REPORT No. 90/13
PETITION 222-10
ADMISSIBILITY
JOSUÉ VARGAS MATEUS, MIGUEL ÁNGEL BARAJAS COLLAZOS, SAÚL CASTAÑEDA ZÚÑIGA, SILVIA MARGARITA DUZÁN SÁENZ, AND NEXT OF KIN
COLOMBIA[1]
November 4, 2013

I. SUMMARY

1. On February 23, 2010, the Inter-American Commission on Human Rights (hereinafter referred to as "the Commission" or the "IACHR") received a petition filed by the Colombian Commission of Jurists (Comisión Colombiana de Juristas, hereinafter referred to as "the CCJ" or "the petitioner"), alleging that the Republic of Colombia (hereinafter referred to as "the State" or "Colombia") had incurred international responsibility for the alleged violation of Article 4 (right to life), Article 5 (right to personal integrity), Article 7.1 (right to personal safety), and Article 13 (freedom of expression) of the American Convention on Human Rights (hereinafter referred to as the "American Convention" or the "Convention"), to the detriment of the journalist Silvia Margarita Duzán Sáenz and the heads of the Rural Workers Association of Carare (Asociación de Trabajadores Campesinos del Carare, hereinafter referred to as "ATCC"), Miguel Ángel Barajas Collazos, Saúl Castañeda Zúñiga and Josué Vargas Mateus. It also alleged that the State had incurred international responsibility for the violation of Article 16 (freedom to associate) to the detriment of Miguel Ángel Barajas Collazos, Saúl Castañeda Zúñiga, and Josué Vargas Mateus as members of the ATCC.

2. The petitioner also alleged that Colombia had incurred international responsibility for the violation of Article 5 (right to personal integrity), Article 8.1 (right to a fair trial) and Article 25 (judicial protection) of the Convention, to the detriment of the next of kin of the alleged victims: María Leonor Lamo Gómez, Martha Cecilia Barajas, Héctor Hernández Barajas Lamo, and Raúl Ernesto Barajas Lamo (spouse, daughter, and sons, respectively, of Miguel Ángel Barajas Collazos); Fidelia Quiroga González, Damaris Vargas Quiroga, Yeny Patricia Vargas Quiroga, and César Ariza Quiroga (spouse and children, respectively, of Josué Vargas Mateus); Beatriz Valbuena (spouse of Saúl Castañeda Zúñiga); and Julia Sáenz de Duzán, Salomón Kalmanovitz Krauter, María Jimena Duzán Sáenz, and Juan Manuel Duzán Sáenz (mother, spouse, sister and brother, respectively, of Silvia Margarita Duzán Sáenz).

3. According to the petitioner, the alleged victims were killed on February 26, 1990 by paramilitary groups and with the tolerance and acquiescence of the Army and National Police Force, as a direct consequence of their activities from their various spheres of action. It asserted that the investigations conducted by the State, as well as the legal proceedings filed both with ordinary courts and military courts, did not lead to a conviction, identification or individualization of the persons responsible for the homicide. The petitioner stated that, at the time the petition was filed, there were two criminal investigations under way in Colombia aimed at possibly explaining the facts, identifying those responsible, and providing redress for the next of kin of the alleged victims. It explained, however, that these appeals did not turn out to be effective or adequate either to protect the rights of the alleged victims, as a result of which "the exceptions to the exhaustion of remedies under domestic law as

[1] In conformity with the provisions of 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 taken in the present petition.

provided for in Article 46, paragraph 2, subparagraphs a) and c), of the American Convention are hereby applicable."

4. As for the State, it alleged that the proceedings undertaken under domestic, regular or military criminal law were constant and were aimed at ensuring the individual identification and punishment of those responsible. In this regard, the State requested the Commission to declare that: (i) the petition that was filed is inadmissible because it is not empowered to act as a higher court of appeals regarding the criminal proceedings concerning the incidents targeted by the petition; (ii) the redress is not admissible because remedies were not exhausted in a court having jurisdiction to hear contentious-administrative cases; (iii) the facts do not tend to establish that the Colombian State was responsible either by deed or omission, either directly or indirectly; and (iv) that the petition does not meet the requirement set forth in subparagraph b) of Article 46 of the American Convention with respect to the time-limits for lodging the petition within a period from the date of notification of the final judgment in the respective criminal proceedings.

5. After examining the positions of the parties in the light of the requirements for admissibility set forth in Articles 46 and 47 of the American Convention and without prejudging the merits of the case, the Inter-American Commission decided to declare the petition admissible with respect to the alleged violation of Articles 4, 5, 7.1, 8.1, 13, 16, and 25 of the American Convention, in connection with its Articles 1.1 and 2. Finally, the Commission decided to make the present report public and include it in its Annual Report to the General Assembly of the Organization of American States.

II. PROCESSING BY THE INTER-AMERICAN COMMISSION

6. The petition was received by the IACHR on February 23, 2010. On July 14, 2010, the Commission requested the petitioner to provide additional information. As indicated in the file, the petitioner responded to the IACHR's request in its communications dated July 22 and October 19, 2010.

