

**BEFORE THE INTER-AMERICAN COURT OF HUMAN RIGHTS AT SAN JOSE,  
COSTA RICA**

**IN RE: THE CASE OF ANA TERESA YARCE ET AL. V. THE REPUBLIC OF  
COLOMBIA**

**AFFIDAVIT OF MS. HINA JILANI, ADVOCATE SUPREME COURT OF PAKISTAN  
AND FORMER SPECIAL REPRESENTATIVE OF THE UN SECRETARY GENERAL  
ON THE SITUATION OF HUMAN RIGHTS DEFENDERS, RESIDENT OF 131-ET  
GULBERG 3, LAHORE, PAKISTAN, DEPOSING AS AN EXPERT WITNESS.**

I, the above-named deponent, do hereby take oath and solemnly affirm as below:

**1. INTRODUCTION**

The deponent is a lawyer practicing in the Supreme Court of Pakistan. She was appointed as the Special Representative of the United Nations Secretary General on the Situation of Human Rights Defenders in 2000. The mandate was created pursuant to Resolution 2000/61 of the UN Commission on Human Rights. She held this position till 2008. During this period, she undertook 13 country visits to 12 countries, sent 2,007 communications to 120 countries and presented 34 reports, of which 21 went to the Commission on Human Rights, 7 to the General Assembly and 6 to the Human Rights Council. These reports examined different aspects of the situation of human rights defenders and their activities in defense of human rights. The deponent used her analysis of the facts related to human rights defenders for the development of her mandate and to apply the provisions of the 1998 Declaration on Human Rights Defenders<sup>1</sup> to the activities carried out by them in order to illustrate the relevance of these activities to the right to defend human rights inherent in the provisions of all human rights instruments, including the Declaration.

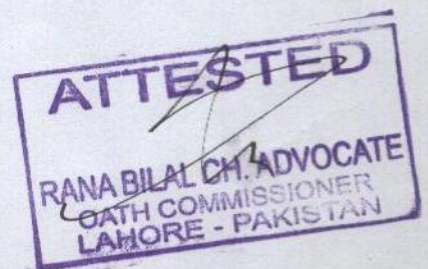
She developed and taught a course on Human Rights Defenders for a Masters Program in International Human Rights Law offered jointly by the Department of Continuing Education and the Faculty of Law, University of Oxford in the United Kingdom.

The Deponent has wide experience of critical investigations of serious violations of International Human Rights and International Humanitarian Law as part of commissions of inquiry set up by the United Nations. She has also participated in several initiatives on expounding international law in the context of human rights, peace and security undertaken by well-known organizations working on development of international law such as the International Committee of the Red Cross (ICRC) and the International Commission of Jurists (ICJ).

**Sources of the Deposition:**

The Deponent has used provisions of International Human Rights Treaties, Conventions and Declarations; General Comments of the Human Rights Committee of the United Nations; the American Convention on Human Rights; Reports of UN Special Procedures and of the Office of

<sup>1</sup> The United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally recognized Human Rights and Fundamental Freedoms.





the High Commissioner for Human Rights (OHCHR), publications of the UN and the Inter-American Commission on Human Rights, related to the role of Human Rights Defenders and the Role and Independence of the Judiciary; and judgments of the Inter-American Court of Human Rights in order to establish that:

1. The right to defend human rights exists by virtue of the prescribed duties of States to protect rights guaranteed by International Human Rights Law (IHRL) and the right and responsibility of everyone to strive for the promotion and protection of human rights;
2. The right to defend human rights remains unaffected by conditions of political, social or economic tensions, conflict, states of exception or declaration of emergencies;
3. In situations of armed conflict, the need to preserve and protect human rights, the rule of law and the observance of the rules of international humanitarian law for the protection of civilians require constant vigilance by human rights defenders;
4. Human rights defenders are exposed to added risks in situations of armed conflict, and women human rights defenders (WHRDs) become vulnerable to harm over and beyond the physical and social injury that HRDs may suffer in general;
5. Those who react against or oppose acts or omissions of state and non-state actors, that have resulted in violations of human rights or International Humanitarian Law (IHL), are entitled to legal protection against any retaliatory measures, pressure or any other arbitrary action against them as a consequence of their actions for the protection and promotion of human rights or IHL;
6. States, as a part of their obligation to guarantee the enjoyment of human rights and fundamental freedoms, have a duty to protect those who are engaged in any activity for the protection of these rights;
7. The duty to protect becomes more urgent in times of internal conflict and the state has an obligation to address the heightened risks to HRDs in a timely and effective manner, with particular emphasis on the safety of WHRDs. This obligation is particularly relevant to the conduct of state forces in areas where the state has launched a military operation against armed groups.

