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**REPORT No. 71/17**  
**PETITION 271-07**  
REPORT ON ADMISSIBILITY

JORGE LUIS DE LA ROSA MEJÍA ET AL.  
COLOMBIA

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**REPORT No. 71/ 17<sup>1</sup>**  
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ADMISSIBILITY REPORT  
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**I. SUMMARY**

1. On March 7, 2007, the Inter-American Commission on Human Rights (hereinafter “the Commission”, “the Inter-American Commission” or “IACHR”) received a petition submitted by la Comisión Colombiana de Juristas against Colombia (hereinafter, “Colombia” or “the State”), on behalf of Jorge Luis de la Rosa Mejía, Sadith Elena Mendoza Pérez, Aída Cecilia Padilla Mercado, and their relatives (hereinafter, “the alleged victims”). On April 11, 2013, la Corporación Colectivo de Abogados José Alvear Restrepo appeared as co-petitioner, representing Fabio Luis Coley Coronado and his relatives, also alleged victims in this Petition.

2. The petitioning organizations hold that the alleged victims were subject to forced disappearance and executed by members of the Monte de Marias Front of Heroes of the Autodefensas Unidas de Colombia (“AUC”) in the municipality of San Onofre, district of Sucre, in 2001. The allegation is that there was an unjustified delay in the investigations, since 15 years after the facts of the case, only three of the presumed perpetrators have been convicted, while the State agents who supported and financed the presumed perpetrators have not been investigated or connected to the case, nor have the remains of the victims been located, identified or handed over to the relatives. On the other hand, the State alleges that the direct reparation action has not been exhausted, and that the facts presented do not characterize human right violations that can be attributed to the State.

3. Without prejudice as to the substance of the claim, upon analysis of the position of the parties, and in compliance with the prerequisites set forth in Articles 46 and 47 of the American Convention on Human Rights (hereinafter, “the American Convention” or “the Convention”) and Articles 31 to 34 of the IACHR Regulations (hereinafter “the Regulations”), the Commission decided to declare the Petition as admissible in order to examine the allegations relative to the alleged violation of the rights enshrined in Articles 3 (Right to the recognition of juridical personality), 4 (Right to life), 5 (Right to humane treatment), 7 (Right to personal liberty), 8 (Judicial guarantees), 22 (Right to free movement and residence); and 25 (Judicial protection) of the American Convention, as per the obligations derived from Article 1.1 therein (Obligation to respect the Rights), as well as Article I of the Inter-American Convention on Forced Disappearance of Persons, and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture. Moreover, the Commission decided to notify the parties about this decision, publish it and include it in its Annual Report to the General Assembly of the Organization of American States.

**II. PRESENTATIONS BEFORE THE COMMISSION**

4. On March 7, 2007, the IACHR received the petition and sent a copy of the relevant parts to the State on August 22, 2007, establishing a term of two months to submit observations, on the basis of Article 30.3 of its Rules of Procedure. On November 28, 2007, the response from the State was received and sent to the petitioners on November 29, 2007.

5. La Comisión Colombiana de Juristas submitted additional observations on November 19, 2010, and November 21, 2011. The State, in turn, submitted additional observations on October 3, 2012. All observations were duly sent to the opposing party.

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<sup>1</sup> As per provisions in Article 17.2.a of the Regulations of the Commission Regulations, Commissioner Luis Ernesto Vargas Silva, a Colombian citizen, did not participate in the discussion or the decision in this case.

6. On April 11, 2013, the Commission received observations from la Corporación Colectivo de Abogados José Alvear Restrepo on behalf of Fabio Luis Coley Coronado and relatives. The petitioners submitted additional observations on July 30, 2013, and November 12, 2014. The State, in turn, submitted additional observations on December 27, 2013 and December 16, 2015. All observations were duly sent to the opposing party.

