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REPORT No. 275/21
PETITION 494-09
REPORT ON ADMISSIBILITY

ALBERTO VELÁSQUEZ VÉLEZ
COLOMBIA

Approved by the Commission at its session No. XXXX held on XX XX, 2020
1XXth Regular Period of Sessions

Cite as: IACHR, Report No. XX/XX, Petition XXX-XX. In/Admissibility. [name]. [State]. [Date of report]..

I. INFORMATION ABOUT THE PETITION

Petitioner	Alberto Velásquez Vélez
Alleged victim	Alberto Velásquez Vélez
Respondent State	Colombia
Rights invoked	Article 21 of the American Convention on Human Rights ¹

II. PROCEEDINGS BEFORE THE IACHR²

Filing of the petition	April 23, 2009
Additional information received during initial review	September 23, 2009, October 6, 2009, February 3, 2010, March 11, 2010, April 23, 2010, June 23, 2010, August 30, 2010, September 19, 2010, October 25, 2010, March 16, 21, 2011, April 13, 2011, June 20, 2011, July 19, 2011, April 4, 2013, August 2, 2013, October 30, 2013, November 15, 2013
Notification of the petition	June 17, 2014
State's first response	October 30, 2014
Additional observations from the petitioner	June 23, 2014, October 29, 2014, January 30, 2015, February 9, 25, 28, 2015, March 13, 30, 2015, April 16, 2016, June 20, 2016, November 4, 2016, July 3, 2017,
Additional observations from the State	March 10, 2015, March 6, 2019

III. COMPETENCE

<i>Ratione personae:</i>	Yes
<i>Ratione loci:</i>	Yes
<i>Ratione temporis:</i>	Yes
<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
Rights declared admissible	Articles 5 (humane treatment), 8 (fair trial), and 25 (judicial protection) of the American Convention in relation to Article 1.1 and 2 thereof
Exhaustion or exception to the exhaustion of remedies	Yes, and no under the terms of Section VI
Timeliness of the petition	Yes and no, under the terms of Section VI

V. SUMMARY OF ALLEGED FACTS

1. This petition is based on claims of unlawful deprivation of property that has so far been unredressed by the State, as well as threats issued to the petitioner by organized criminals.

2. The petitioner alleges that in 1992 he was fraudulently deprived of two parcels of land that he bought in 1991 from Carlos Manuel Dangond Noguera ("Mr. Noguera") and Teresita del Nino Jesus Fernandez de Castro ("Ms. Fernandez"). According to the petitioner: (a) these parcels of land are known as "Diana 1" and "Diana 2", and are located in the region of Guacamayal, municipality of Ciénaga, Magdalena; (b) that under the terms of the agreement of sale/public deed between himself and the vendors, the vendors had an option to reacquire the properties within a year of the date of the public deed; and (c) Ms. Fernandez

¹ Hereinafter "American Convention" or "Convention".

² The observations submitted by each party were duly transmitted to the opposing party.

orchestrated a fraudulent power of attorney in favour of Norma de Jesús Flores Martínez that purported to authorize her to re-transfer the properties (to the vendors³) in the name of the petitioner; (d) that the documents that re-transferred the properties were based on the forged signature and fingerprint of the petitioner.

3. According to the petitioner, in April 2007, he submitted a criminal complaint to the *Fiscal General de la Nación*⁴ (Prosecutor General of the Nation). A criminal investigation was initiated in May 2007⁵, but according to the record, this was subsequently archived in 2009, primarily on the ground that the time for investigation had expired. The petitioner complains that the decision to archive was vitiated by lack of impartiality.⁶ The petitioner also contends that the illegal acquisition has been supported by paramilitary forces, whom he claims, subjected him to death threats.⁷ In this regard, the petitioner states that in or about July/August 2009 he complained about the death threats to the prosecuting authorities of Ciénaga, but that he was told that there was no need to take any investigative or other measures. According to the record, the petitioner was an intervening party in a civil litigation initiated in 2016 by the *Comisión Colombiana de Juristas* on behalf of Carlos Avelino Urueta Julio and others. This litigation was initiated under a 2011 law (*Ley de Tierras*) that deals with providing relief/ restitution to persons who have been dispossessed of land.

4. The State argues that the petition is inadmissible primarily on the ground the petitioner has failed to exhaust domestic remedies; and that adjudication of the petition would constitute a violation of the fourth instance formula. Generally, the State submits that the most appropriate (and effective) remedies were civil remedies (as opposed to criminal) and that the petitioner failed to invoke or exhaust any of these remedies. In this regard, the State refers to a possible civil action under the *Código de Procedimiento Civil Colombiano*⁸ to nullify the alleged fraudulent re-transfer. However, the State indicates that this remedy is no longer available to the petitioner due to the domestic legislation concerning the time limit in which the petitioner could go before the civil or criminal jurisdiction. In fact, according to the State, article 83 of the *Código de Procedimiento Penal* and article 2356 of the *Código Civil* established 20 and 10 years respectively, for initiating legal action. However, the State argues that it is/was open to the petitioner to initiate legal proceedings under a 2011 law (*Ley de Tierras*) for restitution of land⁹, but that he failed to do so in his own right. However, the State acknowledges that the petitioner was an intervening party in civil litigation initiated in 2016 under the *Ley de Tierras*, but contends that that he ultimately failed to comply with certain procedural requirements to be, or to remain an intervening party. In this regard, the State contends that the petitioner, for example, failed to register himself as a victim of displacement or to register the property under dispute under the registry of dispossessed properties. Ultimately, the State argues that the petitioner failed to exhaust domestic remedies available under the *Ley de Tierras*.

