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**REPORT No. 36/14**  
**PETITION 913-06**  
REPORT ON ADMISSIBILITY

SLAUGHTER IN ALBANIA  
COLOMBIA

Approved electronically by the Commission on May 8, 2014

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Colombia. May 8, 2014.



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**I. SUMMARY**

1. On August 25, 2006 the Inter-American Human Rights Commission (hereinafter "the Commission") received a petition filed by the *Corporación Colectivo de Abogados José Alvear Restrepo* (hereinafter "Petitioners") alleging that on January 21, 2006, agents of the Republic of Colombia (hereinafter "the State" or "Colombia ") suddenly entered into the Wayúu Community in Wasimal firing indiscriminately. Wasimal is located in the Ware Waren township (*corregimiento*), part of the County district of Albania, Department of La Guajira. As a result, the following members of the Wayúu indigenous nation were killed: Javier Pushaina, Luis Angel Fince Ipuana, and 16 year-old Gaspar Cambar Ramirez. Gustavo Palmar Pushaina and Moisés Pushaina Pushaina were injured, and Irene Lopez Pushaina and Ligia Cambar Ramirez were physically and sexually assaulted; Antonio Pushaina (70), and Pablo Pushaina and Eduardo Arpushaina were arbitrarily and illegally detained. Several members of the Wayúu people who were then participating in a marriage ceremony in that community were also held and assaulted.

2. Petitioners alleged that the State violated Articles 4 (right to life), 5 (right to humane treatment), 7 (right to personal liberty), 8 (fair trial), 11 (right to privacy), 19 (rights of the child), 24 (right to equal protection) and 25 (judicial protection) of the American Convention on Human rights (hereinafter "the American Convention"), concerning its obligations under Article 1.1 of the treaty. Petitioners also alleged a violation of Article 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (hereinafter "Convention of Belém do Pará") as well as of Articles 2, 6 and 8 of the American Convention to Prevent and punish Torture (hereinafter "Convention against Torture"). With regard to the exhaustion of domestic remedies, Petitioners argue that these facts were initially investigated in the military criminal jurisdiction and to date, remain in impunity, and therefore they invoke the exception to the requirement under Article 46.2.c) of the American Convention.

3. For its part, the State alleged that Petitioners' claims were inadmissible because there are pending legal actions in the ordinary criminal, disciplinary and administrative jurisdiction regarding the death of the three alleged victims who are said to have been executed, as well as for the alleged physical and psychological violence against Irene Lopez Pushaina. Given this, the State argues that Article 46.1.a) of the American Convention, requiring the prior exhaustion of domestic remedies has not been complied with.

4. The Commission, after analyzing the positions of the parties and compliance with the requirements of Articles 46 and 47 of the American Convention, decided to declare the case admissible for purposes of examining the alleged violation of Articles 4, 5, 7, 8, 11, 19, 21, 24 and 25 of the American Convention, in regards to compliance with Article 1.1; Article 7 of the Convention of Belém do Pará, and Articles 1, 6 and 8 of the Convention against Torture. The Commission also decided to inform the parties of this decision, and to publish and include it in its Annual Report to the General Assembly of the Organization of American States.

**II. PROCEEDINGS BEFORE THE COMMISSION**

5. The IACHR registered the petition with number 913-06 and after a preliminary analysis, on October 4, 2006; copy of the relevant parts was forwarded to the State, for it to submit its observations.

6. The State submitted its comments and additional information on January 11 and 17, February 22 and July 25, 2007, which were forwarded to Petitioners for their comments. Petitioners then submitted their reply on May 28, 2007, which was forwarded to the State for its observations.

7. On December 4, 2008 the Commission requested updated information on this matter from the State and Petitioners. The State submitted updated observations on February 9 and May 26, 2009, which were transferred to Petitioners for their observations.

8. On July 28, 2009, August 27 and October 14, 2011, and on September 13, 2012, Petitioners submitted their responses, which were then forwarded to the State for its observations. On November 10, 2011, and November 27, 2012, the State submitted their responses, which were forwarded to the petitioners for information purposes.

### III. POSITIONS OF THE PARTIES

#### A. Position of the Petitioners

9. By way of context, Petitioners recount the origins of the indigenous Wayúu people, their existence prior to the formation of the Colombian state, and relationship to their ancestral lands. They note that the Wayúu have traditionally inhabited the Guajira peninsula in northern present-day Colombia, and maintain social and political practices such as valuing freedom and respect between the different Wayúu clans; their social order is based on polygamous matricentric families, and they use their own Wayúunaiki language. Petitioners state that the practices and institutions have been preserved since their earliest history by means of their own customary law, based on principles that have historically maintained their identity as a people. The Wayúu, with an estimated population of 149,827, today occupy a land area of 1,080,336 hectares, mostly located in the *Resguardo* district of Upper and Middle Guajira, and in eight *Resguardos* located in the south of the department and in the Carraipia reservation. Their main economic activity is to graze animals and grow a few crops during the rainy seasons. The territory of the Wayúu people has vast natural resources which could be exploited by mining and hydrocarbon companies.

9. Petitioners also allege that the facts of the petition arise out of Colombia's implementation of "democratic security" policies and serious human rights violations of indigenous peoples, subjected to a pattern of extrajudicial executions, arbitrary arrests and illegal acts of torture, sexual violence and widespread impunity in the investigations carried out in regard to these acts. Petitioners argue that human rights organizations have denounced, and that national as well as international officials have documented, the widespread and systematic character of these violations.

10. Specifically as to the Wayúu community of Wasimal, Petitioners report that it is located in the township of Ware Waren, in the township of Albania, Department of La Guajira. According to Petitioners, this municipality was created in 2000 in order to "directly administer the royalties that resulted from the exploitation of natural resources," especially from the "Cerrejon" coal mine. They allege that the mine operations have profoundly affected the economic life and health of the Wayúu communities living in that region, and also note that the mine has resulted in the presence of legal and illegal armed groups, as well as of private security forces and the national army which guard the mining facilities, and which they allege have affected the safety of the Wayúu community.

