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CASE 11.726
REPORT ON MERITS (PUBLICATION)

NORBERTO JAVIER RESTREPO
COLOMBIA

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I. SUMMARY¹

1. On February 26, 1997,² the Inter-American Commission on Human Rights (hereinafter "the Commission") received a petition lodged by the Association of Relatives of Detained and Disappeared Persons in Colombia (ASFADDES), the Latin American Federation of Associations for Relatives of the Detained-Disappeared (FEDEFAM), the Colombian Commission of Jurists, and the Center for Justice and International Law (CEJIL) (hereinafter "the petitioners") concerning the disappearance, death, and lack of clarification of what happened to Norberto Javier Restrepo (hereinafter "the alleged victim"), who had links to the *Unión Patriótica* (Patriotic Union) party and whose lifeless body was found on June 7, 1992.

2. After processing the petition for admissibility, the Commission adopted Report 84/00 in which it declared the case admissible for the alleged violations to articles 4, 5, 7, 8, 25 and 1(1) of the Convention.³ In their submissions on merits, the petitioners said that the circumstances of Norberto Restrepo's disappearance and death as well as that lack of clarification in the judicial investigation constituted violations of the rights to life, humane treatment, personal liberty, a fair trial, and judicial protection envisaged in Articles 4, 5, 7, 8, and 25 of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") in connection with the obligations set forth in Article 1(1) of that treaty. Meanwhile, the State argued that the investigation into Norberto Javier Restrepo's death was still under way and it had not been demonstrated that state agents were involved in the events, for which reason it could not be attributed any responsibility for violation of rights enshrined in the Convention. It also held that the judicial investigation had been conducted diligently and in a reasonable time, in keeping with international standards in that regard.

3. Based on its analysis of the positions of the parties, the Commission has concluded that the Republic of Colombia is responsible for violation of the rights to juridical personality, life, humane treatment, personal liberty, fair trial, and judicial protection protected in Articles 3, 4, 5, 7, 8 and 25 of the Convention, in connection with the obligations set forth in Article 1(1) thereof, to the detriment of Norberto Javier Restrepo. The Commission has also concluded that the State is responsible for violation of Articles 5, 8, and 25 of the American Convention, in conjunction with the obligations contained in Article 1(1) thereof, to the detriment of Norberto Javier Restrepo's family. Finally, under the *iura novit curia* principle, the Commission has found that the State is responsible for violation of Articles 8 of the Inter-American Convention to Prevent and Punish Torture and Article I(b) of the Inter-American Convention on Forced Disappearance of Persons. The IACHR made the corresponding recommendations.

II. PROCESSING BY THE COMMISSION

4. On March 3, 1997, the Commission opened the case and assigned it number 11.726. Having processed the petition for admissibility, in a communication dated October 23, 2000, the Commission notified the parties of report on admissibility 84/00 and placed itself at their disposal with a view to reaching a friendly settlement. On March 1, 2010, the IACHR relayed the petitioners' rejection of the offer of a friendly settlement together with their final observations on merits. On June 1, 2010, the State requested a stay, which was granted. On November 12, 2001, a hearing was held in the framework of the 113th regular session of the IACHR.

5. Subsequently, the State sent communications on the following dates: July 1, September 16, and October 27, 2010; February 4, March 9, and April 15, 2011; July 14, 2011; and March 11, May 11, June 7, July 13, and October 11, 2012. In turn, the petitioners submitted briefs on August 11 and December 20, 2010; May 23, 2011; February 27 and October 2, 2012; and May 8 and November 26, 2013.

¹ In accordance with the provisions of Article 17.2 of the Commission's Rules of Procedure, Commissioner Luis Ernesto Vargas Silva, of Colombian nationality, did not participate either in the discussion or decision in the present case.

² In its report on admissibility (84/00) the Commission said that the petition was received on February 19, 1997. The Commission notes for the record that that brief, dated February 19, 1997, was received by its Executive Secretariat on February 26, 1997.

³ IACHR, Report No. 84/00, Case 11.726, Norberto Javier Restrepo, Colombia, October 5, 2000. <http://cidh.org/annualrep/2000eng/ChapterIII/Admissible/Colombia11.726.htm>

III. POSITIONS OF THE PARTIES

A. The petitioners

6. The petitioners said that Norberto Javier Restrepo was a member of *Unión Patriótica* (Patriotic Union), a political party. They said that on June 2, 1992, Mr. Restrepo left his home in the city of Medellín at 6:30 a.m. and never returned. They said that the next day his mother, Lucila Restrepo Posada, has a short telephone conversation with her son, who asked after the family. They said that on June 5, 1992, his mother received an anonymous call telling her that her son had been disappeared.

7. The petitioners said that on June 6, 1992, Mr. Restrepo's mother began the search for her son at police stations, at the F-2 (the National Police intelligence agency), at hospitals, and through the media. They said that on June 7, 1992, Norberto Restrepo called for the last time to say that he had been detained on the road to Las Palmas. They added that that same day Mrs. Restrepo Posada verbally reported her son's disappearance to the Antioquia Departmental Attorney's Office (*Procuraduría Departamental of Antioquia*), and the next day she was told that the National Police had carried out an operation in Las Palmas. They said that on June 10, 1992, the victim's mother presented a complaint to the Tenth Court of Criminal Investigation of Medellín.

8. The petitioners' said that on June 9, 1992, Norberto Restrepo's body was found on the highway that leads to *El Cairo* cement factory in the municipality of Santa Bárbara and that he was buried as John Doe (*NN* in Spanish) with the cause of death given as "presumed suicide by gunshot." The family learned of the discovery of the body thanks to the intervention of the Center for the Disappeared (*Centro de Desaparecidos*). Accordingly, on June 11, the victim's father, José Marco Restrepo, went to Santa Bárbara and managed to have the corpse exhumed and an autopsy performed. They said that the autopsy revealed acid burns on the body, missing the teeth from the lower jaw, and a fracture in the right hand, two bullet wounds, and that death had resulted from tissue anoxia and gunshot wounds.

9. As to the initial steps of the officials involved in the search and identification of the remains of Norberto Javier Restrepo, the petitioners said that the way in which the removal of the corpse was carried out, the listing of the cause of death as "suicide by gunshot," and the burial of the victim as a John Doe, were at odds with the due diligence that the State had an obligation to observe. They said that the interment of the remains without first conducting an autopsy also violated the standards then in force in the country. As regards to the progress of the criminal investigation, the petitioners said that, despite the time elapsed, the proceedings were still at the preliminary inquiry stage, with no suspect identified.

10. With respect to the **rights to life, humane treatment, and personal liberty**, the petitioners said that the family was able to determine unofficially that Mr. Restrepo was detained by police officers with the Criminal Investigation Section (SIJIN) and handed over to members of a paramilitary group who tortured and executed him. They also said that they were able to determine that at the time of Mr. Restrepo's disappearance and execution, other individuals associated with *Unión Patriótica* were simultaneously disappeared and executed. They said that the omissions and irregularities in the criminal proceeding were designed to throw the investigation off track and keep the events in impunity, which is another indication of the involvement of state agents in the events.

11. In relation to the **rights to a fair trial and judicial protection**, the petitioners said that the State has not adopted the investigative measures that it was required to in order to determine what happened and punish all the perpetrators. They reiterated the omissions in the handling of the crime scene, that the proceeding has been conducted without due diligence, and that it has dragged on for an unreasonably long time. They added that from the outset of the investigation the family encountered regulatory obstacles in accessing the record in the suit for civil damages, and that said restriction has only been lifted in 2002.

12. The petitioners rejected the requests from the State regarding the joinder of this case with Case 11.227, concerning alleged human rights violations against persons linked to *Unión Patriótica*. In particular, they said that had they wished that to happen, they would have requested the Inter-American

Commission and alleged the same violations of rights for which the Commission declared that case admissible. They noted that, according to the case law of the Inter-American Court, even though facts connected with the situation of Unión Patriótica at the time of the events were examined, that circumstance did not imply a prejudgment of the matter in Case 11.227.

13. Finally, they said that Mrs. Lucila Restrepo, Norberto Javier Restrepo's mother, had died on March 8, 2011, and that following her son's disappearance she had joined a civil society organization and worked tirelessly to obtain justice for her son's disappearance and execution, among other cases that have reportedly gone unpunished.

B. The State

14. The state of Colombia says that the participation of its agents, whether by act or omission, in the events that surrounded the death of Norberto Javier Restrepo is a mere hypothesis that the petitioners have not proved. Therefore, it requested that it be found not to bear international responsibility for violation of Articles 4, 5, and 7 of the American Convention, in connection with Article 1 thereof.

15. In particular, the State said that, while it repudiated Mr. Restrepo's death, there were inconsistencies in the petitioners' accounts regarding the circumstances in which he was said to have disappeared. Specifically, it said that it had verified that the Metropolitan Police of Valle de Abura had no record of any arrests or operations carried out in the Santa Barbara sector of the city of Medellín or that involved Norberto Javier Restrepo. In that sense, it said that Norberto Javier Restrepo had not been under the control of agents of the State, for which reason neither his disappearance nor his death were imputable to its agents by act or omission.

16. As regards the alleged involvement of the National Police's Criminal Investigation Section (SIJIN) in Mr. Restrepo's disappearance, the State said that the existence of motives for his alleged detention had not been proven and that there was no proof that agents had been involved in the events. It clarified, however, that the judicial investigation had been undertaken with no intention of excluding the hypothesis of state involvement in the victim's death or that the motive might have had to do with Mr. Restrepo's link to Unión Patriótica.

17. With respect to the alleged violation of the rights to a fair trial and judicial protection, the State questioned the petitioners' submissions concerning the lack of significant progress in the investigation. In that sense, it said that the petitioners' arguments overlook the principles concerning the conduct of judicial proceedings within a reasonable time, in accordance with the circumstances as to the complexity, the activity of the interested party in the proceedings, and the conduct of the judicial authorities, as established by the Inter-American Court. It noted that the mere passage of time without the imposition of criminal penalties did not equate to an unreasonable delay or to a breach of obligations under the Convention. It also pointed out that the omissions committed by state agents in the initial proceedings prompted disciplinary proceedings which found that those omissions were the result of negligence and inexperience on behalf of the officials involved, without any intention to obstruct the investigation.

18. The state questioned the failure of the interested parties to seek to move the case forward through the claim for civil damages, in which they had been entitled to participate since 2002. In addition, it said that the petitioners had not brought a contentious-administrative suit for direct reparations based on the petitioners' claims of alleged participation by state agents in Norberto Restrepo's killing.

19. Finally, the State requested in its communications that the case be joined with Case 11.227 concerning alleged human rights violations against persons reportedly associated with Unión Patriótica, which was being processed by the Inter-American Commission. It added, that if the petitioners opposed that request, the Commission would have to exclude any aspect relating to the context of the Unión Patriótica case from its analysis.

IV. ANALYSIS OF MERITS

A. Prior considerations

1. The State's request for the joinder of this case with Case 11.227

20. The Commission notes that, by virtue of the fact that the petitioners said that Norberto Javier Restrepo was a member of Unión Patriótica, the State requested that the case be joined with Case 11.227 concerning alleged human rights violations against persons reportedly associated with that party, which was being processed by the Inter-American Commission, and that if the petitioners opposed that joinder, the Commission would have to exclude from the case any analysis of the context of the case connected with that party.

21. The Commission notes that it is indeed processing Case 11.227,⁴ which contains serious allegations of political persecution and violence against individuals reportedly linked to UP. That case is currently at the merits stage. In the framework of that case, after the petition was formally lodged in 1993, the parties sent multiple communications to the Commission and held several hearings that did not include the specific situation of the alleged violation of Norberto Javier Restrepo's rights.

22. The Commission notes that although in this case the petitioners say that Mr. Restrepo had links to UP, they made it clear on several occasions that it was not the family's wish that the petition should be joined to Case 11.227; indeed, they said that, to the contrary, the family had expressed their opposition to it. The Commission also notes that the petitioners requested a decision on the merits of the matter on the grounds that sufficient information had been put forward by both parties.

23. The Rules of the Commission indicate that in certain circumstances, it has the power to join or disaggregate cases. However, this is an optional mechanism and not a requirement. Taking into account the family's will and, in particular, that the discussions as to fact, law, and points of procedure have been finalized in this case, the Commission does not consider it appropriate to join it to Case 11.227. As the Inter-American Court has stated, even though in this case, which is not part of case 11.227, "specific or contextual facts are mentioned ... that correspond also to the case of the UP, their existence, assessment or relevance will be decided solely on the basis of the evidence provided by the parties in this case."⁵ Therefore, the Commission does not believe that the State is disadvantaged in any way by its decision not to join this case.

2. Criteria for assessing evidence in light of the refusal to disclose the record of the investigation and disciplinary and judicial proceedings instituted over the death Norberto Javier Restrepo

24. The Commission considers it pertinent to recall that according to the case law of the inter-American system, the criteria for assessing evidence are less rigid than for domestic legal systems and it has maintained that it may "weigh the evidence freely."⁶ In that regard, the Inter-American Court has found that "it must apply an assessment of the evidence that takes into account the gravity of attributing international responsibility to a State and that, despite this, is able to create confidence in the truth of the facts that have been alleged."⁷ The Court has held that it is "legitimate to use circumstantial evidence, indications and presumptions to found a judgment, provided that conclusions consistent with the facts can be inferred from them."⁸ In particular, indicia and presumptive evidence are of special importance in a case of alleged forced

⁴ IACHR, Case 11.227, Report 5/97, Admissibility, José Bernardo Díaz (Colombia), March 12, 1997.

