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REPORT No. 12/17
PETITION 972-08
REPORT ON ADMISSIBILITY

LUIS FERNANDO CANO MARTÍNEZ AND FAMILY
COLOMBIA

Approved by the Commission on January 27, 2017.

Cite as: IACHR, Report No. 12/17. Admissibility. Luis Fernando Cano Martínez and Family.
Colombia. January 27, 2017.



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PETITION 972-08
 REPORT ON ADMISSIBILITY
 LUIS FERNANDO CANO MARTINEZ AND FAMILY
 COLOMBIA
 JANUARY 27, 2017

I. INFORMATION ABOUT THE PETITION

Petitioner:	Gustavo Adolfo Cano Martínez
Alleged victims:	Luis Fernando Cano Martínez and family ²
State denounced:	Colombia
Rights invoked:	Articles 4 (right to life), 5 (right to humane treatment), 8 (right to a fair trial), 11 (right to privacy), 17 (rights of the family), 19 (rights of the child), 21 (right to property), 22 (freedom of movement and residence), 24 (right to equal protection), and 25 (judicial protection) of the American Convention on Human Rights ³

II. PROCEDURE BEFORE THE IACHR⁴

Date on which the petition was received:	August 20, 2008
Additional information received during the initial stage:	September 1, 2009 and December 16, 2013
Date on which the petition was transmitted to the State:	January 14, 2014
Date of the State's first response:	May 22, 2014
Additional observations from the petitioner:	July 7, November 21, and December 16, 2014, February 5 and 6, 2015, and April 19, 2016
Additional observations from the State:	October 16, 2014

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes, American Convention (instrument of ratification deposited on July 31, 1973)

IV. ANALYSIS OF DUPLICATION OF PROCEDURES AND INTERNATIONAL RES JUDICATA, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES, AND TIMELINESS OF THE PETITION

Duplication of procedures and International <i>res judicata</i>:	No
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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)(a) of the Inter-American Commission's Rules of Procedure.

² The petition refers to 27 alleged victims who are listed individually in the attached document.

³ Hereinafter, "the Convention" or "the American Convention."

⁴ All observations were duly forwarded to the opposing party.

Rights declared admissible:	Articles 4 (right to life), 5 (right to humane treatment), 8 (right to a fair trial), 17 (rights of the family), 19 (rights of the child), 21 (right to property), 22 (freedom of movement and residence), and 25 (judicial protection) of the American Convention
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, the exception provided for under Article 46(2)(c) of the Convention applies
Timeliness of the petition:	Yes, under the terms stipulated in Section VI

V. ALLEGED FACTS

1. The petitioner states that the facts of the instant case, which occurred in 2003, are framed in the context of human rights violations committed by paramilitary groups in a number of regions in Colombia. He indicates that in the municipality of San Roque—situated in the northeastern part of the Department of Antioquia—the *Bloque Cacique Nutibara*, led by Diego Fernando Murillo Bejarano (a.k.a. Don Berna), engaged in irregular activities with the approval of State authorities. The petitioner notes that Luis Fernando Cano Martínez, in his capacity as community leader, was esteemed by the residents of San Roque, and thus, among other posts, was elected Mayor of the town in both 1998 and 2000. In May 2003, however, he began to receive constant threats from members of the aforementioned paramilitary block and in August of that same year, a group of armed men entered his family property and proceeded to destroy it in an attempt to intimidate him. He states that all of this was reported to the municipal authorities, without any protection measure being granted.

2. The petitioner indicates that several armed men kidnapped Luis Fernando Cano Martínez on November 5, 2003, subsequently assassinating him with three gunshots and abandoning his dead body in a rural area where it was found the following day. He states that, more than 13 years after these events transpired, the facts surrounding Mr. Cano Martínez's death have yet to be established since the criminal investigation was shelved by the Office of the Prosecutor via a June 10, 2004 resolution of dismissal, arguing that the preliminary inquiry stage had exceeded the six-month timeframe.

3. The petitioner states that on November 8, 2003 the relatives of the alleged victim received death threats from the above-mentioned paramilitary group, forcing them to then abandon their homes in the Department of Antioquia and move to the Bogota. On November 26, 2003, they filed a complaint regarding the threats and forced displacement with the Office of the Public Prosecutor; the investigations launched in Medellin were, however, suspended and archived. Later, as recently as March 13, 2014, a Technical Legal Committee of the Public Prosecutor's Office ordered the case to be reopened. The alleged victim's relatives also brought their case to the Office of the President of the Republic, the Interior and the Justice Ministries, and the National Congress, securing in the latter two only letters or notes in case they were ever to decide to seek asylum in another country. The petitioner further notes that they requested to be included in *Acción Social's* Consolidated Registry of the Displaced Population, but their requests were denied without proper grounds. Lastly, he states that after more than one year had elapsed, following news about a possible demobilization of paramilitary groups, and primarily because of the loss of work and the dire financial situation they were in, some of the alleged victims returned to the city of Medellin, despite the persistent violence there. In this vein, the petitioner notes that in 2006, a group of men, presumably linked to the paramilitary block, threatened Martín Cano Martínez with their guns, coercing him to sign a deed of conveyance of ownership for a piece of family property. The alleged victims reported this to the Office of the Public Prosecutor; their investigations, however, did not move forward nor did they establish the facts.

