

OEA/Ser.L/V/II.164
Doc. 139
7 September 2017
Original: Spanish

REPORT No. 118/17
PETITION 1484-07
ADMISSIBILITY REPORT

CARMEN LUZ CUCHIMBA VALLEJO ET AL.
COLOMBIA

Approved by the Commission at its session No. 2098 held on September 7, 2017
164th Extraordinary Period of Sessions

Cite as: IACHR, Report No. 118/17. Petition 1484-07. Admissibility. Carmen Luz Cuchimba Vallejo et Al. Colombia. September 7, 2017.

REPORT No. 118/17¹
PETITION P-1484-07
 ADMISSIBILITY REPORT
 CARMEN LUZ COCHIMBA VALLEJO ET AL.
 COLOMBIA
 SEPTEMBER 7, 2017

I. INFORMATION ABOUT THE PETITION

Petitioning party:	Alberto Salazar Estrada
Alleged victims:	Carmen Luz Cochimba Vallejo et al.
State denounced:	Colombia
Rights invoked:	No articles of the American Convention on Human Rights are specified ²

II. PROCEDURE BEFORE THE IACHR³

Date on which the petition was received:	November 16, 2007
Additional information received at the initial study stage:	November 2, 2011
Date on which the petition was transmitted to the State:	March 26, 2012
Date of the State's first response:	July 13, 2012
Additional observations from the State:	August 16, 2016
Date on which the petitioner was notified of the possible archiving of the petition:	February 4, 2015
Date on which the petitioner responded to the notification regarding the possible archiving of the petition:	February 20, 2015

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 (the instrument of ratification was deposited on July 31, 1973)

IV. ANALYSIS OF 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
---	----

¹ Pursuant to provisions in Article 17.2.a of the IACHR Rules, Commissioner Luis Ernesto Vargas Silva, a Colombian national, did not participate in the debate or the decision on this matter.

² Hereinafter "the American Convention" or "the Convention." The petitioner invokes other international instruments such as the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights, and the European Convention on Human Rights.

³ The observations presented by each party were duly transmitted to the opposing party.

Rights declared admissible	Articles 4 (Life), 5 (Humane Treatment), 8 (Fair Trial), 19 (Rights of the Child) and 25 (Judicial Protection) of the Convention, in relation to its Article 1.1 (Obligation to Respect Rights)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, exception set forth in Article 46.2.c of the ACHR applies
Timeliness of the petition:	Yes, under the terms of Section VI

V. ALLEGED FACTS

1. The petitioner indicates that in the morning of August 26, 2007 armed individuals presumably belonging to the 48th Front of the Revolutionary Armed Forces of Colombia (FARC) violently entered “La Florida” estate property, located in the *vereda* of Villa Victoria, in Putumayo department, killing Carmen Luz Cuchimba Chamorro, Rómulo Ruales Sánchez, William Idilio Yela Rosero, Marta Irene Rosero Mora and Biviana Andrea Rodríguez and children Daniela Margoth Ruales Rosero (aged 15), Marta Natalia Ruales Rosero (aged 4), Magdalen Danitza Yela Cuchimba (aged 3) and Anderson Mauricio Guanga Rodríguez (aged 3). He claims that their bodies had bruises and bullet wounds.

2. He claims that the facts were denounced by the father of one of the alleged victims before the 44th Sectional Prosecutor’s Office on August 29, 2007 and before the Municipal Office of Puerto Asís on August 30, 2007. He asserts, however, that the investigations have been ineffective and contrary to the right to judicial protection, in view of a countrywide context of unwarranted delay of justice and state corruption. With regard to this, he indicates that the authorities fail to investigate crimes committed by illegal armed groups in the country, whether they are paramilitary or guerrilla groups; and that said cases are archived or closed and that perpetrators remain unpunished. In addition, he indicates that he did not file a claim for damages in the administrative jurisdiction, as the courts would fail to be impartial.

3. Lastly, he claims that the state authorities did not adopt the measures necessary to protect the alleged victims’ life, as they failed to protect them despite the threats that the alleged victims had received from the illegal armed groups. In this regard, the petitioner attaches news articles on the facts, in which the then Putumayo’s Police commander declared that Rómulo Ruales Sánchez, the alleged victim who owned “La Florida” property, had been repeatedly threatened in view of his refusal to pay extortion taxes known as “*vacunas*” to the FARC.

