, 2001, and the petition was not filed until November 9, 2006. The State argues that the five-year lapse exceeds the reasonable period of time alluded to in the Commission's Rules of Procedure.

24. Concerning the alleged violation of the Convention of Belém do Pará, the State observes that there is absolutely no evidence indicating that what happened to Mr. Ismael Eterio Becerra can be described as gender-based violence. Finally, the State argues that "the clear purpose of this petition is to have the inter-American system remedy the fact that those with a stake in having a criminal investigation prosecuted within the domestic legal system failed to do so [...]."[FN10] Summarizing, the State is asking the Commission to declare the petition inadmissible on the grounds that the rule requiring exhaustion of local remedies and the filing deadline were not observed and because the petition does not state facts that tend to establish violations of the American Convention and the Convention of Belém do Pará.

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[FN10] The State's brief of observations DDHHGOI/No. 18158/963 from the Ministry of Foreign Affairs of Colombia, dated April 14, paragraph 61.  
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#### IV. ANALYSIS ON COMPETENCE AND ADMISSIBILITY

##### A. Competence

25. Under Article 44 of the American Convention, the petitioner is, in principle, authorized to lodge complaints with the IACHR. The alleged victims named in the petition are individuals whose Convention-protected rights the Colombian State undertook to respect and ensure. As for the State, Colombia has been a State party to the American Convention since July 31, 1973, the date on which it deposited the respective instrument of ratification; it has been a State party to the Convention of Belém do Pará since November 15, 1996. Therefore, the Commission has competence *ratione personae* to examine the petition.

26. The Commission has competence *ratione loci* to take up the petition inasmuch as it alleges violations of rights protected in the American Convention and the Convention of Belém do Pará, said to have occurred within the territory of Colombia, a State party to those conventions. The Commission has competence *ratione temporis* inasmuch as the obligation to respect and ensure the rights protected under the American Convention and the Convention of Belém do Pará was already in effect on the date on which the facts alleged in the petition were said to have occurred.

27. Finally, the Commission has competence *ratione materiae* because the petition denounces possible violations of human rights protected by the American Convention. Concerning the petitioner's allegations of violations of Article 7 of the Convention of Belém do Pará, in keeping with its Article 12 the Commission will consider those claims in accordance with the norms and procedures established by the American Convention on Human Rights and the Statutes and Rules of Procedure of the Inter-American Commission on Human Rights for lodging and considering petitions.

B. Admissibility requirements

1. Exhaustion of local remedies

28. Article 46(1)(a) of the American Convention provides that for a complaint lodged with the Inter-American Commission alleging a violation of the American Convention to be admissible, the remedies under domestic law must have been pursued and exhausted in accordance with generally recognized principles of international law.

29. Article 46(2) of the American Convention provides that the prior exhaustion rule does not apply when:

- a) the domestic legislation of the State concerned does not afford due process of law for the protection of the right or rights that have allegedly 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.

As the Inter-American Court has established, whenever a State alleges a failure to exhaust domestic remedies, it must demonstrate that there are remedies that remain to be exhausted and that they are "adequate," which means that the function of those remedies within the legal system is suitable to address an infringement of a legal right.[FN11]

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[FN11] Article 31(3) of the Commission's Rules of Procedure. See also I/A Court H.R., Case of Velásquez Rodríguez, Judgment of July 29, 1988, paragraph 64.

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30. In the present case, the State is arguing that the petition does not comply with the rule requiring exhaustion of local remedies, stipulated in Article 46(1)(a) of the American Convention, inasmuch as the alleged victim failed to avail herself of the remedies under domestic law to correct the violation alleged. Specifically the State claims that the alleged victim did not appear as a civil party to the criminal case and that she did not apply for poverty protection [amparo de pobreza] when her claimed indigence supposedly prevented her from appearing as a civil party to the case. The petitioner, on the other hand, alleges that the criminal investigation was suspended more than eight years ago and has not been reopened since and that

the alleged victim filed a petition with the Presidential Agency for Social Action and International Cooperation seeking economic aid which was denied.

31. Given the arguments made by the parties, the first matter to be determined, based on the inter-American system's case law, is which internal remedies have to be exhausted in a case such as this. The jurisprudence of the inter-American system holds that whenever a crime is committed that can be prosecuted *ex officio*, the State has an obligation to set the criminal justice system in motion and to prosecute the case<sup>[FN12]</sup> and that in such cases this is the appropriate avenue to pursue to ascertain the facts, try those responsible, establish the appropriate penalties, and make possible other forms of pecuniary reparations. The Commission is of the view that the facts alleged by the petitioner in connection with the death of Ismael Eterio Becerra are, under Colombia's domestic laws, crimes that can be prosecuted *ex officio*; therefore, investigation and prosecution of the crimes must be undertaken by the State itself as its own responsibility.

