

OEA/Ser.L/V/II.
Doc. 85
15 June 2018
Original: Spanish

REPORT No. 74/18
PETITION 1271-08
REPORT ON ADMISSIBILITY

PATRICIA RODRÍGUEZ RODRÍGUEZ ET AL.
COLOMBIA

Approved electronically by the Commission on June 15, 2018.

Cite as: IACHR, Report No. 74/18. Admissibility, Patricia Rodríguez et al., Colombia, June 15, 2018.



Organización de lo
Estados American

I. INFORMATION ABOUT THE PETITION

Petitioner:	Diego Armando Díaz Morales ¹
Alleged victim:	Patricia Rodríguez Rodríguez <i>et al.</i> ²
Respondent State:	Colombia ³
Rights invoked:	Articles 4 (life), 5 (humane treatment), 8 (fair trial), and 25 (judicial protection) of the American Convention on Human Rights ⁴

II. PROCEEDINGS BEFORE THE IACHR⁵

Filing of the petition:	October 29, 2008
Notification of the petition to the State:	January 14, 2014
State's first response:	May 16, 2014
Additional observations from the petitioner:	July 16, 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 deposited on July 31, 1973)

IV. 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, under the terms of Section V
Rights declared admissible	Articles 4 (life), 5 (humane treatment), 8 (fair trial), 19 (rights of the child), and 25 (judicial protection) of the American Convention, in connection with Article 1(1) thereof (obligation to respect rights)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, exception of Article 46(2)(c) of the Convention applies
Timeliness of the petition:	Yes, in the terms of Section VII

V. PRELIMINARY MATTER

1. The petition refers to 19 individuals alleged to be victims of the facts denounced therein. The Commission has determined that 15 of those 19 individuals are included in the list of victims in Case 11.227 (Patriotic Union case), on which the Commission adopted a report on the merits on December 5, 2017. Under Articles 47(d) of the Convention and 33(1)(b) of the IACHR Rules of Procedure, the Commission shall

¹ The petition was initially lodged by Nelson de Jesús Ríos Santamaría. However, in a note dated September 3, 2015, the IACHR was informed of his death and a change in the alleged victims' representation.

² Belén Rodríguez Villareal, Diana Rodríguez Rodríguez, and Eduar Andrés Rojas Ortiz.

³ Pursuant to Article 17(2)(a) of the Commission's Rules of Procedure, Commissioner Luis Ernesto Vargas Silva, a Colombian national, did not participate in the discussion or decision in this matter.

⁴ Hereinafter the "Convention," "American Convention," or "ACHR."

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

consider inadmissible any matter that is substantially the same as a petition pending or already examined and settled by the Commission. In light of the foregoing, and bearing in mind the identity of the individuals, the purpose of the petition, and the claim, the Commission finds that there is a duplication with respect to José Arcesio Rodríguez Hurtado, Yorlenis Rodríguez Rodríguez, Leonor Ortiz Cervera, Hernando de Jesús Gómez Restrepo, Gladiz Niño de Gómez, Neftalí Quimbaya Malagón, Soledad del Carmen Cárdenas Gil, Wilson Alexis Quimbaya Solórzano, Luis Alberto Duran Martínez, Adriana Ávila Alfaro, Sandra Ávila Alfaro, Hilmer de Jesús Patiño Arias, Lili Valencia Gómez, Jairo Duran Barreto, and Adán Afanador Nieto, and, therefore, that the matter is inadmissible in relation to them. Accordingly, this report refers exclusively to Patricia Rodríguez Rodríguez, Belén Rodríguez Villareal, Diana Rodríguez Rodríguez, and Eduar Andrés Rojas Ortiz.

VI. FACTS ALLEGED

2. The petitioners alleged that on July 3, 1988, the alleged victims, a group of 19 people, were attacked by armed civilians who fired rifles and fragmentation grenades at the vehicle in which they were traveling in the locality of Caño Sibao, Meta Department. They said that the purpose of the attack was to assassinate Manuel Salvador Mazo Correa, who was the mayor of the Municipality of Castillo and a member of the Patriotic Union, a political party. He was unscathed because he got out of the vehicle before it reached the place where the events occurred. They said that 18 people, among them boys and girls, were killed in the attack, and that the sole survivor was Patricia Rodríguez Rodríguez, who was eight years old at the time. They said that Patricia Rodríguez Rodríguez sustained six bullet wounds and was taken to the local hospital, where she was subsequently the target of threats and persecution because she was the only one to have survived. They said that the area where the events occurred was under the control of paramilitary groups and that the action was part of a campaign of extermination of members of the Patriotic Union party.

3. They alleged that the massacre was the result of a coordinated operation between paramilitary groups and the Army. They said that minutes after the incident occurred, the commander of the VII Brigade put out a communiqué blaming the events on the Revolutionary Armed Forces of Colombia (hereinafter FARC), in a bid to conceal the real culprits. They added that a military base and police station were located near where the massacre occurred but that the security forces did nothing to pursue and capture the perpetrators. They said that after the Justice and Peace Law was passed, a number of paramilitaries who demobilized admitted their part in the massacre, along with members of the Vargas 21st Battalion, including an army colonel and lieutenant.

4. They said that the incident was investigated by Villavicencio Fourth Public Order Court, and that on May 18, 1990, all the suspects, both those in detention and those declared absent, were acquitted. They said that the judge who acquitted them found that there was no evidence to demonstrate with absolute certainty that any of the accused had carried out or participated in the crimes, not even in relation to those who had confessed their involvement. They said that the Supreme Court of Justice confirmed the acquittal judgment.

