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Session:	Hundred Twenty-Eighth Session (16 – 27 July 2007)
Title/Style of Cause:	Mery del Socorro Naranjo Jimenez, Maria del Socorro Mosquera Londono and Ana Teresa Yarce v. Colombia
Doc. Type:	Decision
Decided by:	President: Florentin Melendez; First Vice-President: Paolo Carozza; Second Vice-President: Victor Abramovich; Commissioners: Evelio Fernandez Arevalos, Sir Clare K. Roberts, Freddy Gutierrez.
Dated:	23 July 2007
Citation:	Naranjo v. Colombia, Petition 231-05, Inter-Am. C.H.R., Report No. 46/07, OEA/Ser.L/V/II.130, doc. 22 rev. 1 (2007)
Represented by:	APPLICANT: the Interdisciplinary Human Rights Group
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## I. SUMMARY

1. On March 7, 2005, the Inter-American Commission on Human Rights (hereinafter “the Commission”) received a petition that the Interdisciplinary Human Rights Group (hereinafter “the petitioners”) lodged against the Republic of Colombia (hereinafter “the State” or “the Colombian State”) accusing it of responsibility for the alleged November 2002 arbitrary detention of community leaders María del Socorro Mosquera Londoño, Mery del Socorro Naranjo Jiménez and Ana Teresa Yarce –who served on the Community Action Board of the Las Independencias III district of Comuna 13 in the city of Medellín- and of the death of Ana Teresa Yarce on October 6, 2004.

2. The petitioners allege that the State is responsible for violation of the rights to life, humane treatment, personal liberty, a fair trial, privacy, freedom of association, protection of the family, freedom of movement and residence and judicial protection and of the obligation not to suspend certain non-derogable rights, as recognized in Articles 4, 5, 7, 8, 11, 16, 17, 22, 25 and 27 of the American Convention on Human Rights (hereinafter the “Convention” or the “American Convention”), all in relation to Article 1(1) thereof and to the detriment of María del Socorro Mosquera Londoño, Mery del Socorro Naranjo Jiménez, and Ana Teresa Yarce and their next of kin. In response, the State alleges that the petitioners’ complaint does not satisfy the rule requiring prior exhaustion of the remedies under domestic law, set forth in Article 46(1)(a) of the American Convention, or the conditions that must obtain for the exception allowed under Article 46(2)(c) of the Convention to apply.

3. After examining the parties' positions and the matter of compliance with the requirements set forth in Articles 46 and 47 of the Convention, the Commission decided to declare the complaint admissible as regards the alleged violations of Articles 5(1), 7(1), 7(3), 8(1), 11, 16, 17(1), 22(1) and 25 of the Convention, all in relation to Article 1(1) thereof and to the detriment of María del Socorro Mosquera Londoño, Mery del Socorro Naranjo Jiménez and Ana Teresa Yarce and their next of kin; and as regards the alleged violation of Article 4 of the American Convention, in relation to Article 1(1) thereof and to the detriment of Ana Teresa Yarce. It also finds that the petition is admissible under Articles 46 and 47 of the American Convention. It has decided to notify the parties of its decision and to order its publication in the Annual Report.

## II. PROCESSING WITH THE COMMISSION

4. The IACHR registered the petition as P-231-05 and, after a preliminary review of its content, forwarded the relevant parts to the Colombian State on December 21, 2005, with the request that it submit information on the issue in question within two months, pursuant to Article 30(2) and 30(3) of the Commission's Rules of Procedure.

5. On February 22, 2006, the IACHR received a communication from the State in which it requested a 30-day extension to submit its response to the petition. That extension was granted on February 24, 2005. The State submitted its information on June 14, 2006, by note DDH.GOI 31279/1533.

6. On October 22, 2004, the Commission requested the State to adopt precautionary measures to protect the life and physical integrity of Mery Naranjo Jiménez, Alba Mery Naranjo, Sandra Janeth Naranjo, Alejandro Naranjo, Juan David Naranjo and Socorro Mosquera Londoño.[FN1] 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 pursuant to Article 63(2) of the American Convention. The Court issued an order for the adoption of provisional measures on July 5, 2006.[FN2] As of the date of the adoption of this report, the parties continue to submit follow-up reports on fulfillment of the provisional measures.

