

OEA/Ser.L/V/II.161
Doc. 34
18 March 2017
Original: Spanish

REPORT No. 27/17
PETITION 1653-07
REPORT ON ADMISSIBILITY

FORCED DISPLACEMENT IN NUEVA VENECIA, CAÑO EL
CLARÍN, AND BUENA VISTA
COLOMBIA

Approved by the Commission at its session No. 2077 held on March 18, 2017.
161th Regular Period of Sessions.

Cite as: IACHR, Report No. 27/17. Admissibility. Petition 1653-07. Forced Displacement In
Nueva Venecia, Caño El Clarín, And Buena Vista. Colombia. March 18, 2017.



REPORT No. 27/ 17
PETITION 1653-07
 REPORT ON ADMISSIBILITY
 FORCED DISPLACEMENT IN NUEVA VENECIA, CAÑO EL CLARÍN, AND BUENA VISTA
 COLOMBIA
 MARCH 18, 2017

I. INFORMATION ABOUT THE PETITION

Petitioner:	Nelson Javier De Lavallo Restrepo
Alleged victims:	Forced displacement in Nueva Venecia, Caño el Clarín, and Buena Vista ¹
State denounced:	Colombia
Rights invoked:	Article 4 (right to life), Article 5 (right to humane treatment), Article 8 (right to a fair trial), Article 17 (rights of the family), Article 21 (right to property), Article 22 (freedom of movement and residence), and Article 25 (right to judicial protection) of the American Convention on Human Rights. ²

II. PROCEDURE BEFORE THE IACHR³

Date on which the petition was received:	May 17, 2007
Additional information received during the initial stage:	October 17, 2007 and July 22, 2011
Date on which the petition was transmitted to the State:	May 9, 2012
Date of the State's first response:	August 15, 2012
Additional observations from the petitioner:	August 15, 2012, November 13, 2013, and March 6, 2014
Additional observations from the State:	October 17, 2012, February 18, 2014, and May 16, 2014

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes, American Convention (instrument of ratification deposited on July 31, 1973); Inter-American Convention to Prevent and Punish Torture (instrument of ratification deposited on January 19, 1999)

IV. ANALYSIS OF DUPLICATION OF PROCEDURES AND INTERNATIONAL RES JUDICATA, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES, AND TIMELINESS OF THE PETITION

Duplication of procedures and International <i>res judicata</i>:	No, under the terms of Section VI
---	-----------------------------------

¹ The petition refers to 3,045 alleged victims, who are listed individually in the attached document.

² Hereinafter, "the Convention" or "the American Convention."

³ All observations were duly forwarded to the opposing party.

Rights declared admissible:	Articles 4 (right to life), 5 (right to humane treatment), 8 (right to a fair trial), 17 (rights of the family), 19 (rights of the child), 21 (right to property), 22 (freedom of movement and residence), and 25 (right to judicial protection), in connection with Article 1(1) of the Convention; and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, under the terms of Section VI
Timeliness of the petition:	Yes, under the terms of Section VI

V. ALLEGED FACTS

1. The petitioner alleges that on November 21 and 22, 2000, members of paramilitary groups, with the knowledge and consent of state agents, committed murder, torture, and bodily harm against various members of the communities of Nueva Venecia, Caño El Clarín, and Buena Vista, in the municipality of Sitio Grande, Department of Magdalena. The petitioner indicates that these incidents led to a massive forced displacement of more than 3,000 victims, from approximately 500 families, of whom 1,500 were children. The present petition pertains mainly to the displacement of the alleged victims.

2. Regarding the exhaustion of domestic remedies, the petitioner states that in response to the aforementioned incident, a criminal investigation was launched on November 22, 2000. In this regard he notes that as of the date the petition was filed, six years had elapsed and the case remained pending. The petitioner indicates that more than 70 paramilitaries participated in the events and that the criminal investigation was able to verify the involvement of a non-commissioned officer and several former professional soldiers from the army, as well as of a former police officer. He claims that not all of the perpetrators have been prosecuted and convicted, which reveals a high rate of impunity. Accordingly, the petitioner is invoking the exception to fulfillment of this requirement due to unwarranted delay, an exception set forth under Article 46(2)(c) of the American Convention.

3. The petitioner further notes that the Constitutional Court, via a protection judgment issued on January 22, 2004, declared a state of unconstitutionality with respect to all of the victims of forced displacement in the country as a consequence of the armed conflict and ordered measures be adopted to remedy this situation. He alleges that the State has failed to comply with the orders issued by the Judiciary.

4. The petitioner also states that, between May 2009 and June 2010, 214 family groups that are parties to this petition made use of the protection action to claim redress from the State. He alleges that, as a result of a precautionary measure issued by the Constitutional Court on June 30, 2010, the payment ordered in response to these claims was suspended and the use of protection actions in cases of forced displacement was restricted until such time as a unification judgment that would have *inter communis* effects was rendered. The petitioner holds that delays in the implementation of this resolution and the fact that the suspension order was kept in place constitute an arbitrary failure to comply with international obligations, which curtails the rights of and discriminates against the victims of the armed conflict.

