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## **REPORT No. 230/19**

### **PETITION 1455-08**

#### REPORT ON ADMISSIBILITY

JUAN PABLO PALACIOS SERNA AND FAMILY  
COLOMBIA

Approved electronically by the Commission on December 31, 2019.

**Cite as:** IACHR, Report No. 230/19, Petition 1455-08. Admissibility. Juan Pablo Palacios Serna and Family. Colombia. December 31, 2019.



**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Milton Mena Córdoba
<b>Alleged victim:</b>	Juan Pablo Palacios Serna and Family
<b>Respondent State:</b>	Colombia <sup>1</sup>
<b>Rights invoked:</b>	Articles 5 (right to humane treatment), 8 (right to a fair trial), 10 (right to compensation), 17 (rights of the family), 24 (right to equal protection) and 25 (right to judicial protection) in relation to its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) of the American Convention on Human Rights <sup>2</sup> .

**II. PROCEEDINGS BEFORE THE IACHR<sup>3</sup>**

<b>Filing of the petition:</b>	December 15, 2008
<b>Notification of the petition to the State:</b>	June 12, 2014
<b>State's first response:</b>	October 16, 2014
<b>Additional observations from the petitioner:</b>	January 9, 2015
<b>Additional observations from the State:</b>	March 27, 2015
<b>Notification of the possible archiving of the petition:</b>	November 9, 2018
<b>Petitioner's response to the notification regarding the possible archiving of the petition:</b>	November 12, 2018

**III. COMPETENCE**

<b>Competence <i>Ratione personae</i>:</b>	Yes
<b>Competence <i>Ratione loci</i>:</b>	Yes
<b>Competence <i>Ratione temporis</i>:</b>	Yes
<b>Competence <i>Ratione materiae</i>:</b>	Yes, American Convention (deposit of instrument of ratification made on April 19, 1978)

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

<b>Duplication of procedures and International <i>res judicata</i>:</b>	No
<b>Rights declared admissible</b>	Articles 4 (right to life) 5 (right to humane treatment), 8 (right to a fair trial), 17 (rights of the Family), 22 (Freedom of movement and residence), 24 (right to equal protection), 25 (right to judicial protection) and 26 (Progressive development) in relation to its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects)

<sup>1</sup> In accordance with the provisions of Article 17.2.a of the Commission's Rules of Procedure, Commissioner Luis Ernesto Vargas Silva, of Colombian nationality, did not participate in either the discussions or decision in the present case.

<sup>2</sup> Hereinafter "the Convention" or "the American Convention".

<sup>3</sup> The observations submitted by each party were duly transmitted to the opposing party.

<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, exception in Article 46.2.c of the American Convention applicable
<b>Timeliness of the petition:</b>	Yes, in the terms of Section VI

## V. FACTS ALLEGED

1. The petitioner argues that Juan Pablo Palacios Serna (hereinafter “the alleged victim”) was murdered on October 27, 2002, by members of the National Liberation Army (ELN) in an attack aimed at the Boca de Apartadó community - Rio Pato-Municipality of the Quito River. He also alleges the State's responsibility for breach of its duty of prevention because, prior to the events, the State was aware of the activities of illegal groups and of the local inhabitants' situation of vulnerability. He argues that the State has failed to clarify the facts surrounding the alleged victim's death, which remains unpunished, and that the alleged victim's relatives have been denied comprehensive reparation. The petitioner also argues that as a result of this situation, the alleged victim's relatives have been forced to move from the area.

2. The petitioner indicates that at the time the local and national authorities were fully aware that the inhabitants of the village of Boca de Apartado del Rio Quito were being intimidated and killed due to the presence of illegal armed groups such as the FARC, the ELN and the AUC operating in the area; that the Mayor and *Personero* of the Municipality of Rio Quito revealed the problem along the Quito River and all its villages, especially Boca de Apartado and San Isidro to the National Police, to the Commander of the Manosalva Battalion, to the Governor, to the Procurator and to the Public Ombudsman without any entity taking preventive measures. Likewise, the petitioner indicates that intelligence reports made by the National Police and known to the Army, highlighted the presence of the ELN guerrilla group belonging to the *Manuel Hernández el Boche* front prior to the occurrence of the events; and that none of these entities undertook operations to avoid the events denounced in the present petition and other acts committed in the area.

