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REPORT No. 60/24
PETITION 1995-14
REPORT ON ADMISSIBILITY

SAN CARLOS DE GUAROA MASSACRE
COLOMBIA

Approved electronically by the Commission on May 16, 2024.

Cite as: IACHR Report No. 60/24. Petition 1995-14. Admissibility.
San Carlos de Guaroa Massacre. Colombia. May 16, 2024.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Corporación Colectivo de Abogados 'José Alvear Restrepo' ("CCAJAR")
Alleged victim:	Fifty-four public servants who participated in the operation in San Carlos de Guaroa on October 3, 1997 ¹
Respondent State:	Colombia ²
Rights invoked:	Articles 4 (life), 5 (humane treatment), 8 (fair trial) and 25 (judicial protection) of the American Convention on Human Rights, ³ read in conjunction with its Article 1(1) (obligation to respect rights)

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition:	August 5, 2014
Additional information received at the review stage:	July 26, 2016, March 30, 2020, and November 23, 2022
Notification of the petition to the State:	November 2, 2021
State's first response:	March 31, 2022

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 (ratification instrument deposited 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 4 (life), 5 (humane treatment), 8 (fair trial), and 25 (judicial protection) of the American Convention on Human Rights, in relation to its Article 1(1) (obligation to respect rights)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, pursuant to the terms of Section VI
Timeliness of the petition:	Yes, pursuant to the terms of Section VI

V. FACTS ALLEGED*Petitioner*

1. The petitioner alleges a violation of the right to life of 11 public servants and the right to humane treatment of 43 other officials belonging to the Attorney General's Office, the Administrative Security

¹ The petitioner identifies 54 persons as alleged victims; their names are included in the annex to this report.

² Commissioner Carlos Bernal Pulido, of Colombian nationality, did not participate in the deliberations nor in the decision in this matter, in keeping with the provisions of Article 17(2)(a) of the Rules of Procedure of the Commission.

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

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

Department (hereinafter "DAS"), and the Army as a result of the State's failure to provide the reinforcements requested during a drug seizure operation in which they were ambushed by nearly 150 paramilitary soldiers.

2. The petitioners state that the context in which the operation and the paramilitary ambush took place in San Carlos de Guaroa, department of Meta, happened in a time in which paramilitary groups—particularly the United Self-Defense Forces of Colombia (hereinafter "AUC")—had co-opted the department's institutions by allying with the army and regional political elites. As an example of this, they note that the Mapiripán massacre committed in Meta in July 1997 was the first action of the recently formed AUC in the department and was carried out in coordination with the national army and other paramilitary groups operating in the northwestern region of Urabá.

3. In this context, the petitioner indicates that by May 1997, the prosecutor's office and the police had made a seizure of narcotics from the El Alcaraván farm in the municipality of San Carlos de Guaroa, where they confiscated weapons reserved for the exclusive use of the military, along with a large quantity of cocaine. They indicate that on September 9, 1997, the prosecutor's office requested support from the Seventh Army Brigade in the city of Villavicencio for a raid and seizure at the El Alcaraván farm, coordinated with the Army's Unified Action Group for Personal Liberty (hereinafter "GAULA"). The objective was to perform a topographic survey of the property, locate where the drugs and weapons were hidden, collect statements from four witnesses, and draft a report on the seizure at the farm.

4. The petitioner indicates that on October 3, 1997, the Judicial Commission of the Office of the Attorney General of the Nation of Villavicencio and members of the army's GAULA left around 4:00 a.m. in a caravan of eight vehicles headed for the El Alcaraván farm in the rural area of the municipality of San Carlos de Guaroa. They state that they arrived around 10:00 a.m. and carried out the procedure ordered by the prosecutor's office. However, the petitioner states that upon its return to Villavicencio, the Judicial Commission was attacked by a group of armed men who confronted the army GAULA that was escorting the Judicial Commission.

5. As a result of this first clash, three of the attackers were killed and three more arrested, one of whom was wounded. The Judicial Commission proceeded to collect the bodies and to secure the detainees, who were interrogated and voluntarily stated that they belonged to the paramilitary group identified as "Los Buitragueños," led by Héctor José Buitrago Rodríguez alias "El Tripas" and his two sons, Héctor Germán and Nelson Orlando, known by the aliases of "Martín Llanos" and "El Caballo." The detainees indicated that 150 more men were on their way to attack the Judicial Commission, which their leaders had ordered to be "exterminated."

