

OEA/Ser.L/V/II.
Doc. 103
27 July 2018
Original: Spanish

REPORT No. 89/18
PETITION 1110-07
REPORT ON ADMISSIBILITY

JUAN SIMÓN CANTILLO RAIGOZA, KEYLA SANDRITH CANTILLO VIDES
AND FAMILY
COLOMBIA

Approved electronically by the Commission on July 27, 2018.

Cite as: IACHR, Report No. 89/18. Petition 1110-07. Admissibility. Juan Simón Cantillo Raigoza, Keyla Sandrith Cantillo Vides, and Family. Colombia. July 27, 2018.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Fundación para el Desarrollo Social de las Condiciones Mínimas de Vida " <i>Mínimo Vital</i> " (Foundation for the Development of Minimum Living Conditions)
Alleged victims:	Juan Simón Cantillo Raigoza, Keyla Sandrith Cantillo Vides, and family ¹
Respondent State:	Colombia ²
Rights invoked:	Articles 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 19 (rights of the child) and 25 (judicial protection) of the American Convention on Human Rights, ³ in relation to Article 1.1 thereof (obligation to respect rights)

II. PROCEDURE BEFORE THE IACHR⁴

Filing of the petition:	August 26, 2007
Notification of the petition to the State:	November 23, 2011
State's first response:	March 21, 2012
Additional observations from the petitioner:	May 15, June 26 and September 4, 2012 and January 3, 2013
Additional observations from the State:	May 24, July 16 and October 16, 2012 and May 12, 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 instrument of ratification 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), 7 (personal liberty), 8 (fair trial), 13 (freedom of thought and expression), 19 (rights of the child), 22 (movement and residence) and 25 (judicial protection) of the American Convention, in relation to Article 1.1 thereof (obligation to respect rights)
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 19 family members of Juan Simón Cantillo Raigoza and Keyla Sandrith Cantillo Vides, all identified in the attached document.

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

³ Hereinafter "Convention" or "American Convention."

⁴ The observations submitted by each party were duly transmitted to the opposing party.

V. ALLEGED FACTS

1. The instant petition concerns the murder of Juan Simón Cantillo Raigoza and his daughter Keyla Sandrith Cantillo Vides, aged six, in the department of Cesar allegedly committed by members of the United Self-Defense Groups of Colombia (AUC, by the Spanish acronym), who operated in that region with the acquiescence of the State. Particularly, the petitioner denounces the State's failure to adopt measures aimed at protecting and ensuring Keyla Cantillo's rights, who lived in a vulnerable situation in a context of violence and insecurity, as well as the subsequent displacement of her family members and the lack of judicial clarification of facts.

2. The petitioner indicates that on April 8, 2002 at about 9:30 p.m. two heavily armed AUC members in balaclavas came to the house of Mr. Simón Cantillo and his partner, Ms. Miladis Vides, in Hernán Gómez neighborhood, in the municipality of Agustín Codazzi, department of Cesar. The petitioner explains that "in a selective act of private justice" the individuals violently broke into the domicile where Mr. Cantillo was sleeping with his daughter Keyla and shot him several times. It claims that when the assailants found that Mr. Cantillo was still alive, they proceeded to strike him around 18 blows with a machete until he was dead, and the girl was seriously injured. It asserts that the rest of the family members were locked up, the doors were locked from outside, and that the individuals broke the family's bicycles and threatened to kill the members if these tried to leave the house. It claims that the family members, as soon as they got to escape, took Keyla to the Rosario Pumarejo de López Hospital, where she died on April 12, 2002. The petitioner adds, as background information, that on April 8, 2002 AUC members killed other three peasants from that town who had called the police, who refused to come help them. It also indicates that only in the following morning was Mr. Cantillo's dead body removed. It submits that in view of the incidents and their fear of being killed, due to the death threats, Ms. Vides, Keyla's mother, was compelled to move together with her three sons and daughter to the outskirts of the city of Santa Marta, in the department of Magdalena.

