

**REPORT NO. 149/11<sup>1</sup>**  
PETITION 873-06  
ADMISSIBILITY  
FAMILIES BELONGING TO THE BLANQUICET AGRICULTURAL WORKERS COOPERATIVE  
(COTRAGROBLAN)  
COLOMBIA  
November 2, 2011

**I. SUMMARY**

1. On September 5, 2006, the Inter-American Commission on Human Rights (hereinafter, "the Commission" or "the IACHR") received a petition lodged by the Comisión Intereclesial de Justicia y Paz (hereinafter, "the petitioners"), alleging that the Republic of Colombia (hereinafter, "the State," "the Colombian State," or "Colombia") is responsible for the alleged forced displacement of nine families that make up the Blanquicet Agricultural Workers Cooperative (hereinafter, "COTRAGROBLAN" or "the cooperative")<sup>2</sup>; the subsequent violent dispossession and fraudulent appropriation of their properties, called "La Esperanza" and "Nueva Vida," located in the municipality of Turbo, in the department of Antioquia; and the death of cooperative member Oscar Maussa at the hands of paramilitary groups, as well as the lack of judicial clarification of the facts. The petitioners alleged that these acts result from a failure to prevent, prosecute, and punish the activities of paramilitary groups.

2. The petitioners alleged that the State was responsible for violating the rights to life, a fair trial, protection of the family, private property, freedom of movement and residence, and judicial protection, established in Articles 4, 8(1), 17, 21, 22(1), and 25(1) of the American Convention on Human Rights (hereinafter, "the Convention" or "the American Convention"), in conjunction with the guarantee obligation under Article 1(1). For its part, the State alleged that the petitioners' claims were inadmissible on grounds that the Commission did not have jurisdiction *ratione personae* to hear the petitions of juridical persons, and that there had not been proper individual identification of the alleged victims, exhaustion of domestic remedies, or characterization of the acts in question as violations of the American Convention.

3. After analyzing the parties' positions and whether the requirements established in Articles 46 and 47 of the American Convention have been met, the Commission decided to declare the case admissible for the purpose of examining the alleged violation of Articles 4(1), 5(1), 8, 22, and 25 in conjunction with Article 1(1) of the American Convention. Moreover, the Commission decided that it will analyze the merits of the petitioners' allegations pertaining to loss of personal property by the members of the families, namely their crops, homes, and possessions, in light of the standards established in Article 21 of the Convention; that it lacks jurisdiction to refer to the alleged violation of Article 21 with regard to the "La Esperanza" and "Nueva Vida" properties belonging to the cooperative; and that the allegations regarding the alleged violation of Article 17 of the American Convention are inadmissible. The Commission decided to notify the parties of this decision and order its publication in its Annual Report to the OAS General Assembly.

**II. PROCESSING BY THE COMMISSION**

4. On August 14, 2006, the petitioners filed a request for precautionary measures for four families that are part of COTRAGROBLAN, and the Commission granted these measures on September 1, 2006.<sup>3</sup> The precautionary measure remains in force as of the date of approval of this report.

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<sup>1</sup> Pursuant to Article 17(2) of the IACHR Rules of Procedure, Commissioner Rodrigo Escobar Gil, who is of Colombian nationality, did not participate in the debate or the decision in this case.

<sup>2</sup> The list of the members of the nine families that make up COTRAGROBLAN appears in an annex to this report.

<sup>3</sup> IACHR, 2006 Annual Report. Chapter III, Precautionary Measures granted by the IACHR during 2006. "On September 1, 2006, the IACHR granted precautionary measures in favor of the Mausea [sic], Rodríguez, Bravo Pertuz, and Tordecilla Cordero families, all members of the Blanquicet Agricultural Workers' Cooperative (COTRAGROBLAN) in the municipality of Turbo. The available information indicates that in 1998...[the] families belonging to the COTRAGROBLAN cooperative were violently ejected from the "La Esperanza" farm in the municipality of Turbo. Four of these families, who are still living in the area, were subjected to  
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5. The Commission registered the petition as number P-873-06, and after conducting a preliminary analysis, on October 3, 2006, it forwarded a copy of the relevant portions to the State, giving it a two-month period to submit information, in accordance with Article 30(3) of the IACHR Rules of Procedure. In response, the State requested a 30-day extension of the time period for submitting its observations; this was granted by the IACHR. The State presented its observations on January 11, 2007, and its annexes on January 12, 2007, which were forwarded to the petitioners for their observations. On April 3, 2009, the Commission, in accordance with Article 30(5) of its Rules of Procedure, asked the State and the petitioners for updated information on the referenced matter. In addition, the Commission reiterated to the petitioners its request for observations.

6. On April 15, 2009, the petitioners sent in two briefs with observations, dated April 25 and October 11, 2007, which were forwarded to the State for its observations. In response, the State requested a 60-day extension, and the Commission granted a 30-day extension. On July 3, 2009, the State submitted its response, which was forwarded to the petitioners for their observations. On December 17, 2009, the petitioners submitted their response, which was forwarded to the State for its observations. In response, the State requested a 30-day extension, which was granted by the Commission. On March 5, 2010, the State sent in its observations, which were forwarded to the petitioners for their information. On February 15, 2011, the petitioners submitted additional information, which was forwarded to the State for its observations. On March 28, 2011, the State requested an extension, which the Commission granted. On June 1, 2011, the State submitted observations, which were forwarded to the petitioners for their information.

