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REPORT No. 47/19
PETITION 1011-09
REPORT ON ADMISSIBILITY

ARTURO ALONSO TORO VALENCIA AND FAMILY
COLOMBIA

Approved electronically by the Commission on April 24, 2019.

Cite as: IACHR, Report No. 47/19, Petition 1011-09. Admissibility. Arturo Alonso Toro Valencia and Family. Colombia. April 24, 2019.



I. INFORMATION ABOUT THE PETITION

Petitioner:	Oscar Dario Villegas Posada
Alleged victim:	Arturo Alonso Toro Valencia and family ¹
Respondent State:	Colombia ²
Rights invoked:	Articles 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (judicial guarantees), 11 (honor and dignity), 19 (rights of the child), and 25 (judicial protection) of the American Convention on Human Rights ³ and Articles I (life, liberty, and personal security), V (honor, reputation, and private and family life), XI (preservation of health and wellbeing), and XVIII (fair trial) of the American Declaration of the Rights and Duties of Man. ⁴

II. PROCEEDINGS BEFORE THE IACHR⁵

Filing of the petition:	August 12, 2009
Notification of the petition to the State:	August 2, 2010
State's first response:	February 2, 2011
Additional observations from the petitioner:	March 4, 2011
Additional observations from the State:	April 13, 2011 and March 8, 2019
Notification regarding the possible archiving of the petition	March 27, 2017
Petitioner's response to the notification regarding the possible archiving of the petition:	April 6, 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 (deposited instrument of ratification 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
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¹ The list of the alleged victims presented by the petitioner is included in the attachment.

² In keeping with Article 17(2)(a) of the Commission's Rules of Procedure, Commissioner Luis Ernesto Vargas Silva, of Colombian nationality, did not participate in the debate or decision in the instant matter.

³ Hereinafter "Convention" or "American Convention."

⁴ Hereinafter "American Declaration."

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

Rights declared admissible	Articles 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (judicial guarantees), 11 (honor and dignity), 17 (protection of the family), 18 (right to a name), 19 (rights of the child), and 25 (judicial protection) of the American Convention in relation to its Articles 1(1) (obligation to respect the rights) and 2 (obligation to adopt provisions of domestic law)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, the exceptions at Article 46(2)(c) of the Convention applies.
Timeliness of the petition:	Yes, in the terms of section VI

V. ALLEGED FACTS

1. The petitioner states that on February 28, 1997 Arturo Alonso Toro Valencia (hereinafter also “the alleged victim”) was extrajudicially executed in the municipality of San José del Nus (Antioquia), at the hands of agents of the National Police.

2. He reports that on February 28, an unknown person approached the parish priest of the municipality of San José del Nus demanding that he turn over to him the keys of the “dump truck” (“*volqueta*”) of the municipal government, at which time the priest explained that the vehicle had been donated exclusively for use in public works. When the person insisted, the priest explained to him that the driver of the vehicle (the alleged victim) had the keys; thus the person went to the residence of Arturo Alonso Toro Valencia. He adduces that the person forced the alleged victim to drive the vehicle, which they used to carry out an attack on the civilian population in the municipality of Vegachí, department of Antioquia, which resulted in six persons killed. He reports that subsequently the group went to the municipality of Yalí, where they were intercepted by a police command, at which time the alleged victim jumped out of the vehicle, shirtless, and with his hands held up high, trying to seek the agents’ protection.

3. He alleges that even though the alleged victim identified and reported on his circumstances, one of the police officers shot his standard-issue weapon, killing him. Immediately thereafter there was a confrontation between the purported paramilitary group and the National Police agents, resulting in three persons killed, including the alleged victim. He adduces the responsibility of the State for the disproportionate action of the security agency, on not effectively protecting the alleged victim, a civilian, who sought their protection and was unarmed and defenseless prior to being shot. The petitioner indicates that the news of the alleged victim’s death spread and he was said to have been a member of the illegal group.

