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REPORT No. 113/17
PETITION 1141-07
ADMISSIBILITY REPORT

ALFREDO MANUEL MARTÍNEZ MEZA AND OTHERS
COLOMBIA

Approved by the Commission at its session No. 2098 held on September 7, 2017.
164th Special Period of Sessions.

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 SEPTEMBER 7, 2017

I. INFORMATION ABOUT THE PETITION

Petitioner:	Fundación Mínimo Vital
Presuntas víctimas:	Alfredo Manuel Martínez Meza and others
State denounced:	Colombia
Rights invoked:	Articles 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 19 (rights of the child), and 25 (judicial protection) of the Inter-American Convention on Human Rights ²

II. PROCEDURE BEFORE THE IACHR³

Date on which the petition was filed:	September 4, 2007
Additional information received at the study stage:	April 4, 2012
Date on which the petition was transmitted to the State:	December 3, 2012
Date of the State's first response:	April 24, 2014
Additional observations from the petitioner:	November 4, 2014; May 7, 2015
Additional observations from the State:	February 20, 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 (instrument of ratification deposited on July 31, 1973)

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 (humane treatment), 8 (fair trial), 19 (rights of the child), 22 (movement and residence), and 25 (judicial protection) of the American Convention, in connection with Articles 1.1 (obligation to respect rights) and 2 (duty to adopt provisions of domestic law)

¹ In accordance with the provisions of Article 17.2.a of the Commission's Rules of Procedure, Commissioner Luis Ernesto Vargas Silva, a Colombian national, did not participate in the discussions or decision-making in the present case.

² Hereinafter "the American Convention" or "the Convention."

³ The observations of each party were duly transmitted to the opposing party.

Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, exception established in Article 46.2.c of the ACHR applies
Timeliness of the petition:	Yes, under the terms of section VI

V. ALLEGED FACTS

Prior considerations

1. The petition being considered in the present report is related to the alleged violent death of 15 people in the Municipality of Valencia, Department of Córdoba, between 1983 and 2003. The killings were allegedly perpetrated by paramilitary groups who operated in the area with the State's consent and have not been clarified or investigated by judicial authorities.

2. The State requested the IACHR, on the basis of Article 29.4 of its Rules of Procedure, to proceed with the division of the petition because it considers that the minimum requirements of interconnectivity to consolidate the incidents have not been met, because, apart from their relationship in terms of space, there are no other matching elements among them. It asserts that, processing the case jointly, would inevitably lead to a violation of its right to defense, because it would be difficult to build a single defense strategy for all the cases set forth in the petition. The petitioners point out that the facts submitted in the petition are embedded in a context of human rights violations, characterized by a systematic pattern or practice of stakeholders in an armed conflict against the civilian population. Because of that, they contend that the cases must be examined in a single proceeding.

3. Regarding this, the Commission has established that interpretation of Article 29.4 of its Rules of Procedure does not require the facts, victims, and violations presented in a petition to strictly match each other in terms of time and place so that they can be processed as a single case.⁴ The Commission has processed individual cases in connection with many alleged victims that allege violations occurring at different times and places, which allegedly had the same origin, such as the implementation of legal standards or the existence of an identical pattern or practice or where there was a similarity among the alleged incidents. In the present petition, the alleged facts refer to alleged violations occurring over a 20-year time-frame, perpetrated in a given territorial space allegedly by the same armed group and on the basis of the same *modus operandi*. The above-mentioned elements are similar in each one of the complaints described and make it possible to examine them jointly. Therefore, the Commission shall proceed with the review of the petition as one case.

Alleged violent deaths and subsequent criminal investigations

4. The petitioners state that, since the 1980s, armed paramilitary groups operated with the consent of the State in various sectors of the Municipality of Valencia, Department of Córdoba, creating a situation of extreme violence. They indicate that, in that region, illegal detentions, torture, and extrajudicial executions were being carried out and that they were not being either duly investigated or punished by Colombian authorities. Furthermore, they point out that the various operations and methods used by said groups to terrorize the population led to forced displacement, thereby securing territorial, social, and economic control over the area. They contend that, although these violations were being committed systematically, the State did not diligently install any prevention and protection measures for the affected population.

