

OAS/Ser.L/V/II
Doc. 148
9 September 2024
Original: Spanish

REPORT No. 140/24
PETITION 264-14
REPORT ON ADMISSIBILITY

ANA ISABEL RIVERA NARVÁEZ ET AL.
COLOMBIA

Approved electronically by the Commission on September 9, 2024.

Cite as: IACHR, Report No. 140/24, Petition 264-14. Admissibility.
Ana Isabel Rivera Narváez et al. Colombia. September 9, 2024.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Consultoría para los Derechos Humanos y el Desplazamiento (Codhes); Asociación de Víctimas de Pichilin (Asovip); Corporación Consultoría para el Derecho Internacional de los Derechos Humanos (ConDerechos)
Alleged victims:	Ana Isabel Rivera Narváez et al. (see annex)
Respondent State:	Colombia ¹
Rights invoked:	Articles 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (judicial guarantees), 17 (protection of the family), 19 (rights of the child), 21 (private property), 22 (movement and residency), and 25 (judicial protection) of the American Convention on Human Rights ² ; and the Inter-American Convention to Prevent and Punish Torture

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition:	February 26, 2014
Notification of the petition to the State:	April 26, 2018
State's first response:	December 26, 2019
Additional observations from the petitioner:	March 10, 2021
Additional observations from the State	March 16, 2021

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); Convention of Belém do Pará (deposit of instrument of ratification November 15, 1996); and Inter-American Convention to Prevent and Punish Torture (instrument of ratification deposited January 19, 1999)

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 (life), 5 (humane treatment), 7 (personal liberty), 8 (judicial guarantees), 17 (protection of the family), 19 (rights of the child), 21 (private property), 22 (movement and residence), and 25 (judicial protection), in conjunction with Article 1(1) (obligation to respect rights) of the American Convention; Article 7 of the Inter-American Convention for the Prevention, Punishment, and Eradication of Violence against Women

¹ In keeping with Article 17(2)(a) of the Commission's Rules of Procedure, Commissioner Carlos Bernal Pulido, of Colombian nationality, did not participate in the decision in the instant matter.

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

³ Each party's observations were duly forwarded to the other party.

	(Convention of Belém do Pará); Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, in the terms of Section VI
Timeliness of the petition:	Yes, in the terms of Section VI

V. THE PARTIES' POSITIONS

The petitioner

1. The petitioner alleges the kidnapping, arbitrary detention, torture, assassination, and other acts of violence and harassment, as well as arson of dwellings and the forced displacement of communities, at the hands of paramilitaries and state agents, in the course of what is known as the "Chinulito Massacre" or "the El Parejo Massacre"; as well as the impunity surrounding the events and impacts suffered by the family members.

The massacre and other acts of violence

2. The petitioner narrates that from September 12 to 15, 2000, 60 paramilitaries massacred residents of rural areas of the municipality of El Colosó, in the department of Sucre. This massacre was carried out under what was called "Operación Rastrillo" ("Operation Rake") directed by paramilitary Cristian Eduardo Acosta Olascuagas (alias "Pantera") with state support; and sought to exercise territorial control in the zone to counter the advances by guerrilla groups. This operation and other massacres in the region, 43 in all, leaving 369 victims, sought to consolidate paramilitary control, especially by the Bloque Norte of the Autodefensas Unidas de Colombia (AUC) and the "Golfo de Morrosquillo" Front, under the command of paramilitary Rodrigo Antonio Mercado Pelufo (alias "Cadena"). According to the petitioners, the paramilitaries responsible for these actions had political ties with and the support of the authorities (the very governor of Sucre at the time was said to have proven ties with these groups). In this context, even before the massacre, this violence had already reduced the population from 3,000 to only five families in the urban area of Chinulito. Nonetheless, the paramilitaries had not yet achieved the massive displacement expected in rural areas. The "Chinulito Massacre" was the thirty-fourth massacre in the region from 1996 to 2001 and the third one in the context of "Operación Rastrillo"; they allege it sought to wipe out all the adult men.

3. The massacre was ordered by "Cadena," the paramilitary leader in the zone, and directed by his second-in-command, Uber Enrique Banquez Martínez (alias "Juancho Dique") and Edwar Cobo (alias "Diego Vecino"). In addition, it is said that many other members of the paramilitary forces had participated in the massacre, along with four police officers from the Unified Action Group for Personal Protection of the National Police, and three corporals from the Marine Infantry.

