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REPORT No. 252/20
PETITION 195-10
REPORT ON ADMISSIBILITY

ERNESTO RAMÍREZ BERRÍOS AND FAMILY
COLOMBIA

Approved electronically by the Commission on September 21, 2020.

Cite as: IACHR, Report No. 252/20. Petition 195-10. Admissibility. Ernesto Ramírez Berríos and family. Colombia. September 21, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner	Luz Marina Barahona Barreto ¹
Alleged victim	Ernesto Ramírez Berríos and members of his family ²
Respondent State	Colombia
Rights invoked	Articles 4 (life), 8 (fair trial) and 25 (judicial protection) of the American Convention on Human Rights ³

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition	February 18, 2010
Additional information received during initial review	April 11, 2016 and June 22, 2018
Notification of the petition	January 6, 2016
State's first response	January 12, 2018
Additional observations from the petitioner	June 22, 2018

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 of ratification 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 (life), 5 (humane treatment), 8 (fair trial), 21 (property), 22 (freedom of movement and residence), 23 (right to participate in government), 25 (judicial protection) and 26 (economic, social and cultural rights) of the American Convention, in relation to its articles 1.1 (obligation to respect rights) and 2 (domestic legal effects).
Exhaustion or exception to the exhaustion of remedies	Yes, the exception of article 46.2.c of the American Convention applies
Timeliness of the petition	Yes, in the terms of Section VI

¹ The petition was initially filed by attorney Nelson de Jesús Ríos Santamaría; however, he died in May 2015. From that moment on the representation of the alleged victims was assumed by attorney Luz Marina Barahona.

² The petitioners identify the following individuals as close relatives of Mr. Ernesto Ramírez Berríos: (1) Betsabé Berríos de Ramírez, mother; (2) Ernesto Ramírez Valdez, father; (3) Luz Facunda Ramírez Berríos, sister; (4) Consuelo Ramírez Berríos, sister; (5) María Victoria Ramírez Berríos, sister; (6) Gloria Ramírez Berríos, sister; (7) Angélica Ramírez Berríos, sister; (8) Mauricio Ramírez Berríos, brother; (9) Miguel Ángel Ramírez Berríos, brother; (10) José Luis Ramírez Berríos, brother; (11) Felipe Ramírez Berríos, brother; (12) Yohani Ernesto Ramírez Berríos, brother; (13) Rolando Ramírez Berríos, brother; (14) Monica Maryury Fajardo Ramírez, niece; (15) Yasmín Fajardo Ramírez, niece; (16) Luis Heli Fajardo Fandiño, brother-in-law; (17) Lizzeth Daniela Cuéllar Ramírez, niece; (18) Walter Esneider Cardona Ramírez, nephew; (19) Yudy Fernanda Guzmán Ramírez, niece; (20) Darwin Mateo Ramírez Bolaños, nephew; (21) Paula Dayan Ramírez Bolaños, niece; and (22) Lexi Liliana Bolaños Lozano, sister-in-law.

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

⁴ The observations from each party were duly transmitted to the other party.

V. ALLEGED FACTS

1. The petitioner requests that the Inter-American Commission declare the Colombian State internationally responsible for the homicide of the former mayor of the Municipality of Puerto Rico, Meta, Ernesto Ramírez Berríos, given the lack of protection of his life and security attributable to the authorities; for the lack of adequate investigation, prosecution and punishment of the facts that surrounded his homicide; and for the forced displacement of his family as a consequence of the events.

2. The petition explains that Mr. Ernesto Ramírez Berríos was elected mayor for the 1998-2000 term, in an area with a high presence and criminal activity of the FARC guerrilla, which had previously ordered the civilian population of the municipality to abstain from participating in the elections, taking up public office or collaborating with the State authorities, under threat of death. Nevertheless, Mr. Ramírez competed as a candidate in the municipal elections and won them. As documented in the petition, during his administration, which lasted from January 1, 1998 to December 31, 2000, Mr. Ramirez sought to, among other things, promote an increase in the presence of public force in the municipality, in light of the submission of its population to violence from FARC and drug trafficking, and given the historical absence of the State in such region. Once his term concluded, and in light of the persistence of the risk for his life, Mr. Ramírez continued to be afforded a measure of protection in charge of the National Police, consisting of one bodyguard.