5. In the context set forth in detail above, they specifically describe the circumstances of time, mode, and place in connection with the violent death of 15 persons, allegedly committed by the Casa Castaño Group belonging to the United Self-Defense of Colombia (*Autodefensas Unidas de Colombia*—AUC) between 1983 and 2003. They indicate that the so-called Self-Defense acted on the basis of violent operations and

⁴ IACHR, Report No. 5/97. Admissibility. Petition 11.227, Unión Patriótica Nacional, Colombia, March 12, 1997, paras. 39-42. IACHR, Report No. 61/16, Petition 12.325. Admissibility. Community of Paz San José de Apartadó. Colombia. December 6, 2016.

raids in complete freedom in the region, because of the State's acquiescence and the absence of actions to protect the civilian population. They consider that the incidents perpetrated by these groups can be attributed to the State for having created a situation of risk that it did not subsequently control or dismantle and because of the impunity in which these crimes remained. They state that, because of the atrocities committed by the paramilitary groups, general fear spread over the population, and that is why the next of kin of the alleged victims only filed complaints in 2006. They argue that criminal investigations have not been effectively conducted, leading to impunity and unjustified delays in administering justice. Regarding this they argue that a few judicial proceedings were filed and that criminal proceedings conducted by the State were mere formalities which, to date, have not achieved any results. Finally, they indicated that two of the alleged victims were children when they lost their lives.

6. The petitioners point out that the next of kin of the alleged victims did not resort to filing administrative litigation proceedings because of their widespread justified fear of filing any complaint and, in addition, because of the obstacle itself of being displaced from their homes. Nevertheless, they point out that, on December 19, 2006, they came together to request the Second Prosecution Service No. 33 of the Administrative Litigation Court of Montería, Córdoba, to hold an out-of-court settlement hearing with the Ministry of Defense and the National Army. This request was turned down on January 23, 2007 because the statute of limitations for reparations had expired because of the two-year time-limits established by law. As a result of this, they filed an appeal for reversal of the ruling but it was dismissed by the same authority on March 5, 2007.

7. As for the State, it contends that the petition is inadmissible because remedies under domestic law have not been exhausted since the criminal proceedings that were filed for each one of the incidents have not concluded. It indicates that, because of the complexity of the cases, there is no unjustified delay or a violation of reasonable time-limits in the investigation. It stresses that, because the incidents were allegedly perpetrated by paramilitary groups in the context of Colombia's armed conflict, in order to verify the truth the Attorney General's Office has been applying transitional justice criteria and processes provided for by Justice and Peace Law No. 975 of 2005 and Legislative Act No. 1 of July 31, 2012. Among these actions, there is the prosecution of each one of the former members and demobilized members of the AUC, which has been conducted in order to secure statements and information on the incidents targeted by the petition.

8. The State points out that domestic remedies were not exhausted because the petitioners did not file any direct proceedings for reparations in the framework of the administrative litigation jurisdiction, which is an adequate and effective remedy. It also contends that it has not been demonstrated that there are elements making it possible to establish the existence of widespread fear in the circle of attorneys that would have prevented them from resorting to domestic remedies. Furthermore, it believes that the factual situation presented does not tend to establish any violation of the rights enshrined in the ACHR, because the death of the alleged victims was caused by members of illegal armed groups that have nothing to do with the actions or omissions of State agents. It indicates that it has not been duly proven that the State knew or must have known the special risks these persons were running, because of which it cannot be charged with neglecting its duty to prevent these crimes.

Specific allegations⁵

Alfredo Manuel Martínez Meza

9. The petitioners indicate that, the night of January 20, 1997, while he was at home located in the Municipality of Valencia, the alleged victim was violently killed by two members of the AUC, upon being hit by 12 shots from a firearm. Removal of the body was carried out by the inspector of police, but no forensic autopsy was subsequently ordered.

⁵ Specific allegations by the parties regarding the exhaustion of domestic remedies are specified in the attached table.

Manuel Jesús Tapia Mora

10. The petitioners point out that, at daybreak on November 29, 1994 in the town of Cocuelo Limón, a group of armed persons surrounded the house of the alleged victim and called for him to come out. When he opened the door, the assailants entered his home, hit his wife, and shot him in front of his two small daughters.

José Eliecer Cuava Posso, José Santiago Posso Madrid, and Lucía del Carmen Posso Madrid

11. The petitioners indicate that, in the night of June 28, 1990, in response to rumors of a possible guerrilla takeover in the Municipality of Valencia, unidentified armed individuals went to the house of Mr. Francisco Posso, commanding him to step out. They indicate that, when Mr. Posso realized it was an ambush, he fled from the back of the house. Minutes later, the group of men broke into the home and indiscriminately shot the persons who were there, killing the five-month-old child José Eliecer Cuava Posso as well as his uncle José Santiago Posso Madrid and his aunt Lucía del Carmen Posso Madrid.

