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| Institution: | Inter-American Commission on Human Rights |
| File Number(s): | Report No. 140/09; Petition 1470-05 |
| Title/Style of Cause: | Members of the Union of State Workers of Antioquia (SINTRAOFAN) v. Colombia |
| Doc. Type: | Decision |
| Decided by: | President: Luz Patricia Mejia Guerrero; First Vice President: Victor Abramovich; Second Vice President: Felipe Gonzalez; Commissioners: Sir Clare K. Roberts, Paulo Sergio Pinheiro, Florentin Melendez, Paolo G. Carozza. |
| Dated: | 30 December 2009 |
| Citation: | SINTRAOFAN v. Colombia, Petition 1470-05, Inter-Am. C.H.R., Report No. 140/09, OEA/Ser.L/V/II., doc. 51, corr. 1 (2009) |
| Represented by: | APPLICANT: Grupo Interdisciplinario por los Derechos Humanos |
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I. SUMMARY

1. On December 27, 2005, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the IACHR") received a petition lodged by Grupo Interdisciplinario por los Derechos Humanos (hereinafter "the petitioners"), which alleged that between June 1995 and May 2005, in different municipalities of the Department of Antioquia, 76 workers affiliated with the Union of State Workers of Antioquia (hereinafter "SINTRAOFAN") were unjustly dismissed and that members of paramilitary groups, with the acquiescence of the agents of the Republic of Colombia (hereinafter "the State", "the Colombian State" or "Colombia"), prevented SINTRAOFAN from operating freely, threatened its members and their families, murdered 30 of its members and two of their relatives, and cause the forced displacement of its members and their next of kin.

2. The petitioners claim that the acquiescence of the State's agents to the actions of members of paramilitary groups engaged the responsibility of the State for violation of the right to humane treatment based on the threats made to 50 members of SINTRAOFAN and on the collective threats against more than 1,470 of its members,[FN1] most of whom belonged to the subdirectorates of Andes, Arboletes, Betania, Betulia, Ciudad Bolívar, Concordia, Frontino, Necoclí, Pueblo Rico, Salgar, San Francisco, Tarazá, Vegachí and Yalí; the right to life of 32 of its members and two of their next of kin;[FN2] the rights to personal liberty, freedom of movement and residence, a fair trial, and judicial protection to the detriment of 29 registered members,[FN3] on account of their forcible displacement; the rights to freedom of association, a fair trial, and judicial protection of the members of SINTRAOFAN; and the rights to a fair trial and judicial protection of the relatives of the victims recognized in the American Convention on

Human Rights (hereinafter "the American Convention"),[FN4] all in connection with the obligation to observe and ensure the rights guaranteed by that treaty. The petitioners also claimed that the State is responsible for violation of the right to freedom of association recognized in Article 8(1)(a) of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (hereinafter "the Protocol of San Salvador") to the detriment of SINTRAOFAN and its members.

[FN1] Carlos Alberto Borja Hoyos, Gilberto Toro Quintero, Charles Figueroa Lopera, César Urán, Francisco Luis Echavarría, Jesús María Castaño, John Jain Betancur, Jorge Soto, Carlos Albeiro Higueta López, Arcadio Chica Foronda, Campo Elías Lozano Perdomo, Darío Saldarriaga, Dempsy Tangarife Yepes, Fernando Alberto Torres Ríos, Gonzalo Humberto Marín, Gustavo Adolfo Bedoya Monsalve, Hernán Rivas Hernández, Hugo Humberto Vásquez Velásquez, Jelver Ramírez González, Jhardy de J. Taborda, John Dairo Castaño, John Jairo Araque, José Leonel Bermúdez Rojas, Julio Florez, Luis Guillermo Betancur, Manuel de Jesús Zapata Valencia, Marcial Manuel Oviedo Casilla, Neftalí González Idárraga, Nicolás Agustín Rendón, Octavio Parra Arredondo, Orlando Córdoba Mejía, Pedro Nel Martínez Morales, René Antonio Restrepo Mejía, William de Jesús Castañeda, Sigifredo de Jesús Bustamante Henao, Hernando Alberto Echeverri Gómez, Belisario Palacio Montoya, Alberto Antonio Estrada, Ángel María Sepúlveda, Marino Usuga Manco, Abelardo de Jesús Quintero, Carlos Mario Velásquez Cano, Carlos Adrián Echavarría, Omar Hernando Pérez, Jorge Eliécer Úsuga, Orlando Martínez, Ramiro Eusse, Gustavo Emilio Montaña Alzate, Roberto Luis Arroyave Giraldo (seriously wounded), and Hernán de Jesús Álvarez (or Alberto Álvarez T.).

[FN2] Francisco Eladio Sierra Vásquez, Juan de la Cruz Aguirre, Juvenal Gallego Montoya, Octavio de Jesús Sepúlveda Benítez, Fabio A. Escobar Martínez, Gabriel Ángel Palacio Estrada, Israel Sánchez Florez, Darío de Jesús Oquendo, Gildardo Durango Rengifo, José Abelardo Jiménez Peña, Liomedi López Yuste, Oscar de Jesús Arrubla, Fidel Antonio Seguro Cano, Ramón Chaverra Robledo, Manuel Alfonso Vásquez Alzate, Hernán de Jesús Álvarez, Luis Humberto Herrera Gallego, Edgar Orlando Marulanda Ríos, Euclides de Jesús Achury, Luis Fernando Elorza, Margarita Guzmán Restrepo, Rafael Ángel Mesa Aguilar, Manuel José Jaramillo, José Gildardo Uribe García, Alveiro Úsuga, Ángel María Cuartas, José David Ríos Madrid, José Luis García, Frank Ángel David, Luis Humberto Herrera Gallego, Gildardo Uribe, Hernán de Jesús Álvarez (or Alberto Álvarez T.), Amparo del Socorro Echavarría (the mother of a member), and Oscar Bermúdez Bravo (the son of a member).

[FN3] Héctor de Jesús Giraldo, Jorge Wilson Ospina Espinosa, José David Taborda G, Omar de Jesús Bedoya Hurtado, Rafael Ángel Muñoz, Francisco Mestra, Antonio Pino, Gildardo Serna, Héctor Echavarría, Jesús María Sanpedro, Jorge Echavarría, José Reinaldo Gallego, Luis Eduardo Atehortua, Luis Eduardo Ramírez, Omar Campiño, Omar Prisco, Oscar Estrada, Jaime Alonso Gallego Gómez, Omar Alberto Tobón Albanéz, Oscar Alberto Estrada, Pedro José Barrera Zuleta, Aníbal Pino, Antonio José Cañaveral Colorado, Julio Cesar Zea Rúa, Luis Eulogio Hernández Atehortua, Sinforiano Páez Gómez, Carlos Sifredis Zapata, Luis Carlos Blandón, and Carlos Adrián Echavarría.

[FN4] Adriana María Álvarez Cano, Alba Iris Córdoba, Consuelo de Jesús Rivera Restrepo, Elba Edilia Florez Cardona, Gilma Palomino Arango, Gladis Elena Alzate Osorio, Gloria Amparo Gallego Rivera, Hilda Liria Contreras Suaza, Jhon Jairo Guzmán Restrepo, Luz Amparo Rojas Uribe, Luz Marina Manco de Aguirre, Luz Mery Mesa Vallejo, María Elba Berrío, María

Fabiola Rengifo de Caro, María Nazareth Arango Usme, Nayda Correa Álvarez, and Olga María Bedoya Laverde.

3. For its part, the State requests the Commission to declare the case inadmissible on account of the failure to satisfy the rule of prior exhaustion of domestic remedies contained in Article 46(1)(a) of the American Convention, the lack of jurisdiction of the IACHR *ratione temporis* and *ratione personae*, and the failure to establish the individual identities of the alleged victims. For their part, the petitioners invoke the exceptions to the requirement of prior exhaustion of domestic remedies provided at Article 46(2) (b) and (c) of the American Convention, to the detriment of approximately 1,500 victims.

4. Having examined the positions of the parties and compliance with the requirements provided in Articles 46 and 47 of the American Convention, the Commission decided to declare the petition admissible as regards the alleged violation of Articles 4(1), 4(2), 5(1), 7(1), 8(1), 16, 22(1), and 25 of the American Convention in conjunction with Article 1(1) thereof; to notify the parties, and to order publication of the report

II. PROCESSING BY THE COMMISSION

5. The IACHR registered the petition as No. P1470-04 and, after a preliminary analysis of its contents, on March 28, 2006, proceeded to transmit a copy of the pertinent portions to the State in accordance with Article 30(2) of the Rules of Procedure. On June 30, 2006, the State submitted its comments, which were relayed on July 6, 2006, to the petitioners so that they might present their observations. On December 22, 2006, the petitioners submitted its comments, which were relayed on February 22, 2007, to the State so that it might present its observations.

6. On March 6, 2007, a hearing was held in the framework of the 131st Regular Session of the IACHR. The State presented its comments on April 4, 2007, and on September 26, 2007, they were transmitted to the petitioners for observations, together with a request for information on the alleged victims. The petitioners submitted their response on March 14, 2008, and it was forwarded to the State on August 8, 2008, while the annexes thereto were transmitted to the State on January 12, 2009.

7. The State presented additional comments on July 15, 2008. These were relayed to the petitioners on September 3, 2008, with a request for their observations; that request was reiterated on December 3, 2008. On September 8, 2008, the State requested an additional month to present its comments on the brief of March 14, 2008, which the Commission granted on September 17, 2008. On October 20, 2008, the State requested another extension in order to present its comments, which the IACHR granted. The State submitted its comments on November 25, 2008. On February 20, 2009, the State requested an additional period of time to submit its comments on the annex to the petitioners' brief, which the Commission granted. On March 26, 2009, the State requested another extension, which the Commission also granted. On April 30, 2009, the State presented its comments on the annexes to the petitioners' brief.

8. On May 7, 2009, the petitioners conveyed their response to the additional comments of the State of July 15, 2008. That response was transferred to the State on May 8, 2008, for comment. On June 10, 2008, the State asked for an extension of 30 days, which the Commission granted. The State submitted its final comments on July 13, 2009.

III. POSITIONS OF THE PARTIES

A. The petitioners

9. The petitioners say that SINTRAOFAN's membership includes municipal workers throughout the department of Antioquia, who work as construction, cleaning and maintenance workers, as well as drivers, among other jobs, and are hired by the State under employment contracts which are governed by the Substantive Labor Code, just like any worker employed by a private company. They say that the law recognizes the right to organize and join trade unions, as well as to present lists of petitions. The petitioners mention that since its inception the union has established a presence in 45 municipalities in the department and that its members are organized into subdirectorates, committees, and branches, with a central executive board based in the city of Medellín.

10. The petitioners claim that in the 1990's persecution increased in Antioquia of political organizations regarded as being left-wing or opposed to the government, along with trade unions, civic organizations, and grassroots organizations in general. They also say that from 1995 to 2005 SINTRAOFAN's members were victims of persecution, mass dismissals, forced dissolution of union subdirectorates, intimidation, arrests, displacement and murder. In that connection, they say that 1995 saw the unjust dismissal of 60 of the union's members in Frontino and 16 in Toledo, followed by more mass dismissals of members of other subdirectorates and committees.[FN5]

[FN5] The petitioners submitted 48 statements received from SINTRAOFAN members or relatives of alleged victims, which were attached to their original petition received on January 13, 2005, as well as six statements accompanying their observations on the brief of the State of December 20, 2006.

