

OEA/Ser.L/V/II.
Doc. 148
20 November 2018
Original: Spanish

REPORT No. 131/18
PETITION 537-09
REPORT ON ADMISSIBILITY

ANA ISABEL FLOREZ THERA AND OTHERS
COLOMBIA

Approved electronically by the Commission on November 20, 2018.

Cite as: IACHR, Report No. 131/17, Petition 537-09. Admissibility. Ana Isabel Florez Thera et al. Colombia. November 20, 2018.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Foundation for the Social Development of the Minimum Conditions for Life (Mínimo Vital)
Alleged victim:	Ana Isabel Florez Thera 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), 19 (rights of the child) and 25 (right to judicial protection) of the American Convention on Human Rights, ³ in conjunction with Article 1.1 (obligation to respect rights)

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition:	May 7, 2009
Additional information received at the stage of initial review:	June, 25, 2014
Notification of the petition to the State:	August 21, 2014
State's first response:	January 20, 2015
Additional observations from the petitioner:	March 6, 2015
Additional observations from the State:	March 20, 2018

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)

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), 19 (rights of the child) and 25 (right to judicial protection) of the American Convention on Human Rights in relation to Article 1.1 (obligation to respect rights)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, in the terms of Section VI

¹ Adaberto Julio Florez, Mónica Julio Florez, Beatriz Julio Florez, Eduardo Julio Florez, Ides Antonio López Pérez, José Agustín Olivarez Pérez, Gerónimo Manuel Julio Vega, Juana Gregoria Vega Martinez, Victor Manuel Julio Morelo, Ider Segundo López Rico, Rita Antonia Olivares Bravo and Luz Mary Olivares Bravo.

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.

Timeliness of the petition:

Yes, in the terms of Section VI

V. FACTS ALLEGED

1. The petitioner alleges that the State has violated, *inter alia*, the rights to humane treatment, personal liberty and life of Ana Isabel Florez Thera and her children: Adaberto Julio Florez, (16 years old) Mónica Julio Florez (14 years old) , Beatriz Julio Florez (11 years old) and Eduardo Julio Florez (8 years old); as well as of Ides Antonio López Pérez and Jose Agustin Olivarez Pérez (hereinafter "the alleged victims") who were executed by members of groups belonging to the Paramilitary Auto Defense United of Colombia (AUC). The petitioners indicate that these groups operated in the department of Córdoba with the acquiescence of the State, and that Colombia has violated the rights of the alleged victims and their families' access to justice and full reparations.

2. They state that on October 25, 1990, at approximately 2:00 a.m., heavily armed men arrived at the 'Las Delicias' settlement in the Barrio Escolar, in the municipality of Tierralta, Department of Córdoba, and knocked down the door of Mr. Gerónimo Manuel Julio Vega's home. There they detained and executed his children: Adaberto, Mónica, Beatriz and Eduardo and his companion, Ana Isabel Florez Thera. They indicate that at 3:00 am on the same day, the Central Police Inspectorate issued the report on the removal of the bodies where it appears that Mrs. Ana Isabel had died from gunshot wounds hugging her son Eduardo, 8 years of age, and that the 10-year-old Beatriz Elena had died embracing her sister Monica. Another report records that the child Adalberto died in a diagonal position in relation to the house, apparently trying to escape the attack. The petitioners state that the child was partially dressed and had died as he fled.

3. They state that on October 25, 1990, Mr. Ides Antonio López Pérez was beheaded at his home by several men allegedly belonging to the Paramilitary Groups (*los tangueros*) who broke into his home at 3:00 am. They also state that on the same day, at 2:00 a.m. in the Barrio Escolar, a group of armed individuals knocked on Mr. José Agustín Olivarez Pérez front door. When he opened the door, he was shot several times causing his death.

4. They claim the international responsibility of the State for the acts perpetrated by paramilitary groups, on the grounds that the State failed to exercise due diligence and adopt the necessary preventive measures in connection with the foreseeable risk faced by the civilian population of Tierralta. They allege that the situation of fear in the region, and the activity of the paramilitary groups in the Department where the events took place, were widely known and obvious. They also maintain that the situation of vulnerability and risk to the civilian population of the municipality of Tierralta was driven by the State itself in that it failed to control or break up the activities of these paramilitary groups. They also argue that the State has sponsored the activities of the illegal groups by fostering impunity and that the State also failed to take special measures of protection on behalf of the executed children as required by their condition of vulnerability due to their ages.