12. The State argues that, regarding the alleged victims, there is a partial duplication of proceedings filed with the Inter-American System, because these incidents were also reported in petition P-554-09, which is currently being processed in the IACHR. Because of this, it requests that the case be declared partially inadmissible in the framework of Articles 46.c and 47.d. Regarding this, the petitioners recognize that, because of an involuntary inaccuracy, the alleged victims from petition P-554-09 were included, which would entail partial inadmissibility of the latter.

Jorge Eliecer Duque Gómez

13. The petitioners state that, on August 5, 2002, in view of rumors that the guerrilla was there, members of the AUC closed the roads of the town of Guadual. When they saw the alleged victim (17 years old) on one of the roads, they killed him by shooting him in the head. Afterwards he was taken to the hospital of Valencia and his body handed over to his mother.

Eber José Viloría Yañez

14. The petitioners indicate that, on May 18, 1994, while the alleged victim was engaged in farming activities, he was intercepted on the road to the town of Rusia by members of AUC, who killed him by firing their weapons. Removal of the body was conducted by the municipal judge, who did not order a forensic autopsy.

Luis Rafael Fabra Ramos

15. The petitioners point out that, on December 16, 1995, a group of armed persons detained the alleged victim to take him to the town of Águila, where he was to be questioned by the group's commander. At night he was killed and his body thrown into the gully of Las Niñas.

Ernesto Antonio Vergara Caicedo

16. The petitioners indicate that, at daybreak of February 2, 1995, a group of armed men belonging to the AUC violently broke into the farm of Los Alpes, killed the alleged victim, who was the farm's administrator, and other workers, and proceeded to set fire to the property.

Pedro Lucio Sotelo Blanco

17. The petitioners indicate that, on May 9, 1983, members of the AUC violently broke into the house of the alleged victim, who was sleeping and, after identifying him, killed him by firing at him various times; afterwards, the police removed the body.

Eduardo Enrique Pacheco Castilla

18. The petitioners indicate that, in the night of November 25, 1988, members of the AUC arrived at the home of the alleged victim and broke into it violently, proceeded to shoot him in front of his family, and then fled. The police removed the body the following morning.

Félix Antonio Macea Hernández

19. The petitioners indicate that, on the afternoon of December 1, 1996, the alleged victim was arriving from a trip to the bus terminal to the township of Santo Domingo, in the Municipality of Valencia, when he was intercepted by two armed persons belonging to the AUC, who shot him in front of the persons who were there.

Fernando Arturo Jiménez Galván

20. The petitioners point out that, on August 5, 2002, there was an armed clash between members of the AUC and the FARC in the sector of the town of Guadual. Because of this, many frightened persons fled the place, and among them there was the alleged victim, who was first intercepted by a paramilitary and then killed with shots from a firearm. The police of Guadual removed the body and transferred it to the hospital Valencia so that an autopsy could be carried out.

Abel Antonio Pacheco Salgado

21. The petitioners state that, in the afternoon of June 3, 1993 in the town of Almagra, two members of the AUC kidnapped the alleged victim from his home and took him to a nearby farm where they killed him with a single shot. The following day, his family found his body and took it to the hospital of Valencia so that a forensic autopsy could be carried out.

Federico Antonio Jiménez González

22. The petitioners indicate that, on July 16, 2003, members of the AUC kidnapped the alleged victim in the town of Matamoros, killed him by firing three bullets in his head, and threw his body into the Sinú river. After the body was found, it was taken to the morgue of the hospital of Montería where it was identified by his wife on July 22, 2003.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELESS OF THE PETITION

23. The petitioners contend that the families of the alleged victims filed complaints with the Municipal Legal Representatives of Valencia as suitable remedies for the investigation of these violent deaths; despite this, they stress that, to date, there is no result. As for the State, it points out that a ruling for the criminal proceedings in each one of the cases is still pending in the domestic jurisdiction; it also underscores that, in none of the cases, have any proceedings been filed for direct reparations.

