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**REPORT No. 138/24**  
**PETITION 466-14**  
ADMISSIBILITY REPORT

OLABER QUIJANO MUÑOZ AND RELATIVES  
COLOMBIA

Approved electronically by the Commission on September 9, 2024.

**Cite as:** IACHR, Report No. 138/24. Petition 466-14. Admissibility.  
Olaber Quijano Muñoz and relatives. Colombia. September 9, 2024.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Corporación para el Manejo de Conflictos Norte del Cauca (COMAC)
<b>Alleged victims:</b>	Olaber Quijano Muñoz and relatives <sup>1</sup>
<b>Respondent State:</b>	Colombia <sup>2</sup>
<b>Rights invoked:</b>	Articles 4 (life), 5 (humane treatment), 8 (fair trial), 11 (privacy), 22 (freedom of movement and residence), and 25 (judicial protection) of the American Convention on Human Rights, <sup>3</sup> in relation to Article 1.1 thereof (obligation to respect rights)

**II. PROCEEDINGS BEFORE THE IACHR<sup>4</sup>**

<b>Filing of the petition:</b>	March 27, 2014
<b>Notification of possible archiving:</b>	October 28, 2020
<b>Petitioner's response to notification of possible archiving:</b>	November 29, 2020
<b>Notification of petition to the State:</b>	November 11, 2021
<b>State's first response:</b>	March 31, 2022

**III. COMPETENCE**

<b>Competence <i>Ratione personae</i>:</b>	Yes
<b>Competence <i>Ratione loci</i>:</b>	Yes
<b>Competence <i>Ratione temporis</i>:</b>	Yes
<b>Competence <i>Ratione materiae</i>:</b>	Yes, American Convention (instrument deposited on July 31, 1973)

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

<b>Duplication of proceedings and international <i>res judicata</i>:</b>	No
<b>Rights declared admissible:</b>	Articles 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 11 (privacy), and 25 (judicial protection) of the American Convention, in relation to Article 1.1 thereof (obligation to respect rights)
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, the exception under Article 46.2.c) of the Convention, in accordance with the terms of Section VI
<b>Timeliness of the petition:</b>	Yes, under the terms of Section VI

<sup>1</sup> José Quijano (father); Luz Mary Muñoz (mother); Estefany Quijano Muñoz, Paola Andrea Quijano Muñoz, Jaminton Quijano Muñoz, Heliberto Quijano Muñoz, María Neicy Quijano Muñoz (sisters and brothers); Mónica Alejandra Quijano Bedoya, Iván Yair Gómez Ledezma (children).

<sup>2</sup> As provided in Article 17.2.a of the Commission's Rules of Procedure, Commissioner Carlos Bernal Pulido, a Colombian national, did not participate in the discussion or in the decision on this matter.

<sup>3</sup> Hereinafter, "the American Convention" or "the Convention."

<sup>4</sup> The observations submitted by each party were duly transmitted to the opposing party.

## V. POSITIONS OF THE PARTIES

### The petitioner

1. The petitioner denounces the extrajudicial execution of the young peasant, Olaber Quijano Muñoz, as well as the failure to investigate and punish those responsible, and the resulting suffering of his relatives, in the context of the so-called “false positives” [extrajudicial killings disguised as combat deaths].<sup>5</sup>

#### *Circumstances surrounding the death of Olaber Quijano Muñoz*

2. According to the petitioner, Olaber Quijano Muñoz was a young peasant, farmer, and community leader who lived in the village of La Paramilla in the municipality of Patía, Cauca. He was the father of two children and had no criminal record or links to illegal armed groups.

3. On April 15, 2008 members of the National Army attached to Infantry Battalion No. 7 were in the municipality of Argelia conducting the so-called “Alcatraz Tactical Mission,” the objective of which was to neutralize the presence of guerilla groups in the area. As reported by the Commander of the “Gunner 3” group, they received information regarding the presence of heavily armed subjects and he thus ordered the troops to move toward that location. As they approached, the troops reported an attack with explosives and shots, which led to a confrontation that lasted about 30 minutes. After the shooting stopped, the troops found the lifeless body of Olaber Quijano Muñoz. According to the military report, the victim was carrying a 38-caliber long barrel revolver, electric detonators, a hand grenade, a scanner radio, a backpack, and documents referring to the FARC-EP.

