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**REPORT No. 133/20**  
**PETITION 1468-08**  
REPORT ON ADMISSIBILITY

MARIA REGINA OCAMPO LOAIZA ET AL.  
COLOMBIA

Approved electronically by the Commission on June 1, 2020.

**Cite as:** IACHR, Report No. 133/20, Petition 1468-08. Admissibility. María Regina Ocampo Loaiza y otros. Colombia. June 1, 2020.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Oscar Darío Villegas Posada
<b>Alleged victim:</b>	María Regina Ocampo Loaiza and others
<b>Respondent State:</b>	Colombia
<b>Rights invoked:</b>	Does not specify articles but invokes general violations of the American Convention on Human Rights <sup>1</sup>

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

<b>Filing of the petition:</b>	November 7 <sup>th</sup> 2008
<b>Additional information received at the stage of initial review:</b>	July 9 <sup>th</sup> 2012, March 18 <sup>th</sup> 2013, November 3 <sup>rd</sup> 2014, 19 <sup>th</sup> 2015
<b>Notification of the petition to the State:</b>	April 25 <sup>th</sup> 2017
<b>State's first response:</b>	March 31 <sup>st</sup> 2017
<b>Additional observations from the State:</b>	September 12 <sup>th</sup> 2018
<b>Notification of the possible archiving of the petition:</b>	November 12 <sup>th</sup> 2018
<b>Petitioner's response to the notification regarding the possible archiving of the petition:</b>	October 25 <sup>th</sup> 2019

**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 (deposit of the instrument done 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>	4 (life), 5 (integrity), 8 (judicial guaranties), 24 (equality before the law) and 25 (judicial protection) of the American Convention in accordance to article 1 (obligation to respect rights of the same instrument)
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, in the terms of section IV
<b>Timeliness of the petition:</b>	Yes, in the terms of section IV

<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.

## V. FACTS ALLEGED

1. The petitionary claims lack of remedies for María Regina Ocampo Loaiza and other relatives of Martín Emilio and Héctor Gabriel Zapata Álvarez (hereinafter “the Zapata Álvarez brothers”), who were abducted from the Municipal Prison of Granada, where they were deprived from liberty, by a group who operated beyond the law; and were later found dead in the District of Corconá. The petitionary states that the State of Colombia granted neither enough nor effective measures to protect the Zapata Álvarez brothers. Likewise, argues discriminatory treatment in the direct remedy action since no indemnity for damages was acknowledged in favor of the Zapata Álvarez’s relatives, whereas an alternate resolution ordered a monetary indemnity for the relatives of other inmates who were kidnapped with them and murdered outside the District of Granada. The alleged victims would be the Zapata Álvarez brothers, María Regina Ocampo Loaiza and their relatives.

2. It is referred that on December 5<sup>th</sup> 1993 the Zapata Álvarez brothers were arrested for the alleged theft of cattle in a farm of the Antioquia region and transferred to the Municipal Prison of Granada. On December 8<sup>th</sup> that same year at 1:10 a.m. approximately ten armed men entered the Municipal Prison, intimidated the two guards on shift that were looking after the prisoners, and took six inmates, including the Zapata Álvarez brothers. These people are said to be found dead hours later in the District of Corconá with clear signs of gunshot wounds.

3. The relatives of the Zapata Álvarez filed a direct remedy suit before the Contentious Administrative Court of Antioquia against the Nation- Ministry of Justice, Ministry of Defense, National Police, and National Penitentiary and Incarceration Institute–INPEC. A ruling dated April 28<sup>th</sup> 2000, the Eighth Decision Room of the Administrative Court of Antioquia regarded the aforementioned institutions as liable, and sentenced such institutions to repair moral and material damages caused to the relatives of the Zapata Álvarez brothers. On September 8<sup>th</sup> 2000, the relatives filed an appeal petition for failure to acknowledge pecuniary damages upon the other siblings of the deceased. However, as soon as the appeal was filed, they requested a withdrawal, which was accepted by the court on November 1<sup>st</sup> 2000, which caused the case to be archived and affirmed the monetary sanction to be paid to the persons acknowledged as victims with the sentence issued on April 28<sup>th</sup> 2000.