12. As to the events in Wasimal in 2006, Petitioners report that on January 21 the Administrative Security Department (DAS) requested a raid in the community due to information about people being present and dressed in uniforms that only the military is authorized to wear, and that illegal roadblocks were set up in that area. The order for the raid was reported to have been issued by the Fourth Office of the Prosecutors for the Criminal Circuit Courts of Maicao (hereinafter "the Fourth Prosecutor's Office"). Petitioners note that on the same day, more than 30 government officers, among them members of the army assigned to the Unified Action Group for Personal Liberty (*Grupo de Acción Unificada por la Libertad Personal* -Gaula), DAS agents and officials of the Technical Investigation Unit (*Cuerpo de Investigación Técnica* -CTI) of the Federal Prosecutor's Office (*Fiscalía General de la Nación* - FGN) stormed into Wasimal<sup>1</sup> and

<sup>1</sup> The Petition indicates that of the participants identified in this operation, there was the Lieutenant heading up the "Assault Team," which was itself composed of three DAS agents; one SV. Heading up the "Support Team," and a Captain who headed up the  
[continues ...]

accusing those present there of being thieves, and firing indiscriminately at a crowd of some one hundred persons, members of different Wayúu clans who were participating in a marriage ceremony. Petitioners note that none of the government officials who participated in the operation explained that they were acting by order of a search warrant, nor did they give any reason for their being there.

13. Petitioners allege that the shooting resulted in the death of Javier Pushaina of the Wasimal community, Luis Ángel Fince Ipuana (age 18) of the Perancho community, and minor Cambar Gaspar Ramirez (age 16) of the Amare community, as well as that the brothers Gustavo Palmar Pushaina and Moisés Pushaina Pushaina were injured. After the shooting, it is reported that members of the army placed those attending the marriage ceremony in a "goat pen," surrounding them and beating them and taking some of their belongings such as clothing, cell phones and hammocks (*chinchorros*). Petitioners note that Antonio Pushaina (age 70), father of Javier Pushaina who was killed, Eduardo Pushaina, a member of the "4<sup>th</sup> of November" Wayúu group, and Paul Arpushaina, son of the community's *palabrero*, or traditional leader of the Wayúu community of Perancho were arbitrarily detained, locked in a truck and taken to the military base in Maicao.<sup>2</sup> Members of the army reportedly then "planted" rifle ammunition on them in order to allege that there were members of the Revolutionary Armed Forces of Colombia-People's Army (FARC- EP) in their group, and to claim that a shootout between them had occurred.

14. Petitioners note that in this scenario, members of the army went into the houses and took objects they found there. When looting one of the houses, they found Irene Lopez Pushaina, who was six months' pregnant at the time, and her 7-year old nephew; both are alleged to have been assaulted physically and psychologically. The Petition reports that that they fought with Irene, lifted her robe and made her undress. They allege that she was taken behind the house where they continued abusing her, sexually assaulted her, called her a prostitute and threatened to kill her if she did not tell them where the indigenous had fled to. Petitioners reported that agents stole the belongings of her companion Nectario Cambar Ramirez such as his citizen identity card, which was later found with the body of Luis Angel Fince Ipuana. That same allegedly occurred with Cambar Ligia Ramirez, who they took behind the houses, lifted her *manta* and sexually assaulted, threatening to rape and kill her if she would not tell them where the indigenous and the alleged weapons they were seeking could be found.

15. They report that in the following months, at least two arbitrary raids were alleged to have been carried out in Wasimal. Specifically, they state that on February 27, 2006 at 5:00 am, members of the army stormed back into the community where abused and beat Rosa López Pushaina, who was emotionally affected by the slaughter carried out against her clan, and who died that same day as a result of the panic and emotional impact. Petitioners allege that on June 27, 2006, four days after several persons gave testimony regarding the facts to the Ombudsman, a new raid was ordered on the community, and which was interpreted by witnesses as an action which could provoke terror and serve as punishment.

16. They indicate that according to testimonies gathered, "[t]roops of the National Army [...] sow[ed] terror in this community." They claim that the deaths, violent intrusion into community lands, looting of houses, taking of assets, stigmatization and scapegoating caused deep sorrow and anguish, "not only [for] the families of the victims" but that "it has spread to the entire community." They also point out that before the death of Luis Ángel Fince Ipuana, his grandfather the word-giver Alejandro Ipuana, was sharing with him his traditional knowledge, and that because of his death, this process of training did not continue on with any other person in the community. Petitioners contend that by June, 2006, the word-giver or *palabrero* died as a result of his great anxiety and frustration, and the community lost one of its leaders. In October 2006, the leaders' daughter Laurita Ipuana died from a deep depression that resulted from the death of her son and her father.

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[... continuation]

"Closing Team." It reports that there were two CTI officials from the FGN, one from the Public Attorney General's office and another from the Municipal staff. Initial Petition received August 25, 2006.

<sup>2</sup> They note that the Fourth Prosecutor's Office justified the detention of these three persons at the time of this occurrence and in their presence. Petitioners also indicate that this Prosecutor's office declared that the detention of Antonio Pushaina took place because there were apparently lawsuits against him, and that he should have known about the munitions which were seized, and that Eduardo Pushaina and Pablo Arpushaina were arrested because of their surnames and in order to ascertain their true identities.

17. In regards to the investigation of these allegations, Petitioners allege that the Fourth Prosecutors' Office issued orders on January 26, 2006 for the investigation of members of the armed forces who participated in the operation to be transferred to a military criminal justice jurisdiction, and the investigation was assigned to the 20<sup>th</sup> Military Criminal Court under File No. 132-2006. On May 17, 2006, Petitioners requested of the Ministry of Interior, the Office of the Vice President of the Republic, the 20<sup>th</sup> Military Criminal Court, and the Human Rights and International Humanitarian Law Unit (UNDH and DIH) of the of the Federal Prosecutor's Office (FGN), that the investigation be changed to the courts of ordinary jurisdiction. Despite this, on May 30, 2006, the request was denied by the aforementioned court, while the Ministry of Interior and the Office of the Vice Presidency responded that they lacked jurisdiction over the matter, and forwarded the information to the FGN. On July 10, 2006, civil claims were filed in the 20<sup>th</sup> Military Criminal Court. The Federal Prosecutors Office, meanwhile, reported on August 3, 2006, nearly seven months after these facts occurred, that it had appointed a Chief Prosecutor from the UNDH and DIH unit to initiate proceedings to have the jurisdictional conflict resolved by the Superior Judicial Council (hereinafter "CSJ"). Petitioners note that on November 23, 2006, the Superior Judicial Council ruled that jurisdiction over this action was to be exercised by the 32<sup>nd</sup> Court Prosecutors' Office of the UNDH and DIH (hereafter, 32<sup>nd</sup> Prosecutors), and that the case was taken up by that Prosecutors Office only in March 2007.

