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REPORT No. 117/17
PETITIONS 1460-07 AND 788-10
REPORT ON ADMISSIBILITY

ALEXANDER LOPEZ MAYA ET AL. (SINTRAEMCALI)
COLOMBIA

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

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 SEPTEMBER 7, 2017

I. INFORMATION ABOUT THE PETITION

Petitioning party:	P-1460-07: Association for Social Research and Action (NOMADESC) P-788-10: Justice and Dignity Corporation (<i>Corporacion Justicia y Dignidad</i>)
Alleged victims:	P-1460-07: Alexander Lopez Maya et al. P-788-10: SINTRAEMCALI
State denounced:	Colombia
Rights invoked:	Articles 1 (Obligation to Respect Rights), 4 (Right to Life), 5 (Right to Humane Treatment), 8 (Right to a Fair Trial), 11 (Right to Privacy), 13 (Freedom of Thought and Expression), 16 (Freedom of Association), 22 (Freedom of Movement and Residence), 23 (Right to Participate in Government) and 25 (Judicial Protection) of the American Convention on Human Rights; ¹ Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights ²

II. PROCEDURE BEFORE THE IACHR³

Date on which the petition was received:	P-1460-07: November 12, 2007 P-788-10: May 28, 2010
Additional information received at the initial study stage:	P-1460-07: November 26, 2007 P-788-10: December 13 and 23, 2010; April 23 and December 20, 2012
Date on which the petition was transmitted to the State:	P-1460-07: August 11, 2011 P-788-10: June 24, 2014
Date of the State's first response:	P-1460-07: November 15, 2011 P-788-10: November 11, 2014
Additional observations from the petitioning party:	P-1460-07: June 6 and July 16, 2013 ⁴ P-788-10: March 4 and September 4, 2015
Additional observations from the State:	P-1460-07: April 25, 2014 P-788-10: July 14, 2015

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes, in both petitions
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¹ Hereinafter "the Convention" or "the American Convention."

² Hereinafter "the Protocol of San Salvador."

³ The observations presented by each party were duly transmitted to the opposing party.

⁴ On January 12, 2017, the petitioners requested a hearing in the framework of the 161st Period of Sessions of the IACHR; the request was rejected.

Competence <i>Ratione loci</i>:	Yes, in both petitions
Competence <i>Ratione temporis</i>:	Yes, in both petitions
Competence <i>Ratione materiae</i>:	Yes, in both petitions

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

Rights declared admissible	Articles 4 (Right to Life), 5 (Right to Humane Treatment), 8 (Right to a Fair Trial), 11 (Right to Privacy), 13 (Freedom of Thought and Expression), 16 (Freedom of Association), 22 (Freedom of Movement and Residence), 25 (Right to Judicial Protection) and 26 (Right to Progressive Development) of the American Convention, in relation to its Article 1.1 (Obligation to Respect Rights); and Article 8 (Trade Union Rights) of the Protocol of San Salvador
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. PROCESSING OF PRECAUTIONARY MEASURE 133-00

1. On January 1, 2000, the attorney Berenice Celeyta Alayon and the Association for Social Research and Action (NOMADESC) requested precautionary measures to protect the life and personal integrity of the leaders of the Municipal Utility Workers' Union of Cali (SINTRAEMCALI) and other trade unions of the Department of Valle del Cauca in which Alexander Lopez Maya and Robinson Emilio Masso participated. The request was filed on the grounds that these persons faced imminent danger in view of the continuous plotting, accusations and threats from civil and military authorities of said department. On June 21, 2000, the Commission granted precautionary measures and requested that the Colombian State take steps to protect the life and physical integrity of the union leaders of SINTRAEMCALI, the National Union of University Workers and Employees of Colombia, Cali Division; the United Confederation of Workers (CUT), Valle del Cauca sub-division; and the Trade Union of the Department of Valle del Cauca. On July 6, 2000, the Commission decided to broaden the scope of these precautionary measures to include Mr. Roberth Cañarte Montealegre and Mr. Fredy Ocoro, prosecuting attorney with the Union of Municipal Workers of Bugalagrande. The available information indicates that Roberth Cañarte Montealegre was detained by a group of the United Self-Defense Forces of Colombia (AUC); since then there has been no news of his whereabouts. It also indicates that Mr. Fredy Ocoro's name, alongside the name of a union leader who was recently executed, appears on a list of the paramilitary group operating in the center of the Department of Valle. At present, these precautionary measures are in force.

