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REPORT No. 44/18
PETITION 840-07
REPORT ON ADMISSIBILITY

PIJIGUAY MASSACRE
COLOMBIA

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

Cite as: IACHR, Report No. 44/18, Petition 840-07. Admissibility. Pijiguay Massacre. Colombia.
May 4, 2018.

I. INFORMATION ABOUT THE PETITION

Petitioner:	José Luis Viveros Abisambra and Luis Felipe Viveros Montoya
Alleged victims:	William Miguel Sequea López <i>et al.</i> ¹
Respondent State:	Colombia ²
Rights invoked:	Articles 4 (Life), 5 (Humane Treatment), 8 (Fair Trial) and 25 (Judicial Protection) of the American Convention on Human Rights ³

II. PROCEDURE BEFORE THE IACHR⁴

Filing of the petition:	June 25, 2007
Notification of the petition to the State:	September 29, 2011
State's first response:	February 21, 2012
Additional observations from the petitioner:	June 5, 2014
Additional observations from the State:	December 19, 2014

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) and Inter-American Convention to Prevent and Punish Torture ⁵ (deposit of ratification instrument 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 (Fair Trial), 21 (Property), 22 (Freedom of Movement and Residence), and 25 (Judicial Protection) of the American Convention, in relation to Article 1.1 (Obligation to Respect Rights) thereof; and Articles 1, 6 and 8 of the IACPPT
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes; exception established in Article 46.2.c of the Convention applicable
Timeliness of the petition:	Yes, under the terms of Section VI

¹ William Miguel Sequea López, Domingo Sequea López, Rodrigo Miguel Echavez Donado, Antonio Mercado Yepes, Enys del Rosario Viloria Cárdenas, José Higinio Yepes Deavila, Ever Julio Olivera Viloria and their families.

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 "the Convention" or "the American Convention."

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

⁵ Hereinafter "IACPPT."

V. ALLEGED FACTS

1. The petitioners indicate that in 1997, in the framework of the events taking place in the municipality of Ovejas, department of Sucre, the National Army raided, patrolled and searched the towns of the region looking for members and/or possible collaborators of the Colombian Revolutionary Armed Forces (hereinafter "the FARC"). Therefore, they indicate that on September 6, 1997 a military operation was undertaken in the district of Pijiguay, as a result of which the alleged victims were unlawfully kidnapped, tortured and killed even though they were not connected with the FARC. They indicate that these events started early in the morning when a group of military officers violently broke in the house of Mr. William Miguel Sequea López, arresting him without a judicial warrant or any explanations on that respect. They assert that, consequently, Mr. Domingo Sequea López desperately tried to prevent that the military officers took his brother. However, several officers beat him, leaving him unconscious on the ground. They moreover claim that Mr. William Sequea was taken to a nearby stream, where the officers interrogated and tortured him, and finally killed him by gunshot to the head.

2. They manifest that, next, the military officers came to Mr. Rodrigo Miguel Echavez Donado's house, set fire to his car and unlawfully interrogated and arrested him. The officers also took him to the house of Mr. Fredy Antonio Mercado Yepes, who was also threatened and arrested. The petitioners submit that the officers took both alleged victims to the banks of a stream, where they beat and killed them. They affirm that the troop continued its journey to the store of Ms. Enys del Rosario Viloría Cárdenas, whom they beat, tortured, burnt and finally killed by a gunshot to the head. They also indicate that before leaving, the officers set fire to the store. They affirm that, subsequently, the military officers, by means of threats, gathered the inhabitants at the square of the village and, through roll call, they separated from the crowd Mr. José Higinio Yepes Deavila and Mr. Ever Julio Olivera Viloría. They claim that the officers took them latter a few meters away and shot them dead.

3. They claim that due to these acts of violence, the community of Pijiguay immediately moved to the urban area of the city of Ovejas, where in the days that followed about 870 people were housed in different schools, sports centers and other public institutions. They allege that, on top of losing their homes and belongings, the peasants faced food shortage, overcrowding conditions and lack of basic services, given the provisional nature of the places of shelter. They emphasize that the alleged victims' families were among that group of forcedly displaced people. They manifest that since the alleged victims were carefully identified before being killed, their families had to leave their homes and belongings as they feared that the military officers would retaliate.

4. The petitioners indicate that the acts of violence are yet to be punished. In this regard, they explain that the alleged victims' families reported the facts before the Prosecutor's Office, which filed an investigation on September 18, 1997. However, they allege that it proved ineffective because no measures were undertaken to individualize those responsible of the criminal offenses. Therefore, on April 16, 2001 the First Prosecutor's Office appointed before the Criminal Court of the Circuit of Sincelejo decided to suspend the investigation on the grounds that no resolution had been issued for its undertaking. On February 10, 1998, Mr. Domingo Sequea Lopez, for his part, also submitted a report before the Second Prosecutor's Office of the city of Ovejas for the beating he suffered when he tried to defend his brother. They affirm that the investigation was suspended on August 12, 1998 because it also proved ineffective to identify those responsible. Additionally, they claim that, in 2002, the Thirty-Seventh Prosecutor's Office of the National Directorate of Prosecutors' Offices Specializing in Human Rights and International Humanitarian Law reopened the investigation into the events, but that there has been no progress in the identification of those responsible.