18. For this reason, Petitioners argue that the criminal investigation was in the military courts for 14 months, during which time those persons who participated in the events were not linked to the investigation despite the fact that they had been fully identified; the basic evidence was not gathered to establish their responsibility, and the victims and their families and community members were forced to request that the Office of the Ombudsman (*Defensoría del Pueblo*) receive their testimony in order to avoid being harassed by the authorities. They report that on April 7, 2008, the 32<sup>nd</sup> Prosecutors Office ordered that an investigation for aggravated murder be opened under file 3456 against a lieutenant and two soldiers, and that arrest warrants were issued. Petitioners report that the Lieutenant surrendered voluntarily and that the two soldiers, already in custody, were presented to the prosecution. Both soldiers were already being held on detention orders at the military garrison in Albania. On April 8, 2008, all three defendants were charged and the investigation orders were also issued against the DAS members involved in the events. As of August 25, 2008, the Sole Criminal Court of the Special Circuit of Riohacha took over the case and the evidentiary phase has since been concluded.

19. Petitioners also reported on three other internal proceedings related to these allegations. They note that the GAULA Command in La Guajira began preliminary disciplinary investigation No. 001/06 against Army personnel, and this would have as of August 1, 2006, been in the hands of the Human Rights Unit of the Attorney General's Office (hereinafter "PGN"). The case is identified under No. 008-136999, and is in the preliminary stage of evidence gathering. Petitioners also note that in January, 2008, they filed an action for direct reparations for the extrajudicial killing of Luis Ángel Fince Ipuana, Javier Pushaina Pushaina and Gaspar Ramirez. That case was admitted in May 2008 under File 2008-00075. A court judgment of May 17, 2012 ruled that the State was liable, but this decision was appealed since the compensatory claims were denied in regards to Mañe Fince Ipuana and Rosendo Cambar Pushaina, the matter is thus still pending. In this regard, Petitioners argue that the administrative appeal is not in itself an effective remedy to comprehensively address violations of the American Convention. Additionally, Petitioners note that the FGN began a preliminary investigation on charges of a violent sexual act, filed under case 3456B, which is still pending at the preliminary stage.

20. On the other hand, in regards to Antonio Pushaina, Eduardo Pushaina and Paul Arpushaina, the three persons who were arrested on January 21, 2006, Petitioners report that on January 27, 2006, following the opening of the investigation, the 2<sup>nd</sup> Prosecutor's Office in the Criminal Courts of the Riohacha Circuit (hereafter "2<sup>nd</sup> Prosecutors") proceeded to hear and rule on charges for the offenses of manufacture, trafficking and possession of firearms or ammunition, as well as manufacture, trafficking and possession of firearms and ammunition whose use is restricted to the Armed Forces. On January 30, 2006 the 2<sup>nd</sup> Prosecutors held that none of the parties charged in the investigation had committed the second of the above listed offenses.

21. Petitioners report that on February 6, 2006 the detainees were sent to the Municipal Jail in Maicao without any judicial resolution of their case, in violation of the Code of Criminal Procedure.<sup>3</sup> On February 23, 2006, their legal situation was resolved, and they were ordered to be held prior to trial, even though the crimes under investigation do not allow for such detention measures, and the kind of weapons involved had not been established by expert testimony in order to determine if they were applicable to the charges against them. On September 27, 2006, despite the defense counsel for Eduardo Pushaina's request for early termination of the investigation on grounds that the conduct charged was atypical, and for the release of the detainees as a result, the 2<sup>nd</sup> Prosecutors Office continued the investigation without ruling on the request for the termination or dismissal.

22. Petitioners point out that on October 10, 2006, more than eight months after the three detainees were arrested, the 2<sup>nd</sup> Prosecutor ordered their release after verifying that the order of detention was invalid, even though there was no ruling on the dismissal of the charges. They note that in March, 2009 the Prosecutor dismissed the investigation for lack of evidence, noting that there never had been grounds for preventive detention. They report that on June 17, 2011 the alleged victims of the arbitrary detention brought an administrative proceeding under file number 2011-00011 for reparations related to the imprisonment they were subjected to, which is in the discovery phase. They indicate that no criminal or disciplinary investigations were brought against the agents of the state for the crime of illegal imprisonment.<sup>4</sup>

23. As regards the exhaustion of domestic remedies, Petitioners claim that there were unjustified delays in the criminal case involving the facts alleged in the petition, which during 14 months was handled by the military justice system. Petitioners believe that despite the case being tried in the courts of ordinary jurisdiction at present, of the more than 30 persons who were involved in the events, there have been no convictions of any State agents or officials, and only three members of the Army have been investigated, so these actions continue to go unpunished. Because of this Petitioners argue that the exception provided for in Article 46.2, paragraph c) of the Convention applies.

24. Given the above, Petitioners argue that the State is liable for violations of Articles 4, 5, 7, 8, 11, 19, 24 and 25 of the American Convention, in connection with Article 1.1 of that same Convention. They also argue that Article 7 of the Convention of Belém do Pará, and Articles 2, 6 and 8 of the Convention against Torture have been violated. They additionally request a ruling on the scope of Article 19 of the American Convention, considering the United Nations Convention on the Rights of the Child as part of the international corpus juris for the protection of human rights.

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

25. The State argues that Petitioners' are incorrectly using this process to air general complaints regarding the human rights situation in Colombia, alleging that a practice exists of extra-judicial executions and arbitrary illegal detentions; the use of violence against women and a lack of prosecution of those cases. The State also argues that the Petitioners have failed to establish the causal nexus between such allegations and the petition itself. Therefore Colombia requests that the IACHR abstain from making any general findings regarding the human rights situation in Colombia.

26. The State includes a general statement describing Colombia's policy of "zero tolerance towards violations of human rights by its public security forces" and the laws it enacted to prevent said

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<sup>3</sup>Petitioners cite Article 354 of the Code of Criminal Procedure in force at the time of the facts, which states: "[...] When a person is deprived of liberty, once the investigation is commenced, the Court officer must issue an interlocutory judgment to rule on the legal status of the detainee no more than five (5) days following his detention, and rule on whether there are grounds for issuing protective measures if any evidence justifies doing so, or instead ordering the detainee's immediate release. In the latter case, the accused will sign a document in which he agrees to appear before the competent authority when so requested. [...]". "Observations from Petitioners dated May 28, 2007, received on May 29, 2007.