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[FN1] On October 22, 2004, the IACHR requested precautionary measures for Mery Naranjo Jiménez and her family and Socorro Mosquera Londoño, members of the Communal Action Board of the Las Independencias III district in Comuna 13 in Medellín. The available information indicates that on October 7, 2004, Mrs. Mery Naranjo witnessed the murder of Ana Teresa Yarce, auditor of the Communal Action Board of which she was a member. After that, Mery Naranjo was forced to leave home for the sake of her own safety. A few days later, unknown persons approached her daughter to intimidate her. Given the situation of the precautionary measures' beneficiaries and the violence and intimidation that paramilitary groups were practicing against community leaders in Medellín's Comuna 13, the Commission decided to ask the Colombian Government to adopt the measures needed to guarantee the life and physical integrity 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 adopted to investigate and stop the threats that necessitated the adoption of precautionary measures.

[FN2] By an order dated July 5, 2006, the Court ordered the State, inter alia, to immediately adopt the measures necessary to protect the rights to life and to personal integrity of Mery Naranjo Jiménez and her next of kin, 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, Esteban Torres Naranjo, María del Socorro Mosquera Londoño and Luisa María Escudero Jiménez. The Court reiterated its order in a decision it delivered on September 22, 2006. In 2006 and 2007, the Commission presented information and observations concerning the provisional measures, as ordered by the Court. The text of these orders is available at [http://www.corteidh.or.cr/docs/medidas/naranjo\\_se\\_01.doc](http://www.corteidh.or.cr/docs/medidas/naranjo_se_01.doc) and [http://www.corteidh.or.cr/docs/medidas/naranjo\\_se\\_02.doc](http://www.corteidh.or.cr/docs/medidas/naranjo_se_02.doc).

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### III. POSITIONS OF THE PARTIES

#### A. The petitioners

7. By way of context, the petition states that Comuna 13 in the city of Medellín is made up of 22 districts, which are home to some 130 thousand people. Most subsist on less than the minimum wage. Given these conditions, combined with the lack of state policies geared toward finding an effective solution to the situation, the districts in the Comuna became a breeding ground for various types of illicit organizations, like militia –some under the influence of the guerrilla movement, some not-, armed commando groups and gangs of common criminals. These organizations have turf battles with members of the self-defense groups belonging to the Cacique Nutibara and Metro blocks.[FN3]

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[FN3] Information supplied in the original petition which the IACHR received on March 7, 2005, pp. 5 and 6.

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8. The petitioners assert that in response to the increased presence of these groups, a series of joint military operations were conducted in 2002, in a clamp down aimed at crushing these groups. Operación Mariscal was conducted on May 21, 2002, followed by Operación Potestad in June, then Operación Antorcha in August and Operación Orión in October. These were joint operations, involving members of the National Army's Fourth Brigade; members of the National Police Force attached to the Antioquia Police Command; personnel from the Administrative Security Department (DAS); members of the Colombian Air Force (FAC); members of the Technical Investigations Corps (CTI); and personnel attached to the Office of the Attorney General of the Nation.[FN4] The petitioners contend that some 350 people were detained in Operation Orion; 170 of these were turned over to the judicial authorities.

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[FN4] Information supplied in the original petition which the IACHR received on March 7, 2005.

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9. The petitioners allege further that in the wake of these operations, paramilitary groups became a stronger presence in Medellín's Comuna 13. They also allege that as a consequence of these operations, many civic and social organizations disbanded because of the threats and persecution that their members suffered. One such organization was the Las Independencias Women's Association [Asociación de Mujeres de Las Independencias - AMI].[FN5]

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[FN5] Women organization established in 1996, it groups women heads of family with the purpose to obtain the social recognition of the woman. It takes part in the recognized Colombian Women's Organization Network and in the Pacific Route of Women in Latin America.

