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REPORT No. 141/17
PETITION 1617-07
REPORT ON ADMISSIBILITY

GEMINIANO GIL MARTÍNEZ 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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 OCTOBER 26, 2017

I. INFORMATION ABOUT THE PETITION

Petitioner:	Rigoberto Olivella Arzuaga ²
Alleged victim	Geminiano Gil Martínez and family
State denounced:	Colombia
Rights invoked:	Articles 1.1 (obligation to respect rights), 4 (life), 5 (personal integrity), 7 (personal liberty), 8 (fair trial), and 25 (judicial protection) of the American Convention on Human Rights ³

II. PROCEDURE BEFORE THE IACHR⁴

Date on which the petition was received:	December 21, 2007
Additional information received at the initial stage of the review:	January 12, 2009; February 26, 2010; March 29, 2011
Date on which the petition was transmitted to the State:	November 15, 2011
Date of the State's first response:	December 30, 2011
Additional observations from the petitioner:	February 18, 2012
Additional observations from the State:	November 5, 2012
Date of warning on the possible archiving of the petition:	March 27, 2017
Date of response by the petitioner to the warning of the possible archiving of the petition:	April 19, 2017

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes, American Convention (instrument of ratification deposited on July 31, 1973)
Competence <i>Ratione materiae</i>:	Yes

¹ In accordance with Article 17.2.a of the IACHR Rules of Procedure, Commissioner Luis Ernesto Vargas Silva, a Colombian national, did not participate in the discussion or the decision on this matter.

² The petition was originally filed by Jesús Arcángel Alonso Guzmán, who was replaced by Rigoberto Olivella Arzuaga on February 26, 2010.

³ Hereafter, "the Convention" or "the American Convention".

⁴ The comments of 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 (physical integrity), 7 (personal liberty), 8 (judicial guarantees), and 25 (judicial protection) of the Convention in relation to Article 1.1 (obligation to respect rights)
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. FACTS ALLEGED

1. The petitioner alleges that on December 6, 1989, Geminiano Gil Martínez (hereafter, also “the alleged victim”), was kidnapped on his way to work from Granada (Department of Antioquia) to the camp located in the district (*corregimiento*) of Santa Ana. He states that in 1982, the alleged victim retired from the National Army as a non-commissioned officer and, for financial reasons, found employment as a public works contractor for the municipality. He alleges that on December 1, 1989, the alleged victim traveled from work to Bogota to deal with some family matters and told his family that he was going to resign due to the security situation in the location where he worked, in particular due to the authorities’ neglect of the area and the presence of armed groups operating outside the law.

2. He states that on December 6, 1989 the alleged victim returned to his workplace and on the morning of December 8, the wife of the alleged victim received a call from an unidentified individual, who informed her that her husband had been kidnapped along with another person. Later that afternoon, authorities from the municipality of Guatapé found the body of the alleged victim, together with that of another person, and reported that the alleged victim had died as the result of a bullet to the head, possibly at the hands of armed groups operating outside the law. He stated in this regard that on December 10, the national newspaper *El Espectador* reported that the kidnapping had been perpetrated by members of the National Liberation Army. He indicated that the alleged victim’s siblings went to the municipality of Guatapé to arrange for the return of the remains.

3. The petitioner states that these events gave rise to an investigation by the General Court of First Instance of Guatapé. The petitioner states that on February 5, 2007, he filed a Right of Petition with the Office of the Attorney General of the Nation and the Antioquia Sectional Prosecutor’s Office requesting information about the investigation launched in December 1989 into the alleged kidnapping and subsequent murder of Geminiano Gil Martínez. He stated that the Office of the Attorney General responded that there was no record whatsoever of the events, and according to the Municipal Criminal Court of Guatapé, the paperwork had been transmitted on March 28, 1990 to the Criminal Court of First Instance No. 61 of the Municipality of San Rafael, which had no record of the alleged victim’s case. The petitioner also filed a petition for direct reparation against the Judiciary and the Office of the Attorney General admitted by decree in April 14, 2009, and indicates that the final adjudication is still pending.

4. The petitioner alleges that the Colombian State has failed to fulfill its duty to investigate, sanction, and provide remedies to the alleged victims as a consequence of its failure to advance the criminal process. He argues that at the time the petition was filed, 18 years had passed since the death of the alleged victim without any punishment for those responsible. He also states that the events occurred within the context of the domestic armed conflict and general insecurity prevailing in Colombia during the 1980s, specifically in the Department of Antioquia, and within the framework of a public policy of impunity.

5. The State maintains that that petition should be declared inadmissible, because it does not provide evidence of human rights violations. It states that indirect responsibility or lack of due diligence by

the State was not established, since it cannot be established that the State had prior knowledge of the existence of a risk or a lack of due diligence to prevent it. It further indicates that all domestic resources have not been exhausted, since the petition for direct reparation is still before the administrative court. Finally, it states that the petition was not timely, since the 18-year period between the events and the filing of the petition with the IACHR cannot be considered a reasonable time period. It indicates that only after 17 years since the events in question did the family of the alleged victim show an interest in learning about the status of the criminal investigation and raised a Right of Petition to the Attorney General's Office. Despite the fact that the family was aware of the Attorney General's investigation, since it participated in various proceedings conducted by the competent authorities.

