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REPORT No. 104/18

PETITION 221-08

REPORT ON ADMISSIBILITY

DELIS PALACIO HERRÓN *ET AL.* (BOJAYÁ MASSACRE)
COLOMBIA

Approved electronically by the Commission on September 20, 2018.

Cite as: IACHR, Report No. 104/18, Petition 221-08. Admissibility. Delis Palacio Herrón and Others (Bojayá Massacre). Colombia. September 20, 2018.



Organización de los
Estados Americanos

I. INFORMATION ABOUT THE PETITION

Petitioner:	Legal Center for Human Rights of Antioquia (<i>Centro Jurídico de Derechos Humanos de Antioquia</i>)
Alleged victim:	Delis Palacio Herrón <i>et al.</i> ¹
Respondent State:	Colombia ²
Rights invoked:	Articles 4 (life), 8 (right to a fair trial), and 25 (judicial protection) of the American Convention on Human Rights, ³ in conjunction with Article 1.1 thereof (obligation to respect rights)

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition:	February 25, 2008
Notification of the petition to the State:	March 7, 2014
State's first response:	December 24, 2014
Additional observations from the petitioner:	June 15, 2016

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)

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
Rights declared admissible:	Articles 4 (life), 5 (humane treatment), 8 (right to a fair trial), 19 (rights of the child), 22 (freedom of movement and residence), 24 (equality before the law), and 25 (judicial protection) of the American Convention, in conjunction with Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) thereof.
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, as indicated in section VI
Timeliness of the petition:	Yes, as indicated in section VI

¹ The petition involves 10 deceased persons, 4 injured persons, and 67 members of the alleged victims' families, as identified in the annex.

² In compliance with the terms of Article 17.2.a of the Commission's Rules of Procedure, Commissioner Luis Ernesto Vargas, a Colombian national, did not participate in discussing or deciding this case.

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

⁴ The observations submitted by each party were duly transmitted to the opposing party.

V. ALLEGED FACTS

1. This petition addresses the massacre that took place on May 2, 2002, in the town center of Cañolindo, located in Bellavista, the municipal seat of Bojayá, in the Atrato Medio area of the department of Chocó. The region is one of the country's most underprivileged and its population is predominantly Afro-Colombian. The petitioner contends that the authorities, in spite of being aware of an imminent massacre and its possible consequences, omitted to carry out actions to prevent numerous clashes between members of the Revolutionary Armed Forces of Colombia – People's Army (FARC-EP) and the United Self-Defense Forces of Colombia (the Self-Defense Forces or AUC). It states that starting in 1996, the Bojayá area was the site of constant fighting, in spite of which in 2000 the State ordered the withdrawal of all its police officers from the community of Bellavista and other neighboring areas, leaving the population unprotected and in a state of extreme vulnerability. It claims that more than 79 people were killed in the massacre, 40 of whom were children, and that many others were seriously injured, and that it additionally led to the mass displacement of the affected population.

2. The petitioner states that in the morning of May 1, 2002, large-scale fighting began between the Self-Defense Forces and the FARC-EP in Vigía del Fuerte, Antioquia, and Bojayá, Chocó. It reports that the clashes intensified over the course of the next day, as a result of which the civilian population sought refuge in the Cañolindo town center church and the members of the AUC took up positions behind it. In that context, the petitioner indicates that at 10:45 a.m. on May 2, the FARC-EP threw a gas tank (cylinder bomb) at the AUC, which directly struck the church and killed more than 70 civilians and seriously injured numerous survivors. It adds that in the aftermath of these serious incidents, as certified by the records of the Social Solidarity Network, between May 3 and 12, 2002, more than 1,971 local inhabitants were displaced, 49.8% of whom were women and 54% were aged fewer than 18.

3. The petitioner contends that over the course of the previous days the State's authorities were aware of the possibility of a massacre, but that they took no steps to protect the communities. It reports that on April 20, 2002, the mayor of Darién municipality informed the Intelligence Group of the Administrative Security Department (DAS) that members of the Self-Defense Forces had killed at least five people and ransacked local businesses prior to conducting an armed incursion into the municipalities of Vigía del Fuerte and Bojayá. Thus, the petitioner alleges acquiescence in that on April 21, 2002, the armed forces allowed a river-borne incursion by more than 11 vessels carrying around two hundred heavily armed paramilitaries from Punta de Turbo, Antioquia, to Bojayá. It contends that the permanent checkpoints of the police and armed forces failed to conduct the obligatory controls of persons traveling through the area.