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10. The petitioners state further that the military takeover of the sector continued subsequent to Operation Orion, leading to more arrests. They allege that in a joint Police/Army action conducted on November 12, 2002, Mrs. Mosquera, Mrs. Naranjo and Mrs. Yarce, all well-known community leaders, were taken into custody. María del Socorro Mosquera was President of the AMI,[FN6] Mery Naranjo and Ana Teresa Yarce served, respectively, as President and Auditor of the Las Independencias III district in Comuna 13. The women were taken into custody in a highly irregular manner: there was no order for their arrest or detention issued by a court of law; a "child dressed in a military uniform" was somehow involved; and they were "identified" by purported witnesses wearing hoods. The three women detained did not have the advice of defense counsel or of an officer of the court. The petitioners state that after being questioned, the three community leaders were held, charged with very serious crimes. The petitioners contend that even though there was not a shred of the evidence required by law to support the charges, the three community leaders were held in custody for eleven days and were released by virtue of a provisional court ruling that found there was no proof of their involvement in the crimes with which they were charged.

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[FN6] A women's organization in existence since 1996,. Its members are female heads of household and its purpose is to improve women's condition in society. It is part of the well-known Network of Women's Organizations in Colombia and in Latin America – Women's Peaceful Avenue.

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11. The petition alleges that after this episode, in November and December 2002, Mrs. Mosquera, Mrs. Naranjo and Mrs. Yarce asked authorities in the National Government to adopt the measures necessary to protect their lives and personal safety, since they serious cause to believe that their lives and those of their next of kin were in danger.

12. The petition alleges that on August 8, 2003, Mrs. Yarce filed a complaint with the Office of the Attorney General of the Nation –the Rapid Response Unit of the Office of Divisional

Public Prosecutor 116- to the effect that she had been receiving threats from paramilitary operating unchecked in the area, despite the heavy military presence there. She asked that for the sake of her own life and safety, an investigation be conducted..

13. The petition states that on October 6, 2004, Mrs. Yarce was killed by paramilitary gunmen, as she was engaged in civic work in the Las Independencias III district, in the company of Mery Naranjo. Nothing in the allegations suggests that any protective measures were ever implemented.

14. The petitioners also allege that on February 14, 2006, a commando unit that was a combination of Army personnel and paramilitary conducted an unlawful search of the home of Mrs. Mery Naranjo's family.[FN7]

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[FN7] Observations from the petitioners, which the IACHR received on December 28, 2006, p. 8.

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15. As for the legal basis for the complaints, the petitioners allege that the State is responsible for violation of the right to humane treatment, the right to personal liberty, the right to a fair trial, the right to have one's honor respected and one's dignity recognized, freedom of association, the right to protection of one's family, freedom of movement and residence, the right to judicial protection, and the obligation not to suspend non-derogable rights, recognized in Articles 5, 7, 8, 11, 16, 17, 22, 25, and 27 of the American Convention, all in relation to Article 1(1) thereof and to the detriment of community leaders Mosquera Londoño, Naranjo Jiménez and Yarce. It also alleges violation of Article 4 of the American Convention, to the detriment of Ana Teresa Yarce.

16. The petitioners allege that the violation of the right to freedom of movement and residence, protected under Article 22 of the Convention, occurred by virtue of the forced displacement of Mrs. Mosquera Londoño and Mrs. Naranjo Jiménez, who were forced to move away from the district for the sake of their own safety. They had no idea of when they would be able to return. The petitioners allege that "both families have been disrupted and torn apart" as a direct consequence of this situation; "out of a concern for safety, they were unable to live together." [FN8] The petitioners allege that the breakup of the family is a violation of family rights protected under Article 17 of the American Convention.

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[FN8] Information supplied in the original petition which the IACHR received on March 7, 2005, p. 11.

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17. They allege further that the forced displacement constitutes a violation of the mental and moral integrity of Mrs. Mosquera Londoño and Mrs. Naranjo Jiménez and their next of kin "because of the suffering they have had to endure as a consequence of the unfortunate events." This violation of their mental and moral integrity would constitute a violation of Article 5 of the Convention. The petitioners assert that the alleged victims' right to have their honor respected

and dignity recognized was violated by the arbitrary interference that their unlawful deprivation of freedom represented in their lives and the social stigma that they and their next of kin have had to endure and as a result of which armed elements made them a military target.”[FN9]

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[FN9] Information supplied in the original petition which the IACHR received on March 7, 2005, p. 10.  
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18. To support their allegation concerning the alleged violation of the right to freedom of association, the petitioners point out that being active members of the AMI and of the Communal Action Board, Mrs. Mosquera Londoño and Mrs. Naranjo Jiménez were forced to quit their activities when the threats they received ultimately forced them to move.

