

**REPORT 151/11<sup>1</sup>**  
**PETITION 1077-06**  
**ADMISSIBILITY**  
**LUIS GIOVÁN LAVERDE MORENO AND OTHERS**  
**COLOMBIA**  
November 2, 2011

**I. SUMMARY**

1. On October 6, 2006 the Inter-American Commission on Human Rights (hereinafter "the Commission") received a petition submitted by Nicolás Muñoz Gomez and José Luis Viveros Abisambra (hereinafter "the petitioners") alleging the responsibility of the Republic of Colombia (hereinafter "the State", "the Colombian State" or "Colombia") for the presumed illegal detention, on 13 November 2002 in the rural area of the municipio of Urao, Department of Antioquia, by members of the National Army, of Luis Giován Laverde Moreno (18 years), Juan Carlos Castro Alvarez (17 years), Bladimir Vélez Piedrahita (15 years), José Lizardo Piedrahita Vargas (24 years)<sup>2</sup> and Braimer Alexander Oquendo Santana (14 years), and the subsequent death of the first three persons. They also argued that the presumed victims had been subjected to torture and that the events had not been judicially clarified.

2. The petitioners allege that the State was responsible for violating the rights to life, to humane treatment, to judicial guarantees and to judicial protection, established in articles 4, 5, 8 and 25 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") in relation to the duty to guarantee those rights pursuant to article 1.1 of the Treaty. For its part, the State argues that the petition is inadmissible because, with respect to the alleged violations of the rights of Luis Giován Laverde Moreno, Juan Carlos Castro Alvarez and Bladimir Vélez Piedrahita, the Commission would be acting as a court of appeal, and in the case of Braimer Alexander Oquendo the claims of the petitioners do not characterize violations of the American Convention, and domestic legal remedies have not been exhausted.

3. After examining the positions of the parties and the requirements of articles 46 and 47 of the American Convention, the Commission has decided to declare the petition admissible for purposes of examining the alleged violation of articles 4, 5, 7, 8, 19 and 25 taken in concordance with article 1.1 of the American Convention. It has also decided to notify the report to the parties and to order its publication, and to include it in its annual report to the General Assembly of the OAS.

**II. PROCESSING BEFORE THE COMMISSION**

4. The Commission recorded the petition under number 1177-06, and after a preliminary analysis on February 14, 2008 transmitted a copy of the pertinent portions to the State, giving it 90 days to present information pursuant to article 30.3 of the Rules of Procedure in effect at that time. On April 8, 2008 the State requested an extension, which the Commission granted. The Commission received the observations of the State on July 7, 2008, and these were transmitted to the petitioners for their observations. On September 12, 2008 the petitioners requested an extension, which the Commission granted. On December 12, 2008 the petitioners presented their observations, which were transmitted to the State for its observations.

5. On January 15, on February 17, and again on March 21, 2009 the State requested extensions, which the Commission granted. On April 20, 2009 the State presented observations, which were transmitted to the petitioners for their observations. On October 14, 2010 the Commission reiterated its request to the petitioners for information. On December 9, 2010 the Commission again transmitted the

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<sup>1</sup> In keeping with article 17.2 of the Commission's Rules of Procedure, Commissioner Rodrigo Escobar Gil, of Colombian nationality, did not participate in the discussion or the decision in this case.

<sup>2</sup> The petitioners named José Lizardo Piedrahita Vargas in their account of the events but they did not include him as a presumed victim.

communication of the State to the petitioners. On January 25, 2011 the petitioners presented their observations, which were transmitted to the State for its observations. On March 8, 2011 the State requested an extension, which the Commission granted. On April 15, 2011 the State presented its observations, which were transmitted to the petitioners for their information.

### **III. POSITIONS OF THE PARTIES**

#### **A. Position of the petitioners**

6. The petitioners explain, as background, that after the Revolutionary Armed Forces of Colombia (FARC) had kidnapped the Governor of Antioquia and his peace advisor on April 21, 2002 there was a massive buildup of government troops who carried out operations in the rural area of the municipio of Urrao, Department of Antioquia, where the events of the present case allegedly took place.

7. They allege that in this context, on December 13, 2002, after having spent the day working in the fields, Luis Giován Laverde Moreno (18), Juan Carlos Castro Alvarez (17), Bladimir Vélez Piedrahita (15), José Lizardo Piedrahita Vargas (24) and Braimer Alexander Oquendo Santana (14) were on their way to play billiards at the community center of the village of La Honda in the rural area of the municipio of Urrao. At approximately 6:30 PM they decided to take the road home, and they did so in two groups: on one hand, Luis Giován Laverde Moreno and José Lizardo Piedrahita Vargas and, on the other hand, Juan Carlos Castro Alvarez, Vladimir Vélez and Braimer Alexander Oquendo Santana.

