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**REPORT No. 135/19**  
**PETITION 649-09**  
REPORT ON ADMISSIBILITY

LUZ ELLI SÁNCHEZ HERRERA AND HER FAMILY MEMBERS  
COLOMBIA

Approved electronically by the Commission on August 16, 2019.

**Cite as:** IACHR, Report No. 135/19, Petition 649-09. Admissibility. Luz Elli Sánchez Herrera and her family members. Colombia. August 16, 2019.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Javier Villegas Posada, Yenny Patricia Molina Agudelo and Sandra Consuelo Villegas Arévalo
<b>Alleged victim:</b>	Luz Elli Sánchez Herrera and her family members <sup>1</sup>
<b>Respondent State:</b>	Colombia <sup>2</sup>
<b>Rights invoked:</b>	Articles 4 (life), 5 (humane treatment), 8 (fair trial), and 25 (judicial protection) of the American Convention on Human Rights <sup>3</sup> and Articles I (life, liberty and personal security) and XVIII (fair trial) of the American Declaration of the Rights and Duties of Man <sup>4</sup>

**II. PROCEEDINGS BEFORE THE IACHR<sup>5</sup>**

<b>Filing of the petition:</b>	June 1, 2009
<b>Notification of the petition to the State:</b>	March 26, 2015
<b>State's first response:</b>	August 20 2015
<b>Additional observations from the petitioner:</b>	July 22 and December 2, 2015
<b>Additional observations from the State:</b>	July 13, 2018
<b>Notification of the possible archiving of the petition:</b>	February 8, 2019
<b>Petitioner's response to the notification regarding the possible archiving of the petition:</b>	March 8, 2019

**III. COMPETENCE**

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

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

<b>Duplication of procedures and International <i>res judicata</i>:</b>	No
<b>Rights declared admissible</b>	Articles 4 (life), 5 (humane treatment), 8 (fair trial), and 25 (judicial protection) of the American Convention in relation to its Article 1.1

<sup>1</sup> The petitioners indicate that the alleged victim's family members are the following: Luz Amparo Sánchez Herrera, Francy Elena Sánchez Herrera, Gladys Elena Sánchez Herrera, Luz Doris Sánchez Herrera, Ermilson Antonio Sánchez Herrera and Asdrubal Sánchez Herrera.

<sup>2</sup> 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 discussions or the decision in the present case.

<sup>3</sup> Hereinafter "the Convention" or "the American Convention".

<sup>4</sup> Hereinafter "the Declaration" or "the American Declaration".

<sup>5</sup> The observations submitted by each party were duly transmitted to the opposing party.

<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, in the terms of Section VI
<b>Timeliness of the petition:</b>	Yes, in the terms of Section VI

## V. FACTS ALLEGED

1. The present petition concerns the death of Luz Elli Sánchez Herrera (hereinafter "the alleged victim"), aged approximately 57, which occurred on August 16, 2001, in the region of El Siete, El Carmen de Atrato Municipality, in the Department of Chocó. The petitioners indicate that an armed confrontation took place between troops of the Third Section of the "Alacrán" Company attached to the No. 11 Infantry Battalion "Cacique Nutibara" and members of the Revolutionary Army Guevarista guerrilla group (hereinafter referred to as "the ERG"), with heavy weapons (grenades). They claim that as a result of the attack, four members of said subversive organization, as well as civilians were killed, including Luz Elli Sánchez Herrera.<sup>6</sup>

2. They explain that the Security Forces undertook a tactical mission No. 46 known as "Anaconda 2", which involved offensive operations with the objective of capturing, suppressing and neutralizing the activities of certain armed groups, starting on the night of August 13, 2001. They allege that, at odds with their duties, the National Army battled members of subversive groups in a civilian populated area, thus endangering the safety and lives of innocent individuals, through the indiscriminate use of weapons, that escaped their control.

3. They indicate that on August 16, 2001, the alleged victim was taking care of the children of sick friend in the latter's house, when the military actions began. They indicate that the body of Mrs. Sánchez Herrera was found next to those of the three children in the house. They argue that the position of the bodies indicated that they died while trying to cover themselves from the attack. They argue that the autopsy report on the alleged victim established that her death was secondary to a pericardial tamponade from injuries caused by a fragmentation grenade. In the same sense, the autopsies of the children indicated that they suffered injuries from firearm projectiles and metal shrapnel. On the other hand, they indicate that the Judicial Police report dated October 23, 2001, indicates that in the judicial inspection of the scene, there was evidence of buildings clearly impacted by firearm projectiles and that the building had a crater of approximately 30cms, as a result of a grenade explosion.