### III. POSITIONS OF THE PARTIES

#### A. Position of the Petitioners

7. By way of background, the petitioners allege that since the end of the 1980s, self-defense groups that called themselves the "Tangueros" (and later, the *Autodefensas Campesinas de Córdoba y Urabá*, ACCU, and the *Autodefensas Unidas de Colombia*, AUC—United Self-Defense Forces of Colombia) were operating in the Urabá region, and that their activity began to strengthen significantly in that region beginning in the early 1990s.<sup>4</sup>

8. The petitioners maintain that on August 13, 1990, the Blanquicet Agricultural Workers Cooperative was established, and was made up of nine campesino families from that town in the municipality of Turbo, in the department of Antioquia. They indicate that on January 21, 1991, and January 16, 1995, COTRAGROBLAN acquired the rural properties called "La Esperanza" and "Nueva Vida," respectively.

9. They allege that, beginning in 1996 and for a period of two years, approximately 240 families moved away from the town of Blanquicet as a result of death threats, selective murders, and pressure from paramilitary groups. A great number of these families were allegedly forced to sell their properties under death threats, and most of them had moved to the municipalities of Chigorodó and Turbo and the city of Medellín, in the department of Antioquia.

10. The petitioners maintain that in this context, the nine families that make up COTRAGROBLAN were forced to abandon their crops, homes, and possessions, and move away, after

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intimidation by armed civilians who wanted to legalize their ownership of the property belonging to the evicted families. The four families fear reprisals for not obeying the paramilitaries who took possession of the farm and for taking judicial action to recover their property. The IACHR requested that the Government of Colombia adopt the measures necessary to protect the life and physical integrity of the beneficiaries and report on the action it has taken to judicially investigate the events that gave rise to the precautionary measures. The Commission is monitoring the beneficiaries' situation."

<sup>4</sup> The petitioners indicate that in the framework of the demobilization process, these groups identified themselves as *Bloque Bananero* and *Bloque Elmer Cárdenas*.

which their "La Esperanza" and "Nueva Vida" properties were occupied by the paramilitaries identified as Alfredo or Andrés Usuga, alias "El Palillo", and another person known as "Cincuenta y Cinco". They allege that even though the situation was publicly known, and even though between April and December 1996 some families—including those of Oscar Manuel Maussa Contreras and Sigifredo Bravo Pertuz—had reported the forced displacement to a municipal legal entity (*Personería*) in Chigorodó and the National Ombudsman's Office (*Defensoría del Pueblo*) and the *Personería* in Montería, the authorities reportedly had taken no action whatsoever. The petitioners add that the situation of forced displacement and widespread fear due to the presence of paramilitary groups in Blanquicet had prevented them from attempting other remedies.

11. The petitioners allege that in January 2001, the legal representative of COTRAGROBLAN, Manuel Esteban Rodríguez Cordero, was forced by three paramilitaries—including the one known as "El Palillo"—to sign a contract document to lease "La Esperanza" to an individual. They indicate that in July 2003, Mr. Rodríguez Cordero discovered that the notary in Carepa had registered a public deed of sale for that property by falsifying his signature and fingerprint. They allege that the record of sale had been turned into public deed No. 333, dated May 28, 2001, and that this judicial action gave rise to three transfers of property titles. They add that, even though the "Nueva Vida" property appeared independently on a real-estate register folio, deed No. 333 also executed the sale of that property.

12. The petitioners state that Mr. Rodríguez Cordero reported these facts, and on September 10, 2004, the 66<sup>th</sup> Municipal Prosecutor's Office of Chigorodó ordered that a preliminary investigation be opened, filed under No. 5370, and that the individual versions of events by the participants in the transaction be received. The petitioners allege that in May 2005 the 72<sup>nd</sup> Municipal Prosecutor's Office of Chigorodó handed down a dismissal decision in favor of the Carepa notary, on grounds that he had acted under overwhelming outside coercion and had been driven by overwhelming fear, and ordered the cancellation in its entirety of public deed No. 333, its subsequent registration in the Public Records Office, and the surrender of the real estate, and also ordered the proceedings to be discontinued.

13. The petitioners maintain that in June 2005 the Public Prosecutor's Office ordered that the preliminary investigation be partially reopened for the purpose of canceling the deeds deriving from public deed No. 333, and that in August 2005, it ordered their registration to be canceled. However, reference was apparently made only to the "Nueva Vida" property and not to the "La Esperanza" property, and thus officially paramilitaries continued to be entitled to ownership. The petitioners add that this investigation referred only to the notary's conduct and did not investigate the paramilitaries or the individuals who later appeared as owners of the properties. They also allege that the members of COTRAGROBLAN did not constitute themselves as a civil party, nor did they appeal the dismissal decision out of fear that the paramilitaries operating in Blanquicet would have taken reprisals against them and placed their lives in danger.

