

**REPORT No. 86/13**  
CASES 12.595, 12.596 and 12.621  
MERITS  
ANA TERESA YARCE *ET AL.*  
COMUNA 13  
COLOMBIA  
November 4, 2013

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**I. SUMMARY**

1. On October 25, 2004, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the IACHR") received a petition lodged by the Inter-Disciplinary Group for Human Rights (hereinafter "the petitioners) in which it is alleged that members of paramilitary groups, acting with the acquiescence and participation of agents from the Colombian State (hereinafter "the State," "the Colombian State" or "Colombia"), harassed, threatened and usurped the property of Luz Dary Ospina Bastidas and her family in *Comuna 13*, Department of Antioquia, causing their forced displacement between November 2002 and June 2003. In its Admissibility Report No. 4/07, the Commission declared the case admissible with respect to the alleged violation of articles 5(1) (right to personal integrity), 8(1) (right to judicial guarantees), 16 (freedom of association), 21(1) (right to private property), 21(2), 22(1) (freedom of movement and residence) and 25 (judicial protection) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention"), in conjunction with articles 1(1) and 27(1) thereof.

2. On October 27, 2004, the Commission received a second petition by the same petitioners alleging that members of paramilitary groups, acting with the acquiescence and participation of agents of the Republic of Colombia, threatened and usurped the property of Miryam Eugenia Rúa Figueroa and her family in the *Comuna 13* in Medellín, Department of Antioquia, causing their forced displacement in June 2002. In its Admissibility Report No. 3/07, the Commission declared the case admissible with respect to the alleged violation of articles 5(1) (right to personal integrity); 8(1) (right to judicial guarantees); 16 (freedom of association); 19 (rights of the child); 21(1) (right to private property); 22(1) and 22(2) (freedom of movement and residence) and 25 (judicial protection) of the American Convention, in relation to Article 1(1) of said instrument.

3. On March 7, 2005, the Commission received a third petition lodged by the same petitioners, in which they accused the State of responsibility in the alleged arbitrary detention of community leaders Ana Teresa Yarce, María del Socorro Mosquera Londoño, and Mery del Socorro Naranjo Jiménez –all of whom served on the Community Action Board of the Independencias III Neighborhood in Medellín's *Comuna 13*-- in November 2002, and the death of Ana Teresa Yarce on October 6, 2004. In its Admissibility Report No. 46/07, the Commission declared the petition admissible with respect to the alleged violations of articles 5(1), 7(1), 7(3) (right to personal liberty), 8(1), 11 (the right to have one's honor respected and one's dignity recognized), 16, 17(1) (protection of the family),

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\*By communication of February 15, 2013, the petitioners asked that the victims in the instant case be listed in such a manner that Ms. Ana Teresa Yarce would be the first named. They consider that such a gesture contributes to keeping her memory alive, seeing as she lost her life in the context of the events that are the subject matter of this case.

<sup>1</sup> According to Article 17(2) of the Commission's Rules of Procedure, Commissioner Rodrigo Escobar Gil, a Colombian national, did not participate in the discussion of and decision on this case.

22(1) and 25 of the Convention, in conjunction with Article 1(1) thereof, to the detriment of María del Socorro Mosquera Londoño, Mery del Socorro Naranjo Jiménez, Ana Teresa Yarce and their next of kin, and the violation of Article 4 of the Convention, in conjunction with Article 1(1) thereof, to the detriment of Ana Teresa Yarce.

4. On July 29, 2010, the IACtHR joined the cases 12.595, Miryam Eugenia Rúa Figueroa *et al.* (*Comuna 13*); 12.596, Luz Dary Ospina Bastidas *et al.* (*Comuna 13*); and 12.621, Mary Naranjo *et al.* (*Comuna 13*), for purposes of the decision on the merits, pursuant to Article 29(1)(d) of its Rules of Procedure, since the three cases address similar facts and reveal the same pattern of conduct.

5. The State maintained during part of the merits phase - between November 4, 2010 and February 13, 2012 - that it reserved the right not to present its observations on the petitioners' submissions regarding the merits until three procedural matters were resolved. The State requested that the Commission: (i) properly characterize the facts in dispute in the admissibility reports on the three cases; (ii) once the facts of each case have been properly characterized, adequately justify and defend its decision to join the three cases in question; and (iii) define the legal consequences of the petitioners' belated and unjustified presentation of additional observations on the merits of the three cases.<sup>2</sup> These aspects were answered by the IACtHR on March 15, 2012, in the terms described in paragraph 21 of this report. After this communication from the Commission, the State has requested five extensions to present its merits observations, which were granted by the IACtHR.

6. On November 16, 2012, the State presented its observations on the merits in this matter, in which it reiterated two or three of the procedural requests included in its prior communications associated with the failure to state facts that tend to establish violations in the admissibility and the joinder of the three cases. In its observations on the merits, the State also argues that the contextual assertions made by the petitioners in their arguments on the merits lack evidentiary support, and it affirms that there is no State responsibility for the human rights violations that have been alleged. The State also indicates that it is unable to submit copies of the criminal and administrative records requested by the IACtHR on March 15, 2002, as they are under seal in view of the current stage of the investigations relevant to this matter.

7. After examining the evidence and arguments offered by the parties, in the present report the Commission concludes that the State of Colombia is responsible for violations to the rights recognized in articles 4, 5(1), 7(1), 7(3), 8(1), 16, 17(1), 19, 21(1), 21(2), 22 and 25 of the American Convention, in conjunction with Article 1(1) thereof, and the violation of Article 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, to the detriment of the victims, as described in paragraph 368 of this report. The Commission also considers that it does not have sufficient elements to pronounce regarding Articles 11 and 27 of the American Convention in the present report. Therefore, the Inter-American Commission presents its recommendations to the Colombian State, pursuant to Article 50 of the American Convention.

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<sup>2</sup> Colombian State's Note DIDHD/GOI. No. 64785/2720, forwarded to the IACtHR on November 4, 2010, p. 12.

## **II. PROCESSING WITH THE IACHR SUBSEQUENT TO THE ADMISSIBILITY REPORTS**

### **A. Processing of the case**

8. On February 27, 2007, the IACHR approved Admissibility Reports No 3/07<sup>3</sup> and 4/07<sup>4</sup> and on March 20, 2007, notification of both reports was sent to the parties. On July 23, 2007, the IACHR approved Admissibility Report No. 46/07,<sup>5</sup> notification of which was sent to the parties on August 15, 2007.

9. In the March 20, 2007 notifications (3/07 and 4/07) and the August 15, 2007 notification (46/07), the Commission informed the parties that the cases had been registered as numbers 12.595, 12.596 and 12.621, respectively. Pursuant to Article 38(1) of its Rules of Procedure, it set a period of two months for the petitioners to submit additional observations on the merits in each of the cases. Also, pursuant to Article 48(1)(f) of the Convention, it made itself available to the parties with a view to reaching a friendly settlement in each case.

10. On January 13, 2008, the petitioners requested a hearing to offer one witness to testify in all three cases -12.595, 12.596 and 12.621- and to make their arguments as to why the cases should be joined. On February 11, 2008, the IACHR informed the parties of its decision to convene a hearing, which would be held during the IACHR's 131<sup>st</sup> session. On February 14, 2008, the State asked the Commission to reconsider its decision to convene a hearing to hear one witness testify in all three cases, and that in the case of still holding said hearing, the discussion would be confined to the possibility of joining the three cases. On February 21, 2008, the IACHR again advised the State of the purpose of the hearing, whereupon on February 26 the State filed its objections to the hearing.

11. On March 12, 2008, pursuant to Article 62(1) of its Rules of Procedure, the Commission held a hearing in which both sides were present and heard testimony from a single witness, Mrs. Mery del Socorro Naranjo Jiménez, who gave testimony concerning the facts in all three cases.

12. On April 17, 2008, the State requested that the hearing be deemed invalid and presented its observations on the "procedural inconsistencies that occurred in convoking the State" for the hearing and in the conduct of the hearing. It also reserved the right to present observations on the testimony given by Mrs. Naranjo in its brief on the merits. On December 15, 2008, the IACHR informed the State that the testimony and information received during the March 12 hearing were in keeping with articles 62 and 63 of the Commission's Rules of Procedure and that, consistent with Commission practice, it has the authority to convene whatever hearings it deems necessary to gather all the relevant information required to arrive at a well reasoned decision. The communications exchanged with the State were forwarded to the petitioners for their information.

13. On November 9, 2009, the State presented observations on the procedures used by the IACHR to convene hearings; the IACHR sent its reply on February 22, 2010.

<sup>3</sup> IACHR, Report No. 3/07 (Admissibility), Petition 1145-04, *Miryam Eugenia Rúa Figueroa et al. (Comuna 13)*, Colombia, February 27, 2007.

<sup>4</sup> IACHR, Report No. 4/07 (Admissibility), Petition 1147-04, *Luz Dary Ospina Bastidas et al. (Comuna 13)*, Colombia, February 27, 2007.

<sup>5</sup> IACHR, Report No. 46/07 (Admissibility), Petition 231-05, *Mery Naranjo et al. (Comuna 13)*, Colombia, July 23, 2007.

14. On March 25, 2010, the petitioners presented additional observations on the merits of each of the three cases. These observations were sent to the State on June 29, 2010, which was given a period of three months to present its observations, in keeping with Article 37(1) of the Commission's Rules of Procedure.

15. The IACtHR also informed the parties on July 29, 2010 that cases 12.595, 12.596 and 12.621 had been joined, pursuant to Article 29(1)(d) of its Rules of Procedure. In the text of the letter, the Commission informed the following:

The Commission decided to join these cases on the basis of article 29(1)(d) of its Rules of Procedure, which contemplates this procedure when two or more petitions are related to similar facts, involve the same persons, or reveal the same pattern of conduct. The cases at issue were joined because they are related to similar facts and reveal the same pattern of conduct.

16. On September 1, 2010, the petitioners requested that during the IACtHR's 140<sup>th</sup> regular session, a hearing be held on the joined case. That request was denied on October 5, 2010, given the many hearings already requested.

17. On November 4, 2010, the State presented comments on the "inadequacy of the admissibility report's characterization of the facts in dispute in the case; the necessary requirements and the proper procedural moment for joining cases under Article 29(d) of the Commission's Rules of Procedure, and the expiration of the time period by which petitioners must submit their observations on the merits." The State also requested that the IACtHR take steps to set out the facts in the admissibility reports of all three cases and, once the facts of each case have been properly characterized, justify and defend its decision to join the three cases "adequately and according to the criteria set out [by the State]." Finally, the State asked that the Commission define the legal consequences of the petitioners' belated presentation of additional observations on the merits.

18. By a communication dated November 16, 2010, the IACtHR gave the petitioners one month to present their observations on the State's November 4 communication. The petitioners' observations were received on April 1, 2011, and forwarded to the State on April 6. On April 11, 2011, the State repeated its request to the Commission and informed it that "it reserves the right not to present its observations on the merits of the cases [...] until such time as the IACtHR answers" the procedural questions raised by the Colombian State in its earlier notes. The Commission acknowledged receipt and forwarded the communication to the petitioners on May 18, 2011. On August 3, 2011, the State reiterated its request that the Commission state its opinion on the procedural questions raised by the Colombian State in its earlier notes. Bearing in mind the presumption of truth provided for in Article 38 of the Commission's Rules of Procedure, the State asked that the IACtHR refrain from applying that article inasmuch as the State was ready and willing to provide responsive information once the questions it raised had been answered. The Commission acknowledged receipt of that communication on August 4, 2011.

19. The petitioners presented additional observations on the merits on November 22 and 25, 2011. Both communications were sent to the State on November 28, 2011, which was to present its observations within one month. On January 18, 2012, the petitioners requested a hearing on the merits of the case, which the Commission declined on due to the high number of hearings requested by the IACtHR.

20. On January 5, 2012, the State requested a one-month extension to present its observations on the merits, which the IACtHR granted on January 10, 2012. On February 13, 2012, the State requested a second extension on the deadline for presenting its observations, this time for two months. In that note, the State made the same requests to the Commission that it made in its notes of October 30, 2010, April 8, 2011, and August 3, 2011, including the following: "(i) Proceed to properly characterize the facts in dispute in the admissibility reports on the three cases in question; (ii) once the facts of each case have been properly characterized, adequately justify and defend, according to the criteria set out in the October 2010 note, its decision to join the three cases in question; and (iii) define the legal consequences of the petitioners' belated and unjustified presentation of additional observations on the merits of the three cases before us." The IACtHR granted the extension requested on March 15 for the period of one month.

21. In a communication dated March 15, 2012, which had as its purpose to request additional information from the parties related to this case, the Commission responded to the three points raised by the State, recalling what was decided in the three admissibility reports pertaining to the cases at issue:

As for the procedural matters the Colombian State raised in the note in question, the IACtHR respectfully reminds the honorable Government that in its admissibility reports No. 3/07, No. 4/07 and No. 46/07, the IACtHR defined the scope and nature of the facts that would be considered during the merits phase in the matter in question. The IACtHR also informed the State that cases 12.595, 12.596 and 12.621 were joined on July 29, 2010, and highlighted that "the Commission decided to join those cases pursuant to Article 29(1)(d) of its Rules of Procedure, under which two or more petitions may be joined if they address similar facts, involve the same persons, or reveal the same pattern of conduct. The cases in question were joined because they address similar facts and reveal the same pattern of conduct."

22. In that same communication, the Commission also requested from the State to forward the complete case files of the investigations related to the facts at issue. On March 15, 2012, the Commission informed the petitioners that it had granted the State an extension and requested that within one month's time, they provide additional information relative to the facts of the case. On April 16, 2012, the State requested a one-month extension to respond to the request of the Commission. The petitioners submitted additional observations and documents on May 3 and 11, 2012, which were forwarded to the State on May 15, 2012, in order for it to submit its response within one month's time. The State afterwards presented five requests for extensions to present its merits observations on June 19, July 13, August 29, September 25, and October 26 of 2012, which were granted by the Commission.

23. On November 16, 2012, the observations by the Colombian State on the merits were received by the IACtHR. In its observations, the State reiterated two of the three procedural requests to the IACtHR included in its communications of November 4, 2010 and February 3, 2012 : (i) That the IACtHR proceed to adequately characterize the facts of the dispute in the admissibility reports in the cases of Mery Naranjo et al., Luz Dary Ospina Bastidas et al., and Myriam Eugenia Rúa Figueroa et al.; and that (ii) once the facts of each case are characterized, that it proceed to justify and argue adequately and in keeping with the criteria set forth by the State, its decision to join the three cases just referenced. It expressly asked the IACtHR to reconsider its response to these requests by the State received on March 16, 2012, given that it understands that the response given by the IACtHR does not answer all the positions to which the State made reference in those notes.

24. The State indicated in its observations on the merits that in the admissibility reports on these matters the IACtHR did not determine the facts in relation to the merits, as reference was made in those reports only to the version of the facts put forth by the petitioners. In response to this situation, the State reiterated the importance of juridical security in the context of the individual petitions procedure before the IACtHR as a guarantee for the adequate international protection of human rights, especially in relation to the determination by the Commission of the alleged victims, the alleged violative acts, and the petitioners' claim. This aspect necessarily implies considering and analyzing the arguments presented by both parties – petitioners and the State – throughout the admissibility phase of a petition. The State recognized in turn that in those admissibility reports if one effectively delimits the rights at issue in the dispute, but makes only brief reference to the facts, it is impossible to establish how these facts reveal the same pattern of conduct, or are similar to, those that were considered by the IACtHR in deciding to join these matters.

25. The State also indicated in its response that it is not possible for it to send copies of the criminal and administrative records requested by the IACtHR on March 15, 2002, given that the Office of the Attorney General indicated that they are under seal in light of the current stage of the investigations at issue in this matter.

26. The State's observations on the merits were forwarded to the petitioners on December 17, 2012; they were to submit their observations within one month. The petitioners' observations were received on February 21, 2013, and forwarded to the State on February 25, 2013; it was given one month to answer.

27. The State responded in a communication of March 11, 2013, by which it asked that several documents be sent that it considered missing with respect to the communication from the IACtHR of February 25, 2013. This communication was answered by the IACtHR on April 22, 2013. Subsequently, the State requested two additional extensions, on June 26, 2013, and August 23, 2013, for filing its observations on the additional information presented by the petitioners; both were granted by the IACtHR. The State presented its additional observations related to the merits of this matter on October 21, 2013.

#### **B. Precautionary measures granted by the IACtHR; provisional measures ordered by the Inter-American Court of Human Rights.**

28. At the petitioners' request, on October 22, 2004 the IACtHR adopted precautionary measures for Mery Naranjo Jiménez and her next of kin, and for Socorro Mosquera Londoño. Underscoring the violence and intimidation that paramilitary groups targeted at community leaders of Medellín's *Comuna 13*, as evidenced by the murder of Mrs. Ana Teresa Yarce on October 6, 2004, the Commission asked the Colombian government to adopt the necessary measures to guarantee the life and physical safety of Mery Naranjo Jiménez, Alba Mery Naranjo, Sandra Janneth Naranjo, Alejandro Naranjo, Juan David Naranjo, and Socorro Mosquera Londoño, and to report on the measures taken to investigate and put an end to the threats which prompted the adoption of precautionary measures.

29. On July 3, 2006, the Commission filed a request with the Inter-American Court of Human Rights (hereinafter "the Inter-American Court") seeking provisional measures by which the State would be ordered to protect the life and personal integrity of Mery Naranjo and her family and to investigate the acts perpetrated against her and Mrs. Socorro Mosquera. The Commission stressed to the Court that Mrs. Naranjo and Mrs. Mosquera were recognized human rights defenders in *Comuna 13* and had

been involved in various complaints and inquiries of state agents for their alleged participation in human rights violations; and had been threatened as a result of the mentioned factors.

30. On July 5, 2006, the Inter-American Court granted provisional measures to protect the life and personal integrity of Mrs. Mery Naranjo and her family,<sup>6</sup> María del Socorro Mosquera Londoño, and Luisa María Escudero Jiménez. In its order, the Court required the State to ensure that the measures of protection were not provided by the “security units” which, according to the beneficiaries, had been involved in the events reported; it required the State to provide the permanent protection measures necessary to ensure security for the residence of Mery Naranjo Jiménez and her family; it also required the State to adopt the necessary measures to enable María del Socorro Mosquera Londoño to return to her home, as she had been forced to move elsewhere, was displaced and prevented from returning because of the danger she faced; it required the State to investigate the facts that prompted the adoption of these provisional measures and, if applicable, identify those responsible and impose the corresponding sanctions; it also required the State to take the necessary steps to ensure that the measures of protection decided in the Court’s order were planned and implemented with the participation of their beneficiaries. The Court reiterated these terms in its order of September 22, 2006.

31. On January 31, 2008, the Court issued a third order in which it expressed its concern over the murder of Javier Augusto Torres Durán, son-in-law of Mrs. Mery Naranjo and a beneficiary of the Court-ordered provisional measures; the murder took place in the Las Independencias II neighborhood of *Comuna 13* on December 2, 2007. The Court then called for the same provisional measures in its order of November 25, 2010, in which it expressed its regret at the murder of Mrs. Mery Naranjo’s grandson - Sebastián Naranjo Jiménez.<sup>7</sup> The police allegedly discovered his body on October 4, 2010, on the outskirts of Medellín’s *Comuna 13*, with a gunshot wound to the head. He was 16 years old at the time and was a beneficiary of the very same provisional measures. The Court observed that “the murder of another beneficiary is an exceedingly grave fact denoting the ineffectiveness of the measures adopted to eradicate the sources of risk and adequately protect the beneficiaries. Also, in this particular matter, it evidences the lack of effective communication between the beneficiaries and the State with regard to the implementation of these provisional measures.”<sup>8</sup>

32. The State in the process before the Court<sup>9</sup> has presented information related to a group of measures it has implemented to protect the safety of Mery Naranjo and her family members,<sup>10</sup> and of

<sup>6</sup> The Court identified the following persons as Mrs. Naranjo’s next of kin and beneficiaries of the provisional measures: Juan David Naranjo Jiménez, Alejandro Naranjo Jiménez, Sandra Janeth Naranjo Jiménez, Alba Mery Naranjo Jiménez, Erika Johann Gómez, Javier Augusto Torres Durán, Heidi Tatiana Naranjo Gómez, Sebastián Naranjo Jiménez, María Camila Naranjo Jiménez, Aura María Amaya Naranjo, and Esteban Torres Naranjo. Order of the Inter-American Court of Human Rights in the matter of *Mery Naranjo et al.– Comuna 13*, regarding Colombia, July 5, 2006.

<sup>7</sup> Order of the Inter-American Court of Human Rights in the matter of *Mery Naranjo et al.– Comuna 13*, regarding Colombia, November 25, 2010, paragraph 53.

<sup>8</sup> Order of the Inter-American Court of Human Rights in the matter of *Mery Naranjo et al.– Comuna 13*, regarding Colombia, November 25, 2010, paragraph 53.

<sup>9</sup> Order of the Inter-American Court of Human Rights in the matter of *Mery Naranjo et al.– Comuna 13*, regarding Colombia, November 25, 2010.

<sup>10</sup> These measures have included: 1) the custody of the residence where Mery Naranjo and her family members live by the police 24 hours per day; 2) the association of Mery Naranjo to the “Plan Padrino” of the National Police, by means of which she and her family members may contact an agent of her trust in the city of Medellín when there are loopholes in the implementation of measures; 3) the possibility of the beneficiaries to request to the national police to undertake surveillance when they need the same; 4) the assignment of two means of communication radios “Avantel”; 5) support for land

María del Socorro Mosquera Londoño.<sup>11</sup> The representatives have presented before the Court information highlighting irregularities associated with the functioning of the custody post in the residence of Mery Naranjo and the non-compliance with the duties of the police officers in charge; problems related to the functioning of the communication radios of Avantel; the lack of conformity of Mery Naranjo and María del Socorro Mosquera Londoño with the liaisons assigned as part of the Plan Padrino; the suspension of the transportation support in several occasions; and the insufficiency of the supports to temporarily relocate Mery Naranjo and her family members to leave Comuna 13 in case this is necessary. The State has recognized before the Court that some challenges have presented themselves in the implementation of these measures, but that it has adopted the necessary measures. The Court for its part has valued in a positive way the efforts from the State, but has highlighted the need to improve the effectiveness of the protection measures implemented, the insufficiency of the same in relation to protection needs, and its understanding that the beneficiaries must participate in the planning of the same.

33. On March 3, 2011, the Commission requested that the provisional measures ordered in this case be amplified pursuant to Article 63(2) of the American Convention, so that the Court would order the Colombian State to protect the life and personal integrity of the children, grandchildren and one daughter-in-law<sup>12</sup> of Mrs. María del Socorro Mosquera Londoño. The IACtHR justified its request by citing “a series of attacks suffered by family members of human rights defender Socorro Mosquera; these attacks are repeated occurrences and have intensified in recent months and include various threats and acts of harassment against them and even the murder of Lubin Alfonso, a minor and Mrs. Mosquera’s grandson.”<sup>13</sup> In an order dated March 4, 2011, the Court granted the requested amplification, citing the danger to the proposed beneficiaries and its concern over the alleged involvement of state agents in these attacks.

### **III. POSITIONS OF THE PARTIES**

#### **A. The Position of the Petitioners**

##### **Context**

34. The petitioners make a number of arguments relating to the socioeconomic situation in Medellín’s *Comuna 13*, the longstanding clash between the various armed actors in the area, and the military operations which took place there in 2002. They describe how *Comuna 13* is composed of 22

transportation; and 6) support of temporal relocation for Mery Naranjo when she needs the same to exit Comuna 13; among other measures.

<sup>11</sup> In the case of María del Socorro Mosquera Londoño, the State has informed about the granting of the following measures of protection: i) a means of communication “Avantel” so that she can communicate with her police liaison in the case of threats; ii) her association with the “Plan Padrino” with the National Police, by means of which she has a trust agent in the city of Medellín; and iii) different supports of land transportation.

<sup>12</sup> The IACtHR requested amplification of the measures to include Lubin Arjadi Mosquera, Hilda Milena Villa Mosquera, Iván Alberto and Marión Daniel Herrera Mosquera; Luisa María and Luis Alfonso Mosquera Guisao; Daniel Steven Herrera Vera; Luisa Fernanda Herrera Vera; Sofía Flores Montoya; and María Eugenia Guisao González. See, IACtHR, Request for Amplification of Provisional Measures submitted to the Inter-American Court of Human Rights in the Matter of Mery Naranjo *et al.* regarding the Republic of Colombia, March 3, 2011, page 1.

<sup>13</sup> See, IACtHR, Request for Amplification of Provisional Measures submitted to the Inter-American Court of Human Rights in the Matter of Mery Naranjo *et al.* regarding the Republic of Colombia, March 3, 2011, paragraph 2.

neighborhoods where the vast majority of families survive on incomes below the minimum legal wage. Those conditions, combined with the lack of state policies to effectively correct the situation, caused the neighborhoods in *Comuna 13* to become breeding grounds for illegal groups of various sorts, such as militia, with or without the influence of the guerillas, peoples' armed commando groups, and gangs of common criminals.

35. The petitioners maintain that in response to the emergence of these groups, various joint military operations were conducted in Medellín's *Comuna 13* in 2002. On May 21, 2002, for example, the so-called "Operation Mariscal" was conducted, followed by "Operation Potestad" in June, "Operation Antorcha" in August, and "Operation Orión" in October. The petitioners allege that these were combined operations involving members of the Army's Fourth Brigade, the National Police attached to the Antioquia Police Command; personnel from the Administrative Security Department (*Departamento Administrativo de Seguridad* – DAS); the Colombian Air Force (FAC); the Technical Investigations Corps (CIT) and the Office of the Attorney General of the Nation.

36. According to the petitioners, paralleling these operations was a turf war being fought in *Comuna 13*, pitting members of the guerrilla movement against members of the Cacique Nutibara Bloc and Metro Bloc paramilitary groups. That turf war ended with Operation Orión. The latter was the largest joint military offensive launched on the city in the last decade. Nearly 1,000 Army soldiers, police, personnel from the Administrative Security Department (DAS) and the Technical Investigations Corps under the Attorney General's Office (CIT) advanced on *Comuna 13*, supported by air power and armed with long-range weapons. The objective was to secure the area once and for all and ensure that conditions were right to locate the men from the first narco-paramilitary bloc that would be demobilized as a result of the negotiations with the AUC. The petitioners allege that most of those who lived in *Comuna 13* still suspect that the operation enabled the paramilitaries to tighten their grip on this sector and become even stronger. The presence of the security forces in the area did nothing to protect and ensure the public's human rights. Instead, it legitimized and allowed the unlawful actions committed by the paramilitary groups inside *Comuna 13*.

37. The petitioners indicate that during these operations the State failed to adopt sufficient measures to protect the civilian population. According to the petitioners, the civilian population of *Comuna 13* was treated as if they were combatants in an armed conflict. These operations violated two principles of international humanitarian law, distinction and proportionality. Long-range weapons and helicopter gunships were used in a heavily populated urban area, and protected buildings like the Health Center were overtaken. Every inhabitant was treated like a potential criminal, resulting in massive arrests; many of those arrested went through protracted legal proceedings only to be found not guilty.

38. The petitioners assert that approximately 350 persons were detained in Operation Orion; of these 170 were released by court order. They also observe that as a result of these operations and the events that followed, many civic and grassroots organizations disbanded in the face of the persecution and threats their members suffered because of their resistance to the presence of armed actors, first the militia groups and later the paramilitary groups. Two prominent examples were the Las Independencias Women's Association [*Asociación de Mujeres de Las Independencias*] and the Community Action Board [*Junta de Acción Comunal*].

39. The petitioners indicated in their observations that the State's analysis of the context in the present case is biased and tendentious, in line with the new legal models of defense adopted by the State, in which victims' rights are denied at whatever cost necessary. They observe that in 2002,

Medellín was experiencing a serious public order situation, marked by the confrontation between the paramilitary groups, who enjoyed the support of the official forces, and the different groups of urban militia associated with the guerrilla organizations. Several neighborhoods of Comuna 13 had a prolific social and community movement that denounced the collusion between the official forces and the paramilitary groups, which was made clear with the plans to legalize the Cacique Nutibara Bloc and establish its new center of operations in Comuna 13.

40. The petitioners further allege noncompliance with the obligation not to suspend non-derogable rights, provided for in Article 27 of the American Convention. They contend that at the time the alleged violations occurred, President Uribe had decreed a state of emergency throughout Colombian territory on August 11, 2002. They consider that the State violated Article 27 of the American Convention not for declaring a state of internal commotion (*estado de commoción interior*), but for suspending rights that could not be suspended in carrying out the measures taken in the context of that decree. They state specifically that under those circumstances, the national government authorized the Army and the police to exercise judicial police functions, authorities not given them by law; despite repeated complaints, the national government took no steps to put an end to the systematic unlawful searches, murders, disappearances and forced displacements in an area under the complete control of the State's security forces. They maintain that even in the direst of circumstances, the State has an obligation to respect the most elementary standards of legality and proportionality that ensure proper observance of human rights, which did not happen in this case.

**Case 12.595 – Specific allegations - Miryam Eugenia Rúa Figueroa et al.**

41. Ms. Miryam Eugenia Rúa Figueroa served as Chair of the Community Action Board and since 1989 had been a community leader in the Barrio Nuevo sector, San Javier La Loma in *Comuna 13*. She lived in a house she owned, with her partner, Gustavo de Jesús Tobón, and her three children, all minors at the time: Bárbara del Sol Palacios Rúa, Úrsula Manuela Palacios Rúa, and Valentina Estefanía Tobón Rúa.

42. The petitioners report that Mrs. Rúa Figueroa was told by a neighbor in Barrio Nuevo – La Loma that her name was on a list of persons that the paramilitaries planned to assassinate. Therefore, on June 26, 2002, she left the neighborhood with her daughters and her partner. They left their home without anything, save for some articles of clothing for the daughters. They had no place to go and no money to pay rent in another neighborhood. However, they found shelter in the home of family members who lived in the Municipality of Bello. The petitioners state that Mrs. Rúa and her family have been displaced ever since and have been unable to return to the neighborhood because of the difficult security situation in the area. The petitioners state that they know of a number of people who have returned to the neighborhood only to be disappeared or found dead elsewhere in the city of Medellín. Such stories prevent Mrs. Rúa from returning to her neighborhood indefinitely.

43. The petitioners state that thereafter, on June 27, 2002, there was an outbreak of paramilitary violence everywhere in the area. Informed by her neighbors, Mrs. Rúa learned that her home had been taken over as it was known to be the home of the Chair of the Community Action Board. The petitioners allege that the house was destroyed gradually and piece by piece; the furnishings in it were taken, as were all the parts of the structure (windows, doors, toilet, etc.).

44. Having been forcibly displaced and exposed to great danger because of the office she held, Mrs. Rúa Figueroa had no alternative but to resign as chair of the Board. And while she never

officially notified the Office of the Mayor of Medellín that she had decided to resign, she was nonetheless replaced by the person who had been the Board's Vice Chair.

45. Ms. Rúa Figueroa took a number of measures as a result of the events described above. She turned to the Human Rights Office of the Departmental Prosecutor's Office, to make a statement of forced displacement; she filed a request with the Social Solidarity Network, and filed a formal complaint with the Office of the Attorney General, Medellín Sectional Office, concerning the looting of her home and the displacement of her and her family. On July 10, 2002, the Municipal Disaster Prevention and Care System (SIMPAD) of the Office of the Mayor of Medellín, certified that Ms. Rúa and her family had been displaced from their home by the armed fighting between the self-defense groups and the militia groups.

46. Nevertheless, ten years after these events, neither Ms. Rúa Figueroa nor her family has been listed in the Single Register of Displaced Persons and, therefore, have not received the humanitarian assistance to which they are entitled. They are still unable to make free use and enjoyment of their house, and the State has not provided them with a housing subsidy to make good their needs.

47. In light of these considerations, the petitioners are requesting that the State be declared responsible for violations of the rights to personal integrity, freedom of association, private property, freedom of movement and residence, and judicial protection and guarantees, established in articles 5(1), 8(1), 16, 21(1), 22(1), 22(2) and 25 of the Convention, to the detriment of Miryam Eugenia Rúa Figueroa and her next of kin. They further maintain that the rights of the child protected under Article 19 of the American Convention were violated to the detriment of Bárbara del Sol Palacios Rúa, Úrsula Manuela Palacios Rúa, and Valentina Estefanía Tobón Rúa, the daughters of Miryam Eugenia Rúa Figueroa and minors at the time of their forced displacement.

#### **Case 12.596 – Specific Allegations – Luz Dary Ospina Bastidas et al.**

48. At the time of the events, Ms. Luz Dary Ospina Bastidas had been serving as Executive Director of the Las Independencias Women's Association (AMI) for approximately one year. She was firmly committed to community service and community leadership, and had previously served as President of the AMI in 1998 and again in 2000; she had also chaired the Community Action Board from 1994 to 1996, and was involved in other community organizations. She lived in her own house with her husband, Oscar Túlio Hoyos Oquendo, and their children: Edid Yazmín, Oscar Darío, and Migdalia Andrea Hoyos Ospina.

49. The petitioners allege that on November 12, 2002, in the wake of a combined military/police operation, persons living in the Independencia II neighborhood learned that paramilitary groups were attempting to put a finish to the AMI. The petitioners state that Ms. Ospina learned from the Head of the Educational Center –which was part of the official elementary education system- that her name was on a list of persons whom the paramilitary were planning to assassinate. She therefore immediately left the neighborhood, along with her husband, three children and her son-in-law Fabio Alberto Rodríguez Buriticá, for the sake of their personal safety. However, the petitioners allege that because paramilitary were breaking into the homes abandoned by persons who fled the neighborhood under threat, her husband and their two sons went back to the neighborhood to protect the house.

50. The petitioners report that on March 3, 2003, members of the security forces, five persons in civilian dress but with no identification, and three men wearing hoods appeared at the home of the Hoyos Ospina family and proceeded to search it, without a court order. Although the persons in civilian attire claimed to be from the Attorney General's Office, they did not show any identification. After the men searched the property without finding anything that would constitute a crime, they attacked Mr. Oscar Hoyos and threatened him. They then forced him to dig a hole in the floor of the house, claiming that weapons were buried there. When they did not find anything, they left.

51. The petitioners state that later, on March 6, 2003, a group of armed civilians returned and dug holes in the back of the house. On March 11, 2003, a group of men identified by the armbands of the National Police's Special Counter-terrorism Command surrounded the house and started digging holes, claiming to be looking for weapons. The petitioners state that when this happened Mr. Hoyos and his children decided to abandon the property and rent it. By agreement with the tenants, they left their belongings in a closed room in order to protect them.

52. The petitioners report that thereafter, on June 26, 2003, a group of armed men arrived at the house and threatened the tenant that they would force down the door if she refused to let them in. It is alleged that once inside the house, the men asked for Ms. Ospina and her family and proceeded to take the furniture. The following day they returned to complete the looting. The armed men threatened the tenant, telling her that if she filed a complaint with the Attorney's Office, they "would cut off" her head. They told her that the house needed to be vacated and gave her a message for Ms. Ospina and her husband that they needed to speak with them. The petitioners allege that anyone who agreed to "speak" with the paramilitary commanders was never seen alive again. They contend that as a result of this, the tenant vacated the house and on July 8, 2003 the paramilitary took over the property. The petitioners state that the property was virtually dismantled: the windows, doors, toilets, kitchen and bricks were hauled away.

53. The petitioners allege that in August 2003 Luz Dary Ospina and her family moved to Bogotá. In October 2003, they applied to the Solidarity Network to be listed in the Single Register of Displaced Persons. Their application was denied on December 2, 2003. This decision was subsequently reversed by a February 13, 2004 order to enter their names in the Displaced Persons Register.

54. The Hoyos Ospina family lived in Bogotá for one year, where they endured the difficult economic and security situation. However, thanks to the generosity of a program to protect community leaders, run by the Social Ministry of Bogotá, Mrs. Ospina and her family left the country bound for Montevideo, Uruguay, where they lived in 2004. Luz Dary Ospina left the country with her husband and their two children who were minors; their eldest daughter stayed in Medellín, as the humanitarian aid they received was only sufficient to cover the expenses of the two younger children. The petitioners assert that this undoubtedly took a toll on the family unit. In 2005, the family returned to Colombia, and, beset by an emotional and economic instability they have still not been able to overcome, are living in Medellín in a neighborhood outside *Comuna 13*.

55. The petitioners indicate that Ms. Ospina filed a complaint with the Office of the Public Prosecutor of the Department of Antioquia, with the Ombudsperson's Office and with the National Government. They point out that the Office of the Public Prosecutor of the Department of Antioquia started an investigation into the matter and referred the complaint to the Office of the Prosecutor-Delegate for Human Rights in Bogotá. They claim to have no knowledge of any public official being sanctioned as a result of that investigation. The petitioners contend that Ms. Ospina and her family

were afraid to go directly to the Medellin Sectional Attorney's Office to report what happened and the Departmental Prosecutor's Office failed to bring the facts to the attention of the Medellin Sectional Attorney's Office because members of the security forces were involved. This failure rendered these remedies ineffective.

56. They specifically allege that on the date of the events, Luz Dary Ospina was a respected and recognized leader of the AMI and that the purpose of the persecution and threats to which she and her family were subjected was to disband that organization. As a result, her right of association was violated. The petitioners contend that Mrs. Ospina lost her furnishings and her house, which was torn down, and she cannot even contemplate either rebuilding it or making use of the vacant lot, because of the danger that returning to the community would involve. They therefore consider that the arbitrary dispossession of her home and the family's displacement seriously affected the mental and moral integrity of the Ospina Hoyos family, their right to property and their freedom of movement and residence. The petitioners further contend that the remedies available within the domestic legal system were ineffective in clarifying the facts reported and redressing Ms. Ospina and her family.

57. Based on these considerations, the petitioners are requesting that the State be declared responsible for violations of the rights to personal integrity, judicial guarantees, freedom of association, private property, freedom of movement and residence, and judicial protection, recognized in articles 5(1), 8(1), 16, 21(1), 21(2), 22(1) and 25 of the American Convention, in conjunction with the guarantees established in articles 1(1) and 27(1) thereof, to the detriment of Luz Dary Ospina and her next of kin.

58. In the merits phase, the petitioners are also alleging the violation of Article 19, to the detriment of the child Migdalia Andrea Hoyos Ospina, daughter of Luz Dary Ospina and 18 years old at the time of the family's displacement. The petitioners contend that the forced displacement triggered an abrupt change in the child's life, as she had to abandon both her home and school; suffering which was aggravated by the arbitrary dispossession of her belongings.

#### **Case 12.621 – Specific Allegations – Ana Teresa Yarce et al.**

59. At the time of the events, María del Socorro Mosquera was serving as President of the Las Independencias Women's Association (AMI), while Mery Naranjo and Ana Teresa Yarce were serving, respectively, as Chair and Auditor of the Community Action Board of the Independencias III neighborhood in *Comuna 13*. All three women were recognized community leaders.

60. The petition states that in the aftermath of Operation Orión conducted between October 16 and 18, 2002, the military takeover of *Comuna 13* continued and new arrests were made. They contend that on November 12, 2002, in a combined police/army action, Ms. Mosquera, Ms. Naranjo and Ms. Yarce were detained in *Comuna 13*.

61. The petitioners maintain that this was an irregular detention, done without a court order, and that a child in military attire was involved. The three women were deprived of their freedom illegally and, after being questioned, were formally implicated in a legal proceeding; and they were accused of committing serious offenses, without even a shred of the evidence required under Colombian criminal law. The defenders were released after being held for 11 days in a police station's cells and in Medellin's "El Buen Pastor" women's prison. A provisional court ruling ordered their release, and acknowledged the lack of evidence proving their involvement in the crimes of which they were accused. On May 22, 2003, the competent court upheld that decision on its merits. The

petitioners argue that taking the three women into custody and implicating them in a criminal case – involving, *inter alia*, sedition- unjustly and arbitrarily branded them as participants in the armed conflict, thereby harming their good name, honor and dignity, and placing them squarely in the sights of the armed groups.

62. The petitioners contend that as a result of their arbitrary detention, Ms. Mosquera, Ms. Naranjo and Ms. Yarce filed various complaints with the authorities. In November and December 2002, they requested officials from the national government to adopt the measures that were necessary and sufficient to protect their right to life and their right to personal integrity, as there was serious reason to believe that their lives and the lives of their next of kin were in danger. On May 22, 2003, they filed a complaint with the Office of the Prosecutor-Delegate for Human Rights asking that the public servants responsible for these events be investigated and disciplined and, if appropriate, that a criminal investigation be launched. In 2003, they also took active part in meetings arranged with representatives of the national government to find a solution to their individual circumstances and those of other leaders and inhabitants of *Comuna 13*.

63. The petitioners also allege that on August 8, 2003, Ms. Yarce filed a complaint with the Office of the Attorney General of the Nation –Rapid Response Unit, Office of Sectional Prosecutor 116- to the effect that she had been threatened by paramilitary who were operating within the area with abandon, despite the heavy presence of military forces. She asked that the facts be investigated to protect her life. In response, Ms. Yarce obtained nothing in the form of assistance or protection from the authorities.

64. On October 6, 2004, Ms. Yarce was murdered as she was engaging in civic activities in the Independencias III neighborhood. At the time she was in the company of her daughter Mónica Dulfary Orozco Yarce and Mrs. Mery Naranjo. The petitioners state that this killing took place three or four days after Ms. Yarce, doing her civic and social duty, reported acts committed by the armed groups against the community and filed a complaint with the competent authorities reporting the threats and harassment she had suffered following her unlawful arrest. The petitioners also report that Ms. Yarce was persecuted and ultimately killed because of her commitment to the community, because she reported human rights violations committed in the neighborhood, and because she demanded that human rights be observed and guaranteed. The petitioners argue that Mrs. Yarce's murder was the work of members of paramilitary groups operating legally in *Comuna 13* in the wake of Operation Orión, and the feigned demobilization of the Nutibara Cacique Bloc of the United Self-Defense Forces of Colombia (*Autodefensas Unidas de Colombia - AUC*) in November 2003. The petitioners contend that Ms. Yarce's murder reveals that the civilian population in *Comuna 13* is without protection and guarantees. Her killing also confirms the fact that during Operation Orión and thereafter, when the neighborhood was under the control of paramilitary, one of the strategies of control and social power was to finish off the grassroots and community organizations and their leaders because of the important role they played within the community.

65. As a result of Ms. Yarce's murder, the safety of Ms. Naranjo and Ms. Mosquera was in even greater peril and they had to leave their homes and move away from their children. Ms. Naranjo returned to the Las Independencias III neighborhood in 2005; however, Ms. Mosquera's displacement continues to this day, although she has never resigned her office as President of the AMI.

66. The petitioners note that as of the date of the assassination of Ms. Yarce, throughout Medellín it was known that the persons who had demobilized from the Cacique Nutibara Bloc had social

and economic control over Comuna 13. Soldiers from the army and police agents who remained in the Comuna colluded with the actions carried out by the paramilitary groups, who continued operating illegally. They indicate that this situation was documented repeatedly by the Office of the United Nations High Commissioner for Human Rights in Colombia; they are of the view that the State denies the situation without any foundation.

67. The petitioners contend that the unlawful search of Mery Naranjo's family residence in *Comuna 13* on February 6, 2006 was another episode that reveals how serious the persecution of these leaders was. They contend that the search was conducted by a joint command of Army soldiers and paramilitary and was done without a court order. In the course of that search, Mrs. Naranjo's 14-year old niece, Luisa María Escudero, was injured. This search occurred despite the precautionary measures granted by the IACRH, referenced in paragraphs 27-32 of this report.

68. As a result of these events, Ms. Naranjo and Ms. Mosquera were forced to resign their offices as community leaders. They have been prevented from serving as Chair of the Community Action Board and President of the Las Independencias Women's Association (AMI), respectively. Hence, with the tolerance of the State, paramilitary groups prevented them from lawfully exercising their right to freedom of association. These paramilitary groups attempted to do away with the Community Action Board and the AMI, using threats and systematic persecution of their members and leaders as the means to silence the demands, complaints and the work that was being accomplished through these organizations.

69. The petitioners also described the impact that these events had on the family unit of these human rights defenders. Ms. Yarce was the mother of five children when she was killed.<sup>14</sup> Mrs. Mosquera was a head of household and mother of four children; she is now living with her children and grandchildren, who provide her with assistance and emotional support.<sup>15</sup> At the time of the events associated with Operation Orión, two of her children were minors and Ms. Mosquera had to leave them living alone in the house, because she did not have the economic means to take them with her when she was displaced. Ms. Mery Naranjo is also a mother and head of household, and she lives with and helps financially support the entire family, composed of her children and grandchildren.<sup>16</sup> Another victim the petitioners name in this case is the child Luisa María Escudero –Ms. Naranjo's niece- who was injured in the military operation staged on February 6, 2006. She was 14 at the time of the events.

<sup>14</sup> The petitioners identify Ms. Yarce's children as the following: Mónica Dulfari Orozco Yarce, Siley Vanessa Yarce, John Henry Yarce, Arlex Efrén Yarce and James Adrian Yarce. According to the petitioners, two of her children have died as a product of the violence -Arlex and James. Two of her daughters were minors at the time she was killed - Shirley Vanessa Yarce and Jhon Henry Yarce. Communication from the petitioners in the matter of *Mery Naranjo Jiménez et al. – Comuna 13 – 12.621*, dated March 25, 2010, pp. 3 and 4.

<sup>15</sup> The petitioners identify the following persons as Ms. Mosquera's children: Marlon Daniel Herrera Mosquera, Lubin Arjadi Mosquera, Hilda Milena Villa Mosquera, Iván Alberto Herrera Mosquera and Carlos Mario Villa Mosquera (deceased). Her grandchildren are identified as: Luisa Fernanda Herrera Vera, Sofía Herrera Montoya, Madelen Araujo Correa, Luisa María Mosquera Guisao, Lubín Alfonso Villa Mosquera, Daniel Esteven Herrera Vera, Carlos Mario Bedoya Serna and Mateo Rodríguez. Communication from the petitioners in the matter of *Mery Naranjo Jiménez et al. – Comuna 13 – 12.621*, dated March 25, 2010, pp. 4 and 5.

<sup>16</sup> The petitioners identify the following persons as Ms. Naranjo's children: Juan David, Alejandro, Sandra Janneth and Alba Mery Naranjo Jiménez. Her grandchildren are identified as follows: Erika Johann Gómez, Heidi Tatiana Naranjo Gómez, Sebastián Naranjo Jiménez, María Camila Naranjo Jiménez, Aura María Amaya Naranjo, and Esteban Torres Naranjo. Communication from the petitioners in the matter of *Mery Naranjo Jiménez et al. – Comuna 13 – 12.621*, dated March 25, 2010, p. 4.

70. As for the legal grounds for the complaint, the petitioners allege that the State is responsible for violation of the rights to personal integrity, judicial guarantees, protection of one's honor and dignity, freedom of association, protection of the family, freedom of movement and residence, judicial protection and the duty not to suspend nonderogable rights, recognized in articles 5(1), 7(1), 7(3), 8(1), 11, 16, 17(1), 22(1), 25 and 27 of the Convention, all in conjunction with the obligation to respect and ensure the Convention protected rights, undertaken in Article 1(1) thereof, to the detriment of community leaders Mosquera Londoño, Naranjo Jiménez and Yarce. They are also alleging violation of Article 4 of the American Convention, to the detriment of Ms. Ana Teresa Yarce, given the State's failure to take reasonable measures to protect her life.

## B. The State

### Context

71. According to the State, the place known as *Comuna 13* is located in the northwestern sector of Medellín. It is composed of the neighborhoods of El Pesebre, Blanquiza, Santa Rosa de Lima, Los Alcázares, Metropolitano, La Pradera, Juan XXIII – La Quiebra, San Javier, Veinte de Julio, Belencito, Betania, El Corazón, La Independencia, Nuevos Conquistadores, El Salado, Eduardo Santos, Antonio Nariño, El Socorro, and La Gabriela, and is home to some 130,000 people.

