

OEA/Ser.L/V/II
Doc. 379
12 December 2020
Original: Spanish

REPORT No. 361/20

PETITION 24-11

REPORT ON ADMISSIBILITY

**FAMILIIES OF THE VICTIMS OF COLLECTIVE DISPLACEMENT FROM THE
SANTA CECILIA TOWNSHIP AND NEARBY VILLAGES IN JANUARY 2000
COLOMBIA**

Approved electronically by the Commission on December 12, 2020.

Cite as: IACHR, Report No. 361/20, Petition 24-11. Admissibility. Families of the victims of collective displacement from the Santa Cecilia Township and nearby villages in January 2000. Colombia. December 12, 2020.

I. INFORMATION ABOUT THE PETITION

| | |
|--------------------------|--|
| Petitioner: | Patricia Elena Fernandez Acosta |
| Alleged victim: | Families of the victims of the massacre and and victims of the latter forced displacement from the township of Santa Cecilia and nearby villages in January 2000 ¹ |
| Respondent State: | Colombia |
| Rights invoked: | Articles 4 (life), 5 (humane treatment), 6 (freedom from slavery), 7 (personal liberty), 8 (fair trial), 11 (right to privacy), 15 (assembly), 16 (freedom of association), 17 (rights of the family), 19 (rights of the child), 21 (private property), 22 (freedom of movement and residence), 23 (right to participate in government), 24 (equality before the law) and 25 (judicial protection) of the American Convention on Human Rights ² in relation to its article 1.1 (obligation to respect rights) and 2 (obligation to abide by domestic legal effects) and article 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ³ |

II. PROCEEDINGS BEFORE THE IACHR⁴

| | |
|---|-------------------|
| Filing of the petition: | January 6, 2011 |
| Notification of the petition to the State: | June 9, 2017 |
| State's first response: | April 30, 2018 |
| Additional observations from the petitioner: | November 27, 2018 |

III. COMPETENCE

| | |
|--|---|
| Competence <i>Ratione personae</i>: | Yes |
| Competence <i>Ratione loci</i>: | Yes |
| Competence <i>Ratione temporis</i>: | Yes |
| Competence <i>Ratione materiae</i>: | Yes, American Convention (deposit of the instrument of ratification made on July 31, 1973) and Belém do Para Convention (instrument adopted on November 15, 1996) |

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 |
|---|----|

¹ The petition refers to 203 alleged victims and their families who shall be duly identified at the merits stage.

² Hereinafter "the American Convention".

³ hereinafter "the Convention of Belém do Pará"

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

| | |
|--|--|
| Rights declared admissible | Articles 4 (life), 5 (humane treatment), 6 (freedom from slavery), 7 (personal liberty), 8 (fair trial), 11 (right to privacy), 15 (assembly), 19 (rights of the child), 21 (private property), 22 (freedom of movement and residence), 25 (judicial protection) and 26 (progressive development) of the American Convention, in relation to its articles 1.1 (obligation to respect rights) and 2 (obligation to abide by domestic legal effects) and article 7 of the Belém do Para Convention |
| Exhaustion of domestic remedies or applicability of an exception to the rule: | Yes, in the terms of section VI |
| Timeliness of the petition: | Yes, in the terms of section VI |

V. FACTS ALLEGED

1. The Petitioner affirms that the Colombian State is responsible for the violation of human rights of the alleged victims in virtue of the collective killing (massacre) perpetrated by the paramilitary group United Self-Defense Forces of Colombia (hereinafter “the AUC”) in the township of Santa Cecilia and nearby villages in January 2000 and for the further forced displacement of its survivors as a result from the attack. They hold that the zone had presence of public force, which is why they denounce the State for its acquiescent, permissive and supportive acts toward the paramilitary action, since it had not taken the measures necessary to prevent the massacre, tortures, arbitrary retentions and outrages suffered by such population, which included boys and girls. She claims that the alleged victims were subject to temporary slavery and retention since the paramilitaries forced them to produce food, and to witness their celebrations. Likewise, holds that the paramilitaries broke abusively into their homes and private life having their households and means of commute being destroyed and their beef cattle being stolen.

2. It is affirmed that, in the early morning of January 28, 2000, approximately 80 members of the paramilitary groups of Córdona and Urabe led by Carlos Castaño and Salvatore Mancuso took over and submitted the inhabitants of the township of Santa Cecilia and nearby villages carrying short- and long-range firearms, and dressed with uniforms exclusive of the Colombian military forces. She holds that this paramilitary group used land roads and trucks to enter and mobilize throughout the region during the previous and latter days of the fact passing by police stations and Colombian army control posts. In this context, claims that the State had both knowledge of the facts and the capability to prevent them, since the township of Santa Cecilia is located in the center of the department of el Cesar, and its only routes of access are by highway entering by the township of Arjona and by Cesar river, passing by police stations. Also, affirms that the dwellers of the zone made telephone calls prior to the facts requesting help from the Popa battalion in Valledupar, where they answered the first call, yet not the successive ones that were made asking for aid. Petitioner affirms that the trucks passed by police stations with no one checking on them. She holds that there was never a thorough investigation as to the origin of the trucks that transported the members of the AUC. Additionally, informs that the State knew of the situation of special vulnerability of the inhabitants of the zone and surroundings since denunciations had been formulated years before⁵. They add that in spite of the claims reported and the fact that they were made prior to the attack, there was no action to prevent the facts.

