

OEA/Ser.L/V/II.164  
Doc. 119  
5 September 2017  
Original: Spanish

**REPORT No. 101/17**

**CASE 12.414**

REPORT ON MERITS (PUBLICATION)

ALCIDES TORRES ARIAS, ANGEL DAVID QUINTERO ET AL  
COLOMBIA

Approved by the Commission at its session No. 2096 held on September 5, 2017.  
164<sup>th</sup> Special Period of Sessions.

**Cite as:** IACHR, Report No. 101/17, Case 12.214, Merits (Publication), Alcides Torres Arias,  
Angel David Quintero and others, Colombia, September 5, 2017.

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**I. SUMMARY**

1. On November 21, 2000, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission," "the Commission" or the "IACHR") received a petition lodged by César Augusto Rendón Pinzón, alleging violation of the right to life and to humane treatment, to personal liberty, and to protection of the family, all of which are enshrined in Articles 1(1), 4(1), 5(1), 5(2), 7(1), 7(3), 7(5), 17(1) and 17(2) of the American Convention on Human Rights (hereinafter "the American Convention," "the Convention" or the "ACHR"), by the Republic of Colombia (hereinafter "the Colombian State," "the State," or "Colombia") in the enforced disappearance of Mr. Alcides Torres Arias, since December 20, 1995, by members of the army and of paramilitary groups, following his detention on the premises of the XVII Brigade of the National Army, located in Carepa, Department of Antioquia. It was noted that Mr. Torres Arias was arrested together with three other people, included Mr. Angel David Quintero. They added that two of these people were released, while Mr. Torres Arias and Mr. Quintero whereabouts' remain unknown. It was further alleged that the deeds had gone unpunished. At the merits stage, the petitioners asked the Commission to regard Mr. Angel David Quintero as the victim in the case.

2. For its part, the State argued that it cannot be assigned responsibility for the deeds relating to the alleged violation of the right to life and to humane treatment, to personal liberty, and to protection of the family because, although Mr. Alcides Torres Arias and Mr. Angel David Quintero were deprived of their liberty under State custody, they were released on December 20<sup>th</sup>, 1995. Accordingly, the State argued that it cannot be assigned responsibility for what happened after the release. It further argued that it met its obligation to investigate what happened to the alleged victims and that some of the perpetrators had been punished. At the merits stage, the State indicated that it recognized Mr. Angel David Quintero as an alleged victim in the case.

3. After reviewing the positions of the parties, the Inter-American Commission concludes that the State of Colombia is responsible for violating the right to judicial personality, to life, to personal integrity, to personal liberty, to a fair trial/due guarantees, to protection of the family, and to judicial protection enshrined in Articles 3, 4, 5, 7, 8, 17, and 25 of the American Convention in conjunction with the obligations established in Article 1.1 of the same instrument, to the detriment of Messrs. Alcides Torres Arias and Angel David Quintero. The Commission also concluded that the State violated the rights to personal integrity, due guarantees, and judicial protection established in Articles 5, 8, and 25 of the American Convention in conjunction with the obligations established in Article 1.1 of the same instrument, to the detriment of the relatives. Finally, the Commission concluded that the Colombian State is responsible for violating the obligations established in Articles 1 (a) and 1(b) of the Inter-American Convention on Forced Disappearance of Persons.

**II. PROCESSING BY THE IACHR**

**A. Processing of the case**

4. The initial petition was received on November 21, 2000. The processing of the petition from the time it was lodged to the decision on admissibility is described in detail in Admissibility Report No. 6/03,<sup>2</sup> issued on February 20, 2003.

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<sup>1</sup> In accordance with Article 17(2) of the Rules of Procedure of the IACHR, Commissioner Luis Vargas Silva, a Colombian national, did not participate in the discussion or decision in this case.

5. In that report, the Commission declared itself competent to hear the petition and stated that the facts denounced therein could constitute violations of the rights established in Articles 4, 5, 7, 8, 17, and 25 of the American Convention, in conjunction with the obligations established in Article 1.1 of the same instrument.

6. On March 11, 2003, the Commission notified the parties of the aforementioned report and, pursuant to Article 38.1 of the Rules of Procedures then in force, gave the petitioners two months in which to submit their additional observations on the merits. Furthermore, pursuant to Article 48.1.f of the American Convention, the Commission placed itself at the disposal of the Parties with a view to reaching a friendly settlement of the matter.

7. On May 10, 2003 and June 24, 2007, the petitioners submitted their additional observations on the merits of the matter. The petitioners submitted further information on the case on October 28, 2005, and on February 11 and April 7, 2008.

8. On June 17, 2008, the State presented a communication asking the Commission to pronounce specifically on the procedural consequences of the petitioners' failure to submit their observations on the merits within the time allowed. On July 6, 2009, the State requested an eight-day extension to respond to the IACHR's note of June 4, 2009, which reiterated the Commission's request for the submission of observations on the merits. On July 7, 2009, the IACHR granted the State a 10-day extension. On July 17, 2009, the State requested an additional 30-day extension for submitting its observations. The State presented its observations on the merits on August 10, 2009. On May 1, 2012, the Commission forwarded the pertinent parts of the observations on the merits to the petitioners.

9. On May 1 and July 6, 2012, the Commission asked the petitioners and the State to provide the complete files on internal disciplinary, administrative, criminal, and Justice and Peace proceedings relating to the instant case, along with any other information the parties deemed relevant. At the date of approval of this Report, the Commission has not received any answer to those communications.

10. On December 2, 2013, the State sent a communication containing a series of convictions handed down.

11. On March 28, 2014, a communication was received from the petitioners, in which they submitted their observations on the State's report.

## **B. Processing of precautionary measures**

12. While the case was being processed, the petitioners reported in written communications on January 28 and February 15 on the abduction, torture and subsequent murder of human rights defender María Del Carmen Florez Jaimes on February 14, 2002. Ms. Florez Jaimes was a representative of the Municipality of Mutatá and co-founder of the Colombian Juridical Foundation (hereinafter "CORPOJURÍDICO"), who was helping the relatives in this case. They also reported the chain saw quartering of Alirio Torres Arias and the forced disappearance of Orbaire Torres Arias, both of whom were brothers of the alleged victim in this case.

13. On August 6, 2002, the Commission asked the Colombian State to adopt precautionary measures to protect the life and personal integrity of the relatives of Alcides Torres Arias and of the members of CORPOJURÍDICO. The IACHR communication pointed out that "during the proceedings one witness, two brothers of the disappeared person, and one member of the Foundation have been murdered. That is in itself

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[... continuation]

<sup>2</sup> IACHR, Report No. 6/03 (Admissibility), *Petition 0597/2000 Alcides Torres Arias (Colombia)*, February 20, 2003, paras. 4, 5, and 6.

sufficient evidence of real and imminent danger."<sup>3</sup> As of the date this Report was approved, the precautionary measures remain in effect.

14. Considering the close link between the subject of this case and the alleged sources of risk in the framework of the precautionary measures, the Commission will take the file on those measures into account for a comprehensive evaluation of the instant case.

### III. POSITIONS OF THE PARTIES

#### A. The petitioners

15. The petitioners averred that Alcides Torres Arias was a small-scale cocoa farmer pertaining to a quasi-cooperative (*precooperativa*) of cocoa farmers in San José de Apartadó, in the Urabá subregion, in the Department of Antioquia, Colombia. They said that all the farmers pertaining to that "precooperativa" had been murdered or disappeared and that it was vital for paramilitary groups to maintain control over that area because of the wealth it produced.

16. They pointed out that on December 16, 1995, Mr. Alcides Torres Arias was riding his wife's motorcycle along the La Arenera road, in the district of Currulao, municipality of Turbo, in the Department of Antioquia. They said that at midday (12:30) he was detained by members of the XVII Brigade of the National Army, based at Carepa, in the Department of Antioquia. They added that on December 17, 1995, at 5:30 p.m., Alcides Torres Arias and another three people were handed over to the "faceless" [Tr. i.e. anonymous] Regional Prosecutor's Office, situated on the premises of the XVII Brigade, in Carepa, Antioquia. They stated that on December 18, 1995, the prosecutor on duty ordered the start of preliminary proceedings and on that same day notified Prosecuting Attorney 132 in the Criminal Court of the Apartadó Circuit that he had done so.

17. The petitioners said that while he was detained, as of December 16, 1995, the relatives of Mr. Alcides Torres Arias had been able to visit him and take him food, but on December 20, 1995, at 3:00 p.m., his mother, Mrs. María Noemí Arias, was told that her son had been released that morning.

18. According to the petitioners, at 8:30 a.m. on December 20, 1995, the detainees were brought before the paramilitary Ricardo López Lora, alias "the pig" or "Robert." According to the petitioners, Ricardo López Lora was a former guerrilla fighter in the "People's Liberation Army (*Ejército Popular de Liberación*, hereinafter "the EPL"), who by that time was under the command of the paramilitary leader Carlos Castaño. They also pointed out that Ricardo López Lora's direct supervisor was "the old man" or "Efraín," another former member of the EPL, based in Puerto Cesar (Urabá). They went on to say that next in the chain of command was Freddy Rendón, alias "the German."

19. They further alleged that at 11:30 a.m. on December 20, 1995, the Regional Prosecutor in Carepa ordered the release of Alcides Torres Arias y Angel David Quintero (who had been detained under the same circumstances of Mr. Torres Arias), but that the detainees were not informed of that decision. Regarding the log book recording the departure of the disappeared persons, which was cited by the State, the petitioners argued that it was irrelevant, given that there had been no opportunities to question its authenticity in court and the State itself had never seriously examined its authenticity. According to the petitioners, the State acknowledged that no official notification was made of the principal document proving release, that is to say, the certificate of release (*boleta de libertad*).

20. Regarding the proceedings to which Alcides Torres Arias and Angel David Quintero were subjected, the petitioners underscored a series of irregularities, namely: 1) the paramilitary known as "the pig" lived on the premises of the XVII Brigade; ii) the paramilitary took part in National Army patrols; iii) the confidentiality of the preliminary investigation had been violated because the paramilitary knew all of the facts relating to the detention of Alcides Torres and the other citizens, which shows that there were ties

<sup>3</sup> Communication of the IACHR of August 6, 2002, granting precautionary measures MC 292/02.

between the Prosecutor's Office and the paramilitary groups; iv) the release of Alcides Torres Arias and Angel David Quintero was ordered at 11:30 a.m. on December 20, 1995, even though their statements were taken later, at 11:40 a.m. and 11:53 a.m., respectively; v) at the time, the Regional Prosecutor's Office in Carepa only took statements, while decisions on the merits were taken by the Regional Prosecutor's Office in Medellín, but in this case the Prosecutor in Carepa took it upon himself to skip a step and "release" the detainees in a hurry; and vi) Lance Corporal Belquis Margarita Villaruel received the release order, went to the detention cell accompanied by men in plain clothes, and as she was unable to open the door, proceeded to break the lock.

21. At the same time, the petitioners stated that several witnesses had seen how Alcides Torres Arias had been taken away from the installations of the XVII Brigade in Carepa, in the Department of Antioquia, in a red jeep heading in the direction of Currulao. They said that several family members had been eye witnesses to the fact of a red jeep leaving the army premises in a red jeep with Ricardo López Lora inside as well. They added that that same vehicle was seen minutes later by Ramón Rodríguez, Alcides Torres Arias' father in law, in Currulao, opposite the El Descanso hotel, and that the now disappeared person had called out to him loudly from inside the vehicle. According to the petitioners, Mr. Rodríguez told Alcides Torres Arias' family that Alcides had been badly beaten and was bleeding.

22. As for assigning responsibility to the State, the petitioners stated that the Regional Prosecutor's Office in Carepa knew about the disappearance of Alcides Torres Arias and Angel David Quintero, but did nothing about it. They also pointed out that the paramilitary used to go into the cells on the XVII Brigade's premises to interrogate detainees; served as witnesses in cases handled by the Prosecutor's Office on the XVII Brigade's premises; and went on patrols with members of XVII Brigade during the time of General Rito Alejo del Río. In particular, they pointed out that Ricardo López Lora lived on the premises of the XVII Brigade, even though he had already become a well-known member of the "death squads." They added that the military under the command of General Rito Alejo del Río used to hand over detainees to the paramilitary for the latter to "disappear" them.

23. They pointed out that on January 6, 1996, the *El Colombiano* newspaper in Medellín had published an article on the subject.

24. As regards internal investigations, the petitioners alleged that Alcides Torres Arias' family had lodged complaints with the Attorney General's office, the Prosecutor's Office and the local Office of the Ombudsman in Apartadó. However, they alleged that: 1) as far as the Prosecutor's Office was concerned, the case was assigned to the district office in Chigorodó, known for its high level of corruption and impunity, as shown by the fact that most of the Prosecutors at that time were dismissed and one of them arrested; ii) later on, the criminal proceedings were handled by the Prosecutor's Office Specializing in Human Rights, but they were still at the preliminary phase even though the family had repeatedly pointed out that the paramilitary known by his alias "Robert" or "the pig" was detained in the Bellavista prison and could easily have been linked to the case; iii) at the Attorney General's Office, the case had prescribed; and iv) the Office of the Ombudsman had acted appropriately, but, given the limits to its sphere of competence, it had not had much impact. At the same time, they added that the principal witness to the facts of this case, Ramón Rodríguez, had been murdered, without the State even investigating the circumstances of his death.

25. They said that, thanks to the insistence of the Office of the Ombudsman, the Prosecutor's Office had ordered an investigation into the "abduction" of Alcides Torres Arias, which so far had not come up with any answers regarding the circumstances in which it came about, or about his fate. Given this situation, on July 24, 2000, Mrs. María Noemí Arias filed a habeas corpus suit on her son's behalf with the First Criminal Court of the Apartadó Circuit. It was rejected. The petitioners stated that, to this day, the mother of Alcides Torres Arias has been denied her right to know the truth regarding her son's whereabouts.

26. Subsequently, the petitioners alleged that in a Justice and Peace hearing, the paramilitary leader Ever Veloza ("HH" or "Chicken Face") confessed to having taken Alcides Torres and Angel David Quintero out of the XVII Brigade premises, with the authorization of General Rito Alejo del Río, and he identified the army personnel who had handed Alcides Torres Arias over to be "disappeared." They also reported that the paramilitary Ever Veloz was purportedly being extradited to the United States.

27. The petitioners further stated that the three convictions handed down against army personnel for what had happened to Alcides Torres and Angel David Quintero did not cover all the responsibilities incurred. They pointed out that those convictions were just for abduction, not for the crime of forced disappearance. The petitioners considered that that decision favored the murderers.

28. The petitioners considered that these facts constituted violations of the rights established in Articles 1(1), 4(1), 5(1), 5(2), 7(1), 7(3), 7(5), 17(1), and 17(2) of the American Convention on Human Rights. Furthermore, they indicated at the merits stage, that in this case the provisions of the Inter-American Convention on Forced Disappearance of Persons were also violated. Following is a summary of the petitioners' principal arguments according to law.

29. Regarding the **obligation to respect rights**, the petitioners said that the State failed to safeguard the rights of Alcides Torres Arias and Angel David Quintero, because they were not returned to their families in the same physical and psychological conditions as when they were detained. Regarding the **right to life**, the petitioners maintained that the State was obliged to prevent any activity that violated rights protected under the prevention, as did the forced disappearance of Alcides Torres Arias and Angel David Quintero. They also indicated that subjecting detainees to official enforcement bodies that practice torture and commit murder with impunity constitutes, in itself, a violation of the duty to prevent violations to the rights to physical integrity and life. Regarding the **right to physical integrity**, the petitioners argued that forced disappearance constitutes a crime against humanity and that Alcides Torres Arias and Angel David Quintero were "disappeared," taken away from their environment and, accordingly, destroyed physically, emotionally, and psychologically.

30. As for the **right to personal liberty**, the petitioners pointed out that, although the Prosecutor's Office says that it released Mr. Alcides Torres Arias and Mr. Angel David Quintero, there was no personal notification of said release as required by Colombia's Code of Criminal Procedure, so that his detention was not officially ended (*no hubo solución de continuidad de su detención*). Consequently, according to the petitioners, Mr. Alcides Torres Arias and Mr. Angel David Quintero are still detained and in State custody and, specifically, that of the Regional Prosecutor's Office. At the same time, they alleged that the Army detained Mr. Alcides Torres Arias on December 16, 1995 and only on December 17, 1995, at 5:30 p.m. was he brought before the judicial authority, which violates the internal rule that a detainee be placed promptly at the disposal of the judicial authority, or, by no later than the opening of business on the following day. Finally, they point out that the forced disappearance of persons constitutes a multiple and ongoing violation of numerous rights recognized in the Convention.

31. With respect to the **right to protection of the family and the right to truth**, the petitioners alleged that the forced disappearance of Alcides Torres Arias destroyed the structure of his family and the change in their living conditions led to his wife and children having to leave, with all the decline in living standards associated with displacement. Likewise, they point out that in this case the right to know the truth of what happened was denied, because even though the facts of the case were known to the Prosecutor's Office, the National Army, the Office of the Attorney General, and the Office of the Ombudsman, all those institutions did nothing about it.

32. In addition, they alleged that the State denied the victims every possibility of protecting their rights in criminal proceedings, of submitting evidence, and of helping to ascertain the facts. Specifically, they indicated that on October 18, 2004, the family members had asked to be plaintiffs in a civil action according to internal procedures and thereby be assigned an attorney through the Public Defender Office (*Defensoría Pública*), but the State never responded to that request. They indicated that the State cannot argue that the powers of attorney were sent to the Public Defender in Apartadó, because it knew full well that the family had received asylum in Canada.



## B. The State

33. The State maintained that, based on the date of notification of Admissibility Report No.06/03, the petitioners were supposed to submit their observations on the merits by no later than May 11, 2003. Nevertheless, those observations dated June 27, 2007 were transmitted to the State of Colombia on April 14, 2008, without the IACHR having given notice of any possible extensions that may have been granted to the petitioners and without there being any certainty as to the need or justification that, if they existed, might have given rise to such extensions, so that the State understood that the petitioners had passed the expressly stated deadline for submitting their arguments on the merits.

34. The State further indicated that, although the 60-day time frame granted to it to respond to arguments on the merit was in line with the Commission's Rules of Procedure, in this case it violated the principles of procedure equality between the parties, given that the petitioners had taken five years to present their respective observations on the merits. Furthermore, according to the State, the inequality in the times allowed constituted a violation of due process, particularly since the State must have not just reasonable, but also equitable and balanced, terms and time frames for conducting its analysis of the evidence and pronouncing on the arguments on the merits at the Commission's headquarters.

35. Accordingly, the State went on to say that the lack of a clear statement regarding the effects of the petitioners' violation of the regulations undermines the principle of procedural equality, because it establishes a double standard with respect to application of the Rules of Procedure on meeting deadlines, one for the State and another for the petitioners, for no good reason. Likewise, the State pointed out that failure to determine the effects of the petitioners' failure to abide by the rules undermines the principle of legal certainty, because it does not establish legal consequences for situations that commonly occur in litigation, to the detriment of the State. The State therefore requested the Commission to pronounce on the legal and procedural consequences of the petitioners' failure to meet the deadline for presenting their observations on the merits in the instant case, bearing in mind that the situation in question constitutes an irregularity that has so far not been resolved.

