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REPORT No. 68/19
PETITION 1392-09
REPORT ON ADMISSIBILITY

MIGUEL ÁNGEL GUEVARA DÍAZ ET AL.
COLOMBIA

Approved electronically by the Commission on May 5, 2019.

Cite as: IACHR, Report No. 68/19, Petition 1392-09. Admissibility. Miguel Ángel Guevara Díaz et al. Colombia. May 5, 2019.



I. INFORMATION ABOUT THE PETITION

Petitioner:	LATB ¹
Alleged victim:	Miguel Ángel Guevara Díaz et al. ²
Respondent State:	Colombia ³
Rights invoked:	Articles 4 (right to life), 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), 10 (right to compensation), 24 (right to equal protection), and 25 (right to judicial protection) of the American Convention on Human Rights, ⁴ and Articles I (right to life, liberty and personal security), II (right to equality before the law), V (right to protection of honor, personal reputation, and private and family life), XVIII (right to a fair trial), and XXIV (right of petition) of the American Declaration of the Rights and Duties of Man. ⁵

II. PROCEEDINGS BEFORE THE IACHR⁶

Filing of the petition:	November 4, 2009
Additional information received at the stage of initial review:	September 30, 2011
Notification of the petition to the State:	June 30, 2014
State's first response:	July 30, 2015
Additional observations from the petitioner:	February 9, 2017
Additional observations from the State:	December 20, 2017

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 deposited on July 31, 1973)

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
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¹ The petitioner asked that their identity be withheld.

² The petition identifies the following alleged victims: Miguel Ángel Guevara Díaz, Duran de Jesús Orozco Alarcón, Dagoberto Brito Gallegos, and Jesús Daniel Galeano Vera. It also identifies the following relatives: Yisela Tatiana Guevara Díaz, Andrea Stefania Guevara Díaz, Miguel Ángel Guevara, Bernardo Antonio Calvo, María Leticia Calvo, Aurora Amalia Díaz, María Cecilia Alarcón de Orozco, Javier de Jesús Orozco Castañeda, Nelson de Jesús Orozco Alarcón, Liliana Yaneth Orozco Alarcón, Beatriz Elena Orozco Alarcón, Mary Luz Arozco Alaracón, and Liliana Orozco Alarcón; Clara Ines Cepeda Giraldo, Óscar Joany Brito Cepeda, Yeison Stiven Brito Cepeda, Pedro Nel Brito Gallego, Fernando Brito Gallego, Gildardo Brito Gallego, Jairo Brito Gallego, María Gilma Brito Gallego, María Olga Brito de Suárez, Libia Brito Gallego, and Nubia Brito de Tabares; María Nohelia Vera Cardona, Gildardo de Jesús Galeano Gil, Luz Deisy Galeano Vera, Diego Fernando Galeano Vera, Jhon Jairo Galeano Vera, Rosa Elvira Cardona Henao, and José de la Cruz Vera Vanegas.

³ Pursuant to Article 17(2)(a) of the Commission's Rules of Procedure, Commissioner Luis Ernesto Vargas Silva, a Colombian national, did not participate in the discussion or decision in this matter.

⁴ Hereinafter, the "American Convention" or "Convention."

⁵ Hereinafter the "American Declaration" or "Declaration."

⁶ The observations submitted by each party were duly transmitted to the opposing party.

Rights declared admissible	Articles 4 (right to life), 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), and 25 (right to judicial protection) of the American Convention, in connection with Articles 1(1) and 2 thereof; 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, the exception contained in Article 46(2)(c) of the American Convention applies.
Timeliness of the petition:	Yes, as referred to in Section VI

V. ALLEGED FACTS

1. The petitioner states that Miguel Ángel Guevara Díaz, Duvan De Jesús Orozco Alarcón, Dagoberto Brito Gallego, and Jesús David Galeano Vera (hereinafter "the alleged victim's") were detained on October 25, 1996, by agents of the National Police in Quimbaya, Quindío Department, under the command of the Alcalá Police Commandant. The petitioner says that the alleged victims were tortured and their bodies put in a 4x4 truck which was then set on fire. The petitioner says that the State has not clarified what happened, investigated and punished those responsible for the events, or provided the relatives of the alleged victims with reparation. In addition, the petitioner says that on the day of the funeral, the aforementioned police commandant allegedly threatened the alleged victims' relatives.

2. According to the petitioner, on October 26, 1996, a criminal investigation was ordered, leading to a preliminary inquiry that began on October 30, 1996. A number of investigative procedures were carried out in the framework of the inquiry, including autopsies, a visual inspection of the incinerated vehicle, and statements taken from persons connected with the alleged victims. The petitioner says that the autopsy reports and the inspection certificates of the corpses indicated that all of the alleged victims bore signs of torture, and that the victim Dagoberto Brito Gallego had been decapitated before his body was incinerated. The petitioner says that in an order dated September 24, 1997, the military criminal courts declined jurisdiction and referred the record of the investigation to the ordinary criminal jurisdiction, which had already taken up the matter. However, on May 14, 1998, the preliminary inquiry was suspended because the time limit established in Article 326 of the Code of Criminal Procedure then in force (180 days) had lapsed without sufficient evidence presented by which to issue a resolution to open a full investigation or desist. Following that decision, at the request of the spouse of one of the alleged victims, on October 27, 2011, the Armenia Second Sectional Prosecution Unit voided the suspension order and reopened the investigation, which was then at the preliminary inquiry stage. The petitioner says that, as yet, the facts have not been clarified or those responsible punished.

