

**REPORT No. 17/16**  
**PETITION 1132-06**  
ADMISSIBILITY REPORT

HORTENSIA NEYID TUNJA CUCHUMBE ET AL.  
COLOMBIA

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Cuchumbe et al. Colombia. April 15, 2016.



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**I. SUMMARY**

1. On October 19, 2006, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission,” or “the IACHR”) received a petition filed by the Comisión Intereclesial de Justicia y Paz (hereinafter “the petitioners”) against the State of Colombia (hereinafter “Colombia” or “the State”). The petition was filed in representation of Hortensia Neyid Tunja Cuchumbe, Manuel Antonio Tao Pillimué, and Willian José Cunacue Medina (hereinafter “the alleged victims”), as well as their next-of-kin, for the alleged extrajudicial execution of the first two, and the grievous injuries inflicted on Willian José Cunacue, as well as the purported failure to investigate, punish those responsible, and provide a comprehensive reparation for the alleged facts.

2. The petitioners argue that Hortensia Neyid Tunja Cuchumbe, 17 years old, and Manuel Antonio Tao Pillimué, were executed by members of the Army who altered the crime scene and changed the clothes that both were wearing so as to be able to report them as guerrillas killed in combat, and that Willian José Cunacue Medina was grievously injured in the same facts, and that he was able to flee, and was later detained without a judicial warrant and prosecuted for the crime of rebellion (*rebelión*). They argue that the State has not fulfilled its obligations to investigate, punish, and provide reparation with respect to the facts alleged, in particular with respect to the criminal proceeding, which has not yet concluded.

3. The State argues that the petition is inadmissible on grounds that the alleged victims’ representatives failed to exhaust remedies before the criminal justice system, as there is a proceeding pending, and that as regards the processing before the contentious-administrative jurisdiction, the matter was resolved in favor of the alleged victims’ family members. Accordingly, it argues, petitioners are seeking to turn to the Commission as a court of fourth instance, or court of appeals, which is not admissible.

4. Without prejudging on the merits of the complaint, after analyzing the parties’ positions, and pursuant to the requirements set forth in Articles 46 and 47 of the American Convention, the Commission decides to find the case admissible for the purposes of examining the arguments regarding the alleged violations of the rights enshrined in Article 4 (right to life), Article 5 (right to humane treatment), Article 7 (right to personal liberty), Article 8 (right to a fair trial), Article 11 (right to privacy), Article 19 (rights of the child), and Article 25 (right to judicial protection), all of the American Convention on Human Rights (hereinafter the “American Convention” or the “Convention”) in relation to Article 1(1) (obligation to respect rights) and Article 2 (domestic legal effects ) of the same instrument. The Commission also decides to notify the parties of this decision, publish it, and include it in its Annual Report to the General Assembly of the OAS.

**II. PROCEEDING BEFORE THE IACHR**

5. The IACHR received the petition on October 19, 2006, and on September 29, 2008 it forwarded a copy of the pertinent parts to the State, granting it a two months period to submit any observations, as per Article 30(3) of its Rules of Procedure then in force. On December 1, 2008, the response from the State was received and transmitted to the petitioners on December 4, 2008.

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<sup>1</sup> In keeping with Article 17(2)(a) of the Commission’s Rules of Procedure, Commissioner Enrique Gil Botero, of Colombian nationality, did not participate in the deliberations or decision in the instant case.

6. The petitioners submitted additional observations on September 16, 2014. The State submitted additional observations on March 6, 2015. These communications were duly forwarded to the other party.

### III. THE PARTIES' POSITIONS

#### A. The petitioners' position

7. The petitioners indicate that in the context of the defense and security policy implemented by former president Álvaro Uribe, as of late 2004 the military operation known as "Fuego Azul" ("Blue Fire") was carried out in the municipality of Inza, resulting in an increased presence of military forces in the area and abuses against indigenous and peasant persons and communities in the municipality. In this context, they note that on January 8, 2006, Hortensia Neyid Tunja Cuchumbe, Manuel Antonio Tao Pillimúé, and Willian José Cunacue Medina, who at the time of the facts were 17, 22, and 26 years old respectively, were traveling on a motorcycle returning to their homes after participating in a party, when soldiers who were members of Infantry Battalion No. 26 "Cacique Pigoanza," based in Neiva, shot at them indiscriminately and surprisingly. Hortensia Neyid Tunja Cuchumbe and Manuel Antonio Tao Pillimúé died immediately, while Willian José Cunacue Medina suffered serious injuries in both legs.

