

**REPORT No. 82/12**  
PETITION 615-04  
ADMISSIBILITY  
ANTONIO MARÍA RIVERA MOVILLA ET AL.  
COLOMBIA<sup>1</sup>  
November 8, 2012

**I. SUMMARY**

1. On July 8, 2004, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received a petition alleging responsibility on the part of the Republic of Colombia (hereinafter “the State” or “the Colombian State”) for the death of Antonio María Rivera Movilla (hereinafter “the alleged victim”) between February 23 and February 24, 2003 in the Department of Magdalena, as well as the failure to seek judicial clarification regarding the facts. The petition also alleges violations of the right to humane treatment, private property, and the right to freedom of movement and residence of his family members.<sup>2</sup> The petition was submitted by Lenin Ernesto Rivera Escolar (hereinafter “Mr. Lenin”), son of the alleged victim. The Colombian Commission of Jurists later established itself as a petitioner before the IACHR.

2. The petitioners maintain that the State is responsible for violating Articles 4, 5, 7, 8, 13, 21, 22, and 25 of the American Convention on Human Rights (hereinafter “the American Convention”) in connection with Article 1.1 of the same instrument and Articles 1, 2, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture. For its part, the State alleges that the complaint is inadmissible because the domestic remedies have not been exhausted in accordance with Article 46.1.a) of the American Convention and because it does not tend to establish possible violations of the rights contained in that instrument.

3. Without prejudging the merits of the case, after analyzing the positions of the parties, and in compliance with the requirements of Articles 46 and 47 of the American Convention, the Commission decided to declare the petition admissible for purposes of examining the alleged violation of Articles 2, 4, 5, 7, 8, 21, 22, and 25 of the American Convention in accordance with Article 1.1 thereof, and violation of Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture. It also decided to declare the petition inadmissible with respect to the alleged violation of Article 13 of the American Convention, to inform the parties of its report, and to order its publication in its Annual Report to the General Assembly of the OAS.

**II. PROCESSING BY THE IACHR**

4. The Commission received the petition and recorded it under number 615-04 and after performing a preliminary analysis, on May 29, 2007, the Commission forwarded to the State the relevant sections of the petition so that it could submit its observations. On July 30, 2007, the State asked for an extension to submit its response, which was granted. The State’s response was received on November 20, 2007 and forwarded to the petitioner for his observations.

5. On February 4, 2008, the Colombian Commission of Jurists asked that it be recognized as a petitioner in the handling of this case. On March 25, 2009, the petitioners asked for an extension to submit their observations, which the Commission granted.

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<sup>1</sup> As provided in Article 17.2 of the Commission’s Rules of Procedure, Commissioner Rodrigo Escobar Gil, a Colombian national, did not participate in the discussion or the decision regarding this petition.

<sup>2</sup> The petition indicates as alleged victims the following relatives of Mr. Rivera: Lenin Rivera Escolar, Martha Beatriz Rivera Movilla, Rodrigo Rafael Rivera Movilla, César Augusto Rivera Movilla, Leonides Cecilia Escolar Mendoza, Betzy Patricia Rivera Escolar, and Antonio Miguel Rivera Escolar.

6. On January 15, 2011, the petitioners submitted their response, which was forwarded to the State for its observations. In written communications dated February 22, April 6, and May 19, 2011, the State asked for extensions, which the Commission granted. The State's response was received on June 24, 2011 and forwarded to the petitioners for their information.