6. Concerning the criminal investigation, it indicates that since December 13, 1989, the Guatapé Municipal Court of First Instance and other municipal criminal courts in Bogotá and Medellín had been advancing official proceedings to shed light on the events. Subsequently, on July 13, 1992, the now-extinct Sectional Prosecutor's Office of the Municipality of San Rafael assumed jurisdiction over the investigation and on November 11, 1992, refrained from launching an investigation and issued a resolution to desist, since it was impossible to determine the identity of those responsible for the death of the alleged victim. It states that on November 20, 1992, it ordered the provisional archiving of the case. It furthermore indicates that on December 27, 2011, the Antioquia Sectional Prosecutor's Office and the Office of the Attorney General established a Legal Committee that studied the possibility of reopening the investigation into the murder of the alleged victim, and based on the conclusions of the Committee, ordered that the preliminary investigation be reopened and evidence gathered. Hence, the investigation is still underway and while the alleged victim's family can legally become party to a civil suit, it has not done so of its own volition and not because of any action attributable to the State.

7. It adds that the Office of the Attorney General inadvertently erred in its 2007 response to the Right of Petition filed by the petitioners, answering that there was no record of the file on the preliminary investigation launched into the events outlined in the petition. It indicates that the confusion was due to problems encountered in locating the file; however, once the file on the criminal investigation was located, the case was reopened.

8. Finally, the State maintains that there is no evidence to support the petitioner's assertions about the alleged context of impunity prevailing in the Department of Antioquia in 1989 and that they have been made generically; thus, it requests the IACHR not to consider them in this case.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

9. The petitioner alleges that in this case, an exception to the rule that domestic remedies must be exhausted is applicable due to the excessive amount of time that has passed without obtaining justice. The State counters that the petition for direct reparation filed by the petitioner is pending adjudication and that the petition is not timely.

10. From the available information, it is seen that in December 1989, the Guatapé Criminal Court of First Instance launched a criminal investigation into the kidnapping and subsequent murder of Geminiano Gil Martínez, which was provisionally archived on November 20, 1992. Furthermore, on February 5, 2007, a Right of Petition was filed with the Office of the Attorney General of the Nation and the Antioquia Sectional Prosecutor's Office, requesting information about the investigation, receiving as a response that the competent authorities had no record of the case. On December 27, 2011, a Legal Committee of the Sectional Prosecutor's Office and the Office of the Attorney General ordered the reopening of the preliminary investigation. In addition, on March 26, 2009, the alleged victims filed a petition for direct reparation against the Judiciary and the Office of the Attorney General.

11. Based on the available information, the Commission observes that at the time of this report on admissibility, 27 years have passed since the events, without punishment of those responsible or clarification of the events surrounding the alleged kidnapping and subsequent murder of the alleged victim. According to the available information, a criminal investigation is pending, although the IACHR has no

evidence of concrete progress. In this regard, the Commission has previously ruled that whenever a crime is committed that is officially liable to prosecution, the State is obliged to initiate and advance the criminal process and that, in these cases, this action provides the ideal means by which to establish the facts, judge those responsible, and define the appropriate penal sanctions, as well as permitting other means of pecuniary reparation⁵. Therefore, the Commission considers the exception contained in Article 46.2.c with respect to the criminal investigation to be applicable.

12. Concerning the petition for direct reparation, the parties have indicated that final adjudication is still pending. In terms of the administrative court, the Commission reiterates that, for the purposes of determining the admissibility of a complaint of this nature, the petition for direct reparation is not a suitable remedy not is its exhaustion necessary, given that such action is not appropriate for providing comprehensive reparations and justice to the family⁶.

13. Concerning the timeliness of the petition, it should be borne in mind that in this case, while the petition was received on December 21, 2007 and the facts alleged in the complaint occurred on December 8, 1989, as of the date of this report, a criminal investigation in the initial phases is pending, as is a petition for direct reparation, and the petitioner alleges that the denial of justice has extended to the present. Thus, in view of the context and the fact that an exception to the aforementioned rule that domestic remedies in relation to the criminal investigation must be exhausted has been deemed applicable, the Commission deems that the petition was filed within a reasonable period of time and that the admissibility criterion related to the timeliness of the petition has been met.

VII. COLORABLE CLAIM

14. 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 finds that the petitioner's allegations about the scope of the supposed state responsibility in relation to the duty of prevention with respect to the alleged kidnapping and subsequent murder of the alleged victim; and the alleged unjustified delay in the criminal investigation could constitute a possible violation of the right contained in Articles 4 (life), 5 (physical integrity) and 7 (personal liberty) of the Convention, to the detriment to the alleged victim; and of the rights contained in Articles 5 (physical integrity), 8 (judicial guarantees), and 25 (judicial protection) of the Convention, in relation to Article 1.1, to the detriment of the family of the alleged victim.

VIII. DECISION

1. Declare this petition admissible with respect to Articles 4, 5, 7, 8, and 25 of the Convention, in relation to Article 1.1;
2. Notify the parties of this decision;
3. Continue to review the merits of the case; and
4. 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; Margarette May Macaulay, First Vice President; Esmeralda E. Arosemena Bernal de Troitño, Second Vice President; José de Jesús Orozco Henríquez, Paulo Vannuchi, and James L. Cavallaro, Commissioners.

⁵ IACHR, Report No. 16/06. Admissibility. Petition 619-01, Eugenio Sandoval, Argentina, March 2, 2006, para. 35.

⁶ IACHR, Report No. 13/17. Admissibility. Petition 1194-08, Javier Rodríguez Baena and Family. Colombia. January 27, 2017, para. 8.