

OEA/Ser.L/V/II.
Doc. 293
5 October 2021
Original: Spanish

REPORT No. 283/21
PETITIONS 465-14 and 467-14
REPORT ON ADMISSIBILITY

ADELMO VITONAS CHILHUESO *ET AL.*
COLOMBIA

Approved electronically by the Commission on October 5, 2021.

Cite as: IACHR, Report No. 283/21. Petitions 467-14 and 465-14. Admissibility. Adelmo Vitonas Chilhueso *et al.* Colombia. October 5, 2021.

I. INFORMATION ABOUT THE PETITION

Petitioners:	Asociación Cabildos Indígenas Norte del Cauca (ACIN) and Corporación para el Manejo de Conflictos Norte del Cauca (COMAC)
Alleged victim:	P-465-14: Adelmo Vitonas Chilhueso <i>et al.</i> (see annexes) P-467-14: Abelardo Campo Casamachín <i>et al.</i> (see annexes)
Respondent State:	Colombia
Rights invoked:	Articles 3 (juridical personality), 4 (life), 5 (personal integrity), 7 (personal liberty), 8 (right to a fair trial), 11 (protection of honor and dignity), 19 (rights of the child), 22 (movement and residence) and 25 (judicial protection) of the American Convention on Human Rights, ¹ in relation to Article 1.1 (obligation to respect rights) thereof; and other international treaties ²

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition:	P-465-14: March 24, 2014 P-467-14: March 27, 2014
Additional information received at the stage of initial review:	P-465-14: October 21, 2016 ⁴ P-467-14: October 21, 2016
Notification of the petition to the State:	P-465-14: February 22, 2017 P-467-14: February 22, 2017
State's first response:	P-465-14: March 23, 2018 P-467-14: August 29, 2018
Additional observations from the petitioner:	P-465-14: September 17, 2020 P-467-14: September 16 and 26, 2020
Additional observations from the State:	P-465-14: June 23, 2021

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes, in both petitions
Competence <i>Ratione loci</i>:	Yes, in both petitions
Competence <i>Ratione temporis</i>:	Yes, in both petitions
Competence <i>Ratione materiae</i>:	Yes, American Convention (deposit of the instrument of ratification developed 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
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¹ Hereinafter "the American Convention" or "the Convention."² International Covenant on Civil and Political Rights, Article 2.³ The observations submitted by each party were duly transmitted to the opposing party.⁴ Request for a working meeting made on September 26, 2016.

Rights declared admissible:	Articles 3 (juridical personality), 4 (life), 5 (personal integrity), 7 (personal liberty), 8 (right to a fair trial), 11 (protection of honor and dignity), 19 (rights of the child), 22 (movement and residence) and 25 (judicial protection) of the American Convention on Human Rights, in relation to Article 1.1 (obligation to respect rights) thereof
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, the exception in Article 46.2(c) of the Convention applies
Timeliness of the petition:	Yes, under the terms of Section VI

V. FACTS ALLEGED

Previous considerations

1. The two petitions considered in this report were submitted by the same petitioners: the Asociación Cabildos Indígenas Norte del Cauca (ACIN) and the Corporación para el Manejo de Conflictos Norte del Cauca (COMAC). The petitioners allege that the State of Colombia is responsible for the disappearance and murder of twenty-eight members of the Nasa indigenous people (including a girl), peasants from the area and two girls who were injured by illegal groups. On the basis of these and similar facts, the IACHR decides to accumulate petitions in this report in accordance with Article 29.5 of its Rules of Procedure.

2. The petitioners note that from 1999 to 2004, members of the Calima block of the United Self-Defense Forces of Colombia (AUC) were present in the municipalities in the north of Cauca and the south of the department of Valle and committed violations of human rights and international humanitarian law to the detriment of the Nasa indigenous people. Among those violations, the most common was forced disappearance. The facts of the instant petitions reportedly occurred in the northern part of the department of Cauca, where the ACIN is located. Said association acts as a territorial entity in the departments, districts, municipalities and indigenous territories of the area and brings together seven *cabildos* (municipal councils) in the area.

Specific allegations

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3. The petitioners indicate that on November 18, 2001, at a site known as Crucero de Gualanday, in the municipality of Corinto, members of the Calima block of the AUC intercepted a transport vehicle that connected municipalities and villages, which is known as *chiva* or *bus escalera*. The members of the illegal group reportedly killed nine people who were traveling in the vehicle, including a fourteen-year-old girl, and four people who subsequently arrived at the scene. Also, two girls who were forced to watch the killings suffered post-traumatic injuries, especially Yenny Rocío López Ulcue, a girl who gradually lost her speech and part of her cognitive capacity. They emphasize that it was an attack on the Nasa indigenous community and the peasants from the municipality of Corinto, and that to date there are over seventy next of kin of the victims who have not received any comprehensive reparation based on truth, justice and guarantees of non-repetition.