<sup>4</sup>Petitioners cite the Colombian Penal Code: Art 272. - Wrongful imprisonment. A State official who in the abuse of his powers wrongfully imprisons another person shall be sentenced to a term of imprisonment of one (1) to five (5) years and shall be dismissed from his employment.



violations, so as to ensure they will not re-occur and that any arbitrary killings and deaths of all protected persons will be punished, as well to provide a framework for complete reparations. With regards to this latter point, the State believes it is important to note that the Council of State has determined that the venue for requesting said full and complete reparations is the system of administrative justice in the courts, and that the remedy to seek direct reparations should be exhausted before a party may exercise the right to reparations by recourse to the Inter-American System. Failure to do so shall be deemed a tacit waiver as to reparations.

27. With respect to the facts presented, the State asserts that beginning in 2001, the Central Police Inspector of the Albania Municipality as well as the Prosecutor's Office of the Maicao Division received a series of criminal complaints filed by members of the Wayúu indigenous nation for theft, extortion and physical assault, alleging that these offenses were committed by other indigenous persons dressed in uniforms exclusively reserved for use by the public security forces assigned to the Wasimal community. They note that several of the complainants identified Javier Pushaina, Antonio Pushaina and others as the perpetrators of such offenses, for which the Fourth Prosecutor's Office issued search warrants. The State argues that these searches were carried out in compliance with all validity and efficacy requirements and in strict compliance with the law. It further asserts that these actions were undertaken in order to "protect the life and property of the other members of this indigenous community whose fundamental rights had been violated by the persons identified as being located in this same locale."

28. The State notes that as a part of the military operation, members of the National Army assigned to the GAULA (Anti-terrorism, anti-extortion) team went into the Wasimal community and that they were fired upon, and in turn returned fire, resulting in the death of the three alleged victims. The State admits it does not have enough evidence to prove or disprove that these events are attributable to the illegal and premeditated actions of its agents, since, to date, no legal findings have been issued in the matter. Colombia further states that it will abide by whatever findings are made by its governmental authorities.

29. As to the allegation that Antonio Pushaina, Eduardo Pushaina and Pablo Arpushaina were wrongfully imprisoned, the State argues that their detentions were legal, in accordance with due process and that all legal requirement imposed by the current penal code were followed. The State also notes that when these persons were captured, a large number of military weapons and ammunition were seized. Colombia asserts that in the criminal proceedings filed against these three persons, all their legal rights were respected. Furthermore, Colombia argues that in 2009, the appropriate domestic remedies to be used regarding arbitrary illegal detentions were filing a habeas corpus or an action for direct reparations on grounds of legal error; neither of these remedies had been exhausted. Regarding the alleged arbitrary measures used against the three detainees, Colombia argues that Petitioners filed an action seeking to cancel these detention measures, arguing the principle of favorability in regards to the sentence imposed. In response to these pleadings, the Prosecutor's Office suspended these sentences on October 10th 2006. Given the success of this action, the State argues that these allegations filed in the Petition, are inadmissible.

30. Regarding the personal jurisdiction of the IACHR, the State argues that the alleged victims are only those identified by the Petitioners in their initial pleadings, those being: "Javier Pushaina, Luis Ángel Fince Ipuana, Gasparito Cambar Ramírez, Antonio Pushaina, Eduardo Pushaina, Pablo Pushaina and Mrs. Irene López." Colombia further argues that the persons included in later filings, as well as those participating and/or attending the marriage celebration were not individually identified, and therefore do not comply with the requirements for admissibility. Colombia considers that it is inexplicable for Petitioners' to include references to these alleged victims, despite having this information, nearly five years after the original Petition was filed.

31. In regard to this same matter, the State asserts that it is clear that by means of this Petition, "Petitioners seek to include as victims... [...] the entire Wayúu nation [...] [for] collateral damages caused by Carbones del Cerrejón L.L.C.'s coal mining activities." As to that issue, Colombia argues that the IACHR lacks personal jurisdiction over these claims, since even though Colombia acknowledges that "the IACHR, in certain individual cases, has issued judgments that protect the collective rights of indigenous peoples," the State believes that no causal nexus has been proven between the facts presented and the alleged harm. Colombia

further argues that the alleged harms may not be attributed to the State, given that the alleged “active perpetrator” is a private, legal entity and that the Colombian state has fulfilled the only obligations it has to that company, which is to ensure that the firm complies with all laws so as to guarantee the full exercise of the rights of persons living in the surrounding areas.

32. Regarding the exhaustion of all domestic remedies, the State advises that in the case of the deaths of Javier Pushaina, Luis Ángel Fince Ipuana and the child, Gaspar Cambar Ramírez, the remedies that must be exhausted are a criminal action, an administrative court proceeding, and/or disciplinary proceedings. Colombia argues that these remedies are complementary to one another as they all are a means to fully repair the legal harm. It argues, however, that these three processes are still open at the domestic jurisdiction.

33. In regards to the a criminal action, the State reports that following the incidents of January 21st 2006, both UNDH and DIH (National Human Rights and IHL units) designated the assistant Attorney General assigned to the Barranquilla Special Circuit Criminal Courts as the entity to lead the homicide investigations, and on January 26, 2006, the military criminal courts were assigned the investigation. Finally on November 23, 2006, the Colombian Supreme Court resolved this jurisdictional controversy by ruling that the case should be heard by courts of ordinary jurisdiction and assigned it to the 32<sup>nd</sup> Prosecutor’s Office. Given this, Colombia believes that the alleged violation of the principle of the natural forum was cured, and thus the alleged violation of Article 8 of the American Convention would have been rendered moot.

34. As to the ordinary criminal investigation, the State reports that by April 2008, criminal proceedings were initiated against one lieutenant and three soldiers, and that pre-trial detention was ordered for them, among other actions. A series of investigation measures were taken between 2006 and 2008. Criminal charges were brought in April, 2009, against the lieutenant and three soldiers, and certified documents were issued to be used in order to investigate those Army and DAS personnel that participated in the raid. Colombia further states that in 2009, the cases were procedurally severed. A public hearing was held in cause number 3456 regarding some of the parties involved, and to date, that court has not issued a final judgment. Evidence is still being presented in cause number 3456A, which is being handled by the UNDH and DIH. Colombia asserts that these investigations are continuing in an effort to fulfill the legal duty of the State, and in order to give a result within a reasonable period of time. The State also asserts that the alleged victims and their families have been able to file their criminal complaints and defense response memoranda, have had their testimony heard, have filed their observations, and have had their injuries examined by a forensic physician, and notes they have actively participated in their trial. Given the complexity of the case and the intensity with which this case has been investigated and prosecuted, the State believes that the case has proceeded at a reasonable pace. For this reason, Colombia argues that the exceptions to the requirement that all domestic remedies be exhausted do not apply.