19. The petitioners also allege that during the state of emergency decreed on August 11, 2002, the State failed to comply with its obligation under Article 27(2) of the Convention, which is not to suspend non-derogable rights, Specifically, they claim that the State “allowed both the Army and the Police to act as judicial police, performing functions not regulated by law; despite repeated complaints, the State failed to take measures to stop the unlawful searches, killings, disappearances and forced displacements that were routine practice within an area under the State security forces’ complete control.”[FN10]

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[FN10] Information supplied in the original petition which the IACHR received on March 7, 2005, p. 11.  
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20. As for the admissibility requirements set forth in Article 46 of the American Convention, the petitioners allege that a complaint was filed with the Office of the Prosecutor for Human Rights to have the May 22, 2003 detention of Mrs. Mosquera Londoño, Mrs. Naranjo Jiménez and Mrs. Yarce investigated, in order to have the responsible public servants disciplined and, if appropriate, a criminal investigation opened.[FN11] Thus far, this complaint would appear to have produced no results. As for the complaint alleging the persecution, threats and forced displacement of Ana Teresa Yarce, the petitioners allege that on August 8, 2003, a complaint was filed with the Rapid Response Unit of the Office of Divisional Public Prosecutor 116, but no action was taken. The petitioners further allege that the investigation into the killing of Ana Teresa Yarce is still in its preliminary stages.[FN12]

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[FN11] In No. 008- 82681, combined with 008-082154, cited in the original petition that the IACHR received on March 7, 2005, p. 7.

[FN12] Petitioners’ observations received by the IACHR on December 28, 2006.  
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21. The petitioners argue, therefore, that under Article 46(2)(c) of the American Convention, the exception to the rule requiring exhaustion of domestic remedies applies in the instant case, and so the complaint is admissible.

B. The State

22. By way of context, the State asserts that Comuna 13 is a complex situation. Because of its geographic location it became the epicenter of the activities of armed bands of outlaws. The State observes that Medellín connects the mountain slopes with some municipalities in the Northeast where “rural terrorist” groups are a heavy presence and require ammunition and supplies and routes into and out of the Aburrá Valley.[FN13] The State notes further that the Fuerzas Armadas Revolucionarias de Colombia (FARC) and the Ejército de Liberación Nacional (ELN) established groups of armed irregulars in Comuna 13 back in the early 1990s, where they engaged in criminal activities that included murder, terrorism, curtailment of individual freedoms and extortion. The State also claims that in 1999 illegal self-defense groups began to make inroads into the outlying areas of Comuna 13, in order to battle the armed irregulars directly. This merely served to increase crime in the area. The State claims that despite the efforts made to restore normalcy and law and order and the progress made thus far, the process that the Comuna is undergoing is still a complicated one.

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[FN13] Note from the Colombia State DDH. GOI No. 31279/1533, dated June 14, 2006, p. 1.  
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23. The State refutes the allegations of connivance between members of law enforcement and the paramilitary groups operating in Medellín. This allegation is the product of the efforts made by the Army and the Police to make Comuna 13 safe again. It also cites figures comparing crime in the city of Medellín before and after Operation Orion.[FN14]

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[FN14] Note from the Colombian State DDH. GOI No. 12442/0552 , March 15, 2007, p. 6.  
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24. As for the detention of Mrs. Yarce, Mrs. Londoño and Mrs. Naranjo, the State alleges that these three people were turned over to the Public Prosecutor’s Office, for the alleged commission of the crime of sedition. It explains that the arrests and indictments were based on information provided by people living in the district; it went on to report that on May 22, 2003, the investigation was closed as there were no evidential grounds upon which to arrive at a decision on the charges brought against the three women.

