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**REPORT No. 159/20**  
**PETITION 699-10**  
REPORT ON ADMISSIBILITY

FÉLIX MELGAR ANTELO AND FAMILY  
BOLIVIA

Approved electronically by the Commission on June 17, 2020.

**Cite as:** IACHR, Report No. 159/20, Petition 699-10. Admissibility. Felix Melgar Antelo and family. Bolivia. June 17, 2020.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Felix Julio Melgar Guzmán
<b>Alleged victim:</b>	Felix Melgar Antelo and family <sup>1</sup>
<b>Respondent State:</b>	Bolivia
<b>Rights invoked:</b>	Articles 3 (right to juridical personality), 4 (right to life), 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), 23 (right to participate in government) and 25 (right to judicial protection) of the American Convention on Human Rights <sup>2</sup> , in relation to its Article 1.1; and Articles I, III, IV, and XI of the Inter-American Convention on Forced Disappearance of Persons.

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

<b>Filing of the petition:</b>	May 13, 2010
<b>Additional information received at the stage of initial review:</b>	March 9, 2016
<b>Notification of the petition to the State:</b>	August 4, 2016
<b>State's first response:</b>	December 6, 2016
<b>Additional observations from the petitioner:</b>	August 7 and November 30, 2017, March 1, 2018
<b>Additional observations from the State:</b>	December 6, 2017

**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 made on July 19, 1979) and Inter-American Convention on Forced Disappearance of Persons (deposit of instrument made on May 5, 1999)

**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 3 (right to juridical personality), 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 relation with its article 1.1; Articles I (life, liberty, security, and integrity of the person), XVII (recognition of legal personality and civil rights), XVIII (justice), XXV (protection against arbitrary detention) of the American Declaration of the Rights and Duties of Man <sup>4</sup> ; and article I of the Inter-American Convention on Forced Disappearance of Persons
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, article 46.2.c exception of the CADH applies
<b>Timeliness of the petition:</b>	Yes, in the terms of section VI

<sup>1</sup> Ernesto Vicente Melgar Guzmán and Félix Julio Melgar Guzmán; Loyola Guzmán Lara; and Ovidio Melgar; sons, wife and father of Félix Melgar Antelo respectively.

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

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

<sup>4</sup> Hereinafter "the American Declaration" or "the Declaration".

## V. FACTS ALLEGED

1. This petition refers to the alleged arrest and enforced disappearance of Felix Melgar Antelo, who was a member of the National Liberation Army (hereinafter "ELN"), in the hands of members of the Ministry of the Interior and the Armed Forces on the night of April 3, 1972. The petitioner, Félix Melgar Guzmán, maintains that the Bolivian State has made no investigation efforts to investigate the facts of the case, and therefore the case remains in impunity. He argues that despite the fact that the name of the alleged victim appears on the lists of those buried in the General Cemetery of La Paz in 1972, there is no information on the exact location of his remains. He maintains the moral and psychological integrity of the relatives of Félix Melgar Antelo has been violated as well as his personal freedom for having been detained together with his mother from the moment of his birth in 1972 to 1973.

2. The petitioner describes that the alleged victim was arrested in mid-1969 on Busch Avenue in the Miraflores area of the city of La Paz. He states that during his detention, the alleged victim was tortured and transferred to the San Pedro prison, where he was brought before the ordinary courts. He claims that the trial did not progress and that, in the context of an exchange for the freedom of two German technicians from a mining company who had been kidnapped by the ELN, the alleged victim was released in June 1970 with other ELN militants, on the orders of the then President of the Republic, General Alfredo Ovanda Candia. In this regard, the petitioner maintains that Mr. Melgar Antelo was taken to Arica, Chile on July 22, 1970, along with nine other political prisoners, where they were denied asylum and transferred to Cuba until the alleged victim returned clandestinely to Bolivia in April 1971.

3. The petitioner argues that with the beginning of the presidency of Colonel Hugo Banzer Suárez in 1971, a persecution against the regime's opponents was renewed, especially against members of the ELN who, including Félix Melgar Antelo, were sought by posters with their photos. In this context, he maintains that on April 3, 1972, Félix Melgar Antelo was together with his wife Loyola Guzmán and four other members of the ELN, in a house located on Busch Avenue in the city of La Paz, when around midnight heavily armed Interior Ministry agents raided the house using firearms and tear gas. He describes that Félix Melgar Antelo tried to escape when Interior Ministry agents and members of the Armed Forces shot him, seriously injuring him. The petitioner alleges that despite reports that Félix Melgar reportedly died, his whereabouts are unknown.

4. He claims that Loyola Guzmán gave birth at the Military Hospital on July 14, 1972, where she remained detained along with her son, Félix Melgar Guzmán, until February 1973 and then was released in May 1974. In this regard, the petitioner maintains that after her release, Loyola Guzmán was not allowed to leave the country, despite having a visa for other countries, as part of the threats received by Colonel Loayza from the Intelligence Service of the Ministry of the Interior. He argues that the parents of Loyola Guzmán, Vicente Guzmán Mosqueira and Teresa Lara Salvatierra, requested information on the location of Félix Melgar from April 1972 to May 1974 but were threatened by agents of the Ministry of the Interior, for which they were unable to take any action until the dictatorship ended in 1978.