8. The petitioners indicate that the members of the military force restricted access to the site of the incident, not allowing access to family members or community members and also keeping the prosecutorial authorities (Fiscalía) from performing the official act of removing the bodies, which were said to have been transported by the military in a public service truck and placed at the disposal of the local prosecutorial authorities at the military base in the municipality of La Plata, where they were said to have been shown along with military equipment purportedly seized, and presented to the media as guerrillas killed in combat. They also state that military units forcibly entered the offices of the Junta de Acción Comunal (Community Action Council) where the party was being held in which the alleged victims had participated prior to the facts, their faces covered and their identities concealed, threatening and beating the peasants. They further allege that the families of Willian José Cunacue Medina and Hortensia Neyid Tunja Cuchumbe were intimidated after such events.

9. They state that Willian José Cunacue Medina, who was able to flee, was assisted by residents and taken to a health center, where he underwent surgery. They indicate that from that moment they were subjected to harassment, followed, and threatened, and that two days after the facts the Office of the Attorney General began a judicial proceeding against him for the crime of rebellion (*rebelión*), and that he was compelled to make a statement at the hospital where he had been admitted. They state that on January 11, in delicate health, he was taken from the hospital in an Army truck in the direction of the jail in La Plata, where he was not received due to the lack of a judicial order, and then taken to the Fiscalía (Office of the Attorney General) where he was not received either. They state that after having been taken by members of the military to the police jail, on January 12 he was reportedly taken by the police of La Plata to the jail there, where once again he was not received. They indicate that on January 13 he was taken to the hospital for a medical exam, and that subsequently he was taken to the jail of La Plata, where he was held until January 18. They indicate that on that day, the Criminal Judge for the Circuit of Silvia, based in Belancazar, Cauca, ruled to refrain from decreeing any arrest, and ordered him released.

10. A criminal proceeding was begun before the military justice system because of the facts described; after a jurisdictional conflict, the case ended up in the civilian justice. According to the information submitted, on August 27, 2010, the Office of the 70<sup>th</sup> Prosecutor (Fiscalía 70) of the National Unit for Human Rights in the city of Cali handed down an indictment against soldiers Bertulfo Tao Muñoz, Yeison Lozano Cerquera, and Henry Trujillo Lizcano as the alleged director perpetrators of the crimes of aggravated homicide (*homicidio agravado en concurso homogéneo*) and personal injuries due to attempted homicide with respect to Willian José Cunacue Medina.

11. They also indicate that on January 8, 2006, the next-of-kin of the alleged victims filed a group action before the contentious-administrative jurisdiction. On September 10, 2009, the Eighth Administrative Court of the Circuit of Popayán handed down a judgment and found the Ministry of Defense-National Army administratively liable, and recognized that damages were owed some of the plaintiffs for compensation for some of the material and non-material damage, ordering certain non-pecuniary measures of reparation. That decision was upheld by the Administrative Court of Cauca on March 6, 2010.

12. In the complaint brief the petitioners ask that the exceptions contained in Article 46(2)(a) and (c) of the American Convention be applied to them. With respect to the first exception, which is the lack of due process in the domestic legislation for protecting the rights alleged to have been violated, they argue that the assassinations of Hortensia Neyid Tunja Cuchumbe and Manuel Antonio Tao Pillimué were investigated by the 65<sup>th</sup> Court of Military Criminal Investigation before the military jurisdiction, which would not ensure an adequate and effective remedy to establish and punish liability for violations of the rights to life, integrity, personal liberty and security, honor and dignity, and also a violation of the principle that the court be competent by its constitution. As for the second exception, that is, the existence of unwarranted delay in the decision on domestic remedies, among other points they allege that Article 352 of Law 600 of 2000 establishes the maximum term of six months, after which an order is issued to begin the investigation; that period had already lapsed as of the date the complaint was lodged. They also state that in the criminal investigation, by order of February 22, 2006, the Attorney General of the Nation ordered a change in the assignment of the investigation to the National Unit for Human Rights and International Humanitarian Law, and designated the Prosecutor Delegate before Criminal Circuit Courts assigned to the National Unit for Human Rights in Cali. They indicate that on May 3, 2006, the attorney for the alleged victims came forward as a civil party, and that as of that date the matter was still being transferred, without any case number assigned or specialized prosecutorial office to assume the case. Thus three months elapsed in which the preliminary investigation came to a standstill due to the delay in the transfer of the matter from one prosecutorial office to another within the Office of the Attorney General. Moreover, they argue that the evidence ordered was not collected, and that nine months have gone by and the preliminary investigation is still under way.