## 2. SUBMISSION

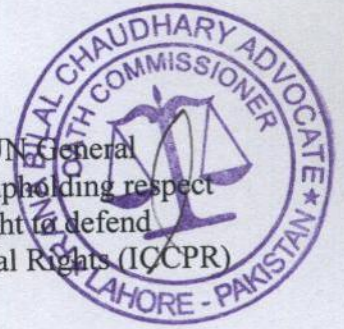
### The Right to Defend Human Rights:

International human rights law gives recognition to and establishes the principles and standards for the protection, promotion and realization of human rights and fundamental freedoms. Inherent in this protection is the guarantee that activities for the promotion and protection of these rights can be conducted with out fear and hindrance.





While proclaiming the Universal Declaration of Human Rights (UDHR), the UN General Assembly bound every individual and every organ of the society to strive for upholding respect for these rights and freedoms<sup>2</sup>. This is the beginning of the evolution of the right to defend human rights. The preamble to the International Covenant on Civil and Political Rights (ICCPR) confirms the essential nature of this right by stating it as a responsibility<sup>3</sup>.



The Preamble to the American Convention on Human Rights recognizes the universality of the principles enshrined in the UDHR and considers that these principles have been "reaffirmed and refined in other international instruments, worldwide as well as regional in scope<sup>4</sup>." The Convention also gives due recognition to provisions of international human rights law when it bars any interpretation of the Convention that excludes or limits the effect that other international acts of the same nature as the American Declaration of the Rights and Duties of Man may have<sup>5</sup>. The Inter-American Commission on Human Rights has not only recognized, but has contributed towards the conceptual clarity in the definition of the right to defend human rights<sup>6</sup>. The Inter-American Court has also observed the importance of defending human rights in judgments of the Court related to serious violations of the rights of those engaged in activities for the promotion and protection of human rights<sup>7</sup>.

In 1998, the United Nations General Assembly adopted the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (the Declaration). The Declaration, though not in itself a legally binding instrument, contains a series of principles and rights that are based on human rights standards enshrined in other international instruments that are legally binding. Moreover, the Declaration was adopted by consensus by the General Assembly and, therefore, represents a very strong commitment by States to its implementation. As stated in a publication of the Office of the UN High Commissioner on Human Rights (OHCHR) on human rights defenders, "States are increasingly considering adopting the Declaration as binding national legislation"<sup>8</sup>.

Attested &  
Notarized to  
Take Effect in  
All Continents Out  
of Pakistan Under  
International Law

<sup>2</sup> See last paragraph of the Preamble to the UDHR.

<sup>3</sup> "Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant," Preamble, ICCPR.

<sup>4</sup> American Convention on Human Rights, Preamble paragraph 3.

<sup>5</sup> Article 29 of the American Convention on Human Rights.

<sup>6</sup> Inter-American Commission on Human Rights Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II.124 Doc.5 Eng., Footnote No. 7: "The Commission has convened hearings to look into, inter alia, issues such as the situation of judicial officers in Central America, the situation of freedom to form and join unions in Central America and Colombia, and the situation of human rights defenders in Latin America"

See also IACHR, Report N° 13/96, Case 10,948 (El Salvador), March 1, 1996, para. 25, and IACHR, Report No. 29/96, case 11,303, (Guatemala), October 16, 1996.

See also IACHR Report on the Situation of Human Rights Defenders in the Americas OEA/Ser.L/V/II. Doc. 66, 31 December 2011.

<sup>7</sup> I/A Court H.R., Lysias Fleury et al v. Haiti, Judgment of November 23, 2011; Valle Jaramillo et al v. Colombia, Judgment of November 27, 2008; Carlos Nieto Palma et Al. v. Venezuela, order of July 9, 2004; Huilca Tesce vs Peru Case, Judgment of March 3, 2001. Kawas Fernandez v. Honduras, Judgment of April 3, 2009, amongst others.

<sup>8</sup> Human Rights Defenders: Protecting the Right to Defend Human Rights Fact Sheet No. 29, ISSN 1014-5567.





The first article of this Declaration proclaims the right of everyone "to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels". This corresponds to and elaborates the purpose of the UDHR expressed in the proclamation paragraph, the Preamble of the ICCPR and also Article 1.1 of the American Convention on the obligation to respect rights.

The 1998 Declaration is a step forward in the development of international protection for human rights. Read with other international human rights instruments, it gives shape to the concept of the defense of human rights as not only a right, but also a collective responsibility<sup>9</sup>. This concept sees the state as the guarantor of rights and in this capacity, responsible for ensuring that individuals, groups and organs of society are able to pursue peaceful activism for the full realization of human rights.

The right to defend human rights remains alive as a duty to be fulfilled at all times and under any conditions, even though some rights and fundamental freedoms may be restricted within the limits prescribed by international human rights law and standards. A cumulative reading of the core human rights instruments confirms this understanding<sup>10</sup>. The mention of this duty in the preamble to many of these instruments became the basis for the statement of this as a right in Article 1 of the Declaration. While recognizing the relationship between international peace and security and the enjoyment of human rights and fundamental freedoms, the Declaration notes, "the absence of international peace and security does not excuse non-compliance". This reflects the autonomous, independent and ever-present status of the right to defend human rights.

