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**REPORT No. 79/19**  
**PETITION 155-09**  
REPORT ON ADMISSIBILITY

CARLOS HERNANDO CASABLANCA PERDOMO AND FAMILY  
COLOMBIA

Approved electronically by the Commission on May 23, 2019.

**Cite as:** IACHR, Report No. 79/19, Petition 155-09. Admissibility. Carlos Hernando Casablanca Perdomo and family. Colombia. May 23, 2019.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Rosa Ana Camacho Weverberg
<b>Alleged victim:</b>	Carlos Hernando Casablanca Perdomo and his family <sup>1</sup>
<b>Respondent State:</b>	Colombia <sup>2</sup>
<b>Rights invoked:</b>	Articles 4 (life), 7 (personal liberty), 8 (judicial guarantees), 24 (right to equal protection), 25 (right to judicial protection) of the American Convention on Human Rights <sup>3</sup> , in relation to Article 1.1 thereof (obligation to respect rights)

**II. PROCEEDINGS BEFORE THE IACHR<sup>4</sup>**

<b>Filing of the petition:</b>	February 12, 2009
<b>Additional information received at the stage of initial review:</b>	April 14, 2009, May 4, 2015, May 14, 2015
<b>Notification of the petition to the State:</b>	May 26, 2015
<b>State's first response:</b>	January 17, 2017
<b>Additional observations from the petitioner:</b>	August 29, 2017
<b>Additional observations from the State:</b>	December 29, 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 (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**

<b>Duplication of procedures and International <i>res judicata</i>:</b>	No
<b>Rights declared admissible</b>	Articles 4 (life), 5 (right to humane treatment), 7 (personal liberty), 8 (judicial guarantees), 24 (right to equal protection), 25 (right to judicial protection) of the American Convention on Human Rights, in relation to Articles 1.1 thereof (obligation to respect rights) and 2 (obligation to adopt provisions of domestic law)
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, under the terms of Section VI
<b>Timeliness of the petition:</b>	Yes, under the terms of Section VI

<sup>1</sup> The family of Carlos Hernando Casablanca Perdomo is his wife Rosa Ana Camacho Weverberg, who is also the petitioner.

<sup>2</sup> Pursuant to Article 17.2.a of the IACHR Rules of Procedure, Commissioner Luis Ernesto Vargas Silva, a Colombian national, did not participate in the discussion or the decision on this matter.

<sup>3</sup> Hereinafter "Convention" or "American Convention."

<sup>4</sup> The observations submitted by each party were duly transmitted to the opposing party.

## V. ALLEGED FACTS

1. The petition concerns the kidnapping of Carlos Hernando Casablanca Perdomo (the alleged victim) by suspected members of Revolutionary Armed Forces of Colombia (FARC) and his subsequent death allegedly at the hands of the Colombian military. According to the petitioner, the alleged victim was kidnapped on February 3, 2000 in Cundinamarca near the area of operation of the 42 front of the FARC. The petitioner states that on February 11, 2000, the military confronted a motor vehicle in which the alleged victim and his captors were travelling. There was an exchange of gunfire between the captors of the alleged victim and the military resulting in the death of the alleged victim. The petitioner maintains that the State has violated the rights of access to justice and to integral reparation for the damage suffered because the criminal proceedings by the authorities have failed to clarify the events or to identify or punish the perpetrators of the execution of her husband, the alleged victim.

2. According to the file, the petitioner initially presented a criminal complaint on February 4, 2000 to the *Grupo de Acción Unificado Por La Libertad Personal* (GAULA) in relation to the kidnapping of the alleged victim. On February 28, 2000, the Office of the Prosecutor General (*Fiscalía General de la Nación* (FGN))<sup>5</sup> in association with GAULA, opened an investigation into the kidnapping of the alleged victim. According to available information the Colombian military also initiated an investigation in March 2000 into the military operation that resulted in the death of the alleged victim. This investigation was conducted by the Fifth Court of Military Criminal Investigation (*El Juzgado Quinto de Instrucción Penal Militar*).

3. The petitioner alleges that in 2003, the FGN identified a suspect - Bernardo Mosquera Machado, and as a result, a warrant of arrest was issued against him in September 2003. Subsequently, in November 24, 2005, FGN, acting on the instructions of the Office of the Attorney General (*Procuraduría General*), revoked the arrest warrant and closed the investigation primarily on the ground that there was insufficient evidence to identify Bernardo Mosquera Machado as one of the kidnappers. According to the record, the FGN also closed the investigation on the ground that by law, the time for investigation had elapsed. In this regard, the petitioner claims that the State denied her access to justice by ordering the closure of the investigation into the kidnapping without notifying her.

4. In February 2008, the petitioner requested the FGN to reopen criminal proceedings against those responsible for the kidnapping. In April 2008 – the FGN declined to proceed, largely based on previous decision of November 2005 to suspend the investigation.

