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REPORT No. 3/19
PETITION 1027-07
REPORT ON ADMISSIBILITY

PLAYÓN DE OROZCO MASSACRE
COLOMBIA

Approved electronically by the Commission on January 3, 2019.

Cite as: IACHR, Report No. 3/19. Petition 1027-07. Admissibility. Playón de Orozco Massacre. Colombia. January 3, 2019.



I. INFORMATION ABOUT THE PETITION

Petitioner:	Nelson Javier de Lavallo Restrepo
Alleged victim:	Ramón García Orozco and others ¹
Respondent State:	Colombia ²
Rights invoked:	Articles 4 (right to life), 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), 21 (right to property), 22 (freedom of movement and residence) and 25 (right to judicial protection) of the American Convention on Human Rights ³

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition:	August 7, 2007
Notification of the petition to the State:	October 5, 2011
State's first response:	April 26, 2016
Additional observations from the petitioner:	December 15 and 29, 2011; January 17, and August 20, 2012; April 25, 2013; August 1 and October 9, 2017 ⁵
Additional observations from the State:	March 27, 2015

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 (deposit of instrument made on July 31, 1973) and Inter-American Convention to Prevent and Punish Torture ⁶ (deposit of instrument made on January 19, 1999)

¹ The petitioner identifies 1,960 alleged victims, set out in the document annexed. The petitioner submitted a list of 1,932 alleged victims, including persons whose houses were burnt and who were victims of internal displacement. The petitioner also identifies separately 23 victims (in one list), and 28 (in a list with an additional 5 individuals) who were executed and do not appear in the list of 1,932 individuals referred to above.

² In accordance with the provisions of Article 17.2.a of the Commission's Rules of Procedure, Commissioner Luis Ernesto Vargas Silva, of Colombian nationality, did not participate in either the discussion or decision in the present case.

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

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

⁵ On January 17, 2012, the petitioner expressed interest in a friendly settlement of the claim. The State responded on March 27, 2015, and on June 1, 2017, the petitioner indicated that he was no longer interested in continuing with the friendly settlement.

⁶ Hereinafter the "IACPPT"

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 (right to life), 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), 17 (rights of the family), 19 (rights of the child), 21 (right to property), 22 (freedom of movement and residence), 25 (right to judicial protection) and 26 (progressive development) of the American Convention, in relation to its Articles 1.1 and 2 and Articles 1, 6 and 8 of the IACPPT
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, in the terms of Section VI
Timeliness of the petition:	Yes, in the terms of Section VI

V. FACTS ALLEGED

1. The petitioner argues that during 1999, paramilitary groups belonging to the United Self-Defense Groups of Colombia (hereinafter "AUC") took control of several areas of the Municipality of El Piñón, Department of Magdalena. He indicates that they made frequent incursions into the towns of the region looking for members of and/or possible collaborators with the Revolutionary Armed Forces of Colombia (hereinafter "FARC"). Thus, he states that on January 9, 1999, a paramilitary operation took place in the town of Playón de Orozco, resulting in the torture and massacre of some of the alleged victims and the subsequent displacement of the others.

2. He states that on January 9, around noon, a large group of heavily armed paramilitaries surrounded the town and its main access points, forcing all of its inhabitants to head towards the small chapel located in the main square. He indicates that they forced the residents out of their homes with threats and beatings. When they were gathered together, they proceeded to separate the children from their parents and to divide the men from the women.

3. He points out that they initially separated Ramón García Orozco and Eliecer de la Cruz, and subsequently, they did the same with approximately 25 more individuals while insulting, beating and threatening them. He indicates that the other inhabitants were locked in the chapel and forced to remain there, while the paramilitaries beat, tortured, mutilated and killed the individuals separated from the group. He indicates that before leaving, the paramilitaries warned that they would do the same in other districts and then looted properties and burned 19 houses, plots and small crop fields.

4. He maintains that when the inhabitants locked in the chapel managed to get out, they panicked at the chaos the paramilitary group had caused and, fearing that they would return, many ran to hide in the forest. He alleges that due to the terror caused, some families chose to take the bodies of their loved ones to neighboring villages a few days later. Those lacking economic means had to bury their dead on the spot.