11. They say that between June 1995 and June 2002, the following 29 members from different subdirectorates were murdered: Francisco Eladio Sierra Vásquez, Juan de la Cruz Aguirre, Juvenal Gallego Montoya, Octavio de Jesús Sepúlveda Benítez, Fabio A. Escobar Martínez, Gabriel Ángel Palacio Estrada, Israel Sánchez Florez, Darío de Jesús Oquendo, Gildardo Durango Rengifo, José Abelardo Jiménez Peña, Liomedi López Yuste, Oscar de Jesús Arrubla, Fidel Antonio Seguro Cano, Ramón Chaverra Robledo, Manuel Alfonso Vásquez Alzate, Hernán de Jesús Álvarez, Luis Humberto Herrera Gallego, Edgar Orlando Marulanda Ríos, Euclides de Jesús Achury, Luis Fernando Elorza, Margarita Guzmán Restrepo, Rafael Ángel Mesa Aguilar, Manuel José Jaramillo, José Gildardo Uribe García, Alveiro Úsuga, Ángel María Cuartas, José David Ríos Madrid, José Luis García and Frank Ángel David.[FN6]

[FN6] The circumstances of each case are summarized in Annex 1. Original petition received on January 13, 2005, pp. 4-6.

12. They say that in 1999 the subdirectorate to which Hernán de Jesús Álvarez was affiliated was forcibly dissolved and that in the course of that year its president, Luis Humberto Herrera Gallego, was murdered. The petitioners mention that some days after Luis Herrera's murder Hernán de Jesús Álvarez was intimidated and beaten by paramilitaries, who threatened him, saying that he would be murdered if he continued to complain that they had dissolved his subdirectorate

13. Concretely the petitioners say that in early June 2000 paramilitaries summoned all the union members to a meeting where they told them that they had been declared a military target and that they must resign from the union. They say that in the morning of June 12, 2000, Gildardo Uribe and two fellow members of the subdirectorate traveled to the municipality of Yolombó to testify in a labor proceeding brought by a member of the union, and that on returning home they were killed by paramilitaries who shot them several times with firearms.

14. They claim that in the municipality of Andes on February 19, 2002, Mr. Roberto Luis Arroyave Giraldo, a member of the subdirectorate of that municipality, was seriously wounded with a firearm at his place of work. They also say that from October 1997 until the end of 2004, the following 15 union members from different subdirectorates were selectively threatened: Sigifredo de Jesús Bustamante Henao, Hernando Alberto Echeverri Gómez, Belisario Palacio Montoya, Alberto Antonio Estrada, Ángel María Sepúlveda, Marino Usuga Manco, Abelardo de Jesús Quintero, Carlos Mario Velásquez Cano, Carlos Adrián Echavarría, Omar Hernando Pérez, Jorge Eliécer Úsuga, Orlando Martínez, Ramiro Eusse, and Gustavo Emilio Montaña Alzate, and Luis Carlos Blandón.[FN7]

[FN7] The circumstances of each case are summarized in Annex 2. Original petition received on January 13, 2005, pp. 7 and 8.

15. They say that on February 22, 2002, the vehicle in which Hernán de Jesús Álvarez was travelling was intercepted by paramilitaries, who ordered everyone to get out and show their identity document. When they saw his, one of them said, "This is the one we need," and they immediately shot him in the head. Upon falling to the ground one of the paramilitaries planted his foot on his abdomen and fired two shots into his body, before kicking him a number of times, saying, "That's what he gets for being a snitch." [FN8]

[FN8] Petitioners' brief of March 14, 2008, p. 3.

16. They also say that approximately 1,500 workers affiliated to the union under the subdirectorates of Andes, Arboletes, Betania, Betulia, Ciudad Bolívar, Concordia, Frontino, Necoclí, Pueblo Rico, Salgar, San Francisco, Tarazá, Vegachí, and Yalí were collectively threatened from 1997 until October 2002.[FN9]

[FN9] The circumstances of each case are summarized in Annex 3. Original petition received on January 13, 2005, pp. 8-10.

17. They allege, furthermore, that from March 1997 until February 2003, the following 29 union members from different subdirectorates were displaced because of the fear inspired by threats from paramilitaries: Héctor de Jesús Giraldo, Jorge Wilson Ospina Espinosa, José David Taborda G, Omar de Jesús Bedoya Hurtado, Rafael Ángel Muñoz, Francisco Mestra, Antonio Pino, Gildardo Serna, Héctor Echavarría, Jesús Maria Sanpedro, Jorge Echavarría, José Reinaldo Gallego, Luis Eduardo Atehortua, Luis Eduardo Ramírez, Omar Campiño, Omar Prisco, Oscar Estrada, Jaime Alonso Gallego Gómez, Omar Alberto Tobón Albanéz, Oscar Alberto Estrada, Pedro José Barrera Zuleta, Aníbal Pino, Antonio José Cañaverl Colorado, Julio Cesar Zea Rúa, Luis Eulogio Hernández Atehortua, Sinforiano Páez Gómez, Carlos Sifredis Zapata, Luis Carlos Blandón,[FN10] and Carlos Adrián Echavarría.

[FN10] The circumstances of each case are summarized in Annex 4. Original petition received on January 13, 2005, pp. 10-12.

18. They say that Amparo del Socorro Echavarría, the mother of active member Carlos Adrián Echavarría, and Oscar Bermúdez Bravo, the son of active member José Leonel Bermúdez Rojas, were murdered when paramilitaries when looking for members of the union and failed to find any. They say that Mrs. Echavarría was murdered on June 17, 1997, and that Mr. Bermúdez was assassinated on February 25, 2001, at a prearranged meeting with a paramilitary commander.

19. The petitioners say that the municipality of Apartadó implemented a “voluntary” retirement scheme that was a means to put pressure on its workers to resign. They claim that many union members who rejected these agreements received death threats. They say that it was not possible to eliminate jobs at some municipalities in the department because the workers were protected by union guarantees and, therefore, they became an obstacle to the law’s implementation. They also hold that in view of the impossibility of dismissing the union members by legitimate means, some mayors, in connivance with paramilitaries, used threats as a mechanism to put pressure on them to resign from both the union and the municipality.

20. The petitioners say that in March 1997, due to the increase in threats and forced displacement in several municipalities, the Central Executive Board of SINTRAOFAN set up a displacement committee to receive the members of several subdirectorates in Medellín. They say that as a result of the complaints filed by the Central Executive Board, in September 1999 the

organization received a telephone call at its headquarters in Medellín in which the threat was made to plant a bomb in the building.

21. As regards exhaustion of domestic remedies, the petitioners say that different remedies were invoked before with the competent bodies in a bid to have justice administered, the facts investigated, and the culprits punished. With respect to the homicides, the petitioners hold that the Office of the Prosecutor General, through its district prosecutors, has a duty *ex officio* to initiate a preliminary inquiry to determine if the acts actually happened and identify possible suspects, and they include a list of 22 criminal proceedings initiated by the Office of the Prosecutor General,[FN11] which are still at the preliminary investigation stage and in respect of which no effective steps have been taken by the investigating body that would suggest any interest in proceeding on them. As a result, no decisions on merits were forthcoming and there was no knowledge of any investigations that had produced a result.

[FN11] See Annex 5, List of preliminary inquiries opened by the Office of the Prosecutor General. Original petition received on January 13, 2005, pp. 14-15.

22. The petitioners say that on June 13, 2002, SINTRAOFAN filed a complaint with the Office of Human Rights of the Antioquia Regional Office of the Ministry of Labor and Social Security, alleging violation of freedom of association, and that as of the date the petition was lodged the Ministry had taken no steps to prevent the continuation of such violations nor ensured protection for the violated right. The petitioners also say that several complaints were presented to the Antioquia Departmental Prosecutor's Office, Provincial Prosecutor's Offices, and Municipal Attorney's Offices, all to no avail as of the date the petition was lodged.

23. They say that on December 17, 2003, the president and legal representative of SINTRAOFAN filed a complaint with the Office of the Prosecutor General, alleging threats against the trade union organization and its members. They say that the investigation by the Office of the 16th Specialized Prosecutor of case 769.249 had yielded no results.

24. They also mention that in January 2004, the Central Executive Board of SINTRAOFAN requested the Office of Human Rights of the Ministry of the Interior and Justice to adopt protection measures for its members but that this situation had brought no respite in the harassment of the union's members.

25. In particular, they hold that violations that involved threats against individuals and forced displacement could not be reported in a timely manner because the control wielded by the paramilitaries in the municipalities concerned was an illegal constraint that amounted to an effective mechanism of coercion and intimidation in preventing the victims from filing complaints. Furthermore very often the paramilitaries would find out almost immediately when complaints and lawsuits were filed in a given municipality. They claim that many victims had no option of seeking an immediate remedy because the institutions in place -Office of the Prosecutor, Office of the Attorney, and authorities in charge of investigating these violations in certain municipalities- were indifferent to the situation, and that in other cases the paramilitaries

were complicit with or acted with the acquiescence of the police and the army, which increased the fear of filing a complaint. They say that union members did not go to the authorities because of fear and the risk that it entailed for their lives and those of their families, since the civilian and military authorities openly legitimized, accepted, and collaborated with the paramilitary groups and were “complicit in keeping silent” about the crimes committed by the latter.[FN12] They say, however, that whenever they were able to do so, the victims invoked the domestic mechanisms to have the facts investigated.

[FN12] The petitioners submit that access to judicial remedies is only possible to the extent that those who report offenses are afforded real mechanisms of protection that ensure that, as a result of their complaint and collaboration in the identification of those responsible, they will not become victims of retaliation, displacement, or any other measure that prevents the free development of their community. The petitioners cite I/A Court H.R., Exceptions to the Exhaustion of Domestic Remedies (Arts. 46(1), 46(2)(a) and 46(2)(b), American Convention on Human Rights). Advisory Opinion OC-11/90 of August 10, 1990. Series A No. 11, pp. 12 and 13.

26. In response to the argument of the State with respect to the requirement that domestic remedies should be individually exhausted in connection with the collective threats against more than 1,400 union members, the petitioners believe that it is unwarranted for every member of the organization to appear individually before the Office of the Prosecutor to report the same threat made by anonymous notes and telephone calls against the group. In that regard, they believe that it is the State that should provide information on the investigations opened in response to the complaints made by the union.

27. In response to the argument of the State asserting failure to exhaust the administrative jurisdiction (see Section III, B below), the petitioners argue that the Inter-American Court has consistently held that said jurisdiction is not suitable to redress and repair violations of the rights to life and humane treatment.[FN13] With respect to the argument of the State asserting non exhaustion of labor proceedings (see Section III, B below) the petitioners reply that said jurisdiction does not impose sanctions but financial penalties against those responsible for wrongful dismissals and that an action for reinstatement can guarantee the right to work for workers, provided that they enjoy employment security as union representatives, but does not protect against violations of freedom of association.[FN14] Furthermore they say that the time limit on actions to protect the right to employment security of union representatives is two months,[FN15] during which time the paramilitaries continued to exercise their power in the municipalities. In addition, they consider that the requirement alleged by the State to exhaust a claim for civil damages in criminal proceedings would be possible if the State identified those responsible and the latter were prosecuted. However, in the instant case there has been no judgment whatsoever that would enable the relatives of the victims to file a claim for civil damages.

[FN13] In support of their argument the petitioners cite IACHR Report 5-03, Jesús María Valle Jaramillo. Petitioners' brief of May 6, 2009, p. 7.

[FN14] The petitioners explain that the reinstated worker would be unable to exercise his or her freedom of association if -when the official is reinstated- the union has been disbanded as a result of loss of members caused by mass lay-offs. Petitioners' brief of May 6, 2009, p. 4.

[FN15] The petitioners cite Article 118 of the Colombian Labor Procedural Code. Petitioners' brief of May 6, 2009, p. 7.