8. At approximately 6:40 PM, Luis Giován and José Lizardo were surprised by members of the National Army who, bearing officially issued uniforms and weapons and employing physical and verbal violence, forced them to lie on the ground. Minutes later another soldier arrived and ordered Luis Giován to stand up, whereupon the soldier shot him several times, killing him. The soldiers then entered into radio communication in which they asked whether they should also kill José Lizardo. The soldiers questioned him on the whereabouts of the weapons of his companions, to which he responded that he had never seen them armed and that he knew nothing about the matter. Members of the Army then took note of his personal data and threatened to kill him if he mentioned anything of what had happened.

9. Moments later, according to the petitioners, in a nearby place members of the Army arrested Juan Carlos, Bladimir and Braimer, herded them into a field and forced them to lie on the ground. The soldiers questioned them about the location of weapons, while beating them and threatening to kill them. Subsequently, the soldiers called a lieutenant by radio and asked him to send "the special guys". When "the special guys" arrived, they separated Braimer from his companions and forced him to witness the execution of Juan Carlos and Bladimir. Braimer had been a member of the FARC militia, but a lieutenant ordered him to go home but not to take the main road.

10. The petitioners allege that the national Army covered up the executions as a false confrontation with guerrillas of the FARC. This fabrication was included in a report submitted by the counter-guerrilla Battalion 4, "Granaderos", on September 23, 2002.

11. A criminal investigation into the facts was opened by the military justice system. However, relatives of the victims submitted complaints alleging extrajudicial executions to the municipal prosecution office (*Personería Municipal*) of Urrao, whereupon the prosecutor of the Circuit Court of Urrao (*Fiscalía Delegada ante el Juzgado Penal del Circuito de Urrao*) brought action for conflict of jurisdiction, which was settled by the Superior Council of the Judiciary on March 11, 2004 in favor of the ordinary courts. On December 14, 2007 the 92nd prosecutor of the circuit criminal court (*Fiscal 92 Delegado ante el Juzgado Penal*) of Urrao decided to close the preliminary investigation on the grounds that the deaths of the three alleged victims occurred in a confrontation between the Army and the FARC. On this point, the petitioners argue that the investigation failed to take into account the evidence gathered in other proceedings in which statements had been taken from eyewitnesses, as well as the autopsy reports, which were inconsistent with the version offered by the Army.

12. The petitioners also report that disciplinary proceedings were opened in the Office of Delegate Disciplinary Procurator for the Defense of Human Rights (*Procuraduría Delegada Disciplinaria para la Defensa de los Derechos Humanos*), headquartered in Bogotá, which resulted on July 18, 2005 in a decision to close the case because it had not been possible to identify the suspected perpetrators. As well, relatives of Luis Giován Laverde Moreno, Juan Carlos Castro Alvarez and Bladimir Vélez Piedrahita filed claims for direct reparations and on August 13, 2009 the Administrative Tribunal of Antioquia declared the State administratively responsible for the death of the three victims. The Ministry of Defense filed an appeal, which was denied. The petitioners argue that the direct reparations process took much more than a reasonable time.

13. In short, the petitioners argue that the State is responsible for violating articles 4, 5, 8 and 25 of the American Convention in connection with article 1.1 thereof, to the prejudice of Luis Giován Laverde Moreno, Juan Carlos Castro Alvarez, and Bladimir Vélez Piedrahita, who were executed, and of Braimer Alexander Oquendo Santana, in view of the imminent risk to his life. The petitioners maintain that the lack of judicial clarification of the material facts of the case and the fact that the investigation remained at the preliminary stage for four years and was then closed constitute a violation of the rights to judicial guarantees and to judicial protection established in articles 8 and 25 of the American Convention, in connection with article 1.1 thereof.

14. As to the requirement for prior exhaustion of domestic remedies established in article 46.1 of the American Convention, the petitioners argue that the exception of article 46.2 (c) is applicable in light of the unjustified delay in criminal proceedings, which did not move beyond the preliminary stage for four years and culminated in the closing of the investigation. This, they argue, has left the matter shrouded in impunity.

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

15. The State argues that the petitioners are asking the Commission to reassess the conclusions arrived at domestically with respect to the death of Luis Giován Laverde Moreno, Juan Carlos Castro Alvarez and Bladimir Vélez Piedrahita, and insists that there is no evidence to overturn the reasoned conclusion that the case involved a confrontation between national army personnel and members of outlawed armed groups.

