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**REPORT No. 58/24**  
**PETITION 215-14**  
REPORT ON ADMISSIBILITY

EDIMER BUSTOS, LUIS ALFONSO JIMÉNEZ BENITO AND RELATIVES  
COLOMBIA

Approved electronically by the Commission on May 21, 2024.

**Cite as:** IACHR, Report No. 58/24. Petition 215-14. Admissibility. Edimer Bustos,  
Luis Alfonso Jiménez Benito and relatives. Colombia. May 21, 2024.

## I. INFORMATION ABOUT THE PETITION

<b>Petitioner:</b>	Walter Raul Mejia Cardona
<b>Alleged victim::</b>	Edimer Bustos, Luis Alfonso Jiménez Benito and relatives
<b>Respondent State:</b>	Colombia <sup>1</sup>
<b>Rights invoked:</b>	Articles I (Right to life, liberty and personal security), V (Right to protection of honor, personal reputation, and private and family life), VIII (Right to residence and movement) XI (Right to the preservation of health and to well-being), and XVIII (Right to a Fair Trial) of the American Declaration of the Rights and Duties of Man <sup>2</sup> ; Articles 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial) and 11 (Right to Privacy) of the American Convention on Human Rights <sup>3</sup> ; Article 14 of the International Covenant on Civil and Political Rights.

## II. PROCEEDINGS BEFORE THE IACHR<sup>4</sup>

<b>Filing of the petition:</b>	February 19, 2014
<b>Additional information received at the stage of initial review:</b>	January 31, 2017
<b>Notification to the State:</b>	September 30, 2019
<b>State's first response:</b>	July 13, 2020
<b>Additional observations from the petitioner:</b>	June 23, 2020; July 21, 2020; Monday, September 21, 2020,
<b>Additional observations from the State:</b>	May 19, 2021; August 16, 2023

## III. COMPETENCE

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

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

<b>Duplication of procedures and International <i>res judicata</i>:</b>	No.
<b><i>Rights</i> declared admissible:</b>	Articles 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), 11 (Right to Privacy) and 25 (Right to Judicial Protection) of the American Convention, in conjunction with its Article 1.1 (Obligation to respect rights).
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, Article 46(2)(c) in the terms of Section VI
<b>Timeliness of the petition:</b>	Yes, in terms of Section VI

<sup>1</sup> In accordance with 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 in the decision on this matter.

<sup>2</sup> Hereinafter "the American Declaration" or "the Declaration."

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

<sup>4</sup> The observations submitted by each party were duly transmitted to the opposing party.

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## V. PARTIES' POSITIONS

### *The petitioner*

1. The petitioner denounces the extrajudicial execution of Edimer Bustos and Luis Alfonso Jiménez Benito, as well as the failure to investigate and punish those responsible and the consequent suffering of their relatives in the context of the so-called "false positives".<sup>5</sup>

2. According to the petitioner, on July 28, 2011, the alleged victims were subject to extrajudicial execution by members of the Colombian National Army using bursts of rifles while they were aboard a boat in Puerto "El Mamon" along with other passengers, where everyone died on the spot.

3. The petitioner refers to the news portal "El Pais Vallenato", which in its July 29, 2011 edition reproduced statements by German Brigadier General Saavedra Prado-Commander of the Tenth Armored Brigade of the Colombian National Army. According to him, the soldiers who participated in the execution were trying to capture members of the criminal gang "Los Rastrojos", active in the area. The report mentions that five alleged members of the band were killed, three of them identified as Luis Alfonso Jimenez Benito, Jose de la Paz Villarreal Toloza and Emiliano Florez Gomez. The military suspected that the victims and the others on the boat were members of the gang. The Commander added that, as these people showed resistance to be captured and shot at the troops, the military reacted immediately.

4. However, the petitioner contends that Luis Alfonso Jiménez Benito and Edimer Bustos were merchants, not members of such band and were unarmed at that moment. Jimenez Benito was on vacation and Bustos invited him to visit the wetland El Zapatin.

