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REPORT No. 40/18
PETITION 607-07
REPORT ON ADMISSIBILITY

NELSON ENRIQUE GIRALDO RAMÍREZ AND FAMILY
COLOMBIA

Approved by the Commission at its session No. 2126 held on May 4, 2018.
168th Special Period of Sessions.

Cite as: IACHR, Report No. 40/18, Petition 607-07. Admissibility. Nelson Enrique Giraldo
Ramírez and Family. Colombia. May 4, 2018.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Roberto Fernando Paz Salas
Alleged victims:	Nelson Giraldo Ramirez and family ¹
Respondent State:	Colombia ²
Rights invoked:	American Convention on Human Rights ³ in general and other international treaties ⁴

II. PROCEEDINGS BEFORE THE IACHR⁵

Filing of the petition:	May 14, 2007
Additional information received at the stage of initial review:	June 23 and July 23, 2008
Notification of the petition to the State:	June 15, 2011
State's first response:	September 16, 2011
Additional observations from the petitioner:	August 2, 2011; October 13, 2011; and May 25, 2012
Additional observations from the State:	March 20 and September 5, 2012

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 (instrument of ratification deposited on July 31, 1973); and Inter-American Convention to Prevent and Punish Torture (instrument of ratification deposited on January 19, 1999)

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 (right to a fair trial), 19 (rights of the child), 22 (movement and residence), and 25 (judicial protection) of the American Convention, in conjunction with Article 1.1 thereof; and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes: exception in ACHR Article 46.2.c applies

¹ The petition also involves Julio Enrique Giraldo Gómez and Mariela del Socorro Ramirez de Giraldo (the victim's parents), and Jhon Fredy, Julio Alfredo, Luz Estela, Efen de Jesus, and Angela Adriana Giraldo Ramirez (the victim's siblings).

² In compliance with the terms of Article 17.2.a of the Commission's Rules of Procedure, Commissioner Luis Ernesto Vargas Silva, a Colombian national, did not participate in discussing or deciding this case.

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

⁴ Articles 6 and 7 of the International Covenant on Civil and Political Rights, and Articles 12 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

⁵ The observations submitted by each party were duly transmitted to the opposing party. In communications dated October 7, 2015, and June 14, 2016, the petitioner reiterated his interest in the continued processing of the petition and requested information on its status.

Timeliness of the petition:

Yes, as indicated in section VI

V. FACTS ALLEGED

1. The petitioner's contentions address the absence of an effective investigation and punishment of those responsible for the murder of 15-year-old Nelson E. Giraldo Ramírez (hereinafter also "the alleged victim"), together with the direct harm suffered by his family and the failure to provide them with redress. The petitioner states that on August 11, 1997, in the community of Los Mangos in Corconá municipality, department of Antioquia, members of the United Self-Defense Forces of Colombia (AUC) captured the alleged victim, attacked him physically and psychologically, and tied him to a tree before killing him with a firearm. He claims that it was common knowledge that the aforesaid group of paramilitaries was led by Ricardo Lopez Lora (hereinafter "Mr. Lopez Lora") and that, since 1996 and with the acquiescence of the authorities, they exercised total control over the east of Antioquia. He further claims that Nelson Giraldo Ramírez's family was forced to relocate to Medellín after his death out of fear of reprisals after they had received threats from the paramilitaries, and that they currently live in that city.

2. The petitioner reports that the prosecution service in Santuario municipality began the investigation into the death of Nelson Giraldo Ramirez, which, along with other cases from the same period, was subsequently taken over by the Human Rights and International Humanitarian Law Unit of the office of the Attorney General of the Nation on January 11, 2000. Following the investigation, criminal charges were filed against Mr. Lopez Lora for the aggravated homicides of seventeen individuals, including the alleged victim. The petitioner states that on June 18, 2003, the First Criminal Court of the Antioquia Specialized Circuit sentenced him to forty years in prison. The judgment also included, subject to a civil suit, the payment of compensation to the next-of-kin of each of those seventeen individuals. The accused appealed that judgment, as a result of which, on December 18, 2003, the Criminal Chamber of the Antioquia Superior Court partially overturned the sentence, upholding the conviction for four of the killings and acquitting Mr. López Lora of the remainder, and thereby relieving him of criminal responsibility for the death of Nelson Giraldo Ramirez. The Superior Court grounded this decision on the lack of certainty regarding Mr. Lopez Lora's possession of the firearm used to kill the alleged victim, even though it was found at his home during the investigation.

3. In addition, as the result of the investigations carried out by the Human Rights and International Humanitarian Law Unit, the Second Criminal Court of the Antioquia Specialized Circuit convicted two police officers, Juan Carlos Valencia Arbeláez and Carlos Mario Tejada Gallego, of the crime of conspiracy because of their membership in an outlawed group and, specifically, for their participation in their capacity as police officers in the paramilitary group commanded by Mr. Lopez Lora in the municipality of Corcona in and after 1996. Mr. Tejada Gallego lodged an appeal for the annulment of that decision with the Supreme Court of Justice, which, in a judgment of November 30, 2004, upheld the decision of the Second Criminal Court of the Antioquia Specialized Circuit. An appeal filed by Mr. Valencia Arbelaez was ruled inadmissible by the Superior Court of Antioquia on October 26, 2005. Consequently, in accordance with the law, on December 2, 2005, the conviction issued by the Second Criminal Court of the Antioquia Specialized Circuit became final with respect to both police officers.