4. He argues that the alleged victim lived in a zone affected by the armed conflict, as a result of which he and the peasants and workers who lived there were exposed to ongoing risks due to the activity of illegal groups. He adduces that while it is true that the armed forces attempted to take measures to regain calm in the zone, and despite the fact that there was a station with permanent agents, the facts that subversives had entered the urban center is a responsibility of the State, as it failed in its duty to ensure the rights of the alleged victim, and to ensure the security of the zone and its inhabitants.

5. Various investigations were initiated into the facts described. As regards the criminal action, petitioner maintains that the competent offices did not diligently investigate the facts. He indicates that the Unit of the Prosecutor Delegate before the Criminal Judges of the Specialized Circuit of Medellín ruled “to suspend provisionally the ... investigative activities, considering that based on the foregoing considerations and the content of Article 326 of the Code of Criminal Procedure, one year has elapsed ... since it was instituted ... without there being any possibility, at least for the time being, of reaching the opening of the investigation [*la apertura de instrucción*] or the options indicated in Article 327 of the Code of Criminal Procedure.”

6. He reports that Arturo Toro Valencia’s brother lodged a disciplinary complaint, which was archived by a decision handed down on May 21, 1999, by the Office of the Procurator General of the Nation, on considering that “... one should accord credibility to those who were operating lawfully, in a situation of

great risk, for we insist, they acted in defense of the population and the death of the youth ... occurred in a fortuitous situation, unforeseeable, which does not constitute a disciplinary breach." Nonetheless, the petitioner adduces that based on the autopsy report in the record, a notation is made that the orifice where the projectile that caused the alleged victim's death entered indicates it was fired from not more than one meter, which means that there was no such exchange of fire; this evidence gives credibility to the statements of witnesses and impartial third parties who indicated that even though the civilian identified himself as such, and indicated that he was acting under duress, he was shot by the agents of the National Police, and in so doing initiating the confrontation.

7. On June 26, 1997, the alleged victim's family members filed an action for direct reparation against the Ministry of Defense/National Police. On March 30, 2001, the Fifth Chamber for Decision of the Chamber for Reducing Backlog of the Administrative Tribunal of Antioquia-Caldas-Chocó found the Ministry of Defense/National Police administratively liable for the harm caused to the family members of Arturo Toro Valencia. Petitioner maintains, however, that the reparation did not include the alleged victim's minor child because the Tribunal considered that said relationship was not shown. He explains that at the time the child was born the place of residence of the alleged victim, the baby, and his mother was the municipality of San José del Nus, where there was no notary, such that to be able to register him it was necessary to go to the municipality of San Roque, which the alleged victim was unable to do, since he was killed. The alleged victim's son was 11 days old at the time of the facts and was registered with the mother's last name so that she could represent him. In response to this decision a cross appeal was filed to analyze the matter of the child's rights on appeal. This action was admitted by the Chamber of Contentious-Administrative Matters of the Council of State on October 29, 2002; nonetheless, as of 2009 the Council of State had not issued its decision.

8. Finally, the petitioner adduces the responsibility of the Colombian State for the disproportionate action of the security agency, on not effectively protecting the alleged victim, a civilian who sought their protection and was unarmed and defenseless, prior to him being shot by a firearm, killing him. Petitioner also adduces failure to conduct an exhaustive and diligent investigation to clarify the alleged victim's death and the lack of full reparation for his family members, particularly in respect of the child Alonso Ruiz Córdoba, son of the alleged victim.

9. The State, for its part, asks that the petition be found inadmissible for failure to exhaust domestic remedies in relation to the criminal proceeding, given that at this time a criminal investigation is continuing in the regular jurisdiction, which is in the preliminary stage, and that the investigations are being conducted diligently and in a reasonable time given the complexity of the case. It also asks that the petition be found inadmissible in relation to the claims of reparation, since the Commission would be sitting as a court of fourth instance.

10. With respect to the investigations, the State says that on March 1, 1997, the Commander of the police station of Yalí reported what happened on February 28, 1997, and that in pursuing the investigations both the autopsy reports and the statements given as per the law were taken into account. The State indicates that in the context of the investigation, the Office of the 150th Military Criminal Prosecutor decided to cease all proceedings against the state agents, a decision that was upheld by the Office of the Third Prosecutor (Fiscalía Tercera) before the Superior Military Tribunal. The investigation was archived on August 30, 2002.

