

OEA/Ser.L/V/II.
Doc. 15
27 January 2017
Original: Spanish

REPORT No. 14/17
PETITION 1197-08
REPORT ON ADMISSIBILITY

JOSÉ RUBIÁN GÓMEZ MARTÍNEZ, ROLFE ARIALDO FIGUEREDO
MARTÍNEZ, MIGUEL NOVOA MARTÍNEZ, ALCIRA MARTÍNEZ
ÁLVAREZ AND FAMILIES
COLOMBIA

Approved by the Commission on January 27, 2017.

Cite as: IACHR, Report No. 14/17. Admissibility. José Rubián Gómez Martínez, Rolfe Arialdo Figueredo Martínez, Miguel Novoa Martínez, Alcira Martínez Álvarez and Families. Colombia. January 27, 2017.

REPORT No. 14/17¹**PETITION P-1197-08**

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COLOMBIA

JANUARY 27, 2017

I. INFORMATION ABOUT THE PETITION

Petitioning party:	Rafael Gatián Gómez
Alleged victims:	José Rubián Gómez Martínez, Rolfe Arialdo Figueredo Martínez, Miguel Novoa Martínez, Alcira Martínez Álvarez and families ²
State denounced:	Colombia
Rights invoked:	Articles 4 (Right to Life), 5 (Right to Personal Integrity), 8 (Right to A Fair Trial) and 25 (Right to Judicial Protection) of the American Convention on Human Rights ³

II. PROCEDURE BEFORE THE IACHR⁴

Date on which the petition was received:	October 10, 2008
Additional information received at the initial study stage:	May 26, 2009 and October 11, 2011
Date on which the petition was transmitted to the State:	February 18, 2014
Date of the State's first response:	June 23, 2014
Additional observations from the petitioning party:	August 7, 2014
Additional observations from the State:	December 15, 2014

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 (deposit of instrument on July 31, 1973)

IV. ANALYSIS OF 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
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¹ In accordance with provisions in Article 17.2 (a) of the IACHR Rules of Procedure, Commissioner Enrique Gil Botero, a Colombian national, did not participate in the debate or the decision on this matter.

² The petition mentions 35 alleged victims individualized in Annex I.

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

⁴ The observations presented by each party were duly transmitted to the opposing party.

Rights declared admissible	Articles 4 (Right to Life), 5 (Right to Personal Integrity), 8 (Right to A Fair Trial), 22 (Freedom of Movement and Residence) and 25 (Right to Judicial Protection) of the American Convention
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes; exception established in Article 46.2 (c) of the ACHR applies
Timeliness of the petition:	Yes, under the terms of Section VI

V. ALLEGED FACTS

1. The petitioner declares that in December 2000, several armed members of an illegal group arrived in the area of the Districts of Cunamá, Volcaneras and El Charte in the Municipality of Yopal, Department of Casanare; they used leaflets and direct threats to tell the locals to leave their homes and that otherwise their lives would be at risk. This forced the inhabitants of said areas to move to the city of Yopal. In Yopal, their living conditions were poor, as they lacked housing, food and employment; the authorities were upset about this. As a result, on January 4, 2001, the Security Council of the Department of Casanare, along with representatives of the National Army, persuaded them to return to their communities, by offering to protect them and promising to deploy military officers to safeguard their security. The petitioner says that the Security Council of Casanare Department is made up of the Governor, the Commanders of the Sixteenth Army Brigade and of the Police Department of Casanare, the Head of the Administrative Department of Security of Casanare, Casanare's Ombudsman, the Chief of the Prosecution Unit, and the Department's Procurator.

2. He alleges that José Rubián Gómez Martínez, Rolfe Arialdo Figueredo Martínez, Miguel Novoa Martínez and Alcira Martínez Álvarez, believing that they would receive such protection, decided to return to their plot of land on January 29, 2001. That day, however, as they were traveling along the road to the city of Volcaneras in the *corregimiento* of El Charte, they were riddled with bullets by hooded individuals. The petitioner argues that the National Army broke its commitment to protect the alleged victims' lives. In this regard, he says that despite the army's presence in the area and its commitment to ensure the security and guard the road where the events took place, the army did not provide the necessary measures to avoid the alleged victims' death. Moreover, he says that the criminal investigations were unsuccessful and that the people responsible were not punished inasmuch as the Prosecutor issued a restraining order; therefore, 15 years later, the killings are still unpunished.

3. Furthermore, the petitioner declares that the alleged victims' family members filed direct reparations proceedings for compensations, at the administrative law court. Therefore, on September 19, 2007, the Second Administrative Law Court of Yopal established the administrative and tortious liability of the State-Ministry of Defense-National Army for the injuries to the alleged victims, and ordered the payment for material damages. This sentence was appealed to the Administrative Law Court of Casanare, which by judgment of April 10, 2008 increased the sum of compensation in favor of some of the alleged victims due to their relationship with the people killed. Nevertheless, the petitioner stresses that they did not receive any other measures that guarantee a full redress for all the events mentioned above.

4. The State holds that the petition is inadmissible, since domestic remedies were not exhausted. It declares that the criminal investigation filed by the Prosecutor's Office on February 6, 2001 for aggravated homicide, threats and forced displacement still continues. Likewise, it says that, though the case file had been archived, the Sixth Specialized Prosecutor's Office revoked the restraining order on April 23, 2013 and that since then, it continues investigating the events. In this regard, the State argues that there was no unwarranted delay, since the case became complex due to the lack of witnesses.