5. They report that in these cases the ex officio investigation was initiated with the removal of the bodies by the Judicial Police of Tierralta, and that it was later carried out by the Delegate Prosecutor's Office before the Municipal Judges of Tierralta and Valencia (Córdoba). However, there was an unwarranted delay in the investigations. They maintain that the Medellín Regional Prosecutor's Office took over the investigation and - after six years - ordered its suspension. It was then assigned to the First Specialized Prosecutor's Office, based in Montería-Córdoba, which decided to maintain the suspension of the investigation. After 15 years of suspension, and due to the entry into force of Law 975 of 2005 (the Justice and Peace Law), the Directorate of the National Specialized Prosecutor's Office for Transitional Justice took over the investigation without any results to date. They indicate that it was only at this point that the relatives of the victims were heard for the first time at a conciliation hearing with the Colombian State before the 33rd Procurator's Office II Judicial Section at the Contentious Administrative Jurisdiction of Montería, Córdoba.

6. Likewise, they state that on November 2, 2006, Jerónimo Manuel Julio Vega filed a criminal complaint against the armed group *Comando Salvatore Mancuso* for the crime of homicide sanctioned by Law

975 of 2005, as did Ider Segundo López Rico on May 6, 2008, and Rita Antonia Olivares Bravo on January 18, 2007.

7. They maintain that on November 20, 2014, the Justice and Peace Chamber of the Superior Court of Bogotá delivered a prioritized judgment against members of the *Bloque Norte* - Salvatore Mancuso Gomez, Edgar Ignacio Fierro Flores, Jorge Ivan Laverde Lugo, Jose Bernardo Lozada Ortiz, Leonardo Enrique Sanchez Barbosa, Sergio Manuel Córdoba Avila, Miguel Ramón Posada Castillo, Julio Manuel Argumedo Garcia, Oscar Jose Ospino Pacheco and Hernando de Jesus Fontalvo Sánchez. However, they allege that this case has failed to produce a ruling and a conviction in favor of the victims of this petition.

8. They argue that the investigation lacked the necessary formalities and lines of enquiry, failed to collect evidence in a timely manner and that during the investigation process the relatives of the murdered victims did not have any opportunity to participate and be heard. With regard to the action for direct reparation before the contentious administrative jurisdiction, they indicated that the relatives of the alleged victims were unable to avail themselves of the remedies established within the Colombian legal system due to the well-founded fear of re-experiencing a situation they had already undergone, and due to the ineffectiveness of the judiciary as a result of the unwarranted delay in the criminal proceedings under the Prosecutor's Office. They maintain that the State has failed to fulfill its obligation to clarify the truth and punish the perpetrators and masterminds of the events.

9. The State argues that the remedies available in the domestic courts have not been exhausted. It indicates that the Prosecutor's Office has acted diligently in order to clarify the facts and that the National Specialized Prosecutor's Office of Transitional Justice is currently investigating the events known as the Massacre of the Barrio Escolar-Tierralta for the crimes of homicide against Ana Isabel Florez Thera, Beatriz Julio Florez, Eduardo Julio Florez, Monica Julio Florez, Adaberto Julio Florez, and José Agustín Olivarez Pérez, whose relatives appeared as victims in proceedings carried out within the framework of the Justice and Peace Law.

10. The State argues that the events were used, as a priority, to build a model on the patterns of macro-criminality of the Castaño family, in order to clarify the circumstances of time, manner and place in which the homicides occurred. It argues that in this claim there is no unjustified delay in light of the fact that the events had a high level of complexity against the background of the internal armed conflict attributable to organized illegal structures (Paramilitary Groups) and the attendant difficulty in obtaining evidence. It indicates that some of the investigative measures carried out by the Prosecutor's Office included the prioritization and voluntary depositions of those seeking demobilization, noting that none of them has acknowledged their participation in the events. On the other hand, regarding Ides Antonio López Perez's death, it observed that the investigations continued in the Specialized First Prosecutor's Office based in Montería-Córdoba, and was suspended due to the difficulties hindering progress in the investigation of the events.

