

**REPORT No. 4/11**  
CASE 1144-04  
ADMISSIBILITY  
ARLES EDISSON GUZMAN MEDINA ET AL. (COMUNA 13)  
COLOMBIA<sup>1</sup>  
January 4, 2011

**I. SUMMARY**

1. On October 27, 2004 the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received a petition submitted by the Inter-Disciplinary Group for Human Rights (hereinafter “the petitioners”) alleging responsibility on the part of the Republic of Colombia (hereinafter “the State” or “the Colombian State”) for the detention, forced disappearance, and presumed death of Arles Edisson Guzmán Medina (hereinafter “the alleged victim”) on November 30, 2002 in Comuna 13 in the city of Medellín, department of Antioquia, as well as for a lack of diligence on the part of judicial authorities in the investigation and punishment of those responsible for the events and for the suspension of non-derogable rights and guarantees during the state of internal disturbance declared on August 11, 2002.

2. The petitioners allege that the State is responsible for violating the rights to life, personal integrity, personal freedom, judicial guarantees, and judicial protection enshrined in Articles 4, 5, 7, 8, 17, 25, and 27 of the American Convention on Human Rights (hereinafter “the American Convention”), all in accordance with the general obligation to respect and guarantee the rights established in Article 1(1) thereof. They maintain that the petition is admissible based on the exception to the exhaustion of domestic remedies provided in Article 46(2)(c) of the American Convention, given the unwarranted delay in resolving the criminal process. For its part, the State alleges that the petition is inadmissible in view of the failure to exhaust the remedy of habeas corpus and because a criminal process is under way and the petitioners failed to characterize the alleged violations in that the actions were not committed by agents of the State.

3. After examining the positions of the parties in the light of the admissibility requirements established in Articles 46 and 47 of the Convention, the Commission concludes that it is competent to hear the complaint and that the complaint is admissible with respect to the alleged violation of the rights enshrined in Articles 4, 5, and 7 of the American Convention, as they relate to Article 1(1) thereof. In accordance with the principle of *iura novit curia* the Commission also considers admissible the potential violation of Article 3 of the American Convention and Article I of the Inter-American Convention on the Forced Disappearance of Persons (hereinafter the “Convention on Forced Disappearance”), to the detriment of Arles Edisson Guzman. In addition, the Commission considers admissible the potential violation of Articles 5, 8, and 25 of the American Convention as they relate to Article 1(1), to the detriment of the alleged victim. Finally, the Commission concludes that the petition is inadmissible with respect to the alleged violation of Articles 17 and 27 of the American Convention. As a result, it orders notification of the parties, publication of its decision, and inclusion thereof in its Annual Report.

**II. PROCESSING BY THE COMMISSION**

4. The IACHR recorded the petition under No. 1144-04 and, after preliminary analysis, proceeded on November 23, 2004 to forward it to the Colombian State, allowing a period of two months for the State to submit its response. On July 6, 2007, the State submitted its response, which was forwarded on August 20, 2007 to the petitioners for submission of their observations. On May 12, 2009, the IACHR repeated to the petitioners its request for information. The petitioners submitted their response on August 3, 2009, which was forwarded to the State on March 25, 2010 for its observations. On April 23,

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<sup>1</sup> As provided in Article 17.2 of the Commission’s Rules of Procedure, Commissioner Rodrigo Escobar Gil, a Colombian national, did not participate in the discussion or the decision regarding this petition.

2010, the State requested an extension, which was granted by the IACHR. On May 25, 2010 the State submitted its response, which was forwarded to the petitioners on May 26, 2010 for its information.

### III. POSITIONS OF THE PARTIES

#### A. Position of the Petitioners

5. As background, the petitioners indicate that Comuna 13 in the city of Medellín is made up of 22 neighborhoods where approximately 130,000 families live, most of whom survive on incomes below the minimum wage. They indicate that conditions of poverty foster the emergence of illegal armed groups and that military operations to combat those groups became increasingly more frequent and more aggressive against the population.