5. The petitioner indicates that in addition to having been presented to Congress in the context of a trial of responsibilities carried out against Hugo Banzer Suárez, which was later interrupted by the military coup of November 1979, the case was reported to the National Commission of Inquiry into Disappeared Persons, established in October 1982 by Supreme Decree No. 241; and then before the Inter-institutional Council for the Clarification of Enforced Disappearances (hereinafter "CIEDEF"), created as a branch of the Ministry of Justice to investigate all cases of disappearances that occurred during the dictatorship of Hugo Banzer Suárez. In this regard, the petitioner specifies that on February 19, 1983, the National Commission of Inquiry into Disappeared Persons published a list of 14 persons who disappeared and were illegally buried in 1972 at the General Cemetery of La Paz, requesting the District Attorney Office to initiate investigations and legal actions against the perpetrators of these disappearances; however, he alleges that after few steps were taken, no proceedings were initiated. The petitioner argues that despite the fact that the name of Félix Melgar Antelo is included in the list of the 14 people buried on April 5, 1972 in the General Cemetery of the city of La

Paz, the Registry of Burial shows that there is no " the location where Mr. Félix Melgar Antelo was buried."<sup>5</sup> In this line, he maintains that the relatives of Félix Melgar Antelo responded to the call made by the Public Prosecutor's office in 2008 in the city of La Paz for the creation of a "Genetic Bank" in the cases of disappeared persons, providing genetic samples which were taken by a representative of the Argentine Forensic Anthropology Team (hereinafter "EAAF").

6. The petitioner argues that despite the fact that a complaint has not been filed with the Public Prosecutor due to the lack of trust of the alleged victim's family in the administration of justice, he went to the Eighth Criminal Court of La Paz in connection to case No. 4664 where he was told the family must first appear before the Office of the Public Prosecutor with a written statement prepared by an attorney which would be forwarded to the Court. He also alleges that although the State of Bolivia has taken domestic measures to clarify some cases of people who were murdered and / or disappeared in the country between November 4, 1964 and October 10, 1982, and has implemented policies, plans and institutions for the promotion and protection of human rights, these are not reflected in practice nor have they led to concrete results.

7. The petitioner maintains that the then National Commission for Compensation to Victims of Political Violence (hereinafter "CONREVIP"), created by Law No. 2640 of March 11, 2004, recognized by resolution No. 26/08 of January 2, 2008, the alleged victim Félix Melgar as missing and indicated that he would be included in a list of victims to be sent to the National Congress for purposes of granting public honors.<sup>6</sup> However, he adds that by means of the same resolution, CONREVIP indicated that petitioner does not qualify to receive the benefit of exceptional compensation, since they have previously benefited from a pecuniary recognition, in particular a plot of land donated by the Municipal Mayor's office of La Paz.

8. The State maintains that it has carried out diligent actions un seeking the historical truth about the events that occurred during the dictatorship, through judicial investigations and the creation of the Truth Commission. However, it highlights that investigations in particular cases are difficult when there is no collaboration from civil society or from the relatives of the victims. In this sense, it argues that the Public Prosecutor's office initiated an ex officio investigation and that case No. 4664 is open in the preliminary investigation stage in the Eighth Criminal Court of La Paz, where forced disappearances in times of dictatorship are being investigated. In this regard, it claims that the petitioner and the other relatives of the alleged victim have not appeared before the Court or the Departmental Prosecutor of the city of La Paz to initiate any legal action against the alleged authors of the death of Félix Melgar nor have they responded to public calls made during February 2008 by the Public Prosecutor's office, and the EAAF and June 2015 by the same authority and the Forensic Investigations Institute (hereinafter "IDIF"), for the reception of their bio- anthropological data for the Genetic Data Bank with the objective of identifying found bone remains.

9. The State affirms that despite the fact that there is a record with the name Félix Melgar Antelo in the 1972-1973 burial record book of the Administration of the General Cemetery of the city of La Paz, the location of the remains is uncertain since the aforementioned book does not indicate the exact location where he was buried. Nevertheless, it considers that the IACHR should assess the progress made by the State in the search for the truth about the events that occurred during the times of dictatorship, emphasizing that it has carried out a series of initiatives to clarify the facts and identify the remains of the victims who were killed and /or disappeared during 1964 to 1982.<sup>7</sup> Likewise, it argues that it has developed specific programs for the

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<sup>5</sup> The petitioner describes that the Administration of the General Cemetery of the city of La Paz indicated through Report GAML/DEESP/UMD-CG No. 179/2017 of July 21, 2017 that "although the name of Melgar A. Félix is registered in the burial registration book, 'the place where he was buried is not listed, and from the comparison in the book of records of burial, there is no documentation in this regard, so it follows that the burial may not have taken place in the General Cemetery of La Paz'".

