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REPORT No. 177/24

PETITION 974-14

REPORT ON ADMISSIBILITY

MARISOL OLAYA CASTAÑEDA AND RELATIVES
COLOMBIA

Approved electronically by the Commission on October 25, 2024.

Cite as: IACHR Report No. 177/24, Petition 974-14. Admissibility. Marisol Olaya Castañeda and relatives. Colombia. October 25, 2024.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Jaime Rojas Tafur and Yimmy Rojas Ramos
Alleged victims:	Marisol Olaya Castañeda and relatives ¹
Respondent State:	Colombia ²
Rights invoked:	Articles 4 (life), 5 (humane treatment), 8 (judicial guarantees) and 10 (compensation) of the American Convention on Human Rights ³

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition:	July 7, 2014
Additional information received at the review stage:	July 30, 2015, and March 7, 2016
Notification to petitioner of the possible archiving of the petition:	August 6, 2020
Response from the petitioner regarding the notification of possible archiving:	August 6, 2020
Notification of the petition to the State:	November 11, 2021

III. COMPETENCE

Competence <i>ratione personae</i>:	Yes
Competence <i>ratione loci</i>:	Yes
Competence <i>ratione temporis</i>:	Yes
Competence <i>ratione materiae</i>:	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

Duplication of procedures and international <i>res judicata</i>:	No
Rights declared admissible:	Articles 4 (life), 5 (humane treatment), 8 (judicial guarantees), 19 (rights of the child), and 25 (judicial protection) of the American Convention on Human Rights, read in conjunction with its Article 1(1) (obligation to respect rights)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, the exception in Article 46(2)(b) applies
Timeliness of the petition:	Yes, pursuant to the terms of Section VI

¹ José Olaya Pisco (father); María Doris Castañeda Plazas (mother); Jhon Alexander Olaya Castañeda, Nubia Olaya Castañeda, Nancy Olaya Castañeda, José Ricardo Olaya Castañeda (siblings); Peregrina Pisco (paternal grandmother); Florinda Plazas and Ricardo Castañeda (maternal grandparents).

² 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.

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

⁴ The observations presented by each party were duly considered and transmitted to the opposing party.

V. PARTIES' POSITIONS

The petitioner

1. The petitioner denounces the extrajudicial killings of Marisol Olaya Castañeda during a massacre in which other people were killed; 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."⁵

2. According to the petitioner, Marisol Olaya Castañeda was a 17-year-old peasant at the time of the facts, living on the farm where her parents worked in the Miravalle village, San Vicente municipality, department of Caquetá. On November 22, 2004, she left for work like any other day; however, on the way, members of the army hidden in ambush in the nearby hills attacked the vehicle in which she was traveling, killing all its occupants. After the operation the army units radioed for a helicopter, loaded the bodies, and flew them to the military base. –Although the petitioner refers to the death of the alleged victim and other persons who were in the attacked vehicle, they do not include these other persons in this petition.

3. The petitioner argues that in order to justify the murder of Marisol Olaya Castañeda and the other occupants of the vehicle, the authorities falsely claimed their deaths took place during combat. The petitioner argues that none of the passengers had fired at or attacked the army, and that it was an irresponsible and premeditated military operation. Marisol Olaya Castañeda, who was traveling in the cab of the truck, was killed instantly by the numerous gunshots and explosions.

4. Regarding the domestic proceedings, the petitioner reports that the facts were the subject of a preliminary military criminal investigation, case file 069, before the 97th Preliminary Criminal Investigation Court Martial, located in the Tenerife Battalion in Neiva Huila, Colombia. This investigation involved nine military personnel: Rico Freyle Aramis Júnior, Mora Tinoco José Gabriel, Cediél Rodríguez Jaime, Sánchez Loaiza Ángel Yovany, Vega López Hermenegild, Ortiz López Jhon Fredy, Cardona Vargas Eider, Castaño Ángulo Carlos Aud, and Román Murillo Blady Alexis. The petitioner argues that, as is usually the case in military criminal proceedings, the investigation culminated in a waiver of prosecution (an order declining to prosecute). –The information provided by the petitioner on the domestic proceedings is very brief and lacks legally relevant details–.

5. In addition, the relatives of Marisol Olaya Castañeda filed suit against the Colombian State for direct reparations on November 2, 2006. On October 5, 2010, the trial court judgment was issued denying the claims of the suit. On October 10, 2013, the appeals court judgment was issued confirming the trial court judgment.

The Colombian State

6. The State submits information on the criminal investigation and the suit for direct reparations, in addition to its arguments on the inadmissibility of the petition.

