

**ALTERNATIVE REPORT FOR THE COMMITTEE ON THE RIGHTS OF THE
CHILD
-COLOMBIA-**

Geneva, March 2014

Report presented before the Committee on the Rights of the Child (CRC) by Antioquia-Minnesota Human Rights Partnership, comprising:

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- **Clínica de Derechos Humanos de la Universidad Católica de Oriente (Colombia)**
- **Clínica de Interés Público de la Universidad de Medellín (Colombia)**
- **Clínica de Derechos Humanos de la Universidad Pontificia Bolivariana (Colombia)**
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INTRODUCTION

The Committee on the Rights of the Child, as the treaty body responsible for monitoring compliance of the states to protect and promote the human rights of children, represents an important opportunity to highlight some issues children face in Colombia, specifically in Medellin and in the Eastern area of the department of Antioquia, with the aim of achieving the minimum conditions for children to enjoy their rights in our country.

As the Colombian state comes up for review before the Committee in January 2015, and based on the fourth and fifth reports issued by the State and the final recommendations of the Committee of 2006, the Human Rights Partnership between the universities of Antioquia and the University of Minnesota¹ submits this alternative report to the Committee about the situation of children in Medellin and Eastern Antioquia. In addition to highlighting issues in this region, we hope that the information presented will also contribute to a broader understanding of national issues. The report also analyzes local and national laws, regulations and judicial decisions for framing the issues and monitoring compliance of the Colombian State's duties under the Convention on the Rights of the Child.

The first section, "General Measures of Implementation" examines the effectiveness of the institutional presence of the state for the protection of the rights of children in Eastern Antioquia.

The second section, "Family Environment and Alternative Care," provides an analysis of the current adoption system in the country and the conditions of international adoptions.

The third section, "Basic Health and Welfare" addresses the State's failure to acknowledge the right to a healthy environment for children and reports on the violation of this right in the city of Medellin due to air and water pollution.

The fourth section, "Special Protection Measures" addresses the situation of displaced children, specifically in terms of their rights to family and adequate housing.

The final section includes recommendations urging the Colombian State to adapt its public policies and institutions to comply with the Convention of the Rights of the Child. Additionally, we hope this document contributes to the dissemination of this Convention in the

¹ The Antioquia-Minnesota Human Rights Partnership is a collaborative effort to strengthen the capacity of universities in Antioquia (Colombia) for the promotion and protection of international human rights. This alternative report was made by La Clínica de Derecho de Familia y el Programa de Atención a Víctimas de Desplazamiento Forzado de la Universidad de Antioquia, La Clínica de Derechos Humanos de la Universidad Católica de Oriente, La Clínica de Interés Público de la Universidad de Medellín, La Clínica de Derechos Humanos de la Universidad Pontificia Bolivariana (Colombia), and the Human Rights Litigation and International Legal Advocacy Clinic of the University of Minnesota Law School (USA).

region, and becomes a useful tool for ensuring the protection and promotion of the rights of children.

1. GENERAL MEASURES OF IMPLEMENTATION

1.1 Coordination and Resources for Protection of Children: The presence of the State in remote areas of Eastern Antioquia for protecting the rights of Children

Although some efforts have been made by the Colombian State following the enactment of the Code of Childhood and Adolescence (Law 1098 of 2006)², there remains a lack of institutional protection for children because of the lack of staff needed to implement full restoration of childrens' rights, as intended by the Constitution and laws. In order to document the problem, cases are presented below from Eastern Antioquia,³ which reflect negligence on the part of the State with regard to the rights of children.⁴ This research focused on the effectiveness of the institutional presence in the municipalities of Eastern Antioquia in safeguarding the interests of children, considering them as subjects of rights.

The effectiveness of the institutional presence in the State's remote zones of Eastern Antioquia is worrying. The mapping conducted to identify the institutional presence in this region⁵ indicates that the institutions responsible for the restoration of the rights of children and other supporting organizations are physically present in each of the municipalities, but they do not carry out their responsibilities to protect the rights of children.

The Colombian Family Welfare Institute (Instituto Colombiano de Bienestar Familiar or ICBF), which in the eastern area of Antioquia has two zonal centers in the municipalities of Rionegro (Zonal Center 12 - East⁶) and El Santuario (Zonal Center 17 - Rionegro - Middle

² As mentioned above, a public policy was created at the national level that has transcended the various territorial authorities that include more than 2.7 million children who benefit from the strategy for early childhood, "De cero a siempre" (Zero to always) 2011. Simultaneously, the State reported a substantial increase in the budget assigned for early childhood programs in force in 2012. As the First Lady of the nation, María Clemencia Rodríguez de Santos, said when presenting the strategy: "*In Colombia there are more than 5 million children in early childhood and half of them face poverty conditions, that generate exclusion and lack of opportunities*"² evidencing that efforts are still insufficient, especially bearing in mind that this strategy only guarantees the protection of rights of children between zero (0) and five (5) years of age and pregnant women. Information taken from the Presentación de Logros en primera infancia 2010-2012 (CDI Valle del Amor Amor – Valledupar, July 26, 2012, visible in the link: <http://www.deceroasiempre.gov.co/Documents/DeCeroaSiempre-Estamos-Cumpliendo-2012.pdf><http://www.deceroasiempre.gov.co/Documents/DeCeroaSiempre-Estamos-Cumpliendo-2012.pdf>

³ Eastern Antioquia comprises 23 municipalities equivalent to approximately 18% of the population of the department of Antioquia, with an average of 502,168 inhabitants, according to information contained in Appendix 1, which is incorporated into this report and extracted from the latest population census conducted by the National Official Statistics Department (Departamento Administrativo Nacional de Estadística DANE) in Colombia.

⁴ Article 51 of Act 1098 of 2006: "*The re-establishment of the rights of children and adolescents is the responsibility of the State through public authorities, who are obliged to report or direct all children and adolescents at risk or in vulnerable conditions to the Police, Family Defenders, Family Commissioners or otherwise, Police Inspectors or Municipal and District Ombudsman's Offices. When this happens, the competent authority must ensure that the National System of Family Welfare guarantees their linkage to social services*".

⁵ See Appendix 4.

⁶ Zonal Center 12 - East includes the Municipalities of Abejorral, Alejandria, Argelia, El Carmen de Viboral, Concepción, Guatapé, Guarne, La Ceja, La Unión, El Peñol, El Retiro, Marinilla, Nariño, San Vicente, Rionegro and Sonsón.

East⁷), is in charge of 23 municipalities. However, this presence does not necessarily guarantee an effective protection of the rights of children, as will be shown below with regard to the legal functions of each of the authorities in the child protection legal system.

In an interview with a social worker of the East Zonal Center on September 12, 2013, it was found that this office works as a center for the restoration and protection of the rights of children, for which the official commented: *“they try to cover as much as they can and reach the most remote places of eastern Antioquia.”* In describing their reach, the official said that, even though the presence of the Institute is not evident in all the municipalities of Antioquia, they count on the support of other institutions such as the Family Commissioner Offices and Childhood and Adolescence Police. However, these entities have different legal duties than those of the Colombian Family Welfare Institute, which is the head authority for guaranteeing the re-establishment of the rights of children⁸. This is a function that may only be transferred to bodies such as the Family Commissioner Office in exceptional cases⁹.

For example, in the municipalities where there is not a Family Attorney, their responsibilities are assigned to the Family Commissioner Office in accordance with the Code of Childhood and Adolescence. In the absence of the Family Commissioner Office, the functions of the Child Welfare Attorney and Family Commissioner will be under the authority of the Police Inspector.

From the research conducted for this report, it was found that, even though there is a Family Commissioner in each of the municipalities who has the responsibility of being the guardian for children, at least for the case of Zonal Center 12 East¹⁰, they do not usually cover areas which are remote or difficult to access because they lack the staff needed according to the law.¹¹ This insufficient staffing limits the possibility of meeting the childhood-related needs that arise there¹².

⁷ Zonal Center 17 - Rionegro - Middle East includes the Municipalities of Cocorná, Granada, El Santuario, San Carlos, San Francisco, San Luis and San Rafael.

⁸ In the interview, the social worker of the East Zonal Center was asked to identify the municipalities in which the Institute had an effective presence to guarantee the re-establishment of children's rights; the answer was: *“in the 23 municipalities of eastern Antioquia”*. To emphasize the question, the officer was asked again about if in the 23 municipalities in Eastern Antioquia officials of the Institute adequately performed their duties of re-establishment of rights; after a long silence, the answer was: *“We are not in the 23 municipalities, but where there is no ICBF office, you can approach the Family Commissioner's office”*. This simple exercise was useful to confirm that the fact that the Institute is responsible for the assistance of all Municipalities in Eastern Antioquia; it does not mean that their presence is permanently assured in them, to the extent that they provide the comprehensive assistance that is referred to in Act 1098 of 2006.

⁹ The legal authority for initiating and advancing adoption procedures is exclusively with the ICBF. Therefore if someone wants to start a procedure of this type, he or she must travel either to the Municipality of Rionegro or El Santuario; places that may be great distances from Municipalities as Sonsón, Algeria and Nariño, which makes such services difficult to access for these people.

¹⁰ See Appendix 1

¹¹ Article 84 of Act 1098 of 2006: (...) *“Family Commissioner Offices will be formed by at least an attorney, who will assume the role of Commissioner; a psychologist; a social worker; a doctor; and a secretary in municipalities of medium and high density of population”*.

¹² It was found that Municipalities such as Algeria and Alejandría, only include a Commissioner, who in addition of serving as attorney, must fill the role of social worker, psychologist and secretary, so it is impossible to guarantee his or her movement to remote areas of the municipality for which they are responsible.

Even though the National Government has allocated resources for the plans and programs developed by the ICBF, the creation and budget of the Family Commissioner Offices depends on the regional authorities, and are insufficient.

As the Family Commissioners are public servants that depend on the Major it is not unusual to find that their designation is a result of political favoritism or that they serving in multiple capacities simultaneously¹³, situations that limit the social function they must accomplish¹⁴.

In the cases in which a municipality has at least one Family Attorney or Family Commissioner Office, people who are located geographically away from the municipalities do not have access to the services that these institutions provide. The result is a lack of services for those who most require institutional support.

La Honduras Village Case (Sonsón)

The municipalities that are part of Eastern Antioquia vary in size. Sonsón, for instance, does not have a large population, but has a vast geographic area, mostly rural and located at a great distance from the urban area, which makes assistance difficult in the remote areas.

As an example, we will take the case of “La Honduras,” a rural village in the “corregimiento” (small territorial unit) of La Danta (Sonsón). It takes about 4 hours to get to “La Honduras” from “La Danta” and the trip covers a difficult route of about 16 km. The village has about 40 families who are mostly poor. “The area is surrounded by illegal crops worked by children in exchange for economic compensation, which in most cases put their lives in risk. It is common for the children to work in mines and to load work materials and tools. To make it worse, there is not a health center to provide them with basic medical care and the access to education is limited to basic primary education”¹⁵. Even though the strategy “Zero to always” (De cero a siempre) is carried out in this rural village, the policy does not cover its total population of children. Additionally, there are paramilitary groups that conduct illegal activities in the zone.

