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REPORT No. 180/18
PETITION 1616-07
REPORT ON ADMISSIBILITY

A.G.A AND FAMILY
COLOMBIA

Approved electronically by the Commission on December 26, 2018.

Cite as: IACHR, Report No. 180/18, Petition 1616-07. Admissibility. A.G.A. and family.
Colombia. December 26, 2018.

I. INFORMATION ABOUT THE PETITION

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| Petitioner: | Leonardo Fidel Guerra ¹ |
| Alleged victim: | A.G.A. and Family |
| Respondent State: | Colombia ² |
| Rights invoked: | Articles 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 25 (judicial protection) of the American Convention on Human Rights ³ in relation to its article 1.1 and article I of the American Declaration of the Rights and Duties of Man. American Convention to Prevent and Punish Torture and the Inter-American Convention on Forced Disappearance of Persons, and other international treaties. ⁴ |

II. PROCEEDINGS BEFORE THE IACHR⁵

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| Filing of the petition: | December 21, 2007 |
| Additional information received at the stage of initial review: | January 12, 2009, June 11, 2010, March 29, 2011 |
| Notification of the petition to the State: | September 30, 2011 |
| State's first response: | November 1, 2012 |
| Additional observations from the petitioner⁶: | December 5, 2012, July 6, 2013, March 6, 2014, November 19, 2015 |
| Additional observations from the State: | September 19, 2013 |

III. COMPETENCE

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| 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 (deposit of instrument made on July 31, 1973); Inter-American Convention to Prevent and Punish Torture ⁷ (deposit of instrument made on January 19, 1999) and Inter-American Convention on the Prevention Punishment and Eradication of Violence against Women ⁸ (deposit of instrument made on November 15, 1996) |

¹ The petition was initially filed requesting that the identities of the alleged victim's next of kin be withheld; however, in a communiqué dated June 11, 2010, the original petitioners informed the IACHR that they had granted Leonardo Fidel Guerra a power of attorney.

² 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 in either the discussion or the decision in the present case.

³ Hereinafter "the Convention" or "the American Convention".

⁴ Articles 3 and 5 of the Universal Declaration of Human Rights and Article 7 of the International Covenant on Civil and Political Rights.

⁵ The observations submitted by each party were duly transmitted to the opposing party.

⁶ The petitioner has sent various communications to the IACHR requesting information on the status of the petition. The last of such communication is dated April 18, 2016.

⁷ Hereinafter the "IACPPT"

⁸ Hereinafter the "Convention of Belem do Pará"

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

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| Duplication of procedures and International <i>res judicata</i>: | No |
| Rights declared admissible | Articles 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 24 (equal protection) and 25 (judicial protection) of the American Convention, in conjunction with its Article 1.1; Article 7 of the Convention of Belém do Pará; and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture |
| Exhaustion of domestic remedies or applicability of an exception to the rule: | Yes, in the terms of Section VI |
| Timeliness of the petition: | Yes, in the terms of Section VI |

V. FACTS ALLEGED

1. The petitioner alleges that Mrs. A.G.A. (hereinafter "the alleged victim") was murdered in an area besieged by guerrilla groups, which was, at the time of the events, an epicenter of violence. He indicates that Mrs. A.G.A. traded in foodstuffs and cattle among the inhabitants of the Municipality of Florencia in the Department of Caquetá. To that effect she usually travelled in an outboard canoe on the Ortegusa river, between Puerto Remolinos and Puerto Arango. He states that on October 4, 1988, while she was going about her work, she was abducted by three unknown men, who removed her from her boat by force. Three days later, her body was found in the vicinity of the river. He states that the alleged victim had stones weighing down her body to prevent her from floating, and that identifying her was extremely difficult because she had been sprayed with acid on her face, head, feet and hands, and that her family members only managed to recognize her by clothing and features on her body. He indicates that the autopsy report showed that A.G.A.'s lack of muscle and skin tissue was due to the application of an acid, and that the possible cause of death was strangulation.

2. He states that on October 10, 1988, the alleged victim's family filed a criminal complaint. He asserts that on February 28, 1989, the Fourth Criminal Investigation Court of Florencia ordered the dismissal of proceedings against the two suspects, and decided to transfer the investigation to the technical corps of the Judicial Police of Florencia. He indicates that the National Attorney General's Office failed to comply with the court order and the investigations were not restarted.