3. The Petitioner holds that the day of the massacre, the paramilitary group commenced simultaneous actions of terror and barbarity that concluded with the extrajudicial execution of 12 persons, among men, women and a teenager. The homicides were barbarically performed before the sight of the dwellers, including children. Petitioner narrates that the alleged victims were tied; some taken out of their

⁵ The Petitioner claims that the Coronado family filed claims for threats from the AUC received against them in 1997 and 1998. She holds that on September 8, 1997 Mr. Eulises Coronado Vidales reported before the Central Inspection of Police of the Astrea-Cesar Municipality, the threats he had been subjected to from the paramilitaries. On April 6, 1998, five members of the Coronado family reported before the Operative Unit of the CTI of the General Prosecutor of the Nation in Astrea-Cesar, the threats from the paramilitary group against them. On January 17, 2000, members of the AUC attacked the Astrea municipality and killed four people; such municipality is located approximately 5 minutes for the township of Santa Clara.

homes half-naked and using a dog to attack some of them; next they were shot with a rifle. Likewise, claims that the paramilitary group kept the inhabitants of Santa Cecilia fenced, keeping them from running away. They were all abducted and many of them were taken to a small soccer field, where the AUC murdered a large number of victims. Meanwhile, another member of the paramilitary group entered into the households of the villagers forcing the residents to make food for them; they consumed all they had, while the outrages, tortures and other murders continued. Also, claims that the paramilitaries consumed domestic animals, looted the stores and stole a quantity of beef cattle. Exemplifying the situation of terror to which the villagers were subject, the Petitioner describes that Mr. Humberto Marin Polo, who was 60 years old, was murdered after having witnessed the humiliations against his daughter Luz Aida Marin Pertuz and that upon asking that he be killed in exchange; he was attacked by a dog which tore off part of his face and after this attack his daughter was murdered and then him. She also indicates that the girl O.O.M, who was 15 years old, was raped by the paramilitaries.

4. The Petitioner claims that, as a result from the aforesaid facts, the survivors of the massacre were forced to relocate internally on account of fear of future of additional acts of violence. This also in light of what happened to the soldier Javier Enrique Estrada Navarro, official of Astrea-Cesar, who on February 1, 2000 on a television program, denounced the facts of the massacre of Santa Cecilia and asked for the State's help to assist the displaced population, being murdered by the AUC⁶ a few days later. Informs that, upon such situation of extreme vulnerability, nearly 300 persons during the following days moved to the municipalities of Astrea and Chimichagua in search of protection and support. She affirms that due to the lack of support from the State, the alleged victims scattered toward different cities such as Valledupar, Barranquilla and Bogotá. In this context affirms that the State violated the right to a dignifying life, humane treatment, free movement and residence, private property, rights of the family and rights of the child, since due to the massacre the survivors had to move from their place of residence to be protected, depriving them from having continuity on their life projects, disregarding the children's welfare; plus, the displacement caused them psychological torture and brought forth such panic that it forced the alleged victims to abandon their homes; and generated the loss of all of their belongings. In addition, the Petitioner claims that the State violated women's rights, since the girl O.O.M was sexually assaulted. Likewise, it is affirmed that the State violated the rights to a fair trial and judicial protection since it did not investigate nor punish and those responsible for the massacre and the forced displacement, apart from not ensuring the rights to truth, justice and reparation. Due to absence of attention from the State, the return of the alleged victims took place in order to retrieve some of their assets. The petitioner affirms that the returned population is currently facing new risks.

5. Concerning the proceeding of justice and peace, the Petitioner affirms that the Prosecutor's office investigated and indicted Mr. Esquivel Cuadrado under the crimes of aggravated homicide, larceny and aggravated theft in 2007. Also, holds that on May 27, 2011, the Criminal Court of the Specialized Circuit of Decongestion of Valledupar sentenced Mr. Esquivel Cuadrado for the murders of the massacre, except for the homicide of the alleged victim Luis Alberto Peñaloza Lafaurie. The decision was appealed and on March 15, 2012, the Criminal Chamber of the Higher Court of Valledupar declared the nullity of the proceeding, establishing that Mr. Esquivel Cuadrado had to be sentenced also for the homicide of Mr. Peñaloza Lafaurie. On March 8, 2013, el Criminal Court of the Specialized Circuit of Valledupar ignored the decision of the Higher Court of Valledupar and communicated the sentence rendered against Mr. Esquivel Cuadrado for the facts of the massacre remained firm. On the other hand, the petitioner adds that Mr. Luis Francisco Robles Mendoza (hereinafter Mr. "Robles Mendoza") was sentenced on July 11, 2014 and Mr. Victor Manuel Hernández Ramos (hereinafter el "Mr. Hernández Ramos") was sentenced on February 11, 2016. Likewise, claims that in the sentence against "Salvatore Mancuso Gómez and others", the victims were neither subscribed nor notified.