11. The State initially adduced that the alleged victim's death occurred in service-related acts, and that therefore there should be no doubt concerning the criminal jurisdiction that assumed the investigation. It indicated that the attack occurred with such intensity that the irregular group used grenades that wounded three police agents and destroyed commercial locales, and accordingly it considers that the response of its agents was not unjust or disproportionate. Subsequently, the State detailed the investigative steps taken in the regular criminal jurisdiction, which was joined to the investigation conducted into the acts committed by the illegal armed group in the municipalities of Vegachí and Yalí. It indicated that in the context of this process, on July 31, 2018, the Specialized Bureau against Human Rights Violations reassigned the investigation to the Office of the 57th Prosecutor (Fiscalía 57), which on November 26, 2018 proceeded to

open the investigation into the crimes of aggravated homicide, aggravated kidnapping, terrorism, and aggravated criminal conspiracy, which is in the preliminary phase.

12. As regards the disciplinary investigation, the State it indicates that it was begun after the complaint lodged by one of the alleged victim's family members; the Office of the Procurator Delegate for Human Rights (Procuraduría Delegada para la Defensa de los Derechos Humanos) established, in the decision on the merits, that the police agents did not commit a disciplinary breach. Regarding the criminal and disciplinary decision, the State maintains that the remedies were exhausted and that the petitioner is asking the IACHR to sit as a fourth-instance review body on seeking to have it review the domestic proceedings, which enjoy a presumption of legality and consistent with Colombia's relevant treaty obligations.

13. As regards the proceeding before the contentious-administrative jurisdiction, the State indicated that the Administrative Tribunal of Antioquia handed down a judgment of first instance on March 30, 2001, in which it found the State administratively liable for the damages caused by the alleged victim's death; it was ordered to pay compensation to the family members, which did not include the child Arturo Alonso Ruíz Córdoba due to the lack of evidence of his filial bond with the alleged victim. That judgment was appealed for the purposes of securing recognition of the relationship between the child Arturo Alonso Ruíz Córdoba and the alleged victim in the proceeding. In a communication of March 2019, the State reported that on August 8, 2012, the Chamber for Contentious-Administrative Matters of the Council of State ruled on the appellate motion that consanguinity of the child with the alleged victim was shown, and ordered compensation for moral and material damages. In response, the alleged victim's family members sought a clarification based on the existence of an error upon updating the corresponding sum to be paid to Ms. Sandra Patricia Ruíz Córdoba. By decision of September 26, 2012 the Council of State ruled to deny the request for clarification. Finally, the State indicated that pursuant to Law 1448 of 2011, in 2012 the Unit for Attention and Integral Reparation of Victims was created, by which measures of care, assistance, and integral reparation are ordered for victims of the internal armed conflict. In the instant case, the alleged victim was included in the Single Registry of Victims as a direct victim of homicide in the events of January 28, 1997 and his partner Sandra Patricia Ruiz Córdoba and his son were included as indirect victims of the same events, and are to receive compensation.

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

14. According to the information available, on July 19, 2002 the Third Prosecutor before the Superior Military Tribunal upheld the decision of the Second Military Criminal Prosecutor to close the criminal investigation into the death of the alleged victim on considering that the police acted within the scope of their authority. In addition, there is currently a criminal investigation in the regular jurisdiction before the Office of the 57th Prosecutor assigned to the Specialized Bureau against Human Rights Violations, which is in the preliminary phase. With respect to the use of the military jurisdiction, the Commission has ruled repeatedly that it is not an appropriate forum for investigating the death of a civilian given that it does not offer the guarantees required and therefore does not constitute an adequate remedy for investigating, prosecuting, and punishing alleged violations of the human rights enshrined in the American Convention.⁶ With respect to the regular jurisdiction, the IACHR observes that more than 22 years after the facts the investigation continues in the preliminary phase. In view of the foregoing, the Commission considers it appropriate to apply the exception set forth at Article 46(2)(c) of the Convention. With respect to the contentious-administrative proceeding, the Commission reiterates that for the purposes of determining the admissibility of a claim in the nature of the one in the instant case, the action for direct reparation does not constitute a suitable remedy nor must it be exhausted, since it is not adequate for securing full reparation and justice for the family members.⁷

⁶ IACHR, Report No. 70/14. Petition 1453-06. Admissibility. Maicon de Souza Silva. Renato da Silva Paixão et al. July 25, 2014, para. 18.

