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REPORT No. 61/16

PETITION 12.325

REPORT ON ADMISSIBILITY

PEACE COMMUNITY OF SAN JOSÉ DE APARTADÓ
COLOMBIA

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REPORT No. 61/16¹
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ADMISSIBILITY REPORT
PEACE COMMUNITY OF SAN JOSÉ DE APARTADÓ
COLOMBIA
DECEMBER 6, 2016

I. SUMMARY

1. On September 8, 2008, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission” or “the IACHR”) received a petition filed by CEJIL, who later handed over representation to Javier Giraldo Moreno (hereinafter “the petitioner”) against Colombia (hereinafter “Colombia” or “the State”). The petition was filed on behalf of the Peace Community of San José de Apartadó (hereinafter “the community” or “the Peace Community of San José de Apartadó”).

2. The petitioner argues that the Peace Community of San José de Apartadó is a community consisting of civilians who live in a context of armed conflict in Colombia and who chose not to cooperate with none of the parties to the conflict. He alleges that the members of the community have been subjected to numerous violations of their human rights as a result of acts by state agents, paramilitary groups and guerrilla groups settled in the region. In this regard, he alleges violations of the rights to life, integrity, personal freedom, due process, private life, property, movement and residence, judicial protection, and of the child, against the community members. He alleges that despite the precautionary measures and the subsequent provisional measures granted in favor of the members of the Peace Community of San José de Apartadó, such violations have persisted throughout the years and to this date.

3. In turn, the State declares that the matter is inadmissible, as it alleges lack of competence *ratione personae* due to the lack of individualization of the victims, and lack of competence *ratione materiae* due to the alleged violation of international treaties regarding which the IACHR is not competent. In addition, it alleges lack of exhaustion of domestic remedies concerning investigation and punishment. Moreover, it argues that if the matter is declared admissible, the allegations of fact should be limited to the alleged victims and the alleged violations reported.

4. Without prejudging the merits of the complaint, after examining the position of the parties and pursuant to the requirements established in articles 31 to 34 of the IACHR’s Rules of Procedure (hereinafter “the Rules”) and in articles 46 and 47 of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”), the Commission decides to declare the petition admissible in order to assess the allegations regarding the alleged violation of the rights set forth in articles 3, 4, 5, 7, 8, 11, 13, 15, 16, 19, 21, 22 and 25 of the American Convention. The IACHR also decides to declare the petition admissible concerning the alleged violation of articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, and Article I of the Inter-American Convention on Forced Disappearance of Persons. Moreover, the IACHR decides to declare the petition admissible concerning the alleged violation of Article 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (hereinafter “Convention of Belém do Pará”). The Commission decides to notify the parties of its decision, to publish this report and include it in its Annual Report to the General Assembly of the Organization of American States.

¹ Commissioner Enrique Gil Botero, a Colombian national, did not take part in the discussion or voting on this petition, pursuant to Article 17.2 of the Inter-American Commission’s Rules of Procedure.

II. PROCEEDINGS BEFORE THE IACHR

5. The IACHR received the petition on September 8, 2000; on October 3, 2000, it sent to the State the pertinent parts of the complaint and granted a 90-day period to submit its observations in accordance with article 31 of its Rules then in force. On January 25, 2001, the Commission received the reply from the State, which was transmitted to the petitioner on January 30, 2001.

6. The petitioner filed additional observations on November 27, 2010 after an information request by the Commission on September 24, 2010. Moreover, the petitioner provided new observations on May 17, 2012; October 20, 2012; March 30, 2014; and December 14, 2014. In turn, the State submitted additional observations on March 16, 2012 and later, on September 10, 2012; September 24, 2014; and July 6, 2015. These observations were duly transmitted to the other party.

PRECAUTIONARY AND PROVISIONAL MEASURES

7. On December 17, 1997, the Commission granted precautionary measures in favor of the members of the Peace Community of San José de Apartadó, based on the reports concerning the killing of forty three of its members since March 1997 when the community members declared their neutrality. After precautionary measures were adopted, the petitioners reported new events that allegedly affected the community.

8. On October 3, 2000, the Inter-American Commission filed to the Inter-American Court on Human Rights (hereinafter "I/A Court H.R.") a request for provisional measures in favor of the people living in the Peace Community of San José de Apartadó for the protection of their life and personal integrity, concerning this case. The I/A Court H.R. ordered provisional measures in favor of the community on October 9, 2000. Said provisional measures were extended and/or ordered again, in favor of all the community members by virtue of resolutions dated November 24, 2000; June 18, 2002; November 17, 2004; March 15, 2005; February 2, 2006; February 6, 2008; and August 30, 2010. To this date, the provisional measures are in force. The IACHR states that in its analysis of this petition it would take into account the information supplied by both parties during the precautionary and provisional measures procedure.

III. POSITION OF THE PARTIES

A. Position of the petitioners

9. The petitioning party argues that the Peace Community of San José de Apartadó dates from March 23, 1997², when it declared itself a civil population living in a context of war and consisting of people who chose not to cooperate with none of the parties to the armed conflict in Colombia. The petitioner alleges that despite the community's neutrality, the State has not respected it.

10. The petitioner argues that since the community exists, the territory with the main settlements has been assigned to Bejarano Muñoz Engineers Battalion and Voltígeros Battalion, both part of the 17th Brigade with headquarters in the municipality of Carepa. The petitioner declared that the army has committed numberless violations against the community, such as massacres, extrajudicial killings, torture, forced disappearance, forced displacement, destruction of goods essential for the community's survival, arson attacks on dwellings, death threats, extermination announcements against the community, theft of pack animals, sexual violence, random bombardments, illegal deprivation of liberty, judicial maneuvers, extortion and blackmail. He alleges that there is a very close link between paramilitary groups and the armed forces, and that throughout the years the State has accepted paramilitarism by means of several legal instruments. The petitioner adds that although the State later determined the illegality of paramilitarism, it continues tolerating it through omissions.

² It is alleged that the community was granted juridical personality on December 15, 1997, by the Chamber of Commerce of Urabá.

11. According to the original complaint, 66 incidents took place on different dates between 1997 and 2000 where hundreds of people (who are individualized) were involved. The complaint includes an account of the time, manner and place of alleged arbitrary detentions, plunder, extrajudicial killings, disappearance and torture, among other reported facts. The petitioner argues that such facts show that there has been an alleged practice of serious human rights violations against the community members by the State. In addition, reference is made to “recent events” that took place on July 8, 2000 in the context of the development of a paramilitary strategy where members of the 17th Brigade and FARC-EP deserters participated. It is alleged that about 20 hooded individuals armed with rifles entered the place where the military officers were, while a helicopter was flying over the hamlet. The petitioner alleges that when the perpetrators entered “La Unión,” they said that they had been ordered to kill men aged between 20 and 40 years old; that they broke into the Community House and destroyed the telephone of the community; and that they broke into the homes of residents, taking them to the pavement, threatening them and saying that the community was “a community of guerrilla people instead of a peaceful community”. It is alleged that six community members (who are individualized) were extrajudicially killed in the presence of other people from the hamlet, and that all community members were threatened and warned to leave the territory within 20 days.

12. In his subsequent communications dated November 27, 2010; May 17 and October 20, 2012; March 30 and December 14, 2014, he makes reference to events taking place between 1997 and the date of his latest communication, where he mentions dates, circumstances, perpetrators, and victims of events which he says are serious violations of the rights of the members of the community.

