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REPORT No. 35/25
PETITION 80-15
ADMISSIBILITY REPORT

DANIEL GUTIERREZ ET AL.
COLOMBIA

Approved electronically by the Commission on March 26, 2025.

Cite as: IACHR, Report No. 35/25. Petition 80-15. Admissibility. Daniel Gutierrez et al. Colombia.
March 26, 2025.

I. PETITION DETAILS

Petitioner:	Corporation of Indigenous Lawyers of Panama
Alleged victim :	Sagla Ernesto Ayala, San Pascual Ayala Gutiérrez, Luis Enrique Martínez Ayala, Gilberto Vásquez and Casildo Ayala Ayala and family members ¹
Reported status:	Colombia ²
Rights invoked:	Articles 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (right to a fair trial), 10 (compensation), 12 (freedom of religion), 17 (protection of the family), 19 (rights of the child), 24 (equality before the law) and 25 (judicial protection) of the American Convention on Human Rights ³ , in relation to Articles 1(1) (obligation to respect rights) and 2 (duty to adopt domestic legal provisions); and Articles I, II, V, VI, VIII, IX, XI, XVIII, XXI, XXIII, and XIV of the American Declaration on the Rights and Duties of Man ⁴

II. PROCEEDINGS BEFORE THE IACHR⁵

Filing of the petition:	February 12, 2015
Additional information received during the study stage:	August 6, 2018
Notification of the petition to the State:	February 18, 2020
The State's Response:	December 2, 2020
Additional Observations of the Petitioner:	May 2, 2023
Warning about possible archiving:	November 11, 2021
Response of the petitioner to the warning of possible archiving:	May 2, 2023

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes, under the terms of Section VI
<i>Ratione Temporis</i> Competition:	Yes
Competence <i>Ratione materiae</i>:	Yes, American Convention (deposit of the instrument of ratification made on July 31, 1973)

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

Duplication of proceedings and international res judicata:	No
Rights declared admissible:	Articles 5 (humane treatment), 8 (right to a fair trial), and 25 (judicial protection) of the American Convention

¹ The petition also refers to the relatives of Sagla Ernesto Ayala, San Pascual Ayala Gutiérrez, Luis Enrique Martínez Ayala, Gilberto Vásquez and Casildo Ayala Ayala, as alleged victims.

² In accordance with the provisions of Article 17(2)(a) of the Commission's Rules of Procedure, Commissioner Carlos Bernal Pulido, a Colombian national, did not participate in the debate or decision in this case.

³ Hereinafter "the Convention" or "Convention".

⁴ Hereinafter "the Declaration" or "Declaration".

⁵ The observations of each party were duly forwarded to the opposing party.

Exhaustion of domestic remedies or admissibility of an exception:	Yes, under the terms of Section VII
Submission within the deadline:	Yes, under the terms of Section VII

V. POSITION OF THE PARTIES

1. The petitioner party alleges the international responsibility of the Colombian State for the murder of four indigenous leaders and the injuries suffered by another during a massacre perpetrated by a Colombian paramilitary group in Panamanian territory.

2. It relates that the original Guna people (also referred to as "kuna", "cradle" or "dule") are cross-border, as they have historically settled and moved between Colombia and Panama since the arrival of the Spanish conquistadors in 1501. This town is made up of the communities of Paya, Púculo, Arquia and Caiman Nuevo.

3. The petitioner organization states that from January 17 to 19, 2003, the Colombian paramilitary group known as the Autodefensas Campesinas de Córdoba y Urabá (hereinafter "ACCU"), commanded by Carlos Castaño Gil, attacked the communities of Arquia, Paya, and Pucuro in Panamanian territory. It states that during this ambush the ACCU perpetrated robberies, kidnappings, torture and murders against members of the Guna people. In these events, community leaders Luis Enrique Martínez Ayala, Sagla Ernesto Ayala Ayala, San Pascual Ayala Gutiérrez, Gilberto Vásquez and Daniel Gutiérrez (the latter of Colombian nationality) were killed, and Casildo Ayala was wounded. As a result of these events, which it refers to as "the Paya massacre," the petitioner recounts that the Paya community had to move within Panama due to a well-founded fear of being the target of new paramilitary attacks.

