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REPORT No. 8/17
PETITION 323-08
ADMISSIBILITY REPORT

DORA MARÍA VÉLEZ ROGER AND FAMILY
COLOMBIA

Approved by the Commission on January 27, 2017.

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Colombia. January 27, 2017.

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 COLOMBIA
 JANUARY 27, 2017

I. BASIC INFORMATION ON THE PETITION

Petitioner:	Grupo Interdisciplinario por los Derechos Humanos
Alleged victims:	Dora María Vélez Roger and family ²
State denounced:	Colombia
Rights invoked:	Articles 3 (right to the recognition of juridical personality), 4 (right to life), 5 (right to humane treatment), 7 (right to personal liberty), 8 (judicial guarantees), 17 (protection of the family), 19 (rights of the child), and 25 (judicial protection) of the American Convention on Human Rights ³ , in relation to Article 1(1)

II. PROCEDURE BEFORE THE IACHR⁴

Date on which the petition was received:	March 14, 2008
Date on which the petition was transmitted to the State:	November 28, 2012
Date of the State's first response:	June 7, 2013
Additional observations from the petitioner:	May 23, 2014
Additional observations from the State:	August 14, 2014

III. COMPETENCE

Competence <i>ratione personae</i>:	Yes
Competence <i>ratione loci</i>:	Yes
Competence <i>ratione temporis</i>:	Yes, American Convention (deposited instrument July 31, 1973); Inter-American Convention on Forced Disappearance of Persons (deposited instrument April 12, 2005)
Competence <i>ratione materiae</i>:	Yes

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 In keeping with Article 17(2)(a) of the Commission's Rules of Procedure Commissioner Enrique Gil Botero, of Colombian nationality, did not participate in the deliberations or decision in the instant matter.

² The petition refers to 12 alleged victims whose names are indicated in the annex.

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

⁴ All the observations were duly forwarded to the opposing party.

Rights declared admissible:	Articles 3, 4, 5, 7, 8, 19 and 25 of the American Convention; and Article I of the Inter-American Convention on Forced Disappearance of Persons
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, exception provided for at Article 46(2)(c) of the American Convention on Human Rights
Timeliness of the petition:	Yes, as set forth in Section VI

V. ALLEGED FACTS

1. The petitioner alleges that sometime on July 29 or 30, 2000, Ms. Dora María Vélez Roger and her son Simón Callejas Vélez, 14 years of age, disappeared from their farm, situated in the hamlet of La Aguacatera, district of Guachacas, department of Magdalena; the area was under the absolute control of paramilitary groups that belonged to the unit known as Bloque Norte of the Autodefensas Unidas de Colombia (AUC). Petitioner indicates in this respect that it was widely known that the AUC intended to forcefully appropriate the lands and dwellings in that sector, and that even so the State failed to carry out operations to dismantle the Bloque Norte of the AUC, maintaining, instead, a permissive attitude. It indicates that Mr. Hernando Vélez Roger, the alleged victim's brother, travelled to the scene and reported the disappearance of his sister and nephew to the office of the 18th Prosecutor before the Circuit Criminal Courts (Fiscalía Dieciocho Delegada ante los Jueces Penales del Circuito) on August 15, 2000.

2. Petitioner further argues that the victims' next-of-kin conducted the first investigations in the place where the disappearance occurred, as the investigators from the Technical Investigations Corps (CTI: Cuerpo Técnico de Investigación) of the Office of the Attorney General refused to inspect the farm where the facts occurred, arguing that it was a high-risk zone. It states that, consequently Mr. Vélez Roger travelled to the scene and gave the Office of the Attorney General and the CTI information on the existence of mass graves in Guachacas, yet the authorities did not go there. Petitioner further alleges that even though a demobilized soldier provided information in 2007 about graves with corpses of persons who had been disappeared in the department of Magdalena, the authorities have not conducted clear investigations to corroborate the facts given in the confession or to identify the bodies found in the graves. The next-of-kin state that many petitions (*derechos de petición*) and criminal complaints (*quejas*) were lodged to give impetus to the investigation.

3. In addition, the petitioner notes that in 2013 the examination of the bony remains exhumed from a common grave yielded positive results for the adolescent Simón Callejas Vélez; the results of the DNA match with Ms. Vélez Roger have yet to be reported. Petitioner indicates that the family asked that the remains of the adolescent be turned over to the family once the results were known with respect to Ms. Vélez Roger, so as to hold a single ceremony. It notes that nonetheless the 19th Prosecutor Specialized in Human Rights summonsed the next-of-kin to receive the adolescent's remains on May 29, 2014, without yet having obtained the results referred to above. Finally, the petitioner alleges that the State is responsible for the suffering of the next-of-kin all these years, and in particular that Sebastián Giraldo Vélez had his family taken away from him, as he lost both his mother and his brother.