Since the urban area is not close to this village, there is a minimal presence of the state bodies, because the trip to the area means that the institutions located in the town will be left unable to offer their services while their one official leaves to conduct official duties in the remote zones.

Another problem is that Zonal Center 12 office hours do not comply with article 87 of the Law on Childhood and Adolescence which prescribes the ongoing and continuous assistance of the Family Attorney and Family Commissioner.¹⁶ ICBF Zonal centers operate from Monday to Friday from 8 am to 6 pm, except for the case of the prosecution of children, for which an

¹³ One specific case is the Municipality of San Vicente, where the Commissioner assigned to such a function served as police inspector in the locality at the same time (Appendix 3). The same situation occurred in the Municipality of Algeria, where according to information provided by the Zonal Center No. 12 of the ICBF (Appendix 2), the Traffic and Police Inspector had functions of Commissioner of Family simultaneously.

¹⁴ See Appendices 1 and 2.

¹⁵ Information extracted by the Program dedicated to pregnant women, and children between 0 and 5 years who are not covered by the “De cero a siempre” strategy, conducted between 2011 - 2012 by Corporación Educativa para el Desarrollo Integral (COREDI), which is a foundation that works with peasants in education and community work in Eastern Antioquia.

¹⁶ See Appendices 1 and 2.

available representative is appointed. But none of them are available on the weekends or holidays.

In addition, there is only one temporary center in Eastern Antioquia for assisting adolescents who have been convicted of crimes. This Center is headquartered in the Municipality of Rionegro and is operated by Associated Municipalities of Eastern Antioquia Altiplano (Municipios Asociados del Altiplano del Oriente Antioqueño or MASORA).¹⁷ The resources of the municipalities cover an approximate cost of US \$175 for each adolescent who enters the prison system. Due to the breach on payments of the regional authorities, the Center was affected by a partial closure in 2012¹⁸. It is necessary that the municipalities financially support this Center as it is crucial for ensuring adequate conditions for adolescent detention.

The Childhood and Adolescence Police is another institution in the legal system established to protect children under the Code of Childhood and Adolescence (Law 1098 of 2006). This special police force is in charge of providing complete protection for children along with the National System of Family Welfare. The Childhood and Adolescence Police is tasked with developing three action lines in order to reduce the various causes of violations to the rights of children: 1) Prevention, 2) Monitoring, and 3) Criminal Control and Research. This institution has a budget which is independent from the ICBF's; however, the budget is insufficient to fulfill its functions.

From the research carried out at the Police institution, it was found that for Eastern Antioquia, the Childhood and Adolescence Police is in five circuits with headquarters in the municipalities of Rionegro, La Ceja, El Santuario, Marinilla and Sonsón¹⁹.

According to law, Childhood and Adolescence Police officers are required to have professional training for assisting and working with children.²⁰ However, this is difficult to guarantee, at least in Eastern Antioquia, because the trained personnel are limited to the judicial districts of the Police. Work load is another issue. Unfortunately, due to budget and human resources shortcomings, the work load demanded is not feasible, and includes the assignment of other tasks of the institution that Police officers are not supposed to do. This prevents them from fully

¹⁷ MASORA is a regional initiative for the integration of some of the municipalities of Eastern Antioquia. Fabio Ríos, its director, explains the process from the moment children arrive at the center. "Upon being apprehended in any of the municipalities of this region, the children are transferred to The Adolescents Detention Center (Centro de Detención para Adolescentes en el Oriente Antioqueño – CETRA) installations, where they are initially received by the ICBF and a district attorney, who are responsible for deciding whether they remain in the assistance center or are released. Until they are brought before a judge, they receive comprehensive assistance with services like food, housing, psychological care, recreation and others. There, they can only remain the first 36 hours of the process, so fulfilled this time they are freed or transferred to places like La Pola or farm San José, where they complete their resocialization. Source: Periódico El Mundo. Refinancian el centro para los menores infractores del Oriente. 13 de Agosto de 2012. Disponible en: <http://www.elmundo.com/portal/pagina.general.impresion.php?idx=202138>

¹⁸ Ibid.

¹⁹ See Appendix 3.

²⁰ Article 92 of Act 1098 of 2006. In addition to the requirements established by law and regulations, the Childhood and Adolescence Police staff must have professional studies on areas related to human and social sciences, have education and training in human rights and childhood and adolescence legislation, assistance procedures and other subjects that enable the comprehensive protection of children and adolescents. Except in exceptional circumstances determined by the General Directorate of Police, members of the Childhood and Adolescence Police who have been selected and trained in the specialization may not be assigned to other activities than those listed in this Code.

undertaking the commitment entrusted to them by law, as well as from having adequate preparation for responding with appropriate measures²¹.

The budgets in Rionegro and La Ceja are insufficient, particularly in Rionegro, which is the main legal circuit. Its headquarters are located inside the National Police's Gymnasium in El Porvenir neighborhood, and its resources are shared with La Ceja legal circuit. Here, the officials who were interviewed commented repeatedly that one of the obstacles that they must overcome in order to fulfill their tasks is having only one car for transporting adolescents who have been convicted in accordance with the parameters set by law.

According to the research, the work of the Childhood and Adolescence Police, even with the difficulties exposed here, is a great source of support for the work of the Family Attorneys (at ICBF) and Family Commissioners. Nevertheless, this support depends on the initial intervention of these two bodies, because the responsibility for the restoration of the rights of children was legally assigned only to these institutions. Unfortunately, they do not have an ongoing presence in most of the municipalities of Eastern Antioquia necessary for providing effective protection to children.

1.2 Controlling body of the institutions responsible for the re-establishment of the rights of Children

The Public Prosecutor's Office is part of the Attorney General's Office, the Ombudsman's Office, and the municipal and regional ombudsman offices (persinerías). It is in charge of the promotion and defense of the human rights of children in public and private institutions, as well as receiving and processing claims and issuing opinions and recommendations to the authorities and individuals in cases of threats to or violations of the human rights of children. The Public Prosecutor cannot promote or restore the rights established in the international treaties, the Constitution, or the Law on Childhood and Adolescence because, according to the latter law, those duties are invested only with the Family Attorneys and Family Commissioners (art. 96 of Law 1098 of 2006).²² However, the Public Prosecutor can carry out research tasks

²¹ Like other problems identified by the childhood and adolescence police staff of the Rionegro circuit to fulfill the task entrusted to the benefit of children and adolescents, these indicate:

- Difficult coordination with the Family Commissioner and Family Welfare, particularly on weekends, where there is no staff.
- There is no proper place to take and assist children in street situation.
- Lack of cooperation from Hospitals that refuse to assist children.
- Limited staff available for prevention, monitoring and control and criminal investigation tasks, since with exception of Rionegro Circuit, there is only one person responsible for this task in each municipality, which warns of a failure to provide the service.
- Assignment of other duties within the institution outside the duties of the Childhood and Adolescence Police.
- Childhood and Adolescence Police absence in jurisdictions or remote places.
- Absence of resources to develop the objectives.

²² Law 1098 of 2006, art. 96.

for cases in which they may be knowledgeable, and when there are complaints about certain situations in their municipality regarding violations of children's rights.

In such a context, the re-establishment of the rights of children is the responsibility of the whole State, through its public authorities and procedures established by the law. Any activity performed by those authorities must be controlled by the corresponding bodies which were created for protecting children at regional and local levels and by the Colombian Family Welfare Institute, which supervises any activity that could directly or indirectly affect children.

Based on the research that was carried out, the institutional presence is not completely effective. To summarize, the following are some factors that contribute to this situation:

a. Whenever the responsibility for the restoration of the rights belongs to the Family Attorneys (at ICBF),²³ and that responsibility is delegated to the Family Commissioners of the Municipalities without the transfer of resources, it subsequently generates ineffectiveness of actions to protect children due to the lack of resources.

b. The institutions responsible for the re-establishment of the rights are not fully aware of their responsibilities regarding children. This lack of clarity results in a lack of explanation to the individuals seeking remedies who then give up and withdraw their claims.²⁴ The uncertainty also detracts from the authorized delegation by Law 1098 of 2006, and leaves other institutions—such as public institutions, academic institutions, and/or ecclesiastical orders—without the possibility of providing full guarantees of rights to children,

c. The municipalities of Eastern Antioquia are large and often difficult to access, especially rural areas. This limits officials' ability to provide assistance, as does the shortage of human and financial resources, which in most cases, are not enough to provide full services as required by the law. The local departmental and national bodies should develop strategies that allow coverage of services for the children, especially health and educational services, even in rural areas.²⁵

d. Family Commissioner Offices and the Childhood and Adolescence Police take on additional roles outside their scope of work which include administrative activities and data collection. This involves handling situations that fall outside their legally assigned roles, which affects their own functions and reflects the lack of economic and human resources in some state institutions.

e. The Family Commissioners are appointed by each Municipality's administration for political or bureaucratic reasons. This political appointment process limits the provision of

²³ See Appendix 5. The family attorneys are the individuals with access to the financial resources to implement programs. See Appendix 5

²⁴ In 2013, the Consultorio Jurídico de la Universidad Católica de Oriente submitted service requests aimed at protecting three children who were allegedly victims of their parents' abuse and neglect. The request was communicated directly to the Family Commissioner of the municipality of Rionegro and Cocorná to protect the children; however, the officers communicated that such power was only possessed by the ICBF. However, the ICBF claimed that the legal competence was in the Family Commissioner. Ultimately, no one assumed the role enshrined in Act 1098 of 2006. The case had to be referred to control bodies (the Ombudsmen's Office) so they could mediate the institutions and bring attention to the case. Additionally, see Appendix 6.

²⁵ See La Honduras Village case in the "corregimiento" La Danta – Sonsón,

proper services, because it diminishes the impartiality of the Family Commissioners' performance. Additionally, these officials remain in their positions for extended terms²⁶ and results subjective decisions²⁷.

f. The officials of the Childhood and Adolescence Police of the Rionegro legal circuit have noted that there is a lack of coordination between the institutions that are supposed to work for the re-establishment of the rights of children. Since the main responsibility belongs to the ICBF and Family Commissioners, the support provided to other institutions is still limited.

g. There is not an information system that reports on the status of the cases of violations of the rights of children. This makes coordination impossible and affects the completion of the re-establishment of Children's rights.

While in Colombia there are legal and regulatory supports for the functioning of the integral Welfare system for Childhood and Adolescence, institutional presence is limited in the remote areas of Eastern Antioquia, and the work of the existing institutions is fragmented and needs better coordination.

2. FAMILY ENVIRONMENT AND ALTERNATIVE CARE

2.1. Family Support and Adoption: Adoption in Colombia as a Measure for the Re-establishment of the Rights of Children

Adoption is considered as a last resort in Colombia, and it seeks to fulfill the rights of children by maintaining family structures. Adoption is only applicable when other comprehensive protective measures implemented by the authorities have not resulted in effective protection of the rights of children under the age of eighteen.

In the last three years, there have been new problems related to the adoption program and the Colombian government continues to disregard national and international standards²⁸.