35. Additionally, the State reports that the GAULA Command for the state of La Guajira initiated a disciplinary investigation in an effort to determine the responsibility, if any, of the military personnel involved in the operation; this investigation was taken over by and later suspended by the PGN. The State notes that in April 2008, the investigation was re-opened as to one second lieutenant, one lieutenant and three soldiers, and that charges were brought against these persons who participated in the raid and that the evidentiary phase of the case is underway. Colombia considers that the investigation may be a measure to ensure that such events are not repeated.

36. The State additionally reports that the victims filed an action for direct reparations before the administrative courts, which issued a final judgment in May, 2012. Plaintiffs as well as defendants appealed this decision, and a settlement hearing was scheduled to take place on December 5th 2012.

37. In response to the allegation of sexual violence made by the Petitioners (see *supra* III.A), the State describes the progress being made by the programs created in 2008 by the Constitutional Court in Order No. 0092, and implemented by the *Acción Social* agency, regarding women who have been victims of displacement actions as well as the advances brought about by the processes created by the 2005 Law No. 975 that focuses on crimes committed against women by members of the self-defense groups.



38. In response to the Petitioners' allegations regarding the violation of the rights of children (see *supra* III.A), the State contends that the United Nations Convention regarding Children's Rights is not one of the jurisdictional documents of the IACHR, and for this reason it requests that the IACHR abstain from deciding that issue.

39. Additionally, the State filed a procedural objection to the Petitioners' tardy inclusion of the attachments to their observations. As to the Petitioners' assertion that those attachments were in the State's possession as they are a party of the domestic proceedings (see *supra* III A), the State denies that assertion clarifying that its attorneys are not party to the criminal proceedings while the Petitioners' attorneys are party to the civil action and have access to the documents in question, thus it is the duty of the Petitioners to provide the documents within the required period of time.

40. In summary, the State argues that the petition is inadmissible because the domestic remedies have not been exhausted, given that the contentious-administrative proceedings as well as the disciplinary processes and the criminal actions regarding the deaths of the three alleged victims and the alleged physical and psychological violence perpetrated against Irene López Pushaina all remain pending.

#### **IV. ADMISSIBILITY REQUIREMENTS**

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

41. Petitioners are in principle, authorized by Article 44 of the American Convention to bring petitions before the Commission. In regard to personal jurisdiction, the Commission notes that the Petitioners list as alleged victims (i) individuals who are part of the Wayúu Communities, for alleged acts of extrajudicial execution, illegal and arbitrary detention, physical injuries, sexual violence, among others; (ii) Wayúu community members present at a marriage celebration which took place in Wasimal on January 21, 2006, and who were allegedly detained and physically assaulted; and (iii) the Wayúu communities of Wasimal, Amare and Perancho for alleged collective harms resulting from the facts alleged to have occurred on January 21, 2006. The State, for its part, argues that the alleged victims should be limited to those identified in Petitioner's initial petition only, and that those mentioned in later filings, as well as those alleged victims who were celebrating the marriage ceremony, have not been individualized, and that for that reason the requirements for admissibility have not been met. The State also argues that the Commission lacks jurisdiction to hear claims for damages from "the entirety of the Wayúu indigenous community [...] [for] collateral damage from coal operations conducted by the Cerrejón LLC Company."

42. Regarding the first argument proposed by the State, the Commission notes that, as stated earlier, the wording of Article 44 of the American Convention which authorizes "any person or group of persons, or any nongovernmental entity [...] to submit Petitions to the Commission containing claims or complaints of violations [...] by a State party" does not restrict the jurisdictional reach of the Commission to those identified "fully and completely" as victims of the violation. This is a deliberate omission, intended to allow for the examination of human rights violations, since these by their nature, can affect a certain person or group of people, but who haven't necessarily been fully identified at the time of filing of the petition.<sup>5</sup> The Commission considers that in these cases formally applying criteria to identify victims does not contribute to the international protection of victims' rights, and therefore the criteria to identify victims used at this stage of the process should be flexible,<sup>6</sup> and that fully identifying the total number of victims will be determined by evidence presented by the parties at the merits stage. Therefore, the Commission is competent to exercise

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<sup>5</sup> See Report No. 64/11 Marino López and others (Operation Genesis), March 31, 2011, para.34, Report No. 15/09, Massacre and forced displacement of the Montes de Maria, March 19, 2009, para. 47, and Report No. 140/09 Miembros del Sindicato de Trabajadores Oficiales y Empleados Públicos de Antioquia - Members of the Union of Officers and Employees of Antioquia (SINTRAOFAN), December 30, 2009, para. 51.

<sup>6</sup> See Report No. 140/09 Miembros del Sindicato de Trabajadores Oficiales y Empleados Públicos de Antioquia - Members of the Union of Officers and Employees of Antioquia (SINTRAOFAN), December 30, 2009, para. 51.

personal jurisdiction and examine the Petition for the alleged violations of the American Convention, as regards individuals identified by Petitioners in their written submissions to the IACHR, including members of the Wayúu village communities attending the marriage celebration in question, who are or will be identified at the merits stage of this proceeding.<sup>7</sup>

43. As to the second argument, the IACHR notes that Petitioners assert their petition was filed alleging that the American Convention had been violated by agents of the State and not for acts committed by a private entity. The Commission understands that facts related to the cited company were reported by way of context. Despite this, the IACHR notes that Petitioners allege damages affecting the rights of the Wayúu communities of Wasimal, Amare and Perancho, resulting from the facts that are claimed to have occurred as of January 21, 2006.<sup>8</sup> The IACHR recalls that according to settled precedent, the IACHR and Inter-American Court have held that indigenous communities and people have rights under the American Convention<sup>9</sup> as collective subjects distinct from their rights as individual members of the collective. Therefore, the Commission may exercise personal jurisdiction to hear the petition as to alleged violations of the American Convention affecting these communities.<sup>10</sup>

44. As regards the State, the Commission notes that Colombia has been a State party to the American Convention since July 31, 1973, is a party to the Inter-American Convention to Prevent and Punish Torture since January 19, 1999, and to the Belém do Pará Convention since November 15, 1996, these being the dates on which it deposited its instruments of ratification and accession, in order.

45. Furthermore, the Commission has competence *rationae loci* to examine the Petition because it alleges violations of rights protected under the American Convention which took place in the territory of Colombia, a State party to this treaty. The Commission has competence *ratione temporis* as the obligation to respect and guarantee the rights protected under the American Convention was already in force for the State on the date on which the facts alleged in the petition occurred. Finally, the Commission is competent *ratione materiae*, because the petition alleges violations of rights protected by the American Convention.