7. On April 6, 2011, the petition was opened for processing by the IACHR and, on April 27 that year, the Commission sent the relevant parts of the case file to the State of Colombia, asking it to submit its response within two months. At the request of the State, a 15-day extension was granted. On July 29, 2011, the State submitted its response to the petition, which was forwarded to the petitioner on August 5, 2011, with a time-limit of one month to reply; at the request of the petitioner, a 15-day extension was granted for it to submit its observations to the State's response. The petitioner submitted additional observations on October 6, 2011; and, on March 7, 2012, a copy of these observations were forwarded to the State of Colombia. After being granted an extension, on July 24, 2012, the State submitted its observations, which were forwarded to the petitioner on August 2, 2012.

III. POSITION OF THE PARTIES

A. Position of the Petitioner

8. The petitioner alleged that the journalist Silvia Margarita Duzán Sáenz and the rural worker leaders Miguel Ángel Barajas Collazos, Saúl Castañeda Zúñiga, and Josué Vargas Mateus were killed on February 26, 1990 in Cimitarra, department of Santander, as a direct consequence of their activities. The petitioner indicated that Duzán Sáenz was working for the BBC of London and was in Cimitarra, department of Santander, shooting the documentary "The other coca wars" which, among other things, talked about the efforts being made by civil society figures in the region to stay away from the violence between the guerrilla, paramilitary groups, and the Army. It also pointed out that Vargas

Mateus, Barajas Collazos and Castañeda Zúñiga were leaders of the ATCC, that is, president, vice-president, and secretary, respectively. As indicated, the ATCC was the first peace-keeping community that declared its neutrality in Colombia's armed conflict; it was comprised of rural workers who rejected any kind of violence and who refused to collaborate with the guerrilla, paramilitary groups or the Army. It indicated that the ATCC was able to enter into agreements with armed stakeholders, which made it possible for them to live relatively peacefully for two years. At the time of the incidents, the petitioner stated that Barajas Collazos was running for the office of mayor in the municipality of Cimitarra.

9. The petitioner stated that, on January 15 and 16, 1990, the forum "Broad Dialogue for Peace" was held in Cimitarra for the purpose of improving the situation and renewing agreements with armed stakeholders. It was indicated that, after the forum, threats and acts of intimidation by paramilitary groups against the ATCC increased, and because of this a "March for Peace" took place. It was indicated that, as a result of these events and the region's special status, the journalist Silvia Margarita Duzán traveled to the municipality of Cimitarra to make the above-mentioned documentary and that, to this end, she had scheduled an interview with the leaders of the ATCC. It stated that, on February 26, 1990, they met at a restaurant called "La Tata" in Cimitarra where they were then killed. The incident was known as the "The Massacre of La India."

10. The petitioner alleged that the proceedings in the Colombian courts could not be qualified as a sound, exhaustive and effective judicial investigation. It stated that, after 20 years, no one has been held responsible for these four killings, which have remained in total impunity. As for the proceedings of the regular courts, it was indicated that investigations started in the Eighth Court of Criminal Investigation of Cimitarra, but that afterwards the preliminary investigation was suspended because of the impossibility of individualizing or identifying the perpetrators or participants of the incident and the investigation was remitted to the Technical Corps of the Judiciary Police (Cuerpo Técnico de Policía Judicial—CTPJ). In the initial petition, it was indicated that the CTPJ issued two reports, in which, among other things, it established that there were ties between paramilitary groups and the National Army, indicating that the motive of the killings was to silence the alleged victims because of the work they had done to achieve peace in the region, as well as for the criticism they had voiced in various of the country's newspapers about the delinquency and criminal activities of armed groups. It also explained that pretrial proceedings were transferred to the Court of Public Law and Order of Cúcuta.

11. The petitioner asserted that, in 1992, the Investigating Court ordered that a criminal investigation be undertaken and that the following be implicated "as perpetrators and accomplices": Hermógenes Mosquera Obando, Carlos Alirio Atuesta, Armando Suescún Gómez, Gustavo Barajas Espinel, Alejandro Olave Hernández, and José Iván Colorado González and the National Police Force officers Alirio Castaño Cardona, Jorge Omar Hernández Villamizar, and Gonzalo de Jesús Bejarano Naranjo. According to the petition, the Technical Corps of Investigations (CTI) of the Office of the National Prosecutor presented a report that indicated a possible tie between the "Rafael Reyes" Battalion of the National Army and paramilitary groups. It was pointed out that the Regional Office of Prosecution Services in Cúcuta implicated the following in the proceedings: Ricardo Linero González and José Uriel Amariles Tabares of the National Army, Remigio Rodríguez Palmera of the National Police Force, and Excelino Ariza Santana. It was indicated that, in 1995, the Regional Office of Prosecution Services barred the proceedings against Ricardo Linero González because of his atypical conduct. The petition indicated that the proceedings were transferred to the Regional Courts of Cucutá and, on April 21, 1997, a judgment was handed down acquitting the paramilitary member Alejandro Ardila Molina of the killing of the alleged victims.

