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**REPORT No. 164/18**  
**PETITION P-1448-08**  
REPORT ON ADMISSIBILITY

LEVIS ELCENER CENTENO CUERO AND FAMILY  
COLOMBIA

Approved electronically by the Commission on December 7, 2018.

**Cite as:** IACHR, Report No. 164/18, Petition 1448-08. Admissibility. Levis Elcener Centeno Cuero and family. Colombia. December 7, 2018.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Eliana Patricia Quintero García
<b>Alleged victim:</b>	Levis Elcener Centeno Cuero and family <sup>1</sup>
<b>Respondent State:</b>	Colombia <sup>2</sup>
<b>Rights invoked:</b>	Articles 4 (life), 5 (humane treatment), 8 (fair trial), 12 (freedom of conscience), 13 (freedom of thought and expression), 25 (judicial protection), of the American Convention on Human Rights, <sup>3</sup> in relation to its Article 1.1 (obligation to respect rights), and Article XVIII (fair trial) of the American Declaration of the Rights and Duties of Man <sup>4</sup>

**II. PROCEEDINGS BEFORE THE IACHR<sup>5</sup>**

<b>Filing of the petition:</b>	December 12, 2008
<b>Notification of the petition to the State:</b>	October 6, 2014
<b>State's first response:</b>	March 23, 2017
<b>Notification of the possible archiving of the petition:</b>	May 16, 2018
<b>Petitioner's response to the notification regarding the possible archiving of the petition:</b>	June 26, 2018

**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 made on July 31, 1973)

**IV. 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
<b>Rights declared admissible</b>	Articles 4 (life), 5 (humane treatment), 8 (fair trial), 13 (freedom of thought and expression), 25 (judicial protection), of the American Convention, in relation to its Article 1.1
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, exception in Article 46.2.b of the Convention applicable
<b>Timeliness of the petition:</b>	Yes, in the terms of section VI

<sup>1</sup> The petition was filed in favor of the alleged victim and eight family members, who are listed in the Annex.

<sup>2</sup> 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.

<sup>3</sup> Hereinafter "the Convention" or "the American Convention".

<sup>4</sup> Hereinafter "the American Declaration" or "the Declaration".

<sup>5</sup> The observations submitted by each party were duly transmitted to the opposing party.

## V. FACTS ALLEGED

1. The petitioner indicates that Levis Elcener Centeno Cuero (hereinafter "the alleged victim"), a soldier attached to the No. 6 Mobile Brigade, No. 48 battalion of the Colombian Army, died on June 6, 2002, while fulfilling military orders. The petitioner claims that the alleged victim's right to life and humane treatment were violated by the Colombian State, as well as the judicial guarantees and the right to justice of his next-of-kin due to the lack of clarification of the facts and the unjustifiable delay in the reparation of the damage caused by the violations.

2. She states that the alleged victim's next of kin were given as an official version that the alleged victim had died in combat against the "Miller Perdomo" unit of the Revolutionary Armed Forces of Colombia. She indicates that months after receiving the news, the alleged victim's parents found out from a conversation with their son's comrades that his death had occurred due to a tactical error of the Battalion Commander and not during combat with the guerrillas. According to evidence from eyewitnesses, on June 6, 2002, the squad was sent to a hill known as "Pico de Loro" in the Municipality of Jamundí, without informing other detachments that were already in the area. They related that when the National Army platoon already on the hill saw unknown troops, they opened fire, causing the death of the alleged victim. They stated that after his death, the Major in charge of the operations gathered his soldiers and ordered them to say that the alleged victim had died as a result of a guerrilla attack.

3. According to the petitioner, on April 14, 2003, Mr. Juan Helio Centeno Cuero made a statement regarding this new information before Section 48 of the Prosecutor's Office of Cali-Valle, where the formal report on the removal of the alleged victim's body was issued. She indicates that, although there was an order to open a criminal investigation in the ordinary jurisdiction, on July 28, 2004, it was referred to the 51st Military Criminal Court of Investigation. She alleges that as a result the alleged victim's next of kin were unable to appear in the military criminal proceedings, nor follow-up first hand on the investigations and actions underway in that jurisdiction. She adds that, so far, there has not been any conviction or decision against the perpetrators.

4. She indicates that there has been no timely and effective response to the writs filed by the alleged victim's next of kin on May 3, 2004, November 22, and December 18, 2006, asking for information on the existence and/or the progress in the disciplinary investigations. She adds that in response, on December 17, 2006, the Commander of Mobile Brigade No. 6 stated that no disciplinary investigation had been opened in connection with this case. She also points out that neither the Attorney General's Office nor any other entity has provided information on other possible disciplinary proceedings.

5. The petitioner indicates that in 2004, she filed a claim for direct reparation No. 2004-1651 against the Colombian State with the Contentious-Administrative Court of Valle del Cauca. At the time of filing this petition - i.e. after more than four years - no decision on the merits has been issued.

6. For its part, the State requests the Commission to declare the petition inadmissible, on the grounds that, if granted, the petitioner's requests would require the Commission to act as a fourth instance. In its view, there has been no unjustified delay in the action for direct reparation, since the case was resolved in favor of the relatives of the alleged victim within a reasonable period of six years. In this respect, the State indicates that by judgment issued on June 28, 2010, the Contentious Administrative Tribunal of Valle del Cauca, found the alleged damage proved and condemned the Ministry of Defense and the National Army to pay compensation for the events. This considering an assessment of the witness declaration of a colleague of the alleged victim, who referred that the official version given to the relatives was false, in addition such statement was not disputed or crossed out. It adds that said judgment was enforced effectively by means of resolution No. 5101 of October 7, 2011.

