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**REPORT No. 119/17**  
**PETITION 1618-07**  
ADMISSIBILITY REPORT

DUVER ALBERTO AND FREDY ALONSO OROZCO GARCÍA  
COLOMBIA

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

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Alonso Orozco García. Colombia. September 7, 2017.



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 COLOMBIA  
 SEPTEMBER 7, 2017

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioning party:</b>	Rubén Darío Rico Guerra and José Gabriel Restrepo García
<b>Alleged victims:</b>	Duver Alberto and Fredy Alonso Orozco García
<b>State denounced:</b>	Colombia
<b>Rights invoked:</b>	Articles 8 (Fair Trial), 9 (Freedom from Ex Post Facto Laws), 10 (Compensation) and 25 (Judicial Protection) of the American Convention on Human Rights <sup>2</sup>

**II. PROCEDURE BEFORE THE IACHR<sup>3</sup>**

<b>Date on which the petition was received:</b>	December 21, 2007
<b>Additional information received at the initial study stage:</b>	September 29, 2008
<b>Date on which the petition was transmitted to the State:</b>	September 28, 2011
<b>Date of the State's first response:</b>	January 11, 2012
<b>Additional observations from the petitioning party:<sup>4</sup></b>	December 3, 2012
<b>Additional observations from the State:</b>	November 15, 2013

**III. COMPETENCE**

<b>Competence <i>Ratione personae</i>:</b>	Yes
<b>Competence <i>Ratione loci</i>:</b>	Yes
<b>Competence <i>Ratione temporis</i>:</b>	Yes
<b>Competence <i>Ratione materiae</i>:</b>	Yes; American Convention (the instrument of ratification was deposited on July 31, 1973) and Inter-American Convention to Prevent and Punish Torture (the instrument of ratification was deposited on January 19, 1999)

<sup>1</sup> Pursuant to provisions in Article 17.2.b of the IACHR Rules of Procedure, Commissioner Luis Ernesto Vargas Silva, a Colombian national, did not participate in the decision or the debate on the present matter.

<sup>2</sup> Hereinafter "the Convention" or "the American Convention."

<sup>3</sup> The observations presented by each party were duly transmitted to the opposing party.

<sup>4</sup> After their last substantive communication, the petitioners sent to the IACHR requests for information on the situation of the petition and that a decision be made on its admissibility. Their last communication dates from July 8, 2014.

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

<b>Duplication of procedures and International <i>res judicata</i>:</b>	No
<b>Rights declared admissible</b>	Articles 4 (Life), 5 (Humane Treatment), 7 (Personal Liberty), 8 (Fair Trial), 22 (Movement and Residence) and 25 (Judicial Protection) of the American Convention on Human Rights, in connection with its Article 1.1 (Obligation to Respect Rights); and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, exception set forth in Article 46.2.c of the ACHR applies
<b>Timeliness of the petition:</b>	Yes, under the terms of Section VI

**V. ALLEGED FACTS**

1. The petitioners claim that on suspicion of illegal possession of weapons, on March 12, 1997 a group of police officers and the Municipal Prosecutor of Cisneros Antioquia executed a search warrant at Duver Alberto and Fredy Alonso Orozco García's domicile. As the officers did not find any illegal possessions, they threatened the family and left. The petitioners also assert that in the days that followed, the Municipal Police Commander harassed the Orozco García brothers so that they would flee the region. Subsequently, on the night of March 16, 1997 a group of men came again to the family's house claiming that it was a new search. The petitioners submit that all the individuals were in civil clothes and had ski masks that covered their faces, and that only one of them was wearing the National Army's uniform. The perpetrators broke in with violence, bound the alleged victims hand and foot, and before taking them in a vehicle, they threatened the other family members so that these would not denounce the facts.

2. The alleged victims were taken to a place called Penjamo, located in the same municipality, where a non-commissioned police officer (whom the alleged victims' recognized) came and ordered the rest of the kidnapers to kill the alleged victims. Some kilometers further, Mr. Duver Alberto Orozco García was made to get off the vehicle, beaten, tortured, and eventually cut in the back of his neck. On the belief that he was dead, they abandoned him in a ditch. In addition, on the pretext of an inquiry, Mr. Fredy Alonso Orozco García was violently beaten, tortured with cuts on his back and face, and seriously injured on his neck. Similarly, as the perpetrators thought he was dead, they threw him on a riverbank. The day after, the alleged victims were found and assisted by people from the area, who took them to neighboring hospitals. The petitioners indicate that as a result of said facts, Mr. Duver Alberto Orozco García suffers from a functional disorder that affects his central nervous system and his digestive system, and a walking impairment that is a permanent handicap. For his part, Mr. Fredy Alonso Orozco García has a serious scar on his face and suffers from a functional hearing disorder and a condition that affects the respiratory function and his thyroid.

3. They submit that on March 17, 1997 the Circuit Prosecutor's Office of Cisneros opened an investigation into the criminal offences of kidnap and attempted murder. Subsequently, on April 8, 1997 Mr. Fredy Alonso Orozco García filed a complaint for these facts before the Third Permanent Police Inspector's Office of Medellín, which was attached to the main case file. However, they assert that to date the investigation has not progressed or produced any results, and that the facts remain unpunished.