The administrative procedure for the re-establishment of children's rights sets up discretionary authority for the Family Attorney to investigate the current situation of a child or adolescent. However, this discretion may not be arbitrary, and must follow objective criteria, especially when the constitutional right of children to remain with their families is under consideration; in this situation, there is a presumption in favor of the biological family²⁹.

²⁶ One particular case is the municipality of San Vicente where the Family Commissioner has been in office for 17 years; another is Sonsón with 14 years in office.

²⁷ This assertion was revealed while conducting research in the Municipality of Sonsón where, the Family Commissioner has been in office for more than fourteen years. The residents of this municipality report that the Commissioner's decisions are subjective.

²⁸ Adoption is regulated by Articles 61 to 78 of the Code of Childhood and Adolescence. The adoption system is also developed based on the 1993 Convention on the Protection of Children and Co-operation with Respect to Intercountry Adoption, Act 265 of 1996 and the "*Lineamiento Técnico del Programa de Adopciones*" (*Technical Guideline of the Adoption Program*) (Resolution No. 3748 of 2010 of the ICBF).

²⁹ The Constitution of Colombia in Article 44 sets the Fundamental Rights of Children and Adolescents. The presumption in favor of the biological family has been restated by the Constitutional Court in the rulings T-510 of 2003, T-934 of 2007 and T-844 of 2011.

Girl adopted without due process of law

Sofia was born on February 4, 1995. Her father did not acknowledge her and her mother handed her to the maternal grandmother fifty-two days after her birth.

When her maternal grandmother passed away, the girl was left in the care of her maternal grandfather, her great grandparents, and maternal aunts and uncles.

On January 14, 2004, when *Sofia* was eight years old and eleven months, one of her aunts, tricked her out of her home, and took her to another city where she handed *Sofia* to the ICBF. She argued that *Sofia* had nobody to care for her, since the relatives who she lived with were extremely poor, and the girl was subjected to mistreatment and sexual abuse. These allegations were not investigated by the Family Attorney.

Consequently, the ICBF, in July 2004, stated in an administrative act that *Sofia* was homeless and later, based on a ruling ordering adoption by the Ninth Family Court in July 2005, the ICBF gave the girl to a foster mother for adoption.

Sofia's family did not receive notice of the administrative act that declared her as homeless, or about the ruling that approved the adoption.

The Family Attorney did not carry out research on the girl's extended family and he only took into account the “consent” of the mother who had abandoned the girl fifty-two days after her birth.

The process of family adaptation between *Sofia* and her foster mother was not successful. From the very first days, *Sofia* asked to be taken to her family's home. As a consequence of *Sofia's* difficult behavior, her foster mother asked the ICBF to put the girl in contact with her biological mother and other family and to revise the research that determined *Sofia's* homeless state, since the inconsistencies and incongruities in the information and the repeated requests by *Sofia* to return to her family indicated that there had been a problem in the administrative process that declared *Sofia* to be homeless and abused.

Nonetheless, the ICBF ignored *Sofia's* foster mother's requests and started the administrative procedure to give her away again for adoption³⁰.

In several enforcement measures (acciones de tutela), for example T-887 in 2009, T-671 in 2010, T-502 in 2011 and T-844 in 2011, the Constitutional Court of Colombia has identified a serious problem in the implementation of the discretion of the Family Attorney to push the administrative process forward and declare adoptability. This discretion supports the declaration of adoptability³¹ based on the adverse circumstances a child's family faces—such as poverty or family members lacking basic education, resulting in the subsequent separation of the child or adolescent from his or her family. Taking these situations as the basis for the

³⁰ Constitutional Court, Sentence T 844 of 2011. M.P. Jorge Ignacio Pretelt Chaljub.

³¹ The Declaration of Adoptability is a Children's rights re-establishment measure made by a Family Attorney and it determines the entrance of children into an adoption program.

decision does not consider the constitutional protection of the family³² or the principle of the best interest of the child. Even when the declaration of adoptability could be revised through a legal action called “*Control de homologación*”³³ without legal representation, many parents do not know their rights and do not use the legal action as a way of demanding a judicial revision of the decision, resulting in many families’ disintegrations.

The Constitutional Court in the T-844 ruling of 2011 highlights that the government should implement positive actions to maintain and preserve the family. The Court also found that although thousands of families do not have enough financial resources to fulfill certain obligations, that fact alone cannot result in the child’s separation from his or her family if the family is in an unstable situation for which the government needs to provide assistance.

According to the Recommendations of the Committee on the Rights of the Child,³⁴ one of the obstacles that interferes with the implementation of the Convention on the Rights of the Child is the poverty in our country, which can be observed in the discrimination against certain vulnerable groups—such as displaced children,³⁵ Afro-colombian children, and indigenous children—and the lack of public policies to assist families and prevent separation from their children.

Girls Placed for Adoption Due to Displaced Status of Parents³⁶

Eduardo Ospina Morales and his wife are peasants who ran away from the paramilitary groups in San Martín de Loba (Bolívar). Due to their displaced status and economic disadvantage, the ICBF took their twins out of their house and declared them available for adoption. The ICBF also never granted the parents any financial help which the ICBF is required to provide in accordance with article 56 of Law 1098 of 2006.

Eduardo Ospina Morales filed an act of enforcement (*acción de tutela*) arguing that the measure taken by the ICBF, in relation to the adoption of the twins, was excessive. Mr. Ospina Morales noted the economic situation the family faced and claimed that their due process rights had been violated because they had never been notified about the decisions in the administrative procedure of the re-establishment of rights.³⁷

The ICBF must be strengthened for public policies to work. The Family Attorney Offices must have an interdisciplinary team made up of qualified professionals and the resources necessary to perform their jobs, not only in large cities, but in the whole national territory. Unfortunately, according to a study on the efficiency of the technical guidelines for the administrative

³²Constitution of Colombia, Article 5.

³³ This is a constitutional control which aims at assuring that the due process and the right to defense have been guaranteed in the Children’s rights re-establishment administrative process.

³⁴ Committee on the Rights of the Child, 42 section periods. *Concluding Observations*. COLOMBIA CRC/C/COL/CO/3, June 8, 2006, para. 53.

³⁵ For an illustration of this situation, see Suárez Domicó family case outlined in section 4.2.

³⁶ Daily newspaper El Tiempo. “Gemelas fueron entregadas en adopción sin autorización de sus padres”. Available at: <http://m.eltiempo.com/justicia/gemelas-fueron-entregadas-en-adopcin-sin-autorizacin-de-padres/11242402>.

³⁷ Supreme Court of Justice. Civil Cassation Chamber. Sentence of April 26, 2012. M. P. Arturo Solarte Rodríguez.

procedure of the restoration of rights, these improvements are not being implemented.³⁸ This study notes that:

The ICBF's facilities where the staff work should be adapted and should not be flawed. There must be a real shared responsibility among bodies, starting at the Institute. There is a need for prioritizing responses when there is a problem related to a child, regular meetings, panel discussions where Family Attorneys are trained by the Institute so as to unify criteria, provide guidance for the Family Attorneys and limit work overload, seriously considering their opinions and the provision of a material tool that could have the role of providing actual guidance.

2.2. Adoption as a Parent-Child Relationship

The serious situation of children in Colombia and the few tools that the Colombian government has to meet children's needs is distressing. One of those issues is the need for proper assistance for the children whose rights have been violated who live in foster homes.

	2007	2008	2009	2010	2011
Percentage of children and adolescents from 0 to 17 years old who were placed in adoption	70.08%	60.04%	73.90%	58.21%	65.92%

Source: Indicators verified by the ICBF. Department for Social Prosperity³⁹

Since 2012, the ICBF has added an additional administrative step, which is not dictated by any law, legal regulation or judicial ruling.⁴⁰ The ICBF orders the search for the child's birth family up to the sixth degree of consanguinity, which has severely delayed the administrative procedures of the re-establishment of rights and has resulted in an increased number of children who have been declared eligible for adoption but are without a family to adopt them. It is very unlikely that the relatives who have not had any contact with a child will take responsibility for him or her, given the lack of familiarity or a relationship with that child.

The legal situation of children who wish to be adopted must be resolved within six months according to the law.⁴¹ However, the process of locating a child's extended family could take longer than six months and does not ensure that such relatives would wish to care for the child, or would have the financial resources to support the child. It also does not ensure that the

³⁸ Medina Ortiz, C. L., Rodríguez Moreno, E. & Vega Flautero, G. (2012). Eficacia de los lineamientos técnicos administrativos para el restablecimiento de derechos de niños, niñas y adolescentes, Resolution 5929 of 2010. (Degree Research Project to qualify for the Law degree). Universidad Libre, Bogotá, Colombia. Available at <http://repository.unilibre.edu.co/bitstream/10901/6410/1/MedinaOrtizCindyLuney202.pdf>.

³⁹ Document "Indicadores del Sistema Único de Información de la Infancia" Available at: http://www.icbf.gov.co/portal/page/portal/PortalICBF/NormatividadC/SUIN1/Indicadores/4_Indicadores_SUIN_26_priorizados_Marzo_8.pdf. For another source of contrast with figures of children adopted in recent years, see: Semana magazine. "Niños sin esperanza de ser adoptados". June 6, 2013. Available at: <http://www.semana.com/nacion/articulo/ninos-esperanzas-adoptados/349850-3>.

⁴⁰ Different mass media have reported the requirement of the search until the sixth degree of consanguinity, but as noted, there are no regulations. "Niños sin esperanza de ser adoptados". June 6, 2013. Available at: <http://www.semana.com/nacion/articulo/ninos-esperanzas-adoptados/349850-3>.

⁴¹ Code of Childhood and Adolescence (Act 1098 of 2006), Article 100 paragraph 2.

relatives would provide a home with the affection, care, and protection needed by vulnerable children.

These problems in Colombia are the result of officials who are in charge of the adoption process and disregard the technical and legal guidelines. This negligence results in the violation of the basic rights of the children involved in the process, including the best interest of the child,⁴² the right to be heard,⁴³ and the right to due process⁴⁴.

The situation of children has been compounded by these procedures, which result in a delay in the adoption process. The longer a child awaits adoption, the more difficult it is to find a home for him or her.⁴⁵ Many Colombian families prefer to adopt newborns,⁴⁶ contrary to foreign families who usually adopt older children, but a significant number of the children are over eight years old when they are finally eligible for adoption.

Under the above conditions, many children spend their childhood inside custodial institutions. A report written by Aldeas Infantiles SOS Colombia⁴⁷ proves that fact:

It is estimated that in Colombia there are approximately 4,506 children who are in difficult situations for adoption, out of which, 1,503 are in that situation due to health reasons and 3,003 due to age, sibling groups or ethnicity. Under the above conditions, many children spend their childhood and come of age inside custodial institutions with psychosocial consequences including the ability to form affective bonds and skills for life which promote social inclusion.

2.3. Adoption as a Measure Under the State's Supervision

The Committee on the Rights of the Child has reported that the Colombian government has not performed a regular revision of children's adoptive placements in accordance with Article 25 of the Convention on the Rights of the Child. Additionally, in its last review, the Committee instructed the Colombian government to control international adoptions and to give priority to national adoptions.⁴⁸ Currently, due to delays in adoption for national and foreign families, the

⁴² Code of Childhood and Adolescence (Act 1098 of 2006), Article 8.

