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REPORT No. 49/19
PETITION 722-10
REPORT ON ADMISSIBILITY

HAWIN PARRA RENTERÍA AND RELATIVES
COLOMBIA

Electronically approved by the Commission on April 24, 2019

Cite as: IACHR, Report No. 49/19. Petition 722-10. Admissibility. Hawin Parra and Relatives. Colombia. April 24, 2019.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Walter Raúl Mejía Cardona
Alleged victim:	Hawin Parra Rentería and relatives ¹
Respondent State:	Colombia ²
Rights invoked:	Articles 2 (domestic legal effects), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 11 (privacy) and 25 (judicial protection) of the American Convention on Human Rights; ³ Articles I (life, liberty and personal security) and XVIII (fair trial) of the American Declaration of the Rights and Duties of Man ⁴

II. PROCEDURE BEFORE THE IACHR⁵

Filing of the petition:	May 14, 2010
Notification of the petition to the State:	May 11, 2016
State's first response:	October 2, 2016
Additional observations from the petitioner:	July 14, 2017
Additional observations from the State:	October 2, 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 (deposit of ratification instrument on July 31, 1973)

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 3 (juridical personality), 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 11 (privacy) and 25 (judicial protection) of the American Convention, in relation to its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, under the terms of Section VI
Timeliness of the petition:	Yes, under the terms of Section VI

¹ According to the petitioner, the relatives are as follows: Berlin Rentería Serna (mother), Ángel Parra Rentería (father), Dina Luz Parra (aunt), Ángel and Diana Milena Parra Rentería (siblings).

² Pursuant Article 17, paragraph 2.a of the IACHR Rules of Procedure, Commissioner Luis Ernesto Vargas Silva, a Colombian national, did not partake in the discussion or the decision on this matter.

³ Hereinafter "Convention" or "American Convention."

⁴ Hereinafter "American Declaration" or "Declaration."

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

V. ALLEGED FACTS

1. The instant petition concerns alleged human rights violations to the detriment of Hawin Parra Rentería (“the alleged victim” or “Mr. Rentería”) and his relatives. The petitioner alleges that Mr. Rentería was killed by officers of the National Army of Colombia, who passed him off as “a dangerous extortionist,” and that the State has not provided prompt reparations to the relatives or punished the perpetrators, which has created a situation of impunity.

2. The petitioner indicates that the alleged victim was an 18-year-old Afro-descendent youth who went missing on April 27, 2007, after going to Parque de San Antonio, Medellín, to search for employment. The petitioner submits that Mr. Rentería lived with his aunt, Ms. Dina Luz Parra, and that she began searching for the latter when she noticed that he was not back home. Mr. Rentería’s parents joined her. Their efforts unsuccessfully continued for several days until someone called them to inform that the alleged victim’s body was at the local morgue in Girardota, Antioquia.

3. According to the petitioner, the Public Prosecutor’s Office of Medellín informed that the body was found in Girardota, at 10:00 p.m. on April 27, 2007, and was guarded by soldiers, and that next to the alleged victim’s body lied the dead body of a 17-year-old youth. The petitioner indicates that army officers claimed that they were deployed to the area because of the “Autoridad” strategic mission, aimed at fighting criminal groups operating in that region, and that, in responding to the shooting against them, they killed the alleged victim and the other youth. He affirms that Mr. Rentería’s death was the homicide of a protected person (someone not participating in hostilities in an armed conflict). He claims that the army passed the alleged victim off as “a dangerous extortionist killed in action” and placed a handgun next to his dead body, although officers knew very well that these men were neither hostile nor killed in action. He further explains that the alleged victim had a clean police record and no reasons to be in Girardota. He submits that, in this case, the actions by the army coincide with the modus operandi in Colombia known as “false positives” or “extrajudicial killings.”

4. As for the investigations, the petitioner claims that some individuals have confessed, but progress in the case has been insufficient because there is not yet “a tangible outcome that provides the victims with a higher degree of certainty about the identity of the masterminds, their motives, and premeditation, in the context of systematicity.” He moreover indicates that on December 10, 2014, the Administrative Court of Antioquia found the Ministry of Defense-the National Army guilty of Mr. Rentería’s death, ruling payment of compensation in favor of the victims. Reportedly, the defendant has not paid reparations because of budgetary limitations and its running behind schedule. The petitioner argues that the judgment not only has been disregarded but it also lacks measures of truth, restitution, rehabilitation, satisfaction, and non-repetition.

5. For its part, the State indicates that on April 27, 2007, the Public Prosecutor’s Office filed proceedings to establish the facts and investigations have progressed diligently since then. It submits that the criminal proceedings are currently in the stage of investigation for aggravated murder and the hypothesis of the crime is “homicide by public officers with the object to present the youths as persons killed in action.” It emphasizes that the time taken by the investigation is not due to a lack of diligence but to circumstances such as the number of victims, perpetrators, and sanctionable actions; the false testimonies initially rendered by subjects involved and the difficulty to collect evidentiary material. It argues that in 2017 the Prosecutor’s Office entered preliminary plea agreements with eight suspects, who pleaded guilty of the murder of Mr. Rentería, and formally accused other two individuals who refused to plead guilty.

