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REPORT No. 53/17
PETITION 1285-04
REPORT ON ADMISSIBILITY

DORA INÉS MENESES GÓMEZ AND OTHERS
COLOMBIA

Approved by the Commission at its session No. 2085 held on May 25, 2017
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I. SUMMARY

1. On November 29, 2004, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission” or “the IACHR”) received a petition lodged by Mr. Ángel Emiro Meneses Gómez, who was later represented by the *Corporación para el Manejo de Conflictos del Norte del Cauca* (hereinafter “the petitioners”), against the Republic of Colombia (hereinafter “Colombia” or “the State”). The petition was filed on behalf of Dora Inés Meneses, Luz Mérida Ocampo, Gonzalo Ocampo Meneses, Floresmiro Guasaquillo, Faber Gil Buitrago, Héctor Fabián Ocampo Meneses and José Duván Gil Vásquez (hereinafter “the alleged victims”) and their family members,¹ for the purported killing of the alleged victims; the alleged denial to hand over the victims’ remains; the wounds caused to Héctor Fabián Ocampo Meneses; José Duván Gil Vásquez’s arbitrary detention; the alleged failure to investigate and punish the facts denounced, and the lack of redress for said damages.

2. The petitioners claim that on November 29, 2003 Dora Inés Meneses, Luz Mérida Ocampo, Gonzalo Ocampo Meneses (a minor), Floresmiro Guasaquillo and Faber Gil Buitrago were killed by the National Army in Caquetá Department. They assert that the alleged victims (except for child Gonzalo Ocampo Meneses) were presented as members of the FARC’s 49th Front, and that Floresmiro Guasaquillo and Faber Gil Buitrago were tortured before being killed. Likewise, they claim that Héctor Fabián Ocampo Meneses (a minor) was wounded as a result of the facts, and that José Duván Gil Vásquez was detained and prosecuted for insurgency. They assert that the State failed to comply with its obligation to investigate and punish the persons responsible, and that the criminal proceedings are not yet finished.

3. On the other hand, the State indicates that the petition is inadmissible since domestic remedies have not been exhausted, inasmuch as criminal proceedings and administrative proceedings are pending resolution. Moreover, it claims that the petition is inadmissible with regards to the alleged violation of the Belém do Pará Convention, because the facts denounced do not tend to establish a violation thereof nor fall under its scope of application.

4. Without prejudging the merits of the complaint, after analyzing the position of the parties and in accordance with the requirements established in Articles 31 to 34 of the IACHR’s Rules of Procedure (hereinafter “the Rules”) and in Articles 46 and 47 of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”), the Commission decides to declare this petition admissible to assess the facts concerning the alleged violation of the rights enshrined in Articles 3 (Juridical Personality), 4 (Life), 5 (Humane Treatment), 7 (Personal Liberty), 8 (Fair Trial), 11 (Privacy), 19 (Rights of the Child), 22 (Freedom of Movement and Residence) and 25 (Judicial Protection) of the American Convention in relation to Article 1.1 of thereof, and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture. The Commission moreover decides to notify the parties of its decision, to publish this report and include it in its Annual Report to the General Assembly of the OAS.

¹ The petitioners identify the following as family members: Ángel Emiro Meneses Gómez, Waldina Gómez, Jacobo Meneses, Ana Rosa Álvarez Devia, Rogério Ocampo Ramada, María Nelly Ocampo Álvarez, Teresa de Jesús Devia de Álvarez, Yon Jair Ocampo Álvarez, Rosa Orfilia Ocampo Álvarez, José Duván Gil Vásquez, Blanca Elvia Iles de Buesaquillo, Nulvial Buesaquillo Iles, and others.

II. PROCEEDINGS BEFORE THE IACHR

5. The IACHR received the petition on November 29, 2004 and transmitted a copy of the pertinent parts to the State on April 18, 2006, establishing a two-month deadline for it to submit observations, pursuant to Article 30.2 of the Rules then in force. The State's response was received on December 21, 2006 and was transmitted to the petitioner on January 5, 2007.