12. According to the petitioner, on May 12, 1998, the Regional Court of Cúcuta handed down a judgment convicting José Iván Colorado González, Luis Enrique Rodríguez Arcila, and Guillermo León Fernández Ortiz for the crime of "setting up vigilante groups privately meting out justice" and acquitted them of the "killing for terrorist purposes" of Silvia Margarita Duzán Sáenz, Miguel Ángel Barajas Collazos, Saúl Castañeda Zúñiga, and Josué Vargas Mateus. It also asserted that the same judgment acquitted José Uriel Amariles Tabares of the Army, Gonzalo de Jesús Bejarano Naranjo, Alirio Castaño Cardona, and Jorge Omar Hernández of the Police Force, as well as all the others who had been accused, of both charges. The petition indicated that, by the time the judgment had been made, the paramilitary members Hermógenes Mosquera, Alejandro Olave, and Joaquín Emilio Castaño had died, as a result of which the investigation was declared subject to the statute of limitations.

13. Afterwards, it was indicated that the National Court, in a judgment on November 5, 1998, overturned the acquittal of Jorge Omar Hernández Villamizar, Gonzalo de Jesús Bejarano, Alirio Castaño Cardona, José Uriel Amariles Tabares, and Pablo Enrique Pineda and convicted them for "setting up vigilante groups privately meting out justice". According to the information, the judgment of November 1998 ratified the acquittal of all those charged in the extra-judicial killing of the journalist and the three leaders of the ATCC. Finally, the petitioner indicated that the Supreme Court of Justice heard the appeal on constitutional grounds filed against the judgment of the National Court and decided not to overturn the judgment. It stated that it is not legally true that, with the judgment of the Supreme Court, the criminal proceedings filed regarding the crime have terminated, because this judgment declared that only the criminal proceedings for the defendants' crime of "belonging to armed groups outside the law" had terminated but not for the killing of the persons referred to in this petition.

14. Regarding Military Criminal Courts, the petitioner indicated that the Inspector General of the National Police Force, as the judge of first instance of military jurisdiction, unleashed a conflict of jurisdiction and challenged the jurisdiction of the Regional Judge of Cúcuta regarding the investigation of the police officer Remigio Rodríguez Palmera. It stated that the Upper Council of the Judiciary decided, on May 29, 1997, that there was a clash of jurisdiction and assigned military criminal justice to hear the case. It also explained that the Inspector General of the National Police issued a judgment on March 30, 2000 and acquitted Officer Remigio Rodríguez Palmera of the crimes of setting up vigilante groups privately meting out justice and committing homicide for terrorist purposes. Regarding this, it contended that military criminal justice does not constitute a competent court to hear severe violations of human rights.

15. As for disciplinary proceedings, the petitioner asserted that the Office of the Attorney General of the Nation filed disciplinary proceedings. Regarding this, it pointed out that, because the petition refers to extra-judicial killings, the disciplinary proceedings do not constitute an effective remedy because of their nature and purpose. As for the contentious-administrative courts, the petitioner asserted that these proceedings do not constitute, in themselves, an effective and adequate remedy to provide comprehensive redress and should not be viewed as a remedy that must be previously exhausted. It also indicated that the decision not to file an appeal to seek financial compensation using the contentious-administrative courts cannot be deemed a waiver of the wish to request and obtain compensation in inter-American proceedings.

16. The petitioner indicated that the decision of the Supreme Court of Justice did not constitute the final court action in the present case, "because for several years now the case of the Massacre of La India is the target of proceedings as a result of Law No. 975 of 2005 and, more recently, of a judicial investigation by the regular courts, via Prosecution Service No. 5 of the National Unit for Human Rights and International Humanitarian Law of the Prosecution Service of the Nation." Regarding

this, the petitioner asserted that, in providing legal counsel to the next of kin of the alleged victims, it has been participating in the context of the special criminal proceedings stemming from Law No. 975 of 2005, for the primary purpose of learning the truth about the incidents that had occurred and identifying those responsible, as many of the alleged perpetrators and accomplices in the killing of the alleged victims are now demobilized members of paramilitary groups.

17. Regarding this, it explained that said Law offered benefits (maximum eight years imprisonment) to the members of paramilitary groups as long as they admitted to the circumstances of time, mode and place of all crimes that they had perpetrated. If it is proven that they are not saying the truth, this benefit is not granted to them. It stated that the former paramilitary chief Arnubio Triana Mahecha responded that he did not know of, and had no responsibility for, the incidents that had taken place regarding the alleged victims in the petition. In that respect, the petitioner reported that the paramilitary chief Ramón María Isaza Arango said that, regarding the incidents that had taken place in Cimitarra, Arnubio Triana Mahecha would have to be questioned. It also reported that the former paramilitary chief Iván Roberto Duque Gaviria had concluded the confession phase, but had not answered the questions asked by the petitioner regarding the incidents that had taken place in Cimitarra on February 26, 1990. It indicated that, because of the former paramilitary member's recalcitrance to admit his involvement in these crimes and at the request of the petitioner, the Justice and Peace Court removed Iván Roberto Duque Gaviria from the special proceedings and transferred his case to the regular courts.

18. The petitioner also explained that the criminal investigation was launched in Prosecution Service No. 5 "because of a certified compilation of copies of the investigation forwarded to the Human Rights Unit of the Nation's Prosecution Service and ordered by the Justice and Peace Prosecutor, at the request of the Colombian Commission of Jurists, as the legal counselor of the next of kin of the victims." According to the petitioner, the request was made because, on February 23, 2010, the daily newspaper *El Tiempo* published an interview with Gabriel Puerta Parra, aka "the Doctor," a member of a paramilitary group, where he mentions the Massacre of La India. The petitioner explained that, in the information provided by Mr. Puerta Parra, there is information concerning funding provided by paramilitary groups of Magdalena Medio at that time and in the area where the Massacre of La India took place. The petitioner indicated that, during said interview, Mr. Puerta admitted that "[t]he paramilitary group called Rural Workers Self-Defense of Puerto Boyacá [Autodefensas Campesinas de Puerto Boyacá] were the perpetrators of the massacre." Because of the above, the petitioner stressed that it is not true that the ruling of the Supreme Court of Justice in 2004 constituted the final judicial proceeding with respect to the incidents of the petition.

