

OEA/Ser.L/V/II.
Doc. 74
5 May 2019
Original: English

REPORT No. 65/19
PETITION 555-09
REPORT ON ADMISSIBILITY

CARLOS ANTONIO GUERRERO VEGA ET AL

COLOMBIA

Approved electronically by the Commission on May 5, 2019.

Cite as: IACHR, Report No. 65-19. Petition 555-09. Admissibility. Carlos Antonio Guerrero Vega et al. Colombia. May 5, 2019.



I. INFORMATION ABOUT THE PETITION

Petitioner:	Fundación para el Desarrollo Social de las Condiciones Mínimas de Vida “Mínimo Vital”
Alleged victim:	Carlos Antonio Guerrero Vega et al ¹
Respondent State:	Colombia ²
Rights invoked:	Articles 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (judicial guarantees), 19 (rights of the child), 25 (judicial protection), and 1.1 (obligation to respect the rights) of the American Convention on Human Rights ³ and Articles 1 and 14 of the Inter-American Convention on Forced Disappearance of Persons ⁴

II. PROCEEDINGS BEFORE THE IACHR⁵

Filing of the petition:	May 7, 2009
Notification of the petition to the State:	August 22, 2014
State’s first response:	September 3, 2014
Additional observations from the petitioner:	October 1, 2014, April 28, 2018
Additional observations from the State:	December 23, 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 (deposited instrument of ratification July 31, 1973); IACFDP (deposit of instrument April 12, 2005)

IV. 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
Rights declared admissible	Articles 3 (recognition of juridical personality), 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (judicial guarantees), 19 (rights of the child), 21 (private property), 22 (movement and residence), 25 (judicial protection) y 26 (economic, social and cultural rights) of the American Convention, in relation to its Articles 1.1 and 2, and Article I of the IACFDP.

¹ The petition refers to 29 alleged victims, which were individually named in an attached document.

² In keeping with Article 17.2.a of the Commission’s Rules of Procedure, Commissioner Luis Ernesto Vargas Silva, of Colombian nationality, did not participate in the debate or decision in the instant matter.

³ Hereinafter “Convention” or “American Convention.”

⁴ Hereinafter “IACFDP.”

⁵ The observations submitted by each party were duly transmitted to the opposing party.

Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, the exception at Article 46.2.c of the American Convention applies
Timeliness of the petition:	Yes, in the terms of section VII

V. PRELIMINARY QUESTION

1. The instant petition covers the complaints lodged by 29 persons, all of whom are represented by the petitioners *Fundación para el Desarrollo Social de las Condiciones Mínimas de Vida “Mínimo Vital,”* who allege that they have suffered illegal detentions, forced disappearances, and extrajudicial executions committed by paramilitary groups that operated in the municipality of Valencia, department of Córdoba from 1983 to 2004.

2. The State, for its part, asks that this petition be disaggregated, to the extent that the facts narrated are not interconnected in time, nor in terms of the persons involved or the causes. This makes it impossible for the State to mount a complete and integral defense, in violation of its right to due process.

3. In this regard, the Commission has established that the interpretation of Article 29.4 of its Rules of Procedure does not require that the facts, victims, and violations submitted in a petition coincide strictly in time and place in order to be able to process them in a single case.⁶ The Commission has processed individual cases related to numerous alleged victims that allege violations at different times and in different places, but that would purportedly have the same origin, such as the application of legal provisions or the existence of a single arrangement or practice, or in which the facts are similar.⁷ In the instant petition the facts stated refer to alleged violations over a period of 21 years, committed in a given territorial space, presumably by the same armed group and with the same *modus operandi*. Those elements are similar in each of the complaints set forth, and make it possible analyze them together. Therefore, the Commission shall proceed with its analysis of the petition as a whole.

