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REPORT No. 379/21
PETITION 1530-11
REPORT ON ADMISSIBILITY

ROQUE ANTONIO GARCÍA DALTON, AÍDA CAÑAS,
JORGE DALTON CAÑAS Y JUAN JOSÉ DALTON CAÑAS
EL SALVADOR

Approved electronically by the Commission on December 1st, 2021.

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I. INFORMATION ABOUT THE PETITION

Petitioner	Oscar Humberto Gomez Gomez
Alleged victim	Olinto Arias Diaz and family ¹
Respondent state	Colombia
Rights invoked	Articles 8 (fair trial) and article 25 (judicial protection) ² of the American Convention on Human Rights ³

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition	July 6, 2011
Notification of the petition	June 7, 2017
State's first response:	April 27, 2018
Warning on the potential archive of the petition:	April 11, 2017
Petitioner's reply to the warning on the potential archive of the petition:	April 27, 2017

III. COMPETENCE

<i>Competence Ratione personae:</i>	Yes
<i>Competence Ratione loci:</i>	Yes
<i>Competence Ratione temporis:</i>	Yes
<i>Competence Ratione materiae:</i>	Yes, American Convention (ratification 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 res judicata:	No
Rights declared admissible:	Articles 25 (judicial protection) and 1.1 (obligation to respect rights) of the American Convention on Human Rights, in relation to article 4 (life) thereof
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes
Timeliness of the petition:	Yes, in the terms of section VI

V. ALLEGED FACTS

1. The petitioner invokes the international responsibility of the Colombian State for the violation of the judicial guarantees and the right to judicial protection of the next of kin of Mr. Olinto Arias Diaz, during the direct reparation judicial procedure initiated by them as a consequence of the death of Mr. Arias. Likewise, they call into question the criminal conviction imposed on the soldiers responsible for Mr. Arias' death, considering it excessively lenient.

2. The petitioners explain that Mr. Arias, a cattle-rancher and State contractor, was assassinated by members of the National Army on March 16, 1999 as he was traveling along the road between Barrancabermeja and Bucaramanga. The attack where he lost his life took place when a brigade of the Galan Battalion of the Fifth Brigade and Second Division of the Army which was traveling on the same road mistook Mr. Arias and the other occupants of his civilian vehicle for members of the guerrilla; the members of the battalion mistakenly thought it was an ambush, shooting at Mr. Arias' car. These facts have been judicially

¹ The petition identifies the following persons as immediate family members of Mr. Olinto Arias: (1) Ana Belen Mantilla de Arias, spouse; (2) David Alberto Arias Mantilla, son; (3) William Arias Mantilla, son; y (4) Fanny Mantilla Rodriguez, sister-in-law, economically dependent on Mr. Arias due to a mental disability.

² Despite the petitioners do not directly invoke the articles of the American Convention, this can clearly deduced from reading the arguments of the petition.

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

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

proven by both the Colombian criminal justice and the contentious-administrative jurisdiction in rulings described below.

3. Mr. Arias' next of kin filed a claim for direct reparation against the State before the Administrative Tribunal of Santander, and the proceedings advanced to the point of having issued a trial-level judgment declaring the Nation responsible. However, from the moment the lawsuit was responded, the Ministry of Defense had requested that said proceedings be accumulated unto another judicial procedure which had been initiated by the mother of Mr. Arias other two extramarital children, also as a consequence of his death, so that they could both be decided jointly. The Tribunal abstained from deciding on this request for accumulation. The process changed its location and was assumed by the Tenth Administrative Court of Bucaramanga, which issued the conviction against the Nation on December 15, 2008. The Ministry of Defense, in its appeal, raised the failure to resolve the request for accumulation; and in 2010 the Administrative Tribunal of Santander decided to annul all of the procedural actions taken from the moment the claim was responded onwards, so that the process would be repeated in its entirety. The petitioners, in their initial complaint before the IACHR, contested said annulment because they considered that it had been based on a cause not provided for in the applicable procedural legislation, which establishes in an exhaustive and exclusive manner the grounds for procedural nullity. In the opinion of the petitioners, the Administrative Tribunal had claimed its own negligence to annul the process, which they alleged would result in a delay of several years to obtain a new ruling on the case, with the serious damages thereby derived for the relatives of Mr. Arias. The petitioner resorted to the Inter-American Commission before the new judgment on the merits had been adopted in this contentious-administrative procedure, indicating that, as of June 2011, the request for accumulation of proceedings had only just been decided, and anticipating a long judicial procedure to unfold, indefinitely prolonging their wait for justice. They specified that the criminal justice system had already convicted the soldiers who had participated in the murder of Mr. Arias for the crime of manslaughter, and that the contentious-administrative justice system had in its possession a copy of the criminal judgment. For these reasons, they argued in the initial petition that "we place our hope in the Inter-American Commission on Human Rights to drastically put an end to this endless and illegal chain of delays of a fair claim that should have been addressed many years ago".