6. They indicate that at dawn on October 16, 2002 the anti-guerrilla operation called "Orion" was conducted in Comuna 13 under the state of internal disturbance decreed on August 11, 2002 by Colombian President Álvaro Uribe Vélez. They maintain that "Operation Orion" was carried out by joint forces that included 700 members of the 4<sup>th</sup> Brigade of the National Army, the Metropolitan Police of Medellín, the Department of Security (hereinafter "DAS"), the Unified Action Group for Personal Liberty (GAULA), the Special Antiterrorist Command (CEAT), and the Investigations Corps of the Office of the Attorney General (hereinafter "CTI"), for the purpose of taking the area back from the guerrillas.

7. They indicate that after intensive combat between October 16 and 18, 2002 the government forces and the National Police took control of the area leaving "three civilians dead and 40 wounded, in addition to seven disappeared."<sup>2</sup> They state that this operation was the last that the Armed Forces conducted in the area that year.<sup>3</sup>

8. They allege that two weeks later the presence of paramilitary groups belonging to the Cacique Nutibara Bloc of Self-Defense Forces became overt and with the acquiescence and permission of law enforcement they began continuous control and surveillance of the population's activities. They allege that the competent authorities were informed of these facts as well as the excesses committed by the paramilitaries.

9. They also allege that during the state of internal disturbance the national government allowed the Army and the National Police to exercise judicial police functions not covered by law and that despite repeated complaints the government failed to implement measures against the systematic practice of murders, disappearances, and forced displacements in an area totally controlled by the government's security forces.

10. They state that on the night of November 30, 2002 two paramilitaries arrived at the "Asados el 20," the restaurant owned by Arles Guzmán and his wife Luz Enith Franco and located a few meters from the Army and Police checkpoint, where they asked for Arles Guzmán. They allege that the paramilitaries took him away in a taxi "with an order for him to answer questions for the commander."<sup>4</sup> They allege that since that time Arles Guzmán is among the disappeared.

11. They allege that the following day Luz Franco received a telephone call telling her that her husband was well and would return. They state that since her husband did not return, on December 2, 2002 Luz Franco went to a farm in the town of San Cristóbal where the command post of the paramilitaries was said to be located. When she asked about her husband, a paramilitary answered that "he would be coming in a bag of shredded garbage" and ordered her to leave in five minutes.

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<sup>2</sup> The petitioners cite the report "Human Rights and International Humanitarian Law Situation. Principal Violations and Breaches." Annex to the 2002 Report of the Office of the High Commissioner for Human Rights. Petitioners' brief of August 3, 2009.

<sup>3</sup> They state that the "La Mariscal," "Potestad," and "Antorcha" military operations were also conducted in 2002. Initial petition of October 27, 2004.

<sup>4</sup> Initial petition of October 27, 2004.

12. They allege that, like Arles Guzmán, many individuals were removed from their homes and accused of assisting the guerillas and that their bodies were dismembered and found in locations near Comuna 13 while others continue to be counted among the disappeared.

13. The petitioners allege that with the military operations the State violated its international obligations regarding the protection of human rights and failed to comply with international humanitarian law (hereinafter "IHL") by ignoring the principles of proportionality and distinction by attacking the unarmed and defenseless civilian population. They allege that the government cannot justify the means used by arguing that it was combating organized crime or justify having given free rein to paramilitaries to control an area of the city that has historically been buffeted by poverty and violence. They state that of the 46 persons reported as disappeared between July 2002 and July 2003 only eight have been found in a common grave.

14. Regarding the exhaustion of domestic remedies, they state that on November 30, 2002 Prosecutor's Office 114 of the Crimes against Freedom Unit before the Criminal Judges of the Circuit of Medellín initiated an investigation to shed light on the facts, as case No. 644804. They state that Luz Franco went to the Prosecutor's Office and gave them a sketch with the location of a common grave that the inhabitants claimed existed. They allege that much later the common grave was found by the Army but the body of Arles Guzmán was not found. They maintain that despite the cooperation of the family, which provided timely information to the Prosecutor's Office and has always been available to respond to summonses, the investigation is still in the preliminary stage.

