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REPORT No. 129/18
PETITION 1256-07
REPORT ON ADMISSIBILITY

CORNELIO ANTONIO ISAZA ARANGO *ET AL.*
MASSACRE OF THE EL RETIRO SAWMILL
COLOMBIA

Approved electronically by the Commission on November 20, 2018.

Cite as: IACHR, Report No. 129/18, Petition 1256-07. Admissibility. Cornelio Antonio Isaza Arango *et al.* (Massacre of the El Retiro Sawmill). Colombia. November 20, 2018.

I. INFORMATION ABOUT THE PETITION

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| Petitioner: | <i>Centro Jurídico de Derechos Humanos de Antioquia</i> |
| Alleged victim: | Cornelio Antonio Isaza Arango <i>et al.</i> ¹ |
| Respondent State: | Colombia ² |
| Rights invoked: | Articles 4 (life), 8 (fair trial) and 25 (judicial protection) in relation to Article 1.1 of the American Convention on Human Rights. ³ |

II. PROCEDURE BEFORE THE IACHR⁴

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| Filing of the petition: | September 25, 2007 |
| Notification of the petition to the State: | September 29, 2011 |
| State's first response: | January 6, 2012 |
| Notification of the possible archiving of the petition: | May 26, 2017 |
| Petitioner's response to the notification regarding the possible archiving of the petition: | June 8, 2017 |

III. COMPETENCE

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| 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 made on August 31, 1973) |

IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

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| 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) in relation to Article 1.1 of the American Convention on Human Rights |
| Exhaustion of domestic remedies or applicability of an exception to the rule: | Yes, in the terms of Section VI |
| Timeliness of the petition: | Yes, in the terms of Section VI |

V. ALLEGED FACTS

1. The present petition alleges that a massacre occurred on August 14, 1997, on the "La Argentina" farmstead, located in the La Herradura sector in the municipality of El Retiro. The petitioner alleges that the murders were perpetrated in the context of various and related crimes committed in the area by paramilitary groups with the support of vigilante cooperatives known as "Convivir" operating with the

¹ The petition was filed on behalf of six of the murdered sawmill workers and their next-of-kin, as identified in the annex.

² In accordance with the provisions of Article 17.2.a of the Commission's Rules of Procedure, Commissioner Luis Ernesto Vargas Silva, of Colombian nationality, did not participate in either the discussion or decision in the present case.

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

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

acquiescence of the State and even in collaboration with members of the police and armed forces. The petitioner alleges that the only judicial proceedings initiated was carried out in an incomplete manner, focused only on the leaders of the "Convivir el Paso", and ended in impunity.

2. The petitioner states that on the night of August 14, 1997, a group of sawmill workers - composed of fourteen men, one woman and three children - were at the sawmill premises of the municipality of El Retiro East, in the Department of Antioquia. It alleges that some mill workers were asleep in their tents, when a gang of armed men arrived and shot at them, killing ten of the workers. It adds that the group of attackers included at least four members of the vigilante cooperative "Convivir el Paso", who had been told by state agents belonging to the Rionegro Criminal Investigation Section (SIJIN, by the Spanish acronym) of the presence of the workers in the area and that it was a guerrilla camp. It argues that "Convivir el Paso" was created by Presidential Decree 356 of 1994, and that they acted under the supervision of the Superintendence of Surveillance and the departmental governors.

3. The petitioner reports that the following morning, the police arrived in the area, that an investigation was opened and that on February 18, 1998, the Public Prosecutor's Office filed charges against four alleged perpetrators and supervisors of the "Convivir el Paso" for the crimes of conspiracy to establish death squads and multiple aggravated homicide. It adds that they were acquitted and released on December 12, 2000, by a decision of the Specialized Circuit Criminal Court of Antioquia, on the grounds that witnesses lacked credibility and that it was impossible to determine which of the accused had fired the weapon identified with positive results in the ballistics test. Therefore, it argues that despite the existence of evidence directly implicating members of the State security forces, paramilitary groups and members of "Convivir El Paso", the state authorities did not carry out investigations or further proceedings in order to punish the perpetrators of the massacre, and the events remain in impunity. Specifically, they refer to the fact that no members of the security forces or paramilitary leaders were ever linked to the massacre. The petitioner adds that the relatives of the murdered victims filed direct reparation suits on August 11, 1999, with the Administrative Tribunal of Antioquia and that, to date; they have received no response or resolution on the status and follow-up of the corresponding reparation procedures. Thus, the petitioner alleges that there has been an unjustified delay. Therefore, it argues that decades after the mill workers were extra judicially executed, the judicial remedies have not yielded a final decision, leaving the events in impunity and without a decision analyzing and defining the question of state responsibility for the massacre.

