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REPORT No. 348/21

PETITION 461-14

REPORT ON ADMISSIBILITY

SOREN ULISES AVILÉS ÁNGELES *ET AL.*
COLOMBIA

Approved electronically by the Commission on November 19, 2021.

Cite as: IACHR. Report No. 348/21. Petition 461-14. Admissibility. Soren Ulises Avilés Ángeles et al. Colombia. November 19, 2021.

I. PETITION DATA

Petitioners:	Regional Human Rights Advisory Foundation (<i>Fundación Regional de Asesoría en Derechos Humanos—INREDH</i>) and Mexican Human Rights League (<i>Liga Mexicana de Derechos Humanos—LIMMEDDHH</i>)
Alleged victims:	Soren Ulises Avilés Ángeles, ¹ Fernando Franco Delgado, ² Juan González del Castillo, ³ and Verónica Natalia Velázquez Ramírez ⁴
Respondent state:	Republic of Colombia
Rights invoked:	Articles 4 (life), 5 (humane treatment), and 25 (judicial protection), in connection with Article 1.1 (obligation to respect rights) of the American Convention on Human Rights ⁵

II. PROCEEDINGS BEFORE THE IACHR⁶

Date of filing of the petition:	March 27, 2014
Additional information received during the study stage:	December 6, 2018
Notification of petition to the state:	June 8, 2019
State's first response:	June 25, 2020
Additional observations from the petitioners:	October 27, 2020
Additional observations from the state:	March 30, 2021

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 PROCEEDINGS AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF REMEDIES UNDER DOMESTIC LAW, AND TIMELINESS OF PETITION

Duplication of proceedings and international <i>res judicata</i>:	No
Rights declared admissible:	Articles 4 (life), 5 (humane treatment), 8 (fair trial), 13 (freedom of expression), and 25 (judicial protection), in connection with Article 1.1 (obligation to respect rights) of the American Convention
Exhaustion of remedies under domestic law or applicability of exception to the rule:	Yes
Timeliness of filing:	Yes

¹ The petitioners identify Telésforo Avilés Chavarría as the father of Soren Ulises Avilés Ángeles.

² The petitioners identify Miriam Dolores Delgado Moreno as the mother of Fernando Franco Delgado.

³ The petitioners identify María Rita del Castillo Díaz as the mother of Juan González del Castillo.

⁴ The petitioners identify Ana María Ramírez Maldonado as the mother of Verónica Velázquez Rodríguez.

⁵ Hereinafter referred to as the American Convention or the Convention.

⁶ The observations made by each party were duly transmitted to the other party.

V. FACTS ALLEGED

1. The petitioners allege the Colombian state's international responsibility for the extrajudicial killing of the four alleged victims in the bombing and attack of the camp of the guerrilla commander known as Raúl Reyes by Colombian troops in the Ecuadorian region of Angostura.

2. The petitioning organizations indicate that the alleged victims were university students and Mexican nationals from the School of Philosophy and Literature of the Autonomous University of Mexico (hereinafter UNAM) and the National Polytechnic University of Mexico. They note that the alleged victims had created a chair in the School of Philosophy and Literature, as well as a Latin American Studies Documentation and Broadcasting Center called *Libertador Simón Bolívar*. In this academic and political context, the alleged victims decided to travel throughout the continent to learn about and disseminate the history of Latin American peoples. The petitioners stress that Juan González del Castillo was working on his degree thesis for the Latin American studies program, focusing on the revolutionary songs of the guerrilla and Latin American movements, and thus, it was not surprising that he had been looking to establish direct contacts with primary sources among the guerrilla in order to draft and finalize his degree thesis.

3. On January 31, 2008, the alleged victims arrived in Quito to attend several academic events. Among these academic activities planned by the alleged victims, there was one to interview Luis Édgar Devia Silva, also known as Raúl Reyes, commander of the Revolutionary Armed Forces of Colombia (hereinafter FARC), because of which, on February 29, 2008,⁷ they reached the FARC campsite located in Ecuadorian territory two kilometers away from the Colombian border in the vicinity of the San Miguel River.

4. The petitioners indicate that, on March 1, 2008, an unknown number of army and police troops from Colombia launched an assault on the camp where the alleged victims were located at the time in the Ecuadorian region of Angostura. The assault started with a bombing of the FARC camp and afterwards a raid by Colombian troops between 1:00 and 3:00 a.m. The petitioners stress that, during the raid after the bombing, Colombian army troops shot the wounded and took away the bodies and communication devices. They estimate that 24 persons died as a result of the attack and that at least 3 persons had been injured, but the true number remains unknown because several bodies were removed from the site of the incident by the Colombian army. The Ecuadorian army had found 23 bodies. They indicate that, on September 8, 2008, the then Colombian ambassador to Mexico reported to the Mexican Human Rights Defense League the death of the four Mexican nationals and alleged victims in the military operation called *Fénix* [Phoenix], as well as the survival of another Mexican student, a young woman who had been injured in the attack.