5. With regard to the domestic proceedings, the petitioner indicates that the Military Criminal Justice, which belongs to the jurisdiction of the Tenth Armored Brigade of the National Army, initiated criminal proceedings for the execution of the victims. However, the families of Jiménez Benito and Bustos did not receive information on the progress of the investigation, the prosecution of those responsible or the details of the criminal proceedings.

6. In addition, the petitioner claims that Maricel Osorio Carrillo and Luz Dany Pedraza, the spouses of Jiménez Benito and Bustos respectively, addressed a letter to the Attorney General's Office (Procuraduría General de la Nación) on October 31, 2011, requesting not to carry out the investigation through the military criminal justice system but through the ordinary justice system. They sent a copy to the Human Rights and International Humanitarian Law Unit of the National Public Prosecutor's Office (Fiscalía General de la Nación). However, they allegedly received no reply.

7. On the other hand, the petitioner refers to Ruling No. 11001010200020120014000 of the Higher Council of the Judiciary-Disciplinary Chamber. This ruling concerns the investigation of the murder of Edimer Bustos, Luis Alfonso Jimenez Benito, José de la Paz Villarreal Toloza, Emiliano Flores Gomez and Ciro Antonio Saravia Martinez, accusing seven members of the Public Forces: "N. E. C. C.", "D. H. G. S.", "B. T. C.", "L. F. E.", "R. G. P.", "E. Y. C. N." and "M.J. C. B." On June 6, 2012, the Disciplinary Chamber assigned the case to the Ordinary Jurisdiction, represented by the Second Specialized Section Prosecutor's Office of Valledupar. The latter informed the spouses of the alleged victims that the arraignment hearing had taken place on May 31, 2019, where the seven defendants were charged with the crime of homicide of a protected person in a crime spree.

8. The petitioner indicates that, according to information from the Attorney General's Office, progress has been made in the criminal process, including the indictment of the material authors, who are awaiting trial. However, due to transitional justice rules, the preventive detention warrant was suspended

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<sup>5</sup> In Colombia, a series of extrajudicial executions of civilians committed by state security forces who are then presented as combat casualties are known as 'false positives'. In this regard see: IACHR, Truth, Justice and Reparation: Fourth report on the situation of human rights in Colombia, 31 December 2013, paragraphs 21, 122 et seq.

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pending the decision of the Special Jurisdiction for Peace (JEP).

9. With regard to Administrative Jurisdiction, the relatives of the alleged victims filed a complaint on 11 April 2013. On May 15, 2013, the Oral Court 1 of Valledupar admitted the lawsuit. Following a conviction in first instance against the State, the latter appealed, and the case was transferred to the Administrative Court of the Department of Cesar-Valledupar, which took it up in April 2017.

10. On September 23, 2021, the Court rendered a judgment that overturned that of first instance, acquitting the Ministry of Defense-Colombian National Army and sentencing the plaintiffs to pay costs after concluding that the alleged victims were criminals who attacked the security forces.

#### *Position of the State*

11. The State indicates that, according to the report of Commander Pedro Fortull, Lieutenant Colonel Alvaro William Zaraza Naranjo, at 13:20 hours on July 28, 2011, in Puerto Mamon, located in the municipality of Tamalameque (Cesar), the "DANTA 44" army section executed the operational order "Javalina 32." During this operation, there was an armed confrontation with men from criminal gangs. The officers report that, upon announcing their arrival, the members of these gangs started the fire, forcing the troops to respond in the same way.

12. The State confirms that, following the events, the Technical Investigation Body of the National Public Prosecutor's Office initiated the relevant investigations, including the disposal of dead bodies and the collection of evidence at the crime scene. Among the deceased, the technical staff identified Emiliano Florez Gomez, Luis Alfonso Jimenez Benito, Jose Paz Villarreal Toloza, Edimer Bustos and Ciro Antonio Sanabria Martinez.

#### *Disciplinary process*

13. Pursuant to a ruling issued on July 29, 2011, The Energy and Road Battalion No. 3 General "Pedro Fortull" ordered Messrs "N. E. C. C.", "D. H. G. S.", "L. F. E.", "B. T. C." and "E. Y. C. N." the opening of preliminary inquiry No. 04-2011 for the facts denounced. Subsequently, these proceedings were forwarded on the grounds of competence to the Commander of the Tenth Armored Brigade of the National Army by virtue of the Ruling of February 24, 2012, who acknowledged receipt by means of Filing Number 005/20127.

