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Decided by:	President: Claudio Grossman; First Vice President: Juan E. Mendez; Second Vice-President: Marta Altolaguirre; Commissioners: Robert K. Goldman, Peter Laurie, Julio Prado Vallejo, Helio Bicudo.
Dated:	10 October 2001
Citation:	El Aro, Intuango v. Colombia, Case 12.266, Inter-Am. C.H.R., Report No. 75/01, OEA/Ser./L/V/II.114, doc. 5, rev. (2001)
Represented by:	APPLICANT: Grupo Interdisciplinario por los Derechos Humanos
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I. SUMMARY

1. On March 3, 2000, the Inter-American Commission on Human Rights (hereinafter “the Commission”) received a petition submitted by the Grupo Interdisciplinario por los Derechos Humanos (hereinafter “the petitioners”) alleging that from October 22 to November 12, 1997, members of groups operating outside the law known as “paramilitary groups” executed Arnulfo Sánchez, José Darío Martínez, Olcris Fail Díaz, Wilmar Restrepo (a minor), Omar Ortiz, Fabio Antonio Zulueta, Otoniel de Jesús Tejada Tejada, Omar Iván Gutiérrez, Guillermo Andrés Mendoza, Nelson Palacio Cárdenas, Luis Modesto Múnera, Marco Aurelio Areiza, Rosa Barrera, Dora Luz Areiza, and Alberto Correa (hereinafter “the victims”) with the tolerance of state agents, during a pre-announced armed incursion in the district (Corregimiento) of El Aro, municipality of Ituango, department of Antioquia, Republic of Colombia (hereinafter “the State” or “the Colombian State”). The petitioners allege that these acts were carried out with the tolerance or acquiescence of state agents.

2. The petitioners alleges that the State is responsible for violating the rights to life, humane treatment, personal liberty, protection of the family, and property, enshrined in Articles 4, 5, 7, 8, 17, and 21, as well as the general obligation to ensure the enjoyment of the human rights protected in the American Convention on Human Rights (hereinafter “the American Convention”) to the detriment of the victims. The State asked the Commission to declare the claim inadmissible for failure to meet the requirement of prior exhaustion of domestic remedies, established in Article 46(1)(a) of the American Convention. In this respect, the petitioners alleged that the claim should be considered to fall within the exception provided for at Article

46(2)(c) of the American Convention, and that the Commission was therefore competent to examine it.

3. Based on the analysis of the parties' positions, the Commission concluded that it is competent to take cognizance of the claim submitted by the petitioners, and that the case is admissible under Articles 46 and 47 of the American Convention.

II. PROCESSING BEFORE THE COMMISSION

4. On April 11, 2000, the Commission proceeded to process the petition as number 12.226, and to forward the pertinent parts to the Colombian State, giving it 90 days to submit information.

5. The State presented its response on July 14, 2000, and the pertinent parts were forwarded to the petitioners for observations. On October 12, 2000, the petitioners submitted additional information; it was forwarded to the State, which was given 30 days to respond. On December 6, 2000, the State submitted its observations. On February 26, 2001, during its 110th session, the Commission held a hearing on the merits with the participation of both parties. On August 26, 2001, the petitioners submitted additional information. On October 2, 2001, the State submitted its observations.

III. THE PARTIES' POSITIONS

A. The petitioners' position

6. The petitioners allege that from June 1996 to February 1997, the civilian population of the municipality of Ituango, in the department of Antioquia, suffered a series of grave acts of violence by paramilitary groups belonging to the Autodefensas de Córdoba y Urabá (AUC), at that time led by Carlos Castaño Gil. The petition indicates that the AUC announced its intent to carry out an incursion and that these threats were duly made known to the authorities. They allege that in this context, on October 22, 1997, approximately 30 men armed and wearing military uniforms arrived in the district of Puerto Valdivia, where there is a continuous Army presence, and went to the district of El Aro, along the way committing atrocious acts of violence against the civilian population, with the acquiescence of state agents. As they proceeded, three paramilitary groups tortured and executed members of the community, destroyed and set fire to humble dwellings they found in their path, impeded the entry or exit of any inhabitant of the district, and stole the cattle from the farms.

