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REPORT No. 11/17
PETITION 946-08
REPORT ON ADMISSIBILITY

MARÍA HILARIA GONZÁLEZ SIERRA AND OTHERS
COLOMBIA

Approved by the Commission on January 27, 2017

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 JANUARY 27, 2017

I. INFORMATION ABOUT THE PETITION

Petitioners:	"Mínimo Vital," <i>Fundación para el Desarrollo Social de Condiciones Mínimas de Vida</i> (Fund for the Development of Basic Living Conditions)
Alleged victim:	María Hilaria González Sierra and Others ²
State denounced:	Colombia
Rights invoked:	Articles 1.1 (Obligation to Respect Rights), 4 (Right to Life), 5 (Right to Personal Integrity), 7 (Right to Personal Liberty), 8 (Right to A Fair Trial), 19 (Rights of the Child) and 25 (Right to Judicial Protection) of the American Convention on Human Rights ³

II. PROCEDURE BEFORE THE IACHR

Date on which the petition was received:	August 14, 2008
Additional information received at the initial study stage:	March 26 and June 25, 2009; July 23 and December 6, 2010; June 26 and July 8, 2014
Date on which the petition was transmitted to the State:	August 22, 2014
Date of the State's first response⁴:	December 31, 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 (deposit of ratification instrument 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 In accordance with the provisions in Article 17.2 (a) of Commission's Rules of Procedure, Commissioner Enrique Gil Botero, a Colombian national, did not participate in the debate or the decision on this matter.

² The petition was filed on behalf of María Hilaria González Sierra, Argenido Antonio Valle Cantillo, Edinson Cantillo Díaz and Armando Pérez Charris or Armando Javier Charris Pérez and their respective families.

³ Hereinafter "the Convention."

⁴ The observations presented were duly transmitted to the petitioners.

Rights declared admissible	Articles 4 (Right to Life), 5 (Right to Personal Integrity), 7 (Right to Personal Liberty), 8 (Right to A Fair Trial), 19 (Rights of the Child), 22 (Freedom of Movement and Residence) and 25 (Right to Judicial Protection) of the Convention, in relation to its Article 1.1 (Obligation to Respect Rights)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, exception to Article 46.2 (c) of the ACHR applies
Timeliness of the petition:	Yes, under the terms of Section VI

V. ALLEGED FACTS

1. The petitioners declare that on April 5, 2000, members of the Self-Defense Forces of Colombia (AUC, by the Spanish acronym) arrived in the municipality of Remolino, Department of Magdalena. The AUC took Mrs. María Hilaria González Sierra, her husband Argenido Valle Cantillo, and Edinson Cantillo Díaz and Armando Pérez Charris (or Armando Javier Charris Pérez) from their houses, tied them hand and foot, and took them to the surrounding area of country estate, where they killed the alleged victims. The petitioners allege that, according to the accounts and reports given by the alleged victims' family members, said group fully controlled the territory and acted with the authorities' consent. They say that the following day, the Central Police of the Municipality of Remolino removed the bodies and criminal proceedings were filed to the 22nd Prosecutor's Office of the Municipality of Ciénaga. They argue that they filed a request for information on the progress of said investigation, but there was no answer. They allege that the state authorities in charge of enforcing the law did not take measures to prevent the events denounced, and that the tribunals, judges and prosecutors broke their obligation to "establish the facts and judge the people responsible."

2. Also, they declare that the family members were subsequently subjected to persecution, and were forced to move for fear. The petitioners say that on October 31, 2007, the family members of Mrs. González Sierra and Mr. Valle Cantillo requested an extrajudicial conciliation hearing to the Judicial 43th Attorney General to seek the acceptance of liability and the compensation for the moral damages caused by the alleged victims' death. The petitioners say that at the hearing, held on February 25, 2008, the committee decided not to reach an agreement due to the prescription of the offense. In addition, they declare that, given the generalized situation of fear, the alleged victims' family members were unable to lodge direct reparation proceedings. They say that they were able to obtain legal representation only after paramilitary groups were demobilized and Law 795 of 2005 (Justice and Peace Law) was issued. Finally, they declare that the authorities have not established the events reported, nor identified or punished the people responsible.

