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REPORT No. 116/17
PETITION 1338-07
REPORT ON ADMISSIBILITY

WILLIAM JIMMY LIZARAZO ÁVILA AND OTHERS
COLOMBIA

Approved by the Commission at its session No. 2098 held on September 7, 2017.
164th Special Period of Sessions.

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Ávila and others. Colombia. September 7, 2017.



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I. INFORMATION ABOUT THE PETITION

Petitioning party:	William Jimmy Lizarazo Ávila
Alleged victims:	William Jimmy Lizarazo Ávila, Rosa Delia Ávila de Lizarazo, and Miryam Edith Lizarazo Ávila
State denounced:	Colombia
Rights invoked:	Articles 4 (Life), 5 (Humane Treatment), 8 (Fair Trial), 16 (Freedom of Association), 17 (Family), 21 (Property), and 22 (Freedom of Movement and Residence) of the American Convention on Human Rights ²

II. PROCEDURE BEFORE THE IACHR³

Date on which the petition was received:	October 12, 2007
Additional information received at the initial stage:	May 26, 2011; July 7, 2011
Date on which the petition was transmitted to the State:	August 3, 2011
Date of the State's first response:	November 4, 2011
Date of additional observations from the petitioning party:	December 6, 2011; July 28, 2014; September 15 and October 6, 2015.
Date of additional observations from the State:	April 10, 2012

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materia</i>:	Yes; American Convention (deposit of instrument of ratification 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 keeping with Article 17(2)(a) of the Commission's Rules of Procedure, Commissioner Luis Ernesto Vargas Silva, of Colombian nationality, did not participate in the deliberations or decision in this matter.

² Hereinafter "Convention" or "American Convention."

³ The observations submitted by each party were duly forwarded to the opposing party.

Rights declared admissible:	Articles 5 (Humane Treatment), 8 (Fair Trial), 21 (Property), 22 (Freedom of Movement and Residence), and 25 (Judicial Protection) in connection with Article 1(1) (Obligation to Respect Rights) of the American Convention
Exhaustion of domestic remedies:	Yes, exception provided for at Article 46(2)(c) of the American Convention
Timeliness of the petition:	Yes, as set forth in Section VI

V. ALLEGED FACTS

1. The petitioner indicates that William Jimmy Lizarazo Ávila, Rosa Delia Ávila de Lizarazo and Miriam Edith Lizarazo Ávila are the owners of the properties *Finca Palma Real I, San Judas de Baltimore, Horizontes, La Fortuna, Berlín, El Silencio, and Okavango*, located in Puerto López and San Carlos de Güaroa in the Department of Meta. He indicates that due to the violent, armed actions of the *Autodefensas Campesinas de Casanare* (Peasant Paramilitary Groups of Casanare – ACC) in the area, in February 1998, the alleged victims were forced to abandon their properties and relocate to the city of Villavicencio, where they have since resided. The petitioner indicates that the terror created by the paramilitary groups has prevented them from returning to the area, and, due to the internal, forced relocation, they were registered in the Unified Registry of Victims (*Registro Único de Víctimas*) since August 12, 2015.

2. The petitioner indicates that he lodged a complaint before the Prosecutor’s Office of Puerto López on February 28, 1998, against one of the farmers (*hacendado*) in the area related to paramilitary groups, for the crimes of land invasion and theft. Nevertheless, he states that the complaint produced no result, because on March 19, 2002, the Prosecutor’s Office issued a writ of waiver of the investigation (*resolución inhibitoria de investigación*) and archived the case, arguing that an arbitrary invasion of the properties was not evident because there was a lease for the lands between the defendant and Mr. William Jimmy Lizarazo Ávila. In this regard, the petitioner states that, in order to prevent the accused farmer from claiming possession of the land through adverse possession (*prescripción adquisitiva*), they sent receipts related to a purported lease. He states that he made this situation known from the beginning of the investigation, but it was not taken into consideration by the Prosecutor’s Office. On the other hand, he states that, despite the writ of waiver ending the process against one of the paramilitary leaders, the Prosecutor’s Office ceased to continue the investigation of the facts with regards to the many other potential suspects.