### **III. POSITION OF THE PARTIES**

#### **A. Position of the petitioners**

7. The petitioning organizations alleged that the facts of this case happened in the context of the forced disappearance of around 2,000 people in the area of Costa Norte, some perpetrated in El Palmar, an estate located in the municipality of San Onofre, in the region of Montes de María. They pointed out that in said region there were paramilitary groups of the AUCs operating with the support, complicity and acquiescence of the authorities, who failed to take any action whatsoever to combat them or to protect the population. Furthermore, they alleged that there existed a context of violations against judicial officers, aimed at hindering their performance, as well as intimidating and frightening them in order to obtain impunity for serious human rights violations occurred in the Montes de María region.

8. They pointed out that previously, on October 20, 1998, Jorge Luis de la Rosa Mejía, a judicial investigator of the Technical Investigation Corps (CTI by its acronym in Spanish), a division that is part of the Attorney General's Office (FGN by its acronym in Spanish), escaped an ambush prepared by the National Liberation Army. They declare that Fabio Luis Coley Coronado, another judicial investigator from the CTI of the FGN, was kidnapped while on a mission on November 20, 1998, and was held captive for six days by the Algarrobos self-defense group; he was finally released, but received a "suggestion to leave the city of Santa Marta", which was his place of residence.

9. They declared that on June 29, 1999, Mr. de la Rosa and Mr. Coley were named as military targets by the paramilitary commander of an AUC front that operated in Sierra Nevada de Santa Marta, and that on the next day there was an attack with a fragmentation grenade outside Mr. de la Rosa's parents' residence. The petitioners alleged that the investigations corresponding to the attack and the abovementioned threats made by the AUC's commander were not carried out within a reasonable term, and they denounced that it is the family members' belief that the investigation of the attack was archived by Specialized Attorney's Office number 5 of Santa Marta on October 8, 2004.

10. Also, they held that the failure to investigate and penalize the perpetrators of the threat made public on June 29, 1999, as well as the failure on the part of the authorities to offset paramilitary control of the area, compelled Mr. de la Rosa and Mr. Coley, and their family members, to abandon their place of residence. They allege that both investigators were unable to return to their freely chosen places of residence due to the fact that the Colombian authorities failed to implement effective actions to penalize the perpetrators of the threats and to stop or counteract the paramilitary control of the area.

#### *Presumed forced disappearance of the alleged victims*

11. The petitioners have pointed out that on May 27, 2001, Mr. de la Rosa and Mr. Coley suffered forced disappearance and were later executed by members of el Bloque Héroes de los Montes de María in the municipality of San Onofre, Sucre, while working as part of a judicial committee of the Attorney's Office of Bogotá. They claim that the alleged victims were last seen in a place known as El Rincón del Mar with Sadith Elena Mendoza Pérez and Aída Cecilia Padilla Mercado, who were also subjected to forced disappearance together with them.

12. They held that the Regional CTI Office set out investigations to establish the whereabouts of its two investigators, and in December 2001, Attorney 12 of the Human Rights National Unit took on the investigation. On the other hand, on January 16, 2002, Ms. Olivia Margarita Díaz Rodríguez, Mr. Coley's wife,

reported his disappearance before the Complaint Room Section of Attorney's Office 11, and on May 27, 2003, the Human Rights National Unit and International Humanitarian Law (UNDHDIH by its acronym in Spanish) certified that it had not been possible to establish his whereabouts, nor the location of his remains, and that no group outside the law had claimed responsibility for the disappearance.

13. According to the petition, on October 11, 2004, the Asociación de Familiares de Detenidos Desaparecidos informed the Attorney's Office about 30 cases of alleged forced disappearances occurred in Santa Marta, district of Magdalena, between 2000 and 2004, including the cases of the alleged victims; they requested information about the investigations that were carried out. The petitioners allege that searches for these people started as late as April 2005. Also, on November 1, 2004, the relatives brought forward petitions before the FGN to promote actions and to give impetus to investigations, and on September 23, 2005, those petitions were also submitted before the President of Colombia. On May 2, 2005, the FGN disclosed the finding of a mass grave with the remains of three males in "El Palmar" Estate of San Onofre; these male bodies were first believed to be Mr. de la Rosa and Mr. Coley. However, in July 2005 that possibility was ruled out.

