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REPORT No. 7/19

PETITION 18-07

REPORT ON ADMISSIBILITY

BOCAS DE ARACATACA MASSACRE
COLOMBIA

Approved electronically by the Commission on February 3, 2019.

Cite as: IACHR, Report No. 7/19, Petition 18-07. Admissibility. Bocas de Aracataca Massacre. Colombia. February 3, 2019.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Nelson Javier de Lavallo Restrepo
Alleged victim:	Habitants of the Bocas de Aracataca District ¹
Respondent State:	Colombia ²
Rights invoked:	Articles 4 (life), 5 (humane treatment), 8 (fair trial), 17 (rights of the family), 19, (rights of the child), 21 (property), 22 (freedom of movement and residence), 24 (equal protection), 25 (judicial protection) and 27 (suspension of guarantees) in relation to Article 1 (obligation to respect rights) of the American Convention on Human Rights, ³ and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture. ⁴

II. PROCEEDINGS BEFORE THE IACHR⁵

Filing of the petition:	January 8, 2007
Additional information received at the stage of initial review:	November 27, 2007, April 20, 2009, and September 7, 2010
Notification of the petition to the State:	May 26, 2011
State's first response:	March 1, 2016
Additional observations from the petitioner:	July 9, July 11, July 22, and December 5, 2011; March 26, 2018
Additional observations from the State:	March 27, 2015
Notification of the possible archiving of the petition:	March 23, 2017
Petitioner's response to the notification regarding the possible archiving of the petition:	July 17, 2017

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 instrument made on July 31, 1973) and IACPPT (deposit of instrument made on January 19, 1999)

¹ The alleged victims as listed by the petitioner are identified in the annexed document.

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", "American Convention", or "ACHR".

⁴ Hereinafter IACPPT.

⁵ The observations submitted by each party were duly transmitted to the opposing party.

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), 17 (rights of the family), 19, (rights of the child), 21 (property), 22 (freedom of movement and residence), 24 (equal protection), 25 (judicial protection), 26 (economic, social and cultural rights) of the American Convention in relation to its Articles 1 and 2, and Articles 1, 6 and 8 of the IACPPT
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. FACTS ALLEGED

1. The petitioner alleges that on February 10 and 11, 2000, between 40 and 80 members of the Walter Usuga Brigade of the United Self-Defense Groups of Córdoba and Urabá (hereinafter "AUCU"), entered the Bocas de Aracataca district in the Department of Magdalena. He reports that the paramilitaries detained a group of villagers, while torturing and murdering another ten individuals. He points out that these actions resulted in massive displacement of the district's habitants, with an estimated population of 1,200 individuals. He reports that this massacre took place in the context of generalized violence perpetrated by the region's self-defense groups.

2. He indicates that on February 10, 2000, in the riverside area called Cabaña del Hobo, members of the AUCU intercepted several outboard canoes and boats, holding the fishermen and workers who were there captive. They were all taken to a nearby ranch, where they were warned not to leave until further notice. He alleges that before leaving, they murdered Mr. Luis Carlos Cantillo Bravo, Mr. Enrique Enrique Cantillo Moreno, Mr. Pedro Ramón Cantillo Moreno, Mr. Abel Antonio Cantillo Moreno and Mr. Anuar Samper Miranda, leaving their corpses next to a cottage.

3. He alleges that the self-defense group departed for Bocas de Aracataca with a hostage, Mr. Adolfo Rafael Moreno Lara. He relates that on the way they passed through the Ciénaga Grande sector where they also captured fishermen in their outboard canoes, kidnapped Ángel Segundo Rodríguez Samper, and killed Juan Pablo Moreno Borne, whose body was found 4 days later. He points out that they arrived at the district at around 3:00 p.m. in 5 boats and 2 canoes and called a meeting in the main square, which was attended by more than a thousand habitants. He maintains that the paramilitaries specifically sought and identified Mr. Pedro Celestino Pacheco Camargo and Mr. Arturo Enrique Pacheco Niebles among the people. They subsequently ordered the women and the children to go and stay in their homes. He indicates that more than 100 men were locked up in the church for the entire night, except for Messrs. Adolfo Rafael Moreno Lara, Ángel Segundo Rodríguez Samper, Pedro Celestino Pacheco Camargo and Arturo Enrique Pacheco Niebles, who were held at the Police Station. Lastly, he states that the aforementioned four alleged victims were tortured and killed in the early hours of February 11, 2000.