VI. ALLEGED FACTS

Previous considerations

2. The two petitions considered in this report address the alleged acts of persecution and attacks against the members of the Municipal Utility Workers' Union of Cali (hereinafter "SINTRAEMCALI"). The State has requested the IACHR to apply Article 29.5 of the Commission's Rules of Procedure, which entitles the Commission to join petitions concerning relevant issues in common and to process them together, in view that both petitions address a purported plan to attack SINTRAEMCALI's members; that Alexander Lopez Maya and Robinson Emilio Masso Arias were the union's leaders at the time of the facts; and that the State undertakes a single criminal investigation into the denounced facts concerning "*Operacion Dragon*." With respect to this, SINTRAEMCALI informed that it does not oppose to the joint processing of the petitions as long as petition 788-10 will not be limited in its scope, since, unlike petition 1460-07, petition 788-10

addresses not only facts in relation to “*Operacion Dragon*” but also alleged attacks against members’ trade union rights. Therefore, in view of the similar facts addressed, the Commission decided to join both petitions pursuant to Article 29.5 of its Rules of Procedure.

Arguments in common

3. The Association for Social Research and Action (NOMADESC) and the Justice and Dignity Corporation (*Corporacion Justicia y Dignidad*) (hereinafter “the petitioners”) claim that there has been a series of attacks, threats and acts of harassment and persecution against SINTRAEMCALI’s leaders and members by illegal groups acting under the protection of some state institutions involved in the planning of these actions. In the petitioners’ view, such actions were aimed at encouraging the privatization and liquidation of certain state companies in favor of economic monopolies.

4. They also claim that the main objective of “*Operacion Dragon*” was to infiltrate third parties linked to the army in SINTRAEMCALI’s leadership in order to collect information through intelligence tasks to identify the alleged victims’ main activities, personal data and family members. They also state that the names of Alexander Lopez Maya (“Mr. Lopez Maya”) and Mr. Robinson Emilio Masso Arias (“Mr. Masso Arias”) appeared on the list of people targeted in “*Operacion Dragon*.” Furthermore, they indicate that the private companies *Consultoria Integral Latinoamericana* (CIL) and *SARACIS S.A.* worked in cooperation with high officials of the 3rd Brigade of the National Army. The petitioners assert that the Superintendency of Public Services, the National Police Intelligence Office, the Ministry of the Interior, the Administrative Security Department and Cali’s Metropolitan Police also knew about “*Operacion Dragon*.”

5. The petitioners also indicate that the acts of persecution and harassment and the death threats have distressed and frightened the alleged victims in such a way that they have been unable to undertake their union and political activities for fear of being attacked. Consequently, some of them have limited their participation in public meetings and activities, and others have had to temporarily flee the City of Cali or even the country.

6. The State claims that the extension of the proceedings results from its complexity, particularly as regards to the filing of evidence and of several legal remedies by the representatives of unionized members and other parties to the proceedings. Therefore, it believes that the domestic remedies have not been exhausted in view of the fact that the criminal proceedings are at the stage of trial and pending settlement. Likewise, it asserts that it has adopted all the necessary measures to protect the alleged victims’ life and personal integrity in the framework of the precautionary measures granted by the Commission.

Individual arguments

Alexander Lopez Maya and others (P-1460-07)

7. The petitioners claim that in August 2004 Mr. Lopez Maya, Berenice Celeita Alayon, Luis Antonio Hernández Monroy, Carlos Marmolejo, Oscar Figueroa and Luis Imbachi (“the alleged victims”) received death threats through anonymous letters and phone calls for several weeks, and were followed menacingly by unknown individuals in civil clothes or military uniform. They submit that this was due to the alleged victims’ work with SINTRAEMCALI. Subsequently, the alleged victims found that there was a plan organized by active and retired military officers to kill Alexander Lopez Maya, SINTRAEMCALI’s then president, and Berenice Celeita Alayon, human rights attorney.

8. The petitioners indicate that Mr. Lopez Maya denounced “*Operacion Dragon*” in a public hearing at the Congress of the Republic on September 29, 2004, and that the Congress had nevertheless denied the existence of such operation.