3. He alleges that on January 10, 2006, and October 4, 2006, (when the alleged victim's children reached the age of majority), they filed two petitions for information with the National Attorney General's Office, requesting data and a copy of the case-file. He maintains that on November 27, 2006, the Delegate Unit of the Criminal Courts of the Circuit of Florencia issued a communication informing him that his file had not been located. He also highlights that on April 6, 2010, the alleged victim's daughter once again requested information on the status of proceedings. He states that on November 16, 2006, the National Directorate of Public Prosecutors gave him some information about the proceedings, such as the official case number and the names of some individuals involved.

4. In view of the foregoing, he states that the alleged victim's family filed a *tutela* action on October 17, 2008. On November 20, 2008, the Second Family Court of First Instance decided to order the reconstruction of the criminal investigation. He states that as a consequence of this ruling, several procedural steps were taken to reconstruct the file. However, he argues that on November 27, 2009, the 11th Sectional Public Prosecutor's Office of Florencia decided to terminate the criminal investigation because more than 20 years had elapsed since the events, arguing in addition that the foregoing had not been taken into account when the *tutela* action had been decided.

5. He argues that the alleged victim's son filed an appeal for reversal of this decision, which was dismissed by the 11 Sectional Prosecutor's Office, on the grounds that the events had been duly investigated. Subsequently, on July 15, 2010, the Deputy Prosecutor of the Superior Court of the National Attorney General's Office dismissed the appeal, indicating that there had been an integral investigation and that the criminal action for homicide had become time-barred.

6. He alleges that at the date of filing the petition, the events have not been investigated, including torture, nor have the perpetrators been punished. On the other hand, he observes that on November 28, 2011, he filed a claim for direct reparation, which is still pending decision. He concludes by stating that since A.G.A.'s death, her children have experienced profound suffering lasting more than 18 years due to the lack of truth, justice and reparation.

7. For its part, the State argues that the situation presented by the petitioner does not involve its international responsibility. It also maintains that it has no direct or indirect responsibility in that the acts were not committed by state agents, and that there was no lack of due diligence in preventing violence or to deal with it under the terms of the Convention. This was due to the fact that the authorities were unaware of situations posing a risk to A.G.A.'s life and integrity.

8. It argues that the Commission lacks competence *ratio materiae* with respect to the American Declaration of the Rights and Duties of Man, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. It also infers the lack of competence *ratione temporis* in relation to the alleged violation of the Inter-American Convention to Prevent and Punish Torture and the Inter-American Convention on Forced Disappearance of Persons, since the events occurred prior to the dates of the deposit of their instruments of ratification.

9. It argues that the petition fails to fulfill the timeliness requirement because it was filed on December 21, 2007, and the events occurred on October 4, 1988. It argues that the petitioner has failed to present sufficient arguments to demonstrate that this period of time is reasonable to invoke the Inter-American system. It also argues that after the adverse results in the investigation, the petitioner intends for the Commission to act as a fourth instance.

10. It alleges that domestic remedies have not been exhausted, since the proceedings initiated in the administrative jurisdiction as a suitable way to achieve civil reparation, are still pending resolution. Finally, it argues that the events do not tend to characterize a violation of the rights enshrined in the Convention.

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

11. The petitioner maintains that the family members of the alleged victim complained about her death on October 10, 1988. However, he says that during the criminal proceedings, on February 28, 1989, the Fourth Criminal Investigation Court of Florencia ordered the release of two alleged suspected and the continuation of the investigation in order to find the perpetrators. It states that the judicial order was not complied with by the authorities and that after several requests made by the next of kin, on November 27, 2009, the 11th Sectional Public Prosecutor of Florence decided to end of the criminal proceedings due to the statute of limitations. Finally, he indicates that on November 28, 2011, he filed a direct reparation claim that is still ongoing. For its part, the State indicates that the petition fails to comply with the timeliness requirement and that the demand for direct reparation is still pending resolution.