4. In addition, it denounces that the ACCU planted antipersonnel mines to prevent the use of the traditional road between the border of the two countries used by the Guna people for the development of their cultural activities, which has affected their lifestyle and food security. It states that several indigenous leaders in Panama submitted complaints to the Office of the Attorney General of Panama requesting a rigorous investigation and extradition of those responsible, but the Panamanian prosecutor's office did not request the cooperation of the Colombian authorities in investigating the events, but limited itself to requesting letters from Colombia to obtain the statements of nationals of the United States who were detained by the paramilitaries.

5. The petitioner recounts that, in 2006, in the context of the demobilization of the Autodefensas Unidas de Colombia (hereinafter "AUC"), a paramilitary group within which the ACCU operated, the Colombian State "*granted them a kind of amnesty for the horrendous crimes they committed and enacted a law of reparation for victims that is not applied in Panama*", including the Paya massacre. The petitioner reports that the relatives of the victims of the massacre contacted an indigenous lawyer in Colombia in 2010 who inquired about the status of the investigations into these crimes, and in 2012, two years after requesting copies of the file, located it, and established that the investigation had been archived since 2004. It argues that the decision to archive is not subject to appeals, only to the submission of new evidence, but argues that it is not available to the victims due to their geographical isolation in Panama. It emphasizes that neither Panama nor Colombia have offered psychological or medical care to the affected communities, nor have they accepted responsibility for the facts denounced or offered any reparation.

6. The petitioners report that in 2011 the Panamanian Foreign Ministry made a formal complaint to the Colombian State regarding reparations to the victims, but it did not obtain any results.

7. With respect to the exhaustion of domestic remedies, it maintains that the victims are unable to access them, given their situation of vulnerability and the impossibility of traveling to Colombia for well-founded fear of reprisals by the paramilitaries or the guerrillas, since in order to reach the nearest city on the Colombian side of the border, it is necessary to cross five days of road through the jungle controlled by the ACCU and the guerrillas of the Revolutionary Armed Forces of Colombia (hereinafter "FARC"). Similarly, the petitioner asserts that, since the Paya massacre constitutes a crime against humanity, there is no statute of

limitations, and the investigation must continue *ex officio* by the Colombian authorities. It adds that it was only in 2020 that the Medellín Prosecutor's Office began an investigation into the murder of Daniel Gutiérrez, an indigenous leader of Colombian nationality killed in the Paya massacre.

8. On the other hand, the petitioners contend the responsibility of the Colombian State for the historical link between paramilitary groups outside the law and the armed forces, since the government promoted the emergence of these groups, and some sectors of the army have collaborated with them. In doing so, they assert that Colombia violated the alleged victims' rights to life, personal integrity, security of person, judicial guarantees, freedom of conscience and religion, family, children's rights, protection of honor, reputation, and private and family life.

The Colombian State

9. The State, for its part, replies that the present petition is inadmissible for three reasons: i) the lack of territorial jurisdiction of the Commission vis-à-vis Colombia for the events that occurred in Panamanian territory; (ii) due to the failure of the petitioner to exhaust domestic remedies; and iii) by the presentation of manifestly unfounded charges.

10. With respect to the facts alleged by the petitioner, Colombia emphasizes that the Office of the Ombudsman for Ethnic Groups and the Office of the Ombudsman for Urabá have taken important steps to assist, guide, advise, and accompany traditional leaders and authorities through humanitarian missions, whereby it monitors the human rights situation and receives complaints and petitions related to possible violations of human rights and infractions of International Humanitarian Law in the Arquía reservation of the Guna community on the Colombian side of the border. It also highlights that several national entities have accompanied this reservation in land restitution procedures, collective reparation programs, technical training in agricultural production, in censuses by the Victims Unit, in the implementation of the comprehensive action plan against mines, and in the tactical deployment of the national army in security operations and public safety, as well as in an approach and agreement for the draft of a historical memory report on the community.