72. Because of its geographic location, *Comuna 13* has become an epicenter of activity by armed outlaw groups, as there are corridors connecting the slopes of *Comuna 13* to certain northeastern municipalities where rural terrorist groups are a strong presence and need provisions and ammunition. These same corridors serve as inroads into the Aburrá Valley. The State observes that in the early 1990s, the Revolutionary Armed Forces of Colombia (*Fuerzas Armadas Revolucionarias de Colombia -FARC*) and the National Liberation Army (*Ejército de Liberación Nacional - ELN*) established militia groups in *Comuna 13*, which engaged in such criminal activities as murders, terrorism, denial of individual rights and extortion. The State asserts that in 1999, the illegal self-defense groups began making inroads into the periphery of *Comuna 13*, to directly control the militia groups. This increased the criminal activity. The State points out that despite the efforts undertaken to restore normalcy and the full force of the State's authority, and notwithstanding the progress made, the process within that Comuna has always been difficult.

73. Apart from the crimes mentioned above, the State provided the Commission with information to illustrate the countless attacks made on police and army patrols in the period between 2000 and 2002, leaving patrol members dead or injured. Officials from the Attorney General's Office, from the Antioquia Government and the Medellín Mayor's Office were attacked with firearms; even utility workers and health personnel were constantly harassed.

74. The State argues that the extreme situation of conflict in central-west Medellín spurred forced displacement as a consequence of the confrontations between the guerrilla forces and the *autodefensas* in the territorial dispute directed against the civilian population. It tells the IACtHR of the burning of some dwellings situated on the slopes of *Comuna 13* and the increase in individual and multiple homicides in various sectors, the victims being persons of all ages and social situations. It notes how the illegal armed groups extended their death threats against persons not involved in the conflict through phone calls, direct threats, and emails in which they called on the victim to abandon his or her residence immediately. The State also reports on incidents in which persons were forced to leave their

dwellings so that they could be taken over, with a view to activating centers of criminal operations, and building trenches and holes in the ground for keeping persons who had been kidnapped.

75. This situation led to the State intensifying its operations to return order to Comuna 13. These included Operations Mariscal, Orión, Potestad, and Antorcha, among others. The implementation of these operations was part of a Plan for Social Recovery whose first phase consisted of regaining control of Comuna 13, so as to then achieve social consolidation with the presence of the State, with a view to improving economic conditions in the *comunas*.

76. The State describes the objectives of Operation Orión in particular – carried out from October 16 to 20, 2002 – in its observations:

The operation consists of carrying out a continuous (72 hours) military operation of occupation, offensive movement, military control and consolidation in support of the National Police, DAS, CTI, Office of the Attorney General, and other security agencies of the State against the different illegal armed organizations engaged in criminal activity in the general area of Comuna 13 in the city of Medellín with the aim of preserving the security and physical integrity of the force, and especially of the civilian population that lives in the sector.<sup>17</sup>

77. The State indicates that civilian, military, and police authorities participated in Operation Orión, and searches of homes were conducted for five days. The State identified, in its observations on the merits, some of the results of this operation, including the criminal prosecution of 170 persons as a result of being accused and recognized in a lineup by victims, who would accuse them of the crimes of conspiracy to engage in criminal conduct, rebellion, terrorism, homicide, and kidnapping, among others. The State also mentioned the arrest of 48 persons – pursuant to valid arrest warrants – by different prosecutorial authorities for crimes of rebellion (26), conspiracy to engage in criminal conduct (12), homicide (1), and kidnapping (9). Search and military control operations were conducted in the area that succeeded in countering illegal armed groups while consolidating and guaranteeing the peace, security, and physical integrity of the civilian population. The State indicates that all the efforts made during Operation Orión were accompanied by a permanent commitment to respect the human rights and fundamental freedoms of the civilian population.

78. The State presented some comparative figures on crime rates before and after Operation Orión, kept by the Office of the Undersecretary for Civil Order – Unit of Citizen Harmony of the Office of the Chief of Staff (Secretaría de Gobierno) of the City of Medellín. The State is of the view that after Operation Orión important results were attained in reducing crime and homicides, and minimizing the effects caused by the groups of militias and *autodefensas* in terms of limiting the exercise of civil rights by the population, while also installing schools, information posts on jobs offered by the city government of Medellín, and strengthening the San Javier Intermediate Medical Unit with a special group of physicians and medicines.

79. Several of the operations mentioned were carried out during the state of internal commotion decreed August 11, 2002, by Decree 1837, whose constitutionality was upheld by the Constitutional Court in Judgment C-802-2002. Such states of internal commotion are permitted by the American Convention on Human Rights at Article 27(1), and the restrictions on human rights allowed in this article must be based on criteria of necessity and proportionality in pursuing a legitimate aim. The

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<sup>17</sup> Note DIDHD/GOI No. 77119/2954 from the Colombian State, November 15, 2012, p. 25.

State considers that these criteria were taken into account during the development of Operation Orión as a measure taken by the State within its margin of appreciation, and pursuant to the duty to ensure the enjoyment of fundamental rights in a democratic society. The operations were not directed against the civilian population, but were implemented with the general aim of social recovery and the specific objective of ensuring the exercise of fundamental rights by the inhabitants of the community.

80. The State is of the view that the declaration of the state of internal commotion on August 11, 2002 not only met the formal and material requirements established in the Constitution of Colombia, but that in addition it was implemented in keeping with the requirements set forth in Article 27 of the American Convention. The state of internal commotion was adopted in a limited and reasonable manner for 90 days, and it had to be extended for another 90 days due to the critical conditions of insecurity created by the illegal armed groups. The State argues that the state of emergency was adopted due to the specific conditions, which were studied and analyzed on an inter-agency basis, and upheld by the Constitutional Court of Colombia, after an in-depth review of the constitutionality of the measure, based on the imminent need to declare that state of emergency. In addition, it was adopted without restricting any of the rights or liberties established at Article 27(2) of the American Convention, which were guaranteed by the State at all times.

81. The State also noted in its observations on the merits that the facts that gave rise to these cases bear no relationship whatsoever to those operations, and that several of these facts did not occur in the context of those operations. It indicates that these facts are not related to the state of internal commotion decreed on August 11, 2002. It notes that there is no evidence for the petitioners' arguments referring to the context in which the human rights violations occurred that negatively affected the five human rights defenders in this matter and argues that these incidents do not give rise to the international responsibility of the State.

82. For the State it is important that the facts that are the subject matter of this case be considered in the historical context in which they occurred. Nonetheless, that context by itself does not give rise to the international responsibility of the State. To that end, the State respectfully asks the Commission to analyze the context mindful of the timing of the each of the facts that is before the Commission in this matter. The State expresses its concern over the petitioners' arguments on the merits in which they make a series of accusations associated with the context in which the facts occurred, which lack any evidence whatsoever. According to the State, the facts that are under examination are not linked to the context described by the petitioners, in which they refer to the situation of security and the operations implemented by public forces in the Comuna 13 during 2002.

83. In this regard, the State contradicts the petitioners' arguments put forth in the three cases that have been joined regarding collusion between members of the Armed Forces and National Police, on the one hand, and the paramilitary groups, on the other. It rejects the notion that the paramilitary phenomenon was the result of a generalized policy of the Colombian State. It also highlights the efforts made by the Army and Police to return security to Comuna 13. The State indicates that it has fully carried out its generic duties to prevent human rights violations by third persons through the presence and constant operation of the Army and Police in Comuna 13.

**Case 12.595 – Specific Allegations – Miryam Eugenia Rúa Figueroa et al.**

84. As for the events involving Ms. Rúa Figueroa and her next of kin, the State's contention is that it is not responsible for the violations alleged, and that it has taken preventive measures for the inhabitants of *Comuna 13*, in fulfillment of its obligations to protect and ensure.

85. It notes that on July 8, 2002, Ms. Myriam Eugenia Rúa Figueroa filed a complaint with the Criminal Judges of the Circuit of Medellín, Antioquia, Subunit on Terrorism, as was reported by the Office of the Attorney General. This was because she had to abandon her residence located at Calle 48C No. 121D-21, Barrio San Javier, la Loma de Medellín, and leave for fear of the various conflicts in the sector, which endangered her life and the lives of her next of kin. She alleged that the ones responsible for these acts were the *Autodefensas* who operated in the neighborhood and who identified themselves as the Nutibara Command.

86. The State also noted that the Office of the 18<sup>th</sup> Special Prosecutor, under the National Human Rights Unit of the Office of the Attorney General, has before it File No. 4016, the investigation being carried out of the alleged crime of forced displacement of which Ms. Myriam Eugenia Rúa Figueroa was a victim. It indicates that the evidence taken includes the work order to the CTI with the aim of verifying the information supplied by her; the request to locate proceedings that correspond to other complaints lodged; obtaining the antecedents of the accused; and the taking of Ms. Rúa's statement, among others. This investigation is in the preliminary phase and is under seal. The State indicates that even though it has done all that is materially possible, to date it has not even been possible to individually identify a possible perpetrator or participant; a work mission is pending that was entrusted to the CTI in Medellín. The IACtHR confirms that while the victims' next-of-kin have the legal possibility of coming forward as a civil plaintiff, they have not done so, by their own decision, and their failure to do so cannot be attributed to the State.

87. The State also asserts that the Prosecutor-Delegate for Human Rights sent copies to the appropriate disciplinary authority for the latter to consider launching an investigation. As for the crime of threat, the State observes that its investigation is complicated because the criminals operate in anonymity; it notes that because the alleged victim learned through rumor, it is difficult to find clues leading to the authors' identity.

88. The State underscores the complex situation in *Comuna 13* and its own efforts to restore normalcy and the full force of its authority. It recognizes that the crimes that take the heaviest toll on the area are murder, terrorism, kidnapping, extortion, and the dispossession of property. It alleges that this was the reason why it stepped up efforts by the security forces to restore normalcy in *Comuna 13*, through special operations conducted in strict accordance with its duty to safeguard and protect.

**Case 12.596 – Specific Allegations – Luz Dary Ospina Bastidas et. al.**

89. The State presented arguments similar to those it made in the case of the events involving Ms. Myriam Eugenia Rúa Figueroa. It contends that it is not responsible for the violations being alleged and that it has taken preventive measures for the inhabitants of *Comuna 13*, in furtherance of its duties to protect and ensure.

90. The State further notes that the Office of the 13<sup>th</sup> Special Prosecutor, under the National Human Rights and International Humanitarian Law Unit of the Office of the Attorney General, under file No. 4017, is conducting the criminal investigation into the forced displacement and threats to which Ms. Luz Dary Ospina Bastidas and her family were subjected. It reports that the evidence taken includes reports of judicial inspections, going to the scene of the events, intelligence work in the sector, locating the victim, taking the amended complaint of Ms. Ospina, taking sworn statements, and assigning work missions to the CTI, among others. As regards the investigation that is being undertaken, the State indicates that the Office of the Attorney General has spared no efforts in pursuing investigative work aimed at prosecuting those responsible for these facts. On this point, it notes that in the context of this investigation Mr. Horacio Vedoya Vergara was identified as a possible defendant; he opted for a plea bargain arrangement and was sentenced by the 27<sup>th</sup> Criminal Court of the Medellín Circuit to fifty (50) months in prison for the crimes of forced displacement and invasion of lands or buildings, on June 29, 2011. Similarly, the Office of the Attorney General indicates that investigative work is being done by members of the Human Rights Group based in Medellín, including taking witness statements, for the purpose of obtaining information that might help identify the other perpetrators and/or participants in this matter.

91. The State also indicates that the Office of the Prosecutor-Delegate for Human Rights sent copies to the competent disciplinary authority for the latter to decide whether an investigation was in order. The State observes that it may be possible to establish blame for Luz Dary Ospina Bastidas' alleged displacement once the investigations have been completed. As for the crime of threat, the State observes that the investigation is complicated by the fact that the criminals acted in anonymity; because the supposed victim found out by way of rumor, finding evidence leading to the identification of those responsible is difficult.

92. As in the previous case, the State emphasizes that the *Comuna 13* situation is complicated and that the State has made efforts to restore normalcy and the full force of its authority. It acknowledges that the crimes that take the heaviest toll on the area are murder, terrorism, kidnapping, extortion and dispossession of properties. It argues that this was the reason why it stepped up efforts by the security forces to restore order in *Comuna 13* through special operations conducted in strict accordance with its duty to safeguard and protect.

#### **Case 12.621 – Specific Allegations – Ana Teresa Yarce et al.**

93. The State alleges that on November 12, 2002, Ms. Yarce, Ms. Londoño and Ms. Naranjo were released from custody and turned over to the Public Prosecutor's Office for the alleged commission of the crime of sedition. It asserts that the three women were arrested and implicated in the investigation based on information provided by people living in the sector. Case No. 631609 was opened in the Single Sectional Unit for Crimes against the Constitutional and Legal Order and Others, Office of the 84<sup>th</sup> Prosecutor Assigned to the Medellín Criminal Circuit Court Judges.

94. During the inquiries, both the Office of the 190<sup>th</sup> Criminal Court Prosecutor assigned to the case and the prosecutor overseeing the case concluded that there were no grounds for bringing an indictment against the accused, and therefore decided to drop the investigation being prosecuted against them, a decision embodied in a resolution delivered by the prosecutor overseeing the case on May 22, 2003. In the course of the investigation, on November 21, 2002, the Prosecutor refrained from issuing custodial measures for Ms. Yarce, Ms. Naranjo and Ms. Mosquera; ordered their immediate release and ordered that they sign a document pledging to appear in court for the legal proceedings. He

also sent the case file to the corresponding office to be assigned to one of the prosecutors in charge of investigating the crime of rebellion. This meant that by November 21, 2002, the investigation into the alleged rebellion was not over.

95. Said investigation was assigned to the Single Sectional Unit for Crimes against the Constitutional and Legal Order and Others, followed its course and was later closed with the order to dismiss dated May 22, 2003. According to the State, the order to dismiss is a decision to close an investigation and is issued once the evidence offered in the case has been weighed; it is different from the decision that determines the accused' legal situation, which is mainly based on a personal assessment in a given context, but not an assessment of the facts to be investigated. The State contends that the information on the alleged illegal activities of the three women under investigation came from private individuals and that it was the State, by way of the Attorney General's Office, that decided to have the case against the suspects dismissed. In consequence, the State considers that it fulfilled its obligations under articles 7.1 and 7.3 of the American Convention.

96. On July 21, 2003, the Office of the Prosecutor-Delegate for Human Rights learned of the complaint regarding alleged threats and the arbitrary detention committed against Mmes. Yarce, Naranjo, and Mosquera from November 12 to 21, 2002. Later, a Third Corporal of the National Army in Medellín was notified of the preliminary inquiry. Subsequently, the inquiry was referred as a matter of jurisdiction to the Office of the Aburrá Valley Provincial Prosecutor, which continued to pursue its activity. By order of June 29, 2006, it was ordered that an investigation be opened into the same Third Corporal and that certain evidence be collected to make it possible to determine what actually happened. On occasion of the evidence introduced into the investigation, the Office of the Inspector General of the Nation ordered that the matter be archived on November 9, 2007. The State argues that the suitable and effective remedy for protecting the rights that the victims mentioned consider to have been violated is an action for direct reparation before the contentious-administrative jurisdiction, but it was not exhausted by them.

97. As for the alleged violation of the right to life of Ana Teresa Yarce (Article 4(1) of the American Convention), the State considers that it is not responsible for it, given that the authorities were not aware of a situation of actual and immediate risk to Ms. Yarce, and as a result they did not have any real possibility of preventing or avoiding that risk. The State considers that it acted within the legal framework in place and in keeping with its capacities to avoid the events of the instant case. In the context of these events, the alleged collaboration or acquiescence of state agents has never been shown, by either act or omission alleged to have been coordinated with, parallel to, or organized in serial fashion with the private persons responsible for the facts.

98. The petitioners indicate that on August 8, 2002, Ms. Ana Teresa Yarce filed a complaint with the Immediate Reaction Unit, which the State notes was filed more than two (2) years before the death of Ms. Yarce. Accordingly, the filing of that complaint cannot be taken as evidence of prior knowledge of a risk by the State, as the foreseeability of the risk by the State that the inter-American system demands requires that it entail a current, certain, and real threat, which are not found in this case. The State indicates that documentation is in the record that shows that a few days after the events she returned to the property that she says she vacated and established telephone communication. After various investigative and procedural steps, the 173<sup>rd</sup> Sectional Prosecutorial Office dismissed the case on grounds of lack of jurisdiction, considering that the facts being investigated were not addressed by any criminal statute, and found that the departure of Ms. Ana Teresa Yarce does not fit within the statutory description of the crime of forced displacement.

99. In relation to the death of Ms. Yarce, the 35<sup>th</sup> Specialized Prosecutorial Office attached to the National Human Rights Unit of the Office of the Attorney General, in File No. 2169, is investigating the facts of the homicide of Ms. Ana Teresa Yarce on October 6, 2004, as well as the complaints filed with the Office of the Inspector General of the Nation with number 014427 of August 22, 2003, for the crime of personal threats allegedly made against Mmes. Ana Teresa Yarce, María del Socorro Mosquera, and Mery del Socorro Naranjo. These complaints gave rise to preliminary investigation No. 747394, opened on August 22, 2003, which were subsequently annexed to the investigations undertaken by the Office of the Attorney General into the homicide of Ms. Ana Teresa Yarce. The Office of the Attorney General notes that the complaints into the alleged threats received from the illegal armed group were joined to this investigation as they were considered interrelated. The consequences are the concurrence of criminal offenses for which two of the members of the illegal armed group were convicted. The State is of the view that the Office of the Attorney General has done arduous and constant work in seeking the persons responsible for the criminal conduct that is the subject of this investigation.

100. The State asserts that steps have been taken and continue to be taken in the context of the investigation into the death of Ms. Yarce, including the inspection of the crime scene, an autopsy, other investigate stops, and the judicial inspection of the corpse; and statements were taken from Jorge Enrique Aguilar Rodríguez and Jhon Jairo Cairo Durán, among others. On January 9, 2009, the Fourth Specialized Criminal Court of Medellín convicted Jhon Jairo Cano Durán alias "Chupón" and sentenced him to 240 months in prison and a fine equivalent to 1,487.5 legal monthly minimum salaries, as of 2004; the conviction was for the criminal offenses of homicide of a protected person, reprisals, forced displacement, and conspiracy to engage in criminal conduct. On July 15, 2010, the Ninth Criminal Court of the Medellín Circuit convicted Jorge Enrique Aguilar Rodríguez for homicide of a protected person in concurrence with the crime of reprisals, and sentenced him to 26 years and 4 months in prison.

101. The 25<sup>th</sup> Specialized Prosecutorial Office, under the National Human Rights Unit of the Office of the Attorney General, which is conducting the investigation into the death of Ms. Ana Teresa Yarce, referred to what was stated by petitioners regarding this investigation, and shares the following observations. It considers that the homicide of Ms. Ana Teresa Yarce was committed by members of the illegal armed group called *Héroes de Granada* and that one of the squadron commanders with a presence in the sector called Cuatro Esquinas, in the neighborhood of Nuevos Conquistadores, in Comuna 13, alias "Aguilar," gave the order to assassinate Ms. Yarce to his subalterns known as alias "El Chupón," "El Guajiro," and "El Zarco." They indicate that the homicide of Ms. Yarce was a reprisal by the paramilitary figure Jorge Enrique Aguilar after he was detained on October 6, 2004, after information was provided by Ms. Ana Teresa Yarce regarding his illegal status. The Office of the Attorney General also notes that the two investigations that it is conducting do not consistently that that it has been the objective of the paramilitary groups situated in Comuna 13 of Medellín to finish off the social and community organizations, as stated by the petitioners. It further indicates that there is no evidence in the investigation to show that her murder was ordered by the high-level commanders or top leaders of the illegal armed group *Héroes de Granada*.

102. The State also indicates that it is not the case – as the victims and their representatives claim – that in the investigation conducted under file No. 2169, the truth of the facts is not known, there is unwarranted delay, and that only two convictions have been handed down in 2009 and 2010, by confession and acceptance of the charges. The State indicates that the two judgments handed down by the Colombian justice system were not obtained simply, and were the result of numerous evidentiary measures.

103. The State also confirms that the investigation into the facts of February 13, 2006, in which the minor Luisa María Escudero was wounded, is entrusted to the 10<sup>th</sup> Specialized Prosecutorial Office of the City of Medellín, which is pursuing different activities to clarify what happened and to identify the persons responsible. The State asks that the IACtHR clarify whether these facts will be debated in the merits phase, since they are not mentioned in admissibility report 46/07.

104. The State maintains that through its justice system, it is complying with its obligations to investigate, prosecute and punish offenders and fully redress victims' claims. According to the State, all the proceedings –both criminal and disciplinary- into the events reported, are underway. It asserts that they are not only active investigations, but also effective, even though they must be continued if they are to achieve the anticipated successful outcome. It contends that the situation is complicated; hence the deadlines for obtaining results must be commensurate with the requirements, circumstances and twists in the investigations. It insists that the judicial authorities have been diligent in their prosecution of the court cases, despite the degree of difficulty encountered, and that "more detailed information cannot be provided because the cases are still active and protected by the confidentiality of court records and proceedings."<sup>18</sup> The State maintains that none of the investigations conducted has uncovered any abuse on the part of the judicial investigatory agencies or any negligence or failure to act on their part.

105. The State contends that it has afforded the necessary protection to Ms. Mosquera and Ms. Naranjo, pursuant to the precautionary measures the Commission requested on October 22, 2004 and the provisional measures ordered by the Inter-American Court on July 5, 2006. The State underscores its commitment to comply with the provisional measures arranged, and the follow-up accomplished through periodic meetings. All this serves to achieve the essential purpose, which is to protect the rights of the persons in question.

#### **Allegations common to the three cases**

106. As regards the criminal and administrative investigations into the facts that are the subject matter of these cases, the State considers that its responsibility under Articles 8(1) and 25 has not been triggered, given that the investigations have been diligent, serious, and free of unwarranted delays, in the context of investigating complex facts. As indicated previously, the State also confirms that two members of paramilitary groups were convicted in the criminal proceeding into the assassination of Ms. Yarce, and that one was convicted for the crime of forced displacement suffered by Luz Dary Ospina Bastidas and her family members.

107. The State also asks the IACtHR not to consider a series of rights violated. It indicates that it is not responsible for the violation of Article 11(2) to the detriment of Mmes. Yarce, Naranjo, and Mosquera. It argues that the right to honor is violated when the public discrediting of the person or persons affected is fully shown, and that the State tolerated such conduct. This situation does not occur in the case at hand, as the alleged violation of this right by the petitioners occurred when Mmes. Ana Teresa Yarce, Mery del Socorro Naranjo, and Maria del Socorro Mosquera were considered suspects in a criminal investigation. That consideration was pursuant to the provisions in force, and not with the aim of publicly discrediting the alleged victims.

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<sup>18</sup> Colombian State's note DDH. GOI 31279/1533 of June 14, 2006, p. 9.

108. The State asserts that there is no violation of Article 16 of the American Convention because the mere fact of belonging to a non-governmental organization or a Communal Action Board (*Junta de Acción Comunal*) does not imply a violation of this right. The State points out that the violations of the right to freedom of association are not related to the characteristics of the person affected, but to specific actions that have violated the core of this right, as has been understood by the inter-American system.

109. The State also rejects the petitioners' arguments related to Articles 17(1) and 19 of the American Convention. It alludes in particular to the fact that Article 17(1) was only admitted in the case of Mery Naranjo et al. (Admissibility Report No. 46/07) and Article 19(1) in the case of Miryam Eugenia Rúa Figueroa (Admissibility Report No. 3/07). It indicates expressly that the arguments related to rights not admitted should be dismissed.

110. On the right to property and Article 21 of the American Convention, the State indicates that it was not violated because it has not been shown that the alleged destruction of property of the alleged victims was by state agents. In the case of impairment of the property rights of Ms. Luz Dary Ospina Bastidas, the Office of the Attorney General already convicted one person for these acts.

111. As regards Article 22(1) of the American Convention, the State considers that it cannot be found responsible for the forced displacement of the aforementioned women human rights defenders given that there is no evidence that the alleged threats that led to their displacement came from or were tolerated by state agents. Nor does it consider it proven that there was a causal nexus between the alleged threats and the need for the women human rights defenders to leave their places of residence.

112. The State also adduces in general terms that the facts do not constitute a violation of Article 5(1) of the American Convention.

#### **IV. PROVEN FACTS**

113. Presented below are the Commission's findings of fact and of law relative to the claims made by the petitioners and by the State. Pursuant to Article 43(1) of its Rules of Procedure, in its analysis the Commission bases its findings on the arguments and evidence presented by the parties, the information obtained during the hearing with the Commission on this case,<sup>19</sup> and information which is a matter of public knowledge.<sup>20</sup>

114. As to the assessment of the evidence in this case, at the outset the IACtHR must highlight that in an international legal proceeding on human rights violations, the standards of proof are more

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<sup>19</sup> Audio, IACtHR, Hearing, 131<sup>st</sup> Session, "Comuna 13" Cases 12.596 – Luz Dary Ospina Bastidas, 12.595 – Miryam Eugenia Rúa Figueroa, and 12.621 – Teresa Yarce, Mery Naranjo and Socorro Mosquera, Colombia, March 12, 2008.

<sup>20</sup> Article 43(1) of the Commission's Rules of Procedure reads as follows: "The Commission shall deliberate on the merits of the case, to which end it shall prepare a report in which it will examine the arguments, the evidence presented by the parties, and the information obtained during hearings and on-site observations. In addition, the Commission may take into account other information that is a matter of public knowledge."

flexible than in a domestic proceeding.<sup>21</sup> In international proceedings, “circumstantial evidence, indicia, and presumptions may be considered, so long as they lead to conclusions consistent with the facts.”<sup>22</sup> In this regard, the Commission has underscored that the context and background information of a particular case has to be considered, as must their relevance in terms of getting at the truth of what happened within the boundaries of its competence.<sup>23</sup> As a general practice, in the cases it considers and where relevant, the Commission also uses information compiled during its on-site visits to the States, the public thematic hearings, annual reports, country reports, thematic reports, and other tools it has devised in discharging its function of monitoring the human rights situation, in keeping with the mandate it has been assigned in various inter-American instruments.<sup>24</sup>

115. The IACtHR also considers the records of the precautionary and provisional measures ordered for Mrs. Mosquera and Mrs. Naranjo –mentioned in paragraphs 28-33 above - to be part of the body of evidence in the case at issue. In the course of the proceedings on this case, both the IACtHR and the Court have been informed that threats, acts of harassment, and murders continue to occur which are associated to the work that Ms. Mosquera and Mrs. Naranjo perform as human rights defenders. For the IACtHR, these events are related to the body of allegations being examined in this joined case.

#### **A. Forced displacement of Miryam Rúa Figueroa and her next of kin on June 26, 2002, and subsequent events**

116. During 2002, Ms. Miryam Eugenia Rúa Figueroa was serving as Chair of the Community Action Board.<sup>25</sup> She was living in a home she owned, together with her permanent companion, Gustavo de Jesús Tobón, and her three underage children: Bárbara del Sol Palacios Rúa, Úrsula Manuela Palacios Rúa, and Valentina Estefanía Tobón Rúa<sup>26</sup>. Her two oldest daughters were students at the Lola Gonzalez educational institute and the younger daughter had entered a neighborhood daycare center.<sup>27</sup>

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<sup>21</sup> I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Judgment of July 29, 1988. Series C No. 4, paragraph 128.

<sup>22</sup> I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Judgment of July 29, 1988. Series C No. 4, paragraph 130.

<sup>23</sup> IACtHR, Report No. 64/11, Case 12.573, Merits Report, *Marino López et al.* (Operation Genesis), Colombia, March 31, 2011, paragraph 101; IACtHR, Report No. 62/08, *Manuel Cepeda Vargas*, July 25, 2008, paragraphs 70 and 71.

<sup>24</sup> IACtHR, Report No. 64/11, Case 12.573, Merits Report. *Marino López et al.* (Operation Genesis), Colombia, March 31, 2011, paragraph 103, referencing IACtHR, Report No. 62/08, *Manuel Cepeda Vargas*, July 25, 2008, footnotes on pages 102, 107-108; IACtHR, Report No. 22/08, *The Dos Erres Massacre*, March 14, 2008, footnotes on pages 50, 72, 78; IACtHR, Report No. 46/10, *Case of the Río Negro Community of the Mayan Indigenous People and its members (Río Negro Massacre)*, July 14, 2010, footnotes on pages 2, 12,, 14, 22, 26, 37, and 51, and IACtHR, Report No. 62/06, *Case of Yvon Neptune*, July 20, 2006, paragraphs 62 and 63.

<sup>25</sup> Annex 1. Certification by the Secretariat of Community Development, Medellín’s Mayor’s Office, of Miryam Eugenia Rúa Figueroa as Chair of the Community Action Board from September 26, 2001 to June 30, 2004, Barrio Nuevo, February 19, 2002. Attachment to the original petition received in the matter of Miryam Eugenia Rúa Figueroa – Comuna 13 – October 27, 2004.

<sup>26</sup> Annex 2. Public deed documenting the sale of the real estate located on Calle 48 CB 121 D-21, Barrio Nuevo, La Loma, Medellín, and transfer of title to said property to Miryam Eugenia Rúa Figueroa, dated April 21, 1992. Attachment to the original petition received in the matter of *Miryam Eugenia Rúa Figueroa – Comuna 13 – October 27, 2004*.

<sup>27</sup> Annex 3. Statement received from Miryam Eugenia Rúa Figueroa by the GIDH (Inter-Disciplinary Group for Human Rights) addressed to the Inter-American Commission on Human Rights, April 27, 2012. Annex 5. Communication of the Petitioners in reference to the matter of *Miryam Eugenia Rúa Figueroa et al* – Case 12.595, dated May 3, 2012.

117. She was informed by a neighbor on June 2002 that her name was on a list of persons that the paramilitary were planning to assassinate.<sup>28</sup> Consequently, on June 26, 2002, she left the neighborhood with her daughters and partner, without any of their belongings.<sup>29</sup>

118. On July 10, 2002, the Municipal Disaster Prevention and Care System (hereinafter "SIMPAD") certified that Ms. Rúa and her three daughters and partner had been displaced from their home "by the armed fighting between the self-defense groups and the militia groups in *Comuna 13*'s Nuevo Neighborhood, in the central western zone of the city of Medellín."<sup>30</sup> That certification states that Ms. Rúa lost her home and all her belongings on Wednesday, June 26, 2002, the "date on which she was forced to move elsewhere to find safety."<sup>31</sup>

119. Moreover, her application to be entered into the National Single Registry of the Displaced Population was rejected on August 9, 2002.<sup>32</sup> Resolution No. 050012342 provides the grounds for the denial in finding that the statement provided by Ms. Rúa "does not fall under the circumstances provided for in Article 1 of Law 387 of 1997, inasmuch as the home has been threatened or affected by situations other than those set forth in Article 1 of Law 387 of 1997."<sup>33</sup> Article 1 of the Law 387 of 1997 establishes:

A displaced person is someone who has been forced to migrate within the national territory abandoning his or her locality of residence and traditional economic activities, because his or her life, physical integrity, safety or personal liberty has been violated or are directly threatened, as a result of any of the following situations: international armed conflict, disturbances and internal tensions, generalized violence, massive violations of human rights, infractions to international humanitarian law, and other circumstances stemming from the mentioned situations which could alter or alter directly the public order.

120. Ms. Rúa once again applied for entry into the Single Registry on October 2, 2006, asserting:

In 2002, I received information from a resident of the neighborhood, who mentioned to me that I appeared on a list of the paramilitary forces and for that reason it was best for me to leave the neighborhood, since I was at risk if I stayed. That is why I immediately left the neighborhood along with my daughters and my permanent companion. Since we had nowhere to go, nor any money to pay rent in another neighborhood, I found refuge in the home of some family members in the Municipality of Bello. The day after my departure, the paramilitary members

<sup>28</sup> Petition received in the matter of *Miryam Eugenia Rúa Figueroa – Comuna 13* – October 27, 2004, paragraph 3, p. 2; Audio, IACHR, Hearing, 131<sup>st</sup> session, "Comuna 13" Cases – 12.596 Luz Dary Ospina Bastidas, 12.595 – Miriam Eugenia Rúa Figueroa, and 12.621 – Teresa Yarce, Mery Naranjo and Socorro Mosquera, Colombia, March 12, 2008.

<sup>29</sup> Annex 4. File Number 289, Secretariat for the Environment (SIMPAD), July 10, 2002. Annex to the original petition received in the matter of *Miryam Eugenia Rúa Figueroa – Comuna 13* – October 27, 2004. This certificate also states that Mrs. Rúa's house is at Calle 48 CB 121 D-21, Barrio Nuevo, La Loma.

<sup>30</sup> Annex 4. File Number 289, Secretariat for the Environment (SIMPAD), July 10, 2002.

<sup>31</sup> Annex 4. File Number 289, Secretariat for the Environment (SIMPAD), July 10, 2002.

<sup>32</sup> Annex 5. Resolution No. 050012342, Social Solidarity Network, Municipality of Medellin, Department of Antioquia, August 9, 2002. Annex to the observations of the petitioners in reference to the matter of *Miryam Eugenia Rúa Figueroa – Comuna 13* – dated March 25, 2010.

<sup>33</sup> Annex 5. Resolution No. 050012342, Social Solidarity Network, Municipality of Medellin, Department of Antioquia, August 9, 2002.

arrived and violently searched the whole sector. Subsequently, and based on accounts provided by my neighbors, I found out that my house was being occupied by members of this group, who publically claimed “that they already knew that the chair of Community Action lived in that house.” As a result of the events recounted above, I went to the Office of Human Rights of the Office of the Inspector General of the Department, in order to provide a statement of forced displacement. I also submitted to this entity an application for registration in the SUR and reported the looting of my home and the displacement of which I am a victim to the Sectional Office of the Public Prosecutor of Medellin.<sup>34</sup>

121. This request to reconsider her case was denied once again by the Social Solidarity Network (Acción Social) on October 10, 2006.<sup>35</sup> On April 16, 2007, humanitarian aid was awarded to Mrs. Miryam Rua Figueroa by Acción Social, as follow-up to the admissibility report of the IACRH, approved on February 27, 2007, in the amount of \$618,000 Colombian pesos.<sup>36</sup>

122. Ms. Rua brought a *tutela* suit (a special appeal for constitutional protection) on August 6, 2010 against the Presidential Agency for the Social Solidarity Network (Acción Social), recounting several different procedures that she had followed at said entity and the contradictory nature of the responses.<sup>37</sup> On August 24, 2010, the 17<sup>th</sup> Circuit Court for Civil Matters of Medellin granted leave to hear the constitutional protection suit filed by Mrs. Miryam Rúa Figueroa, citing the ambiguous nature of the communications received by Mrs. Rúa from the Social Solidarity Agency, the consequence of which was “that the plaintiff was unable to find out what her actual status was according to Social Solidarity, as to aid and benefits she can gain access to if she qualifies and is included in the Single Registry of the Displaced Population (“RUPD”),” and the Court ordered the Office of Social Solidarity Network in Antioquia to issue a clear response to Ms. Rúa regarding being included in the RUPD.<sup>38</sup> On September 7, 2010, Ms. Rúa received a communication from the Social Solidarity Network Office confirming that she was not included in the RUPD.<sup>39</sup>

123. Mrs. Miryam Eugenia Rúa has been unable to resume her duties as leader because, as a result of the displacement, she must work to support her daughters, and she is in fear of the accusations

<sup>34</sup> Annex 6. Communication of Miryam Rua Figueroa addressed to Social Solidarity Network, Request for registry in the SUR, October 2, 2006. Annex 4. Observation of the Petitioners in reference to the Matter of *Miryam Eugenia Rua Figueroa et al* – Case 12.595, dated May 3, 2012.

<sup>35</sup> Annex 7. Communication of Social Solidarity Network. October 10, 2006. Annexes to Observations of the petitioners in reference to the matter of *Miryam Eugenia Rua Figueroa* – Comuna 13 – dated March 25, 2010.

<sup>36</sup> Ministry of Foreign Relations, Directorate of Human Rights and International Humanitarian Law, Observations on the Matter of Miryam Eugenia Rúa Figueroa et al, Case 12.595, April 17, 2007; Presidential Agency for Social Solidarity; Granting of Humanitarian Aid to Miryam Eugenia Rúa Figueroa, April 15, 2007; and Assertion of the Right of Petition, David Medina Hernandez, October 26, 2007. Annex 4. Communication of the Petitioners in reference to the matter of *Miryam Eugenia Rúa Figueroa et al* - Case 12.595, dated May 3, 2012.

<sup>37</sup> Annex 10. Suit for Constitutional Relief (*tutela*) brought by Miryam Eugenia Rúa Figueroa against the Presidential Agency for Social Solidarity, August 6, 2010 before the Circuit Court Judge for Civil Matters (Duty Judge), Medellin. Annex 4. Communication of the Petitioners in the matter of *Miryam Eugenia Rúa Figueroa et al* – Case 12.595, dated May 3, 2012.

<sup>38</sup> Annex 11. Suit for Constitutional Relief (*tutela*), Miryam Eugenia Rúa Figueroa, Office for Social Solidarity, Judgment No. 305, August 24, 2010, 17<sup>th</sup> Circuit Court for Civil Matters of Medellin.

<sup>39</sup> Annex 12. Communication of the Agency for Social Solidarity, September 7, 2010. Annex 4. Observations of the Petitioners in reference to the matter of *Miryam Eugenia Rúa Figueroa et al* – Case 12.595, dated May 3, 2012.

and persecution inflicted on women leaders.<sup>40</sup> Additionally, Mrs. Rua Figueroa and her family have been unable to return to their neighborhood, recover any of their property, and currently live in a municipality near the city of Medellin.<sup>41</sup>

#### **B.      Forced displacement of Luz Dary Ospina Bastidas in November 2002, and subsequent events**

124. In 2002, Ms. Luz Dary Ospina Bastidas was Executive Director of the Las Independencias Women's Association (AMI).<sup>42</sup> She lived in a house she owned<sup>43</sup> with her husband, Oscar Túlio Hoyos Oquendo, and their children Edid Yazmín, Oscar Darío and Migdalia Andrea Hoyos Ospina.<sup>44</sup> Her house had five bedrooms, a dining room, library, kitchen, bathroom, patio, terrace, and construction of a second floor was underway.<sup>45</sup>

125. In November 2002, the head of the Educational Center –part of the official elementary education system- told Ms. Luz Dary Ospina that her name was on a list of persons that the paramilitary were planning to assassinate.<sup>46</sup> In Mrs. Ospina's own words:

On November 12, 2002, when my co-members of the Las Independencias Women's Association (AMI) Mery Naranjo, Socorro Mosquera and Ana Teresa Yarce were arrested, there was a rumor that I was also involved in the alleged acts for which they were detained, and that something would also happen to me, that I could also be detained or charged as they were. Consequently, because of the detention of my fellow association members, and because of the violence and persecution endured by the women leaders of Comuna 13 when the paramilitary forces came in, that same day I left the neighborhood with the help of a friend.<sup>47</sup>

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<sup>40</sup> Annex 3. Statement of Mrs. Miryam Eugenia Rúa Figueroa received by the GIDH addressed to the Inter-American Commission on Human Rights, April 27, 2012.

<sup>41</sup> Observations of the petitioners with reference to the matter of *Miryam Eugenia Rúa Figueroa et al* – Comuna 13 – dated November 22, 2011, paras. 34 and 36.

<sup>42</sup> Annex 13. Statement that Mrs. María Noemí Morales made for the IACHR on October 23, 2006. Annex to the petitioners' communication in the matter of *Miryam Eugenia Rúa Figueroa et al.* – Comuna 13 – dated November 22, 2011.

<sup>43</sup> Annex 14. Copy of the public deed documenting the sale of the house located at Carretera 111C no. 34 DD-36 in Medellín, and transfer of title to said property to Mrs. Luz Dary Ospina Bastidas and Mr. Oscar Túlio Hoyos Oquendo, dated October 14, 1997. Attachment to the original petition received in the matter of *Luz Dary Ospina Bastidas* – Comuna 13 – October 27, 2004.

<sup>44</sup> Annex 15. Statement from Luz Dary Ospina Bastidas received by GIDH addressed to the Inter-American Commission on Human Rights, April 27, 2012. Annex 5. Observations from the Petitioners in reference to the matter of Miryam Eugenia Rúa Figueroa et al. – Case 12.595 – dated May 3, 2012.

<sup>45</sup> Annex 15. Statement from Luz Dary Ospina Bastidas received by GIDH addressed to the Inter-American Commission on Human Rights, April 27, 2012.

<sup>46</sup> Original petition received in the matter of *Luz Dary Ospina Bastidas* – Comuna 13 – October 27, 2004, pp. 2-3; Annex 16. Statement from Luz Dary Ospina Bastidas received by GIDH addressed to the Inter-American Commission on Human Rights, April 27, 2012.

<sup>47</sup> Annex 15. Statement from Luz Dary Ospina Bastidas received by the GIDH, addressed to the Inter-American Commission on Human Rights, April 27, 2012.

126. She immediately abandoned the neighborhood, together with her husband and three children.<sup>48</sup> When all of these events took place, her daughter Edid Yazmin was 22 years old, her son Oscar Dario was 21 years old, and her daughter Migdalia Andrea was 12 years old.<sup>49</sup>

127. Her husband and their two sons returned to protect the house from a possible takeover by paramilitary.<sup>50</sup> Luz Dary Ospina denounced before the authorities that on March 3, 2003, army soldiers, police, three hooded persons and five persons in civilian dress appeared at the home of Luz Dary Ospina and proceeded to search it without a court order.<sup>51</sup> Although the civilians claimed to be from the Attorney General's Office, they did not show identification.<sup>52</sup> Once these men had searched the property and found nothing that was criminal in nature, they attacked and threatened Mr. Oscar Hoyos.<sup>53</sup> They then forced him to dig a hole in the floor of the home, claiming that the family had weapons buried there.<sup>54</sup> They inquired about Mrs. Ospina, and her husband told them that she was at work.<sup>55</sup> When they came up empty-handed, they left.<sup>56</sup>

<sup>48</sup> Annex 16. Complaint filed with the Office of the Ombudsperson, dated July 18, 2003, claiming intra-urban displacement and security for Luz Dary Ospina Bastidas and her family (Independencia II neighborhood, *Comuna 13*). Annex to the original petition received in reference to the matter of *Luz Dary Ospina Bastidas – Comuna 13*, October 27, 2004; Annex 18. Complaint filed with the Departmental Attorney, City of Medellín, July 18, 2003, claiming intra-urban displacement and security for Luz Dary Ospina Bastidas and her family (Independencias II neighborhood, *Comuna 13*). Attachment to the petitioners' communication on the matter of *Luz Dary Ospina Bastidas – Comuna 13* - March 25, 2010.

<sup>49</sup> Annex 15. Statement from Luz Dary Ospina Bastidas received by GIDH addressed to the Inter-American Commission on Human Rights, April 27, 2012.

<sup>50</sup> Annex 16. Complaint filed with the Office of the Ombudsperson, dated July 18, 2003, claiming intra-urban displacement and security for Luz Dary Ospina Bastidas and her family; Annex 17. Complaint filed with the Departmental Attorney, City of Medellín, July 18, 2003, claiming intra-urban displacement and security for Luz Dary Ospina Bastidas and her family.

<sup>51</sup> Annex 16. Complaint filed with the Office of the Ombudsperson, dated July 18, 2003, claiming intra-urban displacement and security for Luz Dary Ospina Bastidas and her family; Annex 17. Complaint filed with the Departmental Prosecutor, City of Medellín, July 18, 2003, claiming intra-urban displacement and security for Luz Dary Ospina Bastidas and her family.

<sup>52</sup> Annex 16. Complaint filed with the Office of the Ombudsperson, dated July 18, 2003, claiming intra-urban displacement and security for Luz Dary Ospina Bastidas and her family; Annex 17. Complaint filed with the Departmental Prosecutor, City of Medellín, July 18, 2003, claiming intra-urban displacement and security for Luz Dary Ospina Bastidas and her family.

<sup>53</sup> Annex 16. Complaint filed with the Office of the Ombudsperson, dated July 18, 2003, claiming intra-urban displacement and security for Luz Dary Ospina Bastidas and her family; Annex 17. Complaint filed with the Departmental Prosecutor, City of Medellín, July 18, 2003, claiming intra-urban displacement and security for Luz Dary Ospina Bastidas and her family.

<sup>54</sup> Annex 16. Complaint filed with the Office of the Ombudsperson, dated July 18, 2003, claiming intra-urban displacement and security for Luz Dary Ospina Bastidas and her family; Annex 17. Complaint filed with the Departmental Prosecutor, City of Medellín, July 18, 2003, claiming intra-urban displacement and security for Luz Dary Ospina Bastidas and her family.

<sup>55</sup> Annex 16. Complaint filed with the Office of the Ombudsperson, dated July 18, 2003, claiming intra-urban displacement and security for Luz Dary Ospina Bastidas and her family; Annex 17. Complaint filed with the Departmental Prosecutor, City of Medellín, July 18, 2003, claiming intra-urban displacement and security for Luz Dary Ospina Bastidas and her family.

<sup>56</sup> Annex 16. Complaint filed with the Office of the Ombudsperson, dated July 18, 2003, claiming intra-urban displacement and security for Luz Dary Ospina Bastidas and her family; Annex 17. Complaint filed with the Departmental Prosecutor, City of Medellín, July 18, 2003, claiming intra-urban displacement and security for Luz Dary Ospina Bastidas and her family.

128. Luz Dary Ospina also later denounced before the authorities that on March 6, 2003, a group of armed civilians returned and dug holes in the rear of the house.<sup>57</sup> When this happened, Mr. Hoyos and his sons decided to abandon the house and rent it out. By agreement with the tenants, they left their belongings stored in a locked room in order to protect them.<sup>58</sup> On March 11, a group of men wearing armbands of the Special Counter-terrorism Command of the National Police, surrounded the house and began digging holes again, claiming to be looking for weapons.<sup>59</sup>

129. Ms. Luz Dary Ospina also denounced that on June 26, 2003, a group of armed men showed up at the house and threatened to break down the door if the tenant refused to let them in.<sup>60</sup> Once inside, they asked for Ms. Ospina and her family and proceeded to take away the furnishings.<sup>61</sup> They then looted all the belongings that were stored in the locked room.<sup>62</sup> At 6:00 p.m. the following day, June 27, 2003, they returned again and completed the looting at midnight.<sup>63</sup> They took away the rest of the furnishings and utensils.<sup>64</sup> When they left, they threatened the tenant by telling her: "If you file a complaint with the Attorney's Office or elsewhere, we'll cut off your head. And tell doña Luz Dary

<sup>57</sup> Annex 16. Complaint filed with the Office of the Ombudsperson, dated July 18, 2003, claiming intra-urban displacement and security for Luz Dary Ospina Bastidas and her family; Annex 17. Complaint filed with the Departmental Prosecutor, City of Medellín, July 18, 2003, claiming intra-urban displacement and security for Luz Dary Ospina Bastidas and her family.

<sup>58</sup> Annex 16. Complaint filed with the Office of the Ombudsperson, dated July 18, 2003, claiming intra-urban displacement and security for Luz Dary Ospina Bastidas and her family; Annex 17. Complaint filed with the Departmental Prosecutor, City of Medellín, July 18, 2003, claiming intra-urban displacement and security for Luz Dary Ospina Bastidas and her family.

<sup>59</sup> Annex 16. Complaint filed with the Office of the Ombudsperson, dated July 18, 2003, claiming intra-urban displacement and security for Luz Dary Ospina Bastidas and her family; Annex 17. Complaint filed with the Departmental Prosecutor, City of Medellín, July 18, 2003, claiming intra-urban displacement and security for Luz Dary Ospina Bastidas and her family.