⁵ I/A Court H.R., *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of May 26, 2010. Series C No. 213, par. 36.

⁶ I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Judgment of July 29, 1988. Series C No. 4, pars. 127 and 128.

⁷ I/A Court H.R., *Case of Gonzalez Medina and Family v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 27, 2012, Series C No. 240, par. 132.

⁸ I/A Court H.R., *Case of Gonzalez Medina and Family v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 27, 2012, Series C No. 240, par. 134, citing Case of the "Las Dos Erres" Massacre v. Guatemala. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 24, 2009, Series C No. 21, par. 197.

disappearance because “this type of violation is characterized by the attempt to eliminate any element that would allow the detention, whereabouts, and fate of the victims to be determined.”⁹

25. In this case, the Commission is cognizant of the fact that a criminal investigation was undertaken into the disappearance and death of Norberto Javier Restrepo which, according to the latest information made available, is at the preliminary stage. In addition, irregularities in the corpse removal procedure were the subject of a disciplinary proceeding.

26. On April 27, 2011, the Commission requested the State to provide copies of the main parts of the records of the judicial, disciplinary, and administrative proceedings connected with the case and gave it one month to do so. On May 27, 2011, the State reported that the above request had been referred to the appropriate domestic authorities. The IACHR repeated the request on April 11, 2012. In a communication dated July 13, 2012, the State said that the Office of the Prosecutor General (*Fiscalía General de la Nación*) had said that “it was not possible to forward a copy of the record of the criminal proceeding as the procedural sections contained in it are subject to investigative confidentiality. The foregoing is in accordance with Article 330 of the Code of Criminal Procedure.”¹⁰

27. The organs of the system have in the past stated their views on the refusal of states to furnish the records of domestic proceedings. Thus, in the case of *Radilla Pacheco et al. v. Mexico* the Court responded to similar arguments as follows:

As it has done on previous occasions,¹¹ the Court considers it appropriate to point out that the reservation of information from people outside the process in the preparation stage of criminal investigations is established in different domestic legislations. ... The restriction mentioned could result justifiable in the domestic proceedings, since the diffusion of certain contents during a preliminary stage of the investigations could obstruct them or cause damages to the people. However, for the effects of the international jurisdiction of this Tribunal, it is the State who has control of the means for the clarification of the facts occurred within its territory and, therefore, its defense cannot fall upon the impossibility of the defendant to present evidence that, in many cases, cannot be obtained without the cooperation of state authorities.¹²

28. In the same case, the Inter-American Court noted that the European Human Rights Court also rejected a state’s arguments for not sending information pertaining to a criminal case file that said Court had requested.¹³ The European Court considered it “insufficient to argue, *inter alia*, that the criminal investigation was pending and that the case file included documents classified as secret.”¹⁴

29. In this case, the Colombian State has simply refused to forward the record of the proceeding, saying that it is subject to confidentiality under the domestic rules of criminal procedure. Like the Court, the Commission finds that this decision on the part of the State cannot be detrimental to the victims.¹⁵ Therefore,

⁹ I/A Court H.R., *Case of Gonzalez Medina and Family v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 27, 2012, Series C No. 240, par. 134.

¹⁰ State’s communication of July 13, 2012, received on July 16, 2012, par. 55.

¹¹ *Cf. Case of Ríos et al. v. Mexico*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of January 28, 2009. Series C No. 194, par. 98 and *Case of González et al. v. Mexico. Request to Include Other Alleged Victims and Refusal to Forward Written Evidence*. Order of the Inter-American Court of Human Rights of January 19, 2009, considering clause number fifty-nine.

¹² 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, par. 89.

¹³ 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, par. 90.

¹⁴ 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, par. 90. citing *Cf. Eur. Ct. H.R., Case of Imakayeva v. Russia, Application No. 7615/02*, Judgment of 9 November 2006, paras. 122 and 123.

¹⁵ 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, par. 92.

in this case, in keeping with the Court's practice, "will consider as established the facts presented ... when they can only be invalidated through the evidence should have forwarded by refused to do so." [sic]¹⁶

30. The Commission notes that as this matter concerns events whose most striking features are concealment and the difficulty of the family in obtaining official information as to what happened, the results of domestic investigations carried out by a state at the domestic level are critical in enabling the Commission to carry out its task of making findings of fact and law in the context of an individual case.

31. With respect to the record of the disciplinary proceeding, the state said that it was not available because "it was disposed of ... after it was verified that the procedure and the withholding periods set down in the Document Withholding Table had been complied with"¹⁷. As will be seen, the Commission noted that the State referred in some of its communications to findings made in that jurisdiction to support its absence of responsibility; however, it did not furnish on that occasion—when it presumably had in his possession the record of the proceedings in order to make such assessments—a copy of certifications or parts of the record to support its assertions.

32. Based on the foregoing, the Commission will proceed in this report to weigh the evidence and determine the facts about what happened to Norberto Javier Restrepo based on the rules governing the burden of proof and the available information provided by the parties, particularly bearing in mind the nature of the alleged violation. Furthermore, in accordance with Article 43(1) of its Rules of Procedure,¹⁸ the Commission may also take into account information in the public domain, including decisions of committees in the universal human rights system, its own reports on petitions and cases and on the overall human rights situation in Colombia, publications by nongovernmental organizations, as well as laws, decrees, and other regulations in force at the time of the facts alleged by the parties.

B. Established Facts

1. Norberto Javier Restrepo and his links to the Unión Patriótica (UP) party

33. Norberto Javier Restrepo was the son of Lucila Restrepo Posadas y José Marco Restrepo, and at the time of the events lived in Medellín, Antioquia.

34. The petitioners said that Norberto Javier Restrepo was one more victim of the genocide against Unión Patriótica and that he was a member of that party. In turn, the State has maintained during the processing of the case that it had not been demonstrated that Norberto Javier Restrepo belonged to UP.

35. The Commission notes that the petitioners' narrative during the processing of the case has consistently indicated that Mr. Restrepo promoted Unión Patriótica. In particular, they said that the "investigator gathered information at the company Cementos El Cairo regarding the workers' knowledge of Norberto Javier, who, they said, 'gave talks on Unión Patriótica at the company's trade union.'"¹⁹ In addition, the record contains a brief sent by his mother, Mrs. Restrepo, which says that he was detained along with other people and that "all of them were members of Unión Patriótica."²⁰ In the information provided by the State, the Commission has also noted that Mrs. Lucila Restrepo reported to the domestic authorities that her son belonged to Unión Patriótica.²¹

¹⁶I/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, par. 92.

¹⁷ State's communication of July 13, 2012, received on July 16, 2012, par. 56. This fact was not contested by the State.

¹⁸ Article 43(1) of the Commission's Rules of Procedure provides as follows: The Commission shall deliberate on the merits of the case, to which end it shall prepare a report in which it will examine the arguments, the evidence presented by the parties, and the information obtained during hearings and on-site observations. In addition, the Commission may take into account other information that is a matter of public knowledge.

¹⁹ Petitioners' brief of March 1, 1999, received that same day. See, also, Original petition of February 19, 1997, received on February 26, 1997, which says that "Norberto Javier Restrepo is one more victim in the Unión Patriótica genocide case."

²⁰ Communication from Mrs. Lucila Restrepo of September 25, 1997, received on November 3, 1997.

²¹ State's communication of July 1, 2010, received the same day.

36. In its *Second Report on the Situation of Human Rights in Colombia*, based on its on-site visit in 1992, the Commission recorded information received about the murders of several people, specifically including Norberto Javier Restrepo. In that regard, according to information provided by *Centro de Investigación y Educación Popular*:

NORBERTO JAVIER RESTREPO, Abejorral (Antioquia). He was working as a contractor with architects; his body was found in the hamlet of El Cairo. It had been burned with sulfuric acid from the waist up (all that was left of the head was bone). One arm had been broken in three places. Near the body was a pyre that apparently was to be used to burn the body. The mother of the victim said that he had been a member of the Unión Patriótica.²²

37. In addition, the Commission notes that according to information provided by the State, a prosecutor's report mentions that a "female colleague (name not given) stated that Norberto was a left-wing activist at the Cementos El Cairo trade union,"²³ which are precisely activities that coincide with the talks that Mr. Restrepo is said to have given there. The Commission notes, in turn, that the possibility that Mr. Restrepo's death might have occurred as a result of the fact that "he might have been a supporter" of Unión Patriótica was one of the hypotheses in the context of the domestic investigation.²⁴ Furthermore, according to the record of the procedures on which the State provided general information, the investigation has not produced any results to disprove that fact. On the contrary, it is mentioned in the list of procedures carried out that were "entrusted to the CTI (Technical Investigation Corps) in order to locate and obtain information" on various persons who belonged to the "UP leadership in the 1990s."²⁵

38. In that regard, even though the State has said that the evidence presented by the petition was insufficient to establish his link to UP, it has not categorically denied that fact or presented proof to show that the investigation has proven otherwise. Furthermore, as mentioned, by not providing the record of the criminal investigation or disciplinary proceeding, it has also prevented the Commission from evaluating the statements and procedures carried out at the domestic level with respect to this hypothesis.

39. Bearing in mind the foregoing, the Commission finds that even though the petitioners have not demonstrated that Norberto Restrepo was formally registered as a member of UP, the available information with respect to the mother's reports to the state authorities, the consistent narrative of the petitioners, and the information gathered for the Commission's 1993 country report following the visit conducted in 1992, coupled with the lack of specific information from the State as to how the link to the political party was disproved, lead to the assumption that Mr. Restrepo was recognized as a person who promoted UP, at the minimum as a supporter.

40. In light of the foregoing, the Commission considers it appropriate in the following section to refer to the situation of UP at the time of the events, in order to determine if Mr. Restrepo's activities in connection with the political party are relevant to its decision in this case.

2. Unión Patriótica and the situation of risk for persons associated with it

41. Unión Patriótica was formed as a political party on May 28, 1985, as a result of peace negotiations between the FARC and the State of Colombia presided over by President Belisario Betancur.²⁶ According to the *Commission in its Third Report on the Situation of Human Rights in Colombia*, that party was not conceived as a political party in the strictest sense of the term, but more as a political alternative to the

²²IACHR, *Second Report on the Situation of Human Rights in Colombia*, Chapter VI The Right to Personal Security and Humane Treatment, OEA/Ser.L/V/II.84, October 14, 1993.

²³State's communication of July 1, 2010, received that same day.faege

²⁴Concretely, the State said that the hypothesis being followed in the investigation by the Office of the Prosecutor General is "(a) that Norberto Javier may have been a supporter of Unión Patriótica, which fact may have led to his disappearance and subsequent death. The Office of the Prosecutor does not yet have any theories as to the culprits." State's communication of July 1, 2010, received that same day.

²⁵State's communication of July 1, 2010, received that same day.

²⁶IACHR, *Third Report on the Situation of Human Rights in Colombia*, Chapter IX, "Freedom of Association and Political Rights," OEA/Ser.L/V/II.102, February 26, 1999, par. 50.

traditional power structure that would serve as a vehicle for the various manifestations of civil and popular protest. However, Unión Patriótica was also envisioned as the political vehicle of the FARC for possible reassimilation into civilian life.²⁷

42. With respect to the situation of people linked to UP, the Ombudsman's Office noted that "there is a direct relationship between the emergence, activity of and electoral support for the Patriotic Union and the murder of its activists and leaders in regions where this party's presence was interpreted as a danger to the preservation of the privileges of certain groups."²⁸

43. The Commission referred to the wholesale assassination of members of Unión Patriótica in its *Second Report on the Situation of Human Rights in Colombia* and in the report on the country included in its 1996 annual report. According to that information, more than 1,500 members of the Patriotic Union political party had allegedly been killed since the party's formation in 1985. In the same report, the Commission noted that the party's leadership estimated that in 1996 "a member of the party was killed every two days."²⁹ For their part, in 1995, the United Nations special rapporteurs on torture and on extrajudicial executions said that since 1985 UP was thought to have lost more than 2000 members, all of whom were assassinated for political reasons.³⁰

44. As regards the targets of the assassinations, the Commission notes that, according to expert testimony cited by the Inter-American Court in its judgment in the case concerning the killing of the UP Senator Manuel Cepeda Vargas,

[t]he acts of violence carried out selectively against the UP representatives were accompanied by crimes perpetrated against members of the communities or social sectors that belonged to or supported its political project in the different regions of the country. Abuses were committed in order to repress and teach a lesson. Using this mechanism, a generalized feeling of fear and terror was instilled that was able to progressively reduce the popular and electoral support for the UP, first in the areas where it received its main support and, subsequently, at the national level.³¹

45. The Inter-American Court said that the perpetrators of those acts of violence "belonged to different groups, including the most important, the paramilitary groups, but State agents also allegedly took part in them directly and indirectly."³² The Court also mentioned that the data provided by the State indicated that "State agents (principally members of the Army and the Police) occupied second place among those responsible for the violence against the UP," while the Ombudsman observed that, "when they could not confront the guerrilla directly, paramilitary or self-defense groups had converted the UP 'into the visible part and the military objective of their strategy.'"³³

46. The Inter-American Court noted that "the violence against the UP has been characterized as systematic."³⁴ For its part, the Constitutional Court of Colombia indicated with respect to the determination of

²⁷ IACHR, *Third Report on the Situation of Human Rights in Colombia*, Chapter IX, "Freedom of Association and Political Rights," OEA/Ser.L/V/II.102, February 26, 1999, par. 50.