14. By means of Written Notice No. 013484 of December 30, 2013, the Tenth Armored Brigade of the National Army informed the Regional Attorney's Office of Caesar of the archiving of this investigation as of April 1, 2013. However, by order of 16 April 2012, the Office of the Regional Attorney of Magdalena referred the complaint lodged by Maricel Osorio Carrillo and Luz Dany Pedraza to the Office of the Regional Attorney of Cesar. On November 15, 2013, the latter institution ordered the opening of Preliminary Inquiry No. 2013-405737 and/or 2013-4848865, for the alleged irregularities committed in the operation where Messrs. Luis Alfonso and Edimer Bustos died to the above-mentioned soldiers.

15. The Office of the Regional Attorney of Magdalena, by ruling of 28 February 2014, referred the above-mentioned proceedings to the Office of the Delegate Attorney for the Military Forces. This body, in turn, sent these proceedings to the Office of the Delegate Attorney for Human Rights since the complaint referred to alleged violations of human rights and International Humanitarian Law.

16. Finally, the Office of the Delegate Attorney for the Defense of Human Rights, in a decision of 24 June 2020, decided to suspend the present proceedings on the grounds of the prevailing competence and powers granted to the JEP to hear this matter.

#### *Military and ordinary criminal jurisdiction*

17. The State mentions that the Military Criminal Investigation Court No. 90 of Valledupar,

through the Ruling of August 16, 2011, included Captain “N. C. C.”, Corporal Second “E. Y. C. N.”, the Second Sergeant “B.T.C.”, the professional soldiers “L.F. E.”, “D.H. G. S.”, “R.G. P.” and “M.J. C. B.” in the investigation. In parallel, within the ordinary courts the national authorities initiated investigations under the Crime Report no. 200016001086201100353 aimed to clarify the events of 28 July 2011.

18. On January 17, 2012, the First Municipal Court with Supervisory Powers of Valledupar held a hearing of conflict of jurisdiction, with representatives of the Second Specialized Prosecutor’s Office of Valledupar and the Fifteen Brigade Court of the same city. Thus, on 5 June 2012, the Disciplinary Jurisdictional Chamber of the Higher Council of the Judiciary decided to assign the competence of the investigation to the ordinary courts.

19. On June 19, 2012, Military Criminal Investigation Court No. 90 transferred the file of Case No. 1795 to the Second Specialized Prosecutor’s Office of Valledupar on grounds of the competence. On May 31, 2019, the Second Municipal Criminal Court with Supervisory Powers of Valledupar held an arraignment hearing where the defendants “N. E. C. C.”, “D. H. G. S.”, “B. T. C.”, “L. F. E.”, “R. G. P.”, “E. Y were advised of their charges. C. N.” and “M.J. C. B.” were charged with the crime of homicide in a protected person in a crime spree.

20. As of July 12, 2021, the investigation activities were suspended in this case, because the Juridical Situation Definition Chamber of the JEP took over the matter.

*Special Jurisdiction for Peace (JEP)*

21. The State reports that the defendants requested their submission to the JEP. The following chart, prepared by the IACHR, presents a summary of the procedural information presented by the State with respect to six of the defendants. –The State did not submit information with respect to the defendant N. E. C. –