VI. ALLEGED FACTS

Common allegations

4. The petitioners argue that the alleged victims suffered detentions and forced disappearances perpetrated by the armed group called “Los Tangueros,” who belonged to the *Autodefensas Unidas de Colombia* (AUC) who operated at that time around the municipality of Valencia. They note that the family members lodged complaints with the Office of the Municipal Ombudsperson of Valencia (*Personería Municipal*) and with the Office of the 22nd Prosecutor Delegate before the municipal judges of Tierralta and Valencia. They indicate that all the cases remain in total impunity, since to date those matters continue to take their course, and the persons responsible have not been identified.

5. They argue that everything has unfolded in a context of violence, in the context of the armed conflict in Colombia, thus the 29 alleged victims’ family members could not intervene in the judicial proceedings, for a climate of persecution and fear of reprisals prevailed for those who might report crimes of this nature. They recount that the complaints were lodged in 2006, when the groups of paramilitaries began to leave the lands and the families felt free to be able to denounce the facts, thanks to Law No. 975 of 2005, called the Law on Justice and Peace.

6. The petitioners state that on November 12, 2008, a hearing for extrajudicial conciliation was held with the Ministry of Interior and Justice before the Office of the 33d Judicial Procurator II for

⁶ IACHR, Report No. 5/97. Admissibility. Petition 11.227, Unión Patriótica Nacional, Colombia, March 12, 1997, paras. 39- 42. IACHR, Report No. 61/16, Petition 12,325. Admissibility. Peace Community of San José de Apartadó. Colombia. December 6, 2016.

⁷ IACHR, Report No. 113/17. Petition 1141-07. Admissibility. Alfredo Manuel Martínez Meza et al. Colombia. September 7, 2017, paras. 2 and 3.

Contentious-Administrative Matters (*Procuraduría 33 Judicial II en lo Contencioso Administrativo*) of Montería, Córdoba. Nonetheless, they indicate that said procedure did not produce any result, for the representative of the State said that he did not want to formalize a conciliatory arrangement, since the matter being addressed was not within the scope of his authority.

7. The State, for its part, indicates that the persons presumably responsible for the 29 cases are not clearly identified, for on occasion the declarants denounce the guerrilla forces or the paramilitary forces, and on other occasions they denounce unidentified persons. It adduces that the circumstances of time, manner, and place in which the alleged victims disappeared are not described, and that there is a prolonged lapse between each of the situations. It argues that the petitioners have not set forth the situations of risk or of generalized fear that may have impeded access to the domestic proceedings. Moreover, it maintains that the complaints lodged with the authorities cover lengthy periods, for they date from 2006.

8. The State further asserts that in the context of the armed conflict, the zone in which the municipality of Valencia is situated saw the presence of different illegal groups that participated in the conflict, specifically guerrilla groups and illegal paramilitary groups. It indicates that as a result it is not possible to assume, with total clarity, to which illegal group the crimes can be attributed, or whether all can be attributed to just one.

Specific allegations

Carlos Antonio Guerrero Vega

9. They note that the alleged victim was assassinated by members of the AUC on January 2, 1983, while he was in the urban center of the municipality of Valencia visiting a friend. They note that he was found and identified by the police and that his family members found out about his death three days later by information broadcast on a radio news program. They say that they denounced the facts on July 27, 2006, and that there has been no progress in the investigations.

Oliver Gregorio Payares Petro

10. They state that the alleged victim disappeared on November 27, 1988, while he was at a public entertainment establishment called "Casa Vieja" drinking with some friends. They note that the police asked them to leave, since they were going to close the place and that when they were leaving an armed group arrived with military apparel and balaclavas, who forced them to get into a pickup truck without the police agents present intervening. The family members indicate that 22 youths were taken away that night, and that initially they believed it was an Army recruitment operation; nonetheless, they did not receive any information from the military authorities. They indicate that they reported the facts on May 5, 2006, and that to date there has been no progress in the investigations.