SINTRAEMCALI (P-788-10)

9. As background information, the petitioners submit that since 1998 there has been a rise in acts against trade union rights in Valle del Cauca and against SINTRAEMCALI's union activity in Cali. They claim that SINTRAEMCALI has received at least three bomb threats at its headquarters, that some union members were actually infiltrated informants, and that at least forty workers were killed and harassed. They also assert that in 1999 a group of police officers beat union groups in a demonstration of state workers in Cali. They indicate that as a result, the attacked members were injured and Mr. Masso Arias had a fracture in his forearm and clavicle. They assert that the State denies the facts officially, which violates their trade union rights. They claim that due to such constant harassment a group of leaders of this union requested precautionary measures to the IACHR to protect their life and personal integrity; and that the measures were granted on June 21, 2000 (PM 133-00) and are still in force.

10. The petitioners submit that on December 12, 2000 unknown individuals entered and searched the domicile of Mr. Masso Arias, a leader of SINTRAEMCALI, despite the fact that he had been granted precautionary measures by the IACHR and the ensuing security measures by the State. As a result of this illegal search, the Ministry of the Interior advised Mr. Masso Arias to leave Colombia, but he chose to temporarily leave with his family to San Andrés. The petitioners indicate that Mr. Masso Arias then requested for an improvement in the security measures provided by the State. On October 6, 2003 the protection group of the Administrative Security Department ("DAS") dismissed his request on the grounds that his level of risk and threat level was low. Moreover, they claim that Mr. Masso Arias was followed and threatened more than once in 2003 and 2004. Consequently, on October 14, 2004, Mr. Masso Arias decided to resign from his job as a union leader.

11. The petitioners inform that three investigations into the death threats received by Mr. Masso Arias on May 1 and 3, 2003 are underway before the 93rd Prosecutor's Office, Section of the Individual Liberty Unit, and are apparently in the preliminary active stage.

12. The State, for its part, asserts that it believes that the alleged forty cases of attacks against union members are not part of the factual framework of this petition as they were not individualized but just described in the abstract. It also indicates that the alleged procedure against trade unions and in favor of SINTRAEMCALI's privatization and liquidation is merely contextual information and cannot be deemed as an argument since it refers to a fact concerning a juridical person and not a natural person.

Arguments in common by the petitioners and the State about exhaustion of domestic remedies in both petitions

13. On August 25, 2004, the alleged victims of both petitions filed a complaint for alleged death threats before the Deputy Attorney General of Colombia. As a result, said Deputy Attorney General opened a preliminary investigation in which the Second Specialized Prosecutor's Office attached to the National Unit on Human Rights ("the Second Specialized Prosecutor's Office") and the Technical Research Body found evidence indicating that the Army had given classified information about the trade union to companies *CIL* and *SERACIS S.A.*, which provided security services to the State. Moreover, it was found that active and retired military officers were involved in "*Operacion Dragon*."

14. On November 24, 2007, the alleged victims requested that an investigation be opened to arrest the persons participating in "*Operacion Dragon*." As they did not get any answers, on September 12, 2008 the alleged victims insisted on their complaint before the Second Specialized Prosecutor's Office. Subsequently, on September 16, 2008 the alleged victims presented an appeal for legal protection before the High Court of the District of Bogotá, which granted legal protection on September 16, 2008 and ruled to further the investigations in order to ensure the victims' right to due process and access to justice.

15. As a result, on October 8, 2008 the Second Specialized Prosecutor's Office adopted a prevention measure consisting in placing six people (one lieutenant colonel, two retired majors and two directors of *SERACIS S.A.*) under domicile arrest, since it considered that they were involved in the crime of

aggravated criminal association. In that resolution, it also established that the offense of violation of the rights to peaceful assembly and association was barred by statute of limitations. Later, on December 28, 2011, the First Prosecutor's Office before the High Court of Bogotá changed the resolution establishing the domicile arrest for the persons mentioned, by changing the criminal classification to simple criminal association. Consequently, the Second Specialized Prosecutor's Office ordered to release the investigated persons as the maximum legal term for the application of said measure had lapsed.

16. The petitioners submit that the criminal proceedings of the investigation into "*Operacion Dragon*," which started over twelve years ago, were for four years in the stage of preliminary investigation. In this regard, they assert that the elements indicating the real existence of a policy against trade unions on the part of the State were not taken into consideration, which proves the State's interest in perpetuating the impunity of actions against SINTRAEMCALI. In addition, they submit that there is no effective legal or administrative remedy to protect trade union rights.

