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REPORT No. 64/21
PETITION 337-10
REPORT ON ADMISSIBILITY

JOSÉ ENRIQUE CALDAS AND FAMILY
COLOMBIA

Approved electronically approved by the Commission on March 19, 2021.

Cite as: IACHR, Report No. 64/21, Petition 337-10. Admissibility. José Enrique Caldas and Family. Colombia. March 19, 2021.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Luz Marina Barahona Barreto ¹
Alleged victims:	José Enrique Caldas and his family ²
Respondent State:	Colombia
Rights invoked:	Articles 4 (life), 5 (humane treatment), and 8 (fair trial) of the American Convention on Human Rights ³

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition:	March 10, 2010
Notification of the petition to the State:	May 4, 2016
State's first response:	September 20, 2018
Notification of the possible archiving of the petition:	July 30, 2020
Petitioner's response to the notification on the possible archiving of the petition:	August 3, 2020

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 (deposit of ratification instrument on July 31, 1973)

IV. 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
Rights declared admissible:	Articles 5 (humane treatment), 8 (fair trial), and 25 (judicial protection) of the American Convention, in relation to Article 1.1 (obligation to respect rights) thereof
Exhaustion or exception to the exhaustion of remedies:	Yes, the exception in Article 46.2(c) of the American Convention is applicable
Timeliness of the petition:	Yes, in accordance with Section VI

V. FACTS ALLEGED

1. The petitioner claims that Mr. José Enrique Caldas was murdered by a member of the Revolutionary Armed Forces of Colombia (hereinafter also "FARC") in the municipality of Puerto Rico, department of Meta. She argues this act of violence has been left unpunished by the state authorities and that it has not been possible to seek compensation for the alleged victim's family, whom the FARC threatened to kill if they reported the crime.

2. The petitioner allege that on December 25, 2005, Mr. José Enrique Caldas was at the diner in the district of Buena Vista, in the municipality of Puerto Rico, department of Meta, when a member of the

¹ The petition was initially presented by Mr. Elpidio Caldas; however, on April 5, 2016, Ms. Luz Marina Barahona Barreto replaced him as representative of the members of the alleged victim's family.

² On April 5, 2016, the petitioner informed that Mr. Elpidio Caldas, the alleged victim's brother, had passed away on August 23, 2014, and she requested that Ms. María Isabel Melo de Caldas and the latter's son Wilson Caldas Melo and daughter Sedy Caldas Melo be considered alleged victims in this petition.

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

⁴ The observations submitted by each party were duly transmitted to the opposing party.

FARC's 44th Front, who was in plainclothes and inspecting the troops mobilized in that area, asked him for his (the alleged victim's) permit to visit that place—to visit the district or the town, country people were required to get a permit from the commander of that area. She recounts that since the alleged victim did not have one such permit, the FARC guerrilla, without saying anything else, stabbed the alleged victim to death in front of the other FARC guerrillas and the people at the diner. No one asked anything and no one could approach or help the alleged victim.

3. Later, Mr. Elpidio Caldas, the alleged victim's brother, and some members of the Community Action Board removed the body themselves given the absence of state authorities in that area. According to the petitioner, the alleged victim, who was threatened by the FARC like everyone else was in the District, was just visiting his surroundings; his purported mistake was not carrying an authorization from the local commander, and his death was due to the State's failure in its duty to protect all its inhabitants as per article 2 of Colombia's National Constitution.

4. Moreover, the petitioner recounts that the population of the district of Buena Vista was controlled by guerrillas of the FARC, who discretionally killed members of that community. According to the petitioner, these killings were known to the several units of the National Army in the Vargas-21st Battalion, headquartered at the municipality of Granada, near the municipality of Puerto Rico, and the Fourth Division, headquartered at the city of Villavicencio, department of Meta. She says that since these armed groups of the FARC did not allow state authorities in, the municipality of Puerto Rico was excluded from any protection from the State. It says that it was the FARC that ruled all the civilian population of that municipality and even communities nearby.

5. The petitioner argues that no formal complaint has been filed against any of the members of the army nor any administrative authority of the municipality of Puerto Rico, Meta, by the alleged victim's family because of the prevailing law of silence and because of the fear caused by the threats from the FARC as well as the fear of reprisal from state authorities and paramilitary groups operating in the country, where the military forces were a judge and party in legal proceedings.

