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**REPORT No. 28/17**  
**PETITION 1710-07**  
REPORT ON ADMISSIBILITY

ALEXANDER SEGUNDO MIENTES GARCÍA AND OTHERS  
COLOMBIA

Approved by the Commission at its session No. 2077 held on March 18, 2017.  
161<sup>th</sup> Regular Period of Sessions.

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**I. INFORMATION ABOUT THE PETITION**

<b>Petitioning party:</b>	Anibal Rafael Mercado Salcedo
<b>Alleged victims:</b>	Alexander Segundo Muentes García and Others <sup>1</sup>
<b>State denounced:</b>	Colombia
<b>Rights invoked:</b>	Articles 1.1 (Obligation to Respect Rights), 4 (Right to Life), 5 (Right to Humane Treatment), 8 (Right to a Fair Trial), 19 (Rights of the Child) and 25 (Right to Judicial Protection) of the American Convention on Human Rights <sup>2</sup>

**II. PROCEDURE BEFORE THE IACHR<sup>3</sup>**

<b>Date on which the petition was received:</b>	September 4, 2007
<b>Date on which the petition was transmitted to the State:</b>	September 27, 2011
<b>Date of the State's first response:</b>	January 6, 2012
<b>Additional observations from the petitioning party:</b>	May 15, 2015
<b>Additional observations from the State:</b>	April 26, 2016

**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 (deposit of instrument of ratification on July 31, 1973); Inter-American Convention on Forced Disappearance of Persons (deposit of instrument on February 11, 2004)

**IV. ANALYSIS OF 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
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<sup>1</sup> The petition refers to 37 alleged victims specified in the annex hereto (35 allegedly disappeared and 2 killed).

<sup>2</sup> Hereinafter "the Convention" or "the American Convention."

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

<b>Rights declared admissible</b>	Articles 3 (Right to Juridical Personality), 4 (Right to Life), 5 (Right to Personal Integrity), 7 (Right to Personal Liberty), 8 (Right to A Fair Trial), 19 (Right of the Child), 22 (Freedom of Movement and Residence) and 25 (Right to Judicial Protection) of the Convention, in connection with Article 1.1 thereof; and Article I of the Inter-American Convention on Forced Disappearance of Persons
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes; exception established in Article 46.2(c) of the ACHR applies
<b>Timeliness of the petition:</b>	Yes, under the terms of Section VI

## V. ALLEGED FACTS

1. The petitioner declares that the alleged victims, rural workers from the town of Valencia, Department of Cordoba, were forcibly disappeared by paramilitary groups operating in the area, with the State's consent and collaboration between March 2, 1985, and May 2, 2003. The petitioner presumes that they were violently killed and alleges the impunity of said facts. Although the petition originally refers to the disappearance of 32 persons, it states that Gerardo Calle was killed on August 28, 1994, in a fire at the house where he was held. The petitioner indicates that Rigoberto Segundo Cogollo García, Fernando Alberto Calle Páez and Lenis Mejía were also being held in that house, but were taken from there by a group of armed individuals and then killed. At the same time, it is said that Eliecer José Cuabas Posso, aged five months, was brutally killed. Moreover, it is said that the family members of the alleged victims were unable to return to their domicile and therefore had to move.

2. The petitioner argues that given the generalized context of fear in the region, the alleged victims' family members had to wait several years until the paramilitary groups demobilized and adhered to the Justice and Peace Process, in order to be able to file the corresponding criminal complaints. He says that these were lodged between March and August 2006 with the Municipal Legal Representative of Valencia, the Municipal Legal Representative of Canalete, the Ordinary Municipal Court of Valencia or to the Twenty Second Special Prosecutor's Office at the Ordinary Courts of Tierralta and Valencia. He alleges that given the lack of results, on June 1, 2007, they filed a request for information on the progress of the legal proceedings to the Prosecutor's Office.

3. The State requests the Commission to dismiss the petition, inasmuch as it does not meet the basic requirements of interconnectedness of facts as set forth in the IACHR Rules of Procedure. Likewise, it argues that due to the long time elapsed between the alleged human rights violation and the presentation of this petition to the inter-American system, the petition is not timely and should therefore be declared inadmissible. Concerning the judicial investigations, it argues that as a result of the alleged disappearance of 32 persons,<sup>4</sup> the Office of the Prosecutor General (hereinafter "FGN") opened 24 investigations to determine the circumstances of time, manner and place of the alleged disappearances, identify the whereabouts of the alleged victims and attribute responsibility to those who participated in the killings, both masterminds and perpetrators. The State declares that eight of these investigations are in being carried out, seven at the preliminary stage, and one in pre-trial proceedings; the other sixteen are inactive given that ten cases were suspended and six were terminated due to the issuing of inhibitory resolutions.

