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REPORT No. 165/18
PETITION 995-07
REPORT ON ADMISSIBILITY

JULIÁN ALBERTO TORO ORTIZ AND FAMILY
COLOMBIA

Approved electronically by the Commission on December 9, 2018.

Cite as: IACHR, Report No. 165/18, Petition 955-07. Admissibility. Julián Alberto Toro Ortiz and Family. Colombia. December 9, 2018.

I. INFORMATION ABOUT THE PETITION

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| Petitioner: | Julián Alberto Toro Ortiz |
| Alleged victims: | Julián Alberto Toro Ortiz and family ¹ |
| Respondent State: | Colombia ² |
| Rights invoked: | Articles 3 (juridical personality), 4 (life), 5 (humane treatment), 6 (freedom from slavery), 7 (personal liberty), 8 (fair trial), 9 (freedom from <i>ex post facto</i> laws), 10 (compensation), 11 (privacy), 12 (freedom of conscience and religion), 14 (reply), 18 (name), 19 (rights of the child), 20 (nationality), 21 (property), 22 (movement and residence), 23 (participation in government), 24 (equal treatment) and 25 (judicial protection) of the American Convention on Human Rights ³ |

II. PROCEDURE BEFORE THE IACHR⁴

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| Filing of the petition: | July 12, 2007 |
| Additional information received at the stage of initial review: | August 1 and 3, November 8, 2007; June 11, 2008; December 1, 2011; September 27, 2012; August 6, 2013 and August 10, 2014 |
| Notification of the petition to the State: | April 6, 2016 |
| State's first response: | December 14, 2016 |

III. COMPETENCE

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| 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 ratification instrument on July 31, 1973) |

IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

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| Duplication of procedures and International <i>res judicata</i>: | No |
| Rights declared admissible | Articles 4 (life), 5 (humane treatment), 8 (fair trial), 21 (property), 22 (movement and residence), 25 (judicial protection) and 26 (economic, social and cultural rights) of the Convention, in relation to Article 1.1 (Obligation to Respect Rights) thereof |
| Exhaustion of domestic remedies or applicability of an exception to the rule: | Yes, under the terms of Section VI |
| Timeliness of the petition: | Yes, under the terms of Section VI |

V. ALLEGED FACTS

1. Mr. Julián Alberto Toro Ortiz (hereinafter "Mr. Toro" or "the petitioner") alleges that between 1982 and 2006 his father, Luis Gerardo Toro Jiménez, his brother, José Davison Toro Ortiz, and his two cousins, Robinson de Jesús Agudelo Toro and Luis Gonzaga Toro Arcila, were violently killed. The

¹ The petition was lodged in favor of Julián Alberto Toro Ortiz and eight of his next of kin, who are individualized in the appendix hereto. The petitioner does not submit information that in some way indicates the age of the alleged victims.

² Pursuant to Article 17.2.a of the IACHR Rules of Procedure, Commissioner Luis Ernesto Vargas Silva, a Colombian national, did not take part in the discussion or the decision on the present matter.

³ Hereinafter "Convention" or "American Convention."

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

petitioner adds that he and his next of kin have been continuously threatened, that the State has failed to protect them and that they have had to move out of town several times accordingly. He indicates that, as a result, they have lived in a constant situation of uncertainty and their economic and social development has been rendered impossible.

2. The petitioner submits that his father was killed on July 21, 1982 when he was working as a municipal guard in the city of Ansermanuevo, Valle del Cauca. He claims that his father was murdered by two United Self-Defense Forces of Colombia (AUC, by the Spanish acronym) members and that his death certificate reads that he died of gunshot wounds. Several threats have led the family to move out of town; and on October 11, 2002 the petitioner's cousin, Robinson de Jesús Agudelo Toro, was killed in the context of a massacre attributed to the AUC in the village of Albán, municipality of El Cairo. Later, the AUC allegedly gave the order to kill the petitioner's brother, who was found dead on November 10, 2002 at the Club Náutico of Anacaro. On April 26, 2006 the dead body of his cousin, Luis Gonzaga Toro Arcila, was found in the area around the town of Marsella, in Risaralda. The petitioner argues that all these incidents were reported to the Public Prosecutor's Office, the Ministry of Interior, and the National Commission for Reparation and Reconciliation.