14. They maintain that in December 2005 and until August 2006, Oscar Maussa—a member of the cooperative—and the COTRAGROBLAN families had received threatening messages concerning the payment of "La Esperanza." They indicate that on August 14, 2006, they requested precautionary measures so as to guarantee the life and integrity of the Maussa, Rodríguez, Bravo Pertuz, and Tordecilla Cordero families, who feared that not bowing to the pressures imposed by the paramilitaries who appropriated "La Esperanza" would lead to reprisals against them.<sup>5</sup>

15. The petitioners state that in February 2007 the Public Prosecutor arranged for the handover of the "La Esperanza" property, and this took place in June 2007. However, in August 2007 the petitioners reportedly established that a person from outside the cooperative appeared as owner of the property and owed the property taxes. They indicate that the families went to the entities that make up the National Council for Comprehensive Assistance to the Displaced Population (*Consejo Nacional de Atención Integral a la Población Desplazada*, CNAIPD) and the National System for Comprehensive Assistance to the Displaced Population (*Sistema Nacional de Atención Integral a la Población*

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<sup>5</sup> The precautionary measures were granted by the IACHR on September 1, 2006.

*Desplazada*, SNAIPD) in order to obtain the protection needed due to their return status and to request information on an exemption from payment of the property tax for victims of forced displacement, without having received a response.

16. The petitioners maintain that Oscar Maussa returned to Blanquicet; however, in October 2007 he learned that paramilitary groups were planning to kill him. Because of that, he reportedly relocated to Chigorodó, and a year later moved from there to San Juan Nepomucemo, after he and his companion, Edith Caldera, were the targets of new threats. They indicate that this information was made known to the authorities on the occasion of a meeting on implementation of precautionary measures for which he was a beneficiary.

17. The petitioners hold that on November 23, 2010, Oscar Maussa participated in a photo lineup procedure for "55 or Campeche" and for "Palillo," and that as a result of this procedure, "55" had been identified as Luis Ángel Ramírez Ramírez. The petitioners add that on November 24, 2010, Oscar Maussa was murdered on the "La Poza del Guamo" farm, where he had worked for several months as a laborer. Another worker reportedly found his body and sought help from the San Juan Nepomucemo Police Force, but it refused to go to the site for fear of an ambush. The following day, the family of Oscar Maussa reportedly found his body on the ground, with his hands tied behind his back, blows to the head, and signs of torture. The cell phone assigned by the Protection Program had been stolen. The petitioners indicate that it was not until 10 a.m. on November 25 that members of the Police, the SIJIN, and the Marines took the body away.

18. As far as the investigations are concerned, the petitioners allege that in addition to the one pursued against the Carepa notary, which ended with a dismissal decision in his favor, the Office of the Public Prosecutor conducted an investigation into the crimes of forced displacement, acting in concert to commit an offense, invasion of lands and buildings, and threats and illegal constraints to the detriment of the families belonging to COTRAGROBLAN. The investigation reportedly was opened in February 2007, the preliminary inquiry began in December 2007, and in June 2009 the investigation was reassigned to the Unit of Human Rights and International Humanitarian Law (UNDH-DIH) in Medellín and would move forward under case No. 7861. The petitioners allege that no avenues of investigation were opened that would tend to shed light on the responsibility of State agents in the displacements and land dispossessions, which they allege were carried out with their acquiescence and tolerance.

19. With respect to the investigation into Oscar Maussa's death, the petitioners indicate that an investigation was opened in the 22<sup>nd</sup> Municipal Prosecutor's Office of Cartagena. This investigation reportedly has not determined any individuals alleged to be responsible, and although a request was made for the investigation to be transferred to the UNDH-DIH, the request had yet to receive a response. The petitioners allege that the death of Oscar Maussa constitutes a failure by the State to meet its obligations toward the beneficiaries of precautionary measures and shows that it is impossible for the victims to go to judicial bodies for fear of meeting the same fate as one of their most recognized leaders.

20. They add that some of the families continue to be displaced, since following the handover of "La Esperanza" threats continue to be received from paramilitary groups that identify themselves as "Águilas Negras," "Convivir," or "Renacer," and due to the lack of conditions in place for a safe and honorable return. They also allege that the families have not received the humanitarian assistance to which they are entitled, from the Presidential Agency for Social Action and International Cooperation, in order to ensure that particular needs are met related to housing, health, and food.

21. As a result, the petitioners believe the State is responsible for violating the rights protected in Articles 4(1), 17, 21, and 22 of the American Convention. They also allege that the lack of an exhaustive judicial clarification of the facts that are the subject of the claim constitutes a violation of the rights contained in Articles 8(1) and 25(1) of the Convention. Moreover, they allege that the State has failed to meet its obligation to ensure respect for the rights established in the Convention.

22. In terms of compliance with the requirement regarding prior exhaustion of domestic remedies, established in Article 46(1) of the American Convention, the petitioners allege that the

exceptions established in Articles 46(2)(b) and 46(2)(c) of the Convention apply. They allege that forced displacement was classified as a crime in the Criminal Code (Law No. 599) that entered into force on July 25, 2001; thus, from 1996—the year in which some members of COTRAGROBLAN reported the facts relative to the displacement—to 2001, no criminal-law protection existed for the legal right protected by the right to freedom of movement and residence, and thus the petitioners were prevented from exhausting their remedies. Moreover, the petitioners allege that the violations of their rights remain in impunity.