28. Based on their submissions, the petitioners believed that there has been an unwarranted delay in administering justice in the investigations of the complaints filed. They say that in none of the murder proceedings has a decision being issued on merits and that in every case bar one a formal inquiry was opened. In the investigations of the threats, the petitioners say that the situation is similar; in some cases the investigations are more than 10 years old and in others the case has been set aside. Therefore, they consider that the exceptions to the rule of prior exhaustion of domestic remedies contained in Article 46(2) (b) and (c) of the Convention apply in this instance.

29. In response to the comments of the State to the effect that the Commission lacks jurisdiction *ratione personae* (see Section III, B below), the petitioners hold that the petition initially identifies 91 specific individuals who are SINTRAOFAN members or their next of kin. In relation to the comment of the State that the alleged victims of collective threats have not been individually identified, the petitioners hold that there is no rule in the American Convention or in the Rules of Procedure of the Commission that specifically requires the identification of victims as a pre-requisite for petitions to be considered and that the Commission has heard several cases in which not all the victims were initially named,[FN16] and they furnish a partial list of 1,470 workers affiliated to SINTRAOFAN between 1995 and 2003.

[FN16] The petitioners cite I/A Court H.R. Las Palmeras, Mapiripán and Ituango Cases. Observations of the petitioners on the State's brief of December 22, 2006, p. 3.

30. In response to the submission of the State that the Commission lacks jurisdiction with respect to legal persons as victims of violations of the rights protected in the Protocol of San Salvador (see Section III, B below), the petitioners say that the State did not permit the trade union to operate freely, in contravention of its obligation under Article 8(1) of the Protocol. The petitioners claim that SINTRAOFAN was weakened and dissolved because of its loss of members and the fear of joining the union that resulted from the permanent, systematic persecution of its members and leaders. This impaired the participation of SINTRAOFAN in national and international federations and confederations, which depends on size of membership, thereby undermining its capacity to influence the policy and decisions of the Federation to which it belongs. They argue that the union permits fulfillment and exercise of freedom of association since it has to exist if workers are to exercise that freedom. They also argue that freedom to organize and join a trade union only exists when an individual is a member of a trade union, since that is the only means for them to exercise that freedom.

31. As to the comments of the State to the effect that the Commission lacks jurisdiction *ratione tempore* in relation to the Protocol of San Salvador and the acts that occurred after its entry into force (see Section III, B below), the petitioners are of the opinion that the Commission has jurisdiction over alleged violations of rights recognized in the American Convention and over those acts that occurred after November 16, 1999, the date on which the Protocol of San Salvador came into force, which includes any acts that occurred before that date, whose effects, owing to the continuous nature of said acts, persisted at the time of the Protocol's entry into force. Therefore, they consider that the Commission has jurisdiction over the forced displacements, threats, and killings that occurred before the Protocol entered into force since they are offenses of a continuous nature.[FN17] Therefore, the petitioners ask the IACHR not to exclude from its analysis of admissibility the 36 alleged victims to which the State objects in its submissions (see Section III, B below).

[FN17] The petitioners say that the Inter-American Court has held in its case law that it may in exceptional circumstances exercise jurisdiction over violations of rights recognized in an instrument ratified by a state that were committed before its entry into force if the effects of the violation persist or continue when the treaty is enforced. The petitioners cite I/A Court H.R., *Genie Lacayo v. Nicaragua Case*. Preliminary Objections. Judgment of January 27, 1995. Series C No. 21, and I/A Court H.R., *Velásquez Rodríguez v. Honduras Case*. Judgment of July 29, 1988. Series C No. 4, para. 155. I/A Court H.R., *Trujillo Oroza v. Bolivia Case*. Reparations (Art. 63(1) American Convention on Human Rights). Judgment of February 27, 2002. Series C No. 92. Reasoned Opinion of Judge Cañado Trindade Petitioners' brief of March 14, 2008, pp. 5 and 6 and observations of the petitioners on the State's brief of December 22, 2006, pp. 6-7.

32. As regards the arguments of the State on duplication of proceedings, in view of the case before the International Labor Organization (ILO) (see Section III, B below), the petitioners are of the view that the ILO only issues recommendations on the general situation of human rights in connection with trade unions in the country and not a decision on merits on the facts for which the duplication is invoked. They hold that the petitioner before the ILO is a person who has neither a mandate from the union nor from the victims, that the alleged violations are different, and that the rights concerned are recognized in different international instruments. Therefore, the petitioners consider there to be no duplication since the proceeding is not "substantially the same" as the instant petition, in accordance with what the Inter-American Court has found.[FN18]

[FN18] The petitioners cite: I/A Court H.R., *Baena Ricardo et al. v. Panama Case*. Preliminary Objections. Judgment of November 18, 1999. Series C No. 61, para. 53. Petitioners' brief of March 14, 2008, p.14.

33. As to the comments of the State regarding the 36 victims to the effect that the petitioners did not provide facts that describe violations, but merely their names (see Section III, B below), the petitioners note that they were victims of threats.

34. Based on the foregoing, the petitioners ask the IACHR to find the State responsible for violation of the rights to life, humane treatment, personal liberty, a fair trial, and judicial protection recognized in Articles 4, 5, 7, 8 and 25 of the American Convention, all in connection with Article 1(1) thereof, as well as freedom of association recognized in Article 8(1)(a) of the Protocol of San Salvador.

B. The State

35. In its response the State argues that the petition is inadmissible on account of the Commission's lack of jurisdiction *ratione personae* and *ratione temporis* as well as the petitioner's failure to exhaust domestic remedies in accordance with Article 46(1)(a) of the American Convention.

36. With respect to the competence *ratione personae* of the Commission, the State understands that the group of victims is composed of the 91 persons named in the petition and the members of the legal persons which have been presented as alleged victims (SINTRAOFAN and its subdirectorates). The State further notes that inter-American legal doctrine has determined that for a petition to be admissible, there must be "specific, individually identified victims and that petitions presented in abstracto not connected with the rights of individually identified human beings are not admissible." Therefore, the State considers that the petitioners have the obligation to identify the alleged victims and their next of kin individually since they have the union membership book and that said requirement has not been met, either with respect to the workers who were collectively threatened or as regards the members of the various subdirectorates whose status and number were not determined. By the same token, the State believes that the list of members of subdirectorates and the list of minutes presented by the petitioners should be rejected since they are not supported by evidence and they do not demonstrate union member status.[FN19] Therefore, it requests that the IACHR reject the petition with regard to the allegations in which the victims are not individually identified, named, or specified.

[FN19] The State requests that the list of union members be certified by the union leadership in accordance with the records contained in the union book. State's observations brief DDH.GOI No. 30971/1525 of June 23, 2006, pp. 2-4 and State's Observations Brief DDH.GOI No. 15721/0814 of April 4, 2007, pp. 6-12.

37. Furthermore, with respect to the submission of the petitioners regarding violation of the trade union rights of SINTRAOFAN (see Section III, A above), the State notes that "the IACHR has consistently excluded legal persons from its jurisdiction in the area of individual petitions," saying that it lacks competence *ratione personae* to examine a petition submitted by a legal person because the latter are not covered by the protection offered by the Convention. Nor does

the State concur with the arguments put forward by the petitioners to the effect that the Commission is competent because trade union organizations are indispensable for enabling workers to protect and uphold their rights.[FN20] Furthermore, it holds, based on its interpretation of Article 8(1)(a) of the Protocol of San Salvador, that the freedom that the State affords trade unions to form federations and confederations is an extension of the right of individuals to freedom of association and not a right in its own right. The State, therefore, asks the IACHR to reject the petition inasmuch as it lacks in personam jurisdiction with regard to SINTRAOFAN and its subdirectorates as legal persons.

[FN20] In support of its argument the State cites: I/A Court H.R., Ivcher Bronstein v. Peru Case. Judgment of February 6, 2001. Series C No. 74, para. 127, and I/A Court H. R., Herrera Ulloa v. Costa Rica Case. Judgment of July 2, 2004. Series C No. 107. State's Observations Brief DDH.GOI No. 15721/0814 of April 4, 2007, pp. 12-14.

38. As to the petitioners' submissions with regard to violation of the right to freedom of association recognized in the Protocol of San Salvador, the State notes that the fact that the Protocol came into force for Colombia on November 16, 1999, means that the facts alleged in the petition occurred after its entry into force. The State also says that the Commission lacks temporal jurisdiction to take up the following allegations made in relation to the Protocol of San Salvador because they occurred after the its entry into force: the displacement of Francisco Mestra, Antonio Pino, Girdaldo Serna, Héctor Echavarría, Jesús María Sanpedro, Jorge Echavarría, José Reinaldo Gallego, Luis Eduardo Atehortua, Luis Eduardo Ramírez, Omar Campiño, Omar Prisco, Oscar Estrada, Jaime Alonso Gallego Gómez, Omar Alberto Tobón Albanéz y Oscar Alberto Estrada; the threats against Carlos Adrián Echavarría, Jorge Eliécer Usaga, Orlando Martínez and Ramiro Eusse, and the killing of Juan de la Cruz Aguirre, Juvenal Gallego Montoya, Octavio de Jesús Sepúlveda Benítez, Fabio A. Escobar Martínez, Gabriel Ángel Palacio Estrada, Israel Sánchez Florez, Darío de Jesús Oquendo, Gildardo Durango Rengifo, José Abelardo Jiménez Peña, Liomedi López Yuste, Oscar de Jesús Arruba, Luis Humberto Herrera Gallego, Luis Fernando Elorza, Margarita Guzmán Restrepo, and Manuel José Jaramillo.

39. In response to the argument of the petitioners with regard to the continuous nature of the alleged violations of Article 8(1)(a) of the Protocol of San Salvador arising from the displacement and lack of response to the complaints lodged by members of SINTRAOFAN, the State holds that it is spurious to assert that the apparent continuous nature of the displacement and failure to investigate the offenses renders the violation of the right contained in Article 8(1)(a) permanent, since that would distort the structure of the scope of the Commission's temporal jurisdiction.[FN21] The State considers that the alleged violation of freedom of association was consummated when the members were forcibly separated from the union by third parties, a deed not attributable to the State. It argues that it is natural for certain effects to persist but that does not make the violation continuous. Consequently, the State requests the IACHR to disregard the supposedly continuous nature of the alleged violations, and to reject the petition with regard to said facts as well as the alleged violation of the Protocol of San Salvador.

[FN21] The State contends that the only instance in which the violation would be continuous was the forced displacement, but that the failure to investigate and prosecute lacked continuity. The State says that the Inter-American Court has pronounced on investigation-related acts or omissions occurring after the date of acceptance of the Court's jurisdiction and decided that it is not competent to rule on such acts or omissions when they occurred before that date even if they are part of the same investigation. The State cites: I/A Court H.R., Nogueira de Carvalho et al. v. Brazil Case. Preliminary Objections and Merits. Judgment of November 28, 2006. Series C No. 161, and I/A Court H. R., Alfonso Martín del Campo Dodd v. Mexico Case. Preliminary Objections. Judgment of September 3, 2004. Series C No. 113. State's Observations Brief DDH.GOI No. 59827/2816 of November 21, 2008, p. 6.

40. The State notes that a complaint brought by domestic and international trade union organizations against the State of Colombia -Case No. 1787- is proceeding before the International Labor Organization (ILO) for alleged violations of freedom of association,[FN22] in particular murders and other acts of violence against trade union officials, including Francisco Eladio Sierra Vásquez and Gildardo Uribe, and that also included in that case are David Frank Ángel, Edgar Orlando Marulanda Ríos, Ramón Chaverra Robledo, Fidel A. Segura, Luis Carlos Cano, and the SINTRAOFAN workers, all alleged victims in the petition lodged with the Commission. Therefore, the State considers that in view of the overlapping subject matter and victims there is a concurrency of international proceedings. Accordingly it requests the Commission, under Article 46(1)(c) of the American Convention, to declare the petition inadmissible with respect to the seven alleged victims who coincide with the case being processed before the ILO, and with respect to the allegations relating to the death threats directed in general at the members of SINTRAOFAN and their subdirectorates.