4. The petitioner also indicates that the facts were conveyed to various government authorities by the Office of the United Nations High Commissioner for Human Rights in Colombia, in reports and communications sent on April 21, 22, and 23, 2002 that expressly requested the urgent adoption of preventive measures to protect the population from the actions of armed groups in Bellavista. It adds that on April 24, 2002, the Office of the People's Defender issued a first-level early warning regarding the serious and imminent danger facing the population of Bojayá on account of some 300 members of the AUC who were advancing in order to dispute control over the territory with the FARC. That alert described, among the potential risks, the possibility of a massacre of the civilian population, their forced displacement, and a shortage of supplies. The petitioner therefore maintains that on account of its geographical and material dimensions, the risk should have been clearly foreseeable by the military, police, and government authorities, including the Armed Forces Command, the Command of the First Division of the Army, the General Directorate of Police, the Antioquia Departmental Police Command, the Chocó and Antioquia departmental governments, the Chocó departmental Inspector General, the DAS, the Interior and Defense ministers, the Social Solidarity Network, and the Vice President of the Republic.

5. Furthermore, the petitioner contends that the facts that led to the massacre and subsequent displacements remain unpunished. The petitioner narrates that following the massacre, the Attorney General of the Nation opened a criminal investigation brought by the Thirty-seventh Specialized Prosecutor of Medellín who, on March 2, 2005, formalized accusations against several members of the FARC Secretariat for masterminding a number of crimes, including those committed against the people of Bojayá. The information

provided indicates that on August 20, 2009, the Superior Court of Quibdó upheld the prison term of 36 and a half years handed down to one of the accused for a series of crimes including rebellion, murder, and criminal wounding. However, the petitioner maintains that the charges brought against the FARC leaders and the punishment of one of the material participants points to the existence of a fragmented and inefficient investigation that ensured impunity for the perpetrators of the massacre and the masterminds behind it, and particularly for the members of the State's institutions that allowed the massacre to take place.

6. The petitioner also reports that several lawsuits were brought before disciplinary and administrative venues. Regarding the former, it states that on July 8, 2003, the Office of the Inspector General of the Nation (PGN) issued a series of charges against a number of military authorities from Infantry Battalion No. 12 for disciplinary offenses in failing to take steps to protect the population. It claims, however, that none of them were effectively investigated or punished. Regarding efforts to secure reparations, the petitioner indicates that in April 2004, relatives of more than 30 of the victims killed in the massacre lodged a suit for direct redress, which was resolved in their favor at the first instance by the Fifth Administrative Relief Circuit Court of Quibdó on July 30, 2013. That judgment was upheld by the Administrative Tribunal of Chocó on March 5, 2015, which found the State, the Ministry of Defense, the Navy, the Army, and the National Police responsible for failing to meet their obligation of protecting, overseeing, and ensuring the security of the population of Bojayá. The judgment ordered the payment of compensation after establishing a massive and systematic violation of human rights and further ordered the reopening of the criminal investigation into the FARC-EP and AUC, and into military and state authorities, in order to determine the extent of their responsibility. The petitioner reports that the judgment has not yet been made final, because the Ministry of Defense lodged a protection action against the reparation measures ordered.

7. In contrast, the State maintains that the facts do not tend to establish human rights violations, in that it cannot be assigned responsibility for the massacre since it was carried out by the FARC. It further maintains there is no evidence of a situation of state tolerance or acquiescence and that, on the contrary, public policies have been pursued for the demobilization and dismantling of the illegal armed groups operating in Colombia. It contends that it fulfilled its obligation of protecting the population and ensuring their rights by verifying the information contained in the early-warning information bulletin and by carrying out, in less than 24 hours, the operation that ordered the deployment of troops to the area of the massacre.

8. It also notes that the responsibility of state agents was the subject of a timely investigation and that no such participation was identified. It reports that following the incident, the 101st Military Criminal Investigating Court opened an investigation into the possible crime of "failing to provide special support," in which it was decided that no criminal proceedings would be pursued. It adds that the Navy conducted a disciplinary investigation, which was shelved on March 3, 2003. It further states that the Office of the Inspector General of the Nation opened a preliminary investigation into several members of Infantry Battalion No. 12, with an acquittal handed down on November 16, 2004. The State contends that those proceedings have been resolved and constitute *res judicata*.