23. In terms of the State's argument that the alleged victims have not been identified individually (see III.B, Position of the State, below), the petitioners allege that the individuals who make up the nine COTRAGROBLAN families are fully identified and individually named in an annex to their brief of April 25, 2007, and that the Ministry of Foreign Affairs has had that list since November 20, 2006. As regards the State's argument concerning the IACHR's lack of jurisdiction *ratione personae* to declare human rights violations with respect to a juridical person (see III.B, Position of the State, below), the petitioners allege that the petition is clear in alleging the State's international responsibility for acts related to the nine families that make up the cooperative.

24. In terms of the State's argument on the lack of exhaustion of the remedy of eviction for *de facto* occupation (see III.B, Position of the State, below), the petitioners allege that that remedy is not suitable, appropriate, or effective, and that it is not necessary to bring such an action to exhaust domestic remedies, since the purpose of that remedy is the return of property and it does not lead to the investigation, prosecution, conviction, and punishment of the crimes of forced displacement, threats, acts of harassment, and falsification of public documents that were involved in the seizure of the "La Esperanza" property.

## **B. Position of the State**

25. First of all, the State alleges that the Commission lacks jurisdiction *ratione personae* to hear the petition because the State deems that the claimant is a juridical person. It alleges that the "La Esperanza" property, which was subject to a violent and illegal dispossession, belonged exclusively to the juridical person COTRAGROBLAN, and thus it was that juridical person that suffered the loss of the asset. The State moreover alleges that the legal representative of COTRAGROBLAN filed a complaint with the domestic courts, given that as the representative of the juridical person, he was the only person who could have sought restitution of the property.

26. On this point, the State refers to Commission precedents that have established "the inadmissibility of petitions filed by business entities or cases in which the domestic remedies were exhausted by such entities and not by the person appearing as petitioners before the Commission...."<sup>6</sup> It asks that based on those precedents the Commission find that it does not have jurisdiction to consider this petition.

27. Secondly, the State objects to the list of victims submitted by the petitioners on grounds that since this is a "private document," the State is not certain about the veracity of its contents; however, it did not clarify what it means by a "private document." It alleges that based on the interpretation that the case law of the inter-American system gives to Articles 44, 46(1)(b), and 46(2)(b) of the American Convention, for a petition to be admissible there must be specific, individual, and identifiable victims,<sup>7</sup> and

<sup>6</sup> The State refers to IACHR. Report No. 40/05, Petition 12.139, Inadmissibility, José Luis Forzanni Ballardo, Peru, March 9, 2005, paras. 35 and 36. Brief with State observations DDH.GOI No. 11774/0479, received by the IACHR on March 5, 2010, para. 13.

<sup>7</sup> The State makes reference to IACHR. Report No. 88/03, Petition 11.533, Inadmissibility, Metropolitan Nature Reserve, Panama, October 22, 2003; IACHR. Report No. 28/98, Case 11.625, María Eugenia Morales de Sierra, Guatemala, March 6, 1998; I/A Court H.R., *Case of the "Juvenile Reeducation Institute" v. Paraguay*, Judgment of September 2, 2004, Series C No. 112; and I/A Court H.R., *Case of Durand and Ugarte v. Peru*, Judgment of August 16, 2000, Series C No. 68. Brief with State observations DDH.GOI No. 11774/0479, received by the IACHR on March 5, 2010, paras. 19-26.

that the petitioners still had the burden of proof to properly establish the individual identities of the alleged victims in the petition.

28. Thirdly, the State alleges that the petitioners have not met the requirement of prior exhaustion of domestic remedies established in Article 46(1)(a) of the American Convention. In this regard, it alleges that the petitioners had available to them the remedy of eviction for *de facto* occupation, under which "the arbitrary occupation of a property is brought to an end, and possession of it is restored to the legitimate holder." It alleges that this action should have been brought following the criminal verdict restoring the right of ownership, in order to make the restitution of the property in fact effective. It also indicates that the petitioners indeed recognize that the property was already returned, which would make it unnecessary to pursue a process of eviction for *de facto* occupation.

29. With regard to the petitioners' argument regarding the unwarranted delay in the resolution of domestic remedies, the State alleges that to establish the reasonableness of the time period in which the procedure was carried out, the following factors are taken into account: a) the complexity of the matter, b) the procedural steps taken by the interested party, c) the conduct of the judicial authorities, and d) the reasonableness of the time period for the entire process, in other words, a comprehensive analysis of the proceedings.

30. Specifically, the State alleges that the authorities only learned about the falsification of the public deeds of sale of the property as of July 2, 2004, when the legal representative of COTRAGROBLAN sent a communication to the President of the Republic. Moreover, the State indicates that on August 13, 2004, the legal representative of COTRAGROBLAN appeared before the Office of the Attorney General of the Nation in Apartadó, Antioquia, to offer a statement ratifying and expanding the complaint regarding the transfer of ownership and the falsification of the public document. It alleges that this complaint led to a disciplinary proceeding and another criminal proceeding.

