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**REPORT No. 154/17**

**PETITION 239-07**

REPORT ON ADMISSIBILITY

NICANOR ALFONSO TERREROS LONDOÑO AND FAMILY  
COLOMBIA

Approved by the Commission at its session No. 2110 held on November 30, 2017.  
166<sup>th</sup> Special Period of Sessions.

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**PETITION P-239-07**  
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 COLOMBIA  
 NOVEMBER 30, 2017

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Roberto Fernando Paz Salas
<b>Alleged victim:</b>	Nicanor Alfonso Terreros Londoño and family
<b>State denounced:</b>	Colombia
<b>Rights invoked:</b>	Articles 4 (life), 7 (personal liberty), 8 (judicial guarantees) and 17 (family) of the American Convention on Human Rights <sup>2</sup>

**II. PROCEDURE BEFORE THE IACHR<sup>3</sup>**

<b>Date on which the petition was received:</b>	February 27, 2007
<b>Additional information received at the stage of initial review:</b>	May 30, 2008 and October 20, 2011
<b>Date on which the petition was transmitted to the State:</b>	February 19, 2013
<b>Date of the State's first response:</b>	June 7, 2013
<b>Additional observations from the petitioning party<sup>4</sup>:</b>	August 9, 2013
<b>Additional observations from the State:</b>	December 24, 2013

**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 (deposit of instrument made on July 31, 1973); and Inter-American Convention on Forced Disappearance of Persons <sup>5</sup> (deposit of instrument made on April 12, 2005)

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

<b>Duplication of procedures and International <i>res judicata</i>:</b>	No
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<sup>1</sup> In accordance with the provisions of Article 17.2.a of the Commission's Rules of Procedure, Commissioner Luis Ernesto Vargas Silva, of Colombian nationality, did not participate either in the discussions nor the decision in the present matter.

<sup>2</sup> Hereinafter the "Convention" or the "the American Convention".

<sup>3</sup> The observations presented by each party were duly transmitted to the opposing party.

<sup>4</sup> Since his last substantive communication, the petitioner has sent several communications to the IACHR requesting information on the status of the petition and requesting a decision on admissibility. The last of these communications is dated June 14, 2016.

<sup>5</sup> Hereinafter "IACFDP".

<b>Rights declared admissible</b>	Articles 3 (recognition of legal personality), 4 (life), 5 (personal integrity), 7 (personal liberty), 8 (judicial guarantees) and 25 (judicial protection) of the American Convention in relation to its articles 1.1 (obligation) of respecting rights) and 2 (duty to adopt provisions of domestic law); and Article I of the IACFDP
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, exception in Article 46.2.b of the ACHR applicable
<b>Timeliness of the petition:</b>	Yes, in terms of Section VI

## V. ALLEGED FACTS

1. The petitioner states that on May 25, 1983, in the city of Palmira, a group of F2 Command National Police officers unlawfully searched the house where Mr. Nicanor Alfonso Terreros Londoño (hereinafter "Mr. Terreros" or "the alleged victim") was with his friends. He alleges that they proceeded to arrest them without a court arrest warrant and transfer them in three vehicles to an unknown destination. He indicates that three of the individuals arrested were released a few days later, but this did not happen with the alleged victim and Mr. Gonzalo Uribe, who to date remain disappeared. In view of the above, their next of kin filed complaints with the Palmira Police Inspectorate and the National Attorney General on June 19 and 20, 1983, respectively.

2. He states that the First Criminal Court of the Circuit of Palmira, by resolution dated November 15, 1983, ordered the investigations to be sent to the military criminal justice system. In the framework of the proceedings in this jurisdiction, on February 25, 1988, the Military Criminal Prosecutor decided to acquit the accused. This decision was confirmed by the Superior Military Court on March 28, 1988, which also ordered a discontinuance of the criminal action with respect to one of the accused who had died; finally, the case was definitively archived on June 20, 1988. The petitioner emphasizes that the information above was obtained only from requests for information made to some judicial authorities, since the relatives of the alleged victim were prevented from participating in the proceedings and investigation carried out within the scope of the military criminal jurisdiction. In the same sense, he indicates that since then has filed various requests to different authorities. He points out that he requested information about the investigation from the First Criminal Judge of the Palmira Circuit in 1988 and 1990, from the Attorney General's Office in May 1990, from the Ministry of Defense and from the National Police in May 2011. He emphasizes that only on June 20, 2011, did the General Secretariat of the National Police inform him that, as a result of a disciplinary procedure, two police agents who were implicated in the events had been dismissed on September 24, 1985.