### III. POSITIONS OF THE PARTIES

#### A. Position of the petitioners

7. As background, the petitioners refer to the situation in what is called the Zapayán region<sup>3</sup> of the Department of Magdalena. They maintain that at the time when the events covered in this petition occurred – in 2003 – members of the United Self-Defense Forces of Colombia (AUC) were present in the area and allegedly exercised political and economic control over the region with the acquiescence and collaboration of the political authorities and law enforcement, through certain agreements existing between them to “consolidate electoral majorities” in the region. They assert that under these circumstances a context of serious human rights violations had been fostered in the Department of Magdalena, a context that provides the framework for the facts submitted in this petition. They emphasize that this situation had been confirmed by the Supreme Court of Justice (hereinafter the “CSJ”) in several of its decisions, in which it referred to the “alliances” existing between agents of the State and paramilitary groups that were operating in the area.<sup>4</sup>

8. The petitioners maintain that the contextual factors described should be considered in the analysis of this petition for purposes of establishing the nature of the alleged violations and the circumstances under which they were committed, so as to be able to establish the applicable “legal consequences” in accordance with what has been established by the jurisprudence of the Inter-American Court and the decisions of the IACHR.

9. With respect to the facts, the petitioners allege that in the early morning of February 23, 2003, Antonio Rivera left his home in the town of Heredia in the Municipality of Pedraza in the Department of Magdalena, accompanied by Orlando Salgado Parody and Felson Acuña Perea, to attend a “meeting” to which he had been called by a person identified with the alias “Codazzi.”<sup>5</sup> The petitioners allege that this person is one of the leaders directing the operations of a paramilitary group belonging to the AUC, which was present in the area, and had previously contacted Antonio Rivera “insistently” – by telephone – using a threatening tone to tell him to agree to a “mandatory” meeting that had been planned for him. They allege that Mr. Rivera “was being extorted” through certain “economic demands” allegedly made by the paramilitaries in the area. They claim that the alleged victim had gone to the town of Caño del Agua “where he was handed over by the people accompanying him to the paramilitary group” that he was to meet.

10. The petitioners allege that Antonio Rivera was retained by the alleged members of the paramilitary group, under the command of “Codazzi,” for approximately 24 hours, during which time he was physically and psychologically pressured so that he would agree to sign documents selling various farms he owned, but since he refused, they decided to kill him. The petitioners state that the body of

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<sup>3</sup> They indicate that this region is located on the left bank of the Magdalena River in the Barranquilla – Plato direction and includes the municipalities of Zapayán, Chivolo, Pedraza, Tenerife, Concordia, Cerro de San Antonio, and Sabanas de San Ángel, all of them with their respective towns and villages.

<sup>4</sup> Specifically, the petitioners cite two CSJ decisions, one from May 12, 2002 in the single instance proceeding against former senator Jorge de Jesús Castro Castro and one from March 18, 2010 in the proceeding against former senator Álvaro Araújo Castro. They also refer to what are called the “Chivolo and Pivijay Pacts,” signed in September 2000 and March 2002, respectively, establishing agreements between paramilitaries and various political authorities in the region, as well as candidates for the Congress of the Republic. Petitioners’ brief dated January 14, 2010, pp. 2-6.

<sup>5</sup> They maintain that Antonio Rivera had previously contacted these persons who had recommended that he attend the referenced meeting. They indicate that Mr. Orlando Salgado Parody was later elected Mayor of the Municipality of Zapayán but was murdered before he could assume the office. Mr. Felson Acuña had served as Mayor of that municipality during the period 2004-2007.

Antonio Rivera was found on February 24, 2003 in the town of Heredia in the Municipality of Pedraza and taken to the municipal hospital by the townspeople.

11. They maintain that from the moment Antonio Rivera was retained and after his death, several of his properties were broken into by members of the paramilitary group that killed him. They state that on February 23, 2003, alleged paramilitaries went to three farms owned by the alleged victim and proceeded to take "all the cattle, tractors, and other assets" and threatened the workers who were there. They allege that over a period of approximately three days Antonio Rivera's properties were stripped and, although this was generally known by the inhabitants of the area as well as by the security forces, the State did not take any effective measures to protect the alleged victim's properties.

