REPORT No. 6/11[1]
PETITION 311-08
ADMISSIBILITY
JAHEL QUIROGA CARRILLO
COLOMBIA
March 22, 2011

I. SUMMARY

1. On March 14, 2008, the Inter-American Commission on Human Rights (hereinafter "the Commission") received a petition filed by the REINICIAR Corporation and the Colombian Commission of Jurists (hereinafter "the petitioners"), claiming that the Republic of Colombia (hereinafter "the State," "the Colombian State," or "Colombia") was responsible for acts of aggression, harassment, and threats against the human rights defender Jahel Quiroga Carrillo (hereinafter "the alleged victim"), as well as for intelligence activities carried out against her, which had been perpetrated by the State's intelligence agency, as well as for the State's failure to provide judicial clarification of the facts. Moreover, they argue that there are intelligence reports within State security agencies that link the alleged victim to illegal armed groups.

2. The petitioners argue that the State is responsible for violating the rights to humane treatment, to a fair trial, to the protection of honor and dignity, to freedom of thought and expression, to freedom of association, to equal protection, and to judicial protection, established in Articles 5, 8, 11, 13, 16, 24, and 25 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") in conjunction with Articles 1(1) of that instrument. The State, for its part, contends that the petitioners' claims are inadmissible because the incidents that are the subject matter of the petition do not constitute violations of Articles 13, 16, and 24 of the American Convention and because domestic remedies were not exhausted.

3. After reviewing the positions of the parties and establishing compliance with the requirements of Articles 46 and 47 of the American Convention, the Commission decided to declare the case admissible for the purpose of examining the alleged violation of Articles 5, 8(1), 13, 16, and 25 in conjunction with the obligations under Article 1(1) of the American Convention, and in accordance with the principle of *iura novit curia*, in conjunction with Article 2 of the American Convention, and decided to declare Article 24 inadmissible in conjunction with Article 1(1) of the American Convention, to notify the parties, and to order publication of the decision in its Annual Report to the General Assembly.

II. PROCESSING BY THE COMMISSION

4. On May 14, 2008, the IACHR received a petition which was recorded under number P311-08 and, after conducting a preliminary analysis, the IACHR proceeded to transmit a copy of the pertinent parts to the State, giving it two months to submit information, in keeping with Article 30(3) of its Rules of Procedure. On August 3, 2009, the State requested a 30-day extension to present its observations, which the IACHR granted. On September 14, 2009, the IACHR received the State's observations and, on October 2, 2010, it received the missing annexes to those observations, which were forwarded to the petitioners for their observations. On October 30, 2009, the petitioners requested an extension to submit their observations, which the IACHR granted. On December 14, 2009, the petitioners requested an additional extension for its observations, which the IACHR granted.

5. On February 3, 2010, the IACHR received observations from the petitioners, which were transmitted to the State for its observations. On March 17, 2010, the State requested a 30-day extension to present its observations, which the IACHR granted. On April 16, 2010, the State requested an

[1] In keeping with Article 17(2) of the Rules of Procedure of the Commission, Commission member Rodrigo Escobar Gil, a Colombian national, did not participate in the discussion or decision of the instant case.

additional 30-day extension to submit its observations, which the IACHR granted. On May 18, 2010, the State submitted its final observations, which were forwarded to the petitioners for their information.

6. It also bears mentioning that on March 7, 2002, the Commission received a request for precautionary measures on behalf of 10 members of the REINICIAR Corporation, including its director, Jahel Quiroga. Those measures were granted on March 15, 2002.[2] The Commission considers it appropriate to include the MC 3-02 documents in its overall consideration of the subject matter of the petition.[3]

III. THE POSITIONS OF THE PARTIES

A. Position of the petitioners

7. The petitioners argue that the facts addressed in the complaint involve a situation of special risk faced by human rights defenders. They note that the situation in Colombia is characterized by the existence of systematic violations against human rights defenders. They point out that members of the military forces and paramilitary groups erroneously accuse them, with alarming frequency, of unlawful activities, as a result of which they are targets of military or paramilitary attacks or of staged judicial proceedings, with the support of State security agencies. They also state that ongoing restrictions are placed on their access to information held by the State and that applications for writs of *habeas data* are not adequate to obtain that information or to protect the rights adversely affected by the existence and publication of that information. Lastly, they indicate that no one is held accountable for that situation.

8. As background information, the petitioners note that Jahel Quiroga Carillo is a recognized human rights defender, who founded the nongovernmental organization REINICIAR Corporation in 1993 following her departure from Barrancabermeja owing to her work for the nongovernmental organization Regional Corporation for the Defense of Human Rights (CREDHOS). They maintain that as director of the REINICIAR Corporation the alleged victim has lodged complaints regarding the serious human rights situation in the country and that her work has been hampered by intelligence activities whereby she was followed, harassed, and threatened and investigations were opened against her.

9. As far as threats are concerned, the petitioners claim that most of them came from paramilitary groups, who also pointed to supposed ties between the alleged victim and the FARC. They argue that that accusation was reiterated in statements by public officials, as a result of which Jahel Quiroga's human rights defense work has been publicly disgraced and efforts have made to discredit her activities and those of the REINICIAR Corporation. They also indicated that the harassment took the form of illegal tapping of telephone calls and the launching of legal action against Jahel Quiroga.

