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**REPORT No. 78/20**  
**PETITION 1434-09**  
REPORT ON ADMISSIBILITY

MOISÉS CUEVA AND FAMILY  
EL SALVADOR

Electronically approved by the Commission on March 17, 2020.

**Cite as:** IACHR, Report No. 78/20. Petition 1434-09. Admissibility. Moisés Cueva and family. El Salvador. March 17, 2020.

**I. INFORMATION ABOUT THE PETITION**

Petitioner	Human Rights Institute of the José Simeón Cañas Central American University, Ana Virginia Cuevas, and Henri Paulo Fino Solórzano
Alleged victim	Moisés Cuevas and his family
Respondent State	El Salvador
Rights invoked	Articles 4 (life), 5 (humane treatment), 8 (fair trial), and 25 (judicial protection) of the American Convention on Human Rights, <sup>1</sup> in connection with Article 1.1 (obligation to respect rights) thereof

**II. PROCEEDINGS BEFORE THE IACHR<sup>2</sup>**

Date of filing	November 10, 2009
Notification of the petition	June 15, 2016
State's first response	October 26, 2016
Notification of the possible archiving of the petition	November 12, 2018
Petitioner's response to the notification on the possible archiving of the petition	December 4, 2018

**III. COMPETENCE**

<i>Ratione personae</i>	Yes
<i>Ratione loci</i>	Yes
<i>Ratione temporis</i>	Yes
<i>Ratione materiae</i>	Yes, American Convention (deposit of instrument of ratification on June 23, 1978)

**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 8 (fair trial), 24 (equal protection), and 25 (judicial protection) of the American Convention, in connection with Article 1.1 (obligation to respect rights) thereof
Exhaustion or exception to the exhaustion of remedies	Yes, May 14, 2009
Timeliness of the petition	Yes, November 10, 2009

**V. SUMMARY OF ALLEGED FACTS**

1. The petitioners claim that the State of El Salvador is responsible for violations of the rights to a fair trial and judicial protection and due process given its failure to exercise due diligence in investigating the murder of Moisés Ernesto Cuevas (hereinafter “the alleged victim,” “Moisés,” or “Mr. Cuevas.”) They allege that the State did not perform a ballistics examination or a blood test, nor examined the gun with which the alleged victim was killed, because he had AIDS.

2. According to the petition, on April 5, 1996, Ms. Ana Virginia Cuevas (hereinafter “Ms. Cuevas”) was notified by a telephone call that her son Moisés had died and that his dead body was at the Institute of Legal Medicine. On recognizing the body, she appeared as the injured party to the Fourth Magistrate’s Court of San Salvador so that an investigation was filed on the death of her son. They assert that as the alleged victim’s murder occurred in Colina Libertad, Pasaje “A,” in San Salvador, the Fourth Magistrate’s Court of San Salvador was competent to open an investigation. They explain that, however, since the investigation was unsuccessful, on April 12, 1996, the magistrate’s court transmitted the case to the Fourth Criminal Court, which on April 16, 1998, ruled to file the case in the archives. They argue that the inquiries were not diligent or timely but rather had several irregularities, such as the following: (i) the non-performance of an autopsy of the alleged victim’s

<sup>1</sup> Hereinafter “the American Convention” or “the Convention.”

<sup>2</sup> The observations submitted by each party were duly transmitted to the opposing party.

body because he was an HIV/AIDS patient, and the Institute of Legal Medicine does not perform autopsies on people who tested positive given the high rate of infections with the virus; (ii) the non-examination of the objects found with the dead body (two credit cards, cash, and a L-shaped lug wrench with traces of blood on it); and (iii) the State's non-performance of investigation procedures such as examining the L-shaped lug wrench, analyzing the blood found or interviewing the person who called the National Police emergency service.

3. The petitioners argue that although the case was reopened on August 18, 1998, at the request of Ms. Cuevas, to remedy the deficiencies of the previous investigation, the results of the new investigation were influenced by the passing of time and the lack of a comparison between the contradictions in the first and the "new" versions of the witness statements. They also submit that the alleged victim's body was disinterred on September 6, 2001—that is, five years after his death—, which did nothing but revictimize Ms. Cuevas because seeing the mortal remains of her son caused her irreversible moral damage. They assert that in the new inspection of the place where body was found, a new piece of evidence was found: a firearm projectile, which had not been seen or considered in the previous investigation and which five years after the murder, did not contribute to the new investigation. According to the petitioners, on May 14, 2009, the criminal action was found barred by the statute of limitations, without Ms. Cuevas' being notified of this.