5. He confirms that as a result of the violent acts and the very precise identification made by the paramilitaries of their families, the surviving residents of Playón de Orozco and some nearby communities were forced into becoming displaced persons. He notes that 243 families of approximately 1,932 individuals, mostly children, abandoned their homes due to these threats. He argues that as from January 13, 1999, this internal displacement was registered by the Ombudsperson's Office of Magdalena and by the Municipal Ombudsperson of Pivijay on January 14, 1999. He also indicates that due to the paramilitary incursions in the area, on January 20, 1999, the Technical Investigation Corps of the Prosecutor's Office requested that the Governor of the Department of Magdalena engage the presence of the security forces as a

preventive measures. He argues that despite these requests, the situation of insecurity continued without efforts being made to protect the population.

6. The petitioner argues that a state of impunity persists with respect to these events, despite coming to the immediate attention of the National Police and that some of the alleged victims who had taken refuge in the town of Pivijay met with police officers on January 10, 1999. He states that the Police visited Playón de Orozco, and confirmed the destruction and that some bodies were still in the streets. Thus, on January 12, 1999, the Deputy Prosecutor's Office before the Regional Judges of Santa Marta initiated the investigation process. However, he alleges that it was ineffective, because despite the alleged victims' identifying several paramilitaries and the authorities' linking them with members of the Army, they have not been tried or punished to date.

7. He points out that 286 family groups filed *tutela* actions against the Administrative Department for Social Prosperity requesting compensation for the forced displacement they suffered. He indicates that after hearings with different judicial authorities in the first and second instance, these actions were consolidated and on April 24, 2013, the Constitutional Court issued judgment 254 of 2013, granting administrative reparation to the alleged victims. However, he points out that to date the state authorities have failed to enforce this decision and it is pending compliance. On the other hand, he indicates that 853 alleged victims filed a claim for direct reparation before the Seventh Administrative Court of the Santa Marta Circuit that has not been resolved.

8. For its part, the State argues that the petition is inadmissible because domestic remedies were not exhausted. In relation to the criminal proceedings, it maintains that the events are under investigation by the ordinary justice and transitional justice within the framework of the Justice and Peace Law. It points out that since September 22, 2011, the case has been brought to the attention of the Court of Justice and Peace of Barranquilla. It argues that preventive detention was ordered against four individuals after investigations carried out by the Office of the Prosecutor and depositions from some demobilized paramilitaries. It states that because of the complexity of the events and the number of victims, there has been no unwarranted delay in justice, as the judicial authorities are complying with the procedures for investigation, prosecution and punishment in a diligent manner.

9. In addition, the State indicates that the 14th Military Criminal Court initiated a preliminary investigation into the events and that on April 8, 1999 - when it found no evidence of actions or omissions by the Armed Forces - it decided not to initiate proceedings against the military personnel. It indicates that disciplinary proceedings were initiated and archived on March 19, 1999, for being groundless.

10. The State maintains that the petitioner has failed to resort to the contentious-administrative jurisdiction through the action of direct reparation, the effective mechanism to determine the responsibility of the State and to obtain payment of compensation. It notes that some of the alleged victims filed a request for conciliation before the First Judicial Procurator for Administrative Affairs of Santa Marta, which is pending resolution.

11. Additionally, the State maintains that the events presented in the petition fail to characterize violations of human rights, since the actions in Playón de Orozco were perpetrated by private third parties, apparently members of the AUC. It highlights that the petitioner has not demonstrated that the State authorities were aware of a risk in the area or their participation in the events.

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

12. The petitioner maintains that the investigations are still pending and none of the perpetrators has been punished. He argues that, as a consequence, there is an unjustified delay in justice. For its part, the State indicates that remedies have not been exhausted, since the criminal proceedings are ongoing and, in view of the complexity of the case, there is no unjustified delay.

13. The Commission has indicated that, as a general rule, a criminal investigation must be undertaken promptly to protect the interests of the victims, preserve the evidence and even safeguard the rights of any person deemed a suspect in the context of the investigation.⁷ The information provided by the parties shows that the investigation aimed at clarifying the events remains open, without identification of the perpetrators or instigators of the events of this petition. Therefore, given the characteristics of the petition and the lapse of time since the facts of the complaint, the Commission considers that the exception provided for in Article 46.2.c of the Convention is applicable. In addition, the Commission considers that the petition was filed within a reasonable period of time and that the admissibility requirement regarding the filing period must be deemed satisfied.