### Human Rights Defenders

Human rights defenders have become integral to the definition of the right to defend human rights. An important element of the right is participation in government, especially in the conduct of public affairs. The American Convention recognizes the right<sup>11</sup> and the Declaration on Human Rights Defenders reiterates the same and adds the right individually and in association with others, to draw attention to any impediment to the promotion, protection or realization of rights<sup>12</sup>.

Article 18 of the Declaration includes safeguarding democracy and contributing towards the promotion and advancement of democratic societies, institutions and processes in the duty to promote human rights. Article 21 of the UDHR, Article 25 of the ICCPR and Article 23 of the American Convention on Human Rights articulate the right to democratic and representative governance. Those that defend this right by the exercise of their freedom of association, assembly and of expression and opinion are human rights defenders regardless of their personal or professional status.

<sup>9</sup> Article 18 of the Declaration on Human Rights Defenders

<sup>10</sup> See, for instance, General Comment No. 34 on Article 19 of the ICCPR, Human Rights Committee, 102nd session, Geneva, 11-29 July 2011.

<sup>11</sup> Article 23.

<sup>12</sup> Article 8 of the Declaration on Human Rights Defenders.





In General Comment No. 34 on the freedom of expression while explaining Article 19, paragraph 3 of the ICCPR, the Human Rights Committee (HRC) has held that "Paragraph 3 may never be invoked as a justification for the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights." In General Comment No. 10, the HRC has held that "Paragraph 1 (of Article 19, ICCPR) requires protection of the "right to hold opinions without interference". This is a right to which the Covenant permits no exception or restriction."

### **Women Human Rights Defenders:**

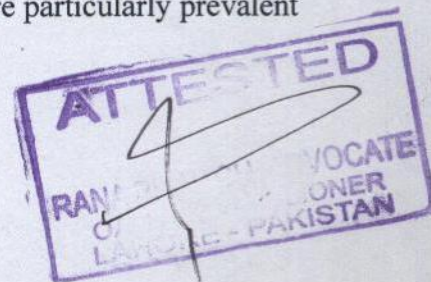
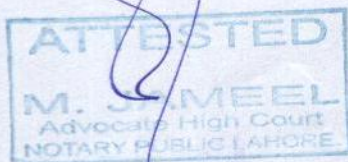
The world over, against all odds, women human rights defenders are working tirelessly for the protection and promotion of the human rights of all. In this respect, it is important to emphasize the sheer wealth, diversity and breadth of the human rights work they undertake and the wide-ranging nature and scope of the activities these women are involved in as human rights defenders.

As professionals and as mothers, sisters, daughters, wives, partners and colleagues, women human rights defenders have been at the forefront of demands for an end to enforced disappearances in several countries. They have campaigned indefatigably for humane prison conditions and have been documenting and exposing human rights abuses. Women defenders have asserted the rights of, among others, ethnic and religious minorities, and protested against widespread impunity for violence against women; they have supported countless victims of human rights abuses and their relatives in demanding justice; they have led projects dedicated to helping other women, particularly victims of sexual abuse, obtain legal redress. As victims of human rights abuses themselves, they have testified in proceedings against the alleged perpetrators.

Like all human rights defenders, these women have paid a heavy cost for defending human rights. They have suffered violations of some of the most fundamental rights, including the right to life, to mental and physical integrity, to liberty and security of person, to freedom of expression and association, and to privacy and family life. However, women who are engaged in activities for the protection and promotion of human rights face extraordinary risks. As women, they face risks that are specific to their gender and additional to those faced by men.

Women defenders are more at risk of certain forms of violence and restrictions and become vulnerable to prejudice, to exclusion and to public repudiation, not only by State forces but by social actors as well, especially when engaged in the defense of women's rights. This is often due to the fact that women defenders are perceived as challenging accepted socio-cultural norms, traditions, perceptions and stereotypes about femininity, sexual orientation, and the role and status of women in society. Their work is often seen as challenging "traditional" notions of the family and is often used to condone or even encourage forms of violence and oppression of women. The very fact that they are active in public life as human rights defenders can, in certain contexts, lead to hostility or lack of support from the general population as well as the authorities.

The violations faced by women defenders may take a gender-specific form, ranging from verbal abuse based on their sex, to sexual abuse and rape. Cases of the latter are particularly prevalent





in situations of conflict, which are often characterized by an environment of complete impunity for perpetrators. Further, in certain contexts, if a woman human rights defender is subjected to rape or sexual abuse as a result of her work, she may be perceived by her extended family as having brought shame on both the family and the wider community, only because she continued to undertake her human rights activities despite the risks entailed. In such situations she is seen to have "invited trouble".

All human rights defenders face vilification and stigmatization, deliberately carried out to undermine their work and their credibility. Aside from the "political" stigmatization to which both women defenders and their male counterparts are subjected in certain contexts, women defenders are often stigmatized and ostracized by community leaders, faith-based groups and even their own families, who perceive their work as jeopardizing religion, honor or culture. WHRDs are, in many societies, seen as defying social norms by engaging in public life.