4. The petitioner claims that in spite of the evidence that exists indicating the involvement or collaboration of several officers with the paramilitary group in its "social cleansing" efforts in the region, not all those guilty for the deaths of several people, including the alleged victim, have been tried or convicted. Only the two officers named above have been brought to justice, and this, in his opinion, indicates a high level of impunity.

5. On December 3, 2007, the alleged victim's family lodged an action for direct redress with the administrative justice system for their displacement—caused by the alleged victim's death and the subsequent threats—in an attempt to secure the payment of compensation. The Fourth Chamber of the Administrative Tribunal of Antioquia, in ruling dated February 1, 2008, rejected the application because of statutory limitations, finding that the deadline should have been calculated from the date of the facts—that is, the forced displacement suffered by alleged victim's family as a result of his death (on August 11, 1997) and

the threats made by the paramilitary group—and not from the final conviction that found the two police officers guilty of involvement in the death of Nelson Giraldo Ramírez. Thus, more than two years had gone by since the time of the facts and the date on which the complaint was filed. The Administrative Tribunal ruled that the criminal trial and the administrative proceedings were separate, given that determining administrative responsibility does not depend on the existence of a conviction.

6. The family lodged an appeal against that ruling with the Third Section of the Council of State, which in a decision of September 8, 2008, upheld the Fourth Chamber of the Administrative Tribunal of Antioquia's decision of February 1, 2008. The family subsequently filed a protection remedy against the ruling of the Third Section of the Council of State, requesting that the first-instance decision be overturned. The Fourth Section of the Administrative Division of the Council of State, in a ruling adopted on May 13, 2009, rejected that remedy as inadmissible, on the grounds of its existing legal precedents. The family lodged an action for protection against that decision, which was ruled inadmissible by the Fifth Section of the Administrative Division of the Council of State on July 2, 2009, because it was being used to attack judicial rulings.

7. The petitioner contends that there were no doubts that Mr. Lopez Lora had masterminded the killing of Nelson Giraldo Ramírez or about the guilt of the two convicted police officers and other persons involved. He holds that the State must provide economic redress for the alleged victim's death, in that its agents gave support to paramilitary groups while on active duty. He reports that the family challenged the Fourth Chamber of the Administrative Tribunal of Antioquia's decision of February 1, 2008, claiming that the statutory limitations should be calculated from the date of the finalization of the judgment handed down against the police officers Juan Carlos Valencia Arbelaez and Carlos Mario Tejada—that is, December 2, 2005—because that is the fact that allows the responsibility of the administration to be established and not, as the State maintains, the death of Nelson Giraldo Ramírez.

8. The petitioner points to the international responsibility that can arise from any failure by the State to act in situations involving human rights violations, including the actions of private citizens with the acquiescence or complicity of state agents. In his petition before the IACHR he also contends that it has been established that the Colombian State committed serious violations of human rights and international humanitarian law. The petitioner denounces the impunity surrounding the death of Nelson Giraldo Ramírez, for which the family seeks justice and demands economic redress.

9. In turn, the State holds that the petition is manifestly groundless, claiming that the facts alleged by the petitioner are, *prima facie*, exclusively attributable to third parties: in other words, unrelated to the sphere of the State's competence. Colombia further contends that this petition "does not establish the existence of the alleged collaboration or acquiescence of state agents through actions or omissions coordinated with, in parallel to, or connected with the private citizens responsible for the facts," nor does it establish that the authorities were aware of a situation of real and imminent danger such that they could have prevented or avoided the alleged incident.

10. The State acknowledges two relevant facts: the murder of Nelson Giraldo Ramírez and the subsequent confession of the paramilitary López Lora. However, it holds that there is no causal link regarding the direct participation (as perpetrators or accomplices) of the two police officers in the alleged victim's death. In this regard, the State submits the judgment of March 1, 2011, issued by the Thirtieth Administrative Court of the Medellín Circuit, in which the court found that the alleged victim's family were unable to establish the alleged direct participation of the police officers.

11. In addition, in its communication of September 16, 2011, the State reported on a new criminal investigation initiated by the Third Prosecutor of the Human Rights and International Humanitarian Law Unit and intended to identify Nelson Giraldo Ramírez's killers. During that investigation, and under the aegis of the Justice and Peace Law, Mr. López Lora confessed his guilt on August 11, 2011. In addition, attention must also be paid to the positive result of the ballistics test that links one of the firearms found in Mr. Lopez Lora's home with the death of Nelson Giraldo Ramirez. At the time of that communication from the State, the proceedings were at the preliminary investigation stage.

