OEA/Ser.L/V/II.
Doc. 360
23 November 2020
Original: Spanish

REPORT No. 342/20
PETITION 863-10

REPORT ON ADMISSIBILITY

HELVIR ANTONIO TORRES CLAVIJO, FREDDY TORRES TORRES AND THEIR FAMILIES
COLOMBIA

Approved by the Commission electronically on November 23, 2020.

Cite as: IACHR, Report No. 342/20, Petition 863-10. Admissibility. Helvir Antonio Torres et al. Colombia. November 23, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner:	*Colectivo de Abogados Jose Alvear Restrepo* Corporation
Alleged victim:	Helvir Antonio Torres Clavijo, Freddy Torres Torres and relatives[1]
Respondent State:	Colombia
Rights invoked:	Articles 4 (life), 5 (humane treatment), 8 (fair trial), 11 (privacy), 22 (movement and residence) and 25 (judicial protection) of the American Convention on Human Rights[2], in relation to Article 1.1 (obligation to respect rights) thereof; Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture.

II. PROCEEDINGS BEFORE THE IACHR[3]

Date of receipt	June 3, 2010
Notification of the petition to the State	May 10, 2016
State's first response	November 17, 2017
Additional observations from the petitioners	September 24, 2019
Advisement of possible archiving	October 13, 2018
Response of the Petitioner regarding possible archiving:	October 16, 2018

III. COMPETENCE

Competence *Ratione personae:*	Yes
Competence *Ratione loci*:	Yes
Competence *Ratione temporis*:	Yes
Competence *Ratione materiae*:	Yes, American Convention (instrument of ratification deposited on July 31, 1973) and Inter-American Convention to Prevent and Punish Torture (instrument of ratification deposited on January 19, 1999)

IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

Duplication of procedures and International *res judicata*:	No

[1] The petitioners in their additional observations identify the following direct relatives of Helvir Antonio Torres and Freddy Torres: (1) Cesar Julio Torres Torres, Freddy's father and Helvir Antonio's uncle; (2) Jheison Alejandro Torres Orjuela, son of Helvir Antonio; (3) Leni Santiago Torres Orjuela, son of Helvir Antonio; (4) Julio Cesar Torres Clavijo, Helvir Antonio's brother and Freddy's cousin; (5) Nohemy Torres Clavijo, Helvir Antonio's sister and Freddy's cousin; (6) Jorge Eliecer Torres Clavijo, Helvir Antonio's brother and Freddy's cousin; (7) Luis Everaldo Torres Clavijo, Helvir Antonio's brother and Freddy's cousin; and (8) Francy Stella Orjuela Riveros, Helvir Antonio's domestic partner.

[2] Hereinafter, "the American Convention" or "the Convention".

[3] The observations submitted by each party were duly transmitted to the opposing party. On June 2, 2020, the additional observations by the petitioner were transmitted by the IACHR to the State, granting it one month to reply; however, as of the date of the present report no response has been received.

Rights declared admissible	Articles 4 (life), 5 (humane treatment), 8 (fair trial), 11 (privacy), 22 (movement and residence) 25 (judicial protection) and 26 (economic, social and cultural rights) of the American Convention, in connection with Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) thereof; and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, the exception of Article 46.2.c) of the American Convention is applicable
Timeliness of the petition:	Yes, in the terms of Section VI

V. ALLEGED FACTS

1. The petitioners request the IACHR to declare the Colombian State internationally responsible for the extrajudicial execution of Helvir Antonio Torres Clavijo by members of the National Army, and the subsequent alteration of the scene and the circumstances of the crime in order to present him officially and publicly as a guerrilla killed in combat; also for the attempted murder of Freddy Torres Torres in the same attack, and for the impunity allegedly surrounding both cases. Petitioners also denounce the internal displacement suffered by Freddy Torres as a consequence of the attack, and the subsequent persecution that affected him; as well as the subsequent internal displacement of the relatives of both so as to preserve their safety.