13. It is alleged that human rights violations stemming from the events reported reveal a state policy that translates into the tolerance and concealment of facts. It is alleged that inasmuch paramilitarism is not acknowledged as a state policy, it has been a contributing factor to the impunity and persistence of crimes; and that in cases like this, one of the problems of justice has been to ignore that they are systematic, and crimes against humanity and crimes of war –a reason for which this could be transmitted from the Inter-American Court to the International Criminal Court for the matters under the competence of the latter. The petitioner adds that the offenses are criminally defined as persecution and annihilation, both described in the Rome Statute and the Nüremberg Principles.

14. He alleges that one of the sources of state responsibility is its keeping the security forces in the area. He argues that despite the talks between the community and the Vice-presidency of the Republic and the National Police seeking to protect the community’s neutral status, in 2005, former President Uribe told security forces to permanently settle in the hamlet of San José de Apartadó. Security officers have been settled there since April 1, 2005, causing the immediate displacement of almost all of its inhabitants. To settle, he says, the police took possession of houses and plundered goods. He alleges that numerous dwellings were used as brothels for policemen and soldiers, and that paramilitaries have been given accommodation in such dwellings.

15. He says that the presence of the security forces in the area has sparked an escalation in the attacks by rebels, turning the area and the hamlet into a battlefield. He alleges that military and police officers broke into the local school carrying weapons, and used children to obtain information through extortion and blackmail. Moreover, he argues that at the police station established, officers began to fabricate registers, which is forbidden under the Constitutional Court. In this regard, it is said that between June 13 and 16, 2012, there were several clashes between the state security forces and the guerrilla. The petitioner alleges that by Judgment T-1206 of 2001, the Constitutional Court declared that the police are a “fighting population” and that their presence leads to attacks by rebels, putting at grave risk the right to life and other rights of civilians living in the neighboring area. He alleges that the State has refused to abide by the judgment, as it keeps the police station and a military base in the middle of the civil population of the San José de Apartadó hamlet.

16. He says that despite the poverty context in the community, consisting of people with no means to afford legal representation and appear as the plaintiff, members have made numerous efforts to exhaust domestic remedies, without any results due to the inadequacy of remedies. He alleges that although there is a close link between the institutions and paramilitarism evidenced by the publication of lists of potential victims, many community members appeared to bear witness before officials of the Prosecutor's Office, who came late to the hamlet for the examinations on the crimes. He adds that some members have appeared to bear witness more than a hundred times and that several people were killed after bearing witness. He also reports that in the case of women who were raped by military officers after filing their complaints, these were searched for and subjected to death threats; and that as result, many of them left the region. The petitioner argues that all of these facts, along with the lack of results, led members of the community to mistrust the justice and to refuse to bear witness more and more.

17. In addition, he declares that although it is possible to seek assistance from the Public Defender's Office, the community had a negative experience with such attorneys. He recalls that the Public Defender's Office appointed an attorney to assist peasants who had been arbitrarily detained and accused of "insurgency"; the attorney forced them and eventually got them to accept the charges –even when these were false– by promising to obtain an immediate release. The petitioner adds that given the lack of justice, the Peace Community's Internal Council suggested the government that committees were set up to further proceedings, which was accepted due to the massacre of La Unión on July 8, 2000.

18. Concerning complaints filed to authorities, the petitioner alleges that throughout the years, complaints were lodged with the Presidents of the Republic, Ministers, Advisers, and supervisory bodies of the State. He alleges, in particular, that between July 29, 2003 and November 15, 2011, 24 petitions were lodged with the President's Office, with exact and detailed information on all the facts that occurred, in order to request administrative measures to stop the crimes. He alleges that there was no reply or that the mailings were made to institutions without competence to act, and he mentions some situations where the State replied in this way.

19. Regarding judicial actions, he says that between 2001 and 2003, the community lodged a detailed account of the facts with the Prosecutor's Office. On June 26, 2001, a civil complaint was filed to the National Prosecutor General's Office to request procedural information on 207 crimes against humanity committed in 5 communities of the area, of which 72 were in San José de Apartadó. The petitioner also argues that he requested to be acknowledged as the plaintiff in representation of humanity, which was rejected. The petitioner argues that he requested a protection of rights, which was rejected, and that the Constitutional Court in review ordered the Prosecutor General to acknowledge him as the plaintiff, by Judgment T-249 of 2003. Also, he says that he requested the Prosecutor's Office to attach the 207 crimes to the case file, but that the prosecutor rejected to investigate any of the crimes and limited the investigation to the offense of integration of illegal groups. The petitioner adds that on March 9, 2004, the Prosecutor General precluded said investigation in favor of a General, and that a former soldier was harassed and imprisoned for filing a complaint against the General; that the ex-soldier and his family were threatened until he retracted his complaint; that upon release, the ex-soldier was killed by paramilitary and military officers; and that the Prosecutor's Office rejected to open an investigation for this murder.

20. Furthermore, he says that on November 12, 2003, a civil complaint was lodged with the Prosecutor General's Office concerning 301 crimes against humanity committed against community members. He alleges that the Prosecutor and his colleague officials avoided the investigation and handed over the complaint to a private prosecutor already investigating one of those 301 crimes (not as a crime against humanity). He says that later the complaint was said to lack the basic information needed to open an investigation and that the authorities refused to answer the petition. The petitioner argues that the Prosecutor General was accused of malfeasance of office before the Accusations Committee of Congress's House of Representatives; but that the matter was filed.

21. He argues that in the context of maneuvers against the community –in which he alleges the cooperation between military officers, paramilitaries, prosecutors, and judges– a protection of rights was filed to safeguard the rights to life, personal integrity, judicial protection, due process, freedom, the good name and the honor of 12 community members mentioned in maneuvers. He alleges that the Supreme Court transferred the protection of rights to the Second Criminal Judge of Apartadó who rejected it, thus violating its legal terms. The petitioner says that later, when the Constitutional Court reviewed said judgment, it declared that the judge neglected the basics of the action of protection of rights. According to the petitioner, this shows that justice in the region was administered by the executive power through the 17th Brigade.

22. The petitioner moreover explains that thanks to the protection of rights that he filed, the Constitutional Court subpoenaed the government to abide by the decisions of the I/A Court H.R, by Judgment T-327 of 2004. He argues that this judgment vindicated the State's duty to ensure life "with a requirement for results" and recalled the scope of the duty of safeguard of rights that higher state officials have, who must also respond for their omissions for "the charge of detrimental outcomes for the subjects." He alleges that this judgment ordered the Commander of the 17th Brigade to prepare a manual of rules for the staff under his authority, which had to include some restrictions concerning the members of the community. He declares that the manual was ready many years later, but that its application was hardly symbolic.

23. Moreover, the petitioner argues that in order to know the names, codes, hierarchy and chain of command of the state security officers that were present on the days, at the times and places where the crimes took place, a petition was lodged with the Ministry of Defense. He says that the requests were dismissed, as they harmed the rights to the good name, dignity and due process of military and police officers as well as privacy rules. As a result, he says, he filed for a protection of rights, which the High Court and the Supreme Court rejected. Nevertheless, he alleges that the Constitutional Court ordered the Ministry of Defense to provide the information requested, by Judgment T-1025 of 2007. The petitioner says that the judgment was formally complied with, as the ministry provided lists with the names of battalions deployed around those dates in all over the region in order to avoid giving the perpetrators' names or the units present in the places where the crimes took place. In addition, the petitioner argues that said judgment ordered the Ministry of Defense and the Prosecutor General's Office to submit fortnightly reports to the Human Rights Ombudsman's Office, concerning the protection of rights in favor of the members of the community, in the case of the ministry, and the progress made in the fight against the impunity of crimes, in the case of the prosecutor. He also declares that since July 2008, both institutions have submitted reports to the Ombudsman's Office, and that the Ombudsman's Office has transmitted these to the community. He alleges that after two years of reading said reports and submitting several critical analysis on the uselessness of such reports, the community requested not to be sent any more copies of the reports, as its members believe that these were concealing and useless.