⁴³ Code of Childhood and Adolescence (Act 1098 of 2006), Article 31.

⁴⁴ Code of Childhood and Adolescence (Act 1098 of 2006), Article 26.

⁴⁵ El Tiempo. "5479 niños crecen en el ICBF esperando que alguien los adopte", (2008) Available online <http://www.eltiempo.com/archivo/documento/CMS-4657432>.

⁴⁶ "As for the right to grow up in a family, adoption becomes difficult to the extent that children exceed the cycle of early childhood, in which they are usually adopted. 28% of children in adoptability situation are between 1 and 5 years old, 62% are children between 6 and 17 who fall into the category of "difficult adoption. At: Aldeas Infantiles SOS Colombia. (2010). *Situación de los derechos de la infancia de los niños y niñas que han perdido el cuidado de sus padres o están en peligro de perderlo.*

⁴⁷ At: Aldeas Infantiles SOS Colombia. (2008). *Situación de los derechos de la infancia de los niños y niñas que han perdido el cuidado de sus padres o están en peligro de perderlo.* Available online [http://www.aldeasinfantiles.org.co/getmedia/0a33ba55-5bcc-4edd-8cf0-49af5078060c/situacion-de](http://www.aldeasinfantiles.org.co/getmedia/0a33ba55-5bcc-4edd-8cf0-49af5078060c/situacion-dehttp://www.aldeasinfantiles.org.co/getmedia/0a33ba55-5bcc-4edd-8cf0-49af5078060c/situacion-de) [derechos-ninos-asin-cuidado-de-sus-padres-o-en-riesgo-de-hacerlo.pdf](http://www.aldeasinfantiles.org.co/getmedia/0a33ba55-5bcc-4edd-8cf0-49af5078060c/situacion-de).

⁴⁸ Committee on the Rights of the Child, 42 session periods. *Concluding observations*. COLOMBIA CRC/C/COL/CO/3, June 8, 2006, para. 56 and 57.

ICBF, by means of Resolution 4274 of 2013, decided to suspend for two years new adoption applications in Colombia from families with habitual residence in a foreign country.

While this measure is based on a seven year backlog of adoption applications, this decision does not solve the structural problems of adoptions in our country, because it does not address the issue of time children spend in custodial institutions and foster homes.⁴⁹

Many foster homes have not been provided with enough assistance by the ICBF:

Dissatisfaction reported by foster mothers is constant in relation to management, assistance and support for the foster homes. This situation can be observed in the failure to deliver provisions and in the treatment provided by the officials. The mothers also report that they do not feel their work is appreciated and they complain of not being heard.⁵⁰

The Report on the Monitoring of the Adoptions Program (Informe de Vigilancia Superior sobre el Programa de Adopciones) by the Ombudsman's Office revealed obstacles that the ICBF is facing related to the work and roles in monitoring and supervision of the Adoptions Program. According to the report, the ICBF issued Operation Licenses for developing Programs of Specialized Assistance and Adoption to the Authorized Institutions for running the Adoptions Program (Instituciones Autorizadas para Desarrollar el Programa de Adopción- IAPAS) without having first unified criteria for operation, and without providing supervision or certification in relation to the legal, technical, administrative, and financial standards of the ICBF⁵¹.

The report also points out that the ICBF does not follow-up after adoptions or have any control of the psychologists who have significant responsibilities in protecting the rights of children who have been placed for adoption⁵².

The Constitutional Court had also urged the ICBF to address the irregularities in the Adoptions Program. In Ruling T-844 of 2011, the Court requested the ICBF to design a protocol that includes guidelines for officials to follow in relation to the implementation of various measures for the re-establishment of rights, especially related to the declaration of adoptability. To date, this protocol has not been created. Therefore, the process continues without clear guidelines regarding the procedure and responsibilities that officials must take in relation to the integral protection of children.

⁴⁹ Foster homes are provided by families selected and trained according to the technical criteria of the ICBF. The family receives economic support and temporarily houses children (for six months extendable to one year) . The family assumes responsibility for caring for the children and providing the children with assistance and a family atmosphere, while children's legal status is defined and either the child is formally reunited with his or her family or the child is declared eligible for adoption.

⁵⁰ Rodríguez Ibarra, Ana Carolina. Cuidado Temprano para la Infancia en Hogares Sustitutos: Descriptive study in Bogotá (2010). Degree Research Project to qualify for the Magister in Psychology Universidad Nacional de Colombia.

⁵¹ Attorney General's Office (2012). Informe de Vigilancia Superior sobre el programa de adopciones (2012) page. 50.

⁵² Ibid., page 64

3. BASIC HEALTH AND WELFARE⁵³

3.2 Environmental Health: The Right to a Healthy Environment for Children has been ignored by the State.

The impact of air pollution on health has been widely documented through epidemiological studies in many parts of the world. The World Health Organization (WHO) recognizes air pollution as “a major environmental health problem affecting everyone in developed and developing countries alike”⁵⁴. According to the WHO, there are 3.3 million deaths every year due to outdoor air pollution⁵⁵. Nearly 3,000 anthropogenic air pollutants have been identified to date⁵⁶. Combustion sources emit about 500 different compounds for which only approximately 200 have been investigated for health impacts⁵⁷.

In regard to Colombia’s the fourth and fifth periodic reports to the Committee on the Rights of the Child, we are concerned that the State does not address the violations of the right to a healthy environment. The State lacks a comprehensive approach to this right both in the reports mentioned above and in the public environmental and health policies of the country. The State’s lack of interest about the violation of the right to a healthy environment for children is evident in the exclusion of pollution and environmental damage as direct causes of the increase in the mortality and morbidity rates of the population of children.⁵⁸

In the last two reports, the Colombian State indicates that there are some environmental programs, but they unfortunately do not account for: the comprehensiveness of the State program for the right to a healthy environment, the effectiveness of current actions to protect that right, and a concrete and accurate diagnostic of the environmental degradation situation in which children live⁵⁹. This is especially relevant in cities with serious atmospheric pollution problems like Medellín.

⁵³ The following people also contribute with substantial information and the reporting of the cases in this section: Professor Luz Yaneth Orozco Jiménez, MSc (Universidad of Antioquia), Professor Isabel Cristina Ortiz Trujillo, PhD - Biology of the Systems Research Group (Medicine School of Universidad Pontificia Bolivariana); and Research Assistant Alejandro Sánchez Ortiz - Biology of the Systems Research Group (Medicine School of Universidad Pontificia Bolivariana)

⁵⁴ Air quality and health. Fact sheet N°313 (Updated September 2011), <http://www.who.int/mediacentre/factsheets/fs313/en/>

⁵⁵ *World Health Day: Climate and Clean Air Coalition Targets Indoor and Outdoor Air Pollution*, U.N. ENV. PROG. (Apr. 7, 2013), <http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=2713&ArticleID=9459&l=en>.

⁵⁶ Jes Fenger, *Urban Air Quality*, 33 ATMOSPHERIC ENV. 4877, 4978 (1999).

⁵⁷ Ibid.

⁵⁸ In section VI of the Report entitled "*Discapacidad, Salud Básica y Bienestar*." This report cites mortality and morbidity rates in children under 1 and 5 years old, with total exclusion of the state of environmental pollution as a major cause of deterioration of children's health. Similarly, strategies and programs highlighted by the Government to address the cited rates do not take into account the deterioration of the environmental quality of cities in which children live.

⁵⁹ Specifically, the programs reported are limited to the «Programa Nacional de Promotoría Ambiental Comunitaria "Proyecto Jóvenes de Ambiente"» (National Community Environmental Administration Program "Environment Youth Project"), «Red Nacional de Jóvenes de Ambiente» (National Environment Youth Network) and «Regional pre-meetings and National Meeting of Young People for the construction of the Charter of Responsibilities of the Children of Colombia, denominated "*Vamos a Cuidar de Colombia*" (Let's take care of Colombia)» and «"proyecto de Educación Ambiental" (Environmental Education Project)». Environmental programs reported by the Colombian State, which according to the Government seek to identify the "socio-environmental issues," do not show specific indicators on such issues, or the actions taken and specific results for its solution.

The State's omission in its reports any mention of the environmental degradation of the country and its direct consequences on child health and welfare is noted with astonishment. This failure to address the environmental crisis is not consistent with the State's international commitments to protect children and prevent environmental pollution,⁶⁰ and in the internal legal and constitutional system.⁶¹

Air and water pollution in the city of Medellín and the deterioration in the quality of life of its inhabitants demonstrate the connection between environmental damage and violation of the fundamental rights of its population. In certain areas of the city of Medellín, the level of pollution is so critical that the academic community is concerned that the risk to people's health is not limited to serious diseases, but may include damage to genetic material, which would most seriously affect children.

3.2. Violation of the Right to a Healthy Environment for Children: The Case of Medellín's Air and Water Pollution

Alarming atmospheric pollution concentrations that have direct impact on the environmental health of children are present in the city of Medellín. The deteriorating situation of the city air becomes more disturbing upon discovering that, despite being acknowledged by the local government, effective measures aimed at preventing, monitoring and remediating children's health conditions are not being implemented.

In the summary of the 2013 Air Quality⁶² report issued by the Air Quality Monitoring Network,⁶³ it is noteworthy that some of the pollutants with higher risk to children's health are present in high concentrations. In three of the five monitoring stations located in the municipality of Medellín, the average concentration of the pollutant PM10⁶⁴ exceeded the

⁶⁰ At the international level, Colombia has taken on different commitments related to the protection and prevention of environmental degradation. Through Art. 1 of Act 99 of 1993, the statement of principles of the 1992 Rio Declaration on Environment and Development was adopted as an internal standard at the national level. Especially in the area of atmospheric pollution prevention, which is the area of the cases that are presented in this section of the alternative report, Colombia is party to the most important international instruments in the subject: United Nations Framework Convention on Climate Change (Act 164 of 1994); Vienna Convention for the Protection of the Ozone Layer (Act 30 of 1990); Agreement Establishing the Inter-American Institute for Global Research (Act 304 of 1996); Montreal Protocol on Substances that Deplete the Ozone Layer (Act 29 of 1992) and the Copenhagen Amendment (Act 306 of 1996); Kyoto Protocol to the United Nations Framework Convention on Climate Change (Act 629 of 2000).

⁶¹ The Constitution of Colombia recognized the collective human right to a healthy environment (Art. 79), the duty of the State and individuals to protect the natural resources of the Nation (Art. 8), and specifically assigned the duty of the State to "prevent and control environmental degradation factors, impose legal sanctions and demand compensation for damage caused." For its part in the internal regulation, Decree 948 of 1995 regulated the issues related to atmospheric pollution control and Resolution 610 of 2010 established appropriate standards for air quality standard.

⁶² This study differs by the type of pollutant, the time of year and the sector in which the equipment that makes the measurement is located. Red Aire, Metropolitan Area of the Aburrá Valley, 2013 Air Quality Summary, "Monitoring Air Quality in the Aburrá Valley." 20/01/2014. Consulted January 23, 2014, available at: www.aredigital.gov.co/CalidadAire/Paginas/resumen_calidadaire.aspx. See also a Glossary of Air and Water pollutants (those which are going to be mentioned in this section) in the Appendix 14.