12. Accordingly, the State requests that the IACHR declare the petition inadmissible and refrain from applying the unwarranted delay exception provided for in Article 46.2 of the American Convention, because it believes that the time spent on the investigation formalities is reasonable. The State argues the complexity of the facts and the context in which they took place, together with the fact that several crimes committed during that period were being investigated, and it expressly recognizes that the proceedings remain active and at the preliminary investigation stage. The State asks the IACHR to allow it the possibility of resolving the alleged situation through the criminal resources provided for in its domestic legal system, which it contends are appropriate and effective. It requests that the IACHR assess the State's actions aimed at clarifying and reconstructing the truth, satisfying the victims' rights, providing them with access to justice, and making redress within the terms of the Justice and Peace Law.

13. Finally, the State claims that the petitioner is seeking for the Commission to act as a fourth instance. In this regard it cites the Inter-American Court of Human Rights and reminds the IACHR that it cannot revisit judgments handed down by domestic courts acting within the sphere of their competence. It holds that the Commission lacks competence to review decisions adopted by the legal system of a State, lest it set itself up as an appeals court that could violate such principles as legal security and judicial autonomy.

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

14. The petitioner argues that impunity persists and that there has been an unwarranted delay in justice in that, despite the reopening of the criminal investigations to identify all those responsible for the alleged victim's death, more than twenty years have gone by. In this connection, the Commission notes that there is no dispute between the parties regarding several facts: (a) the murder of the alleged victim in 1997; (b) only two police officers have punished, in spite of the results of the investigation indicating the alleged participation of police officers, members of the military, and civilians with the paramilitary group in the killings of several individuals during that period of time including that of Nelson Giraldo Ramirez; (c) and later, in a fresh investigation conducted under the Justice and Peace Law, the paramilitary Ricardo Lopez Lora confessed his direct guilt for the incident on August 11, 2011. Regarding the last point, the Commission notes that the Colombian State only referred to these most recent proceedings in its initial comments of September 16, 2011, when the petition was forwarded to it. Consequently, according to the information available in the case file, the Commission does not have any information on the prosecution of other alleged perpetrators. The Commission therefore concludes that in the case at hand, the exception to the exhaustion of domestic remedies rule provided for in Article 46.2.c of the American Convention is applicable.

15. Regarding the proceedings at the administrative venue, the Commission reiterates that in order to determine the admissibility of a claim such as the one at hand, an action for direct redress is not a suitable mechanism and need not be exhausted, in that it is not appropriate for securing comprehensive redress and justice for the next-of-kin.

16. As regards to the timeliness of the petition, given that the exception to the exhaustion of domestic remedies rule has already been admitted, and since the petition before the IACHR was received on May 14, 2007, the alleged facts began on August 11, 1997, and the alleged denial of justice and partial impunity continue into the present, by reason of the context and characteristics of the instant case the Commission believes that the timeliness requirement must be deemed satisfied.

VII. ANALYSIS OF COLORABLE CLAIM

17. In light of the elements of fact and law set out by the parties and of the nature of the matter placed before it, the Commission believes that if the alleged responsibility of the State for the participation of police officers with the paramilitary group in the torture and death of the alleged victim is determined, the failure to investigate the incident and the consequent displacement of his family could tend to establish possible violations of the rights enshrined in Articles 4 (life), 5 (humane treatment), and 7 (personal liberty) of the Convention and in Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, with respect to Nelson Giraldo Ramirez; and of the rights enshrined in Articles 5 (humane treatment), 8 (right

to a fair trial), 22 (movement and residence), and 25 (judicial protection) of the American Convention, in conjunction with Article 1.1 thereof, and the aforesaid articles of the Inter-American Convention to Prevent and Punish Torture, with respect to the direct family members named in this report.

18. Furthermore, the Commission notes from the documents presented by the petitioner that the alleged victim and one of his sisters, Angela Adriana Giraldo Ramirez, were respectively 15 and 10 years of age at the time of the facts, for which reason it also holds Article 19 of the Convention (rights of the child) to be applicable.

19. Likewise, although the Commission lacks competence to rule on violations of the provisions of the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, it may nevertheless take them into account in the course of its interpretation of the terms of the American Convention at the merits stage in the instant case, in keeping with the terms of Article 29 of the Convention.

20. Finally, regarding the State's fourth instance claims, the Commission notes that by admitting this petition it does not intend to supplant the competence of the domestic judicial authorities. Instead, at the merits stage of this petition, it will analyze whether the domestic judicial proceedings complied with the guarantees of due process and the right to a fair trial and offered the alleged victims due guarantees of access to justice in accordance with the terms of the American Convention.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 4, 5, 7, 8, 19, 22, and 25 of the American Convention, in conjunction with the obligations set out in Article 1.1 thereof; and in relation to Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture; 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.

Done and signed in the city of Santo Domingo, Dominican Republic, on the 4th day of the month of May, 2018. (Signed): Margarette May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice President; Francisco José Eguiguren Praeli, Joel Hernández García, and Flávia Piovesan, Commissioners.