24. The precedents established by the IACHR point out that, every time an alleged crime liable to prosecution ex officio is committed, the State is required to promote and spearhead the criminal proceedings and that this is the suitable remedy to clarify the facts, try those responsible, and set forth the corresponding criminal sanctions, in addition to facilitating other modes of reparation of a monetary kind. Furthermore, the Commission has established that, as a general rule, a criminal investigation must be conducted promptly to protect the interests of the victims, safeguard the evidence, and even protect the rights of all persons who, in the context of the investigation, may be deemed suspects.⁶ On the basis of the information provided by the parties, it is observed that, in all cases, the complaints were filed by the families of the alleged victims with the

⁶ IACHR, Report No. 49/14, Petition 1196/07, Admissibility. Juan Carlos Martínez Gil, Colombia, July 21, 2014, para. 29.

jurisdictional authorities in 2006. Nevertheless, to date, no progress has been made in the investigations, as all cases are in their initial stages.

25. The Commission also takes into account that, at least in the cases of Alfredo Manuel Martínez Meza, Jorge Eliecer Duque Gómez, Eber José Viloría Yañez, Pedro Lucio Sotelo Blanco, Eduardo Enrique Pacheco Castillo, Fernando Arturo Jiménez Galván, Abel Antonio Pacheco Salgado, and Federico Antonio Jiménez González, the deaths allegedly perpetrated by the paramilitary members were known and must have been known by the authorities when the bodies were removed by the police and/or as a result of their transfer to public hospitals for carrying out the forensic autopsies. On the basis of available information, it cannot be inferred that said authorities have undertaken the corresponding investigations. In addition, the IACHR recalls that, for the purposes of determining the admissibility of a petition of the present kind, proceedings for reparation do not constitute the suitable remedy nor is their exhaustion required, because they are not adequate to provide comprehensive reparations and justice to the families.⁷

26. Therefore, the Commission concludes that delays in the investigation have been established and, as a result, the exception to the rule of exhaustion of domestic remedies, as provided for in Article 46.2.c of the American Convention, is applicable. Furthermore, the petition was filed on September 4, 2007, the alleged incidents took place between 1983 and 2003, the criminal investigations began in 2006, and the effects of the alleged violations in terms of the alleged denial of justice continue up to the present day. Therefore, the IACHR deems that the petition was filed within a reasonable period of time and that, therefore, the requirement of admissibility in terms of the timeliness of the petition must be considered met.

VII. COLORABLE CLAIM

27. In view of the elements of fact and law presented by the parties and the nature of the case being examined, the Commission considers that, if the alleged absence of protection for the alleged victims is proven, their illegal detentions and subsequent violent deaths allegedly committed by illegal armed groups who were operating in the region with the consent of the State, the forced displacement and the absence of effective judicial protection of their families in the criminal investigation proceedings may tend to establish possible violations of the rights enshrined in Article 4 (life), Article 5 (humane treatment), Article 7 (personal liberty), Article 8 (fair trial), Article 22 (movement and residence), and Article 25 (judicial protection) of the Convention in connection with Articles 1.1 and 2 thereof, regarding the alleged victims and their next of kin. In addition, because Jorge Eliecer Duque Gómez was a child at the time of the incidents, they would also tend to establish a possible violation of Article 19 (rights of the child) of the Convention.

28. Furthermore, with respect to José Santiago Posso Madrid and Lucía del Carmen Posso Madrid, who appear as alleged victims in the present petition, as well as in petition P-554-09, the Commission shall continue to examine their complaints and the alleged violation of their human rights in the framework of the present case. In that respect, for the purpose of guaranteeing enforcement of Article 47.d of the Convention and because of the chronological criterion for the submittal of the petitions, the Commission shall exclude the above-mentioned alleged victims from petition P-554-09. Finally, the Commission observes that José Eliecer Cuava Posso is one of the alleged victims in case 13.077,⁸ which is currently being analyzed in the merits stage, as a result of which it cannot be included in the present case.

VIII. DECISION

1. To find the present petition admissible in connection with Articles 4, 5, 7, 8, 19, 22, and 25, in accordance with Articles 1.1 and 2 of the American Convention;
2. To notify the parties of the present decision;

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

⁸ IACHR, Report No. 28/17. Petition 1710-07. Admissibility. Alexander Segundo Mentes García and others. Colombia. March 18, 2017.

3. To continue with the analysis on the merits of the case; and
4. To publish the present 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 in the city of México, on the 7 day of the month of September, 2017. (Signed): Francisco José Eguiguren, President; Margarete May Macaulay, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice President; José de Jesús Orozco Henríquez, Paulo Vannuchi, and James L. Cavallaro, Commissioners.