⁶ The Petitioner affirms that Mr. Jhon Jairo Esquivel Cuadrado (hereinafter "Mr. Esquivel Cuadrado"), leader of the AUC, confessed in the proceeding of Justice and Peace that three turbo trucks with the paramilitary members of the AUC departed from Publi Nuevo-Magdalena passing by police stations such as the one in Pueblo Nuevo. Following that route, until reaching Santa Cecilia, they passed outside the Police Station of Arjona and by a military post guarding the mina of coal mine of la Loma. Also, he confessed having committed other massacres in the region of the department of el Cesar: on August 18, 1999 a massacre in the township of San Roque, where 6 persons died and the families and neighbors of the victims were forcefully displaced; on September 21, 1999 a massacre in the township of Casacraca, where 6 persons died and the villagers were forcefully displaced; on October 11, 1999 a massacre in the township of Estados Unidos, where 6 persons died and the township dwellers were forcefully displaced; on October 18, 2000 a massacre in the township of Estados Unidos, where 6 persons died and the township dwellers were forcefully displaced. Likewise, holds that within the Proceeding of Justice and Peace, Mr. Rodrigo Tovar Pupo recognized, in July 2007, having ordered the Santa Cecilia massacre, and that he is currently extradited to the United States under charges of drug dealing.

Adds that Mr. Luis Francisco Robles Mendoza (hereinafter Mr. “Robles Mendoza”) was sentenced on July 11, 2014 and Mr. Victor Manuel Hernández Ramos (hereinafter el “Mr. Hernández Ramos”) was sentenced on February 11, 2016, which means, 14 and 16 years after the massacre. Therefore, claims that after 18 years of the massacre, the facts remain in impunity since there was no investigation on the intellectual authors, the alleged victims were not redressed and their condition of displaced has not been left behind. In conclusion, the petitioner affirms that Law 128 of 2003 (Law of Justice and Peace) and Law 975 of 2005, are counter to the American Convention, since they do not allow the authors of the crimes to be held responsible in accordance with the severity of the crimes committed.

6. On its part, the State, on its first writ, affirms that a proceeding took place under Law 975. It holds that, the General Prosecutor of the Nation, informed that the indicted Salvatore Mancuso and Oscar José Ospino Pacheco mentioned the facts concerning the Massacre of Santa Cecilia. Also, on November 20, 2014, the Constitutional Chamber of Knowledge of Justice and Peace of Bogotá sentenced Mr. Lester M González for the homicide, torture, destruction and appropriation of protected assets and deportation, expulsion, displacement o forced displacement of the alleged victims. Such sentence was confirmed on second instance by the Supreme Court of Justice on October 24, 2016. Likewise, the State holds that the facts of the massacre were also attributed to Mr. Esquivel Cuadrado on January 18, 2010. Due to this, a hearing of Legalization of Charges was held on August 22, 2012, which was developed on several stages and that was awaiting the appointment of a new date for its continuation. It affirms that within the procedural actions, the families of the alleged victims participated and formulated questions to the indicted. On the other hand, on its second writ, the State holds that the petition of the Petitioner is intended to assess the alleged responsibility of the State exclusively concerning the alleged forced displacement, so that all other facts are to be considered exclusively as context of such violation.

7. In regard to the reparation of the facts of the massacre and of the displacement, the State affirms that the alleged victims received humanitarian assistance, provided by the Social Solidarity Network and by the Unit for the Attention and Integral Reparation of the Victims. In such sense, claims that the following persons filed a request of administrative reparation and are included in the Consolidated Registry of Victims and that they were granted measures of assistance consisting of humanitarian aid: (i) families of Mr. Eulises Coronado García and Mr. Eulises Coronado Vidal are included by forced displacement occurred on March 6, 2000 and received \$10.690.000 Colombian pesos, which was paid in full on April 23, 2015; (ii) family of Mr. Humberto Marín Polo, victim of homicide, are included by the homicide and received \$ 15.295.000 Colombian pesos; (iii) families of Ms. Luz Aida Marín and Humberto Marín Polo, are included by forced displacement and received \$ 1.425.000 Colombian pesos; (iv) Mr. Néstor Antonio Ortega and their families are included by the homicide occurred on February 28, 2000, and received \$ 2.070.000 Colombian pesos for humanitarian assistance, and \$ 12.241.673 Colombian pesos on account of administrative reparation; (v) Mr. Ernesto Ortega Iturriago and his family are included by the homicide occurred on February 28, 2000, and received humanitarian assistance and the corresponding payment for administrative reparation; (vi) Ms. Rosa Elvira Quintero and her family are included by the homicide occurred on January 28, 2000, and received humanitarian assistance and the corresponding payment for administrative reparation; (vii) Mr. Libardo Ortega Durán and his family are included by the homicide occurred on January 28, 2000.⁷ Also, holds that the case of the