16. The State presented detailed information on the proceedings initiated under internal jurisdiction for the deaths of Luis Giován Laverde Moreno, Juan Carlos Castro Alvarez and Bladimir Vélez. As to the criminal investigation, the State reported that it culminated in a resolution of December 14, 2007 in which the 92nd Prosecutor of the Circuit Court of Urrao ordered the closing of the investigation of Army members on the grounds that the statements given by third parties revealed contradictions as to the time, manner and place in which the events occurred.

17. As well, the State maintains that the relatives of the alleged victims did not constitute themselves as a civil party, which would have been the suitable mechanism for bringing action within the criminal investigation and would have guaranteed their rights. It indicates the foregoing, notwithstanding the fact that rights are guaranteed to the relatives of alleged victims whether or not they are civil parties.

18. As to the disciplinary proceedings, the State reports that the Office of Delegate Disciplinary Procurator for the Defense of Human Rights (*Procuraduría Delegada Disciplinaria para la Defensa de los Derechos Humanos de la Procuraduría General de la Nación*) issued its decision of December 18, 2005 to close the disciplinary investigation on the grounds that it was impossible to conclude that the events had occurred as narrated by the witnesses.

19. Finally, with respect to the administrative disputes procedure, the State indicated that on November 11, 2009 the Administrative Tribunal of Antioquia denied the appeal filed by the Ministry of Defense, thereby upholding the conclusions of its ruling of August 13, 2009 in which it held the State administratively responsible for the deaths of Luis Giován Laverde Moreno, Juan Carlos Castro Alvarez and Bladimir Vélez, and ordered compensation to the relatives. By means of resolution 5005 of

September 13, 2010, the State complied with that ruling and made the payments. As to unjustified delay in direct reparations, as alleged by the petitioner, the State argues that the proper action for questioning that delay would be a motion of *tutela* (protection).

20. With respect to Braimer Alexander Oquendo Santana, the State argues that this case does not involve a violation of article 4 of the Convention and that, with respect to articles 4 and 5, he had not exhausted domestic remedies. With respect to Luis Giován Laverde Moreno, Juan Carlos Castro Alvarez and Bladimir Vélez Piedrahita, the State also argues that, if the petition were admitted, the Commission would be acting as a court of appeals, and that moreover the events do not constitute violations of the American Convention. Finally, the State requests that the Commission declare the petition inadmissible.

#### **IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY**

##### **A. Competence**

21. The petitioners are authorized, in principle, by Article 44 of the American Convention to submit petitions to the Commission. The petition indicates as the alleged victims individuals with respect to whom the Colombian State undertook to respect and ensure the rights enshrined in the American Convention. As regards the State, the Commission notes that Colombia has been a State party to the American Convention as of July 31, 1973, the date on which it deposited its instrument of ratification. Therefore, the Commission is competent *ratione personae* to examine the petition.

22. In addition, the Commission is competent *ratione loci* to take stock of the petition insofar as it alleges violations of rights protected in the American Convention said to have taken place in the territory of Colombia, a State party to that treaty. The Commission is competent *ratione temporis* insofar as the obligation to respect and ensure the rights protected in the American Convention was already in force for the State as of the date on which the facts described in the petition are alleged to have taken place. Finally, the Commission is competent *ratione materiae*, because the petition alleges possible violations of human rights protected by the American Convention.

## **B. Admissibility requirements**

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

23. Article 46(1)(a) of the American Convention requires the prior exhaustion of the remedies available in domestic jurisdiction, in keeping with generally recognized principles of international law, as a requirement for the admissibility of claims regarding the alleged violation of the American Convention.

24. Article 46.2 of the Convention states that the prior exhaustion of domestic remedies shall not be required 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.

Pursuant to the Commission's Rules of Procedure, and as the Inter-American Court has established, whenever a State claims that a petitioner has not exhausted the relevant domestic remedies, it is required to demonstrate that the remedies that have not been exhausted are "suitable" for remedying the alleged violation and that the function of those resources within the domestic legal system is applicable to protecting the violated juridical situation.<sup>3</sup>

25. In the present case, the State argues that criminal, disciplinary and administrative investigations were conducted into the events concerning Luis Giován Laverde Moreno, Juan Carlos Castro Alvarez and Bladimir Vélez Piedrahita. It also claims that the criminal investigation proceeded without delay and in a serious, impartial and effective manner and that the relatives of the alleged victims had ready access to those proceedings even though they did not constitute themselves as a civil party. The petitioners, for their part, argue that the investigation remained at the preliminary stage for four years, after which it was closed, and was therefore ineffective for punishing those responsible. As to Braimer Alexander Oquendo Santana, the State argues that the alleged victim did not exhaust domestic remedies.