4. The petitioner questions the official version of the circumstances surrounding the death of Olaber Quijano Muñoz. It points out that the Commander of Infantry Battalion No. 7 denied the existence of the “Alcatraz Tactical Mission,” and that no documentary evidence was submitted supporting the conduct of the operation, such as the intelligence annex, the intelligence cycle, the daily intelligence bulletin, the patrol report, the ammunition expenditure record, the operational journal, the tactical operations center report, the watch minutes, and the leaders tracking group report.

5. It also questions the proportionality of the military’s use of force. The military report indicates that 110 7.62 caliber cartridges, 196 5.56 mm caliber cartridges, two IM26 hand grenades, and one 40 mm grenade were used against one person carrying a 38-caliber revolver. The victim received six gun shots, five of them in the head and chest, suggesting that the intention was to cause death.

6. It also denounces manipulation of the scene of the crime, in that the body of Olaber Quijano Muñoz was found with his hands and feet tied and his clothing to one side. Inconsistency in the information the military presented to the coroner is emphasized. The autopsy report indicates that the body was carried to the ESE of the municipality of Argelia by National Army soldiers who said that the victim had fallen during confrontations with the guerrillas. However, the coroner’s report mentions that the soldiers said that the death occurred during a guerrilla “attack.”

7. The petitioner also reports that on the same day as the death of Olaber Quijano Muñoz, members of the criminal gang Los Rastrojos showed up at his parents’ home. According to the petitioner, the gang members confirmed the death of Olaber, advising the family that they only had one day to bury him, and that if they reported the events, they would suffer the same fate.

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<sup>5</sup> In Colombia, the term “false positives” refers to a series of extrajudicial executions of civilians by the State security forces that are later presented as combat casualties. In this regard, see: IACHR, Truth, Justice and Reparations: Fourth Report on the Situation of Human Rights in Colombia, December 31, 2013, paragraphs 21, 122.

*Criminal investigation*

8. According to the petitioner, Military Criminal Court 54 undertook the investigation into the death of Olaber Quijano Muñoz. However, the investigation was closed rapidly through a resolution to dismiss on October 31, 2009, in which the military operation and armed confrontation version was deemed to be true.

9. The petitioner alleges that Military Criminal Justice is not an appropriate or effective remedy for investigating human rights violations, in that it does not offer guarantees of independence and impartiality. The petitioner reports that it filed two applications seeking to have the ordinary system of justice undertake the investigation into the death of Olaber Quijano Muñoz. However, to date it has not received any response to these applications, which it alleges constitutes an unwarranted delay in the administration of justice. –This is reported by the petitioner. It does not present any more information such as dates or addressees.–

*Administrative jurisdiction*

10. The petitioner indicates that the relatives of Olaber Quijano Muñoz filed an action for direct reparations with the Administrative Jurisdiction of Popayán. In the first instance, on April 22, 2013, the Second Administrative Backlog Clearing Court found in favor of the relatives, recognizing the State's responsibility for the death of the victim. However, on October 29, 2015, the Administrative Court of Cauca overturned the first instance judgment, arguing that the existence of a crime against humanity had not been proven.

11. The petitioner maintains that the Administrative Court of Cauca made arbitrary judgments in assessing the evidence and that it did not exercise the conventionality control required in these cases. In this sense, it argues, for example, that: i) the Court assessed as evidence an alleged "intelligence report" mentioned in the resolution to dismiss from Military Criminal Justice, although this was not found in the case file, accepting part of its content pointing to Olaber Quijano as a member of the FARC-EP with an arrest warrant in order to construct its argument; ii) the Court disallowed the certification provided by the Office of the Attorney General of the Nation and the Administrative Department of Security to the effect that Olaber Quijano Muñoz had no criminal record or arrest warrants; and that iii) the Court deemed that the testimony provided by the petitioners was "not very telling" in that they were not eye witnesses of the events, overlooking the fact that their testimony showed that the alleged victim was a peasant and farmer and not a guerrilla.