⁷ The Commission observes that the documentation submitted by the parties allows to conclude that the following alleged victims, among which there are boys and girls, were certified in the Consolidated Registry of Displaced Population: Aldo Jose Blando Madrid, Ana Dominga Hernandez Mejia, Andres Camilo Coronado Nevado, Angely Dayana Gutierrez Arce, Barbara Madrid Macea, Carlos Alfredo Mejia Carrascal, Carmen Alicia Garcia Larios, Cesar Julio Villalobos Ospino, Dagne Dailleth Mejia Parody, Daniela Maria Garcia Ayala, Dario Jose Villalobos Hernandez, Darwin Daniel Villalobos Hernandez, Deiner Jose Garcia Martinez, Deyny Rosa Hernandez Mejia, Diego Armando Echeverria Aguilar, Diomaris Nevado Silva, Doralis Villalobos Hernandez, Elias David Coronado Nevado, Enis Esther Carrascal Caro, Esther Farides Macea Rocha, Evangelina Macea Rangel, Geomar Toro Cantillo, Heiner Aguilar Hernandez, Hilda Maria Macea Morales, Ignacio Macea Rocha, Ilianis Carolina Villalobos Hernandez, Isabel Eugenia Coronado Cantillo, Isella Carolina Echeverria Aguilar, Jesus Alberto Macea Rocha, Jesus Manuel Garcia Martinez, Jesus Manuel Mejia Parody, Johan Said Villalobos Aguilar, Johana Soledad Aguilar Hernandez, Jose Antonio Macea Rocha, Jose Daniel Mejia Navarro, Jose Luis Coronado Cantillo, Jose Manuel Aguilar Hernandez, Juan Alejandro Camacho Pineda, Juan Andres Camacho Rocha, Juan Antonio Blanco Hernandez, Juan Bautista Camacho Buelvas, Juan Carlos Blanco Meyer, Juan Carlos Garcia Larios, Juan of Dios Camacho Rocha, Karen Paola Macea Rocha, Karina Isabel Coronado Cantillo, Ligia Garcia Ayala, Linda Marcela Toro Cantillo, Luis Javier Gutierrez Arce, Luisa Fernanda Cantillo Garcia, Luz Mademi Aguilar Perez, Madeynis Blanco Meyer, Mainer Jose Villalobos Hernandez, Malenis Aguilar Hernandez, Manuel Jose Garcia Ayala, Maria Cayetana Buelvas Martinez, Maria Isabel Rojas Aguiar, Maria Jose Garcia Martinez, Marisol Maestre Marin, Marnen Lorena Parody Iturriago, Mauricio Garcia Larios, Mell Yineth Villalobos Aguilar, Milibeth Martinez Aguilar, Nacor Coronado Cantillo, Olga Paola Mejia Carrascal, Oriol Aguilar Blanco, Oscar Eduardo Navarro Ramirez, Ramiro Mejia Rangel, Rosa Angelica Navarro Ramirez, Sandra Marcela Mejia Navarro, Sorelis Mejia Carrascal,

Community of the Santa Cecilia Township was included in the Consolidated Registry of Victims as subject of collective reparation on September 22, 2014, and was at the time, in phase of implementation of the Integral Plan of Collective Reparation.

8. As for the claim that the responsibility of the State stems from its acquiescence, permissiveness and support to the paramilitary action, the State affirms that the petition is unfounded. It holds that in the present case there is no proof that point to the fact that the individuals that perpetrated the threats had acted in connivance with members of the Public Force, and because the petition has no elements to assign responsibility to the State, since the Petitioner does not provide evidential elements which allow to establish the alleged acquiescence, tolerance or complicity of State officials upon the facts. It affirms that, although it is stated that the direct alleged victims reported threats against their integrity, such denunciations dated back to 1997 and 1998, 3 and 2 years prior to the facts, which is why it is impossible to affirm that the claims had the capability to alert the State of the facts that would take place in 2000. It also claims that it is not possible hold that the State had knowledge that the facts may materialize either and that, in spite of this, was omissive, tolerant o acquiescent with the perpetrators. As for the claims that military and police authorities had prior information to contain the action of the United Self-Defense Forces of Colombia, the State once again asserts that the Coronado family filed claims for the alleged threats received against them in 1997 and 1998, 3 and 2 years before the facts. Due to the aforesaid, concludes that there is no international responsibility of the State, since the facts were directly perpetrated by non-state groups, since the conditions are not met to assign such responsibility. Additionally, affirms that once the investigative body knew of the situation, it conducted the investigations pursuant to clear out the facts and to prevent future harm, honoring the duty of due diligence in the investigation. It points out that during the days of the massacre no units of the Battalion of Artillery No. 2 of la Popa attended, because the troops were developing operations of military control of areas in other sectors of its jurisdiction (Valencia of Jesús and Bosconia), and there were troops with specific missions in the jurisdiction of the municipality of Pueblo Bello.