4. The massacre was carried out by approximately 60 men from the group "Héroes de los Montes de María" armed with firearms, clubs, daggers, and an iron ball attached to a chain for beating the victims on the head. They had the support of deserters from the guerrilla forces and were guided by the soldiers from the Marine Infantry, who pointed out the victims who were to be eliminated. With this support the paramilitaries entered violently, assassinated 11 campesino farmers in the villages of La Balastrera, La Arenita, El Parejo, El Bobo, and El Corozo, in the districts (*corregimientos*) of Chinulito and El Cerro, in the municipality of El Colosó, and in the village of Aguacate in the municipality of San Onofre (also in Sucre). The villages affected are situated in the foothills of the Montes de María, interconnected by roads and paths that cut across the hills. These hamlets were home to a total of 39 dwellings.

5. Given the distance among the different hamlets affected, it was not possible to carry out the incursion in just one place and transfer the victims to a central point. The dispersion of the attacks guaranteed the desired impact, provoking the displacement of the rural population of the district. The distance between the points of attack impeded using exclusively firearms, for the noise would have alerted the neighboring

hamlets. Therefore, it was decided to use blunt and bladed weapons, some provided by the Marine Infantry. According to testimony from local residents, during the massacre helicopters were also bombing the zone.

6. The criminal rampage began at the El Palmar and Las Melenas farms, which were paramilitary bases where the 60 members met under the command of “Juancho Dique.” According to subsequent statements by Emiro José Correa Viveros (alias “Convivir”), the massacre was ordered by “Cadena.” The paramilitaries reached Chinulito in trucks at dawn on September 13 and began their incursion on foot from the village of La Balastreira. At the bridge over the El Bobo creek they divided into three groups with different roles: to massacre, to set fires, and to steal property and threaten the survivors. This organization enabled them to act simultaneously in several hamlets. Thus, at about 5:00 a.m. on that day they arrived at the farm known as Finca El Recreo, in the village of La Balastreira, where they kidnapped and assassinated Jesús María Oliveros, Pedro Rivera Martínez, and Roberto Antonio Buelvas Banquez, leaving their bodies by the El Bobo creek. At 6:30 a.m. they reached the village of Arenita, where they set fire to the house of Joaquín Pablo Rivera Colón, and moved towards other dwellings, setting properties and crops ablaze. Nancy Vitola, Joaquín’s partner, and their children fled after not finding him; they found his body the next day. After setting ablaze the houses in El Parejo, the paramilitaries separated Ana Isabel Rivera Narváez from her son and turned him over to a neighbor. Next they took her with them near the El Mico creek, where they beat her to death, also doing the same to Antonio José Rivero and Gerardo Rivera Teherán. Ana Isabel was 7 months pregnant when she was assassinated. She was expecting the birth of her new child, Walter Salas Rivera, an unborn baby who also died from the blows. On that same day, September 13, Mr. Walberto Antonio Salas Rivera, Ana Isabel Rivera Narváez’s husband, denounced the facts to the National Police in Sincelejo, though the police refused to accompany him and charged him 30,000 pesos to help him collect the bodies. The paramilitaries also went to the El Cafetal farm, where they assassinated Jorge Eliécer Torres Arias and continued their rampage to other sectors, finding and killing more persons in El Corozo, such as Messrs. José Guido Buelvas Banquez and Elio Pasos.

7. On the morning of September 14, the paramilitaries advanced towards El Aguacate, where they intercepted José Manuel Padilla Nisperuza and Enalba Isabel Ruiz Ortiz, assassinating the first and forcing the second to leave the zone. Nonetheless, on September 16 she recovered his body and took it to the Office of Forensic Medicine in Sincelejo by her own means. After celebrating their crimes in a tavern in El Cañito, where they spend the night of September 14, 2000, the paramilitaries finally went to the farm known as Las Melenas, where they remained for two or three days before leaving the region. The victims’ bodies were recovered by family members and friends, who transported them in burros and hammocks, for the police considered it too dangerous to enter the zone.