3. In addition, he states that in 1993, Mr. Terreros' next-of-kin requested in court the declaration of a presumption of death. This proceeding was conducted before the First Family Court of Palmira, which, on April 29, 1998, declared the death of the alleged victim, fixing the date of decease as May 25, 1985. This decision was confirmed on July 31, 1998, by the Family Chamber of the Judicial District of Cali and was notified by public announcement on August 6, 1998.

4. On the other hand, the petitioner states that at the time of his forced disappearance, the alleged victim was the father of a 2-month-old baby named Alfonso, whom he had failed to register as his son in the public records. He indicates that in February 2000, Alfonso's mother began ordinary proceedings for an extramarital declaration of paternity so that the child could be recognized as the son of Mr. Terreros. Thus, on December 19, 2001, the Sixth Family Court of Cali declared a paternal relationship with the alleged victim and ordered the child's legal registration as Alfonso Terreros Mora; this ruling was confirmed on July 31, 2002, by the Family Chamber of Judicial District of Cali, and notified on August 6, 2002.

5. Following on from this, on September 18, 2003, Alfonso Terreros Mora filed a direct reparations action for the disappearance of his father before the Fifth Chamber of the Contentious-Administrative Tribunal of Valle del Cauca that rejected the application as time barred on October 31, 2003, on the grounds that the events occurred on May 25, 1983. Mr. Terreros Mora appealed the ruling, arguing that the time bar could not be applied rigorously to his case, as he had acquired rights as the son of the alleged victim with extramarital paternity declaration that was notified on August 6, 2002.

6. Subsequently, on May 27, 2004, the Third Section of the *Consejo de Estado* confirmed the rejection, stating that the time bar for the direct reparation action began to run from the day following the issuance of the sentence declaring the presumed death of Mr. Terreros, that is to say, from September 2, 1998. In addition, the court considered that the claim for damages did not require that the relationship of parentage be proven with the direct victim, only the status of an individual adversely affected. In response, Alfonso Terreros Mora filed a *tutela* action claiming the violation of the guarantees of due process, which was declared inadmissible by the Fourth Chamber of the *Consejo de Estado* on May 18, 2006, on the grounds that said action does not proceed against judicial orders. This decision was notified to the alleged victim on May 23, 2006.

7. For its part, the State declares that from the investigations carried out in the proceedings undertaken in the military criminal jurisdiction, it was established that Messrs. Nicanor Alfonso Terreros Londoño and Gonzalo Uribe were not arrested at the home of their friends as the petitioner indicated. For this reason, it was decided to acquit the accused policemen, since there was no evidence that could determine with certainty who participated in the disappearance of the alleged victim.

8. On the other hand, the State considers that the petition is inadmissible because it is untimely. Thus, it refers to the decision denying the *tutela* action issued on May 18, 2006 and the petition being filed on February 28, 2007; that is, exceeding the six-month period provided for in the American Convention. In addition, it maintains that the IACHR is not authorized to act as an appeal court with respect to the decisions adopted by the national authorities. In this regard, it indicates that in the proceedings taken both in the military criminal and in the contentious administrative jurisdictions the alleged victim's due process guarantees were respected, in accordance with domestic legislation and international standards on the matter.

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

9. The petitioner indicates that on June 19, 1983, the alleged victim's next of kin filed a complaint with the Palmira Police Inspectorate for the forced disappearance of Mr. Terrero. The case was referred to the military criminal justice system where it was permanently archived, which, according to the petitioner, constituted an impediment to access to domestic remedies. He also states that the erroneous application of the time bar of the claim filed in the contentious administrative jurisdiction constituted an impossibility for access to justice. For its part, the State maintains that there was no impediment to the exhaustion of domestic remedies, since the same petitioner points out that the alleged victims resorted to different domestic remedies. However, the State points out that the petition was filed outside the Convention's six-month time limit.

10. The Commission has repeatedly stated that the military jurisdiction does not constitute an appropriate forum and therefore does not provide an adequate remedy to investigate, prosecute and punish alleged violations of human rights enshrined in the American Convention, allegedly committed by members of the Security Forces, or with their collaboration or acquiescence.<sup>6</sup> Therefore, it considers that in the present case, since the investigations for the alleged forced disappearance in the military criminal justice system have been made and filed, the exception established in Article 46.2.b of the Convention is applicable.