6. The petitioners filed additional observations on February 2 and 26, 2007, December 8, 2008, February 4 and April 14, 2009, and March 13, 2013. The State submitted additional observations on December 1, 2008, January 9, 2009 and May 28, 2014. The observations presented by each party were duly transmitted to the opposing party.

III. POSITION OF THE PARTIES

A. Position of the petitioners

7. The petitioners indicate that on November 29, 2003, the troops of the 12th "Juananbú" Infantry Battalion of the Colombian Army, which belongs to the Twelfth Brigade, ordered the operation called "*Normandía*" against the rebels of the FARC's 49th Front.

8. They assert that on November 30, 2003 the troops headed to the *vereda* of El Cedro, *corregimiento* Zabaleta in San José de la Fragua Municipality, Caquetá Department, in order to destroy a rebels' radio base station. They indicate that on their way to said *vereda*, the military group detained Floresmiro Guasaquillo and Faber Gil Buitrago so that these would show them where the base station was.

9. They assert that on that day, early in the morning, a group of armed individuals, seemingly belonging to the FARC, arrived in the *vereda* of El Cedro and forced Dora Inés Meneses and her sons Gonzalo (aged 9 months) and Héctor Fabián Ocampo Meneses (aged 4 years), and Luz Mérida Ocampo to leave their house and go to the place where the antenna was. The petitioners indicate that on its way to the station, the armed group detained José Duván Gil Vásquez and forced him to go with the women and carry one of the children.

10. The petitioners assert that when these got to the base station, the women were forced to move some of the communications equipment, and that right at that moment the officers of the National Army arrived and opened fire on everyone there. They claim that as a result of the gunfire, Dora Inés Meneses, Luz Mérida Ocampo and child Gonzalo Ocampo Meneses died, while child Héctor Fabián Ocampo Meneses was wounded with two gunshots. They assert that Faber Gil Buitrago identified the body his wife among the victims and so rebuked the members of the Army, and that consequently he and Floresmiro Guasaquillo were tortured and killed. They indicate that José Duván Gil Vásquez was able to escape from the gunshots but was soon arrested by another group of military officers, and that then he was taken to court for insurgency.

11. The petitioners assert that after the massacre, the Army officers buried the 9-month-old child as an unidentified person at the place where the facts had taken place. In addition, the petitioners indicate that Héctor Fabián Ocampo Meneses was taken to the Hospital of the city of Florencia and then handed over to the Family Welfare Institute, with a report stating that his parents had died in a clash with the Army; and that as a result, the Institute awarded the paternal grandparents guardianship over the child. Likewise, they indicate that the other alleged victims' remains were taken to the city of Florencia and presented to the media as the bodies of FARC members. They explain that the remains of Dora Inés Meneses, Luz Mérida Ocampo and Faber Gil Buitrago were labeled as unidentified, and buried by officers of the Army in a mass grave at the main cemetery in Florencia, the capital city of the department of Caquetá. The petitioners claim that after some time, in response to the family members' request, the court ordered the exhumation of the bodies, and that DNA tests were conducted on the family members. They allege that although 10 years have passed since the exhumation of the bodies and the DNA tests, the alleged victims' remains have not yet been handed over to the family members, and consequently it has been impossible to register their death.

They claim that the place where the alleged victims' bodies lie nowadays is unknown to the family members, and that this constitutes a crime of forced disappearance of persons.

12. They assert that due to the complaints filed by Ángel Emiro Meneses, Dora Inés Meneses' brother, he and his family have been threatened and forced to move to the city of Popayán, Cauca. They claim that said family is still displaced.

13. The petitioners indicate that as a result of the facts described above, criminal proceedings have been filed before the 14th Prosecutor's Office of Florencia City's Sectional Office, for aggravated murder. They claim that by the resolution of May 18, 2004 the investigation was referred to the Military Criminal Court, and that the criminal proceedings were assigned to the 45th Special Prosecutor for Human Rights' Office of the city of Neiva, Huila Department, once the Higher Council of the Judiciary settled a dispute over competence. The petitioners indicate that the criminal proceedings are in the stage of preliminary investigation.