Felipe Segundo Durango Morales

11. According to the petitioner, on December 4, 1988, the alleged victim was travelling in a public transport bus from the rural community of Incora El Faro to Villanueva, when it was intercepted by armed persons wearing balaclavas. Petitioner indicates that the captors identified him and took him out of the vehicle, indicating that they knew his family, and they threatened the other passengers saying that if they needed more youths they would come back for them. It is alleged that since then his whereabouts have been unknown. His family members reported the facts on June 14, 2006, and there has yet to be any progress in the investigations.

Delmiro José Hernández Soto

12. The petitioner reports that the alleged victim was disappeared the morning of November 17, 1989, while headed to the rural community of Paraguay, by a group of armed persons belonging to the AUC

who operated in the municipality of Valencia. They indicate that his family members lodged the complaint on May 3, 2006; there has been no progress in the investigations.

Leónidas José Fabra Berrocal

13. Petitioner indicates that the alleged victim disappeared on November 25, 1989, while he was on the road to the district of Villanueva and Guasimal. According to the account offered, some armed persons in plainclothes stopped the tractor he was riding on, with other persons, and made them get off and lie down face down in the road; they took the alleged victim and put him in a pickup truck. His family members denounced the facts on July 25, 2006, and there has yet to be any progress in the investigations.

Marcos José Ortiz Cantero

14. Petitioner notes that on the morning of March 26, 1990, while the alleged victim and another person were travelling through the village of Mielles, two armed persons in plainclothes stopped their car and violently removed them from it; to date there is no information about their whereabouts. They indicate that local residents stated that both were likely assassinated, but were not able to give information about the location of the bodies. The petitioner states that his family members lodged the complaint on May 4, 2006, yet there has been no progress in the investigations.

Jaime Eliécer Díaz Ortega

15. Petitioner states that the alleged victim disappeared the afternoon of March 13, 1991, while he was on the road that links the path of El Latón with the path of San Rafael del Pirú. They say that he was headed to his grandmother's house, but he never arrived; and that the local residents said that the persons responsible were members of the AUC who operated in the region. His family members lodged a complaint about these facts on August 10, 2006; to date there has been no progress in the investigations.

Cristóbal Antonio Ruiz Durango

16. They maintain that the alleged victim disappeared the morning of November 24, 1992, while heading to his work, in the path of Rusia headed towards San Pedro de Urabá. His family members lodged the complaint on May 16, 2006; there has yet to be any progress in the investigations.

Jairo Miguel Plazas Buelvas

17. They argue that on February 2, 1993, the alleged victim was travelling in a public transport bus along the road from Montería to Valencia when unidentified armed men intercepted the vehicle and violently took him away, right in front of the other passengers. They note that to date there is no information about his whereabouts. His family members lodged a complaint in relation to these facts on May 5, 2006; to date there has been no progress in the investigations.

Mario Enrique Escobar Buelvas

18. According to the petitioner, on the afternoon of July 18 1993, the alleged victim left his home, situated in the municipality of Valencia, and did not return as anticipated. Even though his family members tried to search for him, at that time the law of silence prevailed there, imposed by the paramilitary groups of the AUC. Petitioner notes that to date it has no information about his whereabouts. They lodged the complaint on May 31, 2006; to date there has been no progress in the investigations.

Darío Eustaquio Arias Salgado

19. The alleged victim is said to have disappeared in the early morning hours of November 4, 1994, while he was at his farm "No Hay como Dios", located in the path of Bejucal. Petitioner indicates that a group of armed persons came to his home, forcibly removed him, and took him to the Las Tangas estate. It is

adduced that the family members tried to recover him, but they were told to stop asking and insisting or else the same thing would happen to them. They specify that they do not have any more information about the alleged victim's whereabouts or where his body might be. They argue that the paramilitaries brought pressure to bear and made threats, forcing them to leave the farm and later sell it to them at the price determined by them. They note that they filed the complaint on November 2, 2006, and that to date there has been no progress in the investigations.

Evaristo Antonio Nieto Gonzalez

20. Petitioner notes that the alleged victim disappeared on February 16, 1995, while returning from having purchased merchandise for his business in the Barrio Montón of the path of Guadual. They recount that a white pickup truck stopped in front of his truck and that armed men asked about him and removed him by force, to take him away. They note that his family members reported the incident on June 27, 2006, and that to date there has been no progress in the investigations.