10. The petitioners contend that the facts reveal a pattern of persecution and harassment against the alleged victim since 1993. They claim that that year marked the beginning of a series of threatening telephone calls to REINICIAR headquarters. As a result of that harassment, the alleged victim and Rafael Gómez, a member of the Board of Directors and a co-founder of REINICIAR, decided to leave the country temporarily for security reasons. They argue that in November 2001 a sympathy card

[2] In its 2001 Annual Report, the IACHR reported that "[o]n March 15, 2002 the IACHR granted precautionary measures on behalf of Rafael Gómez Serrano, Jahel Quiroga Carrillo, Diana Gallego, Luis Alberto Matta, Diana García, Edilma Rosa Granados, Denys Jiménez, Astrid Suárez, Alejandra Vega, and Celmira Moreno, members of the human rights organization REINICIAR, headquartered in Bogotá. According to the request, the beneficiaries had systematically been the victims of verbal and written threats and acts of intimidation, such as being followed and attacks in which they were named as collaborators of dissident armed groups. The Commission decided to grant precautionary measures at its 114th regular session and asked the State, *inter alia*, to effectively investigate the origin of the threats and harassment and to present information on whether or not the organization's telephone lines had been tapped illegally." IACHR, 2002 *Annual Report*, Chapter III, Precautionary Measures granted by the Commission during 2002.

[3] The Inter-American Court of Human Rights has pointed out that "[t]he evidence submitted during all stages of the proceeding has been included in a single body of evidence, for it to be considered as a whole, which means that the documents supplied by the parties with regard to the preliminary objections and the provisional measures are also part of the body of evidence in the instant case." I-A Court of Human Rights, *Case of Herrera Ulloa*. Judgment of July 2, 2004. Series C No. 107. Para. 68.

was sent to the REINICIAR offices threatening various members of the organization, including the alleged victim, and indicating that they were linked to the FARC. Attached to the card was a communiqué, which had been released a few days earlier by the so-called GLU-AUC (Urban Clean-Up Group of the United Self-Defense Forces of Colombia), which threatened human rights defenders with death. Likewise, they claim that the alleged victim had been followed while moving around the city in her vehicle and also that she had received threats by e-mail.

11. The petitioners note that under those circumstances on March 15, 2002, the IACHR granted precautionary measures to protect the alleged victim and other members of the REINICIAR Corporation. The petitioners state that the Ministry of Interior and Justice, through the Protection Program and in view of the risk to Jahel Quiroga, adopted a security plan consisting of an armored vehicle and three escorts, one of whom was the driver. Likewise, security measures were adopted for Jahel Quiroga's residence, such as an armor for the entrance door and security cameras to monitor and record the presence of people in the building. However, they contend that even though the latter measure was approved in 2003, it was installed in 2006. They argue that the precautionary measures have been the subject of follow-up reports, as decided by the Commission, and that it can be concluded from those reports that the Colombian State has not fulfilled its obligation to provide protection and has been ineffective in addressing the sources of danger that have come even from its own agents.

12. The petitioners point out that on April 12, 2006, the escort of the alleged victim who was ascribed to the Administrative Security Department (DAS), in the framework of the Special Comprehensive Protection Program for members and survivors of the Patriotic Union and the Colombian Communist Party, Higinio Baquero Mahecha (26), was killed by two armed men in the downtown area of the city of Bogotá. They also state that in 2007 the alleged victim received information that the paramilitary group Bloque Capital, which operates in Bogotá, was preparing a plan to kill her. They contend that Jahel Quiroga brought these facts to the attention of the national authorities and the IACHR.

13. The petitioners claim that groundless criminal proceedings have been brought against the alleged victim. Specifically, they indicate that on April 7, 2000, Jahel Quiroga filed a right of petition (*derecho de petición*) with the Sectional Director of Prosecuting Offices of the Office of the Prosecutor General of the Nation to seek information about the existence of criminal investigations against her and, if there were such investigations, to be provided with the number of the case and the name of the prosecuting office handling it, and to be allowed to testify freely.

14. On May 11, 2000, the Sectional Director of Prosecuting Offices reported that a case, classified as No. 392173, dated December 24, 1998, had been brought against Jahel Quiroga for the crime of felonious restraint, that the complainant was María Ildaris Rendón Toro, assigned to the Anti-Kidnapping Unit, and that a decision to discontinue that case (*resolución inhibitoria*) had been made on May 4, 2000. Further they argue that Prosecuting Office 59 of the Unit of Crimes against Freedom and Other Guarantees initiated, under case No. 715966, proceedings for a preliminary investigation of the alleged victim regarding the purported commission of the crime of rebellion. They note that on April 27, 2005, the said Prosecuting Office had ordered the case dismissed because of the inexistence of a crime.

15. In relation to the alleged victim's being followed by State security agencies, the petitioners claim that this resulted in the creation of files and the analysis of information on her activities. Specifically, they claim that, on the basis of those files and analyses contained in the State's intelligence archives, people had been encouraged to make declarations in judicial bodies establishing ties between Jahel Quiroga and the illegal armed group Revolutionary Armed Forces of Colombia (FARC). They also argue that these files have led to acts of aggression, threats, and harassment against the alleged victim.