4. Likewise, they indicate that for fear that police or military officers would recognize them, the alleged victims hid in their domiciles, moved home by force and therefore did not immediately file a claim for damages before the administrative law court. In this regard, on December 11, 2001 Mr. Duver Alberto Orozco García lodged a claim for damages with the Administrative Court of Antioquia, which it was rejected on February 18, 2002 due to the lapse of the claim. He challenged this judgment before the Third Court of the

Council of State, which on May 22, 2003 confirmed the lower-instance decision. In view of this, he filed an appeal for legal protection, which the Fourth Court of the Council of State found inapplicable on November 23, 2007. For his part, in view of the damages suffered, Mr. Fredy Alonso Orozco García filed a claim for damages before the Administrative Court of Antioquia on December 19, 2001, but it was rejected on June 4, 2004 on the grounds that it was barred by the statute of limitations. As a result, he filed an appeal for legal protection but it was rejected by the First Court of the Council of State on the grounds that the alleged victim did not appeal against the lower-instance judgment.

5. Moreover, the petitioners indicate that on March 2, 2005 Mr. Duver Alberto Orozco García presented a complaint before the Municipal Ombudsman's Office of Medellín, against the police officer that he was able to recognize on the night of the facts. However, by a resolution dated October 8, 2006 the Sixth Regional Inspector's Office of the Ministry of Defense ruled that the disciplinary proceedings were barred by the statute of limitations, thus ordering to definitely archive the case.

6. The State, for its part, claims that this petition is inadmissible, since the domestic remedies in the criminal jurisdiction have not been exhausted. It indicates that on September 2, 2005 the Public Prosecutor's Office issued a restraining order on the investigations made, but due to the petition filed before the IACHR, the Sixteenth Specialized Prosecutor's Office of Medellín reopened the investigation procedures, which are now in the preliminary stage. With regard to this, the State asserts that the petitioners have been judicially able to resort to different remedies. It also submits that in view of the circumstances of the facts, the case is complex and its duration reasonable so far. Therefore, it believes that the exceptions established in Article 46.2(b) and (c) are not applicable to this case.

7. Finally, it asserts that the petitioners seek a review of the procedures conducted in the administrative jurisdiction in which resolutions on the merits, though duly justified, were contrary to their interests. According to the State, such a review would mean that the Commission work as a fourth instance, exceeding its powers.

## VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

8. The petitioners claim that the criminal proceedings are the appropriate legal remedy, but 15 years later, the facts have not yet been duly investigated neither in the criminal or the disciplinary jurisdictions. The State, in turn, asserts that the criminal investigation is underway, that the petitioners can resort to appropriate domestic remedies, and that there is no unwarranted delay, in view of the complexity of the case.

9. The Commission has repeatedly informed that in situations where possible violations of the right to physical integrity and/or alleged facts of torture are involved,<sup>5</sup> the domestic remedies that must be considered for the purpose of a petition's admissibility are those concerning the investigation and punishment of the persons responsible, which in the domestic legislation translate into criminal offences subject to prosecution *ex officio*. In this particular case, the information submitted indicates that the criminal investigation has extended for over 20 years without having produced any results. In view of this, the IACHR concludes that the exception to the requirement of exhaustion of domestic remedies established in Article 46.2.c of the American Convention is applicable to this case.

10. Furthermore, as to the claims for damages filed before the administrative court, the Commission recalls that such remedies are not appropriate for the purpose of deciding on the admissibility of a complaint of the nature of this petition,<sup>6</sup> since said court is inadequate to provide full redress and justice to

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<sup>5</sup> IACHR, Report No. 7/15, Petition 547-04. Admissibility. José Antonio Bolaños Juárez. Mexico. January 29, 2015, par. 22; IACHR, Report No. 114/12. Petition 524-07. Admissibility. Adán Guillermo López Lone *et al.* Honduras. November 13, 2012, paras. 32-34

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

family members. Notwithstanding the aforementioned, in the merits stage, the IACHR will analyze the development and the conclusion of said proceedings.

11. In addition, the petition filed to the Commission was received on December 21, 2007 and the purported facts matter of this complaint occurred in March 1997 and their effects concerning the alleged denial of justice allegedly persist to date. Therefore, in light of the context and the characteristics of this case, the Commission believes that the petition was presented within a reasonable period and that the admissibility requirement of timeliness is met.

## **VII. COLORABLE CLAIM**

12. In light of the elements of fact and law submitted by the parties and the nature of the matter brought to its attention, the Commission believes that the alleged acts of arbitrary detention, torture and attempted murder perpetrated against the alleged victims presumably by state agents, along with the alleged victims' forced displacement and the lack of effective judicial protection concerning these facts, may establish possible violations of Articles 4 (Right to Life), 5 (Humane Treatment), 7 (Personal Liberty), 8 (Fair Trial), 22 (Freedom of Movement and Residence) and 25 (Judicial Protection) of the American Convention, in relation to its Article 1.1 (Obligation to Respect Rights); and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, given the purported lack of investigation, to the detriment of the alleged victims.

13. With regard to the complaint about the purported violation of Articles 9 (Freedom from Ex Post Facto Laws) and 10 (Right to Compensation) of the American Convention, the Commission notes that the petitioners have not submitted arguments or evidence sufficient to *prima facie* consider their possible violation.

14. Lastly, concerning the arguments presented by the State about the establishment of a fourth instance, the Commission recognizes that it is not competent to review judgments issued by national courts that act within their powers and ensure due process and judicial safeguards. Nevertheless, it recalls that under its mandate it is entitled to declare a petition admissible and rule on the merits whenever the petition concerns domestic procedures that may be contrary to the rights protected by the American Convention.

## **VIII. DECISION**

1. To find the instant petition admissible in relation to Articles 4, 5, 7, 8, 22 and 25 of the American Convention, in the connection with its Article 1.1; and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture;

2. To find the instant petition inadmissible in relation to Articles 9 and 10 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.

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.