5. Moreover, the State argues that the issues concerning the reparation by the State of Colombia in favor of the alleged victims were already discussed at the administrative law court. In this regard, it says that the compensation ordered by the Administrative Law Court of Casanare, reaching a sum of about US\$ 453,000, was effective by Resolution No. 2681 of 2009 issued by the Ministry of Defense and the National

Army. Consequently, it believes that if the case is declared admissible, the IACHR would intervene as a court of fourth instance. Lastly, it argues that domestic remedies were not exhausted by those victims who did not file a request for reparations under Colombia's legal framework.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

6. The petitioner says that impunity and unwarranted delay of justice persist, since, although criminal investigations were reopened and 15 years have passed since the alleged events took place, proceedings are still at the preliminary stage and authorities have not established the facts yet. Furthermore, he declares that in relation to the administrative law proceedings, domestic remedies were exhausted when the Administrative Law Court of Casanare issued the sentence of April 10, 2008. In turn, the State holds that remedies were not exhausted inasmuch as the criminal investigation opened by the Prosecutor's Office is still in progress, and that the exception for unwarranted delay does not apply given the complex nature of the case.

7. The Commission notes that, in situations like this, where violations of the right to life are denounced, the domestic remedies to be considered for the purpose of petitions' admissibility are those concerning the investigation and the punishment of the people responsible, which is the domestic legislation applicable to offenses liable to ex officio prosecution. In this case, according to the information submitted, the criminal investigation has been unsuccessfully prolonged for over 15 years. Regarding the proceedings at the administrative law court and based on the information submitted, the Commission notes that by the sentence of April 10, 2008 the alleged victims got favorable judgments, and that the corresponding payments were made in 2009. Notwithstanding that the IACHR may consider said payments in a likely report on the merits, the Commission recalls that in order to determine the admissibility of a petition of this nature, the prior exhaustion of domestic remedies is neither adequate nor necessary, since it is inadequate to obtain a full redress and justice for the family members⁵. Based on the foregoing, the IACHR concludes that in this case, the exception to the prior exhaustion of domestic remedies applies, in accordance with Article 46.2 (c) of the American Convention with the exception that the causes and effects that have hindered the prior exhaustion of domestic remedies in this case will be analyzed, as appropriate, in the report that the Commission adopts on the merits of the case, in order to verify if they do establish violations of the Convention.

8. Also, the petition to the Commission was received in October 10, 2008, the alleged facts reported in the complaint started on January 29, 2001 and their consequences allegedly continue to this date. As a result, in view of the context and the characteristics of this case, the Commission believes that the petition was filed in a timely manner and that the admissibility requirement concerning the timeliness of the petition is met.

VII. COLORABLE CLAIM

9. In view of the elements of fact and law presented by the parties, and of the nature of the matter brought to it, the Commission believes that the facts denounced concerning the alleged violation of the duty to safeguard in relation to the deaths of José Rubián Gómez Martínez, Rolfe Arialdo Figueredo Martínez, Miguel Novoa Martínez and Alcira Martínez Álvarez could tend to establish a violation of Article 4 (Right to Life) of the Convention, regarding the alleged victims; and of Articles 5 (Right to Personal Integrity) and 22 (Freedom of Movement and Residence) of the Convention, regarding their families; all of these rights being in accordance with Articles 1.1 (Obligation to Respect Rights) and 2 (Domestic Legal Effects). In addition, the IACHR believes that, if proved, the arguments about the violation of the rights to a fair trial and to judicial protection due to the lack of due diligence to establish the truth and to unwarranted delay could tend to establish a violation of the rights enshrined in Articles 8 (Right to A Fair Trial) and 25 (Right to Judicial Protection) of the Convention, in accordance with Articles 1.1 and 2 of the same treaty, regarding all of the alleged victims and their family members.

⁵ IACHR, Report No. 72/16. Petition 694-06. Admissibility. Onofre Antonio de La Hoz Montero and Family. Colombia. December 6, 2016, par. 32.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 4, 5, 8, 22 and 25 of the American Convention, in conformity with Articles 1.1 and 2 of said treaty;
2. To notify the parties of this decision;
3. To continue with the analysis on the merits; and
4. To publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of San Francisco, California, on the 27 day of the month of January, 2017.
(Signed): James L. Cavallaro, President; Francisco José Eguiguren, First Vice President; Margarete May Macaulay, Second Vice President; José de Jesús Orozco Henríquez, and Esmeralda E. Arosemena Bernal de Troitiño, Commissioners.

**LIST OF ALLEGED VICTIMS
(ANNEX I)**

1. José Ruabián Gómez Martínez
2. Rolfe Arialdo Figueredo Martínez
3. Miguel Novoa Martínez
4. Alcira Martínez Álvarez
5. Alfonso Gómez
6. Jairo Gómez Martínez
7. Alfonso Gómez Martínez
8. Javier Gómez Martínez
9. Luz Stela Vargas
10. Ruth Maribel Figueredo Vargas
11. Erin Osmeý Figueredo Vargas
12. Ernestina Martínez Suarez
13. Mariela Figueredo Martínez
14. Maria Brissa Eneida Figueredo Martínez
15. María Luz Marina Figueredo Martínez
16. Martha Nubia Figueredo Martínez
17. María Nayibe Figueredo Martínez
18. Miguel Antonio Novoa Gómez
19. Aura Alicia Martínez Álvarez
20. Martha Yaneth Moreno Bernal
21. Miguel Antonio Novoa Moreno
22. Lelis Yasley Moreno Bernal
23. Leonilde Bernal
24. Diego Felipe Novoa Martínez
25. Olga Alicia Novoa Martínez
26. Yolanda Novoa Martínez
27. Edy Novoa Martínez
28. Martha Isabel Novoa Martínez
29. Ramiro Novoa Montañez
30. Rosalba Martínez Álvarez
31. Flor Martínez Álvarez
32. Aura Rosa Álvarez
33. Álvaro Martínez Álvarez
34. Manuel Álvarez
35. José Alipio Álvarez