14. Furthermore, they indicate that the family members of Dora Inés Meneses Gómez, Gonzalo Ocampo Meneses and Héctor Fabián Ocampo Meneses filed a claim for direct reparations before the Administrative Law Court of Caquetá. In this regard, they assert that on June 29, 2012 the Second Decongestion Administrative Court of Florencia, Caquetá, announced its judgment and declared the State's administrative responsibility. They assert that the denounced party lodged an appeal against the judgment, which is pending resolution at the Administrative Law Court of Caquetá.

15. In addition, they claim that on December 11, 2003 the Command of the National Army's Twelfth Brigade filed a disciplinary investigation, and that it was closed through the decision of March 16, 2004, under which the proceedings had to be permanently archived inasmuch as the facts did not establish a disciplinary offense.

16. The petitioners claim that José Duván Gil Vásquez was subjected to arbitrary deprivation of liberty, and convicted by a First Instance Court for insurgency. They assert that his statements were influenced by the fear of being killed by military officers, since at the time he was detained, he heard them discuss whether they should kill him or not. The petitioners indicate that while he was in jail, he was threatened several times by the Army so that he would change his account of the facts. Furthermore, they claim that in the criminal proceedings against him, there were several violations of the right to due process of law, such as the lack of a technical defense. They assert that the Supreme Court of Justice confirmed this through its judgement of February 19, 2009 inasmuch as it annulled the decisions in the proceedings made as of the end of the investigation, in order to allow the accused to have a proper technical defense.

17. As regards the exhaustion of domestic remedies, the petitioners request the application of the exceptions set forth in Article 46.2(a), (b) and (c) of the ACHR. Concerning the first of these exceptions, they argue that some of the domestic remedies are either inadequate or ineffective to guarantee reparations for the victims and their families, since on December 2, 2012 a domestic legislation was passed to broaden the criminal military jurisdiction; hence it is likely that the case will be heard again by the same court. As to the exception set forth in Article 46.2(b), they assert that the family members have been unable to exhaust all the remedies due to the threats and the displacement that they have been subjected to so far. Moreover, they assert that there is an alleged association between the 45th Prosecutor's Office of the Human Rights Unit and the paramilitary groups,² and that therefore it is dangerous for the alleged victims' families to actively participate in the criminal proceedings. Concerning the exception set forth in Article 46.2(c), they assert that under Article 352 of Law 600 of year 2000, a preliminary investigation must be conducted within a six-month period, after which preliminary hearings will take place. They argue that despite the time elapsed, the

² They claim that a member of the 45th Prosecutor's Office of the Human Rights Unit is linked with an investigation because he has connections with paramilitary groups and because of the conspiracies to commit crimes connected with drug-trafficking, willful malfeasance and forgery, among others.

criminal proceedings are still in the stage of preliminary investigation and no decisions have been made to repair the damages caused to the victims and the family members.

18. Based on the foregoing, the petitioners claim that the State violated the rights enshrined in Articles 1.1, 4.1, 5.1, 7, 8, 19, 22 and 25 of the American Convention, to the detriment of the alleged victims and their family members; and the rights set forth in Articles 3 and 4 of the Belém do Pará Convention, in relation to Dora Inés Meneses Gómez and Luz Mérida Ocampo.

B. Position of the State

19. The State indicates that the department of Caquetá is of strategic relevance inasmuch as it is an important source of economic resources both for the FARC and the illegal self-defense groups, since there are vast crops of coca leaf. It asserts that, therefore, the Eastern Cordillera, on the west of Caquetá, is key to the FARC's war strategy.

20. The State indicates that in order to recover control over the south of Colombia, on November 29, 2003, the 12th "Juananbú" Infantry Battalion conducted the "Normadía" operation. It asserts that on November 30, 2009 the troops of the Army headed to the vereda of El Cedro, where there was an antenna of the 49th Front of the FARC. It asserts that when the troops arrived, the rebels opened fire on the National Army, causing an exchange of fire. It claims that after a search of the building, the bodies of Dora Inés Meneses Gómez, Luz Mérida Ocampo Álvarez, Faber Gil Buitrago and Floresmiro Huesaquillo were found as well as a wounded child, Héctor Fabián Ocampo Meneses. Concerning the latter, it asserts that military staff provided him with the necessary medical assistance at the place of the facts, and that then he was taken to the Hospital María Inmaculada for further assistance. Likewise, it indicates that José Duván Gil Vásquez was arrested and war elements were seized.