<b>Defendant</b>	<b>Alleged facts</b>
<b>D. H. G. S.</b>	D. H. G. S. requested for submission to the JEP by petition of November 23, 2018. Through Resolution 3324 of 12 July 2021, the Chamber for the Definition of Legal Situations accepted the application by the prevailing jurisdiction. Subsequently, through Resolutions 3325 of July 12, 2021 and 27 September 2022, it recognized Karol Jimenez Osorio, Karen Nayiber Bustos Pedraza, Lennis Alejandro Bustos Pedraza, Maricel Osorio Carrillo and Luz Danny Pedraza Diaz (relatives of the alleged victims) as indirect victims. On 18 May 2023, the Chamber requested, in its decision No. 1535, to require appearing D. H. G. S. to immediately comply with Resolution No. 56 issued on January 12 of this year, in which he was ordered to align his commitment in a clear and programmed manner in the context of the “truth” component of this case.
<b>B. T. C..</b>	B. T. C., by written request, expressed its intention to benefit from the JEP. On September 24, 2019, by means of Distribution Record No. 0046, the procedure was assigned to the office of Judge Juan Ramon Martinez, who through Resolution No. 6261, of October 7, 2019, took cognizance of the matter and ordered the following: (i) to request the Director of National Army Personnel to certify the periods during which B.T.C. had worked for the institution and in what positions, (ii) request the Directorate of the Military Detention Centre of the National Army to specify whether the applicant was deprived of his liberty, among other matters.
<b>L. F. E.</b>	On 23 November 2018, L.F.E. applied for submission to the JEP to the Chamber for the Definition of Legal Situations. The Chamber took cognizance of this request by Resolution No. 432 of January 28, 2020. In addition, in this ruling, he requested the practice of some evidence in order to have the necessary inputs for a decision on the competence of this jurisdiction. Through Resolution No. 1532 of 18 May 2023, the Chamber decided to accept, on the grounds of prevailing jurisdiction, the facts that are analyzed in this international proceeding.

<b>R. G. P.</b>	On 23 November 2018, R.G.P. applied to the Chamber for the Definition of Legal Situations for submission to the JEP. In Resolution No. 0207 of 17 January 2020, Judge Claudia Rocio Saldanya Montoya assumed jurisdiction over the affair and ordered additional proceedings before rendering a decision.
<b>E. Y. C. N.</b>	On November 22, 2018, E. Y. C. N. requested the Chamber for the Definition of Legal Situations to be submitted to the JEP. Through Resolution No. 4956, of September 18, 2019, the Chamber took cognizance of the action, ordering the applicant to submit his proposal to align his commitment in a concrete, clear and programmed manner, in accordance with the purposes of the Comprehensive System of Truth, Justice, Reparation and Non-Repetition. On November 1, 2019 E. Y. C. N. raised his proposal. On August 30, 2022, by Resolution No. 3186, the Chamber accepted the submission of E. Y. C. N. for the facts under analysis before this jurisdiction.
<b>M. J. C. B.</b>	M.J. C. B.'s request for submission to the JEP was accepted by Resolution No. 2599 of 7 June 2019.

22. According to the State, though Ruling 033 of February 12, 2021, the Chamber for the Recognition of Truth, Responsibility and Determination of Facts and Conducts (SRVRDHC) made public the internal prioritization strategy for Case 03 “Murders and forced disappearances presented as casualties in combat”, starting with the sub-cases Antioquia, Meta, Costa Caribe, Norte de Santander, Huila and Casanare. The State argues that the prioritization of the mentioned sub-cases does not imply that other units, territories, periods or sub-cases will not be addressed later. Through Ruling OPV 305 of July 14, 2023, the SRVRDHC made public the prioritization of the national investigation phase in Case 03. He explained that the approach adopted in the first stage of the investigation of Case 03, through Ruling 033 of February 12, 2021, allowed him to identify macro-crime patterns that took place simultaneously, concurrently or in a complementary manner in each department. In the same ruling, he also acknowledged that the various acts of determination of facts and conduct issued in each of the subcases coincide in pointing out that the murders presented as being killed in combat responded to common patterns of macro-crime that were executed by criminal organizations located in the military territory units, and that the research hypothesis consists in these patterns not only responding to the same territorial logic in each department, but also having a national scope.

23. Regarding the specific facts of the petition, these were known to the SRVRDHC, according to the report submitted by the Office of the Attorney General’s Office on investigations related to the armed conflict, the inventory annexed by the National Public Prosecutor’s Office and the applications for accreditation, as indirect victims, of the relatives of the alleged victims. Through Ruling OPV-139 of April 15, 2021, the SRVRDHC recognized Karen Nayiber Bustos and Lennis Alejandro Bustos as victims and as intervenors in Case 03. In addition, through Ruling OPV-185, of May 6, 2021, Karol Michel Jimenez was also admitted as an intervenor. Finally, through Ruling OPV-386 of September 20, 2021, Maricel Osorio Carrillo and Luz Danny Pedraza were included.