9. Also, the State holds that domestic remedies have not been exhausted. In relation with Criminal Jurisdiction, affirms that the General Prosecutor of the Nation initiated an investigation of the facts pursuant to the clarification of the facts and punishment of those responsible. Claims that the dispatch of the 13th Specialized Prosecutor shows that there are statements from multiple presential witnesses, whom under oath narrated the circumstances in which paramilitary incursion took place, pointing out that the armed group was comprised by approximately forty or fifty uniformed men belonging to the AUC. During the course of the investigation nine members of the AUC were linked, several of which are demobilized who accepted their participation in the facts, which is why the prosecutor proceeded with the afterward indictment and forwarding of the casefile for judging. It affirms that due to the massacre Jhon Esquivel Cuadrado, Víctor Manuel Hernández and Luis Francisco Robles were sentenced.

10. The State affirms that on January 29, 2000, the Technical Corps of the General Prosecutor of the Nation inspected the bodies of the alleged victims. It holds that on May 30, 2000 it ordered to open the previous investigation of the facts; on October 9, 2000, the inquiry was opened along with the involvement of Mr. Jhon Jairo Esquivel Cuadrado, Mr. Benedicto Estupiñán Solano, Mr. Francisco Prieto Mesa, Mr. Alfonso Ospino Vilora.

11. In regard to the investigations and proceeding versus Mr. Esquivel Cuadrado (el Tigre), the State affirms that the Specialized Prosecutor of the National Unit of Human Rights and Humanitarian Law of Bogotá declared the investigation against him open on May 30, 2000; on October 24, 2000, he denied his participation in the facts, however, on November 2, that same year, he was preemptively detained, without the benefit of release, as coauthor of the crime of aggravated homicide. On April 23, 2002 the closure of the investigation regarding Mr. Esquivel Cuadrado was decreed, determining that it was subject to reposition by dispatch by the Prosecutor on September 13, 2002 in advance for the homicide of Mr. Alberto Peñaloza Lafourie. For this reason, Mr. Esquivel Cuadrado was heard again and, on November 2, 2000, preemptive detainment was imposed upon him as coauthor of larceny and aggravated theft on homogeneous cumulative charging, precluding the criminal action for the crime of conspiracy to commit a crime and on January 2, 2006, it was resolved that he be accused for the crimes of aggravated homicide and of aggravated theft. On May 17,

Sugeis Aguilar Hernandez, Victor Manuel Media Mendez, Yanurys Esther Parea Rocha, Yeferson David Mejia Carrascal and Yofrael Mejia Garcia.

2011, the Deputy Criminal Court of the Specialized Circuit of Decongestion, based in Valledupar, sentenced Mr. Esquivel Cuadrado to 38 years and 3 months of prison and the payment of moral damage in favor of the alleged victims and their successors. In such decision, there was reference to the statements and testimonies provided by the alleged victims (Albeiro Durán Bolaños, Ángel Miguel Coronado García, Ramona Leonor of the Hoz, Patrona Marín Polo, Nora Quintero Rizo, Roquelina Garcia Herrera, Leanis Coronado García, Esteban Durán, Berenice Pallares Navarro and Osmani Ortega Rojas).

12. The State affirms that the preclusion on of the investigation was ordered on February 14, 2005 in favor of Francisco Prieto Meza for the crime of conspiracy to commit a crime and of Benedicto Estupiñán Solano due to his death. Also, the reopening of the inquiry against Alfonso Ospino Vilora was revoked. Likewise, the linkage of Mr. Rodrigo Tovar Pupo (hereinafter “Mr. Tovar Pupo”), general commander of the Northern Block of the AUC, was ordered on November 22, 2007 before the, at the time, National Delegate Prosecutor for Justice and Peace, where he assumed his responsibility for the investigated facts. On December 9, 2008, the Specialized 13th Prosecutor determined his preemptive detainment as coauthor of the crimes of aggravated homicide and aggravated theft. It holds that on February 19, 2010, the partial closing of the investigation was decreed concerning Mr. Tovar Pupo and on February 17, 2012, he was accused for the crimes of aggravated homicide and aggravated theft.

13. In regard to the proceeding versus Mr. Víctor Manuel Hernández Ramos (hereinafter “Mr. Hernández Ramos”), the State holds that he decided to take the benefit of anticipated sentence. His preemptive detainment was ruled on March 22, 2012, and on September 6, 2013 the brief qualified on merits, rendering an indictment against him. Therefore, on February 11, 2016, the Criminal Court of the Specialized Circuit of Valledupar, declared him criminally responsible for the crimes of aggravated homicide in cumulative charging with aggravated theft.