21. It asserts that the National Army has the duty to eradicate illegal armed groups; therefore the "Normadía" military operation, in which 4 FARC members died, is part of the lawful actions of the State.

22. Concerning the investigations made so far, the State indicates that the Attorney General's Office filed a criminal investigation for aggravated murder in connection with Dora Inés Meneses Gómez, Luz Mérida Ocampo Álvarez, Faber Gil Buitrago and Floresmiro Huesaquillo. It asserts that the investigation was referred to the military court in May 2004, and that in May 2007 there was a dispute over competence, which the Higher Council of the Judiciary then settled by the judgment of July 5, 2007. It further indicates that the judgment favored the ordinary court and ordered that the investigation was heard by the 45th Prosecutor's Office of the Human Rights and International Humanitarian Law Unit, which heard the investigation in August 2007. The State asserts that there is an ongoing investigation by the National Unit for Human Rights and International Humanitarian Law, 45th Special Prosecutor's Office of Neiva Huila, in relation to the criminal offenses of aggravated murder of a protected individual, attempted murder of a protected individual, personal injury and forced disappearance. It indicates that a series of investigation procedures have been conducted and that 7 members of the National Army have been inquired in the framework of the proceedings.

23. In its written statement of May 23, 2014, the State indicates that the alleged victims' bodies were exhumed and that to that date, these were at the Institute of Forensic Medicine for the matching of DNA samples taken from their relatives. As regards child Gonzalo Ocampo Meneses, the State initially alleged that there was no proof that he had died in the clash or that he had been one of the alleged victims. Nonetheless, in its written statement of May 23, 2014, the State indicates that his body was found and taken to the Institute of Forensic Medicine for a DNA matching, after which the remains would be handed over to his relatives.

24. As to the administrative proceedings, the State asserts that Ángel Emiro Meneses Muñoz and others filed a claim for direct reparations as family members of Dora Inés Meneses Gómez and children Gonzalo and Fabián Ocampo Meneses. It indicates that the Second Decongestion Administrative Court of Caquetá declared, by its judgment of June 29, 2012, the administrative responsibility of the State—the Ministry of Defense, the National Army. It asserts that the denounced party lodged an appeal against the first-instance judgment, which is pending resolution at the Administrative Law Court of Caquetá.

25. The State indicates that the Command of the National Army's Twelfth Brigade filed a disciplinary investigation into the facts, which was definitely closed by the decision of March 16, 2004 on the grounds that the facts did not establish a disciplinary offense.

26. The State claims that this petition is inadmissible inasmuch as it does not meet the requirement of prior exhaustion of domestic remedies that is set forth in Article 46.1(a) of the Convention. As to the criminal investigation, it indicates that it is being conducted by an ordinary court and that a series of investigative measures have been adopted to determine the facts. It claims, therefore, that the domestic remedies have not been exhausted and that the exception set forth in Article 46.2(a) of the Convention is not applicable.

27. Concerning the exception established in Article 46.2(b) of the Convention, the State indicates that the petitioners' claims in relation to the threats and the displacement suffered by the alleged victims' family members are generic claims and have not been proved or reported to the competent domestic authorities.

28. The State claims that the exception set forth in Article 46.2(c) of the Convention does not apply and that in order to assess the reasonableness of the time limit, it does not suffice to consider only the passing of time. It asserts that it is necessary to consider also the circumstances of the case, the complexity of the matter, the geographical context, and the actions of the judicial authorities and the petitioners. In this regard, it claims that the authorities acted in a diligent way and adopted several evidentiary and procedural measures aimed at determining the facts denounced in the petition; and that the petitioners were not diligent enough in relation to the proceedings inasmuch as they have not appeared as the plaintiff in the criminal proceedings.

29. In addition, the State considers that when State responsibility is alleged, in order to seek redress, a claim for direct reparations must be pursued and exhausted before an administrative law court. It adds that based on the latest decisions by the Council of State, this remedy is useful to obtain compensation but also full redress; therefore, it claims, under the principle of subsidiarity, it is not appropriate that the petitioners resort to the Commission if the alleged State responsibility is yet to be decided through the ongoing domestic proceedings. As to the alleged victims' family members who did not file a claim for direct reparations, the State declares that the competent authorities were unable to rule on the possible State responsibility inasmuch as no claim was filed; hence, it claims that said petitioners did not exhaust domestic remedies.