24. He declares that on January 19, 2009, a civil complaint was filed to the Supreme Court of Justice, the State Council, the Superior Council of the Judiciary, the National Prosecutor General and the Attorney General of Colombia, all of which declared themselves incompetent except for the Constitutional Court, as it proposed the joinder of protection of rights. He alleges that such mechanism was not effective or quick enough to stop the series of incidents affecting the community.

25. As to punishments, he alleges that on August 4, 2010, the Second Specialist Judge of Antioquía released 11 military officers involved in the massacre of February 21, 2005, in which 4 under-aged and 4 adults were killed (Judgment No. 41; 2009-0015). He mentions that on June 5, 2012, the Criminal Court for the Clearing of Backlogs of the High Court of Antioquía partially affirmed the judgement issued and convicted 4 of the officers involved to a 34-year prison term. He alleges that the judgment of second instance exonerated commanders of Vélez Battalion, although there was evidence showing their high-level cooperation with paramilitaries of the region, and that in the raid were paramilitary members chosen and directed by the 17th Brigade. He alleges that the decision was objected through an appeal for review to the Supreme Court.

26. With regards to the observations submitted by the State in the context of this processing, and concerning the 17 cases that the State says are being dealt with through transitional justice mechanisms and where the main perpetrators are said to have been identified, he argues that throughout the processing of this complaint millions of cases have been reported and that for the State to eventually choose 15 cases demonstrates the State's inability to process cases. In addition, he argues that a businessman and a few paramilitaries have been accused in the investigations, but that to the alleged victims this is unreliable, as among the accused there is not a single military or police officer.

27. As to the identification of the alleged victims, and in reply to an information request by the IACHR on September 24, 2010, on November 27, 2010, the petitioner said, that the community includes anyone who adheres to its defining principles, and that throughout the years many people have entered or left the community; so, the Community's Internal Council keeps a record of the flux. He also mentions 218 additional incidents occurred between the date that the complaint was filed and the date that he submitted the document in writing with details of alleged arbitrary detentions, murders, torture, burials, damage of property, displacement, harassment and threats, among others; and he argues that the petition is filed on behalf of the community as a legal entity, not on behalf of each one of the victims; for the Peace Community of San José de Apartadó, as a human group with humanitarian and social objectives, has been subjected to violations of rights protected by the Convention. The petitioner adds that the petition has exclusively registered attacks to individuals who at the time of the attack were part of the community. He adds that victims usually go to the community in order to file complaints and request his assistance; therefore, in the documents submitted to the IACHR and the I/A Court H.R., as well as to different national and international bodies, there are reports on crimes whose victims do not strictly belong to the community –since, terrified by the persecution against the community, these people did not dare to be part of it–, but who do belong to the community's social and geographical context.

28. Concerning the State's allegation of lack of competence *ratione personae*, the petitioner states that the petition does not include any violation of rights against the community as a legal entity, but only violations of rights that the Convention protects in favor of individuals as human beings. He alleges that the community members' right to association does not establish a legal relationship similar to associations of business people or shareholders based on economic or institutional profits. He adds that the violations affect all community members, and alleges that the identification of the beneficiaries of the provisional measures ordered by the I/A Court H.R. led to the granting of measures in favor of all the members of the community. He argues that submitting their names to the State equals to handing them over to the armed security forces and paramilitary groups, who are the ones that have persecuted the community members to either prosecute or kill them. He points out that despite that, the petition does mention the names of the victims of each violation of rights set forth in the Convention.

29. As to competence *ratione materiae*, he argues that reference is made to the conventional articles infringed, and that although other international instruments are mentioned, these "are in conformity with those in the Convention and the Declaration by means of the right to justice (Article XVIII of the Declaration and Article 25 of the Convention)."

30. Finally, concerning the timeframe of the facts and allegations argued by the State in this respect, he recalls that on December 17, 1997, the IACHR granted precautionary measures in favor of the community, since by that time, it had information on 43 people murdered and 2 disappeared. He declares that the fact that the matter is still under provisional measures shows that the situation of violations of the ACHR is an ongoing situation, and that consequently, violations can escalate in the future, keeping the same characteristics of the facts above, which would naturally become part of the same case.

31. Based on the foregoing, the petitioner alleges that to the detriment of the Peace Community of San José de Apartadó, the State violated the rights embodied in articles 4, 5, 7, 8, 11, 13, 15, 16, 19, 21, 22 and 25 of the Convention, and articles I, XVIII and XXVI of the American Declaration of the Rights and Duties of Man.

B. Position of the State

32. As a manner of context data, the State says that Apartadó is located in the center of Urabá Antioquía, which is an important geostrategic region that is key to illegal armed groups. It adds that its geography and proximity to areas with estates and agricultural industries as well as peasant colonies and mountainous territory (with illegal crops) makes Apartadó a land disputed by illegal armed groups that have struggled to keep control of it.

33. It declares that since 1997, the Peasant Self-Defense Groups of Córdoba and Urabá (hereinafter “ACCU”) began a fight to take control of the Paramillo Massif, and that both the FARC and the self-defense groups took actions against the population. It mentions that in that same year the ACCU spread their control over important villages and fought against the FARC’s northwestern block and the ELN’s northwestern block. The State says that in 2001, the self-defense groups lost their influence over some places and that there was a counterattack by the armed groups, both the FARC and the self-defense groups, mostly in areas like Apartadó, where violence was directed against self-denominated peace communities. It alleges that, therefore, between 1998 and 2001, self-defense groups became stronger and violence increased, but that demobilizations began to take place between 2003 and 2005, which along with the expectations raised by the peace process led to lower murder rates.

34. The State argues that in 2005, the Justice and Peace Law, Law No. 975 of 2005, was enacted to enable the peace process, the reintegration and demobilization of illegal organized groups, i.e. guerrilla or self-defense groups. As a result, it says, all paramilitary groups in Urabá that directly affected the community of San José de Apartadó were demobilized. It says that the State used all of its apparatus so that victims’ rights to justice, truth and reparations were ensured in the investigation and prosecution procedures; and that at the same time, specialized bodies were created to dismantle illegal armed groups and avoid damages to the civil population, such as the Justice and Peace Unit of the National Prosecutor’s Office, the Justice and Peace Tribunals, the Justice and Peace Procurator General’s Office, the National Commission on Reconciliation and Reparation, Regional Commissions for the Revocation of Benefits, and the Victims Reparations Fund. At the same time, the State adds, resolutions were ordered for the effective application of the law, such as Resolutions No. 4773 and No. 2296 of 2006, of the National Prosecutor’s Office, and Resolution No. 438 of the same year, of the Ombudsman’s Office. In addition, it states that the President of the Republic also issued several decrees in this regard³.

35. It alleges that all the efforts by the State led to the disarticulation of self-defense groups in many regions, including groups operating in Urabá Antioquía that directly affected the Community of San José de Apartadó. However, it says that where self-defense groups had been disarticulated there was the risk of an escalation of crimes by the guerrilla, drug traffickers, or criminal gangs.

36. It declares that state institutions of the area have taken several measures to ensure the safety of the population from the *corregimiento* San José de Apartadó. In this regard, it says that a victims law³ was passed which includes a procedure concerning illegally taken lands and a new criminal military code that excludes human rights violations from the military jurisdiction, among other things.