12. They allege that several days after these events, the alleged victim's family members were visited at their home by someone who identified himself as an "emissary" of the paramilitary group allegedly involved, who told them that "the *paracos* [paramilitaries] were now in charge of the farms [Antonio Rivera's farms]" and they should proceed to sell them and the other assets to the individuals and at the prices the *paracos* indicated. They allege that three days later, Lenin Ernesto Rivera received a threatening call urging him to proceed with the sale of the properties and advising him that he could not remain on those properties. They allege that because they rejected these demands, the alleged victim's family members have been subjected to constant threats, which has caused them to move from where they lived, in order to protect their lives and personal safety. Similarly, they maintain that they have also been deprived of the ability to "use, enjoy, and dispose of" the assets that belong to them as the heirs of Antonio Rivera and they have not received compensation for the theft and occupation of those properties.

13. The petitioners state that the facts related above were reported to the Local Unit of the Judicial and Investigation Police ("SIJIN"), the Magdalena unit of the Unified Action Group for Personal Liberty ("GAULA"), and the Human Rights and Crimes against Economic Assets Unit of the Office of the Attorney General (hereinafter the "FGN"). They state that the Human Rights and International Humanitarian Law Unit of the FGN initiated an investigation in the context of which an indictment was filed against two individuals joined to the procedures initiated in Colombia to demobilize unlawful armed groups. However, they allege that within the context of that process, the authorities in charge of the investigation did not act with due diligence and according to the requirements of the American Convention, so that the investigation was not ultimately an effective remedy for achieving clarification of the facts and for prosecuting and punishing those responsible.

14. In this regard, they maintain that the proceeding initiated in the ordinary criminal jurisdiction was characterized by the absence of guarantees for due legal process because of serious omissions on the part of the authorities. On the one hand, they allege that the State did not investigate the pattern of joint action by agents of the State and members of illegal armed groups and, in fact, no agent of the State has been tied to the investigation. On the other, they allege that the State has failed in its duty to act with due diligence in prosecuting and punishing the individuals allegedly responsible for the crimes. In this respect, they point out that the Colombian authorities extradited paramilitary leader Rodrigo Tovar Pupo, alias "Jorge 40," to the United States in 2008, without having linked him to the investigation and without being able to establish the extent of his responsibility for what happened. They add that due to the Colombian authorities' failure to cooperate among themselves, one of those allegedly responsible, Omar Montero Martínez, was able to avoid appearing before the court after having been demobilized in March of 2006, since the authorities in charge of that proceeding had not shared the necessary information so that the Prosecutor's Office could identify him as the person being sought and identified with the alias "Codazzi." In this regard, they make it clear that this person is being tried "in absentia" for the events covered in this petition.

15. In addition, the petitioners allege that the exceptions established in Article 46.2 of the Convention are applicable to this petition. First, they maintain that at the time the petition was submitted the exception provided in Article 46.2.b) of that instrument was applicable in that the conduct of the criminal proceeding did not observe the guarantees of independence and impartiality. In this regard, they allege that the person who was initially in charge of the investigation as head of Specialized Prosecutor's Office No. 32 of Barranquilla of the National Human Rights and International Humanitarian Law Unit

(hereinafter “Specialized Prosecutor’s Office No. 32”) was subsequently prosecuted for alleged ties to members of the illegal armed group involved in the events covered in this petition.<sup>6</sup> In this respect, they object to the State’s allegations (see III.B below) regarding the alleged victim’s family members’ alleged failure to cooperate in the process, considering the circumstances under which the criminal proceeding was being conducted. In addition, they maintain that because the case alleges serious human rights violations, the procedural activity of family members cannot be considered a “decisive criterion” for moving ahead with the criminal investigation.

16. Secondly, the petitioners allege that the exception provided in Article 46.2.c) of the Convention is applicable due to the unwarranted delay in the criminal process initiated at the domestic level, in view of the fact that despite the amount of time that has elapsed since the events occurred the State has not managed to judicially clarify those events. They allege that it is this exception that should be considered in this admissibility analysis, which should take into account the factors setting up the alleged unwarranted delay, including: i) the State’s extradition of some of the persons allegedly involved in the events; ii) the alleged lack of due diligence and impartiality on the part of the authorities in charge of the criminal investigation; and iii) the failure to link agents of the State [to the crime] based on their participation in the events.