7. The petitioners' account indicates that on October 22, 1997, in Puerto Valdivia, the first paramilitary group executed Messrs. Omar Ortiz and Fabio Antonio Zuleta Zabala, farmers who lived in El Puquí. In addition, they entered the farm of La Planta and assassinated Mr. Arnulfo Sánchez. Once they reached the pier of Puerto Escondido, the group executed Mr. Omar Iván Gutiérrez in the presence of his wife and young daughters, and cast into the river the freight that belonged to the residents, which was kept in the warehouse owned by Mr. Gutiérrez. Later, the group executed Messrs. Olcris Fail Díaz, José Darío Martínez, and Otoniel de Jesús Tejada. On Saturday, October 25, 1997, that paramilitary group reached the district of El Aro and in a store

assassinated the storeowner, Mr. Guillermo Andrés Mendoza Poso; Mr. Luis Modesto Múnera, a worker for the municipal government of Ituango; and Mr. Nelson Palacio Cárdenas, a farmer.

8. According to the petitioners, the other two groups of paramilitaries reached El Aro from the municipality of Briceño, where they destroyed the bridges of Palestina and Ituango. They allege that these groups assassinated the child Wilmar Restrepo Torres, 13 years old, and Mr. Alberto Correa, while they were performing agricultural work. The first members of the group to reach El Aro went to the house of Mr. Marco Aurelio Areiza Osorio and his common-law wife Rosa María Posada, of whom they demanded food and a cow. Later, they allegedly held Mr. Areiza Osorio in a home where he was tortured and executed. Witnesses are said to have confirmed that the victim showed signs of torture in the eyes, ears, chest, genitalia, and mouth. Nonetheless, he was buried without the official act of removing the body taking place, nor with any death certificate, due to the absence of official authorities. Petitioners further allege that on October 30, 1997, the young woman Dora Luz Areiza was assassinated, and that the paramilitary groups also tortured and executed Rosa Barrera, who worked as a domestic employee in the Church, in a room adjacent to the sanctuary.

9. The paramilitaries destroyed and set fire to 40 houses in the urban sector of the district of El Aro. Only the chapel, the health post, and eight homes were left standing. Finally, they allowed the local residents to leave with the warning that they should stay away for at least two months, and that anyone who made any statements to the authorities or the news media would be executed. As a result, some 800 families were displaced to the municipality of Puerto Valdivia and to the district of Santa Rita.

10. As regards the theft of the cattle, petitioners note that the paramilitaries, with forced guidance of the residents, drove the animals to Puerto Valdivia, where they are said to have spent about ten days at a farm known as La Planta. The petitioners allege that even though the military and judicial authorities were aware of the situation, they failed to take any action. Finally, the cattle was taken to the municipality of Tarazá. The petitioners note that in a press release published in the newspaper *El Colombiano*, Carlos Castaño Gil informed the owners of the cattle that they could claim it there. Nonetheless, it was not returned to those peasants who did so, and the authorities allegedly maintained silence.

11. In relation to the action of the state agents, petitioners allege that the Army did not go to El Aro until three weeks after the paramilitary incursion. Despite the repeated early warnings to the authorities, the presence of the media, who documented the devastation in the urban area, and the testimony of some peasants who had returned to their homes, neither the armed forces or the National Police went to protect the civilian population. The petitioners' arguments not only refer to the omissions of the state security forces; they also point to acts indicating the active cooperation of these forces with the paramilitary incursion. Specifically, petitioners states that on October 27, 1997, an Army helicopter delivered munitions to the paramilitary forces in the plaza of El Aro. It argues that the disciplinary investigation by the Office of the Procurator General (Procuraduría General de la Nación) includes testimony of the presence of the National Army in the area of El Aro and its collaboration with the paramilitary group in the incursion. Petitioners consider, therefore, that the torture and execution of civilians and other unlawful acts were perpetrated with the support, knowledge, and tolerance of State agents.

12. The petitioners allege that the State is responsible for the violation of the right to property considering that the paramilitary group, in the course of its incursion in the district of El Aro, burned and destroyed most of the residents' dwellings. In addition, they are accused of having stolen some 1,200 head of cattle. In their account, petitioners indicate that the actions carried out by the illegal armed groups with the tolerance of the State deprived the inhabitants of the basic conditions for their subsistence, since they took from them the basic means for leading a dignified life.

13. In addition, the petitioners allege that the State is responsible for violating the right to protection of the family considering that the armed incursion and the forceful eviction of at least 40 families provoked the displacement of the local inhabitants, which is alleged to constitute a direct attack on the stability of the family group of the persons affected, particularly the minors.