37. Moreover, it states that the General Director of the Police issued Order of Service No. 003 “For the institution’s work with the community, to establish a Police station in San José de Apartadó,” which was established on March 19, 2005; and that heads of security forces in the *corregimiento* were trained in workshops, among other measures.

³ It refers to Decree 4760 of 2005, Decree 2898 of 2006, Decree 4417 of 2006, Decree 3391 of 2006, Decree 3570 of 2007, and Decree 315 of 2007.

38. Also, it states that in the framework of measures taken by virtue of the provisional measures in force in favor of the community, the National Defense Ministry adopted protective measures, such as military search and control operations and offensive operations; and that reinforcements and patrols were deployed in the area. The State also says that since 2007 troops of the “Voltígeros,” 6th Infantry Battalion, have surveilled the road connecting Apartadó to the village of La Balsa on a permanent basis, and that it is permanently settled in the general area of said *corregimiento*.

39. The State alleges that the community’s lack of will to talk with the military authorities has been an obstacle to the full application of the resolutions of the I/A Court H.R and the Constitutional Court⁴. It also manifests that although the petitioners unilaterally interrupted the agreement of measures –they expressed their decision of not taking part in any talks with the government through a petition dated March 28, 2005–, the Presidential Program on Human Rights and IHL has continued with its of follow-up duties, processing reports and requesting competent authorities the adoption of measures, thus keeping its commitment of ensuring the protection of the community members.

40. As to the facts reported and the framework of time, it argues that the complaint was filed in 2000 to report the facts of July 8, 2000. It adds that the rest of factual data in the petition is contextual data of the facts; that in any case, such date should be taken as the timeframe to establish the factual grounds of the petition. Consequently, it requests that the processing and the facts of the case be limited only to those of July 8, 2000, since later facts are new events that differ from those used as the factual grounds of this complaint. It also argues that under Article 30.5 of the IACHR’s Rules the parties are not entitled to extend the timeframe of the complaint.

41. Concerning the scope of the petition, the State argues that including the petition’s precautionary and provisional measures and considering them as part of the case –as the petitioner intends to do–, leads to confusion about essentially different processings and to an indefinite extension of the subject of the case concerning non-individualized victims. The State adds that additional observations are aimed at supplementing or clarifying the original petition, not at providing arguments that corresponds to the assessment of merits.

42. Concerning competence *ratione personae*, it alleges lack of competence to hear complaints seeking to protect human rights embodied in the Convention, in favor of legal entities, since the concept of victim applies to human beings only (Article 1.2 of the Convention), not to a community –as the petitioner argues. In addition, the State alleges that concerning the individualization and identification of alleged victims, under the Inter-American judicial doctrine regarding Article 44 of the Convention, it has been understood that it is for the petitioner to individualize the alleged victims, a requirement which in this case has not been met, as allegations of human rights violations are made with respect to members of the community whose membership has not been proved under Article 2 of the Internal Rules of the community.

43. In addition, concerning competence *ratione materiae*, the State alleges that the Inter-American System on Human Rights lacks competence, since the petitioner alleges violations establishing crimes against humanity and war crimes described in the Rome Statute. The State adds that the I/A Court H.R. has never described the conduct by a state as an international crime, since it lacks competence to judge such crimes.

44. Moreover, the State says that in the complaint reference is made to actions attributable to third parties, not to state agents. It alleges that in many of the cases described, it is said that the perpetrators belong to the army; but that there is no proof of their responsibility, as there are no details of the time, manner or place of the incidents to determine the responsibility of members of the army. It also alleges that illegal armed groups have strategically worn uniforms exclusive to the armed security forces, to deceive the population and undermine the army. In addition, it declares that in this case, it cannot be said that members of paramilitary groups are alleged state officials.

⁴It refers to Judgment T-327 of 2004.

45. It argues that for its state responsibility to be compromised under the jurisprudence of the I/A Court H.R., the following is required: institutional relationship, in the sense of giving express orders to third parties to commit violations; subordination; delegation of state duties to third parties; acts or omissions contrary to the general duties set forth in the Convention, and the State's prior knowledge of the alleged victim's risk situation; extraordinary risk situations generated by the State; and the analysis of the specific circumstances of each particular case. It declares that it is for the petitioner to submit proof of said conditions and that in this case, there is no such evidence; and that as a result, state responsibility is not applicable.

46. Furthermore, it alleges non-exhaustion of domestic remedies, since saying that "complaints were processed after tens of years and ended up being filed, due to the inefficiency and proverbial corruption of the Colombian justice" is no proof that adequate and effective means under domestic law have been exhausted, pursuant to Article 46.1 (a) of the Convention. In this regard, it alleges that questions on the efficiency of the domestic remedies do not exempt the petitioner from the duty to exhaust them. It further declares that there is a prosecution *ex officio* for every alleged human rights violation against members of the community reported to the National Prosecutor General's Office, since these are violations that demand investigations *ex officio* pursuant to Article 250 of the Colombian Constitution. The State alleges that the community members did not report to the authorities the alleged human rights violations, except for some murders reported only by the National Police or the army. It alleges that said judicial institution has been faced with the lack of cooperation by the community members, leading to the inability to determine the names of the victims of the crimes, for instance.

47. It also declares that in the criminal investigations, the alleged victims did not appear as the plaintiff. It argues that the petitioner's allegation about the lack of means to appear as the plaintiff does not take into account the legal aid set up by the Constitutional Court through Judgment C-875, on the provision of legal aid to anyone with the right to appear as the plaintiff in the case.

48. Moreover, as to the petitions filed to different Presidents of the Republic, it alleges that such is not a replacement of remedies available under the domestic law aimed at safeguarding the alleged situation, and that adequate domestic remedies available must be exhausted. It also declares that if the belief was that the crimes compromised state agents' responsibility, a remedy of direct reparation should have been brought to the administrative law court. The State argues that given the lack of reports to competent authorities, it is impossible to open investigations and start criminal and disciplinary proceedings. Furthermore, it says that the petitioners can access additional means, such as Law No. 975 and Law No. 1448 of 2011.

49. In particular, the State argues that the domestic law allows access to a full redress and has not carried out any actions meant to delay the criminal proceedings, and that it has changed its investigation strategy to maximize its results and coordinate them with the search of peace. It argues that since 2013, the National Directorate of Analysis and Context adopted measures to design an investigation strategy concerning the community's problems, with special emphasis on serious crimes; and that to this end, the directorate proposed a plan to connect cases, which was passed by the National Committee for the Prioritization of Situations and Cases, and that to this date, the investigation of 18 cases has been prioritized. In addition, the State says, the claims for damages are inadmissible due to the subsidiary and complementary nature of the Inter-American Human Rights System.

50. As to progress in the proceedings, it says that in the context of the Judicial Framework for Peace, the National Directorate of Analysis and Contexts (hereinafter "DINAC") –a tool in criminal policy aimed at fighting organized crime– has among its teams an investigation team working on the crimes occurred in the Urabá region. It argues that DINAC "is reconstructing the crime scene that will guide the investigation and help describe the criminal plan of the armed groups responsible for the crimes against the people of *corregimiento* San José de Apartadó, taking into account that the paramilitary group in Urabá is one of the most important groups in the armed conflict in the region." It explains that the investigation on San José de Apartadó is aimed at "determining if some of the members of the state security forces participated in the commission of crimes against this community" and seeks to identify the economic interests of multinational companies carrying out exploitation projects and activities in the territory where the

community is, in order to establish the identity of the perpetrators of murders and forced disappearances, and displacement against the community members.