3. He affirms—particularly regarding his father's death—that the family has been unable to access justice due to the context of violence and the fact that the legal actions they pursued were unsuccessful; that some of the alleged perpetrators have been extradited and others have died. He adds that on October 12, 2002 he reported the death of Robinson Agudelo Toro to the 17th Public Prosecutor's Office of Cartago (case file 68686) and that on November 10, 2002 he reported the murder of José Toro Ortiz to the 16th Prosecutor's Office of Cartago (case file 71680). He also indicates that despite continuous threats, he and his next of kin filed complaints before the Prosecutor's Office in charge of Justice and Peace Law cases and the Police, in addition to having resorted to several state bodies such as the Ombudsman's Office of Zarzal, the Ombudsman's Office of Ansermanuevo and the Ombudsman's Office of Cali. He alleges that in spite of their having exposed themselves to higher risk, he and his next of kin have not been given any answer or protection or reparation measures. He claims that the State has failed to resolve his numerous requests for help with their social reintegration and prevention from displacement, and that it has only made them sign up the processing for state support, which they believe is not an actual form of reparation.

4. For its part, the State argues that those facts do not constitute human rights violations because they are not attributable to the State but to third parties. It indicates that prior to the reported killings the alleged victims did not report the situation of risk before the authorities; that, consequently, the State was not obligated to adopt measures aimed at protecting their rights to life and integrity. It also submits that once the State was informed of such deaths and the subsequent displacement of the family, it decided to include these in the Central Register of Victims so that they would receive administrative reparation, and that administrative remedies were available, which they did not exhaust. Therefore, the State requests that the instant petition be declared inadmissible.

5. The State claims that judicial authorities adopted all the measures available to clarify the facts and punish the persons responsible. In this regard, it indicates that the petitioner failed to timely institute criminal proceedings aimed at clarifying the death of Luis Toro Jiménez, and that the investigation into the death of Robinson Agudelo Toro is open and in the stage of investigative proceedings before the Fifth Special Prosecutor's Office of Buga; hence, it requests that the instant petition be declared inadmissible on grounds of lack of prior exhaustion of domestic remedies. As for the murder of José Toro Ortiz, the State informs that on August 21, 2012 authorities ruled the preclusion of the matter given the lack of evidence. It claims that if IACHR examines this aspect of the petition it would work as a court of fourth instance. It emphasizes that in the domestic jurisdiction the petitioner did not appeal the preclusion of the case.

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

6. The petitioner asserts that although decades have passed since the incidents occurred, not all the persons responsible for the violations of the alleged victims' human rights have been identified,

individualized, investigated and punished nor have the latter been granted full reparation. The State alleges that domestic remedies concerning the purported homicides were not exhausted, some of which allegedly were not reported to the authorities, and that the criminal investigation into Robinson Agudelo Toro's death is open. Finally, it affirms that the alleged victims' next of kin failed to timely present a claim for damages before the administrative jurisdiction.

7. Regarding complaints that include violations of the rights to life and personal integrity like the instant petition, the remedies that must be taken into account for the purposes of the admissibility of the petitions are those related to the criminal investigation and punishment of the perpetrators, which in domestic laws translate into offenses liable to prosecution *ex officio*. In this regard, the Commission notes that, with respect to the alleged murder of Luis Toro Jiménez and Luis Toro Arcila, nothing indicates that criminal investigations have been filed even though the facts were reported to the Prosecutor's Office and the National Commission for Reparation and Reconciliation, whereas the investigation into the death of José Toro Ortiz was closed without attributing responsibilities and the investigation into the death of Robinson Agudelo Toro remains open. Additionally, as for the death threats reported to several authorities of the Public Prosecutor's Office and the Police, nothing indicates that investigations have been filed. Therefore, the Commission resolves that the exception to the requirement of prior exhaustion of domestic remedies foreseen in Article 46.2.c of the Convention applies to the present case, although the causes and effects that have prevented the exhaustion of domestic remedies in this case will be analyzed, as applicable, in the Commission's report on the merits of the case in order to verify whether these actually establish violations of the Convention.