5. Furthermore, they indicate that on August 17, 1999, the families of the alleged victims lodged a claim for damages, and that the Circuit Sixth Administrative Court of Sincelejo dismissed it on March 30, 2007, claiming that it had not been proved that those responsible were state agents. This was so, in spite of the witness statements made by the locals, who were eye witnesses of the acts and, thus, recognized the military officers and explained that the operations of patrol and search of the region were usual. They manifest that they presented an appeal before the Fourth Administrative Court of Sucre, and that on

September 2, 2010 the court confirmed the dismissal on the grounds that the State's participation had not been proved. They assert that those proceedings breached the right of due process because of the unwarranted delays and the judicial authorities' failure to fulfil their obligation to duly investigate and analyze the elements submitted that proved that the army was directly involved in the commission of the acts.

6. The State claims that the acts reported in the petition do not give rise to human rights violations because the acts taking place in the district of Pijiguay on September 6, 1997 were committed by private third parties, apparently by members of the United Self-Defense Forces of Colombia (hereinafter "AUC").

7. Likewise, the State asserts that the domestic remedies were not exhausted because, in 2002, the Attorney General's Office ordered to resume the investigation, which the Thirty-Seventh Prosecutor's Office has been conducting and is now in the stage of preliminary hearing. In this regard, it manifests that on January 15, 2007, in the framework of one of the procedures in the proceedings ruled by the Law of Justice and Peace, one of the AUC leaders, Salvatore Mancuso Gómez, presented his account of the facts; and that his statement is still under investigation. It claims that there is no unwarranted delay because, despite the complexity of the case, there has been a constant progress in relation to it. In addition, it indicates that the Disciplinary Prosecutor for the Defense of Human Rights undertook a disciplinary investigation and, on May 24, 2002, it archived it, concluding that state agents' participation had not been confirmed.

8. Moreover, it indicates that the alleged victims, except for Mr. Miguel Echavez Donado, are registered in the Justice and Peace Information System as victims of actions attributable to the AUC group called "*Bloque Héroes de los Montes de María*."

9. It asserts that the IACHR is not a court of fourth instance nor is it entitled to examine or review decisions that competent domestic courts issued contrary to the interests of alleged victims and that if Commission admits the petition, it would work as a court of fourth instance. In this regard, it stresses that, in the administrative proceedings, the domestic courts analyzed the merits of the case and adopted well-founded measures.

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

10. The petitioners affirm that the investigations into the acts of violence were archived; that five years later these were resumed, and that to date they remain open. They claim that, therefore, there is an unwarranted delay of justice. For its part, the State indicates that the domestic remedies were not exhausted, since the criminal proceedings are under way, and that, considering the complexity of the case, there is no unwarranted delay.

11. The Commission has established that, as a general rule, a criminal investigation must be conducted promptly in order to protect the interests of the victims, preserve the evidence and also safeguard the rights of anyone deemed a suspect in the framework of the investigation.⁶ The Commission notes that the information presented by the parties indicates that an investigation intended to clarify the facts remains open, and that the responsibility of the instigators and perpetrators of the facts of the present complaint is not yet established. Therefore, in view of the characteristics of the petition and the time that has passed since the facts of the complaint occurred, the Commission deems applicable the exception established in Article 46.2.c of the Convention. Likewise, the Commission believes that the petition was filed within a reasonable time and that the requirement of timeliness must be declared met.

12. Furthermore, the IACHR recalls that, to determine the admissibility of a petition similar to the instant complaint, the pursuit or the exhaustion of a claim for damages is neither adequate nor necessary,

⁶ IACHR, Report No. 54/15. Petition 467/97. Admissibility. Campamento Massacre. Colombia. October 17, 2015, par. 33.

because it is not suitable for providing full reparation and justice for the family members.⁷ Notwithstanding the foregoing, although in this case criminal proceedings are the appropriate remedy for an investigation into the events, the Commission observes that the petitioners also allege specific violations in the framework of the claim for damages. Thus, in view of the connection between the two proceedings, the Commission considers that, in the administrative jurisdiction, the domestic remedies were exhausted through the decision by which the Fourth Administrative Court of Sucre dismissed the appeal, dated September 2, 2010 and notified by an edict on September 10, 2010.

VII. ANALYSIS OF COLORABLE CLAIM

13. In view of the elements of fact and law presented by the parties and the nature of the matter brought to its attention, the Commission considers that the alleged detentions, acts of torture and unlawful killings of the alleged victims, and the purported violations of the physical integrity, the forced displacement and the lack of effective judicial protection in connection with their family members, caused by the massacre perpetrated in the district of Pijiguay, all may establish possible violations of Articles 4 (Life), 5 (Humane Treatment), 7 (Personal Liberty), 8 (Fair Trial), 21 (Property), 22 (Movement and Residence), and 25 (Judicial Protection) of the American Convention, in relation to its Article 1.1; and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, due to the alleged lack of investigation, to the detriment of the alleged victims and their families.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 4, 5, 7, 8, 17, 22 and 25 of the American Convention, in connection with Article 1.1 thereof; and 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.

Approved by the Inter-American Commission on Human Rights in the city of Santo Domingo, Dominican Republic, on the 4th day of the month of May, 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, Report No. 107/17, Petition 535-07. Admissibility. Vitelio Capera Cruz and family. Colombia. September 7, 2017, par. 9.