51. In addition, it argues that in 2013, the Committee for the Prioritization of Situations and Cases passed a plan on the connection of cases that was initially made up of 17 investigations on a chronological basis regarding events connected to the conflict in the *corregimiento* of San José de Apartadó, taking into account victims and victimizers (paramilitaries and members of the army) from 1993 to 2005; and that later, when another investigation was filed for due to connections between proceedings, there were 18 cases.

52. The State argues that on September 6, 2013, the National Prosecutor General assigned some of the investigations in process at several units to the DINAC, which in the present has 15 investigations on events occurred in the area of San José de Apartadó –known to the National Directorate on Human Rights and IHL– in which 12 condemnatory judgments were issued. The State also says that in most of the proceedings furthered by the DINAC and related to the community’s situation, condemnatory judgments have been issued against paramilitaries and some members of the state security forces. It alleges that some obstacles to the development of investigations are the passing of time, the complexity of investigations, the lack of cooperation by some of the community members due to mistrust of authorities, and issues concerning security in the area –making it difficult to access to it.

53. It argues that in the framework of the Justice and Peace Law, the Seventeenth Prosecutor’s Office Appointed to the Tribunal declared that of 152 cases related to petition P 12.325, 16 are attributed to the state security forces; and that there are 121 cases geographically associated with Bloque Bananero, in 43 cases of which either permanent or transitional justice has ruled either the suspension of investigations under Article 22 of Law No. 1592 of 2012, or condemnatory judgments –in 37 cases–; and that a judgment ruled on an individual was appealed and is allegedly at the Supreme Court of Justice.

54. Also, it alleges that at the Directorate of the National Prosecution Specialized in Human Rights and International Humanitarian Law, 35 cases are being advanced: 34 of these are active under Law No. 600 (at a pre-trial stage, either a preliminary hearing or an arraignment), 20 inactive cases and 1 case under Law No. 906 (at criminal proceedings). Concerning the victims registered, the State alleges that there are 245 victims in all, of which there are 164 active proceedings and 81 inactive cases.

55. It states that an examination of the victims was carried out after determining the responsibility of the demobilized Bloque Bananero, for statements, modus operandi or area of influence attributable to this group; and that said information was submitted to the Administration Unit for the Full Reparation of Victims, in order to continue to the prioritization of cases concerning the study of all administrative measures of Law No. 1448 of 2011 to be repaired.

56. In its latest communication, the State argues that by resolution dated November 11, 2014, the Government of Medellín distinguished the First Prosecutor Appointed to the Criminal Court of the Specialized Circuit of Medellín, and the Twenty-sixth Prosecutor of Medellín. It adds details on certain proceedings about specific victims, at the Directorate of the Prosecutor’s Office of Medellín and the Directorate of Analysis and Context.

57. It also refers to ongoing investigations on crimes that allegedly involved 57 alleged victims about whom there are alleged proceedings at different stages of progress. It explains that concerning the cases of 25 alleged victims, there are 17 alleged condemnatory judgments. Such 25 alleged victims are: Heliodoro Zapata Montoya, Alberto Antonio Valle and José Heriberto Guerra David, reported killed in action by the National Military, and the disappeared José Elías Zapata Montoya and Félix Antonio Valle Ramírez, for whose death two individuals were convicted and there is an alleged judgment by the State Council dated August 28, 2014 against the State-Ministry of Defense; concerning Alfa Delia Higuaita and Luz Elena Vallejo Ortiz (reported killed as alleged members of the guerrilla) and the events that affected people who were traveling on a public transport when they were arrested by a police post of the self-defense group “Autodefensas Unidas de Colombia,” after which Juan de Jesús Cañas Rojas was murdered, Luz Marina Román

de Cañas arrested and later released, and Clara Rosa Hernández de Cañas and Nubia Cañas were disappeared, there is one person convicted on April 4, 2011; concerning the death of Daniel Pino Mosquera, Aníbal Jiménez and Gabriel Antonio Graciano Vargas, and the injuries to Oscar Martínez Quintero, Norfa Rosa Sánchez Posada and Antonio Borja, the State says there is a condemnatory judgment but does not give the names of the convicted; concerning the death of Pedro José Zapata Velásquez, Jaime Antonio Guzmán Urrego, Rigoberto Guzmán, Leonido Rivera Zapata and Diafanor de Jesús Correa Borja, there is one convicted by sentence of January 25, 2013; concerning the death of Reinel de Jesús Álvarez Rincón, there are two convicted by sentence November 15, 2012; concerning the death of Osiel de Jesús Montoya Atehortua, there are three people convicted by sentences of November 25, 2009, and September 9, 2010. Moreover, the State mentions that four people were condemned for setting seven tent-houses on fire in San José de Apartadó on March 5, 2001.

58. Furthermore, it says that by resolution of February 13, 2015, the National Prosecutor General changed the assignment of 285 cases related to the community, from the Unit of Regional Prosecution Offices of Apartadó to the city of Medellín; of which 22 cases are related to this petition⁵. The State adds that a significant number of cases are pending resolution both concerning the facts reported in the original petition and the additional observations provided by the petitioners.

59. To conclude, the State argues that given the lack of competence *ratione personae* and *ratione materiae* and given the non-exhaustion of domestic remedies, the petition is inadmissible and requests the IACHR so declare.

IV. ANALYSIS ON COMPETENCE AND ADMISSIBILITY

A. Competence

60. Under Article 23 of the IACHR's Rules and Article 44 of the American Convention, the petitioner is entitled to lodge complaints with the Commission. In the petition, the alleged victims are people belonging to the Peace Community of San José de Apartadó whose rights shall be respected and protected by the State of Colombia in compliance with its commitment to abide by the American Convention since July 31, 1973, when Colombia deposited its instrument of ratification.

61. The State alleges that the case should exclusively include the events occurred on July 8, 2000 and the related claims, since other facts are context information of the events or prior events that show the physical, historical and cultural context. In addition, it says that its request of excluding new events is based on the fact that it is impossible to verify requirements in Article 46 of the Convention, as many of the complaints are filed in an abstract manner and are linked to events allegedly being investigated under the new investigation strategy proposed by the National Prosecutor General's Office. In addition, it argues that if the precautionary (now provisional) measures of the petition are included in the case, there would be confusion about essentially different processings and an indefinite extension of the subject of the case concerning non-individualized victims. It also argues that concerning the individualization and identification of alleged victims, it is for the petitioners to individualize the alleged victims, a requirement which in this case is not met, as allegations of human rights violations are made with respect to community members whose membership has not been proved under Article 2 of the Internal Rules of the community.

⁵ Among the cases related to this matter, the State mentions the murder of José Leonardo Paneso Carvajal and Víctor Manuel Orrego Paneso, the disappearance of Miguel Guisao and Beta Guisao, the murder of Ramón Alfredo Jiménez Duarte, the murder of Darío Graciano Usuga, Alexander Graciano Cardona and Samir Graciano Poso or Samir Posso Jiménez, the murder Edilma Rosa Guerra Graciano and the arrest Orfilia Sánchez, the murder Ovidio Higuaita Torres, the murder of César de Jesús Pérez Oliveros, the murder of José Antonio Graciano Usuga and Jairo Valencia Vanegas, the attacks against Argemiro Jimenez, the murder of Juan David, torture and murder of Gilberto Ramírez Giraldo and Miguel Ramírez Giraldo, the arrest and torture of Efrén Espinoza Goez, and the injuries to Gilberto Graciano.