14. On the other hand, the petitioners alleged that, knowing the *modus operandi* of the AUC's fronts in the area, as well as the execution sites for their victims, it is possible to reasonably conclude that the alleged victims were subjected to torture and later deprived arbitrarily of their right to life.

#### *Criminal proceedings against three presumed paramilitary chiefs*

15. The petitioning organizations hold that on February 6, 2007, the Attorney's Office issued an accusation of aggravated kidnapping for extortion and homicide against three paramilitary chiefs. Said accusation was appealed by the Public Prosecution because they considered that the charges to bring the accused to court should be aggravated forced disappearance; the appeal was granted on March 28, 2007, and therefore the Attorney's Office modified the accusation resolution and charged the accused with aggravated forced disappearance and homicide. They hold that since 2007 the process has been delayed on several occasions and is paralyzed to this day, and none of the three accused have been judged or penalized, as applicable.

#### *Criminal investigations referring to other parties responsible for the crimes*

16. The petitioners hold that as from 2007 several of the presumed perpetrators of the crime have been identified; however, by then some of those involved had already passed away. On May 30, 2008, the Attorney's Office decreed preventive arrest for one of the presumed material authors of the crimes of aggravated forced disappearance and homicide against the alleged victims.

17. Moreover, between October 2009 and April 2010, other three suspects connected to the investigation by the Attorney's Office invoked the legal benefit of an anticipated sentence. On April 19, and December 15 and 28, 2010, the First Specialized Court of Sincelejo issued decisions in the abbreviated prosecution for the aggravated forced disappearance and homicide against the alleged victims, sentencing each of the accused to 20 years and 10 months imprisonment, a fine of 1,452 minimum legal monthly salaries, and the payment of 200 minimum salaries for each of the victims as reparation, in favor of those who prove damages according to the Law.

#### *Conclusion*

18. The petitioners hold that there is an unjustified delay in the investigations promoted by the authorities, since more than 15 years after the facts of the case, only three of the presumed perpetrators have been sentenced, and the state agents who supported, financed and instructed the armed group that caused the forced disappearance and subsequent murder of the alleged victims have not even been connected to the proceedings, nor have the remains of the alleged victims been located, identified and handed over to the families.

19. They stated that the term is not justified since the authorities were fully aware of the actions of the paramilitary groups in the area, and of the people commanding said groups, and still failed to issue an arrest warrant or to connect them to the judicial proceedings, or conduct searches for the missing people about whom there existed information and reports.

20. Furthermore, they hold that the criminal investigations have not constituted adequate and effective remedy for the relatives of the alleged victims, since the remains of the alleged victims have not been identified, and authorities have failed to launch an urgent search mechanism as immediate protection *vis-a-vis* the condition of the alleged victims as missing, as provided by Article 13 of the Law 589, dated 2000.

21. Based on all of the abovementioned points, the petitioners request it be declared that there was a violation of the rights enshrined in Articles 3, 4, 5, 7, 8, 22 and 25 of the American Convention, with regard to Article 1.1 of said instrument, and Article I, paragraphs a), b) and d) of the Inter-American Convention on Forced Disappearance of Persons against Jorge Luis de la Rosa Mejía, Fabio Luis Coley Coronado, Aída Cecilia Padilla Mercado and Sadith Elena Mendoza Pérez, as well as Articles 5, 8 and 25 of the abovementioned instrument against their relatives, and Article 22 against the relatives of Mr. de la Rosa Mejía and Mr. Coley Coronado.

## **B. Position of the State**

22. The State has held that at the time of the alleged facts of the case, it was not aware that the Corregimiento Rincón del Mar had been identified by the authorities as a systematic or repeat practice site for forced disappearances or homicides.

23. It stated that Mr. de la Rosa and Mr. Coley Coronado had worked at the Magdalena Precinct of the CTI until August 12, 1999, when they were transferred to a CTI based in Medellín as a way to protect them in view of the threats received in the city of Santa Marta, and the attack suffered at Mr. de la Rosa's parents' home. In the period between April 25 and June 1, 2001, they were assigned to Sincelejo, district of Sucre, to perform their investigation duties in that region.