<sup>60</sup> Annex 16. Complaint filed with the Office of the Ombudsperson, dated July 18, 2003, claiming intra-urban displacement and security for Luz Dary Ospina Bastidas and her family; Annex 17. Complaint filed with the Departmental Prosecutor, City of Medellín, July 18, 2003, claiming intra-urban displacement and security for Luz Dary Ospina Bastidas and her family.

<sup>61</sup> Annex 16. Complaint filed with the Office of the Ombudsperson, dated July 18, 2003, claiming intra-urban displacement and security for Luz Dary Ospina Bastidas and her family; Annex 17. Complaint filed with the Departmental Prosecutor, City of Medellín, July 18, 2003, claiming intra-urban displacement and security for Luz Dary Ospina Bastidas and her family.

<sup>62</sup> Annex 16. Complaint filed with the Office of the Ombudsperson, dated July 18, 2003, claiming intra-urban displacement and security for Luz Dary Ospina Bastidas and her family; Annex 17. Complaint filed with the Departmental Prosecutor, City of Medellín, July 18, 2003, claiming intra-urban displacement and security for Luz Dary Ospina Bastidas and her family.

<sup>63</sup> Annex 16. Complaint filed with the Office of the Ombudsperson, dated July 18, 2003, claiming intra-urban displacement and security for Luz Dary Ospina Bastidas and her family; Annex 17. Complaint filed with the Departmental Prosecutor, City of Medellín, July 18, 2003, claiming intra-urban displacement and security for Luz Dary Ospina Bastidas and her family.

<sup>64</sup> Annex 16. Complaint filed with the Office of the Ombudsperson, dated July 18, 2003, claiming intra-urban displacement and security for Luz Dary Ospina Bastidas and her family; Annex 17. Complaint filed with the Departmental Prosecutor, City of Medellín, July 18, 2003, claiming intra-urban displacement and security for Luz Dary Ospina Bastidas and her family.

and don Oscar that we need to speak with them and we need them to vacate this house.”<sup>65</sup> It was also denounced by Mrs. Luz Dary Ospina that the tenant moved out, and on July 8, 2003, the paramilitary took over the house,<sup>66</sup> which was torn down.<sup>67</sup>

130. Given these events, in August 2003 Luz Dary Ospina and her family moved to Bogotá.<sup>68</sup> Later, she and her husband Oscar Túlio Hoyos Oquendo and their daughter Migdalia Andrea Hoyos Ospina became beneficiaries of the Colombian Citizens’ Temporary Exit Program, and lived in Montevideo, Uruguay, from August 20, 2004 to July 26, 2005.<sup>69</sup> They returned to Colombia on July 28, 2005<sup>70</sup> and currently live in a neighborhood outside *Comuna 13*.<sup>71</sup>

131. In October 2003, Ms. Luz Dary Ospina applied to the Social Solidarity Network to be listed in the Single Registry of the Displaced Population. Her application was denied on December 2, 2003.<sup>72</sup> This decision was subsequently overturned by an order for listing in the Single Registry of Displaced Persons, dated February 13, 2004.<sup>73</sup>

132. On September 27, 2006, a representative from the *Comuna 13* Local Governance Committee came to the home of Mrs. Luz Dary Ospina to “confirm the condition of the property as

<sup>65</sup> Annex 16. Complaint filed with the Office of the Ombudsperson, dated July 18, 2003, claiming intra-urban displacement and security for Luz Dary Ospina Bastidas and her family; Annex 17. Complaint filed with the Departmental Prosecutor, City of Medellín, July 18, 2003, claiming intra-urban displacement and security for Luz Dary Ospina Bastidas and her family.

<sup>66</sup> Annex 16. Complaint filed with the Office of the Ombudsperson, dated July 18, 2003, claiming intra-urban displacement and security for Luz Dary Ospina Bastidas and her family; Annex 17. Complaint filed with the Departmental Prosecutor, City of Medellín, July 18, 2003, claiming intra-urban displacement and security for Luz Dary Ospina Bastidas and her family.

<sup>67</sup> Annexes 18-21. Photographs of rubble, condition of the interior, view of the exterior and frontal view of the house of Luz Dary Ospina. Attachments to the petitioners’ communication in the matter of *Miryam Eugenia Rúa Figueroa et al. – Comuna 13* – dated November 25, 2011. The lot on which the house was built was sold on September 18, 2007. Annex 7. Purchase Contract 091 of 2007. Annex to the petitioners’ communication in the matter of *Miryam Eugenia Rúa Figueroa et al. – Comuna 13* – dated November 22, 2011.

See also Annex 23. Declaration that Mrs. Blanca Inés Jiménez made for the IACtHR, October 23, 2006; Annex 24. Declaration that Mrs. María Noemí Morales made for the IACtHR on October 23, 2006; Annex 25, Declaration that Mrs. Adriana Patricia Suárez made for the IACtHR, March 2, 2010; Annex 26. Declaration that Mrs. Marta Elena Higuita made for the IACtHR, March 2, 2010. All these statements are annexes to the petitioners’ communication in the matter of *Miryam Eugenia Rúa Figueroa et al. – Comuna 13* – November 22, 2011.

<sup>68</sup> Original petition received in the matter of *Luz Dary Ospina Bastidas – Comuna 13*, October 27, 2004, paragraph 17.

<sup>69</sup> Annex 27. Confirmation from the Coordinator of the Colombian Citizens’ Temporary Exit Program of the National Social Ministry Secretariat, November 6, 2008, Attachment to the petitioners’ communication in the matter of *Luz Dary Ospina Bastidas – Comuna 13*, March 25, 2010.

<sup>70</sup> Annex 27. Confirmation from the Coordinator of the Colombian Citizens’ Temporary Exit Program of the National Social Ministry Secretariat, November 6, 2008.

<sup>71</sup> Communication from the petitioners in the matter of *Miryam Eugenia Rúa et al. – Comuna 13*, November 22, 2011, paragraph 27, p. 5.

<sup>72</sup> Annex 28. Decision No. 11001-12791R of February 13, 2004. Attachment to the original petition in the matter of *Luz Dary Ospina Bastidas – Comuna 13*, October 27, 2004.

<sup>73</sup> Annex 28. Decision No. 11001-12791R of February 13, 2004.

described by the owners" on September 6, 2006.<sup>74</sup> The technical report that was issued stated that in recent years, this area "has become a refuge for criminals, who prior to the arrival of the Army occupied the house for drug use."<sup>75</sup> The report stated that "the windows, some walls, doors, utilities, meters and other parts of the home were dismantled by supposed criminals from the area."<sup>76</sup> The report went on to say that at the time of the visit, Army personnel were found there who are posted there to stand guard over the property, to prevent it from again falling into the hands of outlaws."<sup>77</sup>

133. Ms. Luz Dary Ospina is currently living in the Belem La Capilla neighborhood of the city of Medellin.<sup>78</sup> She returned to Medellin in July 2005, and had to "continue moving from neighborhoods and from nearby municipalities out of fear of retaliation" and for what both she and her next of kin could suffer.<sup>79</sup> Additionally, she would not return to any place where she could be identified as a leader out of fear of acts of harassment and violence by the paramilitary members.<sup>80</sup>

#### **C. Detention of Mery Naranjo, María del Socorro Mosquera, and Ana Teresa Yarce on November 12, 2002, and subsequent events**

134. In 2002, Ms. Maria del Socorro Mosquera was President of the Las Independencias Women's Association (AMI).<sup>81</sup> Mery Naranjo and Ana Teresa Yarce were serving, respectively, as Chair and Auditor of the Community Action Board of the Independencias III neighborhood of *Comuna 13*.<sup>82</sup>

135. On November 8, 2002, Mrs. Mosquera, Ms. Naranjo and Ms. Yarce filed a complaint with the Municipal Government Secretariat concerning a series of human rights violations committed in

<sup>74</sup> Annex 29. Technical Report, Precautionary Retrieval of Furnishings, *Comuna 13* Local Governance Committee, October 17, 2006. Attachment to the petitioners' communication in the matter of *Luz Dary Ospina Bastidas – Comuna 13*, March 25, 2010.

<sup>75</sup> Annex 29. Technical Report, Precautionary Retrieval of Furnishings, *Comuna 13* Local Governance Committee, October 17, 2006.

<sup>76</sup> Annex 29. Technical Report, Precautionary Retrieval of Furnishings, *Comuna 13* Local Governance Committee, October 17, 2006.

<sup>77</sup> Annex 29. Technical Report, Precautionary Retrieval of Furnishings, *Comuna 13* Local Governance Committee, October 17, 2006.

<sup>78</sup> Annex 15. Statement from Luz Dary Ospina Bastidas received by GIDH addressed to the Inter-American Commission on Human Rights, April 27, 2012.

<sup>79</sup> Annex 15. Statement from Luz Dary Ospina Bastidas received by GIDH addressed to the Inter-American Commission on Human Rights, April 27, 2012.

<sup>80</sup> Annex 15. Statement of Luz Dary Ospina Bastidas received by the GIDH, addressed to the Inter-American Commission on Human Rights, April 27, 2012.

<sup>81</sup> Annex 30. Certificate of Existence and Representation of Non-profit Entities, Medellín Chamber of Commerce for Antioquia, Las Independencias Women's Association (AMI), p. 1, Annex 1, communication from the petitioners in reference to the matter of *Mery Naranjo et al. – Comuna 13*, March 25, 2010.

<sup>82</sup> Annex 31. Official document from the Secretariat of Social Development, Medellín Mayor's Office, certifying Mery Naranjo Jimenez as Chair and Ana Teresa Yarce as Treasurer of the Community Action Board, from July 23, 2002 to June 30, 2004, Medellín, December 16, 2002, Annex to the petitioners' communication in reference to the matter of *Mery Naranjo et al. – Comuna 13*, March 25, 2010.

*Comuna 13* since Operation Orión.<sup>83</sup> They reported, *inter alia*, murders alleged to have been committed by paramilitary groups in places within *Comuna 13* that were heavily controlled by the Army.<sup>84</sup>

136. Four days later, on November 12, 2002, Ms. Mosquera, Ms. Naranjo and Ms. Yarce were detained in a joint army/police operation conducted without an arrest warrant.<sup>85</sup> The arrest report prepared by the Squad Commander, Corporal Third Class Torres Monterrosa Pilides of the Colombian Military Forces (National Army, Fourth Brigade), describes the detention as follows:

I hereby deliver Mrs. Ana Teresa Yarce (...), Mery del Socorro Naranjo Jimenez (...) and María del Socorro Mozquera (...) for their appearance before the Prosecutor on duty. The three women were apprehended as I was on a military patrol of the area in the Beléncito, La Torre sector, on orders from Mr. S.V. Hernandez. Reports had already been received from people living in the sector that the three women were militia members. The National Police's assistance was requested due to the fact that the three women were in the process of changing residence, knowing that they were on the verge of being caught. The operation went to each residence and the arrests were made. The police searched the homes. By 3:30 p.m. the operation got as far as La Torre. Tank support was requested. They proceeded as far as the command post for Mr. Dario de Jesus Castaño Toro -- I.D. 71.678.364-- and Mr. Diomer Castañeda. The arrests were made by the Bombarda 2 anti-guerrilla unit under the command of Corporal Third Class Torres Monterrosa Pilides and the police agents who conducted the searches, as our units are not manned for searches...<sup>86</sup>

137. On November 12, 2002, the three women were brought to the Prosecutor's Office.<sup>87</sup> According to the records, the women were arrested and implicated in the investigations on the basis of information supplied by people living in the sector, specifically Mr. Diomer Castañeda and Dario de Jesús Castaño Toro, who had reported that the three were "militia members" and, as such, were collaborating with guerrilla groups.<sup>88</sup>

<sup>83</sup> United Nations, Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, submitted in accordance with Commission on Human Rights resolution 2002/52. Visit to Colombia, E/CN.4/2003/75/Add.2, January 14, 2003, paragraph 35, available at [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.2003.90.Add.2.En?OpenDocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.2003.90.Add.2.En?OpenDocument); *Panorama de Derechos Humanos, Noche y Niebla y Violencia Política en Colombia, Caso Tipo No. 2: Comuna 13*, [Human Rights Picture, Night, Fog and Political Violence in Colombia, Case Type No. 2], CINEP & Justicia y Paz, Bogotá, May 2003, p. 31 available [in Spanish] at <http://www.nocheyniebla.org/node/46>.

<sup>84</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, submitted in accordance with Commission on Human Rights resolution 2002/52. Visit to Colombia, E/CN.4/2003/75/Add.2, January 14, 2003, paragraph 35.

<sup>85</sup> Annex 32. Arrest report, Squad Commander Corporal Third Class Torres Monterrosa Pilides, Military Forces of Colombia, National Army, Fourth Brigade, to the Prosecutor on Duty, November 12, 2002, attachment to the petitioners' communication in the matter of *Mery Naranjo et al. – Comuna 13*, March 25, 2010.

<sup>86</sup> Annex 32. Arrest report, Squad Commander Corporal Third Class Torres Monterrosa Pilides, Military Forces of Colombia, National Army, Fourth Brigade, to the Prosecutor on Duty, November 12, 2002. Annex 32. Official Confirmation of the report by Corporal Third Class Torres Monterrosa Pilides, November 12, 2002. Annexes to the petitioners' communication in the matter of *Mery Naranjo et al. – Comuna 13*, March 25, 2010.

<sup>87</sup> Annex 34. Order to close Investigation No. 631609 conducted by the Single Sectional Unit for Crimes against the Constitutional and Legal Order and Other Crimes, dated May 22, 2003. Attachment to the original petition in the matter of *Socorro Mosquera Londoño and Mery Naranjo Jiménez – Comuna 13* – March 7, 2005, and to the Colombian State's note DH. GOI No. 12442-0552 of March 15, 2007.

<sup>88</sup> Annex 34. Order to close Investigation No. 631609 conducted by the Single Sectional Unit for Crimes against the Constitutional and Legal Order and Other Crimes, dated May 22, 2003; Annex 35. Copy of the resolution issued by the

138. On November 13, 2002, Mrs. Mosquera, Mrs. Naranjo and Mrs. Yarce were interrogated.<sup>89</sup> In the course of their interrogation, they stated that at the time of their arrest they were not told the reason why; that the accusations made against them were false, and that they had been threatened because of their leadership work within the Community Action Board.<sup>90</sup> They also noted clashes that they had had with Mr. Diomer Castañeda, who took steps to keep them from being able to participate as candidates in the elections for the Community Action Board.<sup>91</sup>

139. In the preliminary statement given by Mrs. Mery Naranjo, she, too, makes reference to an earlier meeting they had with the Secretary of Municipal Government, in which they reported human rights violations:

....Last Friday the Secretary of Municipal Government summoned the community leaders to a meeting at the Monsignor Perdomo school, which is in the San Javier neighborhood. At the meeting, I spoke about the fear within the community; I said that although the security forces are everywhere, people were disappearing and turning up dead, killed with machetes and knives. I said that it's fine for the security forces to be there, as we can all sleep better at night. But these anomalies have to be investigated.<sup>92</sup>

140. During the process, Ms. Maria Janneth Estrada Serna<sup>93</sup> went to the Prosecutor's Office and made a statement on November 18, 2002. Speaking as vice chair of the Community Action Board, she, too, alluded to the disputes between members of the Community Action Board and Mr. Diomer Castañeda.<sup>94</sup>

141. On November 21, 2002, the Prosecutor in investigation No. 631609 decided not to order any custodial measure for Ms. Yarce, Ms. Naranjo and Ms. Mosquera, and ordered their immediate release instead.<sup>95</sup> In that decision, the Prosecutor made reference to the "complete lack of evidence" in

Prosecutorial Unit Assigned to the Medellín Criminal Circuit Court Judges, dated November 21, 2002. Annex to the Colombian State's note DH. GOI No. 12442-0552 of March 15, 2007, and to the petitioners' communication in the matter of *Mery Naranjo et al. – Comuna 13*, March 25, 2010; Annex 36. Statement that Darío de Jesús Castaño Toro made to the Office of the Attorney General of the Nation-Rapid Response Unit – Sectional Prosecution 12. Annex to the petitioners' communication in the matter of *Mery Naranjo et al. – Comuna 13*, March 25, 2010.

<sup>89</sup> Annex 37. Preliminary questioning of Mrs. Mery del Socorro Naranjo Jiménez, November 13, 2002, Attachment to the original petition in the matter of *Socorro Mosquera Londoño and Mery Naranjo Jiménez – Comuna 13* – March 7, 2005.

<sup>90</sup> Annex 37. Preliminary questioning of Mrs. Mery del Socorro Naranjo Jiménez, November 13, 2002; Annex 38. Preliminary questioning of Mrs. Ana Teresa Yarce by the Office of the Attorney General of the Nation, November 13, 2002. Annex to the petitioners' communication in the matter of *Miryam Eugenia Rua Figueira et al. – Comuna 13*, November 22 and 25, 2011; Annex 39. Preliminary questioning of Mrs. María del Socorro Mosquera Londoño, November 14, 2002. Annex to the original petition in the matter of *Socorro Mosquera Londoño and Mery Naranjo Jiménez – Comuna 13* – March 7, 2005.

<sup>91</sup> Annex 38. Preliminary statement of Mrs. Ana Teresa Yarce to the Office of the Attorney General of the Nation, November 13, 2002.

<sup>92</sup> Annex 37. Preliminary questioning of Mrs. Mery del Socorro Naranjo Jiménez, November 13, 2002.

<sup>93</sup> Annex 40. Sworn statement of Janneth Estrada Serna dated November 18, 2002. Attachment to the original petition in reference to the matter of *Socorro Mosquera Londoño and Mery Naranjo Jiménez – Comuna 13* – March 7, 2005.

<sup>94</sup> Annex 40. Sworn statement of Janneth Estrada Serna dated November 18, 2002.

<sup>95</sup> Annex 41. Copy of the resolution issued by the Prosecutorial Unit Assigned to the Criminal Court Judges of the Medellín Specialized Circuit, dated November 21, 2002.

the statements given by the witnesses who accused Ms. Mosquera, Ms. Yarce and Ms. Naranjo and found that no witness had said anything that would implicate the suspects as either the authors of or participants in the crime of sedition, criminalized in Article 467 of the Criminal Code.<sup>96</sup> The Prosecutor's Office also states that the assertions are based on rumors and rumor is not evidence that the law allows to implicate anyone; hence, rumor cannot be the basis for ordering preventive detention."<sup>97</sup> The Prosecutor therefore refrained from ordering that the suspects be held, as "there is no serious, truthful and convincing evidence suggesting that they were the authors of the crime of sedition; their immediate release shall, therefore, be ordered."<sup>98</sup> However, the Prosecutor does require the suspects to "sign a pledge whereby they guarantee their appearance for the proceedings, as the investigation must go forward in order to shed further light on the matter."<sup>99</sup>

142. On May 22, 2003, the investigation was closed for lack of grounds to charge the suspects.<sup>100</sup>

#### **D. Murder of Ms. Ana Teresa Yarce on October 6, 2004, and subsequent events**

143. Ms. Yarce was murdered on October 6, 2004, as she was performing civic activities in the Independencia III neighborhood of *Comuna 13*. At the time she was with her daughter Mónica Dulfary Orozco Yarce and Mrs. Mery Naranjo.<sup>101</sup> Between 9:30 and 10:00 AM, while she was having breakfast and conversing with the people joining her, across from the Family Community Center, she was shot several times by a young man, approximately 18 to 20 years of age.<sup>102</sup> Mery Naranjo and her daughter came to her aid and she was driven by taxicab to a health center.<sup>103</sup> She passed away minutes

<sup>96</sup> Annex 41. Copy of the resolution issued by the Prosecutorial Unit Assigned to the Criminal Court Judges of the Medellín Specialized Circuit, dated November 21, 2002.

<sup>97</sup> Annex 41. Copy of the resolution issued by the Prosecutorial Unit Assigned to the Criminal Court Judges of the Medellín Specialized Circuit, dated November 21, 2002.

<sup>98</sup> Annex 41. Copy of the resolution issued by the Prosecutorial Unit Assigned to the Criminal Court Judges of the Medellín Specialized Circuit, dated November 21, 2002.

<sup>99</sup> Annex 41. Copy of the resolution issued by the Prosecutorial Unit Assigned to the Criminal Court Judges of the Medellín Specialized Circuit, dated November 21, 2002.

<sup>100</sup> Annex 42. Order to close investigation No. 631609 conducted by the Single Sectional Unit for Crimes against the Constitutional and Legal Order, dated May 22, 2003. Annex to the original petition in the matter of *Socorro Mosquera Londoño and Mery Naranjo Jiménez – Comuna 13 – March 7, 2005*, and to the Colombian State's note DH. GOI No. 12442-0552 of March 15, 2007.

<sup>101</sup> Information supplied in the original petition in the matter of *Socorro Mosquera Londoño and Mery Naranjo Jiménez – Comuna 13 – March 7, 2005*, paragraph 11, p. 4 and in the petitioners' observations regarding the matter of *Mery Naranjo et al. – Comuna 13*, March 25, 2010, p. 3.

<sup>102</sup> Observations of the Petitioners in reference to the matter of *Miryam Eugenia Rúa Figueroa et al*, Case 12.595, dated May 3, 2012, page 7; Annex 43. Supplementary information to the Judicial Inspection Visit for Removal of Corpse, Ana Teresa Yarce, October 6, 2004. Criminal proceeding on the murder of Mrs. Ana Teresa Yarce. Annex 1. Communication of the Petitioners in reference to the matter of *Miryam Eugenia Rúa Figueroa et al* – Case 12.595, dated May 3, 2012.

<sup>103</sup> Information provided in the original petition in reference to the matter of *Socorro Mosquera Londoño and Mery Naranjo Jiménez – Comuna 13 – March 7, 2005*. Pg. 4, par. 11 and the observations of the petitioners in reference to the matter of *Mery Naranjo Jiménez et al* – Comuna 13, on March 25, 2010, pg. 3.

after being transferred to the hospital center.<sup>104</sup> Mónica Dulfary Orozco Yarce made the following statement to the authorities regarding the murder of her mother:

My mom lived with two children, she was unmarried, she served as chair of the Community Action [Board] of the neighborhood of La Independencia 3, she also served as a plumber in the same neighborhood, this morning I was with my mom, we were across from the Family Community Center, it was around 9:30 AM, she was coming down with a bag of garbage and some children were taking breakfast to her, she sat down to eat breakfast under a tree, a young boy from 18 to 20 years of age, dark skinned, thin, wearing a blue shirt with black striped sleeves, blue and white shorts, [came] out of the blue, I don't remember more, I was so scared I don't know how many shots he fired at her. A few days earlier, some boys came to my mother's house and they told her they were going to kill her in front of her children, and she filed a complaint about these threats. ....<sup>105</sup>

144. The cause of Ana Teresa Yarce's death was determined to be from wounds caused by a firearm at short range.<sup>106</sup>

145. The danger to Ms. Mosquera and Ms. Naranjo escalated, prompting the IACtHR to grant precautionary measures on October 22, 2004.<sup>107</sup>

146. On February 14, 2006, a joint Army/paramilitary command unit unlawfully searched the home of Mrs. Mery Naranjo's family members.<sup>108</sup> During that search Luisa María Escudero, a 14-year-old child and Mrs. Naranjo's niece, was injured.<sup>109</sup>

#### E. The situation in *Comuna 13* at the time of these events

147. As capital of the Department of Antioquia, the city of Medellín has 16 comunas and 5 districts.<sup>110</sup> Some 76% of the families in *Comuna 13* live on minimum wage, and 39% of the population are female heads of household.<sup>111</sup>

<sup>104</sup> Annex 44. Decision on the bail status of Jorge Enrique Aguilar, Office of the Attorney General of the Nation, File: 2169, August 31, 2007, Criminal proceeding on the murder of Mrs. Ana Teresa Yarce. Annex 1. Communication of the Petitioners in reference to the matter of *Miryam Eugenia Rúa Figueroa et al* – Case 12.595, dated May 3, 2012.

<sup>105</sup> Annex 45. Report of the Judicial Investigator, Office of the Attorney General of the Nation, October 6, 2004, Information on the Deceased: Ana Teresa Yarce. Criminal proceeding on the murder of Mrs. Ana Teresa Yarce. Annex 1. Communication of the petitioners in reference to the matter of *Miryam Eugenia Rúa Figueroa et al* – Case 12.595, dated May 3, 2012.

<sup>106</sup> Annex 45. Report of Judicial Investigator, Office of the Attorney General of the Nation, October 6, 2004, Information on the Deceased: Ana Teresa Yarce. Criminal proceeding regarding the murder of Mrs. Ana Teresa Yarce, and Autopsy report, No. 2004P-02012, Name: Ana Teresa Yarce.

<sup>107</sup> IACtHR, Solicitud de Medidas Provisionales a la Corte Interamericana de Derechos Humanos en el Asunto "Mery Naranjo y Otros", 3 de julio de 2006. paras. 23-24, Expediente de Medidas Provisionales; Anexos 44 y 47. Resolución de Situación Jurídica de Jorge Enrique Aguilar, Fiscalía General de la Nación, Radicado: 2169, 31 de agosto de 2007 y Resolución de Situación Jurídica de Jhon Jairo Cano Durán, Fiscalía General de la Nación, Radicado: 2169, 6 de septiembre de 2007, Proceso penal sobre el asesinato de la Señora Ana Teresa Yarce. Anexo 1. Comunicación de los Peticionarios en referencia al asunto de *Miryam Eugenia Rúa Figueroa y Otras* – Caso 12.595 de fecha 3 de mayo de 2012.

<sup>108</sup> IACtHR, Request for Provisional Measures submitted to the Inter-American Court of Human Rights in the Matter of *Mery Naranjo et al.* regarding the Republic of Colombia, July 3, 2006, paragraph 26. Provisional Measures File.

<sup>109</sup> IACtHR, Request for Provisional Measures submitted to the Inter-American Court of Human Rights in the Matter of *Mery Naranjo et al.* regarding the Republic of Colombia, July 3, 2006, paragraph 26. Provisional Measures File.

148. Because of its geographic location and the dire economic circumstances of the vast majority of its inhabitants, *Comuna 13* has become a hotbed of activity by armed outlaw groups, which was the prevailing situation as of the date of the facts analyzed in this matter.<sup>112</sup> This has generated periods of violence in the last 30 years, caused by clashes between the armed outlaw groups looking to control more turf and increase their share of the illegal drug trafficking business.<sup>113</sup> Since the late 1980s, the Revolutionary Armed Forces of Colombia (FARC) and the National Liberation Army (ELN) have established militia groups in the comuna.<sup>114</sup> The Office of the Colombian Ombudsperson has documented how these groups established themselves in *Comuna 13*, “pushing back the criminal groups and street gangs that engaged in theft, extortion, drug trafficking, murder and other assaults on the inhabitants.”<sup>115</sup> Once they established their control over the Comuna, the militias imposed their authority and order, supplanting the authority of the State.<sup>116</sup> Since 1999, illegal *autodefensa* groups have made inroads into the peripheral areas of *Comuna 13* to take on these militia groups directly. This merely served to increase crime in the area.<sup>117</sup>

149. This scenario prompted the State to step up its operations in *Comuna 13*, targeting illegal armed groups with the idea of restoring law and order. These operations included “Operation Mariscal” on May 21, 2002, followed by “Operation Potestad” in June, then “Operation Antorcha” in August and “Operation Orión” in October.<sup>118</sup> These offensives were joint operations involving members of the National Army (from the Fourth Brigade), the National Policy (attached to the Antioquia Police Command), personnel from the Administrative Security Department (DAS), from the Colombian Air Force (FAC), from the Technical Investigations Corps (CTI) and from the Office of the Attorney General of the Nation.<sup>119</sup>

150. Various organizations have documented attacks committed during these operations against the civilian population, which included: murders, shooting people as they walked down the street; searching homes without a court order; authorizing the police and the army to perform the

<sup>110</sup> Annex 47. Risk Assessment No. 016-10, Office of the Ombudsperson assigned to assess risks posed to the civilian population as a result of the armed conflict, Early Warning System (“Sistema de Alertas Temprana – SAT), Office of the Colombian Ombudsperson, p. 6.

<sup>111</sup> *Panorama de Derechos Humanos, Noche y Niebla y Violencia Política en Colombia, Caso Tipo No. 2: Comuna 13*, [Human Rights Picture, Night, Fog and Political Violence in Colombia], CINEP & Justicia y Paz, Bogotá, May 2003, p 79.

<sup>112</sup> Annex 47. Risk Assessment No. 016-10, Office of the Colombian Ombudsperson, p. 3.

<sup>113</sup> Annex 47. Risk Assessment No. 016-10, Office of the Colombian Ombudsperson, p. 3.

<sup>114</sup> *Panorama de Derechos Humanos, Noche y Niebla y Violencia Política en Colombia, Caso Tipo No. 2: Comuna 13*, [Human Rights Picture, Night, Fog and Political Violence in Colombia], CINEP & Justicia y Paz, Bogotá, May 2003, pp. 43-44.

<sup>115</sup> Annex 48. Risk Assessment No. 009-07, Office of the Ombudsperson for the Assessment of the Risk Posed to the Civilian Population as a result of the armed conflict, Early Warning System (SAT), Office of the Colombian Ombudsperson, p. 1; Risk Assessment N° 016-10, Office of the Colombian Ombudsperson, p. 7.

<sup>116</sup> Annex 48. Risk Assessment No. 009-07, Office of the Colombian Ombudsperson, p. 5.

<sup>117</sup> *Panorama de Derechos Humanos, Noche y Niebla y Violencia Política en Colombia, Caso Tipo No. 2: Comuna 13*, [Human Rights Picture, Night, Fog and Political Violence in Colombia], CINEP & Justicia y Paz, Bogotá, May 2003, p. 44.

<sup>118</sup> IACHR, Request for Provisional Measures submitted to the Inter-American Court of Human Rights in the Matter of Mery Naranjo *et al.* regarding the Republic of Colombia, July 3, 2006, paragraph 14. Provisional Measures File.

<sup>119</sup> IACHR, Request for Provisional Measures submitted to the Inter-American Court of Human Rights in the Matter of Mery Naranjo *et al.* regarding the Republic of Colombia, July 3, 2006, paragraph 15. Provisional Measures File.

functions of the judicial police; arbitrary detentions done without a court order, and others.<sup>120</sup> In its 2002 Annual Report, the Office of the United Nations High Commissioner for Human Rights documented how the clashes between the illegal armed groups and security forces in the comunas of Medellín took a high toll in human lives and showed “how difficult it has been for the Government to protect the civilian population and to enforce the principles of distinction and proportionality.”<sup>121</sup> These difficulties included indiscriminate attacks against the civilian population and blamed on Army soldiers during Operations “Mariscal” and “Orión”<sup>122</sup> and unlawful and arbitrary searches conducted without a court order.<sup>123</sup>

151. Several particular features of Operation Orión that the Office of the High Commissioner highlighted were the number of civilians killed during searches and arrests; the arbitrary deprivations of liberty and forced disappearances; violations of the right to privacy; and the inviolability of the home.<sup>124</sup> For its part, the IACtHR issued a press release on October 18, 2002, in which it expressed its concern over news reports that civilians were either killed or injured during Operation Orión.<sup>125</sup> The Commission underscored “the obligation of the parties to the conflict to respect the norms of international humanitarian law, in particular the principles that distinguish between combatants and non-combatants, and concerning proportionality in the use of force.”<sup>126</sup> It also reminded the State of its obligation to protect the civilian population, and the judicial and police authorities of their duty to investigate, prosecute and punish violations of these norms and principles.<sup>127</sup> The IACtHR also received information indicating that over 350 people were detained during Operation Orión.<sup>128</sup>

152. In the aftermath of these military operations, the IACtHR received information confirming that paramilitary groups were rapidly making inroads into *Comuna 13* and establishing

<sup>120</sup> *Panorama de Derechos Humanos, Noche y Niebla y Violencia Política en Colombia, Caso Tipo No. 2: Comuna 13*, [Human Rights Picture, Night, Fog and Political Violence in Colombia], CINEP & Justicia y Paz, Bogotá, May 2003, p. 14; Audio, IACtHR, Thematic Hearing, “Human Rights Situation in the Region of Antioquia and in Comuna 13 of Medellín, Colombia,” October 16, 2012, 116<sup>th</sup> period of sessions.

<sup>121</sup> United Nations, *Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia*, Annual Report 2002, E/CN.4/2003/13, February 24, 2003, paragraph 28, available at: <http://www.unhchr.ch/Huridoca/Huridoca.nsf/0/1304674285b7eb3bc1256cf5003906fb?OpenDocument>

<sup>122</sup> United Nations, *Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia*, Annual Report 2002, E/CN.4/2003/13, February 24, 2003, paragraph 37.

<sup>123</sup> United Nations, *Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia*, Annual Report 2002, E/CN.4/2003/13, February 24, 2003, paragraph 37.

<sup>124</sup> United Nations, *Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia*, Annual Report 2002, E/CN.4/2003/13, February 24, 2003, paragraph 46.

<sup>125</sup> IACtHR, Press Release No. 40/02, *IACtHR Concerned over the Situation of Comuna 13 in the City of Medellín, Colombia*, October 18, 2002.

<sup>126</sup> IACtHR, Press Release, No. 40/02, *IACtHR Concerned over the Situation of Comuna 13 in the City of Medellín, Colombia*, October 18, 2002.

<sup>127</sup> IACtHR, Press Release, No. 40/02, *IACtHR Concerned over the Situation of Comuna 13 in the City of Medellín, Colombia*, October 18, 2002..

<sup>128</sup> United Nations, *Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia*, Annual Report 2003, E/CN.4/2004/13, February 17, 2004, paragraph 12, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G04/109/93/PDF/G0410993.pdf?OpenElement>.

themselves there.<sup>129</sup> In June 2003, the IACHR conducted a 10-day working visit to Colombia during which it visited *Comuna 13*, took testimony from members of the community about selective killings, forced disappearances and other acts of violence and intimidation allegedly committed by paramilitary groups despite the presence of the security forces.<sup>130</sup> The IACHR Rapporteur for Colombia acknowledged the efforts being made by the security forces to restore the State's authority in a comuna whose inhabitants had for years been gravely affected by the criminal activities of groups like the FARC, the ELN and others.<sup>131</sup> He did, however, convey his concern over the fact that the paramilitary were becoming an entrenched presence and continued to commit serious crimes in *Comuna 13*. He urged the authorities to dismantle the paramilitary structures operating in the area, to establish the State as the sole authority and to put an end to the climate of fear and insecurity that was obstructing the judicial authorities' investigation of the serious human rights violations that occurred.<sup>132</sup> Concerns were also expressed over the course of the judicial processes against the persons detained by the security forces, in the operations practiced by the public forces, with the intervention of the CTI and the Prosecutor's Office.<sup>133</sup>

153. The Office of the United Nations High Commissioner for Human Rights in Colombia corroborated the fact that the paramilitary were becoming entrenched in *Comuna 13*, whose population had become the victims of abuse and human rights violations.<sup>134</sup> It stressed the fact that the vast majority of these abuses had never been punished, and public officials were not held criminally liable for their ties to "paramilitary groups and actions." It also observed that this was one of the most questionable aspects about the commitment to oppose these ties.<sup>135</sup>

154. The IACHR has closely followed developments in *Comuna 13*. In 2004 it reported that despite a certain decline in the number of incidents of political violence – a general trend since 2003— paramilitary domination persisted<sup>136</sup> in certain *comunas* of Medellín, along with acts of violence, harassment, and intimidation against those who did not express support for the agenda of these

<sup>129</sup> IACHR, Request for Provisional Measures submitted to the Inter-American Court of Human Rights in the Matter of Mery Naranjo *et al.* regarding the Republic of Colombia, July 3, 2006, paragraph 15. Provisional Measures File; Audio, IACHR, Thematic Hearing, "Human Rights Situation in the Region of Antioquia and in Comuna 13 of Medellín, Colombia," October 16, 2012, 116<sup>th</sup> period of sessions.

<sup>130</sup> IACHR, Press Release No. 15/03, *IACHR Rapporteur Concludes Working Visit to the Republic of Colombia*, June 27, 2003.

<sup>131</sup> IACHR, Press Release No. 15/03, *IACHR Rapporteur Concludes Working Visit to the Republic of Colombia*, June 27, 2003.

<sup>132</sup> IACHR, Press Release No. 15/03, *IACHR Rapporteur Concludes Working Visit to the Republic of Colombia*, June 27, 2003; IACHR, Annual Report 2004, Chapter IV, Colombia, paragraph 31.

<sup>133</sup> IACHR, Press Release No. 15/03, *IACHR Rapporteur Concludes Working Visit to the Republic of Colombia*, June 27, 2003.

<sup>134</sup> United Nations, *Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia*, Annual Report 2002, E/CN.4/2003/13, February 24, 2003, paragraph 37; *Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia*, Annual Report 2003, E/CN.4/2004/13, February 17, 2004, paragraphs 3 and 24, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G04/109/93/PDF/G0410993.pdf?OpenElement>.

<sup>135</sup> United Nations, *Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia*, Annual Report 2002, February 24, 2003, paragraph 77.

<sup>136</sup> IACHR, *Report on the Demobilization Process in Colombia*, OEA/Ser.L/V/II.120 Doc. 60, December 13, 2004, paragraph 82.

groups.<sup>137</sup> The Commission also confirmed that these factors had triggered the intra-urban displacement of dozens of families, who were forced to leave their homes, thereby reinforcing what the paramilitary called “the reign of silence.”<sup>138</sup>

#### **F. State of emergency declared on August 11, 2002 and subsequent decrees**

155. On August 11, 2002, during the first term of President Alvaro Uribe Vélez, Colombia declared a state of emergency.<sup>139</sup> As grounds for its decision, the State pointed to the insecurity in the country and the violations of human rights and international humanitarian law committed against its citizens.<sup>140</sup> Decree 1837, which declared the state of emergency, provided that “measures have to be taken to restore the rights and freedoms of citizens across the nation, without sacrificing the guarantees they have under the Constitution and the international treaties that Colombia has signed and ratified on the subject.”<sup>141</sup>

156. By a note dated August 12, 2002, the Minister of Foreign Affairs of the Republic of Colombia informed the OAS Secretary General that a state of emergency had been declared in Colombia on August 11, 2002.<sup>142</sup> In keeping with Article 27(3) of the American Convention on Human Rights, the State reported the following in that note:

The statement to which I have referred is a result of the recent occurrence of events which disrupt the normal course of citizens' activities, causing a state of unrest throughout the nation, stemming from the surge in attacks against the civilian population and democratic institutions, particularly against local leaders, committed by outlawed armed groups funded mainly by resources obtained from drug trafficking, abductions and extortion....

With the use of these powers, the National Government has the legal ability to restrict some public freedoms and to make use of the right that is the subject of Article 27.1 of the American Convention on Human Rights. This right is exercised by the Colombian Government through the issuance of decrees of a legislative nature directly relating to the reasons that gave rise to the statement, which must be signed by the President and all of his Ministers, and is subject to oversight of the Constitutional Court ...

The provisions that are adopted in the course of the internal state of unrest shall not be inconsistent with the other obligations that are imposed by the international rule of law and shall not involve any discrimination based on reasons of race, color, sex, language, religion or

<sup>137</sup> IACHR, *Report on the Demobilization Process in Colombia*, OEA/Ser.L/V/II.120 Doc. 60, December 13, 2004, paragraph 82.

<sup>138</sup> IACHR, *Report on the Demobilization Process in Colombia*, OEA/Ser.L/V/II.120 Doc. 60, December 13, 2004, paragraph 82.

<sup>139</sup> Annex 49. Office of the President of the Republic, Decree Number 1837 of 2002, August 11, 2002. The decree resolves “To declare a state of emergency nationwide, for a period of ninety (90) calendar days as of the date of effect of the present decree,” See p. 4.

<sup>140</sup> Annex 49. Office of the President of the Republic, Decree Number 1837 of 2002, August 11, 2002, pp. 1-4.

<sup>141</sup> Annex 49. Office of the President of the Republic, Decree Number 1837 of 2002, August 11, 2002, p. 2.

<sup>142</sup> Annex 50. Note from the State of Colombia to the OAS Secretary General, DM.OJ. 29607, August 12, 2002, received by the OAS Department of International Law on August 14, 2002; the States Parties to the American Convention on Human Rights, the IACHR and the Inter-American Court of Human Rights were notified on August 15, 2002. With its note, the State attaches a copy of Decree Number 1837 of 2002.

social origin. Additionally, the suspension of the rights and guarantees set forth under subparagraph 2 of Article 27 of the American Convention on Human Rights shall not be ordered.<sup>143</sup>

157. Colombia's Constitutional Court reviewed Decree 1837, and found that the state of emergency was constitutional and explained its reasoning.<sup>144</sup> In Judgment C-802-02 the Constitutional Court found that the state of emergency is enforceable as the President is exercising "his discretionary authority within the boundaries established by the Constitution"; it also held that there was no manifest error "in the assessment of the severity of the upheaval and its implications for the democratic system of government in Colombia."<sup>145</sup> The Court, however, wrote that the President's "authority is neither unlimited nor arbitrary," as the President must observe "the criteria established in the Constitution, the international human rights treaties to which Colombia is party and the Statute on States of Emergency."<sup>146</sup>

158. The State extended the state of emergency for the first time on November 8, 2002,<sup>147</sup> and then again on February 5, 2003.<sup>148</sup> It notified the OAS Secretary General of the first extension in a note dated November 12, 2002;<sup>149</sup> the second was reported on February 12, 2003.<sup>150</sup>

159. Under the state of emergency and in furtherance of the provisions of Decree 1837, the State also adopted Decree 2002 of September 11, 2002, in which "measures are adopted aimed at controlling public law and order and the areas targeted for rehabilitation and consolidation are defined."<sup>151</sup> In Judgment C-024-02, the Constitutional Court held that some provisions of this decree were enforceable, including those that authorized the police and members of the Army to make arrests, conduct searches and stop persons, without a court order.

<sup>143</sup> Annex 50. Colombian State's Note. DM OJ 29607, August 12, 2002. In its note, the State submits as an annex Decree Number 1837 of 2002.

<sup>144</sup> Constitutional Court of Colombia, Judgment C 802-02, available [in Spanish] at: <http://www.corteconstitucional.gov.co/>

<sup>145</sup> Constitutional Court of Colombia, Judgment C 802-02.

<sup>146</sup> Constitutional Court of Colombia, Judgment C 802-02.

<sup>147</sup> IACR, Annual Report 2002, Chapter IV: Colombia, Section VI: *The Declaration of the State of Emergency*, OEA/Ser.L/V/II.117, Doc. 1 rev. 1, March 7, 2003, paragraph 64; Annex 40. Office of the President of the Republic of Colombia, Decree No. 2555 of 2002, November 8, 2002; Annex 41. Office of the President of the Republic of Colombia, Decree 245 of 2003, February 5, 2003.

<sup>148</sup> IACR, Annual Report 2002, Chapter IV: Colombia. Section VI. *The Declaration of the State of Emergency*, OEA/Ser.L/V/II.117, Doc. 1 rev. 1, March 7, 2003, paragraph 64.

<sup>149</sup> Annex 51. Colombian State's note to the OAS Secretary General, dated November 12, 2002. With its note, the State attaches Decree No. 2555 of 2002.

<sup>150</sup> Annex 52. Colombian State's note to the OAS Secretary General, dated February 12, 2003. The State attaches Decree No. 245 of 2003 as an appendix to its note.

<sup>151</sup> Annex 53. Ministry of the Interior, Decree 2002 of 2002, dated September 9, 2002. The Decree also provides that "some area in the country have been particularly hard hit by the activities of criminal organizations; those areas have to be set apart as areas targeted for rehabilitation and consolidation, to ensure that specific measures are taken there to root out the causes of the disruption to public order and prevent their effects from spreading elsewhere."

## G. Comuna 13 and human rights defenders

160. In 2002, over 20 community action boards were active in *Comuna 13*, as were 30 organizations of various kinds, including civic associations, women's groups and organizations whose mission was to defend human rights.<sup>152</sup>

161. The Las Independencias Women's Association was formed in 1999. Its members are female heads of household and its purpose is to win social recognition for women.<sup>153</sup> It is part of a well known Network of Women's Organizations in Colombia and in Latin America – the *Ruta Pacifica de las Mujeres* [Women's Peaceful Path]. The following are among its objectives: 1) to promote human and social recognition of women; 2) to promote women's human rights, based on equity; 3) to improve women's quality of life by creating programs to increase their earnings and create jobs; and 4) to develop specific programs intended to improve the quality of life of female heads of household.<sup>154</sup>

162. In the admissibility phase of the proceedings in this case, the IACtHR established that the Community Action Board is "a non-profit, solidarity-based civil, social and community social-management organization. It has legal personality and its own assets and is formed voluntarily by the residents of a place who join forces and resources to achieve integral and sustainable development, based on the exercise of participatory democracy in community-development management."<sup>155</sup>

163. The Office of the Colombian Ombudsperson has identified the leaders and representatives of the community groups in *Comuna 13* as persons in need of special protection "given their vulnerability to the violent acts of armed outlaw actors."<sup>156</sup> It describes how the vehicles for organizational participation and autonomy have become a threat to the hegemony of illegal armed actors – who in the past were the militias and then the Self-Defense groups.<sup>157</sup> The Ombudsperson's Office describes how these threats are mainly targeted at community leaders and representatives, who are attacked because of their refusal to move over for a new power in the neighborhood.<sup>158</sup>

164. The organization CINEP has also documented how, as these social organizations develop in *Comuna 13*, so does the authorities' pattern of accusing them of aiding and abetting the militias.<sup>159</sup> As a result, attempts have been made on the lives and personal integrity of the organizations' leaders

<sup>152</sup> *Panorama de Derechos Humanos, Noche y Niebla y Violencia Política en Colombia, Caso Tipo No. 2: Comuna 13*, [Human Rights Picture, Night, Fog and Political Violence in Colombia], CINEP & Justicia y Paz, Bogotá, May 2003, p. 81.

<sup>153</sup> Annex 30. Certificate of Existence and Representation of Non-profit Entities, Medellín Chamber of Commerce for Antioquia, Las Independencias Women's Association (AMI), p. 1, Attachment to the petitioners' observations in the matter of *Mery Naranjo Jimenez et al. – Comuna 13*, March 25, 2010..

<sup>154</sup> Annex 30. Certificate of Existence and Representation of Non-profit Entities, Medellín Chamber of Commerce for Antioquia, Las Independencias Women's Association (AMI), p. 1.

<sup>155</sup> IACtHR, Report No. 3/07, Petition 1145-2004, Admissibility, *Miryam Eugenia Rúa Figueroa et al. (Comuna 13)*, Colombia, February 27, 2007, note 15, in reference to Article 8 of Law 745 of 2002 and its regulations, Decree 2350 of 2003.

<sup>156</sup> Annex 48. Risk Assessment No. 009-07, Office of the Colombian Ombudsperson, p. 3.

<sup>157</sup> Annex 48. Risk Assessment No. 009-07, Office of the Colombian Ombudsperson, p. 13.

<sup>158</sup> Annex 48. Risk Assessment No. 009-07, Office of the Colombian Ombudsperson, p. 13.