17. In summary, the petitioners allege that the State is responsible for violating the rights protected in Articles 4, 5, and 7 of the American Convention, and Articles 1, 2, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Antonio María Rivera Movilla; and Articles 5, 21, and 22, to the detriment of his family members. With respect to the latter, the petitioners also allege that the State has violated the right to a fair trial, judicial protection, and the right to the truth, as enshrined in Articles 8, 13, and 25 of the American Convention.

## **B. Position of the State**

18. First, the State alleges that the contextual allegations presented by the petitioners should be dismissed. In this regard, it maintains that: i) according to the precedents established by the Inter-American Court it would not be legally feasible to use the mere context to infer and characterize alleged responsibility on the part of the State; ii) the context alleged by the petitioners has not been duly proven, which is essential given that the allegation is that there has been a Colombian State policy of tolerance of the widespread practice of human rights violations;<sup>7</sup> and iii) the causal nexus between the concrete facts of the petition and the alleged context has not been proven either. On this last point, the State rejects the petitioners’ references to the CSJ decision of May 12, 2000 (III.A above), given that it considers that this refers to events that occurred prior to the events reported in this petition and are thus entirely unrelated. Consequently, the State asks that the factual context be limited to the specific facts in the complaint under study.

19. In this respect and in general terms, the State does not dispute the “concrete” facts presented in the complaint with respect to the alleged victim’s having been murdered on February 23, 2003 in the town of Heredia, Municipality of Pedraza, Department of Magdalena, nor that Orlando Rafael Salgado Parody and Felson Rafael Acuña accompanied him to the place where he was killed. Neither does it object to the complaints made regarding the alleged theft of certain assets that belonged to Antonio Rivera. It states that the authorities knew about what happened, based on the complaint dated February 24, 2003 that the alleged victim’s relatives and those close to him submitted to the Atlántico GAULA in Barranquilla and the city of Santa Marta. It adds that the municipal authorities went immediately to the place where Mr. Rivera’s body was found “to search for evidence.”

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<sup>6</sup> The petitioners cite a decision handed down by the Criminal Cassation Chamber of the CSJ on November 28, 2007, regarding the proceeding against former Prosecutor 32 of the Human Rights and International Humanitarian Law Unit, Luis Francisco Becerra Araque. Petitioners’ brief dated January 14, 2010, p. 9.

<sup>7</sup> In this regard, the State alleges that in Colombia there is a “State policy of zero tolerance of human rights violations by law enforcement” implemented since the year 1998, with the adoption of legislative measures and the consolidation of “public policies on human rights and efforts to combat impunity,” reflecting progress made in the protection of fundamental rights in Colombia.

20. Secondly, the State alleges that the petition does not meet the requirement of the prior exhaustion of domestic remedies established in Article 46.1.a) of the American Convention, given that there is a domestic criminal proceeding that has not concluded as yet and that, since this is an adequate and effective remedy available in the domestic jurisdiction to remedy the allegedly violated legal rights, its exhaustion is mandatory according to the standards established in the Inter-American system and the principle of subsidiarity.

21. In this regard, the State alleges that it has been meeting its international obligation through the actions taken by the domestic authorities in charge of the criminal proceeding initiated to shed light on what really happened and to successfully identify and potentially prosecute those responsible. In this respect, it presents a breakdown of the steps taken by Specialized Prosecutor's Office No. 32. It states that two people have been identified as those allegedly responsible (Fedor Jorge Nader Julio and Omar Montero Martínez, alias "Codazzi"), against whom an order of preventive detention was issued in March 2009, and an indictment was issued on November 5, 2009, which was confirmed in the second instance on February 10, 2010.<sup>8</sup> It states that on March 16, 2010 the case was referred to the Criminal Court of the Specialized Circuit of Santa Marta and evidence was taken in the case between September 2010 and May 2011.<sup>9</sup> It adds that on August 22, 2003, the "civil party's complaint" was admitted as part of the criminal proceeding, representing the alleged victim's family members, a mechanism that should have allowed their active participation in the process.