8. The IACHR recalls that, in the decision on the admissibility of a petition, a claim for damages is neither appropriate nor necessary because it does not provide full redress or justice to the alleged victims' family. Moreover, the IACHR has consistently established that the determination of reparation, whether judicially or administratively (without the two jurisdictions being mutually exclusive), does not exempt the State of its obligations related to the component of justice for the violations caused.

9. As for the requirement of timely presentation, the Commission concludes that, considering the application of the exception set forth in Article 46.2.c of the Convention, the petition has been filed within a reasonable time according to Article 32.2 of its Rules of Procedure. This decision is based on the fact that although the abovementioned events date from July 21, 1982 and the petition was received on August 3, 2007, some of the effects of the facts alleged apparently persist to date, such as the lack of identification and punishment of the persons responsible and the lack of reparation for the victims.

VII. ANALYSIS OF COLORABLE CLAIM

10. In view of the legal and factual elements presented by the parties, and the nature and context of the matter brought to its attention, the IACHR deems that, if proven, the alleged violations of the rights to life and physical integrity of Luis Gerardo Toro Jiménez, Robinson Agudelo Toro, José Davinson Toro Ortiz and Luis Toro Arcila with the acquiescence of the State; the lack of state protection from the continuous threats to their family, the family's forced displacement, the lack of investigation and punishment of the perpetrators and the lack of reparation for the family all could establish violations of the rights protected through Articles 4 (life), 5 (humane treatment), 8 (fair trial), 21 (property), 22 (movement and residence), 25 (judicial protection) and 26 (economic, social and cultural rights) of the American Convention, in connection with Article 1.1 (obligation to respect rights) thereof.

11. With respect to the petitioner's claim on the purported violation of Article 10 (compensation) of the Convention, given that this provision concerns the right to compensation when a person has been sentenced by a final judgment through a miscarriage of justice, the Commission considers that it is not appropriate to declare this claim admissible. As for the petitioner's claim about the violation of the rights enshrined in Articles 3 (juridical personality), 6 (freedom from slavery), 7 (personal liberty), 9 (freedom from *ex post facto* laws), 11 (privacy), 12 (freedom of conscience and religion), 14 (reply), 18 (name), 19 (rights of the child), 20 (nationality), 23 (participation in government) and 24 (equal treatment),

the Commission observes that the petitioner does not present enough evidence that allows the Commission to consider prima facie a possible violation of these.

12. Lastly, as for the State's claim about the establishment of a court of fourth instance, the Commission observes that in declaring this petition admissible it does not seek to overstep the authority of domestic courts. In the merits stage, the Commission will analyze whether the domestic proceedings conformed to the guarantees of due process and judicial protection in accordance with the rights protected by the American Convention.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 4, 5, 8, 21, 22, 25 and 26 of the American Convention, in connection with Article 1.1 of said treaty;

2. To find the instant petition inadmissible in relation to Articles 3, 6, 7, 9, 10, 11, 12, 14, 18, 19, 20, 23 and 24 of the Convention; and

3. 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 9th day of the month of December, 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.

Appendix
List of alleged victims

1. Julián Alberto Toro Ortiz
2. Luis Gerardo Toro Jiménez
3. Robinson de Jesús Agudelo Toro
4. Jose Davinson Toro Ortiz
5. Luis Gonzaga Toro Arcila
6. Mariela Ortiz
7. Gerardo Toro Ortiz
8. Nelson Fernando Toro Ortiz
9. Ana Judith Toro Jiménez