4. With respect to the inactive investigations, the State argues that the FGN set up a Legal Technical Committee that is responsible for assessing each case in order to determine what evidence is required to reopen the investigation and which tasks must be carried out to obtain the said evidence, if

<sup>4</sup> In its observations, the State did not refer to the aforementioned disappearance of Lenis Mejía, Mario Escobar and Manuel Francisco Álvarez González or to the alleged deaths of Gerardo Calle and Eliecer José Cuabas Posso.

appropriate, as well as to recommend the undertaking of tasks that it believes are essential to further the investigations currently being carried out.

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

5. Before analyzing the exhaustion of domestic remedies and the timeliness of the petition, the Commission believes it is necessary to address the State's request to dismiss the petition. In this regard, the Commission establishes that under Article 29.4 of its Rules for petitions to be processed in the same case file, it is not necessary that the facts, the victims and the violations described in a petition strictly coincide in terms of time and place.<sup>5</sup> The Commission processes individual cases associated with numerous purported victims who allege violations taking place in different times and places but which allegedly have the same cause, such as the enforcement of legal rules or the existence of the same pattern of conduct. In this regard, the Commission decides to join petitions and cases that address similar facts, involve the same persons, or reveal the same pattern of conduct. As to this petition, given that the petitioner argues that the alleged facts were part of a purported plan or pattern of conduct of forced disappearances carried out by paramilitary groups in the town of Valencia, the Commission believes that in principle there is a connection between the several facts mentioned, which allows them to be processed together in the same case file.

6. The petitioner alleges that to this date the people responsible for the alleged disappearances and killings have not been investigated, prosecuted or punished, nor have their whereabouts been determined. The State asserts that several criminal procedures are currently in force to establish the truth concerning the forced disappearances reported and that, consequently, domestic remedies have not been exhausted. It also submits that the investigations are complex due to the geographical location of the place where the facts took place, the time elapsed, and the number of victims and possible perpetrators of the facts.

7. Concerning matters like this, which include complaints of forced disappearances and extrajudicial killings, the domestic remedies that are relevant as far as admissibility is concerned are those connected with the investigation and the punishment of the persons responsible, which is the domestic legislation applicable to offenses subject to ex officio prosecution. In this regard, the Commission notes that after the criminal complaints were lodged between March and August 2006, the State opened the corresponding criminal investigations but –over 10 years later– has not yet prosecuted or punished the persons allegedly responsible nor determined the whereabouts of the alleged victims disappeared.

8. At the same time, the State argues that the remedy of direct reparations at the administrative law court has not been exhausted. The petitioner declares that the alleged victims' family members were unable to file the corresponding complaints due to the generalized context of fear. The Commission recalls that in the case of forced disappearance of persons the pursuit or exhaustion of a civil action is not a requirement to resort to the inter-American system. A civil action is not a suitable remedy for the main complaint of this petition, an alleged forced disappearance and the subsequent lack of due diligence in the investigation, prosecution and punishment of the persons responsible.<sup>6</sup> In particular, the IACHR has previously commented on the remedy of direct reparations in Colombia as far as admissibility is concerned as stated above.<sup>7</sup>

9. As a result, the Commission concludes that the exception to the prior exhaustion of domestic remedies set forth in Article 46.2(c) of the Convention and in Article 31.2(c) of the Rules applies in the present case, on condition that the causes and the effects that have hindered the exhaustion of domestic remedies will be analyzed, as necessary, in the report that the Commission adopts on the merits of the case, in order to verify if these are actual violations of the Convention.

<sup>5</sup> IACHR, Report No. 5/97 (Admissibility), Petition 11.227, *Patriotic Union*, Colombia, March 12, 1997, paras. 39-42.

<sup>6</sup> IACHR, Report No. 51/10 (Admissibility), Petition 1166-05, *Tibú Massacres*, Colombia, March 18, 2010, paras. 110 and 120.

<sup>7</sup> IACHR, Report No. 18/14 (Admissibility), Petition 1625-07, *Y.C.G.M. and Family*, Colombia, April 3, 2014, par. 43.