[FN22] Complaint presented by the International Confederation of Free Trade Unions (ICFTU), the Latin American Central of Workers (CLAT), the World Federation of Trade Unions (WFTU), the Single Confederation of Workers of Colombia (CUT), the General Confederation of Democratic Workers (CGTD), the Confederation of Workers of Colombia (CTC), the Trade Union Association of Civil Servants of the Ministry of Defence, Armed Forces, National Police and Related Bodies (ASODEFENSA), the Petroleum Industry Workers' Trade Union (USO), the World Confederation of Labour (WCL). State's Observations Brief DDH.GOI No. 15721/0814 of April 4, 2007, p. 21.

41. The State also argues that the petitioners' complaint fails to meet the requirement of prior exhaustion of domestic remedies and that the exceptions provided in Article 46(2) (b) and (c) are not applicable given that said remedies were and still are available, that several of the investigations are still underway, and that no analysis has been made of reasonableness of time with respect to the criminal proceedings.

42. In this connection, the State considers, with respect to the alleged victims affected by the loss of their freedom of association as a result of a violation of the right to life -for which

restitution is impossible-, that this situation has triggered criminal proceedings as the suitable remedy. The State also mentions that the families of the deceased had access to two mechanisms to seek reparation: a direct claim for damages in an administrative proceeding for acts attributable to agents of the State, or a civil claim for damages in a criminal proceeding for acts not attributable to the State. The State notes that a direct claim for damages is not appropriate on its own but is an additional remedy that is invoked together with other remedies offered by the State in order to protect against human rights violations and provide adequate comprehensive reparation,[FN23] and which must be exhausted.

[FN23] In support of its argument the State cites: IACHR, Report No. 5/03 Jesús María Valle Jaramillo. State's observations brief DDH.GOI No. 36912/1876 of July 10, 2009, pp. 15 and 16.

43. The State also says that in cases where the right to life of the union members was not compromised, they also had access to special labor proceedings to protect their employment security as union representatives, either through a wrongful dismissal action to confirm due cause for dismissal, or through an action for reinstatement, by which the court is petitioned to order the restoration of the labor relationship or payment of lost pay.[FN24] The State says that indirect dismissal -through illegal constraint of workers to force them to resign- is banned as a form of termination of the labor relationship, against which an action for reinstatement can be interposed. In response to the argument of the petitioners that a labor proceeding is not a suitable remedy to protect freedom of association, the State says that the reparations provided through such proceedings serve a dual purpose: to ensure the worker's right to work and, therefore, to ensure freedom of association. The State further argues that the statutory time limit for bringing an action for reinstatement is a rule designed to ensure the correct administration of justice and does not constitute a breach of the American Convention.

[FN24] The State also refers to the possibility of access to a regular labor proceeding to present any claim connected with the labor relationship, such as dismissal without due cause in the case of workers who do not enjoy employment security as union representatives. State's observations brief DDH.GOI No. 12574/1569, June 18, 2007, p. 4.

44. The State says that the petitioners claim that illegal armed groups prevented their access to the domestic courts and that in only one case was this situation reported to the authorities for investigation. The State holds that given the individual character of petitions and that it is not possible to claim that a situation of universal fear existed, the argument that fear prevented the victims from instituting proceedings before the domestic courts must be proved on an individual basis. The State also considers the petitioners' claim regarding the paramilitary groups' supposed penetration of institutions to be reckless and unfounded. The State includes in its observations brief a list of 21 cases investigated at the domestic level, some of which are still open. Based on the foregoing, the State requests that the Commission refrain from a reasonableness-of-time analysis of the criminal proceedings until the elements necessary to confirm compliance with the

requirements established by its case law have being provided;[FN25] and that it declare the exceptions to the rule of exhaustion of domestic remedies invoked inapplicable.

[FN25] To wit, complexity of the matter, procedural activity of the interested party, and behavior of the judicial authorities.

45. The State also notes with respect to the following 36 alleged victims that the petitioners have provided their names but no information as to facts that amount to violations: Carlos Alberto Borja Hoyos, Gilberto Toro Quintero, Charles Figueroa Lopera, César Urán, Francisco Luis Echavarría, Jesús María Castaño, John Jain Betancur, Jorge Soto, Carlos Albeiro Higueta López, Hernán de Jesús Álvarez, Arcadio Chica Foronda, Campo Elías Lozano Perdomo, Darío Saldarriaga, Dempsy Tangarife Yepes, Fernando Alberto Torres Ríos, Gildardo Uribe García, Gonzalo Humberto Marín, Gustavo Adolfo Bedoya Monsalve, Hernán Rivas Hernández, Hugo Humberto Vásquez Velásquez, Jelver Ramírez González, Jhardy de J. Tabora, John Dairo Castaño, John Jairo Araque, José Leonel Bermúdez Rojas, Julio Florez, Luis Guillermo Betancur, Manuel de Jesús Zapata Valencia, Marcial Manuel Oviedo Casilla, Neftalí González Indárraga, Nicolás Agustín Rendón, Octavio Parra Arredondo, Orlando Córdoba Mejía, Pedro Nel Martínez Morales, René Antonio Restrepo Mejía, and William de Jesús Castañeda. In this regard, the State believes that it is not possible that the mere fact of affiliation to the union can be grounds for inclusion of these individuals as victims of the acts alleged in the petition. Therefore, it requests the Commission, under Article 47(b) of the Convention, to declare the petition inadmissible with respect to the aforesaid 36 individuals.

46. Finally, the State clarifies that the death of Gildardo Durango Rengifo occurred on September 12, 1996, according to the report of the Chigorodó Municipal Prosecution Unit, not on June 11, 1996 as the petition suggests. The State also says that the death of Amparo del Socorro Echavarría occurred on June 2, 1997, according to the Report of the Segovia Municipal Prosecution Unit, not on June 17 as the petition claims.

IV. ANALYSIS

A. Competence

47. The petitioners, in principle, have standing under Article 44 of the American Convention to lodge petitions with the IACHR. Colombia has been a party to the American Convention since July 31, 1973, when it deposited its instrument of ratification, and a party to the Protocol of San Salvador since November 16, 1999, when it became the 11th country to ratify the Protocol. Therefore, the Commission is competent *ratione temporis* because the obligation to observe and ensure the rights protected in the American Convention was already binding upon the State at the time the events described in the petition are alleged to have occurred. Furthermore, the Commission has *ratione temporis* competence with respect to the rights protected in the Protocol of San Salvador, in relation to the facts that reportedly occurred after November 16, 1999.

48. The petitioners say that the Commission has *ratione temporis* jurisdiction over those acts that occurred after November 16, 1999, the date on which the Protocol of San Salvador came into force. This jurisdiction extends to any acts that occurred before that date, whose effects, owing to the continuous nature of said acts, persisted at the time of the Protocol's entry into force; such acts include forced displacements, threats and murders. For its part, the State responds that the entry into force of the Protocol of San Salvador came after the facts with which the petition is concerned and that the apparent continuous nature of the displacement and failure to investigate the offenses does not render the violation of the right contained in Article 8(1)(a) permanent, since otherwise the scope of the Commission's temporal jurisdiction would be distorted. The State considers that the alleged violation of freedom of association was consummated when the members were forcibly separated from the union.

49. In this connection the Commission also notes that other facts alleged by the petitioners could have occurred after the entry into force of the aforesaid instrument; more specifically, the facts alleged with regard to the response of the judicial authorities. The question of a possible connection between those acts and the guarantees provided in Article 8 of the Protocol of San Salvador is something that the Commission will consider, as appropriate, in the merits stage once it has received comments and evidence on merits from the parties. The Commission finds in this petition that the execution of certain alleged violations was instantaneous in nature and that they were committed and consummated before contentious jurisdiction was accepted, notwithstanding that their consequences might have persisted. As regards those acts, the Commission lacks *ratione temporis* competence in relation to any displacements, threats, and murders that occurred after November 16, 1999.

50. The petition names as alleged victims approximately 1,500 individual members of SINTRAOFAN, in respect of whom the Colombian State undertook to observe and ensure the rights enshrined in the American Convention. The State, for its part, holds that the group of victims is composed of the 91 persons named in the petition and the members of the legal persons which have been presented as alleged victims (SINTRAOFAN and its subdirectorates). The State further notes that for a petition to be admissible, there must be "specific, individually identified victims and that petitions presented in abstracto not connected with the rights of individually identified human beings are not admissible. For their part, the petitioners respond that there is no rule in the American Convention or in the Rules of Procedure of the Commission that requires the identification of victims as a pre-requisite for petitions to be considered.

51. The Commission reiterates that the text of Article 44 of the American Convention, which enables "any person or group of persons, or any nongovernmental entity [to] lodge petitions with the Commission containing denunciations or complaints of violation (...) by a State Party," contains no restriction of competence in terms of the specific identification of individuals affected by such a violation. It is a deliberate omission, intended to allow the examination of human rights violations that, by their nature, may affect a given individual or group of persons who are not necessarily fully identified at the time the petition is lodged.[FN26] In the instant case, the petitioners have submitted a partial list of the SINTRAOFAN membership for the period when the events that are the subject of complaint occurred, which permits identification of the alleged victims. The difficulty in fully identifying the victims of threats that led to their forced displacement stems precisely from their scattered location brought about by their

displacement. The IACHR considers that in such cases, requiring formal criteria to identify the victims does not contribute to the international protection of freedom of movement and residence and the right to property, and therefore the criterion for the identification of victims at this stage of the proceeding should be flexible and the full identification of all the victims shall be determined from the evidence provided by the parties in the merits stage.[FN27] Thus, the Commission has *ratione personae* competence to examine the petition as regards the alleged violations of the American Convention with respect to the members of SINTRAOFAN.

[FN26] IACHR, Report 86/06 Marino López et al.(Operation Genesis), para. 34 and Report 15/09, Massacre and Forced Displacement of Montes de Maria, para. 47.

[FN27] IACHR, Report 86/06 Marino López et al (Operation Genesis), para. 34.

52. While the Colombian State's opinion that the procedure set out in the American Convention whereby the Inter-American Commission and Court examine and determine the responsibility of states parties in individual cases cannot be used to examine general or abstract situations is correct,[FN28] that is not, however, applicable to the matter at hand. The petitioners' complaint does not constitute an abstract grievance about the overall situation of trade union members or internally displaced persons in Colombia. The factual submissions present circumstances of time and place that would appear to have affected the SINTRAOFAN membership, whose location from a geographical and temporal point of view is clear. Furthermore, the State has registration mechanisms for displaced persons at its disposal, and therefore the Commission finds that there are ways to identify the great majority of persons affected by the facts alleged in the petition.

[FN28] IACHR, Report 86/06 Marino López et al.(Operation Genesis), para. 35.

53. The petitioners also name SINTRAOFAN, a legal person, as an alleged victim on the ground that the State did not permit it to operate freely, in contravention of its obligation under Article 8(1) of the Protocol of San Salvador. They argue that the freedom of association of its members is only realized to the extent that the existence of the trade union is permitted and that in this case the State prevented SINTRAOFAN from forming national federations and confederations. For its part, the State holds that the IACHR lacks *ratione personae* jurisdiction to analyze a petition presented on behalf of a legal person, on the basis that the latter are excluded from the protection offered by the Convention and that the right contained in Article 8(1)(a) of the Protocol of San Salvador is an extension of the right of individuals to freedom of association and not a right in its own right.