6. It indicates that, apart from the criminal investigation, on August 3, 2007, a disciplinary investigation was filed against army officers on duty in the city of Girardota. As a result, on February 11, 2009, the Vice-Inspector General’s Office of Colombia ruled to open an investigation into a corporal second class and seven professional soldiers. Subsequently, on February 14, 2013, the Vice-Inspector General’s Office closed the disciplinary investigation, and, on January 13, 2017, it ordered the accusation of the eight suspects with charges of “grievous violations of international humanitarian law for the homicide of a protected person.”

7. It claims inadmissibility of the instant petition based on Article 47, paragraph b of the Convention “in light of the application of the fourth-instance formula.” It indicates that the criminal and disciplinary investigations were conducted with due diligence, resulting in real progress which has allowed the alleged victim’s relatives to know the truth about the facts.

8. Regarding the claim for damages, it submits that the alleged victim’s relatives presented it on December 19, 2008, but a trial court dismissed it on April 28, 2012. On September 23, 2014, a court of appeals admitted the appeal filed by the complainants and revoked the lower court’s decision by establishing that “contrary to the claims by the Military Institution, the victims were not killed in action but unwarrantedly killed in utterly reproachable circumstances which members of the accused institution then changed to conceal the real motives of their actions and legitimize the deaths.” It argues that authorities already took measures to enforce the payment of compensation ordered by the court. It alleges that the State has a margin of appreciation for the fulfilling of its obligations and that, according to the domestic legal framework, the procedure in place is adequate. Therefore, it contends that the State’s adherence to domestic procedures of purely administrative nature is an invalid ground to allege negligence by the State.

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

9. In a written communication of July 14, 2017, the petitioner requested the Commission to declare his petition admissible because over 10 years had passed since Mr. Rentería’s death, without s of truth, justice and reparation being provided to the relatives. Thus, he believed this established unwarranted delay.

10. The State requests that the petition is declared inadmissible on the grounds of lack of exhaustion of domestic remedies. It claims that the petitioner disregarded the subsidiary nature of the Inter-American System in that he submitted his petition before the disciplinary, criminal and administrative authorities issued final judgments. The State alleges the criminal proceedings were adequate and effective in respect of the petitioner’s claims and that the fact that this and the disciplinary proceedings are still pending is due to the complexity of the case, not to a lack of diligence by state authorities. It argues that Article 46, paragraph 2.c of the Convention does not apply to this petition.

11. It also indicates that should the alleged victim’s relatives not be satisfied with the ruling in their favor regarding the claim for damages, they can file remedies that have not been exhausted yet, such as a constitutional appeal for protection from court decisions and a request for comprehensive reparations under the Law on Victims and Land Restitution. It deems that, because of the non-exhaustion of these remedies, the State has not had the opportunity to address the issue concerning the purported lack of full reparation measures.

12. The Commission reiterates that, in the case of claims of crimes against life and integrity, the domestic remedies to be considered in deciding on the admissibility of a petition are those concerning the investigation and punishment of the persons responsible.⁶ The Commission moreover stresses that the determination of reparation, whether determined judicially or administratively (with the two jurisdictions not being mutually exclusive), does not exempt the State of its obligations regarding the component of justice for the violations caused, which obligates the State to guarantee the victims that there will be an investigation

⁶ IACHR, Report No. 55/13. Petition 375-07. Admissibility. Spencer Friend Montehermoso *et al.* Guatemala. July 16, 2013, para. 31; IACHR, Report No. 49/14, Petition 1196/07, Admissibility. Juan Carlos Martínez Gil, Colombia, July 21, 2014, para. 29; IACHR, Report No. 72/18, Petition 1131-08, Admissibility. Moisés de Jesús Hernández Pinto and Family. Guatemala, June 20, 2018, para. 10; IACHR, Report No. 81/18. Petition 190-07. Admissibility. Edgar José Sánchez Duarte. Colombia. July 7, 2018, para. 13; IACHR, Report No. 89/18. Petition 1110-07. Admissibility. Juan Simón Cantillo Raigoza, Keyla Sandrith Cantillo Vides and Family. Colombia. July 27, 2018, para. 10; IACHR, Report No. 126/18, Admissibility. Luis Mariano Pertuz Lara and Family. Colombia, October 19, 2018, para. 10.

into and punishment of the persons responsible for those violations, as per the requirements of international law.⁷

13. Regarding claims of unwarranted delay, the Commission evaluates the circumstances and conducts a case-by-case analysis to determine whether an undue delay occurred. As a rule, the Commission determines that “a criminal investigation should be carried out promptly to protect the interests of the victims and to preserve evidence.” To determine whether an investigation has been carried out “promptly,” the Commission considers several factors, such as the time passed since the crime was committed, whether the investigation has moved beyond the preliminary stage, the measures adopted by the authorities, and the complexity of the case.⁸

14. In this respect, the Commission notices that the State has accounted for the progress made in the criminal and disciplinary proceedings as well as the complexities and difficulties affecting the duration of the proceedings. However, according to the information on the case file, over 11 years have elapsed since the investigations began, yet the disciplinary and criminal proceedings remain pending. The Commission observes that, while there are preliminary plea agreements with the suspects who admitted their responsibility in 2016, these are not final judgments. Considering the circumstances and without prejudging the merits of the case, the Commission deems that the exception to the rule on the exhaustion of domestic remedies established in Article 46, paragraph 2.c of the Convention applies to the instant petition.