15. In response to the State's assertion that the criminal complaint was filed on October 1, 2003 (see *infra* III.B), the petitioners dispute that the Office of the Ombudsman reported the facts to the Office of the Prosecutor on December 19, 2002; that Henry Guzmán, the brother of Arles Guzmán, reported the facts to the Prosecutor's Office on January 7, 2003 and that the State was informed of the disappearance of Arles Guzmán in a timely manner.<sup>5</sup>

16. They also allege that the Departmental Office of the Prosecutor of Antioquia forwarded the case to the Delegate Procurator for Human Rights in Bogotá, but there have been no results as yet. In addition, they allege that the siblings of Arles Guzmán participated in meetings with representatives of the National Government, the Office of the Procurator General (hereinafter the "PGN"), the Solicitor's Office, and the Office of the Attorney General (hereinafter the "FGN") where the population reported the situation and corrective measures were allegedly sought.

17. In response to the State's argument regarding the failure to exhaust the remedy of habeas corpus (see *infra* III.B), the petitioners respond that the remedy is intended to "protect private persons whose liberty is arbitrarily denied by agents of the State and not for detentions and disappearances carried out by private individuals with the connivance or blind eye of agents of the State"<sup>6</sup> and that the criminal complaint was the only remedy available.

18. The petitioners allege that no adequate investigation has been conducted to identify, prosecute, or punish those responsible and learn the truth. They state that there is an unwarranted delay in the criminal remedy and thus the exception to the exhaustion of domestic remedies established in Article 46(2)(c) of the American Convention is applicable.

19. The petitioners allege that in view of the time elapsed it is reasonable to assume that Arles Guzmán is not alive. They allege that by allowing paramilitary groups to detain a defenseless civilian – just a few meters away from the command post of the National Army that had total control of the

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<sup>5</sup> The petitioners attach a letter dated December 17, 2002 sent to the petitioners by the National Directorate of Human Rights and IHL of the Colombian Ministry of Foreign Affairs, with an attachment indicating the disappearance of Arles Guzmán. Petitioners' brief dated August 3, 2009.

<sup>6</sup> Petitioners' brief dated August 3, 2009, p. 5.

area – who disappeared and executed him, the State violated Articles 4, 5, and 7 of the American Convention as they relate to Article 1(1) to the detriment of Arles Guzmán, and Articles 5, 8, and 25 as they relate to Article 1(1) of the same instrument to the detriment of his relatives.<sup>7</sup>

20. They also allege that the State ignored its obligation to protect the family as the essential nucleus of society given that the disappearance of Arles Guzmán broke the essential ties of the relationships and affection that maintained the family structure, so that the State has violated Article 17 of the American Convention.

21. Finally, the petitioners allege that on the date when the events occurred, Colombia was under a state of internal disturbance decreed by the Colombian President and that during that period the State ignored fundamental judicial rights and guarantees that cannot be suspended, in accordance with Article 27(2) of the American Convention.

## **B. Position of the State**

22. In response to the petitioners' complaint, the State alleges that the petition is inadmissible given the failure to exhaust domestic remedies and because the alleged facts do not illustrate a violation of the American Convention.

23. Regarding "Operation Orión," the State maintains that the operation was planned by law enforcement and carried out between October 16 and 20, 2002 in coordination with the CTI, FGN, DAS, the Judicial Investigation Unit, and the PGN, in order to reestablish order and protect the rights and fundamental freedoms of the civilian population. It alleges that the operation imposed military checks and control of the area and managed to consolidate and guarantee the peace, security and physical safety of the civilian population, and was concerned at all times with guaranteeing and respecting human rights. It alleges that the operation was conducted not only against the guerrillas but against all self-defense groups committing crimes in Comuna 13 and that the principles of proportionality and respect for IHL were respected at all times, given that the civilian protection was protected.