36. As for the merits, the State has been communicating positions with respect to the facts of the case that are not necessarily consistent with one another. In general terms, the State maintained that it cannot be held responsible for the facts in respect of which the petitioners allege violation of the right to life and to personal integrity, personal freedom, and protection of the family, established in Articles 4,5,7, and 17 of the American Convention. In addition, the State argued that it had met the obligations to investigate established in Article 8 and 25, since investigations were carried out and some perpetrators of the deeds were punished, to the extent possible, given the complexity of the case.

37. As for the assignment of responsibility, the State argued that there was no evidence that State agents were responsible for what happened, because the presence of Alcides Torres Arias and Angel David Quintero on the premises of the Vélez Battalion did not in itself constitute a causal link to the alleged disappearance. The State adds that the assignment of responsibility for the facts by the petitioners to members of Colombia's security forces was merely generic, with no description of the alleged collaboration, support, tolerance and/or acquiescence of the State agents. According to the State, this demonstrates ignorance of the various thorny issues associated with the paramilitary phenomenon.

38. As for the victims in the case, the State stressed that it has to do only with Messrs. Alcides Torres Arias and Angel David Quintero, so that facts regarding other members of the Torres Arias family (Obairo Torres, Alirio Torres, Ramón Rodríguez) or the attorney María del Carmen Flórez, are not included in the factual scope of this case.

39. Regarding the allegations relating to violation of the Inter-American Convention on Forced Disappearance of Persons, the State maintained that, based on competence *ratione temporis*, responsibility can only be assigned for deeds occurring subsequent to that instrument's entry into force.

40. At the same time, with respect to the scope of the facts in the case, the State indicated that the events of December 20, 1995 in the municipality of Carepa should be analyzed separately from those relating to fulfillment of the order to release the detainee. Accordingly, the State did not deny the detention of Alcides Torres on December 16, 1995, nor the process that began [and continued] until December 20, 1995, and it indicated that it was a proven fact that the capture of Alcides Torres Arias had been perfectly legal and that judicial guarantees and judicial protection requirements had been met. In particular, the State pointed out that the fact that the Prosecutor's Office was working on the premises of the XVII Brigade was based on the fact that, at that time, given the serious disturbances of the peace and constant threats against members of the judiciary, the military had temporarily and for good reason, made their installations available to some judicial offices.

41. Furthermore, the State pointed out that Alcides Torres Arias had not formally been included in the criminal investigation at any time, nor had he rendered a statement for a formal criminal inquiry (*ni rindió diligencia indagatoria*); he had simply made a witness's statement under oath. The State denied that the Regional Prosecutor's Office had conducted a formal criminal inquiry into Alcides Torres Arias and Angel David Quintero, because: 1) statements in criminal inquiries, unlike witness's statements, are not taken under oath; ii) if one checks the proceedings in the Prosecutor's Office, it is clear that those witness's statements were made after the order to release the alleged victims had been given; and iii) there is no evidence linking Alcides Torres Arias or Angel David Quintero to any criminal proceedings in that judicial office. According to the State, it transpires from the above that Messrs. Torres and Quintero enjoyed respect for all their rights from the time they were captured until they were indeed released.

42. As for the facts relating to fulfillment of the order to release him, the State maintained that Alcides Torres Arias was indeed notified in person and in a timely manner of the contents of the decision taken by the Carepa Regional Prosecutor<sup>103</sup>, with respect to his release. The State pointed out that Mr. Alcides Torres Arias had not been violently taken away from the place where he was detained. Rather, the breaking of the lock on the door of the room was due to the fact that the soldier responsible for keeping the keys did not arrive at the detention center on time.

43. The State said that: a) that no certainty existed as to the possible time in which the events allegedly the petitioners occurred; b) witnesses' statements indicated that Ricardo López Lora was not among the people who directly took Alcides Torres Arias and Angel David Quintero from their cell in the detention center; c) the Guard's logbook has an entry giving 2:05 p.m. as the time at which the alleged victims were released; and d) there is no indication in the logbook of the guard at the entrance to the Brigade's premises of any vehicle leaving the premises at that time that matches the description given by the petitioners.

44. Additionally, the State considered that the petitioners' versions of what happened are contradictory in respect of the presence of a sister of Mr. Alcides Torres Arias in the guardhouse of the XVII Brigade installations and her movements on those premises. Specifically, the State said it was impossible to be in two different places at the same time and to observe the alleged exit of a red vehicle past the guard at the entrance to the Brigade's installations. Nor would she have been able to ascertain the presence of the alleged victims inside that vehicle.

45. Along the same lines, the State maintained that the record of the departure of Alcides Torres Arias and Angel David Quintero is a fact that settles the continuity of detention allegation by the petitioners, since it constitutes a break in the causal link between custody by the judicial authority that detained and later freed them and their alleged disappearance. The State added that custody of the aforementioned persons ended when the noncommissioned officer in charge handed the citizens over to the Commander of the Guard and the latter noted down that fact in the logbook, thereby certifying their departure from the Brigade.

46. The State further indicated that it had not been proved that Ricardo López Lora, alias "the pig," resided on the premises of the XVII Brigade, since there was no evidence of such residence in any of the investigations carried out nor any other pointer in support of that claim. In reality, it was an assumption based on probably frequent visits to the XVII Brigade by the aforementioned person in his capacity as an informant.

47. Regarding the events in the district of Currulao, the State said that none of the eyewitness's statements support the petitioners' claims, so that no certain fact may be deduced from their statements regarding the persons in a "red" vehicle. The State indicated that it was not possible either to identify the persons who allegedly carried out acts in the El Descanso hotel, nor the motives of the alleged perpetrators thereof. The State indicated that there was no evidence either that State agents had perpetrated, through their actions or acquiescence, the acts that took place on December 20, 1995 relating to the forced disappearance. It stated that the news item published in the media on January 7, 1996 was based on the denunciation made by the family members and had not been the result of a journalistic investigation or of statements made by officials related to the facts.

48. As regards the internal investigations carried out, the State asserted that there had been extensive and in-depth proceedings aimed at fulfilling the duty to investigate. Accordingly, the State sent information regarding those investigations and requested that they be kept confidential, so as not to endanger possible witnesses and jeopardize the success of the investigation. In relation to the habeas corpus suit, the State maintained that there had been no arbitrariness of any kind nor denial of justice, because a criminal complaint had been brought for the crime of abduction. As for disciplinary measures, the State reported that the Disciplinary Subdivision for the Defense of Human Rights of the Office of the Attorney General had conducted a disciplinary investigation into the facts of the case against some members of the National Army.

49. Regarding the effectiveness of the criminal suit, the State pointed out that on February 21, 2006, Ricardo López Lora was convicted of aggravated simple abduction of Alcides Torres Arias and Angel David Quintero, and that judgment had been ratified by a higher court on May 30, 2006. The State pointed out that, although those trials had proved that Mr. López Lora was responsible for abducting the two alleged victims, when the facts giving rise to his criminal liability were examined, at no point had it been shown that the two victims had been taken out of the VII Brigade's premises due to an action or omission by State agents.

50. With respect to the petitioners becoming plaintiffs in a civil action, the State said they could have done that at any time and, had they done so, they could have requested the taking of evidence. The State further indicated that, although the family members of the victims had filed for the right to petition -- requesting a court-appointed counsel in order to become plaintiffs in a civil action -- that request had been duly processed at the Colombian consulate in Montreal, Canada, where they were living at the time, and in response a letter had been sent requesting that they fill out certain forms used by the Public Defender's Office. The State added that the family members never filled out those forms. In addition, the State pointed out that no administrative litigation proceedings were under way in connection with this case, despite the fact that a suit for direct reparation was the ideal way for victims and the family members of victims of grave violations of human rights to obtain financial compensation.

51. With respect to the application of Law 975 of 2005, known as the Justice and Peace Act, the State said that although recently it had been stated that members of the security forces were allegedly responsible for the acts referred to in this case, that information had to be confirmed by the competent authorities, specifically the Justice and Peace Unit of the Department of Public Prosecutions (*Fiscalía General de la Nación*). The State reported that Hebert Veloza García, alias "H.H.", former Commander of the "Banana Farmers" Unit of the United Self-Defense Forces of Colombia (AUC), resigned and disbanded in November 2004 as the head of that legal structure and as head of the "Calima" Unit in December of that same year. It added that in 2006 he was called to testify, following which the prosecutor in the case had filed partial charges (*efectuó la imputación parcial*) and more than 30 convictions were handed down against him in the 17 months in which he was a candidate in Colombia in the Justice and Peace process, until his extradition to the United States of America on March 5, 2009.

52. As regards the **right to life**, the State maintained that no individual demonstration was provided of alleged support, acquiescence, collaboration, or tolerance on the part of State agents in the disappearance of the two alleged victims, nor, moreover, had it been shown in any way that the State knew of any real and immediate risk affecting the persons who in this case were victims of members of paramilitary

groups. With respect to the **right to personal liberty**, the State alleged that in the capture of the alleged victims and during the time they were detained there was reliable evidence that their dignity and the other personal and judicial guarantees were respected. At the same time, the State considered that it could not be made responsible for the alleged violation of the Convention based on the disappearance, which occurred after the alleged victims had recovered their liberty by dint of a court order. As for the right to **personal integrity**, the State reiterated that third parties were responsible for the disappearance of the alleged victims.

53. Regarding the **right to judicial guarantees and judicial protection**, the State indicated that no international responsibility existed for the violation of those rights and it considered that it was evident that the family members of the victims had had access to judicial mechanisms. The State pointed out that the Torres Arias family was living abroad, it had been constantly and vigorously active in connection with the processing of precautionary measures and it had even presented an action under Colombian law for protection of constitutional rights (*acción de tutela*). The State added that it was strange in light of the above that none of the family members admitted to the case had constituted himself or herself as civil parties within the criminal proceedings. It further indicated that up to the second half of 2008, domestic proceedings had only managed to ascertain the participation of some perpetrators of the deeds described in the case and the punishments imposed had been exemplary, while it remained clear that there was no evidence linking State agents to those acts. According to the State, to this day there are no elements that constitute sufficient grounds to conclude that the State is internationally liable for any acts or omissions on its part. The State added that the existence of a sentence to 20 years imprisonment handed down against a third party, whose direct participation was proven, contradicts the argument of "total impunity." It also claimed that the extremely complex nature of the case justified the time taken for domestic proceedings.

54. With respect the **right to family**, the State maintained that there were no pointers to the existence of a causal link between the acts of the case and the effects on the family, such as the displacement, departure from the country, and death of other members of the family. It also stated that the alleged violation of Article 17 of the Convention had to be examined in light of Article 5 of that same instrument.

#### IV. PROVEN FACTS

##### A. Context

##### 1. Regarding the paramilitary phenomenon in Colombia

55. The organs of the inter-American system have monitored human rights violation committed in the context of Colombia's internal armed conflict and, in particular, the actions of paramilitary groups.

56. As the IACHR established in its Third Report on the Human Rights Situation in Colombia, the State played a major part in developing the so-called paramilitary or self-defense groups, which it allowed to act with legal protection and legitimacy in the 1970s and 1980s,<sup>4</sup> and it is broadly responsible for their existence and strengthening.<sup>5</sup>

<sup>4</sup> In fact, Decree 3398 of 1965 (National Defense Act) and Law 48 of 1968 authorized the establishment of civilian patrols that received weapons for the exclusive use of the State's security forces, thanks to authorization by the Ministry of Defense. Article 25 of Decree 3398 of 1965 established that "All Colombian men and women, not bound by obligatory military service requirements, may be used by the Government for activities and work contributing to the restoration of order (*la normalidad*)." IACHR, Report No. 75/06, Jesús María Valle Jaramillo, October 16, 2006, par. 61.

<sup>5</sup> IACHR, Third Report on the Situation of Human Rights in Colombia. OEA/Ser.L/V/II.102 Doc. 9 rev. 1, February 26, 1999, Chapter IV, para. 236. At: <http://www.cidh.org/countryrep/Colom99sp/indice.htm>. IACHR, Report No. 75/06, Jesús María Valle Jaramillo, October 16, 2006, para. 61.

57. These groups, either sponsored or accepted by sectors of the Armed Forces, were in large part created with the aim of combating armed dissident groups.<sup>6</sup> Furthermore, as a result of their counter-insurgency motivation, paramilitary groups formed ties with the Colombian Army that strengthened over more than two decades<sup>7</sup>. Finally, on May 25, 1989, the Supreme Court of Justice declared the unconstitutionality of paragraph 3 of Article 33 of Legislative Decree 3398, which had provided a legal basis for the establishment of self-defense groups<sup>8</sup> and withdrew the legal support for their ties to national defense, following which the State adopted a series of legislative measures criminalizing the activities of these groups and of those lending them support.<sup>9</sup> In spite of that, the State did little to dismantle the structure it had created and encouraged, particularly when the groups conducted counterinsurgency activities; in fact, the ties remained in place at several levels, with the paramilitaries, in some cases, being asked or allowed to carry out certain illegal acts on the understanding that they would not be investigated, prosecuted, or punished.<sup>10</sup> The toleration of these groups by certain sectors in the Army has been denounced even by State bodies.<sup>11</sup>

58. In particular, at the time of the facts of the instant case, the Commission received information indicating that elements in the Colombian armed forces were supporting and collaborating with the paramilitary groups in their illicit activities and that, notably at their Third National Summit, held toward the end of 1996, the paramilitary groups acknowledged and discussed their cooperation with the national security forces.<sup>12</sup> The Commission has further considered that the State did not act appropriately to control the paramilitary groups, because a curtain of impunity has protected those groups almost entirely, as well as the members of the security forces supposedly related to them. The Commission likewise maintained that the problems exposed with regard to the military justice system and the excessively broad interpretation of the offenses to be heard under that system were part of the problem.<sup>13</sup>

59. From all the above, the Commission notes that initially the State encouraged the creation of “self-defense” groups with specific objectives, but these were overstepped, and they began to function outside the law, on occasion in collaboration with or with the acquiescence of agents of the State. The Court has observed that said “paramilitary groups are responsible for numerous murders [...] and many of the human rights violations committed [in Colombia] generally.”<sup>14</sup>

<sup>6</sup> IACHR, Third Report on the Situation of Human Rights in Colombia. OEA/Ser.L/V/II.102 Doc. 9 rev. 1, February 26, 1999, Chapter I, paragraphs 7-19. At: <http://www.cidh.org/countryrep/Colom99sp/indice.htm>. IACHR, Report No. 75/06, Jesús María Valle Jaramillo, October 16, 2006, para. 62.

<sup>7</sup> Cf. I/A Court H.R., *Case of the “Mapiripán Massacre” v. Colombia*. Preliminary Objections. Judgment of March 07, 2005. Series C No. 122, para. 96.1 – 96.5.

<sup>8</sup> Articles 25 and 33 of Legislative Decree 3398 (National Defense Act) and Law 48 of 1968 constituted the legal foundations for the creation of “self-defense groups.” Cf. I/A Court H.R., *Case of the 19 Merchants v. Colombia*. Judgment of July 5, 2004. Series C No. 109, para. 84 g).

<sup>9</sup> Decrees 1194 of June 8, 1989 and 2266 of 1991. IACHR. Report No. 75/06, Jesús María Valle Jaramillo, October 16, 2006, para. 62.

<sup>10</sup> IACHR, Third Report on the Situation of Human Rights in Colombia. OEA/Ser.L/V/II.102 Doc. 9 rev. 1, February 26, 1999. Chapter I, paragraphs 17-19. At: <http://www.cidh.org/countryrep/Colom99sp/indice.htm>. See also, Report of the United Nations High Commissioner for Human Rights on the Office in Colombia, April 2000, par. 30. See also, IACHR Report No. 75/06, Jesús María Valle Jaramillo, October 16, 2006, para. 62.

<sup>11</sup> IACHR, Third Report on the Situation of Human Rights in Colombia. OEA/Ser.L/V/II.102 Doc. 9 rev. 1, February 26, 1999, Chapter IV, paras. 37-239. IACHR. Report No. 75/06, Jesús María Valle Jaramillo, October 16, 2006, para. 62. At: <http://www.cidh.org/countryrep/Colom99sp/indice.htm>.

<sup>12</sup> IACHR, Annual Report of the Inter-American Commission on Human Rights 1996, OEA/Ser.L/V/II.95, Doc. 7 rev., March 14, 1997, Cap. V, Colombia, para. 46.

<sup>13</sup> IACHR, Annual Report of the Inter-American Commission on Human Rights 1996, OEA/Ser.L/V/II.95, Doc. 7 rev., March 14, 1997, Colombia, para. 47.

<sup>14</sup> Cf. I/A Court H.R., *Case of the “Mapiripán Massacre” v. Colombia*. Preliminary Objections. Judgment of March 07, 2005. Series C No. 122, para. 96.18; I/A Court H.R., *Case of the Ituango Massacres*. Judgment of July 1, 2006. Series C No. 148, para. 125.23.

60. This situation has led the Commission to establish, for the purposes of determining the international responsibility of the State pursuant to the American Convention, that in cases in which the paramilitary and members of the Army conduct joint operations with the knowledge of higher-ranking officers, or when the paramilitary groups act with the acquiescence or collaboration of the Security Forces, it shall be considered that the paramilitary groups are acting as agents of the State.<sup>15</sup>

61. For its part, the Inter-American Court has ascertained, at various times and in different geographical contexts, the existence of ties between the Colombian Armed Forces and paramilitary groups. A combined review of cases decided on by the Commission and subsequently by the Inter-American Court points to the existence of a link between the paramilitary groups and members of the security forces in connection with violations of human rights, such as [extra]judicial executions, forced disappearances, cruel, inhuman, or degrading treatment, forced displacement, and so on. This link is evidenced through either acts of direct support, collaboration, or coordination or through omissions by members of the security forces that have facilitated the actions of the paramilitary groups. Such cases include, but are not limited to: *19 Merchants*,<sup>16</sup> *the Mapiripán Massacre*,<sup>17</sup> *the El Aro and Ituango Massacres*,<sup>18</sup> and *Cepeda Vargas*<sup>19</sup>

62. Specifically, in the case of the *La Rochela Massacre*, the Court summarized the grounds for assigning international responsibility to the State for acts committed by paramilitary. First, it reiterated the international responsibility of Colombia: 1) for having issued a legal framework that propitiated the creation of self-defense groups that turned into paramilitary groups; and ii) for failing to adopt all the measures needed to put an effective end to the situation of risk created by the State itself when it issued those provisions.<sup>20</sup> Second, the Court pointed out that it had declared Colombia responsible because of its failure to meet its duty to provide guarantees by adopting effective prevention and protection measures for the civilian population that found itself in a situation of risk with regard to paramilitary groups that could reasonably have been foreseen by members of the Armed Forces or State Security.<sup>21</sup> Third, the Court indicated that on several occasions it had found Colombia responsible for violations committed by paramilitary groups with the support, acquiescence, participation, and collaboration of members of the security forces.<sup>22</sup>

63. Recently, in the case of the *Afro-descendant Communities displaced from the Cacarica River basin (Operation Genesis)*, the Court pointed out that "it is a well-known public fact that various decisions of Colombia's high courts have referred to the connections existing between paramilitary groups and members of the Armed Forces,<sup>23</sup> as have several reports of the Ombudsman's Office.<sup>24</sup> This Court's case law also reveals

<sup>15</sup> IACHR. Report No. 37/00, *Monseñor Oscar Arnulfo Romero y Galdámez*, par. 64. IACHR. Report No. 75/06, Jesús María Valle Jaramillo, October 16, 2006, para. 63.