Military criminal investigation

7. According to Colombia, at noon on November 22, 2004, Special Group BCG 72 of the Mobile Brigade reported an armed confrontation with presumed FARC subversives to the 64th Preliminary Criminal Investigation Court Martial. According to the report, the clash resulted in the deaths of five people. Based on this information, the judicial authority went to the Artillery Battalion No. 09 Tenerife—accompanied by officers of the CTI of Neiva—to take over the case. Urgent procedures were carried out at the battalion, including the inspection of the bodies, which were later sent for autopsy. Witness statements were also taken and a detailed

⁵ 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.

patrol report was requested.

8. Subsequently, in an order dated November 30, 2004, the 97th Preliminary Investigation Court Martial opened inquiry 069. This investigation was initiated against military personnel Freyle Aramis Junior, José Gabriel Mora Tinoco, Ángel Yovany Sánchez Loaiza, Carlos Audi Castaño Angulo, Hermenegildo Vega López, Eider Cardona Vargas, Jhon Freddy Ortiz, and Blandy Alexis Román Murillo, who voluntarily confessed to being responsible for the homicides of the five individuals, including the alleged victim. The evidence collected in the investigation included the military order, the patrol report, corpse collection report 041, the seized material, the death certificate, photographs, autopsy report 2004P-00334, a ballistic analysis, and the statements of Luz Dary Morales Patiño (mother of Humberto Valvueda Morales alias "Yerbas"), María Hilda Díaz Murcia (mother of José Luis Tole Murcia alias "Chepe"), and María Doris Castañeda Plazas, as well as the accounts given by the soldiers.

9. After examining the evidence, on May 23, 2005, the court in charge of the case declined to open a formal criminal investigation against the soldiers. The decision was based on the body of evidence indicating that the Centauro Company of the 9th Mobile Brigade acted in compliance with a legal order issued by commanding officer during a military operation. The court found that on the day of the facts, the soldiers took actions that were within the framework of their constitutional and legal functions. They had set up a military checkpoint to control the actions of illegal groups operating in the area, as part of the "Opito Caqueteña" operation. While operating the checkpoint, the military stopped a vehicle with characteristics similar to the one used by alias "Yerbas," a member of the FARC. According to military testimonies, upon noticing the checkpoint, the vehicle slowed down, at which point they observed that its occupants were carrying weapons and wearing camouflage. The five people in the vehicle who lost their lives were identified as suspected FARC members. Based on these findings, the Court issued a waiver of prosecution, declining to open a formal investigation.

Suit for direct reparations

10. The State indicates that the next of kin of Marisol Olaya Castañeda filed suit against the Ministry of Defense-National Army for direction reparations. The First Administrative Circuit Court of Florencia, Caquetá, ruled on the suit on October 5, 2010, denying its claims. The First Court explained that in order for the State to be held financially liable, the wrongful damage alleged must be caused by an action or omission of public officials. In the case in question, it determined—based on evidence from the military criminal proceedings and the decision of the 97th Preliminary Criminal Investigation Court Martial—that Marisol Olaya Castañeda's death was the result of a clash with the FARC. The court concluded that Marisol Olaya was part of the insurgent group, therefore, the fault for her death lies exclusively with her, and it exonerated the State from liability for wrongful damage.

11. The alleged victim's next of kin appealed this decision and requested a new evaluation of the evidence submitted to the proceedings. They argued that the trial court erroneously evaluated the facts and evidence. The appeal was heard by the Administrative Court of Caquetá, which upheld the trial court decision on October 10, 2013.

12. The appeals court determined that based on the documents in the case file, Marisol Olaya's death took place as described by the members of the 09 Mobile Brigade, who were working a checkpoint as part of the operation "Justicia Opito Caqueteña." The Court cited the patrol report of Counter-Guerrilla Battalion No. 72, indicating that alias "Yerbas" was collecting extortion payments and traveling in a red Toyota. While setting up the checkpoint, the soldiers stopped a similar vehicle, and its armed and uniformed occupants began firing on them. This report was confirmed by the statements of a captain and six soldiers before the military criminal justice system. Thus, the Court concluded that the death of the alleged victim was not a failure of service, but the army's reaction to an armed attack. The court found that even if the victim did not act maliciously, her conduct is what caused the damage.

Conclusions of the State

13. The State argues that the date on which this decision was filed before the IACHR is past the six-month deadline given: i) the final decision handed down in the criminal proceeding on May 23, 2005, and ii) the final decision from the adversarial administrative court, handed down on October 10, 2013, and executed on October 24, 2013.