11. Regarding admissibility, the State argues, first, that the IACHR's territorial jurisdiction implies that it can only examine petitions alleging human rights violations that have occurred in the territory of the State denounced, and only exceptionally can it cover events that occurred extraterritorially. It asserts that, from a joint reading of Articles 1.1 and 2 of the Convention, it is possible to conclude that the scope of application of the protection of rights is the domestic law of the States, which has territorial application.

12. While the jurisdiction of States is determined by their territory, Colombia recognizes that there are some exceptions in international law whereby human rights obligations apply in favor of any person subject to the power or effective control of States. However, it maintains that in the instant case the acts denounced were committed in Panamanian territory, and the petitioners have not legally or evidentiarily substantiated the attribution to the Colombian State of alleged human rights violations perpetrated by third parties, who were not Colombian State agents, nor have they demonstrated that the State has exercised effective control over the events or persons in Panamanian territory. Therefore, it requests the IACHR to declare itself incompetent *ratione loci* to hear this petition.

13. In the alternative, the State raises the objection of failure to exhaust domestic remedies, since the petitioners expressly indicate that they did not go to the Colombian authorities, despite the fact that the legal system provides adequate and effective remedies for the protection of the rights they allege have been violated. It recalls that Article 46(1)(a) of the Convention imposes the requirement of prior exhaustion of domestic remedies, so that States have the opportunity to remedy the alleged violations by their own means before the petitioners have recourse to the Inter-American Human Rights System.

14. In this regard, Colombia asserts that the petitioner did not exhaust the criminal complaint or the action for direct reparation. Regarding the first, it specifies that the murder of Daniel Gutiérrez was not brought to the attention of the Colombian prosecutor's office so that the corresponding investigation could be carried out. On this point, it reiterates that there is a duty to report crimes so that they are investigated *ex*

officio; in addition, the State may provide protection measures to those who participate in criminal proceedings for whose life or integrity poses a risk. In this way, it affirms that since the events took place in Panamanian territory, the authorities of that country were in charge of carrying out the work of the *ex officio* investigation.

15. Now, concerning the formal complaint made by the Ministry of Foreign Affairs of Panama to the Colombian State in 2011, Colombia reports that in the context of the special processes for the demobilization of the AUC in the jurisdiction of Justice and Peace, two paramilitaries nominated for criminal benefits testified about these facts. Freddy Rendón Herrera, alias "El Alemán" and Levi Antonio Martínez Paternina gave their version of the incursion carried out by the ACCU into Panamanian territory, indicating that they were unaware of the full identification of the victims of the massacre. For this reason, the Colombian prosecutor's office sent a rogatory letter to its counterpart authorities in Panama requesting the identity of the victims. In this regard, the Colombian State reiterates that all the proceedings related to the Paya massacre were carried out by the Panamanian authorities, and since the facts were not reported or brought to the attention of the Colombian prosecutor's office, that entity did not have any criminal notice to initiate the investigation.

16. Similarly, it asserts that the Colombian legal system provides for the action of direct reparation before the contentious-administrative jurisdiction, whose objective is to determine the administrative responsibility of the State for the damages it has caused and to allow the recognition of comprehensive reparation to the victims for the damages suffered. It argues that it is an adequate and effective remedy for the alleged violations, which the alleged victims did not pursue.

17. Finally, Colombia contends that the charges presented in the petition are manifestly unfounded, under the terms of Article 47(c) of the American Convention, since they lack grounds to attribute responsibility for the facts to the State. It puts forth that in order to attribute international responsibility to a State, it is necessary that the facts be carried out by one of its organs or agents; or by private individuals who acted with its acquiescence; or being able to prevent it, it would not have done so. However, it asserts that there are no serious arguments with a minimum of substantiation that would allow the facts denounced to be attributed *prima facie* to the Colombian State, since they were committed by groups outside the law, and it is not proven that they acted with the tolerance of State agents, nor that the authorities failed to comply with their duty to prevent human rights violations. It adds that there is no evidence to establish the existence of complaints of threats against the lives of the alleged victims to affirm that there was a foreseeable, real and immediate risk. Consequently, it asks the IACHR to declare this petition inadmissible on the basis of Article 47(c) of the American Convention.