8. The petitioners also denounced the collusion of the State, in addition to its direct participation. Petitioners argue that despite a massive displacement in August 2000 that activated the early warnings of the Office of the Human Rights Ombudsperson, the request for special protection for Chinulito presented by the Office of the Human Rights Ombudsperson was denied by the Police and the Marine Infantry on September 4, 2000, eight days before the massacre. Despite having a contingent of approximately 2,500 men and sufficient resources to provide protection, the armed forces and National Police did not act effectively to prevent the paramilitary incursion or to protect the access roads to Chinulito, enabling the paramilitaries to operate freely. Despite the presence of military units nearby and even though they had specific information on the location of these criminals, no effective measures were taken to detain them. In addition, the response of the armed forces and National Police to the victims and their family members, instead of offering protection, was said to have included mistreatment and baseless accusations. This conduct, according to the petitioners, evidences a pattern of negligence and complicity that made it possible to perpetrate the massacre without any impediment.

Judicial investigations

9. The petitioner reports that after the report filed November 27, 2000, by campesino farmers who survived the massacre, the National Director of the Special Unit for Human Rights Investigations of the Office of the Procurator General of the Nation ordered that a preliminary inquiry be opened (File 008 - 52198/01) to investigate the murders of (1) Jesús María Oliveros, (2) Pedro Rivera Martínez, (3) Roberto Antonio Buelvas Banquez, (4) Joaquín Pablo Rivera Colón, (5) Jorge Eliécer Torres, (6) Ana Isabel Rivera, (7) Antonio José Rivero, (8) Gerardo Rivera Teherán, (9) José Guido Buelvas Banquez, and (10) José Manuel Padilla

Nisperuza. Nonetheless, the inquiry did not include the assassination of Elio Pasos, which occurred in the same event. In addition, four extrajudicial executions in La Peña, municipality of Ovejas, dozens of kilometers from Chinulito and El Parejo, without any connection to the facts referred to in the instant petition, were included. On June 26, 2002, this investigation was transferred to the Office of the Delegate Disciplinary Procurator for the Defense of Human Rights, which on May 23, 2003, concluded the procedure with no showing of omissions or other illegal acts by the armed forces and National Police. The petitioner alleges that it is not shown that the complainants were informed of the decision to archive these investigations, thereby making it impossible for them to oppose it.

10. In addition, the Office of the Sixth Prosecutor before the Criminal Courts of the Circuit of Sincelejo initiated a preliminary investigation on September 28, 2000, under number 11140, that includes the homicides of Jesús María Oliveros Rocha, Pedro Rivera Martínez, and Roberto Antonio Buevas Banquez. This file was passed on to the Office of the Specialized First Prosecutor of Sincelejo on April 4, 2001. Nonetheless, on August 16, 2001, the investigations were suspended until finding new evidence; the case remained inactive without any additional progress at least until the moment when the instant petition was filed with the IACHR.

11. In tandem, on September 20, 2000, the Office of the Sixth Prosecutor initiated preliminary investigation No. 11313, stemming from Criminal Complaint No. 0982/CBAFIM5 AJ-726 of September 15, 2000 regarding the homicide of Ana Isabel Rivera Narváez, Gerardo Rivera Martinez, and a person with the last name Contreras, and Criminal Complaint No. 0976/CBAFIM5 AJ-746 of September 18, 2000, regarding the deaths of Gerardo Manuel Rivera Teherán and Jose Manuel Padilla Nisperuza.

12. In addition, on September 15, 2000, the Police of Sucre informed the Office of the Prosecutor for Immediate Response of the homicides of Joaquín Pardo Rivera Colón, Jorge Eliécer Torres Arias, Ana Isabel Rivera Narváez, Antonio José Rivero Contreras, Gerardo Antonio Rivera Teherán, José Guido Buevas Banquez, and José Manuel Padilla Nisperuza. In response, on September 26, 2000, the Office of the Second Specialized Prosecutor of Sincelejo ordered that a preliminary investigation be opened. Nonetheless, on May 22, 2001, the Office of the Second Specialized Prosecutor suspended the investigations until new evidence were to turn up, keeping the case closed without any further progress, at least until the instant petition was filed with the IACHR.

The Justice and Peace Courts

13. The petitioner notes that as of August 2002, the leaders of the AUC stated their intention to initiate a process to negotiate the demobilization of their forces. On July 15, 2002, the national government and the AUC signed the "Ralito agreement," concerning the demobilization of all the paramilitary structures. On July 25, 2005, Law 975 was adopted, including provisions for the reincorporation into civilian life of members of illegal organized armed groups. In this legal framework, July 14, 2005 saw the collective demobilization of the Bloque Héroes de los Montes de María, which had 594 members, 529 of whom had no criminal record and were free with no investigations pending. Decree 128 was applied to 90% of the paramilitaries who demobilized from the Bloque Héroes de los Montes de María, who were pardoned. The remaining 10% voluntarily availed themselves of Law 975; of this group nine died, four did not come forward to give the unsworn statement provided for, and 16 did not complete the procedure.