16. The petitioners contend that Jahel Quiroga has, for several years, been aware of the existence of intelligence reports drawn up by State security agencies linking her to the illegal armed group FARC. They claim that in the course of a visit to inspect intelligence records in the DAS, the Office of the Prosecutor General of the Nation (PGN) had found some magnetic files provided by the Director General of Intelligence and the Chief of the Analysis Division that contained annotations on Jahel Quiroga describing her activities as a human rights defender between May 4, 1995, and March 3, 1996.

17. In addition, they claim that Jahel Quiroga was aware of an intelligence file in the Army Military Intelligence Central Office, Analysis and Production Division, that referred to information received in interviews of demobilized persons in the city of Bogotá, which linked her to the FARC. They add that among the sources of the information in the intelligence records are statements by persons who were allegedly later discredited in the courts.

18. They claim that an intelligence report was released to the media, presumably by the Army Command, which identified FARC representatives at the international level and mentioned Jahel Quiroga as a representative in Germany and, as far as her role was concerned, said that she was "a promoter of human rights violation complaints."

19. They argue that the alleged victim has filed numerous rights of petition with various authorities, requesting that she be given access to the information concerning intelligence reports involving her in judicial proceedings instituted against her or in illegal activities, so that she could exercise her right to defense.

20. Specifically, on July 12, 2002, Mrs. Jahel Quiroga Carrillo filed a right of petition with the Office of the Prosecutor General of the Nation seeking information about the existence of judicial investigations in connection with the complaints made by Mrs. María Ildaris Rendón Toro and the status of those investigations; about the destination of the intelligence reports involving both REINICIAR and any of its members; and about whether, based on those reports, any criminal investigations had been opened against the organization or its members; if so, she requested that she be given the number of the case and the name of the prosecuting office handling it so that she could be given a preliminary hearing; further she asked if an investigation was currently under way against her and, if so, she requested the number of the case, the name of the prosecuting office handling it, and that she be given a preliminary hearing.

21. They indicate that on July 25, 2000, through communication No. 005632, the Office of the Prosecutor General of the Nation responded to the right of petition and stated that the Information Center on Criminal Activities (CISAD) of the Office of the Prosecutor General of the Nation, did not have any records of arrest warrants or protective security measures from 1989 on, of adjudication that had been precluded or discontinued owing to full settlement from 1995 on, or of convictions from 1990 on. Further they state that on August 9, 2002, the Chief of the Information and Analysis Section of the Office of the Prosecutor General of the Nation informed Jahel Quiroga that a review of databases indicated that there were no background reports or intelligence files involving the REINICIAR Corporation or Jahel Quiroga Carrillo.

22. They contend that on March 31, 2005, the alleged victim asked the Office of the Prosecutor General of the Nation to allow her to see all the existing files against her and that she be given the necessary and effective means to purge those files in order to protect her reputation and her privacy. They indicate that subsequently, on November 20, 2006, the alleged victim filed a right of petition with the Prosecutor General of the Nation, in which she sought information concerning follow-up to the military intelligence files in which her name was implicated in her capacity as a human rights defender. On December 15, 2006, the Prosecutor Delegate for Prevention in the Area of Human Rights and Ethnic Matters responded to the right of petition and reported that a document was being drawn up that would contain recommendations for the Police as well as the specific procedures that were being developed to enable the Office of the Prosecutor General of the Nation to follow up on the matter.

23. As for the legal remedies resorted to, they argue that on April 24, 2000, the alleged victim filed a complaint with the Human Rights Unit of the Office of the Prosecutor General of the Nation, which described the incidents that occurred in 1998 and 1999 in connection with illegal tapping of her telephone line, harassment, threats, and attempts to take legal action against her. They note that in 2000, 2002, and 2005, Jahel Quiroga informed the Office of the Prosecutor of new acts of criminal conduct targeting her and other REINICIAR members.

24. They contend that on December 11, 2003, Jahel Quiroga asked the National Unit of Human Rights and International Humanitarian Law of the Office of the Prosecutor General of the Nation to consider jointly all of the investigations opened in the Office of the Prosecutor that were related to attacks and threats against members of the REINICIAR Corporation. That request was denied. On September 1, 2005, the alleged victim sought to reactivate the investigation and to obtain a joinder of all the investigations through an office of the National Unit of Human Rights.

25. They allege that the State closed the files of three preliminary investigations in 2003, 2004, and 2006 and that the alleged victim has simply been summoned for an investigation opened in 2007, to which two investigations opened in 2008 were joined, after the petition was presented to the Commission.

26. In view of the aforementioned facts, the petitioners contend that the State is responsible for violations of the rights established in Articles 5, 8, 11, 13, 16, 24, and 25 in conjunction with Article 1(1) of the American Convention to the detriment of Jahel Quiroga Carrillo.

27. As concerns the right to humane treatment established in Article 5 of the American Convention, the petitioners argue that the inclusion of the alleged victim's name in official documents as a member of the illegal armed group FARC places her at risk, causes serious psychological distress, and is damaging to her work in favor of democracy and the rule of law and that it is therefore a violation of her right to humane treatment. Regarding the right to privacy established in Article 11 of the American Convention, the petitioners maintain that that right has been infringed upon by the State because of the false charge by its agents that she belongs to the illegal armed group FARC.

28. In relation to the right to freedom of expression established in Article 13 of the American Convention, the petitioners contend that the freedom to seek, receive, and disseminate information and complaints about the human rights violations of others or themselves is seriously hampered by the false charge that the alleged victim is a member of the illegal armed group FARC.