Family members of women defenders, along with female relatives and associates of male defenders, are also commonly targeted as a way of curtailing the activities of the defenders. In some circumstances, attacks against family members and children of women defenders are reflective of traditional gender stereotypes of women as mothers and caregivers. The United Nations as well as the Inter-American mandate on Human Rights Defenders have, on many occasions, expressed concern regarding the physical and psychological integrity of family members of women defenders and female relatives and associates of male defenders.

### **The Duty to Protect:**

The duty of the State to protect the rights of defenders is derived from the primary responsibility of the State to protect all human rights as enshrined in article 2 of the International Covenant on Civil and Political Rights and in Article 1.1 of the American Convention. The Declaration underlines the responsibility of the state to ensure that all necessary conditions in the social, economic and political fields are created and all legal guarantees are instituted in order that all persons under its jurisdiction are able to enjoy all rights and freedoms in practice<sup>13</sup>.

The principle of due diligence, as first articulated by the Inter-American Court of Human Rights in the case of Velásquez-Rodríguez v. Honduras<sup>14</sup>, provides a way to assess whether the State has fully discharged its human rights obligations. Failure of a state to comply with international standards required to fulfil the duty to protect, and its failure to demonstrate due diligence in providing that protection, lead to international responsibility.

Articles 9 and 12 of the Declaration on HRDs are relevant in this context. Article 9 protects the exercise of human rights and fundamental freedoms and gives the right to effective remedy and to be protected in the event of the violation of those rights. Article 12 not only protects the right to participate in peaceful activities against violations of human rights and fundamental freedoms, but also emphasizes the duty of the state to protect such activity against any violence, threats, retaliation or any other arbitrary action. These activities include any peaceful action in reacting

<sup>13</sup> Article 2 of the Declaration.

<sup>14</sup> Velasquez Rodriguez v. Honduras, Judgment of July 29, 1988.





against or opposing acts that result in violation of human rights, including those by omission attributable to the State. The scope of this duty extends to violence perpetrated by non-state actors that results in any harm to human rights defenders.

Situations of conflict existing in many parts of the world have their roots in the violation of human rights and fundamental freedoms. At the same time, conflicts not only have serious implications for the promotion, protection and enjoyment of human rights but also place human rights defenders at greater risk. Impunity for violation of human rights during conflict has become one of the most serious human rights problems and directly affects the security of human rights defenders working in such situations. Mere existence of legislation or administrative procedures is not an adequate response to this problem. Genuine political will to combat impunity requires a degree of diligence on the part of state authorities that allows them to spot vulnerability and address it in an effective and timely manner.

This Court has amplified the State duty to protect in situations of conflict in *Valle Jaramillo et al v. Colombia*<sup>15</sup> in the light of the jurisprudence of the Court on the subject. While examining the situation of human rights defenders and the harm inflicted on them by 'paramilitary' groups in the context of the conflict in Colombia and the origin of these groups, the Court observed "In this regard, on other occasions, the Court has declared that it was the Colombian state itself that created a dangerous situation, which it was subsequently unable to control or reverse (.....)." The Court found that "the danger created by the state aggravated the situation of vulnerability of human rights defenders who, ....., denounced the violations committed by paramilitary groups and the armed forces." It is evident therefore, that when the State itself adopts methods of counterinsurgency that create elements, such as paramilitary groups, that become instruments for harm to human rights defenders, the failure to protect denotes an even more serious default in the state's responsibility to protect.

The primary responsibility for developing mechanisms and specific measures for the protection of human rights defenders lies with the State. In the case of *Luna López v. Honduras*, this Court referred to the characteristics of a public policy to protect human right defenders<sup>16</sup>. The obligation to investigate is amongst the more immediate measures that the State must take as a part of its positive duties, both under international as well as the domestic law. This Court has held that "The State's obligation to investigate must be carried out diligently in order to avoid impunity and the repetition of facts such as these"<sup>17</sup>.

Measures for the protection of human rights defenders must accompany all strategies adopted by the state for conflict-affected areas. The situation of women human rights defenders demands more attention as well as gender sensitive and innovative methods of protection. The responsibility of the state to ensure conditions that allow people to enjoy their human rights in all circumstances, enhances the responsibility to protect women defenders not only because of their gender, but also because of the essential nature of the work they do in the context of promoting and protecting human rights. Often however, despite repeated requests, women human rights

<sup>15</sup> Case of Valle Jaramillo et al v. Colombia Judgment of November 27, 2008.

<sup>16</sup> Case of Luna López v. Honduras, Judgment of October 10, 2013. (Merits, Reparations and Costs), paragraph 243.

<sup>17</sup> Case of Valle Jaramillo et al v. Colombia Judgment of November 27, 2008, paragraph 100.





defenders have been denied protection or have been offered hopelessly inadequate protective measures, leaving them to fend for themselves. Such denials or inadequacies on the part of the authorities further increase the risk that women defenders confront, especially at the hands of non-State actors, for whom these failures act as a green light for abuse<sup>18</sup>.