4. In a communication received on April 27, 2017, the petitioner party reported that the contentious-administrative process had already culminated with a judgment declaring the Nation responsible for the murder of Mr. Arias. However, his relatives raised several objections to the content of the judgment, specifically: (i) the Court had not ordered non-pecuniary measures of reparation, failing to address the moral damage caused by the fact that "the Army attacked the honor of the victim by completely misrepresenting the facts and presenting him as a dark individual who had fired at the troops together with his companions"; (ii) the monetary compensation had been insufficient compared to what the family had requested and considered they were entitled to receive; (iii) loss of earnings had been calculated contrary to the criteria established in the jurisprudence of the Constitutional Court; and (iv) the principle of the reasonable time had been violated given the annulment of the initial judgment, as explained in the initial petition before the IACHR. In addition, the petitioners contested the criminal conviction issued against the military personnel who participated in the murder of Mr. Arias, "which turned a clearly intentional homicide into just a culpable manslaughter [...] due to 'recklessness'"; and they claimed that the Army had affected their right to honor because public opinion was informed, through the Bucaramanga press, that the truck that Olinto Arias was driving had shot at the troops and these had limited themselves to respond, which was not true.

5. In its reply, the Colombian State asks the IACHR to declare the petition under study inadmissible, invoking what it calls the "fourth instance formula"; and because it considers that the appropriate domestic remedies were not properly exhausted. Colombia refers separately to the criminal proceedings and conviction, and to the contentious-administrative proceedings and judgments.

6. Regarding the criminal proceedings and the conviction issued therein, the State indicates that due to the death of Mr. Olinto Arias Díaz and the injuries suffered by his vehicle companions Fabio Ramírez Villamizar and Iván Ardila Rincón, the Office of the General Prosecutor of the Nation opened investigation No. 39607, initially assigned to the 11th Prosecutor's Office attached to the Santander Sectional Directorate. On June 9, 2004, the Fifth Sectional Prosecutor's Office issued an indictment against soldier Roberto Camacho

Riaño and others, for manslaughter in concurrence with the offence of unintentional personal injuries. The decision was appealed by the I Judicial Attorney-General's Office and confirmed by the Third Delegate Prosecutor's Office before the Superior Tribunal of Bucaramanga. On October 19, 2009, the Seventh Criminal Court of the Bucaramanga Circuit issued a conviction against Roberto Camacho and others, sentencing them to thirty-six months in prison and a fine, as well as disqualification for the exercise of public rights and functions, for the crimes of culpable manslaughter against Olinto Arias and culpable personal injuries against Fabio Ramírez and Iván Ardila. No appeals were filed against said ruling. The sentence was notified by an edict of October 27, 2009, and became final on November 4, 2009.

7. Having made these clarifications, the State alleges that the petitioner has disputed the very content of this judgment, which is final and was delivered after a procedure that was respectful of due process, thereby being shielded by the principle of *res judicata*. According to the State, this is a judgment that was based on the evidence duly gathered during the process and on the applicable legislation in force, which were fully respectful of the rights of the petitioners. The State alleges that the assertions of the petitioners regarding the alleged excessive leniency with which the responsible soldiers were treated is unfounded, "since the domestic proceedings through which soldier Roberto Camacho Riaño was sentenced for the death of Olinto Arias Díaz was decided by competent and impartial judges, through a motivated decision based on the current legislation, on the grounds of the evidence that was collected in a timely manner and respecting all due process guarantees". For these purposes, Colombia summarizes in detail the contents of the convicting judgement and shows that the judicial arguments were based both on the evidence contained in the criminal casefile and on the applicable substantive and procedural criminal legal provisions. It also explains that the calculation of the amount of the penalty was based on the corresponding regulations and on domestic criminal jurisprudence. Therefore, it considers that, if the IACHR decides to review the decision, it would be acting as an appeals court and analyzing the case once more, thus exceeding the limits of its competence.