26. In light of the parties' arguments, the Commission must first clarify which are the domestic remedies that must be exhausted in a case such as this, in light of the jurisprudence of the inter-American system. The precedents established by the Commission indicate that when a publicly actionable crime is committed, the State is obliged to initiate and pursue criminal proceedings<sup>4</sup> and that, in such cases, this is the best way to clear up incidents, prosecute the guilty, impose the applicable punishments, and enable other forms of monetary redress. The Commission notes that the petitioners' allegations regarding the death of Luis Giován Laverde Moreno, Juan Carlos Castro Alvarez and Bladimir Vélez Piedrahita and the alleged detention and mistreatment of Braimer Alexander Oquendo Santana represent, under Colombian law, publicly actionable offenses that the State itself must investigate and prosecute.

27. As reported, more than eight years have elapsed since the events of the case, and the criminal investigation into the deaths of Luis Giován Laverde Moreno, Juan Carlos Castro Alvarez and Bladimir Vélez Piedrahita was closed on December 14, 2007. With respect to Braimer Alexander Oquendo Santana, there has never been any investigation, although the State had information, from the criminal investigation into the deaths of the three alleged victims, about alleged crimes committed against Braimer, as well as from the testimony given in the administrative proceedings on April 15, 1994 and the complaint filed by the grandmother of Bladimir Vélez Piedrahita on September 21, 2002 before the

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<sup>3</sup> Article 31.3 of the Commission's Rules of Procedure. See also: I/A Court H.R., *Velásquez Rodríguez*. Judgment of July 29, 1988, paragraph 64.

<sup>4</sup> IACHR, Report No. 00/09, Petition 12.335, *Gustavo Giraldo Villamizar Durán*, Colombia, 29 October 2009, para. 33

municipal prosecution authorities of Urrao, in which she narrated the events. In light of the foregoing, the Commission considers that the relatives should not bear the burden of initiating a criminal investigation, and the State has not argued that they should have invoked other measures in the context of that process.

28. On this point, the Commission notes that, as a general rule, a criminal investigation must be undertaken promptly in order to protect the interest of the victims, preserve the evidence and safeguard the rights of any person deemed a suspect in the context of the investigation. As the Inter-American Court has held, while a criminal investigation must satisfy a series of legal requirements, the rule of prior exhaustion of domestic remedies must not result in a situation where international action in support of victims is delayed or suspended until it is useless<sup>5</sup>. In the present case, the State had ample opportunity to investigate and respond to the alleged deeds and, since the criminal investigation was suspended, it has not reported on the efforts made to clarify the facts or the corresponding responsibility.

29. Consequently, in light of the characteristics of this case, the lapse of time since the events in question leads the Commission to consider that the exception of article 46.2 (c) of the Convention is applicable, and therefore the exhaustion of domestic remedies is not a requirement.

30. As to proceedings before the disciplinary and administrative jurisdictions, the Commission has repeatedly maintained<sup>6</sup> that such avenues do not constitute suitable recourse for purposes of analyzing the admissibility of a complaint such as the present one. Disciplinary jurisdiction is not a sufficient means for prosecuting, punishing and repairing the consequences of violations of human rights, and administrative jurisdiction is a mechanism for supervising State administrative activity, and serves only to provide compensation for damages or injury caused by the action or omission of State agents. Consequently, it does not constitute a suitable remedy for purposes of analyzing the admissibility of this case.

31. The invoking of exceptions to the rule of exhaustion of domestic remedies, provided for in article 46.2 of the Convention, is closely linked to the determination of possible violations of certain rights enshrined in the Convention, such as guarantees of access to justice. However, article 46.2, by its nature and purpose, is a standard with independent contents *vis-à-vis* the substantive standards of the Convention. Therefore, the determination of whether the exceptions to the rule of exhaustion of domestic remedies are applicable to the case in question must be dealt with previously and separately from analysis of the merits of the case, as it depends on a different standard of appreciation from that used to determine the possible violation of articles 8 and 25 of the Convention. The causes and effects that prevented the exhaustion of domestic remedies in the case at hand will be analyzed in the Commission's future report on the merits of the dispute, in order to determine whether or not the American Convention was in fact violated.

