UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 22-CV-60338-RAR

HELENA URÁN BIDEGAIN, *et al.*,

Plaintiffs,

v.

LUIS ALFONSO PLAZAS VEGA,

Defendant.
_____/

ORDER ON CROSS MOTIONS FOR SUMMARY JUDGMENT

In this case, the Court is tasked with analyzing Colombian law to determine whether Colombia's legal system affords victims of a dark episode in the country's history—la Toma del Palacio de Justicia (the siege of the Palace of Justice)—with an adequate remedy. This case comes before the Court nearly 40 years after this incident on November 6, 1985, when members of the Colombian guerilla group, M-19, stormed the Palace of Justice, holding the country's Supreme Court justices and many civilians hostage. As a result of the attack, hundreds were killed, including Plaintiffs' father, Magistrate Carlos Horacio Urán Rojas. Defendant is a former lieutenant colonel of Colombia's army that ultimately regained control of the building from M-19 but has been accused of torturing and killing Magistrate Urán during the military operation—following evidence uncovered in the decades after the upheaval.

Plaintiffs bring the instant action under the Torture Victim Protection Act ("TVPA"), which requires a plaintiff to exhaust remedies in the country where the alleged torture or extrajudicial killings occurred before a United States district court may consider the claims. To narrow the scope of discovery after denying Defendant's Motion to Dismiss, [ECF No. 56], the Court bifurcated the case to first address this threshold issue of exhaustion. The parties thereby

engaged in discovery on Plaintiffs' exhaustion efforts, retained Colombian law experts, and filed cross-motions for summary judgment.[1]

Now, this Court, pursuant to Congress's adoption of the TVPA, must police the legal and political practices of another country, including one that maintains a functioning judiciary.[2] The statute's text, and the Eleventh Circuit's encompassing interpretation of the TVPA, dictates the Court's conclusion that Defendant has not satisfied his substantial burden of establishing the existence of adequate and available remedies in Colombia. This decision will, inevitably, become a political tool for a foreign public, adding to the Court's discomfort in gauging the sufficiency of another country's legal system.

BACKGROUND

The Court first provides a brief background of the allegations in the Complaint—considering that facts have only been developed for determining whether Plaintiffs have exhausted adequate and available remedies in Colombia—and then reviews the four purported local remedies in dispute.

On November 6, 1985, armed M-19 guerillas stormed Colombia's Supreme Court complex in Bogotá, the Palace of Justice, and held approximately 300 people hostage. Compl. ¶ 41. "Over the next two days, the Colombian military, in response, engaged in a brutal retaking of the Palace of Justice that left the building largely destroyed and nearly [one] hundred civilians dead," including Colombian lawyers and judges who were in the Supreme Court complex. *Id.* ¶¶ 1–2.

[1] Defendant has filed a Motion for Summary Judgment ("Def.'s Mot.") [ECF No. 87], and Plaintiffs have filed their own Motion for Summary Judgment on Defendant's Affirmative Defense of Exhaustion of Remedies ("Pl.'s Mot.") [ECF No. 90]. Both Motions are now ripe for review. *See* Plaintiffs' Opposition ("Pl.'s Resp.") [ECF No. 101]; Defendant's Response in Opposition ("Def.'s Resp.") [ECF No. 102]; Plaintiff's Reply ("Pl.'s Reply") [ECF No. 111]; Defendant's Reply ("Def.'s Reply") [ECF No. 112]. Further, the Court allowed the filing of an Amicus Brief of Law Professors. [ECF No. 94]. Finally, the Court held oral argument on the Motions on June 14, 2024. [ECF No. 125].

[2] *See generally* Pl.'s Expert Rep., [ECF No. 90-27]; Def.'s Expert Rep., [ECF No. 87-1].