8. Regarding the contentious-administrative procedure, the State reports that the wife and children of Mr. Arias filed a direct reparation lawsuit against the Ministry of National Defense - National Army, which was decided in first instance by the Tenth Administrative Court of Bucaramanga on December 15, 2008, declaring the Nation responsible. This judgment was annulled by the Administrative Tribunal of Santander by means of a decision of February 11, 2010; said annulment decision was the target of a motion for reconsideration, which was resolved on August 20, 2010 confirming the decision. On October 31, 2011, a new first instance judgment was delivered by the Second Administrative Decongestion Court of Bucaramanga, declaring the Ministry of Defense - National Army responsible for the death of Mr. Arias and the injuries to Mr. Ramírez. The judgment was appealed by the Ministry, and on July 25, 2013 the Administrative Tribunal of Santander issued a second instance judgment, increasing some compensation amounts and maintaining the declaration of State responsibility. After presenting this information, the State argues that the IACHR could not proceed to review the content of these final domestic judgments, since in doing so it would be acting as an "international fourth instance". The State refers in detail to the jurisprudence of the Inter-American Court according to which the bodies of the Inter-American Human Rights System are not empowered to review the compensations awarded by domestic judges when those compensations have been based on criteria of reasonableness, objectivity, and effectiveness to repair human rights violations, and do not constitute a violation of the American Convention that amounts to a denial of justice. For the Colombian State, the compensation awarded by the contentious-administrative jurisdiction to Mr. Arias' next-of-kin met said criteria of objectivity, reasonableness, and effectiveness. As it did with the criminal process, the State explains in detail that the first- and second-instance judgments adhered strictly to the applicable domestic judicial precedent in the matter and were based on a careful assessment of the evidence contained in the casefile, in aspects such as the calculation of the compensation for direct damages, lost earnings and moral damages.

9. As for the petitioners' argument regarding the procedural annulment that was declared by the Administrative Tribunal of Santander, the State insists that this argument was already raised by the petitioners in their motion for reconsideration of the decision that declared the nullity in question, and was expressly resolved by the Administrative Tribunal itself based on the applicable legal provisions, for which reason it emphasizes that the IACHR cannot act as an Inter-American court of appeal on this point; it also holds that, with said annulment, no American Convention guarantee was violated. Likewise, the State argues that it is not possible to review these final judicial pronouncements in relation to the lack of ordering of non-pecuniary

reparation measures, both because they are domestic decisions that are final and are protected by the principle of *res judicata*, and also because “the appeal and unification of jurisprudence remedies were available to the petitioner, in order to achieve the declaration of said reparation measures”, but said remedies were not used to dispute the specific point of the lack of non-pecuniary measures.

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

10. The petition under examination focuses its main claims on the conduction of the direct reparation procedure initiated by the wife and children of Mr. Olinto Arias before the contentious-administrative jurisdiction, as well as on the content of the rulings adopted in the course of such procedure. The petitioners also question, in their additional communication of April 2017, the specific legal offense (legal description) that was applied to the military personnel responsible for the death of Mr. Arias, because they consider it was excessively beneficial to the state agents.

