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REPORT No. 97/18
PETITION 1071-07
REPORT ON ADMISSIBILITY

NAUDIN JOSÉ FAJARDO MARTÍNEZ *ET AL.*
(MASSACRE IN “LOS KATIVOS” FARM)
COLOMBIA

Approved electronically by the Commission on September 6, 2018.

Cite as: IACHR, Report No. 97/18, Petition 1071-07. Admissibility. Naudin José Fajardo Martínez *et al.* (Massacre in “Los Kativos” Farm). Colombia. September 6, 2018.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Javier Leónidas Villegas Posada
Alleged victims:	Naudin José Fajardo Martínez <i>et al.</i> ¹
Respondent State:	Colombia ²
Rights invoked:	Articles 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 11 (privacy), and 25 (judicial protection) of the American Convention on Human Rights; ³ Articles I, V, VIII, XI, XIII, XVIII, XXIII, XXV of the American Declaration of the Rights and Duties of Man; ⁴ and other international treaties ⁵

II. PROCEDURE BEFORE THE IACHR⁶

Filing of the petition:	August 20, 2007
Additional information received at the stage of initial review:	March 7 and June 27, 2013
Notification of the petition to the State:	March 26, 2015
State's first response:	July 21, 2015
Additional observations from the petitioner:	December 3, 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 (deposit of ratification instrument on July 31, 1973)

IV. 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
Rights declared admissible	Articles 4 (life), 5 (humane treatment), 8 (fair trial) and 25 (judicial protection) of the Convention, in relation to article 1.1 (obligation to respect rights) thereof
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, under the terms of Section VI
Timeliness of the petition:	Yes, under the terms of Section VI

¹ The petition was lodged on behalf of Naudin José Fajardo Martínez, Edgardo Pineda, José Facundo Ávila Ballesteros, Gabriel Durango Durango, and Dagoberto Galván Padilla, and their respective families (members identified in the annex).

² Pursuant to Article 17.2.a of the IACHR Rules of Procedure, Commissioner Luis Ernesto Vargas Silva, a Colombian national, did not partake in the discussion or the decision on this matter.

³ Hereinafter "Convention" or "American Convention."

⁴ Hereinafter "Declaration" or "American Declaration."

⁵ Article 14 of the International Covenant on Civil and Political Rights.

⁶ The observations submitted by each party were duly transmitted to the opposing party.

V. ALLEGED FACTS

1. The instant petition concerns the murder of Naudin José Fajardo Martínez, Edgardo Pineda, José Facundo Ávila Ballesteros, Gabriel Durango Durango, and Dagoberto Galván Padilla (hereinafter “the alleged victims”), rural workers who were members of SINTRAIINGO labor union, and supporters of Unión Patriótica political party (hereinafter “UP”); allegedly committed by members of the Popular Commandos—self-defense groups operating in the Urabá region, Department of Antioquia— who would have acted with the acquiescence of the State, which has ensured impunity for the events and the persons responsible.

2. The petitioner indicates that on December 9, 1993 members of the Popular Commandos entered “Los Kativos” banana farm, in the village of Río Grande of the Urabá region, municipality of Apartadó, department of Antioquia. Heavily armed and with had a list of the names of unionized workers, the assailants told all the workers to introduce themselves. Then they separated twelve workers—including the alleged victims—, forced these to lie down on the ground, and executed them by shooting them in the head. The petitioner alleges that not only were the alleged victims deprived of their right to life but they were also subjected to physical and psychological torture, as they were isolated from their peers, accused of being the enemy and forced to lie on the ground when their coworkers were killed.

3. According to the petitioner, the murders were a direct result of an omission, on the part of police officers and members of the Colombian Army’s 17th Brigade, to comply with the duty to protect, for despite being settled in the Municipality of Apartadó, these failed to take actions aimed at preventing the killings. Moreover, he claims that, for decades, the alleged victims’ families have lived in fear of reprisals due to the context of violence in said region; that, therefore, they were unable to file an administrative proceeding for damages.

4. The petitioner asserts that, in view of the abovementioned events, on January 18, 1994, the Prosecutor’s Office filed preliminary investigation no. 13,514, which gave rise to criminal proceeding no. 741—allegedly archived on March 29, 1996. He adds that in 1999, pressed by international bodies, the National Directorate of Prosecutor’s Offices created an investigation subunit in charge of hearing and furthering legal actions related to murders committed against UP members and union leaders. On January 24, 2000 this subunit ordered to reopen the investigation, collate a series of documents, background data, and evidence gathered through other similar investigations, and to undertake new proceedings. In criminal proceeding no. 741-UNDH, held before the First Criminal Court of the Special Circuit of Antioquia, and on the basis of several background data gathered from similar investigations, confidential testimonies, and defendant unsworn statements, authorities identified some of the members of the Popular Commandos. Thus warrants were issued for the arrest of at least five of its members, who were arrested, and two of them were charged. On March 18, 2003 the First Criminal Court sentenced the two defendants to 108 months in prison for criminal conspiracy. However, on December 9, 2003 the Criminal Chamber of the Superior Court of Antioquia revoked this judgment, by claiming lack of conclusive evidence of both defendants’ liability; and decided to acquit them and immediately release them from prison.