30. Concerning José Duván Gil Vásquez's detention and prosecution, the State indicates that on November 24, 2004 he was convicted by a first-instance judgment to 76-month term in prison for insurgency, and that on September 19, 2006 he was released on parole. It asserts that whether his deprivation of liberty was unjust must be first analyzed in the domestic venue through a claim for direct reparations, which the victim has not filed yet. In view of this, the State asserts that the petition is inadmissible inasmuch as the domestic remedies have not been exhausted.

31. Finally, the State indicates that the arguments concerning the violation of Articles 3 and 4 of the Belém do Pará Convention to the detriment of Dora Inés Meneses and Luz Mélida Ocampo are inadmissible on the grounds that the facts do not establish a violation thereof, since there is nothing to prove the violation of the specific legal content of said Convention. It also claims that the facts allegedly establishing violations were perpetrated regardless of the fact that the alleged victims were women, as they took place in the context of a military operation in which also men died. The State also claims that the Commission is not competent to hear alleged violations other than those established in Article 7 of the Belém do Pará Convention, and that, hence, the petitioners' request to have this petition declared admissible in relation to Articles 3 and 4 of said Convention must be declared inadmissible.

IV. ANALYSIS ON COMPETENCE AND ADMISSIBILITY

A. Competence

32. In principle, under Article 23 of the Rules and Article 44 of the American Convention, the petitioners are entitled to lodge complaints with the Commission. According to the petition, an alleged violation of rights enshrined in the American Convention and the Belém do Pará Convention has been committed to the detriment of individual persons. The State of Colombia is obliged to respect and ensure the rights protected by American Convention, in relation to these persons. As regards the State, the Commission notes that Colombia is a State Party to the American Convention since July 31, 1973, when Colombia deposited its instrument of ratification; to the Belém do Pará Convention since November 15, 1996, when it deposited its ratification; and to the Inter-American Convention to Prevent and Punish Torture since January 19, 1999, when Colombia deposited its ratification. Therefore, the Commission is competent *ratione personae* to assess the petition. The Commission is also competent *ratione loci* to hear the petition inasmuch as it refers to alleged violations of rights protected by the American Convention and the Belém do Pará Convention that allegedly took place inside the territory of Colombia, which is a State Party to said treaty.

33. The Commission is competent *ratione temporis* since the obligation to respect and ensure the rights protected by the American Convention, the Belém do Pará Convention and the Inter-American Convention to Prevent and Punish Torture were already in force for the State by the time that the facts alleged in the petition took place. Lastly, the Commission is competent *ratione materiae* given that the petitioners denounce possible violations of human rights protected by the American Convention, the Belém do Pará Convention and the Inter-American Convention to Prevent and Punish Torture.

B. Admissibility requirements

1. Exhaustion of domestic remedies

34. Under Article 31.1 of the Rules and Article 46.1(a) of the American Convention, for a petition to be declared admissible in relation to the alleged violation of the American Convention and the Convention of Belém do Pará, remedies available in the domestic venue must have been previously exhausted, in accordance with the generally recognized principles of international law. The purpose of this requirement is to allow the national authorities to hear the alleged violation of a protected right and, if appropriate, resolve the situation before it is heard by an international court. In turn, Article 31.2 of the Rules and 46.2 of the Convention establish that the requirement of prior exhaustion of domestic remedies shall not apply when: a) the domestic legislation of the State concerned does not afford due process of law for protection of the right or rights that have allegedly been violated; b) the party alleging violation of his or her rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

35. The petitioners claim that the exceptions to the prior exhaustion of domestic remedies set forth in Article 46.2(a), (b) and (c) of the Convention are applicable in view that the matter was initially heard by the military criminal court, the alleged victims' family members were subjected to threats and displacement, and there has been alleged unwarranted delay in the criminal proceedings given that it has been over 9 years that the proceedings started at the ordinary venue but no final judgment has been rendered.