14. As for the investigations and proceeding against Mr. Oscar José Ospino Pacheco (hereinafter “Mr. Ospino Pacheco”), the State holds that his linkage to the investigations of the facts was ordered on February 29, 2012, he was heard in a proceeding and expressed his desire to take the benefit of an anticipated sentence; on March 26, 2012, Mr. Ospino Pacheco was preemptively detained for the crimes of aggravated homicide and aggravated theft. The investigation was provisionally suspended pursuant to article 22 of Law 1592 of December 21, 2012.

15. Likewise, the State holds that on December 12, 2012 was the linkage of Mr. Luis Francisco Robles Mendoza (hereinafter “Mr. Robles Mendoza”), Ms. Claudia Patricia Covalada Velásques (hereinafter “Ms. Covalada Velásquez”), Edelmira Esther Pérez Méndez (hereinafter “Ms. Pérez Méndez”) and Víctor Manuel Hernández Ramos (hereinafter “Mr. Hernández Ramos”), issuing for the three latter the corresponding orders of capture. On his part, Mr. Robles Mendoza was heard on May 30, 2013, and a precautionary measure was rendered against him on June 17, 2013 and he expressed his desire to take the benefit of an anticipated sentence for the crimes of aggravated homicide and aggravated theft. On June 11, 2014, a sentence was issued against Mr. Robles Mendoza, where the co-authorship of Mr. Luis Francisco Robles was also admitted. Mr. Robles Mendoza was sentenced to 28 years of imprisonment and the payment of moral damage in an amount of 200 minimum monthly wages to the heirs of the alleged victims. On her part, Ms. Pérez Méndez was heard on March 13, 2013, and on March 26, 2014, the 13th Specialized Prosecutor refrained from imposing a precautionary measure against her for the investigated facts. As for Ms. Covalada Velásquez, on April 22, 2014 she was acknowledged as absent responsible of the crimes of aggravated homicide and aggravated theft; on January 21, 2014 she was preemptively detained, and on May 10, 2016 she was accused as coauthor of such crimes. In regard to these investigations, the State holds that they are at a trial stage at the Criminal Court of the Specialized Circuit of Valledupar. On his part, Mr. Hernández Ramos was accused for the crimes of aggravated homicide and aggravated theft.

16. In addition, the State points out that the sentences had not been enforced. However, holds that the General Prosecutor of the Nation, the National Unit of Human Rights, the Transitional Justice conducted diligent efforts in an aim to identify and individualize those responsible of the facts, which is why the criminal investigation was moved forward in compliance with duty of due diligence. Likewise, holds that the families of the victims would not become parties to the proceeding, in order to know and participate actively in its acts.

17. Regarding the ordinary criminal investigation concerning the investigations of the forced displacement, the State holds that the Petitioner provides no evidential material which allows to infer that

conducts of forced displacement, sexual violence, torture and other behavior cited in the claim had taken place. There is no element of proof either which points to the alleged participation of members of the Public Force in the massacre.

18. Regarding the early proceeding in the jurisdiction of Justice and Peace, the State claims that the right to justice supposes the victims' access to jurisdictional activity to achieve that those responsible of the crimes be investigated, judged and punished, as well as to know the truth and obtain reparation. In the context of transition, the rights to justice, truth and reparation must be analyzed upon the pursuit of national reconciliation, long-lasting and stable peace. In such sense, holds that the purpose of Law 975 of 2005 is that the punishments of those prosecuted under this regime be subjected to a less rigorous criminal jurisdictional proceeding than on ordinary legislation, provided they collaborate with the victims and with the administration of justice; additionally, it privileges the judicial proceeding as main mechanism to obtain the truth.

19. The State holds that in December 2013 a precautionary measure was imposed by the Magistrate of Control of Judicial Guarantees and Peace of Bucaramanga on Mr. Salvatore Mancuso and Mr. Ospino Pacheco. On November 20, 2014, they were sentenced for homicide, torture, destruction and appropriation of assets and deportation, expulsion, relocation or forced displacement of the civil population. such decision was confirmed on October 24, 2016 by the Supreme Court of Justice. Also, holds that proceedings against Mr. Rodrigo Tovar Pupo and of the Ms. Claudia Patricia Covleda are at a trial stage, and that there is an ongoing investigation against Mr. Esquivel Cuadrado. The State holds that, therefore, the National Unit of Human Rights of the General Prosecutor of the Nation has been diligent in investigating the facts.

20. Likewise, the State holds that the reasonable timeframe was observed and that there was no unjustified delay, since the National Unit of Human Rights of the General Prosecutor of the Nation was diligent. It claims that the investigation of the case holds an elevated complexity, considering the facts took place within the armed conflict and in a zone in which several armed actors related with el conflict or with common crime operated, which demanded several lines of investigation, since over 9 people are involved in the acts. Finally, the State holds that the action for direct reparation before the Contentious-Administrative Jurisdiction was not exhausted. In light of the above, claims that on January 28, 2016, a public act of commemoration took place prepared by the community with the performance of symbolic actions and recognition of the murdered victims; Likewise, on January 29, 2016 an informative note related to the victimizing facts of Santa Cecilia was published in the webpage of the National Center of Historic Memory (hereinafter "el CNHM")⁸, and on November 24, 2016 the CNHM proceeded with the official handingover of the commemorative plate by the community.

