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REPORT No. 72/16
PETITION 694-06
REPORT ON ADMISSIBILITY

ONOFRE ANTONIO DE LA HOZ MONTERO AND FAMILY
COLOMBIA

Approved by the Commission at its session No. 2070 held on December 6, 2016.
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Montero and Family. Colombia. December 6, 2016.

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ADMISSIBILITY REPORT
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I. SUMMARY

1. On July 8, 2006, the Inter-American Commission on Human Rights (hereinafter, “the Inter-American Commission,” “the Commission” or “the IACHR,” received a petition lodged by Cielo Marina de la Hoz Domínguez. Later, the petition against Colombia (hereinafter “Colombia” or “the State”) was supplemented by the NGO *Veedurías Ciudadanas Costa Caribe* (citizen oversight committee) (hereinafter, “the petitioners”). The petition was filed on behalf of Onofre Antonio de la Hoz Montero (hereinafter, “Mr. de la Hoz”) and his family.

2. The petitioners argue that members of the paramilitary groups “Self-Defense Forces of Colombia” (hereinafter, “AUC”), with the acquiescence of the police, kidnapped Mr. de la Hoz in the Corregimiento of Tío Gallo, El Piñon, Magdalena Department; that he is still missing and that the goods of his family were stolen. They declare that these facts have remained unpunished due to links between the AUC and renowned politicians from Magdalena Department, which contributes to a generalized context of impunity. They also argue that the rest of the family has been subjected to threats and that many of its members have been displaced to other cities since then. In turn, the State says that the petition is inadmissible, because the facts alleged therein do not tend to establish a violation of the human rights protected by the Inter-American system and because domestic remedies have not been exhausted.

3. Without prejudging the merits of the complaint, after examining the position of the parties and pursuant to the requirements established in Articles 31 to 34 of the IACHR Rules of Procedure (hereinafter, “Rules”) and in Articles 46 and 47 of the American Convention on Human Rights (hereinafter, “the American Convention” or “the Convention”), the Commission decides to declare the petition admissible in order to assess the allegations regarding the alleged violation of the rights set forth in Articles 3 (Right to Juridical Personality), 4 (Right to Life), 5 (Right to Personal Integrity), 8 (Right to a Fair Trial), 21 (Right to Private Property), 22 (Right to Freedom of Movement and Residence) and 25 (Right to Judicial Protection) of the American Convention in agreement with Article 1.1 of the same treaty, Article I of the Inter-American Convention on Forced Disappearance of Persons, and Articles 1 and 6 of the Inter-American Convention to Prevent and Punish Torture. The Commission moreover decides to notify the parties of its decision, to publish this report and include it in its Annual Report to the General Assembly of the Organization of American States.

II. PROCEEDINGS BEFORE THE IACHR

4. The IACHR received the petition on July 8, 2006 and additional information, on August 15, 2006. On February 3, 2011, the IACHR sent to the State a copy of the pertinent parts of the complaint and the additional information received during its first assessment, and granted it a two-month period to submit its observations, in accordance with Article 30.3 of the Commission’s Rules then in force. On August 2, 2011 the State’s reply was received; it was sent to the petitioners on August 9, 2011.

5. The petitioners filed additional observations on August 15, 2011 and June 21, 2016. The State, in turn, filed additional observations on September 14, 2011. These observations were duly sent to the other party.

¹ Commissioner Enrique Gil Botero, a Colombian national, did not take part in the discussion or voting on this petition, pursuant to Article 17.2 of the Inter-American Commission’s Rules of Procedure.

III. POSITION OF THE PARTIES

A. Position of the petitioners

6. The petitioners hold that the State is accountable for the violation of the rights of Mr. de la Hoz (a seller of cattle, aged 50 at the time of the facts alleged and the owner of a grocery store) and his family, for not having prevented the kidnap and forced disappearance of Mr. de la Hoz or the theft of family items, and for lack of investigation and punishment of the perpetrators. Moreover, they add that after the disappearance, Mr. de la Hoz's family members were subjected to threats and made to move to other cities.