24. According to the State, once the SRVRDHC concludes the investigation of Case 03, it must issue a resolution with the conclusions. Given that JEP continues to make progress in relation to the macro-case, it is necessary to wait for SRVRDHC to issue its findings and refer it to the first instance section of the Special Jurisdiction for Peace, in cases of Recognition of Truth and Responsibility.

#### *Administrative jurisdiction*

25. The State also reports that the relatives of Edimer Bustos filed an action for direct reparation against the Nation (Colombian National Army) for the death of Edimer Bustos and Luis Alfonso Jiménez Benito, requesting that the State be declared responsible for administrative and patrimonial matters. On December 5, 2016, the First Administrative Court of Valledupar, in Filing No. 20001333300120120021700, convicted the State and held it responsible for the damages caused. This decision was the subject of an appeal by the defendant before the Administrative Court of Cesar. On 23 September 2021, this Court decided to overturn the

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judgment in its entirety. He pointed out that based on a joint analysis of all the evidence, it may be concluded that the actions of the military personnel who participated on the day of the incident were reasoned and proportionate in response to the illegitimate conduct of the persons who were victims of the military operation.

26. The applicant filed an action for protection of constitutional rights against the decision issued by the Administrative Court of Caesar on the grounds that his rights to due process, access to the Administration of Justice, among others, had been violated. On June 17, 2022, the Third Section, Subsection C, of the Council of State of Colombia decided to declare this request for constitutional amparo inadmissible, stating that the decision in question was not arbitrary or capricious. It also reiterated that this mechanism was not an additional legal recourse to the ordinary process aimed to dispute the decisions of a natural judge. On October 21, 2022, the Third Section, Subsection A, of the Council of State of Colombia decided to uphold the judgment of first instance rendered by the same institution.

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

27. The State argues that the petition is inadmissible for failing to exhaust criminal jurisdiction. It states that a criminal investigation has been conducted diligently and within a reasonable time. The indictment against the seven members of the army investigated by the facts is noteworthy. It considers that the procedural delay is justified by the complexity of the case, as well as by the creation of the JEP in 2019 as an adequate and effective transitional justice mechanism. He stressed that the matter was still pending before the JEP. In parallel, it emphasizes the relevance of the action for direct reparations exhausted by the petitioner. Finally, it argues that domestic procedures have proven the existence of all guarantees for the adequate clarification of the facts and, where appropriate, the corresponding compensation of the victims. Moreover, it states that the petitioner has not demonstrated any of the exceptions to the exhaustion of domestic remedies.

28. The petitioner considers that the petition is admissible because there is an unwarranted delay in the domestic procedures. It contends that the action for direct reparation before the contentious administrative jurisdiction was filed in April 2013 and that no final judgment had been rendered until the last communication that he sent to the IACHR in December 2021. It also indicates that there has been little progress in criminal and disciplinary investigations to clarify what has happened, establish the respective sanctions, and provide adequate compensation to the victims, despite the fact that some military personnel involved in the events have already been convicted of criminal charges.

29. For the analysis of the exhaustion of domestic remedies in the instant case, the IACHR recalls that in cases in which claims are made for the death of persons and the resulting impunity, the appropriate remedy to be exhausted at the domestic level is the criminal proceeding, through the informal and diligent conduct of investigations to determine those responsible for the violation of the right to life and to subject them to prosecution and punishment in accordance with the American Convention;<sup>6</sup> this burden must be assumed by the State as its own legal duty and not as a management of private interests or depending on the initiative of the latter or on the provision of evidence by them.<sup>7</sup>

30. In the instant case, according to the information provided by the parties, the Commission observes that, after the death of the alleged victims in July 2011: i) Initially, the Military Criminal Justice System was in charge of the investigation of these events; however, on 5 June 2012, the investigation was transferred to the ordinary jurisdiction; (ii) the National Public Prosecutor's Office identified seven military personnel as the potential perpetrators; (iii) despite some progress, such as holding an arraignment hearing against the