31. The State alleges that in terms of the criminal proceeding over seizure of lands based on falsification of public deeds, the investigation was launched at the initiative of the authorities on September 10, 2004, and only three years later the properties were actually and materially handed over to COTRAGROBLAN. In terms of the prosecution of those responsible for the acts being alleged, while the 72<sup>nd</sup> Municipal Prosecutor's Office did hand down a dismissal decision on May 23, 2005—based on the fact that the members of the group operating outside the law who were implicated in the acts had not been individually identified—on July 19, 2006, the Prosecutor General of the Nation ordered the investigation to be pursued to its conclusion. It indicates that that investigation was joined with the investigation the 72<sup>nd</sup> Municipal Prosecutor's Office of Chigorodó was conducting into death threats against Oscar Manuel Maussa Contreras.

32. The State alleges that the cumulative investigation was brought before the 32<sup>nd</sup> Specialized Prosecutor's Office of Medellín for the crimes of acting in concert to commit an offense, illegal constraint, forced displacement, and invasion of lands and buildings, and that it is currently in the preliminary inquiry stage before the 37<sup>th</sup> Prosecutor's Office of the UNDH-DIH. It indicates that there are two suspects in the investigation, Dalson López Simanca and Ramiro Enrique Alvarez Porras, who are being deprived of their liberty, the former in the Itagúí jail and the latter under house arrest.

33. The State also alleges that when the investigation was before the 32<sup>nd</sup> Specialized Prosecutor's Office of Medellín, the petitioners lodged a complaint against the Prosecutor for her procedural inaction. It alleges that this was duly investigated, and that on November 17, 2009, the Internal Monitoring Group of the Medellín Division of the Office of the Prosecutor General of the Nation asked that a disciplinary action be brought against the 32<sup>nd</sup> Specialized Prosecutor of Medellín on grounds that there could be alleged irregularities. The State alleges that the foregoing proves that it acted with diligence.

34. In terms of the alleged exception to the exhaustion of domestic remedies as regards to the impediment to their exhaustion, the State holds that the petitioners have not managed to prove the existence of such an exception based on a situation of fear faced by the alleged victims, given that they

have had access to and have participated in the proceedings that have been carried out at the domestic level.

35. The State alleges that as a result of the death of Oscar Maussa, the 22<sup>nd</sup> Specialized Prosecutor's Office of Cartagena launched an investigation into malicious homicide. It alleges that as part of the investigation, a series of investigative steps were taken, and asks that the Commission view these in a positive light. It also indicates that there are avenues of investigation designed to show whether what occurred had to do with his being a witness of what occurred with COTRAGROBLAN or whether it was for different, unrelated motives.

36. In terms of the alleged victims' purported fear of returning to the "La Esperanza" property, the State maintains that the National Police conducted a study of the security and degree of risk for the families that make up COTRAGROBLAN, and that this produced ordinary results. Moreover, the State alleges that law enforcement has undertaken significant efforts to safeguard the integrity and guarantee the rights of the families in the Urabá region, such as the deployment of military units and the execution of tactical missions, among other measures. In addition, the State alleges that

the structures of the armed groups operating outside the law that called themselves "paramilitaries" and that committed crimes in [the area from which the members of COTRAGROBLAN were displaced] joined the peace process carried out by the Colombian State; thus...it cannot be stated that these structures continue to be in effect in the region of the Urabá Antioqueño, Turbo, and Blanquicet. In addition, and according to intelligence information, there is a general presence in the area of illegal armed groups known to be criminal gangs at the service of drug trafficking...against which the Colombian State is fighting rigorously.

37. Regarding humanitarian assistance, the State alleges that Oscar Maussa had been on the Sole Registry of the Displaced Population (*Registro Único de Población Desplazada*, RUPD) since June 19, 2009, identified by No.675895, and that he and his family had received emergency humanitarian assistance (AHE).

38. Finally, the State alleges that the petition is inadmissible since the claims do not amount to violations of the American Convention in accordance with its Article 47(b). In this regard, it alleges that the reported acts can be ascribed exclusively to third parties—paramilitaries—and that there is no link between the alleged acts perpetrated by the paramilitaries, on the one hand, and the State, on the other. Specifically, it indicates that the petitioners tend to use the context that predominated in the Urabá region to make the State responsible for specific acts such as the seizure, displacement, and threats by paramilitaries against the members of COTRAGROBLAN.

39. In this regard, the State objects to statements regarding context that could be interpreted to mean or could suggest that the paramilitary phenomenon was a widespread policy of the Colombian State, or suggest the creation of a general risk. It alleges that from the precedents of the Inter-American Court it can be inferred that it is not legally viable to use simple context to determine and characterize the State's alleged responsibility.<sup>8</sup>

#### **IV. ANALYSIS OF JURISDICTION AND ADMISSIBILITY**

##### **A. Jurisdiction**

40. The petitioners, the Comisión Intereclesial de Justicia y Paz, are authorized by Article 44 of the American Convention to submit petitions to the Commission. As to the State, the Commission

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<sup>8</sup> The State makes reference to I/A Court H.R., *Case of the Rochela Massacre v. Colombia*. Merits, Reparations, and Costs. Judgment of May 11, 2007. Series C No. 163, para. 32; I/A Court H.R., *Case of the Mapiripán Massacre v. Colombia*. Merits, Reparations, and Costs. Judgment of September 15, 2005. Series C No. 134, para. 113; and I/A Court H.R., *Case of the Pueblo Bello Massacre v. Colombia*. Merits, Reparations, and Costs. Judgment of January 31, 2006. Series C No. 140. Brief with State observations DDH.GOI No. 11774/0479, received by the IACHR on March 5, 2010, paras. 129-131.

indicates that Colombia has been a State Party to the American Convention since July 31, 1973, the date on which it deposited the instrument of ratification.