4. The State holds that the petition is manifestly groundless inasmuch as the facts denounced by the petitioner were committed by private individuals outside the State's jurisdiction. Accordingly, the State asserts that the fact that military campaigns were waged against irregular groups known as *autodefensas* ["self-defense" groups] demonstrates that there was no complicity with or tolerance for them. The State further indicates that it was not made aware in a timely fashion of the threats received by Luis Fernando Cano

Martínez and his family before the homicide and forced displacement. It also argues that domestic remedies remain pending resolution inasmuch as with the aim of bringing to bear the precepts of Law 975 of 2005, the Office of the Public Prosecutor ordered an investigation of the facts surrounding the death of one of the alleged victims and the forced displacement of his family members under a single case record. In this regard, the State is asserting that because of how complex the case is, it is impossible to consider that there has been unwarranted delay or a violation of a reasonable timeframe in the case of the investigation because the facts alleged refer to three different incidents, namely, the murder of Luis Fernando Cano Martínez, the forced displacement of his family, and the illegal coercion of Martín Cano Martínez.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

5. The petitioner asserts that after more than a decade, the facts being reported remain unpunished inasmuch as the criminal investigations were suspended and then reopened years later, preventing light from being shed on the case and the perpetrators from being punished, which is why he believes that the exception to the exhaustion of domestic remedies for unwarranted delay applies. The State, for its part, maintains that, given the complex nature of the facts alleged, such exception does not apply.

6. The Commission observes that the investigations of the reported violations of the human rights of the alleged victims that occurred between 2003 and 2006 were archived without having made headway and were subsequently reopened in 2014. The information furnished in this stage does not show substantive progress. In this regard, the IACHR notes that more than 13 years after it occurred, the death of Mr. Cano Martínez has not been solved, nor have the perpetrators thereof been prosecuted. In view of the foregoing, the IACHR finds that in the instant case, the exception to prior exhaustion of domestic remedies provided for in Article 46(2)(c) of the American Convention applies, with the caveat that the causes and effects that have prevented exhaustion of domestic remedies in this case shall be examined, where relevant, in the report adopted by the Commission about the merits of the matter in order to determine whether or not they do indeed constitute violations of the Convention.

7. The petition was submitted to the Commission on August 20, 2008; the incidents alleged in the claim took place starting on November 5, 2003 and the effects thereof as far as the alleged denial of justice and forced displacement and other purported consequences, reportedly continue into the present day. Hence, in view of the context and characteristics of the instant case, the Commission finds that the petition was submitted within a reasonable timeframe and that the admissibility requirement having to do with the timeliness of the petition has thus been met.

VII. ANALYSIS OF COLORABLE CLAIMS

8. In view of the considerations of fact and law presented by the parties as well as the nature of the matter brought to its attention, the Commission believes the facts alleged with respect to the reported violation of the right to life of Luis Fernando Cano Martínez, as well as the subsequent displacement of his family and dispossession of the family property could characterize violations of Articles 4 (right to life) of the Convention with respect to Luis Fernando Cano Martínez, and of Article 5 (humane treatment), 17 (rights of the family), 21 (property), and 22 (movement and residence) of Convention with respect to the members of the Cano Martínez family, all in connection with Articles 1(1) (obligation to respect rights) and 2 (domestic legal effects), thereof. Furthermore, if it is proven that the alleged victims were children or adolescents at the time they were forcibly displaced, this too would constitute a violation of Article 19 (rights of the child) of the Convention. In addition, with respect to all the alleged victims, the IACHR believes that the allegations about the violations of the rights to a fair trial and to judicial protection due to a lack of effort to uncover the truth and to the unwarranted delay thereof, if proven, could characterize potential violations of the rights enshrined in Articles 8 (right to a fair trial) and 25 (judicial protection) of the Convention, in connection with Articles 1(1) and 2, thereof.

9. As to the claim regarding the alleged violation of the rights contained in Articles 11 (right to privacy) and 24 (right to equal protection) of the Convention, the Commission observes that the petitioner

offers no arguments or foundation for this reported violation and therefore such claim must be declared inadmissible.

VIII. DECISION

1. To find the present petition admissible in relation to Articles 4, 5, 8, 17, 19, 21, 22, and 25 of the American Convention, in accordance with Articles 1(1) and 2, thereof;
2. To find the present petition inadmissible in relation to Articles 11 and 24 of the American Convention;
3. To notify the parties of this decision;
4. To continue with the analysis on the merits; and
5. 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 San Francisco, California, on the 27 day of the month of February, 2017.
(Signed): James L. Cavallaro, President; Francisco José Eguiguren, First Vice President; Margarete May Macaulay, Second Vice President; José de Jesús Orozco Henríquez, and Esmeralda E. Arosemena Bernal de Troitiño, Commissioners.