5. According to the file, in July 2000, the petitioner indicates, she lodged a claim for damages - arising out of the death of the alleged victim at the hands of the military. The suit was filed in, and heard by the Administrative Court of *Cundinamarca* (*Tribunal Administrativo de Cundinamarca*) According to the record, the Court ruled in the petitioner's favour on July 3, 2003, and awarded her moral and material damages amounting to over 34 million pesos. However the petitioner was dissatisfied with the award. She appealed to the *Consejo de Estado* – which, on January 30, 2013, increased the award to over 171 million pesos. The petitioner states that she was dissatisfied with this award and subsequently attempted to appeal the decision to the Constitutional Court. On March 18, 2014, the Constitutional Court declined to hear the petitioner's appeal. The petitioner generally complains of the delay in between the first decision of the Tribunal and the decision of the *Consejo de Estado*.

6. Ultimately, the petitioner alleges that in the time that has elapsed since her husband's death in 2000, the State has failed to take adequate steps to investigate the circumstances of her husband's death, as a result of which, nobody has been held criminally responsible for his kidnapping or death. The petitioner also alleges that the award of compensation by the *Consejo de Estado* is inadequate to compensate for the rights violated under the American Convention.

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<sup>5</sup> Hereinafter referred as "the FGN".

7. The State argues that the petition is inadmissible principally for failure to exhaust domestic remedies available. In this regard, the State contends that there have been different actions taken to guarantee the rights of the alleged victim including: (a) criminal proceedings in relation to the kidnapping and homicide of the alleged victim; (b) investigations by the military into the circumstances that led to the death of the alleged victim; and (c) legal proceedings before the *Tribunal Administrativo de Cudinarca* which, in 2003, found the State (Ministry of Defence/National Army) responsible for the harm suffered by the petitioner as a result of the death of her husband during a military operation. The State also observes that the petitioner appealed this decision to the *Consejo de Estado*, which, on January 30, 2013 confirmed the judgment of the Tribunal, but increased the amount of damages/reparation payable to the petitioner.

8. In relation to the criminal proceedings by the FGN, the State acknowledges that Bernard Mosquera Machado was identified as a suspect and a warrant issued for his arrest in 2005. The State also acknowledges that this arrest warrant was withdrawn at the instigation of the *Procuraduria General*, with the result that the criminal investigation was suspended. However, the State contends that in 2009 the FGN agreed to take steps to reopen the investigation and that this was followed up by a formal reopening of the investigation in and that this was followed up by a formal reopening of the investigation in 2015 aimed at determining those responsible for the kidnapping and homicide of Carlos Hernando Casablanca Perdomo. According to the State, that the FGN, since relaunching the investigation, has identified possible suspects - principally members of FARC (Frente 42) as well as other persons that have taken part in kidnappings generally. The State asserts that criminal investigations continue; however, the State contends that criminal investigation is a lot more complex when dealing with a number of persons/suspects. The State contends that dealing with a number of persons (instead of just one person) can prolong the investigation process. For the State, this is a factor that must be taken into account in assessing what is a reasonable time for presenting a petition.

9. The State observes that there was a parallel investigation by the military which commenced in September 2000. This investigation ultimately came to an end in 2013 with no members of the military being held criminally responsible.

10. In relation to the claim for damages before the *Tribunal Administrativo de Cudinarca* and the *Consejo de Estado*, the State observes that this resulted in the award of moral and material damages to the petitioner which was paid by the Ministry of Defense in July 2014. The amount paid to the petitioner (including interest) was 307, 899, 747.94 pesos (approximately US\$103, 949). The State notes that the petitioner disagrees with the amount paid, but has that she has not demonstrated that the payment was unreasonable or contrary to international standards. In this respect, the State argues that any review of this payment by the Commission would amount to the exercise of fourth instance jurisdiction.

11. Ultimately, the State argues that the petition should be ruled inadmissible because (a) there is a failure to exhaust domestic remedies, given that criminal investigations are continuing; and (b) as it relates to the petitioner's complaint about compensation - this violates the fourth instance principle - and is therefore outside the jurisdiction of the Commission. The State also contends that the IACHR should also consider the difficult, complex circumstances in which the investigations are taking place in assessing a reasonable period to file a petition. Accordingly, the State argues that there is no basis for exempting the petition from exhausting domestic remedies - pursuant to Article 46.2 of the American Convention.

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

12. The petitioner alleges that almost two decades after the events that led to the death of the alleged victim, criminal proceedings by the authorities have failed to clarify the events or to identify or punish the perpetrators. The State argues that the criminal investigation is still pending due to its complexity, so that domestic remedies have not been exhausted. The Commission observes that, in situations such as the one that includes crimes against life, the domestic remedies that must be considered for the purposes of the admissibility of petitions are those related to the criminal investigation and punishment of those responsible. With regard to the length of time that has elapsed since the events that led to the death of the alleged victim,

the Commission will assess the circumstances and perform an analysis to determine if there has been undue delay. As a general rule, the Commission finds that "a criminal investigation should be carried out promptly to protect the interests of the victims and to preserve evidence."<sup>6</sup> To establish whether an investigation has been carried out "promptly", the Commission considers a number of factors, such as the time elapsed since the crime was committed, whether the investigation has passed from the preliminary stage, the measures adopted by the authorities as well as the complexity of the case.

