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REPORT No. 125/17
PETITION 1477-08
REPORT ON ADMISSIBILITY

HENRY TORRES *ET AL.*
COLOMBIA

Approved by the Commission at its session No. 2098 held on September 7, 2017
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Colombia. September 7, 2017.



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I. INFORMATION ABOUT THE PETITION

Petitioning party:	Luis Carlos Acosta Ramírez and Nelson Uriel Romero
Alleged victims:	Henry Torres and others ²
State denounced:	Colombia
Rights invoked:	Articles 4 (Life), 5 (Humane Treatment), 8 (Fair Trial), 17 (Rights of the Family), 19 (Rights of the Child), 21 (Property), 25 (Judicial Protection) and 26 (Progressive Development) of the American Convention on Human Rights; ³ and Articles 6 (Work), 9 (Social Security), 10 (Health), 11 (Healthy Environment), 12 (Food), 15 (Right to the Formation and the Protection of Families), 16 (Rights of Children) of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ⁴

II. PROCEDURE BEFORE THE IACHR⁵

Date on which the petition was received:	December 18, 2008
Date on which the petition was transmitted to the State:	October 15, 2009
Date of the State's first response:	January 19, 2010
Additional observations from the petitioning party:	February 23, 2010; August 1, 2015; January 19, 2016; and January 28, 2017
Additional observations from the State:	March 29, 2010

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 (the instrument of ratification was deposited on July 31, 1973)

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

² This petition concerns 39 alleged victims who are individualized in the Annex attached hereto.

³ Hereinafter "the Convention" or "the American Convention."

⁴ Hereinafter "the Protocol of San Salvador."

⁵ The observations presented by each party were duly transmitted to the opposing party.

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 (Life), 5 (Humane Treatment), 8 (Fair Trial), 19 (Rights of the Child), 21 (Property), 25 (Judicial Protection) and 26 (Progressive Development) of the American Convention
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes; under the terms of Section VI
Timeliness of the petition:	Yes; under the terms of Section VI

V. ALLEGED FACTS

1. The petitioners submit that between April 15 and May 30, 1999 the Counter-Narcotics Police made a large-scale fumigation in the *Corregimiento* of La Marina, Municipality of Chaparral, Tolima, through the aerial spraying of the herbicide known as glyphosate, to eradicate illicit opium poppy crops. They assert that in light of the geography and the conflict situation, the aircraft could not descend and the glyphosate was therefore sprayed from 300 meters high, infringing the provisions of Decree 1843 of 1991, under which said herbicide must be sprayed from 10 meters high maximum.

2. They claim that as the product was blown by the wind, it indiscriminately fell over hills, houses, domestic and wild animals, crops, barnyards, water sources and schools, damaging crops and people's and animals' health, and contaminating the environment and the sluice of a conduit that fed four of the *veredas*.⁶ They indicate that thirty-nine people faced physical and/or material damages. They claim that twenty-six people ingested the pesticide that was in the water, and that several women had miscarriages. In particular, the petitioners submit that Doris Yaneth Alape Reyes was hospitalized due to severe symptoms of intoxication, and that several days later she underwent a spontaneous delivery, giving birth to a son of only 28 weeks' gestation. According to their account of the facts, the boy was in intensive care for 8 days and died on June 1, 1999. They assert that Mrs. Alape Reyes has ever since been ill and impaired to work and to undertake household chores.

3. The petitioners indicate that as result of these facts thirty-six claims for damages were filed before the High Court of the Judicial District of Ibagué (Municipality of Tolima) on behalf of the thirty-nine people affected. One of the complaints was lodged on behalf of four people: Ferney Avendaño Lugo, his wife Doris Yaneth Alape Reyes, and their two children (one of whom is the deceased premature baby). The complaints were admitted in full, but their processing cost 60,000 Colombian pesos (about USD 30), which was paid for six of the complaints only. They submit that fee waiver appeals were filed as regards the other thirty complaints, in light of the poor economic situation caused by the fumigation, but these were admitted concerning eight complaints, whereas in the rest of the cases appeals were rejected on the grounds that they had to be filed with the initial complaint. As they were unable to afford such expenses, the petitioners claim that their rights to access to justice, due process and effective judicial protection were violated, since when the six month's period was due, the complaints were declared barred by the statute of limitations and their archiving was ordered.