24. It pointed out that on May 27, 2001; the alleged victims were in a resort in Corregimiento Rincón del Mar in the municipality of San Onofre, where they went missing without a trace. In the days immediately following the disappearance, the Head of the Investigation Unit of the GAULA Group [Unified Action Groups for Individual Freedom], as well as units in the Judicial Police that belong to the CTI and the SIJIN [Local Branch of the Judicial and Investigative Police] were commissioned to search for them. On June 8, 2001, a formal investigation on the matter was ordered.

25. It added that, according to the versions of the facts of the case expressed by the parties in connection with the events under investigation, said investigative actions made the perpetrators exhume the bodies and dump them into the sea, which prevented the authorities from finding out what had happened and determining the alleged victims whereabouts. It has held that, despite that, between 2001 and 2005 multiple judicial steps were taken, namely court-ordered searches and inspections in the El Palmar Estate, where the mortal remains of the alleged victims might have been initially buried; 65 graves and 72 skeletal remains were found. It pointed out that to this day, the CTI continues with search and identification tasks on the remains of the alleged victims.

### *Investigation of the attack at Jorge Luis de la Rosa Mejía's parents' residence*

26. Regarding the investigation of the attack at Mr. de la Rosa Mejía's parents' home, the State has held that on June 30, 1999, the Local District Attorney 8 attached to the Immediate Reaction Unit of Santa Marta opened a preliminary investigation of the abovementioned events, and that they conducted several proceedings. On July 7, 1999, the Attorney's Office Delegated before the Criminal Judges of the Specialized Circuit of Santa Marta took on the jurisdiction for this investigation and ordered several proceedings.

27. The State pointed out that on January 22, 2003, the First Specialized Attorney of Santa Marta took on the jurisdiction to oversee the preliminary proceedings and ordered new proceedings, including an order to consult the SIJUF [Attorney's Office Judicial Information System] of the FGN [Attorney General's Office] in order to verify if there were criminal reports for threats against Mr. de la Rosa; such consultation produced negative results. It added that on October 8, 2004, the Fifth Specialized Attorney of Santa Marta issued a resolution of dismissal upon exceeding the maximum legal term to conduct preliminary judicial proceedings, which can be revoked in case to emerge evidence that enables to individualize and identify the parties responsible for the crimes.

*Criminal investigation of the presumed forced disappearance of the alleged victims*

28. The State indicated that in the days immediately after the disappearance of the alleged victims, the FGN started *ex officio* a criminal investigation under number 1109, which in 2005 was linked to the criminal proceedings regarding three presumed paramilitaries, for whom a preventative detention ordered was issued under charges of aggravated kidnapping for extortion in material and conceptual concurrence with aggravated homicide.

29. The State declared that, the merit of the investigation provoked the indictment of the accused, which was appealed and confirmed by the Attorney's Office Delegated before the High Courts of the Judiciary District of Bogotá on June 26, 2007. The Attorney's Office modified the charges and made them forced disappearance, in material and conceptual concurrence with aggravated homicide. On June 27, 2007, the court file was submitted to the Criminal Court of the Specialized Circuit of Sincelejo to continue with the prosecution.

30. It stated that subsequently eight people were linked to the investigation; said individuals were suspected of having been members of the self-defense groups that had presumably committed crimes in the department of Sucre at the time when the facts of the case in the petition occurred. The Specialized Court of Sincelejo heard an anticipated sentence against three of them on December 15, 2010, on December 28, 2010, and April 19, 2010, prosecuted them for aggravated forced disappearance and homicide against the alleged victims, and sentenced them to 20 years and 10 months imprisonment, a fine of 1,452 minimum legal monthly salaries effective by 2001, and the payment of 200 minimum salaries for each of the victims as reparation, in favor of the victims' relatives.