36. In turn, the State claims that the domestic remedies have not been exhausted, that the exceptions mentioned do not apply due to the ongoing criminal proceedings before the ordinary court, and that the petitioners' pleadings in relation to the threats and displacement suffered are generic and have been not been reported to the authorities. Moreover, it asserts that exception in Article 46.2(c) is inapplicable since in the framework of the criminal proceedings several decisions have been made to establish the facts, and that therefore there is no unwarranted delay.

37. According to the precedents set by Commission, whenever an offense liable to prosecution *ex officio* is committed, the State is obliged to promote and further the criminal proceedings; this is the appropriate remedy to determine the facts, try the responsible and establish the appropriate criminal punishment as well as enable other forms of pecuniary redress.³ Therefore, in view that the facts denounced by the petitioners are offenses liable to prosecution *ex officio*, in this case the domestic remedy that must be exhausted is the investigation in the criminal venue, which must be conducted and furthered by the State.

38. As to the arguments concerning the petitioners' alleged "lack of diligence" for failing to appear as the plaintiff in the criminal proceedings, the IACHR recalls that in procedural systems where victims or their relatives are entitled to participate in criminal proceedings, said participation is not an obligation but an option which under no circumstances substitutes actions by the State. In other words, the fact that said procedural concepts, with complementary or contributing functions, were not used in the criminal proceedings that the State must further, does not affect the analysis of the requirement of prior exhaustion of domestic remedies.⁴

39. In relation to the administrative proceedings, the jurisprudence of the Commission and the Inter-American Court on Human Rights has consistently established that said proceedings are not an effective remedy to analyze the admissibility of a complaint of such nature inasmuch as it does not contribute to eradicate impunity, ensure the non-repetition of wrongful acts or ensure the full exercise of the rights protected by the Convention.⁵ Therefore, said proceedings are not the appropriate remedy to be exhausted by the petitioners as a requirement to file their petition to the Inter-American System.

40. The Commission notes that the case was initially heard by the military court and that on July 5, 2007 the dispute over competence was settled in favor of the ordinary court. It also notes the petitioners' arguments concerning the fact that the threats and the displacement suffered by the alleged victims' family members prevented their access to justice. In this regard, the Commission recalls that the State is bound to conduct an investigation *ex officio* into the facts denounced. Likewise, as to the duration of the criminal proceedings, the Commission's jurisprudence regarding similar matters⁶ establishes that the exception set forth in Article 46.2(c) of the Convention is applicable due to the time elapsed from the date of the facts denounced, the lack of even a first-instance judgment, and the fact that no one has yet been found responsible. In this case, 13 years have passed since the alleged facts took place and, according to the most recent information available, the criminal proceedings are still in the preliminary stage. As a result, considering the delay in the criminal proceedings of this case, the requirement of exhaustion of domestic remedies is not obligatory.

41. As regards the petitioners' claim about José Duván Gil Vásquez's detention, prosecution and conviction for insurgency, they assert that the alleged victim was prosecuted in 2003. They add that on February 19, 2009 the Criminal Chamber of Appeals of the Supreme Court of Justice annulled the judicial proceedings for the violation of the right to technical defense, as of the date that the investigation was closed, in order to allow the alleged victim to have a proper technical defense. The State claims that the petition is inadmissible in that regard inasmuch as the alleged victim has not lodged a claim for direct reparations before the administrative law court, and consequently has not exhausted the domestic remedies. The Commission notes that based on the information submitted by the parties, it appears that the proceedings filed against him are in progress; therefore, the exception to the prior exhaustion of domestic remedies applies, in accordance with Article 46.2(c) of the American Convention.

³ IACHR, Report No. 17/16, Petition 1132-06. Admissibility. Hortencia Neyid Tunja Cuchumbe and Others. Colombia. April 15, 2016. par. 27.

⁴ IACHR, Report No. 31/15, Case 10.522. Admissibility. Juan Fernando Porras Martínez. Colombia. July 22, 2015; par. 36.

⁵ I/A Court H.R. *Case of Manuel Cepeda Vargas v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 26, 2010. Series C No. 213, par. 139; I/A Court H.R. *Case of the "Massacre of Mapiripán" v. Colombia*. Judgment of September 15, 2005. Series C No. 134, par. 210.