41. With respect to jurisdiction *ratione personae*, the State presents two arguments. First of all, it alleges that the purported victims have not been individually identified, and it questions the veracity of the list submitted by the petitioners on grounds that it is a "private document." Secondly, it alleges that the Commission lacks jurisdiction to hear the petition on grounds that the claimant is a juridical person. For their part, the petitioners maintain that the persons who make up the nine families belonging to COTRAGROBLAN are fully identified and individually named, and that the Ministry of Foreign Affairs has had that list since November 2006. With regard to the second argument, the petitioners allege that the petition is clear in alleging the State's international responsibility for acts having to do with the members of the nine families that make up the cooperative.

42. In this regard, the Commission notes that the petition was lodged on behalf of the members of the nine families that make up COTRAGROBLAN, and that both in the processing of the case before the IACHR and in their communications with the State on a domestic level, the petitioners submitted a list that identifies the members of the aforementioned nine families. Moreover, the IACHR notes that the State has limited itself to objecting to the list on grounds of its being a "private document," without presenting any specific facts that might cast doubts on the veracity of the information in question, and that the State itself has made reference to the families belonging to the Blanquicet Agricultural Workers Cooperative in referring to the risk studies that were carried out (paragraph 36 above).

43. Secondly, the Commission observes that the petition in this case alleges that the rights of physical persons have been affected, as well as their rights in the property of the cooperative. In that respect, the Commission reiterates that the Preamble to the American Convention and its Article 1(2) provide that "for the purposes of this Convention, 'person' means every human being," and that the protection granted by the inter-American human rights system in this hemisphere is limited to the protection of natural persons.<sup>9</sup>

44. The Commission has established constant case law on the inadmissibility of petitions lodged by corporate juridical persons when they are direct victims, or when the exhaustion of domestic remedies was done by them and not by the natural persons who appear before the Commission as petitioners<sup>10</sup>, while under certain circumstances it is possible or necessary to understand that the situation of a collective may have direct consequences on the human rights of its members. The Commission deems that with respect to the properties called "La Esperanza" and "Nueva Vida," the petitioners are invoking a violation of the right to property with regard to rural properties that belonged to the juridical person of COTRAGROBLAN, and it was on behalf of the cooperative that the legal representative exhausted the domestic remedies. The Commission notes that the petitioners did not submit information or explain the impact that the events related to the seizure of the cooperative's properties had on the individual rights of the members of the families that belong to it. Thus, the Commission does not have jurisdiction *ratione personae* to examine the alleged violation of Article 21 of the American Convention in this specific aspect.

45. In terms of the other alleged violations of the American Convention, the Commission has jurisdiction *ratione personae* to examine the petition when it comes to the members of the nine families that make up COTRAGROBLAN. Moreover, the Commission has jurisdiction *ratione loci* to hear the petition, as the petition alleges violations of rights protected in the American Convention that are said to have taken place within the territory of Colombia, a State Party to the treaty. The Commission has

<sup>9</sup> IACHR, Report No. 10/91, Case 10.169, Banco de Lima, Peru, February 22, 1991, "considering" paragraph No. 1, and IACHR, Report No. 47/97, Tabacalera Boquerón, S.A., Paraguay, October 16, 1997, paras. 24 and 25.

<sup>10</sup> IACHR, Report No. 83/05 (Inadmissibility), Petition 644/00, Carlos Alberto López Urquía, Honduras, October 24, 2005, para. 42; and, among others, IACHR, Banco de Lima, Report No. 10/91, Case 10.169, Peru, 1990-1991 Annual Report, paras. 452 ff.; IACHR, Tabacalera Boquerón, Report No. 47/97, Paraguay, 1997 Annual Report, paras. 229 ff.; IACHR, Mevopal, S.A., Report No. 39/99, Argentina, 1999 Annual Report; IACHR, Bernard Merens and Family, Report No. 103/99, Argentina, 1999 Annual Report; and IACHR, Bendeck-COHDINSA, Report No. 106/99, Honduras, 1999 Annual Report.

jurisdiction *ratione temporis*, as the obligation to respect and guarantee the rights protected in the American Convention was already in effect for the State on the date the acts alleged in the petition took place. Finally, the Commission has jurisdiction *ratione materiae*, because the petition reports possible violations of human rights protected by the American Convention.

## **B. Admissibility Requirements**

### **1. Exhaustion of Domestic Remedies**

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

47. Article 46(2) of the Convention provides that the requirement of prior exhaustion of domestic remedies does not apply when:

- a) the State's domestic legislation does not afford due process of law for protection of the right or rights that have allegedly been violated;
- b) the party alleging violation of his or her 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.