ANNEX

ALLEGATIONS OF THE PARTIES ABOUT THE EXHAUSTION OF DOMESTIC REMEDIES

Name of the alleged victim	Date of the alleged initial incidents	Domestic remedies filed
Alfredo Manuel Martínez Meza	January 20, 1997	Petitioners: They file a complaint with the Municipal Legal Representatives of Valencia on June 5, 2006. The criminal investigation is in its initial stage.
		State: Presumed responsibility of the Casa Castaño group of the AUC. No informant has cooperated with the judicial authorities concerning this case.
Manuel Jesús Tapia Mora	November 29, 1994	Petitioners: They file a complaint with the Mixed Jurisdiction Court of Valencia on March 30, 2006. The criminal investigation is in its initial stage.
		State: Alleged responsibility of the Casa Castaño group of the AUC. No informant has cooperated with the judicial authorities concerning this case.
José Eliecer Cuava Posso, José Santiago Posso Madrid, and Lucía del Carmen Posso Madrid	June 28, 1990	Petitioners: They file a complaint with the Municipal Legal Representatives of the Valencia on May 15, 2006. The criminal investigation is in its initial stage.
		State: Presumed responsibility of the members of FARC-EP.
Jorge Eliecer Duque Gómez	August 5, 2002	Petitioners: They file a complaint with the Municipal Legal Representatives of Valencia on June 7, 2006. The criminal investigation is in its initial stage.
		State: A former member of the Bloque Bananero, a potential informant, referred the incident to judicial authorities; nevertheless, the proceedings to broaden these statement are still pending.
Eber José Viloría Yañez	May 18, 1994	Petitioners: They file a complaint with the Legal Representatives of Valencia on May 5, 2006. The criminal investigation is in its initial stage.
		State: Presumed responsibility of the Casa Castaño group of the AUC. No informant has cooperated with the judicial authorities concerning this case.
Luis Rafael Fabra Ramos	December 16, 1995	Petitioners: They file a complaint with the Legal Representatives of Valencia on May 5, 2006. The criminal investigation is in its initial stage.
		State: Presumed responsibility of the Casa Castaño group of the AUC. No informant has cooperated with the judicial authorities concerning this case.
Ernesto Antonio Vergara Caicedo	February 2, 1995	Petitioners: They file a complaint with the Mixed Jurisdiction Court of Valencia on March 16, 2006. The criminal investigation is in its initial stage.
		State: Presumed responsibility of the Casa Castaño group of the AUC. No informant has cooperated with the judicial authorities concerning this case.
Pedro Lucio Sotelo Blanco	May 9, 1983	Petitioners: They file a complaint with the Municipal Legal Representatives of Valencia on May 4, 2006. The criminal

		investigation is currently in its initial stage.
		State: Presumed responsibility of the Casa Castaño group of the AUC. No informant has cooperated with the judicial authorities concerning this case.
Eduardo Enrique Pacheco Castilla	November 25, 1988	Petitioners: They file a complaint with the Attorney General's Office of Valencia on May 3, 2006. The criminal investigation is in its initial stage.
		State: Presumed responsibility of the Casa Castaño group of the AUC. No informant has cooperated with the judicial authorities concerning this case.
Félix Antonio Macea Hernández	December 1, 1996	Petitioners: They file a complaint with the Municipal Legal Representatives of Valencia on May 5, 2006. The criminal investigation is in its initial stage.
		State: Presumed responsibility of the Casa Castaño group of the AUC. No informant has cooperated with the judicial authorities concerning this case.
Fernando Arturo Jiménez Galván	August 5, 2002	Petitioners: They file a complaint with the Municipal Legal Representatives of Valencia on May 23, 2006. The criminal investigation is in its initial stage.
		State: A former member of the Bloque Bananero, a potential informant, referred the incident to judicial authorities; nevertheless, the proceedings to broaden these statement are still pending.
Abel Antonio Pacheco Salgado	June 3, 1993	Petitioners: They file a complaint with the Municipal Legal Representatives of Valencia on May 3, 2006. The criminal investigation is in its initial stage.
		State: Presumed responsibility of the Casa Castaño group of AUC. No informant has cooperated with the judicial authorities concerning this case.
Federico Antonio Jiménez González	July 16, 2003	Petitioners: They file a complaint with the Municipal Legal Representatives of Valencia on June 6, 2006. The criminal investigation is in its initial stage.
		State: It did not provide any specific information about the progress of criminal proceedings.