29. The petitioners argue that the State has infringed upon the right to freedom of association established in Article 16 of the American Convention to the detriment of Jahel Quiroga, in view of the fact that her work as founder and director of the REINICIAR Corporation has been limited by accusations that she belongs to the illegal armed group FARC, which have adversely affected her past and current international activities in defense of human rights, on behalf of REINICIAR.

30. The petitioners contend that the fact that the Colombian authorities have not protected the rights of the alleged victim and that their own security agencies falsely accuse Jahel Quiroga of belonging to an illegal armed group, without the State's having taken effective measures to remedy the fact, constitutes a violation of the right to equal protection established in Article 24 of the American Convention.

31. With regard to the rights to a fair trial and to judicial protection, established in Articles 8 and 25 of the American Convention, the petitioners argue that the State has not provided the alleged victim with judicial guarantees to defend herself against false charges or to prevent the risks posed to her and the REINICIAR members, nor has it offered either a simple or an effective remedy to offer her judicial protection against the violation of her rights. Finally, the petitioners argue that the State failed to meet its general obligation to respect and guarantee rights, as set forth in Article 1(1) of the Convention.

32. As concerns admissibility of the petition, with regard to fulfillment of the prior exhaustion of domestic remedies requirement, established in Article 46(1)(a) of the American Convention, the petitioners contend that there was an unjustified delay in the processing of the criminal investigations into the threats against and harassment of Jahel Quiroga. In addition they argue that there was no strategy behind the investigations aimed at clarifying the facts and identifying the perpetrators and participants, as a result of which the exception to the prior exhaustion of domestic remedies requirement envisaged in Article 46(2)(c) would apply.

33. With respect to the compilation and maintenance of intelligence files and records in State security agencies, as well as the alleged victim's access to that information in order to exercise her right to self-defense and obtain due protection of her rights, the petitioners argue that there is no specific procedure under domestic law for availing oneself of the right to information, *habeas data*, when said information is compiled and analyzed by State intelligence agencies.

34. In that connection, they contend that the absence of an effective remedy to exclude Jahel Quiroga's name from the State's intelligence records and to destroy those records constitutes the exception to the exhaustion of domestic remedies requirement set forth in Article 46(2)(a) as it refers to the absence in the State's domestic legislation of due process of law for the protection of the right or rights that have allegedly been violated. Further they argue that despite the absence in domestic legislation of due process for guaranteeing the alleged rights, Jahel Quiroga had recourse to several judicial measures which failed to yield any results in terms of protection of her rights.

B. Position of the State

35. Firstly, the State expresses its absolute denial of any activity related to threats, harassment, or arbitrary interference in the communications of human rights defenders or any other citizen and, in cases in which these circumstances do exist, expresses its interest in having investigations carried out and seeing the perpetrators punished. Likewise, the State argues that, based on the incidents described by the petitioners, it is impossible to speak of a pattern of systematic persecution and harassment since 1993.

36. Secondly, with regard to the purported State intelligence information, it contends that there is no record whatsoever of the alleged dissemination to the media of an intelligence report describing FARC representatives at the international level, in which "Jahel Quiroga Carreño" is mentioned by the National Army Command as a representative of that group in Germany.

37. Likewise, the State argues that, according to information supplied by the National Army, the document provided by the petitioners titled "Army Military Intelligence Central Office, Analysis and Production Division," dated November 6, 2001, was apocryphal, since although it contained the name of a noncommissioned officer on active duty, the information in it is not recorded in intelligence files and is therefore not consistent with reality. It also argues, with regard to the interview report supposedly containing information about a battle order and received in the REINICIAR offices in 2005, that no evidence was provided in the file to support that statement.

38. The State contends that, as concerns the request made by Jahel Quiroga on March 31, 2005, to the Office of the Prosecutor General of the Nation (see III.A *supra*), it took the corresponding measures and processed the request. It argues that the Office of the Prosecutor General of the Nation conducted the corresponding investigations with the Military Forces, that intersectoral meetings were held, and that finally Mrs. Quiroga was informed that, after a search of different intelligence areas, no notations were found that mentioned her name. It also points out that in view of the delay in responding to Mrs. Jahel Quiroga's petition, the Office of the Prosecutor General of the Nation opened a disciplinary investigation, under case No. 14-152514-06, which was closed by a decision of May 4, 2007.

39. It indicates that, since 2004, the Office of the Prosecutor General of the Nation had been monitoring the process, announced by the National Government, of reviewing and purging the files and that, as part of that monitoring process, numerous meetings have been held, not only among State entities but also with social groups, to enable them to express their concerns about intelligence reports. It points out that as a result of that process, the Ministry of Defense has on several occasions presented reports on intelligence records of the Armed Forces, that criteria for reviewing intelligence records have been established, and that the Intelligence and Counter-Intelligence Law (Law 1288 of 2009) was presented and passed by the Congress of the Republic.

40. Thirdly, as concerns the proceedings initiated against Jahel Quiroga, the State argues that, based on the investigations carried out in cases No. 392773 and No. 715966, it is not possible to

establish a direct tie between the alleged intelligence activities against Jahel Quiroga and the opening of those investigations, as stated by the petitioners.