11. The IACHR has peacefully established that, in Colombia, the direct reparation action is not an adequate remedy to exhaust in cases where the violation of the right to life is alleged, in which the appropriate remedy is the criminal investigation, prosecution and punishment; but it has also repeatedly indicated that if the petitioner alleges, in those cases, that there has not been a full reparation ordered by the courts via the direct reparation action, or that procedural irregularities have occurred during the respective contentious-administrative proceedings, then the direct reparation action does acquire the character of suitable remedy, and it is exhausted with the last final judgement, even if the latter denies the claims of the alleged victims.⁵ For the purposes of Article 46.1.b) of the Convention, the deadline for submitting these claims is calculated autonomously vis-à-vis the respective criminal proceedings. In this line, in the case under examination, it is understood that the domestic remedies were exhausted on July 25, 2013 with the judgment delivered in second instance by the Administrative Tribunal of Santander. The petition was presented to the Executive Secretariat on July 6, 2011. Therefore, the rule established by the Inter-American Commission in prior pronouncements is applicable, according to which the six-month period established in Article 46.1.b) of the American Convention may be deemed to have been fulfilled when a petition regarding the violation of procedural guarantees is presented during the first stages of the domestic proceedings, and those proceedings are exhausted after that filing date, given that the exhaustion of domestic remedies is assessed based on the situation that exists at the time the IACHR's admissibility report was adopted.⁶

12. As for the petitioners' allegations pertaining to the conviction issued by the criminal justice system, this conviction was issued on October 19, 2009 and was notified by edict on October 27, 2009. Therefore, after nearly twenty months have elapsed between that date and the receipt of the petition at the Executive Secretariat, for the purposes of the criminal proceedings, the petition was presented in a manifestly untimely manner according to article 46.1.b) of the American Convention. Moreover, the petitioners have not provided information showing that they logged any judicial remedy to challenge the decisions taken in that criminal proceeding. The petitioners neither provide any information regarding legal actions to reestablish the honor and good name of Mr. Olinto Arias after the Armed Forces published false news about him.

VII. ANALYSIS OF COLORABLE CLAIM

13. In first place, and in the interest of the clarity of the present analysis, the Commission reiterates that all the facts surrounding the criminal proceedings against the perpetrators of the murder of Mr. Olinto Arias fall outside the scope of the present report, these facts are extemporaneous. Therefore, the homicide of Mr. Olinto Arias, as potential violation of his right to life, will also be excluded from the present decision. Thus, the factual framework subject to analysis in the present case will be confined to the petitioner's claims regarding the alleged lack of compliance on the part of the State of its duty to provide them with due reparation because of the homicide of Mr. Olinto Arias. The Commission reiterates that within the framework

⁵ IACHR, Report N. 44/18, Petition 840-07. Admissibility. Pijiguay Massacre. Colombia. May 4, 2018, par. 11; Report N. 110/17. Petition 802-07. Admissibility. Leonardo Vanegas and family. Colombia. September 7, 2017, par. 8-10; Report N. 122-19. Petition 1442-09. Admissibility. Luis Fernando Hernández Carvajal and others. Colombia. May 23, 2019, par. 6; Report N. 79/19. Admissibility. Carlos Hernando Casablanca Perdomo and family. Colombia, May 23, 2019, par. 14.

⁶ IACHR, Report N. 57/17. Petition 406-04. Admissibility. Washington David Espino Muñoz. Dominican Republic. June 5, 2017, par. 30; Report N. 164/17. Admissibility. Santiago Adolfo Villegas Delgado. Venezuela. November 30, 2017.

of its mandate, it is indeed competent to declare a petition admissible and rule on its merits when it refers to domestic judicial proceedings that could violate rights guaranteed by the Convention.⁷

14. The organs of the Inter-American System have developed solid jurisprudence on the basis, content, and components of the right of victims of human rights violations to receive full reparations, which is directly relevant to the present case. The IACHR, through its merits reports and in line with the jurisprudence of the Inter-American Court, has historically stood out for recommending, for each case of violation or threat to human rights that it hears, a complex combination of remedial measures of different types and scopes which, as a whole, tend to configure a comprehensive reparation of the damage sustained that guarantees its non-repetition. Under current International Law, reparation is an autonomous human right, the bearers of which are those persons who have been affected by a specific violation of their rights. From another perspective, the right to obtain reparations for the violation of human rights is one of the components of the right of access to justice, judicial protection and access to effective remedies at the national level, enshrined in Article 25 of the American Convention⁸. The IACHR has sought from its earliest pronouncements to advance towards the consolidation and application of a comprehensive notion of full reparation. This parameter seeks to undo, in each particular case, the negative effects of a violation of rights, and to remedy their harmful impacts through a complex scheme of specific remedial measures that complement each other in addressing different aspects of the harm suffered. When full restitution of the situation that pre-existed the violation - or *restitutio in integrum* - is not possible to achieve, as happens in cases in which the victims have died as a result of the violation, the organs of the IAHRs strive to establish a combination of diverse modalities of reparatory measures that, together, will produce a remedial result as close as possible to that ideal⁹.