14. Likewise, with respect to the suit for direct reparations, it argues that, in the domestic jurisdiction, the suit for direct reparation is the appropriate and effective remedy to guarantee effective reparation in cases of possible human rights violations attributable to the State.

15. With respect to the criminal investigation, it notes that the military criminal justice system is compatible with inter-American and national jurisprudence. In this sense, it argues that the decision of the Inter-American Court of Human Rights in the case of *Rodríguez Vera and Others v. Colombia* established that military criminal jurisdiction should be restrictive and exceptional, judging only crimes committed by active-duty military personnel that affect legal rights under the military order. In addition, it clarifies that pursuant to national jurisprudence, military criminal jurisdiction in Colombia is applied restrictively and exceptionally and governed by the following rules: i) only crimes that fall within the sphere of the security forces functions are investigated, excluding actions with criminal intent; ii) grave human rights violations are excluded; iii) if there is doubt as to jurisdiction, the case must be heard by the ordinary courts.

16. Lastly, the State argues that the criminal investigation respected and guaranteed the due process of the alleged victim's next of kin, pointing out that the decision adopted by the military criminal justice system cannot be considered to violate the American Convention because its grounds take into account the applicable matters of fact and law. Additionally, the decision was adopted within the bounds of the respective jurisdiction and based on a reasoned analysis of the evidence put forward in the investigation and in keeping with the norm's of the State's internal law.

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

17. The main subject of the petition is the alleged extrajudicial killing of Marisol Olaya Castañeda, the impunity to date, and the failure to provide full reparations to the alleged victim's next of kin.

18. 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.⁶ This burden falls to the State as its own legal duty. It is not merely a manager of private interests, nor does it depend on the initiative of private individuals or provision of evidence by them.⁷

19. In this case, according to the information provided by the parties, the Commission notes that following the death of the alleged victim on November 22, 2004: i) on the same day, Special Group BCG 72 of the Mobile Brigade reported an armed confrontation to the 64th Preliminary Investigation Criminal Court Martial that resulted in the deaths of five people, the alleged victim among them; ii) the judicial authority went to Tenerife Artillery Battalion 09 to take over the case and perform the initial investigative steps; iii) on November 30, 2004, the 97th Preliminary Investigation Criminal Court Martial opened preliminary

⁶ 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.

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

investigation 069 into the eight soldiers identified as those allegedly responsible for the murders of the five individuals; iv) after examining the evidence, on May 23, 2005, Court 97 issued a waiver of prosecution, declining to open a formal criminal investigation against the soldiers. The facts described, therefore, were investigated only by the military criminal jurisdiction. Indeed, the information provided by the parties does not indicate that the facts have been examined by the ordinary criminal jurisdiction, nor by the special jurisdictions created by the State of Colombia to hear possible human rights violations similar to those alleged here.

20. The military criminal jurisdiction is not the appropriate forum to investigate facts like the ones alleged. According to the petition, the alleged victim, Marisol Olaya Castañeda, a 17-year-old girl who worked in the fields to help support her family, was traveling in a Toyota pickup truck with other workers on their way to work when soldiers opened fire on the vehicle; the multiple gunshots and explosions caused the instant deaths of the alleged victim and the other occupants, and they had no time to react. The State had an obligation to conduct an impartial investigation of such serious facts attributed to military personnel, but this was hindered by the involvement of the military criminal jurisdiction.

21. The facts described above are therefore in line with the settled case law of the Inter-American Commission, according to which military jurisdiction does not provide an adequate remedy for investigating, trying, and punishing alleged violations of the human rights enshrined in the American Convention that are allegedly committed by members of the armed forces or with their collaboration or acquiescence. The decision of the Inter-American Court of Human Rights in the case of *Rodríguez Vera and Others v. Colombia*, cited by the State, reinforces this conclusion: i) the case concerned grave human rights violations involving State military personnel, ii) the domestic investigations were conducted by the military criminal jurisdiction, and iii) the Inter-American Court concluded that, "the military criminal jurisdiction is not the competent jurisdiction to investigate and, if appropriate, to prosecute and to punish the perpetrators [...]; rather the prosecution of those responsible always corresponds to the ordinary justice system."⁸ Taking into account the above and its reiterated precedents, the IACHR concludes that in this case, given that the investigations were carried out and archived by the military criminal jurisdiction, the exception set forth in Article 46(2)(b) of the Convention applies.⁹

22. 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 on a different standard of appreciation than that used to determine the possible violation of Articles 8 and 25 of the Convention.