<sup>16</sup> I/A Court H.R., *Case of the 19 Merchants v. Colombia*. Merits, Reparations and Costs. Judgment of July 05, 2004. Series C No. 109.

<sup>17</sup> I/A Court H.R., *Case of the "Mapiripán Massacre" v. Colombia*. Merits, Reparations and Costs. Judgment of September 15, 2005. Series C No. 134.

<sup>18</sup> I/A Court H.R., *Case of the Ituango Massacres v. Colombia*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 01, 2006. Series C No. 148

<sup>19</sup> I/A Court H.R., *Case of Cepeda Vargas v. Colombia*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 26, 2010. Series C No. 213

<sup>20</sup> I/A Court H.R., *Case of the Rochela Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 165, para. 78.

<sup>21</sup> I/A Court H.R., *Case of the Rochela Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of Wednesday, July 04, 2007. Series C No. 165, para. 78.

<sup>22</sup> I/A Court H.R., *Case of the Rochela Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 165, para. 78.

<sup>23</sup> Operation Genesis. Citing. *Cf.* Supreme Court of Justice of Colombia, Criminal Cassation Chamber: Review Judgment No. 30516 of March 11, 2009 (evidence file, pp. 9851 and 9856), Cassation Judgment No. 24448 of September 12, 2007, cited in District Director Public Prosecutors' Offices Director Seccional de Fiscalías, Memorandum No. 0035 of April 28, 2009, pp. 106 to [1?]18 (evidence file, p. 10024). See also Colombian Constitutional Court Ruling 005 of January 26, 2009 and Council of State Third Section Direct

[continues ...]

that, on other occasions, it has taken into account reports and decisions of the Public Prosecution Service in which the collaboration between members of the Army and paramilitary groups in the department of Antioquía was considered proved."<sup>25</sup> "Furthermore, the reports published by the National Historical Memory Center (...) also contain accounts of different scenarios in which there were connections between the Colombian Armed Forces and the paramilitary groups."<sup>26</sup>

64. In the same judgment the Court pointed out that:

In accordance with what has been indicated by several State institutions, different United Nations bodies and agencies (the Commission on Human Rights, the Office of the High Commissioner for Human Rights, the Human Rights Committee of the International Covenant on Civil and Political Rights<sup>27</sup>) and the ILO<sup>28</sup>) have referred to this context of connections between the Armed Forces and the paramilitaries. Lastly, some expert opinions

[... continuation]

Reparation Action Judgment No. 68001-23-15-000-1996-01698-01, Reporting Councilor Olga Melida Valle de la Oz of February 27, 2013, p. 13.

<sup>24</sup> Operation Genesis. Citing. *Cf.* Ombudsman's Office, Fourth Report to the Congress of Colombia, Bogotá, 1997, pp. 59 and 60, cited by the United Nations Commission on Human Rights, in the Report the Secretary-General's Representative on internally displaced persons, pursuant to resolution 1999/47 of the Commission, E/CN.4/2000/83/Add.1, of January 11, 2000, par. 25 (evidence file, p. 1571). It is to be noted that the President of this Court, through its Secretariat, asked the Office of the Ombudsman of Colombia in vain for a copy of its Fourth Report to Congress as a piece of evidence to be taken into account in its decision. On the other hand, the State did not object to the reference to the aforementioned report made in the United Nations report, so that the Court considers that the reference made to the text thereof is correct. See also, Office of the Ombudsman, Twelfth Report of the Ombudsman to the Congress of the Republic of Colombia January-December 2004, pp. 66, 67, 172, and 173; Office of the Ombudsman. Ombudsman's Report on Forced Displacement due to Violence in Colombia, of April 2002, points 4 and 9; and Office of the Ombudsman, Follow-up Report on compliance with Judgment T-1025 of 2007m pp. 16, 17, 21, 35, and 35.

<sup>25</sup> Operation Genesis. Citing. Office of the Attorney General, Decision issued by the Subdivision for the Defense of Human Rights on September 30, 2002. Decision cited in the *Case of the Ituango Massacres v. Colombia*, par. 125.100: "On September 30, 2002, the Office of the Delegate Attorney for the Defense of Human Rights decided to sanction Lieutenant Everardo Bolaños Galindo and First Corporal Germán Antonio Alzate Cardona, alias "Rambo," dismissing them from their functions as public officials because it found that they were responsible for collaborating with the paramilitary incursion in El Aro and the theft of livestock and facilitating it with criminal intent. On November 1, 2002, following an appeal filed by the said individuals, this ruling was confirmed in second instance by the Disciplinary Chamber of the Attorney General's Office."

<sup>26</sup> Operation Genesis. Citing. *Cf.* National Historical Memory Center, "¡Basta ya! [Enough is Enough] Colombia: Memorias de guerra y dignidad. [Memoirs of war and dignity] Report of the General Group on Historical Memory, National Print office, Colombia, 2013, pp. 20, 42, 48, 343 y 347; and "Justicia y Paz ¿verdad judicial o verdad histórica?" [Justice and Peace: Judicial Truth or Historical Truth?], Colombia, 2012, pp. 251, 377, 469, 498, 513, 514, and 515, "La Rochela: Memorias de un crimen contra la justicia [Records of a crime against justice], Ed. Semana, Colombia, 2010, pp. 20, 95, 96, 104, 105, and 116; "Silenciar en Democracia.[Silencing in Democracy] Las masacres de Remedios y Segovia, 1982-1997" [The massacres at Remedios and Segovia], Ed. Semana, Colombia, 2010, pp. 21, 22, 28, 29, 61, 73, 74, 75, and 76; "La masacre de Bahía Portete: Mujeres Wayuu en la mira", [The massacre at Bahía Portete: Wayuu Women at the Forefront] Ed. Semana, Colombia, 2010, pp. 23 and 33; "San Carlos: Memorias del éxodo en la guerra", (Report on the wartime exodus] Ed. Aguilar, Altea, Taurus, Alfaguara, S. A., Colombia, 2011, pp. 87 and 15; "Mujeres y guerra. Víctimas y resistentes en el Caribe colombiano", [Victims and resistance fighters in the Colombian Caribbean] Ed. Aguilar, Altea, Taurus, Alfaguara, S. A., Colombia, 2011, pp. 31, 32, and 240.

<sup>27</sup> Operation Genesis. Citing *cf.* The United Nations Commission on Human Rights, in the Report the Secretary-General's Representative on internally displaced persons, pursuant to resolution 1999/47 of the Commission, E/CN.4/2000/83/Add.1, of January 11, 2000, par. 25 (evidence file, p. 1571). United Nations High Commissioner for Human Rights, Reports on the Human Rights Situation in Colombia. E/CN.4/2001/15, March 20, 2001, par. 131 (evidence file, p. 2601); E/CN.4/2005/10, February 28, 2005, par. 149, Appendix No. II, paragraphs 5, 6, 7, and 8 (evidence file pp. 2337 and 2348 ); E/CN.4/2004/13, February 17, 2004, paragraphs.23, 24, 65, and 73; (evidence file pp. 2382, 2383, 2392, and 2393); E/CN.4/2003/13, February 24, 2003, paragraphs 9, 34, 44, 74, 75, and 77; (evidence file pp. 2445, 2450, 2452, 24659 and 2460 ); E/CN.4/2002/17, February 28, 2002, par. 62. (evidence file, p. 2520), E/CN.4/2000/11, March 9, 2000, paragraphs 25, 110, and 11; (evidence file pp. 2640, 2657 and 2658 ); E/CN.4/1998/16, March 9, 1998, paragraphs 29, 90, 91, and 175 (evidence file pp. 744, 751, and 762). See also, United Nations Human Rights Committee: Consideration of reports submitted by States parties under Articles 40 of the Covenant. Concluding Observations of May 5, 1997, par. 17, August 4, 2010, par. 8, and May 26, 2004, paragraph 12.

<sup>28</sup> Operation Genesis. Citing *cf.* The Committee of Experts on the Application of Conventions and Recommendations (CEACR) of the ILO, Individual Observation for the year 2009, pp. 78 and 79.

presented in these proceedings<sup>29</sup> and in other proceedings<sup>30</sup> before the Court (incorporated into the documentary evidence of this case) reveal these connections.

In this respect, the Fourth Report of the Ombudsman's Office to the Colombian Congress, from 1997, is illustrative in its references to paramilitary groups having turned into the illegal arm of the armed forces and the police, for whom they do the work that the military and police cannot do because they are subject to the rule of law. Thus, according to the Ombudsman, paramilitary activities were a new way to conduct unbridled and illegal repression.<sup>31</sup>

## 2. The context of paramilitary activities in the area of Urabá

65. The Urabá region is located in the far north-west of Colombia at the point in which Central and South America intersect. Here the departments of Chocó, Antioquia, and Córdoba come together in a lush jungle area with numerous rivers and abundant biodiversity.<sup>32</sup> The Atrato river forms the natural border between the departments of Chocó and Antioquia. The Urabá region in the department of Antioquia comprises 11 municipalities.<sup>33</sup> For its part, the Urabá region in the department of Chocó, also known as the Darién, comprises four municipalities.<sup>34</sup>

66. The Commission has pointed out that in the specific case of the Department of Antioquia, one of the epicenters of paramilitary violence against the civilian population, in 1999 it continued receiving complaints and information from a variety of sources regarding situations in which the National Army or the Police withdrew from their posts precisely before the irruption of paramilitary groups bent on attacking and terrifying the civilian population.<sup>35</sup> In particular, the Commission has ascertained that, according to statements made by the military and paramilitary themselves, there were ties between the Army and paramilitary groups in the area<sup>36</sup>; that as of the arrival of General del Rito Alejo del Río at the XVII Brigade in mid-December 1995, no members of paramilitary groups were captured or killed;<sup>37</sup> and that there were close ties between the aforementioned General and the paramilitary groups.<sup>38</sup>

<sup>29</sup> Operation Genesis. Citing cf. Expert opinion of Javier Ciurlizza, the expert proposed by the Commission, rendered before the Inter-American Court of Human Rights during the public hearing on February 12, 2013: "[...]The existence of connections between paramilitary groups and some local economic or political agents is public knowledge [...]" Expert opinion rendered by anthropologist Jesús A. Flores López, proposed by the representatives, before the Inter-American Court of Human Rights, on February 12, 2013.

<sup>30</sup> Operation Genesis. Citing cf. Sworn statement by Federico Andreu-Guzmán in the Mapiripán and La Rochela massacres cases against Colombia. At various points in his statement, Mr. Andreu refers to the existence of connections between paramilitary groups and the military.

<sup>31</sup> Operation Genesis. Citing cf. Ombudsman's Office, Fourth Report to the Congress of Colombia, Bogotá, 1997, pp. 59 and 60, cited by the United Nations Commission on Human Rights, in the Report of the Secretary-General's Representative on internally displaced persons, pursuant to resolution 1999/47 of the Commission, E/CN.4/2000/83/Add.1, par. 25 (evidence file, p. 1571).

<sup>32</sup> Operation Genesis. Citing Cf. Office of the Ombudsman. Ombudsman's resolution No. 025 on Massive Violations of Human Rights and Forced Displacement in the Lower Atrato Region in Chocó, October 2002 (evidence file, p. 229). See also: Statement by esús Alfonso Flórez López, expert proposed by the representatives of the alleged victims, to the Inter-American Court of Human Rights during the public hearing held on February 12, 2013.

<sup>33</sup> Operation Genesis. These are: Apartadó, Carepa, Chigorodó, Necoclí, San Juan de Urabá, San Pedro de Urabá, Turbo, Arboletes, Murindó, Mutatá, and Vigía del Fuerte.

<sup>34</sup> Operation Genesis. These are: Acandí, Unguía, Riosucio, and Carmén del Darién Cf. Office of the Ombudsman. Ombudsman's resolution No. 025 on Massive Violations of Human Rights and Forced Displacement in the Lower Atrato Region in Chocó, October 2002 (evidence file, p. 229).

<sup>35</sup> IACHR, Annual Report of the Inter-American Commission on Human Rights 1999, OEA/Ser.L/V/II.106, Doc. 3, April 13, 2000, Chapter V, Colombia, para. 13.

<sup>36</sup> IACHR, Report 64/11 (Merits), *Marino López et al.* (Operation Genesis) (Colombia), March 31, 2011, para. 203.

<sup>37</sup> IACHR, Report 64/11 (Merits), *Marino López et al.* (Operation Genesis) (Colombia), March 31, 2011, para. 200.

<sup>38</sup> IACHR, Report 64/11 (Merits), *Marino López et al.* (Operation Genesis) (Colombia), March 31, 2011, para. 187.



67. In its Annual Report for 1996, the Commission stated that the lack of actions by the Colombian Army to combat the paramilitary phenomenon was denounced by a colonel, who was retired from the Army in November 1996. In January 1997, Colonel Velásquez stated publicly that "there is no fighting against the paramilitary in Urabá." Until he was retired, Colonel Velásquez had been second-in-command of the XVII Brigade based in Urabá.<sup>39</sup>

68. In the case of the *Afro-descendant Communities displaced from the Cacarica River basin*, a mass of evidence was summarized showing concretely that the XVII Army Brigade had been singled out in a number of cases for having [ties] to paramilitary groups.<sup>40</sup> Indeed, the Court pointed out that: "evidence was presented indicating that senior Army commanders could have had connections with paramilitary groups in the Urabá region and in other regions. This is supported by: (a) testimony and denunciations of soldiers and of former members of the Armed Forces<sup>41</sup>; (b) information from the Prosecutor General's Office;<sup>42</sup> (c) confessions and statements of demobilized paramilitaries<sup>43</sup>; and (d) an expert opinion presented in the hearing in the instant case.<sup>44</sup>"

## **B. Detention and disappearance of Alcides Torres Arias and Angel David Quintero**

69. Mr. Alcides Torres Arias was born on September 15, 1962 in the municipality of Chigorodó, Department of Antioquia, Colombia.<sup>45</sup> The information available regarding his family members is referred as follows: Juan Gregorio Torres (father); Maria Noemí Arias (mother); Consuelo Rodríguez Peña (partner); Dianelly Torres Rodríguez (daughter); Yenifer Torres Rodríguez (daughter); Nelsy Torres Arias (sister); Alirio Torres Arias (brother); and Obairo Torres Arias (brother).

70. Angel David Quintero was 32 by the moment of his disappearance. He was a farmer. The information available regarding his family members is referred as follows: María Celedonia Benitez (mother); Jorge Quintero (father); Blanca Yanet Graciano (partner); and Disneisa Quintero Graciano (daughter).

71. On December 16, 1995, at 12:30 p.m., Alcides Torres Arias, Leonel de Jesús Durango, Angel David Quintero Benites, and Argemiro López Bravo were detained by a Vélez Battalion patrol, under the

<sup>39</sup> IACHR, Annual Report of the Inter-American Commission on Human Rights 1996, OEA/Ser.L/V/II.95, Doc. 7 rev., March 14, 1997, Colombia, para. 48.

<sup>40</sup> Operation Genesis. Citing. *Cf.* Statements by Dr. G.I.C.M, the Mayor of Apartadó, in the proceedings before the National Unit for Human Rights and International Humanitarian Law of the Attorney General's Office on October 21, 1998 and April 24, 1997 (evidence file, pp. 39585 and 38813); statements by Colonel C.A.V.R. before the National Unit for Human Rights and International Humanitarian Law of the Attorney General's Office on May 8, 1998 and September 13, 2002 (evidence file, pp. 38794, 34795, 38796, 41284, and 41335); statement by M.M.C. in Filed Document 426 before the National Unit for Human Rights and International Humanitarian Law of the Attorney General's Office on July 28, 1999 (evidence file, pp. 39613 and 39614). Regarding this testimony, it should be explained that the Prosecutor's Office finds it impossible that a person who entered the Army could have managed to gain the trust of military high command, as happened with M.M.C. Regarding the episode where he apparently hears Rito Alejo speaking in English, he provides no evidence that he understands that language. He is suspected of lying because he cannot explain how he knew the exact location of the paramilitary bases, the weapons they had, and the exact numbers on the license plates of the vehicles used by paramilitary leaders (evidence file, pp. 41564 to 41566).

<sup>41</sup> Operation Genesis. Citing. *Cf.* Statement by C.A.V.R. of May 8, 1998, September 11 and 13, 2003 before the National Unit for Human Rights and International Humanitarian Law of the Attorney General's Office on (and the statement by C.A.F. on May 11, 2011 before the Eighth Criminal Court of the Specialized Circuit (evidence file, from Minute 29.10 onwards of the video, p. 8745).

<sup>42</sup> Operation Genesis. Citing. *Cf.* Office of the Attorney General, Document and Powerpoint Presentation on "Operation Cacarica" (evidence file, pp. 19258 and 1926) and the Attorney general's Office, Justice and Peace Unit, File on the Elmer Cárdenas Unit's Structures, handed over by Fredy Rendón (evidence file, p. 45295).

<sup>43</sup> Operation Genesis. Citing. *Cf.* Free renderings of Fredy Rendón Herrera and Julio César Arce Graciano, in Combined Free Renderings (*Versiones Libres Conjuntas*) of the assumptions of the Elmer Cárdenas Unit on Operation Genesis - Cacarica before the 48th Local Prosecutor's Office, Justice and Peace Unit, Medellín, on April 28, 2010 (evidence file, minutes 11:08 and 14:24, pp. 9160 and 19162).

<sup>44</sup> Operation Genesis. Citing. *Cf.* Affidavit before the Public Notary of Gimena Sánchez-Garzoli, evidence file, p. expert presented by the representatives of the alleged victims, on January 30, 2013 (evidence file, p.15242).