4. On July 23, 2003, the Administrative Court of Tolima decided to join together the fourteen⁷ case files admitted under file No. 2001-1311. On July 24, 2007 the Sixth Administrative Court of Ibagué (Tolima) settled the case, by declaring the State of Colombia, the Federal Counter-Narcotics Bureau and the

⁶ *vereda*: an administrative subdivision of a municipality in Colombia.

⁷ Tiberio Caicedo, Jesús María Gonzalez, Evangelista Torres Peralta, Joaquín Méndez Arce, Fidel Amado Ríos, Rosa María Ochoa, Alirio Saldaña Cruz, Nelson Alberto Rojas Silva, Martha Inés Ortiz Campos, José Gabriel Totena, José David Ortiz Campos, Ferney Avendaño Lugo, Yesid Rúgeles Sánchez and Olegario Morales.

Federal Counter-Narcotics Police liable for the economic damage caused to six of the alleged victims,⁸ and ruling the inapplicability of compensations for the moral damages. As to the other persons affected,⁹ the court ruled that since they failed to prove the damages caused by the spraying, they were not entitled to compensation. In this regard, the petitioners claim that before the court passed on the case file for the conclusions, they requested the undertaking of tests that had been previously ordered but which had not been made regarding some of the complaints. They indicate that the court, however, issued a judgment without ruling on that aspect, and thus 8 complaints were found inadmissible.

5. Both the claimant and the respondent appealed against the lower-instance judgment; the judgment of July 24, 1997 was revoked by the Administrative Court of Tolima, which noted that although the spraying was proved, the alleged victims were obliged to denounce the illicit crops before the authorities and to seek protection for their own crops "in such a way that if there are programs to eradicate or control illicit crops, these will be made manually or measures will be adopted on the spraying." With respect to this, the petitioners claim that considering the context of an armed conflict, "to comply with the duty to report an offense was equal to condemn themselves and their family to death or to forced displacement, and the lawful duty to fumigate could not be superior to the State's duty to protect the life and the health of the inhabitants of the region"; and that said argument is therefore illogical.

6. The petitioners finally indicate that the decision to spray glyphosate over coca plantations as an experiment was widely questioned by the Ombudsman's Office itself. They submit that the sprayings in the south of Colombia led to a trial with Ecuador, which in 2008 filed a lawsuit against Colombia before the International Court of Justice at The Hague due to the damages that the herbicide caused to the environment and to people's health as the wind blew the product across the border. They assert that the proceedings were settled in 2013 after Colombia paid compensation. They add that on April 24, 2015 the Ministry of Health and Social Welfare, in light of the principle of caution, recommended that all glyphosate sprayings be suspended in the Colombian territory, since it believes that such sprayings violate the right to health and to a healthy environment.

7. The State indicates that the petition must be declared inadmissible given that the alleged facts do not establish human rights violations, and stresses that an unfavorable ruling is not a violation of the Convention, since the fact that the domestic courts did not settle the case in favor of the petitioners does not prove the lack of appropriate remedies. In addition, it submits that the petitioning party seeks to have the Inter-American jurisdiction work as a fourth instance to review the judgments issued by the domestic courts. It asserts that judgments on the merits were promptly and duly issued in accordance with the legal framework in force and the substantive and procedural laws.

8. It claims that, in the framework of the administrative proceedings, thirty complaints were not processed due to circumstances proper to the proceedings and pursuant to due process of law. As to the decision of the Administrative Court of Tolima, the State indicates that, although there was a spraying and the alleged victims' crops were damaged, the proximity of these in relation to the illicit plantations led to the alleged victims' obligation or legal duty to denounce such crops to the authorities, and request that their own crops be protected. It asserts that given that the alleged victims failed to comply with said obligation, the State is not obliged to repair the damages by virtue of the principle of equity in taxation.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

9. According to the information submitted by both parties, of the thirty-six complaints that were filed only fourteen were admitted for the proceedings for damages. By a judgment of July 24, 2007, the Sixth Administrative Court of Ibagué (Tolima) ordered compensation in favor of six people. Subsequently, by

⁸ Tiberio Caicedo, Jesús María González, Evangelista Torres Peralta, Martha Inés Ortiz Campos, Joaquín Méndez Arce and Fidel Amado Ríos.

⁹ Rosa María Ochoa, Alirio Saldaña Cruz, Nelson Alberto Rojas, José Gabriel Totena, José David Ortiz, Yesid Rúgeles Sanchez, Olegario Morales, Ferney Avendaño Lugo, Doris Yaneth Alape Reyes and the two children.

a resolution of July 18, 2008, the Administrative Court of Tolima fully revoked the judgment appealed against, issuing a judgment contrary to the alleged victims' interests instead.