4. The State alleges that the petition is inadmissible for failure to exhaust domestic remedies. It argues that it has implemented several measures as tools for addressing the cases of disappearance that have occurred in Colombian territory. It notes that the criminal investigation has not been exhausted, and that it has been carried out diligently, resulting in the identification and turning over of the remains of adolescent Simón Callejas Vélez to his next-of-kin, and the detention of one person said to be responsible for the disappearance and death of the alleged victims. It states that the alleged victims did not exhaust administrative remedies so as to be able to access reparation for the harm allegedly caused by the State.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

5. The petitioner argues that on August 15, 2000, the alleged victims' next-of-kin filed a criminal complaint concerning their disappearance, in addition to any number of petitions (*derechos de*

petición) and criminal complaints (*quejas*) to activate the investigation. It argues that the exception to the exhaustion of domestic remedies provided for at Article 46(2)(c) of the Convention applies, and that the petition was filed in a reasonable time. The State argues that the criminal action has gone forwarded diligently and has led to a determination of the whereabouts of the remains of the adolescent Simón Callejas Vélez; in addition to the detention of the person responsible for the alleged victims' disappearance and death. It asserts that the administrative procedure for reparations has not been exhausted, and, therefore, that the petition should not be declared admissible.

6. The Commission reiterates that in situations such as the one posed the domestic remedies that should be taken into account for the purposes of the admissibility of the petition are those related to the investigation and punishment of the persons responsible through the regular judicial system, since those are the remedies suitable for clarifying the facts, prosecuting the persons responsible, and establishing the corresponding criminal sanctions, in addition to allowing for other forms of compensation.⁵ From the information available, the Commission observes that as of the issuance of the admissibility report 16 years have elapsed since the events at issue without any person responsible having been convicted, and without having clarified the facts related to the disappearance of Ms. Vélez Roger; nor has any reparation been made to the next-of-kin. In view of this circumstance, the Commission considers that the exception contained at Article 46(2)(c) applies, with the caveat that the causes and effects that have impeded the exhaustion of domestic remedies in the instant case will be analyzed, as relevant, in the report that the Commission adopts on the merits, where it will determine whether in effect there has been any violation of the Convention.

7. As regards the deadline for filing, since it has been established that the aforementioned exception to the prior exhaustion requirement applies, that the petition before the IACHR was received on March 14, 2008, and the facts that are the subject matter of the claim began on July 30, 2000, and that if true their effects would extend to this day, the Commission considers that said admissibility requirement should be considered satisfied.

VII. CHARACTERIZATION OF THE FACTS ALLEGED

8. In view of the elements of fact and law presented by the parties and the nature of the matter put before it, the IACHR considers that the petitioners' arguments on the scope of the alleged responsibility of the State with respect to the forced disappearance of the alleged victims, and the alleged unwarranted delay in the criminal investigation, could characterize possible violations of the rights set forth at Articles 3, 4, 5, 7, 8, and 25 of the American Convention on Human Rights in conjunction with its Article 1(1), and Article I of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Dora María Vélez Roger and Simón Callejas Vélez. In addition, the facts, if true, tend to establish possible violations of the rights contained at Article 19 of the Convention with respect to Simón Callejas Vélez; as well as at Articles 5, 8, and 25 of the American Convention to the detriment of the next-of-kin, in all keeping with Article 1(1) of the same instrument. In addition, regarding the alleged violation of Article 17 (protection of the family) of the Convention, the IACHR observes that even though the family's suffering will be examined in the merits stage, the petitioner does not offer any arguments or support for determining, *prima facie*, a possible violation of that right.

VIII. COLORABLE CLAIM

1. To find this petition admissible in relation to Articles 3, 4, 5, 7, 8, 19, and 25 of the American Convention in conjunction with Article 1(1) of the same instrument and Article I of the Inter-American Convention on Forced Disappearance of Persons in the terms established in this report;

2. To find the petition inadmissible with respect to Article 17 of the Convention;

⁵ Report No. 126/10 (Admissibility), Petition 1448-06, Roberto Carlos Pereira de Souza *et al.*, Brazil, October 23, 2010, para. 44.

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.

Annex I: Alleged Victims

1. Dora María Vélez Roger
2. Simón Callejas Vélez
3. Sebastián Giraldo Vélez
4. Francisco Santiago Vélez Vélez
5. Luz Helena Vélez Roger
6. Margarita Rosa Vélez Roger
7. Hernando Vélez Roger
8. Gabriel Vélez Roger
9. Hugo Vélez Roger
10. Javier Vélez Roger
11. Gustavo Vélez Roger
12. Juan Manuel Vélez Roger