31. On the other hand, the State pointed out that on May 30, 2007, July 15, 2008, and March 17, 2010, preventative arrest was ordered against other three presumed perpetrators. Referring to the first one, it stated that on December 13, 2013, the accusation resolution was issued against him for forced disappearance and aggravated homicide, pending prosecution before the Criminal Court of the Specialized Circuit of Sincelejo. Referring to the second one, it stated that on September 5, 2008, proceedings were promoted but it does not specify which ones. Finally, referring to the third one, it stated that on August 17, 2010, a revocation request was resolved in his favor, and his immediate release was ordered.

32. Regarding the mechanisms within the framework of transitional justice, it has been pointed out that the proceedings ordered are recorded in the Missionary System of Justice and Peace Information under files No362870-37579 and No119577. Said files contain voluntary testimony of some of the accused, who related the circumstances of manner, place and time of the disappearance and murder of the alleged victims.

33. Given the abovementioned point, the accused were charged with forced disappearance in material and conceptual concurrence with homicide of protected individuals; the proceedings included a request for the indictment hearing submitted by Attorney's Office 12 Delegated before the Transitional Justice Chamber of the Superior Court of Barranquilla. The State pointed out that said legal proceedings are pending resolution, by the Supreme Court of Justice, of the appeal interposed by the investigation agency referred to accumulation of indictment hearings.



34. Thus, the State has alleged that the application of the judicial mechanisms contemplated in the country's legislation has enabled the investigation, prosecution and penalization of the main parties responsible for the alleged violations, together with the fact that the jurisdictional activity is still in force in order to prosecute all of those involved in the crimes in question. Also, the different judicial instances have succeeded in establishing the circumstances regarding manner, place and time where the disappearance and murder of the alleged victims occurred.

35. The State has claimed that elements to evidence an alleged collaboration or acquiescence on the part of state agents, either by action or omission, in view of the actions of the illegal armed group that perpetrated the forced disappearance and homicide of the alleged victims could not be verified; it has also claimed that the crimes were committed by the members of frente Héroes de los Montes de María de las AUC, and there is no indication about any participation of state agents. It added that the FGN's Human Rights and Humanitarian International Law Department has made efforts to advance the process in order to verify whether there was participation of members of the Attorney's Office in the facts of the case, but up to now this has not been proven.

36. The State has declared that a simple and suitable remedy to access all of the elements, facts and evidence compiled throughout the criminal investigation is to interpose a civil action. It points out that this is made effective with the mere appointment of a proxy or legal representative duly constituted by means of a power of attorney, without requiring filing of a lawsuit of the civil party which establishes the scope of the stakeholders' petition.

37. On the other hand, the State has pointed out that, in view of the presumed forced disappearance, the relatives of the alleged victims did not make use of the habeas corpus appeal established as per Article 30 of the Political Constitution of Colombia, which is acknowledged as the suitable remedy to request that the state authorities provide information of the whereabouts of an individual in case of detention or disappearance that may have been committed by state agents.

38. Regarding the urgent search mechanism for missing people, the State claims that Law 589 dating from year 2000 is only a tool to provide a response to the missing people's relatives in order to prevent a crime from being committed, and to be able to establish the victim's whereabouts, instead of identifying, individualizing and penalizing the perpetrators, which corresponds to criminal proceedings. In this sense, it rejects the idea that not activating said mechanism entails the exhaustion of internal remedies.

39. Regarding the allegations about an unjustified delay, the State holds that it has been proven that the facts of the case referring to the petition present a high degree of complexity, and also that the judicial body has acted with due diligence and provided the required judicial protection, and therefore the facts that gave rise to the petition have ceased.

40. Finally, the State holds that the direct reparation action has not been exhausted, and that, when claiming against the presumed intervention of the state agents in the forced disappearance and murder of the alleged victims, the petitioners should have used such argument before the administrative judge, so that he could determine whether the adoption of measures aimed at the reparation in favor of the affected subjects was applicable, since such action is the adequate and effective remedy to obtain a reparation from the State through the courts, if damage was caused in the exercise of its duties.

41. Thus, it declares that it is not aware of any administrative litigation against the State in connection to the facts of the case in the Petition, and that it is only aware of the civil action filed before Family Court number 4 of Medellín (No278-05), which requests a declaration of "presumed death due to disappearance" for Mr. de la Rosa, initiated by Ms. Marly Marbel Gregory Tejada, on her behalf and on behalf of her daughters Marilyn Paola and Karime Andrea.

