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REPORT No. 139/17
PETITION 331-07
REPORT ON ADMISSIBILITY

CARLOS ANTONIO REYES MARTINEZ AND FAMILY
COLOMBIA

Approved by the Commission at its session No. 2104 held on October 26, 2017
165th Regular Period of Sessions

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Martínez and Family. Colombia. October 26, 2017.



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I. INFORMATION ABOUT THE PETITION

Petitioner:	Nelson Javier de Lavallo Restrepo
Alleged victim:	Carlos Antonio Reyes Martínez and family
State denounced:	Colombia
Rights invoked:	Articles 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 10 (compensation), 24 (equal protection), and 25 (judicial protection) of the American Convention on Human Rights ²

II. PROCEDURE BEFORE THE IACHR³

Date on which the petition was received:	March 21, 2007
Additional information received at the stage of initial review:	October 17, 2007 and July 21, 2011
Date on which the petition was transmitted to the State:	February 7, 2012
Date of the State's first response:	August 10, 2012
Additional observations from the petitioner:	May 14, 2013
Additional observations from the State:	October 18, 2013
Date on which the petitioner was notified of the possible archiving of the petition:	June 19, 2017
Date on which the petitioner responded to the notification regarding the possible archiving of the petition:	August 23, 2017

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 (instrument of ratification deposited on July 31, 1973)

¹ Commissioner Luis Ernesto Vargas Silva, a Colombian national, did not take part in the discussion or voting on this petition pursuant to Article 17(2)(a) of the Inter-American Commission's Rules of Procedure.

² Hereinafter, "the Convention" or "the American Convention."

³ 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 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 22 (freedom of movement and residence), and 25 (judicial protection) of the American Convention, in accordance with Articles 1(1) and 2 thereof
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 petitioner states that at the time the events transpired, Carlos Antonio Reyes Martínez was 61 years of age and worked as a farmer on a plot of land he owned in the Municipality of Fundación in the Department of Magdalena. He indicates that on the morning of May 24, 1992, the alleged victim was having breakfast at a restaurant a few kilometers from his land, in the subdivision of Santa Rosa de Lima, when members of the Colombian army, who were traveling in a truck, opened fire against an armed civilian who was in front of the restaurant. Carlos Antonio Reyes Martínez ended up being hit by three bullets—in his left knee and leg and his right forearm, respectively. The petitioner notes that the alleged victim was taken to the hospital where he remained for three and a half months, during which time he underwent three corrective surgeries; he was left severely disabled, which prevents him from walking and taking care of himself to this day. In the wake of these events, the [alleged victim] and his family had to move from the area out of fear and are living in poverty.

2. The petitioner indicates that on May 24, 1994, the alleged victim filed a petition for direct reparations for the gunshots that hit him; the Administrative Court of Magdalena ruled in his favor during a conciliation hearing on August 12, 1996, awarding him the sum of 5,500 grams of gold. The petitioner notes that on January 30, 1996, while the petition for direct reparations was being processed, Carlos Antonio Reyes Martínez was arrested for having allegedly committed the crime of contempt of authority. This arrest stemmed from a report filed with the Office of the Prosecutor by members of the military who stated that the alleged victim had been found in possession of a shotgun and five rounds. The petitioner asserts that the gunshots the alleged victim suffered were a result of the sole fact that he was at the restaurant and that the soldiers filed that report as an attempted “false positive” to cover up their mistake. On February 12, 1996 the Regional Prosecutor ordered pretrial detention for Mr. Reyes Martínez, who was taken to the municipal jail in Fundación.

3. The petitioner indicates that the alleged victim requested to be released on April 23, 1996, a request that was denied on April 29, 1996 because the Office of the Prosecutor deemed that the testimony of non-eyewitnesses was not sufficient to rescind the pretrial detention order. On July 24, 1996 he requested provisional release, which was denied on July 29 by the Office of the Prosecutor after it argued before the Regional Judges of Barranquilla that provisional release could be requested only after 240 days in detention, while the alleged victim had been in custody for just 120 days. The petitioner notes that the alleged victim remained in jail nearly a year, until an October 8, 1996 decision by the Regional Prosecutor to halt the investigation against the alleged victim as it had been demonstrated that he had not been involved in the crime of contempt for authority.

