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REPORT No. 10/17

PETITION 864-08

REPORT ON ADMISSIBILITY

WILLAN FERNÁNDEZ BECERRA AND FAMILY
COLOMBIA

Approved by the Commission on January 27, 2017.

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Organización de los
Estados Americanos

REPORT No. 10/17¹
PETITION 864-08
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 WILLAN FERNÁNDEZ BECERRA AND FAMILY
 COLOMBIA
 JANUARY 27, 2017

I. INFORMATION ABOUT THE PETITION

Petitioner:	Luis Guillermo Serrano Escobar
Alleged victim:	Willan Fernández Becerra and family
State concerned:	Colombia
Rights invoked:	Articles 4 (right to life), 5 (right to humane treatment), 8 (right to a fair trial), and 25 (judicial protection) of the American Convention on Human Rights ²

II. PROCEDURE BEFORE THE IACHR

Date on which the petition was received:	July 23, 2008
Additional information received during the initial stage:	July 29, August 7 and 29, September 2 and 18, and October 15, 2008; March 16 and October 12, 2011; and January 27, 2014
Date on which the petition was transmitted to the State:	June 5, 2014
Date of the State's first response:	November 12, 2014
Additional observations from the petitioner:³	December 19, 2014

III. COMPETENCE

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

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

Duplication of procedures and International <i>res judicata</i>:	No
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¹ Pursuant to the provisions of Article 17(2)(a) of the Commission's Rules of Procedure, Commissioner Enrique Gil Botero, a Colombian national, did not participate in either the debate or the decision on this case.

² Hereinafter, "Convention" or "American Convention."

³ These observations were duly forwarded to the State.

Rights declared admissible:	Articles 4 (right to life), 5 (right to humane treatment), 8 (right to a fair trial), 19 (rights of the child), and 25 (judicial protection) of the American Convention, in connection with Articles 1(1) (obligation to respect rights) and 2 (domestic legal effects), thereof.
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, the exception provided for in Article 46(2)(a) of the American Convention applies.
Timeliness of the petition:	Yes, under the terms stipulated in Section VI.

V. ALLEGED FACTS

1. According to the petition and to the information available, Willan Fernández Becerra, age 17, died in the early morning hours of August 26, 1996 on the Pan-American Highway that connects the city of Popayán to the city of Pasto, municipality of Mercaderes, as a result of six bullet wounds inflicted by officers of the Colombian National Police (CNP) who were conducting an “inland anti-piracy” mission.

2. The petitioner indicates that Willan Alfonso Fernández, father of the alleged victim, filed a verbal complaint for the crime of homicide on August 26, 1996 with the Office of the Prosecutor of the Criminal Circuit Court of Mercaderes. He notes that the complaint was referred to Chamber 62 of the Military Criminal Court of Inquiry, which, on June 12, 1997 refrained from ordering pretrial detention for the five police officers involved and ordered the case be dismissed because it considered that those officers had acted in self-defense. The petitioner states that the Criminal and Military Procurator filed an appeal for reversal as well as a subsidiary appeal, questioning the absence of evidence to justify self-defense. According to the documentation furnished by the petitioner, on November 12, 1997 the Military High Court rescinded Chamber 62’s decision, stating that “the inquiry must run its course with a view to ensuring that along the way the particular circumstances of how the bloody incident unfolded are fully established.” The petitioner holds that the military justice system does not meet the standards of jurisdiction, independence, and impartiality; that the family members were unable to appeal Chamber 62’s decision to dismiss the case as they were not party to the case because they could not afford an attorney; and that they have had to endure the official version that their son was killed by the National Police because he was a dangerous criminal.

3. Furthermore, the petitioner states that on September 23, 1997, Willan Fernández Becerra’s relatives filed a tort action with the Administrative Tribunal of Cauca against the CNP; the action was denied on November 16, 1999. That decision was appealed: The Council of State received the case file on January 24, 2000 and rescinded the first-instance judgment on February 18, 2010, ordering the State to pay compensation for damages. The petitioner alleges that there was excessive delay in the administrative justice proceedings.