42. In conclusion, the State holds that, since the direct reparation action has not been exhausted and given that the facts discussed do not characterize violations to human rights that are attributable to the State, the Petition is inadmissible, and the IACHR is requested to follow suit.

## IV. ANALYSIS OF JURISDICTION AND ADMISSIBILITY

### A. Competence

43. The petitioners are entitled, in principle, as per Articles 44 of the American Convention and 23 of the Regulations to submit petitions before the Commission. The Petition states that the alleged victims are individuals the State de Colombia is committed to respect and whose rights, enshrined in the American Convention and the Inter-American Convention on Forced Disappearance of Persons, the State undertakes to uphold and guarantee. In this regard, the Commission points out that the State has been a party to said instruments since July 31, 1973, and April 12, 2005, when the respective instruments of ratification were deposited. Therefore, the Commission has *ratione personae* jurisdiction to examine the Petition. Also, the Commission has *ratione loci* jurisdiction to hear the Petition, given that it contains allegations referring to violations that would have taken place in the territory of Colombia.

44. The Commission has *ratione temporis* jurisdiction since the obligation to respect and guarantee the rights protected by the Convention was in force to be upheld by the State at the time when the alleged facts in the Petition would have occurred. Furthermore, the Commission has jurisdiction under the Inter-American Convention on Forced Disappearance of Persons, inasmuch as the alleged facts constitute a situation that presumably continues to the date of issuance of this report. Finally, the Commission has *ratione materiae* jurisdiction as regards the alleged violations to human rights protected in the abovementioned treaties.

### B. Requirements for Admissibility

#### 1. Exhaustion of internal remedies

45. Articles 46.1.a of the American Convention and 31.1 of the Regulations demand exhaustion of the remedies available in the local and domestic jurisdictions, pursuant to the generally acknowledged international legal principles, as a prerequisite for admissibility of the claims contained in the petition submitted. The purpose of this prerequisite is to allow for the national authorities to gain awareness about the presumed violation of a protected right and, if applicable, devise a solution for the situation prior to being submitted before an international instance. On the other hand, Articles 31.2 of the Regulations and 46.2 of the Convention contemplate the fact that the prerequisite of exhaustion of the internal remedies is not applicable when: i) there is no internal legislation of the State in question regarding due legal process for the protection of the rights that have allegedly been violated; ii) the alleged victims of the violation of their rights have not been able to access the internal jurisdiction remedies they are entitled to, or their right to exhaust those remedies has been obstructed or hindered; or iii) there have been unjustified delays in the decision on the abovementioned remedies.

46. The petitioners claim that there has been an unjustified delay in the investigations promoted by the authorities, given that more than 15 years after the facts of the case, three of the presumed perpetrators have been convicted, but none of the state agents who allegedly supported, financed and instructed the armed group that caused the forced disappearance and murder of the alleged victims have been linked to the legal proceedings, and the victims' remains have not been located, identified or handed over to the families. On the other hand, the State points out that the facts connected to the petition present a high degree of complexity, and also that the judicial body has acted with due diligence. Furthermore, it claims that the *habeas corpus* appeal has not been exhausted, a prerequisite to request the authorities to produce information about the alleged victims' whereabouts, or a direct reparation in favor of the relatives.

47. In situations similar to the one at hand, including illegal detention, torture and forced disappearance reports, the internal remedies that should be considered for petition admissibility purposes are the ones referring to the investigation and penalization of the parties responsible for said acts, which translates in the domestic legislation as criminal offences subject to ex officio prosecution. In this regard, the Commission observes that the State has, in effect, initiated an ex officio investigation on the presumed forced disappearances and subsequent murder of the alleged victims, which was formally opened on June 8, 2001.



The Commission has observed that, even though three of the perpetrators were convicted and sentenced in a abbreviated prosecution, according to the information provided, more than 15 years after the alleged facts not all of the presumed perpetrators have been convicted, nor have the alleged victims' whereabouts been determined.

