REPORT No. 28/11[1]
DECISION TO ARCHIVE
CASE 11.021
COLOMBIA
March 23, 2011

ALLEGED VICTIMS:	José Vicente Apolinar Arias and Macario Reinoso
PETITIONER:	Corporación Colectivo de Abogados José Alvear Restrepo
ALLEGED VIOLATIONS:	The petitioners make no express reference but possible violations of Articles 4, 5, 8, 25 of the American Convention on Human Rights are inferred.
PROCEEDING START DATE:	June 17, 1992

I. POSITION OF THE PETITIONERS

1. In June 1992, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "IACHR") received a petition submitted by the Corporación Colectivo de Abogados José Alvear Restrepo (hereinafter "the petitioners") alleging that agents of the Republic of Colombia (hereinafter "the Colombian State" or "Colombia") were responsible for the arrest and torture allegedly perpetrated against José Vicente Apolinar Arias (35) and Macario Reinoso (60) on October 28, 1991 in the municipality of Vista Hermosa in the Department of Meta.

2. The petitioners indicated that on October 28, 1991 José Vicente Apolinar Arias and Macario Reinoso were detained by members of Army Units attached to Mobile Brigade No. 1 and accused of being auxiliaries of the Revolutionary Armed Forces (FARC). They alleged that José Vicente Apolinar Arias and Macario Reinoso were severely tortured by those Army Units and by members of paramilitary groups that were operating in that region. They allege that they were dressed in military uniforms and placed with their hands tied in front of the troops during counter-guerrilla raids in the areas of conflict so that they could be used as targets. They alleged that during one of the raids there was a confrontation between the Mobile Bridge and the FARC in which José Vicente Apolinar Arias and Macario Reinoso were seriously wounded.

3. The petitioners state that on November 8 the Mobile Brigade presented the alleged victims to the court, indicating that they had been wounded in combat and captured by the Army as members of the FARC and perpetrators of the murders that occurred in that confrontation. The petitioners state that, by order of the Public Order Section of Bogotá, José Vicente Apolinar and Macario Reinoso were imprisoned at the National Model Prison in Bogotá and prosecuted for the crimes of terrorism and rebellion. They state that the alleged victims later reached an agreement with the Prosecutor's Office to submit to the early conclusion of the proceeding. Based on this, a regional judge sentenced them to 30 months in prison for having committed the crime of rebellion, granted them a conditional suspension of the sentence, and released them.

4. The petitioners allege that a disciplinary investigation, which should be initiated *ex officio*, was never initiated by the Office of the Attorney General of the Nation against members of the National Army who were responsible for the arrest and torture of José Vicente Apolinar Arias and Macario Reinoso.

II. POSITION OF THE STATE

[1] 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 decision in this case.

5. In response to the petitioners' complaint, the State considered the petition inadmissible because the domestic remedies had not been exhausted. In this regard, it maintained that no proceeding had been filed in the contentious-administrative jurisdiction, which would be effective for satisfying the damages cause by the alleged actions of the Army members.

6. The State alleged that on November 12, 1991 a Public Order Court of Investigation received a statement against the alleged victims and on November 28, 1991 the court issued a preventive detention order against the accused for the crime of rebellion. It also stated that a special hearing was held regarding the early conclusion of the proceeding on February 9, 1993 and on February 25, 1995 the Regional Judge issued a decision approving an agreement between the Regional Prosecutor's Office and the accused, imposing a 30-month prison sentence and a fine of 100 minimum monthly salaries on the accused for being jointly responsible for the crime of rebellion. The State indicated that the same decision granted a conditional suspension, with prior posting of bond, and issued an order of release.

7. The State also indicated that the Delegate Procurator for Human Rights has no record of a disciplinary investigation related to the events reported.

8. In view of the preceding, the State felt that the domestic remedies had not been exhausted as established in Article 46(1) of the American Convention on Human Rights and that the events described do not characterize alleged violations of the American Convention. Accordingly, the State asked the Commission to declare the complaint inadmissible.