9. Moreover, the State maintains that the remedies available under domestic jurisdiction have not been exhausted. Regarding the actions for direct redress, Colombia states that numerous actions have been simultaneously brought in connection with the incident and the alleged victims, and that many of these have not yet been resolved. Regarding the criminal investigation, it indicates that the Thirty-seventh Specialized Prosecutor's Office of the Directorate of Human Rights and International Humanitarian Law is pursuing investigation No. 1215. It contends that although it is still at the preliminary stage, judgments have been handed down in the criminal proceedings and 18 FARC members have been convicted. Colombia notes that the investigation has produced no evidence to incriminate members of the Self-Defense Forces.

10. In conclusion, the State contends that it has a legal system that ensures access to investigation, prosecution, punishment, and comprehensive redress, and that as a result, suits for direct redress and criminal proceedings are ideal mechanisms that the alleged victims have still not exhausted. It holds that the duration of these proceedings cannot be used to justify an exemption to the exhaustion rule, on

account of the specific characteristics of the context, the complexity of the crimes committed, and the continuing progress underway in the investigations.

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

11. The petitioner contends that more than a decade after the massacre in Bojayá, the criminal proceedings remain at the preliminary stage and the authorities have not yet cleared up the facts or identified the persons responsible for the deaths, injuries, and internal displacements. It claims that the judicial inaction and delays on the part of the authorities have guaranteed impunity for the perpetrators. In turn, the State maintains that the domestic remedies have not been exhausted in that the criminal investigations opened by the prosecution service remain ongoing and that, on account of the complexity of the matter, the exceptions set out in Article 46.2 of the Convention are not applicable.

12. The precedents set by the IACHR maintain that whenever a publicly actionable offense is allegedly committed, the State is obliged to institute and pursue criminal proceedings and that this is the suitable channel to clarify the facts, prosecute the responsible parties, establish appropriate criminal penalties, and make possible other means of financial reparation. In addition, as a general rule, the Commission has established that a criminal investigation must be carried out promptly to protect the interests of the victims, to preserve the evidence, and also to safeguard the rights of all persons deemed suspects in the investigation.⁵ From the information furnished by the parties, although some members of the FARC have reportedly been convicted, it appears that the investigation intended to clear up the incident remains at a preliminary stage and that the identities of all those responsible have not been determined. Consequently, in light of the characteristics of the petition and the time that has passed since the incidents described in the claim, the Commission concludes that there has been a delay in the criminal investigation and that, consequently, the exception to the exhaustion of domestic remedies rule provided for in Article 46.2.c of the Convention is applicable.

13. Regarding the timeliness of the petition, the Commission notes that the filing was received on February 25, 2008, the alleged facts began on May 2, 2002, and their effects in terms of the lack of judicial results extend into the present. Consequently, considering the context and characteristics of this petition, the Commission believes that it was lodged within a reasonable time and that the admissibility requirement regarding the timeliness of the petition must be deemed met.

VII. ANALYSIS OF COLORABLE CLAIM

14. In light of the elements of fact and law set out by the parties and considering the nature of the matter placed before it, the Commission believes that the alleged failure to prevent the massacre that occurred in Bojayá—an area with a predominantly Afro-Colombian population—and the subsequent displacement of the alleged victims, including children, as the result of the actions of illegal armed groups with the acquiescence of the State, together with the absence of an effective criminal investigation into all the possible perpetrators of the massacre and the masterminds behind it, could tend to establish possible violations of the rights protected in Articles 4 (life), 5 (humane treatment), 8 (right to a fair trial), 19 (rights of the child), 22 (freedom of movement and residence), 24 (equality before the law), and 25 (judicial protection) of the American Convention, in conjunction with Articles 1.1 and 2 thereof, with respect to the alleged victims and their families.

⁵ IACHR, Report No. 113/17, Petition 1141-07, Admissibility, Alfredo Manuel Martínez Meza and others. Colombia. September 7, 2017, para. 24.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 4, 5, 8, 19, 22, 24, and 25 of the American Convention, in conjunction with Articles 1.1 and 2 thereof; and,

2. 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 20th day of the month of September, 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 Flavia Piovesan, Commissioners.