4. The petitionary informs that on September 11<sup>th</sup> 2001 the Administrative Court admitted the condemnatory sentence as a consultation before the State Council, since the amount of the monetary indemnity surpassed the minimum. The aforementioned was based on Law 446 from 1998 which states that whenever the payment of a monetary indemnity surpasses 300 minimum wages, it is to be consulted with the superior even without appeal. The petitionary affirms that on November 22<sup>nd</sup> 2001 a reposition petition was filed and on November 27<sup>th</sup> 2001 as well as an appeal versus the decision of the Administrative Court. Also, an action for protection was filed, but the Administrative Court declared it non-applicable on June 21<sup>st</sup> 2002; on the decision of reposition petition, it maintained the criteria in that it needed to be consulted before the State Council due to the amount of the indemnity.

5. On November 15<sup>th</sup> 2002 another reposition motion was filed before the State Council against the order which admitted the consultation degree, which was also dismissed due to the amount of the indemnity. On May 30<sup>th</sup> 2003 the State Council was requested to amend the current proceeding which permitted the disclosure of the case, but it was also rejected on September 11<sup>th</sup> 2003. Finally, on May 9<sup>th</sup> 2012 the State Council ruled against the plaintiffs of the direct remedy process; ordered the revocation of the sentence of April 28<sup>th</sup> 2000 by the Administrative Court of Antioquia; and declared acquittal of the entities sentenced to pay the indemnity assessed previously on first instance.

6. The State Council determined that the suit lacked legitimation, since the obligations to guard and care of the detained pertained municipal prison authorities and not the National Police, whose function was to look after the safety and protection of inhabitants within the national territory; it also established of the National Police had been diligent in informing the Director of the Municipal Prison regarding the irregularities which took place in that facility. Finally, the State Council clarified that the creation, direction, organization, administration and surveillance of departmental and municipal prisons were dependent on the respective

Departments and Municipalities; and that the Municipality had not been included in the direct remedial suit instated.

7. The petitionary informs that Mrs. Arnovia del Socorro Cardona Escobar, relative of Isidro León Ramírez Ciro, another detained who was kidnapped and murdered under the same circumstances as the Zapata Álvarez brothers, also filed a direct remedy suit. Such case was studied by the State Council, which ruled diametrically different upon admitting to relatives of Mr. Ramírez Ciro the payment of the monetary indemnity. The petitionary considers that such measures represent a violation to the rights of the due process and to equality before the law, since the first instance sentence was already enforceable; and that, finally, the permissive attitude from the State's officials originated the breach of the rights to life and personal integrity of the detained people.

8. On their part, the State argues improper exhaustion of domestic remedies, since the relatives of the Zapata Álvarez brothers sued the wrong State entities in their direct remedy action before the Administrative Court of Antioquia in early 1995, which is why they incurred in a passive lack of legitimation. In its sentence of April 8<sup>th</sup> 2000, such tribunal declared the Nation as solidary and materially liable, the Ministry of Defense, the National Penitentiary and Incarceration Institute-INPEC, since the death of the six people had been produced from the omission from such authorities to provide surveillance and protection, which would have prevented the kidnap and latter murder of the detained. The Court sent the ruling as consultation to the State Council, which claimed the exception of passive lack of legitimation in the cause as proven and thus, revoked the first instance sentence.

9. Even if the State Council had admitted that the State held custody of the inmates at the time of being forcefully extracted from the prison to be murdered, the State argues that the plaintiffs had the obligation to include the District of Granada in their action; and that the consequence of such omission was that the exception of passive lack of legitimation be found proven. The State Council confirmed that the integrity of the murdered brothers concerned Municipality since, in conformity with domestic legislation it was in charge of the administration of the municipal prison. The State deems that with that being proven the relatives exhausted the proper and effective remedies, but improperly since they filed them versus a passive subject that had no relation with the case.

10. On the other hand, the State clarifies that in the suit filed by Mrs. Cardona Escobar, the sentence by the State Council partially modified the first instance sentence, and once again assessed the damages; that the case got to the State Council due to the appeal filed by Mrs. Cardona Escobar, which allowed to revise the aspects of the ruling which produced informity; and that which was not addressed by the plaintiff was not matter of revision. On the other hand, in the case presented by Mrs. Ocampo Loaiza the first instance sentence was revoked, since the State Council was fully entitled to perform an integral analysis of the previous judicial instance, due to the amount of the indemnity. Also, the State acknowledged that a determined timeframe had elapsed between the date of the first instance sentence and the time when the State Council became aware of the case; yet argues this was no reason to infer it was enforceable since the case was automatically subject to consultation.