<sup>159</sup> *Panorama de Derechos Humanos, Noche y Niebla y Violencia Política en Colombia, Caso Tipo No. 2: Comuna 13*, [Human Rights Picture, Night, Fog and Political Violence in Colombia], CINEP & Justicia y Paz, Bogotá, May 2003, p. 30.

and members, who have also been the target of unwarranted and baseless legal inquiries, in violation of their rights to freedom of association and expression.<sup>160</sup>

165. The Office of the Colombian Ombudsperson has confirmed that in the aftermath of Operation Orión in *Comuna 13*, the new armed actors in the area took a series of measures intended to “clamp down on the community, eliminate or drive out social representatives and leaders who refuse[d] to participate in the new established order and who continue[d] to press economic, social and political demands.”<sup>161</sup> It also made reference to the coercive tactics that the self-defense groups employed to those ends.<sup>162</sup> The Office of the United Nations High Commissioner for Human Rights in Colombia also reported how the violations of rights committed during the military offensives conducted in 2002 had a direct effect on social, human rights and peace organizations in *Comuna 13*.<sup>163</sup>

166. The Office of the Ombudsperson continues to identify leaders working in community organizations, on community action boards and in nongovernmental organizations as persons exposed to particular peril in *Comuna 13* because of the illegal armed groups that constantly emerge in the area and which continue to threaten these community and social organizations and intimidate, stigmatize and threaten their leadership as a means of exercising control and instilling terror.<sup>164</sup>

#### **H. The Context of Risk for Women Human Rights Defenders in Colombia**

167. In the context of its historical analysis of the Colombian armed conflict the Commission has noted in particular its concern for the situation of insecurity of women who work in the defense of human rights in Colombia<sup>165</sup>. This situation has also been highlighted by a number of international organs for the protection of human rights, civil society organizations, and the Constitutional Court of Colombia.<sup>166</sup>

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<sup>160</sup> *Panorama de Derechos Humanos, Noche y Niebla y Violencia Política en Colombia, Caso Tipo No. 2: Comuna 13*, [Human Rights Picture, Night, Fog and Political Violence in Colombia], CINEP & Justicia y Paz, Bogotá, May 2003, p. 30.

<sup>161</sup> Annex 48. Risk Assessment No. 009-07, Office of the Colombian Ombudsperson, p. 2.

<sup>162</sup> Annex 48. Risk Assessment No. 009-07, Office of the Colombian Ombudsperson, p. 8.

<sup>163</sup> United Nations, *Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia*, Annual Report 2002, February 24, 2003, paragraph 46; Annex 49. Risk Assessment No. 009-07, Office of the Colombian Ombudsperson, p. 1; and Annex 35. Risk Assessment No. 016-10, Office of the Colombian Ombudsperson, pp. 6-7.

<sup>164</sup> Annex 47. Risk Assessment No. 016-10, Office of the Colombian Ombudsperson, p. 17.

<sup>165</sup> IACRH, *Violence and Discrimination Against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II. Doc. 67, October 18, 2006, para. 225; IACRH, Annual Report 2009, Follow up Report on the Report *Violence and Discrimination Against Women in the Armed Conflict in Colombia*, OEA/Ser.L.V/II. Doc. 67, October 18, 2006, paras. 105-106.

<sup>166</sup> See, for example, United Nations, *Report by the Special Rapporteur on Violence against Women, its causes and consequences*, Ms. Rhadika Coomaraswamy, Mission to Colombia, March 11, 2002, paras. 90-91; United Nations, *Report of the Special Representative of the United Nations Secretary General on Human Rights Defenders*, Hina Jilani, Visit to Colombia, April 24, 2002, paras. 138-147; Committee for the Elimination of Discrimination against Women, *Observations on the Report of the State of Colombia*, February 3, 1999, para. 271; United Nations, *Reports by the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia*, Annual Report 2002, February 24, 2003, paras. 102-108; Annual Report 2003, February 17, 2004, paras. 85-89; and Annual Report 2004, February 28, 2005, pages 4 and 120; Mesa de Trabajo Mujer y Conflicto Armado, *Informe sobre Violencia Socio-Política contra las Mujeres, Jóvenes y Niñas en Colombia, Mujer y Conflicto Armado*, October 2004, pp. 91-102; Mesa de Trabajo Mujer y Conflicto Armado, *Informe sobre Violencia Socio-Política contra las Mujeres, Jóvenes y Niñas en Colombia, Mujer y Conflicto Armado*, October 2004, pp. 91-102; Mesa de Trabajo Mujeres y Conflicto Armado, *Informe sobre Violencia Socio-Política Contra Mujeres, Jóvenes, y Niñas en Colombia*, Third Report 2002,

168. The IACHR has focused its analysis on women human rights defenders who work in zones controlled by the different factions of the armed conflict and the specific risks to their integrity, their lives, and their work in those localities.<sup>167</sup> It has documented how the armed actors find that the leadership of the women's rights organizations poses a threat to their social and territorial control, and represents a break with social notions and stereotypes as to the role women should occupy socially, which has led to the intimidation, persecution, and kidnapping, and to systematic torture and incidents of sexual abuse of representatives of these organizations and their family members.<sup>168</sup> This situation has also been highlighted by the IACHR in its annual reports, in the context of the thematic hearings on Colombia, and in its regional reports on the situation of human rights defenders in the Americas.<sup>169</sup>

169. The Commission has also identified the phenomenon of forced displacement – which is frequently caused by the different factions in the conflict – as a challenge for women's activities and organizing processes.<sup>170</sup> The Commission has also granted a series of precautionary measures and has expanded the existing ones to cover the women working in defense of human rights and the organizations that protect women's rights, in particular to advance the rights of displaced women.<sup>171</sup> In general the Commission has observed the State's need to investigate and punish the threats against and attacks on women human rights defenders to ensure that these abuses do not end in impunity.<sup>172</sup>

170. Internationally, the United Nations Special Rapporteur on violence against women, its causes and consequences, also highlighted in her report on her visit to Colombia, published March 11, 2002, that women's human rights organizations and their leaders are the targets of frequent "systematic intimidation and persecuted for the work that they do to defend and improve living

February 2003, p. 14; Constitutional Court of Colombia, Judgment T-496 of 2008 (Case T-1783291); and Constitutional Court of Colombia, Order 092-08.

<sup>167</sup> IACHR, *Violence and Discrimination Against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II. Doc. 67, October 18, 2006, para. 226; IACHR, Annual Report 2009, Follow-up Report on the Report *Violence and Discrimination Against Women in the Armed Conflict in Colombia*, OEA/Ser.L./V/II. Doc. 67, October 18, 2006, paras. 105-106.

<sup>168</sup> IACHR, *Violence and Discrimination Against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II. Doc. 67, October 18, 2006, para. 226; IACHR, Annual Report 2009, Follow-up Report on the Report *Violence and Discrimination Against Women in the Armed Conflict in Colombia*, OEA/Ser.L./V/II. Doc. 67, October 18, 2006, paras. 102-111.

<sup>169</sup> See IACHR, Annual Report 2004, Chapter IV, para. 31; IACHR, Annual Report, 2011, Chapter IV: Colombia, para. 103; IACHR, Thematic Hearings, *Situation of Human Rights of Women in Colombia* (144<sup>th</sup> period of sessions, March 26, 2012); *Violence against Women in Colombia* (143<sup>rd</sup> period of sessions, October 27, 2011); *Discrimination and violence against women stemming from the armed conflict in Colombia* (133<sup>rd</sup> period of sessions, October 23, 2008); *Violence against Women in Colombia in the context of the Armed Conflict* (122<sup>nd</sup> period of sessions, February 28, 2005); *Situation of women's rights in Colombia* (119<sup>th</sup> period of sessions, March 2, 2004); and *Situation of the Defenders of Women's Human Rights in Colombia* (118<sup>th</sup> period of sessions, October 15, 2003).

See also, IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124 Doc. 5 rev. 1, March 7, 2006, para. 230; IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas* (2011), para. 293 (note 612).

<sup>170</sup> IACHR, *Violence and Discrimination Against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II. Doc. 67, October 18, 2006, para. 230.

<sup>171</sup> For a description of the precautionary measures granted, see IACHR, Annual Report, 2011, Chapter IV: Colombia, para. 103.

<sup>172</sup> IACHR, Annual Report, 2011, Chapter IV: Colombia, para. 108.

conditions for their communities.”<sup>173</sup> Not only are the members of these organizations subject to these impacts, but so are their children, spouses and partners, who have even been assassinated as a result of a woman’s social and political activities. The Special Rapporteur has observed in particular that:

In their effort to gain social and political control of territories under dispute, armed groups target women’s organizations as a visible obstacle, deeply rooted within the communities, which they try to use for their benefit or alternatively destroy. Women’s organizations that do not bow before the interests of armed groups are forced to carry on their activities in permanently unsafe conditions and are increasingly forced to abandon or transform their organizational procedures.<sup>174</sup>

171. This situation of risk to women’s human rights defenders was also highlighted by other international organs and procedures, such as the Special Representative of the United Nations Secretary General on human rights defenders, after her visit to the country in 2001; the Committee on the Elimination of Discrimination against Women; and the Office of the High Commissioner for Human Rights in Colombia.<sup>175</sup> The Office of the High Commissioner for Human Rights has identified the paramilitary groups in particular as the principal perpetrators of threats and acts of harassment against human rights defenders in areas occupied by the actors in the armed conflict, including women’s organizations and social leaders.<sup>176</sup>

172. At the national level, in its reports the *Mesa de Trabajo Mujer y Conflicto Armado* (“Women and Armed Conflict Working Group”)<sup>177</sup> has identified the situation of national and regional organizations, especially those that operate in war zones, that are subject to harassment and threats, negatively impacting their members and their community work, as a form of violence that affects women in the context of the armed conflict.<sup>178</sup> In its third report (of 2002) it highlighted how the

<sup>173</sup> United Nations, Report of the Special Rapporteur on violence against women, Ms. Rhadika Coomaraswamy, Mission to Colombia, March 11, 2002, para. 90.

<sup>174</sup> United Nations, Report of the Special Rapporteur on violence against women, Ms. Rhadika Coomaraswamy, Mission to Colombia, March 11, 2002, para. 91.

<sup>175</sup> United Nations, *Report by the Representative of the United Nations Secretary General on Human Rights Defenders*, Hina Jilani, Visit to Colombia, April 24, 2002, paras. 138-147; Committee on the Elimination of Discrimination against Women, *Observations on the Report of the State of Colombia*, February 3, 1999, para. 271; United Nations, *Reports of the United Nations High Commissioner on Human Rights on the situation of human rights in Colombia*, Annual Report 2002, February 24, 2003, paras. 102-108; Annual Report 2003, February 17, 2004, paras. 85-89; and Annual Report 2004, February 28, 2005, pp. 4 and 120.

<sup>176</sup> United Nations, *Reports of the United Nations High Commissioner on Human Rights on the situation of human rights in Colombia*, Annual Report 2004, February 28, 2005, p. 4.

<sup>177</sup> The Mesa de Trabajo Mujer y Conflicto Armado (Women and Armed Conflict Working Group) is made up of the following organizations of Colombian civil society: Asociación Nacional de Mujeres Campesinas, Negras e Indígenas de Colombia (ANMUIC); Programa Mujer Campesina de la Asociación Nacional de Usuarios Campesinos-Unidad y Reconstrucción (ANUC-UR), Colectivo de Mujeres Excombatientes, Colectivo Mujeres al Derecho; Comisión Colombiana de Juristas (CCJ), Corporación Casa de la Mujer; Corporación Casa Amazonía; Corporación de Apoyo a Comunidades Populares (CODACOP); Corporación Humanas Centro Regional de Derechos Humanos y Justicia de Género; Corporación Opción Legal; Corporación para la Vida “Mujeres que Crean”; Fundación Educación y Desarrollo; Corporación Sísma Mujer; Fundación Mujer y Futuro; Instituto Latinoamericano de Servicios Legales Alternativos (ILSA); Liga Internacional de Mujeres por la Paz y la Libertad (LIMPAL); Liga de Mujeres Desplazadas; Organización Femenina Popular (OFP); Programa Mujer y Cultura de la Organización Nacional Indígena Colombiana (ONIC); Grupo de Mujeres AFRODES; and Ruta Pacífica de las Mujeres.

<sup>178</sup> Mesa de Trabajo Mujer y Conflicto Armado, *Informe sobre Violencia Socio-Política contra las Mujeres, Jóvenes y Niñas en Colombia, Mujer y Conflicto Armado*, October 2004, pp. 91-102.

increase in the number and scope of military actions and the coercion by the armed actors especially impacted women and their organizations, including threats and assaults directed against women and their families, leading to their displacement.<sup>179</sup> The report indicates, in particular, that:

Although displacement is simultaneously a violation of all rights (civil, political, social, economic, and cultural) and an infraction of international humanitarian law, in the case of the women who participate in social organizations it is often preceded by violent acts and is geared to disrupting organizational processes.<sup>180</sup>

173. It is also important to note pronouncements by the Constitutional Court of Colombia referring to the risks women human rights defenders face in the Colombian armed conflict. For example, Judgment T-496 of 2008 issued by the Constitutional Court of Colombia protected the rights to life, security, liberty, physical integrity, and access to justice for several women human rights defenders.<sup>181</sup> In that judgment the Constitutional Court found that given their gender, women defenders of women's human rights "are exposed to particular risks and to a specific situation of vulnerability in many aspects of their lives in the context of the armed conflict. In their legal action they reveal their status as victims who have survived violent acts, a situation that imposes extreme and abrupt material and psychological burdens on them."<sup>182</sup>

174. In its Order 092-08 – adopted to protect the fundamental rights of women displaced by the armed conflict – the Constitutional Court of Colombia also identified belonging to social organizations and the performance of leadership work and the promotion of human rights by women in areas affected by the armed conflict as a gender risk that furthers the forced displacement of women human rights defenders.<sup>183</sup> The Constitutional Court documented, in its judgment, having received information from several entities indicating that women who take on public visibility as representatives of women's, social, and community organizations have become targets of homicides, persecution, arrests, arbitrary detentions, torture, disappearance, acts of sexual violence, and threats by members of illegal armed groups, including in places such as Medellín.<sup>184</sup> These acts have also been directed against members of their families.<sup>185</sup> Notwithstanding the efforts made by the Colombian State to overcome the problems identified by the Constitutional Court, the IACtHR continues receiving information about the specific risks to their security that women human rights defenders continue to face in the context of the armed conflict due to their sex, their status as social leaders, and the incompatibility of their work with the interests of the armed actors in the conflict.<sup>186</sup>

<sup>179</sup> Mesa de Trabajo Mujeres y Conflicto Armado, *Informe sobre Violencia Socio-Política Contra Mujeres, Jóvenes, y Niñas en Colombia*, Third Report 2002, February 2003, p. 14.

<sup>180</sup> Mesa de Trabajo Mujeres y Conflicto Armado, *Informe sobre Violencia Socio-Política Contra Mujeres, Jóvenes, y Niñas en Colombia*, Third Report 2002, February 2003, p. 14.

<sup>181</sup> Constitutional Court of Colombia, Judgment T-496 of 2008 (Case T-1783291), available at: <http://www.nrc.org.co/biblioteca/sentencia-T-496-08.pdf>.

<sup>182</sup> Constitutional Court of Colombia, Judgment T-496 of 2008 (Case T-1783291), para. 10.4.

<sup>183</sup> Constitutional Court of Colombia, Order 092-08, available at: <http://www.corteconstitucional.gov.co/relatoria/autos/2008/a092-08.htm>

<sup>184</sup> Constitutional Court of Colombia, Order 092-08, Section III.1.5.

<sup>185</sup> Constitutional Court of Colombia, Order 092-08, Section III.1.5.

<sup>186</sup> Video, IACtHR, Thematic Hearing, *Situation of the Human Rights of Women in Colombia*, March 14, 2013, available at: <http://www.oas.org/es/cidh/audiencias/advanced.aspx?lang=es>; IACtHR, Press Release, *IACtHR's Preliminary Observations on*

## I. Judicial proceedings conducted to shed light on the facts

### Miryam Eugenia Rúa Figueroa and her next of kin

#### 1. Complaint for the crime of forced displacement and the destruction of property

175. On July 8, 2002, Ms. Rúa reported the pillaging of her home, and her forced displacement to the Criminal Judges of the Circuit of Medellín, Antioquia, Subunit on Terrorism.<sup>187</sup> She filed this complaint on having to abandon her residence situated at Calle 48C No. 121D-21, Barrio San Javier, la Loma de Medellín, for fear of the various conflicts in the sector and the danger that they posed to her life and the life of her family members.<sup>188</sup> She alleged that the *autodefensas* that operated in her neighborhood, identified as the Nutibara Command, were responsible for these acts.<sup>189</sup>

#### 2. Complaint filed with the Human Rights Office at the Departmental Prosecutor's Office

176. The Office of the 18<sup>th</sup> Special Prosecutor, under the National Human Rights Unit of the Office of the Attorney General, is carrying out an investigation, identified as file No. 4016, into the alleged crime of forced displacement of which Ms. Rúa was victim.<sup>190</sup> In the context of this investigation a number of investigative steps have been taken to collect different types of evidence of the facts.<sup>191</sup> This investigation is in a preliminary phase, under seal, and no persons have been identified as responsible.<sup>192</sup>

177. Ms. Rúa Figueroa also went to the Office of Human Rights of the Office of the Departmental Prosecutor to make a declaration that she was forcibly displaced.<sup>193</sup> The Office of the Prosecutor-Delegate for Human Rights, pursuant to Article 26 of Decree 262 of 2002, forwarded copies to the competent disciplinary authority<sup>194</sup> for it, should it consider it appropriate, to begin the

*Its Onsite Visit to Colombia*, December 7, 2012; IACtHR, Annual Report, 2011, Chapter IV: Colombia, paras. 72, 103-110, 122-123.

<sup>187</sup> Note DIDHD/GOI No. 77119/2954 from the Colombian State, November 15, 2012, p. 59; Petitioners' initial petition with respect to the matter of *Miryam Eugenia Rúa – Comuna 13*, October 27, 2004, para. 7.

<sup>188</sup> Note DIDHD/GOI No. 77119/2954 from the Colombian State, November 15, 2012, p. 59.

<sup>189</sup> Note DIDHD/GOI No. 77119/2954 from the Colombian State, November 15, 2012, p. 59.

<sup>190</sup> Note DIDHD/GOI No. 77119/2954 from the Colombian State, November 15, 2012, pp. 59-60.

<sup>191</sup> Note DIDHD/GOI No. 77119/2954 from the Colombian State, November 15, 2012, pp.60-61.

<sup>192</sup> Note DIDHD/GOI No. 77119/2954 from the Colombian State, November 15, 2012, pp.59-60.

<sup>193</sup> Initial petition by petitioners in relation to the matter of *Miryam Eugenia Rúa – Comuna 13*, October 27, 2004, paragraph 7.

<sup>194</sup> According to the State, the disciplinary jurisdiction "is a domestic remedy for oversight and sanction. It is under the Public Ministry, as a guarantor of the safeguarding and promotion of human rights, and responsible for overseeing the official conduct of those who perform public functions. The disciplinary jurisdiction guarantees the removal of the public servant when called for, as well as assuring the non-repetition of the infraction by the official when removed and disqualified from holding a public position." Note DDH. GOI No. 56107/2586 from the Colombian State, October 31, 2006, p. 4.

investigations into the facts alleged.<sup>195</sup> The IACRH does not have any documentation indicating that said investigation was begun.

### **Luz Dary Ospina and her family members**

#### **i. Complaints of Forced Displacement and Threats, filed with the Antioquia Departmental Prosecutor's Office and the Office of the Ombudsperson**

178. Ms. Ospina reported the events to the Antioquia Departmental Prosecutor's Office and to the Office of the Ombudsperson on July 18, 2003.<sup>196</sup> In her complaint, she maintained that she had been an intra-urban displaced person since November 2002 and that she was driven out by the threats from the paramilitary, although her husband and sons continued to live in the neighborhood.<sup>197</sup> In that complaint she recounted the events described at paragraphs 127-129 above.

179. Ms. Luz Dary Ospina also reported her belief that these events were related to her work with the Las Independencias Women's Association (AMI) and because she had filed complaints of abuses and violations of basic rights being committed in *Comuna 13* since "Operation Mariscal," in the period from May 21 to the date on which the complaint was filed.<sup>198</sup> She also stated the following:

..... nowadays, armed civilians are taking over the homes located at strategic sites, whether because of their panoramic view or because they are close to the entrance to the neighborhoods, which makes it easier for them to exercise control. In Independencias I, around seven houses on one block have been taken over. There are families who have refused to give up their homes, which means that they are in serious danger; they are also being told to hand over the deeds to their property... The community is afraid to file a complaint, because it has seen the obvious collusion among the paramilitary, the army and the police. Repeated complaints have been filed about this collusion, but to no avail.<sup>199</sup>

180. Given the danger and insecurity her entire family was facing, and the risk of losing their legally built home, she specifically asked, that "appropriate measures be taken to protect the life, honor and property of all citizens, as the Constitution provides."<sup>200</sup>

<sup>195</sup> Note DDH. GOI No. 56107/2586 from the Colombian State, October 31, 2006, p. 4.

<sup>196</sup> Annex 16. Complaint filed with the Office of the Ombudsperson, dated July 18, 2003, claiming intra-urban displacement and security for Luz Dary Ospina B. and her family; Annex 17. Complaint filed with the Departmental Attorney, City of Medellín, July 18, 2003, claiming intra-urban displacement and security for Luz Dary Ospina B. and her family.

<sup>197</sup> Annex 16. Complaint filed with the Office of the Ombudsperson, dated July 18, 2003, claiming intra-urban displacement and security for Luz Dary Ospina B. and her family; Annex 17. Complaint filed with the Departmental Attorney, City of Medellín, July 18, 2003, claiming intra-urban displacement and security for Luz Dary Ospina B. and her family.

<sup>198</sup> Annex 16. Complaint filed with the Office of the Ombudsperson, dated July 18, 2003, claiming intra-urban displacement and security for Luz Dary Ospina B. and her family; Annex 17. Complaint filed with the Departmental Attorney, City of Medellín, July 18, 2003, claiming intra-urban displacement and security for Luz Dary Ospina B. and her family.

<sup>199</sup> Annex 16. Complaint filed with the Office of the Ombudsperson, dated July 18, 2003, claiming intra-urban displacement and security for Luz Dary Ospina B. and her family; Annex 17. Complaint filed with the Departmental Attorney, City of Medellín, July 18, 2003, claiming intra-urban displacement and security for Luz Dary Ospina B. and her family.

<sup>200</sup> Annex 16. Complaint filed with the Office of the Ombudsperson, dated July 18, 2003, claiming intra-urban displacement and security for Luz Dary Ospina B. and her family; Annex 17. Complaint filed with the Departmental Attorney, City of Medellín, July 18, 2003, claiming intra-urban displacement and security for Luz Dary Ospina B. and her family.

## ii. Investigation into the crime of forced displacement and threats

181. The Office of Specialized Prosecutor 107 of Medellin conducted under File 7155209 the investigation for the alleged crimes of forced displacement and threats against Luz Dary Ospinas until September 5, 2006.<sup>201</sup> Said investigation was temporarily suspended on September 5, 2006, with the Prosecuting Attorney involved noting that “any way this Delegate views it, she does not clearly see any legal support to proceed to move to open a formal investigation, nor any evidence that decisively warrants granting a motion for change of venue and more than 180 days have transpired since the beginning of the proceedings, with the procedural efforts appropriate to this preliminary phase having been made.....”<sup>202</sup>

182. On January 22, 2008, the National Human Rights and International Humanitarian Law Unit, under Decision 06, File 4017 – reopened said investigation.<sup>203</sup> Regarding the temporary suspension of the investigation, it noted the following:

The delay in fulfilling the duty to investigate or the meager results obtained with the investigation are not a valid excuse to give up the mission entrusted or to ignore the interests and purposes that are pursued with the investigation – to learn the truth, investigate the facts, hold the perpetrators responsible, and to compensate the victims – because the State must also seek justice to the benefit of everyone who has a legitimate interest in the result of the proceeding. In the case at hand, since the alleged persons responsible have not been identified or singled out, much less have they been charged in this proceeding through a presentment or arraignment of a defendant or proceeding against those responsible in absentia, the investigation must continue in order to achieve the purposes set forth above, especially because the action has not lapsed under the statute of limitations.<sup>204</sup>

183. On February 22, 2010, the opening of the preliminary criminal investigation was ordered for the crime of *forced displacement in conjunction with invasion of lands or buildings* against Mr. Horacio de Jesus Bedoya Vergara, as one of the members of the illegal armed group that threatened and displaced Luz Dary Ospina and her family, and who subsequently took over their home and possessions.<sup>205</sup> Ms. Mosquera gave a statement during this proceeding wherein she asserted that the

<sup>201</sup> Colombian State's Note DDH. GOI No. 60162/2802 dated December 11, 2006, pp. 3 and 4.

<sup>202</sup> Annex 54. Prosecutor Maria Eugenia Londoño Betancur, Office of the Attorney General of the Nation, Unit of Crimes against Liberty and Integrity, Sexual Development and Other Crimes, Prosecutor's Office 114, Delegate before the Criminal Circuit Courts of Medellin, File No: 715.520. Complainant: Luz Ary Ospina Bastidas, Crime: Forced Displacement, Annex 2. Communication of the petitioners in reference to the matter of *Miryam Eugenia Rúa Figueroa et al* – Case 12.595, dated May 3, 2012.

<sup>203</sup> Annex 55. National Directorate of Prosecutorial Offices. National Human Rights and Humanitarian Law Unit, Office 13, Decision 06, File No. 40117, January 22, 2008. Criminal proceeding for forced displacement of Luz Dary Ospina Bastidas. Annex 2. Communication of the Petitioners in reference to the matter of *Miryam Eugenia Rúa Figueroa et al* - Case 12.595 Dated May 3, 2012.

<sup>204</sup> Annex 55. National Directorate of Prosecutors Offices, Human Rights and International Humanitarian Law Unit, Office 13, Decision 06, File No. 4017, January 22, 2008. Criminal proceeding for the forced displacement of Luz Dary Ospina Bastidas.

<sup>205</sup> Annex 56. Opening of Criminal Investigation, Office of the Attorney General of the Nation, National Human Rights and International Humanitarian Law Unit, Office 13, Decision 29, File No. 4017, February 22, 2010. Criminal proceeding for the forced displacement of Luz Dary Ospina Bastidas. Annex 2. Observations of the Petitioners in reference to the matter of *Miryam Eugenia Rúa Figueroa et al* – Case 12.595 dated May 3, 2012.

threats, the forced displacement, and the occupation of the house of Luz Dary Ospina Bastidas can be attributed to the paramilitary group that was present in the area in November 2002, whose members were the men known by the noms de guerre King Kong, Cero Ocho, and Horacio Bedoya.<sup>206</sup> Ms. Mery Naranjo testified as well that her friend Luz Dary Ospina Bastidas was filing complaints for human rights violations, which took place in Comuna 13, and because of said activity her life came under threat and she was “labeled a guerrilla member” by the paramilitary members of the sector, who appeared to be members of the Cacique Nutibara Bloc, and she witnessed how the armed group took over the house of Ms. Ospina and her possessions.<sup>207</sup> She identified among the members that were part of this group as individuals known by the pseudonyms CERO OHCO, Jorge Aguilar, Horacio Bedoya, Cosa Mala, Jimmy El Zarco and Alex, among many others.<sup>208</sup>

184. The Office of the Prosecutor issued a custody order for Horacio Bedoya on July 12, 2010.<sup>209</sup> On June 29, 2011, Mr. Horacio Bedoya Vergara was convicted through an early disposition plea for acts of forced displacement and invasion of lands or buildings, the victim of which was Luz Dary Ospina Bastidas.<sup>210</sup> The Court recognized that “the panel of judges does not have an abundance of evidence, [but] that is not an impediment for the Court to deduce from it, the certainty required by criminal law to issue a conviction, against defendant Bedoya Vergara.”<sup>211</sup> He was sentenced to “fifty (50) months in prison, a fine of three hundred and fifty (350) minimum daily wages as currently set by law and disqualification from asserting rights and performing public duties for a period of forty-two (42) months, in being found criminally responsible for the crimes of forced displacement and invasion of lands or buildings.”<sup>212</sup>

185. The last record of the judicial proceeding as part of this investigation included in the IACHR case file is an order of January 13, 2012 to investigate for the purpose of obtaining information on

<sup>206</sup> Annex 57. Statement given by Mrs. Maria del Socorro Mosquera Londoño, May 14, 2009. Criminal proceeding for the force displacement of Luz Dary Ospina Bastidas. Annex 2. Observations of the petitioners in reference to the matter of *Miryam Eugenia Rúa Figueroa et al* – Case 12.595 dated May 3, 2012.

<sup>207</sup> Annex 58. Statement given by Mrs. Mery Naranjo, May 14, 2009. Criminal proceeding for forced displacement of Dary Luz Ospina Bastidas. Annex 2. Observations of the Petitioners in reference to the matter of *Miryam Eugenia Rúa Figueroa et al* – Case 12.595, dated May 3, 2012.

<sup>208</sup> Annex 59. Office of the Attorney General of Nation, National Human Rights and International Humanitarian Law Unit, Office 13, Decision 29, File No. 4017, February 22, 2010. Criminal proceeding for the forced displacement of Luz Dary Ospina Bastidas. Annex 2 Observations of the Petitioners in reference to the matter of *Miryam Eugenia Rúa Figueroa et al* – Case 12.595, dated May 3, 2012.

<sup>209</sup> Annex 60. Office of the Attorney General of the Nation, National Human Rights and International Humanitarian Law Unit, Office 13, Decision 17, Preliminary Investigation No. 4017, July 22, 2010. Criminal proceeding for the forced displacement of Luz Dary Ospina Bastidas, Annex 2. Observations of the Petitioners in reference to the matter of *Miryam Eugenia Rúa Figueroa et al* – Case 12.595, dated May 3, 2012.

<sup>210</sup> Annex 61. 27<sup>th</sup> Circuit Court for Criminal Matters, Medellin, June 29, 2011, 2011-00164-00, Defendant: Horacio Bedoya Vergara, Crime: Forced Displacement and Invasion of Lands and Buildings, Early Disposition [guilty plea]. Criminal proceeding for the forced displacement of Luz Dary Ospina Bastidas, Annex 2. Observations of the Petitioners in reference to the matter of *Miryam Eugenia Rúa Figueroa et al* – Case 12.595, dated May 3, 2012.

<sup>211</sup> Annex 61. 27<sup>th</sup> Circuit Court for Criminal Matters, Medellin, June 29, 2011, 2011-00164-00, Defendant: Horacio Bedoya Vergara, Crime: Forced Displacement and Invasion of Lands and Buildings, Early Disposition [guilty plea]. Criminal proceeding for the forced displacement of Luz Dary Ospina Bastidas.

<sup>212</sup> Annex 61. 27<sup>th</sup> Circuit Court for Criminal Matters, Medellin, June 29, 2011, 2011-00164-00, Defendant: Horacio Bedoya Vergara, Crime: Forced Displacement and Invasion of Lands and Buildings, Early Disposition [guilty plea]. Criminal proceeding for the forced displacement of Luz Dary Ospina Bastidas.

the identity and location of several of the members of the Cacique Nutibara and Heroes de Granada Blocs.<sup>213</sup> The Office of the Attorney General continues to engage in investigative tasks the objective of which is to turn up information that makes it possible to identify the other perpetrators and/or participants in the instant case.<sup>214</sup> In this regard, the State informed the Commission in its last observations that on August 27, 2013 steps were undertaken to press charges – with the goal of obtaining an early resolution on the matter – against Juan Carlos Villa Saldarriaga alias “móvil 8”; matter which was transmitted to the 9° Criminal Court of the Medellin Circuit for a judgment.<sup>215</sup>

186. The Office of the Prosecutor-Delegate for Human Rights, pursuant to Article 26 of Decree 262 of 2002, also forwarded copies to the competent disciplinary authority for it to begin the investigations into the facts alleged, should it consider it appropriate.<sup>216</sup> The IACtHR does not have documentation indicating that said investigation was initiated.

**Mery Naranjo, María del Socorro Mosquera, Ana Teresa Yarce and their next of kin**

**i. August 8, 2003 complaint for the crime of Mrs. Yarce's forced displacement**

187. Ms. Yarce filed a criminal complaint on August 6, 2003 with the Office of the Attorney General of the Nation – Quick Response Unit, Sectional Office of the Prosecutor 166 – requesting measures for protection of her life and her family members, in light of threats and acts of harassment inflicted on them by paramilitary members, and their imminent forced displacement.<sup>217</sup> After receiving said complaint, on August 8 of the same year, Sectional Prosecutor 166 requested:

Police or military authorities, based on several different reasons, to investigate these incidents, work as closely as possible with the complainant and her family to protect their lives and property. At the same time, this Office requests the judicial police of the national police force, to conduct operations in Comuna 13, endeavor to identify and single out the co-perpetrators of these criminal acts, including those cited above in the complaint, in order to be able to issue the arrest warrant from the Sectional Prosecutor's Office to continue conducting this investigation....<sup>218</sup>

<sup>213</sup> Annex 62. Office of the Attorney General of the Nation, File No. 4017, Decision No. 177, January 13, 2012. Criminal proceeding for the forced displacement of Luz Dary Ospina Bastidas. Annex 2. Observations of the Petitioners in reference to the matter of *Miryam Eugenia Rúa Figueroa et al* – Case 12.595, dated May 3, 2012.

<sup>214</sup> Note DIDHD/GOI No. 77119/2954 from the Colombian State, November 15, 2012, p. 67.

<sup>215</sup> Note from the State of Colombia 20135010025881, transmitted to the IACtHR by means of communication dated October 21, 2013, para. 76.

<sup>216</sup> Note from the State of Colombia GOI No. 60162/2802 dated December 11, 2006, p. 4.

<sup>217</sup> Annex 63. Complaint filed by Mrs. Ana Teresa Yarce against defendants Jesús N.N., Gabriel N.N and “Care-Niño”-members of the Paramilitary forces, Crime: Forced Displacement and Others, August 6, 2003. Criminal proceeding regarding the murder of Mrs. Ana Teresa Yarce. Annex 1. Observations of the Petitioners in reference to the matter of *Miryam Eugenia Rúa Figueroa et al* – Case 12.595, dated May 3, 2012; Annex 65. Record of the complaint filed by Mrs. Ana Teresa Yarce with the Office of the Attorney General of the Nation, Sectional Office of Medellin, Single Quick Response Unit, Sectional Office of the Public Prosecutor 166, August 8, 2003, Annex 1 of the Initial Petition in the matter of *Socorro Mosquera Londoño, and Mery Naranjo Jiménez* – Comuna 13 – March 7, 2005.

<sup>218</sup> Annex 64. Record of complaint filed by Mrs. Ana Teresa Yarce with the Office of the Attorney General of the Nation, Sectional Directorate of Medellin, Single Quick Response Unit, Sectional Office of the Public Prosecutor 166, August 8, 2003.

188. The Prosecutorial Office that took cognizance of the investigation ruled that it lacked jurisdiction since the conduct investigated was not covered by any criminal statute, and concluded that the fact of Ms. Yarce leaving her home did not fit within the statutory definition of the crime of forced displacement.<sup>219</sup>

**ii. Proceedings associated with the arbitrary arrest of Ms. Mosquera Londoño, Ms. Naranjo Jímenez and Ms. Yarce**

189. Ms. Mosquera Londoño, Ms. Naranjo Jímenez and Ms. Yarce filed a complaint with the Office of the Prosecutor-Delegate for Human Rights asking that the civil servants responsible for their arrest be investigated and disciplined and that, if necessary, a criminal investigation be instituted.<sup>220</sup> The Prosecutor's Office learned of this complaint on July 21, 2003, which alleged the threats made against Ms. Yarce, Ms. Naranjo and Ms. Mosquera and the fact that they were arbitrarily arrested and held in custody from November 12 to 21, 2002.<sup>221</sup>

190. The Office of the Prosecutor-Delegate for Human Rights proceeded to conduct disciplinary inquiry No. 8-82157-2003<sup>222</sup> and notified an Army Corporal Third Class based in Medellín that a preliminary investigation had been instituted against him.<sup>223</sup> For jurisdictional reasons, the investigation was turned over to the Office of the Aburrá Valley (Antioquia) Provincial Prosecutor, where it is being conducted as case No. 136-5270-2004.<sup>224</sup> A decision dated June 29, 2006 ordered that an investigation against the Corporal Third Class be instituted and various evidentiary measures taken.<sup>225</sup> The case file contains several documents, such as the report documenting the fact that the three women were arrested and brought before the competent authority, an affidavit of good treatment, the report documenting the circumstances under which the women were apprehended, and the record of a special visit in connection with the criminal case against the three women taken into custody.<sup>226</sup> Based on the evidence produced in the investigation, the Office of the Inspector General ordered it be archived on November 9, 2007.<sup>227</sup>

**iii. Investigation into the murder of Ms. Yarce**

191. Prosecutor 37 with Medellín's *Unidad 2<sup>a</sup> de Vida* [inquiries into cause of death] instituted an investigation into Ms. Yarce's murder, which was transferred to the Office of Medellín's Special Prosecutor for Human Rights, as case 2169.<sup>228</sup>

<sup>219</sup> Note from the Colombian State DIDHD/GOI No. 77119/2954, November 15, 2012, p. 43.

<sup>220</sup> Record No. 008-82861, joined with No. 008-082154, cited in the original petition in the matter of *Socorro Mosquera Londoño and Mery Naranjo Jiménez – Comuna 13* – March 7, 2005, p. 7.

<sup>221</sup> Colombian State's note DH. GOI No. 12442-0552 of March 15, 2007, p. 9.

<sup>222</sup> Colombian State's note DDH. GOI No 31279/1533 of June 14, 2006, p. 8.

<sup>223</sup> Colombian State's note DH. GOI No. 12442-0552 of March 15, 2007, p. 9.

<sup>224</sup> Colombian State's note DDH. GOI No 31279/1533 of June 14, 2006, p. 8.

<sup>225</sup> Colombian State's note DDH. GOI No 31279/1533 of June 14, 2006, p. 8.

<sup>226</sup> Colombian State's note DH. GOI No. 12442-0552 of March 15, 2007, p. 9.

<sup>227</sup> Note from the Colombian State DIDHD/GOI No. 77119/2954, November 15, 2012, p. 50.

<sup>228</sup> Colombian State's note DDH. GOI No 31279/1533 of June 14, 2006, p. 7.

192. According to the record before the IACRH, this transfer took place because it was decided that the investigation should be conducted by the Human Rights Unit of the Office of the Attorney General of the Nation, in view of the fact that Ms. Ana Teresa Yarce served as public official on the La Independencia 3 neighborhood Community Action Board, she was a member of the community organization known as Women's Association of Las Independencias (AMI), "and the motives for which she lost her life appear to be for political reasons as part of an extermination scheme against non-governmental organizations, perpetrated by alleged members of illegal armed groups, specifically those known as the paramilitary."<sup>229</sup> On April 14, 2005, the criminal charge of substantial connection between offenses was also added to the charges, and an order was issued to join the investigations in the context of the death of Ms. Ana Teresa Yarce with the investigations into the threats by the illegal armed groups against Mosquera, Naranjo and Yarce.<sup>230</sup>

193. As of this writing, the Office of the 35<sup>th</sup> Special Prosecutor, under the National Human Rights Unit of the Office of the Attorney General, is investigating the facts corresponding to the homicide of Ms. Ana Teresa Yarce, which occurred on October 6, 2004, under file No. 2169.<sup>231</sup> The investigation of this matter is undertaken jointly with the complaints filed with the Office of the Inspector General on August 22, 2003 – under number 014427 – for the crime of personal threats allegedly made against Mmes. Ana Teresa Yarce, María del Socorro Mosquera, and Mery del Socorro Naranjo.<sup>232</sup>

194. The judicial processes before the IACRH reveal the following activities were conducted between October 2004 and August 31, 2007 in the investigation pertaining to the murder of Ms. Yarce: judicial inspection of the body; civil registration of death; judicial police reports (2023 and 1151); creation of a photo array; the autopsy report; the report on the fingerprints of the body of the deceased; expert report on the ballistics study conducted on two projectiles recovered at the time of the forensic medical inspection; the taking of the testimonies of Monica Dulfary Orozco Yarce, daughter of Ms. Yarce, and Mery del Socorro Naranjo Jimenez as direct witnesses of the crimes; and the taking of the statements of Mrs. Socorro Mosquera, of members of the army based in the area; and of other residents of Comuna 13.<sup>233</sup>

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<sup>229</sup> Annex 66. Decision to Transfer Investigation from the Second Unit of Crimes against Life and Personal Integrity, of the Office of the Attorney General of the Nation, to the Human Rights Unit of the same body, December 3, 2004. Criminal proceeding regarding the murder of Mrs. Ana Teresa Yarce. Annex 1. Observations of the Petitioners in reference to the matter of *Miryam Eugenia Rúa Figueroa et al* – Case 12.595, dated May 3, 2012.

<sup>230</sup> Annex 66. Order to Join Investigations on grounds of Connection between offenses, File: 83076-747.394 (M-213), Office of the Attorney General of the Nation, April 14, 2005. Criminal proceeding regarding the murder of Mrs. Ana Teresa Yarce.. Annex 1. Observations of the Petitioners in reference to the matter of *Miryam Eugenia Rúa Figueroa et al* – Case 12.595, dated May 3, 2012.

<sup>231</sup> Note DIDHD/GOI No. 77119/2954 from the Colombian State, November 15, 2012, p. 53.

<sup>232</sup> Note DIDHD/GOI No. 77119/2954 from the Colombian State, November 15, 2012, p. 53.

<sup>233</sup> Annexes 44, 47 and 67. Decision on the Bail Status of Jorge Enrique Aguilar, Office of the Attorney General of the Nation, File 2169, August 31, 2007; Decision on the Bail Status of Jhon Jairo Cano Duran, Office of the Attorney General of the Nation, File 2169, September 6, 2007; Charging Document for Early Disposition [Guilty Plea] Requested by Defendant Jhon Jairo Cano Duron, March 25, 2008. Criminal proceeding regarding the murder of Mrs. Ana Teresa Yarce. Annex 1. Observations of the Petitioners in reference to the matter of *Miryam Eugenia Rúa Figueroa et al* – Case 12.595, dated May 3, 2012.

195. In the context of said investigation, a written communication from Ms. Caterina Bettina Abbatì, on February 7, 2003, to the Office of the Inspector General of the Nation was also taken into consideration, in which she reported the individual threats of which community leaders María del Socorro, Mery Naranjo and Ana Teresa Yarce were the targets, after their release on November 21, 2002.<sup>234</sup> Said communication was sent by the Office of the Inspector General to the Office of the Attorney General of the Nation on August 22, 2003.<sup>235</sup> In said communication, it was recounted how said defenders endured acts of intimidation perpetrated by paramilitary groups, as a result of their community advocacy efforts.<sup>236</sup> In the context of the investigation of the death of Mrs. Yarce, the Office of the Prosecutor did establish links between the aforementioned threats in said communication and the murder of Mrs. Ana Teresa Yarce.<sup>237</sup>

196. In the statements provided by the family members of Ms. Yarce, as well as Mrs. Mosquera and Naranjo, the source of these threats is identified, as well as the different individuals who are implicated in them. Monica Dulfary Orozco, Ms. Yarce's daughter, identified in the addendum to her statement several perpetrators of the threats against her mother prior to her murder, including the individuals known by the noms de guerre Jorge Aguilar, James Obregon, Juan Gabriel, Cosa Mala, Chupon, Horacio and El Guajiro.<sup>238</sup> Shirley Vanessa Yarce, further testified that "her mother was threatened because she watched out for the boys in the neighborhood so that the so-called paramilitary members did not kill them...."<sup>239</sup> In addition to Jorge Aguilar and el Chupon, she also identified individuals known by the aliases Cosa Mala, Pipe, Horacio and Octavio as members of the paramilitary group that threatened her mother.<sup>240</sup>

197. In her statements, Ms. Mery Naranjo recounts how after she and Ms. Socorro Mosquera and Ana Teresa Yarce were detained, the threats against them by the paramilitary groups continued as a consequence of their community advocacy and she specifically mentioned Jorge Aguilar, James

<sup>234</sup> Annex 44. Decision on the Bail Status of Jorge Enrique Aguilar, Office of the Attorney General of the Nation, File 2169, Annex 1. Criminal proceeding regarding the murder of Mrs. Ana Teresa Yarce. Annex 1. Observations of the Petitioners in reference to the matter of *Miryam Eugenia Rúa Figueroa et al* – Case 12.595, dated May 3, 2012.

<sup>235</sup> Annex 68. Copy of the Official Communication signed by Mrs. Caterina Bettina Abbatì of the Office of the Inspector General and sent to Office of the Attorney General of the Nation on August 22, 2003. Criminal proceeding regarding the murder of Mrs. Ana Teresa Yarce. Annex 1. Observations of the Petitioners in reference to the matter of *Miryam Eugenia Rúa Figueroa et al* – Case 12.595, dated May 3, 2012.

<sup>236</sup> Annex 44. Decision on the Bail Status of Jorge Enrique Aguilar, Office of the Attorney General of the Nation, File 2169, Criminal proceeding regarding the murder of Mrs. Ana Teresa Yarce.

<sup>237</sup> Annexes 44 and 46. Decision on the Bail Status of Jorge Enrique Aguilar, Office of the Attorney General of the Nation, File 2169, August 31, 2007 and Decision on the Bail Status of Jhon Jairo Cano Duran, Office of the Attorney General of the Nation, File 2169, September 6, 2007, Criminal proceeding regarding the murder of Mrs. Ana Teresa Yarce.

<sup>238</sup> Annexes 69, 44 and 46. Statement of Monica Dulfary Orozco Yarce, Office of the Attorney General of the Nation, File: 2169, August 3, 2005; Decision on the Bail Status of Jorge Enrique Aguilar, Office of the Attorney General of the Nation, File 2169, August 31, 2007 and Decision on the Bail Status of Jhon Jairo Cano Duran, Office of the Attorney General of the Nation, File 2169, September 6, 2007, Criminal proceeding regarding the murder of Mrs. Ana Teresa Yarce. Observations of the Petitioners in reference to the matter of *Miryam Eugenia Rúa Figueroa et al* – Case 12.595 dated May 3, 2012.

<sup>239</sup> Annex 70. Statement of Shirley Vanessa Yarce, Office of the Attorney General of the Nation, File 2169, September 7, 2005. Criminal proceeding regarding the murder of Mrs. Ana Teresa Yarce.

<sup>240</sup> Annex 70. Statement of Shirley Vanessa Yarce, Office of the Attorney General of the Nation, File 2169, September 7, 2005. Criminal proceeding regarding the murder of Mrs. Ana Teresa Yarce. Annex 1. Observations of the Petitioners in reference to the matter of *Miryam Eugenia Rúa Figueroa et al* – Case 12.595 dated May 3, 2012.

Obregon, Juan Gabriel, Cosa Mala, Jhon James and el Chupon as the perpetrators of the threats.<sup>241</sup> As for Ms. Mosquera, she testified regarding the illegal search of her home by the army, in the presence of her 14 year-old son, which took place after she was detained until November 21, 2002.<sup>242</sup> She further testified that she understands that the murder of Mrs. Yarce was because of her work as a community leader and she was threatened by members of the Heroes de Granadas and Cacique Nutibara blocs because she vowed to protect the young men of the neighborhood from the paramilitary forces.<sup>243</sup>

198. In its decisions on the legal status of Jorge Aguilar and Jhon Jairo Cano Duran, the Office of the Prosecutor asserted that Mmes Socorro Mosquera, Naranjo and Yarce "had resorted to the authorities in order to avoid operations of the group led by, among others, by Jorge Aguilar, Jhon James Obregón, Chupón, el Guajiro; individuals who were part of the illegal group based in Comuna 13 of this city."<sup>244</sup>

199. When Mr. Jorge Aguilar provided his initial voluntary defendant's statement, he testified to the Office of the Prosecutor that he had joined the United Self-defense Forces of Colombia (UAC) and demobilized with the Heroes de Granada group on July 31, 2005; when he gave this statement he was serving a sentence for the crimes of murder and illegally carrying fire arms; and his duty inside the AUC was as a patrolman.<sup>245</sup> He also claimed that his immediate boss was *Estartaz* – who was the head of the Heroes de Granada group - and who operated with four patrolmen including Jhony Loco, John Edison, and Horacio.<sup>246</sup> In his voluntary initial defendant's statement, Jhon Cano Duran testified that he was a paramilitary member and that he was deprived of his liberty at that time.<sup>247</sup> He describes that the individual known by the nom de guerre Primo was the head of all of the commanders in the area, including Jorge Aguilar, and that it was el Primo who gave the order to Jhon Jairo Cano Duran and to

<sup>241</sup> Annexes 71 and 72. Addendum to the Testimony provided by Mrs. Mery Naranjo on August 24, 2005 and original Statement of Mery Naranjo, Office of the Attorney General of the Nation, December 13, 2004, Criminal proceeding regarding the murder of Mrs. Ana Teresa Yarce. Annex 1. Observations of the Petitioners in reference to the matter of *Miryam Eugenia Rúa Figueroa et al* – Case 12.595 dated May 3, 2012.