²⁸ Cf. Report of the Ombudsman for the Government, Congress, and Attorney General, titled *Estudio de casos de homicidio de miembros de la Unión Patriótica y Esperanza, Paz y Libertad*, October 2002, cited in I/A Court H.R., *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of May 26, 2010. Series C No. 213, par. 76.

²⁹ IACHR, *Third Report on the Situation of Human Rights in Colombia*, Chapter IX, "Freedom of Association and Political Rights," OEA/Ser.L/V/II.102, February 26, 1999, par. 52.

³⁰ United Nations, Report by the United Nations High Commissioner for Human Rights, E/CN.4/1998/16, 9 March 1998.

³¹ Opinion provided by expert witness Eduardo Cifuentes Muñoz, cited in I/A Court H.R. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of May 26, 2010. Series C No. 213, footnote 84.

³² I/A Court H.R., *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of May 26, 2010. Series C No. 213, par. 78.

³³ Cf. Report of the Ombudsman for the Government, Congress, and Attorney General, titled *Estudio de casos de homicidio de miembros de la Unión Patriótica y Esperanza, Paz y Libertad*, October 2002, cited in I/A Court H.R., *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of May 26, 2010. Series C No. 213, par. 78.

³⁴ I/A Court H.R., *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of May 26, 2010. Series C No. 213, par. 81.

the situation of risk faced by someone because of their link to UP since 1992, the year in which the events in this case occurred, that "being formally or reportedly linked to Unión Patriótica in the context of the political and ideological persecution unleashed against its members or supporters, is a key determinant in the case for saying that they felt their lives to be in danger."³⁵

47. By resolution 5659 of September 30, 2002, ratified on November 30, 2002, the National Elections Council concluded that the political party UP did not meet the legal requirements to keep its legal status, essentially for failing to obtain the minimum number of votes necessary or maintaining its representation in Congress.³⁶ Based on those decisions, UP was left without the possibility of fielding candidates for the elections. However, on July 4, 2013, the Council of State said that "it was not through loss of popular support because the electorate disagreed with its ideas or leadership, but the complete impossibility for it to compete in the elections for the Congress of the Republic of March 10, 2002, on an equal footing with the other political parties in terms of enjoying guarantees for the protection of the lives and well-being of its leadership, members, and supporters".

48. In light of the above information, the Commission notes that a succession of serious acts of violence that caused deaths and physical injuries at the time of the events in this case, aimed at progressively eroding the support of the public and the voters for UP within an environment of political tension and particular danger for persons associated with that party, including its leaders, representatives, members, or sympathizers who openly supported it, created a climate of risk and fear that steadily reduced its electoral support.

49. The Commission finds that the above-described context confirms that a situation of particular risk existed for anyone linked to UP, and it believes that that context is relevant to its analysis in this case given that, as mentioned, there is sufficient evidence to conclude that Mr. Restrepo was at the very least a UP sympathizer and promoted it in a year for which high levels of violence were recorded against people in a similar situations.

3. Norberto Javier Restrepo's disappearance

50. Norberto Javier Restrepo left his home in the city of Medellín, Antioquia Department, on the morning of June 2, 1992.³⁷

51. Mrs. Lucila Restrepo Posada, said that after her son had left the house she received the following telephone calls:

- On June 3, 1992, from her son, Norberto Javier Restrepo, who asked after the family and then said goodbye.³⁸
- On June 5, 1992, from an unknown male caller, who said that Norberto Javier Restrepo "had been disappeared and that they should look for him."³⁹
- On June 7, 1992, at approximately 8:00 a.m. from Norberto Javier Restrepo, who said that "he had been detained on the road to Las Palmas."⁴⁰

³⁵Constitutional Court of Colombia, Judgment T-439/92, M.P.: Eduardo Cifuentes Muñoz, July 2, 1992. Available at: <http://www.corteconstitucional.gov.co/relatoria/1992/t-439-92.htm>

³⁶ Council of State, Contentious Administrative Division, Case No. 11001-03-28-000-2010-00027-00, Judgment of July 4, 2013.

³⁷ Investigation status report by the Office of the Advisor on Human Rights – Office of the President of the Republic, March 24, 1994, enclosed with the petitioners' communication of March 1, 1999, received on March 23, 1999. State's communication of July 1, 2010, received that same day, par. 28. The Commission notes that this fact was not contested by the State, which indicated in its report of July 1, 2010, that it was established as proven. State's communication of July 1, 2010, received that same day.

³⁸ Original petition of February 19, 1997, received on February 26, 1997. In a similar sense, see petitioners communication of March 1, 1999, received that same day.

³⁹ Original petition of February 19, 1997, received on February 26, 1997. In a similar sense, see petitioners communication of March 1, 1999, received that same day.

⁴⁰ Original petition of February 19, 1997, received on February 26, 1997.

52. The Commission notes that the State has not disputed that Mrs. Lucila Restrepo received the above calls. Rather, the State recognized that in the domestic investigation Mrs. Lucila Restrepo told the prosecutor's office that on June 7 she had received an anonymous call in which she was told that he had been detained in the Las Palmas area east of Medellín, and then another call to say that the arrest had been made by the police.⁴¹

4. The police operation in the area where Norberto Javier Restrepo and other persons linked to UP were allegedly detained

53. The Commission notes that the petitioners said that they received information about a police operation in which Mr. Restrepo and other persons linked to UP were detained. With respect to such an operation, the State said that, according to information provided later by the Attorney's Office in the context of the disciplinary proceeding, "that institution [the police] stated that it checked with the Metropolitan Police of Valle de Aburrá [and] it was determined that no record was found of an apprehension or operations conducted by members of the institution involving Mr. Norberto Javier Restrepo."⁴² It added that "the entity said that no operations were carried out by the National Police in the Santa Barbara area of the city of Medellín, where Mr. Restrepo's alleged disappearance is said to have occurred."⁴³

54. Mr. Restrepo's mother mentioned information intended to show that there was an operation in the area in which a number of people linked to Unión Patriótica were reportedly detained. In particular, she said that she received a telephone call from her son, saying that he had been detained on the Las Palmas Road (see par. 50 above), where, on June 8, 1992, the Office of the Attorney allegedly confirmed to her while inquiring about her son that, after making a telephone call to the Fourth Army Brigade, an operation had reportedly been carried out by the National Police on the Las Palmas road.⁴⁴ However, she said that later, "following inquiries in that security agency, they had denied it."⁴⁵ According to information provided by the petitioners that was not contested by the State through the provision of the record, the Ms. Lucila Restrepo could identify though the investigator designated by the Human Rights Unit of the Prosecutor General's Office investigator designated by the Human Rights Unit of the Prosecutor General's Office that the last three other people that were detained with Norberto Javier Restrepo, were Luis Alfonso López, Sady Ferney Pérez Uribe, and María Luisa Parra Nosa.⁴⁶

55. With respect to the aforementioned individuals, the Commission finds that while preparing its *Second Report on the Situation of Human Rights in Colombia*, it received information about their deaths from *Centro de Investigación y Educación Popular*. Specifically, the Commission received information that their remains were been found on June 3, 1992, in other words, a day after Norberto Javier Restrepo was seen for the last time:

LUIS ALFONSO LOPEZ RESTREPO, Caldas (Antioquia). A merchant found murdered, together with two other people, on the road to the municipality of Fredonia in the vicinity of the village of Piedra Verde. He lived in Bello. The bodies of the victims had multiple 9 mm bullet wounds and were partially burned with sulfuric acid. The victims had been detained at various sites in Medellín. **SADY FERNEY PEREZ URIBE, Caldas (Antioquia).** A history student at the Universidad Nacional, Medellín campus, found murdered in the hamlet of Sinifariá. Her body had multiple bullet wounds, showed signs of torture and was partially burned. She lived in the Obrero neighborhood of Medellín and some days earlier had been taken by force from the university, by persons unknown. **MARIA LUISA PARRA NOSA, Caldas (Antioquia).** She was found murdered, together with her husband and a merchant, in the village of Piedra Verde. Her body showed signs

⁴¹ State's communication of July 1, 2010, received that same day.

⁴² State's communication of July 13, 2012, received on July 16, 2012.

⁴³ State's communication of July 13, 2012, received on July 16, 2012.

⁴⁴ Petitioners' communication of March 1, 1999, received that same day. Petitioners' communication of November 12, 2001, received on January 22, 2002.

⁴⁵ State's communication of July 1, 2010, received that same day.

⁴⁶ Petitioners' brief of March 1, 1999, received on March 1, 1999.

of torture and was burned with sulfuric acid. The victims had been detained at various sites in Medellín.⁴⁷

56. The Commission does not have an official record of where and when those individuals are said to have disappeared and their bodies found. However, in addition to the findings mentioned in its country report, the Commission notes with respect to María Luisa Parra Nosa, that the petitioners said that one account had it that she was detained together with Mr. Restrepo as she was leaving the facilities of the University of Antioquia and that her charred remains were found in the Municipality of Caldas, which is between Medellín and the Municipality of Santa Barbara, where Norberto Javier Restrepo's body was found.⁴⁸ In addition, the Commission finds that, according to information obtained unofficially by the relatives, those persons, who were reportedly linked to UP, were detained by members of the SIJIN patrol and that Norberto was subsequently handed over to paramilitaries in the Southwest, where he was eventually tortured and murdered.⁴⁹ Mr. Restrepo's mother clarified in a communication to the Commission, that the person who gave her that information "was unable to make a statement because of security problems."⁵⁰

57. The Commission notes that the State said that the operation was not confirmed based on the findings in the disciplinary proceeding. However, the Commission observes that upon advising of the situation, the State did not, in order to support its assertions, furnish a copy of the record of the disciplinary proceeding that it had in its possession at the time, or a certification from the Departmental Attorney's office that denied the information regarding said operation. Providing evidence on this point was particularly important, given the existence of other killings discovered in similar circumstances to Mr. Restrepo's body in the same area and at the same time as the events in this case, and bearing in mind the assertion made by Mr. Restrepo's mother that the Departmental Attorney's office had confirmed that an operation had taken place.

58. With regard to the investigations in the judicial proceeding, the Commission finds that despite the fact that in the procedures reported by the State steps were taken to request various statements and police reports, information on paramilitary groups that were operating in that area, and verification of arrest warrants for members of the "Casa Castaño" self-defense group, owing to the fact that the State did not provide the record of the proceeding, the Commission has been unable to assess the results of those investigations or determine if they disproved the participation of SIJIN personnel or paramilitaries in the operation reportedly verified at the time of the events.

59. In addition, despite the fact that the petitioners explained that the person who provided them with the testimony on Mr. Restrepo delivery to the paramilitaries "was unable to make a statement because of security problems," the State has not reported or shown that it investigated or followed up on this important piece of information in the domestic proceedings or the results that it obtained in that regard.

60. Based on the foregoing, the Commission considers that given the nature of forced disappearance, whose purpose is to conceal any trace of the arrest and the victim themselves in order to preclude any responsibility from attaching to the perpetrators, the State's mere affirmation denying the

⁴⁷IACHR, *Second Report on the Situation of Human Rights in Colombia, Chapter VI The Right to Personal Security and Humane Treatment*, OEA/Ser.L/V/II.84, October 14, 1993.

⁴⁸ The petitioners mentioned that the relatives were able to establish that Mr. Restrepo was disappeared together with at least five other people, who were Unión Patriótica colleagues. In particular, they provided information that Norberto Javier Restrepo and a woman called María Luisa Parra Nova were disappeared by members of SIJIN, a security agency of the National Police, as they were leaving the University of Antioquia in the Municipality of Medellín. They said that María Luisa's body was found incinerated "15 days later" in the municipality of Caldas and that her family had recognized her from an earring and a shoe. Original petition of February 19, 1997, received on February 26, 1997. In that connection, see, also, petitioners' communication of September 25, 1997, received on November 3, 1997.

⁴⁹ Communication from Mrs. Lucila Restrepo Posadas of September 25, 1997, received on November 3, 1997. The record shows that Mrs. Lucila Restrepo Posadas said in the disciplinary proceeding that she "suspected that the SIJIN had detained him near Las Palmas, and then near the University of Antioquia, concluding that, according to statements by farmers in El Cairo hamlet, he had been murdered on Sunday at around 5:00 p.m., although the latter had not wanted to get involved in the events, given that they had refused to make a statement, much less say to which region the policemen who caused the death." State's communication of July 1, 2010, received that same day. Furthermore, according to the State's account of the reports of the prosecutor's office, Mrs. Lucila Restrepo said that "her son had been handed over to the SIJIN and that he had been allegedly turned over to paramilitary groups in the Southwest." State's communication of July 1, 2010, received that same day.

