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REPORT No. 101/20
PETITION 760-10
REPORT ON ADMISSIBILITY

ZOILO DE JESÚS ROJAS ORTIZ Y FAMILIA
COLOMBIA

Approved by the Commission electronically on April 24, 2020.

Cite as: IACHR, Report No. 101/20, Petition760-10. Admissibility. Zoilo de Jesús Rojas Ortíz and family. Colombia. April 24, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner:	'José Alvear Restrepo' Lawyers' Collective Corporation (CAJAR)
Alleged victim:	Zoilo de Jesús Rojas Ortiz and Family
Respondent State:	Colombia
Rights invoked:	Articles 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial) and 25 (judicial protection) of the American Convention on Human Rights ¹ and Article I of the Inter-American Convention on the Forced Disappearance of Persons ²

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition:	May 24, 2010
Notification of the petition to the State:	May 23, 2016
State's first response:	November 10, 2016
Additional observations from the petitioner:	December 2, 2017
Additional observations from the State:	October 4, 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 (instrument deposited on July 31, 1973) and CIDFP (instrument deposited on April 12, 2005)

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

Duplication of procedures and International <i>res judicata</i>:	No
Rights declared admissible	Articles 3 (right to juridical personality), 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial rights) and 25 (judicial protection) of the American Convention, in connection with Article 1.1 thereof, and Article 1 of the CIDFP
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, the exception of Article 46.2.c of the ACHR is applicable
Timeliness of the petition:	Yes, under Section VI

SUMMARY OF FACTS ALLEGED

1. The petition is about the illegal detention by military troops and the alleged forced disappearance of Mr. Zoilo de Jesús Rojas Ortiz (hereinafter "the alleged victim"), as well as the lack of judicial protection. The petitioners assert that in December 1982, as Mr. Zoilo de Jesús Rojas Ortiz was going about his regular business as a farmer in the settlement of San José de la Fragua, in the Department of Caquetá, he was detained by military troops belonging to the Tarquí Battalion. They assert that the detention took place in front of witnesses, who advised the family about the events. They claim that the family members of the alleged victim

¹ Hereinafter "the American Convention" or "the Convention."

² Hereinafter "CIDFP" from its Spanish language initials.

³ The observations submitted by each party were duly transmitted to the opposing party.

set out to search for him the next day at said military facility, but they were told that Mr. Rojas Ortiz had been released the night before. They argue that, from that time on, in other words, as of December 1982, the alleged victim continues to be missing and his family members have no information about his whereabouts or about what happened to him.

2. Petitioners note that the family filed for declaration of presumed death on November 12, 1986, and the death was declared proven in a judgment of June 29, 1989 and upheld by the Superior Court of the Civil Chamber of Florencia on October 23, 1989.

3. Petitioners claim that on August 6, 2007, the alleged victim's wife asserted her right of petition to the Sectional Prosecutor's Office of Belén de los Andaquíes, requesting information about any investigation opened into the incidents. They note that said entity reported on September 18, 2007, that it did not find any investigation into the disappearance of Mr. Rojas Ortiz, and that the National Human Rights and Humanitarian Law Unit gave the same response on October 4, 2007.

4. Petitioners argue that on November 19, 2007, the Office of the Prosecutor opened a preliminary investigation and the on October 8, 2008, it issued an order to suspend the investigation on the grounds that not enough essential evidence had be collected. They emphasize that over the few months that the aforementioned investigation lasted, the alleged victim's family members were not contacted by the authorities. They claim that no petition for a writ of habeas corpus was filed, because at the time of the events, Colombian law required that the location of the detainee be identified and, whenever possible, the names of the authorities that had carried out the detention. To the petitioners' understanding, this would amount to a requirement that makes it impossible to protect rights. They contend that the crimes remain in impunity as of the present day, inasmuch as there have been no effective investigations to identify the perpetrators and state authorities have not taken the necessary measures to determine the whereabouts of the alleged victim.

5. For its part, the State argues that the petition is inadmissible because the petitioners did not exhaust available domestic remedies. It claims that habeas corpus, as it was regulated at the time, was adequate and effective, inasmuch as it was the paramount instrument available to ensure liberty and that nothing stood in the way of the alleged victim's family members to pursue it. Additionally, it contends that the petitioners did not file a claim for direct reparation, as an adequate means to determine State responsibility for the alleged human rights violations.