⁶ IACHR, Report No. 17/16, Petition 1132-06. Admissibility. Hortencia Neyid Tunja Cuchumbe and Others. Colombia. April 15, 2016. par. 27; IACHR, Report No. 35/15, Petition 191-07. Admissibility. Álvaro Henrique Rodríguez Buitrago and Others.

42. As a result, the Commission concludes that the exceptions to the requirement of exhaustion of domestic remedies set forth in Article 46.2(c) of the Convention and in Article 31.2(c) of the IACHR's Rules are applicable in this case.

2. Timeliness of the petition

43. Under Article 46.1(b) of the American Convention and Article 32.1 of the Rules, for a petition to be declared admissible by the Commission, it must be lodged within a six-month period following the date on which the alleged victim was notified of the final judgment. As to the petition under assessment, the IACHR has established the applicability of the exception to the requirement of exhaustion of domestic remedies set forth in Article 46.2(c) of the American Convention and in Article 31.2(c) of the Rules. In this regard, Article 32.2 of the Rules of the Commission establishes that in those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time, as determined by the Commission. For this purpose, the Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case.

44. Concerning the case under assessment, the Commission received the petition on November 29, 2004 and the alleged facts matter of this complaint allegedly took place on November 30, 2003 and its effects allegedly persist. Therefore, in view of the context and the characteristics of this case, the Commission considers that the petition was presented within a reasonable term, and that the admissibility requirement of timeliness of the petition has been met.

3. Duplication of procedures and international res judicata

45. From the case file, there is nothing that indicates that the subject matter of the petition is pending in another international proceeding or that it duplicates a petition already examined by this or another international body. Therefore, the inadmissibility conditions set forth in Articles 46.1(c) and 47(d) of the Convention, and in Articles 33.1(a) and 33.1(b) of the Rules do not apply.

4. Colorable claim

46. For admissibility purposes, the Commission must decide if the facts denounced tend to establish a violation of rights, in accordance with Article 47(b) of the American Convention and Article 34(a) of the Rules, or if the petition is 'manifestly groundless' or 'obviously out of order,' in accordance with Article 47(c) of the American Convention and Article 34(b) of the Rules. The admissibility assessment criterion differs from the merits assessment criterion, since the Commission only undertakes a *prima facie* assessment to determine whether the petitioners have established the apparent or possible violation of a right protected by the Convention. It is a general analysis not involving a prejudgment of, or issuance of a preliminary opinion on the merits of the matter.

47. Moreover, neither the American Convention nor the IACHR's Rules require a petitioner to identify the specific rights allegedly violated by the State in the matter brought before the Commission, although petitioners may do so. Based on the system's jurisprudence, it is for the Commission to determine in its admissibility report which provisions of the relevant Inter-American instruments apply and could be found to have been violated if the alleged facts are proven by sufficient elements.

48. The petitioners assert that five of the alleged victims were killed and presented as members of the FARC, and that their bodies were buried: one at the place of the facts and the other four in a mass grave. They assert that the remains are still to be handed over. They claim that two of the alleged victims were also tortured before being killed. Also they assert that one of the alleged victims was injured and another was subjected to arbitrary detention and prosecuted for insurgency. Likewise, they affirm that the alleged victims' family members were subjected to threats and forced displacement, and that in the criminal proceedings, no decision has been made to determine the facts denounced. They indicate that the foregoing facts establish a violation of Articles 1.1, 4.1, 5.1, 7, 8, 19, 22 and 25 of the American Convention, to the detriment of the

alleged victims and their family members; and of Articles 3 and 4 of the Belém do Pará Convention, in relation to Dora Inés Meneses Gómez and Luz Mélida Ocampo.

49. In turn, the State claims that the military operation in the framework of which the facts took place is part of the lawful actions of the State. It further asserts that the domestic remedies have been duly applied and that several decisions have been made in the criminal proceedings in order to investigate into the facts denounced. The State indicates that the pleadings about the alleged violation of the Belém do Pará Convention are inadmissible since the facts that allegedly establish possible violations were perpetrated regardless of the fact that the alleged victims were women.