This case is about the torture and extrajudicial murder of one of those judges, Magistrate Carlos Horacio Urán Rojas, an Auxiliary Justice of the Council of State. *Id.* ¶ 2. Plaintiffs are three of Magistrate Urán's daughters. They bring this action pursuant to the TVPA, seeking compensatory and punitive damages against Defendant, Luis Alfonso Plazas Vega. Defendant Vega was a lieutenant colonel and the commander of the Colombian Army's 13th Brigade Cavalry School in Bogotá. In 2007, an investigation in Colombia uncovered evidence of Magistrate Urán's torture and execution. Compl. ¶ 99.[3] With this background, the Court outlines the facts relevant to Plaintiffs' efforts to exhaust remedies in Colombia.

On October 22, 1987, Plaintiffs' mother filed an Administrative Complaint on behalf of herself and her daughters against the Colombian government regarding the death of Magistrate Urán. Plaintiffs' Statement of Undisputed Material Facts ("PSOF") ¶ 8, [ECF No. 109]. On January 26, 1995, the Consejo de Estado, Sala de lo Contencioso Administrativo, Sección Tercera (Contentious-Administrative Chamber of the Council of State, Third Section) issued an administrative judgment, awarding $187,901.13 in damages to Magistrate Urán's family, including Plaintiffs. *Id.* ¶¶ 9–10. The administrative judgment, awarded pursuant to Article 90 of the Colombian constitution, did not assign liability to any individual actor. *Id.* ¶ 10. Plaintiffs have not initiated another Article 90 action. Defendant's Statement of Material Facts ("DSOF") ¶ 28, [ECF No. 89].

In 2005, the Colombian government began investigating the events connected to the Palace of Justice siege, and Defendant was among those investigated in Criminal Case No. 9755. PSOF ¶ 11. The 2007 investigation through Criminal Case No. 9755 led to evidence suggesting

[3] Initially, the Colombian Military denied ever having Magistrate Urán in its custody. Compl. ¶ 94. But in 2007, when the Colombian prosecutor's office searched the premises of the 13th Brigade, Magistrate Urán's belongings, including the contents of his wallet, were found hidden in a locked vault. *Id.* ¶ 96. That same year, video records and eyewitness testimony emerged indicating that Magistrate Urán exited the Palace of Justice alive. *Id.*

Defendant's involvement in Magistrate Urán's death. *Id.* ¶¶ 12–20. The prosecutor denied Plaintiffs' mother's request to be admitted as a civil party to Criminal Case No. 9755 because the allegations surrounding Magistrate Urán were distinct from the scope of Criminal Case No. 9755. *Id.* ¶ 21.

However, in 2008, the Colombian Prosecutor General opened a new case—now titled Case No. 8110 ("Urán Criminal Case")—to investigate Magistrate Urán's death, and Plaintiff's mother was admitted as a civil party. *Id.* ¶¶ 23, 25, 26. Plaintiffs Mairée Urán and Helena Urán Bidegain joined as civil parties in 2011 and 2020. *Id.* ¶¶ 30, 33. The prosecutor at the time named three individuals—not including Defendant—in the criminal investigation. *Id.* ¶ 30. Mairée Urán requested to link other officers (not including the Defendant) from the intelligence unit (B-2) of the Colombian Army's 13th Brigade to the investigation but was rebuffed. *Id.* ¶¶ 30, 31; Resolution, Case 8110 (Sept. 7, 2011), Ex. 23, [ECF No. 25]. The prosecutor reasoned that the investigation and prosecution against the named individuals must be adjudicated before Urán's request could be granted. *Id.* In 2021, Helena Urán Bidegain filed a petition requesting that the prosecutor issue a decision on the individuals under investigation. *Id.* ¶ 24. And, in February 2024, Plaintiff sought and obtained a status update from the Colombian prosecutors that indicates the preliminary investigation into the three linked individuals is ongoing, without providing any timeframe or substantive update. Def.'s Corrected Notice of Filing Supplemental Authority, Ex. A, [ECF No. 119-1] ("Feb. 22, 2024 Letter"). As such, the criminal investigation and proceeding regarding Magistrate Urán's death has not yet been resolved.