6. Lastly, regarding the criminal investigation, it argues inadmissibility on the grounds of the fourth instance formula as a manifestation of the principle of the supplementary or subsidiary nature of the Inter-American human rights protection system. It explains that once the State became aware of the facts, on November 19, 2007, the Office of Sectional Prosecutor 13 of Belén de los Andaquíes opened the investigation, and on September 26, 2008 ordered the collection of evidence. It notes that despite the investigative efforts described above, on October 8, 2008, a decision was made to archive the proceedings. It thus claims that the investigation that was conducted was terminated under a ruling, that is consistent with the Convention.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

7. The petitioners argue that the instant case must be exempt from the requirement of prior exhaustion of domestic remedies because of unwarranted delay and ineffectiveness of habeas corpus. In response, the State claims that the remedies provided for in domestic law, such as habeas corpus and the claim for direct reparation were not exhausted.

8. The Commission has established that when crimes are committed that involve a violation of the right to life and physical integrity, once the State becomes aware of them, it has the obligation to promote and move forward a criminal proceeding and that such a proceeding is the suitable means to clarify the facts and establish the appropriate criminal punishment, in addition to providing for other possible means of reparation of a pecuniary nature. Thus, in the instant case, the Commission notes that the first report of the alleged disappearance of Mr. Rojas Ortiz was brought to the attention of the State through the process of filing for a declaration of presumed death by his family members on November 12, 1986. Additionally, the State

authorities became aware of the events through a note submitted by the alleged victim's wife on August 6, 2007 to the Sectional Prosecutor's Office of Belén de los Andaquíes, in response to which an investigation proceeding was opened. Nonetheless, the Commission takes into account that this investigation was archived on October 8, 2008 under an order of suspension for lack of evidence and as of the present date the facts have not been elucidated. It is also noted that the State did not provide the necessary information to determine whether or not the investigation and the subsequent decision to suspend it satisfied *prima facie* due diligence requirements. Therefore, the Commission concludes that, because there has been unwarranted delay of domestic remedies, the exception provided for in Article 46.2.c of the American Convention must apply.

9. Additionally, as for the direct reparation proceedings before the administrative claims court, the Commission has repeatedly held that that this means is not a suitable remedy for the purpose of assessing the admissibility of a claim of this nature,⁴ given that it is not adequate to provide full redress, which includes clarification of the facts and justice for the family.

10. As for the timeliness of the petition, the Commission understands that such an analysis must take into consideration the continuous nature of forced disappearance.⁵ In the instant case, the alleged disappearance of Mr. Ortiz reportedly occurred in December 1982 and as of the present date it has not been effectively investigated nor have those responsible been prosecuted and punished. Consequently, due to the continuous nature of forced disappearance couple with the unduly delay in the criminal investigations, the IACHR concludes that the petition was received within a reasonable time and considers the requirement have been satisfied.

VII. COLORABLE CLAIM

11. In view of the arguments of fact and law put forward by the parties and the nature of the matter, the Commission finds that the facts alleged by the petitioner are not manifestly groundless and warrant an examination on the merits and, if proven, the alleged illegal detention by military troops and the alleged forced disappearance of Mr. Zoilo de Jesús Rojas Ortiz, as well as the lack of judicial protection, could tend to establish violations of the rights enshrined in Articles 3 (right to juridical personality), 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial) and 25 (judicial protection) of the American Convention in connection with Article 1.1 thereof; as well as Article I of the Inter-American Convention on the Forced Disappearance of Persons, because of the continuous nature of the crime of forced disappearance and the alleged failure to investigate it, to the detriment of the alleged victim and his family.

VIII. DECISION

1. To declare admissible this petition in relation to Articles 3, 4, 5, 7, 8 and 25 of the American Convention in connection with Article 1.1 thereof, and Article I of the Inter-American Convention on the Forced Disappearance of Persons;

2. To notify the parties of this decision; to continue with the analysis of 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 24th day of the month of April, 2020. (Signed): Joel Hernández, President; Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, and Stuardo Ralón Orellana, Commissioners.

⁴ IACHR, Report No. 66/19. Petition 338-09. Admissibility. Guillermo Rivera Fúquene and Family. Colombia. May 5, 2019, paragraph 16.

⁵ IACHR, Report No. 5/11, petition 702-03, Admissibility, Iván Rocha, Brazil, March 22, 2011, para. 40; IACHR, Report No. 45/05, Petition 712-04, Admissibility, Renato Ticona Estrada et al (Bolivia), October 15, 2005, paragraph 39.