62. As to the above allegations, the Commission sees that the text of Article 44 of the Convention, under which “Any person or group of persons, or any nongovernmental entity legally [...] may lodge petitions with the Commission containing denunciations or complaints of violation [...] by a State Party,” does not mention any limitations of competence in terms of “full and complete” identification of the persons affected by violations; instead, it allows the assessment of violations of human rights which –by their characteristics– may affect one person or group of persons in particular but who are not necessarily fully identified⁶. In this case, although the petitioning party has individualized 303 alleged victims throughout the processing⁷, the Commission takes note of the difficulties found in establishing the names of all the alleged victims, and believes that in cases like this –where the reported crimes are said to be linked to the attacks on a community on the grounds of the victims’ membership to it– the criteria to identify victims shall be flexible, and the full and complete identification of the victims will be determined according to the evidence provided by the parties during the stage of assessment of merits⁸.

63. The State of Colombia’s view that the procedure established by the Convention for the assessment and determination of possible state responsibility concerning individual cases cannot be invoked to assess general or abstract situations is valid. However, this view does not apply to the matter under assessment⁹, since the fact that the events reported are about a large number of alleged violations does not turn the petition into an abstract complaint. The allegations filed by the petitioners do not amount to an abstract complaint, since they show a series of specific events that affected specific community members and were allegedly caused by a same pattern of behaviour attributable to the State –details of time, manner and place are provided–, and the State has taken note of the different situations reported through the several documents with observations filed, which were duly transmitted to it.

64. Concerning competence *ratione materiae*, the petitioner argues that, although he mentions other international instruments apart from the Convention, these “are in conformity with those in the Convention and the Declaration by means of the right to justice (Article XVIII of the Declaration and Article 25 of the Convention).” Moreover, he declares that by virtue of Article 29 of the Convention, the Commission and the I/A Court H.R. believe that they are competent to examine certain facts that may tend to establish crimes against humanity. In turn, the State argues that the Inter-American System on Human Rights lacks competence, since the violations alleged in this case are crimes against humanity and war crimes described in the Statute of Rome. The State adds that the I/A Court H.R. has never judged a State’s behavior as an international crime, since it lacks competence to judge such crimes and because a court that analyzes state responsibility instead of individual responsibility cannot have such competence. In this regard, the Commission sees that it is competent to resort to provisions in other treaties in order to interpret the rules of the American Convention, based on the rules of interpretation set forth in Article 29 of the American Convention¹⁰.

65. The Commission also believes that concerning allegations of torture, the Inter-American Convention to Prevent and Punish Torture is applicable with respect to events taking place after January 19, 1999, the date when the State of Colombia deposited its instrument of ratification. In addition to this, the Commission is competent to hear this complaint by virtue of the provisions in the Inter-American Convention on Forced Disappearance of Persons, ratified by the State of Colombia on March 12, 2005, under which the

⁶ IACHR, Report No. 51/10 (Admissibility), Petition 1166-05, *Massacres of Tibú*, Colombia, March 18, 2010, par. 102; IACHR, Report No. 86/06 *Marino López and others (Operation Genesis)*, par. 34 and Report No. 15/09, *Massacre and forced displacement of Montes de María*, par. 47.

⁷ These are mentioned in the attachment to this report.

⁸ IACHR, Report No. 64/15 Petition 663-04. Admissibility. *Mayan Peoples and members of the Cristo Rey, Belluet Tree, San Ignacio, Santa Elena and Santa Familia communities*. Belize. October 27, 2015, par. 27; IACHR, Report No. 51/10 (Admissibility), Petition 1166-05, *Massacres of Tibú*, Colombia, March 18, 2010, par. 102; IACHR, Report No. 86/06 *Marino López and others (Operation Genesis)*, par. 34.

⁹ IACHR, Report No. 51/10 (Admissibility), Petition 1166-05, *Massacres of Tibú*, Colombia, March 18, 2010, par. 103.

¹⁰ IACHR, Report No. 86/06 Admissibility, Petition 499-04, *Marino López and others (Operation Genesis v. Colombia)*, October 21, 2006, par. 41.

offense of forced disappearance shall be considered as ongoing or permanent unless the victim's destiny or whereabouts are known¹¹. The Commission is competent *ratione temporis* concerning these instruments includes possible instances non-compliance with the duty of investigation even when the original events were prior to said instruments.

66. Finally, the Commission is competent to hear possible acts of sexual violence by virtue of provisions in the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, Convention of Belém do Pará, which the State of Colombia ratified on October 3, 1996, with the later deposit of its instrument on November 15, 1996.

67. Based on the foregoing and considering that the alleged violations seem to have taken place in the territory of a State Party to these agreements, and after the deposit of its instruments of ratification, the IACHR concludes that the Commission is competent *ratione personae*, *ratione loci*, *ratione temporis* and *ratione materiae* to assess this petition.

B. Admissibility requirements

1. Exhaustion of domestic remedies

68. Under articles 31.1 of the Rules and 46.1 (a) of the American Convention, for a petition to be admissible, domestic remedies must have been pursued and exhausted, in accordance with generally recognized principles of international law. This requirement is aimed at enabling national authorities to take cognizance of the alleged violation of a protected right and, if applicable, reverse the situation before it is heard by an international body. In turn, under articles 31.2 of the Rules and 46.2 of the Convention, the requirement of prior exhaustion of domestic remedies does not apply when: (a) the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated; (b) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or (c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

69. The petitioner argues that several complaints, actions of protection of rights, and other administrative and judicial actions were filed concerning the facts reported, but that the perpetrators have not been punished concerning all of the facts reported; and that the situation of permanent risk of human rights violations against the community members persisted throughout the processing of the complaint, despite precautionary measures and then provisional measures in favor of all the members of the community. In addition, the petitioner declares that, in general, the members of the community are people without means to afford legal representation and appear as the plaintiff, and that many times those who were victims or witnesses of reported events did not resort to the police or the justice due to delays for filing complaints, the inefficiency domestic remedies, their fear of being prosecuted, alleged corruption linked to acts or retaliation suffered by people who did resort to the competent bodies.

70. In turn, the State alleges lack of exhaustion of adequate and effective domestic remedies. It argues that the alleged ineffectiveness of remedies does not exempt the petitioners from the duty to exhaust them, and that the alleged victims, with some exceptions, did not report the violations or refused to cooperate with the justice, causing that it would be impossible to determine the victims' names. In addition, it alleges that in the criminal investigations, the alleged victims did not appear as the plaintiff in spite of the legal aid provided to anyone with the right to appear as the plaintiff in the case, under Judgment C-875 of Constitutional Court. Furthermore, it argues that the petitions filed to different Presidents of the Republic are not a replacement of remedies available under the domestic law aimed at safeguarding the alleged situation; and that the domestic remedies to be exhausted are: habeas corpus; *amparo*; criminal remedies. It also declares that if the belief was that the crimes compromised state agents' responsibility, a remedy of direct

¹¹ IACHR, Report No. 17/15, Petición 1139-04, Admisibilidad, Masacre de la Aldea Los Josefinos, Guatemala, 24 de marzo de 2015, párr. 18.

reparation should have been brought to the administrative law court. The State argues that given the lack of reports to competent authorities, it is impossible to open investigations and start criminal and disciplinary proceedings. Furthermore, it says that the petitioners can access additional means, such as Law No. 975 of 2005 and Law No. 1448 of 2011. Lastly, it argues that the petition is inadmissible pursuant to Article 46.1 (a) of the Convention, since several domestic remedies are pending resolution and have been updated in order to deal with the particular situations reported.

71. From the information filed to the Commission, it is understood that from the universe of the alleged victims mentioned in the documents filed in the framework of the processing of the petition, the petitioners report a total of 303 persons, individualized in the attachment to this report. In addition, the petitioner mentions the pursuit of several domestic mechanisms such as petitions, protection of rights, and complaints to Prosecutor's Offices and Ministries, to report the facts and stop the violence that allegedly affects the community.