14. As a result of the demobilization of the AUC the paramilitaries "Juancho Dique," Emiro José Correa Viveros (alias "Convivir"), and Yairsiño Meza (alias "El Gato") admitted their participation in the aggravated homicide of 10 of the 11 victims of the Chinulito Massacre. The admissions of responsibility by these three paramilitaries occurred in hearings held as part of the demobilization. "Juancho Dique" accepted his responsibility in a hearing held September 6, 2009, while "Convivir" and "El Gato" did so in a hearing on May 5, 2009. Nonetheless, the petitioner notes that the leaders implicated in the massacre were not investigated. Four of the five commanders identified were not subjected to the Law on Justice and Peace, and although two paramilitaries with the alias of "El Paisa" did avail themselves of the law, neither mentioned the massacre. According to the petitioner, there has been no investigation into the members of the military and National Police who allowed or participated in the massacre.

Administrative courts

15. The petitioner indicates that the family members of eight of the 11 alleged assassinated victims – without indicating which ones – filed a direct reparation action for damages before the Contentious-Administrative Court of Sucre in September 2002. Nonetheless, as of the date of the petition to the IACHR, in February 2014, the case continued in the evidentiary phase with no final resolution.

The Colombian State*Information on the criminal proceedings*

16. In the area of criminal justice, the State indicates that the Office of the 161st Prosecutor of the Specialized Directorate against Human Rights Violations of Montería carried out investigation No. 108622, which was joined with the above-mentioned preliminary investigation 11313 on May 11, 2015, as both have to do with the same facts. According to the State's response of December 2019, the investigation was at that time in the preliminary phase. In this investigation the Office of the Prosecutor accredited, as victims, Pedro Rivera Martínez, Roberto Antonio Buelvas Bánquez, Joaquín Pablo Rivera Colón, Antonio José Rivero Contreras, Ana Isabel Rivera Narváez (pregnant), José Guido Buelvas Banquez, Jesús María Oliveros Rocha, Jorge Eliécer Torres Arias, José Manuel Padilla Nisperuza, and Elio Rafael Pasos Chávez.

17. The actions of the Office of the Prosecutor culminated in an early judgment (*sentencia anticipada*) handed down on September 17, 2018 by the Criminal Court of the Specialized Circuit of Sincelejo, Sucre, convicting Michel Antonio Berrio Julio (alias "Meneca"), José Antonio Ruíz Rocha (alias "El Guía"), Yeison José Anaya Fernández (alias "Armando Nero" or "Cabezón"), and Edilberto Pelufo Lora (alias "Jaime") of the crime of forced displacement of civilian population, along with homicide of a protected person. The court imposed sentences of 240 months of prison, a fine of 1,716 times of current monthly legal minimum salary (approximately US\$ 440,000 at the time of the facts⁴) and disqualification from holding public office or performing public duties for 20 years.

18. On October 1, 2018, the Office of the Attorney General closed the investigation with respect to Rodrigo Antonio Mercado Pelufo (alias "Cadena"), but revoked this decision on October 30, 2018. The State does not explain the reasons for the revocation. On February 11, 2019 the Judicial Police reported that it was not able to arrest Cadena because he had gone missing.

19. On June 11, 2019, the Office of the Attorney General of the Nation proceeded to locate alias "Miguel Soldado," so as to file charges with a view to securing an early judgment. A report of the Judicial Police of June 21 indicated that he resided in Magangué, Bolívar.

20. On September 9, 2019, the Criminal Court of the Specialized Circuit of Sincelejo handed down an early judgment against alias "Félix," as perpetrator of the crime of forced displacement of civilian population and homicide of a protected person; he was given a prison sentence of 320 months, a fine of 3,433 times the monthly legal minimum salary in force (approximately US\$ 800,000 at the time of the facts⁵), and 20 years disqualification from holding public office or performing public duties. The State also indicates that the following are persons of interest within the same investigation: Rodrigo Antonio Mercado Pelufo, Uber Enrique Banquez Martínez, Edward Cobos Téllez, Emiro José Correa Viveros, Yairsiño Enrique Meza Mercado, Michel Antonio Berrio Julio, Nilton Andrés Manjarrez Mendoza, José Antonio Ruíz Rocha, Yeison José Anaya Fernández, Edilberto Pelufo Lora, José David Gracia Gómez, and Juan Alberto Ramos Espinel.