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<sup>6</sup>IACHR, Report No. 13/ 22. Petition 1332-11. Admissibility. Orlando Hernandez Ramirez and next of kin. Colombia. February 09, 2022, paragraph 7; IACHR, Report No. 72/ 18, Petition 1131- 08. Admissibility. Moses de Jesus Hernandez Pinto and family. Guatemala. June 20, 2018, paragraph 10; IACHR, Report No. 70/14. Petition 1453-06. Admissibility. Maicon de Souza Silva. Renato da Silva Paixão et al. 25 July 2014, paragraph 18; Report No. 3/12, Petition 12.224, Admissibility, Santiago Antezana Cueto et al., Peru, January 27, 2012, paragraph 24; Report No. 124/17, Petition 21-08, Admissibility, Fernanda Lopez Medina et al., Peru, September 7, 2017, paragraphs 3, 9-11.

<sup>7</sup>IACHR, Report No. 13/ 22. Petition 1332-11. Admissibility. Orlando Hernandez Ramirez and next of kin. Colombia. February 09, 2022, paragraph 7; IACHR, Report No. 159/ 17, Petition 712- 08. Admissibility. Sebastian Larroza Velazquez and next of kin. Paraguay. November 30, 2017, paragraph 14.

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seven defendants, as of July 12, 2021, the investigation activities were suspended in this case, because the JEP Juridical Situation Definition Chamber took over the case; (iv) the case is still pending before the JEP.

31. In its recent jurisprudence on admissibility, the Inter-American Commission analyzed similar cases where domestic remedies are still pending before the JEP or have been suspended because of the mere creation of the JEP many years after the events occurred. In this regard, the Commission concluded that the exception of unwarranted delay must be applied, since the requirement of exhaustion of domestic remedies cannot be such as to delay indefinitely the access of the alleged victims to the Inter-American System.<sup>8</sup>

32. Thus, taking into account the foregoing, and the fact that the process considered as a whole has passed for more than twelve years since the deaths of the alleged victims occurred without a court ruling or punishment of those responsible, the IACHR concludes that there is an unwarranted delay in the adoption of a final decision at the domestic level, so the exception provided for in Article 46(2)(c) of the American Convention is applicable.

33. In this regard, the Commission firstly reiterates, as done before, that Article 46(2), given its nature and purpose, is a norm with autonomous content vis-à-vis the substantive provisions of the Convention. Therefore, the determination as to whether the exceptions to the rule of exhaustion of domestic remedies are applicable to the case in question should be made prior to and separate from the analysis of the merits, as it depends on a different standard of evaluation than that used to determine whether Articles 8 and 25 of the Convention were violated. The IACHR has also pointed out that there are no specific provisions in the Convention or Rules of Procedure that define the length of time that constitutes “unwarranted delay,” meaning that the Commission evaluates each case to determine whether a delay exists.<sup>9</sup> Along these lines, the Inter-American Court has established as a guiding principle the analysis of possible unwarranted delay as an exception to the rule of exhaustion of domestic remedies, that “*the rule of prior exhaustion must never lead to a*