4. In connection with his detention, on March 11, 1998 the alleged victim filed a second claim for direct reparations against the Colombian army with the Administrative Court of Magdalena. When the Court failed to act, he filed a writ for the protection of constitutional rights with the *Consejo Seccional de la Judicatura* [Departmental Council of the Judiciary] of Magdalena, which ordered a judicial review of the Court

on November 21, 2000. The Court, however, declared that it had no jurisdiction and thus the request for protection of constitutional rights was denied. Lastly, after numerous jurisdiction-related transfers, on June 30, 2005—seven years after the claim had been filed—the Administrative Court of Magdalena ruled against the alleged victim, stating that “the petitioner failed to provide sufficient evidence to prove administrative liability on the part of the judiciary,” and that the [alleged victim] had not provided a copy of the criminal case file in connection with the contempt charge against him. Nevertheless, the petitioner alleges that the judicial inspection report, dated November 21, 2000, indicates that the Administrative Court of Magdalena received the criminal case file on September 11, 2000, meaning that that assertion would be false. The ruling was appealed and on [September] 18, 2006 the Administrative Court of Magdalena dismissed the appeal since, pursuant to Law 954/05, the proceeding was considered to be a first-instance case only because of the amounts involved. The decision was notified on October 3, 2006.

5. Lastly, the petitioner indicates that in the contempt proceedings, the Office of the Regional Prosecutor of Barranquilla concluded that “the statements given by the captain and lieutenant fit into a fictitious reality to justify not only the death of the guerrilla fighter, but also the serious injuries caused to the defendant that left him almost completely crippled,” and ordered the Military Courts and the Office of the Prosecutor Assigned to Military Oversight “to conduct a criminal and disciplinary investigation into the conduct of the army officers involved in the operation.” The petitioner further indicates, however, that to date no investigation or proceedings have been launched against these individuals, as evidenced in 2011 communications from Military Criminal Investigation Courts 17 and 19, which confirm that no certified requests had been received from the Office of the Prosecutor of Barranquilla to investigate the two officers involved in the events that occurred on May 24, 1992.

6. The State holds that the petition is inadmissible inasmuch as it contains no facts that might constitute a violation of the rights protected by and enshrined in the Convention. It states that the facts set forth in the petition were examined by competent authorities and substantiated in accordance with the guarantees of due process. In this regard, the State maintains that the IACHR cannot act as court of appeal and, in keeping with the principle of subsidiarity, cannot challenge legal rulings made in accordance with the law simply because they went against the alleged victims.

7. The State adds that the judgment was unfavorable because of an omission by the petitioner, who failed to provide evidence that would enable charges to be brought against the Colombian army from the moment he declined to furnish proof. The State also asserts that domestic remedies have not been exhausted insofar as the petitioner could have filed a complaint challenging the September 18, 2006 decision that denied the appeal, as well as an appeal for a review of the decision that finalized the process. Regarding the judge’s actions, the State indicates that, in addition to the petition for protection of constitutional rights, he could have filed a disciplinary complaint with the *Consejo Superior de la Judicatura* [Higher Council of the Judiciary]. And finally, the State indicates that the facts surrounding the first claim for direct reparations should not be taken into account since they were already examined and resolved appropriately, meaning that the discussion should only consider the facts that gave rise to the second claim for reparations.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

8. According to the information both parties furnished to the IACHR, an agreement was reached on August 12, 1996 in connection with the first claim for direct reparations filed on May 24, 1994; in it, the [alleged victim] was granted redress for the injuries suffered. With regard to the report that led to the alleged victim being placed in pretrial detention, a second claim for direct reparations was filed on March 11, 1998; such claim was thrown out by the Administrative Court of Magdalena on August 30, 2005. Thereafter, an appeal was filed, but was rejected by the same Administrative Court of Magdalena on September 18, 2006 because of the amounts involved, as per Law 954 of 2005; this decision was announced on October 3, 2006. The petitioner indicates that notification of the decision marked the exhaustion of domestic remedies. The State, for its part, holds that the domestic remedies have not been exhausted inasmuch as the alleged victim should have filed an appeal for review and as well as a challenge to the decision that brought the proceedings to an end and to the decision that denied the appeal, respectively.

