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REPORT No. 93/20
PETITION 501-09
REPORT ON ADMISSIBILITY

RUBIELA ROJAS CHICA AND OTHERS
COLOMBIA

Approved electronically by the Commission on April 21, 2020.

Cite as: IACHR, Report No. 93/20, Petition 501-09. Admissibility. Rubiela Rojas Chica and others. Colombia. April 21, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioners	Rubiela Rojas Chica and others
Alleged victims	Rubiela Rojas Chica and others
Respondent State	Colombia
Rights invoked	Articles 8 and 26 of the American Convention on Human Rights

II. PROCEEDINGS BEFORE THE IACHR¹

Filing of the petition	April 24, 2009
Notification of the petition	June 11, 2014
State's first response	November 13, 2015

III. COMPETENCE

<i>Ratione personae:</i>	Yes
<i>Ratione loci:</i>	Yes
<i>Ratione temporis:</i>	Yes
<i>Ratione materiae:</i>	Yes, American Convention (instrument deposited 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 8 (right to a fair trial), 21 (right to property), 25 (right to judicial protection), and 26 (economic, social and cultural rights) all in conjunction with Articles 1 (obligation to respect rights) and 2 (obligation to adopt domestic law provisions) of the American Convention on Human Rights.
Exhaustion or exception to the exhaustion of remedies	Yes
Timeliness of the petition	Yes

V. SUMMARY OF ALLEGED FACTS

1. This petition is primarily centered on the right to property, arising out of the destruction of houses as a result of an earthquake. These houses were allegedly in a "high risk" zone.

2. The petition alleges that in 1992 the Municipality of La Tebaida (department of Quindío, Colombia) authorized the construction of 372 houses on lots located in an area of La Tebaida known as El Mirador². The petitioners allege that the Municipality authorized this construction despite the existence of a

¹ The observations submitted by each party were duly transmitted to the opposing party.

² The petitioners claim that the Municipality conferred this authority on two engineers Jose Daniel Rincon Zulaga and Jorge Hernando Echeverria who were acting nominally for a senator – Ricardo Arias Mora.

March 1992 study by a municipal body known as CRQ-INGEOMINAS that indicated that El Mirador was a zone of “high risk”. The petitioners assert that they were unaware of this study when they subsequently bought lots/houses in or about 1996³. According to the petitioners, the houses were ultimately constructed by La Corporacion GranColombia de Ahorro y Vividenda Granahorrar S.A⁴. The petitioners also allege that an environmental permit was also granted by La Corporacion Autonoma Regional de Quindio despite the risk identified by the 1992 study.

3. The petitioners also allege that in January 1999, there was an earthquake in the area which led to a decree from the mayor of La Tebaida ordering the evacuation/relocation of the petitioners (and other purchasers/owners of lots in El Mirador). The petitioners also claim that following the earthquake, there was a series of studies on the urban areas of La Tebaida – including El Mirador – which showed that the area was at “high risk” and not suitable for housing. The petitioners claim that they have been forced to abandon their homes, without reparation, and that they continue to be obliged to pay mortgages. The petitioners also allege that there were technical studies done after the earthquake that showed that the houses built had a number of structural flaws⁵.

4. In December 2001, the petitioners filed an action for reparation in the Tribunal Administrativo del Quindio against the Municipality of La Tebaida, the Corporacion Autonoma Regional de Quindio and the La Corporacion GranColombia de Ahorro y Vividenda Granahorrar S.A. The petitioners contended that these defendants had acted negligently in authorizing or carrying out the construction of houses in an area of high risk; and that the houses were poorly constructed. In Tribunal ultimately dismissed the claim – mainly on the ground that they had failed to provide a certified copy of the study that the area of construction (where the houses were built) was a high risk zone. The petitioners’ subsequent appeal to Consejo de Estado, was dismissed on January 27, 2009⁶. Based on the record, the petitioners were notified of this decision on the same day (January 27, 2009). The petitioners also assert that they made a criminal complaint against Senator Ricardo Arias and against La Corporacion GranColombia de Ahorro y Vividenda Granahorrar S.A, for fraud and illegal urbanization, but this complaint was archived in 2003.