17. The State, on the other hand, claims that the judicial authorities have undertaken the necessary actions to investigate the complaints filed by the alleged victims, as they conducted all the necessary investigations, particularly those involving former army officers, and even sentenced these to pre-trial detention. It asserts that there has not been an unwarranted delay in the criminal investigation into the denounced facts as these are complex matters; and that the judicial authorities have complied with their duty to investigate, and ensure the alleged victims' access to justice. Moreover, it indicates that there were no obstacles for the alleged victims to pursue the legal remedies that they deemed appropriate. Likewise, it claims that the facts brought to the attention of the IACHR do not establish violations of the human rights enshrined in the American Convention, since the facts do not involve state agents but private individuals unrelated to the National Army and the police. Therefore, the State asserts that Colombia cannot be held internationally responsible for the alleged violations of human rights presented in this petition.

18. Additionally, the State indicates that the petitions should be declared inadmissible in view of the lack of exhaustion of domestic legal remedies, since the criminal proceedings for the facts presented to the IACHR are in the trial stage before the Cali Circuit Criminal Courts. Furthermore, the State claims that there has been no unwarranted delay in the criminal investigation into the denounced facts.

19. Lastly, the State indicates that it is relevant to consider that the precautionary measures granted by the Commission have been domestically adopted, thus ensuring the alleged victims' rights to life and personal integrity.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

20. The petitioners declare that there has been an unwarranted delay in the investigation of the denounced facts, especially in the investigation concerning "*Operacion Dragon*" which started in 2004. In view of this, they consider that the exception to the rule of prior exhaustion of domestic remedies set forth in Article 46.2.c of the Convention applies. The State, for its part, believes that domestic remedies have not been exhausted since the criminal proceedings are in the trial stage and settlement is pending.

21. In view of these considerations, after analyzing the information available in the files of both petitions, the Commission notes that there is no controversy about the fact that the alleged victims pursued the appropriate legal remedy to claim their rights, that is to say, the criminal jurisdiction. The Commission further notes that the State recognizes that the criminal proceedings are still in underway and that settlement is pending. In this regard, the Commission believes that the fact that said criminal proceedings have extended for over thirteen years and that no first-instance judgment has yet been issued cannot be deemed reasonable for the purpose of the admissibility of this petition. Therefore, the exception foreseen in Article 46.2.c of the American Convention applies.

22. Likewise, the petitions were lodged on November 12, 2007 and May 28, 2010, accordingly. In view of the specific circumstances of these petitions, in particular the arguments on the unwarranted delay in the domestic criminal proceedings, which are said to continue to this date, the IACHR concludes that the

petition was filed within a reasonable period, pursuant to Article 46.2 of the American Convention and Article 32.2 of the Commission's Rules.

VIII. COLORABLE CLAIM

23. Based on the foregoing considerations and the information available in the files of the petitions, the Commission considers that, if proved, the alleged acts of harassment and persecution alongside the death threats against the alleged victims for their work in trade unions; the purported plan to kill Mr. Lopez Maya; and the alleged unwarranted delay in the investigation and prosecution of those responsible for "*Operacion Dragon*", establish possible violations of the rights enshrined in Articles 4 (Right to Life), 5 (Right to Humane Treatment), 8 (Right to a Fair Trial), 11 (Right to Privacy), 13 (Freedom of Thought and Expression), 16 (Freedom of Association), 22 (Freedom of Movement and Residence), 25 (Right to Judicial Protection), and 26 (Right to Progressive Development) of the American Convention, in relation to its Article 1.1 (Obligation to Respect Rights). Said possible violations are to the detriment of Alexander Lopez Maya, Robinson Emilio Masso Arias, Berenice Celeita Alayon, Luis Antonio Hernández Monroy, Carlos Marmolejo, Oscar Figueroa, Luis Imbachi and those persons connected with the facts described herein who will be individualized in the merits stage of this petition. Moreover, if the alleged facts are proved, they may establish a violation of Article 8 (Trade Union Rights) of the Protocol of San Salvador.

24. As to the complaint for the alleged violation of Article 23 (Right to Participate in Government) of the American Convention, the Commission notes that the petitioners did not submit arguments or evidence sufficient to prima facie consider said possible violation.

IX. DECISION

1. To declare the instant petition admissible in relation to Articles 4, 5, 8, 11, 13, 16, 22, 25 and 26 of the American Convention, in relation to its Article 1.1;
2. To find the instant petition inadmissible in relation to Article 23 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.