14. As for the investigation of the facts by the judicial authorities, petitioners note that after a cursory effort in the official act of removing the bodies, the Medellín office of the special prosecutorial unit known as the Fiscalía Regional opened a preliminary investigation that was later transferred to the National Human Rights Unit of the Office of the Attorney General. They argue that several civilians have been called to give testimony in that investigation, but that it has advanced no further, and that the State has not executed the arrest warrants issued for the paramilitary chiefs.

15. Based on these allegations, the petitioners ask the Commission to declare the State responsible for violating the right to life, the victims' right to humane treatment, the right to personal liberty, and the right to judicial protection, in conjunction with the general obligation to respect and ensure the enjoyment of those rights protected in the American Convention.

16. As regards compliance with the admissibility requirements set forth in the American Convention, the petitioners argues that this case should be considered in the context of the exception to the requirement of prior exhaustion of domestic remedies provided for at Article 46(2)(c), in view of the delay in the investigation.[FN1] They allege that the preliminary investigation continues open more than three years after the facts, and that as the Inter-American Court has indicated in its case law, it is not enough for the domestic remedies to exist formally, but rather, they must be suitable and capable of restoring the rights violated.[FN2]

[FN1] Initial petition of March 3, 2000.

[FN2] Communication from the petitioners of October 10, 2000.

17. As regards the justifications presented by the State in relation to the duration of the process in light of the complexity of the situation (see *infra*), the petitioners argued in the hearing held during the 110th session of the Commission that the Commission could not fail to carry out its obligation to collect evidence in the national territory.[FN3] As regards the alleged duplication of procedures with respect to case 12.050 (La Granja, Ituango) (see *infra*), the petitioners allege that the position articulated by the State is self-contradictory.

[FN3] Hearing held during the 110th regular session of the IACHR, February 26, 2001.

B. The State's position

18. As for the facts of the case, the State notes that according to the investigation carried out in the proceedings before the domestic courts, the deaths occurred in the context of a confrontation between a subversive armed dissident group and the Autodefensas de Córdoba y Urabá.

19. As regards the investigation, the State reports that the facts of the case were initially investigated by the then-Fiscalía Regional of Medellín and that the investigation was then transferred to the National Human Rights Unit of the Office of the Attorney General (Fiscalía General) and assigned the number UDH-525. It notes that on June 1, 1999, an arrest warrant was issued for Carlos Castaño Gil and Francisco Villalba Hernández for multiple homicide (homicidio en concurso). On July 4, 1999, Carlos Castaño was declared to be in absentia. Later, it was ordered that the investigation also look into the conduct of Salvatore Mancuso Gómez, Alexander Mecado Fonseca, and Héctor Darío Gallego Meza. On September 10, 2001, the prosecutor handed down an indictment as partners in the crimes of conspiracy to commit multiple homicide (el delito de concierto para delinquir en concurso con homicidio).[FN4] The State also made reference to a disciplinary proceeding being pursued by the Office of the Delegate Procurator for Human Rights (Procuraduría Delegada para los Derechos Humanos) for omissions of public officials in arresting the persons responsible for the El Aro massacre. In its communications of November 5, 2000, and October 2, 2001, the State considered these procedural steps to represent a significant advance in the investigation.[FN5] Later, in the hearing held during the 110th session of the IACHR, it acknowledged that for security reasons the judicial authorities have faced difficulties traveling to the area to take the next steps in the investigation.[FN6]

[FN4] Note EE 36301 of the General Office for Special Matters of the Ministry of Foreign Affairs of the Republic of Colombia, October 2, 2001.

[FN5] Note EE 2841 from the Vice-Minister for Europe, Asia, Africa, and Oceania of the Ministry of Foreign Affairs, November 5, 2000, and Note EE 36301 of the General Office for Special Matters of the Ministry of Foreign Affairs of Colombia, October 2, 2001.

[FN6] Hearing held during the 110th regular session of the IACHR, February 26, 2001.

20. The State alleges that the petitioners' claim does not meet the requirement of prior exhaustion of domestic remedies, provided for at Article 46(1) of the American Convention. It notes that the delay to which the petitioners refer is justified in light of the standards established in the case-law of the Inter-American Court of Human Rights, particularly the complexity of the situation in the zone in question. It argues, accordingly, that the claim should be declared inadmissible.

