

OAS/Ser.L/V/II
Doc. 243
5 December 2024
Original: Spanish

REPORT No. 231/24
PETITION 1751-14
REPORT ON ADMISSIBILITY

NICANOR MORALES RODRÍGUEZ & RELATIVES
COLOMBIA

Approved electronically by the Commission on December 5, 2024.

Cite as: IACHR, Report No. 231/24, Petition 1751-14. Admissibility. Nicanor Morales Rodríguez and Relatives. Colombia. December 5, 2024.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Pedro José Canencia Martínez
Alleged victim:	Nicanor Morales Rodríguez and relatives ¹
Respondent State:	Colombia ²
Rights invoked:	Articles 4 (right to life), 5 (humane treatment), 8 (right to a fair trial), 17 (rights of the family), 24 (right to equal protection), and 25 (judicial protection) of the American Convention on Human Rights, ³ in relation to Article 1.1 (obligation to respect rights)

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition:	November 15, 2014
Notification to the petitioner of the possible archiving of the petition:	September 24, 2020
Petitioner's response to the possible archiving of the petition:	November 25, 2020
Notification of the petition to the State:	November 11, 2021
Request for extension:	February 15, 2022
State's first response:	February 23, 2022

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
Rights declared admissible:	Articles 4 (right to life), 5 (humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), and 25 (judicial protection) of the American Convention on Human Rights, in relation to Article 1.1 (obligation to respect rights)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, the Article 46.2(c) exception applies,
Timeliness of the petition:	Yes, under the terms of Section VI

¹ Estebana Rodríguez Blanquicett (mother); Aleida Elena Bolívar Salgado (partner); Yuluis Morales Bolívar, Juliana Morales Bolívar, Diocy Patricia Morales Pineda, Moisés Morales Arrieta, María Alejandra Morales Arrieta (children); Pablo Morales Rodríguez, José Morales Rodríguez, Mary Ledys Morales Rodríguez, Edamis Del Carmen Morales Rodríguez, Luis Morales Rodríguez, Antonio José Morales Rodríguez, Estebana Morales Rodríguez, Májela Morales Rodríguez (siblings); Edwin David Morales Moreno, Karina Morales Moreno, Antonio José Morales Ruiz, Iban Enrique Morales Moreno, Sandra Milena Morales Moreno, Félix Manuel Ortega Morales, Juan Yair Castro Morales, Alexander Castro Morales (nieces and nephews).

² In keeping with Article 17.2(a) of the Commission's Rules of Procedure, Commissioner Carlos Bernal Pulido, a Colombian national, did not participate in the deliberations or in the decision in this case.

³ Hereinafter "the American Convention" or "the Convention."

⁴ The observations submitted by each party were duly considered and transmitted to the opposing party.

V. POSITIONS OF THE PARTIES

The petitioner

1. The petitioner condemns the violent death by lynching of Nicanor Morales Rodríguez (“Mr. Morales” or “the alleged victim”) while in police custody; the impunity and lack of reparations for this act; and the pain and suffering of his next of kin.

2. The petitioner states that Mr. Morales worked as a bricklayer on the Guaimaral bridge construction project in the town of San Andrés del Río, where he lived with his wife and children. On December 1, 2006, he was arrested and taken to the San Andrés del Río police substation for the alleged assault and battery of a person named David Velásquez. He was arrested at his home, in front of his family, including his minor children Yuluis Morales Bolívar and Juliana Morales Bolívar. He was handcuffed and detained without clothes, with a bleeding wound on his left arm.

3. While Mr. Morales was detained at the police station, family and friends of David Velásquez, enraged, burst into the station demanding that Mr. Morales be handed over to them so they could kill him, saying that they would take justice into their own hands. The police did not intervene to prevent the lynching. Nicanor Morales Rodríguez was brutally murdered in the presence of the police officers, who failed to take the necessary actions to prevent his murder. The attackers used stones, sticks, machetes, and rods to beat him; they tied him up, dragged him, and doused his body with gasoline. The officers present at the police substation observed the attack without preventing it.

4. The petitioner alleges that the only investigation conducted was a disciplinary investigation by the National Police against Second Lieutenant Alberto Luis Cortes Valero, and he was exonerated. The petitioners provided only limited information on the domestic proceedings.