⁵⁰ Communication from Mrs. Lucila Restrepo Posadas of September 25, 1997, received on November 3, 1997.

existence of a record of arrest or of an operation that culminated in Mr. Restrepo's capture by the Metropolitan Police of Aburrá and his subsequent handover to paramilitary groups is not sufficient to refute the account given to Mr. Restrepo's mother that he was detained in a SIJIN operation and turned over to paramilitaries. It is worth reiterating on this point that while Mr. Restrepo's mother says that the Departmental Attorney's Office told her that an operation did take place, the State simply denied that information without providing the relevant documents that, unlike Mrs. Restrepo, it had at its disposal and under its control.

61. Taking into account the particular climate of danger in which a series of acts of violence perpetrated by agents of the state and paramilitaries against persons who, like Mr. Restrepo, supported UP, the Commission considers it appropriate to consider Mr. Restrepo's mother's statements to the effect that a police operation was carried out and what the petitioners said with respect to the identification of the people who were reportedly detained at the time of the events as valid evidence about Mr. Restrepo's alleged detention and subsequent murder with involvement by state agents.

5. Steps taken by Lucila Restrepo Posadas after the disappearance of Norberto Javier Restrepo

62. According to the petitioners, Mrs. Lucila Restrepo took the following steps between June 6 and 10, 1992:

- On June 6, Mrs. Restrepo began making telephone calls to a clinic and hospitals, police stations, and the F-2 (intelligence agency of the National Police); she also visited the city's amphitheater and notified a radio station, all without success.⁵¹
- On June 7, 1992, she went to the Office of the Departmental Attorney in Medellin, where "she presented an oral report of her son's disappearance." From there, telephone calls were made to the Fourth Army Brigade, the Administrative Security Department, Bellavista Jail. She stated that she also visited the dissection hall of the Metropolitan area without success.⁵²
- On June 8, 1992, she again went to the Office of the Departmental Attorney, who called the Fourth Army Brigade and received information that the operation in Las Palmas had been carried out by the National Police.⁵³
- On June 9, 1992, Mrs. Restrepo wrote to the Office of the Departmental Attorney to "report her son's disappearance." They said that an official at that office called the Fourth Army Brigade and was told that no one had been detained in the operation in Las Palmas.⁵⁴
- On June 10, 2000, Mrs. Restrepo presented a formal complaint to the Tenth Court of Criminal Investigation of Medellín.⁵⁵

63. With regard to these efforts, the State recognized in its brief of June 10, 1992, that Mrs. Restrepo presented a formal complaint to the Eighth Court of Criminal Investigation of Medellin concerning the disappearance of her son Norberto Javier Restrepo.⁵⁶ In its brief of July 22, 1997, the State informed that on

⁵¹ Original petition of February 19, 1997, received on February 26, 1997. see also, Petitioners' communication of March 1, 1999, received that same day.

⁵² Original petition of February 19, 1997, received on February 26, 1997.

⁵³ Petitioners' communication of March 1, 1999, received that same day. Petitioners' communication of November 12, 2001, received on January 22, 2002.

⁵⁴ Original petition of February 19, 1997, received on February 26, 1997.

⁵⁵ Original petition of February 19, 1997, received on February 26, 1997.

⁵⁶ State's communication of July 1, 2010, received that same day, par. 28. it should be noted that the report of the Office of the Adviser on Human Rights states that the initial complaint was lodged with the Tenth Court of Criminal Investigation, not the Eighth Court. See Investigation status report by the Office of the Advisor on Human Rights – Office of the President of the Republic, March 24, 1994, enclosed with the petitioners' communication of March 1, 1999, received on March 23, 1999.

that date, June 10, 1992, the criminal investigation courts opened an investigation "into the abduction of Mr. Norberto Restrepo."⁵⁷

64. The Commission notes that the State argued in general terms that the petitioners did not provide documents in support of their allegations. However, for purposes of this section, the Commission observes that, given the nature of what Mrs. Lucila Restrepo describes, it is not reasonable to require her to have documentation of the oral complaint presented or of the content of what the staff at the Departmental Attorney's Office might have told verbally after making some calls.⁵⁸ In that regard, since it does not have access to the records of the proceedings by which to confirm the initial steps taken by the State after learning of Mr. Restrepo's disappearance, in the light of its nature, the Commission attaches credibility to the consistent account of Mrs. Lucila Restrepo regarding the steps that she took between her son's disappearance and the time his lifeless body appeared.

6. The appearance of Norberto Javier Restrepo's body and related investigative procedures

65. On June 9, 1992, a dead body was found at the side of "El Cairo" road (near kilometer marker 3) on the way to Las Palmas.⁵⁹ Santa Barbara Municipal Police Station, under the command of Inspector Hernán Jaime Arango Mesa, reported that:

it was informed in a communication from Police Command that the cadaver of a man who had apparently died violently from a gunshot was lying beside the road to El Cairo cement factory; he had been dead for several days.⁶⁰

66. That same day, the municipal inspector went to where the discovery of the corpse had been reported and proceeded with the removal procedure. He noted for the record that he was unable to identify the victim because he had no identity documents and it was not possible to take fingerprints because of the decomposed state of the corpse. He also said that the body had no teeth in the lower jaw and that "the wounds on that person's body were consistent with two (2) exit wounds, in the chest and in the neck." He also recorded that "Baigon" (sic) had been poured over him.⁶¹

67. On June 11, 1992, the Municipal Inspector recorded on the National Corpse Removal Reporting Form that the body was lying "face down with the hands above the head" and that the cause of death was "presumed suicide."⁶² Although the form called for an autopsy by medical examiners at Santa María Hospital prior to the corpse's burial, none was performed and the cadaver was simply interred as a John Doe.⁶³

68. On June 10, 1992, the Restrepo family was informed by the Center for the Disappeared that a body with Norberto Restrepo's characteristics had been found in the Municipality of Santa Barbara.⁶⁴ In

⁵⁷ State's brief of July 22, 1997, received on August 7, 1997.

⁵⁸ Decree 2700 of 1991 (Code of Criminal Procedure) was in force at the time of the events. Article 27 of that code provided the possibility to lodge oral complaints and said that a record should be made of the date and time of their presentation. In addition, Article 25 of the Code provided that "any public servant who by any means becomes aware of the commission of a publicly actionable offense, shall initiate an investigation without delay, should they have the authority to do so; if not, they shall immediately bring the offense to the attention of the proper authority. See ftp://ftp.camara.gov.co/camara/basedoc/codigo/codigo_procedimiento_penal_1991.html.

⁵⁹ National corpse removal reporting form, Institute of Forensic Medicine, dated June 11, 1992, enclosed with the petitioners' communication of March 1, 1999, received on March 23, 1999. State's communication of July 1, 2010, received that same day, par. 28.

⁶⁰ Municipal Police Station, Santa Barbara, June 9, 1992 (Enclosed with the petitioners' communication of March 1, 1999, received on March 23, 1999).

⁶¹ Removal of the corpse. Municipal Police Station, Santa Barbara, June 9, 1992 (Enclosed with the petitioners' communication of March 1, 1999, received on March 23, 1999).

⁶² Removal of the corpse. Municipal Police Station, Santa Barbara, June 9, 1992 (Enclosed with the petitioners' communication of March 1, 1999, received on March 23, 1999).

⁶³ Removal of the corpse. Municipal Police Station, Santa Barbara, June 9, 1992 (Enclosed with the petitioners' communication of March 1, 1999, received on March 23, 1999).

⁶⁴ State's communication of July 1, 2010, received that same day, par. 28.

Investigation status report by the Office of the Advisor on Human Rights – Office of the President of the Republic, March 24, 1994, enclosed with the petitioners' communication of March 1, 1999, received on March 23, 1999.

connection with that fact, Mrs. Lucila Restrepo said that she contacted Dr. Olga Lucía Arango, a physician at Santa Barbara Hospital, who said that "the body found had been burned, apparently with acid, because the face lacked features and was just a skull; that the right hand was fractured in several places; that there were no teeth in the lower jaw; that there were three bullet wounds; and that, based on the body's state of decomposition, he had apparently been murdered on June 7."⁶⁵

69. On June 11, 1992, José Marco Restrepo, the victim's father, went to Santa Barbara following the exhumation of the body found near the municipality that had initially been buried as a John Doe, and recognized his son.⁶⁶ The petitioners said that Dr. Lucía Arango explained to José Marco Restrepo that the body had not been discovered sooner because "the feet had been covered with branches; that there was a kind of pyre next to the body apparently in order to burn it; that the shirt was in tatters; and that baygon had been poured over the corpse to slow its decomposition."⁶⁷

70. An autopsy was performed on the corpse at Santa Maria Hospital before it was reburied. The medical examiner who signed the report concluded that death had been caused by "tissue anoxia" (asphyxiation) and "gunshot wounds" on the head and chest,⁶⁸ and that there were burn marks.⁶⁹

7. The investigation and proceedings instituted over the death of Norberto Javier Restrepo

71. According to information provided by the parties on June 10, 1992, Lucila Restrepo presented a formal complaint to the Eighth Court of Criminal Investigation of Medellín concerning the disappearance of her son Norberto Javier Restrepo.⁷⁰ With regard to that fact, the State noted in its brief of July 22, 1997, that, indeed, on June 10, 1992, the criminal investigation courts opened an investigation "into the abduction of Mr. Norberto Restrepo," and that it was later established that he turned up dead in the Municipality of Santa Barbara.⁷¹ The complaint was reportedly elaborated upon before the Twentieth Criminal Investigation Court.⁷² Further, the State reported that on June 12, 1992, a preliminary investigation was opened and that on September 24, 1992, the Office of the Second Prosecutor of the Prior Investigation Unit of Medellín intervened.⁷³

72. On June 20, 1994, the prosecutor assigned to the Office of the Departmental Prosecutor for the municipality of Santa Bárbara, handed down an interlocutory ruling, in accordance with Article 118 of Law 23 of 1991, closing the investigation as two years had elapsed without the culprits being identified.⁷⁴ Subsequently, the departmental prosecutor of the Fifth Unit on Economic Property referred the investigation begun in Medellín into the homicide of Norberto Restrepo to the Second Unit on Crimes against Life, and on March 26, 1997, the Tenth Prosecutor of that Unit took up the matter.⁷⁵

73. On April 3, 1998, the investigation was moved to the Human Rights and International Humanitarian Law Unit of the Office of the Prosecutor General. A number of investigative procedures, including

⁶⁵ Original petition of February 19, 1997, received on February 26, 1997.

⁶⁶ Investigation status report by the Office of the Advisor on Human Rights – Office of the President of the Republic, March 24, 1994, enclosed with the petitioners' communication of March 1, 1999, received on March 23, 1999.

⁶⁷ Original petition of February 19, 1997, received on February 26, 1997.

⁶⁸ Autopsy on the cadaver of Norbert Javier Restrepo dated June 11, 1992, enclosed with the petitioners' communication of March 1, 1999, received on March 23, 1999.

⁶⁹ State's communication of July 1, 2010, received that same day.

⁷⁰ State's communication of July 1, 2010, received that same day, par. 28. It should be noted that the report of the Office of the Adviser on Human Rights states that the initial complaint was lodged with the Tenth Court of Criminal Investigation, not the Eighth Court. See Investigation status report by the Office of the Advisor on Human Rights – Office of the President of the Republic, March 24, 1994, enclosed with the petitioners' communication of March 1, 1999, received on March 23, 1999.

⁷¹ State's brief of July 22, 1997, received on August 7, 1997.

⁷² Investigation status report by the Office of the Advisor on Human Rights – Office of the President of the Republic, March 24, 1994, enclosed with the petitioners' communication of March 1, 1999, received on March 23, 1999.

⁷³ State's communication of July 1, 2010, received that same day, par. 57. State's communication of July 13, 2012, received on July 16, 2012, par. 35.

⁷⁴ State's note of July 22, 1997, received on August 21, 1997.

⁷⁵ State's note of July 22, 1997, received on August 21, 1997.

collection of evidence, were reportedly carried out between 1998 and 2003. The results of these procedures are not detailed in the information provided by the State.⁷⁶

74. On January 9, 2007, the investigation was sent to the 37th Specialized Prosecutors Office of the Medellín Support Unit and new investigative procedures were ordered, whose results are also absent from the state's communications.⁷⁷ In a resolution dated August 8, 2008, the investigation was assigned to the Third Office of the National Human Rights and International Humanitarian Law Unit, which took up the investigation on November 4, 2008. In response to a petition from the petitioners regarding the status of the investigation, on April 8, 2009, that office said that at that time, despite the fact that more than 16 years had elapsed since the events, "the investigation was still at the preliminary stage and no suspect ha[d] been named."⁷⁸ The State informed that investigative procedures were ordered between 2009 and 2012, which apparently have had no impact in terms of elucidating the events and moving the investigation forward.⁷⁹

75. The State indicated that the hypothesis being followed in the investigation by the Office of the Prosecutor General is:

"(a) that Norberto Javier may have been a supporter of Unión Patriótica, fact which may have led to his disappearance and subsequent death. The Office of the Prosecutor does not yet have any theories as to the culprits."⁸⁰

76. The petitioners said that the investigator from the Technical Investigations Corps of the Office of the Prosecutor General who led the initial investigations into Javier Restrepo's death was the victim of a homicide.⁸¹ There is nothing to show that this act has been linked to Mr. Restrepo's death.