4. They allege that a witness, who was hiding under a car in the street, observed the army firing a M-60 machine gun at the guerrillas, and indicated that the grenade landed in the building when the alleged victim tried to leave. They argue that a neighbor claimed that when the guerrillas were in the area, the military fired at the house sheltering the children. They maintain that other testimony stated that during the confrontation the army troops fired their weapons and members of the ERG launched bombs and other objects.

5. They argue that in the report issued by the Technical Investigation Unit, the children's father stated that a Army Major deeply regretting what had occurred, told him that they had thrown a grenade to confront the guerrillas, but not to attack those who were in the residence. They argue that this report contained contradictions because some accounts maintained the presence of guerrillas in the houses and others denied it.

6. They indicate that proceedings were referred to the military jurisdiction, where the 27th Military Criminal Court of Inquiry decided not to open a formal investigation and archived the case on April 13, 2004, on the grounds that the deaths apparently occurred as a result of the mortar shells indiscriminately fired by the guerrilla group. They point out that in May 2015, as a result of the transfer of the petition by the IACHR to the State, the Office of the 90<sup>th</sup> Special Prosecutor for Human Rights and International Humanitarian

<sup>6</sup> The petitioners stress that although other individuals lost their lives in the events, the present petition is filed only on behalf of Mrs. Luz Elli Sánchez Herrera and her family members.

Law was asked to prepare a report on the possibility that the case could be heard by the ordinary courts. They indicate that on June 4, 2015, the aforementioned 90<sup>th</sup> Public Prosecutor's Office issued a legal opinion establishing the existence of a serious violation of the principles of distinction and precaution, and that thereby the military criminal justice system lacked jurisdiction. They point out that the Disciplinary Jurisdictional Chamber of the Superior Council of the Judiciary decided that the case should be referred to the ordinary courts. Thus, on March 17, 2017, the 20<sup>th</sup> Specialized Prosecutor's Office took over the investigation. They allege that at present, the investigation is being conducted by the 107<sup>th</sup> Specialized Prosecutor's Office, which, in their opinion, shows an unjustified delay of justice as well as the lack of diligence in the investigation. Finally, they argue that they had to withdraw from all the proceedings they had initiated in the contentious administrative jurisdiction due to fear and intimidation they suffered, a situation that - they maintain - is confirmed by several community witnesses.

7. The State argues that the military criminal jurisdiction decided to archive the investigation on April 13, 2004, and that the interested party failed to lodge an appeal and became duly enforceable. It states that the ordinary criminal jurisdiction is carrying out an investigation into the events as a consequence of the decision of the Superior Council of the Judiciary. It notes that the National Attorney General's Office initiated disciplinary investigations in 2001, which were archived on November 11, 2003, on the grounds that there was no evidence to determine the responsibility of members of the Army.

8. The State also indicates that Mrs. Sánchez Herrera's next of kin filed an action for direct reparation before the Contentious-Administrative Court of Chocó. On October 7, 2005, this Court ordered the payment of USD 16,572 as compensation for the moral damages caused to the alleged victim's daughters, Francy Elena and Nancy Margarita Sánchez Herrera. However, it alleges this judgment denied reparation for her brothers, on the ground that the alleged victim's death certificate failed to include the names of her parents, and therefore their kinship had not been proven. It specifies that the payment of material damages was not ordered upon consideration that the damage to life had not been proven. It argues that the appeal filed against this decision was denied by the Plenary Chamber of the Contentious-Administrative Court of Chocó, on February 7, 2006, on the grounds that it was inadmissible in view of the amount. The State indicates that although the petitioners filed an appeal for reconsideration on February 10, 2006, they withdrew it on May 2, 2006, and that they also failed to file a complaint motion. Thus, the State argues that the judgment of the Contentious-Administrative Court of Chocó was duly enforceable on October 11, 2006, as the definitive decision against possible reparations to the alleged victim's next of kin. Likewise, the State indicates that the alleged victim's children were included in the Unified Victims' Registry in accordance with Law 418 of 1997, and amounts of money were paid out in 2007. Finally, the State argues that the petition refers to facts that were already considered by various internal judicial bodies, in compliance with the guarantees of due process. Therefore, if the IACHR admits the petition, it would be acting as a court of appeal.