5. The family of the alleged victim filed a direct reparation action in administrative court. In the first instance, the First Administrative Overflow Court of Cartagena ruled for the family. However, the State appealed the decision, arguing that the responsibility fell on third parties. On April 29, 2014, the Administrative Court of Bolívar overturned the lower court’s ruling, holding that the National Police could not be held responsible, as they “*had done everything possible*” to protect Mr. Morales. Notice of the final judgment was issued on May 14, 2014.

6. The petitioner contends that the alleged victim’s death is the responsibility of the State, which failed to provide him with the necessary protection while he was in its custody. He argues that the State failed in its duty to safeguard the alleged victim’s life; and that the judicial proceedings were marred by irregularities that prevented access to justice for the victim’s family. In addition, he condemns the impunity of the perpetrators and the lack of comprehensive reparations for the victim’s family.

The Colombian State

7. The State reports that Mr. Morales was held at the San Andrés del Río police substation after being caught in flagrante delicto for acts of assault and battery leading to the death of Mr. David Velásquez. These acts occurred during a fight, and Mr. Velásquez’s death sparked outrage in the community. On December 1, 2006, at least two hundred people gathered around the police station seeking to forcibly remove Mr. Morales. Although station officials intervened to protect the detainee, the mob entered the premises and forcibly removed him, beating him to death.

Criminal investigation

8. After the incident, authorities apprehended thirteen people allegedly responsible for the murder. The 43rd Prosecutor’s Office of Carmen de Bolívar opened an investigation into these thirteen people, who were arrested in flagrante delicto. On December 7, 2006, the Police brought eight of the detainees before the Prosecutor’s Office, where they were questioned. On December 21, 2006, the Prosecutor’s Office ordered

the pretrial detention of Alfredo Velásquez Medina and Alfredo Velásquez Atencio on murder charges, and ordered the release of the other detainees due to lack of evidence. On February 26, 2007, defense counsel requested the revocation of the detention order; but on March 20, 2007, the Prosecutor's Office denied the request and ordered that both defendants be kept on pretrial house arrest.

9. On December 5, 2014, the 56th Sectional Prosecutor's Office of Carmen de Bolívar took over the case and summoned the defendants to testify. On February 3, 2015, the prosecutor again summoned the defendants, and the parties were given notice to file their closing arguments between July 27 and August 5, 2015. However, despite the parties having been served notice, none filed closing arguments. On March 15, 2017, the prosecutor's office ordered the preparation of a prosecution memorandum. It noted that the defendants had been questioned in the hearing of October 1, 2014, although their legal status was not determined, which resulted in a decision to set aside the proceedings as of the order of October 1, 2014.

10. Subsequently, on February 9, 2018, the 29th Sectional Prosecutor's Office of Carmen de Bolívar again took over the investigation; and as of the date of the State's last brief to the IACHR, in March 2022, this proceeding was still in the pretrial stage.

Disciplinary investigation

11. The State reports that the General Inspectorate of the Colombian National Police opened a disciplinary investigation against the National Police officers who were on duty the day of the events. Second Lieutenant Alberto Luis Cortés Valero recounted the facts in a report submitted to the Internal Disciplinary Oversight Office of the Bolívar Police Department. This office opened the respective investigation against the officers under file number P-REGI8-2007-8. However, on April 11, 2007, after investigative work was completed and statements were taken, the General Inspectorate of the National Police closed the investigation.

12. According to the State, the investigation concluded that there was a riot in which a mob attacked the police facilities, setting fire to the station and extracting Nicanor Morales Rodríguez, who was then lynched. This was considered a force majeure event that exempted the police officers from responsibility. The arguments put forward by the accused officer were accepted, and the case was adjudicated in his favor. No official was held responsible for the events which, although regrettable, occurred when the mob overcame law enforcement and took justice into its own hands. Although the law permits the use of force in such cases, including the use of firearms, this could have resulted in more victims due to the excessive use of force by the National Police.

Direct reparation action

13. The State also reports that Nicanor Morales Rodríguez's next of kin filed an action for direct reparation, seeking to have the State declared administratively liable for breach of duty and failure to prevent the events in question. On April 30, 2013, the First Administrative Overflow Court of Cartagena ruled for the plaintiffs, finding that Morales Rodríguez was in the custody of the National Police, and that those responsible failed to use all necessary means to prevent the attack and safeguard the detainee's life.