⁶³ Red Aire is a "macro-interinstitutional cooperation and support agreement, which aims to scientific and technological cooperation in the study of meteorology and air quality of Aburrá Valley."

⁶⁴ See PM10 in the Glossary of Air and Water pollutants (those which are going to be mentioned in this section), Appendix 14.

annual quality standard of $50 \mu\text{g}/\text{m}^3$.⁶⁵ The same was observed with PM2.5 concentrations, which exceeded the annual standard of $25 \mu\text{g}/\text{m}^3$.⁶⁶

Regarding the tropospheric ozone pollutant, it was determined that during year 2013, concentrations (one-hour and eight-hour⁶⁷) higher than those defined in Resolution 610 of 2010 were present at all stations that monitor ozone in Medellín.⁶⁸

Scientific research carried out in Medellín shows a correlation between environmental quality and child health. It must be noted that research on air quality and its influence on health have primarily been conducted in the adult population; nevertheless, its results show that children have a higher risk of presenting diseases due to their vulnerable condition.

Respiratory pathologies in children under 5 years of age

In the city of Medellín, the only research on respiratory conditions conducted in the child population dates between 2006-2007 encompasses children that are under 5 years old.⁶⁹ In this study, the presence of respiratory pathologies associated with atmospheric pollutants in the city was confirmed. Four areas were identified according to their degree of contamination: High: Medellín and Guayabal center; High average: Andalucía and Castilla; Low average: El Estadio and Robledo; and Low: Santa Elena and Belén Los Alpes.⁷⁰

Here, the main air pollutants are: PM10, PM2.5, soot, tropospheric ozone (O_3), Chromium (Cr), Lead (Pb) and Cadmium (Cd).⁷¹ The gravity of this finding is the verification of their presence in

⁶⁵ Éxito station from San Antonio (central Medellín) showed an average of $56,0 \mu\text{g}/\text{m}^3$; Universidad Nacional Facultad de Minas station (west of Medellín) with an average of $57,1 \mu\text{g}/\text{m}^3$; and Politécnico station (south eastern Medellín) showed an average of $50,8 \mu\text{g}/\text{m}^3$. Consult: www.aredigital.gov.co/CalidadAire/Paginas/redmonitoreo.aspx.

⁶⁶ "During the year 2013 the Colombian daily PM2.5 standard ($50 \mu\text{g}/\text{m}^3$) was exceeded in MED-UNNV station (3 exceedances), MED-MANT station (10 exceedances), MED-PJIC station (2 exceedances), ITA-CJUS station (1 exceedance) (...) In Museo de Antioquia (MED-MANT) station, an annual average concentration equal to $34.9 \mu\text{g}/\text{m}^3$ was obtained. (...) It is worth adding that in MED-MANT and ITA-CJUS stations, the annual PM2.5 particulate matter standard equal to $25 \mu\text{g}/\text{m}^3$, as defined in MAVDT resolution 610, was exceeded. For the MED-UNNV background urban station, the PM2.5 particulate matter average concentration during 2013 was equal to $28.0 \mu\text{g}/\text{m}^3$, with which at this station the annual Colombian standard for PM2.5, equal to $25 \mu\text{g}/\text{m}^3$, as defined in MAVDT resolution 610, was exceeded (...) MED-UNEP station was the station with the lowest annual average concentration equal to $23.4 \mu\text{g}/\text{m}^3$." Consult: www.aredigital.gov.co/CalidadAire/Paginas/resumen_calidadaire.aspx page 14.

⁶⁷ One-hour and eight-hour concentrations correspond to the relationship between the weight or volume of a pollutant and the volume of air unit in which it is contained, in a time period of one or eight hours.

⁶⁸ Consult: www.aredigital.gov.co/CalidadAire/Paginas/resumen_calidadaire.aspx page 31.

⁶⁹ The research was conducted by the CES University and the University of Medellín and financed by the Secretary of Health of the municipality of Medellín. In total, a sample of 720 children divided between exposed and unexposed was selected. The first would be those that remained in a site with pollutant concentration higher than the allowed by the internal standard for a period of 8 hours. With regards to this, see Herrera T. Ana, Echeverri L. Gabriel J., Ordoñez M. Jaime E.; Patologías respiratorias en niños preescolares y su relación con la concentración de contaminantes en el aire de la ciudad de Medellín (Colombia) (Respiratory pathologies in preschool children and their relation to the pollutant concentration in the air of the city of Medellín (Colombia)); Ingenierías Magazine, University of Medellín, vol. 10, No. 19, pages 21-32 - ISSN 1692-3324 - July-December of 2011/228.

⁷⁰ Ibid., page 25. It should be highlighted that the city of Medellín is located in a narrow valley that prevents pollutant dispersion, where thermal inversion phenomena that aggravate this situation occur.

⁷¹ These pollutants can generate and intensify in a short-term various respiratory pathologies such as asthma, bronchitis, pulmonary emphysema, allergies, nasal congestion, sinusitis, pneumonia, pulmonary occlusive disease, among others. And in the long-term, they cause cytotoxicity and genotoxicity, with children the most vulnerable population due to their physiological physiognomic development state. Regarding the relationship of atmospheric pollutants and their impact on

levels higher than the allowed concentrations and their direct effects on the health of the child population.

Among the findings, it was determined that PM_{2.5} tends to exceed the annual internal air quality standard, which is still above the WHO's recommended rate.⁷² PM₁₀ also exceeds the standards set by the WHO as hazardous to human health, although remains within the threshold allowed by the annual internal standard.⁷³

In the case of tropospheric ozone (O₃), it was found that the average concentrations for the studied areas were given in a range between 59 and 88 µg/m³ in a period of 8 hours⁷⁴. Regarding Cadmium (Cd), very high concentrations were identified in a period of six months. Taking into account that standard levels for pollutants are measured on annual and daily bases, it is likely that in a year remains high and therefore it has not complied with the air quality standard in force at the time⁷⁵.

The research concluded that children living in "Medellín areas with high levels of PM₁₀, PM_{2.5}, soot and lead increase the risk of suffering respiratory diseases by 49.3%."⁷⁶ During the 9 months of study, 70.4% of children consulted the doctor for respiratory diseases, of which "50.4% of children consulted for emergency, ARF (Acute Respiratory Failures), which is the predominated diagnosis with 82.9%, followed by asthma in its different states (mild, moderate, severe) in 17.7% and only 0.4% was diagnosed as pneumonia."⁷⁷

Air Pollution and Genetic Damages in Medellín

In research⁷⁸ conducted by the Universidad Pontificia Bolivariana and the University of Antioquia, it was determined that the pollutants found in the neighborhoods of Robledo and San Germán (west), Guayabal (south eastern) and Naranjal (central western) are responsible for cytotoxicity (toxic to the cells) and genotoxicity (these pollutants cause harm to human DNA) in human lymphocytes (white blood cells). Additionally, the various interactions between these compounds may increase the risk of pathologies to develop in the long term, generating adverse effects on ecosystems and human health. Children are particularly susceptible because the initial effect is at a

child health, see: World Health Organization (WHO). Worldwide Update 2005. Available at: http://www.euro.who.int/_data/assets/pdf_file/0005/78638/E90038.pdf.

⁷² The annual internal standard of air quality for PM_{2.5} is 25 µg/m³ annual average (Resolution 610 of 2010, Art. 2). The situation is even worst because there is a risk to human health from 10 µg/m³ (annual average) according to the WHO.. Consult: Air Quality Guideline for particulate matter, ozone, nitrogen dioxide and sulfur dioxide, World Health Organization (WHO). Worldwide Update 2005, page 9. Available at: <http://www.who.int/mediacentre/factsheets/fs313/es/>

⁷³ Ibid. The annual internal standard of air quality for PM₁₀ is 50 µg/m³ annual average (Resolution 610 of 2010, Art. 2), while the standard recommended by the WHO, from which there is a risk to human health is 20 µg/m³ (annual average).

⁷⁴ It should be noted that Resolution 610 of 2010, fixed the maximum allowable concentration of O₃ in 80 µg/m³ (8 hours). With regards to this, see Table 2. "Concentración a condiciones de referencia de las partículas respirables..." (Concentration at reference conditions of breathable particles), page 26. Op. Cit. Herrera T. Ana, Echeverri L. Gabriel J., Ordoñez M. Jaime E.; Patologías respiratorias en niños preescolares y su relación con la concentración de contaminantes en el aire de la ciudad de Medellín (Colombia) (Respiratory pathologies in preschool children and their relation to the pollutant concentration in the air of the city of Medellín (Colombia)); Ingenierías Magazine, University of Medellín, vol. 10, No. 19, pages 21-32 - ISSN 1692-3324 - July-December of 2011/228.

⁷⁵ Resolution 601 of 2006, Article 4, Table 2.

⁷⁶ These areas are central Medellín and Guayabal sector. It should be emphasized that the identified areas are located within the urban perimeter and constitute important areas for commercial, industrial and service sectors. This condition makes them particularly vulnerable to high vehicular traffic. Op. Cit. Herrera; Echeverri; Gabriel & Ordoñez.

⁷⁷ Ibid.

⁷⁸ Ortiz IC, Peláez CA, Orozco LY, Zuleta M. Evaluación genotóxica de la interacción entre mezclas binarias de mutágenas en linfocitos humanos (Genotoxic evaluation of the interaction between mutagenic binary mixtures in human lymphocytes). *Biomédica*. 2012; 32(3).

cellular level, and when cells are in the period of growth and development, they have a higher rate of division, including affected cells, which could trigger the development of tumors. On the other hand, children living in areas with high levels of breathable particles (PM2.5, PM10, soot and lead) in Medellín have a 49.3% higher risk of suffering respiratory diseases than those exposed to normal concentrations.

One important outcome of these studies that deserves to be highlighted is that although PM10 was found within the national standard reference values, the genotoxic effect persisted, i.e., damages to the genetic material (DNA). These damages result in chromosomal breaks or ruptures of DNA, which constitute potential premutagenic injuries. Moreover, they interrupt the functioning of these molecules, altering the sensitivity of individuals, which brings the possibility of developing mutations and cancer. This finding confirms again that the standard is not the appropriate one to prevent health problems.

Despite the failure to acknowledge the relationship between environmental impacts and the violation of the fundamental rights of children in the Colombian State reports, that relationship is recognized in court cases. Indeed, the Constitutional Court has reviewed a large number of cases in which the existence of a connection between environmental degradation and the violation of rights is confirmed, and it has recognized the comprehensive nature of the right to a healthy environment and the ineffectiveness of the Government's control and prevention measures.⁷⁹

The state of air pollution in Medellín is alarming, since it evidences not only the magnitude of air pollution in the city, but also the backwardness of the national legislation in the setting of permissible contamination limits, according to rates recommended by international organizations such as the WHO. In this case, the delay in setting allowable concentrations puts children living in the most polluted urban areas at high risk.