VI. PRELIMINARY CONSIDERATIONS

18. Firstly, the Inter-American Commission observes that on August 11, 2022, it approved Admissibility Report No. 213/22 with respect to a petition filed by the petitioner based on the same facts against the Panamanian State.

19. Second, it notes that the Colombian State argues that the IACHR lacks jurisdiction to hear the present petition because the events occurred in the territory of another State and were committed by third parties, without the acquiescence of State agents, and without having proven that Colombia failed to prevent human rights violations.

20. Concerning the competence *ratione locii*, the IACHR recalls that while the term 'jurisdiction' usually refers to authority over persons within the territory of a State, the Commission has specified that human rights are inherent to all human beings and are not based on their citizenship or location, and that, under inter-American human rights law, each State is therefore obliged to respect the rights of all persons within its territory and of those present in the territory of another State, or even in international waters,⁶ but subject to the control of its agents.⁷ The Inter-American Court of Human Rights (hereinafter "the Inter-American Court",

⁶ IACHR, Report No. 28/93. Case 10.675. Admissibility. Haitian Boat People. United States. October 13, 1993.

⁷ IACHR, Report No. 86/99, Case 11.589, Armando Alejandro Jr et al., Cuba, April 13, 1999.

“the Inter-American Court” or “the Court”) has also concluded that the concept of jurisdiction does not only cover the national territory of a State.⁸ Thus, it has declared that “a person is subject to the jurisdiction of a State, with respect to conduct committed outside the territory of that State (extraterritorial conduct) or with effects outside said territory, when that State is exercising authority over the person or when the person is under its effective control, whether inside or outside its territory”.⁹

21. Indeed, the Inter-American Commission has applied the doctrine of effective control to analyze the competence of States by reason of place in a consistent and repeated manner.¹⁰ However, in the instant case, there are no elements or sufficient support to determine that the Colombian State exercised effective control over the acts perpetrated by the ACCU in Panamanian territory, or that they did so with the tolerance or acquiescence of State agents.

22. In certain cases with respect to Colombia, in which members of paramilitary groups have committed serious human rights violations, the Commission verifies whether there has been prior connivance or generalized tolerance to commit these acts; but when there is no evidence to demonstrate that they have had the collaboration, acquiescence, or tolerance of State agents, the Commission has declared such conduct inadmissible because there are no minimum elements to attribute the possible international responsibility of the State.¹¹

23. In the instant case, the State submits its objection regarding the lack of territorial jurisdiction in a timely manner, based on the absence of tolerance or complicity of Colombian agents in the facts denounced; and the petitioner does not provide additional and concrete elements to refute this allegation. Consequently, the IACHR does not find sufficient elements or grounds to establish *prima facie* that the Paya massacre had the acquiescence of State authorities or agents, and thus, the IACHR concludes that it lacks competence *ratione locii* to hear the alleged violation of the rights to life (Article 4) and to personal liberty (Article 7), compensation (Article 10), freedom of religion (Article 12), protection of the family (Article 17), rights of the child (Article 19) and equality before the law (Article 24). Therefore, the subsequent admissibility analysis will be limited to the investigations that the Colombian authorities have undertaken into the facts set forth in this petition.

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

24. This petition concerns the massacre committed against the Paya and Púculo communities by the ACCU during a raid on the Panama-Colombia border in January 2003. The petitioner alleges that it is impossible to exhaust domestic remedies in Colombia due to fear of reprisals by paramilitaries, the vulnerable situation of the communities, and the risk involved in traveling to Colombia. For its part, the State replies that the petitioners did not exhaust the remedies of a criminal complaint and the lawsuit for direct reparation. In particular, it maintains that in order to initiate an *ex officio* investigation, the alleged victims are required to report the facts.