4. He alleges that the entire village was looted and that the AUCU acronym and aims were painted on the walls. He also indicates that they took the town's official boat that was used as an ambulance. To that effect they selected Mr. Gabriel Enrique Moreno Garizabalo at random to drive it. The petitioner indicates that his body was subsequently found in the Cabaña del Hobo. He points out that the hostages in the Church were released just before the AUCU members left. He alleges that while these events were unfolding, the Security Forces were not present in the district. He points out that the precise identification of the alleged murdered victims and the armed group's threats, caused a massive forced displacement of around 200 family groups, amounting to over a thousand individuals, more than half of whom were minors. He stresses that the

district of Bocas de Aracataca practically disappeared because 90% of its houses are unoccupied, and religious services ceased. There is no electricity, and therefore there are not markets or commerce.

5. The petitioner states that the displaced from Bocas de Aracataca live in precarious conditions in marginal neighborhoods in other municipalities. He emphasizes that although Colombian law recognizes the right of displaced persons to return to their place of origin, it is not possible to do so due to the fear of being killed by those who perpetrated the massacre and who have not been fully prosecuted. In addition, he emphasizes that the State, by using the military force of the self-defense groups, continued sponsoring and allowing the same armed group to massacre inhabitants of other villages of the Ciénaga Grande de Santa Marta, due to suspicions of their collaboration with guerrilla groups.

6. He states that on February 14, 2000, merely as a formality to establish in court that the Army had not participated or been an accomplice in these events, the Human Rights NCO of the Córdoba Battalion submitted a report and filed a criminal complaint on the massacre occurring in Bocas de Aracataca. The petitioner points out that the complaint was submitted to the Fifth Delegated Prosecutor's Office before the Circuit Criminal Justices and not to the National Human Rights Unit of the Attorney General's Office. He emphasizes that these ordinary criminal proceedings failed to identify all the perpetrators or participants in the massacre on the grounds that the inhabitants had failed to assist in the investigation. He points out that as a result of the investigations, only one of the paramilitaries involved was brought to trial, and that he was not detained until mid-2014 despite being fully identified and his whereabouts known. The petitioner considers that the authorities have the obligation to act *ex officio* to promote the investigation in light of the reprisals that the villagers could suffer, due to the connivance between the self-defense groups and the Security Forces.

7. From January 2016 the Northern Bloc of the United Self-Defense Groups of Colombia, linked to the AUCU, subjected themselves to the transitional justice system implemented in light of the Justice and Peace Law. By October 2017, after more than 17 years from the massacre, only 14 perpetrators - among them two high-ranking commanders who confessed to being co-authors - had been brought to trial. The petitioner alleges that only a total of 15 out of 40 perpetrators have been identified and prosecuted. He also highlights that by decision of May 15, 2000, the Fourteenth Court of Military Criminal Investigation refrained from initiating criminal proceedings against the military personnel of No. 5 Córdoba Infantry Battalion, and ordered the final archiving of the case. He points out that this decision was made on the understanding that the National Army had not deemed it necessary to deploy to Bocas de Aracataca, due to the absence of indications of possible disturbances of public order.

8. The petitioner indicates that in *tutela* judgment T-085 of February 16, 2009, the Constitutional Court admitted the recognition of damages in favor of the victims of the forced displacement and their consequent assessment before the Contentious Administrative Jurisdiction, on the grounds of their being victims of violations to fundamental rights subject to special protection based on their condition of "manifest weakness". Thus, he refers to the fact that 144 of the 221 family groups affected by the massacre resorted to the *tutela* action to demand reparation from the Colombian State. The majority of them obtained a positive response to their claims. He points out that the Constitutional Court issued Decision 207 on June 30, 2010, which ordered a stay on compliance with any payment order relating to the compensation of damages caused to victims of forced displacement in connection with a *tutela* action or settlement motions ordered by *tutela* judges. This was done on the understanding that there could be a violation of the right to equality due to the absence of unified criteria on the application of the mechanisms and appropriate means to make reparation effective.

9. The petitioner states that as a result of this decision, the assessments and payment of reparations recognized by a writ of protection of constitutional rights (*acción de tutela*) were suspended and, in addition, the viability of the *tutela* was questioned as an appropriate judicial mechanism to obtain administrative reparation. He emphasizes that in order to lift this suspension, a request for administrative judicial oversight was filed against the Plenary of the Constitutional Court, which was denied by the Superior Council of the Judiciary and the General Procurator's Office, on the grounds of a lack of jurisdiction. He indicates that the suspension was maintained until the Constitutional Court issued consolidated judgment SU-254 of 2013, which directly ordered payment of administrative compensation to 8 family groups who were

victims of forced displacement. He points out that the decision established *inter comunis* effects for analogous or similar cases, benefiting at least 136 family groups.