In 2014, the Inter-American Court of Human Rights ("IACHR") issued a judgment in "*Case of Rodríguez Vera (the Disappeared from the Palace of Justice) v. Colombia*," concerning the responsibility of the State of Colombia for extrajudicial killings, torture, and forced disappearances of individuals who were in the Palace of Justice in November 1985, including

Magistrate Urán ("IACHR Case"). *See* [ECF No. 90-11] ¶¶ 512–13. Finding the Colombian government liable for the torture and extrajudicial killing of Magistrate Urán, the IACHR Judgment ordered the Colombian government to pay damages to the victims, including Plaintiffs, and to investigate those responsible for Magistrate Urán's death. *Id.* ¶ 603.

Plaintiffs have not initiated a civil action pursuant to the Colombian civil code against Defendant. DSOF ¶ 25. However, in 2022, Plaintiffs brought this action pursuant to the TVPA. *See* Compl., [ECF No. 1]. The Court denied Defendant's Motion to Dismiss, concluding that the affirmative defense of non-exhaustion was suited for a motion for summary judgment. [ECF No. 56]; *see Jara v. Nunez*, No. 6:13-cv-1426-Orl-37GJK, 2015 WL 8659954, at *2 (M.D. Fla. Dec. 14, 2015) (noting that resolution of exhaustion of local remedies defense under TVPA is necessarily left for the stage in the proceedings where there is a complete evidentiary record).

Defendant now moves for summary judgment on the grounds that Plaintiffs have failed to exhaust four adequate and available remedies under Colombian law. *See generally* Def.'s Mot. Defendant maintains that each of the following processes affords Plaintiffs an adequate and available remedy against Defendant in Colombia: (1) a civil action, under the Colombian civil code; (2) an action through Article 90 of the Colombian constitution; (3) a victim-initiated expansion of an ongoing criminal case; and (4) civil reparations through the initiated criminal proceeding. Plaintiffs have also filed a partial Motion for Summary Judgment, requesting that the Court find they have exhausted their local remedies. *See generally* Pl.'s Mot.

LEGAL STANDARD

Summary judgment is rendered if the pleadings, discovery, disclosure materials on file, and any affidavits show there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law. *See* FED. R. CIV. P. 56(a), (c). An issue of fact is "material" if it might affect the outcome of the case under governing law. *See Anderson v. Liberty Lobby, Inc.*,

477 U.S. 242, 248 (1986). It is "genuine" if the evidence could lead a reasonable factfinder to find for the non-moving party. *See id.*; *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). At summary judgment, the Court views the evidence "in the light most favorable to the nonmoving party," *Stewart v. Happy Herman's Cheshire Bridge, Inc.*, 117 F.3d 1278, 1285 (11th Cir. 1997) (citation omitted), the moving party bears the burden of proving the absence of a genuine issue of material fact, and all factual inferences are drawn in favor of the non-moving party. *See Allen v. Tyson Foods, Inc.*, 121 F.3d 642, 646 (11th Cir. 1997).

The TVPA provides a cause of action to hold liable "[a]n individual who, under actual or apparent authority, or color of law, of any foreign nation—(1) subjects an individual to torture" or "(2) subjects an individual to extrajudicial killing." TVPA, Pub. L. No. 102-256, 106 Stat. 73 (1992) (codified at 28 U.S.C. § 1350, note, § 2(b)). The TVPA contains an "exhaustion of remedies" clause which states, "[a] court shall decline to hear a claim under this section if the claimant has not exhausted adequate and available remedies in the place in which the conduct giving rise to the claim occurred." *Id.* The TVPA exhaustion requirement "is an affirmative defense" for which the defendant bears a "substantial" burden of proof. *Jean v. Dorélien*, 431 F.3d 776, 781 (11th Cir. 2005).[4] "'Once the defendant makes a showing of remedies abroad which have not been exhausted, the burden shifts to the plaintiff to rebut by showing that the local remedies were ineffective, unobtainable, unduly prolonged, inadequate, or obviously futile.'" *Id.* at 782 (quoting S.Rep. No. 102-249, at 9–10).