15. In their current jurisprudential development, the modalities of reparation to which the IACHR resorts in its decisions can be grouped into the following six categories: (1) restitution measures, understood as the reestablishment of the situation that existed before the violation of human rights was consummated, which must place the victim in the position in which he or she would have been if the violation had not occurred; (2) compensation measures, understood as the payment of a monetary indemnity to repair the material or immaterial damages, suffered by the victim and their next of kin, which can be economically assessed; (3) rehabilitation measures, which include those actions aimed at achieving the physical, psychological and social rehabilitation of the victims vis-à-vis the severe and lasting impacts derived from the violation of their human rights; (4) measures of satisfaction, which include symbolic, moral, or non-pecuniary actions aimed at repairing non-material damages through the restoration of the dignity, honor, and historical memory of the victims; (5) measures of access to justice aimed at investigating, prosecuting, and punishing those responsible for the human rights violation in question, in accordance with the pertinent international standards; and (6) guarantees of non-repetition, which may have either an individual scope and translate into protection and prevention measures for individuals and families, or a public connotation or structural dimension aimed at eliminating the root causes of the violation of human rights in question, so as to prevent its replication. Due to their direct relevance to the matter under consideration, the IACHR will provide below some brief schematic elements that are critical for a proper understanding of the content and applicability of compensation, satisfaction, access to justice, and guarantees of non-repetition, as modalities of reparation enforceable at the Inter-American level; this will be done in general terms and without implying in any way a pre-judgment of the merits of the matter, in the manner of legal guidance for the parties during the subsequent development of the regulated phases of the present proceedings.

16. As for compensation, it must cover any types of damages which can be economically assessed, both material (pecuniary) and moral or immaterial (non-pecuniary).¹⁰ This includes the physical and

⁷ IACHR, Report N. 122/19. Petition 1442-09. Admissibility. Luis Fernando Hernández Carvajal and others. Colombia, July 14, 2019. Report N. 116/19. Petition 1780-10. Admissibility. Carlos Fernando Ballivián Jiménez. Argentina. July 3, 2019, par. 16; Report N. 111/19. Petition 335-08. Admissibility. Marcelo Gerardo Pereyra. Argentina. June 7, 2019, par. 13.

⁸ I/A Court H.R., Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, Reparation and Costs. Judgment of September 1, 2010. Series C No. 217, par. 226.

⁹ I/A Court H.R., Case of Atala Riffo and daughters v. Chile. Request for Interpretation of the Judgment on Merits, Reparations and Costs. Judgment of November 21, 2012. Series C No. 254, par. 241

¹⁰ See, among many others, the following decisions by the Inter-American Court of Human Rights: (1) I/A Court H.R., Case of Castillo Páez v. Peru. Reparations and Costs. Judgment of November 27, 1998. Series C No. 43, par. 53; and (2) I/A Court H.R., Case of Blake v. Guatemala. Interpretation of the Judgment of Reparations and Costs. Judgment of October 1, 1999. Series C No. 57, par. 42.

psychological damages sustained by the victims, as well as the loss of income and opportunities, the material damages derived from the violation, the expenses incurred in activities and procedures related to the violation, the costs of medical and psychological services, funerary expenses, and the immaterial or moral damages they have suffered. Like the other forms of reparation, monetary compensation or indemnification must be granted in an appropriate manner and in proportion to the seriousness of the violation, and to the circumstances of each case, for all of the economically assessable damages that are a consequence of the violations. In many cases, the victims of human rights violations who come to the Inter-American System have already received, at the time of the judgment of the Inter-American Court, monetary reparations at the national level, be they of a judicial nature, or through administrative reparation programs. In the Cepeda Vargas case, the Inter-American Court explained its position in this regard: *"The Court considers that, when national mechanisms exist to determine forms of reparations, these procedures and results can be assessed (...). If these mechanisms do not satisfy criteria of objectivity, reasonableness and effectiveness to make adequate reparation for the violations of rights recognized in the Convention that have been declared by this Court, it is for the Court, in exercise of its subsidiary and complementary competence, to order the pertinent reparations."*¹¹ The IACHR and the Inter-American Court normally take into account the reparations that the victims have already received. In some cases, this fact has been enough for the Court not to order any additional indemnity at the international level.¹² In other cases, it has been ordered that what has already been paid by the State be deducted from the value of the Inter-American compensation, if the latter is higher.¹³