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

21. The Petitioner holds that exhaustion of domestic remedies is not demandable, since in the case the exceptions foreseen in article 46.2 of the American Convention are applicable. She claims that the facts were committed by nearly 80 paramilitaries, but only one was captured and that person was not sentenced by ordinary justice. Likewise, over five years have elapsed and investigations of all crimes committed have not progressed, since Mr. Esquivel Cuadrado was solely prosecuted for homicide and theft. Holds that the Prosecutor's office did not investigate the facts of torture, abduction, forced displacement, destruction of assets, illegal carrying of weapons, terrorism, attacks against freedom or rape. Holds that no proceedings of extension nor domain over the assets of the alleged victims has been initiated. Also, claims that there was no investigation either on the military agents who allowed and facilitated the facts.

22. The State holds that domestic remedies have not been exhausted, since the General Prosecutor of the Nation initiated investigations to clarify the facts and punish those responsible. Also, indicates that the action for direct reparation was not exhausted, which is an effective and proper remedy to repair the damages occurred as a consequence of the facts, omissions or operations attributable to the Colombian State. Holds that the families of the alleged victims were beneficiary of the administrative reparation which Law 418 of 1997 and Law 1448 of 2011 contemplate.

⁸ Available at: <http://www.centrodehistoriahistorica.gov.colnoticias/noticias-cmh/16-anos-de-la-masacre-de-santa-cecilia> and <http://www.centrodehistoriahistorica.gov.colcentro-audiovisuallvideos/la-masacre-de-santa-cecilia>.

23. Regarding the criminal investigations for the massacre, the Commission takes note that, according to the information submitted by both parties, nearly 80 persons are involved in the massacre and in the violations to humane treatment, private property of the alleged victims. Nonetheless, the Commission observes that only four persons (Mr. Esquivel Cuadrado, Mr. Robles Mendoza and Mr. Hernández Ramos and Ms. Covalada Velásquez) were sentenced for homicide and aggravated theft, and that Ms. Pérez Méndez and Mr. Hernández Ramos were linked to the investigations. In regard to the other responsible and with the intellectual authors, no proceedings nor investigations before Ordinary Justice were initiated. Before the jurisdiction of Justice and Peace, only five investigations commenced until 2016 and there is no sign that such investigations have been concluded. Regarding the decisions of courts of Justice and Peace, for being directly related with the analysis of the alleged violation of articles 8 and 25, the IACHR shall analyze the scope of them at a merits stage.

24. Also, regarding the allegations of acts of torture and sexual crimes committed by third parties, the Commission observes that the facts were reported, but, to this date there are no investigations on such facts. Therefore, in virtue of the characteristics of the present case, the Commission considers that the exception of the exhaustion of domestic remedies foreseen in article 46.2.c of the American Convention⁹ is applicable.

25. In regard to the facts of forced displacements, the IACHR takes note that such facts started near year 2000 and that the State had the obligation of initiating an investigation on that crime. Likewise, regarding forced displacement, the Commission holds that the forced displacement constitutes a crime, and the remedy to be filed in order to consider this requirement exhausted is the criminal complaint. In the present case, the Commission observes that the investigation commenced in 2000 and, at the time of last communication by the parties, eighteen years later, was still unsolved¹⁰. Consequently, the IACHR concludes that the exception to the exhaustion of domestic remedies is applicable, in accordance with what article 46.2.c of the Convention¹¹ stipulates.

26. Finally, with respect to the action for direct reparation, the Commission holds that, in cases of massacres, homicide, sexual violence, forced displacement, that remedy would not address the main allegation presented in this petition, concerning the lack of due diligence in the investigation, prosecution and punishment of those responsible. In this sense, the Commission has held on numerous occasions that the proceeding of direct reparation initiated in the Contentious-Administrative Jurisdiction does not constitute a suitable remedy in order to analyze the admissibility of a complaint of the nature of the present one, since it is unfit to provide integral reparation and justice for the families¹².

27. Also, the IACHR is to consider in the merits the reparations granted to the Community of the township of Santa Cecilia (as recognition of subject of collective reparation; the staging of a public act prepared by the community with the realization of symbolic actions and recognition of the murdered victims; the publication in the CNHM webpage of an informative note in relation with the facts; the official handover of a commemorative plate requested by the community). Notwithstanding the above, the Commission reiterates that, in order to determine the admissibility of a complaint such as the present one, it does not conform the suitable path nor is it necessary to exhaust it, since it is not adequate to provide integral reparation and justice to the families. That being said, the IACHR concludes that in the present case the exception to the exhaustion of domestic remedies foreseen in article 46.2.c of the American Convention is applicable.¹³

28. In the present case, the petition was received on January 6, 2011, and the facts matter of complaint initiated in January 2000, and the effects of the facts subject to these claims would extend to the present, which is why the IACHR concludes that the petition was filed within a reasonable time and considers the requirement set forth in article 32.2 of the Rules of Procedure as fulfilled.