6. The petitioners relate that at 1:45 p.m., the GAULA chief, Major Juan Carlos Figueroa, moved immediately to communicate with Major Mantilla of his brigade and request backup from helicopter gunships or the dispatch of a Fantasma gunship. This request was reportedly transmitted to Brigadier General Jaime Humberto Uscátegui, currently convicted for the Mapiripán massacre. The petitioner notes that Brigadier Uscátegui "inexplicably asked for verification over the official radio," for which reason, at 2:00 p.m., the major repeated the request for support over the official radio, and Major Figueroa and Brigadier General Uscátegui communicated directly. In turn, the DAS officials and the Technical Investigation Corps (hereinafter "CTI") of the prosecutor's office asked their superiors to insist on the urgent call to the Seventh Brigade, so three regional prosecutors went to the Brigade's headquarters to reiterate their call for support: However, the response they received was that there was no danger, that "everything was under control."

7. The petitioner alleges that despite the fact that air support was available, the Seventh Brigade ignored the request. The Judicial and Military Commission continued on its way until, 20 minutes later, it encountered a group of approximately 150 men who attacked them with different types of weaponry, while Major Figueroa continued to request air support. However, by then, the Seventh Brigade had stopped responding to the radio calls. The petitioner indicates that during the clash, the major was killed along with 10 other officials. They recount that the survivors from the DAS, CTI, the public prosecutor's office, and the attorney general's office continued to contact their superiors for support, and in turn continued to contact the Seventh Brigade. A cargo plane was eventually sent to do a flyover of the area at 5:00 p.m. as a show of force,

without engaging. This led the paramilitary group to retreat, and a group of officials were able to escape with their lives.

8. Regarding the health care for the wounded, the petitioner emphasizes that despite the seriousness of a situation in which more than 20 officers were wounded, no support arrived that day, and it was not until the following day at 3:00 a.m. did a land patrol arrive under the command of Captain Damián Aníbal Peña Navarro, who coordinated care for the wounded. Then at 7:00 a.m., a helicopter arrived to evacuate the wounded and take them to Bogotá and Villavicencio, and the corpses to Apiay Air Base, where they were collected.

9. Concerning the investigation of the facts, the petitioner notes that an *ex officio* investigation was launched in both the military criminal jurisdiction and in the ordinary justice system. They relate that the first case was brought against the military personnel of the Fourth Division and Seventh Brigade for the crimes of homicide and failure to provide support, but the process concluded with a decision on February 4, 1999, to not open an investigation. Additionally, they narrate that an investigation was brought in the ordinary jurisdiction against members of the paramilitary group “Los Buitragueños,” especially against their leaders, identified as Héctor Buitrago and his two sons, alias “Caballo” and “Martín Llanos.” All three were tried and convicted in absentia and sentenced to 40 and 38 years in prison in April 1999. The petitioner emphasizes that the “Los Buitragueños” structure did not participate in the collective AUC demobilization of 2005, and therefore none of the attackers were brought before the Justice and Peace Jurisdiction.

10. While the petitioners recount that Hector Buitrago and his sons were captured in 2011, they note as well that none of the other 150 members of the paramilitary group have been identified by the prosecutor's office. The petitioner states that at the end of 2011, the alleged victims and their relatives joined the criminal proceedings as civil parties and gave their testimonies. As a result, on October 4, 2011, the 101st Prosecutor's Office for Human Rights launched a preliminary investigation into Brigadier General Jaime Humberto Uscátegui Ramírez and Colonel Luis Felipe Molano Díaz. This is the latest information available to the petitioner regarding the criminal proceeding. The petitioner therefore invokes the exception of unwarranted delay in the resolution of domestic remedies, provided for in Article 46(2)(c) of the Convention, in view of the fact that, 15 years after the facts took place, the State has failed to convict the other perpetrators of the massacre and the ambush and has been very slow in pursuing investigations into the State agents that could have possibly been involved.