<sup>45</sup> Appendix. Birth certificate of Alcides Torres Arias. Enclosed with the original petition.

command of Sergeant José Alberto Monrroy, in the course of a military surveillance and control operation in the area, on the La Arenera and Pueblo Galleta road, in the district of Currulao, which is under the jurisdiction of the municipality of Turbo.<sup>46</sup> At the time of arrest, the following was confiscated from them; an XL-125 Honda motorcycle with license plate DCU-35, an XL-125 Honda motorcycle with license plate DCX-10, a 38-caliber revolver with 12 caliber 38 bullets and one pin-and-pineapple hand grenade.<sup>47</sup>

72. That same day Alcides Torres Arias signed a paper certifying proper treatment during his detention on the premises of the Francisco de Paula Vélez battalion.<sup>48</sup> There is also a certificate that the detainee was read his rights, dated December 16, 1995, at 5:30 p.m., in which he is charged with illegally bearing arms and he is told that he has the right to: i) talk immediately with a defense attorney; ii) indicate the person whom he wishes to notify of his arrest; iii) give a free and spontaneous version of what happened to the investigating official; iv) keep silence in respect of the accusation; v) receive medical care; vi) not to be held in solitary confinement; and vi) to read and have books, and to receive articles for personal hygiene.<sup>49</sup>

73. On December 17, 1995 the detainees were placed at the disposal of the Assistant Prosecutor General (*Fiscal General Delegado*) in Carepa.<sup>50</sup> According to the respective briefing:

[The aforementioned are charged with pertaining to the Bolivarian militias of the FARC in this sector and with being tasked with carrying out kidnappings, charging for vaccinations, extortion of landowners and cattle-farmers in the region; they also capture vehicles transporting produce overland to the coast and take them to this segment on the road to rob the merchandise.

The individual named Leonel de Jesús Durango, who, at the time of his arrest was carrying a pineapple-type hand grenade, said he had been a member of the Fifth FARC squadron for approximately four years and that at the time of his capture he had been carrying out intelligence surveillance of the troops operating in that sector. According to this individual's statements, the group he was with comprised four people, headed by someone nicknamed N.N. (alias Black Cat).<sup>51</sup>

74. On December 18, 1995, the Regional Prosecutor in Carepa ordered an investigation to be opened for possible subversion in respect of the four detainees.<sup>52</sup> The Regional Director of Prosecutor's Offices in Medellín<sup>53</sup> was notified of this decision, as was Prosecutor 132 for Criminal Matters in Apartadó<sup>54</sup>. The investigation was opened due to the fact that

<sup>46</sup> Appendix . Briefing N° 4284/BR17-BIVEL-S2-INT-252, Handing over of detainees, weapons of war, and means of transport, of the Commander of Inf. Battalion 47, Francisco De Paula Vélez of December 17, 1995. Enclosed with the original petition.

<sup>47</sup> Appendix. Briefing N° 4284/BR17-BIVEL-S2-INT-252, Handing over of detainees, weapons of war, and means of transport, of the Commander of Inf. Battalion 47, Francisco De Paula Vélez of December 17, 1995. Enclosed with the original petition.

<sup>48</sup> Appendix. Certificate of good treatment signed by Alcides Torres Arias on December 16, 1995. Enclosed with the original petition.

<sup>49</sup> Appendix. Procedure communicating the rights of the detainee at Infantry Battalion No. 32, General Francisco de Paula Vélez on December 16, 1995. Enclosed with the original petition.

<sup>50</sup> Appendix. Briefing N° 4284/BR17-BIVEL-S2-INT-252, Handing over of detainees, weapons of war, and means of transport, of the Commander of Inf. Battalion 47, Francisco De Paula Vélez of December 17, 1995. Enclosed with the original petition.

<sup>51</sup> Appendix. Briefing N° 4284/BR17-BIVEL-S2-INT-252, Handing over of detainees, weapons of war, and means of transport, of the Commander of Inf. Battalion 47, Francisco De Paula Vélez of December 17, 1995. Enclosed with the original petition.

<sup>52</sup> Appendix. Filed document 246 in Carepa, opening of preliminary investigation on December 18, 1995 Enclosed with the original petition.

<sup>53</sup> Appendix. Official Letter 1419 of the Regional Prosecutor in Carepa, dated December 18, 1995. Enclosed with the original petition.

<sup>54</sup> Appendix. Official Letter 1420 of the Regional Prosecutor in Carepa, dated December 18, 1995. Enclosed with the original petition.

[a] the arrest was made for subversion, a crime who perpetrators are said to be permanently *in flagrante*, in order to maintain their intentions over time, is necessary to state as of now that the detention was lawful, apart from the fact that the bearing of arms was in flagrante and the report states that they were spying on regular Army soldiers.<sup>55</sup>

75. Regarding the procedures carried out during the detention, one of the detainees, Argemiro López Bravo, maintained that

Leonel and I were taken to make statements to the Offices of the Prosecutor's Office locate don the premises of the Battalion. They asked us to collaborate but I could not say anything because I did not have an attorney. What's more, a tall, heavily built guy inside the Prosecutor's Office dressed in civilian clothes thrust me up against the wall to make me speak and told me that if I didn't I would rot in jail. I told him if I had to rot in jail I would but I didn't know whether they were or were not members of the guerrilla. So that stayed like that, they took our statements and then took us back to the cell. Then, at night, they took out David and Alcides to interrogate them. It was already dark, about 7:30 or 8:00 p.m. Alcides came back that night very frightened because they had told him that the next day "the pig" was coming to see who we were, because there, where they took statements, they had told him that someone knew him ["the pig" ?] and they had called him and given him our data and they had agreed that he would come and identify us. And they had told Alcides that then he was going to pay dearly for it.

76. At 8:30 p.m. on December 20, 1995, a statement was heard made by Ricardo López Lora, a resident in the XVII Brigade of Carepa, a reintegrated former member of the EPL, as follows:

ASKED: The undersigned Prosecutor briefly informs the witness of the facts relating to his statement, and asks specifically what knowledge he has regarding the capture of ALCIDES TORRES ARIAS; LEONEL DE JESUS DURANGO alias the BRAVE or "EL CURI"; ANGEL DAVID QUINTERO BENITES; and ARGEMIRO LOPEZ BRAVO alias THE DEER. **REPLY:** Because I am from CURRULAO, and used to belong to the EPL guerrilla army, which operates in the Urabá region, I know LEONEL DE JESUS DURANGO, I used to know him as the BIZCORETO (the cross-eyed one); I didn't know him as "EL CURI." He is a guerrilla fighter in the FARC. He goes around with ARGEMIRO, known as EL CHILAPO (mestizo). I don't know him as THE DEER. They hang around CARABALLO and the ARENERA, where they work with the Bolivarian militias, acting as bandits, robbing vehicles with remittances and cattle. I don't know the other two at all and I heard that they stopped them and hauled them in, but I don't know who they are, they seem to be nice people.<sup>56</sup>

77. At 11:30 a.m. on that same day, i.e., December 20, 1995, the Regional Prosecutor in Carepa ordered the release of Angel David Quintero Benítez and Alcides Torres Arias<sup>57</sup>. That decision was communicated to the Commander of the Vélez Infantry Battalion on the same day, December 20, 1995.<sup>58</sup> The Prosecutor based his decision on the fact that:

<sup>55</sup> Appendix. Filed document 246 in Carepa, opening of preliminary investigation on December 18, 1995 Enclosed with the original petition.

<sup>56</sup> Appendix. Filed document 246 in Carepa, Statement by Ricardo López Lora on December 20, 1995 Appendix to the petitioners' brief of June 24, 2007.

<sup>57</sup> Appendix. Filed document 246 of the Regional Prosecutor's Office in Carepa. Order for the Immediate Release of two persons on December 20, 1995. Enclosed with the original petition.

<sup>58</sup> Appendix. Official Letter 1429 of the Regional Prosecutor in Carepa, dated Wednesday, December 20, 1995. Enclosed with the original petition.

From the investigation thus far, it transpires that the drivers of the motorcycles had nothing to do with the bearing of arms and that Argemiro López Bravo and Leonel de Jesús Durango, are the subversives referred to in the report, in addition to being accused of blowing up the police station in Currulao, in the municipality of Turbo.

That being so, there is no point in involving the drivers of the motorbikes, so that the opening of investigations is to be revoked in the sense that proceedings will only go forward in respect of Argemiro López Bravo and Leonel de Jesús Durango.

[...] I hereby order the immediate and unconditional release of Angel David Quintero Benites and Alcides Torres Arias, from a statement on the facts will be taken.<sup>59</sup>

78. A statement was taken from Alcides Torres Arias at 11:40 a.m. on the same day, December 20<sup>th</sup>, 1995, AS FOLLOWS:

**ASKED:** The undersigned Prosecutor briefly informs the witness of the facts relating to his statement, and asks him specifically to say what happened in connection with his arrest.

**REPLY:** [...] I got up at around seven or 6:30 a.m., saddled my horse and set off for LA ARENERA. I arrived there on horseback and met my brother OLBER TORRES ARIAS, who has a red 125 HONDA motorcycle. I asked him to lend me the motorbike and left the horse tethered at his place. I set off on the motorbike heading for EL CONGO where a man had asked me if I would buy a heifer from him. Along the road I see a young guy come out called ARGEMIRO whom I know because I have seen him chilling out in LA ARENERA. He stopped me and asked me to give him a ride so that he could cross the water without getting wet. It was then that the Army saw he had got onto my motorbike. I crossed the river and on the bank of the river they stopped us, pointing their guns at us. I was so frightened that I didn't realize what was happening, but it seems they took a revolver off the guy. That is all.

**ASKED:** Do you have anything you would like to add, amend, or correct? **REPLY:** I was going to ask you that they should let us have more visits.<sup>60</sup> [*Yo le iba a decir que nos dieran más visita*]

79. A statement was taken from Angel David Quintero at 11:53 a.m. on the same day, as follows:

[...] I was coming from my house that day when a little way down from it I saw a young fellow called LEONEL, I don't know his surname. He raised his hand for me to stop and I did and he asked me to take him to LA ARENERA. He was on his own and told me he just needed to get to La Arenera, so we went down there and when we got to the other side of the river, that is to say, the side where the farm called La Arenera is and there the Army was holding another guy and one in front of the motorbike. I got there and they stopped me and threw me to the ground and I could not see, but the army pulled out a grenade and the soldiers said to the guy I had given a ride to, this son of a bitch, look what he was carrying, but I couldn't see anything. From there they took us to one of those huts you only find in La Arenera and left us there for God knows how many hours. Then they took us to another hut. Finally some trucks came down from Nueva Antioquia, they put us in and took us to Río Grande and then here.<sup>61</sup>

<sup>59</sup> Appendix. Filed document 246 of the Regional Prosecutor's Office in Carepa. Order for the Immediate Release of two persons on December 20, 1995. Enclosed with the original petition.

<sup>60</sup> Appendix. Filed document 246 of the Regional Prosecutor's Office in Carepa. Statement of Alcides Torres Arias on December 20, 1995. Appendix to the petitioners' brief of June 24, 2007.

<sup>61</sup> Appendix. Filed document 246 of the Regional Prosecutor's Office in Carepa. Statement of Angel David Quintero Benites on December 20, 1995. Appendix to the petitioners' brief of June 24, 2007.

80. According to the statement made by the officers in the Brigade<sup>62</sup> and the Logbook of the Infantry Battalion Guard No. 32 of the XVII Brigade,<sup>63</sup> Messrs. Alcides Torres Arias and Angel David Quintero were released at 2:05 p.m. on December 20, 1995.

81. According to the statement given by Mr. José Ignacio Jiménez, the guard at the installations of the XVII Brigade:

On the day in question he had been on guard duty and saw Alcides Torres Arias and Angel David Quintero Benítez leave. They had arrived at the Guard station accompanied by a female noncommissioned officer, who gave him the order to let them go. He checked the names and they left. He explains however that he is a bit confused with statements made 14 years ago.<sup>64</sup>

82. However, Sergeant Héctor Vanegas Rodríguez commented in his statement, in relation to this statement by the guard, that "he himself had gone to the guard on duty, who at that moment was Sergeant Jose Ignacio Jiménez, and told him that the order was to say, if they were asked, that the detainees had left. He [Jiménez] made no objection or anything."<sup>65</sup>

83. At the same time, there are several statements giving another version of the facts relating to the supposed release of Mr. Alcides Torres Arias.

84. Thus, Argemiro López Bravo, one of the detainees, declared as follows:

[...] We were all in the cell. I don't remember if it was in the morning or afternoon, when two men in plain clothes came to the door of the cell. They were bearing arms, and one could see that they were small arms tucked under their shirts. They were accompanied by a woman in uniform from the S-2, who told the guard keeping watch on us to leave. He left and it was then that they asked for David Quintero and Alcides Torres, and told them to step out. They asked why and they answered no, they had to leave. They said no and at that point the visitors took out the lock and tossed it on the ground...

[...] the girl in uniform told them, when she arrived with the two men dressed in civilian clothes, that the time for their release had come, she showed them a piece of paper, and it was then they began moving the lock. They didn't sign anything. They took them in a hurry, so much so that Alcides, who was a thin guy, had to hold his pants up, leaving the belt in the cell, because they didn't let them take anything with them. They just took them with whatever they had on.<sup>66</sup>

85. This statement was later ratified by Mr. Argemiro López Bravo when he stated that he "confirms what he said in earlier statements that a woman dressed as a soldier gives the order to the guard to

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<sup>62</sup> Appendix. Statement provided by Lance Corporal Villaruel Molina Belquis Margarita to the Investigation Office of the XVII Brigade on January 26, 1996. Appendix to the petitioners' brief of June 24, 2007.

<sup>63</sup> Appendix. Logbook of of the Infantry Battalion Guard No. 32 of the XVII Brigade. Enclosed with the initial petition of November 1, 2001.

<sup>64</sup> Appendix. Statement by Mr. Jose Ignacio Jiménez, contained in the judgment of the Court attached to the First Criminal Court of the Specialized Circuit of Antioquia, handed down on June 6, 2012 on case filed as 05-00-31-07-001-2012-00010, p. 10. Appendix to the State document of December 02, 2013.

<sup>65</sup> Appendix. Statement by Mr. Héctor Vanegas Rodríguez, contained in the judgment of the Court attached to the Second Criminal Court of the Specialized Circuit of Antioquia, handed down on January 31, 2012 on case filed as 05000 31 07 002 2009 00041. pp. 56/65. Appendix 10 to the State document of December 2, 2013.

<sup>66</sup> Appendix. Statement by Mr. Argemiro López Bravo made on October 13, 2004. Appendix to the petitioners' brief of June 24, 2007.

withdraw and that she was accompanied by two men in plain clothes and was there when they broke the lock."<sup>67</sup>

86. In addition, Leonel de Jesús Durango, another of the detainees, said:

[...] Look, we were captured [...] accused of being guerrillas although we are nothing. They set things up so that we had to say we were guerrillas and if we didn't they would disappear us like the other two gentlemen. Later (...) next to the cell where they were keeping us two men arrived with a woman from the same battalion, that woman there, who broke the lock with a hacksaw. Around eleven [Tr. one?] or two in the afternoon they arrived in a red Trooper [Tr. jeep] and hauled out Alcides Torres Arias and Angel David Quintero and took them away...<sup>68</sup>

87. Mr. Alcides Torres Arias' family visited him in the installations of the XVII Brigade on the days following his arrest.<sup>69</sup> On December 20, 1995, the Regional Prosecutor told the family members that he had ordered the release of the detainees, but no more was heard of them.<sup>70</sup> The testimony of the mother of Alcides Torres Arias reads as follows:

When I got to the door [of the Regional Prosecutor's office], I met the two daughters and I said that the Prosecutor has said that they had already released my son Alcides Torres Arias. They commented that their brother had never gone by them because they had waited the whole time at the only entrance to the Brigade. They had noted something special, which was a red jeep coming out escorted by two or three motorbikes. What drew their attention was that among the people in that vehicle they had seen a paramilitary that everybody recognized, known as "the pig" whose real name was Ricardo López Lora, although he also has another alias: "Robert."

88. Ms. Nelsy Torres Arias, a sister of Alcides Torres Arias, testified that:

Her brother Alcides Torres Arias was stopped by the Army when he was with Angel David Quintero. They took them to Batallón Vélez, where they were allowed to visit them and take them food. They had gone in routinely, without any problems. On the Wednesday, they had gone to visit them from around 10:30 or 11:00 a.m., but they were left at the guard station. At 2:00 p.m., unlike the previous days, they asked them to show their ideas (which they had never done before). While they were waiting for permission to enter, they saw a red station-wagon type of vehicle come out, escorted by several people on motorcycles.

Later on they were allowed in to go to the Prosecutor's Office where they would be authorized to visit their relative. There they talked with the Prosecutor, who told them that he had already ordered their release. As they had found nothing to confirm what he was saying [Tr? *que los comprometiera*], they asked the official why he had not advised them and moreover they had not noticed them leave. The Prosecutor answered that just an order from him sufficed.

<sup>67</sup> Appendix. Statement by Mr. Argemiro López Bravo on September 29, 2008, contained in the judgment of the Court attached to the First Criminal Court of the Specialized Circuit of Antioquia, handed down on June 6, 2012 on case filed as 05-00-31-07-001-2012-00010. p. 9. Appendix to the State document of December 2, 2013.

<sup>68</sup> Appendix. Statement by Leonel de Jesús Durango Ruedo, made on May 24, 1006. Appendix to the observations presented by the State on August 10, 2009.

<sup>69</sup> Appendix. Habeas corpus application filed by Cesar Augusto Rendón Pinzón on July 24, 2000. Enclosed with the original petition.

<sup>70</sup> Appendix. Habeas corpus application filed by Cesar Augusto Rendón Pinzón on July 24, 2000. Enclosed with the original petition.

Subsequently, the sister tells how a soldier ordered a subordinate in plain clothes to go and bring the prisoners who had been freed. The subordinate had come back and said they were no longer there and "must have broken out using force because the lock was damaged."

They called "a female sergeant apparently called Belcris," who told them that the released detainees had been taken to the gate of the Brigade to catch a bus.<sup>71</sup>

89. From the time they were told of his supposed release, the family members of Alcides Torres Arias began to look for him. As a result of the family's search, it was possible to find out more about what had happened.

90. According to his mother's testimony:

We went to Chigorodó, because that's where I live with my daughters, to see if Alcides was there. But at home they told me he had gone. so we went to Currulao to see if he was there or on the farm. When we got to the village, we met Mr. Ramón Rodríguez, who told us he had seen a red Army jeep stuck at the entrance to Currulao, escorted by several motorbikes. Angel David Quintero Benitez had come running out from there, bleeding, pursued by some soldiers along with members of the paramilitary. Angel hid in a hotel called "Descanso" and tried to get to the back of it to escape from there, but the back door was locked and there they captured him again, and brought him out, beating him savagely. Someone began calling out "'Don Ramón...Don Ramón', who looked and saw that he was being called to from the red jeep and in it he saw my son Alcides Torres Arias, who showed signs of having been tortured, because his face had been beaten and was covered in blood. At that point the vehicle drove off, escorted by the motorbikes. The man [Tr. Ramón Rodríguez] realized that one of the people in the group was "the pig" or "Robert", the paramilitary they had seen come out of the Brigade, he was one of those who had hauled out Angel David, hitting him like the soldiers. I believe what don Ramón said because he was my son's father in law and knew him well enough to make out his voice and face.