4. The petitioners indicate that judicial proceedings were initiated in ordinary courts in criminal and administrative matters, and that a proceeding was also initiated within the framework of transitional justice. With regard to the criminal proceedings, they point out that the case was taken over by Public Prosecutor's Office No. 38 of the Human Rights and International Humanitarian Law Unit of the Attorney General's Office (AG). During the first five years, the investigation reportedly took the wrong direction. In January 2006, Mr. Armando Lugo, within the framework of Law 975 of 2005, confessed to having participated in the massacre. In November 2008, he was bound over to the proceedings and, during a questioning, he confessed to the participation of paramilitary officers Jaime Caicedo Ramos, Carlos Fabio Viscunda, Elkin Londoño Guisao, Elkin Fernando Vicuña and Alejandro Ortega in the facts. As a result, on February 29, 2012, the First Specialized Court of Popayán sentenced Mr. Armando Lugo and Mr. Elkin Fernando Vicuña to one

hundred and ninety months in prison and to the payment of one hundred minimum wages for moral damages to the next of kin of Mr. Julio Vitonas Chilhueso, Mr. Adelmo Vitonas Chilhueso and young Benilda Ley Dagua, the victims who had been recognized in the proceedings. The petitioners note that the case of Yenny Rocío López Ulcue was not included in the investigation conducted by Public Prosecutor's Office No. 38 of the Human Rights and International Humanitarian Law Unit.

5. The petitioners allege that no disciplinary investigation has been initiated for the above facts despite that, in their view, civil and military officials have not been included in the proceedings, and that the events of the Gualanday Massacre are being addressed within the framework of Law 975 of 2005. However, they argue that the law does not provide adequate mechanisms for the effective reparation of the victims, since it does not address the specific situation of certain victims (children, women, indigenous peoples and members of Afro-Colombian communities), and it places the burden of reparation on the victims, who need to file claims against the perpetrator's equity. They also argue that the proceeding established in said law violates Articles 8 and 25 of the Convention, because it prevents family members from being heard by a judge.

6. The relatives of the victims reportedly participated actively in the proceedings, without any of the paramilitary officers being charged; and they handed over the necessary documents to the Justice and Peace Unit, so that the victims and their agents could be recognized in the proceedings. However, upon their request being denied, some next of kin of the victims filed a writ for the protection of their constitutional rights before the Court of Contentious-Administrative Matters of Cauca, which was dismissed on September 11, 2012, by the Criminal Division of the Supreme Court of Justice. Finally, with regard to the administrative reparation, the petitioners indicate that Decree 1290 of 2008 and Law 1448 of 2011 do not meet the minimum standards established by international human rights law, and that the State failed to comply with the recommendations made by the IACHR on August 1, 2006, in relation to the enforcement and the scope of the Law on Justice and Peace.

7. Accordingly, the petitioners allege that the exception set forth in Article 46.2(c) of the Convention should apply, since over twenty years have elapsed since the massacre, and therefore there is an unjustified delay in the Colombian jurisdiction to identify those responsible for the facts. They point out that the facts have been investigated separately, although the legal proceedings should have been conducted on the basis of the criteria of systematicity and should have considered the fact that military and paramilitary agents allegedly forced the displacement of hundreds of families.

8. The State points out that it has conducted various actions to clarify the facts presented in this petition. In this regard, they explain that on November 23, 2001, in the investigation with file no. 3492, the facts were heard by Public Prosecutor's Office No. 38 of the Human Rights and International Humanitarian Law Unit of Cali. In this investigation, an order of preventive detention was issued against Mr. José Darío Rojas, without the benefit of provisional release, and on March 6, 2003, he was formally accused of the crime of rebellion. In addition, a preclusion order was issued related to the crime of murder, and illicit manufacturing, trafficking and holding of firearms. In January 2006, Public Prosecutor's Office No. 38 received a copy of Mr. Armando Lugo's statement, in which he confessed to his participation in the facts before the Justice and Peace Unit. Therefore, on November 10, 2008, in an inquiry procedure, he affirmed he was the mastermind of the massacre and identified "El Negro," "El Indio Elkin," "Rubén el de los brakes," "El Paisa" and "El Flaco Alejandro" as responsible for carrying out the massacre. Thus, on February 29, 2012, the First Specialized Criminal Court of Popayán issued a judgement of conviction against Mr. Armando Lugo and Mr. Elkin Fernando Vicuña Miranda. The judgement sentenced them to 190 months in prison and the payment of 100 minimum wages per month. The investigation is currently underway with regard to other persons possibly involved in the facts, who have been bound over to the proceedings and for whom a detention order has been issued.

9. These facts were heard by Public Prosecutor's Office No. 40 of Transitional Justice, who was in charge of the investigation under file no.1100160002532200681099. In this investigation, some of the accused have assumed responsibility for the facts in this petition and, as a result, on November 30, 2016, a formal accusation was made. Within the framework of this proceedings, the representative of the alleged victims filed a writ for the protection of constitutional rights before the Justice and Peace Unit of the Attorney General's Office to ensure that the victims of the case were recognized as such. However, said writ was

dismissed by the Criminal Cassation Division of the Supreme Court of Justice, since the person who had filed the writ did not submit any document proving their power of attorney.

10. Mr. Jesús Herney Orozco Villamarín initiated a claim for direct reparation against the Ministry of National Defense and the National Army for the facts related to the Gualanday Massacre. On January 1, 2010, the Court of Contentious-Administrative Matters of Cauca issued a first instance judgment releasing the State from any administrative or financial responsibility. As for disciplinary matters, the Office of the Inspector General initiated a disciplinary investigation against some authorities. However, the investigation was closed on March 15, 2004, because no evidence that could point to the participation of state agents in the facts was found. With regard to the recognition of the alleged victims in the proceedings, the petitioners note that the Unit for the Attention and Integral Reparation to the Victims (UAIRV) recognized some of the victims, who were included in the Single Victims Registry (SVR) and received administrative compensation. However, the State indicates that the compensation granted is not based on its responsibility for the facts.