13. By brief of September 16, 2014, the petitioners indicate that more than eight years have gone by since the facts without there being a firm decision as to the responsibility of the state agents, thus they adduce the exception of unwarranted delay in the decision on domestic remedies, provided for at Article 46(2)(c) of the American Convention. In addition, with respect to the contentious-administrative jurisdiction, they argue that while non-pecuniary measures were ordered, these do not make it an effective remedy that must be exhausted for the petition to be found admissible; and that the non-pecuniary measures ordered do not constitute a mechanism of reparation as per the standards of the system, for they were not the result of a consensus reached with the victims. Petitioners also state that the expectation of the alleged victims is focused on the investigation, processing, and criminal sanction of the persons responsible, for which the contentious-administrative procedure is not a suitable mechanism.

14. Based on the foregoing, the petitioners allege that the State violated the rights recognized in Articles 1, 4, 5, 7, 8, 11, and 25 of the American Convention to the detriment of Hortensia Neyid Tunja Cuchumbe, Manuel Antonio Tao Pillimué, and Willian José Cunacue Medina.

## **B. The State's position**

15. According to the State the petitioners have failed to exhaust domestic remedies. The State indicates that there is a criminal proceeding addressing the facts, complemented by a disciplinary investigation and a contentious-administrative proceeding, all under way, investigating what happened to the alleged victims. In particular, as regards the criminal proceeding it argues that it is a suitable remedy that has yet to be exhausted, and that it is clearly within a reasonable time.

16. Specifically, in terms of criminal justice, the State notes that on June 9, 2008, it was ordered that the investigation into Willian Jose Cunacue for the crime of rebellion be precluded. Moreover, on July 7, 2008, the Superior Judicial Council resolved a jurisdictional dispute that had arisen, ordering that the civilian justice, and not the military justice, had jurisdiction over the facts alleged, and that in September 2008 the

Office of the 70<sup>th</sup> Specialized Prosecutor for Human Rights and International Humanitarian Law based in Cali named three professional soldiers as possible suspects in the preliminary phase of the investigation. In addition, regarding the disciplinary proceeding that went forward, it notes that on February 13, 2006, the Office of the Inspector General of the Nation began a preliminary investigation, and issued an order to open an investigation into three officers and one professional soldier assigned to Battalion No. 26; and in relation to the contentious-administrative proceeding brought by Gloria Edilma Quintero Rivero et al., it reported that the action was admitted on March 8, 2006, and that it was being studied.

17. The State also argues that the exception at Article 46(2)(a) of the American Convention does not apply. It argues that the petitioners' assertions are inaccurate, noting that the jurisdictional dispute was resolved in July 2008, and points to the actions undertaken by the Attorney General's Office for the matter to be heard in the civilian jurisdiction.

18. As for the exception at Article 46(2)(c) of the American Convention, the State argues that the criminal proceeding as a whole has unfolded within a reasonable time. As for the complexity of the matter, it indicates that thanks to the diligence of the judicial authorities there is a single investigation with respect to the incidents involving homicides and wounds. It indicates that there has been intense investigative activity, noting a series of actions. As regards the petitioners' arguments that the six months provided for in the law for the preliminary investigation had gone by, the State notes that the period petitioner alludes to refers to the criminal proceeding against Willian José Cunacue Medina for the crime of rebellion, an investigation that was precluded on June 9, 2008. In addition, it highlights several results obtained in the investigation. In view of the foregoing, it argues that neither in the general processing of the matter nor in its particular actions is there any basis for finding unwarranted delay so as to provide a foundation for applying the exception. Accordingly, it argues that the criminal proceeding is the suitable remedy, that it has not been exhausted, and that the exceptions to the prior exhaustion requirement that have been invoked are not admissible, thus it asks that the petition be found inadmissible.