Elkin Urango Pestana

21. Petitioner indicates that the alleged victim disappeared on February 19, 1995, while riding on a motorcycle taxi on the road from Valencia to San Pedro de Urabá. They say that he was going to a work interview, to which he never arrived. His family members lodged a complaint on August 17, 2006, without any progress in the investigations to date.

Manuel Narciso Morales Hernández

22. Petitioner states that the alleged victim was assassinated on April 10, 1995, while attending an appointment with members of the guerrillas in the district of Guadual. They adduce that in those days in was a common practice for the guerrilla forces to call the local population together to resolve problems, punish them, and even kill them. They indicate that their family members reported the facts on May 15, 2006, and that there has yet to be progress in the investigations.

Edinson Alfonso Polo Velásquez

23. Petitioner argues that the alleged victim was disappeared and assassinated the night of August 3, 1995 by a group of armed persons who arrived at his house while he was sleeping. They mention that they removed the other members of the family and put them in a school across the way and immediately set the structure ablaze with him inside. They state that the following morning they went to recover the remains, but did not find ashes or any trace whatsoever. They indicate that they reported the facts on May 18, 2006, and that to date there has yet to be progress in the investigations.

Edilberto Antonio Sotelo Martínez

24. Petitioner states that the alleged victim disappeared the morning of January 10, 1996, while working as a merchant in the district of Paraguay. They note that the testimony collected by his family members indicates that the disappearance was committed by the illegal group called Los Tangueros, part of the AUC. They indicate that they reported the facts on May 10, 2006, yet there has been no progress in the investigations.

Adeliz Manuel Ramos Arias and Juan Carlos Ramos Arias

25. Petitioner reports that the alleged victims disappeared the morning of April 13, 1996, while working planting corn in the path of Bejucal, accompanied by their stepfather. They adduce that a group of armed persons belonging to the AUC took them away violently. They note that Juan Carlos Ramos Arias was 17 years old at the time of the disappearance. Their family members reported the facts on November 2, 2006; and there has yet to be any progress in the investigations.

Oscar Luis Martínez de la Hoz

26. They report that the alleged victim disappeared the night of March 5, 1997, after going out for a bicycle ride to the center of the Bijagual neighborhood of the municipality of Valencia. They indicate that the residents' testimonies affirm that unknown armed men placed him in a pickup truck and took him forcibly. His family members lodged the complaint on May 11, 2006; but to date there has been no progress in the investigations.

Albenio David Velásquez Hoyos

27. Petitioner indicates that the alleged victim was travelling on a public transport bus along the road to the municipality of San Pedro to reach his work as a day laborer the afternoon of January 19, 1998, and that armed men belonging to the AUC intercepted the vehicle, and took him and other youths. They note that since then they have not any further information about his whereabouts. His family members lodged a complaint on May 19, 2006; and there has yet to be any progress in the investigations.

Elibardo Arévalo Pachón

28. Petitioner indicates that the alleged victim disappeared the night of February 19, 1999, when armed persons belonging to the AUC arrived at his house, intimidated his wife and small children, and with threats bound him and took him by force along the road to Guadual. His family members lodged the complaint on May 5, 2006; there has yet to be any progress in the investigations.

Horacio Manuel Bertel Hernández and Gladys María Bertel Pastrana

29. Petitioner states that the alleged victims disappeared on September 10, 1999, while they were in the district of Guadal Central. They recount that approximately 50 armed persons arrived, dressed in camouflage belonging to the AUC, and, threatening them, they took them by force. In addition, they state that on that same day, hours later, a car with unidentified persons returned to loot their store. They allege that due to the threats against the family they had to displace, leaving behind all their property and belongings. They indicate that the family members reported the facts on May 17, 2006; and that to date there has been no progress in the investigations.