11. The State alleges that this petition must not be accepted due to three reasons: (i) manifestly unfounded charges were filed; (ii) domestic remedies have not been exhausted; and (iii) the IACHR is requested to act as a fourth international instance. With regard to the first item, the State stresses that the petitioners did not provide any evidence to affirm that the Colombian State acted with tolerance or acquiescence in the face of the facts. It points out that the members of the Calima block of the AUC never indicated that the military forces have been acquiescent. It also considers that this type of claims go beyond the facts in the petition and, therefore, requests that the claims be ignored in the instant proceedings and that the alleged facts of the petition are limited to those that have been duly proven.

12. Colombia argues that two different criminal investigations are currently underway for the facts covered by this petition: (a) a criminal investigation before ordinary courts conducted by Public Prosecutor's Office No. 32 of the Human Rights Unit, under file no. 3492; and (b) an investigation conducted within the framework of the Law on Justice and Peace under file no. 110016000253200681099. As a result, domestic remedies have not been exhausted, and accepting the petition would constitute a breach of the requirements established in Article 46.1(a) of the Convention.

13. In the context of criminal investigation (a), the State maintains that it has ordered for evidence to be collected so as to clarify the means, the time and the place in which the facts occurred and thus identify those responsible. As a result, on November 21, 2013, Mr. Harbey Fabián Rodríguez was bound over to the proceedings, and a preventive detention order was issued against him on November 30, 2013, without the benefit of provisional release. Mr. Rodríguez is allegedly collaborating with justice, which could lead to a guilty plea. On April 29, 2014, a detention order was issued against Mr. Carlos Fabio Viscunda Guerrero for the crime of conspiracy to commit a crime. He had been identified by demobilized persons as a collaborator of the paramilitary groups operating in the Cauca area and the Cauca Valley.

14. In the context of criminal investigation (b), the State stresses that transitional justice systems constitute an appropriate, and even necessary, mechanism for the administration of justice for societies in the context of violence towards the end of an armed conflict. It indicates that on December 1, 2016, the Directorate of the National Public Prosecutor's Office Specialized in Transitional Justice filed a request for a hearing to file charges against 725 former members of the AUC for 22,221 criminal acts, resulting in over 49,000 victims. The facts of the Gualanday Massacre were included. Accordingly, the State argues that the domestic remedies appropriate to analyze the alleged facts have not been exhausted.

15. The State emphasizes that it aims to clarify the facts and to identify and try all those responsible. It stresses that the circumstances under which the facts occurred are complex, since the facts took place within the framework of an armed conflict, which included big criminal structures that have made it more difficult to determine the responsibility of all those involved. It adds that the judicial authorities have been collecting evidence, summoning witnesses, and identifying corpses, and have issued two judgements of conviction on February 29, 2012, against Armando Lugo and Elkin Fernando Vicuña Miranda. This proves that judicial operators have acted diligently and effectively in the investigation into the facts. It also adds that with the judgement of conviction and the binding over of those responsible to the proceedings, it has been possible

to determine the means, the time and the place of the facts, which would guarantee the victims the right to truth and justice. In conclusion, the State affirms that in the instant case the judicial investigation was not subject to an unjustified delay that might exempt the petitioners from exhausting domestic remedies in accordance with Article 46.1(a) of the American Convention.

16. With respect to the contentious-administrative proceedings, the State argues that only a group of victims filed an action for reparation. This fact was confirmed in the observations made by the petitioners. The State stresses that only Mr. Herney Orozco Villamarín, on behalf of a group of affected families, filed a claim for direct reparation against the Ministry of National Defense and the National Army, which was resolved in favor of the State. No appeal was filed against said decision. Since they had claims of a compensatory nature, all the alleged victims should have requested administrative measures of reparation, and Mr. Orozco Villamarín should have also filed an appeal against the administrative decision. Therefore, domestic remedies have not been exhausted, and the exception provided for in Article 46.1(a) of the American Convention has not been met.

17. The State indicates that in the instant case there are final decisions in the constitutional, contentious-administrative and criminal jurisdictions, which have been duly issued by competent judges and with full observance of the guarantees of due process. It stresses that the petitioners have not identified any breaches in the proceedings brought before the criminal, ordinary and transitional jurisdictions, for which final decisions have been issued. The only allegation made by the petitioners is that the two judgements of conviction will not be enforced since those accused under the Law on Justice and Peace will receive alternative sentences. As a result, it concludes that the petitioners expect the Commission to act as a court of appeals with regard to the conviction judgements, and with regard to Colombian Constitutional Court's judgement no. C-370, which established that the alternative sentences were constitutional. In addition, the State points out that the decision on the writ for the protection of constitutional rights was made following the principles of legal security and proper administration of justice, and therefore the petitions on reparations that were raised by the petitioners were resolved domestically by competent courts. In view of the foregoing, the State concludes that the Commission is being asked to act as a "fourth instance," and that Article 47(b) of the Convention is met.