19. Subsequently, by communication of March 6, 2015, the State argues that the criminal investigation has been carried out diligently and continues in the civilian jurisdiction, thus there is a failure to exhaust domestic remedies. It reiterates that due to the participation of the military forces in the events, it was necessary to settle the jurisdictional dispute by entrusting the investigation to the Office of the 70<sup>th</sup> Special Prosecutor for Human Rights and International Humanitarian Law. It notes that among the investigative steps taken by the Office of the Attorney General it was decided to bring charges against three professional soldiers as alleged direct perpetrators of the crimes of aggravated homicide (*homicidio agravado en concurso homogéneo*) with respect to Hortensia Neyid Tunja and Manuel Antonio Tao Pillimué, and aggravated attempted homicide with respect to Willian José Cunacue, which was confirmed, and it states that a preparatory hearing was held in the context of the trial phase, on September 6, 2012, and several evidence has been received, with the active participation of family members as well as the attorney for the civil party. It notes that only four years after the events an indictment was handed down, and that in addition the investigation continues with respect to other persons.

20. The State also adduces a fourth-instance argument with respect to the petitioners' claim for reparation for the events that gave rise to the petition. It argues that mindful that the situation was already heard, studied, and decided in the contentious-administrative jurisdiction, and that comprehensive reparation to the next-of-kin was ordered, the IACHR is barred from reviewing the petition, and in particular from ruling on it, at least in respect of the claim for reparation, for it would be sitting as a court of appeals. The State argues that the situations that were already subject to decision by the authorities who are part of the domestic legal order may only be brought before an international body to the extent that it is shown that the domestic authorities' actions resulted in violations of the rights contained in the American Convention, which one does not find in this case. It also notes that based on the group action brought by the next-of-kin before the contentious-administrative jurisdiction the Eighth Administrative Court of Popayán handed down a ruling on September 10, 2009, in which it found the State liable, and ordered comprehensive reparation for the harm not only finding material and non-material damages, but also ordering measures of restorative justice, among which it was ordered to hold ceremonies for public apologies by the Army, the implementation of a system for promoting and respecting the rights of persons by the Army, and publication of the judgment

in a visible place in the City Hall of the municipality of Inza, Cauca and La Plata. That ruling was affirmed on appeal by judgment of March 25, 2010. In view of the foregoing, it argues that the reparation sought was already granted domestically.

21. Finally, it notes that in the disciplinary jurisdiction the Delegate for the Defense of Human Rights of the Office of the Procurator General (Procuraduría General de la Nación) imposed disciplinary sanctions on Berulfo Tao Muñoz, Jeyson Lozano Cerquera, and Henry Trujillo Lizcano, professional soldiers of the National Army, with the removal from their positions and disqualification from holding public office for 15 years.

22. In conclusion, the State argues that in light of the failure to exhaust domestic remedies in respect of the criminal jurisdiction, and the fourth-instance argument with respect to the aspect of reparations, the petition is inadmissible; and it asks the IACHR to find it inadmissible.

#### **IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY**

##### **A. Competence**

23. The petitioners are entitled, in principle, to file petitions with the Commission by Article 44 of the American Convention. The petition identifies as alleged victims individual persons with respect to whom the Colombian State undertook to respect and ensure the rights enshrined in the American Convention. As regards the State, the Commission notes that Colombia has been a State party to the American Convention since July 31, 1973, the date on which it deposited its instrument of ratification. Therefore, the Commission is competent *ratione personae* to examine the petition. The Commission is also competent *ratione loci* insofar as the petition alleges violations of rights protected in the American Convention said to have occurred within the territory of Colombia, a State party to that treaty.