7. According to the petitioners, on April 6, 1998, AUC members arrived in Corregimiento Tío Gollo, El Piñon, Magdalena Department; they called local residents to a meeting to tell them how they could help the AUC and said that all were obliged to attend. The petitioners allege that Mr. de la Hoz and his family attended the meeting and that the population was called to another meeting to be held on the following day. They argue that the following day in the morning AUC members went to Mr. Hoz's house –which was also a grocery store that belonged to the family– and requested Mr. de la Hoz's help, because being a businessman and the owner of a store, he was able to give them food. They allege that Mr. de la Hoz complied with the request and that the AUC members left the store, saying they would be back later. The petitioners argue that at about 9.30 in the morning, the AUC returned to his store and asked for a larger amount of food, saying that they intended to pay for the food once their leader was in town. They hold that Mr. de la Hoz again complied with the request, giving them the food and a purchase receipt. They allege that this time, some of the AUC people stayed in the store.

8. They say that around midday one of the AUC members approached Mr. de la Hoz and told him that the group leader wanted to have lunch with him, and that Mr. de la Hoz left with this man while the rest of the family stayed at home having lunch. They declare that some hours later, his family was upset and went out to look after him. They argue that some of the locals told the family that Mr. de la Hoz was in a property in the outskirts of the city, and that one of his daughters went to this place to see if this was true. They say that when she arrived at the property, she saw that Mr. de la Hoz was tied on the floor in a "chicken farm," how he was tortured and stoned, and how the alleged victim feared for his life.

9. They say that Mr. de la Hoz's daughter came home at about 3 pm and told the others about the situation of her father. They allege that on that day, the national police came to the city to fight the AUC, which finally did not happen due to negotiations between the police and the AUC. They argue that another of Mr. de la Hoz's daughters approached the national police officers who were speaking with an AUC member, and told them about her father being kidnapped and the circumstances in which he had been seen. They allege that the AUC member told the police that they did not want to do anything with Mr. de la Hoz, that he would be set free and that he was not tied. They allege that the police officers did nothing to verify Mr. de la Hoz's situation or set him free.

10. The petitioners also declare that after the police left, members of the AUC returned to Mr. de la Hoz's house and stole two vehicles that belonged to the family and a large quantity of goods from the grocery.

11. According to the petitioners, on the days after the reported facts, the AUC told Mr. de la Hoz's family members that they would set him free, but this never happened. They also heard that Mr. de la Hoz was allegedly taken to an estate owned by the AUC, where he was allegedly doing forced labor, but they were never able to verify this. They allege that the petitioners were able to speak with some of the police officers about his possible whereabouts, but that at moment they did not file a police report because they hoped Mr. de la Hoz would be set free.

12. They allege, however, that in March 1999, Mr. de la Hoz's family filed a report before the Colombian Public Prosecutor's Office (hereinafter, "the prosecutor") for Mr. de la Hoz's kidnap and disappearance, the theft of family items, and omission by the police. They allege that after the report, there was an investigation. They affirm that in the years that followed, they were alert to it, continuously requested

information or that the file was assessed, requested the offense reclassification as forced disappearance – instead of kidnap–, and appeared as the plaintiff in the investigation in order to further it.

13. They allege that despite their efforts and investigators' recommendation to investigate National Police officers, the investigation was suspended on June 28, 2002, after the prosecutor in charge of the investigation issued a restraining order "for lack of merits to open a criminal investigation." They inform that corruption and paramilitary influence over the local politics in Magdalena Department hampered the investigation and contributed to a generalized context of impunity.

14. They allege that on October 23, 2007, given the context of impunity and the impossibility to cooperate with the investigation, Mrs. Cielo Marina de la Hoz Domínguez (hereinafter, "Mrs. Cielo de la Hoz") requested the Public Prosecutor's Office to assign the criminal investigation to the Human Rights and Humanitarian Law Unit in the city of Barranquilla. They say that on February 15, 2008, the Public Prosecutor granted the request. They affirm that the investigation was since then resumed with and the offense reclassified as forced disappearance. Nevertheless, on June 21, 2016, the petitioners informed that 18 years after he went missing, Mr. de la Hoz's whereabouts were still unknown; that the investigation was not making any progress and that it was leading to the re-victimization of his family as they are continuously requested to bear witness. In this regard, they allege that there is unwarranted delay in the investigation and, as a result, denial of justice.