18. Finally, the State points out that the petitioners did not submit facts showing an illegal or arbitrary violation of personal liberty or the right to movement and residence of the alleged victims. It indicates that the petitioners merely pointed to the aforementioned articles of the American Convention, but did not submit any factual or legal allegation, which would demonstrate *prima facie* the violation of these rights as a result of actions or omissions by the State. Therefore, the State concludes that the facts alleged in this petition are manifestly unfounded in accordance with Article 47(c) of the Convention, with respect to the rights set forth in Articles 7 (personal liberty) and 22 (movement and residence).

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19. The petitioners make a separate and specific account of the facts and proceedings related to the fifteen *comuneros* who disappeared and/or were killed within the framework of the present petition. On May 31, 2001, Mr. Libardo Méndez Passu and Mr. Fabián Alexis Méndez Dagua were traveling from Resguardo del Jábalo to Santander de Quilichao when they were arrested by members of the AUC, who took them to the banks of the Cauca river, interrogated them and shot them to death. On June 2, 2001, the next of kin of Mr. Méndez Passu and Mr. Méndez Dagua filed a complaint with the Attorney General's Office (AG). On February 7, 2002, the criminal investigation was referred to the Specialized Prosecution Office of Popayán. However, the four criminal investigations for enforced disappearance have been suspended since November 15, 2006, when they were sent to the Justice and Peace Unit of Public Prosecutor's Office No. 40 to act before the Superior Court of the District. With regard to the contentious-administrative proceedings, the petitioners note that on July 25, 2012, the National Government (the Ministry of the Interior, the Ministry of Defense, the Army, the National Police and the department of Cauca) was summoned to a hearing, in which the alleged victims wanted to reach an agreement based on the recognition of the material and moral damages caused by the facts. However, it was not possible to reach an agreement between the parties.

20. Therefore, on October 24, 2013, the alleged victims filed a claim for direct reparation that was twice dismissed by the Eighth Administrative Court of Popayán. The alleged victims filed an appeal against the dismissal; the Contentious Administrative Court of Popayán decided their claim for direct reparation on March 14, 2014. Finally, within the framework of Law 975 of 2005, those accused of the facts allegedly confessed to the crimes spontaneously, and as part of this proceeding the next of kin were reportedly recognized as victims.

21. On March 2, 2001, Mr. Saulo Mosquera Fiscue was arrested by members of the Calima block and by an army soldier at a gas station in Santander de Quilichao. He was killed, and his body thrown away in the Cauca river. The petitioners indicate that there is reportedly a proceeding before the Seventh Specialized Prosecution Office of Popayán, which has not progressed, and that the facts were allegedly confessed in transitional justice. As for the contentious-administrative proceedings, the National Government was also summoned to a settlement hearing on July 25, 2012, but no agreement was reached. As a result, the relatives filed a claim for direct reparation before the Fifth Administrative Court of Popayán. On May 6, 2001, Mr. Rubén Ulcue Apio traveled from the township of Buenavista to Santander de Quilichao, where he was killed. His body was later recognized by his next of kin, and a criminal proceeding was brought before Public Prosecutor's Office No. 21 of the Unit of Human Rights. The proceedings are reportedly in a pre-trial stage.

22. On March 15, 2001, Mr. Abelardo Campo Casamachín was traveling from Resguardo de López Adentro de Caloto to Caloto, when he disappeared. His whereabouts remain unknown. The Public Prosecutor's Office is not conducting any criminal proceedings to investigate his disappearance, despite the fact that a complaint was filed on March 17, 2001. On June 14, 2000, Mr. Laurentino Casamachín Secue was traveling from the municipality of Puerto Asís to Resguardo Indígena de Lopez Adentro, when he disappeared. The last time he was seen alive was in Santander de Quilichao. His next of kin filed a complaint. As a result, an investigation was opened by Public Prosecutor's Office No. 27 to act before the Justice and Peace Unit of the Superior Court of the District of Bogotá. Those responsible confessed to the facts in the transitional justice jurisdiction. On February 7, 2001, Mr. Nepomuceno Largo Campo disappeared while he was traveling from Toribio to Santander de Quilichao. The petitioners allege that Mr. Largo Campo was arrested and killed by members of the AUC, and that his body was buried in the banks of the Cauca river. The investigation was assigned to Public Prosecutor's No. 18 and charges are being brought within a special criminal proceeding of the Justice and Peace Unit. In this proceeding, members of the AUC confessed to the facts.

23. On December 31, 2000, Mr. Luis Alberto Velasco Conda disappeared in Santander de Quilichao. The petitioners allege that, despite several meetings with state agents, no information has been provided with regard to the investigation into his disappearance. On May 2, 2001, Mr. Bernardo Rivera Mestizo was arrested and killed in Santander de Quilichao. His body has not been found. There is currently a proceeding before Public Prosecutor's Office No. 21 of Bogotá, and in the context of transitional justice, the paramilitary officers involved allegedly confessed to the facts. The petitioners consider that the fact that the accused confessed to the facts has no impact on the ordinary criminal investigation, and therefore they emphasize that to date there is no decision on the merits, nor is there any plan to search for the victim's body. In this proceeding, the next of kin reportedly requested to be recognized as victims. On June 13, 2003, Mr. Roberney Salazar Lizcano disappeared in El Tigre, Putumayo. His next of kin are unaware of there being any investigation into the facts.