24. The Commission is competent *ratione temporis* because the obligation to respect and ensure the rights protected in the American Convention was already in effect for the State as of the date of the facts alleged in the petition. Finally, the Commission is competent *ratione materiae*, given that the petition alleges possible violations of human rights protected by the American Convention.

##### **B. Admissibility Requirements**

###### **1. Exhaustion of domestic remedies**

25. Article 46(1)(a) of the American Convention requires the prior exhaustion of remedies available in the domestic jurisdiction in accordance with the generally recognized principles of international law, as a requirement for the admissibility of a claim alleging a violation of the American Convention. The purpose of this requirement is to allow the national authorities to consider the alleged violation of a protected right and, if appropriate, to solve the situation before it is taken up by an international body. Article 46(2) of the Convention provides that the prior exhaustion requirement does not apply when (i) the domestic legislation in the state in question does not provide for due process of law for protecting the right or rights alleged to have been violated; (ii) the person whose rights have been violated has not been allowed to access domestic remedies or has been impeded from exhausting them; or (iii) when there is unwarranted delay in the decision on said remedies.

26. The petitioners alleged in their original complaint that two exceptions to the prior exhaustion requirement apply, pointing to Article 46(2)(a) and (c) of the American Convention, insofar as the matter was initially being heard by the military justice system, and insofar as there was unwarranted delay in the criminal proceeding. Subsequently, by brief of September 16, 2014, they emphasized that there was unwarranted delay in the criminal proceeding, for more than eight years had elapsed without any judgment being handed down. The State argued failure to exhaust domestic remedies and alleged that the exceptions provided for at Article 46(2)(a) and (c) of the American Convention do not apply, for with respect to the first, there was a jurisdictional conflict that was resolved in favor of the civilian justice system, and the criminal

proceeding is now being reviewed in that jurisdiction, and in terms of the second ground, it argued that the proceeding was unfolding within a reasonable time.

27. The precedents established by the Commission note that whenever an alleged crime is committed that by law should be prosecuted at the initiative of the authorities, the State has the obligation to promote and give impetus to the criminal proceeding and that in those cases the criminal justice process is the suitable forum for clarifying the facts, prosecuting those responsible, and establishing the corresponding criminal sanctions, in addition to making possible other forms of pecuniary reparation.<sup>2</sup> Therefore, and considering that the facts alleged by the petitioners constitute crimes which by law are to be prosecuted at the initiative of the authorities, the domestic proceeding that should be exhausted in the instant case is the criminal investigation, which should be assumed by the State.

28. With respect to the duration of the criminal proceeding, the IACHR has already reached a decision on admissibility in similar matters, in Report 34/15 on Petition 191-07 (Álvaro Enrique Rodríguez Buitrago et al.), of July 22, 2015. Applying that case-law, the Inter-American Commission concludes that in view of the time that has elapsed since the facts occurred without the authorities having even handed down a judgment of first instance, and considering that therefore there has been no conviction of any person in a final judgment, it is considered that the exception provided for at Article 46(2)(c) of the American Convention, on exhaustion of domestic remedies, does apply.

29. In addition, and citing case-law in the above-mentioned matter and in others<sup>3</sup>, the Commission understands with respect to the proceedings heard before the contentious-administrative jurisdiction that it does not constitute a suitable remedy for the purposes of analyzing the admissibility of a claim as in the instant matter. Specifically, the Commission has noted that the contentious-administrative jurisdiction is a mechanism that seeks to supervise the administrative activity of the State and that it only allows one to obtain compensation for damages caused by an act or omission of State agents. In this respect, the Inter-American Court has considered that “the comprehensive reparation for a violation of a right protected by the Convention cannot be reduced to the payment of compensation to the family of the victim”<sup>4</sup>

30. Therefore, the Commission concludes that in the instant case the exception to the prior exhaustion requirement set forth on Article 46(2)(c) of the American Convention applies, and it dismisses the argument presented by the State regarding the applicability of the fourth-instance formula to the case.