19. Regarding the alleged violation of Articles 5.1 and 7.1 of the Convention, the petitioner stated that the National Government was aware of the repeated death threats against the leaders of the ATCC. Regarding this, it stated that effective measures were never taken to protect the rights of the leaders or those of the journalist Silvia Duzán. It also indicated that it is evident that members of public law and order acted in connivance with the region's paramilitary groups and did not protect the integrity and personal safety of the alleged victims. As for the violation of Article 4 of the Convention, the petitioner asserted that there is no doubt that members of the Army and Police Force were involved in the homicide of the alleged victims and, therefore, that the State of Colombia had incurred "direct responsibility." It deems that aggravated violation is at stake here because the situation had been expected and the necessary measures to protect the alleged victims had not been adopted.

20. About the alleged violation of Article 13 of the Convention, the petition indicated that, as established in the CTPJ's technical report, the executions were aimed at silencing voices of criticism and protest against crimes perpetrated by armed stakeholders in the region. The petitioner stressed the case of the journalist Silvia Duzán because she was killed for having exercised the profession of journalist. As for the alleged violation of Article 16, it asserted that the repeated threats against, and killing of, the ATCC leaders were aimed at exterminating the association as they were perceived as being an obstacle to paramilitary control.

21. The petitioner indicated that Colombia justice had not held anyone liable for the four homicides and that the crimes had remained in total impunity (they have not benefited from guarantees or adequate or effective remedies), which tends to establish a violation of the rights enshrined in Articles 8.1 and 25 of the next of kin of the alleged victims. Regarding the alleged violation of Article 5, in paragraphs 1 and 2, it indicated that the extra-judicial execution and impunity in the proceedings have been a source of suffering and anguish for the next of kin of the alleged victims.

B. Position of the State

22. In its communication dated July 28, 2011, the State requested the Commission to declare that: (i) the petition that was filed is inadmissible because it is not empowered to act as a higher court of appeals regarding the criminal proceedings involving the incidents targeted by the petition; (ii) inadmissibility regarding redress because remedies have not been previously exhausted in contentious-administrative courts; (iii) the facts do not tend to establish the Colombian State's responsibility either by deed or omission, either directly or indirectly; and (iv) the petition does not meet the requirement set forth in subparagraph b) of Article 46 of the American Convention regarding lodging the petition within a period from the date on which the final judgment in the respective criminal proceedings was notified.

23. When referring to the proceedings conducted in the domestic jurisdiction and the investigations carried out regarding the facts that led to the filing of the present petition, the State qualified them as "constant and aimed at individualizing and punishing those responsible" for the death of Silvia Margarita Duzán Sáenz, Miguel Ángel Barajas Collazos, Saúl Castañeda Zúñiga, and Josué Vargas Mateus. As for the proceedings in the regular courts, the State indicated that, in 1992, the investigation was formally opened in the Court of Public Law and Order of Cúcuta. In that instance, the incidents were attributed to armed groups outside the law and various persons were implicated in the proceedings, among which National Police officers Alirio Castaño Cardona, Jorge Omar Hernández Villamizar, and Gonzalo de Jesús Bejarano Naranjo. The State indicated that the Regional Prosecution Service of Cúcuta implicated José Uriel Amariles Tabares of the National Army in the proceedings. The State asserted that, afterwards, the following were held in pretrial detention as perpetrators of the crimes of homicide for terrorist purposes and for belonging to vigilante groups privately meting out justice: Hermógenes Mosquera Obando, Carlos Alirio Atuesta, Armando Suescún Gómez, Gustavo Barajas Espinel, Alejandro Olave Hernández, José Iván Colorado González, Joaquín Emilio Castaño Hernández, Jorge Omar Hernández Villamizar, Gonzalo de Jesús Bejarano Naranjo, and Alirio Castaño Cardona. It reported that, in 1994, the investigation was partially closed and that, in 1995, it was declared null and void with respect to the proceedings against Police Force officers Gonzalo de Jesús Bejarano Naranjo and Jorge Omar Hernández Villamizar and that the investigation against José Uriel Amariles Tabares was terminated. According to the State, on December 7, 1995, nine persons implicated as perpetrators of the homicide for terrorist purposes and establishing and promoting vigilante groups privately meting out

justice were formally charged and that the investigation of five persons was barred. The State indicated that, in 1996, the trial against the persons charged started before a Regional Judge of Cúcuta.

24. The State also asserted that, on March 31, 1998, Guillermo León Fernández Ortiz, José Iván Colorado González, and Luis Enrique Arcila were convicted for the crime of belonging and setting up vigilante groups privately meting out justice. In that same judgment, the proceedings against Alejandro Olave Hernández were declared null and void, the proceedings against Hermógenes Mosquera Obando were barred because of his death, and all those charged in the homicide of Silvia Margarita Duzán Sáenz, Miguel Ángel Barajas Collazos, Saúl Castañeda Zúñiga, and Josué Vargas Mateus were acquitted.