11. The petitioner additionally points out that several groups of relatives of the alleged victims filed claims for damages before the contentious-administrative jurisdiction based on the failure to support a number of the suits for direct reparations filed against the nation. They indicate that in 2003, the Meta Administrative Court denied the claims of the relatives of deceased driver Aldemar Manchola Ramos and injured investigator Fernando Sierra Zambrano and his family. The Administrative Court of Cundinamarca ruled likewise on the joindered claims of the families of deceased officials José Noel Nossa Díaz, Otto Ruiz Pérez, José Luis Castro Barón, Aldier Castro Merchán, Artidoro Vasallo, and Jorge Giovanni Alfonso Arévalo. The petitioner indicates that in 2005 and 2007, the Administrative Court of Meta found the nation liable for the death of prosecutor's office investigator Luis Fernando Vargas Jaimes, and in 2007, it also found the nation liable for the death of prosecutor Carlos Degly Cortés. Lastly, the petitioner notes that the Council of State upheld the ruling on appeal on May 2014, although it does not specify in which process.

The Colombian State

12. For its part, the State contends that the petition is inadmissible due to the failure to exhaust the criminal investigation and direct reparations remedies, as well as due to the so-called “fourth international instance formula.”

13. Regarding exhaustion of the criminal investigation, it notes that the principle of subsidiarity and the requirement of prior exhaustion of domestic remedies are guarantees for the State that are designed to give it the opportunity to resolve the matter before the petitioners have recourse to the inter-American System. Based on this understanding, the State points to the exception invoked by the petitioner of unjustified

delay in resolving the criminal investigation and argues that based on the elements of reasonable time, the time taken so far to conduct and complete the investigation into the San Carlos de Guaroa massacre is reasonable.

14. The State argues that the criminal proceeding is highly complex due to the plurality of subjects under investigation and because the investigation has identified 12 suspects, with investigations into 6 of them dismissed because they did not participate in the facts or because the accused had passed away. It notes that since 2011, multiple inquiry procedures have been carried out with respect to Brigadier Uscátegui, leading to the issuance of charges against him on January 26, 2015, and the rejection of a request for the application of the statute of limitations to the criminal action. Subsequently, the proceedings against the brigadier general were referred to the Special Jurisdiction for Peace (hereinafter "JEP") on August 5, 2020.

15. The State therefore asserts that there is an ongoing criminal proceeding that—given the complexity of the matter as a result of there being multiple victims and perpetrators—has implicated and ruled out many persons. It also argues that the conduct of the prosecutor's office has been diligent, as it has carried out multiple actions to obtain decisive outcomes, such as the closing of the preliminary investigations into several individuals. The Colombian State therefore contends that there has not been an unwarranted delay in the criminal investigation of the case, and consequently, the petitioner has not exhausted the remedy.

16. Additionally, Colombia holds that not all the alleged victims and their relatives have exhausted the suit for direct reparations remedy. Along these lines, it argues that this remedy is appropriate and effective for holding the nation liable for the actions or omissions of its authorities. It asserts that within the framework of the contentious-administrative process, the Colombian Council of State uses the accusation of violation of the American Convention as a basis for its proceedings and applies the inter-American System's standards for full reparations.

17. Lastly, the State argues that the petitioner seeks to use the IACHR as an international court of appeal, asking it to review decisions made in the contentious-administrative jurisdiction. For these purposes, it provides an overview of the contentious-administrative processes and notes that the Colombian State was found liable upon appeal and ordered to pay compensation to the relatives of the alleged victims. The State therefore asserts that once a human rights violation has been resolved and redressed internally, it is no longer necessary to uphold it before international jurisdiction, as doing so infringes upon the subsidiary and complementary nature of the Inter-American System for human rights protection. Colombia consequently contends that in this case, the alleged violations were redressed through the granting of compensation to the relatives of the alleged victims in the contentious-administrative jurisdiction. Consequently, it asks that this petition be declared inadmissible.