3. The petitioner states that on June 18, 2001, when he was headed to his house in Villavicencio together with another private citizen and without his police escort, Mr. Ramírez was approached by two individuals in a motorcycle who shot repeatedly at him, causing him wounds that led to his death on July 13, 2001, in a clinic in Villavicencio. The petition identifies the murderers as members of FARC and states that police escort was withdrawn from Mr. Ramírez on the same day of the attack. It denounces that the family of Mr. Ramírez was forced to displace themselves from Puerto Rico and Villavicencio to other locations in the country, as a consequence of his murder and of the ensuing risk for their safety. The petition also informs that, at the time of his murder, Mr. Ramírez was getting ready to travel abroad to protect himself from the numerous death threats that he received.

4. The petitioner points out that the Office of the Attorney General of the Nation opened a criminal investigation for the murder of Mr. Ramírez, but this investigation did not register any progress, so at the date of filing the petition the crime had gone unpunished for several years. In this regard, the petitioner attached a certification issued on July 27, 2001 by the Tenth Delegate Prosecutor's Office before the Criminal Courts of the Villavicencio Circuit, stating that said office was conducting a preliminary investigation into the murder of Mr. Ramírez. The petitioner also informs that Mr. Ramírez's relatives filed a direct reparation (civil damages) action before the Meta Administrative Tribunal, seeking a declaration of the State's administrative responsibility for its failure to protect Mr. Ramírez, although the result of this judicial action is not indicated in the petition. In addition, the petitioner declares that some of Mr. Ramírez's relatives have received administrative reparations under the National System of Comprehensive Victim Assistance and Reparation, as surviving relatives of a homicide victim in the context of the armed conflict. However, petitioner criticizes the amount of administrative reparations actually received by the parents, calling it derisory, and argues that none of Mr. Ramírez's other relatives received this type of support.

5. In its response, the State confirms, first, that Mr. Ramírez was the victim of an attack on June 18, 2001, and that he died on July 13 of that year. It points out that the judicial action for administrative reparation (civil damages) filed by the relatives of Mr. Ramírez was dismissed in the first instance by the Meta Administrative Tribunal on December 4, 2007; and that the subsequent appeal filed before the Council of State was declared inadmissible on April 18, 2008 due to the low monetary value of the claims. It also reports that the criminal investigation initiated by the Attorney General's Office (file No. 500038), concluded with an exoneratory closure resolution issued on June 20, 2003; nevertheless, it indicates in its response of January 12, 2018 that "the Prosecutor's Office conducts proceedings and evidentiary measures with the purpose of determining whether it is feasible to revoke the Closure Resolution issued in the framework of the criminal investigation". Likewise, it informs that Mr. Ramírez is registered in the Unified Victims Registry as a direct victim of homicide; that some of his relatives are also enrolled in it; and that his parents received administrative compensation as victims under the system of Law 1448 of 2011.

6. The State argues that the petition must be declared inadmissible due to lack of exhaustion of domestic remedies with respect to the duty to investigate the death of Mr. Ramírez, explaining that from the moment the authorities learned of the incident, they initiated proceedings to identify those responsible, opening a criminal investigation that concluded with an exoneratory closure resolution. The State reports that currently the Attorney General's Office is studying the legal feasibility of reopening that investigation. The State also alleges that Mr. Ramírez's next of kin had at their disposal the remedies of reconsideration and appeal in the context of the criminal process to challenge the inhibitory resolution, but that they refrained from using them; and that the criminal process has been advanced in a reasonable time in accordance with the complexities of the case. Consequently, Colombia argues that the criminal procedure, as a resource to be exhausted, is still pending, and asks the Commission to refrain from hearing about the case and to allow national institutions to resolve the matter domestically.