**The situation of Human Rights Defenders in the context of the conflict in Colombia:**

As the Special Representative of the UN Secretary General on the Situation of Human Rights Defenders, the deponent conducted a Mission to Colombia from 23 to 31 October 2001. The purpose of the visit was to study and evaluate the situation of human rights defenders and the conditions under which they pursue their activities in the context of the conflict in Colombia. The deponent visited Bogotá, Medellín and Barrancabermeja and gathered information on the basis of which she prepared a report<sup>19</sup> that she presented to the United Nations Commission on Human Rights in its fifty-eighth session.

The deponent recorded her serious concerns over the climate of intimidation and the insecurity in which human rights defenders carry out their work, while caught in the crossfire between the various parties to the conflict. She had received reports that human rights defenders were usually targeted because of the independent positions they take vis-à-vis the armed factions and for denouncing the serious abuses committed by all parties to the conflict.

The deponent received credible information that indicated the responsibility of the paramilitaries for the majority of killings. According to the same information paramilitaries often accused human rights defenders and organizations of supporting or collaborating with the guerrillas, and targeting them as legitimate military targets. In this regard the deponent had observed that the pattern of selective killings had been adopted by the paramilitaries at that time as a new strategy in some parts of the country, and had referred to the 2001 report of the High Commissioner for Human Rights on the human rights situation in Colombia<sup>20</sup> to support her assessment.

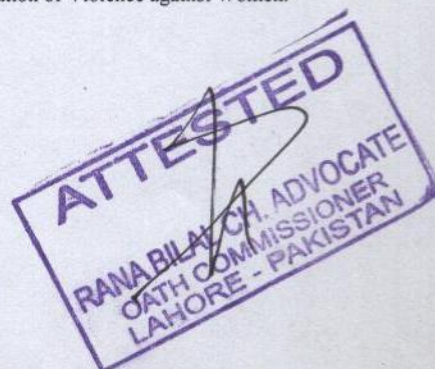
Reports received by the deponent from Colombia during 2001 and her own observation of the situation during her Mission to Colombia, indicated an increase in the victimization of human rights defenders in some of the regions, particularly the Magdalena Medio (Barrancabermeja) and the Department of Antioquia (Medellin). During 2001, many communications were sent by the deponent about attacks committed against human rights defenders in these two regions.

The deponent had observed at the time that, even though the most basic rights of human rights defenders have been consistently violated in recent years in Colombia, these violations are never or rarely properly investigated. In her concluding observations the deponent expressed her deep concern about the climate of impunity that surrounds human rights violations in Colombia, in particular with respect to the violations that had resulted in serious harm to human rights defenders. There was a body of credible material that indicated that state support, acquiescence or connivance have been contributory factors to violence against human rights defenders

<sup>18</sup> Also see Article 2 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women.

<sup>19</sup> E/CN.4/2002/106/Add.2

<sup>20</sup> E/CN.4/2001/15, paragraph 35





committed by paramilitaries. She noted with concern the tendency of State and army officials of increasing the risk against HRDs by using harmful and irresponsible rhetoric against them, often accusing them of collaborating with the guerrillas.

The deponent noted a pattern of abuse against human rights defenders, including threats, arbitrary detention, disappearances, killings and forced displacements. Human rights defenders who were monitoring and reporting the actions carried out by paramilitary groups, allegedly in collusion with law enforcement forces, were amongst the groups more targeted than others. Many of these defenders were women community leaders.

The deponent heard of several instances of unknown individuals approaching human rights defenders and telling them that they have to stop their work or suffer the consequences. Some human rights defenders, many of whom were women community leaders, received funeral wreaths or invitations to their own funerals. She was shown several communications allegedly sent by paramilitaries to various human rights organizations, including women's organizations, announcing their funerals.

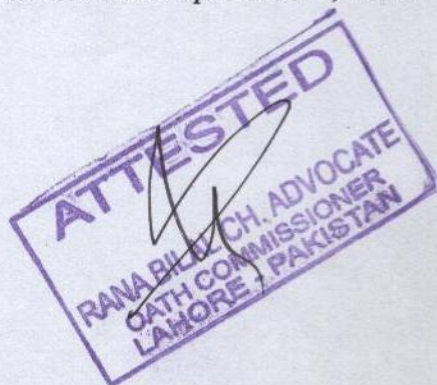
Amongst groups that appear to be most at risk are women defenders working to fight impunity for human rights violations. Women's organizations, which were hit the hardest on an on-going basis, were those that work in areas of intense conflict where paramilitary and armed self-defence groups were more active. Several women leaders of these organizations were killed in the past few years, some of them along with their husbands or children. Many had suffered enforced disappearances, assassinations, forced displacement and exile of its leaders and members. Many continued to face intimidation and harassment and to receive threats from armed paramilitaries, despite repeated complaints to the authorities. The deponent received reliable testimony that, just before she was killed, one woman human rights defender had reported to the authorities that unidentified men had been following her and that the office of her organization was under constant surveillance. No action was taken for her protection.