25. The State argues that the petitioners’ complaint is inadmissible and that the State is fulfilling its obligations to investigate, prosecute, punish and to make full reparations through its system for the administration of justice. Specifically, it is alleging that the remedies under domestic law have not been pursued and exhausted and that the circumstances that would trigger the exceptions that the Convention allows to the prior exhaustion rule are not present.

26. In particular, it considers that the exception by virtue of an unwarranted delay in rendering a final judgment under the domestic remedies does not apply based on the three criteria of the reasonableness of the time allowed, i.e., the complexity of the case, the procedural activity of the parties and the conduct of the judicial authorities.[FN15] It contends that given the complexity of the situation, the time periods allowed for obtaining results must factor in the needs, circumstances and incidental proceedings that investigations involve. The State insists that the court authorities have diligently prosecuted the court cases, despite the difficulty encountered, and that more detailed information cannot be provided because these are still active cases protected by the rules against disclosing information during the pretrial phase.”[FN16]

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[FN15] Note from the Colombian State DDH. GOI No. 31279/1533, dated June 14, 2006, p. 5.

[FN16] Note from the Colombian State DDH. GOI No. 31279/1533 dated June 14, 2006, p. 9.

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27. Concerning the death of Mrs. Yarce, the State alleges that an investigation was assigned to Prosecutor 37 attached to Medellín’s Unidad 2<sup>a</sup> de Vida [inquiries into cause of death][FN17] and then transferred to Medellín’s Office of the Special Prosecutor for Human Rights.[FN18] As to the steps taken during the course of the investigation, the State reports that two persons alleged to have participated in the crime have been identified. It also confirms that the case is still in the preliminary phase.

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[FN17] Investigation No 866181, as reported in the Note from the State DDH. GOI No. 31279/1533 dated June 14, 2006.

[FN18] The investigation file number is 2169 and, as of July 3, 2006, the date on the IACHR received the State’s note, it was in the preliminary, with evidence being taken.

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28. The State asserts that the Office of the Prosecutor Delegated to Defend Human Rights conducted a disciplinary investigation into the allegedly arbitrary detention of Mrs. Yarce, Mrs. Londoño and Mrs. Naranjo and the threats purportedly made against them.[FN19] For jurisdictional reasons, the investigation was then referred to the Valle de Aburrá Office of the Provincial Prosecutor in the department of Antioquia.[FN20] The State reports that by order of June 29, 2006, an Army Corporal Third Class was placed under investigation.[FN21]

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[FN19] Case file No. 8-82157-2003.

[FN20] File No. 136-5270-2004. As of June 14, 2006, the date on which the IACHR received the note from the State, the case was in the preliminary stage, and the evidence ordered during the preliminary inquiry was being taken.

[FN21] Note from the Colombian State DDH. GOI No. 12442/0552 dated March 15, 2007, p. 9.

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#### IV. ANALYSIS ON COMPETENCE AND ADMISSIBILITY



A. Competence

29. Under Article 44 of the American Convention, the petitioners are authorized to lodge petitions with the Commission. The alleged victims named in the petition are natural persons whose Convention-protected rights the Colombian State undertook to respect and guarantee. As for the State, Colombia has been a State party to the American Convention since July 31, 1973, the date on which it deposited its instrument of ratification. The Commission is, therefore, competent *ratione personae* to examine the petition.

30. The Commission is also competent *ratione loci* to examine the petition, because it alleges violations of rights protected by the American Convention, said to have occurred within the territory of Colombia, a State party to the Convention. The Commission is competent *ratione temporis* inasmuch as the obligation to respect and guarantee the rights protected under the American Convention became binding upon the State in July 1973. Therefore, as of the date on which the facts alleged in the petition were said to have occurred the obligation to respect and guarantee those rights was already in force for the State.

B. Admissibility requirements

1. Exhaustion of domestic remedies and deadline for lodging the petition

31. Under Article 46(1)(a) of the American Convention, in order for petitions or claims alleging violation of the American Convention to be admissible, the remedies under domestic law must have been pursued and exhausted in accordance with generally recognized principles of international law.