3. The State, in turn, argues that the events reported by the petitioners led several Prosecutors' Offices to open different investigations, and that on November 13, 2004, a Legal Technical Committee of the Post of the Deputy Head of Prosecutor's Offices in Magdalena was created. The State declares that said Committee presented alternatives to promote the investigations, as it reopened those under restraining order or which had been suspended, and transmitted them to Specialized 20th Prosecutor's Office so that they were processed together. The State alleges that the petitioners' requests concerning the criminal investigations are inadmissible, since it is still in progress. Moreover, it says that the alleged victims should have exhausted the remedy of direct reparation proceedings at the administrative law court in order to establish the responsibility for the facts presented, and that they did not present any evidence to prove the situation of generalized fear. Finally, the State says that the facts reported by the petitioners do not tend to establish alleged violations of the rights protected by the Convention.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

4. The petitioners allege that the authorities have not established the truth concerning the events reported, nor identified or punished the people responsible. The State, in turn, declares that the

criminal investigation is still in progress, and as a result, domestic remedies have not been exhausted. In situations like this, where purported extrajudicial killings are reported, the domestic remedies to be considered for the purpose of a petition's admissibility are those concerning the investigation and the punishment of the people responsible for said events, which is the domestic legislation applicable to offenses liable to ex officio prosecution. In this regard, the Commission notes that since April 6, 2000, the Central Police of Remolino Department heard the facts leading to this petition, and that although the State says that several investigations were opened, to the date of the adoption of this report –over 16 years later–, the Commission has no information on any relevant progress or the prosecution of the perpetrators. Therefore, the Commission concludes that in this case the exception to the prior exhaustion of domestic remedies applies, as set forth in Article 46.2 (c) of the Convention, with the exception that the causes and effects that have hindered the prior exhaustion of domestic remedies in this case will be analyzed, as appropriate, in the report that the Commission adopts on the merits of the case, in order to verify if they do establish violations of the Convention.

5. Regarding the administrative law proceedings, the Commission recalls that in order to determine the admissibility of a petition of this nature, direct reparation proceedings are not an adequate means nor is it necessary to exhaust them, since they are inadequate to obtain a full redress and justice for the family members⁵.

6. Concerning the timeliness of the petition, the petition to the IACHR was received on August 14, 2008, the facts denounced started on April 5, 2000, their consequences allegedly continue to this date, and the exception to the prior exhaustion of domestic remedies applies in this case. As a result, in view of the context and the characteristics of this case, the Commission believes that the petition meets the admissibility requirement of timeliness.

VII. COLORABLE CLAIM

7. In view of the elements of fact and law presented by the parties, and the nature of the matter brought to its attention, the Commission believes that, if proved, the alleged State responsibility for the extrajudicial killing of the alleged victims, the lack of investigation and the resulting forced displacement of the alleged victims' family members could tend to establish a violation of the rights protected by Articles 4 (Right to Life), 5 (Right to Personal Integrity), 7 (Right to Personal Liberty), 8 (Right to A Fair Trial) and 25 (Right to Judicial Protection) of the Convention, to the detriment of the people allegedly killed; and a violation of Articles 5, 8 and 22 (Freedom of Movement and Residence) and 25, all of which agree with the obligations enshrined in Article 1.1 (Obligation to Respect Rights) of said treaty, to the detriment of their family members. In addition, the Commission notes that based on the documents submitted by the petitioners, two of Mrs. González Sierra and Mr. Valle Cantillo's daughters were 14 and 11 years of age when the events took place and were allegedly displaced. As a result, the Commission believes that Article 19 (Rights of the Child) of the Convention is admissible.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 4, 5, 7, 8, 19, 22 and 25 of the American Convention, in light of the obligations enshrined in Article 1.1 of said treaty;
2. To notify the parties of this decision;
3. To continue with the analysis on the merits; and
4. To publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

⁵ IACHR, Report No. 72/16. Petition 694-06. Admissibility. Onofre Antonio de La Hoz Montero and Family. Colombia. December 6, 2016, par. 32.

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.