24. Regarding the exhaustion of domestic remedies, the State maintains that the petitioners did not exhaust the remedy of habeas corpus, as the suitable remedy for cases of forced disappearance. In addition, it argues that the petitioners had access to other domestic remedies. It maintains that on November 26, 2004 Prosecutor's Office 144, Medellín Section, provisionally suspended the investigation initiated, given the failure to individually identify those responsible. The State indicates that on November 25, 2005 the FGN submitted the proceedings to the National Human Rights and IHL Unit (hereinafter "UNDH-DIH") in Bogotá so that it could move ahead with the *ex officio* investigation under case No. 2302. It states that the investigation is in the summary stage with constant activity, a paramilitary leader has been accused for the alleged disappearance of Arles Guzmán, and a series of evidentiary proceedings has been ordered. It also states that Luz Franco joined the proceeding as a civilian party on August 24, 2006.

25. The State attributes the delay in the investigations to the fact that the *ex parte* complaint was formally filed on October 1, 2003 – one year after the events occurred – and to the complexity of the matter in view of the public order situation existing at the time the events occurred. In addition, it maintains that "the difficulties inherent in the failure to immediately file a complaint with the State's authorities not only impeded immediate action by the State but also meant that quick results were not obtained once the events were reported."<sup>8</sup> It alleges that the investigation is being conducted diligently and seriously and that, based on the principle of subsidiarity in international law, States must have the opportunity to remedy presumed violations of the American Convention through their domestic remedies.

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<sup>7</sup> His wife, Luz Enith Franco Noreña, and his siblings, Rubiela, Albeiro de Jesús, Henry Orlando, Martha, and Magnolia Guzmán Medina. Initial petition of October 27, 2004.

<sup>8</sup> Note from the State, DDH/GOI No. 33055/1649 dated July 4, 2007, p. 20.

26. The State indicates that no investigations initiated by Military Criminal Investigation Court 187 at the Metropolitan Police Command of Valle de Aburrá were found nor were any disciplinary proceedings recorded regarding the events in the Provincial Prosecutor's Office or the Disciplinary Oversight Coordinating Office of the Metropolitan Police of Valle de Aburrá. The State also alleges that there are no complaints against military personnel of the 4<sup>th</sup> Brigade of the National Army regarding the events in question. In addition, it alleges that the petitioners have not filed any action for direct reparations.

27. The State outlines Colombian legislation on forced disappearance, including Law No. 589 of 2000 defining the offense of forced disappearance and the Penal Code.<sup>9</sup> It alleges that the petitioners have not submitted an application seeking activation of the urgent disappeared persons search mechanism provided by Colombian law.<sup>10</sup> The State alleges that, nonetheless, it has also informed the National Commission on the Search for Disappeared Persons of the facts of this petition.

28. It alleges that there is no causal link between the alleged disappearance of Arles Guzmán and the actions of the troops that conducted the military operations to retake Comuna 13. It alleges that the alleged disappearance occurred two weeks after "Operation Orión" and that the people who committed it are not agents of the State nor did they act with its supervision, guidance, tolerance, or acquiescence; this being the case, family members – rather than submit a complaint to the authorities – indicate that they reacted by looking for the criminals.

29. It alleges that the events involved in the alleged disappearance of Arles Guzmán were totally unforeseen and did not afford the State any reasonable opportunity to prevent them since prior knowledge was impossible. In this respect, it believes that responsibility cannot be assigned to the State for the events alleged in the petition in that there was not even a lack of due diligence in preventing an alleged violation of the American Convention.

30. Finally, the State maintains that the declaration of internal disturbance on August 11, 2002 met the formal and material requirements established in the Political Constitution and in Article 27 of the American Convention, given that the state of emergency was adopted on a limited and reasonable basis for the period of 90 days, due to critical conditions of insecurity to which the civilian population was exposed by extralegal armed groups, and that in addition to complying with the constitutional checks the measure was adopted without restricting any of the rights and freedoms established in Article 27(2) of the American Convention.

#### **IV. ANALISIS OF ADMISSIBILITY**

##### **A. Competence *ratione materiae*, *ratione personae*, *ratione temporis*, and *ratione loci* of the Commission**

31. In principle, the petitioners are empowered by Article 44 of the American Convention to submit petitions to the Commission. The petition indicates as alleged victims individuals with respect to whom the Colombian State agreed to respect and guarantee the rights enshrined in the American Convention. With respect to the State, the Commission indicates that Colombia has been a State Party to the American Convention and the American Convention on Forced Disappearance since July 31, 1977 and April 4, 2005, respectively, the dates on which it deposited its ratifying instruments. Thus, the Commission is competent *ratione personae* to examine the petition. The Commission is also competent *ratione loci* to hear the petition in that it alleges violations of right protected in these instruments that took place within the territory of Colombia, a State Party to those treaties.

