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REPORT No. 9/17
PETITION 481-08
REPORT ON ADMISSIBILITY

RUBÉN DARÍO OCAMPO HENAO ET AL
COLOMBIA

Approved by the Commission on January 27, 2017.

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I. PETITION INFORMATION

Petitioners:	Luis Carlos José Peña Rodríguez and Luis Francisco Peña Ramírez
Alleged victims:	Rubén Darío Ocampo Henao, Héctor Corrales Ocampo and families
State:	Colombia
Rights invoked:	No specific articles invoked

II. PROCEDURE BEFORE THE IACHR²

Date on which the petition was received:	April 23, 2008
Additional information received at the initial study stage:	October 12, 2011
Date on which the petition was transmitted to the State:	December 4, 2013
Date of the State's first response:	April 4, 2014
Additional observations from the petitioners:	August 1, 2014
Additional observations from the State:	December 30, 2014

III. COMPETENCE

<i>Ratione personae</i> competence:	Yes
<i>Ratione loci</i> competence:	Yes
<i>Ratione temporis</i> competence:	Yes
<i>Ratione materiae</i> competence:	Yes, American Convention on Human Rights ³ (ratification instrument 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 proceedings and international <i>res judicata</i>:	No
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¹ Commissioner Enrique Gil Botero, of Colombian nationality, did not participate in the deliberations nor in the decision in this case, in keeping with the provisions of Article 17(2)(a) of the Rules of Procedure of the Commission.

²All these comments were duly forwarded to the counter-party.

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

Rights declared admissible:	Articles 4 (right to life), 5 (right to humane treatment), 8 (judicial protection), 11 (right to honor and dignity), 22 (right to movement and residency and 25 (judicial protection) of the Convention, in conjunction with Article 1(1) (obligation to respect rights) and 2 (duty to adopt domestic legal provisions)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, exception Article 46(2)(a) of the ACHR applies
Timeliness of the petition:	Yes, pursuant to the terms of Section VI

V. ALLEGED FACTS

1. The petitioner stated that at approximately 20:00 hours on June 25, 2003, rural laborers Rubén Darío Ocampo Henao and Héctor Corrales Ocampo, first cousins, died in a rural area close to the city of Pereira, Risaralda department, at the hands of the Grupo Armado Unidos para la Liberación (GAULA). The group is made up of members of the National Army, the Office of the Attorney General of the Nation (FGN), and the Administrative Security Department (DAS). The deaths took place during an operation aimed at identifying and capturing individuals who were allegedly extorting the owner of local farm.

2. According to the petitioners, the alleged victims, members of poor rural working families, were passing by the place of the operation when the GAULA commander and a non-commissioned officer told them they were officers of the law and immediately fired upon them, killing them. They also state that the alleged victims were completely defenseless based on GUALA's superiority in terms of both manpower and weapons, and because the alleged victims were not capable of responding to the disproportionate and excessive use of force. In this regard, they indicate that the soldiers' argument that the victims fired upon them with an old shotgun was discredited by an expert report that found that this could not have happened because the weapon was in poor condition. They state that the operation's perimeter was guarded by 32 GUALA members, so if they had wanted to arrest the alleged victims, could have done so without resistance. The petitioners conclude that the reaction of the GUALA members was excessive and intended to "take them down" and "show them as a trophy in the fight against crime."

3. The case file of the criminal investigation provided by the petitioners indicates that on June 25, 2003, upon receipt of communication from SIJIN's Communications Center, the Second Local Public Prosecutor of the Pereira Quick Response Unit launched an investigation into the deaths of Mr. Ocampo Henao and Mr. Corrales Ocampo. The documentation indicates that the public prosecutor ordered a number of procedures performed, which were submitted on June 27, 2003, to the 56th Military Criminal Trial Court. The court opened a preliminary investigation for the crime of homicide of the alleged victims. The court collected a number of expert reports and testimony from the relatives of the alleged victims and those who participated in the operation. They argue that the conclusion of the writ of prohibition issued by the military criminal court arguing that the group acted in legitimate self-defense is a miscarriage of justice. They allege that the State violated the right to due process and rights to life and humane treatment of the alleged victims and their families, as well as their right to honor.