15. The petitioners moreover argue that after Mr. de la Hoz was kidnapped and disappeared, throughout the years his family members were many times subjected to threats from people wearing uniforms, and that these threats made that many family members moved away. As to this, they say that on February 14, 2000, Mrs. Cielo de la Hoz was appointed Police Central Inspector of Piñon and that in September of the same year, she had to move with her children due to threats from AUC members. Furthermore, the petitioners submit documents showing that on August 6, 2001, Mrs. Cielo de la Hoz was included in the Registry of Displaced Persons. They also say the situation of displacement continues to this date.

16. Based on the foregoing, the petitioners allege that the State is accountable for the forced disappearance of Mr. de la Hoz, still missing on the date of this report, and for not taking actions against the theft, the threats and the displacement that his family has been subjected to.

B. Position of the State

17. According to the State, the petition is inadmissible, since the allegations are not attributable to the State and the behavior of private parties does not tend to establish violations of the rights protected by the Convention and other treaties of the Inter-American human rights system. Also, it alleges inadmissibility on the grounds that the remedies under domestic law have not been exhausted and that the exceptions to this admissibility requirement are not applicable.

18. According to the State, Mr. de la Hoz's disappearance and the thefts reported by the petitioners are attributable to third parties, not to State officials. It also argues that under the jurisprudence of the Inter-American human rights system, the State could only be held accountable for failure to protect the alleged victim or investigate the facts, as well as for toleration, connivance or collaboration by State officials concerning the third parties that carried out the facts reported. It states, however, that in this case none of these accountability hypotheses apply.

19. With regards to its prevention and protection duties, the State says that neither Mr. de la Hoz nor his family members had reported a risk situation and that, therefore, State authorities were not able to prevent the facts reported. As to the obligation of investigation, it holds that the State authorities concerned opened an investigation against 19 individuals, including police officers, and that they continue working on the investigation. Moreover, it states that in this case there is no proof of connivance or cooperation, either through acts or omission, between State officials and the perpetrators of the facts reported.

20. The State adds that the remedies under domestic law have not been exhausted concerning the facts, the punishment of the perpetrators or the request for reparations, as set forth in Article 46.1 (a) of the American Convention.

21. Firstly, it argues that the State continues investigating the forced disappearance of Mr. de la Hoz and the thefts in order to clarify the facts and punish the perpetrators. In addition, it says that the investigation conforms to international standards and other procedural safeguards, and that it is not over due to the complexity of the case and the lack of cooperation of Mr. de la Hoz's family members. As a result, it says, the exceptions to the requirement of exhaustion of domestic remedies set forth in Article 46.2 of the Convention do not apply in this case. In this regard, it states that Mr. de la Hoz's daughters many times rejected to bear witness due to groundless alleged threats, and submits documents from the prosecutor saying that "the major obstacle to this investigation is the victim's daughters' rejection to bear witness." The State adds that one of Mr. de la Hoz's daughters appeared as the plaintiff in the investigation but did nothing to further it.

22. Furthermore, it argues that there is no lack of political will to investigate the facts and that the IACHR should dismiss the contextual information furnished by the petitioners in view that it is irrelevant to this case. It adds that the State has made institutional efforts to fight impunity concerning human rights violations.

23. Secondly, it argues that Mr. de la Hoz's family members never filed a petition for direct reparations to the administrative law court. According to the State, this is the adequate and effective means to obtain reparation for material and immaterial damages suffered as a result of the acts or omission by State officials. It alleges that the Inter-American Court many times has ruled on the adequacy and effectiveness of such remedy to redress material and immaterial damages, and that the Colombian jurisprudence has decided that this remedy can also be used for reparations consisting in satisfaction and guarantees of non-repetition.

