

OEA/Ser.L/V/II.
Doc. 196
21 December 2018
Original: Spanish

REPORT No. 171/18

PETITION 926-08

REPORT ON ADMISSIBILITY

LUIS EDUARDO ACOSTA ROMERO AND FAMILY
COLOMBIA

Electronically approved by the Commission on December 21, 2018.

Cite as: IACHR, Report No. 171/18. Petition 926-08. Admissibility. Luis Eduardo Acosta Romero. Colombia. December 21, 2018.



I. INFORMATION ABOUT THE PETITION

Petitioner:	Josefa Maria Rumbo de Acosta
Alleged victim:	Luis Eduardo Acosta Romero and family
Respondent State:	Colombia ¹
Rights invoked:	No alleged articles are specified

II. PROCEDURE BEFORE THE IACHR²

Filing of the petition:	August 10, 2008
Additional information received at the stage of initial review:	April 12 and August 17, 2012; October 12, 2013
Notification of the petition to the State:	February 14, 2017
State's first response:	January 18, 2018
Additional observations from the petitioner:	August 17, 2018

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 on Human Rights ³ (deposit of instrument made on July 31, 1973)

IV. ANALYSIS OF 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 (personal integrity), 8 (judicial guarantees), 23 (political rights) and 25 (judicial protection) of the American Convention in relation to its Articles 1.1 (obligation to respect rights) and 2 (duty to adopt provisions of domestic law)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, exception under Article 46.2.c of the Convention applies
Timeliness of submission:	Yes, under the terms of Section VII

V. FACTS ALLEGED

1. The petitioner, the alleged victim's widow, reports the murder of Mr. Luis Eduardo Acosta Romero (hereinafter "the alleged victim") committed by members of "Bloque Norte de las Autodefensas Unidas de Colombia" (hereinafter "AUC") who operated in La Guajira Department, under the permissive conduct of the State, which has also insured the facts' impunity.

¹ Pursuant to Article 17.2 of the Commission's Rules of Procedure, Commissioner Luis Ernesto Vargas Silva, of Colombian nationality, did not participate in the debate or the present case's decision.

² The observations presented by each party were duly forwarded to the opposing party.

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

2. The petitioner indicates that on December 3, 2003, Mr. Luis Eduardo Acosta Romero, who was Councilor of Urumita Municipality in La Guajira Department, was murdered while he was at his house's terrace with his grandson and a friend. She indicates that on that day, two unidentified men followed the alleged victim from the City Hall to his house, and that one of them approached him and shot him in the head and chest with a 9 mm gun, which instantly killed him.

3. She adds that an own-initiative investigation was conducted by the public prosecutor's office of Villanueva Municipality due to the murder of December 2003, and the Technical Investigation Unit was commissioned for the clearing up of the facts and the perpetrators' identification. She says that this unit issued reports on December 15, 2003 and March 9, 2004, which identified AUC's "Bloque Norte" members as being the perpetrators.

4. The petitioner states that on August 30, 2004, the Twelfth Public Prosecutor's Office concluded the proceeding before the Mixed Jurisdiction Judges of San Juan del César Circuit by means of a resolution of dismissal, based on the fact that there was no flagrancy or sufficient evidence so as to involve the alleged perpetrators. She adds that on November 22, 2007, she filed a complaint before the National Prosecutors' Unit for Justice and Peace, reporting the facts before the Procurator-General of the Nation, the Prosecutor General, and the President of the National Commission for Reparation and Reconciliation. She says that the criminal investigation concluded with a resolution of dismissal on August 30, 2008 and that the facts are still unclarified, and the perpetrators have not been punished.

5. The State expresses that domestic remedies have not been exhausted, since the criminal proceeding is still in progress. It indicates that according to Act 975 of 2005, on October 7, 2009, within an action compiling free versions of postulates, the facts were confessed by an AUC's member. The State says that once the authorities became aware of the facts, while complying with the duties of investigation, prosecution, and punishment, they advanced a proceeding that has shown progress in the framework of transitional justice and within a reasonable term. It alleges that the case is complex due to the political and social situation ruling the place and time of the facts. Finally, it considers that the facts reported cannot be directly attributed to the State because they were carried out by the AUC and not by its officials.

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

6. The petitioner indicates that the criminal investigation concluded on August 30, 2008 and that, so far, the facts are still uninvestigated and unpunished. The State indicates that adequate and effective domestic remedies have not been exhausted, since the 2009 criminal proceeding is still underway and that due to the matter's complexity, the exception under Article 46.2 of the Convention does not apply.

7. The Commission reiterates that, in situations related to potential violations of the right to life, the domestic remedies to consider regarding the effects of the petition's admissibility are the crimes related to the perpetrators' investigation and punishment, which are translated in domestic legislation as crimes subject to ex officio prosecution. In this case, according to the information provided, the Commission observes that after the alleged victim's death, a criminal investigation was conducted in December, 2003, which concluded in a dismissal decision issued on August 26, 2007 and another one on November 22, 2007 which also concluded in a dismissal resolution On August 30, 2008. Afterward, in the framework of the proceedings initiated in Justice and Peace, the public prosecutor's office re-conducted an investigation about the alleged victim's death, which is still in progress.

8. Therefore, due to this case's characteristics, the Commission considers that the exception of domestic remedies under Article 46.2.c of the American Convention applies. Furthermore, the IACHR indicates that the petition was submitted within a reasonable period of time and that the admissibility requirement shall be deemed as complied with regarding timeliness.

VII. ANALYSIS OF COLORABLE CLAIM

9. 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 believes that, if proved, the responsibility for the omission of state officials in the alleged victim's death, as well as the lack of investigation of said claims, might all represent potential violations of the rights enshrined in Articles 4 (life), 5 (personal integrity), 8 (judicial guarantees), and 23 (political rights) to the detriment of the alleged victim, as well as Articles 5 (personal integrity) and 25 (judicial protection) of the Convention, to the detriment of his family, all in connection with Articles 1.1 and 2 thereof.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 4, 5, 8, 23, and 25 of the American Convention in relation to its Articles 1.1 and 2;

2. To notify the parties of the present decision; to continue analyzing the matter, 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 21st 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.