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<sup>9</sup> Law 599 of 2000. Note from the State DDH/GOI No. 33055/1649 of July 4, 2007.

<sup>10</sup> The State indicates that this mechanism is established in Law No. 589 of 2000. Note from the State DDH/GOI No. 33055/1649 of July 4, 2007.

32. The Commission is competent *ratione temporis* in that the obligation to respect and guarantee the rights protected in the American Convention was already in effect for the State on the date the events alleged in the petition took place. The Commission notes that the Convention on Forced Disappearance took effect for Colombia on April 4, 2005. Therefore, the IACHR is competent *ratione temporis* with respect to the obligation established in Article 1 thereof by virtue of the continuing nature of the alleged failure to shed light on the alleged crime of forced disappearance.<sup>11</sup>

33. Finally, the Commission is competent *ratione materiae*, because the petition reports violations of human rights protected by the American Convention and by the Convention on Forced Disappearance.

## **B. Admissibility requirements**

### **1. Exhaustion of domestic remedies**

34. Article 46(1)(a) of the American Convention requires the prior exhaustion of available domestic remedies in accordance with generally recognized principles of international law as a requirement for the admission of complaints regarding the alleged violation of the American Convention.<sup>12</sup> Article 46(2) of the Convention establishes that the requirement on the prior exhaustion of domestic remedies is not applicable when (i) 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; (ii) 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 (iii) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

35. In the instant case, the State maintains that the petition does not satisfy the requirement of prior exhaustion of domestic remedies because the petitioners failed to exhaust the remedy of habeas corpus and because a criminal investigation is in progress. For their part, the petitioners maintain that the remedy of habeas corpus is not intended to protect people detained and disappeared by individuals with the connivance or negligence of agents of the State and argue that the exception provided in Article 46(2)(c) of the American Convention applies in view of the unwarranted delay in the criminal process.

36. As established by Article 31(3) of the Commission's Rules of Procedure and the jurisprudence of the Inter-American Court, whenever the State alleges the petitioner's failure to exhaust domestic remedies it must demonstrate that the remedies that have not been exhausted are "suitable" for remedying the alleged violation, which means that the function of those remedies within the domestic legal system is suitable for protecting the violated legal status.<sup>13</sup>

37. In view of the parties' allegations, it is first necessary to clarify which domestic remedies should be exhausted in this case. The Inter-American Court has indicated that only remedies suitable for remedying the violations allegedly committed must be exhausted. Adequate remedies are

those which are suitable to address an infringement of a legal right. A number of remedies exist in the legal system of every country, but not all are applicable in every circumstance. If a remedy is not adequate in a specific case, it obviously need not be exhausted. A norm is meant to have an

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<sup>11</sup> IACHR. Report No. 65/09, *Juan Carlos Flores Bedregal*, August 4, 2009, para. 45; and Report No. 72/07, *Edgar Quiroga and Gildardo Fuentes*, October 15, 2007, para. 44.

<sup>12</sup> I/A Court H.R., *Case of the Moiwana Village v. Suriname*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of June 15, 2005. Series C, No. 124, para. 48; *Case of Tibi v. Colombia*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 7, 2004. Series C. No. 114, para. 48; and *Case of Herrera Ulloa v. Costa Rica*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of July 2, 2004. Series C, No. 107, para. 80.

<sup>13</sup> I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C, No. 4, para. 64.

effect and should not be interpreted in such a way as to negate its effect or lead to a result that is manifestly absurd or unreasonable.<sup>14</sup>

38. The jurisprudence of the Inter-American Court recognizes that whenever a crime subject to prosecution by the State is committed, the State has the obligation to promote and pursue criminal proceedings<sup>15</sup> and in such cases this is the suitable route for shedding light on the facts, judging those responsible, and establishing the respective criminal penalties, in addition to making other means of reparations of a monetary nature possible. The Commission believes that the facts alleged by the petitioners in the instant case involve the alleged violation of fundamental rights, which are reflected in domestic law as crimes subject to prosecution by the State and it is thus this process that must be pursued by the State itself.