24. The State acknowledges that "the nature of this type of remedy is not aimed at restoring the right to justice," and declares that "its adequacy and effectiveness are limited to the right to reparation and a partial contribution in the search of the truth." It alleges that it is a complementary means concerning the criminal action and non-exclusive, and that "the alleged victims should pursue and exhaust this remedy before resorting to bodies in the Inter-American system, at least when it comes to reparations for material and immaterial damages." It argues that the exceptions to the requirement of exhaustion of domestic remedies do not apply in relation with this remedy, because its filing depends exclusively on Mr. de la Hoz's family members but they never lodged it or were prevented from lodging it.

25. Based on the foregoing, the State says that it is not accountable for the violation of the alleged victims' rights as set forth in the instruments of the Inter-American human rights system. It also argues that domestic remedies have not been exhausted and that the exceptions to the exhaustion of domestic remedies requirement do not apply; and that, consequently, the IACHR should dismiss this petition.

IV. ANALYSIS ON COMPETENCE AND ADMISSIBILITY

A. Competence

26. Under Article 23 of the Commission's Rules and Article 44 of the American Convention, the petitioners are entitled to lodge complaints with the Commission. In the petition, the alleged victims are individualized persons whose rights the State of Colombia is bound to respect and ensure, as set forth in the American Convention. As to the State, the Commission declares that Colombia is a State party to the Convention since July 31, 1973, when it deposited its instrument of ratification of said treaty. As a result, the Commission is competent *ratione personae* to assess the petition. Moreover, the Commission is competent *ratione loci* to assess the petition, as it alleges violations that seemingly occurred within the territory of Colombia.

27. The Commission is competent *ratione temporis*, since by the time that the facts alleged in the petition are said to have taken place, the State was already bound to respect and ensure the rights protected by the Convention. Also, the Commission is competent *ratione materiae* regarding the alleged violations of human rights protected by the Convention.

28. The Inter-American Commission furthermore finds that Colombia committed itself to respect and ensure the rights enshrined in the Inter-American Convention on Forced Disappearance of Persons, and in the Inter-American Convention to Prevent and Punish Torture, since April 12, 2005, and January 19, 1999, dates on which it deposited the instruments of ratification of the above-mentioned treaties. Therefore, the Commission is also competent *ratione temporis* to hear the alleged violations that would have occurred or continued from the indicated dates.

B. Admissibility requirements

1. Exhaustion of domestic remedies

29. Under Articles 31.1 of the Rules and 46.1 (a) of the American Convention, for a petition to be admissible, domestic remedies must have been exhausted, in conformity with generally recognized principles of international law. This requirement is aimed at enabling national authorities to take cognizance of the alleged violation of a protected right and, if applicable, reverse the situation before it is heard by an international body. In turn, Articles 31.2 of the Rules and 46.2 of the Convention establish that the requirement of prior exhaustion of domestic remedies does not apply when: (a) the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated; (b) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or (c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

30. The petitioners hold that the alleged victims reported the forced disappearance of Mr. de la Hoz and the theft of his family goods, and that to this date, the investigation remains in the preliminary stage with no clarification of the facts, punishment of the perpetrators or reparation for the damages suffered. They declare that there is unwarranted delay in the investigation and that they have unsuccessfully tried to further it. In turn, the State declares that domestic remedies have not been exhausted, as there is an ongoing criminal investigation and the alleged victims did not file a petition for reparations for material and immaterial damages before the administrative law court.

31. The IACHR recalls that whenever there is an offense liable to prosecution *ex officio*, the State is obliged to promote and further the criminal prosecution² and that, in such cases, this is the adequate means to clarify the fact, sentence the perpetrators and decide on the corresponding criminal measures, as well as to enable other means of monetary measures³. As a result, and in view that the facts alleged by the petitioners tend to establish offenses liable to prosecution *ex officio*, the domestic proceedings that should be exhausted in this case is the criminal investigation, which should be carried out and furthered by the State.