According to provisions of the IACHR Rules of Procedure, and statements by the Inter-American Court, any time a State alleges that the petitioners have failed to exhaust domestic remedies, it has the burden of identifying which remedies have yet to be exhausted and to demonstrate to the Commission that the remedies that have not been exhausted are "adequate" to address the violation being alleged, that is to say that the function of these remedies within the domestic legal system is suitable to address the legal right that has been infringed.<sup>11</sup>

48. In the present case, the State alleges that the petition does not meet the requirement of prior exhaustion of remedies under domestic law, established in Article 46(1) of the American Convention, given that the criminal investigation for crimes of acting in concert to commit an offense, illegal constraint, forced displacement, and invasion of lands and buildings is currently in the preliminary inquiry stage before the 37<sup>th</sup> Prosecutor's Office of the UNDH-DIH, a process the State alleges has been carried out with due diligence.

49. For their part, the petitioners allege that the exceptions established in Articles 46(2)(b) and 46(2)(c) of the Convention are applicable. In this regard, they allege that forced displacement was classified as a crime in the Criminal Code (Law No. 599) that entered into effect on July 25, 2001; thus, from 1996—the year in which some members of the families reported the acts related to displacement—to 2001, no criminal-law protection existed for the legal right protected by the right to freedom of movement and residence, and thus the petitioners were prevented from exhausting their remedies. Moreover, they allege that, 13 years after the events took place and 5 years after the criminal investigations were launched, it has not been established that anybody has criminal responsibility, and as a result, the violations have remained in impunity.

50. In view of the parties' allegations, it is appropriate first to clarify what domestic remedies should be exhausted in a case such as this one, in light of the case law of the inter-American system. The precedents established by the Commission indicate that whenever a crime is committed that can be prosecuted at the initiative of the prosecutorial authorities, the State has the obligation to promote and give impetus to the criminal proceedings and that, in those cases, this is the suitable avenue for clarifying the facts, prosecuting those who are responsible, and establishing the appropriate criminal sanctions, in

<sup>11</sup> Article 31(3) of the Rules of Procedure of the Commission. See also I/A Court H.R., *Case of Velásquez-Rodríguez v. Honduras*, Judgment of July 29, 1988, para. 64.

addition to making possible other forms of monetary reparation. The Commission observes that the facts laid out by the petitioners include, on the one hand, the alleged infringement of the rights to life and personal integrity, which translate in domestic law into criminal conduct subject to prosecution at the initiative of the authorities and whose investigation and prosecution should be actively pursued by the State itself. Further, in terms of the displacement of the members of the nine families, it should be noted that in addition to the criminal investigation into the facts, which has been going on since 2006, some families had apparently reported the forced displacement and the loss of their properties to the *Personería* in Chigorodó and the National Ombudsman's Office and the *Personería* in Montería since 1996.

51. First of all, with regard to the displacement, the Commission observes that since 1996, some COTRAGROBLAN families are said to have reported the forced displacement to the *Personería* in Chigorodó and to the National Ombudsman's Office and the *Personería* in Montería. The petitioners had also reportedly gone to the CNAIPD and the SNAIPD to obtain the protection needed due to their return status, and apparently received no response. On July 19, 2006, the Prosecutor General of the Nation reportedly ordered the investigation to be carried out to its conclusion and reassigned the investigation into the crimes of forced disappearance, acting in concert to commit an offense, invasion of lands and buildings, personal threats, and illegal constraint to the 32<sup>nd</sup> Specialized Prosecutor's Office before the Criminal Circuit Judges of Antioquia, which apparently took on the investigations on February 13, 2007. The petitioners allege that to this investigation were sent copies of the proceedings of the investigation carried out in the 72<sup>nd</sup> Prosecutor's Office against the notary of Carepa for the crime of material falsification of a public document. In addition, another investigation into the threats against Oscar Maussa, which was carried out in the 72<sup>nd</sup> Municipal Prosecutor's Office of Medellín and is in the preliminary stages, was joined to the case. On December 31, 2007, a ruling was issued opening a preliminary inquiry, and several paramilitaries were linked to the case. The Commission notes that in the framework of the investigation, some rulings to close the investigation were issued, and in a ruling dated June 11, 2009, the Prosecutor General reassigned the investigation to the UNDH-DIH in Medellín (case No. 7861). On October 5, 2010, Dalson López Simanca and Ramiro Enrique Alvarez Porras were linked to the case and their legal status was resolved; they are being deprived of their liberty (the former in the Itagüí jail and the latter under house arrest), as ordered by a judge of enforcement of penalties and security measures.

52. Secondly, in terms of the threats against Oscar Maussa and his subsequent death, apparently an investigation is being conducted into the alleged threats he had received, but this has not produced any results. Subsequently, following the death of this beneficiary of precautionary measures, on November 23, 2010, an investigation was reportedly opened in the 22<sup>nd</sup> Municipal Prosecutor's Office of Cartagena; this is in a preliminary stage.