22. The State objects to the petitioners' allegations regarding: i) the failure to tie Rodrigo Tovar Pupo, alias "Jorge 40," to the investigation, pointing out that an investigation against him was opened up on August 21, 2008;<sup>10</sup> ii) the failure to link agents of the State to the proceeding, indicating that "neither the victims, particularly Mr. Lenin Ernesto Rivera Escobar, nor his family members [...] have made any link or referred to any public official or servant;" and iii) the failure to implicate Felson Acuña, given that there was not sufficient evidence to point to him as a perpetrator or accomplice to the crimes. It adds that there was a preliminary investigation intended to identify others who were allegedly responsible for participating in the crimes.

23. In response to the petitioners' allegation regarding the unwarranted delay in resolving the domestic remedies, the State maintains that we cannot consider only the passage of time to establish the reasonability of the time during which the process has developed, but should rather consider as well: i) the complexity of the matter, ii) the procedural activity of the interested party, iii) the conduct of judicial authorities; and iv) the reasonability of the period for the process as a whole. In this regard, it again mentions the diligence of the Prosecutor's Office in conducting the investigative work, thus ensuring access to justice for the alleged victim's family members, and alleges that the latter have not provided the collaboration requested by the authorities. It makes particular reference to the complaints regarding the assets belonging to the alleged victim that were stolen after his death, noting that the preexistence thereof and title thereto must be established, either to achieve their recovery or to issue the necessary protective measures.

24. In addition, the State maintains that, bearing in mind the complexity of the facts reported and that several of the accused in the domestic proceeding had taken advantage of the so-called "Justice

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<sup>8</sup> According to the State, Omar Montero Martínez had been indicted for the crimes of aggravated homicide, forced displacement, aggravated theft, and unlawful enrichment. The indictment of Fedor Jorge Nader Julio was for the crimes of conspiracy to commit a crime and forced displacement.

<sup>9</sup> According to the information provided by the State, as of March 2011, the investigation was divided as follows: Case file 1674 in the "case" phase, Case file 1674-B in the "investigation" phase, and Case file 1674-C in the "preliminary investigation" phase. Information provided by Specialized Prosecutor's Office No. 32 through official letter 87 F 32 UNDH and DIH of March 18, 2011, cited in Note DIDH/GOI No. 32729/1479 of Colombia's Ministry of Foreign Relations dated June 24, 2011, p. 22.

<sup>10</sup> According to the State, based on the information submitted by Specialized Prosecutor's Office No. 32, the proceeding with respect to this person (filed under No. 1674 B) would be in the "investigation phase pending the successful implication of Mr. Tovar Pupo, in that the international processing of the case has already been initiated." (Note DIDH/GOI No. 32729/1479 from Colombia's Ministry of Foreign Relations of June 24, 2011, p. 21).

and Peace Law,” analysis of compliance with the reasonable period requirement should also take into account the nature of the process followed based on the facts in this petition. In this regard, the State maintains that appropriate measures were being taken to guarantee the rights of the alleged victims to truth, justice, and reparations. Based on these considerations, the State alleges that the exceptions to the exhaustion of domestic remedies established in Article 46.2 of the American Convention would not be applicable.

25. Third, the State alleges that the petition is inadmissible since the complaints do not tend to establish violations of the American Convention in accordance with Article 47(b) thereof. In this regard, it alleges that the facts reported are exclusively attributable to third parties belonging to an illegal armed group, and that the complaint under study does not meet the requirements – in accordance with the standards developed by inter-American jurisprudence – for assigning international responsibility for such acts. It maintains that the petitioners have not demonstrated *prima facie* that there is a nexus that would make it possible to establish the link between the crimes allegedly perpetrated by illegal armed groups and the participation of agents of the State in those crimes, whether by action or omission, and with their collaboration or acquiescence. It alleges that it has not been proven that the State had knowledge of a real and immediate situation of risk to the alleged victim and had not taken effective and reasonable preventive and protective measures to prevent that risk from materializing. It also repeats its rejection of the petitioners’ contextual assertions regarding the existence of a widespread policy of the Colombia State supporting or tolerating the presence of illegal armed groups in the area where the events occurred.