4. The State claims that the facts do not establish human rights violations in view of the fact that the alleged victims’ death are not attributable to the State, as it was perpetrated by FARC elements. It underlines that it was unable to foresee the events and that although an investigation is underway, no judgment has been issued proving that the killings had been foreseen.

5. In addition, the State submits that the domestic remedies have not been exhausted, as the court has not yet ruled on the merits in the framework of the criminal proceedings filed to determine the facts. Therefore, it indicates that on August 26, 2007 the 44th Sectional Prosecutor’s Office before the Circuit Courts of Puerto Asís opened an investigation for the crime of aggravated murder of the alleged victims. Later, on November 13, 2007 the investigation procedures were reassigned to the National Human Rights and International Humanitarian Law Unit of the Prosecutor-General’s Office, and on November 27, 2007 to the 41st Specialized Prosecutor’s Office, where inquiries are being conducted.

6. In this regard, the State claims that the alleged victims never filed a claim for damages before the administrative law court, which is the appropriate and effective remedy to seek reparations. It also indicates that given that the deadline to resort to said jurisdiction is of two years following the day of the facts, in this case the deadline for said claim was due on February 27, 2009. It asserts that therefore the petitioner is not entitled to seek compensation for material and immaterial damages before the Inter-American System, in view of his tacit waiver of his right to that type of reparation.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

7. The petitioner submits that the father of one of the alleged victims filed a complaint before the Sectional Prosecutor's Office on August 29, 2007. Nevertheless, he claims that it is of no use to bring a case before state bodies in view of the lack of judicial protection and impartiality in Colombia; as a result, he did not file any more lawsuits. The State, for its part, indicates that the domestic remedies have not been exhausted in the criminal jurisdiction, since the investigation is still underway, and in view of the fact that the petitioner did not file a claim for damages before the administrative law court.

8. The Commission recalls that in cases where possible violations of the right to life are involved the domestic remedies to be considered for the purpose of admissibility are those concerning the investigation and punishment of the persons responsible, which translate into the domestic legislation on criminal offences subject to prosecution *ex officio*. In this case, the Commission notes that, according to the available information on the facts of violence leading to the death of the alleged victims, a criminal investigation was open on August 26, 2007 and is still in progress. As to the proceedings before the administrative law court, based on the information submitted, the IACHR recalls that for the admissibility of a petition of the nature of this claim, said jurisdiction is inappropriate and its exhaustion unnecessary, as it is inappropriate to provide full redress and justice to the alleged victims' families.⁴

9. Therefore, in view of the characteristics of this case, the Commission considers that the exception to the requirement of exhaustion of domestic remedies established in Article 46.2.c of the American Convention is applicable. Moreover, the IACHR notes that the petition was lodged within a reasonable time and thus the admissibility requirement of timeliness is met.

VII. COLORABLE CLAIM

10. In view of the elements of fact and law presented by each party and the nature of the matter brought to its attention, the Commission considers that at the merits stage it will analyze whether the State's alleged knowledge of the risk situation of the alleged victims, their subsequent death and the purportedly excessive duration of the criminal investigation allegedly still underway ten years after the facts establish possible violations of the rights enshrined in Articles 4 (Right to Life), 5 (Humane Treatment), 8 (Fair Trial) and 25 (Judicial Protection) of the ACHR, in relation to its Article 1.1, to the detriment of the abovementioned persons and their family members accordingly. Likewise, in view of the fact that four of the alleged victims were children, the facts might establish a possible violation of Article 19 (Rights of the Child) of the Convention, in relation to its Article 1.1.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 4, 5, 8, 19 and 25 of the American Convention, in connection with its Article 1.1;

2. To notify the parties of this decision;

3. To continue with the analysis on the merits; and

4. To 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 in the city of México, on the 7 day of the month of September, 2017. (Signed): Francisco José Eguiguren, President; Margarette May Macaulay, First Vice

⁴IACHR, Report No. 72/16, Petition 694-06, Onofre Antonio de la Hoz Montero and family. Colombia, December 6, 2016, par. 32.

President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice President; José de Jesús Orozco Henríquez, Paulo Vannuchi, and James L. Cavallaro, Commissioners.