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**REPORT No. 105/24**  
**PETITION 461-12**  
REPORT ON ADMISSIBILITY

DIEGO ARMANDO HEREDIA MONROY, DOMINGO ANTONIO CASTRO ZORRO,  
AND RELATIVES  
COLOMBIA

Approved electronically by the Commission on July 12, 2024.

**Cite as:** IACHR Report No. 105/24. Petition 461-12. Admissibility. Diego Armando Heredia Monroy, Domingo Antonio Castro Zorro, and relatives. Colombia. July 12, 2024.

## I. INFORMATION ABOUT THE PETITION

<b>Petitioner:</b>	Centro Jurídico de Derechos Humanos (“CJDH”)
<b>Alleged victims:</b>	Diego Armando Heredia Monroy, Domingo Antonio Castro Zorro, and relatives
<b>Respondent State:</b>	Colombia <sup>1</sup>
<b>Rights invoked:</b>	Articles 4 (life), 5 (humane treatment), 8 (judicial guarantees) and 25 (judicial protection) of the American Convention on Human Rights, <sup>2</sup> read in conjunction with its Article 1(1) (obligation to respect rights)

## II. PROCEEDINGS BEFORE THE IACHR<sup>3</sup>

<b>Filing of the petition:</b>	March 21, 2012
<b>Additional information received at the review stage:</b>	May 15, 2017
<b>Notification of the petition to the State:</b>	July 24, 2017
<b>Extension request:</b>	October 2, 2017
<b>Notification of the possible archiving:</b>	April 6, 2021
<b>Petitioner's response:</b>	May 7, 2021
<b>State's first response:</b>	September 15, 2023
<b>Additional observations from the petitioner:</b>	September 6, 2022, and January 17, 2023
<b>Additional observations from the State:</b>	17 January 2024

## 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 (humane treatment), 7 (personal liberty), 8 (judicial guarantees), and 25 (judicial protection) of the American Convention on Human Rights, read in conjunction with Article 1(1) (obligation to respect rights)
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, the exception found in Article 46(2)(c) of the Convention, pursuant to the terms of Section VI
<b>Timeliness of the petition:</b>	Yes, pursuant to the terms of Section VI

<sup>1</sup> Commissioner Carlos Bernal Pulido, of Colombian nationality, did not participate in the deliberations nor in the decision in this matter, in keeping with the provisions of Article 17(2)(a) of the Rules of Procedure of the Commission.

<sup>2</sup> Hereinafter “the American Convention” or “the Convention.”

<sup>3</sup> The observations presented by each party were duly transmitted to the opposing party.

## V. PARTIES' POSITIONS

### *The petitioner*

1. The petitioner alleges the extrajudicial executions of Diego Armando Heredia Monroy and Domingo Antonio Castro Zorro, as well as a failure to investigate and punish those responsible and the consequent suffering of their relatives, in the context of the so-called "false positives."<sup>4</sup>

2. According to the petitioner, on June 12, 2007, Diego Armando Heredia Monroy and Domingo Antonio Castro Zorro were detained by a patrol of the National Army's Unified Action Group for Personal Liberty (GAULA) while they were in a public establishment in Tauramena, Casanare, with no information provided as to their whereabouts.

3. Later, their families were informed of the discovery of two bodies at the Tauramena Prosecutor's Office, which turned out to be those of Heredia Monroy and Castro Zorro. The military report alleged that both were killed in an alleged armed confrontation with troops of the Ramón Nonato Pérez Infantry Battalion, and they were accused of belonging to an illegal organization.

4. With respect to the criminal investigation, the petitioner reports that the Military Criminal Investigation Courts in Yopal opened an investigation into the deaths, attributed to members of the National Army. After some procedural back and forth, the Special Prosecutor's Office for Human Rights and International Humanitarian Law assumed jurisdiction over the investigation and managed to gather enough evidence to bring some members of the military to oral trial before the Specialized Criminal Court of Yopal. However, the case file was referred to the Special Jurisdiction for Peace (JEP) in February 2020, under Case 003 on "Deaths unlawfully presented as combat casualties by State agents." Despite this, the petitioner emphasizes that to date, there have been no convictions and the crime remains in impunity.