13. Regarding the State's argument that the exception to the exhaustion of domestic remedies does not apply due to the complexity of the events, the Commission recalls that the determination of whether the exceptions to the rule of exhaustion of domestic remedies set out in Article 46.2.c of the Convention are applicable to the case in question, must be carried out prior to and separately from the analysis on the merits of the matter, as it depends on a standard of examination that is different from the one used to determine a possible violation of Articles 8 and 25 of the Convention. It should be clarified that the causes and effects preventing the exhaustion of domestic remedies in this case will be analyzed, where relevant, in the report adopted by the Commission on the merits of the dispute in order to establish whether violations to the Convention have taken place. Based on the foregoing, the IACHR considers that, given the nature of the petition and that the criminal investigation remains at a preliminary stage almost 20 years after the death of the alleged victim, the exception to the exhaustion of domestic remedies provided for in Article 46.2. c of the American Convention applies.

14. As it relates to the investigation conducted by the military, the Commission has reiterated on several occasions<sup>7</sup> that military jurisdiction does not provide a suitable recourse to investigate, try and punish the alleged violations of the human rights enshrined in the American Convention, that were allegedly committed by members of the military or with their collaboration or acquiescence. Accordingly, the Commission considers it appropriate to apply the exception set out at Article 46.2.b of the American Convention.

15. In addition, as for the processes of direct reparation before the contentious-administrative jurisdiction, the Commission has stated time and again that said jurisdiction does not offer a suitable remedy for the purposes of analyzing the admissibility of a claim of this nature<sup>8</sup>, since it is not adequate for providing integral reparation, which includes clarifying the facts and justice for the family members. Without prejudice to this, while in the instant case a criminal proceeding is the suitable remedy for investigating the facts, it is observed that the petitioner also allege specific violations in the context of the action for direct reparation. Accordingly, given the link between the two processes, the Commission takes into account that in the contentious-administrative jurisdiction domestic remedies were exhausted with the decision not to review the matter taken by the *Consejo de Estado* issued on January 30, 2013.

16. Regarding timeliness for submission, as the exception to the exhaustion of domestic remedies mentioned above has been found to apply, that the petition before the IACHR was received on February 12, 2009, and the alleged facts in the complaint began on February 3, 2000, and their effects continue up to the present, in view of the context and characteristics of the present case, the Commission considers that the petition was filed within a reasonable time and that the admissibility requirement regarding timeliness has been satisfied.

## VII. ANALYSIS OF COLORABLE CLAIM

17. In view of the factual and legal elements exposed by the parties and the nature of the matter brought to its attention, the Commission considers that, if proven, the alleged kidnapping and the murder of

<sup>6</sup> IACHR REPORT N° 46/17, Admissibility, Petition 69-08, Javier Charque Choque And Family Bolivia, May 25, 2017, para. 10.

<sup>7</sup> See for example IACHR Report N° 50/17. Petition 464-10B. Admissibility, José Ruperto Agudelo Ciro and Family, Colombia. May 25, 2017, para. 9; IACHR Report N° 26/17, Petition 1208-08, Admisibilidad, William Olaya Moreno y familia. Colombia. March 18, 2017, para. 6.

<sup>8</sup> IACHR, Report No. 72/16. Petition 694-06. Admissibility. Onofre Antonio de La Hoz Montero and family. Colombia. December 6, 2016, para. 32.

Carlos Hernando Casablanca Perdomo, as well as the lack of effective judicial protection, delays in the criminal investigation, and delays in the court proceedings for direct reparation could characterize possible violations of the rights recognized in Articles 4 (life), 5 (right to humane treatment), 7 (personal liberty), 8 (judicial guarantees), 24 (equality before the law) and 25 (judicial protection) of the American Convention, in connection with its Articles 1.1 (obligation to respect rights) and 2 (obligation to adopt provisions of domestic law), to the detriment of the alleged victim and his family.

18. As to the State's allegations of the establishment of a fourth instance of jurisdiction, the Commission recognizes that it is not entitled to review judgments issued by domestic courts acting within their jurisdiction and in accordance with due process of law and the judicial safeguards. However, the Commission reiterates that, under its mandate, it is competent to declare a petition admissible and rule on the merits when it concerns domestic proceedings that may have violated any of the rights protected by the American Convention.

### **VIII. DECISION**

1. To find the instant petition admissible in relation to Articles 4, 5, 7, 8, 24, and 25 of the American Convention, in relation to Article 1.1 and 2 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 23<sup>rd</sup> day of the month of May, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández García, First Vice President; Antonia Urrejola, Second Vice President; Margarete May Macaulay, Francisco José Eguiguren Praeli and Flávia Piovesan, Commissioners.