3. Taking the foregoing into account, the petitioner argues that the Colombian State has failed to act to clarify the events and punish the perpetrators of the alleged victim's death. He also argues that given the actual murder of the alleged victim and the context prior to his death, the only activities carried out were the National Police's remitting intelligence reports to the Army Commander, who was absolutely silent. Notwithstanding the foregoing, the petitioner does not present additional information related to the existence of criminal or disciplinary proceedings into the events.

4. With respect to reparation measures on the other hand, the petitioner indicates that on June 11, 2003, he filed a direct reparation action against the Nation seeking the payment of material and moral damages and damage to life on the grounds that he considered the Nation liable for the failure to act in relation to the death of Councilor Gerardino Mosquera Mosquera at the hands of the ELN guerrilla group. With respect to this claim, the petitioner indicates that the Contentious Administrative Court of Choco issued a favorable ruling on December 19, 2005, holding the State administratively liable for the death of the councilor that occurred on October 27, 2002, at the same time, mode and place of the events set out in the present petition. The petitioner indicates that the judgment relating to Mosquera's death mentions the context described in the preceding paragraphs, as well as an account of the murder of the alleged victim. Taking into account this decision, the petitioner argues for an unequal treatment in law used by the Contentious Administrative Court of Chocó by denying comprehensive reparation to the family members of the alleged victim.

5. The petitioner points out that on October 7, 2003, he initiated a direct reparation action with the Administrative Court of Chocó against the Nation – the Ministry of Defense and the National Police - for the damages caused by the failure to act in relation to the death of the alleged victim. This action was denied by a judgment of October 20, 2006, on the grounds that the risk to Mr. Palacios Serna was not foreseeable, and therefore, the State could not have incurred liability. He indicates that at the moment of filing the claims for direct reparations, said claims were lodged at first instance due to the amount involved, but upon the adoption of law 945 of 2005, said claims were considered as the sole instance where legal error could only be

redressed by a *tutela* motion. In view of the above, the petitioner filed a *tutela* motion that was heard by the Second Chamber of the Council of State, Subsection A, and on March 1, 2007, declared the *tutela* action inadmissible. The petitioner contested this decision, and on May 3, 2007, the Administrative Litigation Chamber of the Council of State upheld the judgment issued in the *tutela* action. This judgment was remitted for review by the Constitutional Court, and was heard by Selection Chamber No.6, which in its June 22, 2007, session declined to review it.

6. For its part, the State argues that the petition must be declared inadmissible because: i) the direct reparation action and *tutela* motion are adequate and effective remedies for the case; ii) the *tutela* motion was heard in accordance with the Constitution and domestic rules and regulations from its inception until its completion; and iii) that the decision of June 22, 2007, by Chamber Section No. 6 and served on July 11, 2007, is the decision terminating the *tutela* motion, and therefore the petition is extemporaneous because it was filed with the IACHR more than 16 months after service of the judicial decision. The State argues that the review did not proceed with respect to all *tutela* motions, because, since it is a discretionary power, it does not represent an additional instance.

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

7. The petitioner argues that domestic legislation does not afford due process guarantees, and that the alleged victim's murder remains in impunity, without any compensation for his relatives. For its part, the State indicates that the events were brought to the attention of the competent bodies in the domestic legal system in the Contentious Administrative jurisdiction, which rejected the plaintiffs' claims.

8. The Commission observes that the State was aware of the alleged victim's death at least since October 27, 2002, in addition to the context of violence prevailing in the area prior to the events. However, at the date of the adoption of this report, and more than 16 years after the alleged victim's murder, it has still failed to prosecute, and where appropriate, sanction the perpetrators of these events. The Commission has not received more specific information about the progress or the measures taken to investigate the alleged victim's murder.