We went to the Descanso Hotel to speak to the owner and he told us the same story that Angel David had come running in and had gone to the back but as the door was locked the soldiers and paramilitary had caught him and beat him up, and then took him back to the red jeep standing there...<sup>72</sup>

91. Several people testified about what happened in El Descanso hotel. Thus, to take an example, Ignacio de Jesús Gómez Ruiz, the owner and administrator of the El Descanso property said:

I don't remember what day it was. I was sitting in the shade under a tree opposite the rooms, at around midday, when I saw this guy running in with two armed men behind him. The young fellow tried to reach the back of the hotel and jump into the street behind. However, as the door there was locked, they caught him, pulled him out and threw him into the vehicle, which was parked opposite, to the right, on the road leading to Turbo. I think the vehicle was red, a small jeep, I was with Mr. Roque Giraldo at the time, who left when he saw this happen...[...].

At the time [around 1995] anything could happen, there was a war between guerrillas and the paramilitary [...]

<sup>71</sup> Appendix. Statement by Ms. Nelsy Torres Arias, contained in the judgment of the Court attached to the First Criminal Court of the Specialized Circuit of Antioquia, handed down on June 6, 2012 on case filed as 05-00-31-07-001-2012-00010. pp. 5-6. Appendix to the State document of December 2, 2013.

<sup>72</sup> Appendix. Sworn statement of complaint of María Noemí Arias de Torres. Attached to the petitioners' brief off April 17, 2002.

People say that the guy they call the pig was in the vehicle... I don't want them to hear this because they'd kill me.<sup>73</sup>

92. For his part, Roque de Jesús Giraldo Vélez declared as follows:

I don't recall what day it was. I was sitting at don Ignacio's place drinking a Coca Cola together with don Ramón. At that moment a red car drove up. I don't remember whether it as a Suzuki or if it was small. When it braked, a client threw himself out of the car window and ran toward don Ignacio and El Descanso rooms. As the Hotel has two entrances, he went in through the front and tried to get out the back. I realized when another guy riding a large 175 motorbike tossed it to the ground and went after the first guy. Then I saw them come out and the first guy was holding his testicles as if they had hit him there. He was groaning and they forced him back into the vehicle. They asked for help to push-start the car and then set off toward Turbo. That's all I saw.<sup>74</sup>

93. Likewise, Ramón Angel Ortega González stated as follows:

I was sitting in a shop, on the outside, that is to say, on the patio of a neighbor, under some trees that give shade. I had my back to the Hotel, looking at my shop, waiting to see who went into it, when we heard a bunch of people and saw someone running and another person behind. I couldn't tell you what they were wearing. I ran for my house, when I saw that it wasn't looking pretty. I didn't manage to see if they were armed. I don't remember. I don't remember anything else. What I do remember is that they bundled him into a red car, a small car like a jeep. I don't remember the make. It was red. I don't recall seeing anyone else inside that vehicle. [...] What happened is that they made me push the car and the guy even hit me in the shoulder. I pushed and when the car started he said "next time I'll give you gonorrhea." When he hit me, I was frightened...<sup>75</sup>

94. As for the circumstances surrounding the statements made by Mr. López Lora on December 20, 1995 (supra 75) regarding Angel David Quintero y Alcides Torres Arias<sup>76</sup>, Mr. López Lora himself, alias "the pig," "the sow", or "Robert," disclosed the following:

they had spoken to the Public Prosecutor at that time because they need two detainees who were at the Brigade. The Prosecutor told him that he had to make a statement saying that they were nice decent people who had had no problems in the area, and that's what he did and the prosecutor released them and they gave him some money, he doesn't know how much. They took the men from the cell, busting the locks with iron bars and stones. Before leaving he told Charry and the Bald One that once they were past the guard at the gate and outside, they should handcuff them because if people saw them they'd be in trouble. They left through the gate of the Brigade.<sup>77</sup>

<sup>73</sup> Appendix. Statement by gnacio de Jesús Gómez Ruiz on December 5, 2003. Appendix to the petitioners' brief of June 24, 2007.

<sup>74</sup> Appendix. Statement by Roque de Jesús Giraldo Vélez on March 17, 2003. Appendix to the petitioners' brief of June 24, 2007.

<sup>75</sup> Appendix. Statement by Mr. Ramón Angel Ortega González made on June 12, 2003. Appendix to the petitioners' brief of June 24, 2007.

<sup>76</sup> When he stated that: "I don't know the other two [Alcides Torres Arias and Angel David Quintero Benítez] at all and I heard that they stopped them and hauled them in, but I don't know who they are, they seem to be nice people." Filed document 246 in Carepa, Statement by Ricardo López Lora on December 20, 1995 Appendix to the petitioners' brief of Sunday, June 24, 2007.

<sup>77</sup> Appendix. Statement by Mr. Ricardo López Lora, contained in the judgment of the Court attached to the First Criminal Court of the Specialized Circuit of Antioquia, handed down on June 6, 2012 on case filed as 05-00-31-07-001-2012-00010. pp. 10-11. Appendix to the State document of December 2, 2013.



95. Regarding the planning of what happened to Messrs. Alcides Torres Arias and Angel David, Quintero Benítez, in the judgment against Mr. Héctor Gutiérrez Vélez, there is an unsworn statement by Mr. Hebert Veloza García, alias "HH", in which he said that:

When he heard about the capture of Messrs. Alcides Torres Arias and Angel David Quintero Benítez he called Sergeant "Beto" of the B2, with whom he coordinated the way they would get the detainees out of the BIVETL (the Brigade's) headquarters. Later on, "Beto," accompanied by Ricardo López Lora, alias "El Marrano" and alias "Wilson" got Alcides and David from the barracks and took them in a covered red jeep belonging to the Brigade to Turbo

[...]

He said that "Beto" had gotten DAVID and ALCIDES out from the cell and later put them in the red jeep and drove them first to Casa Verde and then Turbo. He further stated that "BETO" had asked him for money to fix a release order because it was a delicate matter [*porque la vuelta está caliente*] and so they needed money so that the Prosecutor at the Brigade could fix a (illegible).<sup>78</sup>

96. Following is an account of some of contents of the "free version" comments made by Heber Veloza García in August 2008:

He participated directly in the arrest and subsequent disappearance of Messrs. Alcides Torres Arias and Angel David Quintero Benítez, whom they took from a cell at the headquarters of the XVII Brigade in Carepa (Antioquia). The candidate (*el postulado*) also stated that four other paramilitary had participated in the commission of the acts, in addition to some regular members of the XVII Army Brigade, Gaula officers from Cali, and one judicial official.

[...] They were taken out of the XVII Brigade in a red covered jeep and taken to Turbo; on the way, Mr. David Quintero attempted to escape in Currulao. He was chased down and captured and they continued on to Turbo, from where they were finally flown in a light aircraft to the port of Buenaventura (Valle del Cauca), where they were tortured in order to get them to reveal the whereabouts of a woman they had purportedly abducted; the same declarant claimed that the two men were left alive in the custody of officers from the Gaula in Cali (Valle). Finally, he said that he did not know what may have happened to them or their whereabouts.<sup>79</sup>

97. The Commission has no information on the fate or whereabouts of Alcides Torres Arias and Angel David Quintero.

### C. Internal processes related to forced disappearance

98. The Commission does not have full information regarding the domestic proceedings related to the facts of this case, despite having expressly requested it from the parties. Accordingly, the Commission will conduct a determination of the facts regarding domestic proceedings based on the information contained in the file.

<sup>78</sup> Appendix. Statement by Mr. Hebert Veloza García, alias "HH", contained in the judgment of the Court attached to the Second Criminal Court of the Specialized Circuit of Antioquia, handed down on January 31, 2012 on case filed as 05000 31 07 002 2009 00041. pp. 35/65. Appendix 10 to the State document of December 2, 2013.

<sup>79</sup> Appendix. Judgment of the Higher Court of Bogotá, Justice and peace Division, handed down on October 31, 2013, on the case filed under 11-001-60-00 253-2006 810099 Internal file number 1432. Par. 47. Available online: [http://www.coljuristas.org/documentos/adicionales/control\\_de\\_legalidad\\_HEBERT\\_VELOZA.pdf](http://www.coljuristas.org/documentos/adicionales/control_de_legalidad_HEBERT_VELOZA.pdf).

## 1. Habeas corpus appeal filed by the next of kin of Alcides Torres Arias

99. On July 24, 2000, Mrs. María Noemí Arias filed a habeas corpus action on her son's behalf with the First Criminal Court of the Apartadó Circuit.<sup>80</sup> In processing that appeal, the Judge asked for information from the Specialized Public Prosecutor in Apartadó<sup>81</sup>, from the National Director of Public Prosecutions [*Fiscal General de la Nación*]<sup>82</sup>, and from the Coordinator of the Specialized Public Prosecutor's Office in Medellín.<sup>83</sup>

100. That same day the Specialized Public Prosecutor in Apartadó answered the official letter sent by the Criminal Court and pointed out that the proceedings undertaken when Mr. Alcides Torres Arias was arrested are filed under No. 19.423 in the Unit for Specialized Public Prosecutor's Offices in Medellín, so that he suggested requesting information from that Unit.<sup>84</sup>

101. On July 25, 2000, the Coordinator of Specialized Public Prosecutor's Offices replied to the Official Letter sent by the Criminal Court and announced that the proceedings filed under No. 19.423 in respect of Alcides Torres Arias had moved to the trial phase (*etapa de la causa*) since December 9, 1996, so that he had that day requested information from the Criminal Judge of the Specialized Circuit.<sup>85</sup> That same day, the Coordinator of the Specialized Public Prosecutor's Offices added to the information previously provided and indicated that:

(...) Mr. Alcides Torres Arias does not come within the purview of the Specialized Judges of this city, nor within that of this Specialized Public Prosecutor's Office. However, a glance at the SIGA system shows that a case was opened against Mr. Torres Arias and given the number 19.423. It was remitted to the extinct Regional Courts of Medellín, for the trial phase (*etapa de la causa*). Those Courts are now the Specialized Criminal Judges of the Circuit, so that personnel in this secretariat made inquiries to those offices and found that the proceedings in question appear as remitted in April 1999 to the Judges for Enforcement of Sentences and Security Measures of Medellín, given that Messrs. Alcides Torres Arias and Leonel de Jesús Durango were convicted of the crime of subversion (*rebelión*).

In light of the above, this Prosecutor's Office's "SIGA" system was consulted and it transpired that, through a resolution of August 16, 1996, a resolution of indictment (*acusación*) was issued against the two men. That resolution is located in the archives of this Specialized [Prosecutor's] Office. It was consulted and found to describe the circumstances in which Messrs. Leonel de Jesús Durango, Angel David Quintero Benitez, Argemiro Lopez Bravo and Alcides Torres Arias were captured on December 16, 1995, on the La Arenera and Pueblo Galleta road in the district of Currulao, in the jurisdiction of the municipality of Turbo. They were charged with belonging to the Bolivarian militias of the FARC, devoted to charging for vaccines, abductions, extortion of land-owners and cattle farmers in the region, and robbery of vehicles carrying produce overland to the coast.

<sup>80</sup> Appendix. Habeas corpus application filed by Cesar Augusto Rendón Pinzón on July 24, 2000. Enclosed with the original petition.

<sup>81</sup> Appendix. Law 484 of July 24, 2000. Enclosed with the original petition.

<sup>82</sup> Appendix. Law 485 of July 24, 2000. Enclosed with the original petition.

<sup>83</sup> Appendix. Law 486 of Tuesday, July 25, 2000. Enclosed with the original petition.

<sup>84</sup> Appendix. Transcription made by the Secretary of the First Criminal Court of the Circuit of Apartadó, Antioquia on July 25, 2000 with respect to Official Letter 0774 of July 24, 2000, signed by José David Ibarra Contreras, Specialized Prosecutor, and Official Letter 0774, sent by fax. Enclosed with the original petition.

<sup>85</sup> Appendix. Official Letter 1390 of the Coordinator of the Specialized Public Prosecutor's Offices, dated July 25, 2000. Enclosed with the original petition.

Through a resolution handed down on August 18, 1995, the local branch of the Regional Prosecutor's Office in Carepa, Department of Antioquía, ordered the opening of an investigation into the involvement of the aforementioned persons.

Through a subsequent resolution, the Regional Prosecutor amended the opening of preliminary proceedings, in which he refrained from involving the drivers of the confiscated motorcycles, that is to say Messrs. Angel David Quintero and Alcides Torres Arias , because he considered that they were not part of the conduct under investigation.

Likewise, it is argued in the indictment resolution which according to a document of the district Ombudswoman in Apartadó, reports that Messrs. Angel David Quintero and Alcides Torres Arias were taken from their cell after the lock was broken and were seen being driven in a red vehicle in the district of Currulao. Based on that document, the Regional Prosecutor ordered copies to be made so as to investigate the abduction to which the aforementioned gentlemen were subjected. The copies were remitted to the district Prosecutor's Office in Carepa, Antioquía<sup>86</sup>.

102. By virtue of that information, on July 26, 2000, the Judge of the First Criminal Court sent an Official Letter to the Court for the Enforcement of Sentences and Security Measures, requesting information regarding Alcides Torres Arias<sup>87</sup>, and also the Commander of the XVII Brigade, in Carepa, Antioquia<sup>88</sup>. On July 27, 2000, the First Judge of Enforcement answered the Official Letter and stated that:

in proceedings No. 1999-0222, Mr. Alcides Torres Arias has been captured on December 16, 1995, along with Leonel de Jesús Durango, Angel David Quintero Benitez, and Argemiro López Bravo, by Colombian military forces in Carepa, and accused of subversion.

By order dated December 20, 1995, the Office of the Regional Prosecutor of this city ordered the immediate and unconditional release of Alcides Torres Arias and Angel David Quintero Benítez (folios 43 f.), with only the others to be investigated.

In light of the above, Mr. Torres Arias is not referred to as accused in the proceedings handled by this office and is therefore not at the disposal of this Court.<sup>89</sup>

103. Given the information collected, the First Criminal Court of the Apartadó Circuit decided to reject the habeas corpus appeal because:

If Mr. Alcides Torres was taken from the place he was being held and as of now his whereabouts are unknown, and given the evidence that no proceedings were initiated against him, so that he is not being detained on the orders of a competent judicial authority, this [habeas corpus] action is not the appropriate action to take, whereas it is appropriate in cases in which a person is deprived of his liberty, in violation of constitutional or legal guarantees, or his [Tr. deprivation of?] liberty has been extended illegally. It could be argued that the latter is the case, that the deprivation of liberty has been prolonged illegally. However, with the information obtained in the sense that a crime of abduction was denounced (folio 14) after Mr. Alcides Torres was taken out of the place where he was being

<sup>86</sup> Appendix. Official Letter 1396 of the Coordinator of the Specialized Public Prosecutor's Offices, dated July 25, 2000. Enclosed with the original petition.

<sup>87</sup> Appendix. Official Letter 495 of the First Criminal Court of the Apartadó Circuit, dated July 26, 2000. Enclosed with the original petition.

<sup>88</sup> Appendix. Official Letter 496 of the First Criminal Court of the Apartadó Circuit, dated July 26, 2000. Enclosed with the original petition.

<sup>89</sup> Appendix. Official Letter 1335 of the First Court of Enforcement of Sentences and Security Measures of Medellín, dated July 27, 2000. Enclosed with the original petition.

held, the petitioner and the family of the aforementioned gentleman must await the outcomes of the investigation that said enunciation should have given rise to.<sup>90</sup>

## 2. Criminal proceedings

104. As a result of the family member's complaints to the Office of the Attorney General and the Ombudsman's Office, on January 29, 1996, the district Prosecutor's Office of Chigorodó ordered the start of a prior investigation to throw light on the alleged abduction of Mr. Alcides Torres Arias. On July 30, 1999, the Public Prosecutor ordered the investigation to be suspended for lack of evidence. The Commission does not have further information about this proceeding.<sup>91</sup>

105. At the same time, starting in 2002, the National Department of Public Prosecutions (*Fiscalía General de la Nación*) investigated the disappearance of Alcides Torres Arias and Angel David Quintero. In that proceeding, on February 21, 2006, the First Criminal Court of the Specialized Circuit of Antioquia sentenced Mr. Ricardo López Lora, alias "the pig", "the sow" or "Robert" to 20 years in prison, having found him guilty of aggravated simple abduction.<sup>92</sup> That sentence was confirmed on appeal on May 30, 2006.

106. Likewise, on September 6, 2011, the Court attached to the First Criminal Court of the Specialized Circuit of Antioquia handed down judgment against Belkis Margarita Villarruel Molina, convicting her of being an accomplice in the aggravated simple abduction of Alcides Torres Arias and Angel David Quintero Benítez and sentencing her to 14 years in prison as her main punishment, a fine totalling 125 legal minimum monthly wages, and a ban on exercising civic rights and office for the same term as her prison sentence.<sup>93</sup>

107. In this proceeding, the judge reached the following conclusion:

The evidence is clear regarding the participation of VILLARUEL MOLINA in the crime of abduction, in which she played a clear part in the taking out of the detainees to hand them over to armed groups outside the law. She took part in the kidnapping. The fact is your client provided prior help for which she must be considered an accomplice, so that the prosecution's characterization of the accused's actions is in accord with the law.<sup>94</sup>

108. In the same judgment, the judge pointed out that Ms. Villaruel knew that with her actions she was collaborating in the delivery of Messrs. Alcides Torres Arias and Angel David Quintero Benítez to groups outside the law, as expressed in the following section of the judgment:

When she begins the criminal task entrusted to her, abduction, she provides prior help to consummate other offenses. To that end, her participation in the kidnapping was to bring the detainees out of their cell in an illicit manner and pretend [Tr.  *fingir not fungir?*] it was a release, knowing full well that it was to hand them over for purposes other than obtaining their release, which clearly shows us that her participation was that of an accomplice providing pre-arranged assistance.<sup>95</sup>

<sup>90</sup> Appendix. Resolution of the First Criminal Court of the Apartadó Circuit, dated July 28, 2000. Enclosed with the original petition.

<sup>91</sup> IACHR, Report No. 6/03 (Admissibility), Petition 0597/200 *Alcides Torres Arias* (Colombia), February 20, 2003, para. 12.

<sup>92</sup> Appendix. Official Letter 317 UNDH-DIH dated August 21, 2008. Appendix 3 to the observations on the merits presented by the State on August 10, 2009.

<sup>93</sup> Appendix. Judgment of the Court attached to the First Criminal Court of the Specialized Circuit of Antioquia, handed down on September 6, 2011, under case number 2011-0017. pp. 38. Appendix to the State document of December 2, 2013.

<sup>94</sup> Appendix. Judgment of the Court attached to the First Criminal Court of the Specialized Circuit of Antioquia, handed down on September 6, 2011, under case number 2011-0017. pp. 18. Appendix to the State document of Monday, December 02, 2013.