7. The State also argues that the petitioners have resorted to the IACHR as a fourth instance court, since their claims regarding the lack of compliance with the State's duty to guarantee rights and the lack of compensation for the described facts have already been judicially resolved at the domestic level in definitive form, deeming their revision by the IACHR unacceptable. The State supports this allegation in: (a) the ruling of the Administrative Tribunal of Meta of June 18, 2003, in which the claims of Mr. Ramírez's next of kin were dismissed as the court considered that in that specific procedure it had not been proven that the damage caused was attributable to a failure to protect incurred in by the National Police; and (b) the decision of the Council of State that declared the appeal against that decision inadmissible for reasons of the monetary amount claimed. The State maintains that these decisions were adopted in compliance with all procedural guarantees, and may not be reviewed again by the IACHR.

8. In connection with the previous allegation, the State asks the IACHR to review its position on the unsuitable nature of the judicial administrative remedy (civil damages) in cases where the right to life of people has been violated, stating that, in recent years, the jurisprudence of the Colombian Council of State has evolved in such a way that the reparations granted in cases of state responsibility are consistent with the reparation criteria established by the Inter-American System. Colombia indicates, finally, that the administrative reparation for the murder of Mr. Ramírez was given in full to his parents, and that, although some of his relatives are not registered in the Unified Victims Registry, this is because they have not complied with the legal procedures required to enter such a system.

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

9. The petition raises the alleged international responsibility of the State for the lack of protection and guarantee of the rights to life and personal security of Mr. Ernesto Ramírez, an omission that allegedly permitted the consummation of the mortal attack of which he was a victim, allegedly carried out by FARC agents. The petition also claims that the case is in a situation of impunity, given the lack of investigation, prosecution and punishment of those responsible; and that, as a consequence of the crime, Mr. Ramírez's relatives suffered forced displacement.

10. Thus, the Inter-American Commission has consistently established, in cases in which violations of the right to life are alleged, that the appropriate remedy that must be exhausted at the domestic level is the institution of judicial criminal proceedings, through the ex-officio and diligent conduction of investigations that determine those responsible of the violation and subject them to prosecution and punishment in accordance with the American Convention⁵.

11. In this regard, concerning the alleged violation of Mr. Ernesto Ramírez's right to life, the appropriate remedy to exhaust was therefore that of the initiation of criminal investigations. As it has done on other occasions, the IACHR considers that the aforementioned criminal procedure was also the appropriate

⁵ IACHR, Report No. 72/18, Petition 1131-08. Admissibility. Moisés de Jesús Hernández Pinto and family. Guatemala. June 20, 2018, para. 10. IACHR, Report N° 70/14. Petition 1453-06. Admissibility. Maicon de Souza Silva. Renato da Silva Paixão and others. July 25, 2014, para. 18.

remedy to be exhausted in relation to the crime of forced displacement of which Mr. Ramírez's relatives were victims as a direct consequence of his murder⁶. Both parties agree that an investigation was initiated by the Attorney General's Office on the facts; but, as indicated by the State, said investigation was closed by means of an exoneratory closure resolution of June 20, 2003. The State has held that the means to reopen the investigation are currently being explored but does not report on alternative resolutions to said investigative closure, nor does it describe the evidentiary or legal difficulties that it has encountered and intends to overcome. Since more than sixteen years have elapsed from the moment of closing the investigation by means of an exoneratory closure resolution to the present, the IACHR considers that, for the purposes of this admissibility analysis, the exception of unwarranted delay in the exhaustion of the domestic remedies foreseen in Article 46.2.c of the American Convention has been configured.

12. Regarding the requirement of timeliness of the petition, the IACHR, taking into consideration that the petition was received on February 18, 2010; that the events began on June 18, 2001; that the criminal investigation was filed by the Attorney General's Office in 2003, and then in 2018 was under consideration for reopening by this same investigative agency; and that the effects of the alleged violations allegedly persist until present, concludes that the instant petition was presented within a reasonable period of time under the terms of Article 32.2 of the Rules of Procedure of the IACHR.