14. On the other hand, the IACHR recalls that, for purposes of determining the admissibility of a claim of this nature, the action for direct reparation does not constitute an appropriate remedy and its exhaustion is not necessary, given that it is not adequate to provide comprehensive reparation and justice to the victims' families.⁸ Notwithstanding the above, although in the present case the criminal proceedings are the appropriate remedy for the investigation into the events, the petitioner also alleges specific violations within the framework of the claim for direct reparation and non-compliance with the outcome of the *tutela* action filed to seek reparation for the forced displacement. Therefore, given the connection between both proceedings, the Commission notes that domestic remedies for the contentious-administrative jurisdiction were exhausted with judgment 254 of 2013 issued on April 24, 2013, by the Constitutional Court.

VII. ANALYSIS OF COLORABLE CLAIM

15. In view of the factual and legal elements presented by the parties and the nature of the matter brought to its attention, the Commission considers that the alleged illegal detentions, torture and extrajudicial executions of the alleged victims, as well as the alleged effects on the personal integrity and the lack of effective judicial protection of their next of kin, caused by the massacre perpetrated in Playón de Orozco, could characterize possible violations of Articles 4 (right to life), 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention in relation to its Articles 1.1 and 2; and Article 7 of the Convention of Belém do Pará, as well as Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, due to the alleged lack of an investigation, to the detriment of the alleged victims and their families.

16. It also considers that the alleged illegal detentions and threats against the inhabitants; the destruction, arson and looting of their property; the intimidation by illegal armed groups in the area; and the alleged acquiescence and lack of preventive measures by the State, as well as the consequent internal displacement of the inhabitants of Playón de Orozco and other neighboring towns, and the lack of judicial protection in connection with the events on January 9, 1999, could characterize violations of Articles 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), 17 (rights to the family), 19 (rights of the child), 21 (right to property), 22 (freedom of movement and residence), 25 (right to judicial protection) and 26 (progressive development) of the American Convention in relation to Articles 1.1 and 2 of the same instrument, to the prejudice of the alleged victims and their next of kin.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 4, 5, 7, 8, 17, 19, 22, 25 and 26 in conjunction with its Articles 1.1 and 2 of the American Convention and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture;

⁷ IACHR, Report No.54/15, Petition 467/97, Admissibility. Campamento Massacre, Colombia, October 17, 2015, para. 33.

⁸ IACHR, Report N° 107/17. Petition 535-07. Admissibility. Vitelio Capera Cruz and family. Colombia. September 7, 2017, para.9.

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 3rd day of the month of January, 2019. (Signed): Margarete 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.

Annex 1
List of Alleged Victims

Alleged Deceased Victims

1. Ramón García Orozco
2. Eliecer de la Cruz
3. Andrés Alberto Polo Villa
4. Orlando Polo Villa
5. Lascario Miguel de la Hoz Pabón
6. Edgardo Rafael de la Hoz Pabón
7. Luis Alberto de la Hoz Pabón
8. Diomedes José Barrios Mozo
9. Ubaldino Ospina Carranza
10. Hidal Antonio Arévalo Gonzalez
11. Carmen Elena Rudas Cantillo
12. Ángel Cantillo Moya
13. Álvaro de la Cruz Monzón
14. Humberto Rafael Romo Barrios
15. Julio César Mozo Ortiz
16. José Agustín Palacin Mendoza
17. Luis José Bocanegra Barrios
18. Eduardo Rafael Bocanegra Barrios
19. Manuel Antonio Villa García
20. Luis Alberto Camacho de Ávila
21. José Antonio Arévalo Aldanada
22. Julio César Pabón Miranda
23. José Calvo González
24. Yolanda Palacin
25. Humberto Enrique Cervantes Mozo
26. Hansel Rafael Rodríguez Carpio
27. Jaime Alberto Rojano Lozano
28. Andrés José Salas Romo

Annex 2

List provided by the petitioner including the 1,932 alleged victims affected by the arson attacks on the property and/or forced displacement