25. According to the State, on November 5, 1998, the National Court, as a result of an appeal filed by those convicted and by virtue of the "jurisdictional degree of legal consultation", overturned the judgment of the court of first instance regarding the persons acquitted for conducting paramilitary activities, convicted them for belonging to those illegal armed organizations, and ratified the other aspects of the judgment. Finally, the State referred to the judgment of the Supreme Court of Justice of September 22, 2004 where it was decided not to overturn the 1998 judgment of the National Court and declared that the criminal charges against Guillermo León Hernández Ortiz, José Iván Colorado González, Pablo Enrique Pineda, Luis Enrique Arcila, and Fernando Mateus Garzón for the crime of conspiring to organize, promote, arm or fund armed groups outside the law had been barred on the grounds of a statute of limitations.

26. Regarding Military Criminal Jurisdiction, the State indicated that it had filed proceedings against the National Police Major Remigio Rodríguez Palmera for the crimes of homicide for terrorist purposes and setting up vigilante groups privately meting out justice. It stated that, on March 30, 2000, the Court of the Inspector General's Office of the National Police Force issued an order that terminated the proceedings against Remigio Rodríguez and that this ruling was ratified, as a result of the "jurisdictional degree of legal consultation", by the First Military Criminal Prosecution Service before the High Military Court on October 11, 2002. Regarding the proceedings in the disciplinary courts, it indicated that they had been archived by the Attorney General's Office of the Nation on February 26, 1998 on the grounds that they had no merit.

27. Because of the above, the State indicated that it is not possible to assert that there are criminal proceedings currently being processed in any jurisdiction with respect to the incidents that took place on February 26, 1990. Regarding this, it stated that "strictly speaking there are proceedings that were processed as *res judicata*, which (…) are subject to possible review proceedings, which are special in nature and are subject to specific conditions before they can be filed."[2] Regarding court proceedings in the framework of Law 975 of 2005, it indicated that members of paramilitary groups who had applied for its benefits have not made any statement regarding the incidents targeted by the petition, as a result of which there are no proceedings being heard in the special Justice and Peace Courts. It also indicated that for these incidents there is no investigation being conducted in regular criminal courts and therefore it is not possible to state that there are any proceedings being heard at all. In this regard, it indicated that the petition did not meet the requirement set forth in subparagraph b) of Article 46 of the American Convention on Human Rights, pertaining to the time-limits for submitting petitions. The State asserted that the ruling whereby criminal proceedings were terminated was issued on September 22, 2004 by the Supreme Court of Justice and that the petition was submitted on February 26, 2010.

[2] Communication by the State dated July 24, 2012 and forwarded to the petitioner on August 2, 2012.

28. The State contended that, in any case, the affected parties had at their disposal the remedy of direct redress in the contentious-administrative jurisdiction, which is aimed at compensating damages stemming from deeds or omissions attributable to agents of the State of Colombia. According to the State, this mechanism is the suitable remedy to obtain redress, if the facts are indeed attributable to deeds or omissions of agents of the State. It also indicated that said remedy is subject to a two-year statute of limitation and if it is not filed by the affected parties, it is construed that they have tacitly waived their right to obtain pecuniary compensation in the domestic legal system. In this regard, it pointed out that although the absence of prior exhaustion of the remedy of direct redress in domestic contentious-administrative courts does not prevent the bodies of the Inter-American System to hear the petition, it at least prevents them from examining certain matters that could only be discussed if adequate remedies had been exhausted. Because of this, it contended that the alleged victims should not be legitimized in seeking compensation for material or intangible damages with the Inter-American System.

29. Finally, the State asserted that the petition does not describe any facts that might tend to establish the violation of any of the rights guaranteed by the Convention. Thus, it deemed that the judgments issued by Military Criminal Courts cannot be disqualified as jurisdictional actions and that the State did guarantee at all times due process of law and other judicial guarantees and that remedies were thoroughly examined, rulings on the merits of the case were taken, the judgments were duly substantiated and benefited from due evidence, and that actions were taken autonomously and impartially. It also explained that it involved a jurisdiction grounded in the Constitution empowered to administer adequate and effective justice to investigate matters implicating members of public law and order in the performance of their duties. According to the State, no direct ties were proven between agents of the State and the incidents occurring on February 26, 1990, which makes it impossible to hold the State of Colombia directly liable for the crimes that were committed, because the judges having jurisdiction found that the agents implicated in the proceedings were not responsible and that the persons who might have killed the four persons mentioned in the petition did not act under the supervision, custody, tolerance or acquiescence of agents of the State. The State also stated that it cannot be held liable indirectly for this incident because it had not been previously aware of any risk involved and therefore could not reasonably do anything to prevent it.

IV. REVIEW OF COMPETENCY AND ADMISSIBILITY

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

30. Article 44 of the American Convention and Article 23 of the Rules of Procedure of the IACHR entitle the petitioner to lodge complaints with the Inter-American Commission. As for the State, Colombia is a party to the American Convention. The alleged victims are natural persons whose rights, as enshrined in the American Convention, the State has pledged to guarantee. Therefore the Commission has jurisdiction *ratione personae* to examine the petition.