5. Consequently, the petitioner alleges that the offenses are yet to be punished and that the State must be held internationally responsible for the lack of investigation into state agents’ criminal liability for omissions. Finally, he claims that former members of paramilitary groups were appointed as officials of the Administrative Security Department (DAS, by the Spanish acronym), which demonstrates the connection between the State and the persons responsible for the reported events.

6. The State, for its part, refers to the application of the “fourth instance” doctrine because the criminal courts issued sentences that have been executed. It indicates that although the Superior Court of Antioquia acquitted two of the defendants on December 9, 2003 in the framework of an appeal proceeding, several convictions are in force. It submits that on May 18, 2006 the Supreme Court of Justice convicted Reálvale Sepúlveda Corrales, also known as “Alfonsito,” for sedition, to five years in prison; and that on September 3, 2010 the Superior Court of Antioquia upheld the sentence against Rafael Garcia, a.k.a. “Efraín,” for criminal association with terrorist aims and murder, in view of the executions committed in Los Kativos farm. It also asserts that on June 7, 2011 the First Special Court of Antioquia sentenced Olmer Anaya, a.k.a.

“Chollo,” and Dalson Lopez for criminal association with terrorist aims, in view of the same offenses, a resolution upheld by the Superior Court of Antioquia. In addition, it indicates that, in said proceedings, there were no violations of the rights to due process or judicial protection hence their lawfulness cannot be challenged. Therefore, it requests that this petition be declared inadmissible in the light of Article 47.c of the Convention.

7. The State moreover alleges the lack of exhaustion of domestic remedies in regard to reparations, since the petitioning party did not resort to the administrative jurisdiction through a claim for damages, which is an appropriate and effective remedy. It also claims that the petitioning party must provide evidence of the fear preventing the alleged victims from resorting to said jurisdiction. Lastly, it argues that the events do not constitute human rights violations since they are not attributable to the State, but to third parties, particularly, to illegal armed groups.

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

8. The petitioner claims more than two decades have passed since the events took place yet not all the persons responsible have been prosecuted or punished, and the alleged victims’ families have not been compensated for the State’s acts and omissions. The State, in turn, argues that four people have been convicted, by a final resolution, for the abovementioned events. As for reparations, it indicates that in the administrative jurisdiction remedies have not been exhausted.

9. The Commission observes that, in situations involving offenses against the rights to life and humane treatment, the domestic remedies to be exhausted for the purpose of admissibility are those concerning the investigation and the punishment of the persons responsible, in addition to enabling other forms of compensation.⁷ In the instant case, the Commission observes that although more than 20 years have passed since the events took place, it is alleged that not all the persons responsible have been investigated and punished. In view of the foregoing, the IACHR concludes that the exception to the requirement of prior exhaustion of domestic remedies established in Article 46.2.c of the American Convention applies to the instant case.⁸

10. Additionally, the IACHR recalls that, for the purpose of ruling on the admissibility of a petition, a claim for damages is neither appropriate nor necessary because it does not provide full redress or justice to the alleged victims’ families.⁹ Furthermore, the IACHR has consistently established that the determination of reparation whether determined judicially or administratively (with the two jurisdictions being mutually exclusive), does not exempt the State of its obligations related to the component of justice for the violations caused.¹⁰ In view of this, the IACHR concludes that, considering the characteristics of the petition and the time elapsed since the criminal proceeding initiated in 1994, the exception to the prior exhaustion of domestic remedies provided for in Article 46.2.c of the American Convention applies to the instant case.

11. As for the requirement of timeliness, given that the petition to the IACHR was received on August 20, 2007, the alleged facts matter of this complaint started on December 9, 1993 and their consequences persist to date, and the context and the characteristics of this case, the Commission finds that the petition was filed within a reasonable time and that the admissibility requirement concerning timeliness must be declared met.

⁷ IACHR, Report No. 49/14, Petition 1,196/07. Admissibility. Juan Carlos Martínez Gil. Colombia, July 21, 2014, par. 29.

⁸ IACHR, Report No. 126/17, Petition 861-03 *et al.* Admissibility. Silvia Elena Rivera Morales *et al.* (Girls and young women disappeared and murdered in Ciudad Juárez). Mexico. September 29, 2017; par. 24.

⁹ IACHR, Report No. 72/16, Petition 694/06. Admissibility. Onofre Antonio de La Hoz and Family. Colombia, December 6, 2016, par. 32.