32. Article 46(2) of the Convention states that the rule requiring exhaustion of domestic remedies shall not apply when:

- a) the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;
- b) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or
- c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

As the Inter-American Court has written, whenever a State alleges a petitioner's failure to exhaust domestic remedies, it must show that the remedies that have not been exhausted are "adequate," in other words, that the function of those remedies within the domestic legal system is suitable to address an infringement of a legal right.[FN22]

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[FN22] I/A Court H.R., Velásquez Rodríguez Case. Judgment of July 29,1988. Series C No. 4, para. 64.

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33. In the instant case, the State is alleging that the remedies under domestic law have not been pursued and exhausted in accordance with Article 46(1)(a) of the American Convention, since the criminal and disciplinary proceedings instituted in connection with the facts alleged in the complaint are still pending. It argues that the exception allowed under Article 46(2)(c) of the Convention does not apply. The petitioners, for their part, are invoking the exception allowed under Article 46(2)(c) by virtue of the unwarranted delay in rendering a final judgment in the domestic courts.

34. The Commission observes that on the question of the reasonableness of the time that a case takes, the Inter-American Court has established that the right to access to justice is not served merely by conducting domestic proceedings; for victims and their next of kin the right to justice also means that within a reasonable period, every measure necessary will be taken to establish the truth of what happened and to punish those responsible.[FN23]

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[FN23] I/A Court H.R., Case of the Ituango Massacre. Judgment of July 1, 2006. Series C No. 148, para. 289; Case of the Pueblo Bello Massacre, Judgment of January 31, 2006. Series C No. 140, para. 171; Case of the “Mapiripán Massacre”. Judgment of September 15, 2005. Series C No. 134, para. 216; Case of the Serrano Cruz Sisters. Judgment of March 1, 2005. Series C No. 120, para. 66, and Case of the 19 Merchants. Judgment of July 5, 2004. Series C No. 109, para. 188.  
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35. The Commission observes that while more than five years have passed since the three women leaders were taken into custody, and more than three years since the death of Mrs. Yarce, justice has still not been done. It also notes that the failure to clarify the facts alleged in the petition left the surviving social leaders unprotected, and provisional measures had to be ordered on their behalf to protect them from the harassment they endured.

36. In its case law, the inter-American system for the protection of human rights has established that an effective investigation is fundamental to and a precondition for protecting certain rights when violated, such as the right to personal liberty, the right to humane treatment and the right to life. This maxim applies regardless of the agent ultimately held accountable for the violation, even private persons; if the authorities fail to investigate the facts, they somehow become accessories to them, thus engaging the international responsibility of the State.[FN24] An effective search for the truth must be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof.[FN25]

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[FN24] I/A Court H.R., Case of the Pueblo Bello Massacre. Judgment of January 31, 2006. Series C No. 140, para. 145; Case of the “Mapiripán Massacre”. Judgment of September 15, 2005. Series C No. 134, paragraphs 137 and 232; Case of Huilca Tecse. Judgment of March 3, 2005. Series C No. 121, para. 66; Case of the “Juvenile Reeducation Institute.” Judgment of September 2, 2004. Series C No. 112, para. 158; Case of the Gómez Paquiyauri Brothers.  
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Judgment of July 8, 2004. Series C No. 110, para. 129, and Case of the 19 Merchants. Judgment of July 5, 2004. Series C No. 109, para. 153.

[FN25] I/A Court H.R., Case of the Ituango Massacre. Judgment of July 1, 2006. Series C No. 148, para. 296; Case of Baldeón García. Judgment of April 6, 2006. Series C No. 147, para. 93; Case of the Pueblo Bello Massacre. Judgment of January 31, 2006, Series C No. 140, para. 144; and Case of the “Mapiripan Massacre”. Judgment of September 15, 2005. Series C No. 134, para. 219.

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37. Given the characteristics of the case and the time that has passed since the facts that prompted the complaint occurred, the Commission considers that the exception provided for in Article 46(2)(c) of the American Convention applies, which is the exception allowed in the case of an unwarranted delay in rendering a final judgment. The rule requiring exhaustion of domestic remedies does not, therefore, apply.