12. The Commission has established that in situations related to possible violations of the right to life and humane treatment, the domestic remedies to be taken into account for the purposes of admissibility of the petition are those related to the investigation and punishment of those responsible, which

are reflected in domestic legislation as crimes prosecuted *ex officio*.⁹ In the present case, the Commission notes after 19 years elapsing since the alleged victim's death, the criminal proceedings have not concluded with a substantive decision establishing a penalty for those responsible. Based on the foregoing, the IACHR concludes that in the present case the exception to the exhaustion of domestic remedies set out in Article 46.2.c of the American Convention applies.

13. Regarding the remedy of direct reparation that is pending resolution in the contentious administrative jurisdiction, the Commission reiterates that, for purposes of determining the admissibility of a claim of this nature, it does not constitute the appropriate remedy nor is it necessary to exhaust it, given that it is not adequate to provide comprehensive reparation and justice to family members.¹⁰

14. On the other hand, the IACHR observes that the alleged facts in the claim took place on October 5, 1988, and that their effects extend up to the present. It also takes into account that the complaint was filed with the Colombian authorities on October 10, 1983, and that since then the alleged victim's family members have made several requests for information with different state instances, in order to obtain copies and data on the investigations, as well as a *tutela* action. Therefore, the Commission concludes that the petition was filed within a reasonable period of time and that the admissibility requirement regarding timeliness must be considered satisfied.

VII. ANALYSIS OF COLORABLE CLAIM

15. In view of the factual and legal elements presented by the parties and the nature of the matter brought to its attention, the Commission considers that, if proven, the alleged kidnapping, the acts of torture, and the murder of Mrs. A.G.A, as well as the lack of effective judicial protection, could characterize possible violations of the rights recognized in Articles 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 24 (equal protection) and 25 (judicial protection) of the American Convention, in conjunction with its Article 1.1, to the detriment of the alleged victim and her next of kin. In addition, the facts may constitute a violation of Article 7 of the Convention of Belém do Pará, and Articles 1, 6 and 8 of the IACPPT, to the detriment of the alleged victim regarding the lack of investigation of said events after the date of ratification and deposit of both international instruments.

16. On the other hand, with respect to the claim on the violation of Article 1 of the Inter-American Convention on Forced Disappearance of Persons, the Commission observes that there are no allegations or sufficient grounds to examine such violations, so it is inappropriate to declare this claim admissible.

17. The Commission has previously established that, once the American Convention enters into force in relation to a State, the latter, and not the Declaration, becomes the primary source of law applicable by the Commission, provided that the petition refers to the alleged violation of identical rights in both instruments and does not refer to a situation of ongoing violations. In this case, the IACHR observes that Article I of the American Declaration enshrines the right to life in substantially identical terms as Article 4 of the American Convention. In this regard, the Commission will analyze these allegations in the light of the American Convention.

18. Finally, with regard to the alleged violation of Articles 7 of the International Covenant on Civil and Political Rights, as well as Articles 3 and 5 of the Universal Declaration of Human Rights, the Commission lacks competence with respect to such instruments, without prejudice to the fact that they may be used as a guideline for the interpretation of Convention obligations, in light of the provisions of Article 29 of the American Convention.

⁹ IACHR, Report No. 155/17, Petition 1470-08. Admissibility. Beatriz Elena San Miguel Bastidas and family. Colombia. November 30, 2017, para. 9.

¹⁰ IACHR, Report No. 14/17. Admissibility. José Rubián Gómez Martínez, Rolfe Arialdo Figueredo Martínez, Miguel Novoa Martínez, Alcira Martínez Álvarez and their Families. Colombia. January 27, 2017, para. 6.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 4, 5, 7, 8, 24 and 25 of the American Convention, in relation to its Article 1; as well as Article 7 of the Convention of Belém do Pará; and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture;

2. To find the instant petition inadmissible in relation to the alleged violation of Article 1 of the Inter-American Convention on Forced Disappearance of Persons; and

3. To notify the parties of this decision; to continue with the analysis on the merits; and to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 26th day of the month of December, 2018. (Signed): Margarette May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice President; Francisco José Eguiguren Praeli, Joel Hernández García, Antonia Urrejola, and Flávia Piovesan, Commissioners.