As the Eleventh Circuit explains, the Senate Report to the TVPA makes clear that "[t]he ultimate burden of proof and persuasion on the issue of exhaustion of remedies [] lies with the

[4] The Eleventh Circuit relied on TVPA's legislative history to better assess the exhaustion requirement. *Id.* at 781. In light of this guidance, the Court follows suit here by considering the statute's legislative history in evaluating the cross motions for summary judgment on exhaustion.

defendant." *Id.* (citing *Wiwa v. Royal Dutch Petroleum Co.*, No. 96 CIV. 8386 (KMW), 2002 WL 319887, at *17 (S.D.N.Y. Feb. 28, 2002) ("Other courts that have considered the exhaustion defense have recognized that the legislative history of the TVPA indicates that the exhaustion requirement . . . was not intended to create a prohibitively stringent condition precedent to recovery under the statute.")); *see also Enahoro v. Abubakar*, 408 F.3d 877, 892 (7th Cir. 2005) ("[B]oth Congress and international tribunals have mandated that . . . doubts [concerning the TVPA and exhaustion are to] be resolved in favor of the plaintiffs."); *Barrueto v. Larios*, 291 F. Supp. 2d 1360, 1365 (S.D. Fla. 2003) (citing *Mehinovic v. Vuckovic*, 198 F. Supp. 2d 1322, 1347 n.30 (N.D. Ga. 2002)); *Wiwa*, 2002 WL 319887, at *17 (holding that defendant raising TVPA exhaustion defense did not meet initial burden of demonstrating that plaintiffs had not exhausted "alternative and adequate" remedies in Nigeria); *Cabiri v. Assasie–Gyimah,* 921 F. Supp. 1189, 1197 n.6 (S.D.N.Y. 1996) (noting that the legislative history of the TVPA indicates that the exhaustion requirement "was not intended to create a prohibitively stringent condition precedent to recovery under the statute"); *Xuncax v. Gramajo,* 886 F. Supp. 162, 178 (D. Mass. 1995) (holding that "when foreign remedies are unobtainable, ineffective, inadequate, or obviously futile," exhaustion pursuant to the TVPA is not required) (quoting S.Rep. No. 102–249 (1991) (internal quotations omitted)).[5]

Finally, the issue of exhaustion is one for the court, not for the jury. *Hilao v. Est. of Marcos*, 103 F.3d 767, 778 (9th Cir. 1996). Thus, the Court resolves all factual and legal issues relevant to exhaustion at this stage of the proceedings.

[5] While the TVPA and claims brought thereunder are "governed by its language, its legislative history, and general principles of domestic law," the exhaustion requirement presents the "rare occasion" where courts "*do* look to general principles of international law for guidance as to what a theory of liability or statutory definition requires, . . . *only* because the TVPA itself implicitly or explicitly incorporated those principles from international law." *Doe v. Drummond Co.*, 782 F.3d 576, 605–06 (11th Cir. 2015) (emphasis in original) (citing S.Rep. No. 102–249, at 10).

ANALYSIS

Defendant presents four local remedies that he argues are adequate and available for Plaintiffs to pursue in Colombia. Defendant relies on the report of his expert, the former President of the Colombian Supreme Court of Justice, Carlos Esteban Jaramillo. *See* [ECF No. 87-1] ("Jaramillo Rep."); [ECF No. 87-2] ("Jaramillo Rebuttal"). Plaintiffs' Motion and Response retort that each of these avenues is foreclosed or has otherwise been exhausted—relying on their own expert, Professor Nelson Camilo Sánchez Leon. *See* [ECF No. 90-27] ("Sánchez Rep."); [ECF No. 90-28] ("Sánchez Rebuttal"). Generally, Plaintiffs argue that Defendant has failed to carry his substantial burden of proof, pursuant to the TVPA's burden-shifting framework as outlined by legislative history. The Court agrees that Defendant has not carried his burden on the affirmative defense of non-exhaustion and addresses the adequacy and availability of each disputed local remedy in turn.