Despite the serious risk to the environmental health of children in Medellín, no specific action has been implemented by the local Government to protect their fundamental rights. Since 2007, when the municipality received research on respiratory pathologies in children under 5 years old, there have not been any monitoring and controlling actions from the State have been carried out for guaranteeing children's environmental health.⁸⁰

Morales Family vs. Drummond Ltda.

In the case, *Morales Family v. Drummond Ltd.*, the well-known multinational coal corporation is being sued for the effects of its pollutant emissions on the health of children. The Morales family lives at a close distance of 300 meters from the coal mining "Pribbenow," property of Drummond Ltd., located in La Loma village in El Paso municipality of the department of Cesar. In this case, the defendant were charged with indiscriminate coal exploitation without environmental control every day, which produces "i) unbearable "noise," due to the working machines; ii) "dust and particulate matter" spread in the air, produced by the exploitation, which settles upon their house, work tools,

⁷⁹ With regards to this, consult sentences of the Constitutional Court: T-771 of 2001; T-1077 of 2012; T-154 of 2013; T-418 of 2010; T-749 of 2012; T-242 of 2013, among others.

⁸⁰ Is necessary to reiterate that the research cited in this report have been conducted with economic financing from the municipality of Medellín.

animals, food, water sources, etc.; iii) health problems to the individuals who live in the area, especially children who suffer from “*cough, irritated eyes and earache*” and in some cases, temperature and breathing problems (...) the two water sources used for consumption and development of daily activities are polluted “*with undetermined solids with an unpleasant texture, smell and taste.*”⁸¹

In the Drummond case, the Constitutional Court protected the fundamental rights of children who were affected by the concentration of carbon particles in the air and noise pollution emitted by the company. The Court highlighted the importance of the right to a healthy environment and its comprehensive nature in the Colombian legal system. Thus, conservation of the environment is a right recognized by the Constitution whose holders are all human beings “*in connection to the unavoidable duty of the State to guarantee people's lives in adequate conditions, preventing any harmful interference that threatens their health.*”⁸²

The adequate conditions to which the Constitutional Court refers to comprise the inseparable relationship of the right to a healthy environment with the rights to health, indemnity and privacy of people, who “*tend to be affected by alterations that threaten a healthy environment, particularly when the quality of vital elements, such as water and air, is altered, due to their interdependent relationship, which prevents the division of measures to protect those rights.*”⁸³ In preventive actions, the child population deserves special consideration given children’s high vulnerability to environmental hazards.

In relation to drinking water for human consumption, the situation is also worrying because some compounds that have been detected may cause damage to health in the general population, but especially in a very vulnerable group: the children of Medellín. Furthermore, it is necessary to bear in mind that in Colombia, the quality of water for human consumption is determined by taking into account physicochemical and microbiological parameters. However, it is not known whether there is a control system for the compounds that can produce cancer (muta-carcinogenic) in the waters that supply water treatment plants for human consumption.

Water Contaminated with Muta-carcinogenic Compounds in Medellín

In various studies conducted by the University of Antioquia and the Universidad Pontificia Bolivariana, the possible mutagenic and genotoxic effect of compounds present in some drinking water treatment plants in Medellín was evaluated.⁸⁴ For example, a water treatment plant located to

⁸¹ T-154 of 2013, M. P. Nilson Pinilla Pinilla.

⁸² Ibid.

⁸³ T-494 of 1993, M. P. Vladimiro Naranjo Mesa., M. P. Vladimiro Naranjo Mesa T-494 of 1993, M. P. Vladimiro Naranjo Mesa

⁸⁴ These studies are part of the macro research project entitled “Origen, identificación e interacción de mutágenos presentes en aguas de consumo humano tratadas en la planta de Ayurá, Villahermosa y Rionegro” (Origin, identification and interaction of mutagens present in drinking water treated at the Ayurá, Villahermosa and Rionegro plants) conducted by the University of Antioquia in Medellín, financed by Colciencias (Administrative Department of Science, Technology and Innovation at the national level), Contract 570-2003 Code 1115-04-14719. The articles produced from this research that support the results described are: Oñate JF, Paruma AF, Cárdenas HH, Meléndez I, Zuleta M, Peláez CA. Potencialidad Mutagénica y Genotóxica de Aguas que Surten una Planta de Potabilización (Mutagenic and Genotoxic Potentiality of Waters that Supply a Drinking Water Treatment Plant). [Epub ahead of print]; Barbosa C, De las Salas B, Ossa M, Ortiz IC, Peláez C. Mutagenicidad y genotoxicidad de aguas para consumo humano antes y después de su potabilización, durante las épocas seca y de lluvia (Mutagenicity and genotoxicity of water for human consumption before and after purification, during the dry and rainy seasons) 2011 [Epub ahead print]; Cárdenas HH, Meléndez IG, Oñate JF,

the southeast of Medellín, which distributes drinking water to more than 1,500,000 inhabitants of the southern part of the city and surrounding municipalities makes drinkable water coming from La Fe dam, which is supplied by Las Palmas ravines and other rivers that may be contaminated with agrochemicals, industrial wastes and household sewage.

At the same time, Las Palmas brook receives wastewater coming from the (corregimiento) Las Palmas, from some villages and small shops of fried and roasted meats, as well as from woodwork shops which use many solvents, and service stations.

In these studies, different compounds such as polycyclic hydrocarbons, heterocyclic amines and nitrosamines that are highly genotoxic (they cause harm to human DNA) were identified. These compounds are dangerous for the genetic health of the general population, especially for children due to their vulnerability, explained in part by the high rate of cell division, related to their development and growth, and exposing their cells to division processes in the presence of these genotoxics found in the environment.

Additionally, it was confirmed that from the samples obtained from water treated with aluminum sulfate and chlorine, damage in DNA was generated, demonstrating that water purification processes are not 100% effective in removing chemical contaminants. Therefore, the research proposing alternatives for exposure reduction must continue. Some of these studies were performed with human lymphocytes (white blood cells) and results showed a direct connection between the agents and potential damage in humans⁸⁵.

Research on drinking water in the city of Medellín shows a serious weakness of the national environmental regulations concerning up-to-date technical information with regard to new contaminants that can affect the health of the population.⁸⁶ With respect to the guarantee and protection of the rights of children, the lack of specific research on this population is worrying.

3.4. Public Policies, Regulations and Actions of Local Government

Different public policies related to public health and atmospheric pollution express concerns about the situation of children's environmental health in Colombia. This situation occurs in Medellín and other main cities, making it a national problem.

This concern was validated in National Council for Economic and Social Policy (Consejo Nacional de Política Económica y Social – CONPES) Document 3550⁸⁷ approved in December

Paruma AF, Zuleta M. Mutagenicidad y genotoxicidad de dos sitios que abastecen una planta de tratamiento de agua potable (Mutagenicity and genotoxicity of two sites that supply a drinking water treatment plant). 2011 [In press].

⁸⁵ Ortiz IC, Peláez CA, Orozco LY, Zuleta M. Evaluación genotóxica de la interacción entre mezclas binarias de mutágenas en linfocitos humanos (Genotoxic evaluation of the interaction between mutagenic binary mixtures in human lymphocytes). 2011 [Epub ahead print].

⁸⁶ Pollutants such as Heterocyclic Amines, Furanones, Benz(a)anthracene, Benzo(a)pyrene (BaP) and Polycyclic Aromatic Hydrocarbons (PAHs) cause damage in human DNA, as scientifically proven. Contact with these pollutants, even in minimal amounts, threatens the health of the entire population, including children. Therefore, it is necessary to issue a national standard to establish the maximum concentrations of these pollutants allowed in water after potabilization processes.

⁸⁷ "Lineamientos para la formulación de la política integral de salud ambiental con énfasis en los componentes de calidad de aire, calidad de agua y seguridad química" (Guidelines for the formulation of comprehensive environmental health policy with emphasis on air quality, water quality and chemical safety components)

2008 in which is possible to see the lack of "an explicit policy framework that comprehensively regulate the area of environmental health". This document specifically highlighted the increased vulnerability of children to air pollution, inadequacy of water, sanitation and hygiene, and inadequate management of chemicals⁸⁸.

Similarly, the 2010 National Policy on Prevention and Control of Air Pollution emphasized that, between 2007 and 2009, studies were conducted to measure the impact of air pollution on children's health in the cities of Bogotá, Cali, Medellín, Bucaramanga and Santa Marta with disturbing results. According to the Policy:

"All studies carried out have quantified the increase in the number of cases of acute respiratory disease (ARD) associated with an increase in the concentration of pollutants such as ozone, nitrogen dioxide, particulate matter less than 10 microns and particulate matter less than 2.5 microns. It was found that due to increments of 10 and 20 µg/m³ in daily concentration of PM_{2.5}, consultations for respiratory diseases increased by 13 and 24%, respectively. Consultations for Chronic Obstructive Pulmonary Disease (COPD) increased 13% due to increments of 10 µg/m³ in PM_{2.5} and 28% due to increments of 20 µg/m³ in PM_{2.5}"⁸⁹.

Against these findings, it is surprising that the same national policies that present them do not include strategies, plans, programs and projects for the implementation of specific actions to safeguard the fundamental rights of children nor specify any action to correct this.

This same scenario is replicated at local level in cities like Medellín. It was confirmed in the previous Plan de Desarrollo Medellín 2008-2011 (2008-2011 Medellín Development Plan), which in its line 4, "Hábitat y Medio Ambiente para la Gente" (Habitat and Environment for People) presented a serious diagnosis of the air situation for the year 2007, without the establishment of specific projects to remedy the environmental health problems detected.

"Total pollutant emissions in Medellín are estimated at 224,774 tons/year (particulate matter, sulfur oxides, nitrogen oxides, volatile organic compounds) (...) Due to this contamination, 22 children per 100,000 children under five years of age die each year because of acute respiratory infection, which is mainly produced by breathable particulate matter concentrations (PM₁₀) in the environment, which in Medellín rises to 74 ug/m³, exceeding in 4 ug/m³ the

www.dnp.gov.co/Portals/0/archivos/documentos/Subdireccion/Conpes/3550.pdfwww.dnp.gov.co/Portals/0/archivos/documentos/Subdireccion/Conpes/3550.pdf, page 3.

⁸⁸ Ibid. "In order to promote and facilitate the approach of the guidelines described herein, some of the multiple environmental factors whose deterioration negatively affects human health will be taken into account, including as a priority the poor air quality, poor quality of drinking water for human consumption, and inadequate management of chemicals (chemical safety) because it is considered that the affectation of these factors significantly deteriorates the environment and negatively affects the health of the population, especially vulnerable groups (children, pregnant women, older population and people living in extreme poverty)."

⁸⁹ La política nacional de Prevención y Control de la Contaminación del Aire de 2010 (2010 National Policy on Prevention and Control of Air Pollution), page 13.

70 ug/m³ standard set for Colombia, but exceeding in 24 ug/m³ the 50 standard set by the World Health Organization"⁹⁰.

Similarly, the project of the current Plan de Desarrollo Medellín 2012-2015, "Medellín: Un Hogar Para La Vida" (Medellín: A Home For Life), evidenced that by 2010, a high mortality rate for acute respiratory diseases remained, with 12.28 cases per hundred thousand children under five years of age.⁹¹ Equally discouraging are the indicators for the years 2011 to 2012, in which it was stated that: "mortality in girls and boys under five years due to Acute Respiratory Diseases (ARD) remained at a similar level to 2011, going from 14.3 to 14.4 cases per hundred thousand children in this age range for 2012"⁹².