5. The petitioner also indicates that the relatives of Heredia Monroy filed suit for direct reparations before the Second Administrative Court of the Yopal, Casanare, Circuit, which resulted in a trial court judgment of January 18, 2012, finding the State liable. This judgment was appealed by the State and was pending resolution.

6. In sum, the petitioner argues that the extrajudicial execution and impunity thereof amount to violations of the rights to life, humane treatment, judicial guarantees, and judicial protection, to the detriment of the alleged victims and their next of kin.

### *The Colombian State*

7. The State indicates that it launched an investigation into the deaths of Diego Armando Heredia Monroy and Domingo Antonio Castro Zorro before the Military Criminal Courts. The facts were reported through official letter 1489 of June 16, 2007, signed by a battalion commander, and the 45th Military Criminal Trial Court of the city of Yopal, attached to the Sixteenth Brigade of the National Army, heard the case. On June 27, 2007, the military court ordered an investigation be opened to identify those responsible for the crime of homicide.

8. The State indicates that since June 16, 2007, the Judicial Police and the Office of the Public Prosecutor have taken a number of steps to establish the facts and the investigate, prosecute, and punish those responsible for the facts leading to the deaths of Diego Armando Heredia Monroy and Domingo Antonio Castro Zorro. The evidence collected has included examinations of the bodies, photo albums, statements, judicial

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<sup>4</sup> In Colombia, the "false positives" were a series of extrajudicial executions of civilians committed by State security forces and then framed as combat casualties. In this regard, see: IACHR, Truth, Justice and Reparation: Fourth report on the human rights situation in Colombia, December 31, 2013, paragraphs 21, 122.

inspections, technical reports from experts, forensic medical reports, and statements from those under investigation.

9. Pursuant to order 00358 of the Office of the National Specialized Prosecutor's Office for Human Rights and International Humanitarian Law, dated December 4, 2014, the investigation was transferred to the Ordinary Jurisdiction. In an order dated March 21, 2015, the Office of the Attorney General of the Nation took over the proceedings, and on July 21, 2015, it issued an order to open the investigation.

10. The State reports that the ordinary criminal investigation, identified under case number 9171, referred to the crimes of homicide of a protected person, tampering with public documents, preferential treatment, criminal conspiracy, forced disappearance, and embezzlement by appropriation against the following persons: Henry William Torres Escalante; Jorge Eduwin Gordillo Benítez; José Abel Pedraza Amaya; Leandro Eliécer Mona Cano; Alex Mario García Cruz; Eliseo Ibañez Riaño; Fernando Barrera Cachay; Fredy Gonzalo Zamora; Diego Armando Martínez Vega; Marcolino Puerto Jiménez; Jesús Alberto Luna Camacho; César Augusto Combita Eslava; Gustavo Alberto Parada Cuéllar; Carlos Manuel Angarita Reyes; Julio César Sierra; Jairo Raúl López Conlunge; Fabián Eduardo Sarmiento Valbuena; and Henry Hernán Acosta Pardo. The State emphasizes that those implicated in the investigation were members of the National Army of the Fourth Division of the Sixteenth Brigade of the Sixteenth Infantry Battalion No. 44.

11. However, of the 18 persons implicated in this investigation, 16 appeared before the Special Jurisdiction for Peace (JEP) to submit themselves to this transitional justice system established to investigate crimes committed during the armed conflict, for which reason it was not possible to continue the appeals and trials regarding their responsibility. The following table is a summary of the information provided by the State on the subject:

<b>Name</b>	<b>Submission before the JEP</b>
<b>Marcolino Puerto Jimenez</b>	<b>October 7, 2021</b>
<b>Diego Armando Martínez Vega</b>	<b>May 10, 2017</b>
<b>César Augusto Cómbita Eslava</b>	<b>June 28, 2019</b>
<b>William Andrés Capera Vargas</b>	<b>May 20, 2021</b>
<b>Fernando Barrera Cachay</b>	<b>May 10, 2017</b>
<b>Henry Hernán Acosta Pardo</b>	<b>November 25, 2019</b>
<b>José Abel Pedraza Amaya</b>	<b>No date, but also before the JEP</b>
<b>Julio Cesar Sierra</b>	<b>November 19, 2018</b>
<b>Leandro Eliécer Moná Cano</b>	<b>May 8, 2018</b>
<b>Fredy Gonzalo Zamora</b>	<b>October 15, 2018</b>
<b>Carlos Manuel Angarita Reyes</b>	<b>November 27, 2019</b>
<b>Henry William Torres Escalante</b>	<b>July 10, 2018</b>
<b>Jorge Eduwin Gordillo Benítez</b>	<b>July 24, 2017</b>
<b>Alex Mario García Cruz</b>	<b>June 22, 2017</b>
<b>Eliseo Ibañez Riaño</b>	<b>No date, but also before the JEP</b>
<b>Gustavo Alberto Parada Cuéllar</b>	<b>June 22, 2017</b>

12. The State adds that the different chambers and trial courts of the JEP are currently hearing the case related to the death of Diego Armando Heredia Monroy and Domingo Antonio Castro Zorro and have not yet reached a final judgment.

13. The State maintains that, despite this, the Office of the Attorney General of the Nation continued to take actions aimed at establishing the facts and investigating, prosecuting, and punishing those

responsible. These steps include bringing charges for reaching plea bargains with those who have not yet submitted themselves to the JEP, expanding and continuing the preliminary inquiries, carrying out judicial inspections, and ordering procedures to collect evidence. In its writings, the State does not mention against whom the ordinary investigation was continuing. Only two persons initially involved in the ordinary process were not mentioned by the State as subject to the JEP: Jairo Raúl López Conlunge and Fabián Eduardo Sarmiento Valbuena.

14. With respect to the jurisdiction for the administrative litigation, the State indicates as follows: Josefa Castro Zorro, Verónica Zorro Peralta, Arelyz Castro Zorro, Rosa Dominga Monroy Becerra, Luz Melba Catro Zorro, Martha Patricia Monroy, José Octavio Heredia Tovar, Claudia Camargo and Javier Heredia Monroy, relatives of the alleged victims, filed suit for direct reparations against the Nation - Ministry of Defense - National Army, filed as case 85001-3331-002-2009-00105-00.

15. On January 18, 2012, the Second Administrative Court of the Circuit of Yopal-Casanare issued a judgment declaring the Nation - Ministry of Defense - National Army liable for the economic damage suffered by the relatives of the alleged victims. According to the judgment, the liability is of a non-contractual nature in a case of "failure in service." The ruling was based on the demonstration of injury directly linked to a military operation called "Jungle I," carried out on June 12, 2007, in the course of which Diego Armando Heredia Monroy and Domingo Antonio Castro Zorro lost their lives. According to the judgment, the evidence demonstrated that the testimony given by the military was irregular and inconsistent with the evidence presented by the relatives of the deceased. In addition, there was evidence of a failure to distinguish between combatants and non-combatants, a violation of the "Additional Protocol to the Geneva Conventions on the Protection of Victims of International Armed Conflicts."

16. Following the judgment, the Nation - Ministry of Defense - National Army appealed the trial court decision. In response, the Second Administrative Circuit Court summoned the parties to a special reconciliation hearing. This session began on March 26, 2012, but was suspended and resumed on April 20, 2012. Therein, the parties reached full agreement on 80% of the damages awarded in the trial court judgment, thus concluding the process before the contentious-administrative jurisdiction.