5. The petitioners refer to the facts submitted by Ecuador in Inter-state Petition IP-02 to describe how the military operation called *Fénix* started in 2007 and was coordinated by the Intelligence Department of the National Police Force of Colombia (*Dirección de Inteligencia de la Policía Nacional Colombia—DIPOL*, hereinafter referred to as DIPOL), with Ecuadorian and U.S. agents to locate the campsite of the commander known as Raúl Reyes. They also indicate that, once DIPOL had confirmed that the camp was located in Ecuadorian territory, the then President of Colombia authorized the military operation against the site.

6. As a result, after midnight on March 1, 2008, airplanes and helicopters left the ground from the Tres Esquinas or Larandia airbase in Caquetá, Colombia, and headed to Angostura in Ecuador, located 1,850 meters from the Colombian border. At around 00:20, they bombed the two-hectare campsite, where there were about fifty persons at the time, among whom FARC insurgents, five Mexican nationals, and one Ecuadorian national. At around 3:30 a.m. the Colombian Air Force launched another bombing to prevent members of the guerrilla to flee and take with them the dead and wounded.

7. In Operation *Fénix*, it was estimated that twenty-five persons were killed, including both civilians and members of the guerrilla. The petitioners indicate that Ecuador identified the following persons

⁷ Although the petitioners indicate that the alleged victims arrived at the camp on March 29, 2008, the IACHR understands that it is a typographical mistake and that they mean February 29, 2008, since they have indicated that the alleged victims departed from Quito on February 28, 2008, and that the bombing that destroyed the camp occurred on March 1, 2008.

among the dead: Verónica Natalia Velasquez Ramírez, 30 years of age; Fernando Franco Delgado, 28 years of age; Soren Ulises Aviles Angeles, 33 years of age; and Juan González del Castillo, 28 years of age, all of them Mexican nationals and students of the National Autonomous University of Mexico. They also add that the results of the autopsies of the bodies that were found in the camp conducted in Ecuador “revealed the practice of extrajudicial executions of defenseless individuals.” Ecuador’s office of the attorney general requested French experts to provide them with a second opinion, which confirmed that they had died from the impacts of bullets shot from firearms at close range.

8. The petitioners claim to the IACHR that no criminal proceedings had been filed *ex officio* in Colombia for the death of the alleged victims. They state that, in the framework of the inter-state petition between Ecuador and Colombia, the state of Colombia reported that there were no investigations being conducted into the bombing by the Office of the Attorney General of the Nation or in the Military Criminal Justice system or the Office of the Prosecutor General of the Republic, because the events took place in Ecuadorian territory. The petitioners point out that, because of the inter-state complaint filed for the death of one Ecuadorian national in the bombing of Angostura, the attorney-general’s office of Colombia launched an inquiry into the death of Mr. Aisalla Molina, but not into the death of the alleged victims of the present petition. They invoke the exception of unwarranted delay in rendering a final judgment under domestic remedies, because in Colombia there had been no criminal investigation into the death of the alleged victims.

9. The petitioners allege the violation of the right to life of the alleged victims because they deem that the state of Colombia should have specified the military targets and differentiated the persons protected under international humanitarian law (hereinafter IHL), contrary to what occurred in the attack in Angostura. They contend that military Operation *Fénix* violated Ecuador’s sovereignty and constituted a direct, disproportionate, malicious, and premeditated attack on a camp that was playing an important role in negotiating the return of hostages. They claim that evidence showing that the bodies had been shot in the back and had been mutilated, as well as the absence of any evidence of combat, are elements demonstrating that it was not an attack conducted for the purpose of legitimate self-defense, but rather a massacre and extrajudicial killings that constitute a crime against humanity. They argue that the intent of “neutralizing” a military target is contrary to IHL, because even alleged terrorists benefit from the protection of IHL, and the state is required to arrest them and provide them with a fair trial in order to provide them with judicial guarantees. They deem that a military operation to arrest the insurgents would have fulfilled the purpose of the operation in a less violent fashion.