26. Finally, the State alleges that, as provided in the American Convention and the Commission’s Rules of Procedure, the Commission is not competent *ratione materiae* to hear the alleged violations of the International Covenant on Civil and Political Rights, specifically regarding Article 12 thereof, with respect to the right of movement and residence alleged by the petitioners to have been violated.

#### **IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY**

##### **A. Competence *ratione materiae*, *ratione personae*, *ratione temporis* and *ratione loci* of the Commission**

27. In principle the petitioners are authorized by Article 44 of the American Convention to submit petitions to the Commission. The petition indicates as alleged victims individuals with respect to whom the Colombian State committed to respect and guarantee the rights enshrined in the American Convention. Colombia has been a State Party to the American Convention since July 31, 1973 and the Inter-American Convention to Prevent and Punish Torture since January 19, 1999, the dates on which it deposited the respective ratifying instruments. Therefore, the Commission is competent *ratione personae* to examine the petition. The Commission is also competent *ratione loci* to hear the petition in that it alleges violations of rights protected in the American Convention that took place within Colombian territory.

28. The Commission is competent *ratione temporis* in that the obligation to respect and guarantee the rights protected in the American Convention was already in effect for the State on the date the events alleged in the petition occurred. The Commission is also competent *ratione materiae*, given that the petition reports possible violations of human rights protected by the American Convention and the Inter-American Convention to Prevent and Punish Torture.

##### **B. Admissibility requirements**

###### **1. Exhaustion of domestic remedies**

29. Article 46.1.a) of the American Convention requires the prior exhaustion of domestic remedies in accordance with generally recognized principles of international law as a requirement for the admission of complaints regarding the alleged violation of the American Convention. For its part, Article 46.2 of the Convention provides that the prior exhaustion of domestic remedies requirement is not applicable when (i) 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; (ii) 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 (iii) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

30. As established in the Commission's Rules of Procedure and expressed by the Inter-American Court, whenever a State alleges a petitioner's failure to exhaust the domestic remedies, the State is responsible for demonstrating that the remedies that have not been exhausted are "suitable" for remedying the alleged violation, which means that the function of those remedies within the system of domestic law is suitable for protecting the infringed legal right.<sup>11</sup>

31. In the instant case, the State alleges that the petition does not meet the requirement of the prior exhaustion of domestic remedies as provided in Article 46.1.a) of the American Convention and that the exceptions to that requirement are not applicable. For their part, the petitioners alleged that the exception provided in Article 46.2.c) of the American Convention is applicable due to the unwarranted delay in judicial clarification of the facts covered in the petition.

32. In view of the parties' allegations, it is first necessary to make clear which domestic remedies must be exhausted in this petition. The precedents established by the Commission indicate that whenever a crime is committed that is prosecutable *ex officio*, the State has the obligation to promote and give impetus to the criminal proceeding<sup>12</sup> and that, in those cases, this is the suitable jurisdiction for clarifying the facts, prosecuting the persons responsible, and establishing the corresponding criminal sanctions, in addition to making possible other forms of monetary reparation. The Commission believes that the facts presented by the petitioners cover the alleged violation of fundamental rights such as the right to life, humane treatment, and personal liberty, which in the domestic system are *ex officio* prosecutable crimes that must be investigated and prosecuted by the State itself.<sup>13</sup>

33. The information provided by the parties indicates that there is a proceeding in the ordinary criminal jurisdiction in the context of which two persons were indicted by Specialized Prosecutor's Office No. 32 in November 2009 and, as of May 2011, this case was in the trial phase before the Criminal Court of the Specialized Circuit of Santa Marta. The record shows that there was an investigation conducted against the paramilitary leader, Jorge 40, and that a preliminary investigation was being conducted to identify others who were allegedly responsible. In addition, some of those implicated in the ordinary proceeding were also being processed in the context of the Justice and Peace Law. The IACHR does not have information as to which persons had taken advantage of that law and the status of the procedures followed by virtue of its implementation to clarify the facts of this petition. As for linking Rodrigo Tovar to the process, the Commission bears in mind that this individual was extradited to the United States in 2008.<sup>14</sup>