<sup>95</sup> Appendix. Judgment of the Court attached to the First Criminal Court of the Specialized Circuit of Antioquia, handed down on September 6, 2011, under case number 2011-0017. pp. 19. Appendix to the State document of December 2, 2013.

109. Likewise, on January 31, 2012, the Second Criminal Court of the Specialized Circuit of Antioquia handed down Ordinary Law Judgment No.1 declaring Héctor Gutiérrez Vélez criminally responsible as an accessory in the concurrence of two criminal offenses in the form of two aggravated simple abductions of Alcides Torres Arias and Angel David Quintero Benítez, and sentenced him to 25 years imprisonment.<sup>96</sup>

110. This decision establishes that:

Although the key to the lock was missing, the officials in the Brigade would have been asked to take time to find it or to ask their superior for permission to do what they did, instead of breaking the lock surreptitiously and without authorization.<sup>97</sup>

(...)

Together with the haste with which the aforementioned citizens were abducted, it can reasonably be inferred that the procedure was illicit and not done to expedite the right to liberty of Messrs. TORRES and QUINTERO. On the contrary, the purpose of this malicious behavior was none other than to haul away the detainees illegally, specifically in order to hand them over to the paramilitary group formed by HEBERT VELOZA, as he himself asserts.

(...)

The Court considers it a proven fact that on December 20, 1995, Messrs. ALCIDES TORRES ARIAS and ANGEL DAVID QUINTERO were illicitly taken from the cell in XVII Brigade (BIVEL) and that to do this day it is not known what happened to them. Participating as an accessory in the abduction and retention of the above-mentioned persons was Mr. HÉCTOR GUTIÉRREZ VÉLEZ<sup>98</sup>.

111. For its part, on June 6, 2012, the Court attached to the First Criminal Court of the Specialized Circuit of Antioquia convicted National Army Sergeant Héctor Julio Vanegas Rodríguez as an accomplice in the aggravated simple abduction of Alcides Torres Arias and Angel David Quintero Benítez. He was sentenced to 10 years in prison, a fine of 83.33 legal monthly minimum wages, and a ban on exercising civic rights or holding public office for the duration of the principal punishment.<sup>99</sup>

112. In order to take the decision described in the foregoing paragraph, the Court concluded that through his actions Mr. Vanegas:

meets the requirements needed to characterize malicious intent (*dolo*), because his conduct was pro-active and directed toward the commission of punishable offenses. From him came the idea of illegally holding on to Messrs. ALCIDES TORRES ARIAS y ANGEL DAVID QUINTERO BENÍTEZ, who were handed over to the group outside the law, without there being any paper or evidence of their being handed over. . However, as this was a task for several people, they distributed the work among themselves like a good team, with each one performing a specific task.

[...]

<sup>96</sup> Appendix. Judgment of the Second Criminal Court of the Specialized Circuit of Antioquia, handed down on January 31, 2012, case filed under 05000 31 07 002 2009 00041. pp. 63/65. Appendix 10 to the State document of December 2, 2013.

<sup>97</sup> Appendix. Judgment of the Second Criminal Court of the Specialized Circuit of Antioquia, handed down on January 31, 2012, case filed under 05000 31 07 002 2009 00041. pp. 48/65. Appendix 10 to the State document of December 2, 2013.

<sup>98</sup> Appendix. Judgment of the Second Criminal Court of the Specialized Circuit of Antioquia, handed down on January 31, 2012, case filed under 05000 31 07 002 2009 00041. pp. 57/65. Appendix 10 to the State document of December 2, 2013.

<sup>99</sup> Appendix. Judgment of the Court attached to the First Criminal Court of the Specialized Circuit of Antioquia, handed down on June 6, 2012, case filed under 05-00-31-07-001-2012-00010. p. 38 Appendix to the State document of December 2, 2013.

The accused must answer for the offense charged by the prosecution [Aggravated Simple Abduction], because he was a substantive accomplice in the criminal enterprise led by HH. He had a specific job to do, which was to get the detainees out of their cell making the release look legal. For that reason, his participation is that of an accomplice to the aggravated simple abduction.<sup>100</sup>

113. In the aforementioned proceedings, Mr. Vanegas was sentenced to pay 50 legal monthly minimum wages to each of the next of kin of the victims for injury, pain, and suffering (*perjuicios morales*). The affected were not granted material damages.<sup>101</sup>

### 3. Disciplinary proceedings

114. With respect to the military personnel; serving in the XVII Brigade, on August 26, 1996, the 36th Military Court Hearing Preliminary Proceedings disqualified itself from instituting a formal criminal investigation against the personnel of Infantry Battalion No. 47 Vélez, on account of the disappearance of Alcides Torres Arias and Angel David Quintero. To reach that decision, the Court stated that

having examined the logbook of the guard at the entrance for the date of the events, the office noted that on page 5 a note is made recording the departure of the persons concerned, one of them identified by his I.D., at 2:05 p.m., a circumstance that demonstrates that in reality the aforementioned persons were taken as far as the guardhouse, from where they left by their own means, having recovered their freedom of movement, and from there on the unit lost all contact with them. The versions of events given by the other two detainees are not credible, when they give their account of what happened later, because they were in the offices of the Public Prosecutor, from where it was physically impossible for them to ascertain by their own means what may have happened to the disappeared individuals.<sup>102</sup>

115. Subsequently, on September 10, 2004, the Deputy Disciplinary Attorney for the Defense of Human Rights resolved to acquit the personnel serving in the Brigade of responsibility because "there is better evidence to support the affirmation that Alcides and Angel David were released pursuant to a legitimate order issued by the competent judicial authority, so that the actual occurrence of the conduct [forced disappearance] is not fully accredited."<sup>103</sup>

### 4. Justice and Police Act

116. Regarding the Justice and Peace proceedings, in a document dated August 10, 2009, the State reported that Heber Veloza García had been included in an investigation involving this case. The State also reported that Heber Veloza García was extradited to the United States on March 5, 2009.<sup>104</sup>

117. In addition, as a matter of public knowledge, on October 13, 2013, the Higher Court of Bogotá's Justice and Peace Division handed down a partial judgment against Mr. Heber Veloza García<sup>105</sup>,

<sup>100</sup> Appendix. Judgment of the Court attached to the First Criminal Court of the Specialized Circuit of Antioquia, handed down on June 6, 2012, case filed under 05-00-31-07-001-2012-00010. pp 18-19 Appendix to the State document of December 2, 2013.

<sup>101</sup> Appendix. Judgment of the Court attached to the First Criminal Court of the Specialized Circuit of Antioquia, handed down on June 6, 2012, case filed under 05-00-31-07-001-2012-00010. p.37 Appendix to the State document of December 2, 2013.

<sup>102</sup> Appendix. Decision of the 36th Military Court Hearing Preliminary Proceedings, August 26, 1996. Appendix to the observations on the merits presented by the State on August 10, 2009.

<sup>103</sup> Appendix. Decision of the Deputy Disciplinary Attorney for the Defense of Human Rights, September 10, 2004. Appendix to the observations on the merits presented by the State on August 10, 2009.

<sup>104</sup> Appendix. Official Letter 317 UNDH-DIH dated August 21, 2008. Appendix 3 to the observations on the merits presented by the State on August 10, 2009.

<sup>105</sup> Appendix. Judgment of the Higher Court of Bogotá, Justice and Peace Division, handed down on October 31, 2013, on the case filed under 11-001-60-00 253-2006 810099 Internal file number 1432. Available online: [http://www.coljuristas.org/documentos/adicionales/control\\_de\\_legalidad\\_HEBERT\\_VELOZA.pdf](http://www.coljuristas.org/documentos/adicionales/control_de_legalidad_HEBERT_VELOZA.pdf)

sentencing him to alternative punishment of 7 years imprisonment for the crimes of murder of a protected person, forced disappearance, and torture of a protected person, in respect of Messrs. Alcides Torres Arias and Angel David Quintero Benítez.

118. Mr. Veloza gave a list of others who also participated in the acts perpetrated against Messrs Alcides Torres Arias and Angel David Quintero Benítez:

Another five paramilitary: Wilmer Aguado Álvarez, alias 'Carroloco', Luis Enrique Mestra Yáñez, alias 'Wilson', Uber Coca, alias 'Uber', José Ruperto García Quiroga, alias 'The Cat', and Ricardo López Lora, alias 'the pig'<sup>106</sup>

119. In respect of all these persons, the Commission only knows of proceedings brought against Mr. Ricardo López Lora, alias "The Sow".

120. With regard to reparation, this judgment established that under Law 1448 of 2011 (Decree 4800 of 2011), it would not be appropriate to put a figure on any compensation benefits. Rather,

the Special Administrative Unit for Caring for and Making Comprehensive Reparation to Victims would administer the funds earmarked for compensation via administrative channels (Article 146). It will also estimate the amount of compensation based on the following criteria: (1) The nature and impact of the victimizing act; (ii) the harm done, and (iii) the current vulnerability status of the victim, from a differential standpoint<sup>107</sup>.

121. With regard to what happened to Messrs. Alcides Torres Arias and Angel David Quintero Benítez the following were recognized as victims in the proceedings against alias "HH": In respect of Alcides Torres Arias: Consuelo Rodríguez Peña (full time companion) and Dianelly Torres Rodríguez (daughter); In respect of Mr. Quintero: Blanca Yanet Graciano Acevedo (companion), Luz Enith Quintero Serna (daughter) and Isneisa Quintero Graciano (daughter).

## **V. LEGAL ANALYSIS**

### **A. Prior considerations**

122. Before analyzing the proven facts in the light of the American Convention and the Inter-American Convention on Forced Disappearance of Persons, the Commission will discuss some matters with a view to addressing two procedural issues posed following the admissibility report.

#### **1. Determination of the alleged victims**

123. The petition was initially presented on behalf of Alcides Torres Arias. Indeed, taking into account the information received during the admissibility phase, the Admissibility Report No. 06/03 referred only to him as the alleged "disappeared" victim. Later on, during the merits phase, and in particular in their observations of June 24, 2007, the petitioners added Angel David Quintero as an alleged victim in the case. For its part, the State acknowledged the latter's status as an alleged victim when it indicated, in its observations on the merits, that the victims were Alcides Torres Arias and Angel David Quintero.

124. Taking into account that during the merits phase, both parties agreed that the two alleged "disappeared" victims are both Alcides Torres Arias and Angel David Quintero, who were detained and disappeared under the same circumstances, and whose researches were conducted jointly, and that both

<sup>106</sup> Idem. para. 50.

<sup>107</sup> Appendix. Judgment of the Higher Court of Bogotá, Justice and Peace Division, handed down on October 31, 2013, on the case filed under 11-001-60-00 253-2006 810099 Internal file number 1432. Para. 1257. Available online: [http://www.coljuristas.org/documentos/adicionales/control de legalidad HEBERT VELOZA.pdf](http://www.coljuristas.org/documentos/adicionales/control%20de%20legalidad%20HEBERT%20VELOZA.pdf)

parties had several opportunities to present and to controvert the information available regarding Mr. Torres Arias and Mr. Quintero, the Commission proceeds to pronounce on both these people and their respective family units.

**2. Regarding the procedural consequences of failing to meet the deadlines for presenting observations on the merits**

125. The State asked the Commission to pronounce expressly on the legal consequences of the petitioners' failure to meet the deadline established in Article 37.1 of the Commission's Rules of Procedure, bearing in mind that Article 38 of the same Rules of Procedure establishes that any facts averred in the petition that are not challenged by the State within the time allowed shall be considered true .

126. First, and in general terms, the Commission wishes to offer a reminder that, throughout processing by the inter-American system, the burden of arguing and proving alternates between the parties. Thus, in principle, it is up to the petitioner to provide a detailed description of the alleged facts and to provide any information available in support of his or her petition. Subsequently, it is up to the State to pronounce on that supporting evidence and provide convincing elements in support of its position. Under those circumstances, if the petitioners do not submit their observations on the merits and the Commission lacks sufficient grounds to make up its mind, the outcome will be that the Commission will not be able to make determinations and reach conclusions in the case. On the other hand, if it is the State that fails to submit its observations on the merits, the Commission may assume the veracity of what is alleged in the petition. Processing is governed throughout by the principles of procedural and adversarial equality. Furthermore, in addition to the observations on the merits, the Commission receives and forwards any other information provided by the parties and, in practice, grants reasonable extensions to ensure procedural balance.

127. In the instant case, the petitioners presented their observations on the merits on May 10, 2003, two months after they were notified of the admissibility report. In that sense, the Commission observes that the State's argument when making the request to the Commission does not match the file on the case. The pertinent parts of the observations on the merits presented on May 10, 2003, along with additional information subsequently presented by the petitioners, were forwarded to the State on April 15, 2008. On June 17, 2008, the State submitted a communication with some considerations of a procedural nature, but did not submit observations on the merits and did not request an extension. On June 4, 2009, the Commission reiterated its request for observations on the merits. The State requested two consecutive extensions, which the Commission granted. The State presented its observations on the merits on August 10, 2009.

128. In light of the above, the Commission considers that the State had ample time to exercise its defense in the instant case and that; consequently, procedural balance was maintained throughout the processing period.

**B. Rights to recognition of juridical personality, to personal liberty, to personal integrity, and to life (Articles 3, 7, 5, and 4 of the American Convention; and the Inter-American Convention on Forced Disappearance of Persons (Article I.a)**

129. Article 3 of the American Convention provides:

Every person has the right to recognition as a person before the law.

130. Article 4.1 of the Convention stipulates:

Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

Article 5 of the Convention stipulates:

1. Every person has the right to have his physical, mental, and moral integrity respected.



2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

131. Article 7 of the Convention stipulates:

1. Every person has the right to personal liberty and security.

132. Article 1.1 of the Convention establishes:

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

133. For its part, Article 1 (a) of the Inter-American Convention on Forced Disappearance of Persons stipulates that:

Article I

The States Parties to this Convention undertake:

a) Not to practice, permit, or tolerate the forced disappearance of persons, even in states of emergency or suspension of individual guarantees.

134. From the first cases it addressed, the Inter-American Court has referred to the practice of forced disappearances, pointing out that:

Forced or involuntary disappearance is one of the most serious and cruel human rights violations, in that it not only produces arbitrary deprivation of freedom but places the physical integrity, security and the very life of the detainee in danger. It also leaves the detainee utterly defenseless, bringing related crimes in its wake. Hence, it is important for the State to take all measures as may be necessary to avoid such acts, to investigate them and to sanction those responsible, as well as to inform the next of kin of the disappeared person's whereabouts and to make reparations where appropriate.<sup>108</sup>

135. Regarding the characteristics of the crime of forced disappearance, the Court has stated that the IACFDP concurs with other international treaties,<sup>109</sup> in establishing that the following cumulative and concurring elements constitute forced disappearance: a) the deprivation of liberty against the will of the person concerned; b) involvement of governmental officials, at least directly or by acquiescence, and c) refusal to disclose the fate and whereabouts of the person concerned.<sup>110</sup>

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<sup>108</sup> I/A Court H.R., Case of Blake v. Guatemala. Preliminary Objections. Judgment of July 02, 1996. Series C No. 27, para. 66.

<sup>109</sup> The Court refers to the following instruments: The Economic and Social Council of the United Nations, the Report of the Working Group on Forced or Involuntary Disappearances, General Comment on Article 4 of the Declaration on the Protection of All Persons from Enforced Disappearance of January 15, 1996. (E/CN. 4/1996/38), par. 55; and Article 2 of the International Convention for the Protection of all Persons from Forced Disappearance.

<sup>110</sup> I/A Court H.R., Case of Anzualdo Castro v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, para. 60.

136. It has also been defined as an ongoing or permanent crime, which in turn implies that its effects persist over time until the fate or whereabouts of the victim become known. This puts the State in the position of continuously violating its international obligations until it is clear what happened to the victim.<sup>111</sup>

137. Given the multiple, permanent, and autonomous nature of the violation committed through a forced disappearance, the Inter-American Court has determined that the analysis of a possible case of it should not be approached in an isolated, divided, and segmented way, based only on the detention, or possible torture, or risk of loss of life, but on the set of facts presented in the case under consideration.<sup>112</sup> Thus, comprehensive treatment of forced disappearance as a complex form of violation of human rights has led the Court to analyze together the whole set of rights recognized in the Convention that are violated.<sup>113</sup>

138. Accordingly, the Court has opted for a comprehensive perspective of forced disappearance by reason of the plurality of behaviors, that joined together toward a single purpose, permanently violate juridical rights protected by the American Convention.<sup>114</sup> In particular, in cases of forced disappearance, the Court has jointly analyzed the violation of the rights to recognition of juridical personality, to life, to personal integrity, and to personal liberty, enshrined in Articles 3, 4, 5, and 7 of the Convention, respectively.<sup>115</sup>

139. Thus, regarding the right to recognition of juridical personality, for instance, in the case of *Anzualdo Castro v. Peru*, the Court considered that

given the multiple and complex nature of this grave violation of human rights, forced disappearance may entail a specific violation of the right to recognition of juridical personality. despite the fact that the disappeared person can no longer exercise and enjoy other rights, and eventually all the rights to which he or she is entitled, his or her disappearance is not only one of the most serious forms of placing the person outside the protection of the law but it also entails to deny that person's existence and to place him or her in a kind of limbo or uncertain legal situation before the society, the State and even the international community Beyond the fact that the disappeared person can no longer exercise and enjoy other rights, and possibly all the rights to which he or she is entitled, his or her disappearance is not only one of the most serious forms of placing the person outside the protection of the law but it also entails denying that person's existence and placing him or her in a kind of limbo or uncertain legal situation before society and the State.<sup>116</sup>

140. Regarding violations of the right to life and personal integrity resulting from forced disappearance, the Court has established that

subjecting a person to official, repressive bodies, agents of the State or private persons that act with acquiescence or tolerance and practice torture and assassination with impunity is itself a breach of the duty to prevent violations of the rights to life and physical integrity of the person, even if the acts of torture or murder cannot be proven in a concrete case.<sup>117</sup>

<sup>111</sup> IACHR, Application to the Inter-American Court of Human Rights in the case of *Renato Ticona Estrada et al.* (Case 12.527) against the Republic of Bolivia, August 0, 2007, para. 108.

<sup>112</sup> I/A Court H.R., *Case of Ticona Estrada v. Bolivia. Merits, Reparations and Costs.* Judgment of November 27, 2008. Series C No. 191, para. 56.

<sup>113</sup> I/A Court H.R., *Case of Tiu Tojín v. Guatemala. Merits, Reparations and Costs.* Judgment of November 26, 2008. Serie C No. 190, and *Case of Ticona Estrada v. Bolivia. Merits, Reparations and Costs.* Judgment of November 27, 2008. Series C No. 191.

<sup>114</sup> I/A Court H.R., *Case of Radilla Pacheco v. Mexico.* Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2009. Series C No. 209, para. 138.

<sup>115</sup> I/A Court H.R., *Case of Anzualdo Castro v. Peru.* Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, paragraphs 51-103, *Case of Radilla Pacheco v. Mexico.* Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2009. Series C No. 209, paragraphs 138-59.