<sup>242</sup> Annex 73. Statement of Maria del Socorro Mosquera, Office of the Attorney General of the Nation, December 16, 2004. Criminal proceeding regarding the murder of Mrs. Ana Teresa Yarce. Annex 1. Observations of the Petitioners in reference to the matter of *Miryam Eugenia Rúa Figueroa et al* – Case 12.595 dated May 3, 2012.

<sup>243</sup> Annex 73. Statement of Maria del Socorro Mosquera, Office of the Attorney General of the Nation, December 16, 2004.

<sup>244</sup> Annexes 44 and 46. Decision on the Bail Status of Jorge Enrique Aguilar, Office of the Attorney General of the Nation, File 2169, August 31, 2007 and Decision on the Status of Jhon Jairo Cano Duran, Office of the Attorney General of the Nation, File 2169, September 6, 2007, Criminal proceeding regarding the murder of Mrs. Ana Teresa Yarce.

<sup>245</sup> Annex 74. Defendant's initial voluntary statement of Jorge Enrique Aguilar Rodriguez, August 23, 2007. Criminal proceeding regarding the murder of Mrs. Ana Teresa Yarce. Annex 1. Observations of the Petitioners in reference to the matter of *Miryam Eugenia Rúa Figueroa et al* – Case 12.595 dated May 3, 2012.

<sup>246</sup> Annex 74. Defendant's initial voluntary statement of Jorge Enrique Aguilar Rodriguez, August 23, 2007. Criminal proceeding regarding the murder of Mrs. Ana Teresa Yarce..

<sup>247</sup> Annex 75. Defendant's initial voluntary statement of Jhon Jairo Cano Duran, October 19, 2007, Criminal proceeding regarding the murder of Mrs. Ana Teresa Yarce. Annex 1. Observations of the Petitioners in reference to the matter of *Miryam Eugenia Rúa Figueroa et al* – Case 12.595 dated May 3, 2012.

alias Jhony Loco to shoot Mrs. Yarce.<sup>248</sup> He confessed during his declaration that he personally had fired against Mrs. Yarce.<sup>249</sup>

200. According to information provided by the parties, in the context of the steps taken in the context of that investigation, two participants in that illicit act have been identified and punished<sup>250</sup> – Jorge Aguilar and Jhon Jairo Cano Durán – from 2009 to date.<sup>251</sup> Jhon Jairo Cano Durán, *alias Chupón*, was sentenced on January 9, 2009, to 240 months in prison and a fine equivalent to 1,487.5 legal minimum salaries for the crimes of homicide of a protected person, reprisals, forced displacement, and conspiracy to engage in criminal conduct.<sup>252</sup> On July 15, 2010, Jorge Enrique Aguilar Rodríguez was convicted of homicide of a protected person concurrent with the crime of reprisals to 26 years and 4 months in prison.<sup>253</sup>

201. On issuing the measure of confinement against both participants, the Office of the Attorney General indicated that it considered that the assassination of Ms. Ana Teresa Yarce was linked to the illegal group Héroes de Granada – situated at the América bus terminal – and that the order had been given by one of the upper-level commanders, *alias Johnny*.<sup>254</sup> The Office of the Attorney General argued that “it was learned that just days before the homicide Ms. Ana Teresa Yarce had succeeded in stopping the displacement of several families by the paramilitaries.”<sup>255</sup> The Office of the Attorney General also identified another material co-perpetrator of the crime, Jhony Alberto Henao Echevarría, alias *Johny Loco*, also a member of the paramilitary forces, for whom an arrest warrant was issued on September 6 2007.<sup>256</sup>

### **3. Investigation into the unlawful search of the home of Ms. Naranjo’s next of kin on February 13, 2006, during which a child, Luisa María Escudero, was injured.**

202. The investigation into these facts is entrusted to the Office of the 35<sup>th</sup> Prosecutor under the National Human Rights and Humanitarian Law Unit for the crime of attempted homicide, breach of

<sup>248</sup> Annex 75. Defendant’s initial voluntary statement of Jhon Jairo Cano Duran, October 19, 2007, Criminal proceeding regarding the murder of Mrs. Ana Teresa Yarce.

<sup>249</sup> Annex 75. Defendant’s initial voluntary statement of Jhon Jairo Cano Duran, October 19, 2007, Criminal proceeding regarding the murder of Mrs. Ana Teresa Yarce.

<sup>250</sup> Note DDH. GOI No. 31279/1533 from the Colombian State, June 14, 2006, p. 7.

<sup>251</sup> Note DIDHD/GOI No. 77119/2954 from the Colombian State, November 15, 2012, p. 56; Observations submitted by the petitioners in relation to the matter of *Miryam Eugenia Rúa Figueroa et al.* – Comuna 13, November 22 and 25, 2011, pp. 22 and 23.

<sup>252</sup> Note DIDHD/GOI No. 77119/2954 from the Colombian State, November 15, 2012, p. 56.

<sup>253</sup> Note DIDHD/GOI No. 77119/2954 from the Colombian State, November 15, 2012, p. 56.

<sup>254</sup> Annexes 44 and 46. Resolution of the Legal Situation of Jorge Enrique Aguilar, Office of the Attorney General, file 2169, August 31, 2007, and Resolution of the Legal Situation of Jhon Jairo Cano Durán, Office of the Attorney General, file 2169, September 6, 2007, Criminal proceeding into the assassination of Ms. Ana Teresa Yarce.

<sup>255</sup> Annexes 44 and 46. Resolution of the Legal Situation of Jorge Enrique Aguilar, Office of the Attorney General, file 2169, August 31, 2007, and Resolution of the Legal Situation of Jhon Jairo Cano Durán, Office of the Attorney General, file 2169, September 6, 2007, Criminal proceeding into the assassination of Ms. Ana Teresa Yarce.

<sup>256</sup> Annex 76. Determination that other co-perpetrators are suspects, file 2169, Office of the Attorney General, September 6, 2007. Criminal proceeding into the assassination of Ms. Ana Teresa Yarce. Annex 1. Petitioners’ observations in relation to the matter of *Miryam Eugenia Rúa Figueroa et al.* – Case 12,595, May 3, 2012.

official duty (*prevaricato*) by omission, violation of another's dwelling by a public servant, and abuse of authority, under file No. 3775.<sup>257</sup> The facts were not made known to the competent authorities until 16 or 17 hours after they had occurred.<sup>258</sup> By resolution of November 3, 2006, the Office of the Attorney General specially designated the Prosecutor Delegate before the Criminal Judges of the Specialized Circuit, under the National Human Rights and International Humanitarian Law Unit based in the city of Medellín, to carry out that investigation.<sup>259</sup> At present the investigation is in the preliminary inquiry phase.<sup>260</sup>

203. The Office of the Regional Prosecutor also launched a disciplinary investigation in exercise of its preferential authority. Later transferred to the Office of the Prosecutor-Delegate for Human Rights, the investigation was to inquire into the alleged search of Mrs. Mery Naranjo's home and the injuries to the child Luisa María Escudero and was against a second lieutenant in the National Army.<sup>261</sup> On September 6, 2006, the order was given to begin the investigation and carry it forward; two special visits have been conducted and 8 spontaneous statements and 8 declarations have been taken, 26 memoranda have been issued and 3 measures have been ordered.<sup>262</sup>

## V. LEGAL ANALYSIS

### Preliminary Considerations

204. The allegations of the petitioners before the IACtHR have several common threads and can be summarized in the following terms. The petitioners sustain that the State failed to respect and guarantee several rights of five human rights defenders in the Comuna 13 of Medellín in a known context of armed conflict in the zone by 2002 with specific risks for their integrity, life and organizational work. They sustain that such defenders have suffered a series of acts of harassment and threats by state actors and paramilitary groups, which have remained in impunity, and the extension of such violations to the family circle of the same. The State advances a similar position in the three joined cases, declaring not being responsible for these events and that it is duly investigating the same. The State also presents information of a series of efforts which it has undertaken to recover normalcy in the Comuna 13 in Medellín.

205. Prior to its examination of the merits of this matter, the IACtHR deems pertinent to rule on several elements of context, and how it will analyze their scope in its consideration of the international responsibility of the State of Colombia under different provisions of the American Convention.

206. The petitioners claim that the incidents pertaining to Ms. Rúa, Bastidas, Mosquera, Naranjo, and Yarce took place in a context characterized by three factors. Firstly, the petitioners

<sup>257</sup> Note DIDHD/GOI No. 77119/2954 from the Colombian State, November 15, 2012, p. 68.

<sup>258</sup> Annex 77. Single Criminal Notice Form, February 14, 2006, Complainant: Mery del Socorro Naranjo, Information on the Victim: Luisa María Escudero. Annex 7. Petitioners' observations in reference to the matter of *Miryam Eugenia Rúa Figueroa et al.* – Case 12,595, May 3, 2012; Note DH. GOI No. 12442-0552 from the Colombian State, March 15, 2007, p. 14.

<sup>259</sup> Note DH. GOI No. 12442-0552 from the Colombian State, March 15, 2007, p. 15.

<sup>260</sup> Note DIDHD/GOI No. 77119/2954 from the Colombian State, November 15, 2012, p. 68.

<sup>261</sup> Note DH. GOI No. 12442-0552 from the Colombian State, March 15, 2007, p. 15.

<sup>262</sup> Note DH. GOI No. 12442-0552 from the Colombian State, March 15, 2007, p. 15.

submitted information to the IACtHR regarding the military operations undertaken by the State in Comuna 13 during 2002, and how said operations particularly affected the civilian population. Secondly, they contended that after the aforementioned operations, the paramilitary groups moved into Comuna 13 – even with the presence of the public security forces – and they took actions against women human rights defenders with the acquiescence of the State. Thirdly, the parties introduced information regarding the internal state of unrest declared by the Colombian State on August 11, 2002, which was in effect throughout the territory of Colombia for 90 days, and was first extended on November 8, 2002, and extended once again on February 5, 2003.

207. Regarding the first element, the IACtHR finds that the incidents took place in the context of Colombia's internal armed conflict, as a result of clashes between the illegal armed groups and the public security forces, with subsequent collusion between the paramilitary groups and the public security forces in the area; and the consequences of this situation have persisted to this day for the victims involved in this matter. The IACtHR has taken a position on the general and special duties of the Colombian State to protect the civilian population it is responsible for in the midst of the armed conflict that has been affecting the country for more than forty years now; and these duties emanate from several provisions of the American Convention, as well as from the principles of distinction and proportionality enshrined in international humanitarian law.<sup>263</sup> Consequently, the Commission shall examine the claims of the parties in light of the context of the armed conflict in which the events unfolded, the relevant provisions of the American Convention,<sup>264</sup> and international humanitarian law. In its considerations of law, the IACtHR shall also take into account its pronouncements relevant to the specific impact of the Colombian armed conflict on women, and the concrete risks that stem from that context of the activities of women human rights defenders.

208. With regard to the second element, the petitioners claim several incidents allegedly perpetrated not only by agents of the State, but also by paramilitary groups based in the area of Comuna 13. With regard to the nature of the paramilitary forces, as established by the IACtHR, the Colombian State has played an important role in the development of the paramilitary or self-defense groups, which it allowed to act with legal protection and legitimacy in the 1970's and 1980's, being responsible for their existing and strengthening at that time.<sup>265</sup> Even though the State adopted particular legislative measures in order to prohibit, prevent and punish the activities of the self-defense or paramilitary groups, these measures have not been translated into concrete and effective measures to defuse the risk that the State itself contributed to creating.<sup>266</sup> Said risk – as has been noted by the

<sup>263</sup> The IACtHR has conveyed its impressions and points of view on the general human rights situation in Colombia periodically in Chapter IV of its annual reports for 1995, 1996, 2000-2011, in its *Third Report on the Human Rights Situation in Colombia*, OEA/Ser.L/V/II.102, Doc. 9, rev. 1, February 26, 1999, and in its *Report on the Demobilization Process in Colombia*, OEA/Ser.L/V/II.120, Doc. 60, December 13, 2004.

<sup>264</sup> The Commission will broadly interpret the rights of the American Convention based on other international instruments that are relevant to the case, as provided in Article 29(b) therein. Article 29(b) establishes that no provision of the American Convention may be interpreted in such a way as to "restrict the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party." See, IACtHR, *Case of the Rio Negro Community of the Maya Indigenous People and its members (Massacre of Rio Negro)*, July 14, 2010, par. 224.

<sup>265</sup> IACtHR, *Third Report on the Human Rights Situation in Colombia*, OEA/Ser.L/V/III.102 Doc. 9 rev. 1, February 26, 1999, Chap. 1, pars. 7-19, 236; IACtHR, Merits Report No. 64/11, Case 122.573, *Marino Lopez et al* (Operation Genesis), Colombia, March 31, 2011, par. 225.

<sup>266</sup> IA Court of HR, *Case of Valle Jaramillo et al v. Colombia*. Merits, Reparation and Costs. Judgment of November 27, 2008, Series C No. 192, par. 80..

Inter-American Court — has worsened the situation of vulnerability for human rights defenders who report violations committed by paramilitary and public security forces.<sup>267</sup> As long as this situation of risk persists, the State's special duties of prevention and protection are heightened, as is its obligation to investigate, with the utmost diligence, acts and omissions of state agents and private individuals, which strike at the civilian population.<sup>268</sup> The Commission therefore reiterates that the State objectively created a situation of risk for its inhabitants and defenders, without adopting all of the necessary and adequate measures to keep the paramilitary groups from being able to continue committing acts such as those that are the subject of this matter. The Commission shall examine the alleged violations of the American Convention and the scope of the duties of prevention and protection in this particular case based on these parameters.

209. As for the third factor, the findings of fact show that several of the events that are the subject of this matter have been contemporary — or their consequences have continued — with the State of internal unrest decreed by President Alvaro Uribe on August 12, 2002, which including its extensions, lasted nine months, the circumstances of which are described above in paragraphs 155-159.<sup>269</sup>

210. In their submissions, the petitioners claim in a general fashion that the State did not respect the minimum standards of legality and proportionality during said internal state of unrest, in ordering military operations to be conducted that disregarded the minimum guarantees referred to in Article 27 of the American Convention. In response, the State made general reference to the restrictions on human rights allowed under Article 27.1, noting that the criteria of necessity and proportionality in achieving a legitimate purpose were taken into account in conducting Operation Orion, “as a measure taken by the State within its margin of appreciation and in keeping with the duty to ensure fundamental rights in a democratic society.”<sup>270</sup> The State has also asserted generically during the merits phase that there is no link between the facts that have given rise to the instant matter and the operations carried out in Comuna 13 in 2002; that several of the facts presented by the petitioners did not occur during those operations; and that the facts under examination were not related to the state of internal commotion decreed on August 11, 2002. The Commission observes that in this matter it does not have sufficient elements to pronounce over the alleged violation of Article 27 of the American Convention.

<sup>267</sup> IA Court of HR, *Case of Valle Jaramillo et al v. Colombia*. Merits, Reparation and Costs. Judgment of November 27, 2008. Series C No. 192, par. 81.

<sup>268</sup> IA Court of HR, *Case of the Massacre of Pueblo Bello v. Colombia*. Judgment of January 31, 2006. Series C No. 140, par. 126.

<sup>269</sup> In the relevant admissibility reports pertinent to the cases of Mery Naranjo, María del Socorro Mosquera, Ana Teresa Yarce and Luz Dary Bastidas et al, the IACtHR noted:

As for the arguments on the alleged violation of Article 27 of the American Convention, the petitioners refer to the State of unrest decreed by the President of the Republic on the date when the events took place, alleging the violation of the restrictions on suspension of non-derogable rights in it. The IACtHR shall determine in the merits stage whether it should examine the international obligations of the State with regard to this provision.

IACtHR, Report No. 46/07, Petition 231-05, Admissibility. *Mery Naranjo et al* (Comuna 13), Colombia, July 23, 2007, par. 43; IACtHR, Report No. 4/07, Petition 1147-04, Admissibility, *Luz Dary Ospina Bastidas et al* (Comuna 13), Colombia. February 27, 2007, par. 34.

<sup>270</sup> Note DIDHD/GOI No. 77119/2954 from the Colombian State, November 15, 2012, p. 23; Colombian State's Note DH. GOI No. 12442-0552 dated March 15, 2007, pg. 6.

**A. Right to Personal Integrity (Article 5.1<sup>271</sup>), in connection with Article 1.1 of the American Convention**

211. The right to personal integrity protected under Article 5 of the American Convention is fundamental in the system of guarantees of the American Convention.<sup>272</sup> States are prohibited from imposing an absolute suspension on this right under Article 27.2 of the same instrument in time of war, public danger, or other emergency that threatens the independence or security.”

212. Pursuant to Article 1.1 of the American Convention, the right to personal integrity must be respected and ensured by the State “without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth or any other social condition.”

213. The petitioners make several claims before the IACtHR linked to the guarantee of the right to personal integrity of five women human rights defenders in Comuna 13 of Medellin. They view it as a failure of the State in its duty to protect the women’s personal integrity and organizational work, in a context of risk to human rights defenders, who report crimes committed by the paramilitary forces in an area affected by the Colombian armed conflict. They contend that said defenders have endured ongoing acts of harassment and threats by state and paramilitary actors, including the arbitrary detention of Mmes Mosquera, Naranjo and Yarce from November 12 to 21, 2002; the murder of Ms. Yarce on October 6, 2004; the forcible displacement of Ms. Rua, Ospina, Mosquera and Naranjo from 2002 until the present time; the gradual destruction of the homes of Ms. Rua and Ospina from 2002 to 2003; the disruption and inability to work of each of the above listed defenders in Comuna 13; and the extension of these abuses to these women’s next of kin.

214. The petitioners also assert that these acts have taken place in a context of armed conflict, in which the State carried out several military operations in Comuna 13 during 2002, which helped the paramilitary presence to gain a stronghold in said locality. The State has argued before the IACtHR that it is not responsible for the alleged violations; that it has properly investigated the crimes; and that it has made a significant effort to restore law and order in Comuna 13.

215. The Commission will proceed to examine the arguments of the parties by presenting considerations pertaining to the scope of the duty of protection and prevention set forth in Article 5.1 of the American Convention, and its legal consequences on the activity of the human rights defenders. It will then examine the threats and acts of harassment, the forced displacement, and the unlawful search and occupation of the homes of Ms. Rúa Figueroa and Ospina Bastidas, in light of these considerations. The violations linked to Article 5.1, in relation to the arbitrary detention of Ms. Naranjo, Mosquera and Yarce; the forced displacement of Ms. Rúa, Ospina, Mosquera and Naranjo; and the infringement of the human rights of the next of kin of the five defenders will be addressed in subsequent sections.

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<sup>271</sup> Article 5(1) of the American Convention establishes that “every person has the right to have his physical, mental, and moral integrity respected.”

<sup>272</sup> IACtHR, Merits Report No. 64/11, Case 12.573, *Marino Lopez et al.* (Operation Genesis), Colombia, March 31, 2011, par. 234.

## **1. Considerations related to the Content of Article 5.1 of the American Convention, and the Work of Women Human Rights Defenders**

216. The Commission has ruled on the specific scope of the duty to prevent and protect set forth in Article 5.1, with regard to the work of human rights defenders.<sup>273</sup> The Inter-American system has broadly defined who should be considered as a human rights defender including “any person who in any way promotes or strives for the protection and fulfillment of the human rights and fundamental liberties recognized at the national and international levels.”<sup>274</sup> The IACtHR has found that the members of organizations that work for the advancement of human rights such as the Women’s Association of Las Independencias, and the Community Action Board, are covered under the definition of human rights defenders.<sup>275</sup>

217. The States’ obligation to respect and ensure under Article 5(1) is all encompassing, and includes physical and psychological assaults, threats, and harassment used in order to diminish the physical and mental capacity of human rights defenders.<sup>276</sup> The State can be found internationally responsible for infringing the right to personal integrity by not adopting reasonable measures to prevent these assaults against human rights defenders; by not diligently and seriously investigating the incidents that come to its attention; and by not punishing those responsible for the crimes.<sup>277</sup>

218. Both the Court and the Commission have established that this duty to protect and prevent can be applicable in certain circumstances to acts perpetrated by state actors, third parties, or private individuals. Said international responsibility is contingent upon knowledge of a situation of real and immediate risk – to an individual or a group of particular individuals – and on a reasonable chance of preventing or avoiding said risk.<sup>278</sup> Even though an act, omission, or event of a private individual may have the legal consequence of violating specific human rights of another private individual, such a violation is not automatically attributable to the State, rather it must be viewed in light of the particular circumstances of the case, and the fulfillment of said obligations to ensure rights.<sup>279</sup> The Commission

<sup>273</sup> IACtHR, Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II.124 Doc. 5 rev 1, March 7, 2006, par. 47.

<sup>274</sup> The IACtHR has discussed in its analysis Article 1 of the United Nations Declaration of the Rights and Duties of Individuals, Groups and Promoting and Protecting Human Rights and Fundamental Liberties (hereinafter “the UN Declaration on Defenders”). See IACtHR, Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II.124 Doc. 5 rev. 1, March 7, 2006, par. 13. In this regard, the UN High Commissioner for Human Rights has determined that in order to be considered a defender, the person must protect or promote any right or rights on behalf of persons or groups of persons, which includes the promotion and protection of any civil or political, economic, social or cultural right. See, Office of the High Commissioner for Human Rights, Fact Sheet No. 29: Human Rights Defenders: Protecting the Right to Defend Rights. Geneva 2004. Available at: <http://www.ohchr.org/Documents/Publications/FactSheet29sp.pdf>.

<sup>275</sup> IACtHR, Second Report on the Situation of Human Rights Defenders in the Americas (2011), pars. 208-232.

<sup>276</sup> IACtHR, Second Report on the Situation of Human Rights Defenders in the Americas (2011), par. 40; IACtHR. Second Report on the Situation of Human Rights Defenders in the Americas (2011), OEA/Ser.L/V/II.124 Doc. 5 rev. 1, March 7, 2006, par. 47.

<sup>277</sup> IACtHR, Second Report on the Situation of Human Rights Defenders in the Americas (2011), par. 43.

<sup>278</sup> IA Court of HR, Case of the Massacre of Pueblo Bello v. Colombia. Judgment of January 31, 2006. Series C No. 140, pars. 123 and 124; European Court of Human Rights, Kiliç v. Turkey, judgment of March 2000, Application No. 22492/93, pars. 62-63; Osman v. the United Kingdom, judgment of October 28, 1998, Reports of Judgments and Decisions 1998-VIII, pars. 115-116.

<sup>279</sup> IA Court of HR, Case of Valle Jaramillo et al v. Colombia. Merits, Reparation and Costs. Judgment of November 27, 2008. Series C No. 192, par. 78.

discusses in this report in later sections the scope of state responsibility towards the actions of private actors which threaten the integrity, life and work of women's rights defenders in Colombia working in zones affected by the armed conflict (see paragraphs below 252-264; 279-282; 312-321; 322-332).

219. In this sense, the State's duty to prevent and protect takes on special meaning in the case of women human rights defenders. In addition to the risk inherent to the work of human rights defense is the history of discrimination that women have suffered based on their sex, stemming from stereotyped concepts and sociocultural patterns of behavior that have promoted their treatment as inferiors.<sup>280</sup> This history of discrimination has increasingly exposed them, in certain contexts, to acts of violence, threats, harassment, and other types of violations of their human rights.<sup>281</sup> The IACtHR has established how women human rights defenders continue in several countries of the hemisphere, including Colombia, being exposed to a special situation of risk of suffering human rights violations compared to other groups of defenders.<sup>282</sup>

220. Accordingly, the inherent link between discrimination and violence against women is relevant to the scope of the duty of protection of a State with respect to the activities of women human rights defenders, and entails special obligations of prevention for the same. When a State does not adopt reasonable measures to prevent acts of violence against women human rights defenders, or remedy a known context of discrimination that promotes the repetition of these acts, not only does it violate the right to humane treatment, but also its obligation not to discriminate against women, contained in Article 1(1) of the American Convention.<sup>283</sup>

221. This duty of prevention and response applicable to the State is not limited to providing material means to the women human rights defenders affected in order to protect their personal integrity, or to ensure that its agents not interfere in the full exercise of their human rights.<sup>284</sup> It also entails the duty to act on the structural causes that affect their security<sup>285</sup> with the aim of creating the conditions necessary for the effective enjoyment of the rights established in the American Convention.<sup>286</sup> For the State it entails the obligation to take into account specific risks that women human rights defenders face in a given context in adopting measures to protect their personal integrity

<sup>280</sup> IACtHR, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124 Doc. 5 rev. 1, March 7, 2006, para. 283.

<sup>281</sup> See in general, IACtHR, Report on the Merits No. 80/11, Case 12,626, *Jessica Lenahan (Gonzales) et al.*, United States, July 21, 2011, para. 110; IACtHR, Report on the Merits No. 28/07, Cases 12,496-12,498, *Claudia Ivette González et al.* (Mexico), March 9, 2007; IACtHR, Report No. 54/01, Case 12,051, *Maria Da Penha Maia Fernandes* (Brazil), IACtHR Annual Report 2001; IACtHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/V/II, Doc. 68 (January 20, 2007); I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205.

<sup>282</sup> IACtHR, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124 Doc. 5 rev. 1, March 7, 2006, para. 283.

<sup>283</sup> IACtHR, Report on the Merits No. 80/11, Case 12,626, *Jessica Lenahan (Gonzales) et al.*, United States, July 21, 2011, para. 120.

<sup>284</sup> IACtHR, *Second Report on the Situation of Human Rights Defenders in the Americas* (2011), para. 42; IACtHR, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124 Doc. 5 rev. 1, March 7, 2006, para. 47.

<sup>285</sup> IACtHR, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124 Doc. 5 rev. 1, March 7, 2006, para. 47.

<sup>286</sup> I/A Court H.R., *Case of the Mapiripán Massacre v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 111.

and to prevent other violations of their human rights. It is a fundamental part of the State's duty to adopt comprehensive measures to respond to violence against women with the due diligence required.

222. This means that the duty of protection, reinforced in relation to women human rights defenders, is accentuated in situations of armed conflict, such as one which still affects Colombia. In that context, the Commission considers it proven that the Colombian State has been put on notice continuously by the international and national community as to how women who work in the defense of human rights are generally subject to harassment and threats by the armed actors on considering that their leadership threatens the social and territorial control they pursue.<sup>287</sup> Accordingly, the IACtHR considers that the Colombian State was aware of the situation of risk in which the five women human rights defenders in the matter under examination were working.

## **2. Analysis of the Concrete Facts in light of these Considerations**

223. Based on the proven facts, Ms. Rúa and Ospina were informed during 2002 by residents of Comuna 13 that their names were included in several lists of persons that the paramilitary groups were planning to assassinate.<sup>288</sup> When they became aware that their names were included in these lists, resulted in a series of events including the forced displacement of Ms. Rúa and Ospina in June and November of 2002 respectively; the permanent cease of their activities in defense of human rights; and the gradual occupation and distribution of their homes between 2002 and 2003; with effects on the victims, and their family members which have lasted until the present.

224. The Commission observes that the death threats described by Ms. Rúa and Ospina coincide with the practice identified by the Office of the High Commissioner for Human Rights in Colombia, in her annual report of 2002, where members of the illegal armed groups employed the same against members of social organizations as a primary strategy to cause their displacement and to appropriate themselves of their belongings.<sup>289</sup> Several elements in the file before the IACtHR also suggest that Ms. Luz Dary Ospina Bastidas and Myriam Eugenia Rúa Figueroa suffered these threats as the result of their denunciation of crimes committed by the paramilitary groups in Comuna 13, such as

<sup>287</sup> See, for example, United Nations, *Report of the Special Rapporteur on violence against women, Ms. Rhadika Coomaraswamy, Mission to Colombia*, March 11, 2002, paras. 90-91; United Nations, *Report by the Representative of the United Nations Secretary General on Human Rights Defenders, Hina Jilani, Visit to Colombia*, April 24, 2002, paras. 138-147; Committee on the Elimination of Discrimination against Women, *Observations on the Report by the State of Colombia*, February 3, 1999, para. 271; United Nations, *Reports of the United Nations High Commissioner on Human Rights on the situation of human rights in Colombia*, Annual Report 2002, February 24, 2003, paras. 102-108; Annual Report 2003, February 17, 2004, paras. 85-89; and Annual Report 2004, February 28, 2005, pp. 4 and 120; Mesa de Trabajo Mujeres y Conflicto Armado, *Informe sobre Violencia Socio-Política Contra Mujeres, Jóvenes, y Niñas en Colombia*, Third Report 2002, February 2003, p. 14; Mesa de Trabajo Mujer y Conflicto Armado, *Informe sobre Violencia Socio-Política contra las Mujeres, Jóvenes y Niñas en Colombia, Mujer y Conflicto Armado*, October 2004, pp. 91-102; Constitutional Court of Colombia, Judgment T-496 of 2008 (Case T-1783291); and Constitutional Court of Colombia, Order 092-08.

See also IACtHR, *Violence and Discrimination Against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II. Doc. 67, October 18, 2006, para. 226; IACtHR, Annual Report 2009, Follow-up Report on the Report *Violence and Discrimination Against Women in the Armed Conflict in Colombia*, OEA/Ser.L.V/II. Doc. 67, October 18, 2006, paras. 105-106.

<sup>288</sup> Annexes 3 and 15. Statements from Miryam Eugenia Rúa Figueroa and Luz Dary Ospina Bastidas received by the GIDH addressed to the Inter-American Commission on Human Rights, April 27, 2012.

<sup>289</sup> United Nations, *Report of the Office of the High Commissioner for Human Rights in Colombia*, Annual Report 2002, para. 32.

threats leading to the forced displacement of full families, the murder of youth considered part of the “militia”, and the gradual destruction of their homes.<sup>290</sup>

225. For example, the declarations of Blanca Inés Jiménez Pérez, María Noemí Morales, Adirana Patricia Suárez, and Marta Elena Higuita, residents of the las Independencias III neighborhood of the Comuna 13 and members of the AMI by the time of the events in this case, describe how Luz Dary Ospina Bastidas was forced to exit the Comuna 13 due to the threats perpetrated against her by paramilitary groups, and how these groups occupied her residence, gradually dismantled it, and appropriated themselves of her belongings after her forced displacement.<sup>291</sup> Ms. María Noemí Morales declared concretely:

Days after she [Luz Dary Ospina] left her home, armed men arrived at night and stated that they are the ones who had control of the neighborhood, that they were paramilitaries and communicated to the family that lived there, that they had to leave their house immediately because it was theirs, and they began looting it. During those days, the paramilitaries disoccupied the house entirely and then they dismantled it. The house today is completely destroyed, the only thing left where the columns, because even the adobe was cut. The shambles left are perceivable. The house was large, had 5 pieces, a dining table, two bathrooms, a backyard, a living room, and a kitchen, the house was revoked and needed painting, but the kitchen was finished, was plated, and the bathroom was also plated.... The house had one aluminum door and another metallic one, the house had windows and fences....She was not able to rescue anything and today what remains from the house is sadness. Also Luz Dary has had to go through a very difficult time, and she is currently staying with one of her daughters.<sup>292</sup>

226. In the case of Luz Dary Ospina Bastidas the first person criminally sanctioned for the threats and consequent forced displacement that she suffered, along with her family members, and the appropriation of their home and belongings, is a member of the Bloc *Héroes de Granada*.<sup>293</sup> Regarding Miryam Eugenia Rúa Figueroa, on July 10, 2002, the Municipal Disaster Prevention and Care System (hereinafter “SIMPAD”) certified that that she was the victim of displacement with her three daughters and husband due to the armed conflict between the *autodefensas* groups and the militia groups in

<sup>290</sup> Annexes 3 and 15 Declarations received by Miryam Eugenia Rúa Figueroa and Luz Dary Ospina Bastidas by the GIDH, to be submitted to the Inter-American Commission on Human Rights, April 27, 2012; Audio, IACHR, Hearing, 131<sup>o</sup> Period of Sessions, Cases “Comuna 13”, 12.596 – Luz Dary Ospina Bastidas, 12.595 – Miryam Eugenia Rúa Figueroa and 12.621 – Teresa Yarce, Mery Naranjo, and Socorro Mosquera, Colombia, March 12, 2008; Annexes 58 and 59. Declarations rendered by Mrs. Maria Del Socorro Mosquera Londoño and Mery Naranjo, May 14, 2009. Criminal Process for the forced displacement of Luz Dary Ospina Bastidas; Annex 61. General Prosecutor’s Office of Colombia, National Unit of Human Rights and International Humanitarian Law, Chamber 13, Resolution 17, Summary No. 4017, July 22, 2010. Criminal Process for the Forced Displacement of Luz Dary Ospina Bastidas.

<sup>291</sup> Annex 23 Declaration of Blanca Inés Jiménez to be submitted before the IACHR, October 23, 2006. Annex 2. Information submitted in the observations presented by the petitioners of November 22, 2011; Annex 25. Declaration of María Noemí Morales to be submitted before the IACHR, October 23, 2006. Annex 3. Information submitted in the observations presented by the petitioners of November 22, 2011; Annex. 26. Declaration of Adriana Patricia Suárez to be submitted before the IACHR, March 2, 2010. Annex. 4. Information submitted in the observations presented by the petitioners of November 22, 2011; Annex. 27. Declaration of Marta Elena Higuita to be submitted before the IACHR, March 2, 2010. Annex 5. Information submitted in the observations presented by the petitioners of November 22, 2011.

<sup>292</sup> Annex 24. Declaration of María Noemí Morales to be submitted before the IACHR, October 23, 2006. Annex 3. Information submitted in the observations presented by the petitioners of November 22, 2011.

<sup>293</sup> Annex 61. 27<sup>th</sup> Circuit Court for Criminal Matters, Medellin, June 29, 2011, 2011-00164-00, Defendant: Horacio Bedoya Vergara, Crime: Forced Displacement and Invasion of Lands and Buildings, Early Disposition [guilty plea]. Criminal proceeding for the forced displacement of Luz Dary Ospina Bastidas.

*Comuna 13's Nuevo Neighborhood*, and that in this process they lost their house and belongings, being forced to move elsewhere to find safety.<sup>294</sup> The State of Colombia has not disputed before the Commission that the threats that lead Ms. Myriam Eugenia Rúa Figueroa and Luz Dary Ospina Bastidas and their family members to vacate their homes and to forcibly displace were perpetrated by paramilitary groups.

227. The threats and their aftermath reported by Luz Dary Ospina Bastidas and Miryam Eugenia Rúa Figueroa are also consistent with the pronouncements of the IACHR, the Ombudsman's Office in Colombia, the Office of the High Commissioner for Human Rights, and other national organizations about the consolidation of the paramilitary presence in Comuna 13 by 2002, and the perpetration by these groups of acts of violence, harassment, and intimidation against those who did not support their project to control the zone.<sup>295</sup> The IACHR has also verified that these factors generated the intra-urban displacement of many families, forced to abandon their homes, encouraging what the paramilitary groups qualify as the "reign of silence".<sup>296</sup> These actions have also been aggravated by the inaction from the State towards the targeting and stigmatization of the work of these organizations and their members; their tolerance and acquiescence of the paramilitary presence in Comuna 13; and the impunity of the vast majority of these events.

228. In this sense, the IACHR considers proven (paragraphs 147-154 above) that the events reported by Miryam Eugenia Rúa Figueroa and Luz Dary Ospina Bastidas occurred in a context of armed conflict in the Comuna 13 well-known by the Colombian state, characterized by clashes between the illegal armed groups and the public forced for several decades.<sup>297</sup> This context has been intensified by military operations executed by the State in the zone during 2002, and the solidification of the paramilitary presence after these operations.<sup>298</sup>

229. Based on these proven facts, the Commission is prompted to make the following legal conclusions. Firstly, the IACHR finds that the State had a heightened duty of protection with regard to the civilian population of Comuna 13, in light of the context of armed conflict in the area, which was public knowledge; the implementation by the State of several consecutive military operations during 2002; and the increase in the paramilitary presence in the zone after these operations. These duties emanate from its obligations contracted under international human rights law, described above in paragraphs 216-222. The State itself has recognized the context of insecurity in Comuna 13 as

<sup>294</sup> Annex 4. File Number 289, Secretariat for the Environment (SIMPAD), July 10, 2002.

<sup>295</sup> IACHR, Press Release, No. 40/02, *IACHR Concerned over Situation in Comuna 13 in the City of Medellín*, Colombia. October 18, 2002; IACHR, Press Release No. 15/03, *Rapporteur concludes working visit to the Republic of Colombia*, June 27, 2003; United Nations, *Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Colombia*, Annual Report 2002, February 24, 2003; Annex 35. Risk Report N° 016-10, Office of the Ombudsman of Colombia; Annex 36. Risk Report N° 009-07, Office of the Ombudsman of Colombia; Audio, IACHR, Thematic Hearing, "Human Rights Situation in the Region of Antioquia and in Comuna 13 of Medellín, Colombia," October 16, 2012, 116<sup>th</sup> period of sessions.

<sup>296</sup> IACHR, *Report on the Process of Demobilization in Colombia*, OEA/Ser.L/II.120 Doc. 60, December 13, 2004, par. 82.

<sup>297</sup> IACHR, Press Release No. 15/03, *IACHR Rapporteur concludes working visit to the Republic of Colombia*, June 27, 2003; IACHR, *Report on the Process of Demobilization in Colombia*, OEA/Ser.L/II.120 Doc. 60, December 13, 2004, par. 82.

<sup>298</sup> IACHR, Press Release No. 15/03, *IACHR Rapporteur concludes working visit to the Republic of Colombia*, June 27, 2003; IACHR, *Report on the Process of Demobilization in Colombia*, OEA/Ser.L/II.120 Doc. 60, December 13, 2004, par. 82.

contemporaneous with these incidents before the IACHR.<sup>299</sup> Being that it was aware of said context, the State had the obligation to adopt reasonable measures to prevent acts of violence against human rights defenders – perpetrated both by state agents and by paramilitary members in collusion with public security forces – as well as the duty to generate the necessary conditions for the performance of the work of human rights defense.

230. Second, the IACHR establishes that this accentuated duty of the State to protect and respond was further reinforced by two factors known to the State: the particular situation of risk to women human rights defenders, due to the historical discrimination they have suffered by virtue of their sex and the causes they pursue; and the aggravation of this risk in areas controlled by actors who are parties to the Colombian armed conflict. As described in the facts proven, the IACHR has issued repeated pronouncements as to how women who work in the defense of human rights who operate in areas of Colombia where there is military confrontation are targets of harassment and threats that affect both their members and their community work.<sup>300</sup> The armed actors consider that the leadership exercised by women human rights defenders and their work of reporting human rights violations represents an obstacle in the way of their gaining social and territorial control in certain parts of the country.<sup>301</sup> The State not only violates the right to personal integrity when it fails to adopt reasonable measures to prevent acts of violence against women human rights defenders in a known context of risk, but that also falls short in its obligation to respect and ensure their rights, free of any discrimination, set forth in Article 1(1) of the American Convention.

231. Thirdly, the IACHR understands that the State's ineffectiveness at dismantling the paramilitary groups brings upon itself a special and ongoing duty to prevent and protect the civilian population, where such groups are present.<sup>302</sup> In the matter before us, the State had a heightened duty to protect women human rights defenders inasmuch as it was aware of the paramilitary presence in the area, and it breached this obligation, with lasting effects for Ms. Rúa, Ospina and their next of kin up to the present.

232. Even though the State had been duly alerted to these specific risks, the Commission has not received information in the framework of this case illustrating reasonable measures that were adopted by the Colombian State to protect human rights defenders during the military operations mentioned, and the subsequent effects. Nor does it appear that the forced displacements reported have been investigated with the due diligence required. For example, in the case of Ms. Ospina, according to the facts proven she reported to the authorities that members of the official forces participated in the search of her home on March 3, 2003, which facilitated the subsequent paramilitary occupation of it,

<sup>299</sup> Note DIDHD/GOI No. 77119/2954 from the Colombian State, November 15, 2012; Colombian State's Note DDH.GOI/56107/2586 dated October 30, 2006; Colombian State's Note DDH.GOI/31279/1533 dated June 14, 2006; Colombian State's Note DDH.GOI/60162/2802 dated December 11, 2006.

<sup>300</sup> IACHR, *Violence and Discrimination Against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II. Doc. 67, October 18, 2006, para. 225.

<sup>301</sup> IACHR, *Violence and Discrimination Against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II. Doc. 67, October 18, 2006, para. 226.

<sup>302</sup> IA Court of HR, *Case of Valle Jaramillo et al v. Colombia. Merits, Reparation and Costs*. Judgment of September 27, 2008. Series C No. 192, para. 81; I/A Court H.R., *Case of the Massacre of Pueblo Bello*. Judgment of January 31, 2006. Series C No. 140, para. 126.

and caused her forced displacement.<sup>303</sup> Nonetheless, in the investigation undertaken by the authorities into her complaint, it does not appear that the possible involvement of official forces in the occupation and subsequent dismantling of her home, after her displacement, was explored.

233. The context of insecurity in which these human rights defenders operated is confirmed by the fact that precautionary measures were granted on October 22, 2004 by the IACtHR on behalf of Mrs. Naranjo and Mosquera as a result of their community organization endeavors, and the Court granted provisional measures on July 5, 2006. It is important to highlight that both the IACtHR and the Court have repeatedly ruled on the ineffectiveness of the mechanisms of protection provided to the women human rights defenders in the context of said measures, with some of their next of kin even being murdered.<sup>304</sup>

234. The IACtHR thus concludes this section expressing its concern over the chilling effect of the State's failure to protect, in this instance, the women who work to defend human rights in Comuna 13. Statements from Miryam Eugenia Rúa Figueroa and Luz Dary Ospina Bastidas in the case file indicate that they were forced to abandon their community and organizational work permanently due to their fear of accusations, persecution and other acts of violence and, as will be thoroughly discussed later in this report, they remain in a situation of displacement, in precarious economic circumstances.<sup>305</sup> Such declarations also allude to the extension of these violations to the family members of the mentioned defenders, including having joined the forced displacement, a radical and traumatic change in their life project, and the interruption of their work and studies, an aspect which will be analyzed in detail in later sections of this report.<sup>306</sup>

235. The IACtHR reiterates the need to legitimize and protect the actions of women human rights defenders in the face of the threat to their existence and work by the actors in the Colombian armed conflict, including the Armed Forces and National Police, and their positive obligation to create the structural conditions necessary for them to be able to do their work in this known context of risk.

236. Based on the foregoing considerations, the Commission finds that the right to personal integrity of Miryam Eugenia Rúa Figueroa and Luz Dary Ospina Bastidas, as set forth in Article 5.1 of the American Convention, in connection with Article 1.1 of the same instrument, was violated in the present case.

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<sup>303</sup> Annex 16. Complaint to the Office of the Ombudsperson of July 18, 2003, on inter-urban displacement and security of Luz Dary Ospina B. and her family; Annex 17. Complaint to the Departmental Prosecutor, City of Medellín, July 18, 2003, or intra-urban displacement and security of Luz Dary Ospina B. and her family.

<sup>304</sup> See, for example, IACtHR, Press Release, *IACtHR condemns continued threats and murders directed against human rights defenders and their families in Colombia*, March 7, 2011; Decisions of the Inter-American Court of Human Rights in the Matter of Mery Naranjo et al – Comuna 13, Colombia September 22, 2006, January 31, 2008; November 25, 2010; and March 4, 2011.

<sup>305</sup> Annexes 3 and 15. Statements from Miryam Eugenia Rúa Figueroa and Luz Dary Ospina Bastidas received by the GIDH addressed to the Inter-American Commission on Human Rights, April 27, 2012.

<sup>306</sup> Annexes 3 and 15. Statements from Miryam Eugenia Rúa Figueroa and Luz Dary Ospina Bastidas received by the GIDH addressed to the Inter-American Commission on Human Rights, April 27, 2012.

**B. Rights to Personal Liberty, Personal Integrity, and Honor and Dignity (Articles 7.1 and 7.3,<sup>307</sup> 5.1 and 11), in connection with Article 1.1 of the American Convention**

237. Article 7 of the American Convention establishes the right to personal liberty and the guarantees which must be observed in cases of deprivation of liberty.<sup>308</sup> Its provisions set limits on the branches of government expressly prohibiting both illegal and arbitrary detentions.<sup>309</sup>

238. The Commission considers that a detention is illegal and arbitrary when it does not adhere to the motives and formalities established by law; when it is executed without compliance with the standards required by law; and when it is conducted for purposes other than those provided for and required by law.<sup>310</sup> The right to personal liberty also encompasses several guarantees during a detention, including, the right to be informed of the reasons for the detention;<sup>311</sup> to be notified promptly of the charges;<sup>312</sup> and to be brought before a judge immediately when the detention has been carried out without an arrest warrant.<sup>313</sup>

239. In the matter that concerns us, the petitioners claim that the right to personal liberty of Ms. Naranjo, Mosquera and Yarce was infringed on November 12, 2002, when they were illegally and arbitrarily detained in a joint operation between the Army and National Police Force. The IACtHR notes that this detention occurred in the context of the state of internal unrest decreed by President Alvaro Uribe on August 12, 2002, which was still in effect at the time. They contend that they were detained unlawfully; without any court-ordered arrest warrant; without being informed of the reason for their detention; and that they were held without any basis for nine days. The State argues that their detention was based on information provided from neighborhood residents of the sector; that the defendants were placed in the custody of the Office of the Prosecuting Attorney for the alleged offense of rebellion; and that on May 22, 2003, the investigation was closed for lack of merit in the charges against the defendants.

240. The IACtHR, therefore, must examine whether or not the detention of Ms. Mosquera, Naranjo and Yarce was conducted in keeping with the international principles described.

241. Article 28 of the Political Constitution of Colombia provides that no person may be detained “except under a written warrant from a competent judicial authority, through formal procedures established by law and for reasons previously defined in the law.” Article 214 of the same

<sup>307</sup> The pertinent part of Article 7 of the American Convention provides in its text:

1. Every person has the right to personal liberty and security.
3. No one shall be subject to arbitrary arrest or imprisonment.

<sup>308</sup> IACtHR, Case 10.738, Admissibility and Merits. *Carlos Augusto Rodríguez Vera et al* (“Palace of Justice”), Colombia (2011), par. 406; IACtHR, Report No. 53/01, Case 11.565, *Ana, Beatriz and Celia González Pérez*, Mexico, April 4, 2001, par. 22.

<sup>309</sup> IACtHR, Case 10.738, Admissibility and Merits, *Carlos Augusto Rodríguez Vera et al* (“Palace of Justice”), Colombia (2011), par. 406; IACtHR, Report No. 53/01, Case 11.565, *Ana, Beatriz and Celia González Pérez*, Mexico, April 4, 2001, par. 22.

<sup>310</sup> IACtHR, Report No. 35/08 (admissibility and merits), *Antonio Ferreira Braga*, July 18, 2008, par. 68.

<sup>311</sup> IA Court of HR, *Case of Tibi v. Ecuador*, Judgment September 7, 2004, Series C. No. 114, par. 109.

<sup>312</sup> IA Court of HR, *Case of Bulacio v. Argentina*, Judgment of September 18, 2003. Series C No. 100, par. 128.