34. In light of the above, the Commission notes that, more than nine years after the events reported in the petition, the domestic proceedings have not fully established all levels of responsibility in terms of the perpetrators and masterminds of the crimes covered in this petition. Therefore, given the characteristics of this petition and the time elapsed since the events covered in the complaint, the Commission believes that the exception provided in Article 46.2.c) of the American Convention is

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<sup>11</sup> Article 31(3) of the Commission's Rules of Procedure. See also I/A Court H.R., *Velásquez Rodríguez Case*, Judgment of July 29, 1988, paragraph 64.

<sup>12</sup> IACHR, Report No. 99/09, Petition 12.335, *Gustavo Giraldo Villamizar Durán*, Colombia, October 29, 2009, para. 33. See also IACHR, Report No. 52/97, Case 11.218, *Arges Sequeira Mangas*, 1997 Annual Report of the IACHR, paras. 96 and 97, and IACHR, Report No. 55/97, Case 11.137, *Abella et al.*, para. 392.

<sup>13</sup> Report No. 52/97, Case 11.218, *Arges Sequeira Mangas*, 1997 Annual Report of the IACHR, paras. 96 and 97. See also: Report No. 55/97, para. 392. Report No. 62/00, Case 11.727, *Hernando Osorio Correa* 2000 Annual Report of the IACHR, para. 24.

<sup>14</sup> See: IACHR. Press Release 21/08 of May 14, 2008. Available at: [http://www.IACHR.org/Comunicados/Spanish/2008/21\\_08sp.htm](http://www.IACHR.org/Comunicados/Spanish/2008/21_08sp.htm)

applicable with respect to the unwarranted delay in conducting the domestic court proceedings, so that the prior exhaustion of domestic remedies requirement cannot be imposed.

35. Invocation of the exceptions to the rule of prior exhaustion of domestic remedies as provided in Article 46.2 of the Convention is closely tied to the determination of possible violations of certain rights enshrined in the Convention such as the guarantees on access to justice. However, Article 46.2, based on its nature and purpose, is a provision with autonomous content *vis à vis* the substantive provisions of the American Convention. Therefore, the determination as to whether the exceptions to the rule of exhaustion of domestic remedies are applicable to the case in question must be made prior to and separate from the analysis of the merits of the case, in that it depends on a standard of assessment different from that used to determine the possible violation of Articles 8 and 25 of the Convention. It should be made clear that the causes and effects that prevented the exhaustion of domestic remedies will be analyzed in the report adopted by the Commission on the merits of the dispute, in order to determine whether they constitute violations of the American Convention.



## **2. Deadline for submitting the petition**

36. The American Convention establishes that in order for a petition to be admitted by the Commission it must be submitted within six months of the date when the alleged injured party was notified of the final decision. In the complaint under analysis, the IACHR has established the application of the exceptions to the exhaustion of domestic remedies in accordance with Article 46.2.c) of the American Convention. In this regard, Article 32 of the Commission's Rules of Procedure establishes that in cases where the exceptions to the prior exhaustion of domestic remedies are applicable the petition must be submitted within a reasonable period of time in the judgment of the Commission. To this end, the Commission must consider the date when the alleged violation of rights occurred and the circumstances of each case.

37. In the instant case, the petition was received on July 8, 2004; the alleged events covered in the complaint occurred in 2003; the current effects thereof in terms of the alleged failure to administer justice would extend to the present. Therefore, in view of the context and characteristics of the instant case, as well as the fact that criminal proceedings are pending, the Commission believes that the petition was submitted within a reasonable period of time and the admissibility requirement with respect to the deadline for submission should be deemed to have been met.