3. On the other hand, on October 8, 2001, he complained before the Inspector General of the Nation (*Procurador General de la Nación*) that the criminal investigations were not being properly pursued and requested the appointment of a special agent to follow up on the case. Thus, on December 27, 2001, the Office of the Inspector General (*Procuraduría*) communicated that the Office of the General Prosecutor (*Fiscalía*) had not committed any act to infringe due process and, therefore, there was no need for the appointment of a special agent. In addition, it concluded that the lack of progress in the investigation was due to public disorder in the region that risked the security of the investigating authorities.

4. The petitioner also states that, on June 20, 2007, the administrator of the *Palma Real* property, received death threats from paramilitary groups and was forced to relocate from the area. He states that a complaint was lodged before the Judicial Police (*Policía Judicial*) of Villavicencio on July 12, 2007, but, to-date, the investigations have produced no results.

5. The petitioner states that, due to constant acts of violence, insecurity, extortion, land grabbing, and forced relocation caused by the ACC in the area, on September 21, 2001, the petitioner requested that the President of the Republic apply protective measures for his entire community and the affected areas. The Office of the Legal Secretary of the Presidency (*Secretaría Jurídica de la Presidencia*) informed him that his request would be transferred to the Ministry of Defense. Considering that this infringed his right of petition, the petitioner lodged an action of constitutional protection, which was denied by the

Administrative Court of Cundinamarca, on November 22, 2001.

6. Likewise, on September 21, 2001, he requested that the Ministry of Defense seize his properties in order to verify the presence of the paramilitaries acting illegally in the area. On September 25, 2001, this ministerial office informed him that his request was transferred to the Army Command and the Office of the Director General of the National Police. With this response, the petitioner filed for an action of constitutional protection, which was granted on November 23, 2001 by the Fourth Section of the Contentious-Administrative Tribunal of Cundinamarca (*Sección Cuarta del Tribunal Contencioso Administrativo de Cundinamarca*). The tribunal concluded that the authorities had merely conducted a procedure as a formality and did not provide, as requested by the petitioner, a substantive response. In addition, it considered that the illegal actions of these groups were infringing the petitioner and the rest of displaced people of the area's rights to life, family, and property. Therefore, it ordered that, within 48 hours, the Ministry of Defense adopt the necessary actions, operations or solutions in order to restore public order in said area. The petitioner states that this resolution was not implemented by the respective authority.

7. On the other hand, on September 24, 2001, the petitioner requested that the Commander of the Armed Forces reinforce the presence of the State to restore order in the area of Meta, and to seize his property to demonstrate the presence of the paramilitaries that allegedly illegally displaced him. Upon receiving no response, he filed an action of constitutional protection, which was granted on November 23, 2001, by the Second Section of the Administrative Court of Cundinamarca and which, considering the infringement of the right to petition, ordered that, within 48 hours, an appropriate response should be given to his request. The petitioner states that this order was not fulfilled.

8. Likewise, the petitioner states that on September 24, 2001, he drew the attention of the Commander of the National Army to his situation and that of his family and requested that they be absolved of responsibility for illegal actions that paramilitary groups may be committing in their properties, and sought restoration of the institutional order in the area. Due to the lack of response, and alleging the infringement of his right to petition, he filed an action of constitutional protection, which was granted on November 23, 2001, by the Second Section of the Administrative Court of Cundinamarca, which ordered that the respective authority should respond to his request within 48 hours. He states that the order was not fulfilled.

9. The petitioner states that on September 25, 2001, he brought the forced displacement of his family to the attention of the General Commander of the National Police and denounced the illegal activities conducted by paramilitary groups in his properties, and requested his intervention to restore public order in these areas. He states that, on September 28, 2001, the national Police notified him that his request was transferred to the competent body, without specifying which body. Therefore, alleging a violation of his right of petition he filed an action of constitutional protection that was granted by the First Section of the Administrative Court of Cundinamarca, on November 26, 2001. Said court, acknowledging the forced displacement situation concluded that, even though the problem of violence is structural, and in this case he would not receive a definitive solution, it was an obligation of the public administration to address the complaint filed by the petitioner; therefore, it ordered the National Police to resolve the request within 48 hours. Nevertheless, the petitioner states that said judicial order was not fulfilled.