46. Regarding the alleged violation of Article 19 of the American Convention, the State alleges the lack of competence of the IACHR regarding the United Nations Convention on the Rights of the Child. It bears noting, therefore, that in accordance with the rules of interpretation set forth in the American Convention<sup>11</sup> and with the criteria established by the Inter-American Court of Human Rights on the tendency to integrate the regional and the universal systems,<sup>12</sup> and in regards to the notion of corpus juris on

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<sup>7</sup> See Report No. 64/11 Marino López and others (Operation Genesis), March 31, 2011, para.34, Report No. 15/09, Massacre and forced displacement of the Montes de Maria, March 19, 2009, para. 47, and Report No. 140/09 Miembros del Sindicato de Trabajadores Oficiales y Empleados Públicos de Antioquia - Members of the Union of Officers and Employees of Antioquia (SINTRAOFAN), December 30, 2009, para. 51.

<sup>8</sup> These Wayúu communities constitute socially and politically organized groups in a specific geographical location and its members may be individually identified. In this regard see: IACHR, Report No. 63/10, Punta Piedra Garifuna Community and its members (Honduras), March 24, 2010, paragraph 32; IACHR, Report No. 141/09, Diaguita of Huascoltinos and its members (Chile), December 30, 2009, paragraph 28; IACHR, Report No. 79/09, Ngobe Indigenous Communities and their Members in Chingola River Valley (Panama), paragraph 26.

<sup>9</sup> In this regard, see IACHR, Application before the I/A Court H.R. in Mayagna Community (Sumo) Awas Tingni v. Nicaragua, June 4, 1998; ICHR, Application before the I/A Court H.R. in Case Yakye Axa Indigenous Community v. Paraguay, March 17, 2003; IACHR, Application before the I/A Court H.R., in Xákmok Kásek Indigenous Community v. Paraguay, July 3, 2009; I/A Court H.R., Case Kichwa People of Sarayaku v. Ecuador Merits and reparation. Judgment of June 27, 2012. Series C No. 245, para. 231.

<sup>10</sup> In this regard, see IACHR, Report No. 63/10, Punta Piedra Garifuna Community and its members (Honduras), March 24, 2010, paragraph 32; IACHR, Report No. 141/09, Diaguita of Huascoltinos Farming Community and its members (Chile), December 30, 2009, paragraph 28; IACHR, Report No. 79/09, Ngobe Indigenous Communities and their Members in the Chingola River Valley (Panama), paragraph 26.

<sup>11</sup> American Convention, Article 29, Rules of Interpretation. Nothing in this Convention shall be interpreted as: [...] b) restricting the enjoyment or exercise of any right or freedom which may be recognized in accordance with the laws of any State Party or by virtue of another convention to which those States is a party; [...].

<sup>12</sup> I/A Court H.R., Advisory Opinion 1/82 of September 24, 1982 regarding "Other Treaties" subject to the advisory jurisdiction of the Court (Art. 64 American Convention on Human Rights), para. 41.

children,<sup>13</sup> the Commission will interpret the scope of Article 19 of the American Convention, and consider the rights which are claimed to have been violated of the alleged victims when they were children, in light of the provisions of the United Nations Convention on the Rights of the Child.<sup>14</sup>

## **B. Admissibility Requirements**

### **1. Exhaustion of domestic remedies**

47. For a claim to be admitted for alleged violations of the provisions of the American Convention, it must meet the requirements set out in Article 46.1 of this international treaty. Article 46.1.a) of the Convention provides that in order to determine the admissibility of a petition or communication filed with the Commission in accordance with Articles 44 or 45 of the Convention, domestic remedies must have been pursued and exhausted, in keeping with generally recognized principles of international law.

48. Article 46.2 of the Convention provides that the requirement to have previously exhausted domestic remedies will not apply when (a) the legislation of the state in question does not afford due process for the protection of the right or rights in question that have allegedly been violated; (b) the party alleging the violation has not been afforded access to the resources available under domestic law, or has been prevented from exhausting such remedies; or (c) there has been unwarranted delay in rendering a final judgment under those remedies.

49. As established by the Regulations of the Commission, and as established by the Inter-American Court, whenever a State claims that domestic remedies have not been exhausted by a petitioner, the State has the burden of demonstrating that the resources that have not been exhausted are "adequate" to remedy the alleged violation, that is, that the function of these remedies within the domestic legal system is adequate to address an infringement of the legal right that has been violated.<sup>15</sup>

50. The State argues that the petition does not meet the requirement under Article 46.1 of the Convention, of prior exhaustion of remedies under domestic jurisdiction, as there are pending disciplinary, administrative and ordinary criminal proceedings on the facts on which State considers to be in the complaint. Petitioners argue that an exception applies to the requirement under Article 46.2.c) for the exhaustion of domestic remedies because there have been verified delays in the criminal investigation and the facts remain unpunished.

51. In view of the arguments of the parties, the Commission must determine in relation to the subject of this case which are the domestic remedies which must be exhausted. The jurisprudence of the Commission states that whenever a prosecutable offense has occurred, the State has the obligation to promote and advance the criminal process and that, in such cases, is the ideal means to clarify the facts, judge those who are responsible for committing the acts, and determine appropriate criminal penalties, and possibly other forms of monetary reparations.<sup>16</sup> The Commission considers that the facts alleged by the petitioners in this case involving the alleged violations of rights under domestic law are prosecutable offenses, and therefore the criminal process administered by the State itself should be taken into consideration for purposes of determining the admissibility of the claim.

<sup>13</sup> I/A Court H.R., *Case of Villagran Morales et al.* Judgment of November 19, 1999, Series C No. 63, para. 194. *Case of Instituto de Reeducación del Menor* case, Judgment of September 2, 2004, para. 148, *Case of the Gómez Paquiyauri Brothers* Judgment of July 8, 2004, para. 166. I/A Court H.R., *Judicial Condition and Rights of the Child*, Advisory Opinion OC-17/02 of August 28, 2002, Series A No. 17, pp. 24, 37, 53.

<sup>14</sup> This Convention was adopted on 20 November 1989, and entered into force on September 2, 1990. Colombia ratified the Convention on the Rights of the Child on January 28, 1991.

<sup>15</sup> I/A Court H.R., *Case of Velásquez Rodríguez*, Judgment of July 29, 1988, p. 64.