I. Colombian Civil Code

Defendant's expert opines that Plaintiffs could have filed a civil action—akin to a wrongful death suit—under Article 2341 of Colombia's civil code. Def.'s Mot. at 9. Plaintiffs admit that they have not pursued a standalone civil claim but explain that Plaintiffs' status as civil parties to the Urán Criminal Case precludes them from filing an independent action that is based on the same facts involved in the criminal proceeding. Pl.'s Resp. at 14.

Under Colombian law, civil parties to a criminal investigation cannot file an independent civil claim based on the same nucleus of facts as the criminal proceedings. Sánchez Rebuttal at 7–8. Defendant has not—nor has his expert—provided evidence to the contrary. Rather, he argues, to no avail, that the criminal investigation is not based on the same set of facts as the proposed civil action because the criminal case does not target Plazas Vegas. Def.'s Reply at 6. It is uncontroverted, however, that the criminal investigation pertains to the same set of facts as

the instant action and the proposed civil claim: the siege of the Palace of Justice, its retaking, and the ensuing acts that resulted in the death of Magistrate Urán.[6]

The Court is particularly persuaded by Plaintiffs' experts' explanation of Article 48 of Law 600 of 2000—the requirement to renounce the right to file an independent civil claim to become a party to a criminal case. Sánchez Rebuttal at 7–8 ("[O]nce a victim joins a criminal proceeding as a civil party they must renounce their right to file an independent civil claim that is tied to the same set of facts under investigation. Article 48 of Law 600 of 2000, which outlines the prerequisites for becoming a civil party to a criminal proceeding, explicitly requires a sworn statement, deemed to have been made upon the submission of the lawsuit, attesting that no prior proceedings have been initiated in civil jurisdiction with the intent of seeking redress for damages arising from the criminal offense.") (cleaned up).

Defendant retorts that Plaintiffs essentially slept on their rights, failing to bring suit between 1985 and 2011, when they were not parties to the criminal proceeding. Def.'s Resp. at 12–13. Plaintiffs explain that prior to 2007, Plaintiffs did not have information sufficient to allow them to participate in any civil or criminal proceeding because Colombian authorities led Plaintiffs to believe that their father died "inside the Palace of Justice, a victim of circumstance." Pl.'s Resp. at 13. But once the Colombian Prosecutor General opened a new case in 2008 to conduct a preliminary inquiry into the death, Plaintiffs were admitted as civil parties. PSOF ¶¶ 23, 25, 30, 33. Plaintiffs also allege that any purported civil action would be barred by the applicable statute of limitations, and thus, not adequate and available under the TVPA; their Rebuttal Expert Report explains that Article 2536 of the Colombian Civil Code conceives a ten-year statute of limitations for an independent civil claim, which has now expired. Pl.'s Resp. at 14 n.26; Sánchez Rebuttal

[6] Below, the Court discusses the impact of delays in the criminal proceeding on Plaintiffs' exhaustion status.

at 8 ("Even assuming that a direct civil claim was possible, which it was not, and that such a claim could be tolled until 2007, when the new evidence emerged, the statute of limitations for a direct civil claim would still have expired in 2017, when the criminal investigation into Magistrate Urán's murder remained open"). The Eleventh Circuit's reading of the TVPA's "adequate and available" requirement renders a remedy with an expired statute of limitations unavailable. *See Mamani v. Berzain*, 825 F.3d 1304, 1311 (11th Cir. 2016) (interpreting the exhaustion requirement through the plain language of the TVPA's text, declining to employ legislative history or common-law principles to bar plaintiffs who have successfully exhausted local remedies from filing suit under the TVPA); *Jara v. Nunez*, No. 6:13-cv-1426-Orl-37GJK, 2016 WL 2348658, at *4 (M.D. Fla. 2016) (finding a remedy in Chile unavailable because the statute of limitations had run).