24. Mr. Carlos Yonda Pinzón and Ms. Florinda Yonda Pinzón were victims of the Naya Massacre on April 11, 2001. Therefore, they are presumed to be disappeared persons. These events are investigated by Public Prosecutor's Office No. 21 of the Human Rights and International Humanitarian Law Unit and, at the same time, Public Prosecutor's Office No. 18 of the National Peace and Justice Unit of Cali is conducting another investigation. This case was reportedly mentioned in the spontaneous statement of paramilitary officers. However, the accused did not admit their involvement in these events. On May 17, 2000, Ms. Martha Inés Zúñiga disappeared in the area known as "La Virgen Salida de Popayán", in the municipality of Santander de Quilichao. These facts led to criminal proceedings for the crimes of conspiracy to commit crimes and simple kidnapping. However, the accused admitted their involvement in these events in their spontaneous statement of June 9, 2011. The victims' next of kin were reportedly advised to submit more information in order to be recognized as victims in the transitional justice proceedings.

25. Mr. Einer Lizcano disappeared in Valle del Guamez, Putumayo, on May 10, 2001. His remains were handed over to his relatives on November 29, 2013, and there is no information regarding any type of proceeding carried out before ordinary courts. Mr. Juan Andrés Rosero Salazar disappeared in Puerto Asís, Putumayo, on November 26, 2000. The petitioners have no information regarding any type of proceeding being carried out before ordinary courts and stress that the relatives are not listed as victims in the databases.

26. Finally, on June 10, 2021, COMAC filed three petitions before the AG requesting information about the status of the criminal investigations, as well as the reopening and relocation of over 60 proceedings in the Specialized Human Rights Unit of the AG. However, COMAC had not received any answer to these petitions by the date in which the instant petition was filed.

27. The petitioners conclude that the exception of unwarranted delay set out in Article 46.2.c) of the American Convention applies in the instant case, since the Colombian justice system has not issued reasoned decisions aimed at materializing the rights to truth, justice and comprehensive reparation. In addition, the petitioners allege that the public officials have not been bound over to the criminal investigations, that there has not been any coordination between the Public Prosecutor's Office of the National Peace and Justice Unit and the Human Rights and International Humanitarian Law Unit of the AG, and that the victims have not been given any opportunity to participate in the proceedings carried out by the ordinary and transitional justice systems.

28. The State, for its part, argues that the alleged acquiescence and collaboration of some members of the public forces and some members of the self-defense groups in the region mentioned by the petitioners has been progressively clarified in judgements issued domestically. It stresses that the special criminal proceeding of the Justice and Peace Unit has been aimed at clarifying the facts that were committed during the more than fifty years of armed conflicts in the country. Consequently, the State argues that it has made all the efforts possible to investigate, prosecute and punish those responsible for human rights violations committed in the context of the armed conflict, and to identify the causes, beneficiaries and structures which made such violations possible. Therefore, the State concludes that the Inter-American Commission should not rule on any issues related to alliances between agents of the public forces, the politicians of the area and members of the AUC, since that may violate the reinforcing and supplementary mandate of the Inter-American System of Human Rights.

29. With regard to the exhaustion of domestic remedies, the State argues that the petitioners did not exhaust the available remedies in the criminal and contentious-administrative jurisdictions, and that, consequently, the petition should be declared inadmissible. It also alleges that the exception set forth in Article 46.2 of the Convention and, in particular, the exception set out in subparagraph c), does not apply in the instant case. It stresses that the IAHR Court has established four criteria to determine whether the duration of the proceedings is reasonable or not in light of the Convention: i) the complexity of the matter, ii) the procedural activity of the interested party, iii) the conduct of the judicial authorities and iv) the adverse effect of the duration of proceedings on the judicial situation of the interested party. In addition, the State highlights that the jurisprudence of the IAHR Court establishes that the specific characteristics of the conduct under investigation, the complexity of the evidence and the number of procedural subjects or the number of victims shall be considered to determine the complexity of the matter.

30. The State indicates that the clarification of the facts is highly complex since the acts were committed by the Calima block of the AUC and, allegedly, by members of the Armed Forces. It also notes that the date in which these acts were committed (1999-2004) has hindered the collection of the evidence. Therefore, the State considers that it is important to analyze the characteristics of each crime to determine the complexity of the case under investigation, and that the practice of the AUC of suppressing the evidence of their criminal acts should be considered. In addition, the State highlights that four fronts of the Revolutionary Armed Forces of Colombia (FARC) and the National Liberation Army (ELN) operate in the area where the events occurred, and that, consequently, the criminal proceedings carried out by the judicial authorities have been serious, impartial and independent; and therefore, they have acted diligently. In this regard, the State considers that the criminal proceedings have been conducted *ex officio* within a reasonable time in accordance with the

standards provided for the IASHR, and that the petitioners did not exhaust the applicable proceedings before resorting to the Commission.