<sup>16</sup> IACHR, Report N° 52/97 (Merits), Case 11.218, *Arges Sequeira Mangas*, Nicaragua, February 18, 1998, pp. 96 and 97. See also Report N° 55/04 p. 25. Report N° 16/06 p. 35; Report N° 32/06, p. 30.

52. The Commission also notes that as a general rule, a criminal investigation should be undertaken promptly in order to protect the interests of victims, preserve evidence, and even safeguard the rights of all persons who are deemed to be under investigation.<sup>17</sup> Also, the Inter-American Court has pointed as since their earliest judgments, although any criminal investigation must comply with a series of legal requirements, the rule of prior exhaustion of domestic remedies should not impede or delay international action in support of victims to the point of it being useless.<sup>18</sup>

53. An analysis of the information and documents submitted by the parties suggests that following the events of January 21, 2006, an investigation was started that was referred to the military criminal courts, where it remained until November, 2006, despite a request for a change in jurisdiction by petitioners. In this regard, the Commission must reiterate that military courts are not an appropriate venue, and therefore do not provide adequate means to investigate, prosecute and punish those violations of human rights protected under the American Convention which are alleged to have been committed by members of public security forces.<sup>19</sup> Additionally, the Inter-American Court has held that military criminal courts do provide an appropriate forum to try military personnel for crimes or offenses that by their nature attempt against legally protected interests of the military order.<sup>20</sup> This same reasoning has been consistently applied by other relevant international human rights institutions.<sup>21</sup>

54. The Commission notes that the Supreme Court of Justice ruled in November 2006 that jurisdiction over the investigation belonged to ordinary courts. The proceeding in those courts for the murder of the alleged victims advanced under File 3456; three government officials – out of more than 30 state officials alleged to have participated in the events were criminally charged, and are under pre-trial detention. No judgments have been issued in these cases. The investigation of some of the state officials who participated in the events of January 26, 2006, filed under number 3456A, is at the pre-trial stage, and the investigation for violent sexual assaults filed under number 3456B is at the preliminary stage.

55. Therefore as more than seven years have passed since the occurrence of the material facts giving rise to the petition, without definitive results, the Commission considers the exceptions under Article 46.2.c) of the American Convention with respect to undue delays in the decision from internal resources applicable; and therefore the requirement of exhausting domestic remedies, as to this portion of the petition, does not apply.

56. As for other remedies referenced by the State, the Commission has previously held that decisions issued in disciplinary and contentious-administrative jurisdictions fail to meet the requirements established in the Convention. The disciplinary jurisdiction does not provide adequate means to prosecute and punish nor redress the consequences of human rights violations. The administrative jurisdiction, on the other hand, is a mechanism that seeks to provide a means of supervising the State's administrative activity, and provide for compensation for damages only in cases of abuse of authority. Accordingly, in a case such as this which is not only related to claims for damages and for disciplinary actions, it is not necessary to exhaust these remedies before resorting to the Inter American system.<sup>22</sup>

<sup>17</sup> IACHR, Report No. 87/06, *Carlos Alberto Valbuena and Luis Alfonso Hamburger Diazgranados*, October 21, 2006, p. 25; Report No. 70/09, *José Rusbell Lara*, August 5, 2009, p. 31; and Report No. 15/09, *Massacre and Forced Displacement in the Montes de María*, March 19, 2009.

<sup>18</sup> I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Preliminary Exceptions. Judgment of June 26, 1987. Series C No. 1, p. 93.

<sup>19</sup> IACHR, Report No. 47/08, *Luis Gonzalo "Richard" Vélez Restrepo and Family*, July 24, 2008, para. 74; see also IACHR, Third Report on the Situation of Human Rights in Colombia (1999), p. 175; Second Report on the Situation of Human Rights in Colombia (1993), p. 246; Report on the Situation of Human Rights in Brazil (1997), p. 40-42.

<sup>20</sup> I/A Court H.R., *Case of Durand and Ugarte*, Judgment of August 16, 2000, para. 117.

<sup>21</sup> UN Doc E/CN.4/Sub.2/2000/44, *Administration of justice through military courts and other special courts*, August 15, 2000, para. 30; and 1995 Report, *Special Rapporteur on Torture*. UN Doc E/CN.4/1995/34, January 2, 1995, para. 76 (g).

<sup>22</sup> See. IACHR. Report No. 74/07 *José Antonio Romero Cruz, Rolando Ordoñez Alvarez and Norberto Hernandez*, October 15, 2007, para. 34 and Report No. 124/10 *Oscar Orlando Bueno Bonnet et al*, October 23, 2010 para. 36.

57. Petitioners allege that the arrests were arbitrary and illegal. The State responds that the arrests were legal, and that all due process and other provisions of the criminal law in force were strictly observed. The State further notes that in the execution of the raid there was an exchange of gunfire and various weapons and military ammunition were seized. As to this, the Commission notes that Petitioners had challenged the preventive detention measures by means of an action for annulment, which led to an order being issued on October 10, 2006 for the release of the alleged victims, after it was verified that the detention orders were not warranted. The Commission also notes that on June 17, 2011, the alleged victims filed an administrative action that is in the discovery phase, in order to obtain redress for the deprivation of liberty to which they were subjected. Therefore, given the nature of this petition, the Commission considers that domestic remedies were exhausted by the order of October 10, 2006.

58. It only bears noting that invoking the exception to the rule of exhaustion of domestic remedies under Article 46.2 of the Convention is closely linked to a finding of possible violations of certain rights enshrined in the Convention, such as ensuring access to justice. However, Article 46.2, by its nature and purpose, is a rule having its own content vis-à-vis the substantive provisions of the Convention. Therefore, a determination as to whether an exception is applicable to the rule of exhausting domestic remedies to the case at hand must be made prior to and separately from deciding the merits of the case, as a different standard applies here than that used to determine possible violations of Articles 8 and 25 of the Convention. By way of clarification, the causes and effects that prevented the exhaustion of domestic remedies will be analyzed in report that is adopted by the Commission on the merits of the dispute, in order to determine whether violations of the American Convention have occurred.