15. Under Article 46, paragraph 2 of the Convention, the six-month period established for filing a petition does not apply when an exception to the requirement of prior exhaustion of domestic remedies applies. In such cases, the Commission will analyze if the petition was lodged within a reasonable period considering the date when the alleged violation took place and the circumstances of each case, in accordance with Article 32, paragraph 2 of its Rules of Procedure. In the present case, the Commission notes that Mr. Rentería’s family members learned about his death in May 2007 and that the IACHR received the petition on May 14, 2010. It also observes that, 12 years after the facts occurred, the purported denial of justice and the situation of partial impunity persist. Therefore, given the context and the characteristics of this case, the Commission deems that the instant petition was lodged within a reasonable period of time.⁹

16. As to the claim regarding the compensation ordered by the Administrative Court of Antioquia, the Commission observes that, according to the information on the case file, it has been over four years since that judgment was passed; however, payment remains pending. The State has referred to remedies that the alleged victim’s relatives can use to have the judgment reviewed or to seek full reparation through other means. Nevertheless, it has not mentioned which remedies should be exhausted to obtain the execution of the final judgment issued in their favor. Therefore, the Commission believes that domestic remedies have been exhausted regarding this claim under the terms of Article 46, paragraph 1.a of the Convention. Considering that the decision that exhausted domestic remedies dates from September 23, 2014, and that the IACHR received the petition on May 14, 2010, the Commission decides that it meets the requirement on timeliness set out in Article 46, paragraph 1.b of the Convention.

17. Regarding the State’s observation that the instant petition was filed when legal proceedings were pending at the domestic level, the IACHR has consistently established that the situation to be considered to determine the exhaustion of domestic remedies, is that existing when such decision is made, because the time when the petition was filed and the time of the decision on admissibility are different.

⁷ IACHR, Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia, December 31, 2007, para. 467.

⁸ IACHR, Report No. 50/18. Petition 298-2007. Admissibility. Néstor José Uzcategui *et al.*, Venezuela, July 24, 2008, para. 42.

⁹ IACHR, Report No. 40/18. Admissibility. Nelson Enrique Giraldo Ramírez and Family. Colombia. May 4, 2018, para. 16; IACHR, Report No. 89/18. Petition 1110-07. Admissibility. Juan Simón Cantillo Raigoza, Keyla Sandrith Cantillo Vides and Family. Colombia. July 27, 2018, para. 11.

VII. ANALYSIS OF COLORABLE CLAIM

18. In view of the elements of fact and law submitted by the parties and the nature of the matter brought to its attention, the Commission believes that the allegations regarding the extrajudicial killing of Mr. Rentería by officers of the army and the subsequent concealment by the false attribution of criminal actions to him; the lack of prompt resolution of the criminal and disciplinary proceedings; the lack of full reparations for the alleged victim's relatives, and the lack of prompt payment of compensation established in a final judgment, if proven, could constitute violations of Articles 3 (juridical personality), 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 11 (privacy) and 25 (judicial protection) of the American Convention, in relation to its Articles 1, paragraph 1 (obligation to respect rights) and 2 (domestic legal effects).

19. In regard to the purported violations of the American Declaration, the Commission has previously established that once the American Convention comes into effect in relation to a State, it is this, not the Declaration, that becomes the primary source of law applicable by the Commission provided that the petition concerns the alleged violation of identical rights found in both instruments, and that this is not an ongoing situation. In this case, the alleged violations of the American Declaration are related to Articles 4, 8 and 25 of the American Convention. Therefore, the Commission will examine these claims in the light of the Convention.

20. Regarding the State's claim of the application of the fourth-instance formula, the Commission recognizes its lack of competence to review decisions by domestic courts acting within the sphere of their jurisdiction and following the principle of due process and judicial guarantees. However, the Commission reiterates that it is competent to find a petition admissible and rule on the merits of the case when said petition concerns domestic proceedings that may be contrary to the rights enshrined in the American Convention.¹⁰

VIII. DECISION

1. To find the instant petition admissible regarding Articles 3, 4, 5, 7, 8, 11 and 25 of the American Convention, in relation to its Articles 1.1 and 2; 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 on the 24th day of the month of April, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández García, First Vice President; Antonia Urrejola, Second Vice President; Margarete May Macaulay, Francisco José Eguiguren Praeli, and Flávia Piovesan, Commissioners.

¹⁰ IACHR, Report No. 40/18. Admissibility. Nelson Enrique Giraldo Ramírez and Family. Colombia. May 4, 2018, para. 20; IACHR, Report No. 81/18. Petition 190-07. Admissibility. Edgar José Sánchez Duarte. Colombia. July 7, 2018, para. 18.