Annex
LIST OF ALLEGED VICTIMS AND THEIR RELATIVES

1. Delis Palacio Herrón (injured)

Relatives:

- 1) Manuel Ciriaco Lescano Correa (life partner)
- 2) Luis Hernán Palacios Asprilla (father)
- 3) Elvia Tulia Herrón (mother)
- 4) Erna Palacios Herrón (sister)
- 5) Jhojary Palacios Herrón (brother)
- 6) Jhonier Palacios Herrón (brother)
- 7) Giovanni Palacios Herrón (brother)
- 8) Yanelvis Palacios Mosquera (sister)
- 9) Yadiancy Palacios Mosquera (sister)
- 10) Verni Palacios Herrón (sister)
- 11) Yasnice Palacios Herrón (sister)
- 12) Luz Nelly Palacios Herrón (sister)
- 13) Yanny Maria Palacios Mosquera (sister)
- 14) Yaminson Palacios Mosquera (brother)
- 15) Paulo Palacios Orejuela (brother)
- 16) Eulogio Palacios Orejuela (brother)

2. Yudelys Lescano Palacios (injured)

3. Benjamín Antonio Palacios Zúñiga (killed)

Relatives:

- 17) Elvia Tulia Errón Zúñiga (sister)

4. Eladio Moreno Torres (killed)

Relatives:

- 18) Dora Maria Palacios Blandon (wife)
- 19) Dorila Moreno Palacios (daughter)
- 20) Daniel Moreno Palacios (son)
- 21) Josue Moreno Palacios (son)
- 22) Hosnay Moreno Palacios (son)
- 23) Edgar Antonio Moreno Palacios (son)
- 24) Carlina Moreno Palacios (daughter)
- 25) Regino Moreno Mosquera (father)
- 26) Luis Anges Palacios Torres (brother)
- 27) Clara Inés Palacios Torres (sister)
- 28) Carlina Torres Mosquera (sister)
- 29) Modesto Palacios Torres (brother)
- 30) Julio Arboleda Torres (brother)
- 31) Tarsilo Moreno Ríos (brother)
- 32) Matias Moreno Ríos (brother)

5. Maria Rosa Mosquera Cordoba (killed)

Relatives:

- 33) Amalia Murillo Mosquera (mother)
- 34) Walter Enrique Valencia Murillo (brother)

- 35) Luis Manuel Yanes Murillo (brother)
- 36) Rafael Antonio Yanes Murillo (brother)
- 37) Martha Cecilia Yanes Murillo (sister)
- 38) Piedad del Carmen Yanes Murillo (sister)
- 39) Maria Nuris Palacios Largacha (sister)
- 40) Pelegrina Zuñiga Murillo (sister)

6. Diana Milena Mena Mosquera (killed)

7. Ana Cecilia Mena Mosquera (killed)

8. Walter Mena Mosquera (killed)

9. Jenny Perea Izquierda (killed)

Relatives:

- 41) Abraham Perea Murillo (father)
- 42) Juan David Perea Hinostriza (brother)
- 43) Mauricio Perea Hinostriza (brother)
- 44) Seleny Perea Izquierda (sister)

10. Isabel Martínez Izquierda (killed)

11. Willington Mosquera Palacios (killed)

Relatives :

- 45) Yon Jairo Mosquera Palacios (brother)

12. Deyner Urrutia Mosquera (injured)

Relatives :

- 46) Jose Dioselino Urrutia Reyes (father)
- 47) Nelia Mosquera Mosquera (stepmother)
- 48) Joegelino Urrutia Moquera (brother)
- 49) Diocelina Urrutia Moquera (brother)
- 50) Rosney Urrutia Moquera (brother)
- 51) Yasledi Urrutia Moquera (brother)
- 52) Kevin Andres Urrutia Moquera (brother)
- 53) Rafael Urrutia Moquera (brother)
- 54) Merlin Urrutia Moquera (brother)
- 55) Martha Lucia Urrutia Moquera (brother)
- 56) Yamile Urrutia Moquera (brother)
- 57) Heiler Urrutia Moquera (brother)
- 58) Melkin Urrutia Moquera (brother)
- 59) Efren Urrutia Moquera (brother)
- 60) Hector Urrutia Moquera (brother)
- 61) Yeison Urrutia Moquera (brother)
- 62) Rosmira Urrutia Moquera (brother)
- 63) Enith Urrutia Moquera (brother)
- 64) Hernestina Urrutia Cordoba (brother)

13. Estibinson Palacios Caicedo (killed)

14. Flora Yolita Palacios Caicedo (injured)

Relatives:

- 65) Ana Beatriz Caicedo Cuesta (mother)
- 66) Ana Lucia Palacios Caicedo (sister)
- 67) Vilma Cecilia Palacios Caicedo (sister)