In her report to the Human Rights Council at its Sixteenth Session in 2011, largely dedicated to an analysis of the situation of women human rights defenders, the Special Rapporteur on the Situation of Human Rights Defenders noted the gender-related risks faced by women defenders in the context of the conflict that were highlighted by the Constitutional Court of Colombia and the directions that the Court had issued to overcome the inadequate protection of those women who work as leaders of internally displaced communities<sup>21</sup>. In its judgment in the case of *Valle Jaramillo v. Colombia*, this Court has also referred to a 1998 judgment of the Constitutional Court of Colombia where the court has expressed its concerns on the situation of human rights defenders, defining them as "a vulnerable sector of society", and directing the state to "prioritize their protection"<sup>22</sup>.

It is evident that the dangers confronting human rights defenders in Colombia have been of long standing. The deponent conducted a follow-up visit to Colombia in 2004 and reported that, while

<sup>21</sup> A /HRC/16/44, paragraph 94.

<sup>22</sup> Case of Valle Jaramillo et al v. Colombia Judgment of November 27, 2008, paragraph 82.





the government had taken several positive initiatives, these programs had no visible impact on the safety of human rights defenders. With the break down of peace talks between the government and the illegal armed groups in 2002, the conflict had intensified and the violence had increased. Paramilitary groups continued to perpetrate grave human rights violations including massacres, selective homicides and disappearances. Human rights defenders continued to face serious threats from these groups. A majority of cases registered with respect to violence and threats against human rights defenders remained pending and only few investigations had resulted in the indictment of the perpetrators or in their sentencing. As a result, acts against human rights defenders continued to be committed, still with a worrying level of impunity. According to the deponent's assessment, actions taken by the Government had not had the expected outcome. The deponent noted with concern that the situation of HRDs had deteriorated since her last visit in 2001.

In her report on her mission to Colombia in September 2009<sup>23</sup>, the Special Rapporteur on the Situation of Human Rights Defenders, Margaret Sekaggya, had concluded "patterns of harassment and persecution against human rights defenders, and often their families, continue to exist in Colombia"<sup>24</sup>. She acknowledged the efforts of the government to improve the situation of human rights defenders, but observed that much still remained to be done to ensure a safe and conducive environment for defenders<sup>25</sup>. She pointed towards the large number of cases of attacks and threats against defenders. She expressed her concern over the continuing impunity for violations committed by state and non-actors against them, and a lack of an effective methodology for thoroughly investigating all threats and attacks against human rights defenders, and prosecuting the perpetrators<sup>26</sup>.

#### **Facts of the Case:**

Ms. Myriam Eugenia Rúa Figueroa, Ms. Luz Dary Ospina, Ms. Mery Naranjo, Ms. María del Socorro Mosquera, Ms. Ana Teresa Yarce, were all human rights defenders. These community leaders were members of an organization that worked for the welfare of the population in that particular local area. Three of these women were office bearers of the organization and, therefore, had visibility in the community.

The events in the case of the five women human rights defenders violations of whose rights are at issue in the present case, stretched over a period of two years (2002-2004).

It is the same period of time during which the situation described by the deponent prevailed in Colombia. This was a period when the conflict in Colombia had intensified. The location in which these defenders were carrying out their human rights activities was one of the areas where military operations were being conducted and paramilitary presence and activity was well known. All of them were at risk and had at some point made the authorities aware of the threats

<sup>23</sup> A/HRC/13/22/Add.3

<sup>24</sup> Ibid, paragraph 138.

<sup>25</sup> Ibid, paragraph 139.

<sup>26</sup> Ibid, paragraph 147.





that they were receiving. All suffered serious harm, including death in one case, through a series of actions that violated their human rights.

In none of the cases did the state either prevent harm or fully discharge its duty to protect. Following the incidents the state visibly failed in its obligations with respect to ensuring accountability of the perpetrators. This had resulted in a high level of impunity that the deponent as well as other independent observers had reported as a general trend in Colombia. The state also failed to install sufficient safeguards for the protection of the community and human rights defenders in a locality where armed conflict was raging.

The situation faced by these women human rights defenders, including Ana Teresa Yarce who ultimately lost her life, illustrates all the trends that have been identified in the context of the conflict in Colombia. They suffered serious physical harm, forced displacement, loss of liberty, disruption of family and social life, psychological stress on account of anxiety for the safety of their family, separation from their community and suspension of their collective work for the promotion and protection of human rights as well as disassociation from the activities of their organization. None of them received adequate measures for their protection. Typically, impunity prevailed and accountability of the perpetrators remained elusive. The major source of harm in relation to HRDs identified by a variety of independent observers, i.e. paramilitary groups, is also the alleged perpetrators in this case.