6. Finally, the petitioner claims that the State failed to protect not only the alleged victim but also the whole civilian population of the district of Buena Vista. In her opinion, the state bodies did have the adequate means to fight these armed groups of the FARC but failed to do so, even though they knew that human rights violations were being committed in that area. The petitioner also claims that when the State filed the criminal action *ex officio*, it did not conduct it effectively and eventually filed the case in the archives without punishing the persons responsible. Moreover, she points the finger at the Minister of National Defense, the Commander of the Fourth Division of the Army, the Commander of the Army's VII Brigade, and the Director of the National Police, all of whom were in office when the events took place, as the persons responsible for the violation of the alleged victim's human rights. Furthermore, through the Ministry of the Interior and Justice, the petitioner requested copies of the proceedings and a judicial inspection into the record compiled by the Office of the Prosecutor General, Office of the Public Prosecutor of Puerto Lleras to the Judge of the Circuit of San Martín, Meta.

7. The State, for its part, argues that this petition should be declared inadmissible as per Articles 46.1(a) and 47(c) of the American Convention, because it deems it groundless and that domestic remedies have not been exhausted.

8. Concerning the alleged failure in the duty to protect, the State highlights that it was not aware of the existence of a certain, real, and imminent risk to the alleged victim's life and physical integrity that could have led to the adoption of reasonable measures to prevent the violation of his human rights. Thus, the State contends that the circumstances of this case do not contribute to *prima facie* establishing an attribution of responsibility for the purported violation of the rights to life and integrity, on the grounds of failure in the duty to prevent human rights violations perpetrated by third parties.

9. As to the alleged failure in its duty of due diligence to investigate, the State argues that the national jurisdiction worked toward investigating the facts and that, to date, the criminal action is in progress. Moreover, the State claims—without giving further details—that on the alleged victim’s death, the Office of the Prosecutor General filed a criminal investigation based on a complaint presented by Mr. Luis Socorro Lizano Rivera and body removal report No. 0043 of December 26, 2005, verified by the Police Inspector of Puerto Rico, Meta. It indicates that on January 20, 2006, the preliminary investigation was open; that on April 16, 2006, an order to conduct evidentiary tests was issued; and that on July 21 of that same year, the prosecutor in charge issued a waiver of prosecution. Later, on December 15, 2007, a Legal-Technical Committee was convened at the District Office of the Public Prosecutor and Public Safety of Meta Department within case No. 148.749, which decided to reopen the case and recommended the implementation of some investigative measures aimed at identifying the alleged responsible. It concludes by saying that according to the existing evidentiary material, it has not been possible to determine whether the alleged murderer belonged to the FARC.

10. As to the lack of exhaustion of domestic remedies, the State maintains that the petitioner did not file a claim for direct reparation. It explains that the claim for direct reparation is an adequate means to have the State comply with its duty to provide compensation for wrongful damage resulting from acts or omissions attributable to its agents. Moreover, it alleges a lack of exhaustion of the criminal action, arguing that it is an adequate and effective remedy against violations of the right to life. According to the information from the prosecutor in charge, progress in the investigation has been difficult given the impossibility of finding witnesses to the events and the family members of the murder victim, along with the law-and-order situation in the municipality where the events took place.

11. Lastly, the State claims that: (i) the person responsible for the death of the alleged victim was a private party; (ii) nothing indicates the participation of state agents; (iii) the State did not fail to comply with its duty to prevent the facts; and (iv) it did not neglect its duty to investigate either.

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

12. In this case, the petitioner alleges an unwarranted delay because to date, it has not been possible to clarify the facts; that no diligent investigation has been conducted nor the persons responsible been punished; and that no full reparation has been provided for the damage caused. For its part, the State contends that, given the complexity of the case, the criminal action is still in progress, in the investigation stage, following the decision of the Legal-Technical Committee at the District Office of the Public Prosecutor and Public Safety of Meta Department within record No. 148.749. It also alleges the lack of exhaustion of both the claim for direct reparation and the criminal action.