11. As for the criminal process for kidnap and homicide of the Zapata Álvarez brothers, the State points out that there is an ongoing investigation in charge of the Nation's Prosecutor under No. 157.788. It adds that, according to proof and testimonies collected by the Prosecutor, one of the authors of the multiple homicide is incarcerated in the Maximum-Security Prison of Itagüí. Because of being a demobilized member of the Subversive Front Carlos Alirio Buitrago of the National Liberation Army-ELN, such person is under the Justice and Peace System before the Prosecutor 68. The State clarifies that such person is not imprisoned due to the kidnap and murder of the Hermanos Zapata Álvarez brothers; but that he confessed that during his militancy in the aforesaid criminal organization, he committed several punishable conducts in 1993 in the District of Granada, and that one of them had been the kidnap and murder of six inmates from the municipal prison. Additionally, the State does not mention any disciplinary process whatsoever versus authorities who were guarding the municipal prison at the time of the reported facts.

12. Finally, the State affirms that the function of the Commission is to guarantee the observance of the obligations assumed by the States adhered to the Convention, but it is not entitled to act as a higher court and analyze alleged errors of fact or right which may have taken place during the development of the process.

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

13. The petitionary reports lack of access to an administrative remedy for the relatives of the Zapata Álvarez brothers, kidnapped when they were held in custody of the State and later murdered. Additionally, claims lack of criminal investigation by the State regarding such facts. On their part, the Commission observes that the direct remedy suit filed before the Contentious Administrative Court of Antioquia on the abduction and death of the brothers was ruled in favor of the plaintiff on the sentence of April 28<sup>th</sup> 2000. The family of the Zapata Álvarez brothers filed a reposition petition on November 22<sup>nd</sup> 2001 against the decision of the State Council of admitting the suit as consultation; then filed an appeal on November 27<sup>th</sup> 2001; and then an action for protection. On May 30<sup>th</sup> 2003 the State Council was requested to amend the alleged error committed with the consultation order, but the request was rejected on September 11<sup>th</sup> 2003. Finally, on May 9<sup>th</sup> 2012 the State Council ruled against the plaintiff based on the passive lack of legitimation, since the Municipality of Granada had not been sued.

14. Regarding such process of direct remedy and the alleged improper exhaustion of domestic remedies, the Commission has repeatedly sustained that the contemptuous administrative channel is not a suitable resort in order to analyze the admissibility of a complaint such as the present one. This because such form is not appropriate to grant an integral remedy and justice to the relatives of the murdered brothers. Notwithstanding the above, at the present case the petitionary alleges further violations of access to justice and judicial guaranties in the context of direct remedy. Given the link between the direct remedy process and the criminal process on the present matter, the Commission considers that internal remedies were exhausted upon decision on May 9<sup>th</sup> 2012 by the Supreme Court of Justice; the petition was presented on November 7<sup>th</sup> 2008, which means, during an ongoing admissibility phase. The Commission has affirmed that the analysis of the requirements of articles 46 and 47 of the American Convention must be performed in the light of the current situation at the moment of resolving as to the admissibility of the complaint, in order to ensure that the parties have full opportunity to submit information and actions<sup>3</sup>. Therefore, the Commission determines that the present petition complies with the requirement set forth in articles 46.1.a and b of the American Convention.

15. On the other hand, the Commission observes that the criminal process for murder of the Zapata Álvarez brothers is still under investigation, and that all diligences concerning the case have been done, to the point that one of the alleged perpetrators of such actions is already under custody of prison authorities. The State indicated by this means the criminal investigation in 1993 and up to this date has no precise information, nor has there been a concrete individualization of the perpetrators, since the arrest of one of the alleged murderers did not occur within the criminal investigation of the case of the Zapata Álvarez brothers, but as a consequence of a demobilization process of an armed group. Therefore, the IACHR concludes that, regarding the execution of the penal action, the exception of exhaustion of domestic remedies proceeds in accordance with what is set forth in articles 46(2)(c) of the American Convention.

16. The Commission finally observes that although the facts have taken place since 1993 and the petition was received in 2008, some of its effects –such as the lack of access to justice, the individualization of those responsible and the lack of indemnity to the alleged victims—would persist until today. Considering the context and the characteristics of the facts analyzed in the present report, the Commission regards the petition was presented within a reasonable timeframe and that the requirement regarding deadline for submittal should be considered met.