54. In this regard, the Commission has previously held that the Preamble of the American Convention on Human Rights and Article 1(2) thereof provide that, 'for the purposes of this Convention, "person" means every human being,' and that the protection afforded by the inter-American system of human rights is limited to natural persons.[FN29] Moreover, Article 8(1)(a) of the Protocol establishes guarantees for the right "of workers to organize trade unions" and, as

an extension of that right, the obligation of the State to permit the formation of federations and confederations. Therefore, the Commission lacks *ratione personae* competence to pronounce on alleged violations against a legal person, such as SINTRAOFAN. However, as noted, the IACHR has *ratione personae* competence to examine the petition as regards the members of SINTRAOFAN, who are also named as victims in this case, with respect to the scope of the rights protected in Article 8(1)(a) of the Protocol of San Salvador, as well as to the duties of the State, including that of ensuring the right to form trade unions and permit their members to join together in federations and confederations.

[FN29] Cf. IACHR, Report No. 10/91, Case 10.169 (Banco de Lima) and Report No. 47/97 Tabacalera Boquerón, S.A., paras. 24 and 25.

55. Finally, the Commission has *ratione materiae* competence because the petition alleges violations of human rights protected by the American Convention and the Protocol of San Salvador. Finally, the Commission is competent *ratione loci* to examine the petition because it alleges violations of rights protected in the American Convention and the Protocol of San Salvador that are purported to have occurred within the territory of Colombia, a state party to said treaties.

B. Admissibility requirements

1. Exhaustion of domestic remedies and timeliness of the petition

56. Article 46(1)(a) of the American Convention provides that admission of petitions alleging violation of the Convention shall be subject to the requirement that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law. Article 46(2) of the Convention provides that the rule on prior exhaustion of domestic remedies does 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 found, the State claiming non-exhaustion of domestic remedies has an obligation to prove that the domestic remedies that remain to be exhausted are “adequate” for dealing with the violation alleged, in other words, that the function of those remedies in the legal system of the country is suitable to address an infringement of a legal right.[FN30]

[FN30] I/A Court H.R. Velásquez Rodríguez Case, Judgment of July 29, 1988, para. 64.

57. To begin with, the Commission must clarify which domestic remedies need to be exhausted in the instant case. The Inter-American Court has found that the only those remedies that are adequate for addressing an alleged violation need be exhausted. In the words of the Court:

Adequate domestic remedies are those which are suitable to address an infringement of a legal right. A number of remedies exist in the legal system of every country, but not all are applicable in every circumstance. If a remedy is not adequate in a specific case, it obviously need not be exhausted. A norm is meant to have an effect and should not be interpreted in such a way as to negate its effect or lead to a result that is manifestly absurd or unreasonable.[FN31]

[FN31] I/A Court H.R. Velásquez Rodríguez Case, Judgment of July 29, 1988, para. 63.

58. In the instant case the State argues that the petition does not meet the requirement of prior exhaustion of domestic remedies provided at Article 46(1)(a) of the American Convention because there are still criminal proceedings pending on homicides and alleged violations of the right to humane treatment and that only one complaint alleging threats was presented. As regards the alleged violations of freedom of association the State argues that the petitioners exhausted neither the action for wrongful dismissal nor the action for reinstatement in the labor courts. Furthermore, the State argues that the relatives of the victims did not exhaust the administrative jurisdiction nor file a civil claim for damages in the criminal proceedings.

59. For their part, the petitioners consider that the exceptions to the rule of prior exhaustion of domestic remedies provided at Article 46(2)(c) of the American Convention are applicable in view of the unwarranted delay and ineffectiveness in processing the complaints and the investigations initiated since 1995. They also invoke the exceptions provided in Article 46(2)(b) of the Convention with respect to the arguments on displacement and threats on account of the prevention of access to domestic remedies as a result of fear caused by illegal constraint supported by institutions. They also hold that it is unwarranted for every individual member of the organization to report the same threat made against their group. The petitioners argue that the labor courts are not suitable because they do not impose sanctions but financial penalties on those responsible for wrongful dismissal; that an action for reinstatement can guarantee the right to work for workers, provided that they enjoy employment security as union representatives, but does not protect against violations of freedom of association; and that exhaustion of a claim for civil damages in criminal proceedings would be possible if the State identified and prosecuted those responsible. However, in the instant case there has been no judgment whatsoever that would enable the relatives of the victims to file a claim for civil damages. They also argue that the Inter-American Court has consistently held that the administrative jurisdiction is not suitable to redress and repair violations of the rights to life and humane treatment.

60. As to the submissions concerning the duty of the State to protect and react to violations of the rights to life and humane treatment, the case law of the IACHR recognizes that when a publicly actionable offense is committed, the State has the obligation to institute criminal

proceedings and pursue them,[FN32] and that in such cases, this is the best way to clarify the facts, judge the perpetrators, and establish the corresponding criminal punishment, in addition to providing for other forms of reparation, including financial reparation. The Commission notes that the petitioners' claims in the instant case refer to alleged violations of inalienable fundamental rights, to wit the rights to life and humane treatment, which entail publicly actionable offenses for the State, a fact that warrants consideration for the purposes of determining the admissibility of the complaint.

[FN32] Cf. IACHR, Report No. 52/97, Arges Sequeira Mangas, pars. 96 and 97, Report No. 55/97 Juan Carlos Abella, para. 392, and Report No. 62/00, Hernando Osorio Correa, para. 24.

61. The Commission finds that the Office of the Prosecutor General opened 21 ex officio investigations for homicides and violations of the right to humane treatment, and that more than 14 years after the first investigation was initiated in August 1995, 11 remain open, six have been closed, three are suspended, one is at the preliminary investigation stage, and no suspected culprits have been identified or singled out.

62. In this regard, the Commission notes that, as a general rule, criminal investigations must be conducted promptly, in order to protect the interests of the victims, preserve the evidence, and safeguard the rights of anyone considered a suspect in the context of the investigation. As the Inter-American Court has noted, while every criminal investigation must meet a series of legal requirements, the rule of prior exhaustion of domestic remedies should not lead international action on behalf of the victims to come to a halt or to be delayed to the point of being rendered ineffective.[FN33]

[FN33] I/A Court H.R., Velásquez Rodríguez Case, Preliminary Objections, Judgment of June 26, 1987, para. 93.

63. The Commission also notes that the petitioners attempted various remedies before the authorities in a bid to have justice administered. Specifically, on June 13, 2002 SINTRAOFAN filed a complaint with the Office of Human Rights of the Antioquia Regional Office of the Ministry of Labor and Social Security, alleging violation of freedom of association. Furthermore, several complaints were presented to the Antioquia Departmental Prosecutor's Office, Provincial Prosecutor's Offices, and Municipal Attorney's Offices, all to no avail. On December 17, 2003, SINTRAOFAN filed a complaint with the Office of the Prosecutor General, alleging threats against the trade union organization and its members. However, the investigation of this complaint has also failed to yield any results.

64. As regards the direct reparation action to which the State refers, the Commission notes that such an action does not offer the necessary elements suitably to remedy the injuries alleged, which mainly concern the duty of the State to prevent violations and protect rights. The

administrative jurisdiction is a mechanism aimed at supervising the administrative activity of the State that only allows obtaining a compensation for damages caused by abuse of authority.

65. Furthermore, based on the alleged facts, the Commission finds *prima facie* that the members of SINTRAOFAN received death threats or were murdered because of their opposition to the “voluntary retirement plan”, layoffs and the dissolution of union subdirectorates, as well as their complaints or participation as witnesses in a labor proceeding; that the alleged context of intimidation precluded or obstructed their access to domestic remedies; and that the acquiescence is alleged of agents of the state in this framework of intimidation and obstruction.

66. The Commission has stated that an essential component of the enforceability of the right to justice and social rights is the possibility of access to actions in representation of collective interests, and it has referred to the right to effective judicial protection in its collective dimension. The right to justice is covered in Article 25 of the American Convention and closely linked to freedom of association. Accordingly, the relevant judicial remedies are those that are suitable for the protection of rights of this type.[FN34] In this connection the Commission observes that the petitioners claim that the alleged victims were the target of threats from paramilitaries with the acquiescence of state agents, which in very often resulted in their murder, as collective acts of reprisal designed to interfere with their union activities. They also allege that the State was aware of the situation and yet failed to provide an effective response. To the extent that the petitioners claim a collective dimension in the alleged threats and forced displacement and bearing in mind the lack of response from the State, a suitable remedy would have to be capable of addressing this situation. The petitioners have claimed an absence of remedies that are capable of this and the State, for it is far, has based its response on remedies of an individual nature. Consequently, in a case such as this it is not necessary to exhaust these remedies before resorting to the inter-American system.

[FN34] IACHR, Report on Access to Justice as a Guarantee of Economic, Social, and Cultural Rights. A Review of the Standards Adopted by the Inter-American System of Human Rights, OEA/Ser.L/V/II.129 Doc. 4, para. 269.

67. Therefore, given the characteristics of the instant case and the time elapsed during the period of alleged violations that are the subject of the petition, the Commission finds to be applicable the exceptions provided in Article 46(2) (b) and (c) of the American Convention as regards the delay in domestic judicial proceedings on the homicides and in processing the complaints of violation of the right to humane treatment. Therefore, the rule on exhaustion of domestic remedies can be set aside.

68. Invocation of the exceptions to the rule of exhaustion of domestic remedies provided in Article 46(2) of the Convention is closely linked to the determination of possible violations of certain rights set forth therein, such as guarantees of access to justice. However, Article 46(2), by its nature and purpose, is a self-contained provision *vis á vis* the substantive provisions contained in the Convention. Therefore, to determine whether or not the exceptions to the rule of exhaustion of domestic remedies are applicable to a particular case requires an examination

carried out in advance of and separate from the analysis of the merits of the case, since it depends on a different standard of appreciation to that used to establish whether or not there has been a violation of Articles 8 and 25 of the Convention. It should be clarified that the causes and effects that have prevented exhaustion of domestic remedies in the instant case will be examined, where pertinent, in the report that the IACHR adopts on the merits of the dispute, in order to determine if they constitute violations of the American Convention.

2. Timeliness of the petition

69. The American Convention provides that for a petition to be admissible, it must be presented within six months of the date on which the party alleging violation of rights was notified of the final judgment. In the complaint under review the IACHR has determined that the exceptions to the rule of exhaustion of domestic remedies pursuant to Article 46(2) (b) and (c) of the American Convention are applicable. In this regard, Article 32 of the Commission's Rules of Procedure states that when the exceptions to the rule requiring prior exhaustion of domestic remedies apply, the petition is to be presented within what the Commission deems to be a reasonable period. The Commission must therefore consider the date on which the alleged violation of rights occurred and the circumstances of each case.

70. In the instant case the petition was lodged on December 27, 2005; the facts alleged in the complaint began to occur in 1995 and lasted several years until the date of its presentation. In light of the context and characteristics of the instant case, as well as the fact that there are investigations still open at an initial stage, the Commission considers that the petition was lodged within a reasonable time and that the admissibility requirement regarding the timeliness of the petition must be deemed met.

3. Duplication of proceedings and res judicata

71. The Commission notes that the State has argued lack of jurisdiction under Article 46(1)(c) of the Convention by reason of the concurrent international processing of a complaint against the State of Colombia before the ILO, which involves SINTRAOFAN and seven individuals named as alleged victims of murder and intimidation in the instant petition. Accordingly, the Commission must examine if there is duplication of proceedings.

72. Article 46(1) of the Convention states:

Admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the following requirements:

[...]

c) that the subject of the petition or communication is not pending in another international proceeding for settlement, [...]