10. With regard to the fourteen claims for damages concerning seventeen alleged victims, the IACHR notes that, through Tolima's Administrative Court's decision of July 18, 2008, the appropriate domestic remedies were exhausted pursuant to Article 46.1.a of the Convention and Article 31.1 of the IACHR Rules of Procedure. Concerning the other twenty-two alleged victims, the petitioners assert that they were unable to access justice in view of the fact that a sum equivalent to USD 30 was required in order to file a claim for damages. The Commission believes that given the alleged victims' purported economic situation, said requirement may establish, for the purpose of deciding on the petition's admissibility, a demand that prevented the access to and exhaustion of domestic remedies. In this initial stage of analysis, based on the information available so far, the Inter-American Commission decides that the exception to the requirement of exhaustion of domestic remedies is applicable concerning these people, pursuant to Article 46.2.b of the American Convention. In the merits stage, the IACHR will carefully analyze the requirement of the aforementioned amount in light of the alleged victims' situation and their right to judicial protection.

11. Based on the foregoing, the Commission concludes that in the case of the seventeen alleged victims that were granted a resolution by Tolima's Administrative Court on July 18, 2008, the petition meets the requirement established in Article 46.1.b of the Convention and Article 32.1 of the Rules of Procedure, as it was presented on December 18, 2008. As to the alleged victims to whom the exception set forth in Article 46.2.b has been applied, the Inter-American Commission believes that the petition was filed within a reasonable period, under the provisions of Article 32 of its Rules of Procedure.

VII. COLORABLE CLAIM

12. 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 considers that, if proved, the arguments regarding the health damages caused by glyphosate, the damages to the alleged victims' goods and livestock, the violation of due process of law, and the lack of access to justice and to full redress could establish violations of Articles 5 (Humane Treatment), 8 (Fair Trial), 21 (Property), 25 (Judicial Protection) and 26 (Progressive Development) of the American Convention, in relation to the alleged victims; and of Article 19 (Rights of the Child) in relation to the two children purportedly affected. Likewise, as to the boy that was born prematurely and died on June 1, 1999, if proved, the alleged facts may establish a violation of Article 4 (Right to Life) of the American Convention. Moreover, with respect to the alleged violation of Article 17 (Right of the Family) of the Convention, the Commission notes that the petitioners did not submit arguments or evidence to support such claim.

13. Concerning the alleged violations of Articles 9, 10, 11, 12, 15 and 16 of the Protocol of San Salvador, the Commission is not competent to declare said rights violated; however, it is entitled to use the articles to interpret the conventional obligations, under the provisions of Article 29 of the American Convention.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 4, 5, 8, 19, 21, 25 and 26 of the American Convention;
2. To find the instant petition inadmissible in relation to Article 17 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.

Annex
List of alleged victims

1. Alfonso Lugo
2. Alirio Gutiérrez Guarnizo
3. Alirio Saldaña Cruz
4. Benjamín Torres
5. Cornelio Ávila Castañeda
6. Doris Yaneth Alape Reyes
7. Edwin Lugo
8. Esther Myriam Mejía de Otálvaro
9. Evangelista Torres Peralta
10. Ferney Avendaño Lugo
11. Fidel Amado Ríos
12. Gloria María Sánchez Castrillón
13. Harvey Díaz Méndez
14. Henry García Ducuara
15. Henry Torres
16. Jessika Paola Avendaño Alape (girl)
17. Jesús María González
18. Joaquín Méndez Arce
19. Jorge Velásquez
20. José David Ortiz Campos
21. José Gabriel Totena
22. José Heriberto Váquiro
23. José Leónidas Campos
24. José Leovigildo Rodríguez
25. José Vicente Pinilla
26. Laudith Janeth Rodríguez
27. Manuel Alfonso Morales Loaiza
28. Martha Inés Ortiz Campos
29. Miguel Antonio Malagón
30. Nelson Alberto Rojas Silva
31. Olegario Morales
32. Pedro Jiménez
33. Rosa María Ochoa
34. Rosendo Cruz
35. Saan Maceto
36. Tiberio Caicedo
37. Trinidad Váquiro
38. Wilmer Andres Avendaño Alape (boy)
39. Yesid Rúgeles Sánchez