31. The IACHR has jurisdiction *ratione materiae* because the petition refers to the alleged violations of human rights protected by the American Convention. The Commission also noted that Colombia is a party to the Convention since July 31, 1973, the date on which it deposited its ratification instrument. Therefore the Commission has jurisdiction *ratione temporis* to examine the petition.

32. Finally, the Inter-American Commission has jurisdiction *ratione loci* to hear the petition because it alleges violations of the rights protected in the American Convention that had taken place in Colombia's territory.

B. Requirements for Admissibility of the Petition

1. Exhaustion of remedies under domestic law

33. The petitioner alleged that, in this specific case, the appropriate remedy is criminal proceedings, which must be processed *ex officio* by the State. Nevertheless, it asserted that the criminal investigations and proceedings available by the State to clarify the incidents that were reported "have not been effective or adequate," because after two decades those responsible for the incidents have neither been identified nor punished. Because of this, it deemed that the exception set forth in Article 46.2 (a) and (c) of the Convention was applicable.

34. As for the State, it asserted that, as a result of the judgment of the Supreme Court of Justice on September 22, 2004, criminal proceedings were terminated in the present case because it was not possible to assert that an exception to the rule of prior exhaustion of remedies under domestic law was applicable. As for the absence of exhaustion of the remedy of direct compensation in the contentious-administrative courts in the domestic system, the State indicated that, although this does not prevent bodies of the Inter-American System from hearing the petition, the alleged victims must not be legitimized in requesting compensation for material or intangible damage with the System.

35. Article 46.1.a) of the American Convention provides that, for a complaint lodged with the Inter-American Commission in line with Article 44 of the Convention to be admissible, it is required that remedies under domestic law be pursued and exhausted in conformity with generally recognized principles of international law. This requirement is aimed at allowing national authorities to hear cases of alleged violations of a protected right and, if appropriate, having the opportunity to resolve them before being heard by an international body.

36. The requirement of prior exhaustion is applicable when the domestic system does have remedies that are truly available, adequate, and effective to remedy the alleged violation. In this regard, Article 46.2 specifies that the requirement shall not be applicable when: (i) the domestic legislation of the State concerned does not afford due process of law for the protection of the right allegedly violated; or (ii) the party alleging violation has been denied access to the remedies under domestic law; or (iii) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

37. As indicated by the Commission, to examine compliance with the requirement of prior exhaustion of remedies under domestic law, the adequate remedy that must be previously exhausted, depending on the circumstances of the case, must be identified, meaning the remedy that can settle the legal situation that was infringed.[3] In those cases of alleged arbitrary violation of the right to live, the adequate remedy entails criminal investigation and proceedings launched, conducted and promoted by the State, in the performance of its duties, to identify and punish those responsible.[4]

[3] IACHR. Report No. 23/07. Eduardo José Landaeta Mejías and others. Petition 435-2006. Admissibility. March 9, 2007. Paragraph 43.

[4] IACHR. Report No. 23/07. *Eduardo José Landaeta Mejías and others*. Petition 435-2006. Admissibility. March 9, 2007. Paragraph 43; IACHR. Report No. 15/06. *María Emilia González, Paula Micaela González and María Verónica Villar*. Petition 618-01. Admissibility. March 2, 2006. Paragraph 34; IACHR. Report No. 52/97. Case 11.218. *Arges Sequeira Mangas*. Annual Report 1997. Paragraphs 96 and 97.

38. The Commission observes that the State did file criminal proceedings for the purpose of clarifying the killing of Silvia Margarita Duzán Sáenz, Miguel Ángel Barajas Collazos, Saúl Castañeda Zúñiga and Josué Vargas Mateus and that, according to the information that was submitted, these proceedings came to an end with the acquittal of all those charged for the crime of homicide for terrorist purposes. It also notes that the final judgment in these proceedings was issued by the Supreme Court of Justice on September 22, 2004 and, on that basis, a conviction was not obtained for those responsible for the crime targeted by the petition.

39. According to the petitioner, after the judgment by the Supreme Court of Justice, the facts of the Massacre of La India had been the subject of a criminal investigation in the context of the special procedures established by the Law on Justice and Peace regarding various demobilized members of paramilitary groups. It indicated that, up until the date of the filing of the petition, the investigations in the framework of this procedure had not yielded any results and pointed out that, because of the above, it has promoted investigations pertaining to regular criminal jurisdiction.

40. The IACHR notes that the facts alleged in the present case involve the alleged arbitrary violation of the right to life and that this type of crime must be investigated by state authorities in the official and diligent performance of their duties. A judgment of acquittal, as the one occurring in the present case, does not exhaust the State's obligation to clarify the crime and to establish criminal responsibility of the true material and/or intellectual perpetrators of the incidents, nor does it enable the next of kin of the alleged victims to learn the truth about the incidents. Under these circumstances, as is evident, the next of kin of the alleged victims are entitled to expect that the State will take other actions aimed at clarifying what happened and the State, in turn, has the obligation to continue to conduct, in the performance of its official duties, all the investigations needed to respond to the call for justice as filed.

