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REPORT No. 50/17
PETITION 464-10B
REPORT ON ADMISSIBILITY

JOSÉ RUPERTO AGUDELO CIRO AND FAMILY
COLOMBIA

Approved by the Commission at its session No. 2085 held on May 25, 2017
162nd Extraordinary Period of Sessions

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I. INFORMATION ABOUT THE PETITION

Petitioner	<i>Corporación Jurídica Libertad</i> NGO
Alleged victim:	José Ruperto Agudelo Ciro and family
State denounced:	Colombia
Rights invoked:	Articles 1 (Obligation to Respect Rights), 3 (Right to Juridical Personality), 4 (Right to Life), 5 (Right to personal integrity), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), 11 (protection of honor and dignity), 17 (Rights of the Family) and 25 (Right to Judicial Protection) of the American Convention on Human Rights ³

II. PROCEDURE BEFORE THE IACHR⁴

Date on which the petition was received:	March 31 st 2010
Date on which the petition was transmitted to the State⁵:	2 nd August 2010
Date of the State's first response:	February 10 th 2011
Additional observations from the petitioner:	May 18 th 2012 and September 16 th 2015
Additional observations from the State:	September 27 th 2012

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 on Human Rights (ratification instrument deposited on July 31 st 1973)

¹ On March 31st 2010 the IACHR received a petition against the State of Colombia presented by the *Corporación Jurídica Libertad* NGO for the alleged extra-judicial execution of Oreste de Jesús Morales. That petition also refers to the alleged execution of José Ruperto Agudelo Ciro, which is alleged to have occurred in the same factual framework. Furthermore, on March 26th 2015 the *Corporación Jurídica Libertad* NGO informed the IACHR that it would also start to represent the family of José Ruperto Agudelo Ciro. Due to an involuntary administrative error, that communication was not incorporated to the file of the petition, and consequently the facts regarding Mr. Agudelo Ciro were not taken into account by the IACHR when it adopted the Report on Admissibility No. 34/15 on July 22nd 2015.

² Commissioner Luis Ernesto Vargas Silva, of Colombian nationality, did not participate in the discussion and decision of the present case, in accordance with article 17.2.a) of IACHR Regulations.

³ Hereinafter "Convention" or "American Convention".

⁴ The observations of each party were duly transmitted to the opposing party.

⁵ Given that the alleged victim features in the claims originally lodged in petition 464-10, on which the State of Colombia duly pronounced judgment, these State responses were taken into account by the IACHR in drawing up this report.

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
Rights declared admissible:	Articles 4 (Right to Life), 5 (Right to personal integrity), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), 11 (protection of honor and dignity) 22 (Freedom of Movement and Residence), and 25 (Right to Judicial Protection) of the American Convention and articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, exceptions of article 46.2.b and c of the ACHR are applicable
Timeliness of the petition:	Yes, under the terms of Section VI

V. ALLEGED FACTS

1. The petitioners state that within the framework of the defense and security policies implemented by President Álvaro Uribe, from 2002, military operations were undertaken against the guerrilla group of the Revolutionary Armed Forces of Colombia (FARC) and other subversive groups, in the eastern region of the Department of Antioquia. They indicate that in March 2003 the Colombian Army carried out the “Marcial Norte” Operation in the municipality of San Francisco. In this context, on the morning of March 13th, while José Ruperto Agudelo Ciro was travelling along the road to Vereda Boquerón, he was intercepted by military troops who, without any court order, seized him and took him away together with 14 other people who had also been captured in the area. During the course of that day, all the locals being held were freed with the exception of the alleged victim and Oreste de Jesús Morales, who both remained in captivity close to some stables located in Vereda Boquerón. They indicate that they were violently assaulted and subjected to torture there, as local residents described hearing screams, crying, and moans that night, and the firing of shots in the early hours of the following morning.

2. Later on, on the afternoon of March 14th, the bodies were carried in a military helicopter to the municipality of Rionegro, where they were presented as members of the National Liberation Army (ELN) who had died in combat. According to the petitioners, it was not until March 17th that his family noticed that the body of the alleged victim was lying in the morgue of Rionegro, where a formal autopsy had been carried out. They indicate that the intense military activity taking place in the area, the hostile acts committed against local farmers, and the violent death of the alleged victim forced his family to move away from Vereda Boquerón to the urban area of the municipality of San Francisco. Once there, they reported what had occurred to the Municipal Attorney; however, on March 31st 2003 the Public Prosecutor’s Office 131 of Antioquia remitted the investigation to Court 24 of Preliminary Military Criminal Proceedings.

3. They state that the case did not advanced at all in the military justice system given that on February 15th, 2005, Court 24 of Preliminary Military Criminal Proceedings decided to abstain from opening a formal investigation and ordered the case to be closed. Following requests by the petitioners, on March 17th 2010 the military court authorized the family members of the alleged victims to have access to the file and ordered the case to be reopened. They recount that the requests made by Legal Representative 197 and by Public Prosecutor’s Office 37 of the Human Rights and International Humanitarian Law Unit for the investigation to be remitted to the ordinary justice system were rejected by the Eighth Court of Army Brigade IV on July 21st and November 24th 2010 respectively. In view of this, on December 15th 2010 the Disciplinary Court of the Judiciary Council resolved the positive conflict of jurisdiction, ordering that the case be investigated by the military criminal court system. Subsequently, Court 24 of Preliminary Military Criminal Proceedings closed the preliminary inquiry on May 2nd 2011.