73. Article 47 of the Convention provides that:

The Commission shall consider inadmissible any petition or communication submitted under Articles 44 or 45 if:

d. the petition or communication is substantially the same as one previously studied by the Commission or by another international organization.

74. The Inter-American Court, for its part, has found that

The phrase “substantially the same” signifies that there should be identity between the cases. In order for this identity to exist, the presence of three elements is necessary, these are: that the parties are the same, that the object of the action is the same and that the legal grounds are identical. In the instant case there is no duplication of proceedings.[FN35]

[FN35] I/A Court H.R., Baena Ricardo et al. Case. Preliminary Objections. Judgment of November 18, 1999. Series C No. 61, para. 53.

75. For its part, the Commission has held that for duplication or res judicata to exist,[FN36] a petition must be under consideration or have been ruled upon by an international organization with the competence to make decisions on the specific facts described in the petition and to impose measures capable of effectively resolving the dispute.[FN37] In the instant petition the provisional report issued by the Committee on Freedom of Association does not pronounce on the alleged violations of the rights to life, humane treatment, personal liberty, movement and residence, a fair trial, and judicial protection. Furthermore, the Commission has indicated that the recommendations made by the ILO Committee on Freedom of Association “[do] not entail any binding effect, either pecuniary or restorative, or compensatory.”[FN38] Therefore, the Commission finds that the requirements set forth in Articles 46(1)(c) and 47(d) of the Convention have been met.

[FN36] Cf. IACHR, Report No. 89/05 Cecilia Rosa Núñez Chipana, para. 37.

[FN37] I/A Court H.R., Baena Ricardo et al. Case. Preliminary Objections. Judgment of November 18, 1999. Series C No. 61, para. 53.

[FN38] Cf. IACHR, Report No. 23/06, Union of Ministry of Education Workers (ATRAMEC), para. 27.

4. Characterization of the alleged facts

76. According to the petitioners the State has violated the rights provided in Articles 4(1), 5(1), 7(1), 8(1), 16, 22(1), and 25 of the American Convention, in conjunction with Article 1(1) thereof, and in Article 8(1)(a) of the Protocol of San Salvador, inasmuch as they hold that the acts alleged in the petition were carried out by, or with the participation or acquiescence of, agents of the state. The State, for its part, argues that the members of SINTRAOFAN were forcibly separated from the union by third parties and that this is not attributable to the State.

Bearing in mind the available information for the purposes of a review of admissibility, the scope of the State's obligations, and the factual, evidence-based, and legal arguments offered by the parties, the latter are elements that that require and pertain to an analysis of merits.

77. The State has contested the submissions of the petitioners with respect to the alleged violations committed against 36 individuals (see Section III, B), arguing that the petitioners have not stated facts that describe the alleged violations with respect to said individuals. The petitioners, for their part, hold that those persons were victims of threats. In this connection, the Commission finds that for the purposes of the report on admissibility it must include the arguments of the petitioners with respect to the alleged threats made against these 36 individuals. At the same time it points out that the alleged violations will be examined in the report that the Commission adopts on the merits of the dispute in order to determine whether or not they constitute violations of the American Convention.

78. The petitioners also assert violation of the right to personal liberty to the detriment of a number of members of SINTRAOFAN. The Commission considers that the petitioners have not provided sufficient evidence to establish a possible violation of Article 7 of the American Convention and, therefore, it must declare that claim inadmissible.

79. The Commission considers that the petitioners' claims of alleged violation of the rights to life, humane treatment, personal liberty, a fair trial, freedom of association, freedom of movement and residence, and judicial protection, could characterize violations of the rights protected by Articles 4(1), 5(1), 8(1), 16, 22(1), and 25 of the Convention, in conjunction with Article 1(1) thereof, and by Article 8(1)(a) of the Protocol of San Salvador. Since these aspects of the complaint are clearly not baseless or out of order, the Commission considers the requirements set forth in Articles 47(b) and (c) of the American Convention to be met.

V. CONCLUSIONS

80. The Commission concludes that it is competent to examine the petition with respect to the alleged violations of Articles 4(1), 5(1), 8(1), 16, 22(1), and 25 of the Convention, in conjunction with Article 1(1) thereof, and of Article 8(1)(a) of the Protocol of San Salvador, and that the petition is admissible in accordance with the requirements contained in Articles 46 and 47 of the American Convention. It also concludes that the complaint with respect to the alleged violation of Article 7 of the American Convention is inadmissible.

81. Based on the factual and legal arguments given above and without prejudging the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the instant case admissible as regards Articles 4(1), 5(1), 8(1), 16, 22(1), and 25 of the Convention, in conjunction with Article 1(1) thereof, and Article 8(1)(a) of the Protocol

of San Salvador, and to declare the complaint with respect to the alleged violation of Article 7 of the American Convention inadmissible.

2. To notify the Colombian State and the petitioner of this decision.
3. To proceed with its analysis of merits in the matter.
4. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Approved by the Inter-American Commission on Human Rights on the 30th day of the month of December, 2009. (Signed): Luz Patricia Mejía, President; Víctor E. Abramovich, First Vice-President; Felipe González, Second Vice-President; Sir Clare K. Roberts, Paulo Sérgio Pinheiro, Florentín Meléndez, and Paolo G. Carozza, members of the Commission.

Annex 1

List of alleged murder victims

| No. | NAME OF THE ALLEGED VICTIM | MUNICIPALITY (SUBDIRECTORATE) | ALLEGED FACTS |
|-----|------------------------------------|-------------------------------|--|
| 1 | FRANCISCO ELADIO SIERRA VÁSQUEZ | ANDES | On December 16, 2001, the paramilitaries summoned the executive board to a meeting. There they separated him from the group and a commander of the Autodefensas Unidas de Colombia (AUC) assassinated him. |
| 2 | JUAN DE LA CRUZ AGUIRRE | APARTADÓ | On November 25, 1996, he was assassinated by paramilitaries on the road that leads to the municipal landfill. |
| 3 | JUVENAL GALLEGO MONTOYA | APARTADÓ | On November 21, 1996, he was assassinated by paramilitaries while at work. |
| 4 | OCTAVIO DE JESÚS SEPÚLVEDA BENÍTEZ | APARTADÓ | On August 4, 1996, he was murdered by paramilitaries at his home. |
| 5 | FABIO A. ESCOBAR MARTÍNEZ | BETANIA | On November 13, 1999, he and two other members were summoned to a meeting in the municipality of Hispania and murdered there. |
| 6 | GABRIEL ÁNGEL PALACIO ESTRADA | BETANIA | On November 13, 1999, he and two other members were summoned to a meeting in the municipality of Hispania and murdered there. |

| No. | NAME OF THE ALLEGED VICTIM | MUNICIPALITY (SUBDIRECTORATE) | ALLEGED FACTS |
|-----|-------------------------------|-------------------------------|--|
| 7 | ISRAEL SÁNCHEZ FLOREZ | BETANIA | On November 13, 1999, he and two other members were summoned to a meeting in the municipality of Hispania and murdered there. |
| 8 | DARÍO DE JESÚS OQUENDO | CHIGORODÓ | On August 14, 1996, he was murdered by paramilitaries at a mechanical workshop in the town. |
| 9 | GILDARDO DURANGO RENGIFO | CHIGORODÓ | He was murdered by paramilitaries near the municipal bus terminal on September 11, 1997. |
| 10 | JOSÉ ABELARDO JIMÉNEZ PEÑA | CHIGORODÓ | He was assassinated by paramilitaries on the main street of Chigorodó as he was on his way to work on July 8, 1996. |
| 11 | LIOMEDI LÓPEZ YUSTE | CHIGORODÓ | He was murdered by paramilitaries while working in a neighborhood of Chigorodó on June 30, 1995. |
| 12 | LIOMEDI LÓPEZ YUSTE | CHIGORODÓ | He was assassinated by paramilitaries on March 3, 1996. |
| 13 | FIDEL ANTONIO SEGURO CANO | CIUDAD BOLÍVAR | While he was working at the landfill on June 17, 2001, two paramilitaries arrived, separated him from the group, and murdered him. |
| 14 | RAMÓN CHAVERRA ROBLEDO | CIUDAD BOLÍVAR | He was murdered on June 17, 2001, while at work at the municipal landfill. |
| 15 | MANUEL ALFONSO VÁSQUEZ ALZATE | COCORNÁ | On October 11, 2002, some paramilitaries entered his home, took him out by force with his hands tied, and later murdered him on the outskirts of the town. |
| 16 | HERNÁN DE JESÚS ÁLVAREZ | PUEBLO RICO | On February 22, 2002, members of the paramilitary groups intercepted the vehicle in which he was travelling and murdered him. |
| 17 | LUIS HUMBERTO HERRERA GALLEGO | PUEBLO RICO | On July 13, 1999, as he was on his way to Medellín, paramilitaries intercepted and assassinated him. |

| No. | NAME OF THE ALLEGED VICTIM | MUNICIPALITY (SUBDIRECTORATE) | ALLEGED FACTS |
|-----|------------------------------|-------------------------------|--|
| 18 | EDGAR ORLANDO MARULANDA RÍOS | SEGOVIA | On January 1, 2001, paramilitaries took him by force to the “Matuna” district and shot him several times. He died later at Segovia hospital. |
| 19 | EUCLIDES DE JESÚS ACHURY | SEGOVIA | On September 1, 1997 he was murdered outside his house by four men in ski masks. |
| 20 | LUIS FERNANDO ELORZA | SEGOVIA | He was murdered on May 22, 1997. He had been told four months earlier that his name was on a paramilitary “hit list”. |
| 21 | MARGARITA GUZMÁN RESTREPO | SEGOVIA | On March 25, 1997, paramilitaries entered his place of work and assassinated him. |
| 22 | RAFAEL ÁNGEL MESA AGUILAR | SEGOVIA | On July 3, 2003, he was working in the “Zambulligallo” district. A man wearing a hood appeared, argued with him, and shot him three times. |
| 23 | MANUEL JOSÉ JARAMILLO | TARAZA | He was assassinated as he was leaving his house on December 6, 1996. |
| 24 | JOSÉ GILDARDO URIBE GARCÍA | VEGACHÍ | He was assassinated by paramilitaries at his home in Vegachí on June 19, 2000. |
| 25 | ALVEIRO ÚSUGA | APARTADÓ | The precise circumstances of the case are not known |
| 26 | ÁNGEL MARÍA CUARTAS | APARTADÓ | The precise circumstances of the case are not known |
| 27 | JOSÉ DAVID RÍOS MADRID | BETANIA | The precise circumstances of the case are not known |
| 28 | JOSÉ LUIS GARCÍA | BETANIA | The precise circumstances of the case are not known |
| 29 | FRANK ÁNGEL DAVID | SANTA FE DE ANTIOQUIA | The precise circumstances of the case are not known |