3. According to the information submitted, on April 9, 2002, in view of the report issued by the Technical Investigation Team, the Twenty-Seventh Public Prosecutor's Office of Agustín Codazzi took on the criminal investigation into the murder of Mr. Cantillo. Later, on April 12, 2002, based on the *notitia criminis* issued by the Hospital, the Immediate Response Unit Ninth Prosecutor's Office filed an investigation into the murder of Keyla Cantillo. The petitioner explains that on May 2, 2002 the Twenty-Seventh Prosecutor's Office ordered to join the investigations, and that on September 30, 2002 the Judicial Police issued a concise report on the undertaken proceedings. It alleges, however, that on December 19, 2002 the Prosecutor's Office, on the sole basis of said police report and without having filed legal procedures aimed at clarifying the facts or heard the victims' family members and the witnesses of the events, decided to not initiate criminal proceedings because more than six months had passed yet the persons responsible had not been identified, ruling to archive the investigation. The petitioner indicates that on January 10, 2012, as a result of the instant petition, the Technical Legal Committee of the Public Prosecutor's Office ordered that the investigation be reopen. Nevertheless, it claims that it has never been able to access the case file. It denounces that on April 16, 2012 it requested the Twenty-Seventh Prosecutor's Office information on the current state of the investigation and to be granted access to copies of the proceedings, and that in view of the lack of response, it presented a constitutional appeal before the Criminal Judge of the Circuit of Valledupar, whose resolution has not been informed.

4. Moreover, it argues that for decades Ms. Miladis Vides lived in fear because of the context of violence where she had lived and her forced displacement, thus she was unable to file administrative remedies to seek redress. It submits that on December 8, 2006, Ms. Vides requested an extrajudicial conciliation hearing against the State of Colombia. The public hearing was held on April 25, 2007 before the Forty-Seventh Attorney General for Administrative Matters of Valledupar, where the State claimed that conciliation was not applicable. The petitioner further submits that although Ms. Vides was granted a small pecuniary aid by "*Red de Solidaridad*" (Solidarity Network), it does not amount to full redress.

5. Therefore, concerning the requirement of prior exhaustion of domestic remedies, the petitioner specifically requests that the exception enshrined in Article 46.2.b of the Convention be considered in regard to the administrative proceedings because the alleged victims have filed domestic remedies though

not exhausted them completely in view of the generalized context of violence they have been subjected to. It indicates that this has prevented them from effectively exhausting domestic remedies. With regard to the criminal proceedings, it alleges that the exception set forth in Article 46.2.c of the Convention applies to the instant petition because despite the elapsed time the investigators have failed to undertake specific procedures directed at clarifying the facts and identifying the persons responsible, thus the events are still to be punished.

6. For its part, the State argues that the facts do not establish human rights violations because the alleged murders are not to be attributed to the State because these are exclusively attributable to third parties, hence the State is not obligated to grant redress for damage sustained by citizens as a result of criminal offenses. It also argues that acquiescence or tolerance on the part of the State has not been demonstrated; that, on the contrary, in 2002 the State undertook continuous military operations of surveillance, search and settlement against illegal armed groups in the town of Agustín Codazzi, and that since October 2011 a special troop of the Colombian Army has been operating there.

7. Additionally, the State argues that domestic legal remedies have not been exhausted. It claims that in the framework of the criminal proceedings an objective and thorough investigation was filed and that the restraining order was issued in accordance with the right of due process and other judicial safeguards. It affirms that in 2012 the Prosecutor's Office decided to reopen the investigation, which has not produced any positive results in view of the complexity of the case because the murders were committed in the context of an armed conflict. It asserts that the lines of investigation are many and the evidence is limited. As for the administrative jurisdiction, it indicates that the remedy that should have been exhausted was a claim for damages, which it affirms is appropriate to resolve matters involving State responsibility.

8. Furthermore, it alleges that the Unit for Victim Support and Reparations informed that Ms. Vides filed for administrative redress for her family members' death. By virtue of said request, the State approved, pursuant to Law No. 418, the payment of a bill equivalent to 10,226 dollars to Ms. Vides and her son Mr. Juan Camilo Cantillo Vides, between December 21, 2004 and August 1, 2005, for the death of their family members. Consequently, the State requests the Commission to declare the instant petition inadmissible in view of the lack of facts establishing human rights violations and the non-exhaustion of domestic remedies.