53. The Commission observes that, more than 14 years after the alleged victims told the authorities about their risk situation and displacement and more than 6 years after the first investigation was launched, in September 2004, no criminal responsibility has apparently been established for any of the alleged perpetrators of the acts in question. In terms of the investigation into the death of Oscar Maussa, the investigation into the threats against him still remains in a preliminary stage. Therefore, given the circumstances of this case and the time that has gone by since the events that are the subject of the petition, the Commission deems that the exception established in Article 46(2)(c) of the American Convention applies with respect to the delay in the progress of domestic legal remedies, and thus the requirement concerning exhaustion of domestic remedies may not be claimed.

54. The invocation of exceptions to the rule of exhaustion of domestic remedies prescribed in Article 46(2) of the Convention is intimately linked to the finding of possible violations of certain rights established therein, such as due process guarantees. However, by its nature and purpose Article 46(2) is an autonomous provision *vis-à-vis* the substantive norms of the Convention. Therefore, the determination of whether the exceptions to the rule on exhaustion of domestic remedies apply in the case in question should be made prior to, and separately from, the analysis of the merits of the case, since it requires a different assessment standard than that used to determine the possible violation of Articles 8 and 25 of the Convention. It should be clarified that the causes and effects that prevented the exhaustion of

domestic remedies will be analyzed in the Commission's report on the merits of the case, to determine whether they constitute violations to the American Convention.

## **2. Deadline for Filing the Petition**

55. 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 alleged victim was notified of the final judgment. In the claim being analyzed, the IACHR has established the application of exceptions to the exhaustion of domestic remedies pursuant to Article 46(2)(c) of the American Convention. In this respect, Article 32 of the IACHR Rules of Procedure establishes that in cases in which the exceptions to prior exhaustion of domestic remedies apply, the petition should be filed 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.

56. In this case, the petition was received on September 5, 2006; the facts that form the basis of the claim date back to 1996, when they were reported to the authorities; and the first judicial investigations began in 2004, and their effects, in terms of the alleged failure in administration of justice, allegedly extend to the present time. Therefore, in view of the context and characteristics of this case, as well as the fact that an investigation is still pending, the Commission deems that the petition was lodged within a reasonable period of time and that the admissibility requirement regarding the filing deadline has been met.

## **3. Duplication of Proceedings and International *Res Judicata***

57. There is no indication in the record that the subject of this petition is pending settlement in another international proceeding or that the petition substantially duplicates one previously examined by the Commission or by another international organization. Therefore, the requirements established in Articles 46(1)(c) and 47(d) of the Convention have been satisfied.

## **4. Characterization of the alleged facts**

58. Based on the elements of fact and law presented by the parties and the nature of the matter before it, the IACHR deems that the petitioners' allegations on the scope of alleged State responsibility with respect to the facts that are the subject of this claim could characterize possible violations of the rights to life, freedom of movement and residence, a fair trial, and judicial protection protected in Articles 4(1), 22, 8, and 25 in conjunction with Article 1(1) of the American Convention. The Commission observes that the allegations related to the lack of State humanitarian assistance, in conformity with its legal obligations, for the families that reportedly returned to the region and for those who continue to be displaced, all of whom are in a situation of allegedly grave risk, support the State's possible responsibility for preventing access to conditions that would guarantee a life of dignity, pursuant to Article 5(1) of the Convention.

59. Neither the American Convention nor the IACHR Rules of Procedure require a petitioner to identify the specific rights allegedly violated by the State in the matter brought before the Commission, although petitioners may do so. Instead, it is for the Commission, based on the system's jurisprudence, to determine in its admissibility report which provisions of the relevant Inter-American instruments are applicable and could be found to have been violated if the alleged facts are proven by satisfactory evidence and legal argument. In the present petition the Commission deems that the allegations regarding the purported lack of protection in response to the alleged threats perpetrated by paramilitary groups against the nine families support the State's possible responsibility for failing to comply with the obligation to protect their personal integrity, pursuant to Article 5.1 of the Convention.

60. Finally, the Commission will analyze the merits of the petitioners' allegations related to the loss of personal property of the members of the families, namely their crops, houses, and possessions, in light of the standards established in Article 21 of the Convention.

61. With respect to the alleged violation of Article 17 of the American Convention, the petitioners' allegations have not been duly substantiated in the petition, and thus those claims are not found to be admissible.

## **V. CONCLUSIONS**

62. The Commission concludes that it has jurisdiction to examine the claims lodged by the petitioner regarding the alleged violation of Articles 4(1), 5(1), 8, 21, 22, and 25 in conjunction with Article 1(1) of the American Convention, and that these are admissible, pursuant to the requirements established in Articles 46 and 47 of the American Convention. In addition, it concludes that it lacks jurisdiction to refer to the alleged violation of Article 21 of the Convention with regard to the dispossession of the "La Esperanza" and "Nueva Vida" properties belonging to the cooperative, and that it is declaring the claim regarding the alleged violation of Article 17 of the American Convention to be inadmissible.

63. In light of the foregoing arguments of fact and law, and without prejudging the merits of the case,

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

#### **DECIDES:**

1. To declare this case admissible with regard to Articles 4(1), 5(1), 8, 22, and 25 in conjunction with Article 1(1) of the American Convention.
2. To notify the Colombian State and the petitioner of this decision.
3. To continue with its analysis of the merits of the case.
4. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 2nd day of November 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.