17. As for satisfaction, the reparatory measures grouped under this heading include, in practice, five large non-exhaustive categories: (i) acts of acknowledgment of responsibility, presentation of public apologies and official testimonies; (ii) official statements and judicial decisions that restore the honor and reputation of the victims; (iii) the publication or dissemination of the merits report of the IACHR or of the judgment of the Court; (iv) the performance of tributes to, and commemorations of, the victims; and (v) the provision of educational measures, socioeconomic measures, or measures of support for the social reintegration of the beneficiaries. Additionally, among the measures of satisfaction, insofar as their purpose is

¹¹ I/A Court H.R., Case of Cepeda Vargas v. Colombia. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 26, 2010. Series C No. 213, par.246. In that specific case, the next of kin of the victim had received compensation from the national courts which the Court considered was objective and reasonable, evaluating it in a positive manner.

¹² For example, in the Almonacid Arellano case, the Inter-American Court abstained from ordering the payment of compensation for immaterial damages to the victims because, at the domestic level, they had already received compensation within a transitional justice process which included the disbursement of monetary reparations; even though the Court did order other forms of reparation, in addition to emphasizing that the sentence itself was a form of satisfaction [I/A Court H.R., Case of Almonacid Arellano et al. v. Chile. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 26, 2006. Series C No. 154, par. 161]. Likewise, in the case of the Santo Domingo Massacre, the Court decided not to order the payment of compensation to the next of kin of the deceased victims and to the surviving victims who had already obtained administrative judicial reparations for the same events at the national level [I/A Court H.R., Case of the Santo Domingo Massacre v. Colombia. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 30, 2012. Series C No. 259, par. 336].

¹³ In the case of the Ituango Massacres, several of the victims who had come to the IACHR had already received reparations at the domestic level through settlement agreements executed in the course of administrative judicial proceedings, and others had such proceedings still in progress before the domestic courts. The Inter-American Court took note of said compensation already received, especially insofar as they repaired the same material and immaterial damages that were being evaluated at the inter-American level, in order not to duplicate them in its ruling; and it recalled that one of the guidelines for international compensation is that it should neither enrich nor impoverish the victim. Regarding the people who had legal proceedings in progress, the Inter-American Court ordered that they be compensated but expressly instructing the State to communicate that fact to the courts that were hearing the cases so that they could decide what was appropriate there [I/A Court H.R., Case of the Ituango Massacres v. Colombia. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2006. Series C No. 148, par. 376]. A similar decision was adopted in the case of the Rochela Massacre, in which the Court authorized the Colombian State to deduct the amounts that the victims had already received for judicially ordered reparations at the domestic level, at the moment of making the payment [I/A Court H.R., Case of the Rochela Massacre v. Colombia. Interpretation of the Judgment on Merits, Reparations and Costs. Judgment of January 28, 2008. Series C No. 175, par. 250]. Likewise, in setting the inter-American compensation, the Court has taken into account the amounts that people have received as administrative reparations at the domestic level, as is the case with the victims of forced displacement in Colombia; in the case of the Ituango Massacres, it was taken into account that several of the beneficiaries had already received such national administrative aid [I/A Court H.R., Case of the Ituango Massacres v. Colombia. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2006. Series C No. 148, par. 378]. An interesting case in this regard is that of the Rochela Massacre. The victims, who were surviving relatives of the persons who died in the massacre, had already obtained reparations for immaterial damages in Colombia through domestic administrative judicial proceedings. However, given that the Colombian legal system does not recognize the moral damages suffered by the deceased victims themselves in order to compensate them, but only the moral damages of the surviving next of kin, the Court considered that the reparations already received were insufficient in that aspect, and ordered that said personal suffering of the deceased be compensated, so as to deliver the indemnification to their next of kin as heirs [I/A Court H.R., Case of the Rochela Massacre v. Colombia. Series C No. 163, pars. 256-257, 267].