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

9. The petitioner indicates that the requirement of prior exhaustion of domestic remedies is not applicable to the instant petition, in view of the applicability of the exception established in Article 46.2 paragraphs b and c of the Convention. In turn, the State alleges the non-exhaustion of domestic remedies as the alleged victims never filed a claim for damages and the criminal proceedings are pending resolution.

10. The Commission observes that whenever a case involves a criminal offense against life and physical integrity, the domestic remedies to be pursued and exhausted for admissibility purposes are those concerning the investigation and prosecution of the persons responsible, in addition to enabling other forms of compensation.⁵ In the instant case, based on the information submitted, the criminal investigation has unsuccessfully prolonged for over 16 years. The IACHR recalls that a claim for damages is not appropriate nor is its exhaustion necessary for determining the admissibility of a complaint like the instant petition, because it is ineffective to provide full reparation or justice to the family.⁶ Moreover, the IACHR has 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

⁵ IACHR, Report No. 49/14, Petition 1196/07, Admissibility. Juan Carlos Martínez Gil, Colombia, July 21, 2014, par. 29.

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

the violations caused.⁷ In view of the foregoing, the IACHR concludes that given the characteristics of the petition and the time elapsed since the beginning of the criminal proceedings in 2002, the exception to the prior exhaustion of domestic remedies foreseen in Article 46.2.c of the American Convention applies to the instant petition.

11. As for the requirement of timeliness, the Commission believes that, considering the aforementioned exception, the petition was received within a reasonable time pursuant to Article 32.2 of the Rules of Procedure. This decision derives from the fact that although the facts matter of this complaint began on April 8, 2002 and the petition was received on August 26, 2007, some of the effects of the alleged facts persist to date, such as the lack of identification and punishment of the persons responsible.

VII. ANALYSIS OF COLORABLE CLAIM

12. In view of the elements of fact and law submitted by the parties and the nature of the matter brought to its attention, the Commission considers that, if proven, the alleged violations of the rights to life and humane treatment with the acquiescence of the State, to the detriment of Juan Simón Cantillo Raigoza and his daughter Keyla Sandrith Cantillo Vides; the deprivation of liberty of the rest of the family in their house during the denounced killings, the subsequent displacement of the family members, as well as the lack of investigation and punishment of the persons responsible all could establish possible violations of the rights protected through Articles 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 19 (rights of the child), 22 (residence and movement) and 25 (judicial protection) of the American Convention in connection with Article 1.1 (obligation to respect rights) thereof.

13. As for the alleged facts concerning the lack of appropriate response to the request to access the case file and the lack of effective remedies to protect this right, these may establish a violation of Articles 8 (fair trial), 13 (freedom of thought and expression) and 25 (judicial protection) of the Convention, in relation to the obligations enshrined in Article 1.1 thereof.

VIII. DECISION

1. To declare the instant petition admissible in relation to Articles 4, 5, 7, 8, 13, 19, 22 and 25 of the American Convention, in relation to Article 1.1 thereof; and

2. 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 27th day of the month of July, 2018. (Signed): Margarete 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.

⁷ IACHR, Truth, justice and reparation: Fourth report on [the] human rights situation in Colombia. December 31, 2013, par. 467.

Annex
List of alleged victims

- 1) Juan Simón Cantillo Raigoza
- 2) Keyla Sandrith Cantillo Vides
- 3) Miladis Esther Vides Acosta
- 4) Juan Camilo Cantillo Vides
- 5) Yeris David Palmera Vides
- 6) Luis Alfonso Contreras Vides
- 7) Dubis Leonor Palmera Vides
- 8) Daniel Cantillo Raigoza
- 9) Melba Cantillo Raigoza
- 10) Edilsa Cantillo Raigoza
- 11) Luz Cantillo Raigoza
- 12) Elcida Cantillo Raigoza
- 13) Carlos Cantillo Raigoza
- 14) Clara Cantillo Raigoza
- 15) Jesús Cantillo Raigoza
- 16) Belfor Cantillo Raigoza
- 17) Luís Cantillo Raigoza
- 18) Víctor Castillo Raigoza
- 19) Nancy Cantillo Raigoza
- 20) Aceneth Cantillo Raigoza
- 21) Libardo Antonio Vides García.