Accordingly, the Court finds that Defendant has not shown that the Colombian civil code provides an available means of recovery for Plaintiffs.[7] Defendant's mere speculation that Plaintiffs *can* file a civil action—without regard for the aforementioned procedural barriers under Colombian law—is insufficient to overcome Defendant's substantial burden of proof when it comes to the affirmative defense of exhaustion under the TVPA.

[7] Plaintiffs' expert also explains how Colombia's Article 20 of Law 1448 and corresponding Colombian Supreme Court jurisprudence would bar recovery through a civil action due to the prohibition on "double compensation." As argued, this principle would limit Plaintiffs' ability to obtain monetary remedies from the proposed civil action where they have already received compensation from the Colombian government through an Article 90 award from 1995 and the IACHR judgment. PSOF ¶¶ 8–9, 38, 41–44; Sánchez Rep. at 16 ("Because double compensation is not permitted, for individuals, like Plaintiffs, who have already obtained compensation from the Colombian State for their harms, there are no remedies they can pursue in a direct civil action against an individual defendant."). While the Court is not persuaded—and Defendant's expert rejects—that recovery from the Colombian government is equivalent to recovery for actions by an individual to create a double recovery issue, the Court must resolve any "doubts concerning the TVPA and exhaustion . . . in favor of the plaintiffs." *Jean*, 431 F.3d at 781–82. Nevertheless, the Court need not address this issue given the presence of other obstacles preventing Plaintiffs from bringing an action under the Colombian civil code.

II. Article 90 of Colombia's Constitution

Defendant asserts that Article 90 of the Colombian constitution offers a local remedy for Plaintiffs against Defendant in the exercise of his official duties. Def.'s Mot. at 11. Plaintiffs respond that, under Article 90, victims can only seek remedies *against the government of Colombia itself*, not against the individual who committed the violation. Pl.'s Resp. at 6. The TVPA, by its plain language, provides recourse against individuals, not foreign governments, and a remedy against Colombia thus falls outside the scope of the statute's exhaustion requirement. *See* 28 U.S.C. § 1350(2)(a) (providing liability for "[a]n *individual* who, under actual or apparent authority, or color of law, of any foreign nation" commits torture or an extrajudicial killing) (emphasis added); *Mohamad v. Palestinian Auth.*, 566 U.S. 449, 456 (2012) (interpreting "individual" to encompass solely natural persons). Here, Plaintiffs' expert explains that Article 90 creates "administrative liability" for the government of Colombia. Sánchez Rebuttal at 3. Defendant has not provided sufficient factual or legal support to the contrary, and, therefore, the Court finds that Defendant is unable to meet his substantial burden to demonstrate that Article 90 is an available remedy for Plaintiffs to pursue in Colombia.[8]

To the extent pursuing an administrative remedy under Article 90 is applicable here, Plaintiffs previously sought and obtained said reparations from the Colombian government through Article 90 for the death of Magistrate Urán in 1995. PSOF ¶¶ 7–10; DSOF ¶ 18. Although the Colombian government awarded Article 90 damages prior to Plaintiffs' discovery of Defendant's alleged involvement in Magistrate Uran's death, Plaintiffs would be foreclosed from obtaining "double compensation" for the same underlying harm. *See* Sánchez Rebuttal at 6–7

[8] Defendant's expert report comments that the 1995 Article 90 judgment is unrelated to the present action as it was awarded prior to allegations of torture and extrajudicial killing—but does not rebut that an Article 90 claim is adverse to the Colombian government, not Defendant himself.