<sup>313</sup> IACtHR, Note of referral of the Case to the Court and Report on the Merits of Case 12.661 “Néstor José and Luiz Uzcátegui et al”, October 22, 2010, par. 223.

instrument establishes that during internal states of unrest, “human rights and fundamental liberties may not be suspended.”<sup>314</sup> Among the powers of the Government established in the statute regulating states of emergency in Colombia — Law 137 of 1994 — is the power “to order through a warrant from a competent judicial authority, the preventive apprehension of persons about whom there is indicia regarding their participation, or regarding their plans to participate, in the commission of crimes, relating to the causes of the disruption in the public order.”<sup>315</sup> The statute restricts the circumstances under which persons may be detained preventively without a warrant of the court noting:

When there are insurmountable circumstances of urgency and it is necessary to protect a fundamental right in grave and imminent danger, prior written judicial authorization may be communicated verbally...When the circumstances set forth in the previous subparagraph arise and it is impossible to request judicial authorization, action may be taken without a warrant from a judicial official. The person preventively apprehended must be brought before a prosecutor as soon as possible and in all instances within the next twenty-four hours, so the prosecutor makes the appropriate decision within thirty-six hours. In this instance, the Office of the Inspector General must be informed of the act and of the reasons for taking this action, in order to take the measures incumbent upon him.<sup>316</sup>

242. The Constitutional Court of Colombia in Judgment C 802-02 examined the provisions of Decree 1837, under which the internal state of unrest was declared on August 12, 2002, and established that “the mere declaration of a state of emergency does not necessarily mean a restriction of rights and in view of the effect that a measure of this sort has on the course of community life, when it is going to be used, the liberties that will be restricted by the legislative decrees in effect must be generically identified.” The Court interpreted this power in the strictest sense, establishing that Decree 1837 only proclaimed “the need for the authorities to restrict free movement of persons and vehicles in specific places and at specific times,” and therefore, “this liberty, and this fundamental liberty alone may be abridged by the legislative decrees in effect.” As was established in the section on proven facts (paragraph 132 above) under Judgment C-1024-02, the Constitutional Court found any subsequent provisions of a legislative decree to be invalid in the context of the internal state of unrest that allowed for the arrest of suspects without a warrant and searches and inspections without judicial authorization.

243. Consequently, based on Colombian domestic legislation regulating potential suspects during an internal state of unrest, and the provisions of specific laws that are applicable to such states of emergency, it cannot be concluded that these laws justified detentions without an order from a “competent judicial authority.” The IACtHR notes, therefore, that Ms. Mosquera, Naranjo and Yarce were detained without adherence to the provisions of the law in effect at the time of the incidents.

244. Accordingly, Ms. Mosquera, Naranjo and Yarce were detained without an order from a competent authority being involved, and without any reason provided. There is no evidence to indicate that they were caught *in flagrante*, or in any kind of circumstance of “insurmountable urgency” that would warrant their detention in violation of the requirements imposed under Colombian law. There are no facts either in the evidence provided by the parties to indicate that their detention was strictly

<sup>314</sup> The same article provides that a statute shall regulate the powers of the government during states of emergency and shall establish “the judicial controls and guarantees in order to protect rights, in accordance with international treaties.”

<sup>315</sup> Law 137 of 1994, Official Gazette No. 41.379 of June 3, 1994, under which states of emergency in Colombia are regulated, subsection 38(f), available at: [http://www.secretariosenado.gov.co/senado/basedoc/ley/1994/ley\\_0137\\_1994.html](http://www.secretariosenado.gov.co/senado/basedoc/ley/1994/ley_0137_1994.html).

<sup>316</sup> Law 137 of 1994, Official Gazette No. 41.379 of June 3, 1994.

necessary, or that it had some nexus with the proclamation of internal unrest. The proven facts before the IACtHR show that the detention of Mrs. Mosquera, Naranjo and Yarce was based on an “absolute void of evidence” and on proof which is not permitted under the law; as established under a decision issued by the Prosecuting Attorney in charge of the case on November 21, 2002.<sup>317</sup> The circumstances of their detention were in overt violation of the precepts set forth under subsections 1 and 3 of Article 7 of the American Convention.

245. The IACtHR also expresses its concern over the proven fact that Ms. Naranjo, Mosquera and Rúa were detained four days after holding a meeting with the Secretary of the Municipal Government, in which they reported murders committed by paramilitary groups in locations of the Comuna which were heavily controlled by the army.<sup>318</sup> The Office of the United Nations High Commissioner identified arbitrary detentions of civilians, as part of the pattern of human rights violations that Operation Orion entailed, which took place at the same time as these incidents.<sup>319</sup>

246. The IACtHR notes that the detention of a human rights defender is incompatible with standards of international law when it is conducted without fulfilling the requirements and following the formal procedures as established by law. Moreover, the IACtHR reiterates that the illegal and arbitrary detention of a particular human rights defender is an especially serious act, and infringes several rights, including the right to personal integrity contained in Article 5.1 of the American Convention.<sup>320</sup>

247. An illegal and arbitrary detention generates different types of psychological harm, which manifest themselves through anxiety, fear, insecurity, stigmatization, stress, and frustration of the defender involved,<sup>321</sup> and can become a tool of direct harassment of said defender compromising her mental and emotional integrity,<sup>322</sup> and that of her next of kin. The detention of a women human rights defender does not only have a chilling effect on her work but also brings her work to a standstill inasmuch as her time, energy and resources have to be focused on her own defense.<sup>323</sup> As for the collective impact, arbitrary detention and the criminalization of the work of a defender may in turn result in collective stigmatization and send an intimidating message to any individuals who intended to report violations, or have lodged complaints for human rights violations.<sup>324</sup>

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<sup>317</sup> Annex 35. Copy of the decision issued by the Office of the Prosecutor Delegate before the Criminal Circuit Courts of Medellin dated November 21, 2002, Annex to the Colombian State’s Note DH. GOI No. 12442-0552 dated March 15, 2007, and the Observations of the petitioners with reference to the matter of *Mery Naranjo et al – Comuna 13*, March 25, 2010.

<sup>318</sup> United Nations, Report of the Special Rapporteur on Violence against Women, Mrs. Rhadika Coomaraswamy, Visit to Colombia, January 14, 2003, par. 35; Night and Fog: an Overview of Human Rights and Political Violence in Colombia, *Case Type No. 2: Comuna 13*, Data Bases of Political Violence CINEP and Justice and Peace, Bogota, May 2003, pg. 31.

<sup>319</sup> United Nations, *Report of the UN High Commissioner for Human Rights on the human rights situation in Colombia*, Annual Report 2002, February 24, 2003, par. 37.

<sup>320</sup> IACtHR, *Second Report on the Situation of Human Rights Defenders in the Americas* (2012), pars. 118-119.

<sup>321</sup> IACtHR, *Second Report on the Situation of Human Rights Defenders in the Americas* (2011), par. 119.

<sup>322</sup> IACtHR, *Third Report on the Situation of Human Rights Situation in Colombia*, OEA/Ser.L/V/II.102, February 29, 1999, par. 43. Also see on this topic IACtHR, *Second Report on the Situation of Human Rights in Peru. Chapter III Administration of Justice and Rule of Law*, OEA/Ser.L.V/II.106, June 2, 2000, par. 149.

<sup>323</sup> IACtHR *Second Report on the Situation of Human Rights Defenders in the Americas* (2011), par. 76.

<sup>324</sup> IACtHR *Second Report on the Situation of Human Rights Defenders in the Americas* (2011), par. 79.

248. The Commission considers that the circumstances of the arbitrary detention of Ms. Naranjo, Mosquera and Yarce in and of themselves amount to a violation of their psychological and emotional integrity. The Commission reaches the reasonable assumption that the defenders were stricken with fear and anxiety in light of the uncertainty regarding their deprivation of liberty. Ms. Naranjo and Mosquera have testified before the IACtHR on the violent nature of their detention, the participation of members of the army in it, the unhealthy and unhygienic conditions in which they were held for nine days, and the inability to see their family members over that period of time; and this information has not been refuted by the State.<sup>325</sup> After their release on November 21, 2002 in light of the “absolute void of evidence” that their detention was based on, they had to wait six months for the investigation launched against them to be closed with prejudice on May 22, 2003.

249. Based on the foregoing, the Commission finds that the State is responsible for violation of the right of Ms. Mosquera, Naranjo and Yarce to personal liberty, and personal integrity as a result of their arbitrary detention, and the effects thereof, under Articles 7.1, 7.3, and 5.1 of the American Convention, in connection with Article 1.1 of the same instrument.

#### C. Right to life (Article 4.1<sup>326</sup>), in connection with Article 1.1 of the American Convention

250. The Inter-American Court has held that the right to life plays a fundamental role in the American Convention, inasmuch as it is an essential requirement for the exercise of any other right.<sup>327</sup> Enforcement of the right to life, in connection with Article 1.1 of the American Convention, presupposes not only that no person may be deprived of his or her life arbitrarily (negative obligation), but also requires States to adopt all appropriate measures to protect and preserve the right to life (positive obligation), pursuant to the obligation to ensure the full and free exercise of the rights of all persons subject to their jurisdiction.<sup>328</sup> Both the right to life, protected by Article 4.1, as well as the right to personal integrity enshrined in Article 5.1, constitute the essential minimum required for the exercise of human rights defense.<sup>329</sup>

251. In the instant case, the petitioners contend that the State failed to adopt reasonable measures to protect the life of Ms. Ana Teresa Yarce, who was murdered on October 6, 2004, while in the company of her daughter and Ms. Mery Naranjo. They find that the State was aware of a real and immediate risk to her life because she reported to the competent authorities the threats and harassment inflicted upon her by the paramilitary members after her arbitrary detention on November 12, 2002, and because she decried human rights violations in Comuna 13. The State argues that the Office of the 35<sup>th</sup> Specialized Prosecutor, under the National Human Rights Unit of the Office of the

<sup>325</sup> Annex 78. Statement from María del Socorro Mosquera received by GIDH addressed to the Inter-American Commission on Human Rights, May 2, 2012; Observations of the Petitioners with reference to the matter of *Miryam Eugenia Rúa Figueroa et al– Case 12.595* dated May 3, 2012, pgs. 7 and 8.

<sup>326</sup> Article 4.1 of the American Convention establishes in the pertinent section:

Every person has the right to have his life respected. This right shall be protected by law ley [...] No one shall be arbitrarily deprived of his life.

<sup>327</sup> IA Court of HR, *Case of González et al (“Cotton Fields”) v. Mexico*. Preliminary Objections, Merits, Reparation and Costs. Judgment November 16, 2009. Series C No. 205, par. 245.

<sup>328</sup> IA Court of HR, *Case of González et al (“Cotton Fields”) v. Mexico*. Preliminary Objections, Merits, Reparation and Costs. Judgment November 16, 2009. Series C No. 205, par. 245.

<sup>329</sup> IACtHR, *Second Report on the Situation of Human Rights Defenders in the Americas* (2011), par. 23.

Attorney General, is currently undertaking an investigation into the facts in the context of which two participants in the offense have been identified and punished.

252. The IACHR has established that the adoption of reasonable measures with a view to ensuring the right to life is a critical part of the duty of states to act with due diligence to protect a woman from acts of violence.<sup>330</sup> International bodies have consistently established that a state may be internationally responsible for failing to act with due diligence to prevent, investigate, punish, and make reparation for every act of violence against women.<sup>331</sup> This legal obligation pertains to the entire state structure<sup>332</sup>, and includes possible obligations of the state to prevent and respond to the actions of non-state and private actors on learning of a situation of real and immediate risk to a woman, and the real possibilities of preventing or avoiding that risk.<sup>333</sup>

253. The reinforced duty to observe the right to life is accentuated in the case of women who work as human rights defenders in a known context of risk, such as the zones controlled by the different factions in the context of the Colombian armed conflict. The Commission has recognized the twofold risk that women face in those areas both as leaders, given the increase in their visibility and in light of the causes they pursue, and by virtue of their sex, which has contributed to their being treated historically as inferior beings in such scenarios.<sup>334</sup> As indicated in the section on facts proven, in the case of Colombia in particular the IACHR has reported how the armed actors consider that the leadership of the organizations made up of women or that work in the defense of women's rights constitute an obstacle that makes it difficult for them to advance their agenda of social and territorial control, and therefore these organizations and their members may be subject to assassination, harassment, and threats that seriously affect their work in the community.<sup>335</sup> The IACHR notes that in guaranteeing the right to life the State must take into account these specific risks faced by women who work in the defense of human rights in those areas, and adopt reasonable measures to protect them and to prevent violations of the right to life.

254. In light of these parameters, the Commission proceeds to consider whether the facts set forth above rise to the level of international responsibility of the State for its failure to prevent and protect the life of Ms. Ana Teresa Yarce, as a woman human rights defender.

<sup>330</sup> IACHR, Report No. 80/11, Case 12,626, *Merits, Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011, para. 128.

<sup>331</sup> See in general, IACHR, Report No. 28/07, Cases 12,496-12,498, *Claudia Ivette González et al.* (Mexico), March 9, 2007; European Court of Human Rights, Case of *Opuz v. Turkey*, Petition No. 33401/02, June 9, 2009; CEDAW Committee, Views on Communication 6/2005, *Fatma Yıldırım v. Austria* (July 21, 2004).

<sup>332</sup> See, IACHR, Report No. 80/11, Case 12,626, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011, para. 128.

IACHR, Report No. 28/07, Cases 12,496-12,498, *Claudia Ivette Gonzalez et al.* (Mexico), March 9, 2007, paras. 247-255; I/A Court H.R.. *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 245.

<sup>333</sup> See IACHR, Report No. 28/07, Cases 12,496-12,498, *Claudia Ivette González et al.* (Mexico), March 9, 2007, paras. 247-255.

<sup>334</sup> IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124 Doc. 5 rev. 1, March 7, 2006, para. 229.

<sup>335</sup> IACHR, *Violence and Discrimination Against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II. Doc. 67, October 18, 2006, para. 226.

255. Based on the findings of fact, Ms. Ana Teresa Yarce served as an Attorney and Treasurer of the Community Action Board in Comuna 13.<sup>336</sup> Part of her community advocacy work involved reporting crimes committed by the paramilitary forces to the Army, in order to protect the young men of Comuna 13 from murders; prevent forcible displacement; and protect families from the gradual destruction of their homes.<sup>337</sup>

256. Their work jeopardized both the life of Ana Teresa Yarce, as well as her personal integrity, as she became the target of threats and accusations from the paramilitary groups, at times, in front of her own children.<sup>338</sup> Consequently, on November 12, 2002 Ms. Yarce was detained along with Mery Naranjo and Maria del Socorro Mosquera for the alleged crime of rebellion; and this detention took place after participating in a meeting with the Secretariat of the Interior, where she reported murders perpetrated by paramilitary members in areas controlled by the army.<sup>339</sup> The proven facts show that this detention elevated her level of insecurity in Comuna 13.<sup>340</sup>

257. Evidence in the case file before the IACtHR indicates that the authorities were aware of the situation of risk and the threats endured by Ana Teresa Yarce, which led to her murder. Based on the proven facts, on February 7, 2003, Ms. Caterina Bettina Abatti alerted the Inspector General of the Nation, via written communication, about the troubling security situation of Ms. Ana Teresa Yarce, Mery Naranjo and Maria del Socorro Mosquera, as a result of their work as community leaders.<sup>341</sup>

With all due respect I request that you initiate impartial and exhaustive investigations towards the detention of María del Socorro Mosquera, Mery del Socorro Naranjo, and Ana Teresa Yarce, to publish the results of said investigations, and to bring to justice those responsible. I also request that you adopt the necessary measures, considered appropriate by those threatened, to

<sup>336</sup> Annex 31. Certification from the Secretariat of Social Development, Office of the Mayor of Medellin, of Mery Naranjo Jímenez as President, and Ana Teresa Yarce as Treasurer of the Community Action Board, from July 23, 2002 to June 30, 2004, Medellin, December 16, 2002.

<sup>337</sup> Annex 45. Report of Judicial Investigator, Office of the Attorney General of the Nation, October 6, 2004, Information on the Deceased: Ana Teresa Yarce. Criminal proceeding on the murder of Mrs. Ana Yarce; Annexes 69-73. Statements of Mónica Dulfary Orozco Yarce (August 3, 2005); Shirley Vanessa Yarce (September 7, 2005); Mery Naranjo (December 13, 2004); and Maria del Socorro Mosquera (December 16, 2004) and Addenda to the statement of Mery Naranjo (August 24, 2005), before the Office of the Attorney General of the Nation, File: 2169. Criminal proceeding on the murder of Mrs. Ana Yarce.

<sup>338</sup> Annexes 69-73. Statements of Mónica Dulfary Orozco Yarce (August 3, 2005); Shirley Vanessa Yarce (September 7, 2005); Mery Naranjo (December 13, 2004); and Maria del Socorro Mosquera (December 16, 2004); and Addenda to the statement of Mery Naranjo (August 24, 2005), before the Office of the Attorney General of the Nation, File: 2169. Criminal proceeding on the murder of Mrs. Ana Yarce.

<sup>339</sup> United Nations, *Report of the Special Rapporteur on Violence against Women*, Mrs. Rhadika Coomaraswamy. Visit to Colombia, January 14, 2003, par. 35; Annex 33. Retention Report, Squad Commander, C-3 Torres Monterosa Pilides, Military Forces of Colombia, National Army, Fourth Brigade, to Duty Prosecutor, November 12, 2002.

<sup>340</sup> Annexes 44 and 46. Written communication from Mrs. Caterina Bettina Abbati addressed to the Office of the Inspector General of the Nation, February 7, 2003, mentioned in Decision on the Bail Situation of Jorge Enrique Aguilar, Office of the Attorney General of the Nation, File: 2169, August 31, 2007 and Decision on Bail Situation of Jhon Jairo Cano Durán, Office of the Attorney General of the Nation, File: 2169, September 6, 2007. Also see, Annexes 72-73, 77-78. Statements of Mery Naranjo (December 13, 2004); and Maria del Socorro Mosquera (December 16, 2004) and Addenda to statements of Maria del Socorro Mosquera (December 16, 2004) and Mery Naranjo (August 24, 2005), to the Office of the Attorney General of the Nation, File: 2169. Criminal proceeding on the murder of Mrs. Ana Yarce.

<sup>341</sup> Annex 79. Written Communication of Caterina Bettina Abbati addressed to the Office of the Inspector General of the Nation, February 7, 2003. Criminal proceeding on the murder of Mrs. Ana Yarce.

protect María del Socorro Mosquera, Mery del Socorro Naranjo, and Teresa Yarce. Also, I consider imperative that you adopt immediate and efficient measures to ensure that all other human rights defenders in the district of Comuna 13 in Medellín can move forward, with full security, with their legitimate and important work in the advancement of human rights.<sup>342</sup>

258. This communication was sent by the Office of the Inspector General of the Nation to the Office of the Attorney General of the Nation on August 2, 2003, to bring this to its attention and to convey that a preliminary investigation on the reported crimes had been opened.<sup>343</sup> The Office of the Prosecuting Attorney has interpreted that, in this communication, Mrs. Abatti referred to acts of intimidation perpetrated by paramilitary groups that were directed at Mrs. Yarce, which culminated on October 6, 2004 with her murder.<sup>344</sup>

259. Accordingly, on the grounds of connection between crimes, on April 14, 2005, the Office of the Prosecuting Attorney joined the investigation previously opened into the threats against Mmes Yarce, Mosquera and Naranjo, with the investigation of the subsequent killing of Mrs. Yarce, in finding that "after a detailed examination of the facts it is highly possible that the murder of Mrs. Ana Teresa Yarce is the culmination of serious threats, leveled at the women's group by an illegal armed group, whose activities are based out of the western area of this city."<sup>345</sup>

260. On August 8, 2003, Ms. Ana Teresa Yarce also brought a criminal complaint with the Office of the Attorney General of the Nation requesting measures to protect her life and that of her next of kin in light of death threats that they had received from members of the self-defense forces in Comuna 13.<sup>346</sup> In said complaint, Ms. Yarce identified three paramilitary members that had threatened her and her sons and daughters with death because she had reported a violent confrontation that they had had with young men residing in Comuna 13, including her son, 15-year-old Jhon Henry Yarce.<sup>347</sup> In the record of the complaint filed by her, the Office of the Prosecuting Attorney requested "the police or military authorities, based on several different reasons, to investigate these incidents, work as closely as possible with the complainant and her family to protect their lives and property."<sup>348</sup> There are no indications in the case file before the IACtHR that the State adopted any reasonable measures to identify, arrest and punish those responsible for these threats prior to the murder of Mrs. Yarce. Even with

<sup>342</sup> Annex 79. Written Communication of Caterina Bettina Abbati addressed to the Office of the Inspector General of the Nation, February 7, 2003. Criminal proceeding on the murder of Mrs. Ana Yarce.

<sup>343</sup> Annex 68. Copy of Official Letter signed by Mrs. Caterina Bettina Abbati and sent to the Office of the Inspector General of the Nation on August 22, 2003. Criminal proceeding on the murder of Mrs. Ana Yarce.

<sup>344</sup> Annexes 44 and 46. Decision on the Bail Situation of Jorge Enrique Aguilar, Office of the Office of the Attorney General of the Nation, File: 2169, August 31, 2007 and Decision on Bail Situation of de Jhon Jairo Cano Durán, Office of the Attorney General of the Nation, File: 2169, September 6, 2007.

<sup>345</sup> Annex 66. Order to Join Cases based on Connection between Crimes, File No: 83076-747.394 (M-213), Office of the Attorney General of the Nation, April 14, 2005.

<sup>346</sup> Annex 63. Complaint filed by Mrs. Ana Teresa Yarce against defendants Jesús N.N., Gabriel N.N and "Care-Niño" – Members of the Self-Defense Forces, Crime: Forced Displacement and Other crimes, August 6, 2003. Criminal proceeding on the murder of Mrs. Ana Yarce.

<sup>347</sup> Annex 63. Complaint filed by Mrs. Ana Teresa Yarce against defendants Jesús N.N., Gabriel N.N and "Care-Niño" – Members of the Self-Defense Forces, Crime: Forced Displacement and Other crimes, August 6, 2003. Criminal proceeding on the murder of Mrs. Ana Yarce.

<sup>348</sup> Annex 64. Copy of complaint filed by Mrs. Ana Teresa Yarce with the Office of the Attorney General of the Nation, Sectional Office o166, August 8, 2003.

authorities' prior knowledge of the threats leveled against Mrs. Yarce, the State has not submitted information on concrete and reasonable measures that were adopted in order to protect the life of Mrs. Yarce prior to October 6, 2004. The State, in its observations on the merits, merely claims that the prosecutorial office entrusted with the investigation ruled that it lacked jurisdiction as the facts investigated were not covered by any criminal statute, and concluded that the departure of Ms. Ana Teresa Yarce from her residence did not fit within the statutory definition of the crime of forced displacement.<sup>349</sup>

261. Moreover, as will be explained in greater detail later in this report, eight years after the death of Ana Teresa Yarce, the State has not taken the necessary measures to sanction all the material and intellectual perpetrators of her death.

262. As established in the proven facts section, in 2003, the international and national communities had alerted the Colombian State as to the entrenchment of the paramilitary presence in the area and serious harm that this entrenchment was having on the personal integrity of women human rights defenders in Comuna 13.<sup>350</sup> This situation became more intense during the military operations that were implemented by the State itself in the area over 2002, without taking any adequate protection measures for human rights defenders.<sup>351</sup>

263. In the context of said climate of insecurity, and the information received by the State regarding the pressing security situation of Ms. Ana Teresa Yarce prior to being killed, the State had a heightened obligation to adopt immediate and reasonable measures in order to protect her life, as a woman human rights defender.

264. According to the Inter-American Court, it does not suffice for the states to refrain from violating rights; rather, it is imperative that positive measures be adopted that can be determined in light of the particular needs of protection of the person in question, whether due to his or her personal status or his or her specific situation.<sup>352</sup> The IACtHR recalls that protection of the right to life of women human rights defenders demands that states adopt positive measures to bring about safe conditions for their work, with a view to eradicating situations that are dangerous for the protection of their human rights and that are known to be so. In the instant case, the State not only failed to take reasonable measures to protect the life of Ms. Ana Teresa Yarce, it also failed to bring about propitious conditions in Comuna 13 for the exercise of her activity as a woman human rights defender.

<sup>349</sup> Note DIDHD/GOI No. 77119/2954 from the Colombian State, November 15, 2012, p. 43.

<sup>350</sup> United Nations, Report of the UN High Commissioner for Human Rights on the human rights situation in Colombia, Annual Report 2003, E/CN.4/2004/13, February 17, 2004, par. 12; United Nations, Report of the UN High Commissioner for Human Rights on the human rights situation in Colombia, Annual Report 2003, E/CN.4/2004/13, February 17, 2004, par. 37; IACtHR, Press Release No. 15/03, *IACtHR Rapporteur Concludes Working Visit to the Republic of Colombia*, June 27, 2003; IACtHR, *Report on the Demobilization Process in Colombia*, OEA/Ser.L/V/II.120 Doc. 60, December 13, 2004, par. 96; Night and Fog: an Overview of Human Rights and Political Violence in Colombia, Case Type No. 2: Comuna 13, CINEP and Justice and Peace Data Base on Political Violence, Bogotá, May 2003, pg. 30. Also see, Annex 49. Risk Report N° 009-07, Office of the Ombudsman of Colombia, pgs. 2-8.

<sup>351</sup> Annex 48. Risk Report N° 009-07, Office of the Ombudsman of Colombia, pg. 8; IACtHR, Press Release No. 15/03, *Rapporteur concludes working visit to the Republic of Colombia*, June 27, 2003; IACtHR, Report on the Demobilization in Colombia OEA/Ser.L/V/II.120 Doc. 60, December 13, 2004, par. 96.

<sup>352</sup> I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 243.

265. The Commission also highlights the effect on the family members of Ana Teresa Yarce of her murder. According to the proven facts, her daughter Mónica Dulfary Yarce witnessed her mother's murder.<sup>353</sup> Also her daughters Mónica and Shirley have declared how their family members suffered threats on the part of the paramilitary groups before and after the murder of Mrs. Yarce.<sup>354</sup> Her children have also suffered the absence of Ana Teresa Yarce as the economic provider of the home, and the lack of the full clarification of the circumstances of her death after eight years. In consequence, the IACtHR considers that the State also violated the right to personal integrity of the family members of Ana Teresa Yarce contained in Article 5.1 of the American Convention, as will be discussed in later sections of this report.

266. Based on the above-cited considerations, the Commission finds that in the instant case the State failed in its duty to prevent and ensure protection of the life of Ms. Ana Teresa Yarce, in violation of Article 4.1 of the American Convention, in connection with Article 1.1 of said instrument.

**D. Rights to Movement and Residence, Personal Integrity, Protection of the Family and the Rights of the Child (Articles 22,<sup>355</sup> 5.1, 17.1,<sup>356</sup> and 19<sup>357</sup>), in connection with Article 1.1 of the American Convention**

267. The proven facts in this case show that Ms. Rúa, Ospina, Mosquera, and Naranjo were forced to leave the Comuna 13 upon learning of a variety of threats and harassment by members of paramilitary groups and the public security forces. This climate of hostility stemmed from their efforts to report human rights violations in said context.

268. Therefore, in this section, the IACtHR must examine the facts linked to the forced displacement of these four defenders, in light of the scope of the obligations set forth in Article 22; the treatment of the issue of forced displacement under international human rights law; its manifestation in the context of the internal armed conflict that Colombia is going through; and the aggravated impact of this phenomenon on women, and human rights defenders.

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<sup>353</sup> Annex 69. Statement from Monica Dulfary Orozco Yarce, Office of the Attorney General of the Nation, File: 2169, August 3, 2005.

<sup>354</sup> Annexes 69 and 70. Statements from Monica Dulfary Orozco Yarce, Office of the Attorney General of the Nation, File: 2169, August 3, 2005 and Shirley Vanessa Yarce, Office of the Attorney General of the Nation, File 2169, September 7, 2005.

<sup>355</sup> The relevant portion of Article 22 of the American Convention provides that:

1. Every person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law.
2. Every person has the right to leave any country freely, including his own.

<sup>356</sup> The relevant portion of Article 17 of the American Convention establishes that "the family is the natural and fundamental group unit of society and is entitled to protection by society and the state. [...]".

<sup>357</sup> Article 19 establishes that: "Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state."

## **1. General considerations related to the problem of forced displacement and its impact on women**

269. The Court has established that the right to movement and residence covered in Article 22.1 is an essential condition for the free development of the person<sup>358</sup> and involves, *inter alia*, the right of those who are legally located within a State to freely circulate in that State, and choose their place of residence.<sup>359</sup> This Article also “protects the right to not be forcibly displaced within a State Party to the Convention.”<sup>360</sup>

270. Regarding the content of the Colombian State’s obligations under Article 22, the Court has established that:

Owing to the complexity of the phenomenon of internal displacement and the wide range of human rights affected and jeopardized, and taking into account the circumstance of special vulnerability and defenselessness in which those displace usually find themselves, their situation can be understood as a *de facto* situation of lack of protection. In the terms of the American Convention, this situation obliges the States to grant the displaced preferential treatment and to adopt positive measures to reverse the effects of this situation of vulnerability and defenselessness, including vis-à-vis acts and practices of individual third parties.<sup>361</sup>

271. The bodies of the Inter-American human rights system have cited the Guiding Principles on Internal Displacement in order to define the content and scope of Article 22 in the context of internal displacement in Colombia.<sup>362</sup> The Principles define *internally displaced* persons as persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.<sup>363</sup> Colombian law has established a similar definition to the one in the guiding principles.<sup>364</sup>

<sup>358</sup> IA Court of HR, *Case of the Massacres of Ituango v. Colombia*. Preliminary Objections, Merits, Reparation and Costs. Judgment July 1, 2006 Series C No. 148, par. 206; IA Court of HR, *Case of the Massacre of Mapiripán v. Colombia*. Merits, Reparation and Costs. Judgment September 15, 2005. Series C No. 134, par. 168.

<sup>359</sup> IA Court of HR, *Case of the Massacres of Ituango v. Colombia*. Preliminary Objections, Merits, Reparation and Costs. Judgment July 1, 2006 Series C No. 148, par. 206; IA Court of HR, *Case of the Molwana Community v. Suriname*. Preliminary Objections, Merits, Reparation and Costs. Judgment June 15, 2005. Series C No. 124, par. 110.

<sup>360</sup> IA Court of HR, *Case of the Massacre of Mapiripán v. Colombia*. Merits, Reparation and Costs. Judgment September 15, 2005. Series C No. 134, par. 188.

<sup>361</sup> IA Court of HR, *Case of the Massacres of Ituango v. Colombia*. Preliminary Objections, Merits, Reparation and Costs. Judgment July 1, 2006 Series C No. 148, par. 210; IA Court of HR, *Case of the Massacre of Mapiripán v. Colombia*. Merits, Reparation and Costs. Judgment September 15, 2005. Series C No. 134, par. 168.

<sup>362</sup> United Nations Guiding Principles for Internal Displacement, E/CN.4/1998/53/Add.2 February 11, 1998, available at <http://www.acnur.org/t3/fileadmin/scripts/doc.php?file=biblioteca/pdf/0022>

<sup>363</sup> United Nations Guiding Principles for Internal Displacement, Principle 2.

<sup>364</sup> Law 387 of 1997, Article 1, available at [http://www.gparlamentario.org/spip/IMG/pdf/Ley\\_387\\_de\\_24-7-1997\\_Personas\\_desplazadas\\_-\\_Colombia.pdf](http://www.gparlamentario.org/spip/IMG/pdf/Ley_387_de_24-7-1997_Personas_desplazadas_-_Colombia.pdf); IACHR, *Third Report on the Human Rights Situation in Colombia*, OEA/Ser.L/V/II.102, Doc. 9, rev. 1, February 26, 1999.

272. The IACtHR has referred to forced displacement as one of the four major forms of violence that mainly affects women as part of the armed conflict in Colombia.<sup>365</sup> It has identified as the causes for internal displacement some of the same causes that have affected the women human rights defenders involved in the instant matter — such as threats, acts of violence, and abuse by armed factions in order to control territories and dominate the population that resides therein; military operations; and arbitrary detentions.<sup>366</sup> The Constitutional Court of Colombia itself has held under Decision 092-08 that there are eighteen gender-related facets of forced displacement that have a differentiated impact on women, including those who belong to social and community organizations, and their leadership roles and human rights promotion work in areas affected by armed conflict, emphasizing authorities' duty of prevention.

## **2. Application of these international principles to the facts in the present case**

273. The Commission finds that the circumstances that led Ms. Rúa, Bastidas, Mosquera, and Naranjo to leave Comuna 13, and to settle in other areas of the country, does conform to the concept of an internally displaced person advanced by the international principles described.

274. The facts of the case bear out that Ms. Rúa was forced to travel from Comuna 13 on June 26, 2002 when she learned during that same month that her name appeared on a list of individuals that the paramilitary forces intended to murder.<sup>367</sup> Ms. Rúa left her neighborhood together with her 3-year-old, 10-year-old and 12-year-old daughters, and her permanent companion, without any of her possessions; and these facts were certified by SIMPAD on July 10, 2002.<sup>368</sup> The SIMAPD also certified that her displacement was the product of armed confrontations between paramilitary and militia groups in the Comuna 13.<sup>369</sup> Ten years after these events, Mrs. Rúa is living in a rented house in the municipality of Envigado, Antioquia, with her companion and her three daughters, and has not been able to return to Comuna 13.<sup>370</sup> She has ceased her activities as a leader due to the fear of being accused and persecuted.<sup>371</sup>

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<sup>365</sup> IACtHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II. Doc. 67, October 18, 2006, par. 4.

<sup>366</sup> IACtHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II. Doc. 67, October 18, 2006, par. 72.

<sup>367</sup> Annex 3. Statement from Miryam Eugenia Rúa Figueroa received by GIDH addressed to the Inter-American Commission on Human Rights, April 27, 2012; Original petition received in reference to the matter of Miryam Eugenia Rúa Figueroa – Comuna 13 – October 27, 2004, pg. 2, par. 3.

<sup>368</sup> Annex 4. File Number 289, Secretariat of the Environment (SIMPAD), July 10, 2002; Annex 3. Statement from Miryam Eugenia Rúa Figueroa received by GIDH addressed to the Inter-American Commission on Human Rights, April 27, 2012.

<sup>369</sup> Annex 4. File Number 289, Secretariat of the Environment (SIMPAD), July 10, 2002; Photographs of the destruction and ruins of the home of Mrs. Rúa. Annexes 2 and 5, Observations of the petitioners in reference to the matter of *Miryam Eugenia Rúa Figueroa et al* – Comuna 13 dated November 25, 2011.

<sup>370</sup> Observations of the petitioners in reference to the matter of *Miryam Eugenia Rúa Figueroa et al* – Case 12.595, dated May 3, 2012, pg. 3.

<sup>371</sup> Annex 3. Statement from Miryam Eugenia Rúa Figueroa received by GIDH addressed to the Inter-American Commission on Human Rights, April 27, 2012.

275. Ms. Ospina and her next of kin had to travel on their own in similar circumstances in November 2002.<sup>372</sup> It was brought to her attention by a fellow member of the AMI and the head of the education center of Comuna 13 that her name appeared on a list of individuals that the paramilitary forces were looking for, and she feared for her safety because of the detention for the alleged crime of sedition of her fellow defenders Mmes Naranjo, Mosquera and Yarce on November 12, 2002.<sup>373</sup> She departed from her neighborhood with her husband and their 22-year-old and 21-year-old sons and 12-year-old daughter.<sup>374</sup> She denounced several events later with the authorities, including the attack of her husband by members of the military during a search of her home in Comuna 13 without a warrant on March 3, 2003; the searches performed in the same between March 3 and July 8 of 2003; and the occupation of the members of the paramilitary groups on July 8, 2003, fully dismantling it.<sup>375</sup> Ms. Luz Dary Ospina Bastidas currently lives in a rented apartment in the neighborhood of Belén La Capilla in the City of Medellin and has been prevented from returning to Comuna 13.<sup>376</sup> She has not resumed her work as a leader out of fear of retaliation.<sup>377</sup>

276. Ms. Mosquera was also subjected to an illegal and arbitrary detention by the public security forces from November 12 to 21, 2002, in the terms described above on paragraphs 237-249. This detention led her to leave Comuna 13 until 2004, and she described this displacement before the IACtHR as follows:

When I got my freedom back I went to my mother's house out of fear of retaliation and especially that I would be killed, because a paramilitary member sent word to me that I should not even think of going up to the neighborhood because he would kill me. The because of that and out of fear that I would be located I stayed in several different places and even slept out on the street, in hotels and at my friend's houses. I experienced all of this with my daughter Hilda Milena and son Lubin Alfonso, since they had to come to where I was because that same paramilitary member told him that he had to leave the neighborhood.<sup>378</sup>

277. Accordingly, the IACtHR notes that it requested an expansion of provisional measures on March 3, 2011 in order to protect the life and safety of Ms. Mosquera's children, grandchildren, and one of her daughters-in-law in response to several assaults, threats harassment taking place "intensely and repeatedly" in the past few months.<sup>379</sup> As was noted above, the Court granted the request for

<sup>372</sup> Annex 15. Statement from Luz Dary Ospina Bastidas received by GIDH addressed to the Inter-American Commission on Human Rights, April 27, 2012.

<sup>373</sup> Annex 15. Statement from Luz Dary Ospina Bastidas received by GIDH addressed to the Inter-American Commission on Human Rights, April 27, 2012.

<sup>374</sup> Annex 15. Statement from Luz Dary Ospina Bastidas received by GIDH addressed to the Inter-American Commission on Human Rights, April 27, 2012.

<sup>375</sup> Annex 29. Technical Report, Preventive Recovery of Real Property, Local Committee of the Government of Comuna 13, October 17, 2006.

<sup>376</sup> Observations of the petitioners in reference to the matter of *Miryam Eugenia Rúa Figueroa et al* – Case 12.595, dated May 3, 2012, pg. 4.

<sup>377</sup> Annex 15. Statement from Miryam Eugenia Rúa Figueroa received by GIDH addressed to the Inter-American Commission on Human Rights, April 27, 2012.

<sup>378</sup> Annex 79. Statement from Miryam Eugenia Rúa Figueroa received by GIDH addressed to the Inter-American Commission on Human Rights, April 27, 2012.

<sup>379</sup> IACtHR, Request for Expansion of Provisional Measures to the Honorable Inter-American Court of Human Rights in reference to the *Matter of Mery Naranjo et al – Comuna 13*, Colombia, March 3, 2011, par. 2.

expansion of coverage of the provisional measures, citing the situation of risk of the proposed beneficiaries, as well as their concern over the alleged involvement of agents of the state.

278. Regarding Ms. Naranjo, even though she is currently living in Comuna 13 together with family members, the petitioners have submitted information indicating that she has had to travel away on her own in order to protect her life and safety.<sup>380</sup> She testified as part of the criminal investigation of Ms. Ana Teresa Yarce, and of the investigation of the forced displacement of Luz Dary Ospina Bastidas, how her security situation was exacerbated by Mrs. Yarce's murder, and the subsequent surge in threats by the paramilitary members based in the area, which led to her displacement.<sup>381</sup> The gravity of the security situation of Ms. Naranjo is borne out by the precautionary measures granted to her by the IACR on October 22, 2004 in order to safeguard hers and her next of kins' life and physical integrity and, subsequently, by the provisional measures granted to her by the Inter-American Court on July 5, 2006; both measures are still in effect as of this date. The IACR also highlights the murder of several family members of Ms. Naranjo while the provisional measures were in effect, including her son-in-law and 16-year-old grandson.<sup>382</sup>

279. The IACR moreover notes that the forced displacement of Ms. Rúa, Ospina, Mosquera and Naranjo took place in a context of heightened risk for women human rights defenders, generated by an escalation of the armed conflict in Comuna 13 in 2002, and its aftereffects. Their forced displacement coincides with military operations implemented by the State in Comuna 13 over 2002, and the subsequent paramilitary occupation of the zone.

280. The Colombian State's failure to prevent in the case under consideration is particularly serious in light of the quantity of rulings issued by international and national bodies on the urgency to deal with forced displacement in Colombia, as a byproduct of the armed conflict that the country is experiencing, and its disproportionate impact on women.<sup>383</sup> The IACR, the Office of the High Commissioner for Human Rights in Colombia, the Special Rapporteur on Violence against Women, and the Mesa de Trabajo Mujer y Conflicto Armado en Colombia, have all alerted the Colombian State in 2002 as to the high number of displaced women as a result of the violence stemming from the

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<sup>380</sup> Observations of the Petitioners in reference to the matter of *Miryam Eugenia Rúa Figueroa et al – Case 12.595* dated May 3, 2012, pg. 6.

<sup>381</sup> Annexes 72 and 71. Statement of Mery Naranjo, Office of the Attorney General of the Nation, December 13, de 2004 and addendum to her statement on August 24, 2005. Criminal proceeding on the murder of Mrs. Ana Yarce; Annex 59. Statement given by Mrs. Mery Naranjo, May 14, 2009. Criminal proceeding for the forced displacement of Luz Dary Ospina Bastidas.

<sup>382</sup> Decision of the Inter-American Court of Human Rights in the *Matter of Mery Naranjo et al – Comuna 13, Colombia*, November 25, 2010, par. 53.

<sup>383</sup> IACR, United Nations, *Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Colombia*, 2002 Annual Report, February 24, 2003, pars. 88-91; United Nations, *Report submitted by Mrs. Radhika Coomaraswamy, Special Rapporteur on Violence against Women, its causes and consequences; Mission to Colombia* (November 1-7, 2001), Visit to Colombia, March 11, 2002, Executive Summary, pars. 59-86; IACR, *Third Report on the Human Rights Situation in Colombia*, OEA/Ser.L/V/II.102, Doc. 9, rev. 1, February 26, 1999, Chapter VI, Internal Forced Displacement, par. 1, section C, par. 26; Mesa de Trabajo Mujer y Conflicto Armado, First Report 2001, *Report on Violence against Women and Girls in the Colombian Armed Conflict*, Mesa de Trabajo Mujer y Conflicto Armado, First Report 2001, Mesa de Trabajo Mujer y Conflicto Armado, April 2001, pgs. 7-9.

Colombian armed conflict; and this problem is closely linked to the absence of an effective prevention policy of the State.<sup>384</sup>

281. The Commission is aware of the huge challenge that it poses for the Colombian State to confront the serious situation of internal displacement and recognizes the efforts that have been made in this regard. However, the Commission reiterates that in this particular case, the State had a heightened obligation to prevent and protect, being that Mmes Rúa, Ospina, Mosquera and Naranjo were at particular risk of violations of their human rights based on two factors: their sex and their activities as defenders, in a context of armed conflict in which infringements against this group of the population are widely known by the State, and it has been duly alerted to the situation by the international community.<sup>385</sup> The Commission believes in this instance that the State did not adopt reasonable and sufficient measures of prevention and protection in order to remedy the context that caused the displacement of Mmes Rúa, Ospina, Mosquera, and Naranjo. The IACHR finds that the failures of the State to prevent the forced displacement — understood to be a form of violence against women — violated not only its obligations under Article 22 of the American Convention, but its obligation to not discriminate and to respect and ensure their rights pursuant to this principle under Article 1.1 of the American Convention.

282. In light of these considerations, the Commission finds that the State is responsible for the violation of Article 22 of the American Convention, in connection with its obligation to not discriminate as provided for in Article 1.1, to the detriment of Mrs. Rúa, Ospina, Mosquera and Naranjo, and their next of kin.<sup>386</sup>

<sup>384</sup> IACHR, United Nations, *Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Colombia*, 2002 Annual Report, February 24, 2003, pars. 88-91; United Nations, *Report submitted by Mrs. Radhika Coomaraswamy, Special Rapporteur on Violence Against Women, its causes and consequences: Mission to Colombia* (November 1-7, 2001), Visit to Colombia, March 11, 2002, Executive Summary, pars. 59-86; IACHR, *Third Report on the Human Rights Situation in Colombia*, OEA/Ser.L/V/II.102, Doc. 9, rev. 1, February 26, 1999, Chapter VI, Internal Forced Displacement, par. 1, section C, par. 26; Mesa de Trabajo Mujer y Conflicto Armado, First Report 2001, *Report on Violence against Women and Girls in the Colombian Armed Conflict*, Mesa de Trabajo Mujer y Conflicto Armado, First Report 2001, Mesa de Trabajo Mujer y Conflicto Armado, April 2001, pgs. 7-9.

<sup>385</sup> IACHR, United Nations, *Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Colombia*, 2002 Annual Report, February 24, 2003, pars. 88-91; United Nations, *Report submitted by Mrs. Radhika Coomaraswamy, Special Rapporteur on Violence Against Women, its causes and consequences: Mission to Colombia* (November 1-7, 2001), Visit to Colombia, March 11, 2002, Executive Summary, pars. 59-86; IACHR, *Third Report on the Human Rights Situation in Colombia*, OEA/Ser.L/V/II.102, Doc. 9, rev. 1, February 26, 1999, Chapter VI, Internal Forced Displacement, par. 1, section C, par. 26; Mesa de Trabajo Mujer y Conflicto Armado, First Report 2001, *Report on Violence against Women and Girls in the Colombian Armed Conflict*, Mesa de Trabajo Mujer y Conflicto Armado, First Report 2001, Mesa de Trabajo Mujer y Conflicto Armado, April 2001, pgs. 7-9.

<sup>386</sup> The petitioners identify the accompanying family members in the displacement of Mrs. Rúa, Ospina and Mosquera as follows:

Mrs. Rúa - Gustavo de Jesús Tobón (permanent companion), Bárbara del Sol (daughter), and Úrsula Manuela (daughter) y Valentina (daughter).

Mrs. Ospina - Oscar Julio Hoyos Oquendo (husband), Edid Yazmín (son), Oscar Darío (son), and Migdalia Andrea Hoyos Ospina (daughter).

Mrs. Mosquera - Hilda Milena Villa Mosquera (daughter), and Lubín Alfonso Villa Mosquera (grandson, deceased).

The petitioners note that Mrs. Naranjo departed alone. See, Observations of the Petitioners in reference to the matter of *Miryam Eugenia Rúa Figueroa et al – Case 12.595* dated May 3, 2012, pg. 7(b).

283. The IACHR clarifies, nonetheless, that the circumstances of the instant case and the manifestations of human rights violations that affect internally displaced persons in Colombia go beyond the content of the due protection by the States in the framework of Article 22 of the Convention.<sup>387</sup> In keeping with this parameter and based on the particular circumstances of this case, the Commission proceeds to consider the particular impact of the forced displacement on the rights to personal integrity, to protection of the family, and the rights of the child of Ms. Rúa, Ospina, Mosquera and Naranjo, and their next of kin.

### **3. Forced displacement and the right to personal integrity**

284. The IACHR notes that the presence of displaced persons on national territory entails for the State the primary responsibility to ensure their integrity, security, and wellbeing.<sup>388</sup> This includes an obligation under Article 5.1 to afford special treatment to those affected and to adopt positive measures to reverse the effects of the forced displacement.<sup>389</sup>

285. The IACHR has noted the special impact that forced displacement has on women and heads of household, mostly in terms of the radical, traumatic and sudden change in their family structure and roles, geography, culture, community and socioeconomic standing, and their exposure to threats, violence and discrimination based on their gender, perpetrated by either the actors of the armed conflict who caused the displacement, or the receiving populations.<sup>390</sup> Such women usually face deprivation and social and economic difficulties in the receiving community, which prevent them from re-establishing their lives.<sup>391</sup> Both the IACHR and the United Nations Rapporteur on Violence against Women have also documented how threats to the security and physical integrity of displaced women can extend to the communities in which they seek refuge.<sup>392</sup>

286. The Constitutional Court of Colombia has ruled in Judgment T-025-04 on the minimum necessary protection that must be afforded to the displaced population in Colombia. It encompasses a set of important rights for women, including the following: the right to be registered; to receive special protection; to receive immediate aid for a period of three months; to receive a document accrediting their registry in the health promotion entity; to return home in safe circumstances; and to have specific circumstances of their personal situation be identified to define how they can generate income.<sup>393</sup> In applying these principles, the IACHR has established that the humanitarian aid of which the displaced

<sup>387</sup> IA Court of HR, Case of the “*Massacre of Mapiripán*” v. *Colombia*. Judgment September 15, 2005. Series C No. 134, par. 186.