## **2. Deadline for filing the petition.**

59. Under Article 46.1 of the American Convention a requirement of admissibility is the filing of the petition within six months following the notification to the alleged victim of the violation of the decision which exhausted domestic remedies. Article 32 of the Regulation of the Commission states that "in cases in which the exceptions to the requirement of prior exhaustion of domestic remedies apply, the petition must be filed within a reasonable time, as determined by the Commission. To this end, the Commission shall consider the date on which the alleged violation of rights is to have occurred, and the circumstances of each case." The Commission also reiterates that the situation which must be considered in order to determine if remedies under domestic law have been exhausted is that which exists at the time of a decision on admissibility, since the times of the filing of the Petition and the decision on admissibility are different.<sup>23</sup>

60. In the Petition under review, the IACHR has held that domestic remedies were exhausted with regard to the alleged arbitrary and illegal arrests of August 10, 2006; and that the exceptions to the exhaustion of domestic remedies under 46.2.c ) of the American Convention apply, as regard to the other alleged violations. The petition was received on August 25, 2006, and the alleged facts in the complaint began on January 21, 2006; domestic remedies regarding these arrests would have been exhausted as of August 10, 2006. The effects of the other alleged violations in terms of the alleged misconduct in the administration of justice continue still presently. Therefore, given the characteristics of this Petition, the Commission considers that it was filed within a reasonable time, and that the requirement regarding the deadline for the submission of the Petition has been satisfied.

## **3. Duplication of proceedings and international res judicata**

61. Nothing in the record suggests that the subject matter of the Petition is either pending in another international proceeding, or that it is duplicative of another petition already under review by this or any other international body. Therefore we consider that the requirements of Articles 46.1 c) and 47.d) of the Convention have been met.

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<sup>23</sup> IACHR, Report N°. 52/00, *Dismissed Congressional Employees*, June 15, 2000, para. 21.



#### 4. Characterization of the alleged facts

62. For purposes of admissibility, the Inter-American Commission must determine whether the petition states facts that tend to establish a violation, as required in Article 47.b of the American Convention, and whether the petition is "manifestly groundless" or "clearly out of order" under subsection c) of the same Article. The standard for evaluating these points is different from the requirements to decide on the merits of a claim. The Commission must make a prima facie evaluation to determine whether the complaint establishes an apparent or potential violation of a right guaranteed under the Convention, and not to rule on the existence of a violation. Such an examination is a summary analysis that in no way constitutes a prejudgment or preliminary opinion on the merits of the case.

63. Additionally, neither the American Convention nor the IACHR Regulations require petitioners to identify the specific rights that have allegedly been violated by the State in the matter referred to the Commission, although may do so. The Commission's task is to determine in its report on admissibility, on the basis of the jurisprudence of the Inter-American system, which provisions of the relevant inter-American instruments apply to the case and would be violated, if the alleged facts are proven by sufficient evidence.

64. Petitioners allege that on January 21, 2006, an allegedly illicit and violent operation was carried out in the Wayúu Community in Wasimal by agents of the sates, during a time when approximately one hundred members of various Wayúu communities were celebrating a marriage covenant. They report that the operation resulted in the extrajudicial execution of three Wayúu persons, physical injuries to two others, the arbitrary detention of three, and the physical and sexual assault of two Wayúu women. Petitioners allege that, during the operation, the people who were present at the celebration suffered cruel, inhuman and degrading treatment, and also that there were arbitrary searches of houses. They explain that initially these facts were under investigation in the military criminal courts, but that to date they remain unpunished. The State, for its part, disputes these facts and asserts that the search conducted in Wasimal was in response to complaints that pointed to Wayúu persons in that community as those at fault, and that the operation complied with all requirements for it to be valid and effective, and was executed within a valid legal framework.

65. As to this point, the Commission considers for purposes of admissibility that, if petitioners' allegations are proven, these would constitute violations of the following: (i) Article 4 of the American Convention in relation to Article 1.1, and as to the execution of the alleged victims; (ii) Article 5 of the American Convention in relation to Article 1.1, and in regards to the injuries of the alleged victims and to Luis Angel Fince Ipuana, who was allegedly subject to physical assault before execution; (iii) Article 19 of the American Convention, in connection with Article 1.1, and in regards to the child Gaspar Cambar Ramirez, also an allegedly executed victim; (iv) Articles 5 and 11 of the American Convention, in connection with Article 1.1 thereof; Articles 1, 6 and 8 of the American Convention to Prevent and Punish Torture;<sup>24</sup> and Article 7 of the Convention of Belém do Pará, in relation to the women allegedly victims of sexual violence; (v) Articles 7, 8 and 25 of the American Convention, together with Article 1.1 thereof, in relation to the alleged victims who were detained; (vi) Articles 5, 7, 8 and 25 of the American Convention, together with Article 1.1 thereof; and Articles 1, 6 and 8 of the Convention against Torture, in regards to the members of the Wayúu community attending the celebration of the marriage covenant on January 21, 2006, in the Wasimal Community; and (vii) Articles 5, 8, 11, 24 and 25 of the American Convention, together with Article 1.1 thereof, in regards to the relatives of the alleged victims and to the Wayúu communities of Wasimal, Amare and Perancho. The Commission also notes that above allegations could constitute violations of the right to private property, and therefore, the IAHCR will also consider at the merits stage, the alleged violation of Article 21 of the Convention, together with Article 1.1 thereof, in regards to the persons whose belongings were stolen.

#### V. CONCLUSIONS

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<sup>24</sup> Petitioners alleged a violation of Article 2 of the Convention against Torture, which has not been included in the characterization of the facts alleged as it does not contain a possible violation of the Convention, but a definition of torture.

51. The Inter-American Commission concludes that it is competent to examine the claims submitted by Petitioners regarding the alleged violation of Articles 4, 5, 7, 8, 11, 19, 21, 24 and 25 of the American Convention, in conformity with Article 1.1 thereof.

52. The Commission also concludes that it is competent to examine claims submitted by Petitioners regarding the alleged violation of Article 7 of the Convention of Belém do Pará, and Articles 1, 6 and 8 of the Convention against Torture, and that such claims are admissible in accordance with the requirements of Articles 46 and 47 of the American Convention.

53. On the basis of the factual and legal arguments previously stated, and without prejudging the merits of the case,

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

#### **DECIDES:**

1. To rule that this case is admissible with regards to Articles 4, 5, 7, 8, 11, 19, 21, 24 and 25 of the American Convention, in conformity with Article 1.1 thereof, Article 7 of the Convention of Belém do Pará, and Articles 1, 6 and 8 of the Convention against Torture.

2. To notify both the State of Colombia and Petitioners of this decision.

3. To continue analyzing the merits of this case.

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

Done and signed on the 8<sup>th</sup> day of the month of May 2014. (Signed): Tracy Robinson, President; Rose-Marie Belle Antoine, First Vice President; Felipe González, Second Vice President; José de Jesús Orozco, Rosa María Ortiz, Paulo Vannuchi and James Cavallaro, Commissioners.