<sup>116</sup> Cf. *Case of Anzualdo Castro v. Peru*, supra note 44, para. 90.

<sup>117</sup> Cf. *Velásquez Rodríguez Case v. Honduras*, supra note 24, para. 175; *Case of Ticona Estrada v. Bolivia*, supra note 23, para. 59; [continues ...]

141. As regards the right to personal integrity, the Inter-American Court has, in particular, recognized that forced disappearance violates that right since “prolonged isolation and deprivation of communication are in themselves cruel and inhuman treatment which [...] violates the right of every detainee under Article 5(1) and 5(2)”.<sup>118</sup> Specifically, the Court has determined that it is clear that in the case of a forced disappearance, the victim’s personal integrity is affected in all its dimensions.<sup>119</sup>

142. Likewise, the Inter-American Court has stated that in cases of forced disappearance it is unnecessary to perform a detailed analysis of the arrest in relation to each of the guarantees recognized in Article 7 of the American Convention. When it is demonstrated that deprivation of freedom was a step prior to achieving the disappearance of the victims, it is not necessary to determine whether or not the alleged victims were informed of the reasons for their detention; whether or not said detention was effected regardless of the motives and conditions established in the legislation in force at the time of the events; or whether the acts of the detention were unreasonable, unpredictable or disproportionate.<sup>120</sup> The reason for the above is that when examining an alleged forced disappearance it should be taken into account that the deprivation of liberty of the individual is just the beginning of the constitution of a complex violation that is prolonged over time until the fate and whereabouts of the victim are established.<sup>121</sup>

143. Lastly, as regards the Inter-American Convention on Forced Disappearance of Persons, the Commission notes that the State of Colombia ratified said treaty on April 12, 2005. Therefore, bearing in mind the aforementioned characteristics of the crime of forced disappearance, the State is responsible for the violation of the rights established in that Convention, as of the date it ratified that treaty and in respect of any ongoing cases of forced disappearance.

144. The Commission will analyze the facts relating to the disappearance of Messrs. Alcides Torres Arias y Angel David Quintero and their legal characterization in light of the American Convention and the Inter-American Convention on Forced Disappearance of Persons, taking into account the various elements constituting forced disappearance of persons in the following order: i) Deprivation of the liberty of Messrs. Alcides Torres Arias y Angel David Quintero; ii) the alleged acquiescence and collaboration between the paramilitary groups and the security forces; iii) concealment of the crime (abetment); and iv) the appropriate legal characterization.

### **1. The deprivation of the liberty of Messrs. Alcides Torres Arias y Angel David Quintero**

145. According to the proven facts, the parties do not dispute that: a) Alcides Torres Arias was detained on December 16, 1995 by soldiers; b) he was taken to the headquarters of the XVII Brigade; c) he was placed at the disposal of the corresponding Public Prosecutor on December 17, 1995; d) he remained detained on the premises of the XVII Brigade until December 20, 1995; e) at 8:30 a.m. on December 20, 1995, the paramilitary Ricardo López Lora made a statement in the proceedings; f) the legal status of Alcides Torres Arias was settled at 11:30 a.m. on December 20, 1995, when the Public Prosecutor ordered his immediate release because he did not consider him linked to the facts investigated; and g) that was the last time Alcides Torres Arias was seen.

[... continuation]

and Case of Anzualdo Castro v. Peru, supra note 44, para. 85.

<sup>118</sup> I/A Court H.R., Velásquez Rodríguez v. Honduras. Judgment of July 29, 1988. Series C No. 4, paragraphs 156 and 187; Case of the Miguel Castro-Castro Prison. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, para. 323; I/A Court H.R. Case of Ticona Estrada et al. v. Bolivia. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 191, para. 58.

<sup>119</sup> I/A Court H.R., Case of Ticona Estrada et al v. Bolivia. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 191, para. 58.

<sup>120</sup> I/A Court H.R., Case of La Cantuta v. Peru. Judgment of November 29, 2006. Series C No. 162, para. 109.

<sup>121</sup> I/A Court H.R., Case of Ticona Estrada et al v. Bolivia. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 27, 2008. Series C No. 191, para. 56.

146. In light of those facts, the Commission considers that the first element required for the definition of forced disappearance was given, namely deprivation of liberty by agents of the State. However, a peculiarity of the instant case is that the controversy exists regarding the assignment to the State of responsibility for what happened to the alleged victims after they had been in State custody. Accordingly, the Commission will address this controversy in order to determine whether the continuity of what happened to Alcides Torres Arias and Angel David Quintero after their detention by agents of the State may be attributed to the State.

## **2. The alleged acquiescence and collaboration between paramilitary groups and the security forces**

147. According to the proven facts, Alcides Torres Arias and Angel David Quintero were detained by agents of the State and deprived of their liberty in an Army Brigade's headquarters. According to the version of the officials who were in the Brigade and to the Minute of Guard of the Infantry Battalion No.32 of the XVII Brigade, Messrs. Torres and Quintero were formally released and left the aforementioned Brigade, so that they could not be assigned responsibility for what may have happened to them after their supposed release. However, there are numerous testimonies pointing to another version of what happened.

148. The Commission recapitulates that another detainee, Mr. Argemiro López, stated on several occasions that when they were in their cell, two men in plain clothes took Messrs. Torres and Quintero away. He specified that the two men in plain clothes were accompanied by a uniformed woman, who ordered the cell guard to leave. The other detainee, Mr. Leonel de Jesús Durango, made similar statements. For his part, the paramilitary López Lora himself stated that the Prosecutor had told him to say favorable things about Messrs. Torres and Quintero, with a view to "releasing" them. On top of all these statements come the statements and "free versions" of Hebert Veloza García, alias HH, in the Justice and Peace proceedings. He specified that they had taken them out in a red jeep. That same person declared that other paramilitary had played a part in what happened, along with members of the XVII Brigade and agents pertaining to other State entities, such as El Gaula.

149. Several testimonies exist regarding what happened after the departure from the XVII Brigade. The mother of Alcides Torres Arias indicated that the sisters who were outside the XVII Brigade did not see them leave, but did see a "red jeep" leaving the installations. Alcides Torres Arias' sister gave a statement along the same lines. Mr. Ramón Rodríguez, Mr. Torres Arias' father in law, said that he saw the red jeep around the "El Descanso" hotel; that Mr. Lopez Lora alias "the pig" was inside it; and that Angel David Quintero got out of it, trying to escape, but was caught again. He added that he had seen Mr. Torres Arias bleeding and that he had been hit in the face. The owner of the hotel, Mr. Ignacio de Jesús Gómez, made similar statements. Another person present at the time, Mr. Roque de Jesús Giraldo Vélez, mentioned the same facts and added that when Mr. Angel David Quintero was running away from the jeep he was grabbing his testicles, as if he had been beaten.

150. Apart from these statements, convictions have been handed down internally against the paramilitary López Lora and at least three agents of the State for the same deeds. Thus, according to the proven facts, in 2011, the official Belkis Villaruel was convicted of being an accomplice to the crime of abduction for her participation in the taking away of the detainees to be handed over to "groups outside the law." In that judgment, the facts were characterized as "conspiracy" (*concierto previo*) and the complicity of the aforementioned official was proven in taking the detainees in an unlawful manner and pretending they were leaving when she knew that they were being handed over for purposes other than release. In January 2002, noncommissioned officer Héctor Gutiérrez Vélez was convicted of "aggravated simple abduction." Along the same lines as the aforementioned conviction, this judgment indicated that the "departure" was for the purpose of handing the victims over to the paramilitary led by Hebert Veloza. It mentioned that they had been "unlawfully taken from their cell." Another conviction was handed down against National Army Sergeant Vanegas Ruiz, also for being an accomplice. That judgment refers to joint work in which Ruiz' part was to take them from the cell, making their departure look like a release.

151. All the above fits the picture of a joint operation and mutual collaboration between agents of the State and paramilitary groups at the time of the facts, especially in the Urabá region and especially in connection with the work of the Army's XVII Brigade.

152. The Commission concludes that Messrs. Alcides Torres Arias and Angel David Quintero were deprived of their liberty by agents of the State and that there was a joint plan between officials of the Army's XVII Brigade and paramilitary to take Messrs. Torres and Quintero away and "disappear" them. Accordingly, given the joint work and collaboration that existed, the Commission considers that what happened to Messrs. Torres and Quintero after they left the XVII Brigade is fully attributable to the Colombian State.

### **3. Concealment**

153. From the proven facts, the Commission notes that on December 20, 1995 the officials in the XVII Brigade had already concocted a release ply with the clear goal of concealing the intention to bring about, jointly with the paramilitary, the disappearance of Messrs. Torres and Quintero. This version was kept to throughout the disciplinary and criminal proceedings conducted internally and even by the Colombian State in the processing of the case before the Inter-American Commission.

154. In light of the above, the Commission considers that the element of concealment is accredited in the instant case.

### **4. The corresponding legal characterization**

155. From what has been said thus far, the Commission considers that the elements constituting forced disappearance of persons are given in the instant case. Thus, the victims were deprived of liberty by agents of the State and handed over by them to paramilitary, with whom they acted jointly and in coordination, knowing the fate that awaited the victims. These facts were systematically covered up by the State and until this day the fate or whereabouts of Messrs. Alcides Torres Arias and Angel David Quintero remain unknown. All these facts are fully attributable to the Colombian State for the above-mentioned reasons.

156. In light of the above, the Inter-American Commission concludes that the State of Colombia is responsible for violating the right to recognition of juridical personality, to personal liberty, to personal integrity, and to life established in Articles 3, 7, 5, and 4 of the American Convention in conjunction with the obligations established in Article 1.1 of the same instrument, to the detriment of Messrs. Alcides Torres Arias and Angel David Quintero. The Commission further concludes that the State of Colombia is responsible for violating Article I (a) of the Inter-American Convention on Forced Disappearance of Persons to the detriment of both victims.

### **C. Right to judicial guarantees and right to judicial protection (Articles 8.1 and 25 of the American Convention) and the Inter-American Convention on Forced Disappearance of Persons (Article 1 (b))**

157. Article 8 of the American Convention states:

1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

158. Article 25 of the American Convention provides:

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even

though such violation may have been committed by persons acting in the course of their official duties.

159. Article 1(1) of the American Convention states,

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

160. Article I (b) of the Inter-American Convention on Forced Disappearance of Persons establishes that the States Parties to this Convention undertake "to punish within their jurisdictions, those persons who commit or attempt to commit the crime of forced disappearance of persons and their accomplices and accessories."

161. The Inter-American Court has already established that the obligation to investigate the facts, try, and, where applicable, punish those responsible for a crime that constitutes a violation of human rights is a commitment arising from the American Convention, and that criminal liability must be determined by the competent judicial authorities, abiding strictly by the standards of due process established in Article 8 of the American Convention.<sup>122</sup>

162. Consequently, it is the duty of the State to investigate human rights violations, prosecute those responsible and avoid impunity. Impunity has been defined by the Court as the "total lack of investigation, prosecution, capture, trial and conviction of those responsible for violations of the rights protected by the American Convention"<sup>123</sup> and has ruled that "the State has the obligation to use all the legal means at its disposal to combat that situation, since impunity fosters chronic recidivism of human rights violations, and total defenselessness of victims and their relatives."<sup>124</sup> The Commission points out that the obligation to investigate and to sanction every fact that involves violations to rights protected by the Convention requires the punishment not only to the perpetrators of the acts committed in violation of human rights, but also the masterminds of those violations<sup>125</sup>.

163. With respect to the state's obligation to investigate complaints of forced disappearance of persons, the Court has held that "faced with the particular gravity of such offenses and the nature of the rights harmed, the prohibition of the forced disappearance of persons and the corresponding obligation to investigate and punish those responsible has attained the status of jus cogens."<sup>126</sup> Hence, whenever there are reasonable motives to suspect that a person has been subjected to forced disappearance an investigation should be opened ex officio, without delay, and in a serious, impartial, and effective manner. In any case, every state authority, public or private officer who is aware of acts intended to forcibly disappear persons, shall immediately report them.<sup>127</sup> The Court has established the duty of the State to investigate the facts while

<sup>122</sup> Cf. *Case of Huilca Tecse v. Peru*. Merits, Reparations and Costs. Judgment of March 03, 2005. Series C No. 121, para. 106.

<sup>123</sup> I/A Court H. R., *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004. Series C No. 110, par. 148; I/A Court H. R., *Case of the 19 Merchants*. Judgment of July 5, 2004. Series C No. 109, par. 175; I/A Court H.R., *Bámaca Velásquez Case Reparations* (Art. 63(1) of the American Convention on Human Rights). Judgment of February 22, 2002. Series C No. 91, par. 64.

<sup>124</sup> I/A Court H.R., *Case of Loayza Tamayo, Judgment on Reparation, November 27, 1998, Series C No. 42*, paras. 169 and 170.

<sup>125</sup> IACHR. *Report on the Situation of Human Rights Defenders in the Americas OEA/Ser.L/V/II.124*. Doc. 5 rev.1, Mars 7<sup>th</sup>, 2006, para. 109.

<sup>126</sup> I/A Court H.R., *Case of Goiburú et al v. Paraguay*. Merits, Reparations and Costs. Judgment of September 22, 2006. Series C No. 153, par. 84; *Case of Anzualdo Castro v. Peru*, Judgment of September 22, 2009, Series C No. 202, par. 59; and *Case of Radilla Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2009. Series C No. 209, para. 139.

<sup>127</sup> I/A Court H.R., *Case of Anzualdo Castro v. Peru*, Judgment of September 22, 2009, Series C No. 202, para. 65, and *Case of Radilla Pacheco v. Mexico, Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 23, 2009. Series C No. 209, para. 143.

uncertainty persists as to the fate of the disappeared person, as well as the need to provide a simple and swift remedy for the case, with due guarantees.<sup>128</sup> Accordingly, the Commission issues a reminder that States must guarantee the right of the victim or his next-of-kin to the truth through the investigation and trial provided for in Articles 8 and 25 of the Convention.<sup>129</sup>

164. As to the substance of the duty to investigate with due diligence, the Inter-American Court has held that the investigation should be undertaken utilizing all the legal means available and should be oriented toward the determination of the truth.<sup>130</sup> In that same vein, the Court has found that the State has the duty to ensure that everything necessary is done to learn the truth about what happened and for those responsible to be punished,<sup>131</sup> involving all State institutions to that end.<sup>132</sup> The Court has also said that the authorities should adopt all reasonable measures to secure the necessary probative material in order to carry out the investigation.<sup>133</sup>

165. Regarding military jurisdiction, the Commission issues a reminder that it should only be applied when military legal interests (*bienes jurídicos castrenses*) are endangered during the performance of specific duties related to the defense and [external] security of a State.<sup>134</sup> Moreover, Article IX of the IACFDP, expressly establishes that persons alleged to be responsible for acts constituting the offense of forced disappearance of persons may not be tried in military jurisdictions.

166. Lastly, the right to know the truth has been also recognized by several treaties of the United Nations and recently by the General Assembly of the Organization of American States (OAS).<sup>135</sup> The Inter-American Court has determined the content of the right to the truth, especially in cases of forced disappearances. In the case of Velásquez Rodríguez the Court confirmed the existence of “the right to inform the relatives of the fate of the victims and, if they were killed, the location of their remains.”<sup>136</sup> In this type of cases, it is considered that the relatives of the disappeared victims are victims of the deeds constituting forced disappearance, by which they are entitled to have the facts investigated and those responsible prosecuted and punished.<sup>137</sup> The Court has recognized that the right to the truth of the relatives of victims of serious human rights violations is framed within the right to access to justice.<sup>138</sup>

<sup>128</sup> I/A Court H.R., *Bámaca Velásquez Case v. Guatemala*. Merits. Judgment of November 25, 2000. Series C No. 70, para. 197.

<sup>129</sup> I/A Court H.R., *Case of the Rochela Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 163, para. 147.

<sup>130</sup> I/A Court H.R., *Case of García-Prieto et al. v. El Salvador*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 168, para. 101.

<sup>131</sup> I/A Court H.R., *Case of Bulacio v. Argentina*. Judgment of September 18, 2003. Series C No. 100, para. 114; I/A Court H.R., *Case of the Rochela Massacre v. Colombia*. Judgment of Friday, May 11, 2007. Series C. No. 163 para. 146, and *Case of the Miguel Castro-Castro Prison v. Peru*. Judgment of November 25, 2006. Series C No. 160, para. 382.

<sup>132</sup> I/A Court H.R., *Case of Cantoral-Huamani and García-Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, par. 130; *Case of the Massacre of Pueblo Bello v. Colombia*. Judgment of January 31, 2006. Series C No. 140, par. 120 and the *Case of Huilca Tecse*. Judgment of March 03, 2005. Series C No. 121, par. 66.

<sup>133</sup> I/A Court H.R., *Case of Zambrano-Vélez et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of July 04, 2007. Series C No. 166, para. 122.

<sup>134</sup> I/A Court HR. *Case of Palamara Iribarne v. Chile*. Judgment of November 22, 2005. Series C No. 135, para. 132.

<sup>135</sup> Set of principles for the protection and promotion of human rights through action to combat impunity (E/CN.4/2005/102/Add.1). Report of Professor Diane Orentlicher on the updating of the set of principles for the protection and promotion of human rights through action to combat impunity (E/CN.4/2005/102, of February 18, 2005). Study by the Office of the United Nations High Commissioner for Human Rights on the right to the truth (E/CN.4/2006/91 of January 9, 2006). OAS General Assembly Resolutions on the Right to the Truth, AG/RES. 2175 (XXXVI-O/06), AG/RES. 2267 (XXXVII/O/ 2267, and AG/RES. 2406 (XXXVIII-O/08)

<sup>136</sup> I/A Court H.R., *Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C. No. 4 para. 181.

<sup>137</sup> I/A Court H.R., *Case of Blake v. Guatemala*. Judgment of January 24, 1998. Series C No. 36, para. 97.

<sup>138</sup> I/A Court H.R. *Case of Anzualdo Castro v. Peru*. Judgment of September 22, 2009, Series C No. 202, para. 118.

167. Along the same lines, the Inter-American Court has held that:

...the right to know the truth represents a necessary effect for it is important that a society knows the truth about the facts of serious human rights violations. This is also a fair expectation that the State is required to satisfy, on the one hand, by means of the obligation to investigate human rights violations and, on the other hand, by the public dissemination of the results of the criminal and investigative procedures. The right to know the truth requires from the State the procedural determination of the patterns of joint action and of all those who participated in various ways in said violations and their corresponding responsibilities. Moreover, in compliance with the obligation to guarantee the right to know the truth, States may establish Truth Commissions, which can contribute to building and safeguarding historical memory, to clarifying the events and to determining institutional, social and political responsibilities at certain periods of time in a society.<sup>139</sup>

168. First, the Commission notes that there is not information about the concrete initial measures to find Mr. Torres Arias and Mr. Quintero with the objective to locate them and to determine their whereabouts. There is not either information that indicates that beyond the sending of formal communications, the habeas corpus action activated effective mechanisms of search according to the existing evidence of possible forced disappearance.