14. The Nation, the Ministry of National Defense, and the National Police filed an appeal; and on April 29, 2014, the Administrative Court of Bolívar reversed the lower court's decision, finding that the statements of the police officers consistently indicated that the circumstances resulting in Mr. Morales Rodríguez's death were a case of force majeure, which kept the officers from preventing the unfortunate events. Therefore, it denied the plaintiffs' claims.

Conclusions of the State

15. The State argues that the petition is inadmissible due to the failure to exhaust domestic remedies in connection with the ongoing criminal investigation, since the proceeding is at the preliminary investigation stage. It further contends that the alleged victim's relatives had the opportunity to join the criminal case as a civil party to help advance the proceedings, but did not do so.

16. The State also argues that the petition is inadmissible because the petitioner seeks to have the IACHR substitute the assessments made in the direct reparation action and in the disciplinary investigation. The State underscores that the direct reparation action is the appropriate and effective remedy for pecuniary claims when the State, in the performance of its duties, causes an unlawful injury to a person.

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

17. The petition arises from the violent death of Nicanor Morales Rodríguez while in police custody; the impunity and lack of reparations for this act; and the pain and suffering of his next of kin.

18. To analyze the exhaustion of domestic remedies in this matter, the IACHR recalls that in cases alleging death and subsequent impunity, the appropriate remedy to be exhausted at the domestic level is criminal proceedings, through diligent and proactive investigations to identify those responsible for the violation and to prosecute and punish them in accordance with the American Convention;⁵ this burden must be assumed by the State as its own legal duty, and not as the management of private interests or a process that relies on private initiative or on the furnishing of evidence by private individuals.⁶

19. In this case, the alleged victim was lynched on December 1, 2006, while in police custody. On December 5, 2006, the 43rd Sectional Prosecutor's Office of Carmen de Bolívar opened a criminal investigation. However, the case has not concluded and remains in the investigation stage more than seventeen years after the events. The limited results of the criminal investigation lead the Inter-American Commission to conclude that there has been an unwarranted delay in the rendering of a final decision at the domestic level, and therefore the exception provided for in Article 46.2(c) of the American Convention is applicable.

20. The Commission first reiterates, as it has done consistently, that Article 46.2 of the Convention, by its nature and purpose, is a norm with autonomous content vis-à-vis the substantive norms of the American Convention. Therefore, the determination of whether the exceptions to the rule of exhaustion of domestic remedies are applicable to the case in question must be made prior to and separately from the analysis of the merits of the case, since it is based on a different standard of assessment from that used to determine the possible violation of Articles 8 and 25 of the Convention.⁷ The IACHR has also emphasized that there are no treaty or regulatory provisions specifying the period of time that constitutes unwarranted delay, for which reason the Commission evaluates delay on a case-by-case basis.⁸ Along these lines, the Inter-American Court has established, as a guiding principle for the analysis of the possible unwarranted delay as an exception to the rule on the exhaustion of domestic remedies, that "*the rule of prior exhaustion of domestic remedies must not mean that international action in support of the defenseless victim is halted or delayed to the point of uselessness.*" In other words, in the Commission's opinion, the complementary nature of the international protection provided under the American Convention also means that the intervention of the bodies of the Inter-American system must be timely so that it may have some kind of useful effect on the protection of the alleged victims' rights.

21. Regarding the reasonableness of the time period in which this petition was filed, the IACHR concludes that the petition meets the requirements of Article 32.2 of its Rules of Procedure, since the initial events occurred in 2006; the petition was filed in 2014; and the effects of the alleged violations remain to this day, due to the alleged impunity.

⁵ IACHR, Report No. 13/22, Petition 1332-11. Admissibility. Orlando Hernández Ramírez and family members. Colombia. February 9, 2022, para. 7; IACHR, Report No. 72/18, Petition 1131-08. Admissibility. Moisés de Jesús Hernández Pinto and family. Guatemala. June 20, 2018, para. 10; IACHR, Report No. 70/14, Petition 1453-06. Admissibility. Maicon de Souza Silva. Renato da Silva Paixão et al. July 25, 2014, para. 18; Report No. 3/12, Petition 12,224, Admissibility, Santiago Antezana Cueto et al, Peru, January 27, 2012, para. 24; Report No. 124/17, Petition 21-08, Admissibility, Fernanda López Medina et al, Peru, September 7, 2017, paras. 3, 9-11.

⁶ IACHR, Report No. 13/22, Petition 1332-11. Admissibility. Orlando Hernández Ramírez and family members. Colombia. February 9, 2022, para. 7; IACHR, Report No. 159/17, Petition 712-08. Admissibility. Sebastián Larroza Velázquez and family. Paraguay. November 30, 2017, para. 14.