12. On March 2, 2016, the victim's relatives filed an action for protection with the Council of State, questioning the judgment of the Administrative Court of Cauca. However, on June 2, 2016, the First Section of the Council of State denied the action for protection. In response to this ruling, the victim's relatives filed an appeal, which was dismissed by the Council of State on July 2, 2016.

13. In addition, with regard to the exhaustion of domestic remedies, the petitioner maintains that the exceptions provided in Article 46.2 of the American Convention are applicable in that the military criminal investigation demonstrates the absence of due legal process, in addition to there being unwarranted delay in the domestic proceedings as exemplified by the failure to respond to the applications seeking to have the ordinary system of justice undertake the investigation and the delay in the direct reparations proceeding.

**The Colombian State**

14. The State indicates that on April 15, 2008, in the municipality of Argelia, Cauca department, the Infantry Battalion No. 7 General José Hilario López received information regarding armed persons in the village of Altamira. Accordingly, Sergeant Javier Reyes Parrado ordered a tactical movement toward the sector to verify the information provided. The battalion initiated the operation and, as they were reaching the area subject to inspection, they were surprised by an explosion in a minefield and shots coming from different directions. The National Army reacted to the attack and there was an armed confrontation with members of the FARC-EP guerilla group for about 30 minutes. When the attack ended, agents of the State found the corpse of Mr. Olaber Quijano Muñoz, who was carrying a black bag, a fragmentation grenade, a revolver with four ammunition cartridges, and documentation alluding to the FARC-EP. On the same day, the corpse was transported to the South E. S. E. hospital of the Municipality of Argelia, department of Cauca.

15. Regarding these events, the Municipal Ombudsman's Office of Argelia found that there really was a military operation called Alcatraz Tactical Mission No. 051. In addition, Military Criminal Court 54 assumed jurisdiction for examining the events. –The State's brief does not present additional information regarding the criminal investigation in the context of the cited military trial.–

16. The State also emphasizes that it prompted the Special Jurisdiction for Peace (JEP) to deal with the human rights violations occurring in the context of the armed conflict the country has faced. In the context of these efforts, in relation to the extrajudicial execution of persons presented as guerillas who fell in combat, on July 12, 2018, the JEP opened case 03 on "Deaths illegitimately presented as combat casualties by agents of the State." Through ruling 033 dated February 12, 2021, the Chamber on Recognition of Truth, Responsibility, and Determination of Facts and Conduct (SRVRDHC) made public the strategy of internal prioritization of Case 03, initiating the Antioquia, Meta, Costa Caribe, Norte de Santander, Huila, and Casanare subsidiary cases. The State argues that the prioritization exercise is a cycle fed by the available information, based on available resources, seeking to rationalize efforts and maximize results and their impact. For this reason, the prioritization of subsidiary cases in Case 03 does not mean that other units, territories, periods, or subsidiary cases will not be addressed later. In this regard, the SRVRDHC has estimated that the application of prioritization criteria is not limited to a specific procedural phase. Taking the preceding into account, the State argues that the facts related to the death of Olaber Quijano Muñoz may ultimately be prioritized by the SRVRDHC in a later phase.

17. Finally, the State provides information regarding the administrative jurisdiction. It reports that the relatives of Mr. Olaber Quijano Muñoz filed an action seeking direct reparations with the Administrative Backlog Clearing Court of the City of Popayán. On April 22, 2013, the Second Backlog Clearing Court ruled in favor of the petitioners in the first instance. On October 29, 2015, the Administrative Court of Cauca – Backlog Clearing Chamber – reviewed the matter and decided to overturn the first instance ruling as it felt that the petitioners failed to prove the existence of an extrajudicial execution and that the evidence indicated that Mr. Olaber Quijano Muñoz belonged to the ranks of the FARC guerillas.

18. On March 2, 2016, the petitioner decided to file for protection against the Administrative Court of Cauca as it felt that the court's reversal of the first instance decision violated the fundamental rights to due process, justice, and reparations. In this regard, the Council of State, after analyzing the petitioner's allegations, decided to deny the action for protection. This decision was not challenged by the petitioner Jaminton Quijano Muñoz.