41. Specifically, the State argues that the investigation conducted in case No. 715966 originated in the certification of copies by the prosecutor overseeing the investigation, promoted by the Unit of Human Rights and International Humanitarian Law of the Office of the Prosecutor General of the Nation under case No. 1127B, against the union leader Hernando Hernández, which ordered that an investigation be opened against Jahel Quiroga for the crime of rebellion.

42. As concerns the investigation in case No. 392773, the State contends that said investigation was opened as a result of a complaint by a person identified as María lldaris Rendón Toro for felonious restraint and that it cannot be concluded that the investigation resulted from State agency intelligence reports.

43. Moreover, the State points out that the facts in connection with the threats and harassment alleged by the petitioners have been acted and followed up on by means of precautionary measures and considers that (i) those situations are being considered by the Commission in a different type of setting (precautionary measures) and that moreover, in the face of those situations, the State has adopted the protective measures requested of it; (ii) there is neither clarity nor evidence regarding the accusations leveled against the State; and (iii) facts exist that are not related to the alleged violations against Jahel Quiroga and they should not be taken into account in the petition. For the reasons set out above, it requests that the Commission, in its consideration of the petition, not take into account the facts related to the precautionary measures MC 3-02.

44. With regard to the inadmissibility of the petition, the State contends that the petitioners have not met the prior exhaustion of domestic remedies requirement and that different aspects of the petition do not constitute violations of the American Convention.

45. As concerns the prior exhaustion of domestic remedies requirement, the State, referring to jurisprudence of the Inter-American Court, concludes in the first place that, in diverse situations, different remedies may be pursued in response to similarly different violations of the American Convention, and in the second place that there can be distinct remedies for each of the rights allegedly violated. The State has set forth below a separate analysis of the exhaustion of domestic remedies for each of the rights of the American Convention that have allegedly been violated.

46. Regarding the petitioners' allegation of violation of the right to humane treatment in respect of the alleged attacks on life and physical safety, the State argues that judicial procedures must be exhausted by means of complaints to the competent authority and that the matter of exhaustion must be examined jointly with the rights to a fair trial and to judicial protection, established in Articles 8 and 25 of the American Convention.

47. Specifically, the State contends that the Office of the Prosecutor General of the Nation has opened various investigations in response to the facts of the instant petition. It argues that Sectional Prosecuting Office 239 of Bogotá is currently pursuing the investigation, under case No. 200704088, based on the information received by Jahel Quiroga in March 2007 regarding a plan to kill her. It points out that four other investigations were joined with this one, that on November 18, 2008, a date was set to interview Jahel Quiroga on November 21, 2008, and that Mrs. Quiroga allegedly did not show up. It argues that progress in the investigation has been obstructed, among other things, by the parties' lack of cooperation. It states that on June 9, 2009, Jahel Quiroga appeared before the Prosecutor and said that she did not remember the specific facts regarding the threats she had received since she had informed the authorities of various incidents in that connection, and she withdrew from the proceeding stating that, if necessary, they could summon her again since she did not have any time to lose.

48. It contends that given the allegations that REINICIAR members were followed and threatened in 2005 and the incident on August 26, 2005, regarding the alleged tapping of Jahel Quiroga's cell phone, the Office of the Prosecutor General of the Nation undertook an investigation, classified as

No. 200504525, which was closed since no factual information was found indicating that a crime had been committed.

49. It claims that the investigation was conducted under case No. 635298 by Sectional Prosecuting Office 242 of Bogotá in connection with threats against Jahel Quiroga and other REINICIAR members, and a decision was made on March 12, 2003 to halt the investigation. It also argues that the investigation was pursued by Sectional Prosecuting Office 240 in connection with the alleged crime of threats against REINICIAR members, and again a decision on April 29, 2004, to halt it. The State argues that these two investigations received special assistance from Prosecutor's Office 219 for Judicial Criminal Matters appointed by the Delegate Prosecutor for Criminal Matters.

50. In relation to the alleged violations of the rights to humane treatment, to privacy, to freedom of thought and expression, to freedom of association, and to equal protection, established in Articles 5, 11, 13, 16, and 24 of the American Convention, the State argues that the appropriate remedy was a legal action for protection (*acción de tutela*).[4] In this regard, it argues that Article 15 of the Constitution protects the right to personal and family privacy and to a good name, as well as the right to see, update, and correct any information about them collected in databases and in records of public and private entities.

51. In addition, it contends that the specific procedure for contesting any information that may appear in battle orders or intelligence reports has been in the process of development since the promulgation of Law 1288 on Intelligence and Counter-Intelligence.

52. In specific terms, the State points out that Law 1288 of 2009 established Centers for the Protection of Intelligence Data in each of the agencies that carry out intelligence activities, in order to ensure that procedures for collecting, storing, and disseminating intelligence data are consistent with constitutional norms. Likewise, the State argues that the Law guarantees that any data that are collected as a result of intelligence activities and that cease to be useful for the aforementioned purposes will be purged by the intelligence agencies themselves.

53. As for existing mechanisms enabling an individual to ascertain whether he or she is included in the intelligence records, in addition to resorting to the right of petition enshrined in Article 23 of the Political Constitution, said individual may submit a written request for such a review to the respective inspectors of the Military Forces or the National Police in the case of military or police intelligence agencies, or may pursue any of the mechanisms provided for in the aforementioned Law 1288 of 2009. Consequently, the State contends that the petitioners have not met the prior exhaustion of domestic remedies requirement and that it is not possible to state that available remedies are inexistent or ineffective since the appropriate remedy for the alleged violations is the legal action for protection, which was not exhausted.