39. In the instant case, following the events of November 30, 2002, the Prosecutor's Office initiated a criminal investigation on the same day. In addition, the Office of the Ombudsman reported the events to Prosecutor's Office on December 19, 2002 and Henry Guzmán reported them on January 7, 2003. The criminal investigation was provisionally suspended on November 26, 2004 and was resubmitted to the UNDH-DH on November 25, 2005, where it is pending in the preliminary stage.

40. It should be noted that – as the State maintains – the remedy of habeas corpus in principle represents a suitable remedy for cases of alleged forced disappearance. In this regard, the Commission notes that in the instant case the Prosecutor's Office initiated a criminal investigation *ex officio* on the day that the alleged disappearance occurred and additionally that the Office of the Ombudsman as well as the relatives of the alleged victim submitted complaints regarding the events. In view of the fact that the State had knowledge of a crime subject to prosecution by the State and had initiated an investigation, the Commission believes that the criminal investigation provided a suitable remedy and that the exhaustion of the remedy of habeas corpus in the instant case became unnecessary.

41. The jurisprudence of the inter-American system for the protection of human rights has established that the conduct of an effective investigation is a fundamental and determining element for the protection of fundamental rights, such as the rights to personal freedom, personal integrity, and life. This assessment is valid regardless of the agent who may ultimately be considered responsible for the violation, including private individuals, since if the events are not investigated seriously they would in a certain sense end up being abetted by the authorities, which could entail international responsibility on the part of the State.<sup>16</sup>

42. The Commission notes that the alleged events that are the subject of the petition began on November 30, 2002 and that more than eight years later the criminal process is still in the preliminary stage, which implies an unwarranted delay under the terms of Article 46(2)(c) of the American Convention. Accordingly, the petitioners must be considered exempt from the requirement to exhaust the domestic remedies before seeking protection from the inter-American system.

43. Finally, the IACHR notes that given the close relationship between the rule on the prior exhaustion of domestic remedies – as provided in Article 46(2) of the American Convention – and the determination of possible violations of rights enshrined in the Convention – such as judicial guarantees and due process of law – compliance with these rules must be weighed with respect for the nature and purpose of each rule. The Commission will analyze the causes impeding the exhaustion of domestic remedies in the merits phase.

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<sup>14</sup> I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C, No. 4, para. 64.

<sup>15</sup> IACHR. Report No. 52/97, Arges Sequeira Mangas, February 18, 1998, paras. 96 and 97; Report No. 55/97, Juan Carlos Abella, November 18, 1997, para. 392 and Report No. 62/00, Hernando Osorio Correa, October 3, 2000, para. 24, Report No. 73/07 Isaac Galeano Arango, October 15, 2007, para. 23.

<sup>16</sup> IACHR Report No.46/07 Mery Naranjo et al. (Comuna 13), July 23, 2007, para. 36.

## 2. Deadline for Submitting a Petition to the Commission

44. Article 46(b) of the American Convention establishes that in order for a petition to be admissible by the Commission it must be submitted within six months of the date on which the alleged injured party was informed of a final decision. In the complaint under review, the IACHR has established the application of the exception to the exhaustion of domestic remedies pursuant to Article 46(2) (c) of the American Convention. In this regard, Article 32 of the Commission's Rules of Procedures establishes that in cases where exceptions to the prior exhaustion of domestic remedies are applicable, the petition must be submitted within a reasonable period of time, in the judgment of the Commission. For this purpose, the Commission must consider the date on which the alleged violation of rights occurred and the circumstances of each case.

45. In the instant case, the petition was received on October 27, 2004, the events covered in the complaint began on November 30, 2002, and the effects thereof in terms of the alleged absence of results from the administration of justice extend to the present date. Therefore, in view of the context and characteristics of the instant case and taking into account the fact that the criminal process is still pending in the preliminary stage, the Commission believes that the petition was submitted within a reasonable period of time and the admissibility requirement referring to the deadline should be considered to have been met.