10. They claim that Colombia breached the IHL principles of distinction, precaution, humane treatment, and proportionality. They contend that the state could have conducted operations of observation and gathered more accurate information on the presence of civilians in the camp, because they already knew about the location of the guerrilla camp. They point out that the camp acted as a hub of dialogue and mediation based on a humanitarian agreement for the release of hostages, where journalists, writers, mediators, and students could be found. It was located outside the so-called red zones or conflict areas. They therefore conclude that the state of Colombia did not take all the feasible precautions that were in its power to prevent and protect the civilian population from the impacts of the attack. In addition, they state that the gunshot wounds found in the back of some of the bodies pointed to a breach of the principle of humane treatment.

11. They also report the violation of the right to judicial protection because of the failure to launch a criminal investigation into the death of the alleged victims in Operation *Fénix*. And they allege the violation of psychological integrity to the detriment of the next of kin of the alleged victims because of the lack of access to justice. In subsequent communications, they state that they had filed various petitions with the Colombian Embassy in Mexico between September 2008 and October 2012 in order to investigate and require Colombian authorities to undertake judicial actions *ex officio* and ascertain the facts of the incident, but were unable to secure any response, as a result of which they do not know whether there was ever a criminal investigation that had been closed. They argue, nevertheless, that the investigation conducted in Colombia would not have followed due process of law because constitutional immunity would not have allowed those responsible to be tried and because the conduct was ruled to be atypical, in other words, the actions deployed would not have been categorized as criminal under Colombian law.

12. As for the state of Colombia, it contends that this petition is inadmissible because it brings charges that are unfounded with regard to the alleged violation of the right to judicial protection. In addition, it claims that the petitioners intend for the IACHR to act as an international “fourth instance” regarding the ruling to dismiss the criminal proceedings, on the basis of the terms of subparagraphs (b) and (c) of Article 47 of the American Convention. It claims that the IACHR has ruled that petitions were inadmissible on the basis of this reason when they had not provided sufficient evidence substantiating the existence of a violation of the American Convention. It also indicates that the European Court of Human Rights has used the same reasoning for complaints that fail to meet the requirements of sufficient seriousness from regarding the facts and the law to attribute international responsibility to the state.

13. In that regard, the state contends that the petitioners are taking the allegations submitted in the admissibility report of the inter-state petition out of context, because they only referred to the Ecuadorian national. It stresses that the attorney-general’s office did indeed launch a criminal investigation *ex officio* on March 2, 2008, as a result of the death of all the persons who died in the military operation in Angostura. These criminal proceedings came to end on February 10, 2016, with the ruling to dismiss the case by the office of the Deputy Attorney General of the Nation, on the grounds that the actions deployed by the Colombian troops were atypical, that is, they did not constitute a crime. Regarding this, it contends that, because the arguments by the petitioners were not duly substantiated in either fact or law, they are manifestly groundless according to the terms of Article 47(c) of the American Convention.

14. Furthermore, the state points out that the ruling to close the criminal case was taken in line with treaty-based guarantees. It recalls that, according to the formula referred to as the fourth instance, the IACHR does not have the authority to review rulings issued by domestic courts acting in the purview of their jurisdiction for the implementation of judicial guarantees. Colombia infers that, if the Commission undertakes a review of the events occurring on March 1, 2008, it would necessarily have to review the ruling of dismissal adopted under domestic law on February 10, 2016.

15. Regarding this, it points out that the investigation was processed in the Office of the District Attorney No. 20 of the National Counter-Terrorism Unit up until March 21, 2013, the date on which it was referred to the office of the Attorney General of the Nation owing to the constitutional immunity of the persons under investigation. On April 21, 2013, the then Attorney General of the Nation submitted to the Supreme Court of Justice a motion to prevent the latter from hearing the proceedings, which was ruled admissible by the Court, which ordered its transfer to the office of the Deputy Attorney General of the Nation on May 15, 2013. The state explains that, on February 10, 2016, the Deputy Attorney General ordered the case to be closed on the grounds that the actions deployed on March 1, 2008, had complied with the IHL principles of distinction, humane treatment, precaution, and proportionality. The state quoted extensively from the ruling to close the investigation, whose relevant reasons for characterizing the alleged incidents are transcribed below:

[...] a military operation aimed at neutralizing the enemy is in conformity with international humanitarian law (IHL) as long as it meets a series of requirements: (a) first of all, the military operation must be developed in the context of an international or domestic armed conflict; (b) if this requirement is met, it is necessary, second, to examine whether or not the military operation intended to strike a legitimate military target in conformity with the parameters established by IHL; (c) finally, it must be assessed whether or not the planning and execution of the operation observed the IHL rules and principles applicable in the specific case.