23. 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 2004; the petition was filed in 2014; and the effects of the alleged violations in terms of the alleged impunity persist to the present day.

24. Lastly, regarding the State's argument that the petition missed the filing deadline with respect to the suit for direct reparations, the last decision was issued on October 10, 2013, and executed on October 24, 2013. However, the petition before the IACHR was submitted on July 7, 2014. The Commission therefore concludes that this argument falls outside the factual framework of this case. However, the Commission will examine the possibility that the State is internationally responsible for the alleged violations, in accordance with the established factual framework. In the subsequent deliberation stage, if it concludes that there were human rights violations attributable to the State, it may order the relevant measures of reparation.

⁸ See: Inter-American Court of Human Rights. Case of Rodríguez Vera et al. v. Colombia. Judgment of November 14, 2014, Preliminary Objections, Merits, Reparations, and Costs, para. 443.

⁹ IACHR. IACHR Digest on Admissibility and Competence Criteria. OEA/Ser.L/V/II.175 Doc. 20, March 4, 2020, paras. 219-220; IACHR Report No. 154/17, Petition 239-07. Admissibility. Nicanor Alfonso Terreros Londoño and family. Colombia. November 30, 2017, para. 10; IACHR, Report No. 107/17, Petition 535-07. Admissibility. Vitelio Capera Cruz. Colombia. September 7, 2017, para. 8.

VII. ANALYSIS OF COLORABLE CLAIM

25. 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 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.

26. In the instant case, the Commission notes that the main claim of the petitioner is centered on the extrajudicial killing of Marisol Olaya Castañeda, the failure to investigate and punish the facts, and the failure to provide her relatives with comprehensive reparations for the related damage.

27. The IACHR takes note of the petitioner's allegation regarding the manipulation of the crime scene by the military. The Commission additionally notes that, so far, according to the information provided by the parties, the facts were investigated within the scope of the military criminal justice system, with no investigation having been launched in the appropriate ordinary system.

28. The Commission also notes that the same information provided indicates that the alleged victim, Marisol Olaya Castañeda, was 17 years old at the time of her death, which further amounts to a possible violation of the rights of the child protected by Article 19 of the Convention.

29. 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 petitioner's 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 fundamentally of articles 4 (life), 5 (humane treatment), 8 (judicial guarantees), and 25 (judicial protection) of the American Convention, read in conjunction with its Article 1(1), to the detriment of Marisol Olaya Castañeda and her next of kin, pursuant to the terms of this report.

30. With respect to Article 10 of the Convention (right to compensation) alleged by the petitioner, the Inter-American Commission clarifies that this does not apply to the facts described, since it refers to the right of all persons to be compensated in the event of having been convicted in a final judgment for a miscarriage of justice.

31. With respect to the State's "fourth instance formula" argument, the Commission stresses the complementary nature of the inter-American system and emphasizes that, as indicated by the Inter-American Court, in order for a "higher court" exception to proceed, it must be found to apply for review of "the decision of the domestic court, based on its incorrect assessment of the evidence, the facts or domestic law without, in turn, alleging that such decision was a violation of international treaties [...]."¹⁰ In this case, the Commission finds that, as indicated by the Inter-American Court, "it is up to the Court to ascertain whether or not the State, in the steps effectively taken at domestic level, violated its international obligations stemming from those Inter-American instruments that grant authority to the Court."¹¹ Likewise, it must examine "whether or not the actions of the judicial bodies constitute a violation of the State's international obligations, [which] may lead the Court to examine the corresponding domestic proceedings in order to establish their compatibility with the American Convention."¹² In this sense, analysis of whether the State violated the American Convention is a

¹⁰ Inter-American Court. Case of Cabrera García and Montiel Flores v. Mexico. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 26, 2010. Series C No. 220, para. 18.

¹¹ Inter-American Court. Case of Cabrera García and Montiel Flores v. Mexico. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 26, 2010. Series C No. 220, para. 19.

¹² Inter-American Court. Case of Palma Mendoza et al. Ecuador. Preliminary Objection and Merits. Judgment of September 3, 2012. Series C No. 247, para. 18; Inter-American Court. Rosadio Villavicencio v. Peru. Preliminary Objections, Merits, Reparations, and [continúa...]

matter to be decided in the merits of this case.

VIII. DECISION

1. To declare this petition admissible with regard to articles 4, 5, 8, 19, 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 25th day of the month of October, 2024. (Signed:) Roberta Clarke, President; José Luis Caballero Ochoa, Second Vice President; Arif Bulkan, and Gloria Monique de Mees, Commissioners.