4. The State, for its part, asserts that the investigation began with a visual inspection by the Criminal Investigation Division of the National Police on April 5, 1996, and that the prosecutor's office submitted a case file on malice murder to the detriment of the alleged victim. According to the prosecutor's case file, on April 5, 1996, at about 11:00, a vehicle parked and the four individuals that got off, physically and verbally attacked Mr. Cuevas, shot him dead, and fled the scene of the crime. The State argues that on the same day, the Fourth Magistrate's Court of San Salvador ordered a medico-legal report on the dead body, which was taken to the Institute of Legal Medicine for an autopsy. According to the State, the autopsy was not performed due to safety reasons and under the permission of the Fourth Magistrate's Court of San Salvador. However, it claims that between 1998 and 2001, several proceedings were conducted, such as the taking of Ms. Cuevas' statement and the performance of a serology test on the mortal remains of the alleged victim. It submits that after a series of steps, the case was permanently closed on May 14, 2009, because it was impossible to identify those responsible for the murder under articles 125 and 126 of the Criminal Code in force in 1998.

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

5. Concerning the exhaustion of domestic remedies, the State narrates the development of the criminal case to its permanent filing in the archives on May 14, 2009, when the Fourth Magistrate's Court of San Salvador ordered to permanently file the investigation in the archives because the criminal action was barred by the statute of limitations. The Commission sees that the State does not mention other domestic remedies that should be exhausted and may be appropriate to have the petitioners' claims remedied by the domestic courts. For their part, the petitioners argue that, to date, the facts remain unpunished and that no essential evidentiary tests have been performed that may contribute new data to the investigation on the death of the alleged victim.

6. The Commission reiterates that in petitions where violations of the right to life are alleged, the domestic remedies to be considered for admissibility purposes are those regarding the criminal investigation and punishment of the persons responsible. The Commission observes that the petitioners submitted the relevant complaint, filed the case in due course, and even challenged the decision to file it in the archives and that the investigation was permanently closed on May 14, 2009. Likewise, it notices that the State did not controvert the exhaustion of domestic remedies.

7. Regarding the six months period requirement for filing a petition, the IACHR considers that it was met because the alleged victims were notified on May 14, 2009, that the criminal action was barred by the statutes of limitations, and they filed this petition to the Commission on November 10, 2009.

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

8. The Commission notes that this petition involves allegations of a lack of due diligence to investigate and clarify the facts on the alleged victim's murder and the link between this failure and the alleged victim's HIV/AIDS condition.

9. Therefore, and after analyzing the legal and factual elements submitted by the parties, the Commission deems that the claims of the petitioners are not manifestly groundless but rather meet the requirements for an analysis on the merits; for, if proven to be true, the above facts may establish violations of Articles 8 (fair trial) and 25 (judicial protection) of the American Convention, in connection with Article 1.1 (obligation to respect rights) thereof. In the merits stage of this petition, the Commission will also analyze the possible violation of Article 24 (equal protection) of the American Convention given the alleged differential treatment of the victim during the investigation based on his HIV/AIDS condition.

10. As to the alleged violation of Articles 4 (life) and 5 (humane treatment) of the American Convention, the Commission notes that, in principle, the State is responsible for any violation of rights recognized by the Convention carried out by an act of public authority or by persons who use their position of authority. While these are not all the circumstances where a State is obligated to prevent, investigate, and punish human rights violations, nor all the cases in which the State might be found responsible for an infringement of those rights, the IACHR notes that the purported violations of those rights were committed by third parties and not by state agents. Thus, the Commission deems that the claims of the petitioners cannot establish violations of Articles 4 (life) and 5 (humane treatment) of the Convention.

## **VIII. DECISION**

1. To declare the instant petition admissible with regard to Articles 8 (fair trial), 24 (equal protection), and 25 (judicial protection) of the American Convention, in connection with Article 1.1 (obligation to respect rights) thereof;

2. To declare this petition inadmissible with regard to Articles 4 (life) and 5 (humane treatment) 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 17 day of the month of March, 2020. (Signed): Joel Hernández, President; Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Julissa Mantilla Falcón, and Stuardo Ralón Orellana, Commissioners.