⁴ The legal monthly minimum salary in force in Colombia in 2018 was \$781,242 COP (see, e.g., <https://www.salariominimocolombia.net/2018>), or approximately US\$ 258.00 (<https://www.exchange-rates.org/exchange-rate-history/cop-usd-2018-09-17>). 1,716 legal monthly minimum salary in force were equivalent to \$1,340,869,512 COP, or US\$ 443,886.

⁵ The legal monthly minimum salary in force in Colombia in 2019 was \$828,116 COP (see, e.g., <https://www.salariominimocolombia.net/2019>), or approximately US\$ 233 (<https://www.exchange-rates.org/exchange-rate-history/cop-usd-2019-09-09>). 3,433 legal monthly minimum salaries were equivalent to \$ COP 2,842,922,228, or USD\$ 799,889.

Justice and Peace Courts, disciplinary proceeding, and action for direct reparation

21. With respect to the proceedings before the Justice and Peace court, Colombia reports that in December 2019 the Transitional Justice Section of the Office of the Attorney General was investigating the El Parejo Massacre, recognizing as homicide victims the same persons mentioned in the petition (Gerardo Rivera Teherán, José Manuel Padilla Nisperuza, Antonio José Rivero Contreras, Guido José Buevas Banquez, Ana Isabel Rivera Narváez, Jorge Eliécer Torres Arias, Joaquín Rivera Colón, Jesús María Olivera Rocha, Pedro Manuel Rivera Martínez, Roberto Antonio Buevas Banquez, and Elio Rafael Pasos Chávez), in addition to 21 victims of forced displacement and Walberto Antonio Salas Rivera for damage to his property.

22. The State also reports that “Juancho Dique,” “Convivir,” and “El Gato” admitted their responsibility in the massacre, as they faced charges for various crimes including homicide and torture of a protected person, unaggravated kidnapping, and forced displacement of civilian population. The facts admitted by the defendants led to a hearing on reparation for the victims, which concluded in October 2018. The latest information reported by the State is that the judgment is pending from the Chamber of Justice and Peace of the Superior Court of the Judicial District of Barranquilla.

23. As for the disciplinary proceeding, the Office of the Delegate Procurator for Human Rights (Procuraduría Delegada para los Derechos Humanos) concluded the proceeding without showing the participation of public servants in the El Parejo Massacre. It can reopen the investigation should new evidence come to light.

24. As for the direct reparation action mentioned by the petitioner, the State reports that the Third Administrative Court for Reducing Backlog of the Sincelejo Circuit, in September 2015, exonerated the State of responsibility for the homicides. Nonetheless, the Administrative Court of Sucre overturned this decision in July 2018, finding the Nation-Ministry of Defense-National Navy responsible for the damages caused.

The State’s arguments alleging inadmissibility of the petition

25. The State argues that the petition does not meet the requirement of prior exhaustion of domestic remedies for different reasons. With respect to the investigation and criminal process, it alleges that remedies were not exhausted because the authorities continue investigating the facts of the El Parejo Massacre. It also argues that the exception of unwarranted delay does not apply to the case, since the facts are particularly complex, involving many victims and different types of crimes, in addition to the context of the internal armed conflict, which makes it difficult to collect evidence.

26. The State alleged that the alleged victims failed to exhaust the direct reparation action in relation to the alleged victims of kidnapping and torture, Leoncio Narváez and Luis Jiménez; and the victims of arson or property damage, Alfonso Rivera, Doralba Pacheco Salas, Nancy Tovar Vitola, Idaldo Salas, and Zoe Burgos.

27. It also alleges that the population allegedly affected by forced displacement had not exhausted domestic remedies, and that in this regard a contentious-administrative proceeding was begun in which the State was found responsible in 2015, but which is currently pending a judgment on appeal.

28. Finally, regarding the possible claims for reparations for the homicides alleged in the initial petition, the State invokes the fourth instance formula, i.e. that the petitioners are seeking to have the IACHR review the final decision of a domestic judicial body, since the Administrative Court of Sucre found the Nation-Ministry of Defense-National Navy responsible for the facts, and ordered that the corresponding reparations be made to the victims’ family members.