In the current Development Plan, priority is given to vulnerable groups such as children as the basis of its policy guidelines.⁹³ So on Line 2 of the Development Plan called "Equidad, prioridad de la sociedad y del gobierno" (Equity, Priority of Society and Government), "Ciudad de niños, niñas y adolescentes" (City for boys, girls and adolescents) is set as a component with the objective of the comprehensive protection of this population as holders of rights. This component has the following programs: Buen Comienzo (Good Beginning), Protección integral a la infancia y la adolescencia (Comprehensive Protection of Childhood and Adolescence), and Ejerciendo ciudadanía con la niñez y la adolescencia (Practice of Citizenship with Children and Adolescents)⁹⁴.

Within the initiatives of each of the programs cited, there is no specific reference to actions aimed at the remediation and prevention of diseases caused by the city air and water pollution. It is unacceptable that despite the extensive knowledge obtained through university research, which the municipal administration has financed itself and is thus well aware of, urgent and effective remediation and prevention measures have not been implemented⁹⁵.

4. SPECIAL PROTECTION MEASURES

4.1 Children Who were Displaced Due to the Armed Conflict in Colombia: Individuals in Special Vulnerability Conditions

The Constitutional Court, in Decision T-025 of 2004, concluded that displacement due to violence endangers human rights and required an active and urgent intervention from different

⁹⁰ With regards to this, consult: www.medellin.gov.co/irj/go/km/docs/wpcontent/Sites/Subportal%20del%20Ciudadano/Plan%20de%20Desarrollo/Secciones/Informaci%C3%B3n%20General/Documentos/Plan%20de%20Desarrollo/2008-2011/Presentacion%20Servidores/Plan%20de%20desarrollo%202008-2011%20linea4.pdf Page 8 (Emphasis added).

⁹¹ www.medellin.gov.co/irj/go/km/docs/wpcontent/Sites/Subportal%20del%20Ciudadano/Plan%20de%20Desarrollo/Secciones/Publicaciones/Documentos/PlaDesarrollo2012-2015/2012-05-20_PliegoModificaciones01_PDM_S.pdf.

⁹² Informe de Calidad de Vida de Medellín (Life Quality Report of Medellín), 2012. Page 37. Available at: <http://medellincomovamos.org/salud>.

⁹³ http://www.medellin.gov.co/irj/go/km/docs/wpcontent/Sites/Subportal%20del%20Ciudadano/Plan%20de%20Desarrollo/Secciones/Publicaciones/Documentos/PlaDesarrollo2012-2015/2012-06-20_PDM_Sancionado_GacetaOficial.pdf pages 5-6.

⁹⁴ Ibid. Page 91.

⁹⁵ As it was mentioned before, the quoted researches have been financed with money from local government.

state institutions.⁹⁶ The Court identified children as one of the most affected population groups⁹⁷ and stated that the violations of their rights persist in Colombia, even with the enactment of the Writ (Auto) 251 of 2008 which aimed to reinforce protection⁹⁸ as well as the enactment of the Victims and Land Restitution Law (Law 1448 of 2011) which governs the assistance for victims of forced displacement, especially children.⁹⁹

This document is based on a critical analysis of some aspects of these regulations, as well as specific situations of displaced children and their families¹⁰⁰ in regard to the violations of their rights to a family and adequate housing.

In 2013, there were a total of 115,133 displaced victims, out of which 5,762, are children (46.6%).¹⁰¹ In the same year, in the city of Medellín, 5,994 displaced victims were registered, out of which 2,582, (43%), are children.

⁹⁶ The following factual situations are the bases for this Constitutional Court's ruling: (i) the massive and generalized violation of constitutional rights that affects a significant number of people; (ii) the prolonged omission of the authorities in the fulfillment of their obligations to guarantee rights; (iii) the adoption of unconstitutional practices, such as the incorporation of enforcement action (acción de tutela) as part of the process to ensure the right violated; (iv) the lack of legislative, administrative or budgetary measures necessary to prevent the violation of rights; (v) the existence of a social problem whose solution requires the intervention of several entities, requires the adoption of a complex and coordinated set of actions and demands a level of resources requiring a significant additional budgetary effort; and (vi) if all people affected by the same problem would come to enforcement action (acción de tutela) for the protection of their rights, a greater judicial congestion would occur.

⁹⁷ According to reports in the national press, as of August 2013 nearly 20,000 children have been displaced; and in the history of the country, about five million people have been victims of displacement. Thirty-eight percent of these were children. See: Daily newspaper *el País*, "Colombia registra más de 20.000 niños desplazados en lo que va del año," Available at: <http://www.elpais.com.co/elpais/judicial/noticias/colombia-registra-20000-ninos-desplazados-entre-enero-y-agosto-2013>, Daily newspaper *El Colombiano*, "Defensoría del Pueblo denunció desplazamiento masivo en Chocó";: http://www.elcolombiano.com/BancoConocimiento/D/defensoria_del_pueblo_denuncio_desplazamiento_masivo_en_choco/defensoria_del_pueblo_denuncio_desplazamiento_masivo_en_choco.asp.

⁹⁸ In the Order 251 of October 10, 2008 "on children and adolescents affected by the armed conflict and internal displacement," the Constitutional Court "analyzed the situation and fulfillment of rights of internally displaced children in Colombia". See: INTERNAL DISPLACEMENT MONITORING CENTRE, SUBMISSION FROM THE INTERNAL DISPLACEMENT MONITORING CENTRE (IDMC) OF THE NORWEGIAN REFUGEE COUNCIL (NRC) FOR CONSIDERATION BY THE 42ND PRE-SESSIONAL WORKING GROUP OF THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN THE FORMULATION OF THE LIST OF ISSUES 8 (2009). The Court identified "eight types of enhanced vulnerabilities or risks" faced by displaced children in Colombia, "including risk to their physical security (violence, exploitation, trafficking); hunger and malnutrition; preventable health problems; loss of education; [and] psychosocial trauma." In particular, the Court "found that there exist 'serious problems in education, especially pertaining to reach and access, permanency, flexibility, and adaptability of the system'. Thus, 'the Court ordered the Government to adopt a variety of programs to address the special protection needs of displaced children,' 'including a) prevention from the risks faced by children, and b) integral attention and support with special focus on critical areas". See: *Boys, Girls, and Adolescents*, INTERNAL DISPLACEMENT MONITORING CENTRE (IDMC), (July 3, 2009) <http://www.internaldisplacement.org/idmc/website/countries.nsf/%28httpEnvelopes%29/FC65A081BD865322C12575E70055E735?OpenDocument>.

⁹⁹ Act 1448 of 2011, Article 183: "The rights of children and adolescents that have been violated, must be restored by means of processes and mechanisms that the Constitution and laws, and specially the Code of Childhood and Adolescence, decree for such purpose", Act 1448 of 2011, online: http://www.secretariasenado.gov.co/senado/basedoc/ley/2011/ley_1448_2011_pr004.html.

¹⁰⁰ The cases identified here were identified from the socio-legal advice project for women heads of households and displaced persons and were developed by the Clínica Jurídica de la Escuela de Derecho y Ciencias Políticas, in partnership with a working group of the Facultad de Trabajo Social of the Universidad Pontificia Bolivariana and the case of a family accompanied from the Centro de Atención a Víctimas de la Facultad de Derecho y Ciencias Políticas de la Universidad de Antioquia.

¹⁰¹ Data taken from Red Nacional de Información de la Unidad para la Atención y Reparación Integral a las Víctimas. Available at: <http://rni.unidadvictimas.gov.co/?q=v-reportes>.

4.2. Right to a Family

Children who are displaced due to the armed conflict in Colombia lose members of their families in a violent way. They are forced to leave their homes in order to protect their lives and they reach inhospitable cities that change family relationships. In some cases, the family disintegration is caused by the State even though the stated aim is to protect children, as the following case shows.

Suárez Domicó Family Case

Mr. Mario Montoya Suárez and his wife Hermelina Domicó (a woman of indigenous descent), his eldest son (with mild mental retardation), his other four children (three of them who suffered from a serious physical disability that affected his movements), were forcibly displaced from the Municipality of Murindó, Bartolo village, when members of Frente 34 of the FARC, a guerrilla group, murdered another of their daughters, Blanca Libia Montoya Domicó for refusing to be recruited for that group in 2007.

When they reached the city of Medellín, where Mr. Montoya Suárez's father and other relatives lived since they had been displaced from Urabá in Antioquia, the Montoya Domicó family settled in La Honda, which is a deprived neighborhood located in the central city. Mr. Montoya Suárez and his family finally rented a house which was in poor condition. When they could not afford the rent, they had to move out and build a "shack" with sticks, plastics and a tent in another area of the neighborhood.

In the following days, his son HMD, who at the time was about 14 years old, began to suffer from severe headaches and continuous bleeding from the nostrils, which required him to be taken to the emergency room at the Children's Hospital of the Hospital Universitario San Vicente de Paul. He was diagnosed with a brain tumor and started surgical treatment to remove the tumor, which proved to be malignant. He began with chemotherapy treatment.

Mr. Montoya Suárez regularly took his son to treatment. However, the medical institution notified the ICBF that they should carry out an investigation for presumed "abuse by neglect" by the parents of HMD. On April 2, 2008, the ICBF visited the place where the family Montoya Domicó was living. After verifying that their living conditions were extremely poor and threatened a decent life for all the family members, especially the disabled children, the ICBF moved the children away on a "temporary" basis, as a preventive and restoration measure of rights and to provide them with an adequate living conditions. At that moment, Mr. Montoya Suárez agreed that his children were taken voluntarily because he had no legal representation or arguments to oppose their removal.

Subsequently, by means of Resolution 024 of July 31, 2009, the Family Attorney concluded that there was a violation of rights. As part of a re-establishment measure, the order was given to place children in foster home, where they are provided with food, housing and medical treatment necessary for their serious diseases. However, the child HMD died on June 16, 2010 because of the Government failure to provide him with medical treatment.

Despite the multiple advanced administrative and judicial proceedings from the Legal Advice Center of the University of Antioquia Law and Political Sciences School (Consultorio Jurídico de la Facultad de Derecho y Ciencias Políticas de la Universidad de Antioquia), the family has suffered a dramatic disintegration. In mid-2012, Mrs. Hermelinda Domicó moved to the Municipality of Mutatá, jurisdiction of Belén de Bajirá, Santa Maria village, with her surviving son to escape from

the precarious situation. Mr. Montoya Suárez remained alone in the city, because he feared that if he left, his daughters would be declared abandoned and adopted, which would lead to the final disintegration of the family.

In September 2013, after completing paperwork in the Municipal Victims Support Unit (Unidad Municipal de Atención la Víctimas), received the certification of safety conditions for returning. Mr. Montoya Suárez returned to Belén de Bajira, to regroup with his partner Hermelinda and his son to prepare the economic conditions that would enable them to reintegrate their daughters to the family. To do this, he received the support for starting a productive project for improving their economic situation from the Municipality of Medellín and Municipal Victims Support Unit (Unidad Municipal de Atención la Víctimas).