10. Regarding the State's argument about the time elapsed between the facts and the presentation of the petition, the Commission notes that the criminal complaints were filed in 2006 and that the effects of the alleged violations continue to the date of the adoption of this report. Consequently, given that the petition to the IACHR was received on September 4, 2007, and in view of the context and the characteristics of the case, the Commission believes that the petition was presented in a reasonable time and that the admissibility requirement of timeliness is met.

## VII. COLORABLE CLAIM

11. The petitioner argues that the State is responsible for the disappearances and other related human rights violations committed by paramilitary groups against the alleged victims with the consent or collaboration of state agents, and that it has not established the truth concerning the facts reported nor punished the persons responsible, which establishes an unwarranted delay. The State argues that this petition describes a pattern of conduct proper to an illegal group of armed individuals whose actions do not compromise the State, which was unable to foresee the facts.

12. In view of the elements of fact and law presented by the parties and given the nature of the matter brought to its attention, the IACHR believes that, if proved, the alleged consent or collaboration of the State in the alleged forced disappearances as well as the alleged forced displacement and the lack of investigation could establish possible violations of the rights protected in Articles 3 (Right to Juridical Personality), 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the Convention, in connection with Article 1.1 thereof; Article I of the Inter-American Convention on Forced Disappearance of Persons to the detriment of the 37 alleged victims disappeared; and Articles 5, 8 and 22 (Freedom of Movement and Residence) and 25 in relation to Article 1.1 of the Convention to the detriment of the family members.

13. Likewise, if proved, the State responsibility for the alleged death of Gerardo Calle and Elicer José Cuabas Posso and the impunity concerning these facts could constitute violations of the rights enshrined in Articles 4, 8 and 25 of the Convention to the detriment of the alleged victims and Articles 5, 8 and 25 to the detriment of their family members; all in connection with Article 1.1 of the same instrument. Lastly, if it is proved that Rigoberto Segundo Cogollo García was 17 years old at the time of his alleged disappearance, the Commission shall analyze the possible violation of Article 19 (Right of the Child) of the Convention in the light of the United Nations Convention on the Rights of the Child, under the concept of *corpus juris*.

## VIII. DECISION

1. To find the instant petition admissible in relation to Articles 3, 4, 5, 7, 8, 19, 22 and 25 of the American Convention, in accordance with Article 1.1 thereof; and in relation to Article I of the Inter-American Convention on Forced Disappearance of Persons;

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.

Done and signed in the city of Washington, D.C., on the 18th day of the month of March, 2017. (Signed): Francisco José Eguiguren, President; Margarette May Macaulay, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice President, Paulo Vannuchi and James L. Cavallaro, Commissioners.

**Annex**  
**Names of alleged victims**

**Alleged victims of forced disappearances:**

1. Orlando Carlos Jiménez Ceballos
2. Rigoberto Segundo Cogollo García (aged 17)
3. Fernando Alberto Calle Páez
4. Lenis Mejía
5. Rodrigo Manuel Ramos Muentes
6. Dinio Fermín Páez León
7. Luis Miguel Barbosa Palencia
8. Pedro Darío Soto Argumedo
9. Luis Alberto Sotelo Ramos
10. Manuel Dolores Arteaga Márques
11. Javier Mauricio Aguirre Arteaga
12. Sofanor Antonio Suárez Zúñiga
13. Álvaro Darío Furnieles Álvarez
14. Arnulfo Enrique Humanes Sáenz
15. Elías German Humanes Salgado
16. Manuel Antonio Vargas Castillo
17. Mario Escobar
18. Darío Alberto López González
19. Luis Manuel Cuetto Herrera
20. Manuel Gregorio Arrieta Ortega
21. Luis Alberto Ávila Zuleta
22. Eugenio Rafael Ortiz Montes
23. Manuel Francisco Mendoza Buelvas
24. Capitolino Antonio Cancino Rivero
25. Clay Jhon Gaviria González
26. Rafael Arturo Álvarez González
27. Manuel Francisco Álvarez González
28. Orlando José Ubarnes Díaz
29. Iván Darío Guerra Ramos, disappeared together with his friends
30. Leónidas del Carmen
31. Cristóbal Antonio Garcés Guerrero
32. Alexander Segundo Muentes García
33. Manuel Salgado Hernández
34. Armando Salgado Hernández
35. Herminio Lacides Mader Pereira

**Alleged victims of extrajudicial killings:**

1. Gerardo Calle
2. Eliecer José Cuabas Posso