### **Responses to Questions of the Inter-American Commission on Human Rights**

#### **1. Risks that WHRDs generally confront in conflict areas, where paramilitary or self-defence groups and the guerrillas are active:**

This group includes WHRDs who are denouncing abuses in contexts of military conflict, counter-terrorism and other situations of widespread violence, providing aid and assistance to victims, addressing the gender dimensions of conflict and combating impunity, including by bringing cases before international bodies such as the regional and international human rights mechanisms. Women community leaders, particularly those belonging to indigenous or other minority communities, are more vulnerable and targeted. In her report on women human rights defenders, the Special Rapporteur on Human Rights Defenders has noted that "paramilitary and other armed groups particularly in the Colombian context, are often the source of killings and death threats, which may target large swathes of civil society, often accompanied by the stigmatization of the work that defenders do and declaring them to be "military targets"<sup>27</sup>. Such women are known to have been killed or have received death threats, disappeared, forcibly displaced or had to go into self imposed exile to save their lives. They suffer separation from family and community, disassociation with their organizations and suspension of their human rights activities. Some suffer arbitrary arrest and detention, especially when the perpetrators are acting in collusion with or under the protection of state agencies. Rape, torture and sexual abuse of women defenders at the hand of non-state armed actors have been reported and are well documented in many conflict areas around the world. Rape and torture are used not only to silence women defenders who are active in denouncing violations committed by armed actors, but also to intimidate other defenders and their families. Stigmatization of women human rights

<sup>27</sup> A/HRC/16/44, paragraph 68.





defenders is often a tactic used in order to discredit their allegations against the activities of paramilitary and self defense groups. Such stigmatization is frequently intended to tarnish the social image and reputation of women human rights defenders to incite the community against these defenders, especially when the environment is already polarized and politically charged.

## 2. Responsibility of the State as a part of its duty to protect:

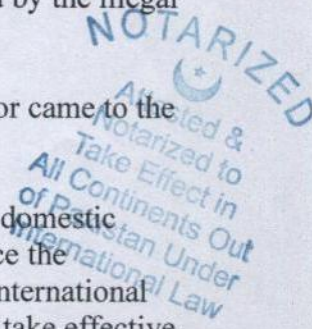
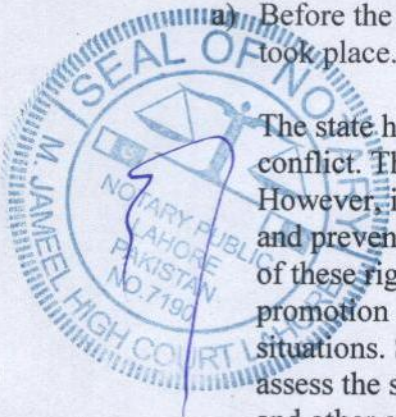
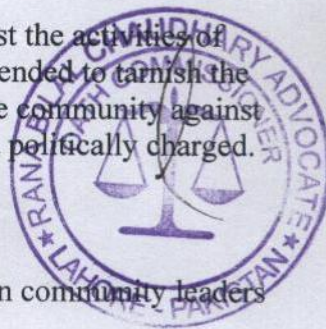
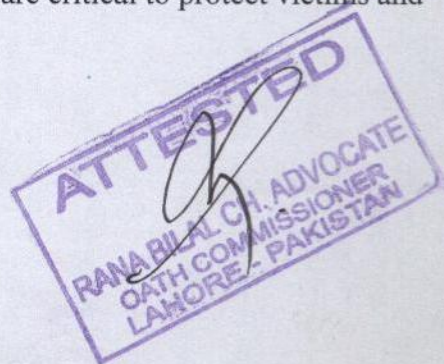
- a) Before the individualized threat or act of aggression against women community leaders took place.

The state has a heavier burden of diligence in fulfilling its duty to protect in situation of conflict. This applies to the protection of everyone present in the conflict affected areas. However, in view of the responsibility of the state to promote and respect human rights and prevent violations under all circumstances, and to create conditions for the enjoyment of these rights, it is obliged to ensure that HRDs are able to conduct activities for the promotion and protection of human rights, including those specially relevant to conflict situations. State authorities, including the military, must exercise constant vigilance to assess the situation and give due importance to reports and assessments made by HRDs and other civil society actors, such as journalists and community leaders, that point out violations and identify the perpetrators. The authorities must be pro-active in spotting vulnerability of defenders, particularly the women, and take measures to make the environment safe for their activities. Public demonstration of support and respect for human rights and for defenders' activities by authorities is an important measure in this regard.

In the context of the present case, the state of Colombia could not have been unaware of the situation in *Comuna 13* at the time that the alleged violations in this case were occurring. Reports of activities of non-state armed groups were also continuously being made public by the human rights and community leaders. Duty of the state to protect implied that measures should have been adopted and safeguards put in place to effectively deal with elements that threatened the work and physical integrity of human defenders, in particular those who were exposing the violations committed by the illegal armed groups.

- b) Once the violations committed by the illegal armed groups were reported or came to the knowledge of the state.

Under international and regional human rights law, as well as Colombia's domestic legislation the state was bound to effectively investigate and bring to justice the perpetrators of these crimes and of serious human rights violations. Both international standards and the Inter-American human rights system obliges the state to take effective measures for the protection of the defenders who were threatened and remained vulnerable to harm, because of which they have suffered long periods of displacement, and one of them lost her life. The duty to protect includes the responsibility to end impunity and to ensure accountability of perpetrators. Diligent and effective investigations by the state, with convincing conclusions, are critical to protect victims and to avoid repetition of violence.