Hermes Antonio Vergara Márquez

30. They argue that the night of April 17, 2000, while the alleged victim was at his home, situated in the path of El Latón, a group of armed men belonging to the AUC asked about him and took him away, bound. They indicate that the neighbors explained that they were threatened lest they say anything. His family members reported the facts on May 3, 2006; and to date there has been no progress in the investigations.

Gustavo Manuel Pico Ávila

31. They state that in the early morning hours of August 4, 2000, while the alleged victim and his family were at the family business, five armed persons with military uniforms came to the place, asking to be sold food. They indicate that those persons asked for directions, as they were lost. They note that the alleged victim accompanied them along the road to the path of El Brillante, but that he did not return home. They argue that his family members reported the facts on July 13, 2006; and that to date there has been no progress in the investigations.

Rubén Darío Ramos Luna

32. Petitioner recounts that the alleged victim disappeared in the early morning hours of April 27, 2002, while he was in the path of Jericó on his way to work as a day laborer. They indicate that some witnesses asserted that the persons responsible were men who belonged to the AUC. They state that their

family members reported the facts on May 10, 2006, and that to date there has been no progress in the investigation.

José David Páez de la Rosa

33. They state that the alleged victim disappeared on February 18, 2004, while he was on the road that runs from the path of Incora to Valencia, apparently by members of the AUC who were operating in the sector. His family members reported the facts on May 31, 2006; and there has yet to be any progress in the investigations.

Yeison Juan Herrera Mercado

34. They indicate that the alleged victim, 18 years old, disappeared the morning of May 9, 2004, while he was on a public transport bus in the district of Río Nuevo. They assert that several armed persons belonging to the AUC who were alongside the road stopped the car and, after identifying the alleged victim, took him away in a green pickup truck. His family members lodged the complaint on May 25, 2006, and argue that there has been no progress in the investigations.

Luis Alfredo Arizal Torres

35. They indicate that the alleged victim disappeared on June 7, 2004, while working in the path of Guadual. They say that his family members began a search that yielded no results, but that local residents stated that the alleged victim as well as two other youths was assassinated by members of the guerrilla forces. They note that despite their efforts they did not find the corpse. They state that they filed a complaint on March 8, 2006, and that there has yet to be any progress in the investigation.

VI. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

36. The petitioners assert that the family members of the 29 alleged victims filed complaints before the Office of the Municipal Ombudsperson of Valencia (*Personería Municipal*) and before the Office of the 22nd Prosecutor Delegate before the Municipal Judges of Tierralta and Valencia, as suitable remedies for investigating the forced disappearances and extrajudicial executions. Despite that they note that to date there have been no results. The State notes that the petition cannot be studied as a single petition, but it did not put forth specific arguments with respect to the exhaustion of domestic remedies.

37. The precedents established by the IACHR note that every time that a purported crime is committed that is prosecutable at the initiative of the authorities the State has the obligation to promote and give impetus to the criminal proceeding, and that this constitutes the suitable means for clarifying the facts, prosecuting the persons responsible, and establishing the corresponding criminal sanctions, in addition to making possible other forms of monetary reparation. In addition, the Commission has established that as a general rule a criminal investigation should be carried out promptly to protect the interests of the victims, to preserve the evidence, and even to safeguard the rights of every person who, in the context of the investigation, is considered a possible suspect.⁸ Based on the information provided by the parties, one observes that in every case the complaints were lodged by the 29 alleged victims' family members with the judicial authorities in 2006. Nonetheless, to date there has been no progress in any of the investigations, for all of them are in the initial stages. Moreover, the IACHR recalls that for the purposes of determining the admissibility of a claim like this one, the action for reparation is not a suitable remedy, and need not be exhausted, given that it is not adequate for providing integral reparation and justice for the family members.⁹

⁸ IACHR, Report No. 49/14. Petition 1196/07. Admissibility. Juan Carlos Martínez Gil, Colombia, July 21, 2014, para. 29.