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

29. The petitioner argues that there was an unwarranted delay in the domestic proceedings, since the criminal trials have not yet reached the point of investigating and punishing all those responsible for the

facts that began in September 2000.

30. The State considers that the criminal action is the adequate and effective remedy for the investigation, reparation, and punishment of the facts narrated by the petitioner. In relation to the criminal action, it adduces that there is a failure to exhaust domestic remedies since the authorities continue investigating the facts. Moreover, it argues that there was no unwarranted delay in the domestic proceedings because the facts are complex. That complexity stems from the large number of victims of various crimes (homicide, kidnapping, torture, and forced displacement, among others) in the context of the internal armed conflict, with armed actors who undertake to hide evidence.

31. Moreover, the State alleges that the adequate remedy with respect to the petitioner's claims for reparations is an action for direct reparation. It argues that there has been a failure to exhaust the action for direct reparation in relation to the alleged victims of kidnapping and torture, Leoncio Narváez and Luis Jiménez; and property damage (arson), Alfonso Rivera, Doralba Pacheco Salas, Nancy Tovar Vitola, Idaldo Salas, and Zoe Burgos, considering that none of these persons filed an action for direct reparation. As for the group action filed by the persons allegedly affected by displacement in the wake of the El Parejo Massacre, it argues failure to exhaust domestic remedies since this action is under way before the contentious-administrative courts.

32. For analyzing exhaustion of domestic remedies, the IACHR recalls that in the cases in which acts of violence and harassment are claimed that included persons being killed and the resulting impunity, the suitable remedy that should be exhausted domestically is criminal prosecution, by means of *sua sponte* and diligent investigations to determine the persons responsible for violating the right to life, and subject them to prosecution and punishment in keeping with the American Convention;⁶ this burden should be assumed by the State as its own legal duty, and not as some sort of management of private interests or that depends on the efforts of private persons or production of evidence by them.⁷

33. In the instant case, according to the information provided by the parties, the Commission observes that the facts alleged of kidnapping, arbitrary detention, torture, murders, and other acts of violence and harassment, at the hands of paramilitaries and state agents, occurred as of September 2000. The acts of setting dwellings ablaze and forcibly displacing communities are, in the context of the facts narrated, additional acts of violence and harassment that should also be investigated by the criminal justice system as part of a set of actions that attack, *inter alia*, the physical and mental integrity, life and liberty of the alleged victims. Specifically, after the events of September 2000, while in late September 2000 an initial impetus was given the criminal investigation, the criminal procedure progressed such that it was not until 2018 and 2019 that the first criminal verdicts were handed down, without any information being reported on new progress. The criminal verdicts mentioned, according to the information available, referred to only some of the persons possibly implicated, and were not final decisions. This shows, therefore, that the criminal proceeding is still under way. This conclusion is not questioned by the State, which also states clearly that criminal proceedings are still under way in the domestic jurisdiction.

34. The IACHR takes note of the State's argument with respect to the multiplicity of victims, plurality of crimes, and the context of armed conflict, which tends to favor the destruction of evidence. Nonetheless, the Commission considers it important to recall that it is a responsibility of the State to mitigate the internal conflicts and ensure an adequate and efficient investigation into the facts. The Commission also observes that the State does not show how the alleged complexity would justify the fact that more than 23 years have elapsed since the facts without the criminal proceeding having yielded any specific or final results.

⁶ IACHR, Report No. 13/22. Petition 1332-11. Admissibility. Orlando Hernández Ramírez and family members. Colombia. February 9, 2022, para. 7; IACHR, Report No. 72/18, Petition 1131-08. Admissibility. Moisés de Jesús Hernández Pinto and family. Guatemala. June 20, 2018, para. 10; IACHR, Report No. 70/14. Petition 1453-06. Admissibility. Maicon de Souza Silva. Renato da Silva Paixão et al. July 25, 2014, para. 18; Report No. 3/12, Petition 12.224, Admissibility, Santiago Antezana Cueto et al. Peru, January 27, 2012, para. 24; Report No. 124/17, Petition 21-08, Admissibility, Fernanda López Medina et al., Peru, September 7, 2017, paras. 3, 9-11.