31. Colombia concludes that the actions taken by the AG to investigate the case have been carried out within a reasonable time, since there are several criminal investigations related to the events that support the petition under study:

i) The Specialized Public Prosecutor's Office of Popayán is carrying out a criminal investigation under file no. 3405, in which the case of Mr. Ulcue Apio is included.

ii) Public Prosecutor's Office No. 2 of Santander de Quilichao is carrying out an investigation under file no. 12716 for the crimes of torture, kidnapping and homicide, in which the cases of Mr. Méndez Passu and Mr. Méndez Dagua are included. This investigation is in the stage of pressing charges within the special proceedings of the Justice and Peace Unit.

iii) Specialized Public Prosecutor's Office No. 7 is carrying out an investigation under file no. 175895 for the crimes of homicide and forced disappearance, in which the case of Mr. Mosquera Fiscué is included. The investigation is in the stage of pressing charges within the special criminal proceeding of the Justice and Peace Unit.

iv) Public Prosecutor's Office No. 18 is carrying out an investigation under file no. 173699 for the crimes of kidnapping, forced disappearance and murder of a protected person, in which the case of Mr. Largo Campo is included. The investigation is in the stage of pressing charges within the special criminal proceeding of the Justice and Peace Unit.

v) Public Prosecutor's Office No. 21 is carrying out an investigation under file no. 242809 for the crimes of kidnapping and homicide, in which the case of Mr. Rivera Mestizo is included. The investigation is in the stage of pressing charges within the special criminal proceeding of the Justice and Peace Unit.

vi) The AG is carrying out an investigation under files no. 240262 and no. 212197 for the crimes of kidnapping and homicide, in which the case of Ms. Zúñiga is included. The investigation is in the stage of pressing charges within the special criminal proceeding of the Justice and Peace Unit.

vii) The criminal investigation related to the Naya Massacre, in which Mr. and Ms. Yonda Pinzón allegedly lost their lives, is in the stage of gathering evidence. However, there had reportedly been a division of the procedural unity in the case due to the number of persons involved. Therefore, the State considers that it has complied with its obligation to investigate, prosecute and punish those responsible since their involvement has been clarified in the criminal proceedings.

32. In the field of transitional justice, the State contends that the allegations of the petitioners according to which "Law No. 975 of 2005 does not meet the main elements required to establish a transitional justice system" lack any basis. The State stresses that the proceeding of the Justice and Peace Unit has enabled the clarification of numerous facts, not only those related to the petition under study, but a series of events related to the Colombian armed conflict. The State contends that it has built and applied several transitional justice tools during the most recent years, with the purpose of building a comprehensive strategy which allows the country to transition from a situation of armed conflict to a stable and lasting peace, whose main goal is the utmost satisfaction of the rights of the victims and the strengthening of the rule of law. Thus, Colombia concludes that it has implemented all the steps to build a criminal investigation system which guarantees the rights to truth, justice and reparation. Therefore, the State considers that the petition should be declared inadmissible pursuant to Articles 46.1.a) and 47.a) of the Convention since the criminal proceedings had been concluded domestically.

33. With regard to the contentious-administrative matters, the State alleges that, out of the group of 15 members of the indigenous communities, the only next of kin who have filed a claim for direct reparation are the next of kin of: i) Mr. Mosquera Fiscué, who filed a claim for direct reparation before the Fifth Court of

Administrative Matters of Popayán, which issued a judgement on August 29, 2016, declaring that the Colombian State was responsible for the disappearance of Mr. Mosquera Fiscué. However, that ruling was appealed, and the case is currently being heard by the Court of Contentious-Administrative Matters of Cauca, which has not ruled on this matter; and ii) Mr. Méndez Passu and Méndez Dagua, who filed a claim for direct reparation before the Eight Court of Administrative Matters of Popayán on December 3, 2013, due to the disappearance of the alleged victims. This claim was admitted on March 14, 2014, by the Court of Contentious-Administrative Matters of Cauca, which reversed an order stating that the claim had not been filed on a timely manner. The State concludes that the claim for direct reparation is a proper and effective remedy which guarantees the reparation of possible human rights violations and that, therefore, the alleged victims have not exhausted domestic remedies.

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

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34. The petitioners affirm that all claims were filed before both the ordinary justice systems for criminal and contentious-administrative matters, and the transitional justice system. The petitioners indicate that Public Prosecutor's Office No. 38 of the Human Rights and International Humanitarian Law Unit of the AG undertook the investigation, which led to the judgement issued by the First Specialized Court of Popayán on February 29, 2012, which found Armando Lugo y Elkin Fernando Vicuña, members of the paramilitary, guilty, and ruled in favor of the next of kin of Mr. Julio Vitonas Chilhueso, Mr. Adelmo Vitonas Chilhueso and youth Benilda Ley Dagua. With regard to Law 975 of 2005, the petitioners point out that the family members of the alleged victims were not recognized in the proceedings even though they filed a writ for the protection of constitutional rights which was rejected by the Criminal Division of the Supreme Court of Justice on September 11, 2012. In this regard, the petitioners allege that the exception set forth in Article 46.2.c) of the Convention is applicable since the massacre was committed over 20 years ago, the facts have not been investigated consistently and the persons responsible have not been punished.