4. Moreover, the petitioners state that they filed a suit for reparations with the First Administrative Court of Pereira, which ruled in their favor on October 30, 2006. They note that the court concluded that GAULA used excessive force in the operation, as the alleged victims were cut down with bursts from an R-15, a powerful weapon with a long range. They indicate that after the Public Prosecutor filed an appeal, on July 12, 2007, the Adversarial Administrative Court of Risaralda overturned the ruling, finding that the State agents acted in legitimate self-defense. They state that the writ of protection filed before the Council of State against the judgment of the higher court was rejected as inadmissible. They were notified of this on December 6, 2007. Finally, they allege that as a result of the death of the alleged victims, their families were displaced and had to move somewhere else "to avoid revenge at the hands of radical right-wing groups."

5. The State indicates that in response to a complaint filed by the owner of a farm in the Pereira jurisdiction alleging acts of extortion and an attempt on his life, GAULA executed Fragmentary Operations Order 10 “Jockey” on June 25, 2003. Two State agents encountered the alleged extortioners (the alleged victims) there. They were armed and did not obey the order to halt given by the GAULA members. Instead, they pointed at them with their weapons. Therefore, given the need to protect their own lives, the agents fired on the alleged victims.

6. The State indicates that once the procedure of collecting the bodies was carried out by the Response Unit, the FGN forwarded the case to the 56th Court, as the National Army members were doing work inherent to their functions. It states that the process concluded with a writ of prohibition after finding that the soldiers’ conduct “was protected on the grounds that they were justified in that they reacted with their weapons to imminent attack to protect their lives and safety.” Regarding the adversarial administrative ruling, the State affirms the allegations made by the petitioners in the first and second instance. However, it alleges that the document on the protection action provided by the petitioners indicates it was presented to the Superior Council of the Judiciary and not the Council of State, making it impossible to verify if the entity had rejected it. The State concludes that conducting a process before criminal military justice does not per se violate human rights, nor does the fact that an administrative remedy has not produced a favorable result. It adds that rejection of the writ of protection against the ruling of the adversarial court on the grounds of inadmissibility did not violate due process or access to justice.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

7. According to the information provided by the parties, on June 27, 2007, the 56th Criminal Military Trial Court opened an investigation into the death of the alleged victims. The investigation concluded with a writ of prohibition. Regarding the use of military courts, the Commission has repeatedly ruled that they are not the appropriate forum for investigating the death of a civilian because they do not provide the required guarantees and therefore do not represent an adequate remedy for investigating, trying, and punishing alleged violations of the human rights enshrined in the American Convention.⁴ Therefore, the Commission finds application of the exception established in Article 46(2)(a) of the Convention admissible.

8. Regarding the adversarial administrative process, the Commission reiterates that for the purposes of determining the admissibility of the claim such as this one, a direct reparations process is not suitable, nor is its exhaustion necessary, as such a process is not adequate for providing comprehensive reparations and justice to the relatives.⁵

9. As far as the filing period, as an exception to the requirement of exhaustion of domestic remedies has been applied, and the petition was received on April 23, 2008, with the material facts of the claim beginning on June 25, 2003, and its effects as far as the allegations of denial of justice extending to the present, the Commission finds, in light of the context and characteristics of this case, that the petition was presented within a reasonable period of time.

VII. COLORABLE CLAIM

10. In view of the elements presented and the nature of the matter under consideration, the Commission finds that due to the nature of the pleadings of facts law presented by the parties largely disagree, they must be analyzed in the merits stage. Thus, should they be proven, the alleged improper actions of State agents in the death of the alleged victims, as well as the military court investigation, the alleged displacement of the relatives as a result of these facts, and the failure to provide reparations could represent possible violations of the rights recognized in Articles 4 (right to life), 8 (right to humane

⁴ IACHR, Report No. 70/14. Petition 1453-06. Admissibility. Maicon de Souza Silva. Renato da Silva Paixão et al. July 25, 2014, para. 18.

⁵ IACHR, Report No. 72/16. Petition 694-06. Admissibility. Onofre Antonio de La Hoz Montero and Family. Colombia. December 6, 2016, para. 32.

treatment), and 25 (judicial protection) of the American Convention, to the detriment of Mr. Ocampo Henao and Mr. Corrales Ocampo, as well as Articles 5 (humane treatment), 8, 11 (right to honor and dignity), 22 (right to movement and residency) and 25, to the detriment of their relatives, all in conjunction with the obligations enshrined in Articles 1(1) (obligation to respect rights) and 2 (duty to adopt domestic legal provisions).

VIII. THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS DECIDES

1. To declare this petition admissible in conjunction with Articles 4, 5, 8, 11, 22, and 25 of the American Convention, in relation to Articles 1(1) and 2 of the American Convention;
2. To notify the parties of this decision;
3. To continue with the analysis of the merits of this matter; and
4. To publish this ruling and include it in its Annual Report to the General Assembly 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.