32. The Commission takes note of the State's observations concerning the non-exhaustion of the petition for direct reparation before the administrative law court, and the adequacy and effectiveness of such means to obtain reparation for material and immaterial damages. However, the Commission sees that the State itself mentions the limitations of said remedy along with its inadequacy to provide full redress and justice to Mr. de la Hoz's family. Moreover, the Commission recalls that concerning petitions before the

² IACHR, Report No. 52/97, Case 11.218, Merits, *Arges Sequeira Mangas*, Nicaragua, February 18, 1998, par. 96; IACHR, Report No. 2/10, Petition 1011-13, Admissibility, *Fredy Marcelo Núñez Naranjo and Others*, March 15, 2010, para. 29.

³ IACHR, Report No. 34/15, Petition 191-07 and others. *Álvaro Enrique Rodríguez Buitrago and others*. Colombia. July 22, 2015, para. 244.

administrative law court, it has repeatedly argued that it is not an adequate means to assess the admissibility of a complaint of a nature such as this.⁴

33. The IACHR also takes note of the allegations by the State concerning the non-applicability of the exceptions to the exhaustion of criminal actions. Nevertheless, the Commission sees that the criminal investigation was suspended between 2002 and 2008 and that it is currently in its preliminary stage, according to the latest information furnished by both parties. Given this and that 18 years have passed since the alleged forced disappearance, the Commission decides that the exception to the exhaustion of domestic remedies set forth in Articles 46.2 (c) of the American Convention and 31.2 (c) of the Rules, is applicable in this case.

34. Due to their nature and object, Articles 46.2 of the American Convention and 31.2 of the Rules, are rules with autonomous content separate from the substantive provisions of the Convention. Therefore, the decision as to whether exceptions to the rule of exhaustion of domestic remedies provided for in said provision are applicable in this particular case are taken prior to and separately from an analysis of the merits of the matter, as it depends on a standard of assessment different from that used when determining violations of Articles 8 and 25 of the Convention. It should be clarified that the causes and effect that have hindered the exhaustion of domestic remedies in this case will be analyzed, as relevant, in the report that the Commission adopts on the merits of the case, in order to assess whether these constitute violations of the American Convention⁵.

2. Timeliness of the petition

35. Under Articles 46.1.b of the American Convention and 32.1 of the Rules, for a petition to be declared admissible by the Commission, it must be lodged within a period of six months from the date on which the alleged victim was notified of the final judgment. Concerning this complaint, the IACHR has declared the exceptions to the requirement of exhaustion of domestic remedies applicable, in accordance with Articles 46.2 (c) of the American Convention and 31.2 (c) of the Commission's Rules. In this regard, Articles 46.2 of the Convention and 32.2 of the Rules establish that in those cases where exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable term, as determined by the Commission.

36. In the case under assessment, the IACHR has declared the exceptions to the requirement of exhaustion of domestic remedies applicable, set forth in Article 46.2 (c) of the American Convention and 31.2 (c) of the IACHR's Rules. The petition to the IACHR was received on July 8, 2006, and the alleged facts that motivate the complaint began on April 7, 1998, and their effects seemingly continue to this date. Consequently, in view of the context and the characteristics of this case, the Commission believes that the petition was filed within a reasonable term and that the admissibility requirement concerning the timeliness of the petition is met.

3. Duplication of proceedings and International *res judicata*

37. From the case file, there is nothing to indicate that the subject matter of the petition is pending in another international proceeding for settlement or that it duplicates a petition already examined by this or by another international body. Therefore, inadmissibility requirements set forth in Articles 46.1 (c) and 47 (d) of the Convention and Articles 33.1.a and 33.1.b of the Rules do not apply.