19. In conclusion, the State believes that since the JEP proceeding on the death of Olaber Quijano Muñoz has not been exhausted, the petition is inadmissible due to the failure to exhaust the domestic remedies. It also maintains that the petition is inadmissible based on the fourth instance formula regarding decisions adopted by the administrative jurisdiction. On this subject, it emphasizes that the IACHR cannot act as an appellate court regarding the assessment of evidence presented in domestic proceedings and questions that were already resolved at the domestic level.

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

20. The Inter-American Commission notes that the main subject of the petition refers to the alleged detention and extrajudicial execution of Olaber Quijano Muñoz while he was on the way to visit his family, with the false justification of a combat death, as well as the weaknesses of the domestic proceedings and impunity for the events up to the present day.

21. To analyze the exhaustion of domestic remedies in the instant case, the IACHR recalls that in cases in which a complaint is made regarding someone's death and the resulting impunity, the suitable remedy that should be exhausted at the domestic level is the criminal route, through the *ex officio* and diligent conduct of investigations identifying those responsible for violating the right to life, and the submission of those

responsible to judgment and punishment in accordance with the American Convention.<sup>6</sup> This burden should be assumed by the State as its own legal duty and not as a matter managed by private interests or that depends on the initiative of such interests nor their submission of evidence.<sup>7</sup>

22. In the instant case, according to the information provided by the parties, the Commission notes that: i) following the death of the alleged victim on April 15, 2008, military criminal justice undertook the investigation of these events; ii) on October 31, 2009, the investigation was closed through an order to dismiss that considered the military operation and armed confrontation version to be true; iii) on July 12, 2018, the JEP opened case 03 on “Deaths illegitimately presented as combat casualties by agents of the State;” iv) on February 12, 2021, the SRVRDHC of the JEP made public the internal prioritization strategy under Case 03. However, to date there is no information regarding investigation of the death of Olaber Quijano Muñoz in the context of Case 03. The State maintains that the events may ultimately be prioritized by the SRVRDHC at a later stage. It can thus be understood that although the case of the alleged victim is known to the JEP, it has not been prioritized.

23. In view of the information submitted by the parties, which is largely limited, the Commission is able to deduce that more than 15 years have passed since the death of Olaber Quijano Muñoz on April 15, 2008, and to date no conclusive criminal investigation has been conducted that establishes the circumstances of his death and those responsible for it. Although the State alleges that the JEP has initiated an investigation regarding extrajudicial investigations, there is no concrete information regarding the investigation of the case of Olaber Quijano Muñoz under the aegis of that court. To date, the only criminal investigation concluded was that of military criminal justice, which culminated in a resolution to dismiss on October 31, 2009, nearly two years after the events. The petitioner also made two applications seeking to have the ordinary justice system undertake the investigation. However, the State did not report on the fate of those applications. Taking the preceding into account, the IACHR concludes that there is unwarranted delay in the adoption of a final decision at the domestic level, so that the exception provided in Article 46.2.c) of the American Convention is applicable.

24. In this regard, the Commission reiterates first, as it has done consistently, that Article 46.2 of the Convention, based on its nature and purpose, is a rule with autonomous content vis-à-vis the substantive provisions of the American Convention. Therefore, the determination as to whether the exceptions to the rule of exhaustion of domestic remedies are applicable to the case in question should be made prior to and separate from the analysis of the merits of the case, in that it depends on a different standard of evaluation than that used to determine the possible violation of Articles 8 and 25 of the Convention. The IACHR has also pointed out that there are no provisions in the Convention or in the Rules of Procedure governing the length of time that constitutes unwarranted delay, so that the Commission evaluates each case to determine whether that delay exists.<sup>8</sup> Along those lines, the Inter-American Court has established as a guiding principle in analyzing the potential unwarranted delay as an exception to the rule of the exhaustion of domestic remedies that “*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.*”<sup>9</sup> In other words, in the Commission’s view, 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 is timely so that it can have some kind of useful effect in the protection of the rights of alleged victims.