to publicly acknowledge the damage suffered by the victims in order to dignify them, the IACHR includes (vi) measures of justice (investigation, prosecution, and punishment of the perpetrators of serious human rights violations), and (vii) knowledge and dissemination of the truth, including the search for the disappeared and the location and return of the remains of dead. However, the catalogue of satisfaction measures may be as broad as the diversity of immaterial damages suffered by the victims of human rights violations. The form and nature of the satisfaction measures are not rigid, and they depend on the circumstances of each case¹⁴.

18. As for access to justice as a measure of reparation, it is recalled that the IACHR and the Inter-American Court habitually order the conduction of an investigation of the respective violation of rights by the State, to be undertaken with due diligence, within a reasonable period of time and in accordance with the standards established by international norms and jurisprudence. For example, in the case of Leydi Dayán Sánchez (Colombia), the IACHR recommended that the State “[c]arry out an impartial and effective investigation in the general jurisdiction with a view to prosecuting and punishing those responsible for the death of Leydi Dayán Sánchez Tamayo”;¹⁵ and in the case of Rafael Cuesta Caputi (Ecuador), the IACHR recommended that the State “[c]arry out a complete, impartial, and effective investigation into the attack on Rafael Ignacio Cuesta Caputi”¹⁶. The IACHR and the Inter-American Court have indicated that the duty to investigate must be carried out in a serious and diligent manner, not as a mere formality that is doomed in advance to fail, and that it must be undertaken by the State as the reasoned fulfilment of its own legal duty rather than as a mere management of private interests, or as one that depends on the procedural initiative of the victim or the victim’s next of kin¹⁷ or on the contribution of evidence by private parties, without an actual quest for truth on the part of the public authorities¹⁸; while the IACHR, based on Article 1 (1) of the American Convention, has explained that “said obligation is not met merely with the formal institution of proceedings in which it is up to the petitioners to supply information to sustain momentum in the proceedings, but should be discharged by the State in a serious manner as a matter of duty”.¹⁹ The Court has also held that compliance with said obligation is a necessary requirement to avoid impunity.²⁰ These obligations remain in force until their full satisfaction –that is, despite the passage of time, the duty of investigation and prosecution subsists for as long as the objective it seeks has not been achieved, namely, full knowledge of the facts, the identification of all of its authors, and the imposition of the corresponding punishment–;²¹ they are owed to the victims;²² and they are applicable regardless of whether those responsible for the violations are public officials, private individuals, or groups.²³ The obligation to investigate includes all of the material and intellectual authors, as well as all possible accessories.²⁴ In the respective proceedings, the victims or their next of kin must have full access and capacity to act in all stages and instances,²⁵ and the State must refrain from resorting to or applying figures such as amnesty and statutes of limitation, or the establishment of measures of exclusion of responsibility.²⁶ The IACHR also customarily provides that multidimensional measures be adopted in matters of justice at different complementary levels, not only in the sense of carrying out the investigation and prosecution of specific cases, but also of adopting

¹⁴ Draft Articles on Responsibility of the State for Internationally Wrongful Acts, International Law Commission. Comment to Art. 37, par. 5.

¹⁵ IACHR. Merits report N. 43/08. Case No. 12.009 – Leydi Dayán Sánchez (Colombia), July 23, 2008.

¹⁶ IACHR. Merits report N. 36/08. Case No. 12.487 – Rafael Ignacio Cuesta Caputi (Ecuador), July 18, 2008.

¹⁷ I/A Court H.R., Case of Las Palmeras v. Colombia. Reparations and Costs. Judgment of November 26, 2002. Series C No. 96., par. 68.

¹⁸ I/A Court H.R., Case of Albán Cornejo et al. v. Ecuador. Interpretation of the Judgment on Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 183, par. 62.

¹⁹ IACHR. Report No. 2/06. Petition 12.130, Merits, Miguel Orlando Muñoz Guzmán (Mexico), par. 62.