## 2. Time for filing the petition

31. Article 46(1)(b) of the American Convention establishes that for a petition to be admissible by the Commission it must be filed within six months of the date on which the alleged victim has been notified of the final decision. In the present case the IACHR has established that the exception to the prior exhaustion rule set forth on Article 46(2)(c) of the American Convention applies here. In this respect, Article 32(2) of the Commission’s Rules of Procedure establishes that in those cases in which the exceptions to the rule requiring prior exhaustion of domestic remedies apply, the petition must be filed within a reasonable time, with reasonableness to be judged by the Commission. For that purpose, the Commission must consider the date of the alleged violation of rights, and the circumstances of each case.

<sup>2</sup> IACHR, Report No. 34/15, Petition 191-07 and others. Admissibility. Álvaro Enrique Rodríguez et al. Colombia. July 22, 2015, para. 246.

<sup>3</sup> See, among others, IACHR, Report No. 34/15, Petition 191-07 and others. Admissibility. Álvaro Enrique Rodríguez et al. Colombia. July 22, 2015, para. 251; IACHR, Report No. 15/95, Case No. 11,010, Hildegard María Feldman, Colombia, September 13, 1995; IACHR, Report No. 61/99, Case 11,519, José Alexis Fuentes Guerrero et al., Colombia, April 13, 1999, para. 51; IACHR, Report No. 43/02, Petition 12,009, Leydi Dayán Sánchez, Colombia, October 9, 2002, para. 22; and IACHR. Report No. 74/07, Petition 1136/03, Admissibility, José Antonio Romero Cruz et al. October 15, 2007, para. 34.

<sup>4</sup> See, *inter alia*, 1/A Court HR, Case of the Mapiripán Massacre v. Colombia. Merits, Reparations, and Costs. Judgment of September 15, 2005. Series C No. 134, para. 214.

32. In the case under analysis, the petition was received by the Commission on October 19, 2006, and the alleged facts that are the subject matter of the claim began on January 8, 2006. Therefore, in view of the context and the characteristics of the instant case the Commission considers that the petition was submitted within a reasonable time and that the admissibility requirement regarding time of submission should be considered satisfied.

### **3. Duplication of procedure and international *res judicata***

33. It does not appear from the file that the subject matter of the petition is pending before any other international procedure for settlement, or that it reproduces a petition already examined by this or any other international organization. Therefore, one should consider the requirements established at Articles 46(1)(c) and 47(d) of the Convention to have been satisfied.

### **4. Characterization of the facts alleged**

34. For the purposes of admissibility, the Commission must decide whether the facts alleged tend to establish 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,” as per Article 47(c). The standard for analyzing admissibility differs from that used for the analysis of the merits of the petition, given that the Commission only performs a *prima facie* analysis to determine whether the petitioners establish the apparent or possible violation of a right guaranteed by the American Convention. It is a summary analysis that does not imply prejudging or issuing a preliminary opinion on the merits.

35. Moreover, neither the American Convention nor the Rules of Procedure of the IACHR require that the petition identify the specific rights alleged to have been violated by the State in the matter submitted to the Commission, although the petitioners may do so. It is up to the Commission, based on the case-law of the system, to determine in its admissibility reports which provision of the relevant inter-American instruments is applicable and whose violation could be established if the facts alleged are proven by sufficient evidence.

36. The petitioners argue that the alleged victims Hortensia Neyid Tunja Cuchumbe and Manuel Antonio Tao Pillimué were extrajudicially executed, and that in those same events Willian José Cunacue Medina suffered serious injuries. They indicate that the Army had acted to alter the scene and presented Hortensia Neyid Tunja Cuchumbe and Manuel Antonio Tao Pillimué to the media as “positives” in the military campaign against insurgent forces. They state that a proceeding was initiated for the crime of rebellion against Willian José Cunacue Medina, and that a criminal proceeding also went forward in relation to the crimes of homicide and injuries against the alleged victims. Regarding this last proceeding, they indicate that initially it was heard by the military justice, and subsequently it was removed to the regular courts, under whose jurisdiction three state agents were identified as suspects in the criminal investigation, yet according to the information received, to date no judgment has been handed down in the first instance. Moreover, they state that family members of the alleged victims brought a contentious-administrative proceeding to obtain reparations, yet the measures ordered in the judgment did not comply with the standards of the system regarding comprehensive reparation.

