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REPORT No. 13/17
PETITION 1194-08
ADMISSIBILITY REPORT

JAVIER RODRÍGUEZ BAENA AND FAMILY
COLOMBIA

Approved by the Commission on January 27, 2017.

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PETITION 1194-08
 INADMISSIBILITY REPORT
 JAVIER RODRÍGUEZ BAENA AND FAMILY
 COLOMBIA
 JANUARY 27, 2017

I. PETITION INFORMATION

Petitioner:	<i>Fundación Jurídica Colombiana</i> [Colombian Legal Foundation] (<i>Corpojurídico</i>)
Alleged victim:	Javier Rodríguez Baena and family
State denounced:	Colombia
Rights invoked:	Articles 4 (right to life), 8 (right to a fair trial), 17 (rights of the family), and 25 (right to judicial protection) of the American Convention on Human Rights ²

II. PROCEEDINGS BEFORE THE IACHR

Date of petition's submission:	October 10, 2008
Date of petition's notification to the State:	January 23, 2014
Date of the State's first response:	May 31, 2014

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 of ratification deposited on July 31, 1973)

IV. ANALYSIS OF DUPLICATION OF PROCEEDINGS AND INTERNATIONAL RES JUDICATA, CHARACTERIZATION, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF SUBMISSION

Duplication of proceedings and international res judicata:	No
Rights declared admissible:	Articles 4 (right to life), 5 (right to humane treatment), 8 (right to a fair trial), and 25 (right to judicial protection) of the Convention in relation to Article 1(1) thereof (obligation to respect rights)
Exhaustion of domestic remedies or appropriateness of an exception:	Yes, exception under Article 46(2)(c) of the American Convention applies
Timeliness of submission:	Yes, under the terms of Section VI

¹ In keeping with the provisions of Article 1(2)(a) of the Commission's Rules of Procedure, Commissioner Enrique Gil Botero, a Colombian national, did not participate in the debate or the decision on this matter.

² Hereinafter, "the Convention."

V. FACTS ALLEGED

1. The petitioners state that on August 19, 2002, Javier Rodríguez Baena, taxi driver by profession, was kidnapped by the V Front of the Revolutionary Armed Forces of Colombia (FARC) on the highway to Chigorodó, La Fortuna, municipality of Mutatá, Department of Antioquia. The petitioners further state that Mr. Rodríguez Baena was kidnapped for extortion, [but] after the victim's economic situation was confirmed, he was freed on December 23, 2002. They indicate that when he was on his way back to the highway where he had been kidnapped, he came across an encampment of soldiers from the Colombian Army's 17th Brigade's Voltígeros Battalion, who executed him. They also indicate that the alleged victim's body was found in la Fortuna, 40 meters from a group of soldiers and paramilitaries, and that on December 24, 2002, two press outlets reported on "the accidental homicide by the Army."

2. The petitioners state that an investigation was conducted by the Specialized Office of the Prosecutor of Apartadó, whose prosecutor was the wife of the Chigorodó Police Commander, a subordinate of the Commander of the Colombian Army's 17th Brigade. They indicate that as a result, Mrs. Adriana Patricia Londoño Díaz, the alleged victim's wife, filed a petition on March 23, 2003 with the Specialized Office of the Prosecutor, requesting a change of prosecutor. This request was denied by the Section Director of the Medellín Office of the Prosecutor on April 25, 2003, who deemed that "the prosecutor apparently has no relationship to a member of the security forces." They add that from that point on Mrs. Londoño Díaz was threatened and intimidated by the prosecutor. On December 13, 2005, she filed another petition with the Specialized Office of the Prosecutor 41 of Urabá, requesting the case file number of the investigation and information on the status of the same. In keeping with the information provided, the Office of the Prosecutor Delegated to the Rural Antioquia Unified Action Group for Personal Liberty (GAULA) reported to her on January 12, 2005 and June 4, 2008 that the investigation conducted into the aggravated kidnapping by several FARC members was in its preliminary stage.

3. Furthermore, the petitioners assert that the army never initiated a disciplinary investigation, despite the fact that all the media outlets had pointed the finger at the army as being responsible for the alleged victim's death. They further assert that Mr. Rodríguez Baena's relatives filed a tort action against the Colombian Nation—National Army. On August 22, 2007, The Administrative Court of the Turbo Circuit, Antioquia, ruled on this action denying its claims, as it considered that "the exception with respect to the exclusive and decisive involvement of a third party—in this case the V front of the FARC—applies to the events that ended the life [of the alleged victim]."

4. The State affirms that the alleged victim was kidnapped by the FARC together with other individuals, some of whom were freed immediately. It further affirms that the purported presence of members of security forces 40 meters from where the body was found is false as at the time of the events there were no troops present there. The State asserts that the *Fiscalía General de la Nación* [Office of the Attorney General] (FGN) has acted diligently and within a reasonable timeframe to achieve the investigation, prosecution, and punishment of the perpetrators of Mr. Rodríguez Baena's kidnapping and subsequent homicide. Furthermore, the State reports that on August 19, 2002, the FGN launched an ex officio investigation of the kidnapping of the alleged victim and others, and on December 26, 2002, the FGN received a report from the Chigorodó Judicial Police giving an account of Mr. Rodríguez Baena's death. The State indicates that the Colombian Army filed a complaint regarding the events on August 30, 2002, which was amended on August 25, 2002 and January 3, 2003. It further indicates that on December 19, 2003, the Specialized Office of the Prosecutor 41 referred the proceedings as a matter of jurisdiction to the Office of the Specialized Prosecutor 48 delegated to the Rural Antioquia GAULA. Office of the Prosecutor 48 continued with the proceedings, and ordered the Antioquia GAULA Investigative Unit to take the necessary steps to identify the perpetrators and accomplices involved in Mr. Javier Rodríguez's kidnapping and homicide. Finally, the State indicates that the last proceedings were a legal inspection of the case file conducted by an investigator assigned to the FGN's National Unit of Human Rights and International Humanitarian Law on December 12, 2013.