[...] Less harmful means, different from the strategic air strike, might have consisted of a larger-scale land-based maneuver; in other words, the air strike could have been discarded and, in its place, a larger number of helicopter-carried troops could have been deployed. Although an operation with those features might have exerted less harmful impacts on the enemy, that is, the members of the Frente 48 of the FARC in this specific case, it is evident that might not have been as effective to achieve the principal objective of Operation *Fénix*—the arrest or neutralization of Raúl Reyes—because an operation of that kind would have not benefited from the element of surprise and might have given Raúl Reyes the opportunity to flee when law enforcement troops launched their attack.

[...] Nevertheless, the fact that they were deemed to be civilian [referring to the alleged victims of the instant petition] does not make it possible to conclude that their deaths and injuries can be criminally attributable to those who ordered, planned, and executed Operation *Fénix*. It must be recalled that the impacts on civilians in the context of an armed conflict caused law enforcement are permitted by IHL as long as they are proportional to the expected concrete and direct military advantage. Because of that, what must first be ascertained is whether or not, in this specific case, the principle of proportionality was observed. Whether or not said principle was observed shall be examined below as explained at the beginning of this ruling on the IHL system of sources." [...] As for the precautionary measures, the nature of the target to be attacked has to be verified. This verification must be conducted during the planning of the attack and whether or not there was a substantial lapse of time between the planning and the execution, before it was carried out to make sure there were no changes in the circumstance or nature of the military target to be attacked. During the planning of Operation *Fénix*, it was ascertained that "According to available information there were no houses, guards, or kidnapped persons in the vicinity of the area of the camp, which made it possible to expect that there would be no collateral damage in the event of an operation conducted by law enforcement," as indicated in the Official Report on Operation *Fénix* (EMP 2, p. 59). In other words, during the planning it was ascertained that it was a military target.

16. Accordingly, the state of Colombia concludes that the military operation executed on March 1, 2008, was in conformity with the applicable statutory framework, as it was carried out within the margin of risk permitted by criminal law, as concluded by the Office of the Attorney General of the Nation. It also states that constitutional immunity did not imply that the facts would not be investigated, but rather that the investigation would be conducted directly by the Office of the Attorney General of the Nation. It also alleges that the ruling to close the investigation could be challenged in criminal courts or by means of a motion for protection. Because of that, the state deems that there has been no violation of the obligations stemming from the American Convention which would authorize the IACHR to examine the case of the ruling to close criminal proceedings. And it requests the Commission to rule that the present petition is inadmissible in connection with the alleged violation of the right to judicial protection because the allegations on the absence of a criminal investigation are false, and with respect to Operation *Fénix* because the Commission would be acting as a court of appeal with respect to the ruling to close the case issued by the Office of the Attorney General of the Nation.

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

17. The Commission observes that the instant petition focuses on the killing of four young Mexican nationals during the bombing and military raid carried out by Colombian troops. There is no dispute about the exhaustion of domestic remedies because the state clearly indicates that it had launched a criminal investigation *ex officio* that led to a ruling to close the case, in conformity with applicable statutes.

18. The IACHR recalls that, in situations in connection with possible violations of the right to life, as well as in extrajudicial killings, the domestic remedies that must be taken into account for the purpose of deciding the petition's admissibility refer to the investigation and punishment of those responsible, subject to domestic legislation on crimes that are to be prosecuted *ex officio*.⁸ The Commission considers that the final ruling exhausting domestic remedies with respect to the instant petition was the one that ordered the investigation to be closed, issued by the office of the Deputy Attorney General of the Nation on February 10, 2016. The legal reasons leading to this ruling are being upheld and reiterated by the state of Colombia as part of its official stance regarding the instant petition; therefore, the Commission considers that these criteria are definitive. As a result, because the petition was filed on March 27, 2014, the Commission concludes that the instant petition meets the requirements set forth in Article 46(1)(a) and (b) of the American Convention.

VII. COLORABLE CLAIM

19. The instant petition includes allegations on the execution of Operation *Fénix* in which the alleged victims died, as well as on the impunity of the case stemming from the closing of the criminal investigation. The state replies that the facts in connection with the failure to conduct a criminal investigation

⁸ IACHR. Report No. 178/21, Petition 1956-12, Admissibility. Nicolás David Neira Álvarez and next of kin. Colombia. August 13, 2021, para. 18.

are manifestly groundless and that, if the IACHR were to examine the legality of Operation *Fénix*, it would be acting as an international court of fourth instance regarding the ruling to close criminal proceedings.