17. The State also indicates that, according to the Administrative Unit for the Comprehensive Reparation of Victims (UARIV), Diego Armando Heredia Monroy and his family group, are not included on the Single Declaration Form (FUD), which is how victims are added to the National Registry of Victims. In addition, the UARIV did not find any information in the Single Registry of Victims (RUV) on Domingo Antonio Castro Zorro. Because of this, Diego Armando Heredia Monroy and Domingo Antonio Castro Zorro, together with their respective families, have thus far not been recognized as victims before the UARIV, and therefore no institutional offer in terms of reparation measures or individual routes has been extended. The State clarifies that the recognition of victim status gives a person access to the assistance and reparation measures provided by law depending on the violation of their rights and the characteristics of the victimizing fact. One of these measures is the provision of administrative compensation.

18. Taking into account all of the above, the State maintains that the petition is inadmissible because of the failure to exhaust the criminal process, after reporting on the ordinary investigation and the lack of a final judgment before the JEP. It also argues that none of the exceptions to the prior exhaustion rule apply to the case. In this sense, it emphasizes that the complexity of the investigation influenced the length of the process. It justifies the complexity insofar as the investigative actions took place within the framework of the internal armed conflict, and highlights that despite the difficulties, the investigation has made great progress in establishing the facts and implicating those responsible. It also notes that the investigations involve a multiplicity of actors and are aimed at establishing the macro contexts in which the facts took place.

19. The State also argues that the petition is inadmissible on the grounds that it seeks to invoke a fourth international instance with respect to the direct reparations action proceeding. This proceeding, the State emphasizes, has already resolved the petitioner's claims for compensation. Therefore, considering that the Inter-American system does not operate as a court of appeal, the petitioner's claims for compensation before the IACHR are inadmissible.

## VI. PRELIMINARY MATTER OF IDENTIFICATION OF ALLEGED VICTIMS

20. The State argues that although the initial petition was filed for the alleged violation of the human rights of Diego Armando Heredia Monroy, the victims' representative also referred to the alleged related violations suffered by Domingo Antonio Castro Zorro. Based on the foregoing, on September 28, 2017, the State asked the IACHR to forward this matter to the petitioner for clarification as to who the alleged victims were. Consequently, on March 6, 2023, the Centro Jurídico de Derechos Humanos clarified that the petition also referred to the alleged violations of the human rights of Domingo Antonio Castro Zorro and his relatives and asked the IACHR to issue a decision on this point. The IACHR further notes that the petitioner sent this clarification prior to the State submitting its first response to the petition, giving it ample opportunity to take a position on the situation of Domingo Antonio Castro Zorro.

21. In this regard, the State also asks the IACHR to clarify the representation of the alleged victims in this matter, since the initial petition was presented by Rafael Alberto Gaitán Gómez, not the Centro Jurídico de Derechos Humanos. The State also asks that the respective powers of attorney granted by the relatives of Diego Armando Heredia Monroy and Domingo Antonio Castro Zorro to the Centro Jurídico de Derechos Humanos be submitted.

22. Regarding this, the Inter-American Commission on Human Rights notes that the initial petition was presented by Rafael Alberto Gaitán Gómez. Subsequently, on September 6, 2022, Mr. Gaitán Gómez informed the IACHR of the change of representation, indicating that the petition would be handled by the Centro Jurídico de Derechos Humanos. The Inter-American Commission also recalls that Article 44 of the Convention allows for any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, to lodge petitions of alleged violations of the Convention without requiring authorization from the alleged victims or that the alleged victims grant them power of attorney.<sup>5</sup> In view of the foregoing, the Inter-American Commission concludes that the intervention of the Centro Jurídico de Derechos Humanos in the petition is valid and in accordance with the Convention and does not need to be verified by additional documentation.

## VII. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

23. The Inter-American Commission observes that the petition focuses on the extrajudicial execution of Diego Armando Heredia Monroy and Domingo Antonio Castro Zorro, and the failure to investigate and punish those responsible. The petitioner mentions the administrative litigation process only to add to the context of the case, without alleging specific violations in relation to this process.