3 By this time, Ms. Noguera had died, so the re-transfer was to Ms. Fernandez solely.

4 Hereinafter "FG".

5 According to the petition, the complaint was handled by various offices of the FG: initially by the 22nd section of the FG's office in Ciénaga, Magdalena, then the FG's office in Santa Marta, Magdalena, and then the 17th section of the FG's office in Ciénaga, Magdalena

6 In this regard, the petitioner complains that the FG was a "close friend" of the family of Ms. Fernández. He also complains that Judge José Alfredo Escobar Araujo, a member of the Superior Council of the Magistracy, is the husband of Ms. Fernández's first cousin. He claims that this judge is under suspicion of having links to organized crime. However, there is no indication from the record that this judge made any decisions regarding the petitioner's complaint.

7 In this regard, the petitioner refers to Las Autodefensas Unidas de Colombia (AUC) and Las Águilas Negras.

8 More specifically under Articles 396 and others.

9 The State submits that this legal action would be particularly relevant where an aggrieved party is claiming that the misappropriation of land occurred by, or with the support of illegal force.

5. With respect to the petitioner's claim of fraudulent deprivation of property, the State considers that the fourth instance formula would apply to the criminal investigation undertaken, but subsequently archived by the FG. According to the State, the FG fully complied with obligation to conduct a criminal investigation, but that (a) the investigation was archived on 26 August 2009 because time had run out (by law); (b) the public deeds that re-transferred the property enjoy a presumption of legality, and that there was no basis to rebut this presumption; (c) delay on the part of the petitioner in bringing the complaint ultimately contributed to suspension of investigation. In the circumstances, the State contends that any review by the IACHR of the FG's decision to archive the investigation would violate the fourth instance formula. The State also rejects the petitioner's claims of lack of impartiality on the part of Colombian authorities, contending that he has provided no evidence to support such claims. In response, the petitioner contends that the State is, and continues to ignore the alleged violations and has ultimately denied him access to justice.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

6. The Commission notes that the petitioner contends that his claim of fraudulent deprivation of his property remains un-redressed by the State despite making a criminal complaint. The petitioner has also complained of threats issued to him and also alleges have not been addressed by the State. For the State, the petitioner has failed to exhaust available civil remedies, which it claims were the most appropriate for redressing the petitioner's claim (of fraudulent deprivation of property). Additionally, the State contends that a criminal investigation was initiated but ultimately archived primarily because the legal period for conducting the investigation had expired.

7. The requirement of prior exhaustion of domestic remedies is intended to allow domestic authorities to hear the alleged violation of a protected right and, if applicable, settle the issue before it is brought before an international body¹⁰. Based on the record, as it relates to the complaint of unlawful deprivation of property, the Commission notes that the State has identified civil remedies that the petitioner has not invoked or exhausted. In this regard, the Commission notes that the petitioner did not invoke the remedies available under the *Código de Procedimiento Civil Colombiano*. Further the Commission notes that the petitioner has not denied that he failed to initiate proceedings under the Ley de Tierras or to comply with certain procedural requirements to be, or to remain an intervening party under this law. Accordingly, as it relates to the petitioner's claims relating to property, the Commission considers that this petition does not meet the requirement for exhaustion of domestic remedies under the terms of Article 46.1 of the American Convention.

8. Regarding the threats reported by the petitioner, the Commission has established that where there are allegations of crimes against life and security, the domestic remedies that must be taken into account for the purposes of the petition's admissibility are those related to criminal investigations by the State with a view to clarifying the facts, and where possible to prosecute and convict those responsible. Considering the parties' statements, the Commission considers that to date an investigation has not been carried out to determine the criminal liability (if any) of all the persons involved in threatening the petitioner. The Commission observes that the alleged threats were reported in 2009 and its effects concerning the alleged lack of investigation and punishment of said acts to the alleged victim continue to this date. As a result, in light of the context and the characteristics of this case, the Commission concludes that it has sufficient elements to believe that the exception set forth in Article 31.2 (b) of the IACHR Rules of Procedure is applicable in this case, and that the petition was filed in a reasonable time, under the terms of Article 32.2 of the IACHR Rules of Procedure.

10 IACHR, Report No. 82/17, Petition 1067-07. Admissibility. Rosa Ángela Martino and María Cristina González. Argentina. July 7, 2017, para. 12

VII. COLORABLE CLAIM

9. The Commission notes that this petition includes allegations regarding unlawful deprivation of property, as well as threats issued to the petitioner. The issue of unlawful deprivation of property has already been addressed under the rubric of exhaustion of domestic remedies.

10. In view of the elements of fact and law submitted by the parties and the nature of the matter brought to its attention, the Commission considers that, if proven, the failure of the State to complete an investigation aimed at clarifying the facts regarding the threats to the petitioner, with a view to identifying and punishing the individuals responsible could establish possible violations of the rights protected through Articles 5 (humane treatment), 8 (fair trial), and 25 (judicial protection) of the American Convention in connection with Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) thereof.

VIII. DECISION

1. To find the instant petition admissible (with respect to the alleged threats) in relation to Articles 5, 8, and 25 of the American Convention in relation to Article 1.1 and 2 thereof; and

2. To find the petition inadmissible in relation to Article 21 of the American 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 12th day of the month of October, 2021. (Signed): Antonia Urrejola, President (dissenting opinion); Julissa Mantilla Falcón, First Vice-President; Flavia Piovesan, Second Vice-President; Margarete May Macaulay; Esmeralda E. Arosemena Bernal de Troitino; Joel Hernández García (dissenting opinion) and Edgar Stuardo Ralón Orellana, Members of the Commission.