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<sup>3</sup> CIDH, Report No 35/16, Petition 4480-02. Admissibility. Carlos Manuel Veraza Urtusuástegui. Mexico. July 9th 2016, par.33

## VII. ANALYSIS OF COLORABLE CLAIM

17. The present petition includes claims regarding lack of investigation and due judicial protection from the State regarding the people who were under its custody and were kidnapped and murdered by a group of men who broke violently into the Municipal Prison of Granada. Likewise, the alleged victim argues that the principle of matter being judged was breached due to the revoking of the first instance sentence by the Tribunal de lo Contentious Administrative Court of Antioquia as a consequence of the resolution issued by the State Council which determined a passive lack of legitimation. The State argues that the Commission lacks competence to revise rendered resolutions on the present matter by national tribunals, since it would be acting as a higher court. Also, the State sustains it is not possible to take blame for the fact that the alleged victim did not include the directly responsible entity in the suit.

18. Firstly, regarding the State's duty to protect in the case of persons deprived from liberty, the Commission has established that the position of guarantor toward such groups regarded as vulnerable corresponds to the State, and therefore the latter is who must prevent all acts which could result in breach of the right to life of people deprived from liberty<sup>4</sup>. This is why, it is indispensable to undergo all necessary actions to develop a diligent and thorough investigation from the State aiming to pursue the restoration of the violated rights, and in this case, the remedies for the damages produced by such violation indistinctively form the civil actions that may have been filed.

19. Secondly, regarding the allegation of breach to the right of equality before the law in the process of direct remedy, the Inter American Court on Human Rights has established that it cannot be affirmed that there is a breach of such right when the State offers differentiated treatment to certain individuals, provided such distinction stems from substantially different suppositions of fact and that express in a proportioned manner a based connection between such differences and the goals of the norm<sup>5</sup>. Also, the Commission has considered that when it comes to superior instances revising sentences, judges must maintain, at least, a basic supervision of the administrative law's decisions' legality and rationality in order to comply with the guarantees stipulated in the American Convention. In so doing, when revising cases, regardless of the judicial action which originated it, the juridical operators must guarantee the alleged victims the right to a decision based on the bottom of the matter and not on mere form appraisals.

20. Finally, before the alleged lack of liability by the State due to lack of legitimation in the cause, the Commission has manifested that certain human rights violations which at first appear non-attributable to the State, may entail its responsibility due to the lack of due diligence of its agents to warn them. Additionally, the Commission has sustained that the liability for human rights violations committed by State agents or institutions, falls upon the State instead of such agents or institutions.

21. Taking these considerations into account and after examining the elements of fact and law exposed by the parties, the Commission deems that the petitioner's allegations arguing lack of due diligence from the State for the care and custody of the Zapata Álvarez brothers while they were held prisoners in the municipal prison; the violation of the right to equality before the law of the alleged victims; and the absence of judicial guarantees during the process of direct remedy are not entirely baseless and require a thorough study since the reported facts, if proven true may qualify as violations to articles 4 (life), 5 (integrity), 8 (judicial guaranties), 24 (equality before the law) and 25 (judicial protection) of the American Convention in accordance with article 1.1 del df the same instrument.

22. As for the claims on right to an indemnity for a judicial error, the American Convention establishes the requirement that such mistake being stated on a firm sentence. The Commission observes that in the present case the sentence which recognized the payment of an indemnity was revoked, which in conclusion does not constitute *prima facie*, a possible violation of article 10 of the American Convention.

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<sup>4</sup> Court I.D.H., *Case Juan Humberto Sánchez vs. Honduras*. Sentence June 7<sup>th</sup> 2003. Series C N. 99, par.111.

<sup>5</sup> Advisory Opinion OC-4/84 del January 19<sup>th</sup> 1984, paragraph 57.

23. In regards to the allegations from the State concerning the fourth instance formula, the Commission insists that within the frame of its empowerment it is competent to declare a petition admissible and to resolve over the core when it refers to domestic processes that could be in violation of rights guaranteed by the American Convention.

**VIII. DECISION**

1. To find the instant petition admissible in relation to Articles 4, 5, 8, 24 and 25;
2. To find the instant petition inadmissible in relation to Article 10; 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 1<sup>st</sup> day of the month of June, 2020.  
(Signed): Joel Hernández, President; Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President; Margarete May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, and Julissa Mantilla Falcón, Commissioners.