54. In addition, the State argues that the facts presented do not provide any grounds for establishing violations of the rights to freedom of thought and expression, to freedom of association, or to freedom of equal protection as it considers that said facts do not constitute violations of rights embodied in Articles 13, 16, and 24 of the American Convention. In short, the State requests that the Commission declare the petition inadmissible.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence

55. The petitioners are entitled, in principle, under Article 44 of the American Convention to lodge complaints with the Commission. The petition names, as the alleged victim, an individual with

[4] The State draws attention to IACHR Report 36/05, Petition 12.170, Fernando A. Colmenares Castillo, Inadmissibility, Mexico, March 9, 2005, paras. 34, 42, and 42.

respect to whom the Colombian State has undertaken to respect and ensure the rights enshrined in the American Convention. Colombia has been a State Party to the American Convention since July 31, 1973, when it deposited its instrument of ratification. The Commission therefore is competent *ratione personae* to examine this petition.

56. Likewise, the Commission is competent *ratione loci* to take up this petition insofar as it claims violations of rights protected in the American Convention that allegedly occurred within the territory of Colombia, a State Party to said treaties. The Commission is competent *ratione temporis* to examine this complaint since the obligation to respect and ensure the rights protected in the American Convention was in effect for the State on the date on which the facts contained in the petition were alleged to have occurred. Finally, the Commission is competent *ratione materiae*, because the petition denounces possible violations of human rights protected by the American Convention.

B. Admissibility requirements

1. Exhaustion of domestic remedies

57. Article 46(1)(a) of the American Convention requires the prior exhaustion of the remedies available under domestic law, in accordance with generally recognized principles of international law, as a requirement for the admissibility of claims regarding alleged violations of the American Convention.

58. Article 46(2) of the Convention states that the prior exhaustion of domestic remedies shall not be required 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 indicated in Article 31(3) of the Rules of Procedure of the Commission and as stated by the Inter-American Court, when a State argues that the petitioners have not exhausted domestic remedies, it is up to the State to demonstrate that the remedies not exhausted are "adequate" to remedy the alleged violation or, in other words, that the function of those remedies under domestic law is suitable for protecting the legal situation that has been infringed upon.[5]

59. In view of the parties' arguments, it is first of all fitting to clarify which domestic remedies should be exhausted in a case like this one, in light of the inter-American system's jurisprudence. The Commission notes that the petitioner's complaints refer in the first place to the absence of a serious and impartial investigation of the threats and harassment against Jahel Quiroga and, in the second place, to the lack of access to the information collected and analyzed by State intelligence agencies in order to request that it be corrected and purged.

60. Firstly, regarding the absence of a serious and impartial investigation of the threats and harassment against Jahel Quiroga, the State argues that the petition does not meet the requirement for prior exhaustion of domestic remedies, established in Article 46(1)(a) of the American Convention, in view of the fact that an investigation is currently under way in the Prosecuting Office based on the information received from Jahel Quiroga in March 2007 concerning a plan to kill her. It indicates that the investigation was opened on May 18, 2007, and that all of the complaints filed by Jahel Quiroga are now joined. However, it points out that the investigation has been obstructed by the alleged victim's lack of cooperation.

[5] Article 31(3) of the Rules of Procedure of the Commission. See also I-A Court of Human Rights, *Velásquez Rodríguez Case,* Judgment of July 29, 1988, para. 64.

61. For their part, the petitioners argue, as concerns the criminal investigations undertaken into the threats and harassment against Jahel Quiroga, that there has been an unjustified delay in carrying out the investigations. They contend that there was no strategy behind the investigations aimed at clarifying the facts and identifying the perpetrators and participants, as a result of which the exception to the prior exhaustion of domestic remedies requirement envisaged in Article 46(2)(c) would be applicable.

62. In that connection, according to the precedents established by the Commission, whenever an indictable crime is committed, the State has the obligation to promote and advance criminal proceedings[6] and, in such cases, this is the appropriate way to clarify the events, prosecute responsible parties, and determine the relevant criminal sanctions, as well as to provide for other monetary types of reparations. The Commission is of the view that the events alleged by the petitioners in relation to the threats and harassment allegedly committed against Jahel Quiroga constitute indictable criminal conduct whose investigation and prosecution must be promoted by the State itself and, as a result, this course of action would be the appropriate one.

63. The Commission notes that the first threats reported by the alleged victim purportedly took place in 1998 and that, more than 10 years after the lodging of that first complaint with the Unit of Human Rights of the Office of the Prosecutor General of the Nation, on April 24, 2000, no one had yet been found criminally responsible. Likewise, the Commission notes that Sectional Prosecuting Office 239 of Bogotá was currently pursuing the investigation under case No. 200704088 on the basis of the information received from Jahel Quiroga in March 2007 concerning the alleged plan to kill her, an investigation to which all of the complaints filed have been joined, and which is still in a preliminary phase.