50. The Commission believes that the alleged detention and subsequent extrajudicial killing of the 5 alleged victims, the fact that they were allegedly presented to the media as FARC members, and the purported situation of risk during detention by State officers are a possible violation of the rights embodied in Articles 4 (Life), 5 (Humane Treatment), 7 (Personal Liberty) and 11 (Privacy) of the American Convention, in relation to Article 1.1 thereof. Likewise, as to the alleged lack of identification of the alleged victims' remains and the alleged lack of return of the bodies to the relatives, together with its possible legal effects, the Commission must analyze in the merits stage the possible violation of Article 3 (Juridical Personality) of the Convention. At the same time, as to the alleged detention and torture of Floresmiro Guasaquillo and Faber Gil Buitrago, prior to their murder, said facts constitute a possible violation of the rights embodied in Articles 5 (Humane Treatment) and 7 (Personal Liberty) of the American Convention, in relation to Article 1.1 thereof; and a violation of Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture. Finally, the purported lack of investigation, punishment and redress in relation to the facts denounced could establish a possible violation of Articles 8 (Fair Trial) and 25 (Judicial Protection) of the American Convention, in connection with Article 1.1 thereof.

51. As regards Héctor Fabián Ocampo Meneses, the petitioners assert that the child received two gunshots that caused him permanent damage. The Commission finds that the facts constitute a possible violation of the rights set forth in Article 4 (Life)⁷ inasmuch as his life was endangered, and in Article 5 (personal integrity), in connection with Article 1.1 of the Convention. Furthermore, the Commission notes that the facts denounced in connection with children Gonzalo Ocampo Meneses and Héctor Fabián Ocampo Meneses are a possible violation of the rights enshrined in Article 19 (Rights of the Child) of the American Convention, which will be interpreted in the light of the United Nations' Convention on the Rights of the Child.⁸ As to the family members of the alleged victims, the arguments in relation to the suffering caused by the facts denounced herein, the displacement and the threats could establish a violation of the rights set forth in Articles 5 (Humane Treatment), 8, (Fair Trial), 22 (Movement and Residence) and 25 (Judicial Protection), in relation to Article 1.1 of the Convention.

52. As regards the allegations that José Duván Gil Vásquez was detained, prosecuted and convicted for insurgency, the information provided by the parties indicates that the alleged victim was criminally prosecuted in 2003, and that the proceedings were annulled in 2009 by the Supreme Court inasmuch as it ruled the annulment of the proceedings as of the date that the investigation was closed, in order to allow him to have a proper technical defense. Considering that to this date there appears to be no final judgment as to the alleged victim's judicial situation, the Commission notes that the facts denounced could establish a possible violation of the rights embodied in Articles 7 (Personal Liberty), 8 and 25 of the American Convention, in connection with Article 1.1 thereof.

53. As to the alleged violation of the Belém do Pará Convention, the Commission notes that from the case file there is no sufficient information to determine possible human rights violations to the detriment of Dora Inés Meneses and Luz Mélida Ocampo, in the light of said treaty.

⁷ IACHR, Report No. 49/14, Petition 1196-07. Admissibility. Juan Carlos Martínez Gil, Colombia, July 22, 2014; par. 40.

⁸ This Convention was adopted on November 20, 1989 and came into force on September 2, 1990. The Colombian State ratified the Convention on the Rights of the Child on January 28, 1991.

V. CONCLUSIONS

54. Considering the abovementioned elements of fact and law and without prejudice on the merits of the matter, the Inter-American Commission concludes that this petition meets the admissibility requirements established in Articles 31 to 34 of the Rules and Articles 46 and 47 of the American Convention; therefore,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To find the instant petition admissible in relation to Articles 3, 4, 5, 7, 8, 11, 19, 22 and 25 of the American Convention on Human Rights, in connection with the obligation set forth in Article 1.1 thereof and with Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture;
2. To find the instant petition inadmissible in relation to the alleged violations of the Belém do Pará Convention;
3. To notify the parties of this decision;
4. To continue with the analysis on the merits; and
5. 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 in the city of Buenos Aires, Argentina, on the 25 day of the month of May, 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