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<sup>8</sup>IACHR, Report No. 239/ 23. Petition 467-12. Admissibility. Ernesto Cruz Guevara and next of kin. Colombia. October 20, 2023, para. 25 (“*The Inter-American Commission on Human Rights considers that the domestic remedy before the JEP, that is, the criminal proceeding of acknowledgment of truth and responsibility, has not been exhausted, and has prevented the decisions adopted in the ordinary justice system from becoming enforceable. Therefore, the Commission understands that the appropriate domestic remedy for cases of serious human rights violations is the criminal proceeding, and this has not been exhausted due to the initiation of a new proceeding before the JEP.*”); IACHR, Report No. 226/23. Petition 468-12. Admissibility. Omar Lizarazo Gaitero and relatives. Colombia. October 20, 2023, para. 37-38 (“*In the instant case, according to the information provided by the parties, the Commission observes that, following the death of the alleged victim in February 2007: i) Initially, the military criminal justice system took over the investigation of these events; however, on November 30, 2010, the investigation was transferred to the Office of the Prosecutor 61 specialized in Human Rights and International Humanitarian Law; [...] (iv) On July 17, 2018, the Chamber of Recognition of the JEP took cognizance of the case; (v) On 22 November 2022, the Chamber commenced the restorative process in preparation for a public hearing to recognize the respective truth and responsibility. Thus, taking into account the above, and the fact that the process considered as a whole has elapsed more than sixteen years since the death of Mr. Lizarazo Gaitero, the IACHR concludes that there is an unwarranted delay in the adoption of a final decision at the domestic level, therefore, the exception provided for in Article 46(2)(c) of the American Convention is applicable.*”); IACHR, Report No. 170/23. Petition 619-13. Admissibility. Héctor Quinceno Lopez and Family. Colombia. August 20, 2023, para. 17-18 (“*From the time of the commission of the crime in December 2000 to date, more than twenty-two years have passed without the identification, trial and punishment of all those responsible for the massacre that occurred in the city of Granada. In this regard, the Inter-American Commission recalls that the requirement of exhaustion of domestic remedies cannot be such as to delay indefinitely the access of the alleged victims to the Inter-American Human Rights System. Consequently, the exception to the rule of exhaustion of domestic remedies set forth in Article 46(2)(c) of the American Convention is applicable at this point of the petition. However, since December 2021, the State reports that the Special Jurisdiction for Peace (JEP) has carried out relevant activities in relation to the analysis of the events that occurred on December 6, 2000 in the city of Granada. However, it does not provide any additional information on the status of the investigation before the transitional justice system nor does it specify whether specific jurisdiction was assumed over this specific criminal investigation, what procedural or investigative actions the JEP has conducted in this case; whether the family members of the fatalities have been recognized as victims before the JEP; or in what time or procedural framework a decision can be envisaged in this case.*”); IACHR, Report No. 33/22. Petition 1394-12. Admissibility. Isnardo Leon Mendoza and family. Colombia. March 09, 2022, para. 27-28 (“*The State has alleged before the Commission that domestic remedies have not been exhausted, since in its opinion the criminal justice authorities, both ordinary and transitional, have acted diligently and continue to advance their investigations, without incurring an unwarranted delay. However, the IACHR observes that, taking into account the internal processes as a whole, more than sixteen years have elapsed in total since the commission of this grave crime against an absolutely innocent and defenseless peasant child, period after which the criminal proceedings initiated for his death or disappearance remain unfinished, without any person being formally charged as a possible perpetrator, much less judged or determined a fair sanction against all those responsible, material and intellectual. In this regard, the Inter-American Commission recalls that the requirement of exhaustion of domestic remedies cannot be such as to delay indefinitely the access of the alleged victims to the Inter-American Human Rights System. Therefore, the IACHR considers applicable, in the case under consideration, the exception to the rule of exhaustion of domestic remedies established in Article 46(2)(c) of the American Convention.*”)

<sup>9</sup>IACHR, Report No. 14/ 08, Petition 652- 04. Admissibility. Hugo Humberto Ruiz Fuentes. Guatemala. March 05, 2008, para. 68.



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*halt or delay that would render international action in support of the defenseless victim ineffective*".<sup>10</sup> In other words, in the Commission's view, the complementary nature of international protection provided for in the American Convention also implies that the intervention of the organs of the Inter-American System is timely so that it can have some kind of useful effect in the protection of the rights of alleged victims.

34. As to the reasonableness of the period within which this petition was lodged, in accordance with Article 32(2) of its Rules of Procedure, the IACHR concludes that it complies with this requirement, since the initial events occurred in 2011; the petition was lodged in 2014; and the effects of the alleged violations in terms of the alleged impunity would remain to this day.

## **VII. ANALYSIS OF COLORABLE CLAIM**

35. The State affirms that the petition is inadmissible in accordance with the provisions of Article 47(b) of the American Convention, by configuration of the fourth instance formula with regard to decisions taken within the jurisdiction of administrative disputes and judgments made by the constitutional authorities, which, according to the State, guaranteed due process and are duly substantiated.