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[FN12] IACHR, Report No. 52/97, Case 11,218, Arges Sequeira Mangas, Annual Report of the IACHR 1997, paragraphs 96 and 97. See also Report No. 55/97, Case 11,137, Abella et al., paragraph 392.

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32. The Commission observes that the harassment that police agents are alleged to have inflicted upon Miliene Pérez Lozano and that allegedly forced her to move, could have become obstacles that prevented her from pressing for and participating in judicial proceedings intended to solve Ismael Eterio Becerra's murder, and from pursuing legal action in connection with her own situation.

33. The Commission notes that although the events happened more than eight years ago, the criminal investigation purportedly remains suspended. As a consequence, the investigation presumably has produced no results and ultimately no one has been made to answer for the crime. Given the characteristics of the present case and the amount of time that has passed since the facts set forth in the petition are alleged to have occurred, the Commission finds that the exception provided for in Article 46(2)(c) of the American Convention applies, which is the exception allowed in a case of unwarranted delay in rendering a final judgment. Thus, the rule requiring exhaustion of local remedies does not apply.

34. Invocation of the exceptions to the rule requiring exhaustion of domestic remedies, provided for in Article 46(2) of the Convention, is closely linked to the determination of possible violations of certain Convention-protected rights, such as the guarantee of access to justice. However, Article 46(2) of the Convention, by its nature and purpose, has a content that is independent of and separate from the substantive norms of the Convention. Therefore, the determination as to whether the exceptions to the domestic remedies rule apply to the case in question must be made prior to and separate from the examination of the merits, since it hinges on a standard of assessment different from the one used to establish the possible violation of Articles 8 and 25 of the Convention. It should be clarified that the causes and effects that prevented exhaustion of domestic remedies will be examined in the report that the Commission

will adopt on the merits of the case, in order to determine whether they constitute violations of the American Convention.

2. Time period for lodging the petition

35. The Convention provides that in order for a petition to be admitted, it must be submitted within a six-month period counting from the date on which the party alleging a violation of his rights was notified of a final judgment at the domestic level. In the petition sub examine, the Commission has established that the exception that Article 46(2)(c) of the American Convention allows to the rule requiring exhaustion of local remedies does apply. Article 32 of the Commission's Rules of Procedure states that in those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time, as determined by the Commission. For this purpose, the Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case.

36. In the instant case, the petition was received on November 14, 2006. The events that are the subject of the complaint began on April 16, 2001; the investigation has remained suspended since June 27, 2003; its effects in terms of the alleged failure on the part of the administration of justice to produce any outcome continue into the present. According to the petition, Milene Pérez Lozano and her three children endured harassment from the time her lifetime partner was killed, until she was forced to move to Cartagena. The petition states that despite the fact that she had moved to another city and was very poor, she nonetheless tried to obtain information by filing claims with the National Police, the Prosecutor General's Office and the Attorney General's Office, all for the purpose of solving the case and obtaining justice. Therefore, given the context and characteristics of the present case and the fact that an investigation is still pending, the Commission deems that the petition was lodged within a reasonable period of time and that the admissibility requirement regarding the time period for lodging the petition are deemed to have been satisfied.

3. Duplication of international proceedings and international res judicata

37. Nothing in the case records suggests that the subject of the petition is pending in another international proceeding for settlement or that it replicates a petition already examined by this or another international organization. Therefore, the requirements set forth in Articles 46(1)(c) and 47(d) of the Convention are deemed to have been satisfied.

4. Characterization of the facts alleged

38. Given the arguments of fact and of law made by the parties and the nature of the matter before it, the Commission finds that the petitioner's allegations regarding the extent of the alleged responsibility of the State in the facts that are the subject of the petition could characterize possible violations of the right to humane treatment, the right to a fair trial, the right to privacy, the rights of the family, the rights of the child and the right to judicial protection, established in articles 5, 8(1), 11(2), 17(1), 19 and 25 of the American Convention, in relation to Article 1(1) thereof.

39. As for the petitioner's claim regarding the mental affliction that the state agents' alleged harassment of Milene Pérez Lozano caused, and which purportedly forced her and her three children to move, the Commission observes that these allegations will require an in-depth analysis by the standards set in Article 5 of the Convention.

40. As for the petitioner's claim regarding the alleged harassment by State agents against Milene Pérez Lozano, the Commission observes that these allegations will require an in-depth analysis by the standards set in Article 11(2) of the Convention.