11. The State alleges that the events do not characterize violations of the American Convention, on the ground that they were committed by third parties (paramilitaries) and there is no evidence of tolerance, complicity or acquiescence on the part of State agents, or of a failure to respect the duty of due diligence. The State alleges that there is no evidence that it had prior knowledge of a situation of risk in the area in view of the lack of complaints prior to the events.

12. With respect to the request for reparation, the State alleges that the alleged victims' next of kin did not file the direct reparation action before the Contentious Administrative Jurisdiction, which is the adequate and appropriate remedy. In addition, the State argues that the petitioner has failed to provide any evidence to show the reason why, due to widespread fear, the representatives of the alleged victims failed to file the aforementioned claim.

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

13. The petitioner alleges that, decades after the events, the proceedings are still at a preliminary stage and the authorities have still failed to clarify the events or to identify or punish the perpetrators. The State argues that the criminal investigation is still pending due to its complexity, so that domestic remedies have not been exhausted. The Commission observes that, in situations such as the one that includes crimes against life and humane treatment, the domestic remedies that must be considered for the purposes of the admissibility of petitions are those related to the criminal investigation and punishment of those responsible. With regard to the length of unjustified delay, the Commission will assess the circumstances and perform an analysis to determine if there has been an undue delay. As a general rule, the Commission finds that "a criminal investigation should be carried out promptly to protect the interests of the victims and to preserve evidence." To establish whether an investigation has been carried out "promptly", the Commission considers a number of factors, such as the time elapsed since the crime was committed, whether the investigation has passed from the preliminary stage, the measures adopted by the authorities as well as the complexity of the case.

14. Regarding the State's argument that the exception to the exhaustion of domestic remedies does not apply due to the complexity of the events, the Commission recalls that the determination of whether the exceptions to the rule of exhaustion of domestic remedies set out in Article 46.2.c of the Convention are applicable to the case in question, must be carried out prior to and separately from the analysis on the merits of the matter, as it depends on a standard of examination that is different from the one used to determine a possible violation of Articles 8 and 25 of the Convention. It should be clarified that the causes and effects preventing the exhaustion of domestic remedies in this case will be analyzed, where relevant, in the report adopted by the Commission on the merits of the dispute in order to establish whether violations to the Convention have taken place. Based on the foregoing, the IACHR considers that, given the nature of the petition and that the criminal investigation remains at a preliminary stage 28 years after the death of the alleged victims, the exception to the exhaustion of domestic remedies provided for in Article 46.2.b and c of the American Convention applies.

15. In relation to the contentious-administrative proceedings, the Commission recalls that for the purpose of determining the admissibility of a claim such as the present, the action for direct reparation does not constitute the appropriate remedy nor does it need to be exhausted, given that it is not adequate to provide comprehensive reparation and justice to family members.

16. Regarding timeliness for submission, as the exception to the exhaustion of domestic remedies mentioned above has been found to apply, that the petition before the IACHR was received on May 7, 2009, and the alleged facts in the complaint began on October 25, 1990, and their effects continue up to the present, in view of the context and characteristics of the present case, the Commission considers that the petition was filed within a reasonable time and that the admissibility requirement regarding timeliness has been satisfied.

VII. ANALYSIS OF COLORABLE CLAIM

17. 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, if proven, the alleged extrajudicial executions, lack of investigation and punishment of those responsible could characterize violations of the rights protected in 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 (obligation to respect rights) and 2 (domestic legal effects). Additionally, it appears that four of the alleged victims were minors at the time of the events, for which reason the Commission also considers Article 19 (rights of the child) of the Convention admissible.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 4, 5, 7, 8, 19, and 25 of the American Convention, in light of the obligations set out in Articles 1.1 and 2 of the said instrument;

2. To notify the parties of this decision; to continue with the analysis on the merits; and to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 20th day of the month of November, 2018. (Signed): Margarette May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice President; Francisco José Eguiguren Praeli, Joel Hernández García, Antonia Urrejola, and Flávia Piovesan, Commissioners.