4. In view of this situation, the petitioners lodged an action for the protection of fundamental freedoms as they claimed there had been a violation of the right to due process, the right to be heard by a competent judge and the principle of impartiality. This was rejected on April 27th 2011 by the Local Judiciary Council of Bogotá, which argued that there was no doubt that the military troops had acted within their capacities and in compliance with constitutional mandates of State defense. That ruling was confirmed on September 13th 2011 by the Superior Judiciary Council, which stated that the judge's actions fell within the framework of the principles governed by the exercise of judicial power.

5. The State maintains that the facts contained in the petition do not constitute human rights violations, as the Marcial operation was a legitimate tactical mission that complied with the constitutional mission of the Armed Forces and was carried out within the framework of International Humanitarian Law. In that regard, following a combat that took place on March 13th 2003 against the Carlos Alirio Buitrago squad of the ELN, 2 bodies were discovered together with war material and explosives. The State maintains that, for that reason, the matters in question fall under the jurisdiction of the military criminal justice system, which is complying with its obligation to investigate the case rigorously and with absolute respect for due process.

6. Furthermore, it states that the petition is inadmissible as all domestic jurisdictional remedies have not been exhausted given that the military criminal proceedings initiated have not yet been concluded. In addition, it mentions that a disciplinary investigation was carried out, and that this was definitively closed on September 16th 2004 by the Disciplinary Office of the Inspector General for the defense of Human Rights, on the basis of the principle of *non bis in ídem*, given that the process concerned the same facts, the same individuals and the same cause of action as those heard by the military criminal justice system. Moreover, it asserts that the family members of the alleged victim did not lodge an action for direct reparation, which also determines the inadmissibility of the petition.

7. Finally, it states that the exceptions to the exhaustion of domestic remedies established in article 46.2. b) and c) of the American Convention do not apply to this case, as the petitioners have been afforded all the legal guarantees and through them have been able to participate actively in the proceedings. In addition, the State asserts that there has been no unwarranted delay in rendering judgment, as the case at hand is a complex one, particularly given the circumstances in which the military operations are taking place; it does however highlight the hard work carried out in investigative and judicial matters.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

8. The petitioners state that the family members of the alleged victim brought an action before the Municipal Attorney of San Francisco as an appropriate legal recourse for the investigation into this violent death. However, the case was derived to the military criminal court system, were it was initially closed and then reopened 5 years later, and to date has not been concluded. They allege that, consequently, through the application of military criminal jurisdiction, they were denied access to the suitable remedies under domestic law, and that moreover there was an unwarranted delay in rendering justice. The State, for its part, indicates that the remedies were not exhausted, given that the military criminal proceedings are still ongoing and the investigation procedures are still taking place. Furthermore, it points out that the jurisdiction of the Eighth Court of Army Brigade IV in the case was confirmed by the Judiciary Council.

9. The Commission has reiterated on several occasions that the military jurisdiction is not appropriate in this case and that it therefore does not provide a suitable recourse to investigate, try and punish the alleged violations of the human rights enshrined in the American Convention, that were allegedly committed by members of the Armed Forces or with their collaboration or acquiescence⁶. It therefore considers that in this case, as the investigations into the alleged extra-judicial execution continue to take place within the military criminal court system, the exception established in article 46.2.b) of the Convention has been constituted. Similarly, the Commission observes that the death of the alleged victim was reported to

⁶ CIDH, Report No. 34/15, Petition 191-07 and others. Admissibility. Álvaro Enrique Rodríguez and others. Colombia. July 22nd 2015, par. 247.

the Colombian authorities in March 2003; however, to date there has been no final decision. Consequently, in view of the characteristics of this case and of the precedents found in similar case law⁷, the Commission believes that the exception to the exhaustion of domestic remedies established in article 46.2.c of the American Convention is applicable. Finally, the IACHR considers that the petition was lodged within a reasonable period of time and therefore believes the admissibility requirement regarding the timeliness of the presentation to have been fulfilled.

VII. COLORABLE CLAIM

10. In view of the elements of fact and law expounded by the parties and the nature of the issues brought to its knowledge, the Commission believes that the alleged extra-judicial execution of the alleged victim, the moving of his body in order to be presented as a member of a guerrilla group who had died in combat, the lack of effective judicial protection in the case and the forced displacement of his family, could constitute possible violations of articles 4 (Right to Life), 5 (Right to personal integrity), 7 (Right to Personal Liberty), 8 (judicial guarantees), 11 (protection of honor and dignity), 22 (Freedom of Movement and Residence) and 25 (Right to Judicial Protection) of the American Convention in connection with article 1.1 and 2 thereof, as well as of articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of the alleged victim and his family.

11. With respect to the claim about the alleged violation of the rights contained in articles 3 and 17 of the Convention, the Commission believes that the petitioners have not put forward arguments or grounds to demonstrate its alleged violations, and therefore considers it cannot declare this petition admissible.

VIII. DECISION

1. To find the present petition admissible in relation to articles 4, 5, 7, 8, 11 and 25 of the American Convention, in connection with article 1.1 and 2 thereof;

2. To find the present petition admissible in relation to articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture;

3. To find the present petition inadmissible in relation to articles 3 and 17 of the American Convention;

4. To notify the parties of this decision;

5. To continue with the analysis on the merits;

6. To join these proceedings to case 12.998 which is currently being analyzed on the merits; and

7. To publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights in the city of Buenos Aires, Argentina, on the 25 day of the month of May, 2017. (Signed): Francisco José Eguiguren, President; Margarette May Macaulay, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice President; José de Jesús Orozco Henríquez, Paulo Vannuchi, and James L. Cavallaro, Commissioners.

⁷ CIDH, report No. 17/16, Petition 1132-06. Admissibility. Hortencia Neyid Tunja Cuchumbe and others. Colombia. April 15th 2016, par. 28.