41. The Commission observes that in light of the context and modalities of internal displacement in Colombia[FN13] and given the facts as reported in the present petition and in application of the principle of *iura novit curiae*, the Commission is called upon to determine whether or not the State is responsible for a violation of the right to freedom of movement and residence, protected under Article 22(1) of the American Convention, in relation to Article 1(1) thereof, given the fact that Milene Pérez Lozano and her three children were allegedly forced to move because of harassment by police agents. Furthermore, the Commission is called upon to determine whether or not the State is responsible for a violation of the rights of the family established in article 17(1) of the American Convention in relation to Article 1(1) thereof as a consequence of the displacement.

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[FN13] See among others, IACHR. Annual Report, Chapter IV: Colombia, pars. 74-84, available at: <http://www.cidh.oas.org/annualrep/2008eng/Chap4eng.htm#COLOMBIA>.  
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42. As for the petitioner's claim regarding the different impact that displacement would have caused in Milene Pérez Lozano's three children, that is that they are living in constant fear and lack the economic means to meet their basic necessities in view of their condition of special vulnerability the Commission observes that the allegations require an in-depth analysis by the standards set by article 19 of the Convention. With respect to the alleged violation of article 19, in accordance with the standards of interpretation established in the American Convention on Human Rights,[FN14] as well as the criteria established by the Inter-American Court of Human Rights with respect to the integration of the regional and universal systems,[FN15] and in light of the corpus juris relating to the rights of the child,[FN16] the Commission will interpret the scope and content of the rights allegedly violated in the case of Milene Pérez Lozano's three children.

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[FN14] American Convention, Article 29, Restrictions Regarding Interpretation. "No provision of this Convention shall be interpreted as: [...]b. restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party; [...]."

[FN15] I/A Court H.R., Advisory Opinion 1/82 "Other Treaties" Subject to the Consultative Jurisdiction of the Court (Art. 64 American Convention on Human Rights)" of September 24, 1982. Series A No. 1, paragraph 41. The Commission observes that Colombia ratified the United Nations Convention on the Rights of the Child on January 28, 1991. See also, I/A Court H.R.,

Advisory Opinion OC-17/02 Juridical Condition and Human Rights of the Child of August 28, 2002. Series A No. 17, paragraphs 20-24.

[FN16] I/A Court H.R., Case of the "Street Children" (Villagrán Morales et al.). Judgment of November 19, 1999. Series C No. 63, para. 194. Case of the "Juvenile Reeducation Institute". Judgment of September 2, 2004. Series C No. 112, para. 148, Case of the Gómez-Paquiyaury Brothers. Judgment of July 8, 2004. Series C No. 110, para. 166. I/A Court H.R., Judicial Status and Human Rights of the Child, Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, paras 24, 37, 53.

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43. As for the allegations of violations of the right to juridical personality, the right to life, the right to personal liberty, the right of assembly and the right to equal protection, established in articles 3, 4, 7, 15 and 24 of the American Convention, in relation to Article 2 thereof, the petitioner's allegations do not tend to establish violations of the American Convention. Therefore, those allegations cannot be declared admissible. As for Articles 3, 4, 6 and 7 of the Convention of Belém do Pará, the petitioner's allegations do not describe what aspects of the complaint would engage the State's international responsibility for gender-based violence by virtue of the fact that the alleged victim was female.

## V. CONCLUSIONS

44. The Commission concludes that it is competent to examine the claims that the petitioner makes with respect to alleged violation of articles 5, 8(1), 11(2), 17(1), 19, 25 and in application of the principle of *iura novit curia* Article 22(1) of the American Convention, in relation to Article 1(1) thereof, and that these claims are admissible inasmuch as the requirements stipulated in articles 46 and 47 of the American Convention are deemed to have been satisfied. The Commission further concludes that the allegations of violation of articles 3, 4, 7, 15 and 24 of the American Convention, in relation to Article 2 thereof, and Articles 3, 4, 6 and 7 of the Convention of Belém do Pará are deemed inadmissible.

45. Based on the foregoing arguments of fact and of law and without this implying any prejudgment of the merits of the case,

## THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

### DECIDES:

1. To declare the present case admissible with respect to articles 5, 8(1), 11(1), 17(1), 19, 22(1) and 25 of the American Convention, in relation to Article 1(1) thereof.
2. To notify the Colombian State and the petitioner of this decision.
3. To proceed to the analysis of the merits of the case.
4. To publish this decision and include it in the Commission's Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 10th day of the month of November 2009. (Signed):

Luz Patricia Mejía Guerrero, President; Víctor E. Abramovich, First Vice-president; Felipe González, Second Vice-president; Paulo Sérgio Pinheiro, Sir Clare K. Roberts, Florentín Meléndez, and Paolo Carozza, members of the Commission.