⁷ IACHR, Report No. 72/16. Petition 694-06. Admissibility. Onofre Antonio de La Hoz Montero and Family. Colombia. December 6, 2016, para. 32.

15. Regarding the timeliness of the petition, as it has been determined that an exception to the prior exhaustion requirement applies, and that the petition was received August 12, 2009, the facts that are the subject matter of the claim began on February 28, 1997, and its effects in terms of the alleged denial of justice extend to the present day, the Commission concludes that the petition was filed in a reasonable time and that the admissibility requirement concerning timeliness of the petition should be deemed satisfied.

VII. ANALYSIS OF COLORABLE CLAIM

16. In view of the elements set forth and the nature of the matter before it, the Commission considers that since the arguments of fact and law presented by the parties differ in large measure, they should be analyzed in the merits phase. In this regard, the alleged unlawful action of state agents in the death of the alleged victim, as well as the investigation in the military jurisdiction, and the lack of full reparation, tend to establish possible violations of the rights recognized at Articles 4 (right to life), 7 (personal liberty), 8 (judicial guarantees), 17 (protection of the family), and 25 (judicial protection) of the American Convention, to the detriment of Mr. Arturo Alonso Toro Valencia, and Articles 5 (humane treatment), 8 (judicial guarantees), 17 (protection for the family), 18 (right to a name), 19 (rights of the child), 11 (right to honor and dignity), and 25 to the detriment of his family members, all in light of the obligations enshrined in Articles 1(1) (obligation to respect the rights) and 2 (obligation to adopt provisions of domestic law).

17. As regards the claim on the alleged violation of Articles I (life liberty, and personal security), V (honor, reputation, and private and family life), XI (preservation of health and wellbeing), XVIII (fair trial) of the American Declaration, the Commission reiterates that once the American Convention enters into force in relation to a state, it and not the Declaration becomes the primary source of law applicable by the Commission, so long as the petition argues violations of rights that are substantially identical enshrined in both instruments.

18. With respect to the arguments of the State regarding the fourth instance formula, the Commission recognizes that it is not competent to review the judgments handed down by domestic courts acting within their jurisdiction and applying due process and judicial guarantees. Nonetheless, it reiterates that within the framework of its mandate it is competent to find a petition admissible and to rule on the merits when it refers to internal proceedings that could be violative of rights guaranteed by the American Convention.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 4, 5, 7, 8, 11, 17, 18, 19, and 25 of the Convention, in conjunction with Articles 1(1) and 2 of that instrument; 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 24th day of the month of April, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández García, First Vice President; Antonia Urrejola, Second Vice President; Margarete May Macaulay, Francisco José Eguiguren Praeli, and Flávia Piovesan, Commissioners.

Appendix 1

List of alleged additional victims

1. Sandra Patricia Ruíz Córdoba (wife)
2. Arturo Alonso Ruíz Córdoba (son)
3. Marta de Jesús Valencia Molina (mother)
4. Luís Fernando Toro Valencia (brother)
5. John Jairo Toro Valencia (brother)
6. Hernan de Jesús Toro Valencia (brother)
7. Luz Marina Toro Valencia (sister)
8. Cruz Emilia Toro Valencia (sister)
9. Jaime de Jesús Toro Valencia (brother)
10. John Fredy Toro Londoño (brother)
11. Sonia Darley Toro Londoño (sister)
12. José Alejandro Toro Londoño (brother)
13. Luís Arturo Toro Gómez (father)
14. Orlando Humberto Toro Alvarez (brother)