⁷ IACHR, Report No. 13/22. Petition 1332-11. Admissibility. Orlando Hernández Ramírez and family members. Colombia. February 9, 2022, para. 7; IACHR, Report No. 159/17, Petition 712-08. Admissibility. Sebastián Larroza Velázquez and family. Paraguay. November 30, 2017, para. 14.

Accordingly, mindful of the foregoing, it concludes that there has been an unwarranted delay in adopting a final decision domestically, making applicable the exception provided for at Article 46(2)(c) of the American Convention.

35. In this respect, the Commission reiterates, first, as it has done consistently, that Article 46(2) of the Convention, in light of its nature and purpose, is a provision whose content is autonomous in relation to the substantive provisions of the American Convention. Therefore, the determination as to whether the exceptions to the prior exhaustion rule apply to the case in question should be done prior to and separate from the analysis of the merits issues, since it depends on a different standard of appreciation from that used to determine the possible violation of Articles 8 and 25 of the Convention. The IACHR has also underscored that there are no provisions in the Convention or the Rules of Procedure that specifically regulate just what period constitutes an unwarranted delay, thus the Commission makes a case-by-case evaluation to determine whether there has been such a delay.⁸ Along these lines, the Inter-American Court has established the following as a guiding principle for analyzing the possible unwarranted delay as an exception to the prior exhaustion rule: *“The rule of prior exhaustion must never lead to a halt or delay that would render international action in support of the defenseless victim ineffective.”*⁹ In other words, in the view of the Commission, the complementary nature of international protection provided for in the American Convention also implies that the intervention of the organs of the inter-American system should be timely so that it can have a useful effect for protecting the rights of the alleged victims.

36. Regarding the reasonableness of the time in which the instant petition was filed, according to Article 32(2) of its Rules of Procedure, the IACHR concludes that it does meet that requirement, since the initial facts occurred in 2000; the petition was filed in 2014; and the effects of the alleged violations, in terms of the alleged impunity, are said to endure to the present day.

VII. COLORABLE CLAIM

37. The State asserts that the petition is inadmissible pursuant to Article 47(b) of the American Convention, mindful of the fourth instance formula, insofar as domestically the Administrative Tribunal of Sucre ordered the corresponding comprehensive measures of reparation, and declared the responsibility of the National Army in the facts alleged.

38. “For the purposes of admissibility, the IACHR must decide if the facts tend to establish a possible violation of rights as stipulated in Article 47(b) of the American Convention or if the petition is manifestly groundless or obviously out of order, in accordance with subparagraph (c) of said article. The criterion for assessing said requirements differs from the one used to rule on the merits of a petition. Likewise, in the framework of its mandate, the Inter-American Commission is competent to declare a petition admissible when it refers to domestic proceedings that could be violating the rights guaranteed by the American Convention. In other words, according to the treaty-based norms cited and in line with Article 34 of its Rules of Procedures, the review of admissibility focuses on verifying said requirements, which refer to the existence of elements which, if proven to be true, would establish *prima facie* violations of the American Convention.” In addition, in cases of violence against women, the general obligations of Articles 8(1) and 25 of the American Convention are reinforced by the provisions of the Convention of Belém do Pará, whose Article 7(b) imposes the specific duty to use due diligence to prevent, punish, and eradicate violence against women.¹⁰

39. In the instant matter the Commission observes that the main claim of the petitioner is focused on acts of kidnapping, arbitrary detention, torture, and murders, as well as other acts of violence and harassment. The victims of these executions included a pregnant woman. The claim also includes the failure to investigate and impose punishment for the facts, as well as integral reparation for their family members. All

⁸ IACHR, Report No. 14/08, Petition 652-04. Admissibility. Hugo Humberto Ruíz Fuentes. Guatemala. March 5, 2008, para. 68.

⁹ Inter-American Court of Human Rights, Velásquez Rodríguez v. Honduras, Preliminary Objections, Judgment of June 26, 1987, para. 93.

¹⁰ IACHR, Report No. 152/22. Petition 1392-17. Admissibility. Martha Silva Beltrán and A.M.S.B. Colombia. June 30, 2022, para. 14; IACHR. Report No. 187/21. Petition 457-13. Admissibility. Gemma Mávil Hernández and family members. Mexico. August 30, 2021, para. 20.

these complex facts, historically relevant in the context in which they occurred, merit a broader examination by the IACHR in the merits stage of this case. One must establish the specific damages suffered by each of the victims and their family members, as well as undertake a detailed assessment of the effectiveness of the domestic judicial procedures. In addition, one should evaluate any measures that the State has been adopting to make reparation to the victims and assist them in the decades after the facts alleged.