13. Concerning matters such as the one at hand, the IACHR reiterates that whenever an alleged crime prosecutable *ex officio* is committed, the State is obligated to file or present a criminal action because this is the adequate means to clarify the facts, prosecute the persons responsible, and enable other forms of monetary reparation. Moreover, as a rule, a criminal investigation must be conducted promptly to protect the interests of the victims, preserve the evidence, and safeguard the rights of anyone deemed a suspect in the framework of the investigation. The Commission also establishes that criminal investigations must be conducted and furthered diligently and *ex officio* by the authorities of the criminal justice system and that this burden must be assumed by the State as its legal duty and not as a procedure involving the interests of private parties or one that is contingent on the latter’s initiative of providing evidence.⁵

14. The information submitted indicates that although over fifteen years have elapsed since the alleged victim’s death, no judgment has been passed by the trial court in the criminal proceedings, according to the information provided by both parties. Therefore, as far as the formal admissibility of this petition is

⁵ IACHR, Report No. 159/17, Petition 712-08, Admissibility, Sebastián Larroza Velázquez and Family, Paraguay, November 30, 2017, par. 14; IACHR, Report No. 108/19, Petition 81-09, Admissibility, Anael Fidel Sanjuanelo Polo and Family, Colombia, July 28, 2019, paras. 17-19.

concerned, the IACHR concludes that the exception to the requirement to exhaust domestic remedies established in Article 46.2(c) of the Convention must be applied in this case.

15. As to the requirement of timeliness, the Inter-American Commission observes that the death of Mr. Caldas at the hands of guerrilla groups allegedly took place on December 25, 2005; that this petition arrived on March 10, 2010; and that the effects of a purported lack of effective investigation and punishment of those responsible seem to persist to date. Consequently, given the characteristics of this case, the Commission considers that this petition was filed within a reasonable time under Article 32.2 of its Rules of Procedure.

16. Regarding the State's argument about the lack of exhaustion of the claim for damages, the Commission reiterates that "in order to determine the admissibility of a claim such as the one at hand, an action for direct redress is not a suitable mechanism and need not be exhausted, in that it is not appropriate for securing comprehensive redress and justice for the next-of-kin."⁶

VII. ANALYSIS OF COLORABLE CLAIM

17. In this case, the fact itself concerning the murder of Mr. José Enrique Caldas was perpetrated by members of the FARC, that has been operating for decades and historically controlled some areas of the State's territory by the illegal use of armed force. Thus, the Commission observes that the commission of this crime was deliberate and unforeseeable; that is to say, unlike other crimes previously heard by the Inter-American System that involved factual elements that could point to the State's failure in its duty to prevent the facts reported,⁷ in the matter at hand, the petitioner has not provided information that leads to *prima facie* establish Colombia's international responsibility for the crime against Mr. Caldas. Therefore, the alleged violation of Article 4 (life) of the American Convention is declared inadmissible by this report. Nonetheless, the behavior of the State concerning its duty to investigate and punish these facts will be a matter of analysis in the merits stage.

18. Given these considerations and having analyzed both the legal and the factual elements submitted by the parties, the Commission deems that the petitioner's claims are not manifestly groundless and require an analysis on the merits; for if proven to be true, the facts alleged may constitute violations of Articles 8 (fair trial) and 25 (judicial protection) of the American Convention, in connection with Articles 5 (humane treatment) and 1.1 (obligation to respect rights) thereof, to the detriment of the alleged victims identified in this report.

VIII. DECISION

1. To declare this petition admissible regarding Articles 8 and 25 of the American Convention, in relation to Articles 5 and 1.1 thereof;

2. To declare the instant petition inadmissible in relation to Article 4 of the American Convention; 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.

⁶ IACHR, Report No. 40/18, Petition 607-07. Admissibility. Nelson Enrique Giraldo Ramírez and Family. Colombia. May 4, 2018, par. 15.

⁷ See for example the following reports on admissibility recently published concerning Colombia: IACHR, Report No. 181/20. Petition 380-10. Admissibility. Gustavo Emilio Gómez Galeano and Family. Colombia. July 7, 2020; and IACHR, Report No. 252/20. Petition 195-10. Admissibility. Ernesto Ramírez Berríos and Family. Colombia. September 21, 2020. As to decisions on merits reports, see for instance: IACHR. Report No. 152/18. Case 12.405. Merits. Vicente Aníbal Grijalva Bueno. Ecuador. December 7, 2018.

Approved by the Inter-American Commission on Human Rights on the 19th day of the month of March, 2021. (Signed:) Antonia Urrejola, President; Julissa Mantilla Falcón, First Vice-President; Flávia Piovesan, Second Vice-President; Margarete May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, Joel Hernández, and Stuardo Ralón Orellana, Commissioners.