⁷⁶ State's communication of July 1, 2010, received that same day. State's communication of July 13, 2012, received on July 16, 2012.

⁷⁷ State's communication of July 1, 2010, received that same day. State's communication of July 13, 2012, received on July 16, 2012.

⁷⁸ Response to petition from the National Human Rights and International Humanitarian Law Unit, dated April 8, 2009, enclosed with the petitioners brief of August 11, 2010..

⁷⁹ The Commission enlists the measures that the State reported: i) between 1998 and 2003 were "conducted several evidentiary procedures which are: several resolutions ordering practical tests, they were gathered and analyzed Judicial Police report No. 315, was subsequently gathered and analyzed the Judicial Police report No. 2171, Resolution ordering authorize the Human Rights Group of the Technical Investigation Unit of the Prosecutor was issued, was subsequently gathered and analyzed the report of the Judicial Police No. 2652; ii) between 2003 and 2006 Judicial Police Report No. 0051 and Report No. 139703 on location SIJIN officials Medellín resolution ordering authorize the CTI testing in practice it was issued Allego, was out judicial inspection at the Regional Office of Antioquia, Report of Judicial Police No. 281,918 was subsequently gathered, iii) on January 9, 2007, he was ordered to send the proceedings to the Prosecutor 37 Human and International Humanitarian Rights; iv) on July 13, 2007, he requested the names of the members of illegal armed group Autodefensas Unidas de Colombia who commit crimes in the place where the incident occurred is reported; v) on August 16, 2007 Judicial Police Report No. 0013 has reached out; vi) August 8, 2008 the investigation to the Prosecutor 3 of this Unit is assigned; vii) on November 4, 2008 to the Specialized Prosecutor 3 Bogota took cognizance; viii) on April 2, 2009, evidence relating to the location of several people ordered, "the location and interview different people"; ix) on April 7, 2009 Commissioner dispatch No. 27 was fought; Report No. 469934 where "related inspections and interviews" did draw near; x) on September 4, 2009 "declaration diligence" is ordered; xi) on September 8, 2009 was "forward declaration diligence"; xii) on 18 September 2009 he was ordered to verify catches of members of armed groups outside the law "which apparently formed the paramilitary group the Brown house"; xiii) by CTI No.498855 Report of November 10, 2009, it was "Allego to process information regarding demobilized;" xiv) on April 15, 2010 "declaration other measures" that were received on May 27, 2010 were enacted; xv) on July 13, 2010 the CTI submitted Report No. 544871 where "interviews allegan"; xvi) on September 2, 2010 "other measures of affidavit are ordered"; xvii) on 20 February 2011, "he insisted in a statement diligence and practice of other measures"; xviii) from March 14 to July 1, 2011 statements and testimonies were received; xix) on 12 July 2011 he was "ordered the verification provisions testimony"; xx) on 10 August 2011 "work mission received"; xxi) on September 19, 2011 "practice test is ordered, among these testimonies"; xxi) on October 12, 2011 "receiving statements available"; xxii) on October 14, 2011 "declaration and practice of tests available"; xxiii) on November 3, 2011 "judicial police reports received"; xxiv) on November 16, 2011 "practice of witness evidence are ordered"; xxv) on November 23, 2011 "declaration received"; xxvi) on 16th December 2011 judicial police report is received; xxvii) on January 5, 2012 "investigative work and witness proceedings are ordered"; xxviii) on 24 and 30 January 2012 "is received (sic) statements"; xxix) 14 February 2012 "tests are ordered"; xxx) on February 27, 2012 "statement received"; xxxi) on April 3, 2012 "report is received by the Judicial Police - CTI"; xxxii) on 13 April "practice tests available"; xxxiii) on April 23, 2012 "practice test is ordered"; xxxiv) on April 26, 2012 "Mission Statement is received"; xxxv) on May 15, 2012 "requested that verification work are ahead in order to establish whether members of the Autodefensas Southwest Antioqueño, now demobilized, versions have statement about authorship and motive of the facts"; xxxvi) on 16 and 25 May 2012 "declaration proceedings are received". State's communication of July 1, 2010, received that same day. State's communication of July 13, 2012, received on July 16, 2012, par. 35.

⁸⁰ State's communication of July 1, 2010, received that same day.

⁸¹ Petitioners' brief of August 11, 2010, received on August 13, 2010.

77. With respect to the record of the disciplinary proceeding, the State said that it was not available because "it was disposed of ... after it was verified that the procedure and the withholding periods set down in the Document Withholding Table had been complied with."⁸²

78. The record shows that this proceeding was instituted by María Luisa Restrepo against the Municipal Inspector of Santa Barbara, Mr. Hernán Jaime Arango Izasa and "members of the SIJIN" on August 24, 1993.⁸³ The State provided information about the proceedings against the Municipal Inspector before the Office of the Attorney General for irregularities and omissions that occurred during the corpse removal procedure. There is only one quote (provided by the State in one of its communications) from the evaluation report of January 4, 1994, by the Antioquia Departmental Attorney's Office, which, while admitting those irregularities, concluded that they were due to "inexperience in the performance of police duties [and] the fact that (Inspector Arango Izasa) was new to the post," and it ruled out any malicious intent in his actions or attitude."⁸⁴ The State said that the Attorney's Office, "after reviewing the arrest books for the period from June 2 to 11, 1992, also found no link between the events and the members of the National Police belonging to SIJIN or Poblado and Manrique police stations."⁸⁵ The petitioners said that this proceeding was set aside by the Medellín Provincial Attorney's Office on December 12, 1994.⁸⁶

79. The State indicated with respect to this proceeding that it has been established by the Attorney's Office that the following irregularities occurred in the procedure involving Norberto Javier Restrepo's corpse:

- " - In the corpse removal procedure, the victim was not identified, yet the cadaver proceeded to be buried;
- The hypothesis as to the cause of death was mishandled; and
- The corpse removal form was processed wrongly because it was incomplete."⁸⁷

V. LEGAL ANALYSIS

80. In this case, the dispute centers on whether or not the State bears international responsibility for the alleged forced disappearance and execution of Norberto Javier Restrepo. On one hand, the petitioners said that what happened to Norberto Javier Restrepo falls under the definition of forced disappearance and execution attributable to the State based on a variety of circumstantial evidence that suggests the involvement of its agents in the deeds. On the other hand, the State argued that that evidence is insufficient to demonstrate its responsibility, by act or omission, of its agents and it stresses that in any case it has conducted the investigations diligently and continues to do so to date.

81. In that regard, the Commission considers it is convenient to recall that international responsibility of the State may be based on the acts or omissions of any branch of government or organ thereof that violate the American Convention, and it arises immediately with the attributed international wrongful act. In such circumstances, to establish a violation of the rights enshrined in the Convention one need not determine, as in domestic criminal law, the guilt of its agents or their intent, nor need one individually identify the agents to which the violations are attributed, nor establish "that the responsibility of the State is proven beyond all reasonable doubt." It is sufficient to demonstrate "that acts or omissions have been verified that have allowed the perpetration of these violations or that a State obligation exists that the State has failed to fulfill."⁸⁸

⁸² State's communication of July 13, 2012, received on July 16, 2012.

⁸³ State's communication of July 1, 2010, received that same day.

⁸⁴ State's communication of July 13, 2012, received on July 16, 2012.

⁸⁵ State's communication of July 1, 2010, received that same day.

⁸⁶ Original petition of February 19, 1997, received on February 26, 1997.

⁸⁷ State's communication of July 1, 2010, received that same day.

⁸⁸ I/A Court H.R., *Case of Gonzalez Medina and Family v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 27, 2012 Series C No. 240, par. 133; I/A Court H.R., *Case of the Massacre of Pueblo Bello v. Colombia*, Judgment of January 31, 2006, Series C No. 140, par. 112.

82. Bearing in mind the considerations established in paragraph 24 and following for weighing the evidence in this case, the Commission wishes to recap that it has taken the following to be established as circumstantial evidence: (i) Norberto Javier Restrepo's links to the UP party; (ii) the existence of a police operation not disproved by the State in which he was reportedly detained; and (iii) the detention and killing of other persons in the area who were also said to be linked to the UP party.

83. The petitioners say that the response of the State in relation to the disappearance and subsequent death of Mr. Restrepo is another evidence of the State's responsibility. In particular, they allege the existence of deliberate behavior by the investigating authorities from the outset to "divert" the investigation and keep the deeds in impunity. On that point, the State said that, contrary to what the petitioners claimed, upon being made aware of the facts as well as after Mr. Restrepo's body was found, it carried out a diligent investigation which remains open to date.

84. Bearing in mind the assertions of both parties, the Commission will analyze the response of the State of Colombia to the disappearance and subsequent death of Mr. Restrepo at two moments: when it was informed of Mr. Restrepo's disappearance, and once his body was found in the context of the criminal proceeding. In that analysis, the Commission will verify if, upon becoming aware of Mr. Restrepo's disappearance, the State acted in keeping with the obligations imposed by the duty to ensure the rights to life, humane treatment, and personal liberty, and if, after learning of his death, it acted in accordance with the obligations that derive from the rights to a fair trial and judicial protection. The Commission will then pronounce on whether or not Mr. Restrepo's disappearance and death are attributable to the State as a forced disappearance of a person. Finally, the Commission will set out its considerations as to whether or not the State is responsible for violation of the family's right to humane treatment.

A. Analysis of the State's response upon being made aware of the death of Norberto Javier Restrepo (Articles 4 [right to life],⁸⁹ 5 [right to humane treatment],⁹⁰ and 7 [right to personal liberty] of the American Convention,⁹¹ in connection with the duty to ensure rights contained in Article 1(1) thereof)

85. The rights to life and humane treatment are of critical importance in the Convention. According to Article 27(2) of said treaty, these rights form part of the non-derogable nucleus because they cannot be suspended in cases of war, public danger or other threats. The Court has held that the obligation to prevent violations of the rights to life and humane treatment "encompasses all those measures of a legal, political, administrative and cultural nature that ensure protection of human rights, and that any possible violation of these rights is considered and treated as an unlawful act, which, as such, may result in the punishment of the person who commits it, as well as the obligation to compensate the victims for the harmful consequences."⁹²

86. With respect to the right to personal freedom, the Court has held that by virtue of the duty to ensure rights, "the State must prevent the violation of the liberty of the individuals being violated by the actions of public officials and private third parties, and must also investigate and punish acts that violate this right."⁹³

⁸⁹ Article 4.1 of the American Convention provides: 1. 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.

⁹⁰ Articles 5(1) and 5(2) of the American Convention state: 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.

⁹¹ Article 7 (1 to 5) of the American Convention provides: 1. Every person has the right to personal liberty and security. 2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto. 3. No one shall be subject to arbitrary arrest or imprisonment. 4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him. 5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial. His release may be subject to guarantees to assure his appearance for trial.

⁹² I/A Court H.R., *Velásquez Rodríguez Case v. Honduras*. Merits. Judgment of July 29, 1988, Series C No. 4, par. 175.

⁹³ I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, par. 247.

87. It follows from inter-American jurisprudence that insofar as a missing person's report is concerned, the response of the State is inevitably linked to the protection of the life and personal integrity of the person reported missing. The State duty to render an immediate and exhaustive response is independent of whether the disappearance may have occurred at the hands of private citizens or at the hands of state agents. The Commission reiterates that "when there are reasonable grounds to suspect that a person has been disappeared, it is essential for prosecutorial and judicial authorities to take prompt and immediate action by ordering timely and necessary measures to determine the whereabouts of the victim or the place where he or she might be deprived of liberty."⁹⁴

88. Furthermore, as the Court has held with regard to reports of missing persons,

[...]Adequate procedures should exist for reporting disappearances, which should result in an immediate effective investigation. The authorities should presume that the disappeared person has been deprived of liberty and is still alive until there is no longer any uncertainty about their fate.⁹⁵

89. In this case, the Commission notes that the State has not disputed that Mrs. Lucila Restrepo began reporting Norberto Javier Restrepo's disappearance to various state entities on June 6, 1992. To recap, the Commission notes that according to the account provided by Mr. Restrepo's mother: (i) on June 6, she began making telephone calls to a clinic and hospitals, police stations, and the F-2 (intelligence agency of the National Police), and she notified a radio station; (ii) on June 7, 1992, she went to the Office of the Departmental Attorney in Medellín, where "she presented an oral report of her son's disappearance"; (iii) on June 8, she again went to the office of the Departmental Attorney, who called the Fourth Army Brigade and received information that the operation on the Las Palmas road had been carried out by the National Police; (iv) on June 9, 1992, she wrote to the Office of the Departmental Attorney to "report her son's disappearance"; and (v) on June 10, 1992 she presented a formal complaint to the Tenth Court of Criminal Investigation of Medellín.