⁹ IACHR, Report No. 25/17, Petition 86-12. Admissibility. Brisa Liliana of Angulo Losada. Bolivia. March 18, 2017, para.9.

¹⁰ IACHR, Report No. 27/17, Petition 1653-07. Admissibility. Forceful Displacement in Nueva Venecia, Caño El Clarín and Buena Vista. Colombia. March 18, 2017, para.10.

¹¹ IACHR, Report No. 39/18, Petition 196-07. Admissibility. José Ricardo Parra Hurtado, Félix Alberto Páez Suárez and families. Colombia. May 4, 2018, para.12.

¹² IACHR, Report No. 71/17, Petition 271-07. Admissibility. Jorge Luis of the Rosa Mejía and others. Colombia. June 29, 2017, para. 49.

¹³ IACHR, Report No. 14/17, Petition 1197-08. Admissibility. José Rubián Gómez Martínez, Rolfe Arialdo Figueredo Martínez, Miguel Novoa Martínez, Alcira Martínez Álvarez and families. Colombia. January 27, 2017, para.6.

VII. ANALYSIS OF COLORABLE CLAIM

29. The Commission observes that the present petition includes allegations as to the acquiescence and tolerance by State officials in the massacre occurred in the township of Santa Cecilia committed by the paramilitary group AUC, since military and police authorities had become aware of threats suffered by the alleged victims and had facilitated the commute of the paramilitaries by the posts of the army and police stations. Such situation generated the death, torture, sexual violence, loss of assets of the alleged victims, and entailed the latter forced displacement of nearly 300 persons. Likewise, the Commission considers that such petition includes allegations regarding of protection by the State upon threats received, the alleged lack of protection by the State of Colombia for the displacement; and the lack of investigation and punishment of all those responsible. Also, the petition presents claims as to the affectation of the massacre and of the displacement in the private life of the alleged victims, in children and in the right to movement.

30. In view of these considerations, and after examining the factual and legal elements set forth by the parties, the IACHR considers that the petitioner's claims are not manifestly unfounded and require a study on the merits, since the alleged facts, if corroborated, may characterize violations of rights established in articles 4 (life¹⁴), 5 (humane treatment), 6 (freedom from slavery), 7 (personal liberty), 8 (fair trial), 11 (right to privacy), 15 (assembly), 19 (rights of the child), 21 (private property), 22 (freedom of movement and residence), 25 (judicial protection) and 26 (progressive development) of the American Convention in relation to its articles 1.1 (obligation to respect rights) and 2 (obligation to abide by domestic legal effects) and article 7 of the Convention of Belém do Pará.

31. The Commission still considers that taking into account the multiple, complex and continuous nature of the displacement of persons, in particular the one concerning the direct affectations that derived from it on the rights to free movement and residence, housing and humane treatment as well as the uprooting which may present itself in social and cultural terms, the claims concerning this phenomenon may characterize possible violations of articles 5 (right to humane treatment), 22 (freedom of movement and residence) and 26 (progressive development) of the American Convention in a jointly and interconnected manner.

32. However, as for the freedom of association, the right of assembly, right to participate in government, right to equality, the Commission observes that the Petitioner raises claims in general terms, for example, does not indicate in which sense was the evidence against the alleged victim illegally attained, which is why the IACHR does not identify, *prima facie*, the characterization of possible violations to the American Convention¹⁵.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 4 (life), 5 (humane treatment), 6 (freedom from slavery), 7 (personal liberty), 8 (fair trial), 11 (right to privacy), 15 (assembly), 19 (rights of the child), 21 (private property), 22 (freedom of movement and residence), 25 (judicial protection) and 26 (progressive development) of the American Convention in relation to its articles 1.1 (obligation to respect rights) and 2 (obligation to abide by domestic legal effects) and article 7 of the Convention of Belém do Pará;

2. To find the instant petition inadmissible in relation to Articles 16 (freedom of association), 15 (assembly), 23 (right to participate in government), 24 (equality before the law) of the American Convention; and

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

Approved by the Inter-American Commission on Human Rights on the 12th day of the month of December, 2020. (Signed): Joel Hernández, President; Antonia Urrejola, First Vice President; Flávia Piovesan,

¹⁴ IHR Court, Case of Loayza Tamayo Vs. Peru. Reparations and Costs. Sentence of November 27, 1998. Serie C No. 42, para.16

¹⁵ IACHR, Report No. 14/18, Petition 1057-07. Admissibility. Thelmo Reyes Palacios. Mexico. February 24, 2018, para.11.

Second Vice President; Margarete May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, Julissa Mantilla Falcón, and Stuardo Ralón Orellana, Commissioners.