9. The IACHR has indicated in the past that when it comes to cases like the one at hand that involve potential human rights violations, that is, cases prosecutable *ex officio*, particularly when agents of the State are reportedly implicated in the crimes being alleged, the State has the duty to investigate them. The burden must be borne by the State as its own legal duty, not as an instrument of the interests of private individuals, and it may not be contingent upon the initiative of those individuals or the evidence they provide.⁴ Based on the information available, the Commission observes that, more than 20 years after the events transpired, and despite the order issued by the Office of the Regional Prosecutor of Barranquilla, no criminal investigation appears to have been conducted into the members of the military who took part in the operation executed on May 24, 1992 that reportedly caused the alleged victim a severe disability that prevents him from taking care of himself, nor has any investigation reportedly been done in connection with the allegedly specious report made by the military officers against him.

10. The IACHR has also observed that the alleged victim filed his first claim for direct reparations for the gunshots he suffered and that such claim was decided in his favor; he also filed a second claim for reparations in connection with his pretrial detention and challenged the dismissal thereof. With respect to claims for direct reparations, the Commission has repeatedly argued that [an administrative law court] is not an adequate means to assess the admissibility of a complaint of a nature such as this,⁵ as it is not effective for providing full redress and justice to the family.

11. The Commission therefore concludes that the exception set forth in Article 46(2)(c) of the Convention applies. The petition was received on March 21, 2007, the alleged events that gave rise thereto occurred on May 24, 1992, and the effects of the facts contained in the petition continue to persist, and thus the Commission considers that the petition was filed within a reasonable timeframe and that the requirement stipulated in Article 32(2) of the IACHR Rules of Procedure has been met.

VII. COLORABLE CLAIM

12. In view of the considerations of fact and law presented by the parties, as well as the nature of the matter brought to its attention, the Commission believes that, if proven, the alleged lack of judicial protection, the unwarranted detention of the alleged victim, the more than seven-year delay in the direct reparations proceeding, the alleged displacement of the family because of all of this, and the lack of an investigation of the events that reportedly caused the alleged victim to become disabled, could constitute potential violations of the rights set forth in Articles 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 22 (freedom of movement and residence), and 25 (judicial protection) of the American Convention, in connection with Article 1(1) thereof. In addition, with respect to the alleged violations of Articles 10 (right to compensation) and 24 (equal protection) of the Convention, the Commission observes that the petitioner offered no arguments or proof to admit them. The Commission further observes that the arguments put forth regarding the application of Law 954 of 2005 (which apparently created a single-instance court for reasons having to do with amounts in cases of direct reparations), requires an in-depth analysis with respect to Articles 8 and 2 thereof.⁶

VIII. DECISION

1. To find the present petition admissible in relation to Articles 5, 7, 8, 22, and 25 of the American Convention, in accordance with Articles 1(1) and 2 thereof;

2. To find the present petition inadmissible in relation to Articles 10 and 24 of the American Convention;

⁴ IACHR, Report No. 68/08, Petition 231-98, Admissibility, *Ernesto Travesi*, Argentina, October 16, 2008, paragraph 32.

⁵ IACHR, Report No. 72/16. Petition 694-06. Admissibility. *Onofre Antonio de La Hoz Montero and Family*, Colombia, December 6, 2016, paragraph 32.

⁶ IACHR, Report No. 108/17, Petition 562-08, *Pedro Herber Rodríguez Cárdenas*, Colombia, September 7, 2017, paragraph 16.

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.

Done and signed in the city of Montevideo, Uruguay, on the 26th day of the month of October, 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.