90. The Commission finds that according to the petitioners, the Office of the Departmental Attorney was the only entity that took steps aimed at finding Mr. Restrepo, in particular, telephone calls made to the Fourth Army Brigade, the Administrative Security Department and the Bellavista Jail without success.

91. The Commission considers that in cases such as this the States have the burden to prove that its officials proceeded diligently with their inquiries after being informed that a person was missing. During the Commission's processing of this case, however, the State has offered no evidence to show that immediate steps were taken and followed up on by its agents in a bid to find Norberto Javier Restrepo alive.

92. The Commission considers that the nature of the reported facts should have made it abundantly clear to the State authorities that the Mr. Restrepo was in a situation of extreme danger. In that sense, the Commission considers that a mere reference by the petitioners to calls from the Attorney's Office to various entities that denied having Mr. Restrepo in custody is not sufficient to attest that the State acted diligently in an attempt to find Mr. Restrepo alive. This is further underscored when one considers that no search was conducted, in spite of the fact that one of the authorities reportedly informed that an operation had indeed been carried out in the area.

93. The Commission notes the importance of characterizing the inadequacy of those steps, taking into account the specific connotations arising from their nature and the complexity of the phenomenon under investigation, precisely one of the characteristics of which is refusal to acknowledge the detention and to disclose the fate or whereabouts of the person concerned. In this regard, the Inter-American Court has

⁹⁴ 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, par. 134; *Case of Radilla Pacheco v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 23, 2009. Series C No. 209, par. 221; *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, Reparations and Costs*. Judgment of September 01, 2010. Series C No. 217, par. 167. See, also, *Matter of Natera Balboa* Order of the Inter-American Court of Human Rights of February 1, 2010, preambular par. 13.

⁹⁵ I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 16, 2009. Series C No. 205, par. 283.

specifically stated that it would be neither “logical nor reasonable to investigate a forced disappearance and subordinate its clarification to the acceptance or confession of the possible authors or authorities involved.”⁹⁶ Thus, “the mere formal verification of the official detainee records, as occurred in this case, or the acceptances of the denial of the detention by those presumably responsible, without objective, impartial and independent verification, is neither reasonable nor diligent and does not constitute an effective remedy.”⁹⁷

94. The Commission notes that during its processing of the case, the State limited itself to saying that on June 10, 1992, the criminal investigation courts opened an investigation into what was legally classified as “abduction” (*secuestro*). The Commission considers that, apart from the possible unsuitable classification of the events given the situation alleged, the State has not furnished evidence about any judicial measures taken immediately to find Mr. Restrepo, and only mentioned steps taken after the body was identified by Mr. Restrepo’s father on June 11, 1992, that is, five days after his mother first made inquiries about his whereabouts and brought the disappearance to the attention of the authorities. On this point, the Commission finds it appropriate to note that, although Mr. Restrepo’s body was found on June 9, 1995, it was not identified, and there is nothing in the record to show that the above came about as a result of the inquiries made to find Mr. Restrepo. Indeed, it is an unrefuted fact that he had been buried as a John Doe without an autopsy being performed first.

95. Based on the foregoing in this section, the Commission concludes that the initial steps taken by the State do not show diligent conduct intended to protect the rights to life, humane treatment, and personal freedom of Norberto Javier Restrepo following the reports of his disappearance. These omissions, in themselves, amounted to violations of the duty to ensure those rights and, furthermore, allow the Commission to conclude that there was a lack of specific steps to look for Norberto Javier Restrepo after his disappearance was reported, enabling his continued disappearance and his execution.

96. Based on the foregoing, the Commission concludes that the State violated the rights to life, humane treatment, and personal liberty recognized at Articles 4, 5, and 7 of the American Convention, in connection with the duty to ensure rights established in Article 1(1) of that instrument, to the detriment of Norberto Javier Restrepo.

B. The State’s response upon being made aware of the death of Norberto Javier Restrepo (Articles 8 [right to a fair trial] 98 and 25 [right to judicial protection] 99 of the American Convention)

97. The Commission will analyze if in this case the State of Colombia carried out a serious and diligent investigation within a reasonable time into Mr. Restrepo’s death, in order to verify access to an effective judicial remedy to elucidate the circumstances in which he died.

98. The Commission believes it pertinent to clarify that since this analysis concerns the due diligence and reasonable time of the investigations, in addition to an examination of compliance with the obligations enshrined in Articles 8 and 25 of the Convention, if what the petitioners said with respect to conduct by the State designed to “divert” attention from the signs of state participation in the events is found to be true, the Commission may consider that further circumstantial evidence of the State’s responsibility in the disappearance and subsequent killing of Mr. Norberto Javier Restrepo.

⁹⁶ I/A Court H.R., *Case of Gonzalez Medina and Family v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 27, 2012, Series C No. 240, par. 161.

⁹⁷ I/A Court H.R., *Case of García and Family v. Guatemala*. Merits, Reparations and Costs. Judgment of November 29, 2012, Series C No., par. 143.

⁹⁸ Article 8(1) 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.

⁹⁹ Article 25(1) 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.

99. On this point, the Commission recalls that, according to the Inter-American Court, if the State apparatus acts in such a way that the violation goes unpunished, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction through a diligent and effective investigation. The Court has considered that “[t]his is true regardless of what agent is eventually found responsible for the violation. Where the acts of private parties that violate the Convention are not seriously investigated, those parties are aided in a sense by the government, thereby making the State responsible on the international plane.”¹⁰⁰

100. According to the United Nations Rapporteur regarding noncompliance with the Principles on effective prevention and investigation of extra-legal, arbitrary and summary executions:

Where a Government's practice fails to meet the standards set forth in the Principles ..., the Special Rapporteur will consider such failure as an indication of the Government's responsibility, even where Government officials are found not to be directly involved in the acts of summary or arbitrary execution.¹⁰¹

101. In that regard, the Commission reiterates that the Inter-American Court has held with respect to violent deaths that the investigation should be undertaken utilizing all the legal means available,¹⁰² and with due diligence.¹⁰³ The IACHR recalls that states have the obligation to act with all diligence from the very first stages of a proceeding.¹⁰⁴ That is because the first investigative steps are key components for an appropriate development of the judicial investigation.¹⁰⁵ Thus, the Court has found, “All these requirements, together with criteria of independence and impartiality also extend to the non-judicial bodies responsible for the investigation prior to the judicial proceedings.”¹⁰⁶

102. The Court has held that “as a result of the protection granted by Articles 8 and 25 of the Convention, the States are obliged to provide effective judicial recourses to the victims of human rights violations that must be substantiated according to the rules of due process of law.”¹⁰⁷ In addition, the Court has found that:

[f]rom Article 8 of the Convention it is evident that the victims of human rights violations, or their next-of-kin should have substantial possibilities to be heard and to act in the respective proceedings, both to clarify the facts and punish those responsible, as well as to seek due reparation.¹⁰⁸

103. By the same token, the Court has ruled that victims and their next of kin have the right to expect, and the States the obligation to ensure, that what befell the alleged victims will be investigated effectively by the State authorities; that proceedings will be filed against those allegedly responsible for the unlawful acts; and, if applicable, the pertinent penalties will be imposed, and the losses suffered by the next of

¹⁰⁰ I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, par. 177.

¹⁰¹ E/CN.4/1991/36, para. 591.

¹⁰² I/A Court H.R., *Case of García-Prieto et al. v. El Salvador. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 168*, par. 101.

¹⁰³ I/A Court H.R., *Case of the Gómez Paquiyauri Brothers v. Peru*. Judgment of July 8, 2004, Series C No. 110, par. 146; and I/A Court H.R., *Case of Cantoral-Huamaní and García-Santa Cruz v. Peru*. Judgment of July 10, 2007, Series C No. 167, par. 130.

¹⁰⁴ 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*, par. 121.

¹⁰⁵ I/A Court H.R., *Case of Myrna Mack Chang v. Guatemala*. Judgment of November 25, 2003, Series C No. 101, par. 167. IACHR Report No. 37/00, Case 11.481, Merits, Monsignor Oscar Arnulfo Romero y Galdámez, El Salvador, April 13, 2000, par. 85.

¹⁰⁶ I/A Court H.R., *Case of Cantoral-Huamaní and García-Santa Cruz v. Peru*. Judgment of July 10, 2007. Series C No. 167, par. 133.

¹⁰⁷ I/A Court H.R., *Case of Cantoral-Huamaní and García-Santa Cruz*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, par. 124; I/A Court H.R., *Case of the Rochela Massacre*. Judgment of May 11, 2007, Series C No. 163, par. 145; I/A Court H.R., *Case of the Miguel Castro-Castro Prison*. Judgment of November 25, 2006, Series C No. 160, par. 381; and I/A Court H.R., *Case of the Dismissed Congressional Employees (Aguado-Alfaro et al.)*. Judgment of November 24, 2006, Series C No. 158, par. 106.

¹⁰⁸ I/A Court H.R., *Case of García-Prieto et al.*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 168, par. 102; I/A Court H.R., *The “Street Children” Case (Villagrán Morales et al.)*. Judgment of November 19, 1999, Series C No. 63, par. 227; and I/A Court H.R., *Case of the Serrano-Cruz Sisters. Merits, Reparations and Costs*. Judgment of March 01, 2005. Series C No. 120, par. 63.

kin repaired.¹⁰⁹ Accordingly, State authorities, once becoming aware of an act of violation of human rights, especially the rights to life, humane treatment and personal liberty,¹¹⁰ have a duty to initiate ex officio and without delay, a serious, impartial and effective investigation,¹¹¹ which must be conducted within a reasonable period of time.¹¹²

104. 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.¹¹³ 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,¹¹⁴ and involving every State institution.¹¹⁵

105. The Court has also said that the authorities should adopt all reasonable measures to guarantee the necessary probative material in order to carry out the investigation.¹¹⁶

106. Although the duty to investigate is one of means and not of results, it must be assumed by the State as its own legal duty and be undertaken in a serious manner and not as a mere formality preordained to be ineffective,¹¹⁷ or simply as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof.¹¹⁸ Furthermore, the Court has held that the right of access to justice should ensure, within a reasonable time, the right of the alleged victims or their next of kin to have everything necessary done to learn the truth about what happened and for those responsible to be punished.¹¹⁹

107. Bearing in mind that the alleged facts described are of the disappearance and execution of Mr. Restrepo, in its assessment, the Commission will take into account the guidelines which, according to the *United Nations Model Protocol for a Legal Investigation of Extralegal, Arbitrary and Summary Executions*, should govern such inquiries. The above instrument, also known as the Minnesota Protocol, sets out a number of basic procedures: identification of the victim; recovery and preservation of evidentiary material related to the death to aid in any potential prosecution of those responsible; identification of possible witnesses and collection of

¹⁰⁹ IACHR, Annual Report of the Inter-American Commission on Human Rights 1992-1993, *Report No. 28/92 Cases 10.147, 10.181, 10.240, 10.262, 10.309 y 10.311 (Argentina)*, October 2, 1992, para. 40; IACHR, Annual Report of the Inter-American Commission on Human Rights, *Report No. 29/92 Cases 10.029, 10.036, 10.145, 10.305, 10.37, 10.373, 10.374 y 10.375 (Uruguay)*, October 2, 1992, párr.50; I/A Court H.R., *Case of García-Prieto et al.*, Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 168, par. 103; I/A Court H.R., *Case of Bulacio*, Preliminary Objections, Merits, Reparations and Costs. Judgment of September 18, 2003. Series C No. 100, par. 114; and I/A Court H.R., *Case of the Miguel Castro-Castro Prison*. Judgment of November 25, 2006, Series C No. 160, par. 382.

¹¹⁰ I/A Court H.R., *Case of Cantoral-Huamaní and García-Santa Cruz*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, par. 100.

¹¹¹ I/A Court H.R., *Case of García-Prieto et al.*, Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 168, par. 101; I/A Court H.R., *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004, Series C No. 110, paras. 146; I/A Court H.R., *Case of Cantoral-Huamaní and García-Santa Cruz*, Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007, Series C No. 167, par. 130.

¹¹² I/A Court H.R., *Case of Bulacio*. Judgment of September 18, 2003, Series C No. 100, par. 114; I/A Court H.R., *Case of the Rochela Massacre*. Judgment of May 11, 2007, Series C No. 163 par. 146; I/A Court H.R., *Case of the Miguel Castro-Castro Prison*. Judgment of November 25, 2006, Series C No. 160, par. 382.

¹¹³ I/A Court H.R., *Case of García-Prieto et al.*, Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 168, par. 101.

¹¹⁴ I/A Court H.R., *Case of Bulacio*. Judgment of September 18, 2003, Series C No. 100, par. 114; I/A Court H.R., *Case of the Rochela Massacre*. Judgment of May 11, 2007, Series C No. 163, par. 146; I/A Court H.R., *Case of the Miguel Castro-Castro Prison*. Judgment of November 25, 2006, Series C No. 160, par. 382.

¹¹⁵ I/A Court H.R., *Case of Cantoral-Huamaní and García-Santa Cruz*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, par. 130; I/A Court H.R., *Case of the Massacre of Pueblo Bello*. Judgment of January 31, 2006, Series C No. 140, par. 120; and I/A Court H.R., *Case of Huilca Tecse*. Judgment of March 3, 2005, Series C No. 121, par. 66.