36. For the purposes of admissibility, the Commission must decide whether the facts alleged may characterize a violation of rights, as stipulated in Article 47(b) of the American Convention, or whether the petition is "manifestly unfounded" or "manifestly out of order," according to Article 47(c) of the Convention. The criteria for evaluating these requirements differ from those used to rule on the merits of a petition. Thus, within the framework of its mandate, the Commission has the competence to declare a petition admissible if it refers to domestic proceedings that could violate rights guaranteed by the American Convention. In other words, in light of the aforementioned conventional rules, in accordance with Article 34 of the Commission's Rules of Procedure, the analysis of admissibility focuses on the verification of such requirements, which refer to the existence of elements that, if true, could *prima facie* constitute a violation of the American Convention.

37. In this case, the Commission observes that the main reclamation of the petitioner focuses on the deaths of Edimer Bustos and Luis Alfonso Jiménez Benito, the failure to investigate and prosecute the facts or grant full reparation to their families for the associated damages, including the loss of the death of the victim, in the context of the so-called "false positives".

38. The IACHR notes that a controversy persists regarding the submission of the case to the JEP and whether that jurisdiction can provide an appropriate and effective remedy to investigate and redress human rights violations resulting from the alleged extrajudicial executions, in accordance with international standards of the right of access to justice and the punishment of international crimes. On this issue, the Commission considers that the analysis of the arguments raised by the petitioner should be analyzed at the merits stage of this report.

39. In view of these considerations and after examining the factual and legal elements set forth by the parties, the Commission considers that the petitioner's allegations are not manifestly unfounded and require a study of the merits, since the facts alleged, if proven, they could characterize fundamental violations of Articles 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to Equal Protection), 11 (Right to Privacy) and 25 (Right to Judicial Protection) of the American Convention, in conjunction with its Article 1.1, to the detriment of Edimer Bustos, Luis Alfonso Jiménez Benito and his family members, in the terms of this report.

40. With regards to the fourth instance doctrine set forth by the State of Colombia, the Commission reiterates that it does not constitute a fourth instance that can make an assessment of the evidence regarding the possible guilt of the alleged victim in the instant case. However, it also reiterates that it is competent to declare a petition admissible and rule on its merits when the contested judgment may materially

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<sup>10</sup> Inter-American Court of Human Rights, *Velasquez Rodriguez v. Honduras*, Preliminary Objections, Judgment of June 26, 1987, para. 93.

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affect any right enshrined in the American Convention.<sup>11</sup>

41. With respect to the rights of the American Declaration invoked by the petitioner, the Commission has previously established that, once the American Convention enters into force in relation to a State, the latter, 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 does not refer to a situation of ongoing violations.<sup>12</sup>

42. Finally, with regard to the alleged violation of articles of the International Covenant on Civil and Political Rights, the Commission lacks competence with respect to such instruments, without prejudice to the fact that they may be used as a guideline for the interpretation of Convention obligations at the merits stage of the present case, in light of the provisions of Article 29 of the American Convention.

## **VIII. DECISION**

1. To find the instant petition admissible in relation to Articles 4, 5, 7, 8, 11 and 25 of the American Convention in conjunction with Article 1.1 thereof;

2. To notify the parties of this decision; to continue with the analysis of the merits of the case; 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 21<sup>st</sup> day of the month of May, 2024. (Signed:) Roberta Clarke, President; José Luis Caballero Ochoa, Second Vice President; Arif Bulkan, and Gloria Monique de Mees, Commissioners.

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<sup>11</sup> In a similar sense: Court IDH, Case of the “Street Children” (Villagran Morales et al.) vs. Guatemala. Merits. Judgment of November 19, 1999. Series C No. 63, para. 222, Inter-American Court, Moya Solis v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 03, 2021. Series C No. 425, para. 28; and Court of Human Rights, Manuela et al. v. El Salvador. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 02, 2021. Series C No. 441, para. 147, 12; Report No. 301/23. Petition 2044-13. Inadmissibility. Juan Carlos Betancur Tabares. Colombia. December 08, 2023, para. 26.

<sup>12</sup> IACHR, Report No. 180/ 18. Petition 1616-07. Admissibility. A.G.A. and family members. Colombia. December 26, 2018, para. 17.