9. The Commission has taken the view that in situations [...] involving crimes against life and integrity, the domestic remedies that must be taken into account for the purposes of the petition's admissibility are those related to the criminal investigation and punishment of the individuals responsible.<sup>4</sup> In such cases, the Commission recalls that the State has the obligation to promote the criminal proceedings, which constitute the appropriate avenue to clarify the facts, prosecute those responsible and impose the appropriate criminal punishment, in addition to enabling other means of pecuniary reparations. In view of the above, the Commission considers that there has been an unjustified delay, and with regard to the criminal investigation, that the exception set out in Article 46.2.c of the Convention and Article 31.2.c of the Rules of Procedure is applicable. The Commission also considers that the petition was filed within a reasonable period of time and that the admissibility requirement regarding timeliness must be considered satisfied.

10. With regard to the contentious administrative proceedings, the Commission considers it relevant to clarify that, for purposes of determining the admissibility of the claim, the direct reparation action does not constitute the appropriate avenue, and therefore it need not be exhausted, since it is not adequate to provide integral reparation that includes clarification and justice for the relatives.<sup>5</sup>

<sup>4</sup> IACHR, Report No.72/18, Petition 1131-08. Admissibility. Moisés de Jesús Hernández Pinto and Family. Guatemala. June 20, 2018, para.10.

<sup>5</sup> IACHR, Report No. 72/16. Case 694-06. Admissibility. Onofre Antonio de La Hoz Montero and family. Colombia. December 6, 2016, par. 32.

## VII. ANALYSIS OF COLORABLE CLAIM

11. The international responsibility of the State may arise from the action of its agents, or from a failure of prevention or from a lack of due diligence in the investigation of acts committed by third parties. In fact, an illegal act violating human rights that initially is not directly attributable to a State, for example, because it is perpetrated by a private individual or because the perpetrator remains unidentified, may incur the international responsibility of the State, not due to the events themselves, but for lack of due diligence in preventing the violation or resolving the matter in the terms required by the Convention. The State has a legal duty to reasonably prevent human rights violations, to investigate seriously with the means at its disposal the violations committed within the scope of its jurisdiction in order to identify those responsible, appropriately punish them, and to ensure adequate reparation for the victim.<sup>6</sup>

12. In view of the elements of fact and law presented by the parties and the nature of the matter brought to its attention, the IACHR considers that the allegations regarding the lack of preventive measures by the State in connection with the alleged victim's death and subsequent lack of investigation and reparations, as well as the forced displacement, whose multiple, complex and continuous nature would have caused direct effects and uprooting in economic, social and cultural terms, are not manifestly unfounded and could characterized possible violations articles 4 (right to life), 5 (right to humane treatment), 8 (right to a fair trial), 17 (rights of the family), 22 (freedom of movement and residence), 24 (right to equal protection), 25 (right to judicial protection) and 26 (progressive development), in relation to Article 1.1 (obligation to respect rights) of the Convention.

13. In the present case, the Commission observes that the allegations presented in relation to the application of Law 954 of 2005, which established a sole instance on the basis of the amount involved in cases such as that of the alleged victim, could characterize possible violations of Articles 8 (right to a fair trial), and 25 (right to judicial protection) of the American Convention, in relation to Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) of said treaty.

14. With respect to the claim of the alleged violation of Article 10 (right to compensation) of the American Convention, and in view of the fact that such article refers to compensation in accordance with the law in the events of having been sentenced by final judgement through a miscarriage of justice, the Commission observes that the petitioner has not offered allegations or sufficient evidence to consider its potential *prima facie* violation.

## VIII. DECISION

1. To find the instant petition admissible in relation to Articles 4, 5, 8, 17, 22, 24, 25 and 26 in conjunction with its Articles 1.1 and 2 of the American Convention;
2. To find the instant petition inadmissible in relation to Article 10 of the Convention; and
3. To notify the parties of this decision; to continue with the analysis on 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 31<sup>st</sup> day of the month of December, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández, First Vice President; Antonia Urrejola, Second Vice President; Margarete May Macaulay, Francisco José Eguiguren, and Flávia Piovesan, Commissioners.

<sup>6</sup> I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988, Series C No. 4, paras. 172-174.