7. In addition, it points out that the Commission lacks subject matter jurisdiction to apply the rights enshrined in the American Declaration with respect to those States that have ratified the Convention.

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

8. The petitioner argues there has been an unjustified delay in the administration of justice in relation to clarifying the alleged victim's death, the identification of those responsible and reparations for his family members. She argues that the complaint filed on April 14, 2003, with the 48<sup>th</sup> Sectional Prosecutor's Office of Cali was later remitted to the 51st Criminal Military Court of Investigation, without any decision being issued to date. On the other hand, she indicates that on December 17, 2006, the Commander of the Mobile Brigade No. 6 reported the lack of a disciplinary investigation on the case. She also indicates that she initiated a direct compensation action in 2004, which was unjustifiably delayed by the courts. In turn, the State argues that there has been no unjustifiable delay, since on June 28, 2010, the Contentious-Administrative Tribunal of Valle del Cauca found the Ministry of Defense and the National Army liable to pay compensation for the death of the alleged victim.

9. The Commission recalls that, in situations such as these, including crimes against the right to life and to humane treatment, the domestic remedies that must be taken into account for the purposes of the admissibility of petitions are those relating to the criminal prosecution and punishment of the perpetrators.<sup>6</sup> According to the information available, the Commission observes that in relation to the alleged victim's death, the military criminal jurisdiction, seized of the case since July 28, 2004, does not represent an adequate means for the investigation. Additionally, the Commission takes note that the State has failed to submit information relating to any criminal proceedings stemming from the case. In this regard, the Commission concludes that the exception to the exhaustion of domestic remedies referred to in Article 46.2.b of the Convention is applicable.

10. Regarding the proceedings in the contentious administrative jurisdiction, the Commission observes that the judgment of June 28, 2010, ordered reparation in favor of the alleged victim's next of kin and that payment was allegedly made in 2011. The Commission reiterates that, for the purposes of determining the admissibility of a claim such as this, the action for direct reparation does not constitute an adequate remedy to ensure reparation in full and justice for the next of kin, and that therefore it is not necessary to exhaust it. Notwithstanding the foregoing, in the present petition there are allegations of specific violations in the context of the action for direct reparation. Therefore, given the connection between the two proceedings, the IACHR considers that in the contentious-administrative jurisdiction, domestic remedies were exhausted with the decision of June 28, 2010, issued by the Contentious-Administrative Tribunal of Valle del Cauca.

11. Finally, the petition was filed with the Commission on December 12, 2008, and the facts alleged therein began on June 6, 2002, with their alleged consequences extending up to the present. Therefore, in view of the context and characteristics of the present case, the Commission considers that the petition was filed within a reasonable period of time and that the admissibility requirement regarding the filing period has been satisfied.

## **VII. ANALYSIS OF COLORABLE CLAIM**

12. In view of the factual and legal elements presented by the parties and the nature of the matter brought to its attention, should the alleged victim's death be proved to have occurred while he was serving as a member of the army, as well as the alleged subsequent concealment by the military authorities, the lack of effective judicial protection, as well as the alleged obstruction of access to information concerning the facts, the Commission considers that this could characterize possible violations of the rights recognized in Articles 4 (life), 5 (humane treatment), 8 (fair trial), 13 (freedom of thought and expression) and 25 (judicial protection) of the American Convention, in relation to its Article 1.1.

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<sup>6</sup> IACHR, Report No. 72/18. Petition 1131-08. Admissibility. Moisés de Jesús Hernández Pinto and family. Guatemala June 20, 2018, para. 10.

13. Regarding the claim concerning the alleged violation of Article 12 (freedom of conscience and religion) of the American Convention, the Commission observes that the petitioner has not offered allegations or sufficient grounds to allow *prima facie* consideration of its possible violation.

14. In relation to the alleged violation of Article XVIII of the American Declaration (fair trial), the Inter-American Commission has previously established that once the American Convention enters into force in relation to a State, the latter and not the Declaration becomes the primary source of law applicable by the Commission, whenever the petition refers to the alleged violation of substantially identical rights in both instruments.<sup>7</sup> In the present case, given that the right to a fair trial contemplated in Article XVIII is set out in Articles 8 and 25 of the American Convention, the Commission's analysis of the merits will be conducted in the light of the latter international treaty.

15. Finally, with respect to the State's arguments regarding the Commission's acting as a fourth instance, the Commission recognizes that it is not competent to review the judgments issued by national courts acting in their respective jurisdictions and applying due process and judicial guarantees. However, the Commission reiterates that, within the framework of its mandate, it is competent to declare a petition admissible and to rule on the merits when it refers to domestic proceedings that may be in violation of the rights guaranteed by the American Convention.

### **VIII. DECISION**

1. To find the instant petition admissible in relation to Articles 4, 5, 8, 13 and 25 of the American Convention in relation to its Article 1.1;

2. To find the instant petition inadmissible in relation to Article 12 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 7th day of the month of December, 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.

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<sup>7</sup> IACHR, Report N° 47/10, Petition 1325-05. Admissibility. Estadero "El Aracatazo" Massacre. Colombia. March 18, 2010, para. 43; Report N° 13/18, Petition 345-08. Admissibility. Ángel García Casimiro. Mexico. February 24, 2018, para. 11.

## **Annex 1**

### **List of Alleged Victims**

1. Levis Elcener Centeno Cuero
2. Idelfonso Centeno Cuero
3. Eufracia Cuero Riascos
4. Darmar Adriana Centeno Cuero
5. Dora Sildania Centeno Cuero
6. Alyster Adey Centeno Cuero
7. Eris Jazmin Centeno Cuero
8. Marlen Omeida Centeno Cuero
9. Juan Elio Centeno Cuero.