20. The Commission reiterates that, for the purpose of admissibility, it must decide whether the facts being alleged tend to establish a violation of rights, in accordance with the stipulations of Article 47(b) of the American Convention or the petition is “manifestly groundless” or “obviously out of order,” in conformity with subparagraph (c) of said article. The criteria for assessing these requirements differ from those used to rule on the merits of a petition. In that respect, the Commission has stated that it is competent to admit and review a petition when the court motion being referred to can materially undermine any right guaranteed under the American Convention.⁹

21. Accordingly, the IACHR points out that, in the instant case, there is a dispute about the violation of the right to life of the alleged victims in the light of applicable IHL standards, in conformity with which the attack on the guerrilla camp of Raúl Reyes should have been carried out. Both the Inter-American Court of Human Rights¹⁰ and the Inter-American Commission¹¹ have ruled that the relevant provisions of IHL can be taken into account as elements for interpreting the American Convention with regard to the enforcement of treaty-based obligations in contexts of armed conflict. Thus, the IACHR notes that the allegations of the parties focus on whether the military operation of March 1, 2018, observed the IHL principles of distinction, precaution, proportionality, and humane treatment. The Commission deems that these allegations are not manifestly groundless and that they do provide elements to be taken into consideration, at least *prima facie*, for the purposes of the present analysis of admissibility, regarding the possible violation of human rights enshrined in the American Convention for the benefit of the alleged victims. Moreover, the Commission will admit Articles 8 (fair trial) and 13 (freedom of expression) of the Convention due the fact that the State did not respond to the information requests filed by the next of kin of the alleged victims regarding the investigation and criminal proceedings carried in Colombia concerning the events of March 1st, 2008, and because they were not able to participate in the judicial process.

22. In light to these considerations and after examining the elements of fact and law described by the parties, the Commission deems that the allegations of the petitioners are not manifestly groundless and do require an in-depth examination, because the facts being alleged, were they to be proven true, would tend to establish violations of articles 4 (life), 5 (humane treatment), 8 (fair trial), 13 (freedom of expression), and 25 (judicial protection) of the American Convention to the detriment of Soren Ulises Avilés Ángeles, Fernando Franco Delgado, Juan González del Castillo, and Verónica Natalia Velázquez Ramírez, as well as their direct next of kin as individually identified in the proceedings of the instant case filed with the IACHR.

VIII. DECISION

1. To declare the instant petition admissible in connection with Articles 4, 5, 8, 13, and 25 of the American Convention.

⁹ IACHR. Report No. 39/96. Case 11.673. Marzioni (Argentina). October 15, 1996, paras. 50-51; IACHR. Report No. 1/03. Case 12.221. Jorge Omar Gutiérrez (Argentina). February 20, 2003, para. 46; IACHR. Report No. 4/04. Petition 12.324. Rubén Luis Godoy (Argentina). February 24, 2004, para. 44; IACHR. Report No. 32/07. Petition 452-05. Juan Patricio Marielo Saravia et al. (Chile). May 2, 2007, para. 57; IACHR. Report No. 72/11. Petition 1164-05. Admissibility. William Gómez Vargas (Costa Rica). March 31, 2011, para. 52; IACHR. Report No. 65/12. Petition 1671-02. Admissibility. Alejandro Peñafiel Salgado (Ecuador). March 29, 2012, para. 38; and IACHR. Report No. 64/14. Petition 806-06. Admissibility. Laureano Brizuela Wilde (Mexico). July 25, 2014, para. 43.

¹⁰ I/A Court H.R. Case of Las Palmeras v. Colombia. Preliminary objections. Judgment of February 4, 2000. Series C No. 67, paras. 32 to 34. See also: Case of Bámaca Velásquez v. Guatemala. Merits. Judgment of November 25, 2000. Series C No. 70, para. 209; I/A Court H.R. Case of the “Mapiripán Massacre” v. Colombia. Merits, reparations, and costs. Judgment of September 15, 2005. Series C No. 134, para. 115; I/A Court H.R. Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits, and reparations. Judgment of November 30, 2012. Series C No. 259, para. 23; and I/A Court H.R. Case of Rodríguez Vera et al. (The Disappeared from the Palace of Justice) v. Colombia. Preliminary objections, merits, reparations, and costs. Judgment of November 14, 2014. Series C No. 287, para. 39.

¹¹ IACHR. *Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia*. OEA/Ser.L/V/II., Doc. 49/13, December 31, 2013, chapter 3, section C “Complementarity of international human rights law and international humanitarian law.”

2. To notify the parties of the present decision, to continue examining the merits of the case, 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 19th day of the month of November, 2021. (Signed:) Antonia Urrejola, President; Julissa Mantilla Falcón, First Vice President; Flávia Piovesan, Second Vice President; Margarete May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, and Stuardo Ralón Orellana, Commissioners.