5. The State rejects the petition as inadmissible principally on the grounds that (a) it violates the fourth instance formula; and (b) it fails to characterize any prima facie violations of the American Convention. With respect to the first ground, the State argues that the complaint of the petitioners was dismissed after being fully ventilated before the domestic courts. In this regard, the State notes that the court of first instance dismissed the claim because of the petitioners’ failure to adduce admissible evidence in support of their claim (i.e. certified copy of the 1992 study) pursuant to theCodigo de Procedimiento Civil.

6. With respect to the second ground, the State contends that (a) the 1992 study referred to by the petitioners did not include El Mirador but surrounding areas; (b) authorization for construction was given after verifying that the applicants had completed the requisite technical studies to adequately ensure the design, construction, and stability of the construction work; (c) there was no environmental licence issued by the Corporacion Autonoma Regional del Quindio as claimed by the petitioners, because the law did not require this until 1993.

7. The State also alleges that following the earthquake in 1999, there were mayoral decrees ordering an evacuation/relocation of the houses in El Mirador. However, in 2002, a study done by Corporacion Autonoma Regional del Quindio that 90% of El Mirador was fit for construction. As a result, the mayor revoked the previous decrees and ordered that in respect of houses that had not been evacuated/relocated, these would be repaired according to plan of repair. As it relates to the petitioners claims of faulty construction, the State argues that this is attributable to third parties and not to the State. The State also argues that the damage caused to the petitioners (by the earthquake) was unforeseeable, and not attributable to the State.

³ According to the petitioners, they purchased the houses/lots by way of mortgages (from La Corporacion GranColombia de Ahorro y Vividenda Granahorrar S.A). The petitioners also contend that an environmental permit was also granted by the Corporacion Autonoma Regional de Quindio despite the risk.

⁴ According to the petitioners the construction was initially started by a company known as El Mirador y compania Ltda, but was subsequently taken over and completed by La Corporacion GranColombia de Ahorro y Vividenda Granahorrar S.A.

⁵ In this regard, the petitioners refer to a study by a NGO – “Antioquia Presente” as the principal study done.

⁶ According to the petition, the Consejo de Estado held that the amount being claimed fell below its jurisdiction.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

8. As between the parties, it is undisputed that the petitioners unsuccessfully litigated their claim before the Tribunal Administrativo del Quindío and the Consejo de Estado. The State, for its part, did not submit any allegations concerning the exhaustion of domestic remedies or the timeliness of the petition.

9. In this case, the Commission notes, for the purpose of the analysis of admissibility, that the petitioners exhausted all the remedies available in the domestic legal framework, and that, consequently, the petition meets the requirement established in Article 46.1.a of the Convention. As to the timeliness requirement, the Commission notes that the petition was filed within the six months period following the date of notification of the final decision by which the domestic remedies were exhausted. The date of notification was January 27, 2009, and the petition was received on April 24, 2009. Thus, the requirement set forth in Article 46.1.b of the Convention is declared met.

VII. COLORABLE CLAIM

10. In the instant case, the petitioners allege that the State has incurred responsibility for (a) authorizing and permitting the construction of houses in an area of “high risk” (that were ultimately damaged by an earthquake in 1999); (b) failing to take adequate measures to ensure that the houses were structurally sound; and (c) failing to provide any compensation for losses incurred as a result of having to relocate as a result of damage done to the houses. The Commission notes that the parties are at variance on the question of whether the area of construction was one of “high risk”, and that the State has attributed any faulty construction to third parties. However, given that this construction was authorized by the State, the Commission considers that the petitioners' allegations are not manifestly unfounded and require a substantive study, since if the facts denounced are confirmed as true, they could constitute violations of Articles 21, 8, 25 and 26 of the American Convention with regard to the obligations established in Articles 1.1. and 2 of the same instrument.

11. As for the State's allegations that this petition leads to a court of fourth instance, the Commission reiterates that, under its mandate, it is competent to declare a petition admissible and rule on the merits of the case when the matter concerns domestic proceedings where any of the rights protected by the American Convention might have been violated.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 8, 21, 25, and 26 all in conjunction with Articles 1.1 and 2 of the American Convention on Human Rights.

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 21st day of the month of April, 2020. (Signed): Joel Hernández, President; Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, and Julissa Mantilla Falcón, Commissioners.