To date, the family has not received any reparations. Although the exhumation of the daughter killed by the FARC in Murindó was obtained by an act of enforcement (acción de tutela), no DNA testing has been administered to fully identify the body¹⁰².

This case denotes the deep flaws in how the ICBF and other State institutions address situations impacting children, as well as their entire families. Aiming at the protection of the children's rights, a legal action resulted in a less desired outcome, for it was not adequately articulated with other support programs to families that must be guaranteed by the Colombian State.¹⁰³

4.1.2 Right to Adequate Housing

For the balanced and well structured development of a child, it is necessary to have access to adequate housing.¹⁰⁴ Unfortunately, one of the greatest deficiencies among the displaced families is access to adequate housing. They often resign themselves to live in places that do not meet the minimum habitability requirements because they are the only viable housing solution.

Following the standards of the 1996 Istanbul Declaration and Habitat Agenda, as well as the requirements of General Comment No. 4 of the Committee on Economic, Social and Cultural Rights (CESCR), we can affirm, for example, that the physical space of the houses where displaced families live is generally too small for the number of people living together in each household. This is the description of the house of a displaced family, in the words of children:

Let's say the house is not so big, 'cos it's small for us, 'cos we are many, and, and, and, and there are two rooms where my two little brothers sleep...in the other I sleep with my mom and... and in another very, very, tiny room that is like for the laundry, sleeps a brother... and that's it the kitchen and there's a very small courtyard just outside and where we put there, the clothes", "... there's a part that

¹⁰² To see the story of Mr. Mario Montoya Suárez and his family, and their assistance by the Centro de Atención a Víctimas a face, refer to the following link: https://www.youtube.com/watch?feature=player_embedded&v=wh2oGObn6c4.

¹⁰³ For a detailed analysis of the generalized discrimination in relation to certain groups in vulnerable conditions such as displaced children, see section 2.1 of this report.

¹⁰⁴ "The right to an adequate housing for the displaced population is a fundamental right of immediate application that has a wide development both on the internal and international levels, and it is provided with accurate content that the State must ensure in order to guarantee real and effective protection of this right." Taken from Sentence T-239 of 2013 of the Constitutional Court. Available at: <http://www.corteconstitucional.gov.co/relatoria/2013/T-239-13.htm>.

*is, let's say a bit of wood and of, of, brick, as it's a rented house then that's of brick", "...the bathroom is very small and serves ~~yes~~ us, but it's always very small for us... it's a kitchen there let's say very small and kind of rare 'cos all behind there's a very rare gap behind, in the kitchen, but is covered with a table there, so you don't see it...(about the house floor) like of tiles, tiles... the roof is made of pure material 'cos there's another house above.*¹⁰⁵

Another issue to be analyzed is the location of the habitation, since the houses are often located in peripheral points of the city, in neighborhoods where public order and security are complex due to different armed groups' presence. These groups operate and point out "invisible borders" as limits to the exercise of the fundamental right to freedom of movement. They also have a permanent sale and consumption of drugs that put families at imminent risk of revictimization, because the children face a threat of forced recruitment by armed actors that are present in the area. Under these circumstances, parents move and leave their homes again in search of protection. Thus, these families often experience multiple forcible internal displacements.

With regards to this, children and adolescents say: *"...one day I came from school and up there was a man shooting with a gun and I was here and he here and another two came shooting each other"*¹⁰⁶.

It is also important to highlight that many of the houses of displaced children are located in high risk areas¹⁰⁷ which suffer from flooding, landslides, among other hazards which occur when there are heavy rains.

In view of the foregoing, we affirm that the limited access to adequate housing by displaced families persists¹⁰⁸ and that the actions taken by the government remain insufficient. Lack of adequate housing throughout the country is made more serious¹⁰⁹ by the urgent need that displaced families¹¹⁰.

¹⁰⁵ Aside taken from an interview conducted with one of the women part of the project and their three children under 18, on December 17, 2013.

¹⁰⁶ Ibid.

¹⁰⁷ With regards to this, check, for example, sentence T-239 of 2013, in which the Constitutional Court performs the count of several sentences approaching cases of forced evictions to forced displacement victims, due to their location in areas of high unrecoverable risk, and points out the precise obligations of the State in such cases.

¹⁰⁸ For this case, take the following study as a reference: <http://repository.javeriana.edu.co/bitstream/10554/1765/1/DiazCastanedaCamiloHernan2011.pdf> and points out that "currently, there are nearly 850,000 displaced houses in the RUPD, of which 84% do not have decent housing" (DNP, 2010). To address this situation, the national government, based on Act 387 of 1997, has adopted policies for prevention, assistance, protection, consolidation and socio-economic stabilization of the displaced population, including housing policy. However, the implementation of this policy has not been enough to address this situation, since there are 707,000 families without decent housing (DNP, 2010).

¹⁰⁹ Daily newspaper El Espectador. "Piden investigar irregularidades en entrega de viviendas a desplazados en el Meta". October 28, 2013. Available at: <http://www.elespectador.com/noticias/judicial/piden-investigar-irregularidades-entrega-de-viviendas-d-articulo-455091>. See also daily newspaper El Espectador. "Tutelatón en Boyacá por el derecho a la vivienda". January 10, 2014. Available at: <http://www.elespectador.com/noticias/nacional/tutelaton-boyaca-el-derecho-vivienda-articulo-467872>.

¹¹⁰ This differential approach that the Constitutional Court has reiterated in Order 251 of 2008: *"la ausencia de un enfoque diferencial sensible a sus necesidades específicas"*. Available at: <http://www.acnur.org/t3/fileadmin/scripts/doc.php?file=biblioteca/pdf/6986>.

5. RECOMMENDATIONS

With Regard to General Implementation Measures:

- The Colombian State should intervene to support existing institutions that can effectively protect the rights of children in Eastern Antioquia and in the country because 1) there is insufficient presence in remote areas, 2) personnel are often required to serve in multiple capacities, i.e., take on additional roles and duties, and 3) personnel are not adequately trained to respond to issues.
- The Colombian State should take the necessary steps to implement public policies to protect children and contribute to ensure that all Colombians feel included in the State regardless of where they are. The State should: 1) guarantee and monitor the effective presence of the Children's Protection System Authorities (Family Commissioner Office, Childhood and Adolescence Police, ICBF and Family Attorneys) in all remote areas of the country, 2) identify programs/actions the State has implemented or is implementing to protect children, 3) determine the State's effectiveness, and 4) describe their geographical reach, noting that it is not enough to create nationwide policies if they are not being effectively implemented in all regions.

With Regard to Family Environment and Alternative Care:

- The Colombian State should take effective preventative measures to address the actual causes that put children's rights at risk. Such preventative intervention should include providing economical and psychological assistance to families so that they have the ability to care for their children thereby preventing children from being removed from their families and growing up in long-term institutional care¹¹¹.
- The Colombian State must enact an Adoption Protocol in order to have a coherent policy on adoptions that unifies criteria regarding the procedure and responsibilities of the authorities that have roles in the adoption process. The State should also avoid overly restrictive procedures that are not established by law, such as ICBF's orders requiring the search of a child's birth family up to the sixth degree of consanguinity. Such requirements restrict the adoptability of children and their right to have a family.
- The Colombian State must ensure the Family Attorney Offices are made up of the staff interdisciplinary staff with trained professionals and with access to sufficient resources to perform their work. This would guarantee that better legal decisions are adopted based on the reality of the situation children and their families face, as opposed to relying on the family's economic situation as a criterion to take children away from their relatives.

¹¹¹ "País de Huérfanos". At: El Tiempo (2009/8/2). Available online <http://www.semana.com/vida-moderna/articulo/pais-huerfanos/105840-3>.

With Regard to Environmental Health:

- It is necessary for the State to invest more resources to address and update the scientific research on the relationship between pollution and children's health at the local and national levels. Accurate information is important in the formulation and implementation of suitable public policies for children. Having current and accurate data on children's health will serve as a basis for the construction of indicators to measure the short-, medium-, and long-term impact of these public policies. This will enable the Colombian State to be held accountable for the performance of its duties in protecting the right to a healthy environment and children's right to health.

- Being continually exposed to water and air pollutants such as Heterocyclic Amines, Furanones, Benz(a)anthracene, Benzo(a)pyrene (BaP) and Polycyclic Aromatic Hydrocarbons (PAHs) can cause damage in human DNA. Therefore, it is necessary that the Colombian State regulate the maximum concentrations of these pollutants to avoid risking the health of the entire population, especially children, by adapting its domestic environmental regulations related to the maximum allowable limits for pollutant concentrations for being consistent with World Health Organization standards.

- While it is the national government that decides to accept the standards recommended by the World Health Organization, it is the local governments' responsibility to implement various strategies to prevent the occurrence of diseases in children. In this regard, domestic environmental regulations allow different strategies to guarantee and protect the right to health, including:

- Identification and public notification when concentrations of pollutants would threaten health).¹¹²
- Issuing local standards on allowable pollutant concentration limits which could be more stringent than national standards. This is in accordance with the *subsidiary rigor principle*, which establishes that environmental authorities have the legal authority to set more demanding standards to protect inhabitants' health¹¹³.
- Revision of land development plans in order to limit industrial activities that produce high levels of pollution and are located in urban areas with the highest concentration of children (e.g., Medellín downtown and Guayabal sectors).

¹¹² Decree 948 of 1995, by which the prevention and control of atmospheric pollution and the protection of air quality are regulated, sets out in Articles 2, 10 and 93 some regulations for matters regarding measures for attention to pollution episodes and contingency plans for atmospheric emissions.

¹¹³ Article 63 of Order 99 of 1993, assigns the *Principio de Rigor Subsidiario (Subsidiary Rigor Principle)*: "environmental police standards and measures, i.e., those that environmental authorities issue to regulate the use, management, application and mobilization of renewable natural resources, or for the preservation of natural environment, whether they limit the exercise of individual rights and public liberties for preservation or restoration of the environment, or require a license or permission to run certain activity for the same objective, may be successively and respectively more strict, but not more flexible, by the competent authorities of regional, departmental, district or municipal level, insofar as it descends in the standard hierarchy and the territorial scope of the competencies is reduced, when special local circumstances so warrant, in accordance with Article 51 of this Act."

- Revision of atmospheric emission and dumping regulations for different industries and commercial establishments in urban areas and the suburban perimeter, in order to watch the strict compliance with the legal environmental standards.
- Strengthen the control and monitoring of environmental and sanitary authorities in sanctioning activities that generate environmental damage.

With Regard to Special Protective Measures (Forced Displaced Children):

- The Colombian State should design and effectively implement public policies specially oriented to protecting the rights of displaced children and not allow children to be separated from their families based solely on conditions of poverty attributable to the human rights violation of forced displacement.
- The Colombian State should guarantee access to adequate housing for displaced families according to the special protective measures ordered in the Writ (Auto) 251 of 2008, which insists on prioritizing displaced children's basic needs as part of the State's responsibilities.