5. The State holds, therefore, that domestic remedies have not been exhausted as the criminal proceedings regarding the alleged victim's homicide are still pending a decision and none of the exceptions

enshrined in Article 46(2) of the Convention are applicable. The State also points out that the alleged victim's family members did not file a civil action as part of the criminal proceedings, with which they could have intervened in the different measures taken by the FGN and opined on their content and scope, as well as requested and contributed evidence that they deemed necessary. The State adds that the criminal investigation has revealed material evidence that shows that the alleged victim's death was caused by FARC members. Furthermore, the State holds that the claims for reparations by the alleged victim's relatives as part of a tort action were denied in a duly reasoned opinion and in full compliance with the guarantees of due process. Finally, the State asserts that the perpetrators of the events that led to the petition were not agents of the state nor did they act with the State's authorization, support, or acquiescence, and that it has not been proven that the State was aware there was a situation of real and imminent risk which would have allowed it to prevent or avert the events denounced.

VI. EXHAUSTION OF DOMESTIC RESOURCES AND TIMELINESS OF SUBMISSION

6. The petitioners have indicated that according to the latest information they received that the criminal investigation of the alleged victim's homicide was in its preliminary stage. The State for its part points out that domestic remedies have not been exhausted inasmuch as the criminal investigation is pending.

7. In situations like the one at hand that include a complaint for violations of the right to life, domestic remedies that are to be considered for purposes of the petition's admissibility are with respect to the investigation and punishment of the perpetrators of such acts, which translate into domestic legislation regarding crimes subject to prosecution by operation of law. In this respect, the Commission notes that on August 19, 2002, the FGN took cognizance of Mr. Rodríguez Baena's kidnapping, opened a formal investigation, and learned of his death on December 26, 2002. As of the date of this report's adoption, more than 13 years later, said investigation is still in the preliminary stage. Thus, the Commission concludes that the exception to the exhaustion of domestic resources provided for under Article 46(2)(c) of the Convention is applicable in this case, with the provision that the causes and effects that have hindered exhaustion of domestic remedies in the instant case will be analyzed, as appropriate, in the report that the Commission adopts on the merits of the matter in order to confirm whether they indeed are violations of the Convention.

8. With respect to the administrative proceedings, the Commission reiterates that, for purposes of determining admissibility in a matter of this nature, a tort action is not a suitable remedy nor is its exhaustion necessary, given this such action is not appropriate for providing comprehensive reparations and justice to the family members.³ With respect the State's argument that the family did not file a civil action as part of the proceedings, the IACHR reiterates that the fact that the family did not make use of supplemental or complementary procedural tools in criminal proceedings the State is tasked with taking forward does not affect the analysis of compliance with the requirement of prior exhaustion to domestic remedies.⁴

9. As for the timeliness of the petition's submission, received by the IACHR on October 10, 2008, inasmuch as the exception to the exhaustion of remedies mentioned above is applicable and some effects of the events that are the subject of these claims are felt to date, in light of the context and characteristics of this case, the Commission considers that said requirement for admissibility has been fulfilled.

VII. CHARACTERIZATION OF THE FACTS ALLEGED

10. In light of the factual and legal arguments provided by the parties and the nature of the matter being heard, the Commission deems that, were the alleged responsibility of the State in Javier

³ IACHR. Report N° 72/16. Petition 694-06. Admissibility. Onofre Antonio de La Hoz Montero and Family. Colombia. December 6, 2016, paragraph 32.

⁴ IACHR. Report N° 31/15. Petition 10.522. Admissibility. Juan Fernando Porras Martínez. Colombia. July 22, 2015, paragraph 36.

Rodríguez Baena's death to be proven, as well as its failure to investigate and make reparations, these acts would characterize violations of the rights recognized in Articles 4 (right to life), 8 (right to a fair trial), and 25 (judicial protection) of the Convention, to the detriment of the alleged victim, and of Articles 5 (humane treatment), 8 (right to a fair trial), and 25 (judicial protection), to the detriment of his family members, all in keeping with Article 1(1) (obligation to respect rights) of the said instrument.

11. Additionally, as to the alleged violation of Article 17 (rights of the family) of the Convention, the IACHR notes that the petitioner does not provide arguments or supporting evidence to find, *prima facie*, a potential violation of said rights.

VIII. DECISION

1. To find this petition admissible with respect to Articles 4, 5, 8, and 25 of the Convention, in relation to Article 1(1) of said instrument;
2. To find this petition inadmissible with respect to Article 17 of the Convention;
3. To notify the parties of this decision;
4. To continue with the analysis of the merits of the matter; and
5. To publish this decision and include in its Annual Report to the Assembly General of the Organization of American States.

Done and signed in the city of San Francisco, California, on the 27 day of the month of February, 2017. (Signed): James L. Cavallaro, President; Francisco José Eguiguren, First Vice President; Margarete May Macaulay, Second Vice President; José de Jesús Orozco Henríquez, and Esmeralda E. Arosemena Bernal de Troitiño, Commissioners.