¹¹⁶ I/A Court H.R., *Case of Zambrano-Vélez et al.* Merits, Reparations and Costs. Judgment of July 04, 2007. Series C No. 166, par. 122.

¹¹⁷ I/A Court H.R., *Velásquez Rodríguez Case*. Judgment of July 29, 1988, Series C No. 4, par. 177; I/A Court H.R., *Case of Cantoral-Huamaní and García-Santa Cruz*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, par. 131; and I/A Court H.R., *Case of Zambrano-Vélez et al.* Merits, Reparations and Costs. Judgment of July 04, 2007. Series C No. 166, par. 120.

¹¹⁸ I/A Court H.R., *Velásquez Rodríguez Case*. Judgment of July 29, 1988, Series C No. 4, par. 177; I/A Court H.R., *Case of Zambrano-Vélez et al.* Merits, Reparations and Costs. Judgment of July 04, 2007. Series C No. 166, par. 120.

¹¹⁹ I/A Court H.R., *Case of the Dos Erres Massacre*, Judgment of November 24, 2009, par. 105; *Case of Bulacio v. Argentina*. Merits, Reparations and Costs. Judgment of September 18, 2003. Series C No. 100, par. 114; *Case of Zambrano-Vélez et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of July 04, 2007. Series C No. 166, par. 115.

statements from them concerning the death; determination of the cause, manner, location and time of death, as well as any pattern or practice that may have brought about the death; distinction between natural death, accidental death, suicide and homicide; identification and apprehension of the person(s) involved in the death; and bringing of the suspected perpetrator(s) before a competent court established by law.¹²⁰

108. With respect to the length of investigations, the Commission recalls that Article 8(1) of the Convention establishes as one of the guarantees of a fair trial that tribunals must reach a decision on cases submitted for their consideration within a reasonable time. In their consistent case law, the organs of the inter-American system have taken into consideration three elements that are relevant to the analysis in this case: (a) the complexity of the matter; (b) the conduct of the judicial authorities; and (c) the procedural activity of the interested party.¹²¹

109. With respect to the investigation undertaken into the disappearance and execution of Mr. Norberto Javier Restrepo, owing to the fact that the State did not forward the record of the domestic proceedings, the Commission has only had access to the corpse removal form, the autopsy report, and the narrative accounts from the parties regarding the status of and procedures carried out in the investigation. Based on those elements, the Commission will determine if the State acted diligently and within a reasonable time.

110. The Commission notes that, in spite of the early intervention of the Municipal Inspector from Santa Barbara once the victim's remains were discovered, the essential evidentiary procedures were not carried out, nor was other key evidence for judicial investigation of his death preserved. Concretely, there were serious irregularities and omissions in the corpse removal procedure carried out on June 9, 1992. For instance, there is no record that photographs were taken of the cadaver, either at the scene of the crime or afterward. The cause of death was recorded as "presumed suicide," despite the fact that no weapon was found at the scene and the obvious signs of violence on the body, including burn marks, gunshot wounds, the absence of teeth in the lower jaw, and the position of the hands above the head.¹²²

111. No evidence was gathered that might have helped to determine the methods used by the perpetrators of the crime and to identify them. Specifically, the Commission is not aware of any attempt made to find the bullet that ended the victim's life or to provide a detailed description of the injuries sustained and an explanation of how they were caused. Nor is there a record of a description of the scene of the crime to confirm the presence at the scene of the elements that the petitioners say the physician from Santa Barbara hospital mentioned in her report, which consisted of a pyre—apparently to burn the body, which was not achieved—and the victim's tattered shirt.

112. After those omissions, the body was immediately buried as a "John Doe" without any apparent effort at identification or to collect relevant evidence to determine the circumstances of his death. According to the submissions of the parties, the exhumation and identification of the body came about thanks to the direct intervention of the victim's family, who learned of the discovery of the body from an association.

113. The Commission finds that these omissions led to a disciplinary proceeding which, according to the State, recognized that faults had been committed at this stage, namely that "the hypothesis as to the cause of death was mishandled" and "the corpse removal form was processed wrongly." In its conclusions, that proceeding attributed the faults to "inexperience in the performance of police duties [and] the fact that (Inspector Arango Isaza) was new to the post," and it ruled out any "malicious intent in his actions or attitude."

¹²⁰ See U.N. Doc E/ST/CSDHA/12 (1991). The Commission has previously relied on United Nations documents to evaluate basic procedures to be carried out in such cases. See IACHR, Report 10/95. Case 10,580. Ecuador. September 12, 1995; Paragraph 53.

¹²¹ IACHR, Report on Merits No. 77/02, Waldemar Gerónimo Pinheiro and José Victor dos Santos (Caso 11.506), December 27, 2002, par. 76. See also I/A Court H.R., *Case of López Álvarez v.* Judgment of February 1, 2006, Series C No. 141, par. 132; *Case of García Asto and Ramírez Rojas* Judgment of November 25, 2005, Series C No. 137, par. 166; and *Case of Acosta Calderón*. Judgment of June 24, 2005, Series C No. 129, par. 105; UN Doc. CCPR/C/GC/32 of August 23, 2007, Human Rights Committee, General Comment No. 32, para. 35.

¹²² *Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*, Office of the United Nations High Commissioner for Human Rights. Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ArbitraryAndSummaryExecutions.aspx>. *United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*.

114. While the Commission has taken note of the results of that proceeding with respect to the disciplinary responsibility of the officials, it notes that as a result of those serious omissions, had it not been for the activities of the family, Norberto's body would have been buried without being identified and his death put down as a suicide, which would have prolonged his disappearance.

115. The Commission also finds that there is no record that efforts were made to make up for those faults, such as ordering planimetric procedures; a reconstruction of events; an inspection of the corpse after its exhumation in an attempt to locate the bullets with a view to identifying the firearm that discharged them and describing their trajectories; or an explanation for the injuries that were found, such as the fracture of the hand and burn marks. The aforementioned faults severely hindered the investigation, particularly because of the contamination of the crime scene and the decomposition of the body, which hampered identification of the origin of the wounds.

116. The Commission notes that following the scant procedures performed, the State did not report any steps between 1992 and 1994, as a result of which the Office of the Departmental Prosecutor for the Municipality of Santa Bárbara proceeded to close the investigation. The Commission finds a record of subsequent proceedings involving the departmental prosecutor of the Fifth Unit on "Economic Property", whose competence to take cognizance of the facts is unclear. The Commission also observes that the record was ultimately referred on April 3, 1998, to the Human Rights and International Humanitarian Law Unit of the Office of the Prosecutor General, which opened an investigation that is still at the preliminary stage.

117. From the investigative procedures described by the State, the Commission finds that since the record's referral to the last prosecution unit, statements have been taken from several persons, some of whom are not identified in the state's report; a number of inquiries have been made to verify arrest warrants for members of self-defense groups; and various police reports have been provided. Nonetheless, the Commission finds that in the criminal proceeding the State has not reported on essential procedures for identifying those responsible, such as, for example, verifying the calls that Mr. Restrepo and an unknown person reportedly made to Mrs. Lucila Restrepo or identifying and searching the places where he may have been arrested or the status of the investigations in the other cases concerning persons who allegedly disappeared around the same time as he. With regard to the latter, the Commission recalls that the Inter American Court has determined that "[i]nvestigating with due diligence requires taking into consideration what happened in other murders and establishing some type of connection with them. This should be carried out *ex officio*, without the victims or their next of kin being responsible for taking the initiative."¹²³

118. The Commission has also been unable to find any record of procedures carried out with the aim of investigating the possible participation of its agents in the events, particularly in view of the alleged police operation.

119. With respect to the overall length of the investigation, according to the description of the procedural steps provided by the parties, it has gone on for 22 years. Bearing in mind the requirements for assessing the reasonableness of that length of time, the Commission finds that this case was not particularly complex, given that it concerned a single victim whose identity was easily determined, the facts were immediately brought to the attention of the State, and the authorities had free access to the scene of the crime and the victim's body. However, the domestic authorities committed a series of omissions from the outset, which led the investigation to be closed and remain dormant for several years. In addition, the case was assigned to tribunals that legally lacked subject matter jurisdiction to take it up. There were also delays in the examination of the case by the bodies that handled the judicial investigation. The Commission notes that, for their part, Mr. Restrepo's family undertook a number of activities to assist the investigation, from the time that his mother reported the disappearance in 1992 and his father took part in the procedures that allowed the remains to be identified. There is nothing in the record to suggest that Norberto Restrepo's family engaged in any procedural activities that impaired the progress of the investigation.

¹²³I/A Court H.R., *Case of Landaeta Mejías brothers et al. v. Venezuela. Preliminary objections, merits, reparations, and costs*. Judgment of August 27, 2014, Series C No. 281, par. 224.

120. In light of the foregoing, the Commission finds that the State did not undertake a diligent investigation into what happened to Norberto Javier Restrepo, the upshot of which is that there is still no definitive version of the events after an unreasonably long interval of more than 22 years. The foregoing violates Articles 8 and 25 of the Convention, in connection with Article 1(1) thereof, to the detriment of the victim's parents, namely, Lucila Restrepo and José Marco Restrepo.

C. Analysis of the international responsibility in relation to the death and disappearance of Norberto Javier Restrepo (Articles 3 [right to juridical personality]¹²⁴, 4 [right to life],¹²⁵ 5 [right to humane treatment],¹²⁶ and 7 [right to personal liberty]¹²⁷, 8 (right to a fair trial)¹²⁸, and 25 (right to judicial protection)¹²⁹ of the American Convention, in connection with the duty to observe rights contained in Article 1(1) thereof)

121. The Court has stated a number of times that forced disappearance, whose prohibition has the character of *jus cogens*, constitutes a multiple violation of several rights protected by the American Convention, including the rights to life, juridical personality, humane treatment, and personal liberty.¹³⁰ Thus, forced disappearance comprises the following concurrent, basic elements: (1) deprivation of liberty; (2) direct involvement of governmental officials or acquiescence thereof; and (3) refusal to acknowledge the deprivation of liberty or to disclose the fate and whereabouts of the person concerned.¹³¹ Also, by removing the victim from both the legal and institutional framework, and thus precluding their possibility for remedy or recourse in their favor, forced disappearance also affects the rights contained in articles 8 and 25 of the Convention, to the detriment of the disappeared person.

122. In relation to the foregoing elements, the Commission has deemed it reasonable in this case to ascribe value to the evidence and a series of indicia that emerge from its analysis, which have to do with Norberto Javier Restrepo's links to UP and the existence of an operation in the area where Mr. Restrepo was detained together with other persons also linked to that party. It is also attested that, in spite of being made aware of Mr. Restrepo's disappearance through the complaints and inquiries made by his mother, the authorities did not take immediate and effective steps to find him, but merely denied what happened, which was conducive to his continued disappearance and execution. In addition, when Mr. Restrepo's body was found, the Commission has confirmed that it was hastily buried without the necessary procedures to identify

¹²⁴ Article 3 of the American Convention provides: 1. Every person has the right to recognition as a person before the law.

¹²⁵ Article 4.1 of the American Convention provides: 1. 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.

¹²⁶ Articles 5(1) and 5(2) of the American Convention states: 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.

¹²⁷ Article 7 (1 to 5) of the American Convention provides: 1. Every person has the right to personal liberty and security. 2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto. 3. No one shall be subject to arbitrary arrest or imprisonment. 4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him. 5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial. His release may be subject to guarantees to assure his appearance for trial.

¹²⁸ Article 8(1) of the American Convention states: 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.

¹²⁹ Article 25.1 of the American Convention states: 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.

¹³⁰ 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, par. 139; Case of Goiburú et al. Paraguay. Merits, Reparations and Costs. Judgment of September 22, 2006. Series C No. 153, par. 84; and Case of Tiu Tojín v. Guatemala. Merits, Reparations and Costs. Judgment of November 26, 2008. Series C No. 190, par. 91.

¹³¹ I/A Court H.R., Case of Gómez Palomino v. Peru. Merits, Reparations and Costs. Judgment of November 22, 2005. Series C No. 136, par. 97; Case of Ticona Estrada et al v. Bolivia. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 191, par. 55; and Case of Anzualdo Castro v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, par. 60.

him being carried out. Furthermore his death was recorded as a suicide without the required autopsy being carried out and despite being in patent contradiction to the physical marks found on the victim's body.

123. The Commission also considers it pertinent to point out that the condition in which the remains of Norberto Restrepo were found included evidence of torture, given the removal of the teeth from the lower jaw, burn marks, asphyxia, and the hands positioned above the head, which compel the Commission to conclude that he was at the mercy of the persons who later killed him. Therefore, it is reasonable to presume that this was not a common criminal act or an "abduction," as it was characterized internally, a crime in which a ransom is usually demanded in return for the victim's life. As the Commission has noted, those facts have not been properly investigated.

124. Also, the Commission notes that in light of the information provided by Mr. Restrepo's mother that she had been informed that her son had been detained by policemen from the SIJIN and then handed over to paramilitaries, who executed him, the State's categorical denial that its agents had any responsibility in the disappearance is not in step with reality or the conclusions of the investigation, since, as the State itself has reported, the hypothesis that remains open is that Norberto Javier Restrepo's disappearance and execution may have had to do with his links to UP. In that regard, as the Commission has previously noted, in the context that existed at the time of the events, the acts of violence against persons linked to that political party were often committed by agents of the state, policemen, or soldiers, or by paramilitary groups acting in concert with state forces.