⁹ IACHR, Report No. 72/16. Petition 694/06. Admissibility. Onofre Antonio de La Hoz Montero and Family Colombia, December 6, 2016, para. 32.

38. Therefore, the IACHR concludes that there has been a delay in the investigations and consequently that the exception to the exhaustion of domestic remedies set out at Article 46.2.c of the American Convention is applicable. For its part, the petition was filed on May 7, 2009, the facts alleged took place from 1983 to 2004, the criminal investigations began in 2006, and the effects of the alleged violations, in particular of the alleged forced disappearances and denial of justice, continue to the present. Therefore, the IACHR considers that the petition was filed within a reasonable time based on Article 32.2 of its Rules of Procedure, and that the admissibility requirement regarding timeliness of the petition should be considered satisfied.

VII. ANALYSIS OF COLORABLE CLAIM

39. In view of the elements of fact and law set forth by the parties, and the nature of the matter put before it, the Commission considers that if the alleged failure to protect the 29 alleged victims is proven, their illegal detentions, and subsequent disappearances, alleged by illegal armed groups that operated in the region with the consent of the State, the forced displacement, and the lack of effective judicial protection for their family members in the criminal investigations, tend to establish possible violations of the rights enshrined in Articles 3 (recognition of juridical personality), 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (judicial guarantees), 21 (private property), 22 (movement and residence), 25 (judicial protection), and 26 (economic, social, and cultural rights) of the Convention, all in relation to Articles 1.1 and 2 of the same instrument, with respect to the 29 alleged victims and their family members. Moreover, and considering that Juan Carlos Ramos Arias was a child at the time of the facts, the conduct would also tend to establish a possible violation of Article 19 (rights of the child) of the Convention.

40. With respect to the facts that occurred prior to the date of deposit of the instrument of ratification of the Inter-American Convention on Forced Disappearance of Persons, as regards the purported continuity of and failure to clarify the crime of forced disappearance, the Commission considers that the facts alleged tend to establish possible violations of Article I of that instrument, to the detriment of the 29 alleged victims.

VIII. DECISION

1. To find this petition admissible in relation to Articles 3, 4, 5, 7, 8, 19, 21, 22, 25, and 26 of the American Convention in conjunction with Articles 1.1 and 2 of the same instrument, and Article I of the Inter-American Convention on Forced Disappearance of Persons;

2. To notify the parties of this decision; to continue with the analysis of the merits of the matter; and to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 5th day of the month of May, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández García, First Vice President; Antonia Urrejola, Second Vice President; Margarette May Macaulay, Francisco José Eguiguren Praeli and Flávia Piovesan, Commissioners.

ANNEX

List of alleged victims

1. Carlos Antonio Guerrero Vega
2. Oliver Gregorio Payares Petro
3. Felipe Segundo Durango Morales
4. Delmiro José Hernández Soto
5. Leónidas José Fabra Berrocal
6. Marcos José Ortiz Cantero
7. Jaime Eliécer Díaz Ortega
8. Cristóbal Antonio Ruiz Durango
9. Jairo Miguel Plazas Buelvas
10. Mario Enrique Escobar Buelvas
11. Darío Eustaquio Arias Salgado
12. Evaristo Antonio Nieto Gonzalez
13. Elkin Urango Pestana
14. Manuel Narciso Morales Hernández
15. Edinson Alfonso Polo Velásquez
16. Edilberto Antonio Sotelo Martínez
17. Adeliz Manuel Ramos Arias
18. Juan Carlos Ramos Arias
19. Oscar Luis Martínez de la Hoz
20. Albenio David Velásquez Hoyos
21. Elibardo Arévalo Pachón
22. Horacio Manuel Bertel Hernández
23. Gladys Maria Bertel Pastrana
24. Hermes Antonio Vergara Marquez
25. Gustavo Manuel Pico Ávila
26. Rubén Darío Ramos Luna
27. José David Páez de la Rosa
28. Yeison Juan Herrera Mercado
29. Luis Alfredo Arizal Torres