⁷ IACHR, Report No. 14/08, Petition 652-04. Admissibility. Hugo Humberto Ruíz Fuentes. Guatemala. March 5, 2008, para. 68.

⁸ I/A Court H.R., *Velasquez Rodriguez v. Honduras*, Preliminary Objections, Judgment of June 26, 1987, para. 93.

VII. ANALYSIS OF COLORABLE CLAIM

22. For purposes of admissibility, the Commission must decide whether the alleged facts may constitute a violation of rights, as stipulated in Article 47(b) of the American Convention, or whether the petition is “manifestly groundless” or “obviously out of order” under Article 47(c) of the American Convention. The standard for evaluating these requirements differs from that used to rule on the merits of a petition. It is also competent, within the framework of its mandate, to declare a petition admissible when it refers to domestic proceedings that could violate rights guaranteed by the American Convention. That is, under the aforementioned provisions of the Convention and Article 34 of the Commission’s Rules of Procedure, the admissibility analysis focuses on verifying such requirements, which refer to the existence of elements that, if true, could constitute *prima facie* violations of the American Convention.

23. Here, the Commission notes that the petitioner’s main claim centers on the violent death of Nicanor Morales Rodríguez, who was lynched while in police custody; the impunity and lack of reparations for this act; and the pain and suffering of his next of kin.

24. The petitioner’s allegations also include the claim that Nicanor Morales Rodríguez was arrested at his home in front of his family, including his minor children Yulus Morales Bolívar and Juliana Morales Bolívar, and taken naked to jail, where, according to the facts alleged, police officers allowed the crowd to lynch Mr. Morales Rodríguez, using stones, sticks, machetes, and rods to beat him, and gasoline to burn his entire body.

25. In view of these considerations and after examining the elements of fact and law presented by the parties, the Commission concludes that the lynching murder of the alleged victim, the manner in which he was detained, and the lack of an adequate investigation and punishment of the perpetrators, are facts that warrant an analysis of the merits by the IACHR. The alleged facts, if proved to be true, could constitute violations of the rights established in Articles 4 (right to life), 5 (humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), and 25 (judicial protection) of the American Convention on Human Rights, in relation to Article 1.1 thereof (obligation to respect rights), to the detriment of Nicanor Morales Rodríguez and his next of kin, as described in this report.

26. With respect to the “fourth instance formula” argument, the Commission underscores the complementary nature of the inter-American system and emphasizes that, as the Inter-American Court has held, for a “fourth instance” exception to be applicable, the petitioner would have to “apply to the Court to review the decision of the domestic court, based on its incorrect assessment of the evidence, the facts or domestic law without, in turn, alleging that such decision was a violation of international treaties [...]”⁹ In this case, the Commission considers, as the Inter-American Court has found, that “[i]t is up to the Court to ascertain whether or not the State, in the steps effectively taken at domestic level, violated its international obligations stemming from those inter-American instruments that grant authority to the Court.”¹⁰ It is also incumbent upon the Court to examine “whether or not the actions of judicial organs constitute a violation of the State’s international obligations, [which] may mean that the Court must examine the respective domestic proceedings to establish their compatibility with the American Convention.”¹¹ In this regard, the analysis of whether the State violated the American Convention is a matter to be decided on the merits of this case.

⁹ I/A Court H.R., *Case of Cabrera García and Montiel Flores v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 26, 2010. Series C No. 220, para. 18.

¹⁰ I/A Court H.R., *Case of Cabrera García and Montiel Flores v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 26, 2010. Series C No. 220, para. 19.

¹¹ I/A Court H.R., *Case of Palma Mendoza et al. v. Ecuador*. Preliminary Objection and Merits. Judgment of September 3, 2012. Series C No. 247, para. 18; I/A Court H.R., *Case of Rosadio Villavicencio v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of October 14, 2019. Series C No. 388, para. 24; I/A Court H.R., *Case of Cabrera García and Montiel Flores v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 26, 2010. Series C No. 220, para. 19.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 4, 5, 7, 8, and 25 of the American Convention in connection with Article 1.1 thereof.

2. 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 5th day of the month of December, 2024. (Signed:) Roberta Clarke, President; José Luis Caballero Ochoa, Second Vice President; Arif Bulkan, and Gloria Monique de Mees, Commissioners.