<sup>388</sup> IACHR, *Third Report on the Human Rights Situation in Colombia*, OEA/Ser.L/V/II.102, Doc. 9, rev. 1, February 26, 1999, Chapter VI, Internal Forced Displacement, par. 4.

<sup>389</sup> IACHR, Merits Report No. 64/11, Case 12.573, *Marino López et al* (Operation Génesis), Colombia, March 31, 2011, par. 300.

<sup>390</sup> IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II. Doc. 67, October 18, 2006, par. 70.

<sup>391</sup> IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II. Doc. 67, October 18, 2006, par. 80.

<sup>392</sup> See United Nations, Report submitted by Mrs. Rhadika Coomaraswamy, Special Rapporteur on violence against women, its causes and consequences: Mission to Colombia (November 1-7, 2001), March 11, 2002, par. 63..

<sup>393</sup> IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II. Doc. 67, October 18, 2006, par. 191.

population should be the beneficiary not only involves financial support, but also includes the guarantee of basic services of food, shelter, health care and education.<sup>394</sup>

287. Based on the findings of fact, Ms. Rúa and her husband and their three daughters continue to live in a situation of displacement and in very precarious economic conditions.<sup>395</sup> When she was displaced, she had to quit her job at a funeral services company and leave all of her personal property behind.<sup>396</sup> Her companion has not been able to get a steady job, and she is currently unemployed.<sup>397</sup> Moreover, Ms. Rúa Figueroa's request to be entered into the National Single Registry of the Displaced Population was denied on August 9, 2002<sup>398</sup> and her request to revisit the case was denied on October 10, 2006.<sup>399</sup> In response, Ms. Rúa filed several motions and suits for constitutional relief (*tutela*) to seek clarification on her registry situation, and to reverse the decision to not be included, but these efforts were unsuccessful.<sup>400</sup>

288. In the course of the mentioned process, Ms. Rúa also received contradictory information from the Social Solidarity Network (Acción Social) regarding her non-inclusion in the registry, as was noted by the 17<sup>th</sup> Civil Circuit Court of Medellin on August 24, 2010 in its ruling on the constitutional relief suit, which favored Mrs. Rúa.<sup>401</sup> The Colombian State, for its part, has not submitted any information to the IACtHR to clarify the reasoning behind the decision to provide partial financial support to Ms. Rúa Figueroa on April 16, 2007, and on why non-inclusion in the Single National Register continues in effect, thus preventing her from availing herself of all benefits for the displaced as provided for in Law 387.<sup>402</sup>

289. Similarly, Ms. Ospina has had to endure displacement at times on her own, because her husband and two children returned in order to protect their home from potential invasion by the

<sup>394</sup> IACtHR, Merits Report No. 64/11, Case 12.573, *Marino López et al* (Operation Génesis), Colombia, March 31, 2011, par. 306.

<sup>395</sup> Annex 3. Statement of Miryam Eugenia Rúa Figueroa received by GIDH addressed to the Inter-American Commission on Human Rights, April 27, 2012.

<sup>396</sup> Annex 3. Statement of Miryam Eugenia Rúa Figueroa received by GIDH addressed to the Inter-American Commission on Human Rights, April 27, 2012.

<sup>397</sup> Annex 3. Statement of Miryam Eugenia Rúa Figueroa received by GIDH addressed to the Inter-American Commission on Human Rights, April 27, 2012.

<sup>398</sup> Annex 5. Decision No. 050012342, Social Solidarity Network, Municipality of Medellin, Department of Antioquia, August 9, 2002. Annex to the Observations of the petitioners in reference to the matter of *Miryam Eugenia Rúa Figueroa – Comuna 13* – dated March 25, 2010.

<sup>399</sup> Annex 7. Observations of Social Solidarity Network, October 10, 2006. Annex \_\_\_\_\_. Observations of the petitioners in reference to the matter of *Miryam Eugenia Rúa Figueroa – Comuna 13* – dated March 25, 2010.

<sup>400</sup> Annex 10. *Tutela* proceeding brought by Miryam Eugenia Rúa Figueroa against Social Solidarity Network, August 6, 2010 before the Civil Circuit Court Judge (Duty Judge), Medellin. Annex 4. Observations of the Petitioners in reference to the matter of *Miryam Eugenia Rúa Figueroa et al* – Case 12.595 dated May 3, 2012.

<sup>401</sup> Annex 10. *Tutela* suit, Miryam Eugenia Rúa Figueroa, Social Solidarity Network, Judgment No. 305, August 24, 2010, 17<sup>th</sup> Civil Circuit Court of Medellin.

<sup>402</sup> Ministry of Foreign Relations, Office of Human Rights and International Humanitarian Law, Observations on the Matter of Miryam Eugenia Rúa Figueroa et al, Case 12.595, April 17, 2007; Social Solidarity Network, Granting of Humanitarian Aid to Miryam Eugenia Rúa Figueroa, April 15, 2007; Exercising of Right of Petition, David Medina Hernández, October 26, 2007. Annex 4. Observations of the Petitioners in reference to the matter of *Miryam Eugenia Rúa Figueroa et al* – Case 12.595 dated May 3 2012.

paramilitary forces.<sup>403</sup> She testified to the IACtHR how her life changed for good after the displacement, never working again at community organizations out of fear of retaliation and intimidation.<sup>404</sup> Her husband has had to change jobs constantly, and her children's studies have been disrupted.<sup>405</sup> Ms. Ospina has also submitted information indicating that the threats and acts of intimidation by the paramilitary members have continued during her displacement, which has prompted them to move around to different neighborhoods in Medellin, and in 2003 they lived in Bogota, in 2004 and 2005, in Montevideo, Uruguay.<sup>406</sup> Despite these events, the first request of Luz Dary Ospina Bastidas to be entered into the Single Registry of the Displaced Population was denied on December 2, 2003; and this decision was later overturned under an order for entry in the Register of Displaced on February 13, 2004, almost two years after her displacement.<sup>407</sup> Based on the case file before the IACtHR, it can be established that she only received from the State humanitarian aid during 2004 consisting of "three days of groceries and the total amount of three hundred and thirty pesos (\$330.00) for payment of housing for three months", and she never received any further aid from the State.<sup>408</sup>

290. Ms. Mosquera moved away along with her daughter Hilda Milena and her grandson Lubin Alfonso Villera Mosquera after her arbitrary detention on November 12, 2002, and in her own words: "I even slept on the street, in hotels and at friend's houses."<sup>409</sup> She experienced displacement as head of household, in precarious economic conditions, and separated from her other children, sons Ivan Alberto and Marlon Daniel, because of the scarce financial resources she had available to her.<sup>410</sup> Ms. Mosquera notes that when she and her daughter and grandson departed as displaced persons, "we were not accepted nor registered as displaced, so I didn't receive any aid from the State."<sup>411</sup> She returned to her neighborhood in Comuna 13 during 2004, and she describes how from that time on "there were years of persecution, stigmatization, beatings, threats, verbal and physical abuse" by the members of the paramilitary forces and of the police and the army.<sup>412</sup> Ms. Mosquera also testified before the IACtHR on the impact of displacement and the continuing threats and acts of intimidation on

<sup>403</sup> Annex 15. Statement of Luz Dary Ospina Bastidas received by GIDH addressed to the Inter-American Commission on Human Rights, April 27, 2012.

<sup>404</sup> Annex 15. Statement of Luz Dary Ospina Bastidas received by GIDH addressed to the Inter-American Commission on Human Rights, April 27, 2012.

<sup>405</sup> Annex 15. Statement of Luz Dary Ospina Bastidas received by GIDH addressed to the Inter-American Commission on Human Rights, April 27, 2012.

<sup>406</sup> Annex 15. Statement of Luz Dary Ospina Bastidas received by GIDH addressed to the Inter-American Commission on Human Rights, April 27, 2012.

<sup>407</sup> Annex 28. Decision № 11001-12791R of February 13, 2004.

<sup>408</sup> Annex 15. Statement of Luz Dary Ospina Bastidas received by GIDH addressed to the Inter-American Commission on Human Rights, April 27, 2012.

<sup>409</sup> Annex 78. Statement of María del Socorro Mosquera received by GIDH c addressed to the Inter-American Commission on Human Rights, on May 2, 2012.

<sup>410</sup> Annex 78. Statement of María del Socorro Mosquera received by GIDH c addressed to the Inter-American Commission on Human Rights, on May 2, 2012.

<sup>411</sup> Annex 78. Statement of María del Socorro Mosquera received by GIDH c addressed to the Inter-American Commission on Human Rights, on May 2, 2012.

<sup>412</sup> Annex 78. Statement of María del Socorro Mosquera received by GIDH c addressed to the Inter-American Commission on Human Rights, on May 2, 2012.

her physical and mental health, and her daughter's and son's fear of just going about their everyday activities because of the potential for violence.<sup>413</sup>

291. The petitioners have also informed the IACtHR that due to threats from members of paramilitary groups, Ms. Mery Naranjo was forced to leave her neighborhood several times, to seek refuge in different places in order to protect her life and personal integrity, then she settled back in her home on a permanent basis in 2005.<sup>414</sup> The proven facts show that her situation of insecurity became worse after her detention on November 12, 2002 and after witnessing the murder of Ms. Yarce.<sup>415</sup> She and her next of kin also were the beneficiaries of precautionary and provisional measures from the IACtHR and the Court, both of which have noted were inadequately implemented.<sup>416</sup> The petitioners have stated to the IACtHR that Ms. Naranjo never received any humanitarian aid from the authorities during the periods of time she was displaced.<sup>417</sup>

292. The State has only submitted information to the IACtHR on the investigations that were undertaken to punish those responsible for these forced displacements. However, it has not submitted any information which would allow the Commission to conclude that the aforementioned victims have ever received any humanitarian assistance as a result of their displacement; that it has adopted any measures to alleviate their living conditions in the receiving communities; or that it has ever ordered any measures of protection needed to ensure their safe return to Comuna 13. The IACtHR finds that it does not have any information from the State to allow it to conclude that the measures it adopted were sufficient or adequate to turn around the situation of vulnerability of the displaced defenders and their next of kin in the matter that is the subject of examination.

293. Based on the foregoing, the Commission finds that the State is also responsible for the violation of Article 22 of the American Convention, in connection with Articles 5 and 1.1, to the detriment of Mmes Rúa, Ospina, Mosquera and Naranjo, and their next of kin, as identified in paragraph 282, footnote 384.

#### **4. Forced displacement and protection of the family**

294. Both the Court and the Commission have pronounced over the dual nature of the right of the family enshrined in Article 17 of the American Convention, which must encompass the State's positive obligation to protect, as well as its negative obligation to refrain from engaging in arbitrary

<sup>413</sup> Annex 78. Statement of María del Socorro Mosquera received by GIDH c addressed to the Inter-American Commission on Human Rights, on May 2, 2012.

<sup>414</sup> Observations of the Petitioners in reference to the matter of *Miryam Eugenia Rúa Figueroa et al* – Case 12.595 dated May 3 2012, pars. 6-7.

<sup>415</sup> Annex 72. Statement of Mery Naranjo, Office of the Attorney General of the Nation, December 13, 2004, Criminal proceeding on the murder of Mrs. Ana Teresa Yarce.

<sup>416</sup> Decision of the Inter-American Court of Human Rights in the *Matter Mery Naranjo et al – Comuna 13*, Colombia, November 25, 2010, par. 53; IACtHR, Request for Expansion of Provisional Measures to the Honorable Inter-American Court of Human Rights in reference to the *Matter of Mery Naranjo et al – Comuna 13*, Colombia, March 3, 2011, par. 2.

<sup>417</sup> Observations of the Petitioners in reference to the matter of *Miryam Eugenia Rúa Figueroa et al* – Case 12.595 dated May 3 2012, pars. 6-7.

interference or abuse in this sphere.<sup>418</sup> It is such a basic right of the American Convention that it cannot be derogated from even in the most extreme circumstances.<sup>419</sup>

295. The Court has established that because of the importance of the rights of the family, the State is under the obligation to favor the development and strengthening of the family nucleus.<sup>420</sup> The Commission notes that forced displacement in and of itself strikes directly at this principle.

296. Forced displacement has a special impact on the family structure of displaced persons.<sup>421</sup> It leads to a radical, traumatic and sudden change in roles and the dynamic within the family nucleus. It can split apart family ties and relationships, as well as lead to its physical break up. Most displaced persons live in situations of poverty in their original community, and this situation only grows worse when they are forced to move to a different location, where they have to find new ways to make ends meet; and this is a heavy burden for women heads of household. This impact on the family is only heightened by the insecurity in which the great majority of these individuals are displaced; the acts of violence inflicted on them in their destination location; and the insecurity that often prevents them from returning home. Based on these considerations, a violation by the State of its obligation to prevent the forced displacement, can also imply a violation of the rights of the family of the individuals involved.

297. In light of the above-stated considerations, the Commission finds that the right to protection of the family of Ms. Rúa, Ospina, Mosquera, Naranjo, and their next of kin were also violated with their forced displacement. While the Commission did not rule on the alleged violation of Article 17.1 in the admissibility reports of the cases of Miryam Eugenia Rúa Figueroa and Luz Dary Ospina Bastidas, the facts supporting said allegations are an integral part of the instant matter and, moreover, the petitioners did make specific arguments in this regard from the beginning and, therefore, the State was able to refute those arguments. Consequently, the Commission finds that based on the examination of the case file, the body of evidence, and the contextual situation of the case, there are sufficient elements to rule on the alleged violations pertaining to the right to protection of the family of Ms. Rúa y Ospina, and their next of kin, as a result of their displacement.

298. The body of evidence before the IACtHR attests to the harmful impact of forced displacement on the dynamic in the families of Ms. Rúa, Ospina, Mosquera and Naranjo.

299. Ms. Ospina was forced to become displaced at times on her own, and separate from her husband and two sons, because they had to return to Comuna 13 in order to protect their home from

<sup>418</sup> IA Court of HR, *Case Tristán Donoso v. Panama*. Preliminary Objection, Merits, Reparation and Costs. Judgment of January 27, 2008. Series C No. 192, par. 55; and *Case of Escher et al v. Brazil*. Preliminary Objection, Merits, Reparation and Costs. Judgment of July 6, 2009. Series C No. 200, par. 113; IACtHR, Merits Report No. 64/11, Case 12.573, *Marino López et al* (Operation Genesis), Colombia, March 31, 2011, par. 316.

<sup>419</sup> IACtHR, Merits Report No. 4/01, *Maria Eugenia Morales de Sierra* (Guatemala), January 19, 2001, par. 40.

<sup>420</sup> IA Court of HR. *Juridical Status and Human Rights of the Child*. Advisory Opinion OC-17-02 of August 28, 2002. Series A No. 17, par. 62.

<sup>421</sup> IACtHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II. Doc. 67, 18 of October 2006, pars. 70, 76; United Nations, Report of the Special Rapporteur on Violence against Women, Mrs. Rhadika Coomaraswamy, Visit to Colombia, March 11, 2002, pars. 69-70; United Nations Development Fund for Women, *Preparing for Peace: The critical role of women in Colombia*, 2004, pg. 24.

occupation by the paramilitary forces.<sup>422</sup> Additionally, she was separated from her children when she moved with part of the family to Uruguay for one year.<sup>423</sup> She testified before the IACtHR on the impact of displacement on her family life, and the instability resulting from displacement, such as her husband having to constantly be changing jobs, the disruption of her children's studies in school, and having to quit her job as community leader.<sup>424</sup> Out of fear of retaliation, she had to move her residence several times since November 2002; she is currently getting divorced from her husband; and her son has become a drug addict.<sup>425</sup>

300. Ms. Rúa has testified before the IACtHR how her family life changed for good with the displacement "because of the difficulty in returning to get all of the things we had, since we left only with the clothes on our backs, and were never able to recover the things we left in the house, because it was all stolen and then, the entire property was destroyed."<sup>426</sup> Both she and her husband have had trouble finding steady jobs during their displacement and, with regard to her children, she notes that:

They don't like to talk about what happened, my younger daughter has vague recollections of the house and always talks about or mentions going to the little house, and my two older daughters do have many sad and painful memories of what we had to experience, of the shootings, of all of the things we had to leave behind, of all of our things, the photo albums, the clothes, the toys, they remember the people from the neighborhood, a lot their experiences there.<sup>427</sup>

301. Ms. Mosquera – head of household – for economic reasons had to live separately from two of her children during her displacement from Comuna 13.<sup>428</sup> She described the separation of the family and its impact as follows:

My other two children did not leave with me because we had no place for all of us to go, because of our economic situation, because of a lack of support, out of fear of discrimination in other neighborhoods, and because they would tell me why should we all go and suffer together that instead they would stay and endure it all and if we get killed then there's nothing else we can do. Being away from my sons, especially the little boys was very difficult for me, they suffered a lot, there was a lot of discrimination at school, they'd be told that their mother was a criminal (Mrs.

<sup>422</sup> Annex 15. Statement of Luz Dary Ospina Bastidas received by GIDH addressed to the Inter-American Commission on Human Rights, April 27, 2012.

<sup>423</sup> Annex 15. Statement of Luz Dary Ospina Bastidas received by GIDH addressed to the Inter-American Commission on Human Rights, April 27, 2012.

<sup>424</sup> Annex 15. Statement of Luz Dary Ospina Bastidas received by GIDH addressed to the Inter-American Commission on Human Rights, April 27, 2012.

<sup>425</sup> Annex 15. Statement of Luz Dary Ospina Bastidas received by GIDH addressed to the Inter-American Commission on Human Rights, April 27, 2012.

<sup>426</sup> Annex 3. Statement of Miryam Eugenia Rúa Figueroa received by GIDH addressed to the Inter-American Commission on Human Rights, April 27, 2012.

<sup>427</sup> Annex 3. Statement of Miryam Eugenia Rúa Figueroa received by GIDH addressed to the Inter-American Commission on Human Rights, April 27, 2012.

<sup>428</sup> Observations of the petitioners dated August 16, 2006, pg. 1, Case file of provisional measures; Audio, IACtHR, Hearing, 131<sup>st</sup> Session, Cases "Comuna 13, 12.595 – Miriam Eugenia Rúa Figueroa, and 12.621 – Teresa Yarce, Mery Naranjo and Socorro Mosquera, Colombia, March 12, 2008.

Socorro Mosquera cries and is silent for a long time). And my oldest child was also stigmatized at work. And I have also suffered a lot, it all hurts me, I don't know when they'll leave us alone.<sup>429</sup>

302. It follows from the proven facts that both Ms. Mosquera as well as her next of kin have been the targets of a sequence of acts of violence which prevent them from living safely in Comuna 13.<sup>430</sup> Ms. Naranjo – as head of household and the breadwinner for an extended family - lives in a similar situation in Comuna 13 and has had to be displaced on her own several times, as she was unable to do so with the members of her family for economic reasons.<sup>431</sup>

303. The IACtHR reiterates that the positive obligation set forth in Article 17 to protect the family during forced displacement, is extended to generating conditions to ensure the safe return of victims to their original homes; and this obligation has not been honored by the Colombian State in the matter under consideration.

304. By virtue of these considerations, the IACtHR finds that the State is responsible for the violation of Article 22, in connection with Articles 17.1 and 1.1 of the same instrument, to the detriment of Ms. Mosquera, Rúa, Ospina, and Naranjo, and their next of kin.<sup>432</sup>

##### **5. Forced displacement and its impact on displaced children**

305. Under the legal precedents of the Inter-American human rights system, the State must adopt measures aimed at providing special protection to children, taking greater care and responsibility under the principle of the best interests of the child.<sup>433</sup> Article 19 of the American Convention must be interpreted as a complementary right, which is established by this instrument for human beings, who because of their stage of physical and emotional development, require measures of special

<sup>429</sup> Annex 78. Statement of María del Socorro Mosquera received by GIDH c addressed to the Inter-American Commission on Human Rights, on May 2, 2012.

<sup>430</sup> Annex 78. Statement of María del Socorro Mosquera received by GIDH addressed to the Inter-American Commission on Human Rights, on May 2, 2012.

<sup>431</sup> Observations of the Petitioners in reference to the matter of *Miryam Eugenia Rúa Figueroa et al* – Case 12.595 dated May 3, 2012, pg. 7.

<sup>432</sup> The family members affected by the violation of Article 22 in connection with articles 17.1 and 1.1 of the same instrument would be as follows:

Mrs. Rúa - Gustavo de Jesús Tobón (permanent companion), Bárbara del Sol (daughter), Úrsula Manuela (daughter) and Valentina (daughter).

Mrs. Ospina - Oscar Julio Hoyos Oquendo (spouse), Edid Yazmín (son), Oscar Darío (son), and Migdalia Andrea Hoyos Ospina (daughter).

Mrs. Mosquera - Hilda Milena Villa Mosquera (daughter), Lubín Alfonso Villa Mosquera (grandson and deceased), Iván Alberto Mosquera (son), and Marlon Daniel Mosquera (son).

Mrs. Naranjo - Juan David Naranjo (son), Sandra Janeth Naranjo (daughter), Alejandro Naranjo (son), Alba Mery Naranjo (daughter), María Camila (granddaughter), Aura María (granddaughter), Esteban Torres (grandson), Nancy Gutiérrez (daughter-in-law), and Alejandro (grandson), Matías (grandson).

<sup>433</sup> IA Court of HR, *Case of the Gómez Paquiyauri Brothers v. Peru*. Judgment July 8, 2004. Series C No. 110, pars. 124, 163-164, and 171; *Case Bulacio*. Judgment September 18, 2003. Series C No. 100, pars. 126 and 134; and *Case of the "Street Children" (Villagrán Morales et al) v. Guatemala*. Judgment November 19, 1999. Series C No. 63, pars. 146 and 191. In this regard, IA Court of HR, *Juridical Status and Human Rights of the Child*. Advisory Opinion OC-17/02 August 28, 2002. Series A No. 17, pars. 56 and 60.

protection.<sup>434</sup> That means that children are entitled to the same human rights as all persons are entitled to, and also special rights stemming from their special condition of vulnerability, and these rights are accompanied by specific duties of the family, society and the State.<sup>435</sup>

306. The petitioners claim in the merits stage that the forced displacement had a particularly serious effect on several of the children and other family members of Ms. Rúa, Ospina, and Mosquera because they were minors when they had to confront said violation of human rights. They contend that several of them were adversely affected when they had to be displaced along with their mothers and grandmothers, while other children had to remain on their own in Comuna 13 for economic or security reasons. Even though the IACtHR has not ruled on Article 19 in the admissibility reports of the cases of Mmes Mosquera and Ospina, the facts supporting such allegations are part of the record of the instant case and, additionally, the petitioners made arguments in this regard from the beginning and, consequently, the State was able to refute the arguments. Based on the foregoing, the Commission finds that the proven facts bear out that there are sufficient elements to rule on the alleged violations pertaining to the rights of the children Bárbara del Sol Palacios Rúa (12), Úrsula Manuela Palacios Rúa (10); Valentina Estefanía Tobón Rúa (3); Migdalia Andrea Hoyos Ospina (12); Lubín Alfonso Villa Mosquera (6); and Marlon Daniel Herrera Mosquera (12).

307. The IACtHR finds that the failure to prevent and protect described above has had a particularly serious impact on the children and grandchildren of Mmes Rúa, Ospina and Mosquera, who are identified in the previous paragraph. As for Ms. Rúa and Ospina, daughters Bárbara del Sol, Úrsula Manuela, Valentina Estefanía, and Migdalia Andrea suffered from the emotional aftereffects of the forced displacement, along with the loss of all their personal possessions, and having to adapt to a new environment and reality. Ms. Ospina explained to the IACtHR how her daughters Bárbara del Sol, Úrsula Manuela and Valentina Estefanía had to leave their house and all of their belongings, live in several different residences and the instability that such a situation is fraught with; they were the targets of threats by the paramilitary members; they had to stop attending school; and they were forced to live in Uruguay for a year as a result of the continuing threats on their mother's life.<sup>436</sup> In her statement before the IACtHR, Ms. Rúa mentioned geographic impediments that she had to confront so that her 13 year-old daughter, at the time of the incidents, Migdalia Andrea, could continue to go to school, and the painful memory that she has of the experience.<sup>437</sup>

308. Regarding Ms. Mosquera, her grandson Lubín Alfonso Villa Mosquera, 6 year-old at the time of the incidents, went with her during her forced displacement, and suffered along with his grandmother and mother from the act of being uprooted that is involved in forced displacement, the related economic hardship, and the fear of the violence and discrimination in the receiving

<sup>434</sup> IA Court of HR, *Juridical Status and Human Rights of the Child*. Advisory Opinion OC-17/02 August 28, 2002. Series A No. 17, par. 54. Also see IA Court of HR, *Case of the "Juvenile Reeducation Institute"*. Judgment September 2, 2004. Series C No. 112, par. 147.

<sup>435</sup> IACtHR, Merits Report No. 64/11, Case 12.573, *Marino López et al* (Operation Genesis), Colombia, March 31, 2011, par. 319; IA Court of HR, *Juridical Status and Human Rights of the Child*. Advisory Opinion OC-17/02 August 28, 2002. Series A No. 17, par. 54; IA Court of HR, *Case of the Kákmok Kasek Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment August 24, 2010 Series C No. 152, par. 113.

<sup>436</sup> Annex 15. Statement of Luz Dary Ospina Bastidas received by GIDH addressed to the Inter-American Commission on Human Rights, April 27, 2012.

<sup>437</sup> Annex 3. Statement of Miryam Eugenia Rúa Figueroa received by GIDH addressed to the Inter-American Commission on Human Rights, April 27, 2012.

community.<sup>438</sup> Her son Marlon Daniel Herrera Mosquera – 12 years of age at the time of the events – could not be displaced with his mother for reasons of insecurity in Comuna 13, and had to live away from his mother and family for two years.<sup>439</sup>

309. Several of the children mentioned above had to leave their homes, their schooling was disrupted, and they were torn away from their community circle of friends at a young age. Bárbara del Sol, Úrsula Manuela, Valentina Estefanía, and Migdalia Andrea, were unable to return to their original home because of the serious security situation that still affects Comuna 13 and because of great economic want. The girls were also affected by the gaps in the humanitarian aid received by their respective mothers. The IACHR also deeply regrets that the grandson of Ms. Mosquera – Lubín Alfonso – was murdered a few years later, when he was only 14 years of age.<sup>440</sup> Ms. Mosquera also testified how Marlon Daniel Herrera Mosquera stays at home for weeks on end out of fear, and as she puts it: “never leaves because he is afraid that something will happen to him.”<sup>441</sup>

310. The Commission views that under the purview of its duty to prevent forced displacement, the State had an obligation of heightened protection toward the affected children. This obligation includes adopting measures aimed at meeting their special needs during the displacement. Nothing in the case file before the IACHR leads to believe that the State made any reasonable effort to adopt the aforementioned measures.

311. In view of the foregoing, the IACHR finds that the State is responsible for the violation of Article 22, in connection with Articles 19 and 1.1, to the detriment of the children Bárbara del Sol Palacios Rúa; Úrsula Manuela Palacios Rúa; Valentina Estefanía Tobón Rúa; Migdalia Andrea Hoyos Ospina; Lubin Alfonso Villa Mosquera; and Marlon Daniel Herrera Mosquera.

#### **E. Right to Property (Articles 21.1 and 2<sup>442</sup>), in connection with Article 1.1 of the American Convention**

312. The Court has addressed the appropriation and destruction of homes by armed actors in the context of the armed conflict in Colombia as acts overtly violating Article 21 of the American Convention.<sup>443</sup> Moreover, it has cited the prohibitions set forth in Article 13 (Protection of the civilian

<sup>438</sup> Annex 78. Statement of María del Socorro Mosquera received by GIDH c addressed to the Inter-American Commission on Human Rights, on May 2, 2012.

<sup>439</sup> Annex 78. Statement of María del Socorro Mosquera received by GIDH c addressed to the Inter-American Commission on Human Rights, on May 2, 2012.

<sup>440</sup> IACHR, Request to expand provisional measures before the Honorable Inter-American Court of Human Rights in reference to the *Matter of Mery Naranjo et al – Comuna 13*, Colombia, March 3, 2011; Decision of the Inter-American Court of Human Rights in the *Matter of Mery Naranjo et al – Comuna 13*, Colombia, March 4, 2011.

<sup>441</sup> Annex 78. Statement of María del Socorro Mosquera received by GIDH c addressed to the Inter-American Commission on Human Rights, on May 2, 2012.

<sup>442</sup> Article 21 of the American Convention establishes in the relevant portion that:

1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society.

2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.

<sup>443</sup> IA Court of HR, *Case of the Massacres of Ituango v. Colombia*. Preliminary Objections, Merits, Reparation and Costs. Judgment July 1, 2006 Series C No. 148, pars. 179-180.

population) and 14 (Protection of the objects indispensable to the survival of the civilian population) of Protocol II of the Geneva Conventions.<sup>444</sup>

313. According to the Court, the destruction of the home constitutes an especially grave violation of the right to property of the affected persons.<sup>445</sup> It means for the victims the loss of a material possession of an economic nature, as well as the most basic living condition.<sup>446</sup> It also signifies the destruction of their social and community frame of reference.<sup>447</sup>

314. The Inter-American Court has defined property as “appropriable material objects, as well as any right that can form part of a person’s patrimony,” including “all movables and immovable, corporeal and incorporeal elements, and other immaterial object that may be of value.”<sup>448</sup>

315. In the matter at hand, the Commission has considered it proven (*supra* paras. 116-133) that after the forced displacement of Mmes. Rúa and Ospina and their respective family members, their homes were destroyed in stages, and their property appropriated. To this day, Mmes. Rúa and Ospina have been unable to return to what remains of their homes, and have not been able to recover any object from them.

316. As explained above, both presented complaints to the authorities identifying the paramilitaries as responsible for these acts in an area in which the control of these groups had consolidated by 2002; these facts have not been investigated exhaustively by the Colombian State. In the case of Ms. Rúa, this destruction and the consequent appropriation of property was reported to the Criminal Judges of the Medellín Circuit, Antioquia, Subunit on Terrorism, identifying as the persons responsible for these deeds the *autodefensas* and the Cacique Nutibara Bloc.<sup>449</sup> These events were certified on July 10, 2002 by the Municipal System for Disaster Prevention and Response.<sup>450</sup> From the documents in the record before the IACtHR it appears that in the investigation into the invasion and destruction of property reported by Ms. Rúa no persons responsible have been identified after 10 years, nor have there been positive results tending to clarify their identities, thereby fostering their impunity.

317. Ms. Ospina, for her part, reported these incidents on July 18, 2003 to the Departmental Prosecutor’s Office of the City of Medellín and the Office of the Human Rights Ombudsman, and they

<sup>444</sup> IA Court of HR, *Case of the Massacres of Ituango v. Colombia*. Preliminary Objections, Merits, Reparation and Costs. Judgment July 1, 2006 Series C No. 148, pars. 179-180.

<sup>445</sup> IA Court of HR, *Case of the Massacres of Ituango v. Colombia*. Preliminary Objections, Merits, Reparation and Costs. Judgment July 1, 2006 Series C No. 148, pars. 182-183.

<sup>446</sup> Court of HR, *Case of the Massacres of Ituango v. Colombia*. Preliminary Objections, Merits, Reparation and Costs. Judgment July 1, 2006 Series C No. 148, par. 182.

<sup>447</sup> Court of HR, *Case of the Massacres of Ituango v. Colombia*. Preliminary Objections, Merits, Reparation and Costs. Judgment July 1, 2006 Series C No. 148, par. 183.

<sup>448</sup> IA Court of HR, *Case of Ivcher Bronstein v. Peru*. Merits, Reparation and Costs. Judgment February 6, 2001. Series C No. 74, par. 122; and IA Court of HR, *Case of the Massacres of Ituango v. Colombia*. Preliminary Objections, Merits, Reparation and Costs. Judgment July 1, 2006 Series C No. 148, par 174.

<sup>449</sup> Note DIDHD/GOI No. 77119/2954 from the Colombian State, November 15, 2012, p. 59.

<sup>450</sup> Annex 4. File No. 289, SIMPAD, July 10, 2002.

were certified by the Local Government Committee of Comuna 13 on September 27, 2006.<sup>451</sup> As will be discussed below, 11 years have passed since the forced displacement and gradual destruction of the home of Ms. Luz Dary Ospina and her family members, and not all of the direct perpetrators and planners of these acts have been identified and punished. It should be noted that the first person convicted for these acts is a member of the *Héroes de Granada* paramilitary bloc.

318. The IACRH also notes with concern that the investigation into these acts by the authorities has been focused exclusively on the activity of paramilitary groups in the zone, and it has not explored the possible participation of state actors, as will be discussed below. As indicated above, Ms. Ospina reported to the authorities indicia of direct facilitation by official forces of the occupation of her home by the paramilitary groups, given the illegal search of the home on March 3, 2003, and their aggressive acts towards and questioning of Mr. Oscar Hoyos. Ms. Ospina reported how this act led to the total abandonment of the house by her family; the appropriation of their property; and the dismantling of the structure.

319. It has been proven that at the time of the facts at issue in this matter the State was aware of the situation of armed conflict in Comuna 13 and its impact on the civilian population, and it had been duly put on notice of this situation by the international community. The action of the illegal armed groups in the zone at the time of the facts included acts aimed at causing the forced displacement of members of social organizations followed by the appropriation of their dwellings and property.<sup>452</sup> For example, Mmes. Naranjo, Rúa, and Mosquera testified before the IACRH at a public hearing that in 2002 that it was a known practice in Comuna 13 for the houses of community leaders to be marked with a phosphorescent "X" by the paramilitary groups, so as to then be dismantled.<sup>453</sup> In the face of this situation the State was obligated to adopt not only measures to protect life and integrity of the women human rights defenders mentioned, but also reasonable measures to protect their property both during the time they resided in Comuna 13 and after their forced displacement.

320. Because of the above-cited reasons, the Commission considers that the appropriation of these houses and the gradual destruction thereof by the paramilitary members, in the absence of reasonable measures by the public security forces in control of the area, amounts to a serious deprivation of the use and enjoyment of the property of Ms. Rúa and Ospina and their next of kin.

321. Based on the aforementioned considerations, the IACRH concludes that the right to property, as set forth under Article 21 (1 and 2) was violated to the detriment of Ms. Rúa and Ospina, and their next of kin, in connection with Article 1.1 of the American Convention. From the file, the Commission has been able to identify the following family members of Ms. Rúa which were affected as Gustavo de Jesús Tobón (permanent companion); Bárbara del Sol (daughter); Úrsula Manuela (daughter) and Valentina (daughter); and those of Ms. Ospina as Oscar Julio Hoyos Oquendo (husband), Edid Yazmín (son), Oscar Darío (son), and Migdalia Andrea Hoyos Ospina (daughter).

<sup>451</sup> Annexes 16 and 17. Complaints lodged by Luz Dary Ospina Bastidas with the Departmental Prosecutor's Office, City of Medellín, and the Office of the Ombudsperson, July 18, 2003; Annex 29. Technical Report, Local Government Committee Comuna 13, October 17, 2006.

<sup>452</sup> United Nations, *Report of the United Nations High Commissioner for Human Rights, Colombia, Annual Report 2002*, para. 32.

<sup>453</sup> Audio, IACRH, Hearing, 131<sup>st</sup> period of sessions, Cases – 12,596 *Luz Dary Ospina Bastidas*, 12,595 – *Miriam Eugenia Rúa Figueroa*, and 12,621 – *Teresa Yarce, Mery Naranjo, and Socorro Mosquera ("Comuna 13")*, Colombia, March 12, 2008.

**F. Right to Freedom of Association (Article 16<sup>454</sup>), in connection with Article 1.1 of the American Convention**

322. When it comes to human rights defenders, the right to freedom of association protected under Article 16 of the American Convention encompasses, *inter alia*, the right to freely form and participate in organizations, associations or non-governmental groups devoted to human rights oversight and promotion and reporting violations of these rights.<sup>455</sup>

323. The bodies of the Inter-American system have pronounced on the dual dimension of the right to freely associate protected under Article 16 of the American Convention.<sup>456</sup> This guarantee entails, on the one hand, that public authorities not limit or hamper the exercise thereof;<sup>457</sup> and, on the other hand, the second dimension presupposes the obligation of States to create the legal and actual conditions in which defenders are able to freely perform their job.<sup>458</sup>

324. In view of these standards, the Inter-American Court has established that States have the duty to facilitate the means necessary for defenders to freely conduct their activities; protect them when they are the targets of threats to avoid assaults of their lives and integrity; refrain from imposing obstacles that hamper them from performing their job; and seriously and effectively investigate violations perpetrated against them, while combating impunity.<sup>459</sup> An obligation of the State to ensure that all persons are able to freely exercise their right to associate without fear of being subjected to any violence stems from these principles.<sup>460</sup> Accordingly, the IACtHR has established that “any act that tends

<sup>454</sup> Article 16 of the American Convention provides that:

- a. Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes.
- b. The exercise of this right shall be subject only to such restrictions established by law as may be necessary in a democratic society, in the interest of national security, public safety or public order, or to protect public health or morals or the rights and freedoms of others.
- c. The provisions of this article do not bar the imposition of legal restrictions, including even deprivation of the exercise of the right of association, on members of the armed forces and the police.

<sup>455</sup> IA Court of HR, *Case of Kawas Fernández v. Honduras*. Merits, Reparation, and Costs. Judgment April 3, 2009. Series C No. 196, par. 146.

<sup>456</sup> IA Court of HR, *Case of Huilca Tecse v. Peru*. Merits, Reparation and Costs. Judgment March 03, 2005. Series C No. 121, pars. 69-72; IACtHR, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124 Doc. 5 rev. 1, March 7, 2006, par. 71.

<sup>457</sup> IA Court of HR, *Case of Baena Ricardo et al v. Panama*, Judgment February 2, 2001, Series C No. 72, par. 156; *Case of Kawas Fernández v. Honduras*. Judgment April 3, 2009. Series C No. 196, par. 143.

<sup>458</sup> IA Court of HR, *Case of Kawas Fernández v. Honduras*. Merits, Reparation, and Costs. Judgment April 3, 2009. Series C No. 196, par. 146.

<sup>459</sup> IA Court of HR, *Case of Nogueira de Carvalho et al v. Brazil*. Preliminary Objections and Merits. Judgment November 28, 2006. Series C No. 161, par. 77; IA Court of HR, *Case of Valle Jaramillo v. Colombia*. Merits, Reparation and Costs. Judgment November 27, 2008. Series C No. 192, par. 91.

<sup>460</sup> IA Court of HR, *Case of Huilca Tecse v. Peru*. Merits, Reparation and Costs. Judgment March 03, 2005. Series C No. 121, par. 76.

to impede the association of human rights defenders, or in any way impedes the purposes for which they have formally associated, is a direct attack on the defense of human rights.”<sup>461</sup>

325. Based on these considerations, the State can be considered responsible under article 16 of the American Convention when it fails to adopt reasonable measures of prevention of determined acts of violence which occur in the framework of an armed conflict, which discourage joining or engaging in the activities of human rights organizations. This obligation is reinforced in a known-context of insecurity for the activity of human rights defenders.

326. The proven facts and the analysis laid out in previous sections evidence the violence endured by Ms. Rúa, Figueroa, Naranjo, Mosquera and Yarce, which has restricted their activities as human rights defenders in Comuna 13.

327. In this sense, the forced displacement of Ms. Rúa and Figueroa compelled them to abandon their leadership positions in the AMI, and the Community Action Board out of fear of accusations, persecution, and other acts in retaliation for their endeavors.<sup>462</sup> They are also impeded from returning to perform their duties inasmuch as they cannot be guaranteed a safe return to Comuna 13 under current security conditions there.

328. As indicated above, Mmes. Naranjo, Mosquera, and Yarce were subject to illegal and arbitrary detention on November 12, 2002 in the terms described in paragraphs 237-249. This detention and the subsequent investigative process not only interfered with their work as human rights defenders, but also stigmatized the work of the AMI, and of the Community Action Board in Comuna 13. Ms. Naranjo testified, in the context of the investigation into the assassination of Ms. Yarce, in the following terms:

It was all triggered by her detention, that was on October 29 after Operation Orion, two years ago, then Teresa, Socorro Mosquera and I left jail, and since there were paramilitary groups, and we were accused of being collaborators with the militias, then the threats started. Teresa and I left for Independence Three Neighborhood, and we continued to belong to the Community Action Board, in other words, being community leaders, and the threats were that we had to leave the neighborhood or otherwise we would be killed, the guys would verbally tell us the people who called themselves the Self-Defense Forces were starting to come to the neighborhood, they would tell us to our faces, we would not answer them, we started to just go about our normal business and to prevent them from robbing the young men to kill them ....<sup>463</sup>

329. The Commission also has consistently deplored the continuing “threats, harassment and murders” linked to the ongoing community leadership work of Mrs. Mosquera and Naranjo in Comuna 13.<sup>464</sup> As noted above (paragraphs 28-33), both have been the beneficiaries of precautionary measures

<sup>461</sup> IACtHR, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124 Doc. 5 rev. 1, March 7, 2006, par. 76.

<sup>462</sup> Annexes 3 and 15. Statements of Miryam Eugenia Rúa and Luz Dary Ospina Bastidas Figueroa received by the GIDH addressed to the Inter-American Commission on Human Rights, April 27, 2012.

<sup>463</sup> Annex 72. Statement of Mery Naranjo, Office of the Attorney General of the Nation, December 13, 2004, Criminal proceeding on the murder of Mrs. Ana Teresa Yarce.

<sup>464</sup> Also see, for example, IACtHR, Press Release, *IACtHR Condemns Continued Threats and Murders Directed against Human Rights Defenders and their Families in Colombia*, March 7, 2011.

since 2004 and provisional measures granted by the Inter-American court since 2006; and it has been verified by both the IACtHR and the Court that implementation by the State of these measures has been ineffective, despite the State being aware of the situation of risk faced by the ladies.<sup>465</sup> The IACtHR, as well as the Court, have expressed their concern over the murder of the three family members of these defenders during the period that the precautionary and provisional measures were in effect – including the 16-year old grandson, and son-in-law of Mery Naranjo; the 14-year-old grandson of Socorro Mosquera, as well as the continuing threats, harassment and assaults that have continued as of the present time against said defenders and their next of kin.<sup>466</sup> The IACtHR specifically expresses that it considers that all of these incidents “are part of a pattern of persecution and lack of protection being faced by these human rights defenders in the Comuna 13 area of Medellín, Colombia.”<sup>467</sup>

330. The Commission also considers proven in the matter that concerns us (paragraphs 160-166 above) that the historical behavior of illegal armed groups, military operations implemented during 2002, and the gradual entrenchment of the paramilitary forces in Comuna 13 have had a disruptive effect on civic, social and grass-roots organizations working in defense of human rights in said locality. The national and international community – including the IACtHR – has documented how members and leaders of these organizations – including the Community Action Boards and a variety of non-governmental entities such as the AMI – have been the victims of forms of persecution, threats, arbitrary detentions, illegal searches, and targeted murders because they not played by the rules set by these groups.<sup>468</sup>

331. The State has promoted the repetition of these acts by failing to adopt reasonable measures of prevention, protection, and legitimization of their work as defenders in a known context of insecurity and armed conflict in Comuna 13. According to prior findings, the Commission reiterates the need for the Colombian State to urgently adopt measures in order to protect and encourage the work of women human rights defenders in the context of the armed conflict that has wracked the country. This gives rise to the obligation of the State to investigate and punish with full urgency and due diligence any violation of the right to free association as a guarantee of non-repetition, in an effort to put into place safe conditions for the work of human rights defenders.

332. By virtue of these considerations, the IACtHR considers that the State has violated the right to free association of Ms. Rúa, Ospina, Naranjo, Mosquera, and Yarce, in breach of Article 16 of the American Convention, in connection with Article 1.1 of the same instrument.

<sup>465</sup> Also see, for example, IACtHR, Press Release, *IACtHR Condemns Continued Threats and Murders Directed against Human Rights Defenders and their Families in Colombia*, March 7, 2011.

<sup>466</sup> Also see, for example, IACtHR, Press Release, *IACtHR Condemns Continued Threats and Murders Directed against Human Rights Defenders and their Families in Colombia*, March 7, 2011; see above paragraphs with description of information received by the Court during the time of effect of the provisional measures in the matter of *Mery Naranjo et al* and decisions issued therein.

<sup>467</sup> IACtHR, Press Release, *IACtHR Condemns Continued Threats and Murders Directed against Human Rights Defenders and their Families in Colombia*, March 7, 2011.

<sup>468</sup> IACtHR, Press Release No. 15/03, *IACtHR Rapporteur Concludes Working Visit to the Republic of Colombia*, June 27, 2003; Risk Report N° 009-07, Office of the Ombudsman of Colombia, pg. 1; Risk Report N° 016-10, Office of the Ombudsman of Colombia, pgs. 6 and 7; United Nations, *Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Colombia*, 2002 Annual Report February 24, 2003, par. 46.

**G. Right to a Fair Trial and Effective Judicial Protection (Articles 8.1<sup>469</sup> and 25<sup>470</sup>), in connection with Article 1.1 of the American Convention, and Article 7 of the Convention of Belém do Pará<sup>471</sup>**

333. The obligation of States to act with due diligence includes facilitating access to suitable and effective judicial recourse vis-à-vis human rights violations.<sup>472</sup> The Inter-American Court has established that every person who has been the victim of a human rights violations “has the right to obtain clarification of the events that violated human rights and the establishment of the corresponding responsibilities from the competent organs of the State, through the investigation and prosecution that are established in Articles 8 and 25 of the Convention.”<sup>473</sup> The Court has also emphasized that the power of access to justice must ensure, within a reasonable period of time, the right of the alleged victims, or their next of kin, to everything necessary being done to learn the truth of what happened and

<sup>469</sup> Article 8.1 of the American Convention provides as follows:

Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

<sup>470</sup> Article 25 of the American Convention establishes that:

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

2. The States Parties undertake:

- a. To ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
- b. To develop the possibilities of judicial remedy; and
- c. To ensure that the competent authorities shall enforce such remedies when granted.

<sup>471</sup> Article 7 of the Convention of Belém do Pará establishes:

The States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to:

- a. refrain from engaging in any act or practice of violence against women and to ensure that their authorities, officials, personnel, agents, and institutions act in conformity with this obligation;
- b. apply due diligence to prevent, investigate and impose penalties for violence against women;
- c. include in their domestic legislation penal, civil, administrative and any other type of provisions that may be needed to prevent, punish and eradicate violence against women and to adopt appropriate administrative measures where necessary;
- d. adopt measures to require the perpetrator to refrain from harassing, intimidating or threatening the woman or using any method that harms or endangers her life or integrity, or damages her property;
- e. take all appropriate measures, including legislative measures, to amend or repeal existing laws and regulations or to modify legal or customary practices which sustain the persistence and tolerance of violence against women;
- f. establish fair and effective legal procedures for women who have been subjected to violence which include, among others, protective measures, a timely hearing and effective access to such procedures;
- g. establish the necessary legal and administrative mechanisms to ensure that women subjected to violence have effective access to restitution, reparations or other just and effective remedies; and
- h. adopt such legislative or other measures as may be necessary to give effect to this Convention.

<sup>472</sup> IACtHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007.