40. Mindful of these considerations, and after examining the arguments of fact and law set forth by the parties, the Commission is of the view that the facts set forth in the petition tend to establish violations of the rights established in Articles 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (judicial guarantees), 17 (protection of the family), 19 (rights of the child), 21 (property), 22 (movement and residence), and 25 (judicial protection) of the American Convention, in conjunction with its Article 1(1) (obligation to respect rights); Article 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará); and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of the alleged victims and their family members, in the terms of this report.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 4, 5, 7, 8, 17, 19, 21, 22, and 25 of the American Convention in conjunction with its Article 1(1); Article 7 of the Convention of Belém do Pará; and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture.

2. To notify the parties of the instant decision; to continue with the analysis of 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 September, 2024. (Signed:) Roberta Clarke, President; José Luis Caballero Ochoa, Second Vice President; Arif Bulkan, and Gloria Monique de Mees, Commissioners.

ANNEX

List of alleged victims reported by the petitioner organized by the type of incident

A. Alleged victims of extrajudicial execution

1. Ana Isabel Rivera Narváez (pregnant)
2. Antonio José Rivero
3. Elio Pasos
4. Gerardo Rivera Teherán
5. Jesús María Oliveros
6. Joaquín Pablo Rivera Colón
7. José Guido Buelvas Banquez
8. José Manuel Padilla Nisperuza
9. Jorge Eliecer Torres
10. Pedro Rivera Martínez
11. Roberto Antonio Buelvas Banquez

B. Alleged victims of the destruction of dwellings/homes

1. Members of the community of Chinulito (all the inhabitants)
2. Members of the community of Pueblo Nuevo (all the inhabitants)
3. Alfonso Rivera
4. Doralba Pacheco Salas
5. Francisco Camaño and family
6. Idaldo Salas
7. Nancy Tovar Vitola and children
8. Zoe Maria Burgos Beltran
9. Alleged victims of torture
10. Leoncio Narváez
11. Luis Jiménez Rodríguez

12. Walter Salas Rivera

C. Alleged victims of forced displacement

1. Members of the community of Chinulito
2. Members of the community of Pueblo Nuevo
3. Alexander Rivera Salas
4. Alfonso Rivera
5. Ana Luisa Rivera
6. Ana Manuela Acosta
7. Antides Rafael Barreto
8. Antides Rafael Muñoz
9. Antonio Rivera Muñoz
10. Arcelio Manuel Palencia
11. Cenaida Castillo Carrascal
12. Cenobia Salas Santos
13. Delcys Isabel Barreto
14. Denia Castillo Carrascal
15. Doralba Pacheco Salas
16. Dormelina Santos Gómez
17. Ena Ordosgoita Barreto
18. Ferney Pacheco Cermeño
19. Francisco Camaño and family
20. Francisco Tovar Rivera
21. Genobeba Maria Rivera
22. Geonith Romeno
23. Gerardo Rivera Solar
24. Herman Carrascal

25. Son of Ana Isabel Rivera Narváez
26. Idaldo Salas
27. Jorge Cermeño Rivera
28. Jorge Salas Vitola
29. José Manuel Rutz
30. Julio Salas Pérez
31. Julio Salas Santos
32. Lázaro Montes Rivera
33. Lino Barreto Salas
34. Luis Montes Meza
35. Manuel Poveda Cermeño
36. Manuel Torres Rivera
37. María E. Salas Rivera
38. María Francisca Banquez
39. María de los Santos Salas
40. Margarita Carrascal
41. Mercedes Otilia Narváez
42. Nancy Tovar Vitola
43. Pedro Alejandro Salas
44. Pedro Rivera Paternina
45. Pedro Rivera Solar
46. Pedro Carrascal
47. Presentación de la Rosa
48. Rafael Herrera Narváez
49. Rafael Montes Rodríguez
50. Rufino Antonio Montes
51. Salomón Tovar Barreto

52. Solangel Tovar Rivera
53. Virginia Barboza Rivera
54. Walberto Salas Rivera
55. Walter Salas Rivera
56. Wilmer Enrique Tovar
57. Yulis Cequea Contreras
58. Zoe Maria Burgos Beltran