3. The petitioner says that in April 1997, relatives of the alleged victims filed suits for direct reparation in the litigious administrative jurisdiction, requesting that the Nation/Ministry of Defense/Army be found financially responsible for the harm suffered as a consequence of the deaths of the alleged victims. The cases were heard by the Quindío Court of Administrative Litigation, which, after joining the suits, issued a ruling on August 5, 1998 rejecting the claims of the alleged victims' relatives. That decision was appealed and on May 13, 2009, the Third Section of the Court of Administrative Litigation of the Council of State confirmed the lower court's decision, finding that "there is a serious lack of evidence for charging the National Police with the killings of the deceased." However, the petitioner points out that it is sufficient for there to be one fault within the National Police service to grant their claims and that a separate investigation to the one in the criminal jurisdiction should have been conducted in order to determine the ruling to hand down.

4. The State, in its turn, argues that the petition is inadmissible, as the appropriate remedy was not exhausted; according to it, the criminal investigation that was ordered reopened is the suitable remedy for redressing the violations suffered by the alleged victim's and their relatives, as well as for identifying and convicting the perpetrators and architects of those crimes. The State says that despite the fact that the Sectional Prosecution Unit advanced the inquiry, given the complexity of the investigation, the characteristics of the crime, and lack of collaboration from potential witnesses, there had been no unwarranted delay in

reaching a decision. It specified that there is no set deadline for meeting the obligation to move investigations forward and that based on jurisprudential precedent the time taken has not been unreasonable.

5. In addition, it says that the petition is inadmissible because the petitioners seek a review of decisions adopted in the judicial proceedings. It says that the measures implemented by the parties and those advanced ex officio by the State were examined in depth by the competent judicial bodies in accordance with domestic law. Therefore, it argues that admitting the petition would entail a fourth-instance review by the Commission.

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

6. The petitioners say that the crimes remain in impunity and that with respect to the litigious administrative proceedings for damages, domestic remedies were exhausted with the decision handed down on the appeal on May 13, 2009. The State, for its part, says that it has provided and advanced the appropriate criminal-law remedies the reopening of the investigation implies that domestic remedies have not been exhausted.

7. The Commission reiterates that in situations involving possible violations of the right to life, the domestic remedies to be taken into account for the purposes of admissibility of the petition are those related to the investigation and punishment of those responsible, which are reflected in domestic law as publicly actionable crimes. In this case, the Commission finds that, according to the information provided, the Armenia Second Sectional Prosecution Unit opened a criminal inquiry into the alleged acts of violence that caused the deaths of the alleged victims, which was suspended on May 14, 1998, and later reopened on October 27, 2011, and that, as yet, the responsibility of the culprits has not been established. Based on the foregoing, the IACHR concludes that the exception to the rule of prior exhaustion of domestic remedies envisaged at Article 46(2)(c) of the American Convention applies in this case.

8. In relation to the litigious administrative proceedings, the IACHR recalls that for the purpose of determining the admissibility of a claim such as the present one, they are not the suitable remedy nor do they need to be exhausted, since they are not adequate to provide comprehensive reparation and justice to family members. Without prejudice to the foregoing, although in this case the criminal proceeding was the suitable remedy for investigating the facts, the Commission finds that the petitioner also alleges specific violations in the framework of the suit for direct reparation. Accordingly, given the link between the two processes, the Commission takes into account that in the litigious administrative jurisdiction domestic remedies were exhausted with the decision of May 13, 2009, issued by the Third Section of the Court of Administrative Litigation of the Council of State.

9. Finally, the petition was lodged on November 4, 2009, the acts alleged in the petition are said to have begun on October 26, 1996, and their purported effects continue to this day. Therefore, in view of the context and characteristics, the Commission considers that the petition was lodged within a reasonable time and that the admissibility requirement must be deemed met.

VII. ANALYSIS OF COLORABLE CLAIM

10. In the light of the factual and legal arguments set out by the parties, the nature of the matter before it, and the context that frames the petition, the Commission finds that, if proven, the purported killings of the alleged victims and their consequences, as well as the failure to investigate and punish those responsible and the failure to provide reparation could characterize possible violations of Articles 4 (right to life), 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), and 25 (right to judicial protection) of the American Convention on Human Rights, in connection with Articles 1(1) and 2 thereof, as well as Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.

11. In relation to the alleged infringements of articles contained in the American Declaration, the Commission has previously established that once the Convention has entered into force in a State, it and not

the Declaration becomes the principal source of law to be applied by the Commission, as long as the petition alleges violation of substantially identical rights set forth in both instruments and a continuing situation is not involved. In this case, the alleged violations of the American Declaration match the framework of protection provided by Articles 4, 5, 7, 8, and 25 of the American Convention. Therefore, the Commission will examine those submissions in the light of the Convention.

12. As to the claim concerning the alleged violation of Article 10 (right to honor and dignity) of the American Convention, the Commission considers that the petitioner has not presented any arguments or sufficient grounds to suggest *prima facie* their possible violation.

13. In relation to the State's submissions relating to the fourth-instance formula, the Commission acknowledges that it is not competent to review judgments handed down by domestic courts acting within their authority and in observance of the rules of due process and fair-trial guarantees. However, the Commission reiterates that, within the framework of its mandate, it is competent to declare a petition admissible and to rule on the merits when the petition refers to domestic proceedings that could be in violation of rights guaranteed by the American Convention.

VIII. DECISION

1. To declare the petition admissible as regards of Articles 4, 5, 7, 8, and 25 of the American Convention, in connection with Articles 1(1) and 2 thereof; as well as Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.

2. To declare this petition inadmissible in relation to Article 10 of the American Convention.

3. To notify the parties of this decision, to continue with the analysis of the merits, 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; Margarete May Macaulay, Francisco José Eguiguren Praeli, and Flávia Piovesan, Commissioners.