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

18. This petition deals with the massacre and attack committed by paramilitary group Los Buitragueños against the Judicial and Military Commission that was carrying out a search and seizure at the El Alcaraván farm on October 3, 1997. The petitioner raises the objection of unwarranted delay in resolving the criminal proceeding, while for its part, the State argues that there is no unwarranted delay because the investigation has been carried out diligently and within a reasonable period of time, given the complexity of the case. It also asserts that some family members and alleged victims did not exhaust the direct reparation lawsuit.

19. The IACHR recalls that, in cases of grave human rights violations that constitute crimes that are prosecutable *ex officio*, the domestic remedies that must be taken into account for the admissibility of a petition are those related to the criminal proceeding, as it is the most appropriate method for solving the crime, punishing those responsible, and laying the groundwork for redress of a pecuniary nature.⁵ Regarding the State's arguments on failure to exhaust the direct reparation lawsuit, the Commission has repeatedly held that

⁵ IACHR Report No. 131/21. Petition 784-10. Admissibility. Wilson Mario Taborda Cardona and family. Colombia. May 13, 2021, para. 12.

it is not classified as a suitable remedy for the purposes of analyzing the admissibility of a claim of this nature,⁶ as the petitioner's main allegation is of impunity and lack of access to justice for the alleged victims. In this regard, the Commission notes that 27 years have passed since the facts took place without the State having brought the two accused of the massacre to trial, nor having identified all of the perpetrators.

20. The Commission has established that when specific elements of partial impunity are present in cases of serious human rights violations—as in the present case—the exception to exhaustion of domestic remedies provided for in Article 46(2)(c) of the American Convention is applicable.⁷ Furthermore, the IACHR finds that the facts put forward in this part of the petition remain valid due to the failure to punish all those responsible, and they were presented within a reasonable period of time, pursuant to the terms of Article 32(2) of the IACHR Rules of Procedure.

VII. ANALYSIS OF COLORABLE CLAIM

21. The Commission notes that this petition includes allegations that the State failed to provide the military support requested for the mission the prosecutor's office was conducting in coordination with the military's GAULA, the office of the attorney general, and the CTI, leading to a massacre in which 11 public servants died and 14 other persons were wounded. The State argues that the petitioner is seeking IACHR review for the judgments issued by the contentious-administrative jurisdiction, which had awarded compensation for some of the alleged victims.

22. The Commission reiterates that for the purposes of admissibility, it must decide whether the alleged facts tend to establish a human rights violation, as stipulated in Article 47(b) of the American Convention, or whether the petition is “manifestly groundless” or “obviously out of order,” pursuant to Article 47(c). In this regard, the Commission observes that the allegations raised by the petitioners as a whole are not manifestly groundless and, to a large extent, refer to facts with which the organs of the inter-American system are already familiar. In this regard, the IACHR notes that the subject of this petition is the State's responsibility for the massacre and the impunity surrounding it. Contrary to what the State argues, the Commission will not review the contentious-administrative proceedings, unless specific violations of rights committed in the context of these proceedings are alleged.

23. In view of these considerations, and upon examination of the elements of fact and law set forth by the parties, the Commission concludes that the petitioners' allegations are not manifestly groundless and must be examined on their merits, as should the facts alleged be found to be true, they could amount to violations of articles 4 (life), 5 (humane treatment), 8 (judicial guarantees), and 25 (judicial protection) to the detriment of the alleged victims identified in the annex to this report.

VIII. DECISION

1. To declare this petition admissible with regard to articles 4, 5, 8, and 25 of the American Convention, read in conjunction with its Article 1(1).

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

⁶ IACHR Report No. 157/21. Petition 1753-11. Admissibility. Julio Daniel Chaparro Hurtado, Jorge Enrique Torres Navas and families. Colombia. July 28, 2021, para. 12; IACHR, Report No. 72/16. Petition 694-06. Admissibility. Onofre Antonio de La Hoz Montero and Family. Colombia. December 6, 2016, para. 32.

⁷ IACHR Report No. 129/21. Petition 894-09. Admissibility. Alcira Pérez Melgar et al. Peru. June 14, 2021, para. 9; IACHR Report 240/20. Petition 399-11. Admissibility. Over José Quila et al. (Rejoya Massacre). Colombia. September 6, 2020, para. 12; Report No. 129/18, Petition 1256/07, Admissibility. Cornelio Antonio Isaza Arango et al. (Massacre of the El Retiro Sawmills), Colombia, November 20, 2018; and Report 104/18, Petition 221/08, Admissibility. Delis Palacio Herrón et al. (Bojayá Massacre), Colombia, September 20, 2018.