72. In turn, the State declares that there is an alleged report and/or open investigation concerning 141 alleged victims¹². In addition, from the latest information submitted by the State, it is understood that there were investigations on the facts that allegedly affected 57 people, and that there are 17 alleged condemnatory judgments of first instance against 11 individuals due to events linked to 26 alleged victims. As to the rest of cases mentioned, most of them seem to be at different procedural stages, including those filed, and those with a suspended investigation or a referral order. As a result, and based on the declarations by the State, the Commission takes note that the alleged events continue taking place, which shows that to this date there are no final judgments of last resort.

73. Under the Commission's jurisprudence, whenever there is an offense liable to prosecution *ex officio*, the State is obliged to promote and further the criminal prosecution; in such cases, this is the adequate means to establish the facts, judge the perpetrators and decide on the corresponding criminal measures, as well as enable other means of monetary measures¹³. As a result, and in view that the facts alleged by the petitioners tend to establish offenses liable to prosecution *ex officio*, the domestic proceedings that in this case must be exhausted is the criminal investigation, which shall be carried out and furthered by the State.

¹² The people concerning which there are alleged open investigations are as follows: Adrián Alonso Valderrama Tuberquia, Alberto Montoya, Alberto Tuberquia, Alberto Valle, Alcides Sucerquia Tuberquia, Alejandro Pérez Castaño, Alexander Graciano, Alexander Guzmán, Alfa Delia Higuita Tuberquia, Alfonso Bolívar Tuberquia Graciano, Alfonso Jiménez, Amanda Úsuga, Aníbal Jiménez, Antonio Borja, Antonio Tuberquia, Antonio Villa, Argemiro Jiménez, Arlén Rodrigo Salas David, Bellanira Areiza, Bernardo Panesso ("Victor Manuel Orrego Panesso") Bernardo Ríos Londoño, Bertha Guisao, Carlos Torres, Carlos Vargas, César de Jesús Pérez Oliveros, Clara Rosa Hernández de Cañas, Daniel Pino, Darío George Gañán, Darío Graciano Úsuga, Dayra Patricia Zúñiga, Deiner Andrés Guerra, Diofanor Díaz Correa, Diofanor Sánchez Celada, Diógenes Guzmán David, Edilberto Úsuga, Edilberto Vásquez Cardona, Edison Valdez Higuita, Eduar Lanchero, Efrén Espinoza Góez, Elkin Emilio Sepúlveda, Elodino Rivera, Fabiola Perea Perea, Félix Antonio Valle Ramírez, Francisco Restrepo, Francis Puertas, Gabriel Antonio Graciano, Gerardo Hidalgo, Germán Graciano, Gilberto Graciano, Gilberto Ramírez Giraldo, Gilma Rosa Graciano, Giovanni Lora, Gloria Elena Tuberquia, Gonzalo Trejos, Guillermo Serna, reiuзмán Urrego, Helena Valle Ortiz, Heliodoro Zapata, Hernán Góez, Humberto Mora, Humberto Sepúlveda, Iván Velásquez, Jaime Guzmán, Jaime Ovidio Higuita Torres, Jairo Pineda, Jairo Tuberquia, Jairo Valencia Vanegas, Javier Torres, Jesús Emilio Tuberquia, Jesús López, Joaquín Rodríguez David, John Freddy Úsuga, John Jairo Zapata, John Kennedy Higuita Ramírez, Jorge Domicó, Jorge Mario Higuita, José Alirio González, José Antonio Graciano Úsuga, Jose David, José Elías Zapata, José Heliberto Guerra David, José Leonardo Panesso, Juan Cañas, Juana Osorio de Lara, Leonel Sánchez Ospina, Libia Guzmán, Luis Arnoldo David Higuita, Luis Ciro, Luis Eduardo Guerra Guerra, Luis Enrique Úsuga, Luis Felipe Salamanca Jiménez, Luz Enith Tuberquia, Luz Helena Torres, Manuel de Jesus Mora, Margarita Giraldo Úsuga, María Grimanesa Flórez, María Rubiela Mazo Duarte, Mario Urrego, Marlobe David Sánchez, Mely Johana Durango Trujillo, Miguel Aya, Miguel Esteban Lara Osorio, Miguel Guisao, Miguel Osorio, Miguel Ramírez Giraldo, Mildrey Dayana David Tuberquia (daughter of Conrado David), Morelia de Jesús Giraldo Tuberquia, Nalfa Sánchez, Natalia Andrea (daughter of Alfonso), Orfidia Sánchez, Óscar Martínez, Osiel Montoya, Ovidio Torres Areiza, Pedro Zapata, Ramón Alfredo Jiménez Duarte, Ramon Franco Vaquero, Reinaldo Areiza, Reinaldo Tuberquia, Reynaldo Lara Ramos, Reynel de Jesús Álvarez, Rigo Quintero, Rigoberto Guzmán, Ruben Antonio Villa, Sandra Milena Muñoz Posso, Santiago (son of Alfonso), Uvaldo Quintero, William de Jesús David Hernández, William Ortiz, Apolinar Guerra George, Elkin Darío Tuberquia, Enadis Lugo, Myriam Tuberquia, Oscar Mario Graciano Cardona, Abelardo Berrío, Diofanor Díaz Correa, Félix María Villa, Francis Puertas, Jorge Pestana Bello, Marina Osorio, Marlobe David Sánchez, and Marloidy Celada.

¹³ IACHR, Report No. 34/15, Petition 191-07 and others. Admissibility. *Álvaro Enrique Rodríguez and others*. Colombia. Julio 22, 2015, par. 246.

74. Moreover, the Commission establishes that, as a general rule, a criminal investigation shall be promptly carried out promptly to protect the interests of the victims, preserve the evidence and also safeguard the rights of anyone who, in the context of the investigation, is considered a suspect. In turn, the I/A Court H.R. establishes that although all criminal investigations shall meet a series of legal requirements, the principle of prior exhaustion of domestic remedies shall not cause that international actions to help the victims stop or become useless¹⁴. In this case, the Commission finds that the investigations on the above human rights violations have extended over time and are still open – in some cases, even after 18 years–, and that concerning cases where some of the individuals involved in the reported crimes have been convicted, it is said only some of the victimizers were sentenced and that, in any case, these are not final judgments. In this regard, the Commission believes that there is unwarranted delay in investigations that should have been filed by the State.

75. In addition, as to the allegations by the State about disciplinary proceedings and the action of direct reparation, the Commission recalls that in cases like this, criminal proceedings are the adequate means¹⁵. Moreover, as to the complaints filed to the administrative law court, in all of the cases heard by the second instance of the State Council, actions had unsuccessful results in those cases that had been ruled by the time that the parties filed their observations. The Commission recalls that proceedings at administrative law courts are not an adequate means to assess the admissibility of a complaint of a nature like this¹⁶. In particular, the Commission says that administrative proceedings are aimed at supervising the State's administrative activity, and that by the date that the events of the case were starting to be verified, such proceedings were only useful to receive an indemnification for damages caused by the acts or omissions by state agents. In this regard, the Inter-American Court believes that “the full redress for a violation of a right protected by the Convention cannot be limited to the payment of compensation to the victim's family.”¹⁷

76. As a result, the Commission concludes that in this case, domestic remedies have been pursued and exhausted in conformity with Article 46.2 (c) of the American Convention.