38. Finally, the Commission observes that the exceptions to the rule requiring exhaustion of domestic remedies, provided for in Article 46(2) of the Convention, are closely linked to the determination of possible violations of certain Convention-protected rights, such as judicial guarantees and judicial protection. Therefore, the assessment as to the applicability of these exceptions must take into account each one’s nature and purpose. The Commission will examine the factors that prevented the internal remedies from being exhausted when the time comes to issue its report on the merits, so as to determine whether rights recognized in the American Convention have been violated.

## 2. Deadline for lodging a petition

39. The American Convention provides that in order for the Commission to be able to admit a petition, the latter must be lodged within six months of the date on which the alleged aggrieved party was notified of the final decision in his case. The IACHR has established that the Article 46(2)(c) exception to the rule requiring exhaustion of domestic remedies applies in the instant case. Article 32 of the Commission’s Rules of Procedure provides that in those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition is to be presented within a reasonable period of time, as determined by the Commission. For this purpose, the Commission will consider the date on which the alleged violation of rights occurred and the circumstances of each case.

40. The petition in the instant case was lodged on March 7, 2005, and the facts alleged were said to have occurred starting in May 2002. After assessing and considering the context, the characteristics of the present case and the fact that the investigations are still pending, the Commission finds that the petition was lodged within a reasonable period of time and that the admissibility requirement involving the filing deadline has been met.

## 3. Duplication of proceedings and res judicata

41. Nothing in the case file suggests that the subject of the petition is pending in another international proceeding for settlement or that it is substantially the same as one previously

studied by the Commission or another international body. Thus, the Commission considers that the requirements established in Articles 46(1)(c) and 47(d) of the Convention have been met .

#### 4. Characterization of the facts alleged

42. The Commission considers that the petitioners' allegations regarding violation of the right to life, the right to humane treatment, the right to personal liberty, the right to judicial guarantees, the right to have one's honor respected and dignity recognized, freedom of association, the rights of the family, the right to freedom of movement and residence and the right to judicial protection, could tend to establish violations of the rights protected in articles 4, 5, 7(1), 7(3), 8(1), 11(2), 16, 17, 22(1) and 25 of the American Convention, all in relation to Article 1(1) thereof, i.e. the State's duty to ensure, and the acts and omissions of its agents vis-à-vis the actions of third parties. The Commission does not find these claims to be either baseless or manifestly out of order, and therefore considers the requirements established in Articles 47(b) and (c) of the American Convention have been met.

43. As to the claims asserting an alleged violation of Article 27 of the American Convention, the petitioners point to the state of internal disturbance that the President of the Republic had decreed on the date the facts were said to have occurred. The petitioners are alleging violation of the Article 27 restriction against suspension of non-derogable rights. In the merits phase, the Commission will decide whether the State's international obligations vis-à-vis this article need to be examined.

#### V. CONCLUSIONS

44. The Commission concludes that it is competent to examine the claims made by the petitioners with regard to the alleged violation of articles 5(1), 7(1), 7(3), 8(1), 11(2), 16, 17(1), 22(1) and 25, all in relation to Article 1(1) of the American Convention and to the detriment of María del Socorro Mosquera Londoño, Mery del Socorro Naranjo Jiménez and Ana Teresa Yarce and their next of kin, Article 4 of the American Convention, in relation to Article 1(1) thereof and to the detriment of Ana Teresa Yarce. It also finds that the petition is admissible under the rules set forth in Articles 46 and 47 of the American Convention.

45. Based on the foregoing arguments of fact and of law, and without prejudging the merits of the case,

#### THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

#### DECIDES:

1. To declare the present petition admissible with regard to articles 4, 5(1), 7(1), 7(3), 8(1), 11(2), 16, 17(1), 22(1) and 25 of the American Convention, all in relation to Article 1(1) thereof.
2. To notify the Colombian State and the petitioners of this decision.
3. To proceed to the analysis of the merits of the petition.
4. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 23rd day of the month of July, 2007.  
(Signed): Florentín Meléndez, President; Paolo G. Carozza, First Vice-President; Víctor E. Abramovich, Second Vice-President; Evelio Fernández Arévalos, Sir Clare K. Roberts, and Freddy Gutiérrez, Commissioners.