⁴ See, e.g., IACHR, Report No. 15/95, Case No. 11.010, *Hildegard María Feldman*, Colombia, September 13, 1995; IACHR, Report No. 61/99, Case 11.519, *José Alexis Fuentes Guerrero and others*, Colombia, April 13, 1999, par. 51; IACHR, Report No. 43/02, Petition 12.009, *Leydi Dayán Sánchez*, Colombia, October 9, 2002, par. 22; and IACHR, Report No. 74/07, Petition 1136/03, Admissibility, *José Antonio Romero Cruz and others*, October 15, 2007; par. 34.

⁵ IACHR, Report No. 48/15, Petition 79-06. Admissibility. *Yaqui People*. Mexico. July 28, 2015, par. 56.

4. Colorable claim

38. The Commission must decide if the facts alleged tend to establish a violation of protected rights, under Articles 47 (b) of the American Convention and 34 (a) of the Rules of Procedure, or if the petition is 'manifestly groundless' or 'obviously out of order,' under Articles 47 (c) of the American Convention and 34 (b) of the IACHR's Rules. The assessment criteria for admissibility differs from that used for the assessment of the merits of the petition, since the Commission only undertakes a *prima facie* assessment to determine whether the petitioners have established the apparent or possible violation of a right protected by the American Convention on Human Rights. It is a general analysis not involving a prejudgment of, or issuance of a preliminary opinion on the merits of the matter.

39. Moreover, the corresponding legal instruments do not require a petitioner to identify the specific rights allegedly violated by the State in the matter brought before the Commission, although petitioners may do so. It is for the Commission, based on the system's jurisprudence, to determine in its admissibility report which provisions of the relevant Inter-American instruments are applicable and could be found to have been violated if the alleged facts are proven by sufficient elements.

40. The petitioners hold that the State is accountable for the violation of the rights of Mr. de la Hoz and his family members, for not preventing the disappearance of Mr. de la Hoz or the theft of his family's goods, finding the whereabouts or the situation of Mr. de la Hoz or investigating and punishing the perpetrators. They also allege that the State is accountable for the threats and displacement that Mr. de la Hoz's family has been subject to as a result of the complaint filed, and for the re-victimization of his family throughout the criminal investigation. In turn, the State argues that it is not accountable, since the facts are exclusively attributable to third parties and the State took diligent measures to investigate the facts and punish the perpetrators. It says, therefore, that the actions by the State do not constitute violations of rights protected by the instruments of the Inter-American system of human rights.

41. In view of the elements of fact and law filed by the petitioners, along with the nature of the matter brought to its attention, the IACHR believes that, if proved, the facts alleged may be possible violations of the rights protected in Articles 3, 4, 5, 7, 8 and 25 of the American Convention in accordance with Article 1.1 of the same treaty; Article I of the Inter-American Convention on Forced Disappearance of Persons, and Articles 1 and 6 of the Inter-American Convention to Prevent and Punish Torture, concerning Mr. de la Hoz. In addition, the Commission believes that if proved, the facts alleged could establish violations of the rights protected in Articles 5, 8, 21, 22 and 25 of the American Convention in accordance with Article 1.1 of the same treaty regarding Mr. de la Hoz's family members.

V. CONCLUSIONS

42. Based on the above elements of fact and law, the Inter-American Commission concludes that this petition meets the admissibility requirements set forth in Articles 31 to 34 of the Rules and Articles 46 and 47 of the American Convention, and without prejudgment of the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare this petition admissible with regard to Articles 3, 4, 5, 7, 8, 21, 22 and 25 of the American Convention in accordance with Article 1.1 of said treaty;
2. To declare this petition admissible with regard to Article I of the Inter-American Convention on Forced Disappearance of Persons;
3. To declare this petition admissible with regard to Articles 1 and 6 of the Inter-American Convention to Prevent and Punish Torture;

4. To notify the parties of this decision;
5. To proceed to the analysis of the merits of the matter; and
6. To publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of Panama, on the 6th day of the month of December, 2016. (Signed): James L. Cavallaro, President; Francisco José Eguiguren, First Vice President; Margarete May Macaulay, Second Vice President; José de Jesús Orozco Henríquez, Paulo Vannuchi, and Esmeralda E. Arosemena Bernal de Troitiño, Commissioners.