21. In addition, it should be noted that in its communication of July 11, 2000, the State offers a series of considerations regarding the application, *inter alia*, of Article 47(b) of the American Convention, which establishes that the petitions that substantially reproduce a prior petition already examined by the Commission or another international organization should be declared inadmissible. In this context, it argues that petition 12,266 "... would appear to merge" with the claim of case 12.050, related to the events of 1996 in La Granja, a locality also situated in the municipality of Ituango.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence

22. The petitioners are authorized by Article 44 of the American Convention to lodge complaints with the Commission. The petition states as alleged victims individuals with respect to whom Colombia undertook to respect and guarantee the rights enshrined in the American Convention. As regards the State, the Commission notes that Colombia has been a state party to the American Convention since July 31, 1973, the date it deposited the respective instrument of ratification. Accordingly, the Commission is competent *ratione personae* to examine the petition.

23. The Commission is competent *ratione loci* to hear the petition insofar as it alleges violations of rights protected in the American Convention in the territory of a state party to that treaty. The IACHR is competent *ratione temporis* insofar as the obligation to respect and ensure the rights protected in the Convention had already entered into force for the State on the date on which the facts stated in the petition are alleged to have occurred. Finally, the Commission is competent *ratione materiae* because the petition alleges violations of human rights protected by the American Convention.

B. Admissibility Requirements

1. Exhaustion of domestic remedies and time period for submitting the petition

24. The State alleges that the petitioners' claim should be declared inadmissible in view of the failure to meet the requirement of prior exhaustion of domestic remedies, set forth at Article 46(1) of the Convention. The petitioners, for their part, allege that the criminal investigation has remained at the preliminary investigative stage for more than three years, and that therefore it is not an effective means for judging the persons responsible for the grave violations at issue in the present matter.

25. Article 46(2) of the Convention establishes that the requirement of prior exhaustion of domestic remedies does not apply when:

a. the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;

- b. the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or
- c. there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

During the proceeding, the petitioners invoked the exception of unwarranted delay, based on the duration of the preliminary investigative stage.

26. Based on the information provided by both parties, during the preliminary investigation, which has lasted for four years and remains ongoing, arrest warrants were issued for several persons, including well-known leaders of the AUC. Nonetheless, despite the gravity of the facts alleged, said arrest warrants have not been executed, and at least one of the persons implicated has maintained daily contact with the press, and on occasion, with State authorities. This situation is a manifestation of delay.

27. In addition, no news has been forthcoming as to the implication of State agents in the investigation, and it was recognized that the proceedings aimed at collecting the necessary evidence have been suspended, due to the security situation in the area. The Commission considers that, as a general rule, a criminal investigation should be undertaken promptly to protect the victims' interests, preserve the evidence, and even safeguard the rights of any person considered a suspect in the context of the investigation. As the Inter-American Court has indicated, while all criminal investigations must meet a series of legal requirements, the rule of prior exhaustion of domestic remedies should not preordain international action on behalf of the victims to come to a halt or to be delayed to the point of being ineffective.[FN7] In the instant case, the prospects for an effective judicial investigation are not tantamount to those of a remedy that must necessarily be exhausted prior to seeking international protection for human rights. As the Inter-American Court has established, for a remedy to be considered effective, it must be capable of producing the result for which it was designed.[FN8]

[FN7] I/A Court H.R., Case of Velásquez Rodríguez, Preliminary Objections, Judgment of June 26, 1987, para. 93.

[FN8] I/A Court H.R., Case of Velásquez Rodríguez, Judgment of July 29, 1988, para. 66.

28. Therefore, given the characteristics and context of this case, the Commission considers that the exception provided for at Article 46(2)(c) of the American Convention applies, and thus that the requirements of the American Convention as regards exhaustion of domestic remedies, and, accordingly, the six-month term for submitting the petition, do not apply.

2. Duplication of procedures and res judicata

29. It does not appear from the record that the subject matter of the petition is pending before any other international body for settlement. In its initial arguments, the State presented a series of considerations on supposed links between two matters pending before the IACHR, identified as petitions 12.050 (La Granja, Ituango) and 12.266 (El Aro, Ituango).