Annex 2

List of alleged intimidation victims

| No. | NAME OF THE VICTIM | MUNICIPALITY (SUBDIRECTORATE) | FACTS |
|-----|--|----------------------------------|--|
| 1 | SIGIFREDO DE JESÚS BUSTAMANTE HENAO | ANDES | In January 2002 he received threatening telephone calls in which he was told that if he did not resign he would be killed. |
| 2 | HERNANDO ALBERTO ECHEVERRI GÓMEZ | CISNEROS | On December 2, 2003, he received a call in which he was told that he had been declared a military target and ordered to leave town. |
| 3 | BELISARIO PALACIO MONTROYA | CONCORDIA | On July 15, 2000, a member of a paramilitary group ordered him not to bring any lawsuits against the municipality. |
| 4 | ALBERTO ANTONIO ESTRADA | FRONTINO | In March 2001, paramilitaries told him to drop his claims for reinstatement in his former job or otherwise he would be killed. |
| 5 | ÁNGEL MARIA SEPÚLVEDA | FRONTINO | On May 1, 2001, a member of a paramilitary group told him that if he did not resign from the union his life and the lives of his family would be in danger. |
| 6 | MARINO USUGA MANCO | FRONTINO | In March 2001, paramilitaries told him to drop his claims for reinstatement in his former job or otherwise he would be killed. |
| 7 | ABELARDO DE JESÚS QUINTERO | MACEO | Toward the end of May 2005 he was accosted by a member of a paramilitary group, who ordered him to accept the municipal restructuring reforms and not to file any labor suits. |
| 8 | CARLOS MARIO VELÁSQUEZ CANO | PUEBLO RICO | He was harassed by paramilitaries in December 2004. |
| 9 | CARLOS ADRIÁN ECHAVARRÍA | SEGOVIA | On June 17, 1997, several paramilitaries went looking for him at his home with the intention of killing him. |

| No. | NAME OF THE VICTIM | MUNICIPALITY (SUBDIRECTORATE) | FACTS |
|-----|----------------------------------|----------------------------------|---|
| 10 | OMAR HERNANDO PÉREZ | SEGOVIA | On January 11, 2001, he received a telephone call in which he was told that he was going to be killed. |
| 11 | JORGE ELIÉCER ÚSUGA | TARAZÁ | In October 1997 paramilitaries threatened him by telephone; they said that he would be killed if he left his house. |
| 12 | ORLANDO MARTÍNEZ | TARAZÁ | In October 1997 paramilitaries threatened him by telephone; they said that he would be killed if he left his house. |
| 13 | RAMIRO EUSSE | TARAZÁ | In October 1997 paramilitaries threatened him by telephone; they said that he would be killed if he left his house. |
| 14 | GUSTAVO EMILIO MONTAÑO ALZATE | VEGACHÍ | Toward the end of 2004 the paramilitaries told him that unless he resigned from the union he would be killed. |

Annex 3

List of alleged victims of collective threats

| No. | MUNICIPALITY (SUBDIRECTORATE) | ALLEGED FACTS |
|-----|----------------------------------|--|
| 1 | ANDES | In 2000, paramilitaries threatened all the members of the union and demanded that they put an end to the organization. Toward the end of that year a member of a paramilitary group summoned all the members to a meeting, which was held on January 1, 2001. At the meeting they were told that unless the subdirectorate was terminated they would all be killed. |
| 2 | ARBOLETES | The unionized workers filed complaints and petitions for protection against the municipality owing to the constant violations of Collective Agreements. According to the union, the mayor retaliated by threatening the officials of the union's municipal branch with giving the names of the people who comprised the Executive Board of the union in the municipality to the autodefensas in that area of the Department. |

| No. | MUNICIPALITY (SUBDIRECTORATE) | ALLEGED FACTS |
|-----|----------------------------------|--|
| 3 | BETANIA | In November 1999 paramilitaries murdered three members of this subdirectorate and forced the rest to resign by threatening them with assassination. |
| 4 | BETULIA | On April 10, 2002, paramilitaries summoned all the union members to a meeting. The members attended the meeting on April 19 of that year, during working hours and with the permission of the mayor. There they were told that they had to resign from the organization and that they had eight days to do so or face the consequences. |
| 5 | CIUDAD BOLÍVAR | On August 8, 1999, paramilitaries sent the subdirectorate two letters demanded that the union members resign from the organization within eight days or else they would be declared a military target. All the members resigned as a result. |
| 6 | CONCORDIA | In July 2000 paramilitaries summoned all the union members to a meeting, warning them that if they did not attend they would have to face the consequences. On the following day they were collected by a bus which the mayor had authorized to take them to the place of the meeting. There they were told that they had to resign from the union, that they had 48 hours to do so, and that if they did not comply they would be killed. |
| 7 | FRONTINO | On May 1, 2001, paramilitaries summoned the president of the subdirectorate to a meeting, which he attended in the company of another union member. There a member of a paramilitary group told them that they must resign from the union. Fearful, the members resigned and at present there is no subdirectorate. |
| 8 | NECOCLÍ | In September 2001, the autodefensas group that operated in the Uraba zone ordered the members of this municipal branch of the union to resign from the municipality or else be declared a military target. |
| 9 | PUEBLO RICO | On July 3, 1999, paramilitaries sent the president of the subdirectorate a communiqué signed by the head of the Autodefensas Bloque Metro, in which he ordered them to terminate the subdirectorate within 20 days, otherwise they would be declared |

| No. | MUNICIPALITY (SUBDIRECTORATE) | ALLEGED FACTS |
|-----|----------------------------------|---|
| | | a military target. There has been no subdirectorate in that municipality since that time. |
| 10 | SALGAR | In 1997, a paramilitary commander ordered all the members of the subdirectorate to resign from the union. |
| 11 | SAN FRANCISCO | On October 29, 2002, a pamphlet signed by the High Command of the Frente José Luis Zuluaga de las Autodefensas Campesinas del Magdalena Medio was delivered to the Municipality of San Francisco. In it they were ordered to terminate the union permanently or else the necessary measures would be adopted to break it up. Under pressure from the threats, the members decided to resign from the union as a protection measure and to dissolve the union organization. |
| 12 | TARAZÁ | In February 2000, all the members of the union were summoned by a member of a paramilitary group to a ranch where they were told to resign both from their jobs in the municipality and from the union. 13 members resigned. In April of that year paramilitaries called a meeting of workers and delegates at the municipality and told them to resign from the union. No one agreed. However, the following day the mayor issued a communiqué in which he announced that all the municipal workers who were SINTRAOFAN members had resigned from the organization. In fear for their lives, all of the members signed a document. |
| 13 | VEGACHÍ | In June 2000 paramilitaries summoned all the union members to a meeting where they told them that they had been declared a military target and that they must resign. That year several union members had to leave the town due to constant persecution from paramilitaries. |
| 14 | YALÍ | In October 2001, paramilitaries threatened all the members of the subdirectorate, telling them to resign from the union. In October 2002, the then-mayor asked the senior paramilitary commander of the Bloque Metro to put an end to the subdirectorate. Finally, in November of that year, the union members were forced to attend a meeting in Cristales, in the Municipality of San |

| No. | MUNICIPALITY (SUBDIRECTORATE) | ALLEGED FACTS |
|-----|----------------------------------|--|
| | | Roque. There a paramilitary commander told them that they must resign both from the union and from the municipality, and that the mayor had prepared a voluntary retirement plan that they all had to sign. The subdirectorate no longer exists. |

Annex 4

List of displaced alleged victims

| No. | NAME OF THE ALLEGED VICTIM | MUNICIPALITY (SUBDIRECTORATE) | ALLEGED FACTS |
|-----|------------------------------------|----------------------------------|---|
| 1 | HÉCTOR DE JESÚS GIRALDO | ANDES | In 2001 he received a threat against his life. For that reason he had to move away. |
| 2 | JORGE WILSON OSPINA ESPINOSA | ANDES | On December 20, 2001 he was the victim of an attack He had to move away from the municipality. |
| 3 | JOSÉ DAVID TABORDA G. | ANDES | In December 2001 he had to move to the city of Medellín and subsequently, owing to the seriousness of the threats, he had to leave the country. |
| 4 | OMAR DE JESÚS BEDOYA HURTADO | BETANIA | On May 14 he had to move to Medellín and resign from the union because of threats from the member of a paramilitary group. |
| 5 | RAFAEL ÁNGEL MUÑOZ | CAÑASGORDAS | In 1999 he was forced to move away by paramilitaries. |
| 6 | FRANCISCO MESTRA | CHIGORODÓ | Around July 1997 he was told that he was going to be murdered, so he left the municipality. |
| 7 | ANTONIO PINO | REMEDIOS | Threatened by paramilitaries in March 1997, forcing him to move away from the area. |
| 8 | GILDARDO SERNA | REMEDIOS | Threatened by paramilitaries in March 1997, forcing him to move away from the area. |

| No. | NAME OF THE ALLEGED VICTIM | MUNICIPALITY (SUBDIRECTORATE) | ALLEGED FACTS |
|-----|----------------------------|-------------------------------|--|
| 9 | HÉCTOR ECHAVARRÍA | REMEDIOS | Threatened by paramilitaries in March 1997, forcing him to move away from the area. |
| 10 | JESÚS MARIA SANPEDRO | REMEDIOS | Threatened by paramilitaries in March 1997, forcing him to move away from the area. |
| 11 | JORGE ECHAVARRÍA | REMEDIOS | Threatened by paramilitaries in March 1997, forcing him to move away from the area. |
| 12 | JOSÉ REINALDO GALLEGO | REMEDIOS | In June 1997, the word was all over the town that the paramilitaries were out to murder him. |
| 13 | LUIS EDUARDO ATEHORTUA | REMEDIOS | Threatened by paramilitaries in March 1997, forcing him to move away from the area. |
| 14 | LUIS EDUARDO RAMÍREZ | REMEDIOS | Threatened by paramilitaries in March 1997, forcing him to move away from the area. |
| 15 | OMAR CAMPIÑO | REMEDIOS | Threatened by paramilitaries in March 1997, forcing him to move away from the area. |
| 16 | OMAR PRISCO | REMEDIOS | Threatened by paramilitaries in March 1997, forcing him to move away from the area. |
| 17 | OSCAR ESTRADA | REMEDIOS | Threatened by paramilitaries in March 1997, forcing him to move away from the area. |
| 18 | JAIME ALONSO GALLEGO GÓMEZ | SEGOVIA | In March 1997 he had to leave the town because he was being threatened by paramilitaries. |
| 19 | OMAR ALBERTO TOBÓN ALBANÉZ | SEGOVIA | In March 1997 he had to leave the town because he was being threatened by paramilitaries. |
| 20 | OSCAR ALBERTO ESTRADA | SEGOVIA | In March 1997 he had to leave the town because he was being threatened by paramilitaries. |

| No. | NAME OF THE ALLEGED VICTIM | MUNICIPALITY (SUBDIRECTORATE) | ALLEGED FACTS |
|-----|----------------------------------|-------------------------------|--|
| 21 | PEDRO JOSÉ BARRERA ZULETA | TARAZÁ | In February 2003 he refused to resign from the subdirectorate and, therefore, had to move away from the area. |
| 22 | ANÍBAL PINO | VEGACHÍ | In 1999 the paramilitaries forced him to move away from the area. |
| 23 | ANTONIO JOSÉ CAÑAVERAL | VEGACHÍ | In June 2000 the paramilitaries began to look for several members in order to assassinate them; he was one of them and he had to leave the area. |
| 24 | JULIO CESAR ZEA RÚA | VEGACHÍ | In June 2000 the paramilitaries began to look for several members in order to assassinate them; he was one of them and he had to leave the area. |
| 25 | LUIS EULOGIO HERNÁNDEZ ATEHORTÚA | VEGACHÍ | In June 2000 the paramilitaries began to look for several members in order to assassinate them; he was one of them and he had to leave the area. |
| 26 | SINFORIANO PÁEZ GÓMEZ | VEGACHÍ | In June 2000 the paramilitaries began to look for several members in order to assassinate them; he was one of them and he had to leave the area. |
| 27 | CARLOS SIFREDIS ZAPATA | ZARAGOZA | In February 1998 the paramilitaries declared him a military target. He, therefore, had to go and live in municipality. |
| 28 | LUIS CARLOS BLANDÓN | CHIRGORODÓ | See the petitioners' brief of March 14, 2008, p. 3. |

Annex 5

PROCEDURAL ACTIVITY OF THE STATE

Source: Original petition received on January 13, 2005, pp. 14 and 15.