## **3. Duplication of international proceeding**

38. The file does not indicate that the subject of the petition is pending any other international proceeding or that it reproduces a petition already examined by this or any other international body. Therefore, the requirements established in Articles 46.1.c) and 47.d) of the Convention should be deemed to have been met.

## **4. Characterization of the alleged facts**

39. In view of the factual and legal evidence submitted by the parties and the nature of the matter submitted for its review, the IACHR believes that the petitioners' allegations regarding the scope of the alleged State responsibility for the events covered in the complaint could tend to establish possible violations of the rights contained in Articles 4, 5, and 7 in connection with Article 1.1 of the American Convention, to the detriment of Antonio María Rivera Movilla, and Articles 5, 8, 21, 22, and 25 of the same instrument, to the detriment of his family members. In addition, given the nature of the alleged violations described in the petition, particularly the alleged physical and psychological treatment to which the victim was subjected prior to his death, as well as the failure to provide judicial clarification of these facts, the Commission believes it should analyze in the merits phase the possible responsibility of the State for the alleged violation of Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.

40. In contrast, the Commission believes that the petitioners have not submitted sufficient evidence to establish the characterization of a possible violation of Article 13 of the American Convention, so that it is appropriate to declare that claim inadmissible.

41. Neither the American Convention nor the Rules of Procedure of the IACHR requires the petitioners to identify the specific rights alleged to have been violated by the State in the matter submitted to the Commission, although the petitioners may do so. It is up to the Commission, based on the system's jurisprudence, to determine in its admissibility reports which provision of the relevant inter-American instruments is applicable and could be established as having been violated if the alleged facts are proven through sufficient evidence.

42. In view of the petitioners' allegations regarding the extradition of the paramilitary leader, Jorge 40, the Commission will also consider in the merits phase the possible failure to comply with the obligations established in Article 2 of the American Convention in relation to the decision on extradition to the jurisdiction of a third-party State of one of the individuals potentially responsible for the events covered in this petition, who was at the disposal of the judicial authorities charged with implementing the

so-called Justice and Peace Law,<sup>15</sup> and the alleged impact this had on securing justice for the events covered in this petition.

## V. CONCLUSIONS

43. The Commission concludes that it is competent to examine the complaints submitted by the petitioners regarding the alleged violation of Articles 2, 4, 5, 7, 8, 21, 22, and 25 of the American Convention in connection with Article 1.1 thereof, and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, in accordance with the requirements established in Articles 46 and 47 of the American Convention. In addition, it concludes that the complaint regarding the alleged violation of Article 13 of the American Convention should be declared inadmissible.

44. Based on the factual and legal arguments presented above,

### THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

#### DECIDES:

1. To declare this petition admissible with respect to Articles 2, 4, 5, 7, 8, 21, 22, and 25 of the American Convention in connection with Article 1.1 thereof, and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.

2. To declare the instant case inadmissible with respect to Article 13 of the American Convention.

3. To inform the Colombian State and the petitioners of this decision.

4. To continue with analysis of the merits of the question.

5. To publish this decision and include it in its Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 8th day of November 2012. (Signed): José de Jesús Orozco Henríquez, President; Felipe González, Second Vice-President; Dinah Shelton, Rosa María Ortiz, Rose-Marie Antoine, Commissioners.

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<sup>15</sup> On June 22, 2005 the Congress of the Republic of Colombia approved Law 975 of 2005, known as the "Justice and Peace Law," which took effect after approval by the President on July 22, 2005. When reviewing the constitutionality of this law, the Constitutional Court established that demobilized individuals implicated in the commission of crimes related to the armed conflict who wished to obtain the benefits established in Law 975 will have to collaborate with the courts for the purpose of achieving the effective enjoyment of victims' rights to the truth, justice, reparations, and non-repetition. Constitutional Court, Case File D-6032 - Judgment C-370/06, foundations made public on July 13, 2006. See IACHR Report No. 70/09 José Rusbell Lara, para. 41.