III. PROCEDURE BEFORE THE IACHR

9. In June 1992, the Commission received the initial petition, recorded it under case number 11.021 and, after a preliminary analysis, on June 17, 1992 it forwarded copy of the relevant sections to the State for its observations. On June 10, 1993 and January 24, 1994 the IACHR again asked the State for information. On February 23, 1994 the State submitted its observations, which were forwarded to the petitioners for their observations. On January 5 and November 9, 1995 the IACHR again asked the petitioners for information.

10. On December 26, 1995 the petitioners submitted their observations, which were forwarded to the State for its observations. On March 21, 1996 the State requested an extension, which the Commission granted. On April 10, 1996 the State submitted its observations, which were forwarded to the petitioners for their observations. On June 10, 1996 the petitioners submitted their observations, which were forwarded to the State for its observations. On July 31 and October 3, 1996 the State asked for extensions, which were granted by the Commission.

11. On November 29, 1996 the State submitted its observations, which were forwarded to the petitioners for their observations. On December 20, 1996 the State submitted additional information, which was forwarded to the petitioners for their observations. On February 4, 1997 the petitioners submitted their observations, which were forwarded [to the State] for its observations. On April 18, 1997 the State asked for an extension, which the Commission granted. On April 22, 1997 the State submitted its observations, which were forwarded to the petitioners for their observations. On April 29, 1997 the State submitted additional information, which was forwarded to the petitioners for their observations.

12. On June 18, 1997 the petitioners submitted their observations, which were forwarded to the State for its observations. On September 10, 1997 the State submitted its observations, which were forwarded to the petitioners for their observations. On July 13, 2001 the IACHR made itself available to the parties for the purpose of reaching a friendly settlement and asked the parties to respond within a period of one month. On August 15, 2001 the State asked for an extension, which was granted by the IACHR.

13. On August 28, 2001 the petitioners submitted a brief indicating their unwillingness to initiate a friendly settlement procedure, which was forwarded to the State for its observations. On September 10, 2001 the State asked for an extension, which the IACHR granted. On October 9, 2001

the State submitted its response, indicating that the case did not meet the assumptions required for advancing a friendly settlement.

14. On October 15, 2008 the IACHR sent a communication to the petitioners asking them to submit, within one month, updated information on whether the grounds for the complaint still existed and indicating that, if not, the Commission could proceed to archive the matter. On February 3 and April 3, 2009 the petitioners asked for extensions, which the Commission granted. On May 5, 2009 the IACHR again asked the petitioners for information. On July 1, 2010 the petitioners submitted a brief reporting that they have no contact with the alleged victims.

IV. BASIS FOR THE DECISION TO ARCHIVE

15. Both Article 48(1)(b) of the American Convention on Human Rights and Article 42 of the Rules of Procedure of the Inter-American Commission on Human Rights establish that, when processing a petition, once information has been received or the deadline for its receipt has passed, the IACHR shall ascertain whether the grounds for the petition or communication still exist and, if they do not, shall order that the case be archived.

16. In this petition, the petitioners alleged that the State is responsible for the arrest and torture of José Vicente Apolinar Arias and Macario Reinoso. For its part, the State alleged that the petition was inadmissible due to the failure to exhaust domestic remedies and because the facts reported do not characterize alleged violations of the American Convention.

17. The Commission has not had any updated information from the petitioners since August 2001. The petitioners were unable to provide the information requested by the IACHR in 2009. Under such circumstances and given that the available information is not sufficient to make a decision regarding the admissibility or inadmissibility of the petition, pursuant to Article 48(1)(b) of the American Convention as well as Article 42 of its Rules of the Procedure, the IACHR decides to archive the petition.

Done and signed in the city of Washington, D.C., on the 23rd day of March 2011. (Signed): Dinah Shelton, President; José de Jesús Orozco Henríquez, First Vice-President; Paulo Sérgio Pinheiro, Felipe González, Luz Patricia Mejía Guerrero, and María Silvia Guillén, Commissioners.