10. In addition, he explains that, on October 11, 2001, he requested that the Commander of the Police in Meta provide adequate, permanent and effective security in the area of Puerto López affected by the illegal actions of the paramilitary groups. He states that, receiving no answer, he filed an action of constitutional protection, which was denied by the Administrative Court of Meta on December 3, 2001. The petitioner appealed this decision and, on February 15, 2002, the Contentious-Administrative Chamber of the of the State Council (*Sala de lo Contencioso Administrativo del Consejo de Estado*) revoked the resolution and granted the constitutional protection of the right to petition, ordering that the respective authority issue a response within 48 hours. In this order of events, on June 14, 2002, the Commander of the Police of Meta sent a note to the petitioner stating that action would taken to guarantee public order. Nonetheless, the petitioner states that the police authorities did not implement the protective measures or investigate the alleged acts he had denounced.

11. Subsequently, the petitioner indicates that he requested information about the demobilization of the *Autodefensas* (paramilitary groups) and reinstatement of public order in the area in August 2006, as well as about the possibility for displaced persons to return to the sector. He sent these requests to different authorities and national institutions, including the President of the Republic, Ministry of Defense, High Commissioner for Peace, and the Armed Forces. He states that even though demobilization took place between August 2005 and April 2006, said State institutions merely replied indicating that armed groups were still operating and committing crimes in the Meta Department.

12. Finally, the petitioner indicates that on August 22, 2007, he lodged a Direct Damages Compensation Action against the Ministry of Defense, the Army and the National Police. This Action was rejected on June 10, 2014 by the Meta Administrative Court, which considered that the victims' displacement was not proven. Said decision was challenged before the Council of State and a final decision has not been rendered to date.

13. For its part, the State argues that the petition is inadmissible because it was submitted extemporaneously. It considered that, in the framework of the investigations, the Prosecutor's Office notified the petitioner of its inhibitory decision on March 19, 2002, while the petition was submitted before the IACHR on October 12, 2007, thus exceeding the period prescribed by the Convention. The State also considers there is failure to exhaust domestic remedies, stating that there are three contentious administrative claims pending before the Council of State. These claims were lodged by the alleged victims in 2007.⁴ In addition, it states that the alleged victims could invoke the internal assistance and reparation mechanisms as set forth in Law 1448 of 2011 for victims of the armed conflict.

14. On the other hand, the State maintains that it has guaranteed the alleged victims due process and the independence and impartiality of the courts at all times with regards to all invoked proceedings and remedies. For this reason, it considers that the petitioners seek to obtain a review of internal decisions unfavorable to their interests; which would require that the Commission acts as a fourth instance.

15. Finally, the State notes that the events set forth in the petition do not characterize human rights violations because they were committed by individuals and were made known to the authorities after the lands were allegedly taken. However, it notes that the National Police took all necessary actions within its competence to verify the claims and reinstate public order in coordination with other State entities.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

16. The petitioner states that he lodged a complaint about invasion of his lands at the Prosecutors' Office of Puerto López on February 28, 1998. However, the complaint was archived on March 18, 2002. He filed a complaint with the Judicial Police of Villavicencio on July 12, 2007, due to the threats made against the manager of one of his estates and his subsequent forced displacement. To date this complaint has not produced any results. In addition, he maintains that, due to the generalized violence committed by paramilitary groups operating in the area, he submitted requests to different state authorities in order to obtain protective measures. None of these requests elicited an effective response. He describes six petitions seeking constitutional protection (*acciones de tutela*) in which he alleged a violation to his right to petition, five of which were granted. However, he considers that, in practice, these decisions were not made effective by any mechanisms of protection or recovery of the affected areas. On the other hand, the State alleges that the domestic remedies were not exhausted as there are three proceedings pending a decision in the contentious administrative jurisdiction, as well as other legal reparations mechanisms that the alleged victims could invoke.