(citing Corte Suprema de Justicia [C.S.J.] [Supreme Court], Sala. Civ. febrero 15, 2021, M.P: A. Quiroz Monsalvo, Expediente SC282-2021, Rad. n 08001-31-03-003-2008-00234-01 (Colom.) at 44).[9] The Court further notes that the Eleventh Circuit has determined, based on the unambiguous text of the TVPA, that "§ 2(b)'s exhaustion requirement does not bar a TVPA suit by a claimant who has successfully exhausted her remedies in the foreign state." *Mamani*, 825 F.3d at 1311. Therefore, Plaintiffs' recovery from the Colombian government under Article 90 does not bar their TVPA claim for failure to exhaust. *Id.* at 1309–12.

III. Victim-Initiated Expansion of Criminal Case

Defendants maintain that Plaintiffs could have requested an expansion of a second Colombian criminal investigation into Magistrate Urán's disappearance, relying on Justice Jaramillo's report indicating that Plaintiffs "could have officially requested that the Defendants be linked to [the existing official criminal proceeding] so that the Defendant's possible culpability be included in the investigation." Def.'s Mot. at 13; Jaramillo Rep. at 7. The Jaramillo Report, however, does not offer insight into the mechanism—Colombian statute, court opinion, regulation, or policy, for example—for achieving this result. Nevertheless, victims associated with the criminal proceeding in Colombia do not have the power to initiate, investigate, or prosecute the perpetrators of crimes. Sánchez Rebuttal at 8–9 (citing L. 600, julio 24, 2000, 44097 DIARIO OFICIAL art. 26 [D.O] (Colom.)). Although Plaintiffs have been admitted as civil parties to a criminal investigation, their ability to direct the case appears limited—if not completely restricted. And requiring Plaintiffs to submit to this process before bringing their TVPA claim here is

[9] "Once compensation is extended to the victim, the damage ceases to exist, rendering any subsequent claim for reparation untenable. Consequently, it is impermissible for the victim to amass multiple compensations for the same harm. In such instances, should the harm have been redressed in any manner, compelling its compensation as if it were extant would amount to an unjust enrichment in favor of the plaintiff." *Id.*

prohibitively stringent.[10] *See Xuncax*, 886 F. Supp. at 178 ("The legislative history to the TVPA indicates that the exhaustion requirement of § 2(b) was not intended to create a prohibitively stringent condition precedent to recovery under the statute.").

IV. Civil Reparation through Initiated Criminal Proceeding

Defendant also advises that Plaintiffs could have pursued damages, pursuant to Articles 102 to 106 of Colombia's Code of Criminal Procedure and Articles 90 through 99 of Colombia's Criminal Code. Def.'s Mot. at 14. Defendant's expert explains that this framework provides victims the opportunity to receive financial reparations as civil parties to a criminal proceeding. Jaramillo Rep. at 7. Plaintiffs Mairée Urán and Helena Urán Bidegain have employed this framework—having been admitted as civil parties to the criminal case, opened officially in 2010, investigating Magistrate Urán's death. PSOF ¶¶ 23–33. The criminal proceeding does not name Defendant as a target of the investigation, and Colombian prosecutors have rebuffed Plaintiffs' effort to link others to the case, reasoning that claims against the three named individuals must be adjudicated first. *Id.* ¶¶ 27, 30, 31; Resolution, Case 8110 (Sept. 7, 2011), Ex. 23, [ECF No. 90-25]. Plaintiffs argue that this avenue is not available and adequate, considering that the proceeding has been stalled for at least ten years, and any purported updates are indistinguishable from those provided twelve years ago. *See* Pl.'s Reply at 10–11; Feb. 22, 2024 Letter.

Plaintiffs face legitimate logistical obstacles which limit the availability of this method. In fact, Colombian officials have acknowledged unjustified delays in administering justice for Magistrate Urán. Sánchez Rep. at 11–12; Sánchez Rebuttal at 5–6.[11] Although the Colombian

[10] The Court notes that Plaintiffs allege they were able to "push[] to have a criminal investigation into [Magistrate Urán's] death opened" in Colombia. Compl. ¶ 99. Nevertheless, Defendant has still not met his burden to demonstrate *how* Plaintiffs could employ this method.