10. In addition, the petitioner points out that Judgment SU-254 of 2013, dated April 24, 2013, reversed the abstract assessment of damages to victims of forced displacement ordered in judgment T-085 of 2009, and imposed administrative compensation based on Law 1448 of 2011, barring the *tutela* as a remedy for their claim. He reports that the 8 families received administrative indemnification without the payment of default interest; and the other groups, despite benefitting from *inter comunis* effects, were not paid with the approval of the Constitutional Court. In this regard, he notes that the alleged victims submitted their respective damage assessments and subsequent executive claims without obtaining an affirmative response from the judicial and administrative authorities. He also notes that the Special Follow-up Chamber of the Constitutional Court relieved the entity in charge of recognition and payment of any constitutional obligation, and stated that non-compliance proceedings would only be admitted in cases of verified neglect and negligence due to the complexity in abiding by the *tutela* decision, thus making compliance and the claim for reparation impossible.

11. For its part, the State asserts that there has been a failure to exhaust the adequate and effective remedies provided by the Colombian legal system and therefore the petition must be declared inadmissible. It emphasizes that serious, impartial and independent criminal proceedings were initiated, and that progress and results were achieved within a reasonable period of time, taking into consideration the complexity of the matter and the procedural activity of the interested party. It points out that the investigative bodies are confronted with an obvious difficulty due to the large number of alleged victims of this crime, the significant number of possible perpetrators, the possible death of several of them and the dynamics of the illegal armed groups' activities whose purpose is to wipe out any trace of the crimes committed and to silence its victims.

12. The State stresses that it has established a comprehensive strategy of transitional justice through the Justice and Peace Law, designed to comply with due process and focused on ending the conflict in Colombia and on providing reparation for the consequences of massive human rights violations. It emphasizes that the aforementioned law allowed for the demobilization of about 32,000 members belonging to the AUC, the investigation of 4,700 members of these illegal groups, about 100,000 victims reported criminal acts and almost 400,000 have participated in the investigation process conducted by the National General Prosecutor's Office. With respect to the massacre that occurred in Bocas de Aracataca, it reports that despite the complexity of the case, the justice system has achieved results. Among these, the investigation of 15 individuals in the ordinary criminal jurisdiction, 13 of whom were brought to trial, and 2 others were not because they were minors at the time of the events. Likewise, on August 23, 2013, preventive detention was issued against 12 possible direct co-authors in the context of the investigation conducted under the Justice and Peace Law. Finally, the State notes that two individuals have been identified as possible co-authors after the fact of this massacre, who are being held in prisons in the United States of America.

13. It also argues a failure to exhaust remedies to obtain reparations from State for its alleged administrative responsibility, since the petitioner did not resort to the Contentious Administrative Jurisdiction. It states that the action of direct reparation constitutes an adequate and effective remedy to claim monetary damages against the State, especially because the Counsel of State has expanded its parameters to adopt guidelines on reparations as established in the Inter-American Human Rights System. Therefore, it concludes that there has been a failure to exhaust the adequate and effective remedies to obtain an integral reparation, as well as a failure to provide grounds for not doing so.

14. Lastly, the State emphasizes that the petitioner has failed to comply with Article 47.b indicating that the petition must state facts that tend to establish a violation of the rights guaranteed by the Convention. In this way, the State maintains that the events described are a result of the criminal acts of illegal self-defense groups unconnected with the Security Forces, and that therefore they cannot be attributable to the State. It also emphasizes that the State is not responsible for omissions, since the petitioner has failed to demonstrate tolerance, complicity or acquiescence of State agents with individuals violating

human rights; nor has the petitioner proven lack of diligence to prevent conduct incompatible with the guarantees established in the Convention.

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

15. The petitioner argues that to date the investigations into the massacre occurring in Bocas de Aracataca and the subsequent forced displacement of the alleged victims have not been concluded and that the perpetrators have not been punished. He argues that as a consequence, impunity persists together with an unjustified delay in justice. For its part, the State indicates a failure to exhaust remedies, since criminal proceedings are still ongoing and, in view of the complexity of the case, there has been no unjustified delay.