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

9. The petitioners point out that more than 18 years have elapsed since the date of the events without investigation or punishment of those responsible, and the exception to the exhaustion of domestic remedies on undue delay of justice is applicable to the petition. For its part, the State argues that criminal proceedings are underway in the ordinary jurisdiction, i.e., that the appropriate remedy to identify, try and eventually punish those responsible is still ongoing. It also argues the untimeliness of the petition because the events occurred on August 16, 2001, and the international complaint was filed on June 1, 2009, 7 years and 10 months later.

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

in domestic legislation represent offenses that can be prosecuted *ex officio*.<sup>7</sup> The Commission also recalls that special jurisdictions (military or police) do not constitute an appropriate forum and therefore fail to provide an adequate remedy to investigate, prosecute and punish violations of human rights enshrined in the American Convention allegedly committed by members of the Security Forces or with their collaboration or acquiescence.<sup>8</sup> In this instance, the Commission observes that the case investigated by the military jurisdiction was archived as from April 13, 2004, and that on March 17, 2017 there was a decision that it should be brought to the attention of the ordinary jurisdiction, without to date a final decision regarding the punishment of those responsible being issued. Therefore, the Commission considers that the exceptions established in Article 46.2.b. and c. of the Convention are fulfilled.

11. In addition, with respect to the direct reparation proceedings before the contentious-administrative jurisdiction, the Commission has repeatedly held that such proceedings do not constitute an appropriate remedy for the purposes of analyzing the admissibility of a claim of the present nature, as it is inadequate to provide comprehensive reparation that includes clarification and justice for family members. Notwithstanding the foregoing, although in the instant case criminal proceedings are the appropriate remedy for an investigation of the events, it is clear that the petitioners also allege specific violations in the context of the direct reparation claim. Therefore, given the link between the two proceedings, the Commission will analyze the development and conclusions thereof at the merits stage. Finally, the IACHR considers that the petition was filed within a reasonable period of time and that the admissibility requirement regarding the timeliness for submission is fulfilled.

## VII. ANALYSIS OF COLORABLE CLAIM

12. 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 that the death of Luz Elli Sánchez Herrera was due to the military operation carried out in a civilian populated area, allegedly in breach of the principle of distinction and precaution, as well as a lack of effective judicial protection for these events, could characterize possible violations of Articles 4 (right to life), 5 (right to humane treatment), 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention, in relation to its Article 1.1 to the detriment of the alleged victim and her next of kin.

13. The Inter-American Commission has previously established that, once the American Convention enters into force in relation to a State, the Convention becomes the primary source of law applicable by the Commission, and not the Declaration, provided that the petition refers to the alleged violation of identical rights in both instruments and does not involve a situation of continuous violation. In this case, the IACHR notes that the right to life, liberty, security, and personal integrity and access to justice enshrined in Articles I and XVIII of the Declaration are specifically protected by the Convention. Therefore, it considers that the latter Convention is the one to be analyzed at the merits stage.

14. Finally, with respect to the State's arguments regarding the fourth instance formula, the Commission recognizes that it is not competent to review the judgments handed down by national courts acting within their sphere of competence and applying due process guarantees. However, it reiterates that, within the framework of its mandate, it is competent to declare a petition admissible and to rule on the merits when these refer to proceedings that might be in violation of rights guaranteed by the American Convention.

## VIII. DECISION

1. To find the instant petition admissible in relation to Articles 4, 5, 8, and 25, in conjunction with Article 1.1 of the American Convention;

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<sup>7</sup> IACHR, Report No. 155/17, Petition 1470-08. Admissibility. Beatriz Elena San Miguel Bastidas and Family. Colombia. November 30, 2017, para. 9

<sup>8</sup> IACHR, Report No. 50/17. Petition 464-10B. Admissibility. José Ruperto Agudelo Ciro and Family. Colombia. May 25, 2017, para. 9

2. 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 13<sup>th</sup> day of the month of August, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández García, First Vice President; Antonia Urrejola, Second Vice President; Margarete May Macaulay, Francisco José Eguiguren Praeli and Flávia Piovesan, Commissioners.