37. The State has said that the domestic remedies have unfolded properly, and notes that several actions have been taken in the criminal jurisdiction to investigate the facts alleged, detailing them, explaining that at present it is the civilian jurisdiction that is hearing the criminal matter, and that both in the contentious-administrative jurisdiction and in the disciplinary proceeding that is now under way judgments have been handed down favorable to the alleged victims; and that with respect to reparations, the matter is inadmissible on grounds of the fourth-instance formula. In view of the foregoing the State alleges that the Commission should not hear the matter considering the principle of subsidiarity and the prohibition on sitting as an appellate court.

38. With respect to the State’s arguments, the Commission reiterates what is established in its case-law, among others in Report 34/15, cited above, affirming that it is not competent to review the

judgments handed down by national courts that act within their jurisdiction and apply due process and judicial guarantees. The Commission cannot act as a court of appeals to examine purported errors of law or fact that may have been made by national courts. Nonetheless, in the context of its mandate to ensure the observance of the rights enshrined in the American Convention and other inter-American human rights instruments the Commission is competent to find a petition admissible and to rule on the merits when the petition refers to domestic proceedings related to alleged human rights violations and which may be in violation of rights guaranteed by the American Convention. Given that the arguments made by the petitioners are intimately related to the merits of the present matter, in particular as regards the alleged violations of Articles 8 and 25 of the Convention, the Commission will analyze the claims in the merits phase to determine whether in effect there was a diligent, effective, and impartial investigation.

39. Based on the information presented by the parties the Commission considers that the alleged extrajudicial execution of Hortensia Neyid Tunja Cuchumbe and Manuel Antonio Tao Pillimúé tends to establish a possible violation of the right to life. In particular, in the case of Hortensia Neyid Tunja Cuchumbe, who was 17 years old at the time of the facts, there is also a possible violation of the rights of the child. In addition, as for Willian José Cunacue Medina, who is said to have suffered grievous injury as the result of the attack suffered by the alleged victims, and who was subsequently arrested for approximately one week, purportedly in violation of the law, and prosecuted for the crime of rebellion, there may be a possible violation of his rights to integrity and personal liberty. In addition, as regards the presentation by the Army of the alleged facts, which it described as resulting from a confrontation with members of guerrilla forces, with the Army even showing the bodies of Hortensia Neyid Tunja Cuchumbe and Manuel Antonio Tao Pillimúé to the media as insurgents killed in combat, it could constitute a violation of the right of the alleged victims to the protection of honor and dignity. In addition, mindful of the alleged failure to investigate, punish, and provide comprehensive reparation in light of the facts alleged, the facts could tend to establish violations of the rights to judicial guarantees and judicial protection.

40. In view of the elements of fact and law presented by the parties and the nature of the matter put before it, the Commission considers that, if proven, the facts alleged tend to establish possible violations of the rights protected in Article 4 (right to life), Article 5 (right to humane treatment), Article 7 (right to personal liberty), Article 8 (right to a fair trial), Article 11 (right to privacy), Article 19 (rights of the child), and Article 25 (right to judicial protection) of the American Convention on Human Rights, in relation to Article 1(1) (obligation to respect the rights) and Article 2 (domestic legal effects) of the same instrument.

## **V. CONCLUSIONS**

41. Based on the considerations of fact and law presented, the Inter-American Commission concludes that this petition meets the admissibility requirements set out at Articles 46 and 47 of the American Convention, and, without prejudging on the merits,

### **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,**

#### **DECIDES:**

1. To find this petition admissible in relation to Articles 4, 5, 7, 8, 11, 19, and 25 of the American Convention in connection with the obligations established at Articles 1(1) and 2 of the same instrument;
2. To notify the parties of this decision;
3. To continue with the analysis on the merits;
4. To join this matter to Case 12,998, which at present is in the merits stage; and,
5. To publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of Washington, D.C., on the 15th day of the month of April, 2016. (Signed): James L. Cavallaro, President; Francisco José Eguiguren, First Vice President; Margarette May Macaulay, Second Vice President; José de Jesús Orozco Henríquez, and Esmeralda E. Arosemena Bernal de Troitiño, Commissioners.