24. The State argues that the petitioner has not exhausted domestic remedies, given that the criminal proceeding is still pending. Additionally, it argues that none of the exceptions to the rule of prior exhaustion apply because there was no unjustified delay, but rather an investigation with a reasonable procedure in view of the complexities of the case.

25. For analysis of exhaustion of domestic remedies in this matter, the IACHR recalls that in cases involving claims of death or disappearance of persons and subsequent impunity, the suitable remedy to be exhausted at the domestic level is criminal proceedings through officious and diligent investigations to identify those responsible for the violation of the right to life and prosecute and punish them in accordance with the American Convention;<sup>6</sup> this burden falls to the State as its own legal duty. It is not merely a manager of private

<sup>5</sup> IACHR Report No. IACHR, Report No. 71/16, Petition 765-09. Admissibility. Q'ooq'ob community of the Municipio of Santa María Nebaj. Guatemala. December 6, 2016, para. 23.

<sup>6</sup> IACHR Report No. 13/22. Petition 1332-11. Admissibility. Orlando Hernández Ramírez and relatives. Colombia. February 9, 2022, para. 7; IACHR, Report 72/18, Petition 1131-08. Admissibility. Moises de Jesus Hernandez Pinto and family. Guatemala. June 20, 2018, para. 10; IACHR, Report 70/14. Petition 1453-06. Admissibility. Maicon de Souza Silva. Renato da Silva Paixão et al. July 25, 2014, paragraph 18; Report 3/12, Petition 12,224, Admissibility, Santiago Antezana Cueto et al., Peru, January 27, 2012, paragraph 24; Report 124/17, Petition 21-08, Admissibility, Fernanda López Medina et al, Peru, September 7, 2017, paras. 3, 9-11.

interests, nor does it depend on the initiative of private individuals or provision of evidence by them.<sup>7</sup>

26. In this case, according to the information provided by the parties, the Commission observes that: i) following the death of the alleged victims on June 12, 2007, the military criminal justice system took over the investigation of these facts; ii) on March 21, 2015, the Office of the Attorney General of the nation took over the investigative proceedings, and on July 21, 2015, it formally ordered launch of the ordinary investigation; iii) between May 2017 and October 2021, the JEP took on the case with respect to 16 of the 18 persons under investigation; iv) the Office of the Attorney General of the Nation continued to conduct proceedings with respect to persons who had not yet submitted themselves before the JEP; however, there is no information on a judgment; v) to date, the different chambers and instances of the JEP have not reached a final judgment.

27. Although the Colombian State argues that the complexity of the case and the number of actors involved justify the length of the process, the information submitted indicates that more than sixteen years have passed since the investigation began in 2007 with no judgment having been issued. The transfer of the case between jurisdictions and the lack of concrete progress in the ordinary criminal proceedings cannot be justified by the rationale put forward by the State. Taking this into account, the IACHR concludes that there has been an unjustified delay in the adoption of a final decision at the domestic level, and therefore the exception provided for in Article 46(2)(c) of the American Convention is applicable.

28. In this regard, the Commission first reiterates, as it has consistently, that Article 46(2) of the American Convention, given its nature and purpose, is a provision whose content is autonomous *vis-à-vis* the substantive provisions of the Convention. Therefore, the determination as to whether the exceptions to the prior exhaustion rule are applicable to the case in question should be done prior to and separate from the analysis of the merits, as it depends a different standard of appreciation than that used to determine the possible violation of Articles 8 and 25 of the Convention. The IACHR has also emphasized that there are no provisions in the Convention or in the Rules of Procedure spelling out specifically the period of time that would constitute an unjustified delay, for which reason the Commission conducts its review on a case-by-case basis to determine if such a delay has taken place.<sup>8</sup> Along these lines, the Inter-American Court has held as a guiding principle for the analysis of possible unjustified delay as an exception to the rule of exhaustion of domestic remedies that “the rule of prior exhaustion must never lead to a halt or delay that would render international action in support of the defenseless victim ineffective.”<sup>9</sup> In other words, in the Commission's opinion, the complementary nature of the international protection provided for in the American Convention also implies that the intervention of the bodies of the Inter-American System must be timely such that it can have some kind of useful effect on the protection of the rights of the alleged victims.