25. Article 46(1)(a) of the American Convention provides that in order for a petition to be admissible, the remedies under domestic law must have been pursued and exhausted in accordance with generally recognized principles of international law. For the analysis of the exhaustion of domestic remedies in the instant case, the Inter-American Commission reiterates that, in situations related to possible violations of the right to life, such as massacres, the domestic remedies that must be taken into account for the purposes of

⁸ Inter-American Court of Human Rights. Advisory Opinion OC-23/17 of November 15, 2017. Series A No. 23, paragraph 74.

⁹ Inter-American Court of Human Rights. Advisory Opinion OC-23/17 of November 15, 2017. Series A No. 23, para. 81. See also: Inter-American Court of Human Rights. Advisory Opinion OC-21/14 of August 19, 2014. Series A No. 21, para. 219.

¹⁰ IACHR, Report No. 228/22, Petition 2096-17. Admissibility. Mohammed Jawad (also known as Saki Bacha). United States of America. August 27, 2022, para. 16; IACHR, Report 17/12, Petition 900-08, Djamel Ameziane (United States), March 20, 2012, para. 30; IACHR, Report No. 109/99, Case 10.951 Coard et al., United States, Merits, September 29, 1999, para. 37; IACHR, Report No. 86/99, Case 11.589 Armando Alejandro Jr., Carlos Costa, Mario de la Peña, and Pablo Morales, Cuba, September 29, 1999, para. 23.

¹¹ See: IACHR, Report No. 61/21. Petition 548-13. Admissibility. M.M.Y.D., D.A.N.Y. and family members. Colombia. March 6, 2021, para. 16.

the admissibility of the petition are those related to the investigation and punishment of those responsible, which translate into domestic legislation in crimes that can be prosecuted *ex officio*.¹²

26. However, the State asserts that the alleged victims did not report the facts to the Colombian authorities, which meant that they were not aware of what happened, and since an investigation was carried out in Panamanian territory by the Office of the Attorney General of that country; the Colombian Prosecutor's Office did not initiate an *ex officio* investigation. However, as reported by the Colombian State itself, two former paramilitary leaders confessed their participation and made these crimes known to the prosecutor's office in 2005, despite which, said entity limited itself to issuing a rogatory letter to the Foreign Ministry of Panama, without taking other steps to continue with due diligence in the investigation.

27. To that extent, the Inter-American Court has established that the obligation to investigate, prosecute, and punish those responsible for human rights violations "*must be assumed by the State as its own legal duty and not as a simple formality condemned in advance to be fruitless, or as a mere management of private interests, which depends on the procedural initiative of the victims, of their relatives or of the private provision of evidence*".¹³

28. Thus, it is clear that the Colombian State became aware of the massacre in 2005 by the alleged perpetrators, who were in its custody and confessed to having participated in the events, it failed to prosecute them and the only action it took was the official letter from the Medellín prosecutor's office in 2020. Given that the current status of the criminal proceedings at the domestic level is unknown, but from the information provided by the parties, it is clear that it was still open in 2020; the Commission considers applicable the exception to the exhaustion of remedies for unwarranted delay, provided for in Article 46(2)(c) of the American Convention. And, in view of the fact that the petition was filed on February 12, 2015, and impunity surrounds the situation denounced, the Commission concludes that it was filed within a reasonable time, under the terms of Article 32(2) of the IACHR's Rules of Procedure.

VIII. ANALYSIS OF A COLORABLE CLAIM

29. The Commission notes that this petition includes allegations regarding a massacre perpetrated against the Guna indigenous people in the context of the control of the paramilitary group ACCU during an incursion into the Panamanian border between January 17 and 19, 2003. The State alleges that the facts cannot be attributed to the State, and therefore the present petition is inadmissible because it contains manifestly unfounded charges under the terms of Article 47(c) of the American Convention.