3. **What impact does the forced displacement of women community leaders have in their possibilities of doing their job in defense of human rights? Could you specify on whether these implications translate into violations of the rights contained in the American Convention?**

Displacement results in suspension of the work that women community leaders are doing to promote and protect human rights, individually and collectively. This is particularly damaging for their freedom of association, when they perform their HRD work in association with local and community based organizations. Any action or omission of the state that results in such displacement and suspension of activities of a defender would be a violation of Article 1.1 of the American Convention. The effect of severance of links with their association resulting from the displacement would also amount to a violation under Article 16 of the Convention. In the case of those community leaders who perform their functions as representatives of their community or act as community spokespersons in matters of public importance affecting the community, ending their connection with the affairs of the community resulting from the displacement would also amount to a violation of their rights under Article 23 of the Convention. It may also be noted that displacement of the women community leaders in the present case occurred under conditions that would also be contrary to the spirit of the Convention expressed in Preamble paragraph 4<sup>28</sup>.

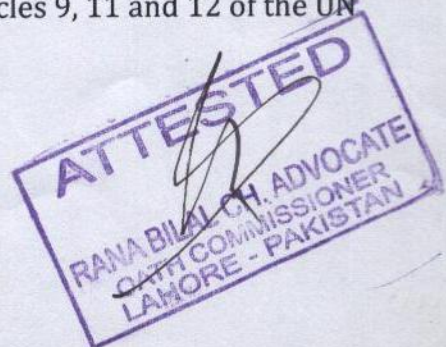
4. **When having knowledge of a situation of displacement by community leaders, human rights defenders, what measures should the State take in accordance with its international obligations in order to enable them to develop their work in defense of human rights?**

Under international human rights law, those whose rights have been violated have a right to remedy, and the state is obliged to provide that remedy<sup>29</sup>. In the case of violation of rights resulting from displacement of human rights defenders and community leaders, the first step in providing that remedy is state action to remove the conditions that resulted in the displacement and to make the environment in the community safe for their return. The State should also make sure that all administrative arrangements, necessary for resettlement of the defender in her community, are facilitated. Adequate measures should be instated for the defender's personal security as well as her safety in continuing with her human rights work.

5. **Do you consider that the duty of protection to community leaders, victims of violations of their rights by illegal armed groups is related to the obligation of**

<sup>28</sup> "Reiterating that, in accordance with the Universal Declaration of Human Rights, the ideal of free men enjoying freedom from fear and want can be achieved only if conditions are created whereby everyone may enjoy his economic, social, and cultural rights, as well as his civil and political rights". American Convention on Human Rights, Preamble.

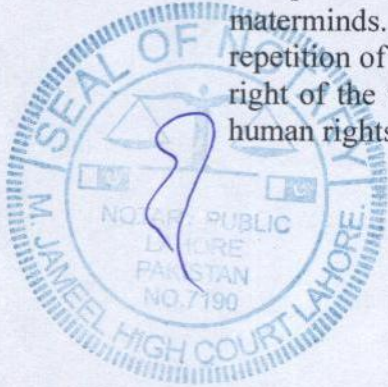
<sup>29</sup> See Article 2 of the International Convention on Civil and Political Rights; Articles 24 and 25 of the American Convention on Human Rights; Articles 9, 11 and 12 of the UN Declaration on Human Rights Defenders.





investigation and punishment of the perpetrators? Specifically, if the State investigates and punishes only some of the perpetrators involved in the acts of violence against the women community leaders and not all the perpetrators and masterminds, do you consider that the obligation of investigating such attacks, in accordance with international law, is satisfied?

The state duty to protect extends to the accountability of non-state actors who are perpetrators of human rights violations. This is now a well recognized and essential element of state responsibility under international law. Jurisprudence of regional human rights courts shows that this principle is now consistently applied to hold that failure of the state to conduct credible, convincing and conclusive investigations to identify and punish the perpetrators, makes the state responsible under international law. Comprehensive investigations imply identification of all perpetrators, and primarily the masterminds. This would be an essential element for eliminating impunity and avoiding repetition of the same violations. More importantly, it is indispensable with respect to the right of the victim to know the whole truth, which is an emerging right in international human rights debate.



NOTARIZED  
Attested &  
Notarized to  
Take Effect in  
All Continents Out  
of Pakistan Under  
International Law

Hina Jilani  
(Hina Jilani)  
The Deponent

#### Verification

Verified on oath at Lahore, this 12<sup>th</sup> day of June 2015, that the contents of this affidavit are true to the best of my knowledge and belief.

ATTESTED  
M. JAMEEL  
Advocate High Court  
NOTARY PUBLIC LAHORE

ATTESTED  
RANA BILAL CH. ADVOCATE  
OATH COMMISSIONER  
LAHORE, PAKISTAN

Hina Jilani  
(Hina Jilani)  
The Deponent