41. The above turns out to be especially relevant in the present matter, because subsequent to the judgment that was issued, the State established a special procedure for the purpose of investigating members of paramilitary groups for committing crimes in the context of Colombia's armed conflict. The IACHR deems that the next of kin of the alleged victims had legitimate expectations to have their right to the truth fulfilled and to obtain redress through this special procedure.

42. Because of the above, the Commission believes that, for the purposes of the petition's admissibility, the above-mentioned judgment by the Supreme Court of Justice issued in this matter could not terminate the domestic instances of Colombia and that criminal investigation constitutes the adequate remedy that had to be exhausted.

43. The IACHR understands that deciding whether or not the exceptions to the rule of exhausting remedies under domestic law is applicable to the present case must be settled prior to, and separately from, a review of the merits of the case, because its relies on a standard of appraisal that is different from the one used to determine the possible violation of Articles 8 and 25 of the Convention.[5] As a consequence, it is necessary to differentiate the issue of unwarranted delay referred to in Article 46.2 of the Convention, applicable to the admissibility phase of the petition, from the standard of reasonable time-limits, applicable to the review of possible violations of Article 8.1 of the Convention, in the examination of the merits of the dispute.

[5] IACHR. Report No. 151/11. *Luis Giován Laverde Moreno* and others. Colombia. Petition 1077-06. Admissibility. November 2, 2011. Paragraph 31.

44. On the basis of the information that was provided, it has been concluded that, 20 years after the incidents occurred, none of the investigations that were conducted have been able to identify and punish those responsible for the crimes that were committed, nor have they been able to provide redress for the next of kin of the victims. In this regard, for the purposes of admissibility, the Commission considers that the lapse of 20 years does make it possible to apply the exception set forth in Article 46.2 of the Convention for unwarranted delay.[6] In any case, the effectiveness of the remedies regarding the rights to protection and a fair trial would have to be reviewed when examining the merits of the case.

45. As for the remedy for direct compensation from the contentious-administrative courts, the IACHR deems that, for the purposes of deciding on the admissibility of the complaint, this remedy does not constitute a suitable channel, nor does it necessarily require exhaustion of the remedy.[7] With respect to this, it repeats that, because it involves incidents that constitute crimes, criminal proceedings are the adequate remedy to clarify this type of incident, bring to trial those responsible, and impose the respective criminal sanctions, in addition to facilitating other ways of redress.

2. Time-limits for submitting the petition

46. The State stated that the petition filed with the IACHR is inadmissible because it does not meet the requirement set forth in Article 46.1.b), whereby the deadline for lodging the petition is within six months from the date on which the final judgment was notified. In the State's view, the final judgment in the present case is the judgment by the Supreme Court of Justice on September 22, 2004, which ruled that the judgment of second instance of the National Court would not be overturned. The petitioner indicated, on the other hand, that the judgment of the Supreme Court of Justice did not constitute the last judicial action in the present case, because it did not terminate criminal proceedings for the homicide of the alleged victims.

47. Article 46.1.b) of the Convention provides that, for the petition to be declared admissible, the petition must have been lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment that exhausted remedies under domestic law. This rule is not applicable when the Commission finds that one of the exceptions to the exhaustion of remedies under domestic law as enshrined in Article 46.2 of the Convention is applicable. In these cases, the Commission must decide whether or not the petition was lodged within a reasonable period of time in accordance with Article 32.2 of its Rules of Procedure, which provides that:

> In those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time, as determined by the Commission. For this purpose, the Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case.

48. Since it was determined in the previous section that the Supreme Court of Justice's judgment of September 22, 2004 was not a ruling that exhausted remedies under domestic law for the purpose of admissibility, the Commission has discarded the argument submitted by the State that

[6] IACHR. Report No. 54/04. *Nelson Carvajal Carvajal*. Colombia. Petition 559-2002. Admissibility. October 13, 2004. Paragraph 32.

[7] IACHR. Report No. 83/12. *Hernando Rangel Moreno*. Colombia. Petition 326-00. Admissibility. November 8, 2012. Paragraph 38.

submittal of the petition did not meet time-limit requirements. Because it was deemed that, in the criminal investigation, there was unwarranted delay, the rule requiring lodging the petition within six months is not applicable.[8]

49. The Commission notes that, subsequent to the Supreme Court of Justice's judgment, the petitioner actively participated in promoting investigations in Colombia's justice system. As legal counselor for the next of kin of the alleged victims, it intervened in the special proceedings provided by the Law on Justice and Peace aimed at clarifying the facts and identifying those responsible for the killing of the alleged victims. The petitioner indicated that, despite its continued effort during these years, the investigations in the framework of these proceedings had not yielded any results because of the recalcitrance of demobilized members of paramilitary groups to admit their involvement in these incidents. It pointed out that it promoted investigations pertaining to regular criminal courts and, in particular, was able to have the Court of Justice and Peace expel from the proceedings of Law 975 of 2005 one of the former paramilitary members implicated in the crime and to transfer the investigation to the regular courts.

50. Bearing in mind the date of the specific incidents submitted to the cognizance of the IACHR in the present case, the proceedings filed by the petitioner, and the complex nature of the remedies available in Colombia to clarify the incidents in which paramilitary armed groups allegedly participated, the Commission deems that the petition was filed within a reasonable period of time.