<sup>473</sup> IA Court of HR, *Case of Barrios Altos v. Peru*. Judgment March 14, 2001, Series C No. 75, par. 48.

for those eventually found to be responsible to be punished.<sup>474</sup> Investigations into human rights violations must be immediate, serious, and exhaustive.<sup>475</sup>

334. Protection of these rights is reinforced by the general obligation to respect and ensure, as provided for in Article 1.1 of the American Convention. On this topic, the Inter-American Court has held that:

Article 25 in relation to Article 1(1) of the American Convention obliges the State to guarantee to every individual access to the administration of justice and, in particular, to simple and prompt recourse, so that, *inter alia*, those responsible for human rights violations may be prosecuted and reparations obtained for the damages suffered... Article 25 "is one of the fundamental pillars not only of the American Convention, but of the very rule of law in a democratic society...". That article is closely linked to Article 8(1), which provides that every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, for the determination of his rights, whatever their nature.<sup>476</sup>

335. The principles described, on the duty of the State to act with due diligence, are relevant to the judicial processing of cases of violence perpetrated against women human rights defenders. The investigation into these acts should be conducted by the State in a prompt fashion, from the first steps, employing all reasonable measures to identify the persons responsible for the facts.<sup>477</sup> The investigation must also take into account the context and circumstances in which they occur, and the specific risks faced by women who work in the defense of human rights in the areas affected by the Colombian armed conflict. In the instant case, it has been established in previous sections that the Colombian State had been duly alerted by the international community as to the specific risks that pose threats to the work, integrity, and lives of women human rights defenders in zones controlled by factions of the nationwide armed conflict, which reinforces the State's duty to conduct a prompt and exhaustive investigation into these facts.<sup>478</sup>

<sup>474</sup> See IA Court of HR, *Case of the Miguel Castro Castro Prison v. Peru*, Judgment November 25, 2006. Series C No. 160, par. 382, citing *Case of Vargas Areco*; IA Court of HR, *Case of the Massacres of Ituango v. Colombia*. Judgment July 1, 2006. Series C No. 148, par. 289; and IA Court of HR, *Case of the Massacre of Pueblo Bello*. Judgment January 31, 2006. Series C No. 140, par. 171.

<sup>475</sup> I/A Court H.R., *Case of Godínez Cruz v. Honduras*. Judgment of January 20, 1989. Series C No. 5, para. 188; I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Judgment of July 29, 1988. Series C No. 4, para. 177; I/A Court H.R., *The "Street Children" (Villagrán Morales et al.) v. Guatemala*. Judgment of November 19, 1999. Series C No. 63, para. 226.

<sup>476</sup> IA Court of HR, *Case of Loayza Tamayo v. Peru. Reparations*. Judgment November 27, 1998. Series C No. 42, par. 169; IA Court of HR, *Case of Velásquez Rodríguez v. Honduras. Preliminary Objections*. Judgment June 26, 1987. Series C No. 1, par. 91; IA Court of HR, *Case of Fairén Garbi and Solís Corrales v. Honduras. Preliminary Objections*. Judgment June 26, 1987. Series C No. 2, par. 90; IA Court of HR, *Case of Godínez Cruz v. Honduras. Preliminary Objections*. Judgment June 26, 1987. Series C No. 3, par. 93.

<sup>477</sup> I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 293; IACtHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007, para. 32.

<sup>478</sup> See, for example, United Nations, *Report of the Special Rapporteur on violence against women, Ms. Rhadika Coomaraswamy, Visit to Colombia*, March 11, 2002, paras. 90-91; United Nations, *Report by the Representative of the United Nations Secretary General on Human Rights Defenders, Hina Jilani, Visit to Colombia*, April 24, 2002, paras. 138-147; Committee on the Elimination of Discrimination against Women, *Observations on the Report of the State of Colombia*, February 3, 1999, para. 271; United Nations, *Reports of the United Nations High Commissioner on Human Rights on the situation of human rights in Colombia*, Annual Report 2002, February 24, 2003, paras. 102-108; Annual Report 2003, February 17, 2004, paras. 85-89; and Annual Report 2004, February 28, 2005, pp. 4 and 120; Mesa de Trabajo Mujeres y Conflicto Armado, *Informe sobre Violencia Socio-Política Contra Mujeres, Jóvenes, y Niñas en Colombia*, Third Report 2002, February 2003, p. 14; Mesa de Trabajo Mujer y

336. Accordingly, a comprehensive strategy by the Colombian State to effectively respond to the violence against women and guarantee the non-repetition of these events, with the due diligence necessary, should include not only measures of protection and prevention, but also the use of the means necessary to prevent impunity in the face of violations that affect the human rights of women defenders.<sup>479</sup> The investigation into these facts should be conducted mindful of the range of actors involved in the context being examined, and the threat they may pose to the work of women engaged in the defense of human rights.

337. Many of the risks suffered by women who work in the defense of human rights in Colombia are based on the discrimination and stereotypes that women have suffered historically; notions that are challenged by their leadership in areas occupied by the actors in the armed conflict, as observed *supra* 167-174 in the section on facts proven.<sup>480</sup> For a full and comprehensive appreciation of these risks and their link to historic discrimination against women, it is useful to refer not only to the general provisions of the American Convention, but also to the specialized ones included in the Convention of Belém do Pará, as a supplemental instrument of interpretation.<sup>481</sup>

338. The petitioners' arguments regarding the guarantees set forth in Articles 8.1 and 25 can be summarized by the failure to act with due diligence of the Colombian State to investigate and punish every perpetrator and intellectual author of the human rights violations perpetrated against Mmes. Rúa, Bastidas, Naranjo, Mosquera, and Yarce, as a result of their work as human rights defenders in Comuna 13. The State, in response, has claimed that it is undertaking several investigations into the aforementioned crimes, and that it has identified and punished several of those responsible.

339. The Commission presents in this section some observations related to the investigations pertaining to the human rights violations analyzed throughout this report, committed to the detriment of the five women human rights defenders who are the subject of this matter, and their next of kin.

### **1. Criminal investigation into the murder of Ana Teresa Yarce**

340. Based on the evidence available to the IACHR, it can be surmised that the investigation undertaken into the killing of Ms. Ana Teresa Yarce has led to the conviction of two members of the paramilitary bloc Héroes de Granada, which was operating in the area at the time of the incidents.<sup>482</sup>

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Conflicto Armado, *Informe sobre Violencia Socio-Política contra las Mujeres, Jóvenes y Niñas en Colombia, Mujer y Conflicto Armado*, October 2004, pp. 91-102; Constitutional Court of Colombia, Judgment T-496 of 2008 (Case T-1783291); and Constitutional Court of Colombia, Order 092-08.

See also, IACHR, *Violence and Discrimination Against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II. Doc. 67, October 18, 2006, para. 226; IACHR, Annual Report 2009, Follow-up Report on *Violence and Discrimination Against Women in the Armed Conflict in Colombia*, OEA/Ser.L.V/II. Doc. 67, October 18, 2006, paras. 105-106.

<sup>479</sup> IACHR, Report on the Merits No. 54/01, *Maria Da Penha Fernandes* (Brazil), April 16, 2001, para. 56.

<sup>480</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007, para. 32.

<sup>481</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007, para. 32.

<sup>482</sup> Note DIDHD/GOI No. 77119/2954 from the Colombian State, November 15, 2012, pp. 56-57; Annexes 44, 47 and 75-76. Defendant's Voluntary Initial Statement of Jhon Jairo Cano Duran, October 19, 2007; Defendant's Voluntary Initial Statement of Jorge Enrique Aguilar Rodríguez, August 23, 2007; Decision on the Bail Status of Jorge Enrique Aguilar, Office of

Mr. Jhon Jairo Cano Durán has been convicted for the crimes of Murder of a Protected Person, retaliation, forced displacement, and simple conspiracy to commit a crime, in confessing to the murder of Mrs. Yarce.<sup>483</sup> According to information provided by the State as part of the provisional measures case file, Mr. Jorge Aguilar has also been convicted to a prison term of 26 years and 4 months for the crimes of murder of a protected person and retaliation, in ordering the murder of Ms. Yarce, and assaults inflicted upon her prior to the murder.<sup>484</sup>

341. Regarding the identification and punishment of the two alleged responsible, the petitioners believe that the murder of Ms. Yarce remains in impunity because the intellectual authors of the crimes have yet to be identified and punished. In their view, the investigation "does not clearly and conclusively reveal the truth about the facts, as the basic and fundamental premise of the State's obligation to investigate, and as part of the victims and their family members' reparation."<sup>485</sup> They note as well that "the investigation has not yielded positive results regarding the high military and paramilitary command of the zone, who were involved in the murder of Mrs. Ana Teresa Yarce."<sup>486</sup>

342. The Inter-American Court has defined impunity "as the absence of any investigation pursuit, capture, prosecution and conviction of those responsible for the violations of rights protected by the American Convention."<sup>487</sup> The Court has also held that when a State has convicted the persons allegedly responsible in the context of the investigation, the impunity subsists to the extent that neither the whole truth about the facts has been determined, nor all those responsible identified.<sup>488</sup>

343. It must be noted that the judicial conviction of the two participants in the murder of Mrs. Ana Teresa Yarce represents a significant element in the view of the IACtHR in its examination of the suitability of the investigation undertaken in order to clarify these crimes. However, the IACtHR must consider in this examination to what extent do these convictions reflect an immediate, serious and thorough investigation of the crimes.<sup>489</sup>

the Attorney General of the Nation, File: 2169, August 31, 2007; Decision on the Bail Status of Jhon Jairo Cano Durán, Office of the Attorney General of the Nation, File: 2169, September 6, 2007. Criminal proceeding on the murder of Mrs. Ana Teresa Yarce.

<sup>483</sup> Annex 81. 4<sup>th</sup> Specialized Circuit Court of Criminal Matters, Medellin, Early Disposition [Guilty Plea], Jhon Jairo Cano Durán, Murder of a Protected Person, Forced Displacement, Retaliation and Conspiracy to Commit a Crime, January 9, 2009. Criminal proceeding on the murder of Mrs. Ana Teresa Yarce. Annex 1. Observations of the Petitioners in reference to the matter of *Miryam Eugenia Rúa Figueroa et al* – Case 12.595 dated May 3, 2012.

<sup>484</sup> Note DIDHD/GOI No. 77119/2954 from the Colombian State, November 15, 2012, p. 56; Colombian State's Note DIDHD.GAPID No. 25483/1121 dated May 5, 2011, page 4. Provisional Measures Case File.

<sup>485</sup> Observations of the Petitioners in reference to the matter of *Miryam Eugenia Rúa et al* — Comuna 13 – November 22, 2011, pg. 23.

<sup>486</sup> Observations of the Petitioners in reference to the matter of *Miryam Eugenia Rúa Figueroa et al* – Case 12.595 dated May 3, 2012, pg. 7.

<sup>487</sup> IA Court of HR, *Case of the Massacres of Ituango*. Judgment July 1, 2006. Series C No. 148, par. 299.

<sup>488</sup> IA Court of HR, *Case of the Massacres of Ituango*. Judgment July 1, 2006. Series C No. 148, par 320.

<sup>489</sup> IA Court of HR, *Case of Godínez Cruz v. Honduras*. Judgment January 20, 1989. Series C No. 5, par. 188; IA Court of HR, *Case of Velásquez Rodríguez v. Honduras*. Judgment July 29, 1988. Series C No. 4, par. 177; IA Court of HR, *Case of the "Street Children" (Villagrán Morales et al) v. Guatemala*. Judgment November 19, 1999. Series C No. 63, par. 226.

344. The case file before the IACHR pertaining to this investigation contains statements from family members of Ana Teresa Yarce and from María del Socorro Mosquera and Mary Naranjo identifying several members of the paramilitary forces who threatened Mrs. Yarce prior to her killing, in addition to the participants who have already been punished, including the men known by the noms de guerre of *Cosa Mala*, *Pipe*, *Horacio*, *Octavio*, *Guajiro*, and others such as Jaime Obregón, Juan Gabriel and John James.<sup>490</sup> The Office of the Public Prosecutor also established a nexus between these threats and the murder of Mrs. Yarce, and identified several of these individuals as associates of the Héroes de Granada Bloc, which is considered responsible for the crimes.<sup>491</sup> The State has not submitted any information to the IACHR on any efforts made to identify and punish all those responsible for the above-cited threats, and determine how they may be connected to the murder of Ms. Yarce.

345. The statements of the convicted participants – Jorge Aguilar y Jhon Jhon Cairo Durán – and several decisions of the Office of the Prosecutor, also mention other potential intellectual authors behind the murder of Ms. Yarce.<sup>492</sup> In the Defendant's initial statement of Mr. Jorge Aguilar he testified that the leader of the Héroes de Granada Bloc was the man known by the alias *Estartaz*<sup>493</sup> and Mr. Jhon Jairo Cano Durán mentioned *Primo* as the individual who gave the order to murder Mrs. Yarce, inasmuch as he believed her to be a “guerrilla member.”<sup>494</sup> He referred to *Primo* as the leader of all of the commanders in the area, ranked higher in the hierarchy than Jorge Aguilar.<sup>495</sup> Mr. Jhon Jairo Cano Durán noted in his initial defendant's statement that he did not believe that Jorge Aguilar was involved in the crimes, and identified alias *Jhony Loco* as co-perpetrator in these crimes.<sup>496</sup> On this topic, the State submitted no information during the merits stage to indicate that it has taken reasonable measures to investigate all individuals mentioned in these statements. The record before the IACHR

<sup>490</sup> Annex 69. Statement of Mónica Dulfary Orozco Yarce, Office of the Attorney General of the Nation, File: 2169, August 3, 2005; Annex 70. Statement of Shirley Vanessa Yarce, Office of the Attorney General of the Nation, File: 2169, September 7, 2005; Annex 72. Statement of Mery Naranjo, Office of the Attorney General of the Nation, December 13, 2004, Criminal proceeding on the murder of Mrs. Ana Teresa Yarce; Annex 73. Statement of María del Socorro Mosquera, Office of the Attorney General of the Nation, December 16, 2004; Annex 82. Addendum to the Testimony given by Mrs. Mosquera on August 24, 2005; Annex 71. Addendum to the Testimony given by Mrs. Naranjo on August 24, 2005. Criminal proceeding on the murder of Mrs. Ana Teresa Yarce.

<sup>491</sup> Annexes 44 and 46. Decision on the Bail Status of Jorge Enrique Aguilar, Office of the Attorney General of the Nation, File: 2169, August 31, 2007; Decision on the Bail Status of Jhon Jairo Cano Durán, Office of the Attorney General of the Nation, File: 2169, September 6, 2007. Criminal proceeding on the murder of Mrs. Ana Teresa Yarce.

<sup>492</sup> Annex 44. Decision on the Bail Status of Jorge Enrique Aguilar, Office of the Attorney General of the Nation, File: 2169, Annex 46. August 31, 2007; Decision on the Bail Status of Jhon Jairo Cano Durán, Office of the Attorney General of the Nation, File: 2169, September 6, 2007. Annex 75. Defendant's Voluntary Initial Statement of Jhon Jairo Cano Durán, October 19, 2007; Annex 74. Defendant's Voluntary Initial Statement of Jorge Enrique Aguilar Rodríguez, August 23, 2007; Criminal proceeding on the murder of Mrs. Ana Teresa Yarce.

<sup>493</sup> Annex 74. Defendant's Voluntary Initial Statement of Jorge Enrique Aguilar Rodríguez, August 23, 2007; Criminal proceeding on the murder of Mrs. Ana Teresa Yarce. Annex 1. Observations of the Petitioners in reference to the matter of *Miryam Eugenia Rúa Figueroa et al* – Case 12.595 dated May 3, 2012.

<sup>494</sup> Annex 75 Defendant's Voluntary Initial Statement of Jhon Jairo Cano Durán, October 19, 2007; Annex 81. Defendant's Initial Statement of Jorge Enrique Aguilar Rodríguez, August 23, 2007; Criminal proceeding on the murder of Mrs. Ana Teresa Yarce.

<sup>495</sup> Annex 75. Defendant's Voluntary Initial Statement of Jhon Jairo Cano Durán, October 19, 2007; Annex 81. Defendant's Voluntary Initial Statement of Jorge Enrique Aguilar Rodríguez, August 23, 2007; Criminal proceeding on the murder of Mrs. Ana Teresa Yarce.

<sup>496</sup> Annex 75. Defendant's Voluntary Initial Statement of Jhon Jairo Cano Durán, October 19, 2007; Annex 81. Defendant's Voluntary Initial Statement of Jorge Enrique Aguilar Rodríguez, August 23, 2007; Criminal proceeding on the murder of Mrs. Ana Teresa Yarce.

only contains an arrest warrant for alias *Jhony Loco*, issued by the Office of the Prosecutor on September 6, 2007, without any indication of any effective execution of the warrant.<sup>497</sup>

346. Based on the proven facts of the case, it is also evident that potential involvement in the murder of Ms. Yarce by members of the public security forces has not been investigated. The State has forcefully contended before the IACHR that state agents have not been involved in these crimes.<sup>498</sup> When the investigation was transferred to the Human Rights Unit of the Prosecutor's Office on December 3, 2004, the line of investigation into paramilitary involvement was established from the beginning, without looking into other lines of investigation.<sup>499</sup> This causes concern for the IACHR, as it finds it to be proven fact that at the time of the incidents there was collusion between the public security forces and paramilitary operations in the zone of Comuna 13.<sup>500</sup> The Office of the United Nations High Commissioner has noted as well its concern over the impunity that has tended to shroud most of these abuses, particularly with regard to criminal liability of public servants in being linked to paramilitary groups; and this concern is shared by the IACHR.<sup>501</sup>

347. In view of these considerations, the IACHR has no evidence before it indicating that all possible lines have been explored in the investigation related to the assassination of Ms. Yarce, or that all the planners and direct perpetrators of the acts have been identified and sanctioned. The duty to prevent and to protect women human rights defenders such as Ms. Yarce from violent acts is accompanied by a reinforced duty to pursue an investigation into her assassination with diligence and without delay, taking into consideration the specific risks of human rights violations that women human rights defenders suffer in a complex context of armed conflict known to the Colombian State; and the array of actors involved in that conflict. The IACHR has also said that states' obligation to investigate and punish pertains not only to the persons who participate in committing violations of the rights of those persons who dedicate their lives to defending human rights, but also extends to all those persons who participate in planning human rights violations directed against human rights defenders.<sup>502</sup>

348. The IACHR does not have enough information available to be able to conclude that the investigation into the murder of Ms. Yarce is being pursued by the State under the criteria mentioned above. Almost eight years have elapsed since Ms. Yarce's murder, and her next of kin have not learned the truth of what happened to her.

349. In light of the foregoing, the Commission finds that the State violated the rights to a fair trial and due process and judicial protection, enshrined in Articles 8.1 and 25.1 of the American

<sup>497</sup> Annex 76. Indictment of other co-perpetrators. File 2169, Office of the Attorney General of the Nation, September 6, 2007. Criminal proceeding on the murder of Mrs. Ana Teresa Yarce.

<sup>498</sup> Note DIDHD/GOI No. 77119/2954 from the Colombian State, November 15, 2012, pp. 56-57; Colombian State's Note DH. GOI No. 12442-0552, dated March 15, 2007, page 10.

<sup>499</sup> Annex 65. Decision to Transfer Investigation from the Second Unit for Crimes against Life and Personal Integrity of the Office of the Attorney General of the Nation, to the Human Rights Unit of the same body, December 3, 2004. Criminal proceeding on the murder of Mrs. Ana Teresa Yarce.

<sup>500</sup> IACHR, *Report on the Demobilization Process in Colombia*, OEA/Ser.L/V/II.120 Doc. 60, December 13, 2004, par. 96.

<sup>501</sup> United Nations, *Report of the United Nations High Commissioner on the Human Rights Situation in Colombia*, 2002 Annual Report 2002, February 24, 2003, par. 77.

<sup>502</sup> IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II. Doc. 66, December 31, 2011, para. 45.

Convention, in connection with the obligation to respect rights without any discrimination, as established in Article 1.1 of the same instrument, and Article 7 of the Convention of Belém do Pará, to the detriment of Mrs. Yarce. It also concludes that the State violated Articles 8.1 and 25 of the American Convention, in relation to Article 1.1 of the same instrument, to the prejudice of the next of kin of Ms. Yarce, identified as Mónica Dulfari Orozco Yarce (daughter), Shirley Vanessa Yarce (daughter), Jhon Henry Yarce (son), Arlex Efrén Yarce (son, deceased), and James Adrian Yarce (son, deceased).

## **2. Investigation into the threats, forced displacement, and destruction of the residence of Luz Dary Ospina Bastidas and her next of kin**

350. The findings of fact reveal that Ms. Luz Dary Ospina Bastidas reported to the authorities the forced displacement she endured together with her family members on July 18, 2003, as well as the gradual destruction of their house.<sup>503</sup> The Office of the Specialized Prosecutor 107 of Medellin, conducted under the File number 7155209 an investigation into the alleged crimes of forced displacement and threats against Luz Dary Ospinas until September 5, 2006<sup>504</sup>. This investigation was suspended from September 5, 2006 until January 22, 2008 on the grounds of lack of evidence.<sup>505</sup> The investigation was reopened on January 22, 2008 by the National Human Rights and International Humanitarian Law Unit of the Office of the Prosecutor on January 22, 2008, in light of the need to continue to investigate.<sup>506</sup> As a result of the reopening of said investigation, Horacio Bedoya Vergara – member of the Héroes de Granada Bloc – was convicted on June 29, 2011 under an early disposition for the acts of forced displacement and invasion of lands or buildings, of which Luz Dary Ospina Bastidas and her next of kin were victims.<sup>507</sup> The State also informed the Commission in its last observations that on August 27, 2013, steps were undertaken to press charges – with the goal of obtaining an early resolution on the matter – against Juan Carlos Villa Saldarriaga alias “móvil 8”; matter which was transmitted to the 9° Criminal Court of the Medellin Circuit for a judgment.<sup>508</sup>

351. In the context of this investigation, the IACtHR remarks the statements given by Luz Dary Ospina Bastidas, María del Socorro Mosquera, and Mary Naranjo mentioning the presence of the Cacique Nutibara Bloc in the zone as the group responsible for the threats leveled against Mrs. Ospina

<sup>503</sup> Annex 16. Complaint with the Office of the Ombudsman, July 18, 2003, for intra-urban displacement and security of Luz Dary Ospina Bastidas and her family (Barrio Independencia II, Comuna 13); Annex 17. Complaint with the Office of the Departmental Inspector General's Office, City of Medellin, July 18, 2003, for intra-urban displacement and security of Luz Dary Ospina Bastidas and her family (Barrio Independencia II, Comuna 13).

<sup>504</sup> Colombian State's Note DH. GOI No. 60162/2802 dated December 11, 2006, pgs. 3 and 4.

<sup>505</sup> Annex 54. Prosecuting Attorney María Eugenia Londoño Betancur, Office of the Attorney General of the Nation, Crimes against Liberty, Integrity, Sexual Formation and others Unit, Prosecutor's Office 114 Delegate before the Criminal Circuit Courts of Medellin, File No: 715.520, Complainant: Luz Dary Ospina Bastidas, Crime: Forced Displacement.

<sup>506</sup> Annex 55. National Directorate of Prosecutorial Offices, National Human Rights and International Humanitarian Law Unit, Office 13, Decision 06, File No. 4017, January 22, 2008. Criminal proceeding for the forcible displacement of Luz Dary Ospina Bastidas.

<sup>507</sup> Note DIDHD/GOI No. 77119/2954 from the Colombian State, November 15, 2012, p. 67; Annex 62. 27<sup>th</sup> Criminal Circuit Court, Medellin, June 29, 2011, File: 2011-00164-00, Defendant: Horacio Bedoya Vergara, Crime: Forced Displacement and Invasion of Lands or Buildings, Early Disposition (Guilty Plea). Criminal proceeding for the forcible displacement of Luz Dary Ospina Bastidas.

<sup>508</sup> Note from the State of Colombia 20135010025881, transmitted to the IACtHR by means of communication dated October 21, 2013, para. 76.

and her family.<sup>509</sup> Mmes Mosquera and Naranjo also identify as members of this bloc the individuals known by the *aliases* King Kong, Cero Ocho, Jimmy Zarco and Alex.<sup>510</sup> The same Prosecutor's Office acknowledges during the investigation possible involvement of different paramilitary blocs.<sup>511</sup> Nonetheless, as recently as January 13, 2012, an order was issued as part of the investigation in order to obtain information on the identity and whereabouts of several of the members of the Cacique Nutibara and Héroes de Granada Blocs.<sup>512</sup> It follows from the facts that 9 years have elapsed since the forced displacement and gradual destruction of the house of Ms. Luz Dary Ospina and her family members, and not all of the actual perpetrators, and intellectual authors have been identified and sanctioned for these events.

352. The IACHR further notes the delay caused by the suspension of this investigation for a period of two years, an order even considered unreasonable by the Human Rights and International Humanitarian Law Unit of the Office of the Prosecuting Attorney in establishing that "the delay in fulfilling the duty to investigate or the meager results obtained in the investigation are not a valid excuse to give up the mission entrusted [to it] or to disregard the interests and purpose that are pursued with the investigation – to find out the truth, investigate the facts, hold the perpetrators responsible and provide reparation to the victims – because the State must also seek justice on behalf of everyone who has a legitimate interest in the outcome of the proceeding."<sup>513</sup> The IACHR finds it reasonable to conclude that the delay in this type of investigation is prejudicial to the timeliness in getting to the root of the violations that are the subject of the complaint.

353. The Commission reiterates that impunity contributes to obstructing the work of women human rights defenders, and has a chilling effect on society, discouraging the reporting of serious violations.<sup>514</sup> The most effective way to protect human rights defenders in the hemisphere is to effectively investigate the acts of violence against them and to punish all the persons responsible for such acts, both the planners and the direct perpetrators.<sup>515</sup> Zealously pursuing every investigation of acts of violence perpetrated against women human rights defenders – in particular in contexts of risk known by the State – is in turn a fundamental component of the State's duty to act with the due diligence required to prevent and punish violence against women. The states are obligated to fight

<sup>509</sup> Annexes 82, 57 and 58. Addendum to the Complaint of Luz Dary Ospina Bastidas, November 15, 2005; Statements given by Mmes Maria del Socorro Mosquera Londoño and Mery Naranjo, May 14, 2009. Criminal proceeding for the forcible displacement of Luz Dary Ospina Bastidas.

<sup>510</sup> Annexes 57-58. Statements given by Mmes Maria del Socorro Mosquera Londoño and Mery Naranjo, May 14, 2009. Criminal proceeding for the forcible displacement of Luz Dary Ospina Bastidas.

<sup>511</sup> Annex 60. Office of the Attorney General of the Nation, National Human Rights and International Humanitarian Law Unit, Office 13, Decision 17, Indictment No. 4017, July 22, 2010. Criminal proceeding for the forcible displacement of Luz Dary Ospina Bastidas.

<sup>512</sup> Annex 60. Office of the Attorney General of the Nation, File No. 4017, Decision No. 177, January 13, 2012. Criminal proceeding for the forcible displacement of Luz Dary Ospina Bastidas.

<sup>513</sup> Annex 55. National Directorate of Prosecutorial Offices, National Human Rights and International Humanitarian Law Unit, Office 13, Decision 06, File No. 4017, January 22, 2008. Criminal proceeding for the forcible displacement of Luz Dary Ospina Bastidas.

<sup>514</sup> IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124 Doc. 5 rev. 1, March 7, 2006, para. 108.

<sup>515</sup> IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124 Doc. 5 rev. 1, March 7, 2006, para. 202.

impunity by all means at their disposal, as it fosters the chronic repetition of human rights violations, and the total defenselessness of the victims and their next of kin.<sup>516</sup>

354. As for Luz Dary Ospina Bastidas, the IACHR finds that the State has not adopted all necessary means to fulfill with due diligence its obligation to investigate, prosecute and punish everyone responsible for these crimes, in violation of Articles 8.1 and 25 of the same instrument, in connection with Article 1.1 of the Convention, and Article 7 of the Convention of Belém do Pará. Likewise it finds that the State violated Articles 8.1 and 25 of the American Convention, in connection with Article 1.1, to the detriment of the next of kin of Ms. Ospina, identified as Oscar Julio Hoyos Oquendo (husband), Edid Yazmín (son), Oscar Darío (son), Migdalia Andrea Hoyos Ospina (daughter) and Fabio Alberto Rodríguez Buriticá (son-in-law).

### **3. Investigation into threats, forced displacement, and destruction of residence of Miryam Eugenia Rúa Figueroa and her next of kin**

355. According to information produced by the State, the 18<sup>th</sup> Special Prosecutor, under the Human Rights Unit of the Office of the Attorney General, is pursuing as file No. 4016 an investigation into the alleged crime of forced displacement of which Ms. Rúa was a victim.<sup>517</sup> That investigation, in the preliminary stage, is under seal, and no one has been identified as one of the persons responsible for that conduct.<sup>518</sup> When Ms. Rúa reported the facts to the authorities on July 8, 2002, she noted as the persons responsible the *autodefensas* operating in her neighborhood.<sup>519</sup> The IACHR has no information indicating that investigations have been carried out by the disciplinary jurisdiction; or that any measures have been taken to remedy the context of insecurity that makes it impossible for Ms. Rúa to return to Comuna 13.

356. In view of the foregoing, the Commission notes that with more than ten years having elapsed since the incidents that are the subject of this claim took place, the threats and forced displacement of Mrs. Rua and her family members have remained in impunity. Pursuant to the above-cited international standards, the IACHR reiterates that as a general rule an investigation must be conducted promptly and without delay in order to protect the interests of the victims, preserve the evidence, and even safeguard the rights of everyone who, in the context of the investigation, may be considered a suspect. Both the Inter-American Commission and the United Nations High Commissioner for Human Rights have consistently issued statements on the high level of impunity in human rights violations committed by members of the public security forces and paramilitary groups in Colombia, and the significant number of criminal proceedings and of open disciplinary investigations against these officers, which do not result in establishing guilt, much less the appropriate punishment of those responsible.<sup>520</sup>

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<sup>516</sup> I/A Court H.R., Case of the *Ituango Massacres v. Colombia*. Judgment of July 1, 2006. Series C No. 148, para. 299; I/A Court H.R., Case of *Baldeón García v. Peru*. Judgment of April 6, 2006. Series C No. 147, para. 168.

<sup>517</sup> Note DIDHD/GOI No. 77119/2954 from the Colombian State, November 15, 2012, pp.59-60.

<sup>518</sup> Note DIDHD/GOI No. 77119/2954 from the Colombian State, November 15, 2012, pp.59-60.

<sup>519</sup> Note DIDHD/GOI No. 77119/2954 from the Colombian State, November 15, 2012, pp.59.

<sup>520</sup> IACHR, Merits Report No. 64/11, Case 12.573, *Marino López et al* (Operation Genesis), Colombia, March 31, 2011, par. 404; IACHR, Merits Report No. 75/06, *Jesús María Valle Jaramillo* October 16, 2006, par. 68.

357. By virtue of these considerations, the Commission finds that the State failed in its duty to act with due diligence to investigate and punish promptly and adequately those responsible for the facts pertaining to the threats, forced displacement, and occupation and destruction of the property of Ms. Rúa, in breach of Articles 8.1 and 25 of the same instrument, in connection with Article 1.1 thereof, and Article 7 of the Convention of Belém do Pará. It further finds that the State violated Articles 8.1 and 25 of the American Convention, in connection with Article 1.1, to the detriment of the next of kin of Ms. Rúa, identified as Gustavo de Jesús Tobón (permanent companion), Bárbara del Sol (daughter), Úrsula Manuela (daughter) and Valentina (daughter).

#### **4. Investigation into the arbitrary detentions of Mery Naranjo, María del Socorro Mosquera Londoño, and Ana Teresa Yarce**

358. Based on the determinations of fact one can conclude that Mmes. Mosquera, Naranjo, and Yarce filed a complaint with the Office of the Prosecutor-Delegate for Human Rights seeking to have a disciplinary investigation and disciplinary sanctions for the public servants responsible for their arbitrary detentions.<sup>521</sup> On June 29, 2006, it was ordered that an investigation be initiated into a Third Corporal, and that several items of evidence be collected.<sup>522</sup> The State has reported that on November 9, 2007, based on the evidence produced in the investigation, the Office of the Inspector General ordered that it be archived.<sup>523</sup>

359. It can be surmised from this information that more than ten years have elapsed since the arbitrary detention of Ms. Mosquera, Naranjo and Yarce without responsibility of public officials being duly established for the violation of their rights. The Commission reiterates that when public officials commit human rights violations against women, such as an arbitrary detention, they have the obligation to investigate the systemic failures that led to these violations, in order to prevent their repetition.<sup>524</sup> That entails an impartial, serious and thorough investigation of the agencies of the State that participated in the arbitrary detention that is the subject of this matter, including a thorough investigation of the individual actions of the members of the army and the national police involved.<sup>525</sup> The States must hold the public officials responsible – through administrative, disciplinary or criminal procedure – when they have acted unlawfully.<sup>526</sup> The State must undertake the systematic investigation

<sup>521</sup> File No. 008-82861, joined to number 008-082154, cited in the initial petition in the matter of Socorro Mosquera Londoño and Mery Naranjo Jiménez – Comuna 13, March 7, 2005, p. 7.

<sup>522</sup> Note DDH. GOI No. 31279/1533 from the Colombian State, June 14, 2006, p. 8.

<sup>523</sup> Note DIDHD/GOI No. 77119/2954 from the Colombian State, November 15, 2012, p. 50.

<sup>524</sup> IACtHR, Merits Report No. 80/11, Case 12.626, *Jessica Lenahan (Gonzales) et al*, United States, July 21, 2011, pars. 178-179.

<sup>525</sup> IACtHR, Merits Report Nº 28/07, Cases 12.496-12.498, *Claudia Ivette González et al*, (Mexico), March 9, 2007, par. 242, Recommendation 2.

<sup>526</sup> IACtHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/V/II, Doc. 68 (January 20, 2007), par. 77; United Nations, *Crime Prevention and Criminal Justice Measures for the Elimination of Violence against Women*, resolution approved by the United Nations General Assembly, A/RES/52/86, February 2, 1998, Annex, Section II.

on its own initiative and promptly.<sup>527</sup> Delay in this investigation amounts to a form of impunity for the arbitrary detention of Mrs. Mosquera, Naranjo y Yarce, and fosters the repetition thereof.<sup>528</sup>

360. Based on the foregoing, the Commission finds that the State failed in its duty to act with due diligence in order to investigate and punish promptly and adequately with regard to the arbitrary detention of Mmes Naranjo, Mosquera, and Yarce, in breach of Articles 8.1 and 25 of the same instrument, in connection with Article 1.1 thereof, and Article 7 of the Convention of Belém do Pará.

#### **H. Right to Personal Integrity of the Next of Kin of the Victims (Article 5.1), in connection with Article 1.1 of the American Convention**

361. As has been established in previous sections, the determinations of fact reveal the particular effect of the human rights violations found in several of the family members of Ms. Rúa, Ospina, Naranjo, Mosquera and Yarce. The IACtHR considers that these violations must be analyzed under the obligations of prevention and protection set forth in Article 5.1 of the American Convention. The Inter-American Court has held repeatedly that the next of kin of the victims of human rights violations may also be victims, because of the additional suffering that they have endured as a consequence of the violations perpetrated against their loved ones, and because of subsequent acts or failure to act of the state authorities vis-à-vis the incidents.<sup>529</sup> Along this line of legal precedents, the Court has found that the right to mental and moral integrity of the family members protected under Article 5.1 of the American Convention is considered violated.<sup>530</sup>

362. The IACtHR has pronounced in relation to the extension of the risk faced by women human rights defenders in Colombia to their family nucleus, whose members are often the targets of acts of systematic intimidation, persecution, kidnapping, torture and sexual abuse, among other crimes.<sup>531</sup>

363. With regard to Ms. Rúa and Ospina, pursuant to the aforementioned analysis, their next of kin have suffered from the emotional, economic and social aftereffects of the forced displacement; the disruptive effect on the family structure that their serious situation of insecurity has had; the gradual

<sup>527</sup> IACtHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/V/II, Doc. 68 (January 20, 2007), par. 77; United Nations, *Crime Prevention and Criminal Justice Measures for the Elimination of Violence against Women*, resolution approved by the United Nations General Assembly, A/RES/52/86, February 2, 1998, Annex, Section II.

<sup>528</sup> IACtHR, *Human Rights Situation of Women in Ciudad Juarez, Mexico*, OEA/Ser. L/V/II.117. Doc. 44 (March 7, 2003), par. 142; IACtHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/V/II, Doc. 68 (January 20, 2007), Recommendation 1.

<sup>529</sup> IA Court of HR, *Case of the Massacre of Pueblo Bello*. Judgment January 31, 2006. Series C No. 140, par. 154; IA Court of HR, *Case of Gómez Palomino v. Peru*. Judgment November 22, 2005. Series C No. 136, par. 60; IA Court of HR, *Case of the Massacre of Mapiripán*. Judgment September 15, 2005. Series C No. 134, pars. 144-146; IA Court of HR, *Case of Serrano Cruz Brother vs. El Salvador*. Judgment March 1, 2005. Series C No. 120, pars. 113-114; IA Court of HR, *Case of 19 Merchants*. Judgment July 5, 2004. Series C No. 109, par. 210.

<sup>530</sup> IA Court of HR, *Case of the Massacre of Pueblo Bello*. Judgment January 31, 2006. Series C No. 140, par. 154; IA Court of HR, *Case of Gómez Palomino v. Peru*. Judgment November 22, 2005. Series C No. 136, par. 60; IA Court of HR, *Case of the Massacre of Mapiripán*. Judgment September 15, 2005. Series C No. 134, pars. 144-146; IA Court of HR, *Case of the Serrano Cruz Brothers vs. El Salvador*. Judgment March 1, 2005. Series C No. 120, pars. 113-114; IA Court of HR, *Case of 19 Merchants*. Judgment July 5, 2004. Series C No. 109, par. 210.

<sup>531</sup> IACtHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II. Doc. 67, October 18, 2006, par. 225.

destruction of their homes; and being prevented from returning to their communities. In the case of Ms. Ospina, her displacement even entailed having to leave the country for one year; a move which compelled her to undergo a radical social and cultural adaptation. The IACtHR notes with concern the silence of the State in regards to these allegations.

364. As for Ms. Naranjo, Mosquera, and Yarce, their family members have endured the uncertainty of their arbitrary detention, their absence from the home, and the continuing threats to their safety because of their ongoing work as defenders. Particularly regarding Ms. Yarce, her children have had to suffer the murder of their mother, and her absence as the breadwinner of the household, with her daughter actually witnessing the murder. Additionally, her daughters Monica and Shirley have testified how their family members have been the victims of threats both prior to and following her murder.<sup>532</sup> Pursuant to the facts that came to light in the precautionary and provisional measures processes before the IACtHR and the Court, several family members of Mrs. Naranjo have been murdered and harassed as a result of her work as a defender, and have been living in conditions of insecurity as of the present date (*supra* paragraphs 28-33). These incidents have included the illegal search of the residence of the family members of Ms. Naranjo on February 14, 2006 by members of the army and the paramilitary groups, in which her 14-year-old niece Luisa María Escudero was seriously wounded.<sup>533</sup>

365. Ms. Mosquera's next of kin have also born the consequences of the forced displacement; the inability to return home; and the murder of several of the family members, including her 14-year-old grandson. The evidence before the IACtHR shows that several family members of Ms. Mosquera have brought complaints for acts of violence committed against them by the authorities subsequent to her detention on November 12, 2002.<sup>534</sup> The IACtHR is not aware of any reasonable measures that have been adopted by the State in order to duly investigate these complaints.

366. These infringements have been exacerbated by the impunity which has surrounded these acts, and the State failure to implement reasonable measures of protection and prevention of the violence committed not only against the Ms. Rúa, Ospina, Mosquera, Naranjo and Yarce, but also against their next of kin. This impunity has also contributed to the repetition of these crimes, and the continuing climate of insecurity for defenders working in Comuna 13. It also has a chilling effect on any social and human rights advocacy work that is carried out in the zone at issue.

367. In view of the foregoing, the Commission finds that the State has violated the right to personal integrity enshrined in Article 5.1 of the American Convention, in connection with Article 1.1 of the same instrument, to the detriment of the family members of Ms. Rúa,<sup>535</sup> Ospina,<sup>536</sup> Mosquera,<sup>537</sup> Naranjo<sup>538</sup> and Yarce.<sup>539</sup>

<sup>532</sup> Annexes 69 and 70. Statements of Mónica Dulfary Orozco Yarce, Office of the Attorney General of the Nation, File: 2169, August 3, 2005 and Shirley Vanessa Yarce, Office of the Attorney General of the Nation, File: 2169, September 7, 2005.

<sup>533</sup> IACtHR, Request for Provisional Measures to the Inter-American Court of Human Rights in the Matter of "Mery Naranjo et al", July 3, 2006. par. 26, Provisional Measure Case File.

<sup>534</sup> Annex 83. Complaint filed on January 24, 2011 by Hilda Milena Villa Mosquera with the Office of the Attorney General of the Nation (Single Form Criminal Notice); Annex 84. Technical Forensic Medical Report of Non Lethal Injuries, Internal Filing: 2011C-03011501310, Hilda Milena Villa Mosquera, January 24, 2011. Annex 6. Observations of the Petitioners in reference to the matter of *Miryam Eugenia Rúa Figueroa et al* – Case 12.595 dated May 3, 2012.

<sup>535</sup> The IACtHR has identified from the file the affected next of kin of Mrs. Rúa as - Gustavo de Jesús Tobón (permanent companion), Bárbara del Sol (daughter), Úrsula Manuela (daughter) and Valentina (daughter).

## VI. CONCLUSIONS

368. Based on the foregoing analysis, the IACHR concludes that the State of Colombia is responsible for the following violations of human rights:

- Article 5(1) of the American Convention in relation to Article 1(1) of the same instrument, to the detriment of Mmes. Miryam Eugenia Rúa Figueroa and Luz Dary Ospina Bastidas.
- Articles 7(1), 7(3), and 5(1) of the American Convention, in relation to Article 1(1) of the same instrument, to the detriment of Mmes. María del Socorro Mosquera, Mery Naranjo, and Ana Teresa Yarce.
- Article 4(1) of the American Convention, in relation to Article 1(1) of the same instrument, to the detriment of Ms. Ana Teresa Yarce.
- Article 22 of the American Convention, in relation to Articles 5(1), 17(1), and 1(1) of the same instrument, to the detriment of Mmes. Miryam Eugenia Rúa Figueroa, María del Socorro Mosquera, Luz Dary Ospina Bastidas, and Mery Naranjo and their next of kin identified in paragraphs 282, 293, and 304 (notes 384 and 430) of this report.
- Article 22 of the American Convention, in relation to Articles 19 and 1(1) of the same instrument, to the detriment of the following who were children at the time of the facts: Bárbara del Sol Palacios Rúa; Úrsula Manuela Palacios Rúa; Valentina Estefanía Tobón Rúa; Migdalia Andrea Hoyos Ospina; Lubín Alfonso Villa Mosquera; and Marlon Daniel Herrera Mosquera.
- Article 21 (1) and (2) of the American Convention, in relation to Article 1(1) of the same instrument, to the detriment of Mmes. Miryam Eugenia Rúa Figueroa, Luz Dary Ospina, and their next of kin identified in paragraph 321 of this report.

<sup>536</sup> The IACHR has identified from the file the affected next of kin of Ms. Ospina as - Oscar Julio Hoyos Oquendo (husband), Edid Yazmín (son), Oscar Darío (son), Migdalia Andrea Hoyos Ospina (daughter) and Fabio Alberto Rodríguez Buriticá (son-in-law).

<sup>537</sup> The IACHR has identified from the file the affected next of kin of Ms. Mosquera as Marlon Daniel Herrera Mosquera (son), Lubin Arjadi Mosquera (son), Hilda Milena Villa Mosquera (daughter), Iván Alberto Herrera Mosquera (son), and Carlos Mario Villa Mosquera (son, deceased), Luisa Fernanda Herrera Vera (granddaughter), Sofía Herrera Montoya (granddaughter), Madelen Araujo Correa (granddaughter), Luisa María Mosquera Guisao (granddaughter), Luis Alfonso Mosquera Guisao (grandson), Lubín Alfonso Villa Mosquera (grandson, deceased), Daniel Esteven Herrera Vera (grandson), Carlos Mario Bedoya Serna (grandson), and Mateo Rodríguez (grandson).

<sup>538</sup> The IACHR has identified from the file the affected next of kin of Ms. Naranjo as Juan David (son), Alejandro (son), Sandra Janneth (daughter), Alba Mery Naranjo Jiménez (daughter), Erika Johann Gómez (granddaughter), Heidi Tatiana Naranjo Gómez (granddaughter), Sebastián Naranjo Jiménez (grandson), María Camila Naranjo Jiménez (granddaughter), Aura María Amaya Naranjo (granddaughter), Esteban Torres Naranjo (grandson) and Luisa María Escudero (niece).

<sup>539</sup> The IACHR has identified from the file the affected next of kin of Mrs. Yarce as Mónica Dulfari Orozco Yarce (daughter), Shirley Vanessa Yarce (daughter), Jhon Henry Yarce (son), Arlex Efrén Yarce (son, deceased), and James Adrian Yarce (son, deceased).

- Article 16 of the American Convention, in relation to Article 1(1) of the same instrument, to the detriment of Mmes. Miryam Eugenia Rúa Figueroa, Luz Dary Ospina Bastidas, María del Socorro Mosquera, Mery Naranjo, and Ana Teresa Yarce.
- Articles 8(1) and 25 of the American Convention, in relation to Article 1(1) of the same instrument, and Article 7 of the Convention of Belém do Pará, to the detriment of Mmes. Luz Dary Ospina Bastidas, Miryam Eugenia Rúa Figueroa, María del Socorro Mosquera, Mery Naranjo, and Ana Teresa Yarce.
- Articles 8(1) and 25 of the American Convention, in relation to Article 1(1) of the same instrument to the detriment of the next of kin of Mmes. Miryam Eugenia Rúa Figueroa, Luz Dary Ospina Bastidas, and Ana Teresa Yarce identified in paragraphs 349, 354, and 357 of this report.
- Article 5(1) of the American Convention, in relation to Article 1(1) of the same instrument, to the detriment of the next of kin Mmes. Miryam Eugenia Rúa Figueroa, Luz Dary Ospina Bastidas, Ana Teresa Yarce, María del Socorro Mosquera, and Mery Naranjo identified in paragraph 367 (notes 532-536) of this report.

369. The Commission also considers that as of the date of approval of this report it does not have sufficient information to rule on possible violations of Articles 11 and 27 of the American Convention.

## **VII. RECOMMENDATIONS**

370. Based on the analysis and conclusions of the instant report,

### **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THE COLOMBIAN STATE TO:**

1. Complete prompt, thorough, impartial, and effective investigations into the violations described in this report. These investigations should be undertaken within a reasonable time period and without delay, by the judicial authorities, with the aim of ascertaining the truth, and punishing those responsible. These measures must be implemented taking into consideration the specific characteristics of the violence that the women's rights defenders at issue have endured, the discrimination they are subjected to based on their dual status as leaders and women, and the known context of risk in which they work. These investigations must also be aimed at identifying all of the actors who may be involved in the violations established herein, including the members of the paramilitary groups, state agents, and both actual perpetrators and masterminds behind or accessories to these crimes.

2. Adopt urgent and immediate measures of protection in order to ensure the safety of the affected defenders, and their next of kin. These measures must include interventions designed to facilitate their return to Comuna 13 promptly and safely.

3. Guarantee humanitarian and comprehensive assistance, and the necessary security conditions, to the victims and their family members living in a situation of displacement.

4. Fully compensate the victims for the human rights violations established in the context of this report. The measures must be agreed upon by consensus with the participation and from the perspective of the affected individuals.

5. Implement policies, programs, and interventions designed to bring about safe conditions for the activities of human rights defenders in Comuna 13, as a fundamental guarantee of non-repetition of the crimes.

6. Implement interventions in Comuna 13 in order to promote a human rights culture in which the fundamental role that is played by human rights defenders is publicly acknowledged. The State's commitment to this policy must be reflected in all spheres of the executive, legislative and judicial branches of government.

7. Generate opportunities for dialogue between organizations working in human rights defense in Comuna 13 and high-level authorities, in order to identify policies, programs and interventions which may be adequate and effective in ensuring safety.