<sup>6</sup> IACHR, Report No. 34/15, Petition 191-07 and others. Admissibility. *Álvaro Enrique Rodríguez et. al.*. Colombia. July 22, 2015, para. 247.

11. On the other hand, the IACHR observes that the facts alleged in the claim took place on May 25, 1983, and that their effects continue up to the present, that the complaint was filed with the Colombian authorities on June 19, 1983, and that since then, the alleged victim's next of kin had requested information from different state agencies, and they have tried to obtain copies and details of the investigation. Irrespective of the declaration of the presumption of death, the petition indicates that Mr. Terreros is still disappeared. For this reason and because of the continuing nature of the alleged forced disappearance, the Commission concludes that the petition was filed within a reasonable time and that the requirement of admissibility regarding the filing period must be considered satisfied.

12. Finally, in connection with the reparation requested by the alleged victim's son, the Commission has repeatedly argued that this avenue is not an adequate means to assess the admissibility of a complaint of a nature such as this<sup>7</sup>, given that it does not provide for integral reparation that includes clarification of the facts and justice to the family members. However, although in the present case the criminal procedure is an adequate remedy for the investigation of the facts, given the autonomous allegation in the framework of the reparation proceedings, the Commission notes that the last judicial decision referring to these proceedings was the judgment issued by the Fourth Section of the *Consejo de Estado* on May 18, 2006, and notified on May 23, 2006, rejecting the *tutela* action, and that the petition was presented to the IACHR on February 27, 2007, that is, nine months after notification of that ruling. Consequently, the Commission concludes that, with respect to the alleged violations committed against Mr. Alfonso Terreros Mora during the reparation proceedings, the requirement set out in Article 46.1.b of the American Convention has not been met.

## VII. COLORABLE CLAIM

13. In view of the allegations of fact and law submitted by the parties and the nature of the matter brought to its attention, the Commission considers that the alleged forced disappearance of the alleged victim and the lack of effective judicial protection could characterize possible violations of Articles 3 (recognition of legal personality), 4 (life), 5 (personal integrity), 7 (personal liberty), 8 (judicial guarantees) and 25 (judicial protection) of the Convention in relation to its Articles 1.1. and 2. Also, regarding the events that occurred prior to the date of deposit of the instrument of ratification of the Inter-American Convention on Forced Disappearance of Persons in relation to the alleged continuity and lack of clarification of the crime of forced disappearance, the Commission considers that the alleged facts could characterize possible violations of Article I of said instrument, to the detriment of Mr. Nicanor Alfonso Terreros Londoño.

14. On the other hand, the alleged continued denial of justice and suffering of Mr. Terreros' next of kin could characterize violations of Articles 5, 8, and 25 of the American Convention in relation to its Article 1.1. Since the allegations regarding the affects on the alleged victim's next of kin will be analyzed under Article 5, the Commission observes that the petitioner has not offered information permitting *prima facie* identification of any specific or autonomous element to analyze the possible violation of the Article 17 of the Convention.

15. Regarding the State's arguments on the fourth-instance formula, the Commission acknowledges that it is not competent to review the judgments handed down by national courts acting within their sphere of competence and applying due process and judicial guarantees. However, the Commission reiterates that, within the framework of its mandate, it is competent to declare a petition admissible and to rule on the merits when the petition refers to domestic proceedings that could be in violation of rights guaranteed by the American Convention.

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<sup>7</sup> IACHR, Report No. 72/16. Petition 694-06. Admissibility. Onofre Antonio de La Hoz Montero and Family. Colombia. December 6, 2016, par. 32.

## VIII. DECISION

1. To find the instant petition admissible in relation to Articles 3, 4, 5, 7, 8, and 25 of the American Convention in relation to its Articles 1.1 and 2 of the same instrument; and in relation to Article I of the Inter-American Convention on Forced Disappearance of Persons;
2. To find the instant petition inadmissible in relation to Article 17 of the American Convention;
3. To notify the parties of this decision;
4. To continue with the analysis on the merits; and
5. 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 in the city of Washington, D.C., on the 30<sup>th</sup> day of the month of November, 2017. (Signed): Margarette May Macaulay, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice President; José de Jesús Orozco Henríquez, Paulo Vannuchi, and James L. Cavallaro, Commissioners.