30. It should now be clarified that the petition submitted to the IACHR on March 3, 2000, on the events that occurred from October 22, to November 6, 1997, in the district of El Aro (petition 12.266), does not reproduce the claims set forth in the petition submitted to the IACHR on July 14, 1998, in relation to events that occurred on June 11, 1996, in the district of La Granja (Case 12.050), which is still pending before the Commission in the merits phase,[FN9] as it is not possible to detect any identity between the facts alleged or victims affected in the two cases. In view of the foregoing, the requirements established in Articles 46(1)(c) and 47(d) of the American Convention are considered to have been met.

[FN9] Case 12.050 was declared admissible by the IACHR on October 2, 2000, in Report 57/00, Annual Report of the IACHR 2000.

3. Characterization of the facts alleged

31. In its note of October 2, 2001, the State asked the Commission to clarify whether the arguments submitted by the petitioners on August 24, 2001, on the alleged violation of Article 21 of the American Convention constituted a supplemental amendment to its claim, since this argument had not been included in the original petition. In addition, the State asked the Commission to determine the “relevance, timeliness, and appropriateness” of this supplemental amendment to the original claim.

32. In effect, in its communication of August 24, 2001, the petitioners argued that the State had violated the right to property enshrined in Article 21 of the American Convention.[FN10] The Commission also notes that in its original complaint of March 3, 2000, the petitioners had already alleged that during the incursion in El Aro, approximately 40 houses in the urban area were set ablaze, and that a number of head of cattle owned by the inhabitants of the district had been stolen.

[FN10] Specifically, the argument indicates that “it has been said in the presentation of the facts that the paramilitary group set fire to and destroyed the dwellings of the inhabitants of the district and appropriated at least 1,200 head of cattle ... the right to property, which is guaranteed in the American Convention, was violated by the setting afire and destruction of the dwellings and by the theft of the cattle.” Communication from petitioners, August 24, 2001.

33. In this connection, the rules that establish the requirements for a petition to be admitted by the Commission--Article 46(1) of the American Convention and Article 32 of the Regulations in place at the time the complaint was submitted--do not require that one immediately specify the articles considered violated in the facts alleged. As has recently been established by the Inter-American Court of Human Rights, insofar as the petitioners set forth, in the complaint, the facts on which its arguments on violations of the Convention are based, and these are relevant to make a legal determination, there is no obligation to invoke specific provisions of the Convention in

the initial petition, nor impediments to making legal arguments in later briefs, based on the same facts. In summary,

[t]he Court considers that the adequate interpretation is that when there are additional arguments of law, on the same essential facts as those invoked in the petitioners' original complaint, that argument cannot be dismissed for failure to invoke a specific article of the Convention.[FN11]

[FN11] I/A Court H.R., Hilaire Case, Judgment of September 1, 2001, para. 42.

Accordingly, the considerations on the alleged violation of Article 21 of the Convention cannot be considered an amendment to the petitioners' claim, and should be considered together with the original petition.

34. The Commission considers that the petitioners' arguments with respect to the alleged violation of the rights to life, humane treatment, and personal liberty of Arnulfo Sánchez, José Darío Martínez, Olcris Fail Díaz, Wilmar Restrepo (a minor), Omar Ortiz, Fabio Antonio Zulueta, Otoniel de Jesús Tejada Tejada, Omar Iván Gutiérrez, Guillermo Andrés Mendoza, Nelson Palacio Cárdenas, Luis Modesto Múnera, Marco Aurelio Areiza, Rosa Barrera, Dora Luz Areiza, and Alberto Correa and the rights to protection of the family and property, tend to establish violations of the rights guaranteed in the American Convention. Accordingly, the Commission considers the requirements established in Articles 47(b) and (c) of the American Convention to have been met.

V. CONCLUSIONS

35. The Commission concludes that it is competent to examine the claim submitted by the petitioners regarding the alleged violation of the rights to life, humane treatment, personal liberty, protection of the family, and property, committed to the detriment of the victims, and that the case is admissible, in keeping with the requirements established at Articles 46 and 47 of the American Convention.

36. Based on the foregoing arguments of fact and of law, and without prejudging on the merits,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this claim admissible in relation to Articles 4, 5, 6, 7, 8, 17, 21, 25, and 1(1).
2. To report this decision to the Colombian State and petitioners.
3. To begin the merits phase in its consideration of this matter.
4. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in Washington, D.C., on this the 10th day of October, 2001. (Signed): Claudio Grossman, President; Juan E. Méndez, First Vice-President; Marta Altolaguirre, Second Vice-President; Commission members Robert K. Goldman, Peter Laurie, Julio Prado Vallejo and Hélio Bicudo.