125. The Commission finds that, despite the fact that 22 years have elapsed since the events and notwithstanding the presence of the aforementioned circumstantial evidence of responsibility for both the disappearance and the execution of Norberto Javier Restrepo, the State has not offered any evidence in the proceedings in this case to contradict, through a diligent investigation, the information provided by the family. On the contrary, the State refused to provide a copy of the record of the investigation during the processing of the case by the Commission claiming that it was confidential, an argument which, as the Commission has explained, is unacceptable and not consistent with the practice of the State in other instances.

126. Taking into account the above circumstances within the climate of particular risk for persons associated with UP, and in accordance with the rules on burden of proof already established in this report, in the absence of any evidence from the State to refute all the circumstantial evidence described, the Commission finds that Mr. Restrepo's disappearance and execution are attributable to the State. The Commission finds that to conclude otherwise would allow the State, given its refusal to release the evidence in its possession, to shelter behind its negligence and the ineffectiveness of the criminal investigation in order to evade international responsibility.¹³² The Commission has also concluded that the State is responsible for violation of the rights to juridical personality, life, humane treatment, personal liberty, fair trial, and judicial protection recognized in Articles 3,4, 5, 7, 8 and 25 of the American Convention, taken in conjunction with the obligation to observe rights established in Article 1(1) thereof

127. Furthermore, bearing in mind its analysis of the lack of due diligence in the investigations, the Commission considers that by reason of the State's failure to investigate the torture that Mr. Restrepo suffered after January 19, 1999, and April 12, 2005, when Colombia deposited its instrument of ratification of the Inter-American Convention to Prevent and Punish Torture and of the Inter-American Convention on Forced Disappearance of Persons, respectively, the State bears international responsibility for violation of Articles 1, 6, and 8,¹³³ of the former Convention and Article I(b) of the latter treaty to the detriment of the parents of Mr. Restrepo.

¹³² I/A Court H.R., *Case of Gonzalez Medina and Family v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 27, 2012, Series C No. 240, par. 132; I/A Court H.R. *Case of Kawas Fernández v. Honduras*, Judgment of April 3, 2009 Series C No. 196, par. 97.

¹³³ The Commission recalls in relation to violations of the rights to humane treatment by reason of torture that the obligation to investigate is reinforced by the provisions contained in Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, according to which, states parties have an obligation to "take effective measures to prevent and punish torture within their jurisdiction" and to "prevent and punish other cruel, inhuman, or degrading treatment or punishment ." Likewise, Article 8 of said Convention provides that

128. In order to make its considerations regarding article 3 of the American Convention, articles 1,6, and 8 of the Inter-American Convention to Prevent and Punish Torture, and article I(b) of the Inter-American Convention on Forced Disappearance of Persons, under the *iura novit curia* principle, the Commission notes that, although it did not pronounce on the application of said convention in its report on admissibility, the facts that support the existence of that violation emerge from the information and evidence put forward by the parties in the course of the Commission's processing of the petition on which the state had the opportunity to comment.

D. The right to humane treatment of Norberto Restrepo's family

129. Article 5(1) of the American Convention on Human Rights provides, "Every person has the right to have his physical, mental, and moral integrity respected." The Inter-American Court has indicated that the next-of-kin of victims of certain human rights violations may, in turn, be considered victims.¹³⁴ In that regard, the Court has ruled that their right to mental and moral integrity [may be] violated based on the ... particular circumstances of the violations perpetrated against their loved ones and owing to the subsequent acts or omissions of the State authorities in relation to the facts.¹³⁵

130. Based on the foregoing, the Commission considers that the loss of a loved one in circumstances such as those described in this case, as well as the lack of a thorough and effective investigation which in turn causes pain and anguish if the truth is not revealed, in themselves constitute harm to the mental and moral integrity of the members of Norberto Javier Restrepo's family. That harm was particularly serious for his mother, Lucila Restrepo, who passed away during the processing of this case with the events still unpunished.

131. Consequently, the Commission concludes that the State violated the right of the parents of Norberto Javier Restrepo in terms of their mental and moral integrity, as recognized in Article 5 of the American Convention, in connection with the obligations set out in Article 1(1) thereof.

VI. PROCEEDINGS SUBSEQUENT TO REPORT No. 20/15

132. The Commission adopted Merits Report No. 20/15 on March 26, 2015 and sent it to the State on June 12 of the same year. In this report the Commission recommended:

1. That comprehensive reparation be made to the family of Norberto Javier Restrepo for the material and nonmaterial losses suffered by reason of the violations of the American Convention established in this report.
2. That a thorough and impartial investigation be carried out in order to prosecute and punish both the physical and intellectual perpetrators of Norberto Javier Restrepo's death, and to establish the truth of what happened.
3. Take the administrative, disciplinary or criminal measures against the acts or omissions of state officials who contributed to the denial of justice and impunity of the case, who breached their duties of response to the reported situation, or who were involved in measures taken to hinder the processes for the identification and punishment those responsible.

if there is an accusation or well-grounded reason to believe that an act of torture has been committed within their jurisdiction, the States Parties shall guarantee that their respective authorities will proceed properly and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal process.

¹³⁴ I/A Court H.R., *Case of Cantoral-Huamaní and García-Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, paragraph 112; and *Case of Bueno-Alves v. Argentina*. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C. No. 164, par: 102.

¹³⁵ I/A Court H.R., *Case of Cantoral-Huamaní and García-Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, paragraph 112; and *Case of Vargas-Areco v. Paraguay*. Judgment of September 26, 2006, Series C No. 155, paragraph 96.

4. Adopt such measures as may be necessary to prevent a repetition of similar events, in keeping with the strengthening immediate response mechanisms for the search of persons reported disappeared.

133. In the proceedings subsequent to the notification of the Merits Report, the Commission received several briefs from the State and from the petitioners regarding compliance with the recommendations established by the IACHR. During this period, the Commission granted a total of ten extensions to the State for the suspension of the time limit established in Article 51 of the American Convention. In these extension requests, the Colombian State repeated its willingness to comply with the recommendations. Likewise, the State expressly waived the right to file preliminary objections for breach of the aforementioned deadline in the event that the case was submitted to the Inter-American Court.

134. After evaluating the available information on the status of compliance with the recommendations, on March 12, 2018, the Commission decided by absolute majority not to send the case to the Inter-American Court and to proceed with the publication of the Merits Report. In the section that follows, the Commission states its considerations on compliance with its recommendations.

VII. PROCEEDINGS SUBSEQUENT TO REPORT No. 68/18

135. The Commission adopted the Report No. 68/18 on May 10, 2018 where it reiterated the recommendations contained in Report No. 20/15:

1. That comprehensive reparation be made to the family of Norberto Javier Restrepo for the material and nonmaterial losses suffered by reason of the violations of the American Convention established in this report.
2. That a thorough and impartial investigation be carried out in order to prosecute and punish both the physical and intellectual perpetrators of Norberto Javier Restrepo's death, and to establish the truth of what happened.
3. Take the administrative, disciplinary or criminal measures against the acts or omissions of state officials who contributed to the denial of justice and impunity of the case, who breached their duties of response to the reported situation, or who were involved in measures taken to hinder the processes for the identification and punishment those responsible.
4. Adopt such measures as may be necessary to prevent a repetition of similar events, in keeping with the strengthening immediate response mechanisms for the search of persons reported disappeared.

136. That report was notified to the parties on June 22, 2018 and, based on Article 51 of the American Convention; the IACHR granted them a period of one month to submit information on the compliance with the final recommendations contained in the document. The IACHR notes that both the State and the petitioners submitted information on the status of compliance with the recommendations. In the section that follows, the Commission will analyze the information presented by the parties.

VIII. ANALYSIS ON COMPLIANCE WITH RECOMMENDATIONS

137. **Regarding the first recommendation**, the State indicated that in September 2018, the National Legal Defense Agency issued a resolution ordering the payment of the family members of the victim. The petitioners contended that one of these persons has not been able to receive said money because, due to the lack of economic resources, the corresponding succession proceedings have not been carried out. The Commission values the measures adopted by the State and, taking into account that one of the relatives of the victim has not received the corresponding compensation, considers that this recommendation is partially fulfilled.

138. **Regarding the second recommendation**, the State indicated that the investigation is still open and that the Prosecutor's office has adopted various measures to clarify the facts of the case and punish the persons responsible. It added that the facts of the case were declared as crimes against humanity and war crimes, so the statute of limitations cannot proceed.

139. For its part, the petitioners expressed their concern due to the lack of recent information from the State. They added that after the merits report No. 20/15 was issued, the investigation of the case was transferred from the National Directorate of Analysis and Contexts to the Office of Special Prosecutors for Human Rights and International Humanitarian Law. They argued that it was requested that the investigation be known by the National Directorate of Analysis and Contexts so that "the crime could be prosecuted jointly with other cases of militant victims or sympathizers of the Patriotic Union" in order to "overcome the difficulties inherent in the passage of time and little evidence." They added that the investigation has not managed to clarify the facts or sanction the responsible persons. Due to the lack of substantive progress in the investigation, the Commission considers that this recommendation is pending compliance.

140. **Regarding the third recommendation**, the State reported that merits report No. 20/15 was sent to the Superior Council of the Judiciary in order to determine whether "administrative measures should be brought before any judicial branch official." The petitioners argued that no measures have been identified by the State to initiate a disciplinary or administrative investigation. The IACHR notes that the State did not present detailed and updated information on whether investigations were actually opened in this regard and therefore considers that this point is pending compliance.

141. **Regarding the fourth recommendation**, the State reported on the adoption of Law 589 of 2000, which established the crimes of genocide, enforced disappearance, forced displacement and torture. It indicated that said norm created the following mechanisms: i) search committee for missing persons; ii) national registry of missing persons; iii) urgent search mechanism; and iv) administration of the property of the disappeared. Additionally, Colombia reported on the following points: i) national search plan; ii) protection mechanisms for unidentified corpses buried in cemeteries; iii) bank of genetic profiles of missing persons; iv) commemoration spaces; v) inter-institutional strategy for the recovery of bodies in cemeteries; and vi) assistance to family members.

142. The Commission takes note of the information provided by the State. Likewise, the IACHR observes that within the framework of the System of Truth, Justice, Reparation and Non-Repetition as a result of the Peace Agreement with the Revolutionary Armed Forces of Colombia, the creation of the Search Unit for Missing Persons was established. Taking into account the importance of this Unit in matters of reparation and non-repetition, the Commission considers it pertinent to obtain more information from the State on the effective implementation thereof, within the framework of the follow-up of this recommendation.

IX. FINAL CONCLUSIONS AND RECOMMENDATIONS

143. In accordance with the considerations of fact and law set forth in this report, the Commission concludes that the Republic of Colombia is responsible for the violation of the following rights:

- Rights to the recognition of legal personality, life, personal integrity, personal liberty, judicial guarantees and judicial protection enshrined in Articles 3, 4, 5, 7, 8 and 25 of the American Convention in relation to Article 1.1 of the same instrument, to the detriment of Norberto Javier Restrepo.
- Rights to personal integrity, judicial guarantees and judicial protection, enshrined in Articles 8 and 25 of the American Convention in relation to Articles 1.1 and 2 of the same instrument, to the detriment of the parents of Norberto Restrepo.
- Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture and Article I(b) of the Inter-American Convention on Forced Disappearance of Persons.

144. Based on the foregoing conclusions,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THAT THE COLOMBIAN STATE CONTINUE WITH THE NECESSARY EFFORTS TO ENSURE TOTAL COMPLIANCE WITH THE FOLLOWING RECOMMENDATIONS

1. That comprehensive reparation be made to the family of Norberto Javier Restrepo for the material and nonmaterial losses suffered by reason of the violations of the American Convention established in this report.
2. That a thorough and impartial investigation be carried out in order to prosecute and punish both the physical and intellectual perpetrators of Norberto Javier Restrepo's death, and to establish the truth of what happened.
3. Take the administrative, disciplinary or criminal measures against the acts or omissions of state officials who contributed to the denial of justice and impunity of the case, who breached their duties of response to the reported situation, or who were involved in measures taken to hinder the processes for the identification and punishment those responsible.
4. Adopt such measures as may be necessary to prevent a repetition of similar events, in keeping with the strengthening immediate response mechanisms for the search of persons reported disappeared.

X. PUBLICATION

145. Based on the considerations presented and in accordance with Article 47.3 of its Rules of Procedure, the IACHR decides to publish this report and include it in its Annual Report to the General Assembly of the Organization of American States. The Inter-American Commission, in accordance with the norms of the instruments that govern its mandate, will continue evaluating the measures adopted by the Colombian State regarding the aforementioned recommendations until it determines that they have been fully complied.

Approved by the Inter-American Commission on Human Rights on the 14th day of the month of June 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández, First Vice President; Antonia Urrejola, Second Vice President; Margarete May Macaulay, Francisco José Eguiguren and Flávia Piovesan, Commissioners.