<sup>6</sup> The petitioner indicates that the Association of Relatives of Disappeared Detainees and Martyrs for National Liberation (hereinafter "ASOFAMD") issued a certificate dated December 16, 2008, by which it acknowledges that Félix Melgar Antelo is on the lists of disappeared persons for political reasons and that his remains have not been found to date.

<sup>7</sup> In this regard, it indicates the creation of the Inter-institutional Council for the Clarification of Forced Disappearances on June 18, 2003; of the National Commission of Compensation for Victims of Political Violence, on March 11, 2004, through Law No. 2640; and of the Technical Qualification Commission in charge of the Ministry of Justice. In particular, the State mentions a series of acts carried out in public recognition of the victims, including Supreme Decree No. 20127 of April 3, 1984, as well as the erection of the Museum of Memory in the facilities of the Public Ministry on August 23, 2011.

promotion and protection of human rights in order to prevent recidivism and recognize the historical memory of these victims, and has adopted a constitutional framework development based on the criterion of the exercise of effective control by the civilian authorities over the armed and security forces through the express regulation of these institutions, assigning to them joint cooperation tasks with the country's national entities in order to preserve security and guarantee the independence of the Bolivian State.<sup>8</sup>

10. Finally, the State maintains that there is no record of the entry of Félix Melgar Antelo into the San Pedro penitentiary compound, dependent on the National Directorate of Penitentiary Security of the Ministry of Government.

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

11. The Commission has established that whenever acts are committed that violate the right to life and personal integrity, the State has the obligation to promote the ordinary criminal process as the ideal way to clarify the facts and establish the corresponding penal sanctions, in addition to enabling other forms of pecuniary reparation.<sup>9</sup> In this sense, the Commission observes from information presented by the parties that the Office of the Public Prosecutor has initiated an ex-officio criminal action in order to investigate the facts and determine responsibilities in the cases of persons disappeared during the "period of dictatorship", including the alleged disappearance of Mr. Melgar Antelo. However, after 47 years, the criminal investigation initiated is still in the preliminary investigation stage, without the responsibility for the material and intellectual authorship of the facts of the present petition having been clarified and established. In light of the foregoing, in this case the exception to exhaustion of domestic remedies provided in Article 46.2.c of the American Convention applies.

12. Additionally, the Commission observes that the petition was received on May 13, 2010, and that the alleged facts that were the subject of the claim would have occurred as of April 3, 1972, and would continue until the present. Therefore, in view of the context and characteristics of the present case, the Commission considers that the petition was presented within a reasonable period of time and that the admissibility requirement regarding the filing period was satisfied.

## **VII. ANALYSIS OF COLORABLE CLAIM**

13. In relation to the *ratione temporis* and *ratione materiae* jurisdiction, the Commission will analyze the facts of this case in light of the obligations established in the American Convention and in the Inter-American Convention on Forced Disappearance of Persons with respect to those events that occurred after their entry into force or whose execution continued after the entry into force of said instruments for the Bolivian State. The Commission will analyze the facts prior to the entry into force of the American Convention for that State, in light of the obligations derived from the American Declaration.

14. The Commission observes that the present petition includes allegations regarding the detention, forced disappearance, and presumed death of the alleged victim, without the delivery of the skeletal remains to his next of kin, the unjustified delay in identifying those responsible, the effective judicial protection and lack of compensation for the events occurred. In light of these considerations, and after examining the factual and legal elements presented by the parties, the Commission considers that the petitioner's allegations are not manifestly unfounded and require a thorough study, since the alleged facts, if corroborated as certain, could characterize violations of Articles I (life, liberty, security, and integrity of the person), XVII (recognition of legal personality and civil rights), XVIII (justice), and XXV (protection against arbitrary detention) of the American Declaration. Regarding the alleged continuity and lack of clarification of said crimes, as well as the allegations regarding the lack of compensation for the events that occurred, the Commission considers that the alleged facts could characterize possible violations of Articles 3 (right to juridical personality), 4 (right to life), 5

<sup>8</sup> The States mentions as one of the most significant advances the issuance of Ministerial Resolution No. 0316 of the Ministry of Defense of May 15, 2009, which determined the opening of the classified files of the Armed Forces in relation to the events of the dictatorship.

<sup>9</sup> IACHR, Report No. 78/16, Petition 1170-09. Admissibility. Almir Muniz Da Silva. Brazil. December 30, 2016, para. 31.

(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 relation with its article 1. 1 (obligation to respect rights), and with Article I of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of the alleged victim and his family.

### **VIII. DECISION**

1. To declare this petition admissible in relation to Articles I, XVII, XVIII, and XXV of the American Declaration; Articles 3, 4, 5, 7, 8, and 25 of the American Convention in relation to Article 1.1; as well as article I of the Inter-American Convention on Forced Disappearance of Persons; and

2. Notify the parties of this decision; continue with the analysis of the merits of the matter; and 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 17th day of the month of June, 2020. (Signed): Joel Hernández, President; Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President; Margarete May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, and Julissa Mantilla Falcón, Commissioners.