5. The petitioners submitted that there had been more than 20 years of utter impunity, since, not only were all the accused acquitted, but also none of the military personnel suspected of involvement in the massacre, whether by deed or by omission, had been investigated. They also said that Patricia Rodríguez Rodríguez was never called to testify in the investigation and that the relatives of the alleged victims were unable to take part in the judicial proceedings because of the prevailing climate of persecution and fear of reprisal for anyone who reported crimes of that nature. They added that the record of the criminal proceeding had vanished and that no judicial or administrative institution had a copy of it. Finally, they said that the victims and their relatives had not received any reparation whatsoever.

6. The State, for its part, submitted that at the time of the events various armed groups had a presence in the Department of Meta and that State intelligence operations had concluded that the massacre was carried out by members of the FARC. The State said that the Army quickly took steps to capture those responsible.

7. The State also argued that the petitioners had not brought a colorable claim, since it considered that it could not be attributed responsibility for the massacre. It argued that Article 47(b) of the American Convention presupposes the violation of a protected right potentially attributable to the State. It argued that in this case, the acts were committed by third parties and, therefore, were not attributable to it, since there was no tolerance of or connivance with the perpetrators of the massacre. It added that it had also been unaware of a situation of real and immediate risk to the alleged victims and that it could not, therefore, be said to be responsible for any failure to adopt effective preventive measures. The State also held that the petition was not supported by any evidence and was manifestly groundless under the terms of Article 47(c) of the American Convention. In that regard, it said that what the petitioners sought was for the IACHR to act as a fourth instance by reviewing proceedings conducted in the domestic jurisdiction that enjoyed the presumption of legality and conformity with the Convention.

8. Finally, the State submitted in relation to the timeliness of the petition that the petitioners had not provided copies of the above-referenced decision of the Supreme Court of Justice or the necessary information to identify it. The State said that in spite of efforts made with the Office of the Rapporteur and the General Secretariat of the Supreme Court of Justice to obtain it, it had been unable to locate the judgment with the information provided by the petitioners. In that connection, it said that it reserved the right to respond to that submission in future observations.

VII. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

9. The petitioners argue that more than 20 years have passed and none of the participants, whether civilian or military, responsible for the alleged offense have yet been identified, investigated, or punished, nor has comprehensive reparation been provided to the alleged victims. The State, for its part, holds that, according to what the petitioners have indicated, the decision of the Supreme Court confirmed the acquittal of the accused and the petitioners have not furnished elements by which to pronounce on the timeliness of the petition.

10. In that regard, the Commission notes that although the parties both say that pronouncements have been made in the domestic jurisdiction, for the purposes of the exhaustion analysis, there would be a prima facie unjustified delay in the investigations, which would have made it impossible to identify and punish those responsible for the alleged offenses. Based on the foregoing and on the time elapsed since the events occurred, the IACHR concludes that the exception to the rule of prior exhaustion of domestic remedies envisaged at Article 46(2)(c) of the American Convention applies in this case. The Commission also concludes that, as said exception applies, the petition has been submitted within a reasonable period of time base on Article 3.3. of it Rules. This, given that although the events occurred on July 3, 1998 and the petition was filed on October 29, 2008, some of the alleged facts, such as the alleged absence of sanctions against those responsible, would extend to the present.

VIII. ANALYSIS OF COLORABLE CLAIM

11. The petitioners submit that the State is responsible for the massacre in which the alleged victims were murdered or wounded, and which was perpetrated by paramilitary groups with the participation, acquiescence, or complicity of State agents. The petitioners also say that the alleged offenses have remained unpunished. For its part, the State holds that the petition refers to deeds carried out exclusively by the FARC, whose conduct does not engage the State's responsibility.

12. In light of the factual and legal arguments set out by the parties and the nature of the matter before it, the Commission finds that, if proven, the alleged acquiescence or complicity of the State in the murder or attempted murder of the alleged victims, in addition to the alleged failure to investigate and punish the offenses could characterize possible violations of rights protected in Articles 4 (life), 8 (fair trial), and 25 (judicial protection) of the American Convention, taken in conjunction with Article 1(1) (obligation to respect rights) thereof. The facts would also seem to characterize a possible violation of Article 19 (rights of the child) of the American Convention in relation to the alleged victims who were minors at the time of the events.

13. Furthermore, with regard to the only surviving victim of the massacre, Patricia Rodríguez Rodríguez, if proven, the facts could amount to possible violations of Article 5 of the Convention in conjunction with Article 1(1) thereof. Finally, with respect to the relatives of the alleged victims, the alleged facts could characterize violations of rights recognized in Articles 5, 8, and 25 of the American Convention, in connection with Article 1(1) of said instrument.

IX. DECISION

1. To find the instant petition admissible in relation to Articles 4, 5, 8, 19, and 25 of the American Convention, in connection with Articles 1(1) thereof;

2. To find the instant petition inadmissible in relation to José Arcesio Rodríguez Hurtado, Yorlenis Rodríguez Rodríguez, Leonor Ortiz Cervera, Hernando de Jesús Gómez Restrepo, Gladiz Niño de Gómez, Neftalí Quimbaya Malagon, Soledad del Carmen Cárdenas Gil, Wilson Alexis Quimbaya Solorzano, Luis Alberto Duran Martínez, Adriana Ávila Alfaro, Sandra Ávila Alfaro, Hilmer de Jesús Patiño Arias, Lili Valencia Gómez, Jairo Duran Barreto, and Adán Afanador Nieto; and

3. To notify the parties of this decision, to continue with the analysis on the merits, and 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 on the 15th day of the month of June, 2018. (Signed): Margarette May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice President; Francisco José Eguiguren Praeli, Joel Hernández García, Antonia Urrejola, and Flávia Piovesan, Commissioners.