4. The petitioner alleges that the criminal group involved in the murders used equipment of the public security forces to transmit information and coordinate the illegal activities. As background information, it argues that the aforementioned cooperation agreement between the security forces and "Convivir el Paso" was shown to exist through various disciplinary and judicial processes. As an example thereof, on December 13, 2000, the National Attorney General's Office (PGN, by the Spanish acronym) began proceedings against members of the Army, the National Police and politicians who participated in criminal acts, similar to the alleged massacre. It adds that on November 30, 2004, the Criminal Chamber of the Superior Court upheld the conviction by the Second Specialized Circuit Criminal Court of Antioquia against two of those charged with the offense of criminal conspiracy, based on evidence of reported links between state agencies and the perpetrators of the massacre. Therefore, it argues that despite there being a public, blatant and judicially determined link, in the specific case of the massacre, the authorities have failed in their obligation to investigate the facts or to punish the perpetrators.

5. The State alleges that the facts set out in the petition were laid before the competent bodies, and that the proceedings were initiated and carried out in accordance with due process; and that due to the lack of evidence, it was not possible to connect those indicted with the events. In addition, it argues that a decision unfavorable to the interests of the alleged victims does not in itself imply a violation of the Convention. Therefore, it considers that it has complied with its Convention obligations and duties with regard to the criminal proceedings. Secondly, the State maintains that it was not possible to implicate state agents, as none of the evidence suggested that they were part of the crime, reporting that no presumption of the participation of state agents in the massacre of the Sawmill Workers could be made from proceedings instituted by the Second Specialized Circuit Criminal Court of Antioquia, since no reference to the events in the present petition was made in those proceedings. Regarding the proceedings for direct reparation, it

points out that this is an adequate remedy and the claim remains undecided, due to the special difficulties of the case.

6. On the other hand, the State alleges that the petitioner has failed to comply with the six-month filing period set out in the Convention, due to the fact that the last decision is judgment issued on December 12, 2000, that was upheld on July 25, 2001, without any further recourse being pursued, while the petition was filed on September 25, 2007. It adds that as the matter has been resolved, the Commission would constitute a fourth instance by declaring it admissible.

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

7. With respect to the alleged violations in the criminal investigation, the petitioner alleges that the Specialized Circuit Criminal Court of Antioquia decided to acquit some of the alleged perpetrators of the mill workers' massacre on December 12, 2000, due to a lack of evidence. It adds that the criminal investigation failed to continue, with the alleged commission of the homicides remaining in impunity, and that there are no other remedies to resolve the situation. The State alleges that appropriate criminal proceedings took place, that it has complied with its duties set out in the Convention, and that these proceedings ended with the acquittal on December 12, 2000, so that the filing of the petition is untimely.

8. Regarding the violations in connection with the reparations for the victims, the petitioner alleges that on August 11, 1999, reparation claims were filed by the alleged victims, that, to date, have not been resolved. The State alleges that proceedings are still under examination, and that no response has been issued due to the special difficulties of the case.

9. The Commission observes that, in situations such as the one involving offenses against life, the remedies that must be taken into account for the purposes of the admissibility of the petitions are those related to the criminal investigation and punishment of the perpetrators. The IACHR takes note of the allegation that there has been a protracted criminal investigation without an outcome in terms of the precise determination of the facts or identification of those responsible. This may be reflected in the impunity of the situation denounced, in the absence of convictions, and in the lack of an appropriate investigation to punish what happened. Based on the foregoing, the IACHR concludes that, in relation to this aspect of the petition, the exception to the exhaustion of remedies provided for in Article 46.2.c of the American Convention applies.

10. The IACHR recalls that, for the purpose of determining the admissibility of a claim such as the present, a reparation claim is not the appropriate remedy, nor is its exhaustion necessary, since it is inadequate in providing comprehensive reparation and justice to the family members. Additionally, the IACHR has argued that the determination of a reparation by administrative or judicial means, in addition to not excluding other remedies, does not exempt the State from its obligations to administer justice in connection with the violations perpetrated.

11. Regarding timeliness for submission, the Commission concludes that, having acknowledged the exception provided for in Article 46.2.c of the Convention, the petition has been submitted within a reasonable period of time based on Article 32.2 of its Rules of Procedure. This determination is based on the fact that although the events in the complaint date from July 14, 1997, and the petition was received on September 25, 2007, some of the effects of the alleged events continue to exist today, such as the lack of identification and punishment of the perpetrators, and the absence of reparation for the victims.