17. The Commission has repeatedly stated, regarding the requirement of exhaustion of domestic remedies in cases related to forced displacement, that, as forced displacement is a crime, investigation and sanction of those responsible -meaning a criminal action- is the remedy that would have to be pursued in

⁴ Files N° 500012331000-2007-00248-01, 500012331000-2007-00249-01 and 50001233100020070025101.

order to consider this requirement exhausted.⁵ In the instant case, according to the information provided for by the parties, the first complaint filed for these events was archived by the Prosecutors Office in relation to each of those accused and it did not continue the investigation of the other suspects. Also, it is in the file that a new complaint filed before Colombian authorities on July 12, 2007, has not advanced to date. In the light of the above, the IACHR concludes that the exception provided for in Article 46(2)(c) of the American Convention applies to the instant case.

18. Likewise, the IACHR takes into account that the petitioner requested protective measures for forced displacement and the effects on his right to private property caused by paramilitary actions in the Puerto López Region. These requests were made to different national authorities and, due to a lack of response, he submitted six requests for constitutional protection (*acciones de tutela*) without obtaining material action or real responses. It is observed that in the decisions on two of the constitutional protection requests, the First and Fourth Chambers of the Contentious Administrative Court acknowledged that the authorities had to take action against forced displacement occurring in the above-mentioned region.

19. While in cases of this nature the Commission considers that the Contentious-Administrative path does not constitute a suitable remedy and it's not necessary to exhaust it for purposes of the admissibility stage, given that the petitioner expressly alleges violations of his right to property within the framework of the direct Compensation Action, the Commission notes that the alleged victims lodged three Direct Compensation Actions in 2007, claiming compensation for damages caused by the appropriation of the properties and estates and related displacement. More than ten years later, these requests are still pending a final decision. In light of the above, the Commission considers that the exception to the exhaustion of domestic remedies provided for in Article 46(2)(c) of the American Convention applies.

20. On the other hand, the petition before the Commission was received on October 12, 2007, and the alleged events occurred in 1998, and some of the effects with regards to the alleged denial of justice, forced displacement and impairment of the right to property persist presently. Therefore, in the context and characteristics of the instant case, the Commission considers that the petition was submitted within a reasonable time and that this admissibility requirement concerning the deadline for submission has been met.

VII. COLORABLE CLAIM

21. In view of the facts and law exposed by the parties and the nature of the matter under study, the Commission considers that the alleged forced displacement and the lack of effective judicial protection in relation to these facts could characterize possible violations of Articles 5 (Humane Treatment), 8 (Fair Trial), 21 (Property), 22 (Freedom of Movement and residence), and 25 (Judicial Protection) of the American Convention, in relation to its Article 1(1), to the detriment of the alleged victims.

22. As for the alleged violations of Articles 4 (Life), 7 (Personal Liberty), 16 (Freedom of Association) and 17 (Family) of the American Convention, the Commission notes that the petitioner *prima facie* has not offered grounds that allow considering these possible violations.

23. Lastly, regarding the State's allegation about fourth instance, the Commission acknowledges that it is not competent to review judgments rendered by domestic courts acting within their competence and applying due process and judicial guarantees. However, it reiterates that within its mandate, the Commission is competent to declare admissible a petition and decide on its merits when it refers to domestic proceedings that could be in violation of the American Convention.

⁵ IACHR, Report No. 27/17, Petition 1653-07. Admissibility. Forced Displacement in *Nueva Venecia, Caño El Clarín* and *Buena Vista*. Colombia. March 18, 2017, para. 10. IACHR, Report No. 18/14, Petition 1625-07. Admissibility. Y.C.G.M. and family. Colombia. April 3, 2014, para. 43.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 5, 8, 21, 22, and 25 of the American Convention, in conjunction with Article 1(1) of the same;
2. To find the instant petition inadmissible in relation to Articles 4, 7, 16 and 17 of the American Convention;
3. To notify the parties of this decision;
4. To continue with the analysis of 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.

Approved by the Inter-American Commission on Human Rights in the city of México, on the 7 day of the month of September, 2017. (Signed): Francisco José Eguiguren, President; Margarete 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.