²⁰ I/A Court H.R., Case of the “White Van” (Paniagua Morales et al.) v. Guatemala. Reparations and Costs. Judgment of May 25, 2001. Series C No. 76, par. 173; I/A Court H.R., Case of Garrido and Baigorria v. Argentina. Reparations and Costs. Judgment of August 27, 1998. Series C No. 39., par. 170.

²¹ I/A Court H.R., Case of Neira Alegría et al. v. Peru. Reparations and Costs. Judgment of September 19, 1996. Series C No. 29. Par. 69; I/A Court H.R., Case of Caballero Delgado and Santana v. Colombia. Merits. Judgment of December 8, 1995. Series C No. 22, pars. 58-59; I/A Court H.R., Case of El Amparo v. Venezuela. Merits. Judgment of January 18, 1995. Series C No. 19, par. 61.

²² I/A Court H.R., Case of Castillo Páez v. Peru. Reparations and Costs. Judgment of November 27, 1998. Series C No. 43., par. 143.

²³ I/A Court H.R., Case of the “White Van” (Paniagua Morales et al.) v. Guatemala. Reparations and Costs. Judgment of May 25, 2001. Series C No. 76, pars. 174, 177.

²⁴ I/A Court H.R., Case of Juan Humberto Sánchez v. Honduras. Interpretation of the Judgment of Preliminary Objection, Merits, Reparations and Costs. Judgment of November 26, 2003. Series C No. 102, par. 186.

²⁵ I/A Court H.R., Case of Bulacio v. Argentina. Merits, Reparations and Costs. Judgment of September 18, 2003. Series C No. 100, par. 121.

²⁶ I/A Court H.R., Case of Myrna Mack Chang v. Guatemala. Merits, Reparations and Costs. Judgment of November 25, 2003. Series C No. 101, par. 276.

measures against the officials who caused a situation of impunity, and of strengthening the capacity of the administration of justice institutions in order to avoid such an outcome of impunity in the future – thus combining individual and structural reparation measures to produce complex remedial configurations in the field of justice, that restore the victims' rights and prevent the repetition of impunity.

19. The Commission reiterates that the evaluation criteria applied during the admissibility phase differ from those used to rule on the merits of a petition. Under this *prima facie* evaluation criterion, the IACHR considers that the allegations of the petitioners are not manifestly groundless and warrant an examination of the merits based on the evidence in the casefile, since they dispute, among others, the argument on the comprehensiveness of the reparation measures that the State has adopted in the domestic sphere, because no non-pecuniary measures were ordered in their favor - matters that must be studied and resolved in subsequent phases of the present proceedings. The Inter-American Commission takes note of the reparation measures that have already been already put in place at the domestic level, because of the facts established in the present petition. These actions will effectively be considered by the IACHR as part of its analysis on the merits of this case.

20. Considering the foregoing, and taken into account its precedents, in particular its conclusion on the colorable claim in its Report No. 2/18, Emilio Peon and others, the IACHR concludes that the claims submitted in the instant case might constitute violations of the rights enshrined in articles 25 (right to judicial protection) and 1.1 (obligations to respect rights), *in light of*²⁷ article 4 (right to life) of the American Convention, to the detriment of the alleged victims, in the terms of the present report.

21. Regarding the claim on the alleged violation of article 8 (right to a fair trial) of the American Convention; the Commission notes that the petitioners have not provided arguments of sufficient grounds to consider *prima facie* its eventual violation in the context of the administrative proceeding the exhausted to claim compensation.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 25 and 1.1 of the American Convention, in light of Article 4 thereof;

2. To find the instant petition inadmissible in relation to Article 8 of the American Convention, and;

3. To notify the parties of the decision; to continue with the analysis on the merits and to publish this decision and to 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 13th day of the month of December, 2021. (Signed:) Antonia Urrejola, President; Julissa Mantilla Falcón, First Vice President; Flávia Piovesan, Second Vice President; Margarete May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, Joel Hernández, and Stuardo Ralón Orellana, Commissioners.

²⁷ CIDH, Informe No. 2/18. P-656-08. Admisibilidad. Emilio Peón y Familia. Argentina. 24 de febrero de 2018, para. 14. See also: CIDH, Informe No. 102/17. Petición 383-08. Admisibilidad. Hebe Alicia López Osuna. Argentina. 7 de septiembre de 2017.