30. For purposes of admissibility, the Commission must decide whether the alleged facts can establish a violation of rights, as stipulated in Article 47(b) of the American Convention, or whether the petition is "manifestly groundless" or "obviously out of order", in accordance with Article 47(c) of the American Convention. In this regard, the Commission reiterates that the criterion for assessing the admissibility phase differs from the one used to rule on the merits of a petition. At this stage, the IACHR must carry out a *prima facie* evaluation to determine whether the petition establishes the basis for the possible or potential violation of a right guaranteed by the Convention, but not to establish the existence of a violation of rights. This determination on the colorable claim of violations of the American Convention constitutes a primary analysis, which does not imply prejudging the merits of the case.

¹² IACHR, Report No. 60/24. Petition 1995-14. Admissibility. Massacre of San Carlos de Guaroa. Colombia. May 16, 2024, para. 19; Report No. 27/23. Petition 1359-07. Admissibility. Santa Rita Massacre. Colombia. February 26, 2023, para. 19; Report No. 76/22. Petition 1721-12. Admissibility. Pichilin Massacre. Colombia. April 24, 2022, para. 22; Report No. 368/21. Petition 1466-13. Admissibility. San Salvador massacre. Colombia. December 1, 2021, para. 14; Report No. 367/21. Petition 1490-12. Admissibility. José Aníbal Garcerant Mejía et al. (Villanueva Massacre). Colombia. December 1, 2021, para. 22; e, Report No. 254/21. Petition 1846-11. Admissibility. Giovanni Guzmán Pérez et al. (Puerto Patiño Massacre). Colombia. September 26, 2021, para. 13.

¹³ Inter-American Court of Human Rights. Case of the U'wa Indigenous People and its Members v. Colombia. Merits, Reparations and Costs. Judgment of July 4, 2024. Series C No. 530, para. 358.

31. The Commission reiterates that the allegations raised by the petitioners as a whole are not manifestly unfounded, and that they largely refer to facts already known in the jurisprudence of the organs of the inter-American system. In particular, the IACHR recalls that States have “the obligation to investigate and, where appropriate, prosecute and punish those responsible for human rights violations, among the positive measures that States must adopt to guarantee the rights recognized in the Convention.”¹⁴ Thus, the object of litigation continues in relation to the due diligence in the investigation and eventual punishment of those responsible for the Paya massacre in Colombian jurisdiction.

32. In view of these considerations and after examining the factual and legal elements presented by the parties, the Commission considers that the allegations of the petitioner are not manifestly groundless and require a study of the merits; since the alleged facts, if corroborated as true, could amount to violations of Articles 5 (humane treatment), 8 (fair trial) and 25 (judicial protection) of the American Convention to the detriment of Daniel Gutiérrez and his next of kin, under the terms of this report.

33. Finally, with respect to the rights enshrined in the American Declaration, the Commission has previously established that, once the American Convention enters into force in relation to a State, the Convention and not the Declaration becomes the primary source of law applicable by the Commission, provided that the petition refers to the alleged violation of identical rights in both instruments and is not a situation of continuous violation. In this case, the rights alleged to have been violated have already been admitted as articles of the American Convention, and therefore the Commission will not admit the articles of the Declaration invoked.

XI. DECISION

1. To declare this petition admissible in relation to Articles 5, 8, and 25 of the American Convention, in connection with Article 1(1) thereof;

2. To declare this petition inadmissible in relation to Articles 4, 7, 10, 12, 17, 19, and 24 of the Convention and Articles I, II, V, VI, VIII, IX, XI, XVIII, XXI, XXIII, and XIV of the American Declaration;

3. To notify the parties of this decision; to continue with the 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.

Approved by the Inter-American Commission on Human Rights on the 26th day of the month of March, 2025. (Signed:) José Luis Caballero Ochoa, President; Arif Bulkan, Second Vice President; Roberta Clarke, and Gloria Monique de Mees, Commissioners.

¹⁴ Inter-American Court of Human Rights. Case of the U'wa Indigenous People and its Members v. Colombia. Merits, Reparations and Costs. Judgment of July 4, 2024. Series C No. 530, para. 358.