2. Timeliness of the petition

77. Under article 46.1 (b) of the American Convention, for a petition to be declared admissible by the Commission, it must be lodged within a period of six months from the date on which the alleged victim was notified of the final judgment. Concerning this complaint, the Commission decides that the exception rule to the requirement of exhaustion of domestic remedies is applicable, pursuant to Article 46.2 (c) of the Convention. In this respect, under Article 32.2 of the IACHR's Rules, in cases where exceptions to prior exhaustion of domestic remedies apply, the petition must be filed within a reasonable term, as determined by the Commission. To this end, the Commission shall consider the date when the alleged violations took place along with the circumstances of each case.

78. In the case under assessment, the IACHR establishes the applicability of the exception rule to the prior exhaustion of domestic remedies set forth in Article 46.2 (c) of the American Convention. The petition to the IACHR was received on July 28, 2003, and the alleged facts that are the subject of the complaint started to take place in 1997 and the consequences seem to persist to this date. Therefore, in view of the context and the characteristics of this case, the Commission finds that the petition was filed within a

¹⁴ I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Preliminary Objections. Judgment of June 26, 1987. Series C No. 1. par. 93; IACHR, Report No. 27/13, Admissibility, Petition 164-01, *Jorge Luis López Sosa*, Paraguay, March 20, 2013, par. 28.

¹⁵ See, I/A Court H.R., *Case of the "Mapiripán Massacre" v. Colombia*. Merits, Reparations and Costs. Judgment of September 15, 2005. Series C No. 134., par. 210.

¹⁶ See, among others, IACHR, Report No. 34/15, Petition 191-07 and others. Admissibility. *Álvaro Enrique Rodríguez Buitrago and others*. Colombia. July 22, 2015., par. 251; IACHR, Report No. 74/07, Petition 1136/03, Admissibility, *José Antonio Romero Cruz and others*, October 15, 2007. par. 34, and; IACHR, Report No. 43/02, Petition 12,009, *Leydi Dayán Sánchez*, Colombia, October 9, 2002, par. 22.

¹⁷ I/A Court H.R., *Case of the Rochela Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 163, par. 219.

reasonable term and that the admissibility requirement concerning the timeliness of the petition has been met.

3. Duplication of proceedings and International *res judicata*

79. From the case file, there is nothing to indicate that the subject matter of the petition is pending in another international proceeding for settlement or that it duplicates a petition already examined by this or by another international body. Therefore, inadmissibility requirements set forth in articles 46.1 (c) and 47 (d) of the Convention and articles 33.1 (a) and 33.1 (b) of the Rules do not apply.

4. Colorable claim

80. The Commission must decide if the facts alleged tend to establish a violation of protected rights, under articles 47 (b) of the American Convention and 34 (a) of the Rules of Procedure, or if the petition is 'manifestly groundless' or 'obviously out of order,' under articles 47 (c) of the American Convention and 34 (b) of the Rules. The assessment criteria for admissibility differs from that used for the assessment of the merits of the petition, since the Commission only undertakes a *prima facie* assessment to determine whether the petitioners have established the apparent or possible violation of a right protected by the American Convention on Human Rights. It is a general analysis not involving a prejudgment of, or issuance of a preliminary opinion on the merits of the matter.

81. Moreover, the corresponding legal instruments do not require a petitioner to identify the specific rights allegedly violated by the State in the matter brought before the Commission, although petitioners may do so. It is for the Commission, based on the system's jurisprudence, to determine in its admissibility report which provisions of the relevant Inter-American instruments are applicable and could be found to have been violated if the alleged facts are proven by sufficient elements.

82. In this petition, it is alleged that the members of the community have been subjected to forced disappearance, murder, torture, arbitrary deprivation of liberty, infringements on the right to property, threats, harassment, and forced displacement for being part of said community. The Commission takes into account the information filed and the allegations submitted by the parties. In particular, concerning the narrowing of facts suggested by the State, the Commission takes note of the fact that over time the facts initially reported have been updated through communications submitted by the petitioner, and sees that complaints are due to a specific context and to the victims' membership to the community. In this regard, the Commission recalls that it is common practice for the bodies of the system to take into account that in many cases, reported facts evolve with the passing of time –additional related facts may develop–, and that there may be changes in issues concerning the exhaustion of domestic remedies. On the other hand, in some contexts, the bodies in the system have had the need to integrate and assess new and later facts, as long as these are connected with, and reasonably part of, the case under assessment, always safeguarding the right to defense and the principle of adversarial proceedings¹⁸.

83. Furthermore, the Commission identifies the difficulties in presenting the names of all of the alleged victims, which does not preclude the fact that there is information of 303 people who were individualized by the petitioner and are mentioned in the attachment to this report. Due to the foregoing, the Commission will analyze the allegations of fact and law in light of the information submitted and the determination of the universe of alleged victims, in the stage of assessment of merits¹⁹.

¹⁸ I/A Court H.R., *Case of the Barrios Family v. Venezuela*. Merits, Reparations and Costs. Judgment of November 24, 2011. Series C No. 237; párr. 20.

¹⁹ IACHR, Report No. 30/16, Petition 554-03, Admissibility. *Communities of the Lower and Upper Atrato Valleys in Chocó and Antioquia Departments*, Colombia, July 22, 2016, par. 56.

84. In view of the elements of fact and law filed by the petitioners, along with the nature of the matter brought to its attention, the IACHR believes that if the alleged extrajudicial killings, forced disappearance, torture, cruel treatment and injuries, sexual violence, arbitrary deprivation of liberty, stigmatization of the community members, use of individuals as military “false positives,” forced displacement, and lack of diligence, and unwarranted delays in the investigations are proved, the reported facts may be possible violations of human rights protected by articles 3, 4, 5, 7, 8, 11, 13, 15, 16, 21, 22 and 25 of the American Convention, all of which are in agreement with articles 1.1 and 2 of the same treaty. Concerning the alleged victims who at the moment of the events were under-aged, these events would also be a violation to Article 19 of the Convention. Moreover, if proved, the alleged facts could establish a violation of articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of alleged victims of torture and other cruel treatment; a violation of Article I of the Inter-American Convention on Forced Disappearance of Persons with respect to victims of forced disappearance. Finally, the Commission believes that the allegation in the alleged sexual violation of some of the women and the sexual violence in the context of the investigations, could establish a violation of Article 7 of the Convention of Belém do Pará.

V. CONCLUSIONS

85. Based on the above elements of fact and law, the Inter-American Commission concludes that this petition meets the admissibility requirements set forth in articles 31 to 34 of the Rules and articles 46 and 47 of the American Convention, and without prejudgment of the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare this petition admissible with regard to articles 3, 4, 5, 7, 8, 11, 13, 15, 16, 21, 22 and 25 of the American Convention in accordance with articles 1.1 and 2 of said treaty.
2. To declare this petition admissible with regard to articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture to the detriment of alleged victims of torture and cruel treatment;
3. To declare this petition admissible with regard to Article I of the Inter-American Convention on Forced Disappearance of Persons with respect to victims of forced disappearance;
4. To declare this petition admissible with regard to Article 7 of the Convention of Belém do Pará to the detriment of those who were subjected to the offense of rape, or were affected by actions of sexual violence;
5. To notify the parties of this decision;
6. To proceed to the analysis of the merits of the matter; and
7. To publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of Panama, Panama, on the 6th day of the month of December, 2016.
(Signed): James L. Cavallaro, President; Francisco José Eguiguren, First Vice President; Margarette May Macaulay, Second Vice President; José de Jesús Orozco Henríquez, Paulo Vannuchi, and Esmeralda E. Arosemena Bernal de Troitiño Commissioners.