35. The State, for its part, argues that domestic remedies have not been exhausted since there are currently two ongoing criminal investigations related to the subject matter of the petition. The first investigation is being carried out by Public Prosecutor's Office No. 32 of Human Rights Unit before the ordinary justice system, and the second investigation is being conducted within the framework of the Law on Justice and Peace. In addition, the State highlights that Mr. Jesús Herney Orozco Villamarín filed a claim for direct reparation against the Ministry of National Defense, and that the Court of Contentious-Administrative Matters of Cauca issued a judgement releasing the State from any responsibility on January 1, 2010, which was not appealed. Finally, the State indicates that the Office of the Inspector General initiated a disciplinary investigation, which was closed on March 15, 2004, due to lack of evidence. In this line, the State affirms that the requirements set forth in Article 46.1.a) of the American Convention have not been met. None of the parties made any reference to the timeliness of the petition.

Abelardo Campo Casamachín et al. (P-467-14)

36. The petitioners state that the following proceedings have been conducted with regard to the alleged victims. In the case of Mr. Méndez Passu and Mr. Méndez Dagua, there were reportedly four criminal investigations into the crime of forced disappearance, which were assigned to Public Prosecutor's Office No. 40, to act before the Justice and Peace Unit of the Superior Court of the District and allegedly suspended, and a writ for protection of constitutional rights which was admitted by the Eight Court of Popayán on March 14, 2014. As for Mr. Mosquera Fiscué, there was reportedly an ongoing proceeding before the Specialized Public Prosecutor's Office No. 7 of Popayán. Regarding Mr. Ulcue Apio, a criminal proceeding was conducted by Public Prosecutor's Office No. 21 of the Human Rights Unit. In the case of Mr. Casamachín Secue, an investigation was conducted by Public Prosecutor's Office No. 27 to act before the Justice and Peace Unit of the Superior Court of the District of Bogotá. Regarding Mr. Largo Campo, an investigation was assigned to Public Prosecutor's Office No. 18. As for Mr. Rivera Mestizo, there was reportedly a criminal proceeding before Public Prosecutor's Office No. 21 of Bogotá. In the case Mr. and Ms. Yonda Pinzón, two investigations of the Naya Massacre were

reportedly carried out, one before Public Prosecutor's Office No. 21 of the Human Rights and International Humanitarian Law Unit, and the other before Public Prosecutor's Office No. 18 of the National Peace and Justice Unit of Cali. Finally, the petitioners stress that COMAC filed petitions for information before the AG in relation to over 60 proceedings, and that such claims have not been answered. Therefore, the petitioners conclude that the exception of unjustified delay set forth in Article 46.2.c) of the Convention is applicable since the facts occurred between 2001 and 2003, and to date those responsible have not been punished, and the alleged victims have not been repaired.

37. The State, for its part, argues that the alleged victims have not exhausted domestic remedies since the criminal proceedings initiated are still pending. It also alleges that, regarding contentious-administrative matters, the next of kin of Mr. Mosquera Fiscué, Mr. Méndez Passu and Mr. Méndez Dagua were the only ones who file claims for direct reparation. As to the timeliness of the petition, the State stresses that there has not been any unwarranted delay and, consequently, none of the exceptions set forth in Article 46.2 of the Convention can be applied. In particular, the State highlights that there was no unwarranted delay since the criteria established by the IACTHR to determine if the duration of the proceedings is reasonable were met, especially in view of the complexity of the matter. As a result, the State concludes that the petition is inadmissible since the requirements set forth in Article 46.1.a) of the American Convention have not been met.

Analysis of exhaustion of domestic remedies common to both petitions

38. The Commission notes that the alleged facts took place between 2001 and 2003 in a specific territory and against an indigenous group and the peasants of the area. Therefore, these facts will be analyzed jointly. The Commission further notes that the facts described in this petition occurred over 17 years ago and to date it is known that several members of the AUC confessed to their involvement in several of the facts in these petitions during the transitional justice proceedings carried out within the framework of Law 975 of 2005. In petition 465-14, the Commission observes that two judgements of conviction were issued against Mr. Armando Lugo and Mr. Elkin Fernando Vicuña. The courts ruled in favor of the next of kin of Mr. Julio Vitonas Chilhueso, Mr. Adelmo Vitonas Chilhueso and youth Benilda Ley Dagua. However, the next of kin of the alleged victims were not recognized in the proceedings carried out within the framework of Law 975 of 2005. In addition, the Commission notes that, in petition 467-14, none of the proceedings carried out before the ordinary courts has resulted in a conviction or sanction against the alleged perpetrators, and that none of the alleged victims had received a comprehensive reparation for these facts.

39. In view of the foregoing, the IACHR concludes, as it has done in previous cases⁵ in which situations of partial impunity have been alleged, that the exception to the requirement of prior exhaustion of domestic remedies established in Article 46.2.c) of the American Convention applies to the instant case since the facts happened almost 20 years ago, and only two persons have been punished for the facts alleged in petition 465-15, which affected 15 persons directly and their family members indirectly. The facts alleged in petition 467-14 affected 15 different persons directly and their family members indirectly.

40. In addition, the petitions were filed on March 24, 2014, and March 27, 2014, respectively. Therefore, considering the specific circumstances alleged in these petitions, in particular, the allegations regarding the unwarranted delay in the domestic criminal proceedings, which presumably still continues to the date of this report, the IACHR concludes that the petition was filed within a reasonable period of time, in accordance with Article 46.2 of the American Convention and Article 32.2 of the Rules of Procedure of the Inter-American Commission.