64. The State did not make reference in its arguments to efforts made by the judicial authorities to obtain evidence in order to identify those responsible in prior investigation No. 200704088 aside from mentioning the requests for an interview with the alleged victim. The Commission considers that given the characteristics of the instant case and the period of time elapsed since the beginning of the incidents described in the petition and the first complaint to the judicial authorities in 2000, the exception provided for in Article 46(2)(c) of the American Convention regarding a delay in the domestic criminal process is applicable, since after a period of more than 16 years the investigation is in a preliminary phase, and therefore the established requirement for the exhaustion of domestic resources is not applicable.

65. Secondly, as concerns the alleged violation of the rights to humane treatment, to privacy, to freedom of thought and expression, to freedom of association, and to equal protection, the State claims that the victim has not filed a legal action for protection, which would have been the appropriate mechanism for protecting her rights. Likewise, the State refers to the mechanisms established in Law 1288 of 2009 on Intelligence and Counter-Intelligence, which the petitioners failed to exhaust.

66. With respect to the compilation and maintenance of intelligence files and records in State security agencies, the petitioners argue that there is no specific procedure under domestic law for availing oneself of the right to information, *habeas data*, when what is involved is information compiled and analyzed by State intelligence agencies, and that consequently that constitutes the exception to the exhaustion of domestic remedies requirement set forth in Article 46(2)(a) as it refers to the absence in the State's domestic legislation of due process of law to protect the right or rights that have allegedly been violated. As concerns the procedure under Law 1288 of 2009, the petitioners contend that on various occasions Jahel Quiroga availed herself of different legal procedures, including numerous rights of petition, and presented the authorities with the facts, without obtaining the effective protection of her rights. They point out that the Law entered into force on March 5, 2009, that is, subsequent to the date of the incidents reported and to the filing of the petition, and that it does not provide any mechanism

[6] IACHR, Report No. 52/97, Case 11.218, Arges Sequeira Mangas, Annual Report of the IACHR 1997, paras. 96 and 97. See also Report No. 55/97, Case 11.137, Abella et al., para. 392.

whatsoever for persons affected to challenge the information contained in the intelligence records, nor does it indicate procedures for requesting their correction and purging.

67. Regarding the legal action for protection, the petitioners argue that said measure is not the appropriate way to resolve the situation as it is not intended to clarify circumstances regarding the time, manner, and place in which the events took place, it is not punitive in nature, and it does not seek to address matters of overall reparation.

68. Finally, with respect to the fundamental right to *habeas data*, established in Article 15 of the Constitution, the petitioners contend that regulations regarding that right were issued on December 31, 2008, through Statutory Law 1266 of 2008, which means that said regulations were not in place when the acts were committed. At the same time, they argue that Article 2 of the Law excludes from its scope "databases whose purpose is to produce State intelligence through the Administrative Security Department (DAS) and the Police in order to protect domestic and external security."

69. In connection with the petition regarding a lack of access to the information compiled and analyzed by the State intelligence agencies in order to request its correction and purging and the suitability of the legal action for protection, the Commission notes that the right to *habeas data* is enshrined in Article 15 of the Constitution of the Republic of Colombia, which has been defined by the jurisprudence of the Colombian Constitutional Court as follows: "[t]he fundamental right to habeas data is the right of the owner of personal data to demand from personal data controllers access to and exclusion, correction, addition, updating, and certification of the data, as well as limits on the possibility of dissemination, publication, or transfer of said data, in accordance with the principles governing the management of personal databases."[7] The Constitutional Court has indicated that this right includes (i) the right of the individual to see the information about himself or herself; (ii) the right to update such information; and (iii) the right to correct any information that is not consistent with the truth.[8]

70. Likewise, the aforementioned Article 15 of the Constitution of the Republic of Colombia also establishes that:

> [i]n order to prevent terrorist acts, a law will regulate the form and conditions in which the authorities it indicates can, based on serious reasons, intercept or examine the correspondence and other forms of private communication, without previous judicial order, upon immediate notification to the Office of the Prosecutor General of the Nation and subject to a subsequent review by a judge within the following thirty-six (36) hours.

71. In this regard, the Commission notes that through Statutory Law 1266 of 2008, which entered into force on December 31, 2008, the legislature has prepared regulations for *habeas data* for financial and commercial matters and has not done so for other areas, as in the present case. Consequently, according to available information, the Commission observes that there is no legal habeas data system for requesting the correction and purging of information compiled and analyzed by State intelligence agencies, and consequently the legal action for protection, which is the mechanism now available to file an application for *habeas data*, would not be the appropriate remedy for resolving the situation under consideration.

72. With respect to Law 1288 of 2009 on Intelligence and Counter-Intelligence and its Regulatory Decree 3600 of 2009, set forth as suitable remedies by the State, the Commission notes that they entered into force on March 5 and September 21, 2009, respectively, that is, after the filing of the petition, and as a result their exhaustion would not have been required. In addition, the Commission notes that on November 16, 2010, the Constitutional Court declared the Law on Intelligence unconstitutional because of procedural defects. Nonetheless, it bears mentioning that the law that was declared unconstitutional did not establish specific criteria for access, updating, and purging of the

[7] Constitutional Court, Judgment T-705/07, Reporting Judge Jaime Córdova Triviño, September 7, 2007.

[8] Constitutional Court, Judgment T-1037/08, Reporting Judge Jaime Córdova Triviño, October 23, 2008, para. 27.

information in intelligence databases and it was therefore not a suitable remedy for resolving the situation under consideration.