VII. ANALYSIS OF COLORABLE CLAIM

12. In view of the elements of fact and law presented by the parties, from the nature of the matter brought to its attention, and from the context in which the complaint is framed, the IACHR considers that, upon proof of the alleged violations against the right to life and humane treatment of the victims by members of the "Convivir El Paso" with the alleged acquiescence of the State, as well as the lack of an investigation and punishment of the perpetrators and of reparation for the victims, they could characterize

violations of the rights protected in Articles 4 (life), 5 (humane treatment), 8 (fair trial), and 25 (judicial protection), in relation to Article 1.1 (obligation to respect rights) of the American Convention.

13. Finally, with regard to the State's allegation on fourth instance, the Commission observes that when admitting this petition it does not purport to supplant the jurisdiction of the domestic judicial authorities. It will, however, analyze at the merits stage of this petition whether the domestic judicial proceedings complied with the guarantees of due process and judicial protection in accordance with the rights protected by the American Convention.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 4, 5, 8 and 25 in relation to Article 1.1 of the American Convention on Human Rights; 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 20th day of the month of November, 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.

List of Victims

1. Cornelio Antonio Isaza Arango
 - a. María Nidia Giraldo Martínez –Wife–
 - b. Gerley Andres Isaza Giraldo –Son–
 - c. Luis David Isaza Giraldo –Son–
 - d. María Piedad Isaza Arango –Sister–
 - e. Natividad Isaza Arango –Sister–
 - f. Robeiro Isaza Arango –Brother–
 - g. Rigoberto Isaza Arango –Brother–
 - h. Maria Lucelly Isaza Arango –Sister–
 - i. Albeiro Isaza Arango –Brother–
 - j. Luz Mery Martínez Ocampo –Victim’s Dependent–
2. Gildardo de Jesús Osorio Pamplona
 - a. María Piedad Isaza Arango –Wife–
 - b. Julián Andres Osorio Isaza –Son–
 - c. Yarissa Andres Osorio Isaza –Daughter–
 - d. Jakeline Osorio Isaza –Daughter–
 - e. Rosalía Pamplona de Osorio –Mother–
 - f. Otilio de Jesús Suarez Quiñonez –Foster father–
 - g. Rodrigo de Jesús Osorio Pamplona –Brother–
 - h. Oscar Hernán Osorio Pamplona –Brother–
3. Jose Octavio Garzón Sánchez
 - a. Maria del Socorro Parra Hincapie –Wife–
 - b. Sandra Milena Garzón Parra –Daughter–
 - c. Paola Andrea Garzón Parra –Daughter–
 - d. Octavio Garzón Parra –Son–
4. Efraín Gonzaga Marín
 - a. Jose Luis García Suarez –Father–
 - b. Flor María Marín Valencia –Mother–
 - c. Anderson Estiven García Marín –Brother–
 - d. Rodrigo García Marín –Brother–
 - e. Edgar de Jesús García Marín –Brother–
 - f. Luz Mery García Marín –Sister–
 - g. Reinaldo García Marín –Brother–
 - h. Maria Nohelia Garcia Marin –Sister–
 - i. Maria Delia Valencia Agudelo –Grandmother–
 - j. Maria de la Luz Suarez Guarín –Grandmother–
5. Jose Alady Gallego Mejía
 - a. Francisco Luis Gallego Ciro –Father–
 - b. Carmen Emilia Mejía Foronda –Mother–
 - c. Adelaida María Gallego Mejía –Sister–
 - d. Jose David Gallego Mejía –Brother–
 - e. Juan Antonio Gallego Mejía –Brother–
 - f. María Ofelia Gallego Mejía –Sister–
 - g. Nora de Jesús Gallego Mejía –Sister–
6. Conrado Antonio Quintero González
 - a. Luz Dary Soto Quinchia –Life partner–
 - b. Jailer Antonio Soto Quinchia –Son–
 - c. Darius Soto Quinchia –Son–
 - d. Rosa Angélica González de Quintero –Mother–
 - e. Gilma Rosa Quintero de Castaño –Sister–
 - f. Milton Alexis Quintero González –Brother–
 - g. Valentín de Jesús Quintero González –Brother–

- h. Cesar Augusto Quintero González –Brother–
- i. Víctor Manuel Quintero González –Brother–
- j. Jose Nicolás Quintero González –Brother–
- k. Luz Dora Quintero González –Sister–
- l. Bernarda del Socorro
- m. Rosamary Quintero González –Sister–
- n. Blanca Nubia Quintero González –Sister–
- o. Gloria Aleida Quintero González –Sister–
- p. Ovidio Alberto Quintero González –Brother–
- q. Liliam de los Dolores Quintero González –Sister–