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

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

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

<sup>9</sup> Inter-American Court of Human Rights, Velásquez Rodríguez v. Honduras, Preliminary objections, judgment of June 26, 1987, paragraph. 93.

25. Regarding the reasonableness of the period during which this petition was submitted, in accordance with Article 32.2 of its Rules of Procedure, the IACHR concludes that it complies with this requirement, in that the initial events occurred in 2008; the petition was submitted in 2014; and the effects of the alleged violations in terms of the alleged impunity would remain to this day.

26. As for the proceeding before the administrative jurisdiction in which the relatives of the alleged victim sought compensation for the alleged harm attributable to the State, the Commission observes that both parties agree that the domestic remedies were exhausted with the Council of State's decision of June 2, 2016 to deny the protection sought against the second instance decision. Therefore, this point in the petition complies with the exhaustion of domestic remedies requirement established in Article 46.1.a) of the Convention. In addition, as this petition was submitted in 2014, this point of the petition also complies with the submission deadline requirement of Article 46.1.b).

## VII. ANALYSIS OF COLORABLE CLAIM

27. For the purposes of admissibility, the Commission must decide whether the facts alleged may characterize a violation of rights, as stipulated in Article 47.b of the American Convention, or whether the petition is "manifestly groundless" or "obviously out of order," in accordance with Article 47.c of the Convention. The criterion for evaluating these requirements differs from that used to rule on the merits of a petition. In addition, within the framework of its mandate, it is competent to declare a petition admissible when it refers to domestic proceedings that could violate rights guaranteed by the American Convention. This means that, in accordance with the cited provisions of the Convention, and consistent with Article 34 of the Rules of Procedure, the analysis of admissibility focuses on the verification of such requirements, which refer to the existence of facts that, if true, could constitute *prima facie* violations of the American Convention.

28. In this case, the Commission observes that the petitioner's principal complaint focuses on the death of Olaber Quijano Muñoz and the failure to investigate and impose punishment for the events.

29. The IACHR notes that a controversy persists regarding the submission of the case to the JEP and whether that jurisdiction can provide a suitable and effective remedy to investigate and redress human rights violations resulting from the alleged extrajudicial execution of the alleged victim, in accordance with international standards on the right of access to justice and punishment of international crimes. On this issue, the Commission will defer its analysis to the merits stage and will admit the articles invoked with regards to the extrajudicial execution and handling of the criminal proceeding. As for actions taken in the administrative jurisdiction, the Commission believes that the petitioners do not posit simple disagreement with the decision, but rather they make concrete allegations that merit being analyzed in the merits stage of this report in the light of the rights to judicial guarantees and judicial protection established in the American Convention, notwithstanding the fact that the IACHR's determination of potential indemnities in the merits stage of this matter does not derive from the analysis conducted on that process but rather on the determination of the existence or non-existence of violations of the American Convention to the detriment of the alleged victim and his relatives.

30. In view of these considerations and after examining the factual and legal elements presented by the parties the Commission believes that the allegations of the petition are not manifestly unfounded and require a study of the merits, as the alleged facts, if corroborated as true, could characterize violations of Articles 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 11 (privacy), and 25 (judicial protection) of the American Convention, in relation to Article 1.1 thereof, to the detriment of Olaber Quijano Muñoz and his relatives, under the terms of this report.

31. The petitioner alleges the violation of Article 22, which concerns freedom of movement and residence. It is deduced from the briefs submitted that this article is invoked, considering the fact that Olaber Quijano Muñoz was intercepted and executed while on the way to visit his family. However, this type of holding or detention is more suggestive of a deprivation of liberty which constitutes a component of the extrajudicial

execution. In this context, the arbitrary detention that precedes an extrajudicial execution will be analyzed under Article 4 of the American Convention.

### **VIII. DECISION**

1. To declare this petition admissible in relation to Articles 4, 5, 7, 8, 11, and 25 of the American Convention in conjunction with Article 1.1 thereof.

2. To notify the parties of this decision; to continue analysis of the merits of the case; 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 9<sup>th</sup> 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.