169. Secondly, the Commission notes that on August 26, 1996, almost one year after the forced disappearance of the victims, the 25th Military Criminal Court hearing preliminary proceedings disqualified itself from initiating a criminal investigation of the military serving in the XVII Brigade. As indicated in foregoing paragraphs, the Commission considers that by initially submitting the facts of the case to military criminal justice, the State compromised its international responsibility.

170. Although the Commission does not have the files of the domestic proceedings, despite having requested them from the State, isolated pieces in the respective proceedings indicate that criminal proceedings have been subject to unwarranted delays. Although the investigation in the ordinary jurisdiction began on January 29, 1996, the Commission notes that it was suspended on July 30, 1999, without progress having been made with clarifying the facts. It was only three years after the investigation was halted that it resumed in 2002.

171. The Commission notes that the day of approval of this report, 19 years after the facts, they have yet to be fully clarified and most of those responsible have not been brought to trial. Indeed, the available information indicates that the first conviction (of the paramilitary López Lora) took place 11 years after the facts, that is, in 2006. Subsequent convictions were handed down in 2011, 2012, and 2013, in respect of three of the agents of the State in the XVII Brigade. The State has provided no explanation that can justify those delays, particularly given the nature of the facts of the case, the existence of statements from the start of the investigation, and the knowledge that exists regarding who acted in the XVII Brigade at the time Messrs. Torres and Quintero were taken away.

172. Furthermore, so far no investigations have been conducted into State officials, especially senior officers of the XVII Brigade who, according to the information that emerges from the investigations [into others], gave the orders that enabled the disappearances to take place. Nor have non-military officials, cited in several statements, been brought into the proceedings, in particular, the Public prosecutor who took Mr. López Lora's statement about the victims and Gaula officers mentioned by Hebert Vellozo alias HH in his "free versions" of what happened. Similarly, the State has omitted to investigate the other paramilitary who, according to the statement by the paramilitary leader, also took part in the facts of the case.

<sup>139</sup> I/A Court H.R., *Case of Anzualdo Castro v. Peru*. Judgment of September 22, 2009, Series C No. 202, para. 119.



173. In addition to the unreasonable delays and failure to determine the full range of responsibilities, the Commission observes that none of the convictions were handed down for forced disappearance of persons. This happened despite the fact that said crime has been legally defined (*tipificado*) in Colombia since 2000 by Law 589 of that year. Bearing in mind that on the day the offense was defined [in Colombian law], the forced disappearance of the victims was ongoing, according to the Inter-American Court's case law in cases *Tiu Cojín vs. Guatemala* and *Ibsen vs. Bolivia*, the convictions should have been for the crime of forced disappearance.

174. In fact, the Inter-American Court has clearly stated that, given that it is a crime whose commission is ongoing, when the legal definition of the offense of forced disappearance of persons entered into force in the State in question, the new law was applicable because the criminal conduct was still being performed, without that implying a retroactive application of the law.<sup>140</sup>

175. As the Court pointed out in the aforementioned cases, an inappropriate legal characterization of an instance of forced disappearance may affect clarification of what happened, affect the right to truth of the victim's relatives, reduce the actual scope of responsibility, and, in short, constitute a source of impunity.

176. The Commission notes furthermore that the family members of the victims purportedly encountered obstacles to their playing an active part in the criminal proceedings. In particular, the mother of Alcides Torres Arias complained of intimidation after she tried to advance domestic proceedings. According to her testimony:

In response to [our complaints], the paramilitary and soldiers made death threats and said we had better leave matters alone or else they would kill us as well.

Neither the Public Prosecutor's Office nor the Attorney General's Office (*Procuraduría*) did anything at all, they just kept things hushed up. All we got for our pains was that soon after they killed the witness, Mr. Ramón Rodríguez, because, according to them, he was an informer ("sapo") [...]<sup>141</sup>

177. The information available indicates that the State did not investigate those threats either.

178. Finally, the Commission observes that the extradition process in respect of one of the paramilitary involved in the facts of the case may also have hampered the right of access to justice and the right to the truth about what happened to Alcides Torres Arias. This is particularly worrisome given the lack of immediate follow-up by the State on the statements made by that paramilitary leader in his "free versions" of what had happened with respect to all the responsibilities incurred in the instant case.

179. In light of the foregoing considerations, the Commission concludes that the State of Colombia has not found the necessary ways to meet its obligation to investigate, try, and punish, within a reasonable period of time and with due diligence, all those responsible for the human rights violations analyzed in this report. Consequently, the State of Colombia bears responsibility for the violation of the rights to judicial guarantees and judicial protection established in Articles 8.2 and 25 of the American Convention, in conjunction with the obligations established in Article 1.1 of the same instrument. Likewise, the State of Colombia is responsible for violating Article I (b) of the Convention on the Forced Disappearance of Persons. These violations were committed to the detriment of Alcides Torres Arias, Angel David Quintero and their next of kin listed *supra* in par. 69 and 70.

<sup>140</sup> Appendix. I/A Court HR. *Case of Radilla Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2009. Series C No. 209 para. 239.

<sup>141</sup> Appendix. Sworn statement of complaint of María Noemí Arias de Torres. Attached to the petitioners' brief off April 17, 2002.

#### D. Right to humane treatment of the families of the victims (Article 5(1) of the American Convention)

180. The Court has held on numerous occasions that the next of kin of the victims of human rights violations may, in turn, be victims themselves.<sup>142</sup> Specifically, in cases of forced disappearance of persons, it can be understood that the violation of the right to mental and moral integrity of the victims' next of kin is a direct result, precisely, of this phenomenon, which causes them severe anguish owing to the act itself, which is increased, among other factors, by the constant refusal of the State authorities to provide information on the whereabouts of the victim or to open an effective investigation to clarify what occurred.<sup>143</sup> The Court has come to consider that the continued deprivation of the truth concerning the fate of a disappeared person constitutes a form of cruel and inhuman treatment for the close family.<sup>144</sup>

181. In addition, in the event of a forced disappearance, the State has the obligation to guarantee the right to humane treatment of family members by conducting effective investigations. What is more, the Court has found the absence of effective remedies to be a source of additional suffering and anguish for the victims and their next of kin.<sup>145</sup>

182. The Commission notes that, even now, the next of kin of Alcides Torres Arias and Angel David Quintero have no knowledge of his fate or whereabouts and they have not had an appropriate judicial response. Furthermore, on top of the suffering caused by the forced disappearance of the victims, their families were profoundly affected when they tried to move the domestic investigations forward. Thus, the mother of Alcides Torres Arias declared that

When we started to investigate again, the threats recommenced. First, they killed my son Alirio Torres for stirring up the case. Those who did it were savages, cutting him into pieces with a chain saw. Then they took my son Orbaíro Torres away from the farm and sent someone to tell me that they were waiting to kill me because I had been denouncing what had happened to Alcides. So I did not go and I know that they also killed Orbaíro. They tell me that they buried him in the same farm ("El Lucero"). I haven't been able to go because they'll kill me. [...]

I had to leave Chigorodó, with my three children and nothing to eat and become a displaced person in Medellín, so that they wouldn't kill me. Now I don't know whether all this has been worth it. All I know is that the Colombian Government has denied me justice, and they have threatened and murdered us [...]

As a mother I cry for my children every day. Every day I have a funeral without the bodies. I will not rest until I can bury them. Nobody can understand the anguish I feel, not knowing their fate. This is worse than torture.<sup>146</sup>

183. The Commission considers that because of the nature of the facts of this case, the situation of impunity, and the inevitable effect on both victims' close families, the State also violated the right to personal integrity established in the Article 5 of the American Convention, in conjunction with the obligation

<sup>142</sup> I/A Court H.R., *Bámaca Velásquez Case v. Guatemala*. Merits. Judgment of November 25, 2000. Series C No. 70, para. 160.

<sup>143</sup> I/A Court H.R., *Case of Anzualdo Castro v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, para. 105.

<sup>144</sup> I/A Court H.R., *Case of Radilla Pacheco v. Mexico*. Preliminary Objections, Merit, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, para. 166.

<sup>145</sup> I/A Court H.R., *Case of Anzualdo Castro v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, para. 113.

<sup>146</sup> Appendix. Sworn statement of complaint of María Noemí Arias de Torres. Attached to the petitioners' brief of April 17, 2002.

established in Article 1.1 of the same instrument, to the detriment of the family members of both victims. Finally, the Commission considers that the arguments regarding the violation of the right established in the Article 17 of the Convention have already been discussed in this section.

184. The Commission concludes that the State of Colombia is responsible for violating the right to juridical personality, to life, to personal integrity/humane treatment, to personal liberty, to judicial guarantees, and to protection of the family, established in Articles 3, 4, 5, 7, 8, 17, and 25, in conjunction with Article 1.1 of the same instrument, as well as Articles I (a) and I (b) of the Inter-American Convention on Forced Disappearance of Persons to the detriment of the persons referred to in the respective sections of this report.

## **VI. PROCEEDINGS THAT FOLLOWED REPORT No. 89/14**

185. The Commission adopted Merits Report No. 89/14 on November 4, 2014, and forwarded it to the State on January 30, 2015. In this report, the Commission made the following recommendations:

1. Investigate fully, impartially, and effectively the whereabouts of Alcides Torres Arias and Angel David Quintero and, if applicable, take the necessary measures to identify and deliver their remains to the family members.

2. Carry out the domestic proceedings connected with the human rights violations found in the instant report and conduct proceedings corresponding to the offense of forced disappearance of Alcides Torres Arias and Angel David Quintero in an impartial and effective manner within a reasonable time in order to completely clarify the events, identify all those responsible, and impose the appropriate penalties.

3. Provide adequate reparation for the human rights violations found in the instant report in material as well as moral respects, including fair compensation, elucidation and circulation of the historical truth of the events, and implementation of an adequate program of care for family members.

4. Adopt all necessary measures to avoid the recurrence of similar acts in future.

5. Publicly acknowledge the violations established in this case, guaranteeing adequate mechanisms for the dissemination of these findings.

186. In the proceedings following the notification of the merits report, the Commission received reports from the State and submissions from the petitioners regarding compliance with the recommendations made by the IACHR. During this period, the Commission granted the State a total of eight extensions to the deadline set forth under Article 51 of the American Convention. In those requests for extensions, the Colombian State said it wished to have more time to ensure compliance with the recommendations and expressly waived its right to file for preliminary exceptions with regard to its failure to comply with the aforementioned deadline, should the case be submitted to the Inter-American Court.

187. After assessing the available information regarding compliance with the recommendations, the Commission decided by an absolute majority on April 30, 2017, to not refer the case to the Inter-American Court and to work towards the publication the merits report.

## **VII. PROCEEDINGS THAT FOLLOWED REPORT No. 43/17**

188. On May 23, 2017, the Inter-American Commission adopted Report No. 43/17, reiterating three recommendations contained in Report No. 89/14:

1. Investigate fully, impartially, and effectively the whereabouts of Alcides Torres Arias and Angel David Quintero and, if applicable, take the necessary measures to identify and deliver their remains to the family members.

2. Carry out the domestic proceedings connected with the human rights violations found in the instant report and conduct proceedings corresponding to the offense of forced disappearance of Alcides Torres Arias and Angel David Quintero in an impartial and effective manner within a reasonable time in order to completely clarify the events, identify all those responsible, and impose the appropriate penalties.

3. Provide adequate reparation for the human rights violations found in the instant report in material as well as moral respects, including fair compensation, elucidation and circulation of the historical truth of the events, and implementation of an adequate program of care for family members.

189. The Parties were notified of said report on June 15, 2017<sup>147</sup> and, pursuant to Article 51 of the American Convention, the IACHR granted them two months to submit information regarding compliance with the final recommendations contained therein. The Commission notes that the parties did not submit information subsequent to the issuance of Report No. 43/17. In the section hereunder, the Commission reiterates its considerations included in its final report regarding compliance with its recommendations.

### VIII. ANALYSIS OF COMPLIANCE WITH RECOMMENDATIONS

190. **With regard to the first recommendation**, the parties said three search plans are currently active: the first belongs within the framework of the Justice and Peace Law, the second is being pursued by the Defense Ministry and the third is being pursued by the 37th District Attorney's Office, in its own investigation. Further, the State noted that there is a National Plan to Search for Missing Persons that is being developed in four stages: i) information gathering; ii) analysis and authentication of information; iii) recovery and technical-scientific evaluation for identification; and iv) final destination of the bodies. The State noted that the search for Alcides Torres and Angel David Quintero is in the information gathering stage and reported on a series of activities that are allegedly being carried out by the 37th District Attorney's Office, which specializes in human rights and international humanitarian law specifically for this stage<sup>148</sup>. The Commission values the efforts made by the State to establish the whereabouts of the victims in this case. However, it notes that such efforts have so far failed to deliver concrete results. The Commission urges the State to step up search procedures to locate the victims and, if they are located, to adopt all necessary measures to identify them and hand their remains to their families. Based on the foregoing, the Commission considers that compliance with this recommendation remains pending.

<sup>147</sup> On June 19, 2017, the IACHR sent a communication to the parties informing them that, due to an error, the Report No. 43/17 was attached.

<sup>148</sup> In particular, the State reported that it had pursued the following activities: i) Search for any records in the name of Torres Arias and Quintero Benítez in the information system of the National Penitentiary and Prison Institute (INPEC, by its Spanish acronym), which was negative for both names; ii) Enquiry in the social security registration system, to check whether the victims had any registrations in place. The system did not deliver any information on registration with the health, pension and dismissal systems, and there were no records whatsoever for the victims; iii) Enquiry with the information system of the Social Program Beneficiary Selection System, which was negative for both men; iv) Enquiry with the Integrated Information System on Fines and Penalties for Traffic Offenses, with negative results; v) Search for resources on likely inspections on bodies that may have had similar characteristics to those reported about the two missing persons, and that may have taken place in municipalities adjacent to Buenaventura, such as Calima, Dagua, Restrepo and La Cumbre. All municipal inspection offices reported to the district attorney that they had no reports or information on unidentified persons with the same characteristics as the dead men; vi) Search on social media for potential accounts in the names of the victims, with no records found; vii) Revision of new statements by demobilized paramilitaries Hebert Veloza García, alias "H.H.," and Ricardo López Lora, alias "La Marrana," in the 178th District Attorney's Office, a delegate to the Court in the service of the Department for Transitional Justice at the National Prosecutor's Office. This was done with a view to establishing whether they had made further comments on the disappearance of the two victims. The information that was analyzed delivered no data regarding the whereabouts of the victims; viii) Joint verification with the office for Transitional Justice as to whether the remains of bodies with similar characteristics to those of Alcides Torres Arias and Angel Quintero Benítez had been found in exhumation proceedings carried out by that office, with no results found; ix) Verification of the existence of the site where the body of Aura Lilia Paredes was found, and where the two men who are now missing were, according to applicant Hebert Veloza García, before allegedly being taken to what he called "the bongo by the sea," with a view to locating potential witnesses who had been living there since the year 1995; x) Enquiry with the National Register of Missing Persons (RND, by its Spanish acronym), entering the data of the victims in this case, without finding records in the Mass Information Request System. Observations report drafted by the State on April 24, 2017.

191. **With regard to the second recommendation**, the State reported that six convictions have already been issued for the events in this case, which were passed between 2006 and 2012 and include both paramilitaries and state agents. The State further noted that the 37th District Attorney's Office, which specializes in human rights, is still processing the cases against other potential suspects. Based on the foregoing, the Commission considers that this recommendation has been partially complied with, so it asks the State to persist with the investigation and impose penalties on all perpetrators and masterminds involved in events in this case.

192. **With regard to the third recommendation**, the parties reported that Angel David Quintero's family has already received compensation in the framework of administrative proceedings, through a sentence issued by the First Administrative Relief Court in Turbo (Antioquia), which was executed through Resolution Number 3852 of the Legal Affairs Department at the National Defense Ministry, of June 19, 2012.

193. In relation to Alcides Torres Arias, the State said the parties had reached an agreement on the amounts required for compensation. The State noted that the conciliation agreement had been legally approved. The victims' representative had to file the relevant request so that compensation could be paid. The parties further reported that the Psychosocial Assistance and Integral Health for Victims Program is set to provide medical and psychological care for relatives of the victims in this case, with the exception of two beneficiaries who said they did not wish to receive such assistance. The State added that there are plans for an appraisal, to enable the provision of integral assistance at the individual, family and community levels. The Commission believes that it should continue to monitor compliance with this recommendation, with a view to checking that the family of Alcides Torres Arias does receive reparations once it files the relevant request. Based on the foregoing, the Commission concludes that this recommendation has been partially complied with.

## **IX. CONCLUSIONS AND RECOMMENDATIONS**

194. Based on the factual and legal considerations throughout this report, the Commission concludes that the Republic of Colombia is responsible for violations of the right to recognition of juridical personality, the right to life, the right to humane treatment, the right to personal liberty, the right to a fair trial and the right to judicial protection enshrined in Articles 3, 4, 5, 7, 8 and 25 of the American Convention, in accordance with Article 1.1 of said Convention, and with Articles I.a) and I.b) of the Inter-American Convention on the Forced Disappearance of Persons to the detriment of the people mentioned in the relevant sections of this report.

195. Based on the foregoing conclusions,

### **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THAT THE COLOMBIAN STATE CONTINUE TO MAKE EVERY EFFORT NEEDED TO ACHIEVE FULL COMPLIANCE WITH THE FOLLOWING RECOMMENDATIONS:**

1. Investigate fully, impartially, and effectively the whereabouts of Alcides Torres Arias and Angel David Quintero and, if applicable, take the necessary measures to identify and deliver their remains to the family members.

2. Carry out the domestic proceedings connected with the human rights violations found in the instant report and conduct proceedings corresponding to the offense of forced disappearance of Alcides Torres Arias and Angel David Quintero in an impartial and effective manner within a reasonable time in order to completely clarify the events, identify all those responsible, and impose the appropriate penalties.

3. Provide adequate reparation for the human rights violations found in the instant report in material as well as moral respects, including fair compensation, elucidation and circulation of the historical truth of the events, and implementation of an adequate program of care for family members.

## **IX. PUBLICATION**

196. Based on the foregoing considerations and pursuant to Article 47.3 of its Rules of Procedure, the IACHR has decided to publish this report and to include it in its Annual Report to the General Assembly of the Organization of American States. Pursuant to the provisions of the instruments governing its mandate, the Inter-American Commission will continue to evaluate measures adopted by Colombia in respect of the above-mentioned recommendations until it finds that they have been implemented in full.

Approved by the Inter-American Commission on Human Rights in the city of Mexico, Mexico, on the 5th day of the month of September, 2017. (Signed): Francisco José Eguiguren, President; Margarete May Macaulay, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice President; José de Jesús Orozco Henríquez, Paulo Vannuchi and James L. Cavallaro, Commissioners.