3. Duplication of international proceedings and international *res judicata*

51. There is nothing on record to indicate that the matter of the petition is pending in any other international proceeding for settlement, nor is the petition substantially the same as any petition examined by it or any other international body. Therefore, the requirements set forth in Articles 46.1.c and 47.d of the American Convention have been met.

4. Characterization of the Facts Alleged

52. It pertains to the Inter-American Commission to determine whether the facts described in the petition tend to establish violations of the rights enshrined in the American Convention, in line with the requirements of Article 47.b), or whether the petition, in conformity with Article 47.c), must be considered inadmissible for being "manifestly groundless" or for being "obviously out of order." At this stage of the proceedings, the IACHR must conduct a *prima facie* evaluation not for the purpose of establishing alleged violations of the American Convention, but rather to examine whether or not the petition reports facts that could establish grounds for the potential violation of rights guaranteed by the American Convention. This review does not imply a prejudgment or prior opinion on the merits of the case.[9]

53. Neither the American Convention nor the Rules of Procedure of the IACHR require the petitioner to identify the specific rights that the State is allegedly violating in the case submitted to the Commission, although the petitioners may do so. It pertains to the Commission, on the basis of the System's case law, to decide in its admissibility reports, which provision of the relevant inter-American

[8] IACHR. Report No. 54/04. *Nelson Carvajal Carvajal*. Colombia. Petition 559-2002. Admissibility. October 13, 2004. Paragraph 36.

[9] IACHR. Report No. 21/04. Petition 12.190. Admissibility. José Luís Tapia González and others. Chile. February 24, 2004. Paragraphs 33 and 52.

instruments is applicable or could establish its violation if the allegations are proven on the basis of sufficient evidence.

54. The petitioner alleged that the State had incurred international responsibility for the involvement of members of the Army and Police Force in the incidents described in the petition. It alleged that the State had incurred international responsibility for violating Articles 4, 5, 7.1, and 13 of the Convention to the detriment of the journalist Silvia Margarita Duzán Sáenz, Miguel Ángel Barajas Collazos, Saúl Castañeda Zúñiga, and Josué Vargas Mateus. It also alleged violation of Article 16 to the detriment of Miguel Ángel Barajas Collazos, Saúl Castañeda Zúñiga, and Josué Vargas Mateus as members of the ATCC. Finally, it alleged that responsibility had been incurred for the violation of Articles 5, 8.1 and 25 of the Convention to the detriment of the next of kin of the alleged victims: María Leonor Lamo Gómez, Martha Cecilia Barajas, Héctor Hernández Barajas Lamo, and Raúl Ernesto Barajas Lamo (spouse, daughter, and sons, respectively, of Miguel Ángel Barajas Collazos); Fidelia Quiroga Gonzalez, Damaris Vargas Quiroga, Yeny Patricia Vargas Quiroga, and César Ariza Quiroga (spouse and children, respectively, of Josué Vargas Mateus); Beatriz Valbuena (spouse of Saúl Castañeda Zúñiga); and Julia Sáenz de Duzán, Salomón Kalmanovitz Krauter, Maria Jimena Duzán Sáenz, and Juan Manuel Duzán Sáenz (mother, spouse, sister, and brother, respectively, of Silvia Margarita Duzán Sáenz).

55. In view of the elements of fact and law submitted by the parties and the nature of the case submitted to its review, the Commission deems that, if proven, the petitioner's allegations about the scope of the alleged responsibility of the State in the incidents set forth in the petition could tend to establish a violation of the rights enshrined in Articles 4, 5, 7.1, and 13 of the Convention to the detriment of Silvia Margarita Duzán Sáenz, Miguel Ángel Barajas Collazos, Saúl Castañeda Zúñiga, and Josué Vargas Mateus and in Article 16 to the detriment of Miguel Ángel Barajas Collazos, Saúl Castañeda Zúñiga and Josué Vargas Mateus. Likewise, if proven, the petitioner's allegations could tend to establish a violation of the rights enshrined in Articles 5, 8.1 and 25 of the Convention to the detriment of the next of kin of the alleged victims. The Commission shall examine the merits of the possible violation of these provisions in the light of the general obligation enshrined in Article 1.1 of the Convention, as well as the obligation to adopt measures under domestic law in accordance with the provisions of Article 2 of the treaty.

56. In conclusion, the IACHR decides that the petition is not is not "manifestly groundless" or "obviously out of order," and therefore declares that the petitioner has met *prima facie* the requirements set forth in Article 47.b of the American Convention in connection with potential violations of Articles 4, 5, 7.1, 8.1, 13, 16 and 25 of the American Convention, in keeping with Articles 1.1 and 2 thereof, as specified above.

V. CONCLUSION

57. The Inter-American Commission concludes that it is competent to take cognizance of the merits of the case and that the petition is admissible according to Articles 46 and 47 of the American Convention. Based on the arguments of fact and law set forth above and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the present petition admissible as regards the alleged violation of the rights protected by Articles 4, 5, 7.1, 8.1, 13, 16 and 25 of the American Convention, in connection with Articles 1.1 and 2 thereof.

2. To notify the parties of this decision and to continue with its examination of the merits of the case.

3. To make this decision public and to include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 4th day of November 2013. (Signed): José de Jesús Orozco Henríquez, President; Tracy Robinson, First Vice-President; Felipe González, Dinah Shelton, Rose-Marie Antoine, Commissioners.