Approved by the Inter-American Commission on Human Rights on the 16th day of the month of May, 2024. (Signed:) Roberta Clarke, President; José Luis Caballero Ochoa, Second Vice President; Arif Bulkan, and Gloria Monique de Mees, Commissioners.

ANNEX
List of Alleged Victims

Officials of the Attorney General's Office:

1. Carlos Degly Reyes, GAULA deputy prosecutor (deceased).
2. José Noel Nossa Díaz, assistant (deceased).
3. Aldemar Manchola Ramos, driver (deceased).
4. Mario Alberto Carmona Vanegas, forensics technician (wounded).
5. José Feliciano Romero Bejarano, investigator (wounded).
6. Jovi Celso Hernández Angulo, driver (injured).
7. Luis Fernando Sierra Zambrano, investigator (wounded).
8. Luis Fernando Vargas Jaimés, GAULA investigator (deceased).
9. Maivi Esperanza Acosta Daza, judicial assistant (injured).
10. Carlos Arturo Barrera, investigator (survivor).
11. José Reinaldo Díaz Martínez, Gaula investigator (survivor).
12. Luis Eduardo Jurado, investigator (survivor).
13. Juan Carlos Guevara, investigator (survivor).
14. Oscar León Rojas, investigator (survivor).
15. José Uriel Sánchez Rosas, forensics technician (survivor).
16. Wilson Riveros, Gaula investigator (survivor).
17. Oscar Ovidio Campo Estrada, Gaula investigator (survivor).
18. Jairo Adolfo Calderón Mora, investigator (wounded).
19. José Antonio León, investigator (survivor).
20. Javier Alfonso Amaya Urrego, investigator (survivor).

Officials of the Disciplinary Prosecutor General's Office:

21. Jorge Alberto Socotá, Judicial Oversight Attorney (survivor).

DAS officials, delegated to the army's GAULA:

22. Otto Ruiz Pérez, detective (deceased).
23. Wilber Pulido Alba, detective (survivor).
24. José Quevedo Acosta, detective (survivor).
25. Numar Efrén Arboleda Ibarra, detective (survivor).
26. Juan Carlos Cruz Giraldo, detective (survivor).
27. Luis Hernando Perdomo Castro, detective (survivor).

Officials with the National Army's GAULA:

28. Major Juan Carlos Figueroa Escobar, head of Army GAULA (deceased).
29. Sergeant Otoniel Amaya López, (wounded).
30. Sergeant Ricardo Ruperto Guarnizo Cruz (deceased).
31. Corporal Fredy Guillermo Pinilla Correa (wounded).
32. Private José Campos Hernández (wounded).
33. Private Misael Gómez (wounded).
34. Private Jimmy Jacobo Noguera (wounded).
35. Private Jhonny Hernán Pacheco (wounded).
36. Private Augusto Espinosa (wounded).
37. Private Gilberto Melo (wounded).
38. Private Jorge Giovanni Alfonso Arévalo (deceased).
39. Private Artidoro Vasallo (deceased).
40. Private Aldier Castro Merchán (deceased).
41. Private José Luis Castro Barón (deceased).

42. Lieutenant Rafael Andrés Rave Rojas (survivor).
43. Private Jairo Raúl Velásquez Chisica (survivor).
44. Sergeant Gonzalo Israel Callejas Castro (survivor).
45. Private José Eduardo Peña Rodríguez (survivor).
46. Jorge Alberto Guarnizo Gonzales (survivor).
47. Javier Alfonso Amaya Urrego (survivor).
48. Private Víctor Argumedo Díaz (survivor).
49. Private Norberto Vera Méndez (survivor).
50. Private Arturo Samboni Pérez (survivor).
51. Private Jairo Sánchez Ariza (survivor).
52. Private Aduenar Pérez (survivor).
53. William Alexander Moreno Gonzales (survivor).
54. Germán Darío Pinilla Jiménez (survivor).