48. As regards the *habeas corpus* appeal, even though the Commission has determined that it is the suitable remedy in case of a presumed forced disappearance, it has also been established that the prerequisite of exhaustion of internal remedies does not entail that the alleged victims are obligated to exhaust all the possible remedies available to them; furthermore, if the alleged victim has brought up the case via any of the valid and suitable alternative paths provided for in the internal legislation, and having the State had the opportunity to remediate the issue under its jurisdiction, that situation does not necessarily suffice to comply with international provisions. In this respect, the IACHR notes that a few days after the alleged disappearances, the opening of a formal criminal investigation was ordered.

49. Also, regarding the direct reparation action, the Commission states that in cases of forced disappearance, it is not necessary to file or exhaust a civil action before bringing a claim to the Inter-American system, since such a remedy would not be in response to the main claim contained in this petition, concerning lack of due diligence in the investigation, prosecution and punishment of the persons responsible<sup>2</sup>. In that sense, the Commission has made a pronouncement on the direct reparation action in Colombia referring to admissibility<sup>3</sup>.

50. On the other hand, the petitioners claim that the threat made by the AUCs against Mr. de la Rosa and Mr. Coley on June 29, 1999 implied that they and their family members had to abandon their place of residence, which seriously affected their right to freedom of movement and residence, protected by the provisions in Article 22 of the Convention. The State holds that on August 12, 1999, Mr. de la Rosa and Mr. Coley were transferred to the CTI based in Medellín as a protection measure in view of the threats received in the city of Santa Marta, as well as the attack perpetrated at Mr. de la Rosa's parents' home. The Commission takes into account the likelihood of a link between these events and the subsequent disappearance reported by the petitioners, and observes that, after the attack at Mr. de la Rosa's parents' home, the Attorney's Office initiated a criminal investigation that concluded on October 8, 2004, by means of a resolution of dismissal when the maximum legal term prescribed by law to conduct preliminary judicial proceedings, which can be revoked in case there is evidence that allows to individualize and identify the parties responsible for the crimes..

51. Therefore, the Commission concludes that in this case the exception for exhaustion of the internal remedies pursuant to Article 46.2.c of the Convention and 31.2.c of the Regulations applies. In that regard, the Commission notes that said provisions, given their nature and purpose, are autonomous regulations *vis à vis* the substantive provisions of the Convention. Therefore, the determination of whether the exception for exhaustion of the internal remedies, as per the abovementioned provision, is applicable to the case in point should be resolved prior and separate from the substantial analysis of the case, since it is governed by provisions that differ from the ones used for determination of the violation of Articles 8 and 25 of the Convention. It is worth clarifying that the causes and effects that have prevented the exhaustion of the internal remedies in this case will be analyzed, to the extent that they are relevant, in the report adopted by the Commission on the substantial content of the controversy, in order to establish whether, in effect, they constitute violations to the Convention.

## **2. Term for submission of the Petition**

52. Articles 46.1.b of the American Convention and 32.1 of the Regulations establish that, for a Petition to be admissible by the Commission, it is required to be submitted within a term of six months as from the date when the alleged damaged party has been notified of the final decision. In the claim being

<sup>2</sup> IACHR Report No. 51/10, (Admissibility), Petition 1166-05, *Massacres of Tibú*, Colombia, March 18, 2010, par. 110 and 120.

<sup>3</sup> IACHR, Report No. 18/14 (Admissibility), Petition 1625-07, *Y.C.G.M. and relatives*, Colombia, April 3, 2014, par. 43.

analyzed, the IACHR has established applicability of the exception for exhaustion of the internal remedies pursuant to Articles 46.2.c of the American Convention and 31.2.c of the Regulations. Articles 46.2 of the Convention and 32.2 of the Regulations establish that, in the cases in which the exceptions for exhaustion of the internal remedies were applicable, the petition should be submitted within a reasonable term, as determined at the Commission's discretion. To that end, the Commission should consider the date when the alleged violation of the rights occurred, as well as the circumstances of the matter.