VII. ANALYSIS OF COLORABLE CLAIM

41. The Commission observes that these petitions were filed by the same petitioners, ACIN and COMAC, and that they include events which occurred between 1999 and 2004 in the northern Cauca area and in the south of the Valle department. Petitioners allege the violation of the rights of 30 members of the Nasa

⁵ IACHR, Report No. 240/20. Petition 399/11. Admissibility. Over Jose Quila *et al.* (La Rejoya Massacre). Colombia. September 6, 2020.

indigenous community and peasants of the area, who were reportedly victims of the crimes of disappearance, murder and injuries committed by members of the Calima block of the AUC.

42. As in previous cases,⁶ the petitions under study in the instant case mainly refer, besides the alleged violation of the right to life, to the compliance of the State with its duties to prevent, investigate and punish those responsible, in a context in which the petitioners allege that there is a situation of partial impunity of the perpetrators. During the merits stage, the Commission will consider effectively the investigative actions carried out by the State, which have led to the punishment of some of the perpetrators of the reported facts, as well as the eventual reparation mechanisms that the Colombian State had already implemented for the alleged victims. The IACHR recognizes the progress that has been made and will consider it during its analysis of the facts alleged in this case.

43. In this regard, the Commission considers that the allegations of the petitioners must be assessed on the merits in relation to the rights set out in Articles 3 (right to juridical personality), 4 (right to life), 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), 11 (right to privacy), 19 (rights of the child), 22 (freedom of movement and residence) and 25 (right to judicial protection) of the American Convention in relation to Article 1.1 (obligation to respect rights) thereof, to the detriment of the alleged victims identified in this report and of those victims which are to be identified during the merits stage of this case.

44. With regard to the "fourth instance" allegations, the Commission ratifies that, for purposes of admissibility, it must decide whether the facts alleged could characterize a violation of rights, according to the provisions of Article 47.b) of the American Convention, or whether the petition is "manifestly groundless" or "obviously out of order," pursuant to subparagraph (c) of said article. The standard of appraisal of these extremes is different from the required to decide on the merits of a claim. Likewise, within the scope of its mandate, the IACHR is competent to declare a petition admissible if it refers to domestic proceedings which may violate rights guaranteed by the American Convention. In other words, pursuant to the aforementioned rules of the Convention and in accordance with Article 34 of the Rules of Procedure, the analysis on admissibility is centered in the verification of such requirements, which refer to the existence of elements that, if proven, could *prima facie* lead to determine violations of the American Convention.

45. The Commission concludes that it is not competent to declare that the provisions of the International Covenant on Civil and Political Rights have been violated. However, the Commission may take this treaty into consideration as part of its interpretation of the provisions of the American Convention during the merits stage of this case, pursuant to Article 29 of the Convention.

VIII. DECISION

1. To declare these petitions admissible in relation to Articles 3, 4, 5, 7, 8, 11, 19, 22 and 25 of the Convention in accordance with Article 1.1 of the same instrument; and

2. To notify the parties of this decision; to proceed with the merits of the case; 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 5th day of the month of October, 2021. (Signed): Antonia Urrejola, President; Julissa Mantilla Falcón, First Vice-President; Flavia Piovesan, Second Vice-President; Margarette May Macaulay; Esmeralda E. Arosemena Bernal de Troitiño; Joel Hernández García and Edgar Stuardo Ralón Orellana, Members of the Commission.

⁶ IACHR, Report No. 39/18. Petition 196-07. Admissibility. José Ricardo Parra Hurtado, Félix Alberto Páez Suárez and their families. Colombia. May 4, 2018; IACHR, Report No. 61/16. Petition 12,325. Admissibility. Peace Community of San José de Apartadó. Colombia. December 6, 2016. IACHR, Report No. 38/13, Petition 65-04. Admissibility. Jorge Adolfo Freyter Romero *et al.* Colombia. July 11, 2013; IACHR, Report No. 35/17, Case 12,713, Merits (published), Jose Rusbel Lara *et al.* Colombia. March 21, 2017; and IACHR, Report No. 122/21. Petition 482-12. Admissibility. Amparo Figueroa, her family and members of "ANTHOC". Colombia. June 14, 2021.

VICTIMS OF P-467-14

1. Libardo Mes Passu
2. Fabián Alexis Mendes Dagua
3. Saulo Mosquera Fiscue
4. Rubén Ulcue Pio
5. Abelardo Campo Casamachín
6. Laurentino Casamachín Secue
7. Nepomuceno Largo Campo
8. Luis Alberto Velasco Conda
9. Bernardo Rivera Mestizo
10. Roberney Salazar Lizcano
11. Carlos Yonda Pinzón
12. Florinda Yonda Pinzón
13. Martha Inés Zúñiga
14. Einer Fernández Lizcano
15. Juan Andrés Rosero Salazar

VICTIMS OF P-465-14

1. Benilda Ley Dagua
2. Marcos Medina Mestizo
3. Frans Indico Pete
4. John Edward Osorio Salazar
5. Julio Vitonas Chilhueso
6. Adelmo Vitonas Chilhueso
7. Ernesto Talaga
8. Edilberto Sandoval Villamarin
9. Eliécer Orozco Villamarin
10. Luis Emilio Morales Alzate
11. Sigilfredo Rojas Bustamante
12. José William Rojas Higueta
13. Edier Alexander Orozco López
14. Yenny Rocío López Ulcue
15. Claudia Marcela López Ulcue