29. Regarding the reasonableness of the period of time in which the instant petition was presented, the IACHR concludes that it complies with the requirement set forth in Article 32(2) of its Rules of Procedure, as the initial facts took place in 2007; the petition was filed in 2012; and the effects of the alleged violations in terms of the alleged impunity persist to the present day.

### VIII. ANALYSIS OF COLORABLE CLAIM

30. The State asserts that the petition is inadmissible for invoking the fourth instance formula, since the facts have already been heard by the domestic authorities through the administrative jurisdiction.

31. For purposes of admissibility, the Commission must decide whether the facts alleged tend to establish a violation of rights, as provided for in Article 47(b) of the American Convention, or whether the

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<sup>7</sup> IACHR Report No. 13/22. Petition 1332-11. Admissibility. Orlando Hernández Ramírez and relatives. Colombia. February 9, 2022, para. 7; IACHR, Report IACHR, Report No. 159/17, Petition 712-08. Admissibility. Sebastián Larroza Velázquez and family. Paraguay. November 30, 2017, paragraph 14.

<sup>8</sup> IACHR Report No. IACHR, Report No. 14/08, Petition 652-04. Admissibility. Hugo Humberto Ruíz Fuentes. Guatemala. March 5, 2008, para. 68.

<sup>9</sup> Inter-American Court of Human Rights, *Velasquez Rodriguez v. Honduras*, Preliminary Objections, Judgment of June 26, 1987, para. 93.

petition is “manifestly groundless” or “obviously out of order,” as per Article 47(c). The criterion for the evaluation of these requirements differs from those used to issue an opinion on the merits of a case. Likewise, within the framework of its mandate, it is competent to declare a petition admissible when it refers to domestic proceedings that could violate rights guaranteed by the American Convention. In other words, in accordance with the aforementioned norms under the Convention, as well as with Article 34 of its Rules of Procedure, the admissibility analysis focuses on the verification of such requirements, which refer to the existence of elements that, if true, could constitute *prima facie* violations of the American Convention.

32. In the instant case, the Commission notes that the main claim of the petitioner is centered on the deaths of Diego Armando Heredia Monroy and Domingo Antonio Castro Zorro and the failure to investigate and punish the facts.

33. The IACHR notes that a dispute persists with respect to submission of the case before the JEP and whether the jurisdiction provides a suitable and effective remedy for investigating and redressing the human rights violations stemming from the alleged extrajudicial executions of the alleged victims, pursuant to international standards on the right to access to justice and the sanction of international crimes. On this issue, the Commission will defer its analysis to the merits stage and will admit the articles invoked with respect to the extrajudicial execution and the processing of the criminal proceedings.

34. In view of these considerations, and upon examination of the elements of fact and law set forth by the parties, the Commission concludes that the petitioners’ allegations are not manifestly groundless and must be examined on their merits, as should the facts alleged be found to be true, they could amount to violations of articles 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (judicial guarantees), and 25 (judicial protection) of the American Convention, read in conjunction with its Article 1(1), to the detriment of Diego Armando Heredia Monroy, Domingo Antonio Castro Zorro and their next of kin, pursuant to the terms of this report.

35. Lastly, the Commission notes that the State provides information on an agreement regarding financial compensation to the next of kin in the context of the suit for direct reparations. The Commission takes due note of this fact and will take it into consideration in the merits stage of this matter.

## **IX. DECISION**

1. To declare this petition admissible with regard to articles 4, 5, 7, 8, and 25 of the American Convention, read in conjunction with its Article 1(1).

2. To notify the parties of this decision; continue with analysis of the merits of the matter; and 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 12<sup>th</sup> day of the month of July, 2024. (Signed:) Roberta Clarke, President; José Luis Caballero Ochoa, Second Vice President; Arif Bulkan, and Gloria Monique de Mees, Commissioners.