13. Additionally, as regards the direct reparation (civil damages) judicial processes before the administrative jurisdiction, the Commission has repeatedly held that said course of legal action does not constitute an appropriate remedy for the purpose of analyzing the admissibility of a claim of the nature of the present one, since it is not adequate to provide comprehensive reparation that includes clarification of the facts and the satisfaction of the just expectations of justice of the victims' families. It is only through this judicial investigative route that it can be ruled out whether there was a lack of protection by the National Police that has allowed the consolidation of the mortal risk that weighed on Mr. Ramírez. Therefore, the Commission does not find in the State's arguments reasons that justify varying this reiterated doctrine, which is also consistent with the constant jurisprudence of the Inter-American Court of Human Rights.

VII. ANALYSIS OF COLORABLE CLAIM

14. As a preliminary matter, and in response to the State's questions regarding the competence of the IACHR to hear about domestic proceedings, the IACHR reiterates that for the purposes of the admissibility of a petition, it must decide whether the alleged facts may characterize a violation of rights, as stipulated in Article 47 (b) of the American Convention; or if the petition is "manifestly groundless" or "obviously out of order", in accordance with subsection (c) of said article. The criterion for evaluating these requirements differs from that used to decide on the substance of the case at the merits stage. Likewise, within the framework of its mandate, the Commission is competent to declare a petition admissible when it refers to domestic procedures that may violate rights guaranteed by the American Convention.

15. In this regard, after examining the factual and legal elements set forth by the parties, the Commission considers that the petitioner's allegations regarding: (a) Mr. Ramírez's lack of protection that contributed to the consummation of his murder, and even the possibility of an active participation of State agents in his death in complicity with the FARC; (b) the impunity and lack of clarification that continue to surround these facts; (c) the forced displacement of Mr. Ramírez's relatives as a result of the crime; (d) the fact that these events have occurred as a result of the alleged victim's participation in public functions; and (e) the impossibility of the next of kin of the alleged victim to appeal the decision of first instance in the process of direct reparation (civil damages); are not manifestly unfounded, and require a study on the merits, as the alleged facts, if corroborated, could characterize *prima facie* violations of articles 4 (life), 5 (humane treatment), 8 (fair trial), 21 (property), 22 (freedom of movement and residence), 23 (right to participate in government), 25 (judicial protection) and 26 (economic, social and cultural rights) of the American Convention, in relation

⁶ IACHR, Report No. 11/17. Admissibility. María Hilaria González Sierra and others. Colombia. January 27, 2017, para. 4; IACHR, Report No. 89/18. Petition 1110-07. Admissibility. Juan Simón Cantillo Raigoza, Keyla Sandrith Cantillo Vides and Family. Colombia. July 27, 2018, para. 10; IACHR, Report No. 44/18. Admissibility. Pijiguay Massacre. Colombia. May 4, 2018, para. 11.

to its articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) ⁷, in the terms of this report, to the detriment of Mr. Ernesto Ramírez and his family members identified in this report.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 4, 5, 8, 21, 22, 23, 25 and 26 of the American Convention, in relation to its Articles 1.1 and 2; and

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 21st day of the month of September, 2020. (Signed): Joel Hernández, President; Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President; Margarete May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, Julissa Mantilla Falcón, and Stuardo Ralón Orellana, Commissioners.

⁷ In the present case, the Commission observes that the limitation of the possibility of appeal on the grounds of the amount sought to the direct reparation (civil damages) judicial procedure requires a substantive analysis, since it raises issues related to the scope of the obligation contained in Article 2 of the American Convention, in relation to the guarantees of Article 8 of the same instrument. Such has been the consistent criterion of the IACHR, see for example: IACHR, Report No. 96/18. Petition 1293-07. Admissibility. Benedito Palacios Mosquera. Colombia. September 5, 2018, para. 14; and IACHR, Report No. 12/12, Petition 858-06, Omar de Jesús Lezcano Lezcano, Ángel José Lezcano Vargas et al., Colombia, March 20, 2012, para. 37.