73. In view of the foregoing, the Commission concludes that the aspect of the petition regarding the lack of access to, and the updating and purging of, information in the intelligence databases is covered by the exception to the exhaustion of domestic resources requirement provided for in Article 46(2)(a) of the Convention, which establishes that said exception is applicable when "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."

74. Application of the exceptions to the rule on exhaustion of domestic remedies under Article 46.2 of the Convention is closely linked to a determination of possible violations of certain rights protected therein, such as access to justice. Nonetheless, Article 46(2), by its nature and purpose, is a norm that is independent of the Convention's substantive provisions. Accordingly, the determination as to whether the exceptions to the exhaustion rule apply to the case in question must be made prior to and separately from the analysis of the merits, since the standard that must be met is different from the one met to determine whether Articles 8 and 25 of the Convention have been violated. It should be clarified that the causes and the effects that prevented exhaustion of domestic remedies will be examined in due course in the report on the merits where the IACHR will determine whether there have been violations of the American Convention.

2. Deadline for filing a petition

75. The American Convention establishes that for a petition to be admissible by the Commission it must be lodged within a period of six months from the date on which the party alleging violation of his or her rights was notified of the final judgment. In the petition under consideration, the IACHR has established that the exceptions to the exhaustion of domestic remedies requirement are applicable in accordance with Article 46(2)(c) of the American Convention. In that connection, Article 32 of the Rules of Procedure of the Commission provides that in those cases in which the exceptions to the prior exhaustion of domestic remedies requirement are applicable, the petition shall be presented within a reasonable period of time, as determined by the Commission. For this purpose, the Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case.

76. In the instant case, the petition was received on March 14, 2008. The alleged threats and acts of harassment that were reported began in 1998, the first complaint was lodged on April 24, 2000, a criminal investigation which was opened in 2007 is under way, to which all of the complaints filed earlier by the alleged victim have been joined, and is still in a preliminary phase, and its effects in terms of the alleged deficiency in the administration of justice are still being felt. The Commission is also taking into account the fact that the alleged victim lodged petitions to defend her interests from the onset of the alleged threats and acts of harassment. Accordingly, given the context and the characteristics of the instant case, as well as the fact that an investigation is still under way, the Commission considers that the petition was presented within a reasonable period of time and must conclude that the admissibility requirement for time limit for filing petition has been met.

3. Duplication of proceedings and international *res judicata*

77. It does not appear from the record that the subject matter of the petition is pending before any other international proceeding for settlement or that it is substantially the same as a petition already examined by this or another international organization. Therefore, the requirements established in Articles 46(1)(c) and 47(d) of the Convention should be deemed to have been satisfied.

4. Characterization of the facts alleged

78. In view of the elements of fact and law raised by the parties and the nature of the matter put before it, the Commission finds that, as concerns the harassment and threats against Jahel Quiroga perpetrated since 1998 and reported in 2000 as well as those perpetrated subsequently and reported to

the authorities, the petitioners filed complaints regarding the absence of an appropriate response by the State, which could constitute violations of the rights to a fair trial and judicial protection, protected by Articles 8(1) and 25 in conjunction with Article 1(1) of the American Convention.

79. With regard to the petitioners' claim regarding the psychological distress caused Jahel Quiroga as a result to her name being listed in official documents as a member of the illegal armed group FARC, the absence of an effective investigation to punish those responsible for the threats and harassment, and infringement of the right to association, the Commission notes that the allegations made could constitute violations of Articles 5, 11, and 16 in conjunction with Article 1(1) of the American Convention.

80. With regard to the complaint regarding the alleged harassment and threats against Jahel Quiroga and her stigmatization, as a result of statements by government officials; alleged notations in the intelligence records of State security agencies; and a lack of access to, and updating and purging of, information in the intelligence databases, the Commission notes that the arguments made could, in view of the absence of adequate regulation of *habeas data*, constitute violations of Article 13 in conjunction with Article 1(1) and, in accordance with the principle *iura novit curia*, of Article 2 of the American Convention.

81. With regard to the alleged violation of the right to equal protection, established in Article 24 of the American Convention, the Commission is of the view that the petitioners have not presented any arguments that would tend to establish a violation of the American Convention, and consequently that claim is not deemed admissible.

V. CONCLUSIONS

82. The Commission concludes that it is competent to examine the claims presented by the petitioner on the alleged violation of Articles 5, 8(1), 11, 13, 16, and 25 in conjunction with Articles 1(1) and 2 of the American Convention, and that these are admissible, in keeping with the requirements established in Articles 46 and 47 of the American Convention. In addition, it concludes that the claim in relation to the alleged violation of Article 24 in conjunction with Article 1(1) of the American Convention is not admissible.

83. Based on the arguments of fact and law set forth above, and without this constituting any prejudgment of the merits,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To find this claim admissible in relation to Articles 5, 8(1), 11, 13, 16, and 25 in conjunction with Articles 1(1) and 2 of the Convention.

2. To notify the Colombian State and the petitioner of this decision.

3. To proceed to analyze the merits.

4. To publish this decision and include it in its Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 22nd day of March 2011. (Signed): Dinah Shelton, President; José de Jesús Orozco Henríquez, First Vice-President; Paulo Sérgio Pinheiro, Felipe González, Luz Patricia Mejía Guerrero, and María Silvia Guillén, Commissioners.