| NAME OF THE ALLEGED VICTIM | PLACE AND DATE OF THE EVENTS | PROSECUTOR'S OFFICE | CASE |
|---------------------------------|-------------------------------|--|--------|
| ABELARDO JIMÉNEZ PEÑA | Andes, December 16, 2001 | Chigorodó 71st Municipal Prosecutor's Office | 2089 |
| DARÍO DE JESÚS OQUENDO | Chigorodó, August 14, 1996 | Chigorodó 92nd Municipal Prosecutor's Office | 2183 |
| EDGAR ORLANDO MARULANDA RÍOS | Segovia, January 1, 2001 | 21st Specialized Prosecutor | 417903 |
| FABIO A. ESCOBAR MARTÍNEZ | Betania, November 13, 1999 | 16th Specialized Prosecutor | 334975 |
| FIDEL ANTONIO SEGURO CANO | Ciudad Bolívar, June 17, 2001 | 16th Specialized Prosecutor | 483453 |
| FRANCISCO ELADIO SIERRA VÁSQUEZ | Andes, December 16, 2001 | 16th Specialized Prosecutor | 531969 |
| FRANK ÁNGEL DAVID | Santa Fe de Antioquia | 26th Specialized Prosecutor | 335042 |
| GABRIEL ÁNGEL PALACIO ESTRADA | Betania, November 13, 1999 | 16th Specialized Prosecutor | 334975 |
| GILDARDO DURANGO RENGIFO | Chigorodó, September 11, 1997 | Chigorodó 71st Municipal Prosecutor's Office | 2244 |
| LUIS HUMBERTO HERRERA GALLEGO | Pueblo Rico, July 13, 1999 | 13th Specialized Prosecutor | |
| ISRAEL ANTONIO SÁNCHEZ FLOREZ | Betania, November 13, 1999 | 16th Specialized Prosecutor | 334975 |
| JHON JAIRO TABARES FORONDA | Betania, April 1999 | 25th Specialized Prosecutor | 482168 |
| JOSÉ GILDARDO URIBE GARCÍA | Vegachí, June 19, 2000 | Specialized Prosecutor | 363378 |
| JUAN DE LA CRUZ AGUIRRE | Apartadó, November 25, 1996 | Apartadó 9th Municipal Prosecutor's Office | 4491 |
| JUVENAL GALLEGO MONTOYA | Apartadó, November 21, 1996 | Apartadó 7th Municipal Prosecutor's Office | 4477 |
| LUIS CARLOS MUÑOZ | Segovia, March 7, 1997 | Segovia Municipal Prosecutor's Office | 1894 |
| LUIS M. GÓMEZ ÁLVAREZ | Chigorodó, July 31, 1995 | 71st Municipal Prosecutor's Office | 1513 |

| NAME OF THE ALLEGED VICTIM | PLACE AND DATE OF THE EVENTS | PROSECUTOR'S OFFICE | CASE |
|--------------------------------|-------------------------------|---|--------|
| MANUEL ALFONSO VÁSQUEZ ALZATE | Cocorná, October 11, 2002. | El Santuario 31st Prosecutor's Office | 3779 |
| MANUEL JOSÉ JARAMILLO BATANCUR | Tarazá, December 6, 1996 | Caucasia 81st Municipal Prosecutor's Office | 1441 |
| MARGARITA GUZMÁN RESTREPO | Segovia, March 25, 1997 | Segovia 24th Municipal Prosecutor's Office | 1909 |
| RAFAEL ÁNGEL MESA AGUILAR | Segovia, July 3, 2003. | 23rd Specialized Prosecutor | 810573 |
| RAMÓN CHAVERRA ROBLEDO | Ciudad Bolívar, June 17, 2001 | 16th Specialized Prosecutor | 483453 |

Annex 6

PROCEDURAL ACTIVITY OF THE STATE

Source: State's observations brief DDH.GOI No. 30971/1525, June 23, 2006

pp. 11-18.

| No. | ALLEGED VICTIM | INSTANCE AND PROCEDURAL STAGE | FACTS INVESTIGATED |
|-----|----------------------------------|--|---|
| 1 | FRANCISCO ELADIO SIERRA VASQUEZ | Investigation at Ciudad Bolívar Prosecution Unit. On December 28, 2001, the proceedings were referred to the Specialized Prosecutors at the Medellín Division. | Alleged homicide on December 16, 2001, in the municipality of Ciudad Bolívar. |
| 2 | JUAN DE LA CRUZ AGUIRRE | Apartadó 9th Municipal Prosecutor's Office, Case 4491. A preliminary investigation was opened and on June 18, 1997, the order was given to suspend the proceedings and provisionally suspend the case. The case was set aside on June 28, 1997. No suspect has been identified. | Alleged homicide on November 25, 1996 |
| 3 | JUVENAL DE JESUS GALLEGO MONTOYA | Apartadó 48th Municipal Prosecutor's Office, Case 4477. A preliminary investigation was opened and on November 25, 1996, the order was given to suspend the proceedings and provisionally suspend the case. The case was set aside on June 17, 1997. No suspect has been identified. | Alleged homicide on November 21, 1996 |

| No. | ALLEGED VICTIM | INSTANCE AND PROCEDURAL STAGE | FACTS INVESTIGATED |
|-----|--|---|---|
| 4 | FABIO A. ESCOBAR MARTINEZ, GABRIEL ANGEL PALACIO ESTRADA, ISRAEL SANCHEZ FLOREZ | Andes 17th Municipal Prosecutor's Office. A preliminary investigation was opened and on November 16, 1999. [translator: sic] On August 15, 2000, the proceedings were referred to the Specialized Prosecutors at the Medellín Municipal Division. | Alleged homicide on November 13, 1999. |
| 5 | DARIO DE JESUS OQUENDO | Chigorodó 71st Municipal Prosecutor's Office, Case 2183. A preliminary investigation was opened and on August 21, 1996, the order was given to suspend the investigation. No suspect has been identified. | Alleged homicide on August 14, 1996. |
| 6 | GILDARDO DURANGO RENGIFO | Chigorodó 115th Municipal Prosecutor's Office, Case 2244, under preliminary investigation. A preliminary investigation was opened on September 17, 1997, and on September 9, 1997, the order was given to suspend the investigation. On August 24, 2001, the proceedings were referred to the Specialized Prosecutors at the Special Investigative Unit of the Medellín Division. No suspect has been identified. | Alleged homicide on September 12, 1996. |
| 7 | JOSE ABELARDO JIMENEZ PEÑA | Chigorodó 115th Municipal Prosecutor's Office, Case 2089, under preliminary investigation. A preliminary investigation was opened on July 16, 1996, and on May 13, 1997, the order was given to suspend the investigation. On June 24, 2001, the proceedings were referred to the Specialized Prosecutors at the Special Investigative Unit of the Medellín Division. | Alleged homicide on July 8, 1996. |
| 8 | LIOMEDI LOPEZ GIUSTI (YUSTE) | Chigorodó 72nd Municipal Prosecutor's Office, Case 1474. A preliminary investigation was opened on August 3, 1995, and on February 12, 1996, the order was given to suspend the investigation and set aside the proceedings. | Alleged murder of June 30, 1995. |

| No. | ALLEGED VICTIM | INSTANCE AND PROCEDURAL STAGE | FACTS INVESTIGATED |
|-----|--|--|--|
| 9 | OSCAR DE JESUS ARRUBLA | Chigorodó Municipal Prosecutor's Office, Case 2183, under preliminary investigation. A preliminary investigation was opened on March 7, 1996, and on September 16, 1996, the order was given to suspend the investigation. No suspect has been identified. | Alleged homicide on March 3, 1996, in La Playa neighborhood in Chigorodó |
| 10 | FIDEL ANTONIO SEGURO CANO AND RAMON CHAVERRA ROBLEDO | Ciudad Bolívar 9th Municipal Prosecutor's Office, Case 2279. On October 2, 2001, the proceedings were referred to the Special Investigative Unit of the Medellín Division. | Alleged homicide on June 17, 2001. |
| 11 | MANUEL ALFONSO VASQUEZ ALZATE | El Santuario 31st Prosecutor's Office, Case 3779, under preliminary investigation. A preliminary investigation was opened on October 21, 2001, and on October 29, 2003, an order of dismissal was issued. On November 12, 2003, the case was set aside. No suspect was identified. | Alleged homicide on October 11, 2002. |
| 12 | LUIS FERNANDO ELORZA | Segovia 63rd Municipal Prosecutor's Office, Case 2027. On March 26, 1999, the case was referred to the Regional Prosecutor's Office. No suspect has been identified. | Alleged homicide on May 22, 1997. |
| 13 | MARGARITA GUZMAN RESTREPO | Segovia 24th Municipal Prosecutor's Office, Case 1909. In June 1997 the case was assigned to the 104th Municipal Prosecutor's Office. In June 1998 the proceedings were referred to the Puerto Berrío Regional Prosecutor's Office. No suspect has been identified. | Alleged homicide on March 25, 1997 |
| 14 | RAFAEL ANGEL MESA AGUILAR | Segovia 87th Municipal Prosecutor's Office, Case 4263. The investigation was opened in July 2003. In April 2004 the proceedings were referred to the Specialized Prosecution Office in Medellín. No suspect has been identified. | Alleged homicide on July 3, 2003 |
| 15 | MANUEL JOSE JARAMILLO BETANCUR | Caucasia 80th Municipal Prosecutor's Office, Case 1441. A preliminary investigation was opened in December 1996 and the case was subsequently suspended and provisionally set aside. No suspect has been identified. | Alleged homicide on December 6, 1996. |

| No. | ALLEGED VICTIM | INSTANCE AND PROCEDURAL STAGE | FACTS INVESTIGATED |
|-----|--|--|--|
| 16 | JOSE GILDARDO URIBE GARCIA | Yolombó Municipal Prosecutor's Office, Case 1852. A preliminary investigation was opened in June 2000, and in August 2001 the proceedings were referred to the Specialized Prosecution Office of the Special Investigative Unit of the Medellín Division. | Alleged homicide on June 12, 2000 |
| 17 | ALBERTO ANTONIO ESTRADA, ANGEL MARIA SEPULVEDA, MARINO USAGA MANCO | Frontino 129th Municipal Prosecutor's Office, Case 1170. On April 4, 2002, Case 553.064 was referred to the Medellín 25th Specialized Prosecutor's Office | Alleged conspiracy and unlawful constraint of the Mayor of the Municipality of Frontino and four members of the rural self-defense militias in March 2001. |
| 18 | ORLANDO MARTINEZ | Caucasia 80th Municipal Prosecutor's Office, Case 1460. An investigation was opened in December 1996; the case was subsequently suspended and provisionally set aside. No suspect has been identified. | Alleged defamation on November 26, 1996, in Tarazá |
| 19 | OSCAR ALBERTO ESTRADA | Segovia 129th Municipal Prosecutor's Office, Case 3083. An investigation was opened in June 2000. In February 2001 the proceedings were referred to the Specialized Prosecution Office in Medellín. No suspect was identified while the case was in Segovia. | Alleged unlawful constraint on June 30, 2000 in Segovia |
| 20 | AMPARO DEL SOCORRO ECHEVARRIA | Segovia 104th Municipal Prosecutor's Office, Case 2047. An investigation was opened in June 1997. In June 1998 the case was suspended and provisionally set aside. No suspect has been identified. | Alleged homicide on June 2, 1997 |
| 21 | UNION OF STATE WORKERS OF THE MUNICIPALITY OF CONCORDIA | Concordia 34th Municipal Prosecutor's Office, Case 1233. In April 1999 the investigation was referred to the Specialized Prosecution Office in Medellín. No suspect has been identified. | Alleged violation of trade union rights in 1999. |