4. The State holds that the decision made by Chamber 62 to refrain from ordering pretrial detention and to dismiss the case was based on the fact that it recognized that the police had acted in strict compliance with the public service with which they had been entrusted. It further states that on November 12, 1997 the Military High Court upheld the refusal to order pretrial detention and rescinded the order to dismiss the homicide case; hence, Chamber 62 ordered new evidence and on June 12, 1998 it once again ruled that the case should be dismissed as it considered that [the police] had acted justifiably in self-defense. The State notes that the Military High Court upheld that decision on May 11, 1999 and claims the petitioner is attempting to get the IACHR to review both the cases that were pursued in Colombia and the final decisions issued legally by the competent authorities, which are in line with the standards established by the inter-American human rights system. The State further maintains that the alleged victim’s family members have no standing to request reparations in the inter-American system inasmuch as domestically, the Council of State ordered that compensation for damages be paid to them, and the Commission cannot act as a court of fourth instance with respect to such ruling.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

5. According to the information available, on May 11, 1999 the Military High Court upheld the decision handed down by Chamber 62 of the Military Criminal Court of Inquiry to dismiss the criminal case for the death of the alleged victim because it considered that the police had acted in self-defense. As to the use of the military jurisdiction, the Commission has repeatedly asserted that the military justice system is not an appropriate forum and therefore fails to offer an effective remedy for investigating, prosecuting, and punishing violations of the human rights enshrined in the American Convention.⁴ In light of the foregoing, the Commission believes that the exception provided for in Article 46(2)(a) of the Convention applies. As to the administrative case, the Commission reiterates that for purposes of determining the admissibility of a claim having to do with the right to life, a tort action is not a suitable avenue, nor is the exhaustion thereof necessary since it is not sufficient when it comes to offering comprehensive reparations and justice to the relatives.⁵

6. Regarding the timeliness of the petition, it has been established that an exception to the exhaustion of domestic remedies with respect to the violation of the right to life applies; that the petition was received on July 23, 2008; that the facts of the case began on August 26, 1996; that on May 11, 1999 the Military High Court upheld the decision to dismiss the case; and that the impact of the particulars of the case at hand with respect to the alleged denial of justice continue to date. In view of the context and characteristics of the instant case, and bearing in mind the use of military criminal justice as well as the passage of time in connection with the case brought by the family in the administrative justice system, the Commission considers that the petition was submitted within a reasonable timeframe and that the admissibility requirement having to do with the timeliness of the petition has thus been met.

7. Furthermore, because the petitioner is alleging the violation of a reasonable timeframe with respect to the administrative proceedings, the IACHR is taking into account the exhaustion [requirement] with the February 18, 2010 decision and also concludes that it meets the requirement for timely submission.

VII. COLORABLE CLAIM

8. In view of the considerations of fact and law presented by the parties as well as of the nature of the matter brought to its attention, the Commission believes that if the alleged responsibility of state agents in the death of the young man, Fernández Becerra, as well as the lack of investigation and, as the case may be, punishment within the regular justice system, are proven, they could characterize potential violations of the rights protected under Articles 4 (right to life), 8 (right to a fair trial), 19 (rights of the child), and 25 (judicial protection) of the Convention, to the detriment of Willan Fernández Becerra, as well as of Articles 5 (humane treatment), 8, and 25 of the Convention, to the detriment of his family members, all of this in connection with Articles 1(1) (obligation to respect rights) and 2 (domestic legal effects), thereof.

VIII. DECISION

1. To declare this petition admissible with regard to Articles 4, 5, 8, 19, and 25 of the Convention, in connection with Articles 1(1) and 2, thereof;
2. To notify the parties of this decision;
3. To continue with its analysis of the merits of the complaint; and
4. To publish this decision and include it in its Annual Report to the OAS General Assembly.

⁴ IACHR, Report No. 70/14. Petition 1453-06. Admissibility. Maicon de Souza Silva. Renato da Silva Paixão et al. July 25, 2014, paragraph 18.

⁵ IACHR, Report No. 72/16. Petition 694-06. Admissibility. Onofre Antonio de La Hoz Montero and Family. Colombia. December 6, 2016, paragraph 32.

Done and signed in the city of San Francisco, California, on the 27 day of the month of February, 2017. (Signed): James L. Cavallaro, President; Francisco José Eguiguren, First Vice President; Margarete May Macaulay, Second Vice President; José de Jesús Orozco Henríquez, and Esmeralda E. Arosemena Bernal de Troitiño, Commissioners.