53. In the claim being analyzed, the Petition brought forward before the IACHR was received on March 7, 2007; the alleged facts of the case submitted as part of the claim started on May 27, 2001, and its effects extend to this day. Therefore, in view of the context and characteristics of this case, the Commission considers that the Petition was submitted within a reasonable term and thus, the admissibility requirement referring to the submission term has been met.

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

54. From the court files, it cannot be concluded that the matter in this petition awaits resolution in any pending international procedure, or that it duplicates any other petition which has already been examined by this or any other international body. Therefore, the grounds for inadmissibility established in Articles 46.1.c and 47.d of the Convention, and Articles 33.1.a and 33.1.b of the Regulations are not applicable.

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

55. As regards Admissibility, the Commission is to decide whether the alleged facts may characterize a violation of rights, by virtue of the provisions in Articles 47.b of the American Convention and 34.a of the Regulations, or whether the Petition is "clearly unfounded" or "obviously and utterly inadmissible", pursuant to Articles 47.c of the American Convention and 34.b of the Regulations. The criteria for the admissibility analysis differs from the one used in the substantial analysis of the Petition, since the Commission only conducts a *prima facie* analysis in order to determine whether the petitioners have established an apparent or possible violation of a right guaranteed by the Convention and by the Inter-American Convention on Forced Disappearance of Persons. It is a summary analysis that does not entail a preliminary opinion or judgment on the substantial issues of the matter.

56. Moreover, the corresponding judicial instruments do not require the petitioners to identify the specific rights that have allegedly been violated by the State in an issue submitted to the Commission, although the petitioners are entitled to do so. It is the Commission's duty to determine in its Admissibility reports, based on the system's jurisprudence, what provisions in the relevant Inter-American instruments are applicable to establish violation of rights in case the alleged facts of the case are proven by means of sufficient evidence.

57. The petitioners hold that Jorge Luis de la Rosa Mejía, Fabio Luis Coley Coronado, Aída Cecilia Padilla Mercado and Sadith Elena Mendoza Pérez were tortured, subject to forced disappearance and subsequently executed by paramilitary forces, with the support, complicity and acquiescence of the state authorities, and that to this day not all the parties responsible for those crimes have been tried and penalized, as applicable, nor have the whereabouts of the alleged victims been determined. On the other hand, the State claims the following: that it has investigated, prosecuted and penalized the main parties responsible for the alleged violations, that the jurisdictional activity is still underway in order to prosecute all of the parties involved, that the elements that may evidence an alleged support or acquiescence by state agents have not been accredited, and that the search for identification of the mortal remains of the alleged victims continues to this day.

58. In view of the factual and legal elements of the case submitted by the petitioners, and the nature of the issue at hand, the IACHR considers that, if proven, the alleged facts could characterize possible violations of the rights protected in Articles 3, 4, 5, 7, 8, 22 and 25 of the American Convention, in the light of the obligations enshrined in provision 1.1 of said treaty, as well as Article I of the Inter-American Convention on Forced Disappearance of Persons, and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and

Punish Torture, against the alleged victims, as well as Articles 5, 8 and 25 referring to their relatives, and Article 22 in the case of the relatives of Jorge Luis de la Rosa Mejía and Fabio Luis Coley Coronado.

## **V. CONCLUSIONS**

59. On the basis of the abovementioned factual and legal considerations, the Inter-American Commission concludes that this Petition meets the requirements for Admissibility listed in Articles 31 to 34 of the Regulations, as well as 46 and 47 of the American Convention and, without passing judgment on the substantial issue,

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

#### **DECIDES TO:**

1. Declare this Petition admissible, pursuant to Articles 3, 4, 5, 7, 8, 22 and 25 of the American Convention, referring to Article 1.1 of said instrument, and Article I of the Inter-American Convention on Forced Disappearance of Persons, as well as Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture;
2. Notify the parties about this decision;
3. Continue with the analysis of the substantial issue; and
4. Publish this decision and include it in the Annual Report to the General Assembly of the Organization of American States.

Approved electronically by the Commission on the 29 day of the month of June, 2017. (Signed): Francisco José Eguiguren, President; Margarete 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.