## 3. Duplication of Proceedings and *Res Judicata*

46. The file in this petition does not contain any information that would lead to a determination that the matter is pending settlement under any other international proceeding or that it has been previously decided by the American Commission. Therefore, the IACHR concludes that the exceptions established in Articles 46(1)(d) and 47(d) of the American Convention are not applicable.

## 4. Characterization of the Alleged Facts

47. The petitioners allege that the State is responsible for having allowed paramilitary groups to disappear and execute Arles Guzmán and for not having investigated, prosecuted, and punished the offense in a proper and timely manner. For its part, the State alleges that the persons who committed the actions covered by the complaint are not agents of the State nor did they act with its supervision, guidance, tolerance, or acquiescence nor was there any lack of due diligence to prevent the events. Accordingly, the State argues that there is no violation of the Convention.

48. Given the evidence submitted by the parties and the nature of the matter submitted for its examination, the IACHR finds that in the instant case it must be established that the allegations of the petitioners regarding the alleged violation of the rights to life, integrity, and personal liberty could characterize violations of the rights protected in Articles 4, 5, and 7 as they relate to Article 1(1) of the American Convention, in the light of the State's duty to provide guarantees and the actions and omissions of its agents with respect to the actions of third parties,<sup>17</sup> to the detriment of Arles Edison Guzmán Medina. In addition, it must be established that the allegations of the petitioners could represent the violation of the right to personal integrity and the guarantees of judicial protection enshrined in Articles 5, 8, and 25 of the American Convention as they relate to Article 1(1) thereof, to the detriment of the relatives of the alleged victim.

49. The IACHR, applying the principle of *iura novit curia*, believes that the events could represent violations of the rights established in Article 3 of the American Convention and Article I of the Inter-American Convention on Forced Disappearance given the ongoing nature of the failure to shed light on the crime of forced disappearance.

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<sup>17</sup> IACHR, Report No. 3/07 Miryam Eugenia Rua Figueroa et al. (Comuna 13) of February 27, 2007, para. 31, Report No. 4/07 Luz Dary Ospina Bastidas et al. (Comuna 13) of February 27, 2007, para. 33, and Report No. 46/07, Mery Naranjo et al. (Comuna 13) of February 27, 2007, para. 42.



50. In that there is no evident lack of foundation or cause for inadmissibility of these aspects of the complaint, the Commission considers the requirements established in Article 47(b) and (c) of the American Convention to have been met. Finally, the Commission believes that the petitioners did not submit sufficient evidence to characterize a violation of the rights enshrined in Articles 17 and 27 of the American Convention.

## **V. CONCLUSIONS**

51. The Commission concludes that it is competent to examine the complaints submitted by the petitioners regarding the alleged violation of Articles 3, 4, 5, 7, 8, and 25 as they relate to Article 1(1) of the American Convention, and Article I of the Convention on Forced Disappearance and that they are admissible in accordance with the requirements established in Articles 46 and 47 of the American Convention. In addition, it concludes that the complaints regarding the alleged violation of Articles 17 and 27 of the American Convention should be declared inadmissible.

52. Based on the foregoing factual and legal arguments and without intending any prejudgment as to the merits of the case,

### **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,**

#### **DECIDES:**

1. To declare this petition admissible with respect to Articles 3, 4, 5, 7, 8, and 25 as they relate to Article 1(1) of the American Convention, and Article I of the Convention on Forced Disappearance;
2. To declare this petition inadmissible with respect to Articles 17 and 27 of the American Convention;
3. To inform the parties of this decision.
4. To continue with the analysis of the merits of the case;
5. To publish this decision and include it in the Annual Report to be submitted to the General Assembly of the OAS.

Approved by the Inter-American Commission on Human Rights on the 4th day of the month of January, 2011 (Signed): Felipe González, President; Paulo Sérgio Pinheiro, First Vice-President; Dinah Shelton, Second Vice-President; José de Jesús Orozco Henríquez and María Silvia Guillén, Commissioners.