16. The Commission recalls that, as a general rule, a criminal investigation must be undertaken promptly in order to protect the interests of the victims, preserve the evidence and safeguard the rights of any person deemed a suspect in the context of the investigation.⁶ From the information provided by the parties, the Commission observes that the investigation aimed at clarifying the facts remains open, without the responsibility of the material and intellectual perpetrators having been clarified or established. Therefore, in view of the characteristics of the petition and the time elapsed since the events of the complaint, the Commission considers that the exception established in Article 46.2.c of the Convention is applicable. In addition, the Commission considers that the petition was filed within a reasonable period of time and that the admissibility requirement regarding timeliness has been satisfied.

17. On the other hand, the IACHR recalls that, for purposes of determining the admissibility of a claim such as the present, the reparation action does not constitute the appropriate remedy nor is its exhaustion necessary, since it is not adequate for providing integral reparation, which includes clarifying the facts and justice for the family members.⁷ Without prejudice to the foregoing, although in the instant case criminal proceedings are the appropriate remedy for the investigation of the facts, it is observed that the petitioner also alleges that specific violations have occurred in connection with the *tutela* actions pursued by the victims of forced displacement to claim reparations, and the lack of compliance with said actions. Therefore, given the connection between these proceedings, the Commission finds that with respect to the issue of compensation, domestic remedies were exhausted with judgment 254 of 2013 on April 24, 2013, issued by the Constitutional Court.

VII. ANALYSIS OF COLORABLE CLAIM

18. In view of the factual and legal elements presented by the parties and the nature of the matter brought to its attention, the Commission considers that: the alleged illegal detentions, acts of torture and extrajudicial executions of the alleged victims, as well as the alleged effects on the personal integrity, and the lack of effective judicial protection of their next of kin, caused as a result of the massacre perpetrated in Bocas de Aracataca, could characterize possible violations of Articles 4 (life), 5 (humane treatment), 7 (to personal liberty), 8 (fair trial) and 25 (judicial protection) of the American Convention in relation to its Articles 1.1 and 2; as well as 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.

19. The Commission also considers that the alleged robberies, destruction and looting of the alleged victims' properties and households, the lack of protection to the family as the impacts on children, the intimidation by illegal armed groups in the area, and the State's alleged acquiescence and lack of prevention, as well as the consequent internal displacement of the inhabitants of Bocas de Aracataca, and the lack of judicial protection, as a result of the events that occurred on February 10 and 11, 2000, could characterize violations of Articles 5 (humane treatment), 8 (fair trial), 17 (rights of the family), 19 (rights of the child), 21

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

⁷ IACHR, Report No. 107/17. Petition 535-07. Admissibility. Vitelio Capera Cruz and family. Colombia. September 7, 2017, para. 9.

(property), 22 (freedom of movement and residence), 25 (judicial protection) and 26 (economic, social and cultural rights) of the American Convention in relation to Articles 1.1 and 2 of the same instrument, to the detriment of the alleged victims and their relatives. Additionally, considering the multiple, complex and continuous nature of the displacement of people, in particular that related to the direct effects that derive from it on the rights to free movement and residence, housing and personal integrity as well as uprooting that in social and cultural terms may be presented, the Commission considers that the allegations related to this phenomenon could characterize possible violations of Articles 5, 22 and 26 of the American Convention in a joint and interconnected manner.

20. With regard to the claim for the alleged violation of Article 27 (suspension of guarantees) of the American Convention, the Commission observes that no information has been presented permitting a *prima facie* identification of any content to consider its possible violation.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 4, 5, 7, 8, 17, 19, 21, 22, 25, and 26 in conjunction with its Articles 1.1 and 2 of the American Convention; and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture;

2. To find the instant petition inadmissible in relation to Article 27 of the American 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 3rd day of the month of February, 2019. (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.

Annex 1
List of Alleged Victims

Alleged Deceased Victims

1. Abel Antonio Cantillo Moreno
2. Adolfo Rafael Moreno Lara
3. Ángel Segundo Rodríguez Samper
4. Anuar Samper Miranda
5. Emer Enrique Cantillo Moreno
6. Gabriel Enrique Moreno Garizabalo
7. Juan Pablo Moreno Borre
8. Luis Carlos Cantillo Bravo
9. Pedro Celestino Pacheco Camargo
10. Arturo Enrique Pacheco Niebles

Annex 2
List supplied by the petitioner including approximately 1,000 alleged victims of forced displacement.