¹⁰ IACHR, Truth, Justice and Reparation: Fourth report on [the] human rights situation in Colombia. December 31, 2013, par. 467.

VII. ANALYSIS OF COLORABLE CLAIM

12. In view of the elements of fact and law presented by the parties, the nature of the matter brought to its attention and the context of this complaint, the Commission believes that, if proven, the alleged violations of the rights to life and humane treatment to the detriment of the dead alleged victims, state agents' liability for omissions and the lack of investigation and punishment of all the persons responsible could tend to establish violations of the rights protected through Articles 4 (life) and 5 (humane treatment) of the American Convention in regard to Naudin José Fajardo Martínez, Edgardo Pineda, José Facundo Ávila Ballesteros, Gabriel Durango Durango, and Dagoberto Galván Padilla; and of Articles 5 (humane treatment), 8 (fair trial) and 25 (judicial protection) of the convention, in regard to their families, all articles in connection with article 1.1 (obligation to respect rights) thereof.

13. In addition, as for the alleged violations of Articles 7 (Personal Liberty) and 11 (Privacy) of the Convention, the IACHR observes that the petitioner does not submit allegations or evidence for a *prima facie* consideration of said possible violations.

14. With respect to the alleged violation of provisions of the American Declaration, the IACHR has previously established that once the American Convention takes effect in relation to a State, it is the Convention and not the Declaration that becomes the primary source of law applicable by the Commission, provided that the petition concerns an alleged violation of substantially similar rights enshrined in both treaties, like in this case. Therefore, the Commission will not analyze the alleged violations of the Declaration.

15. Lastly, as for the State's claim about the establishment of a court of "fourth instance," the Commission observes that in declaring this petition admissible it does not seek to overstep domestic courts' authority. In the merits stage, the Commission will analyze whether the domestic proceedings conformed to the rights of due process and judicial protection in accordance with the rights enshrined in the American Convention.

VIII. DECISION

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

2. To find the instant petition inadmissible in relation to Articles 7 and 11 of the Convention;
and

3. To notify the parties of this decision; to continue with the analysis on the merits; and 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 on the 6th day of the month of September, 2018. (Signed): Margarette May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice President; Francisco José Eguiguren Praeli, Joel Hernández García, Antonia Urrejola, and Flávia Piovesan, Commissioners.

Annex
List of alleged victims

- 1) Naudin José Fajardo Martínez
- 2) Rafael José Fajardo Martínez
- 3) Andrés Fajardo Martínez
- 4) Felicita Antonia Fajardo Martínez
- 5) Pablo Fajardo Martínez
- 6) Rosa Inés Fajardo Morelo
- 7) Rafael José Fajardo Morelo
- 8) Manuela Antonia Morelo Mestra
- 9) Edgardo Pineda
- 10) María Raquel Betancurt
- 11) Alba Elcy Pineda Betancur
- 12) Martha María Pineda Betancur
- 13) Luz Mari Pineda Betancur
- 14) Flor María Pineda Betancur
- 15) Luz Elena Tuberquía
- 16) Juan Camilo Pineda Tuberquía
- 17) Duvan Eduardo Pineda Tuberquía
- 18) Robin Alonso Pineda Tuberquía
- 19) José Facundo Ávila Ballesteros
- 20) Bertilda Ávila Hernández
- 21) Luz Mary Ávila Hernández
- 22) Santander José Ávila Hernández
- 23) Juan Bautista Ávila Hernández
- 24) Cipriana Hernández Ramos
- 25) Gabriel Durango Durango
- 26) Gabriel Antonio Durango
- 27) Marleny Durango Oquendo
- 28) Beatriz Helena Durango Oquendo
- 29) María Patricia Durango Oquendo
- 30) Amilvia Durango Oquendo
- 31) Sandra Cristina Durango Oquendo
- 32) Pedro Luis Durango Usuga
- 33) Samuel Arturo Durango Usuga
- 34) Luis Alfonso Durando Usuga
- 35) Carlos Hernán Durango
- 36) Nilson Walter Durango
- 37) María Uberlina Durango
- 38) Luz Marina Durango Usuga
- 39) Blanca Rubiela Durango
- 40) María del Rosario Sepúlveda Durango
- 41) José María Sepúlveda Durango
- 42) Luis Hernán Sepúlveda Durango
- 43) Carlos Enrique Durango Oquendo
- 44) Dagoberto Galván Padilla
- 45) Modesta López De Galván
- 46) Idalides Galván Padilla
- 47) Eduardo Galván Padilla
- 48) Edith María Padilla
- 49) Sonia Galván López
- 50) Luz Mariela Galván Padilla
- 51) Denis Galván Padilla
- 52) Jesús Padilla

- 53) Viviana Esther Galván Bravo
- 54) Jhon Carlos Galván Bravo
- 55) Dagoberto Galván Nadad
- 56) Marelis del Carmén Bravo Padilla