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<sup>5</sup> I-A Court, *Velásquez Rodríguez*, Preliminary Objections, Judgment of 26 June 1987, Series C. No. 1, para. 93.

<sup>6</sup> IACHR, Report No. 74/07 (Admissibility), *José Antonio Romero Cruz et al vs Colombia*, 15 October 2007, para 34.

## **2. Filing period**

32. The American Convention requires that for a petition to be admitted by the Commission, it must be lodged within a period of six months from the date on which the alleged victim of a rights violation was notified of the final judgment. In the present case, the IACHR has admitted the exceptions to the exhaustion of domestic remedies provided by Article 46.2.c of the American Convention. In this regard, Article 32 of the Commission's Rules of Procedure states that in cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, petitions must be presented within what the Commission considers a reasonable period of time. For that purpose, the Commission is to consider the date on which the alleged violation of rights occurred and the circumstances of each case.

33. In the case at hand, the petition was received on October 6, 2006 and the events of the case took place on November 13, 2002, and their presumed effects in terms of the alleged failure in the administration of justice persist until the present time. The criminal investigation was closed in 2007, after the petition was submitted. Consequently, given the context and characteristics of the case, the Commission considers that the petition was presented within a reasonable period of time, and the admissibility requirement regarding the timeliness of the petition must be deemed satisfied.

## **3. Duplication of international proceedings and *res judicata***

34. Article 46.1 (c) of the Convention provides, in order for a petition to be admitted by the Commission, "that the subject of the petition or communication is not pending in another international proceeding for settlement", and article 47 (d) provides that the Commission shall declare inadmissible any petition or communication when it is "substantially the same as one previously studied by the Commission or by another international organization". Nothing in the case file indicates that the substance of the petition is pending in any other international settlement proceeding or that it replicates any other petition already examined by this Commission or another international body. Hence, the requirements set forth in Articles 46.1.c and 47.d of the Convention have been met.

## **4. Characterization of the alleged facts**

35. Neither the American Convention nor the IACHR Rules of Procedure require a petitioner to identify the specific rights allegedly violated by the State in the matter brought before the Commission, although petitioners may do so. It is for the Commission, based on the system's jurisprudence, to determine in its admissibility report which provisions of the relevant Inter-American instruments are applicable and could be found to have been violated if the alleged facts are proven by sufficient elements.

36. Having seen the elements of fact and law presented by the parties and the nature of the matter brought before it, the IACHR finds that the allegations of the petitioners as to the scope of the alleged State responsibility for the events that surrounded the deaths of Luis Giován Laverde Moreno, Juan Carlos Castro Alvarez, and Bladimir Vélez Piedrahita and the alleged mistreatment of Braimer Alexander Oquendo Santana, as well as its failure to ensure judicial clarification, could characterize possible violations of the rights to life, to humane treatment, to judicial guarantees, and to judicial protection enshrined in articles 4, 5, 7, 8 and 25, taken in conjunction with article 1.1 of the American Convention.

37. The Commission also must establish the possible responsibility of the State for the alleged violation of article 19 of the Convention, interpreted in accordance with legislation relating to the rights of children and adolescents, with respect to the minors Juan Carlos Castro Alvarez (17), Bladimir Vélez Piedrahita (15), and Braimer Alexander Oquendo Santana (14).

38. The Commission will also consider, during the merits stage, the alleged violation of article 5, 8.1 and 25 of the American Convention to the prejudice of Braimer Alexander Oquendo Santana and the relatives of Luis Giován Laverde Moreno, Juan Carlos Castro Alvarez and Bladimir Vélez Piedrahita.

## **V. CONCLUSIONS**

39. The Commission concludes that it is competent to hear the petitioners' claims regarding the alleged violation of Articles 4, 5, 7, 8, 19 and 25 of the American Convention, in conjunction with Article 1.1 thereof, and that those claims are admissible under the requirements established by Articles 46 and 47 of the American Convention.

40. Based on the foregoing considerations of fact and law, and without prejudging the merits of the case,

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

**DECIDES:**

1. To declare this case admissible as regards Articles 4, 5, 7, 8, 19 and 25 of the American Convention, in conjunction with Article 1.1 thereof.

2. To give notice of this decision to the Colombian State and to the petitioners.

3. To continue with its analysis of the merits of the complaint.

4. To publish this decision and to include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 2nd day of November 2011. (Signed): Dinah Shelton, President; José de Jesús Orozco Henríquez, First Vice-President; Felipe González, Luz Patricia Mejía Guerrero, and María Silvia Guillén, Commissioners.