5. With respect to the universe of victims, 3,045 individuals have been named (Annex). The petitioner is requesting that this petition be joined with Case No. 12.575, which pertains to the massacre of the Nueva Venezia community and is presently being processed by the IACHR; this Case was admitted via Report No. 88/06⁴ and is currently in a friendly settlement procedure in the merits stage.

⁴ IACHR, Report on Admissibility No. 88/06, Nueva Venecia Massacre, Colombia, October 21, 2006.

6. The State, for its part, claims that the petition is inadmissible inasmuch as there is duplication with the matters being taken up by the Commission under Case No. 12.575 and a number of the victims are the same. It further alleges that, according to official records in Colombia, the total number of people displaced by the events of November 22, 2000 is 518, a figure that is not consistent with the list of victims identified by the petitioner. In addition, the State holds that the events were perpetrated by private individuals, with no involvement by state agents.

7. Concerning the requirement of exhaustion of domestic remedies, the State claims the exception regarding unwarranted delay does not apply because, even though the criminal case is still ongoing, there has been recent activity in the courts and 14 people, including the individual who ordered the massacre, have been convicted of the crimes of murder and forced displacement. The State notes that it has not been possible to prosecute many of the perpetrators because they were only identified by their alias or because they subsequently died.

8. The State indicates that if the petition is admitted, and the facts and victims, defined, it would not oppose having this petition joined with Case No. 12.575.

VI. ANALYSIS OF DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, EXHAUSTION OF DOMESTIC REMEDIES, AND TIMELINESS OF THE PETITION

9. The State claims there is duplication with facts the Commission is currently examining under Case No. 12.575 regarding the massacre of the people in Nueva Venecia, which is currently in the merits stage, and that a number of the victims are the same. As regards the reported duplication of facts, the Commission observes that Case No. 12.575 was admitted because of the alleged deaths and bodily harm that occurred during the events of November 22, 2000, and that no violations having to do with forced displacement, which are the main thrust of this petition, were alleged. Accordingly, although the petitions may be related, their aims are different. Furthermore, with respect to the alleged victims in this petition who are also part of Case No. 12.575, given that the violations being alleged therein have to do with reported deaths and bodily harm, and that herein the allegations have to do with cases of forced displacement, the Commission has concluded that there is also no duplication with respect to such individuals.

10. Regarding the requirement of exhaustion of domestic remedies, as forced displacement is a crime, a criminal action is the remedy that would have to be pursued in order to consider this requirement exhausted. The Commission observes that the investigation began on November 22, 2000 and when the most recent communication from the parties took place, 14 years later, that investigation was still ongoing. The Commission further observes that, according to the petition, approximately 70 alleged paramilitaries and a number of state agents were reportedly involved in the incident, and yet only 14 of the perpetrators—none of them state agents—have been convicted. Accordingly, the Commission believes it is reasonable to apply the exception enshrined in Article 46(2)(c) of the American Convention and 31(2)(c) of the IACHR's Rules of Procedures.

11. With respect to the timeliness of the petition, the Commission notes that it was filed on May 17, 2007, six years after the criminal action was initiated; as of that date the case was still ongoing. In this regard, given the context and characteristics of the case, the Commission believes that the petition was filed within a reasonable timeframe. The Commission observes that the State did not furnish comments with respect to compliance with this requirement.

VII. ANALYSIS OF COLORABLE CLAIMS

12. In view of the considerations of fact and law presented by the petitioner, as well as the nature of the matter brought to its attention, the IACHR believes that, if proven, the facts alleged could characterize potential violations of the rights protected under Articles 5 (right to humane treatment), 8 (right to a fair trial), 17 (rights of the family), 21 (right to property), 22 (freedom of movement and residence), and 25 (judicial protection) of the American Convention, in connection with Article 1(1) thereof. Furthermore, if proven, the alleged deaths and reported acts of torture concerning the alleged victims that are not a part of

Case 12.575, could characterize potential violations of Article 4 (right to life) of the Convention, in connection with Article 1(1) thereof, and of Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture. Lastly, the Commission believes that the facts could also characterize violations of Article 19 (rights of the child), in connection with Article 1(1) of the American Convention.

VIII. DECISION

1. To find the present petition admissible in relation to Articles 4, 5, 8, 17, 19, 21, 22, and 25 of the American Convention on Human Rights, in connection with Article 1(1) thereof, and in relation to Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture;
2. To join this petition to Case No. 12.575, Nueva Venecia Massacre;
3. To notify the parties of this decision;
4. To continue with the analysis on the merits; and
5. To publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of Washington, D.C., on the 18th day of the month of March, 2017. (Signed): Francisco José Eguiguren, President; Margarete May Macaulay, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice President, Paulo Vannuchi and James L. Cavallaro, Commissioners.