[11] To be clear, neither expert has indicated that Colombia's judicial system is inoperable. However, Defendant's own expert acknowledges that "one cannot lose sight of the fact that in Colombia, for many years now, there has been a structural defect in the organization of the judiciary, which has led to widespread

prosecutors responded to Plaintiffs' inquiry regarding the progress of the criminal case in February of 2024, the reality is that the Colombian government initiated the criminal proceeding well over a decade ago to investigate 40-year-old crimes. And conspicuously, the only "ongoing" criminal case investigating Plaintiffs' fathers' death does not even name Plazas Vega, yet Plaintiffs' efforts in adding targets to the investigation have been futile. Moreover, there does not appear to be a reasonably foreseeable date for the conclusion of the ongoing criminal proceeding. Practically speaking, for exhaustion to occur as Defendant speculates, the Colombian prosecutor would first need to reinvigorate the current case; next, Colombian courts would adjudicate the claims against the three named defendants; and only then—with no guarantee—could Defendant be prosecuted.

Accordingly, continued delays in resolving the criminal proceeding render Plaintiffs' remedies under Articles 102 to 106 of Colombia's Code of Criminal Procedure and Articles 90 through 99 of Colombia's Criminal Code unavailable and inadequate. *See Lizarbe v. Rondon*, 642 F. Supp. 2d 473, 485 (D. Md. 2009) (finding defendant had not shown that the remedies in Peru are "effective, obtainable, not unduly prolonged, adequate, and not otherwise futile" where "[t]he record is barren of any evidence that the criminal case against him is proceeding apace or that there is any reasonably foreseeable date for its conclusion."), *aff'd in part, appeal dismissed in part*, 402 F. App'x 834 (4th Cir. 2010); *see also Xuncax*, 886 F. Supp. at 178 (concluding that plaintiff exhausted local remedies, noting "At last report, this criminal case had made no progress for several years; and, under Guatemalan law, a civil action cannot be brought until final judgment has been rendered in the criminal proceedings."). This assessment is further supported by the IACHR's February 2023 Report issued to monitor Colombia's compliance with its 2014 judgment, which found that Colombia has yet to investigate and prosecute those responsible for the

delays in the development of proceedings and the abnormal workload for civil servants that inevitably results from this circumstance." Jaramillo Rebuttal at 3.

extrajudicial killing of Magistrate Urán within a reasonable period of time. *See* IACHR Rep. at 19 ¶ 3(a), [ECF No. 90-26]. Therefore, looking to the IACHR Report, the Court is further compelled to conclude that this particular avenue of relief is unavailable. *See Drummond*, 782 F.3d at 606 (directing district courts to "be informed by general principles of international law" when evaluating claims under the TVPA).

CONCLUSION

The TVPA has "conferred on this country's judiciary the determination of the adequacy of legal remedies in another country," and this Court "must abide by Congress' directive." *Abiola v. Abubakar*, 435 F. Supp. 2d 830, 831 (N.D. Ill. 2006). Here, based on a thorough review of the record, Defendant is unable to meet his substantial burden of demonstrating that any of his four proposed legal remedies are adequate and available to Plaintiffs in this case. *See Jean*, 431 F.3d at 781–82 (holding "doubts concerning the TVPA and exhaustion" must be "resolved in favor of the plaintiffs."). Accordingly, it is hereby

ORDERED AND ADJUDGED that Defendant's Motion for Summary Judgment, [ECF No. 87], is **DENIED** and Plaintiffs' Motion for Summary Judgment on Defendant's Affirmative Defense of Exhaustion of Remedies, [ECF No. 90], is **GRANTED**.

DONE AND ORDERED in Miami, Florida, this 18th day of June, 2024.

RODOLFO A. RUIZ II
UNITED STATES DISTRICT JUDGE