2. The petition reports that Mr. Helvir Antonio Torres, 26 years old at the time of his death, was a private citizen who worked in agriculture, various trades and commerce in the town of Cabrera, Cundinamarca; and that Mr. Freddy Torres Torres, his cousin, is also a private citizen who at the time worked in the transportation and trade sectors of the same municipality. It is indicated that on September 16, 2006, the two were consuming liquor in a public establishment with a man who called himself "Freddy", whom they had met days before on a social occasion. This so-called "Freddy" invited them to a farm in the town of Fusagasugá to continue consuming alcohol, to which the Torres cousins agreed. On the way there they met two other persons, one of them nicknamed "*el costeño*" and the other nicknamed "*el paisa*", with whom they continued the journey to a property with a house in a secluded sector of the countryside, in the Quebrada Honda shire of the municipality of Pasca, Cundinamarca. Once they arrived at the house, as can be deduced from the multiple judicial statements in the casefile, Helvir Antonio and Freddy were invited to shoot different firearms at the trees as an entertainment, which they did; after which they were left alone in the house by their companions, and shortly thereafter, on the morning of September 17, they were the target of an attack with firearms coming from outside the house, in which Helvir Antonio lost his life. Freddy managed to escape by running through the bush, although he claims that he was chased along the way, and the next day he reached the town of Pasca on foot, where he immediately appeared before the National Police to report what had happened.

3. Mr. Helvir Antonio Torres was officially presented by the National Army, through an Operations Report of September 17, 2006, as a FARC guerrilla killed in combat that same day – a combat that had supposedly taken place between the Corcel Company of the Sumapaz 39th Infantry Battalion and alleged members of the FARC, in the course of an operation against kidnappers from that organization. Mr. Freddy Torres Torres assures that this is false, because his cousin Helvir Antonio was a civilian inhabitant of the town of Pasca who lived there and worked in different legal activities, including agricultural work, business and various trades. Thus, this was allegedly one of so-called "false positives" cases, and in the opinion of the petitioners, it formed part of an extensive and documented pattern of extrajudicial executions of poor, marginalized persons belonging to vulnerable social sectors by members of the Armed Forces, in order to later present their altered corpses publicly as if they had been guerrillas killed in combat. The members of the Army who claimed to have executed of the alleged guerrillas gained access to different regulatory benefits, including economic bonuses, days off, and other benefits, established in directives issued by the Ministry of Defense. To illustrate this context, the petitioners describe different reports produced by national and international human rights bodies denouncing and documenting the criminal pattern of "false positives" in Colombia.

4. With regard to the two cases that are the object of this petition, the petitioners note that, as was subsequently demonstrated in the criminal investigation, both alias "el paisa" and alias "el costeño" were active members of the National Army, who were brought to the criminal proceedings as possible culprits. They also maintain that Helvir Antonio and Freddy Torres, who had previously been intoxicated with high quantities of alcohol, had been made to change their clothes on the way to the house, so that they would be wearing the usual guerrilla garments: sweatshirts, boots and balaclavas; that under deception they were made to fire weapons, so that forensic analyses would reveal the presence of gunpowder in their hands; and that the place to which they were taken was actually a spot that had been previously identified by the National Army as a probable FARC encampment, or as a place where people kidnapped by that group were to be held.

5. After this attack, Mr. Freddy Torres did not return to his home in the municipality of Cabrera for fear of being assassinated, leaving behind both his family and his belongings. It is alleged that later, on February 14, 2007, he was the victim of a new firearm attack, which left him unharmed. It is alleged that despite the foregoing, the State refused to inscribe him in the official system for registration of displaced persons, which he needed in order to be able to access humanitarian aid and other basic benefits to which he considered he was entitled. Approximately two months after the attack, the family of Helvir Antonio Torres and the family of Freddy Torres were forcibly displaced from their residence in the municipality of Venecia, Cundinamarca, *"because members of the Colombian Army did not cease to harass and threaten them after the execution of Helvir Torres and the attempted murder of Freddy Torres"* by means of threats, surveillance and intimidation in their homes and workplaces. The members of both families who are currently in a situation of internal displacement include children. The petitioners allege that the State has not provided these families with comprehensive assistance, nor has it guaranteed their return in conditions of dignity and safety.

6. The death of Mr. Helvir Antonio Torres and the armed attack against Mr. Freddy Torres Torres gave rise to an *ex officio* criminal investigation by the military criminal justice, through the 96th Military Criminal Investigation Judge based in Fusagasugá, which on November 1st, 2006 assumed jurisdiction to investigate the complaint. On that same date, this Judge defined the legal situation of the four members of the army brought to the proceedings as alleged culprits, and decided not to order a measure of detention against them, for which reason they remained in liberty. On December 6, 2006, the 251st Criminal Judicial Attorney requested that the investigation be transferred to the ordinary jurisdiction, but his request was denied by the aforementioned Judge on December 19, 2006. On January 18, 2007, the Judicial Attorney appealed this decision , but on March 16, 2007, the Superior Military Court confirmed it. On October 8, 2007, Prosecutor 24 of the National Human Rights Unit of the General Prosecutor of the Nation's Office proposed a positive conflict of jurisdiction in relation to the case. This conflict was resolved in favor of the ordinary jurisdiction by the Fifth Judge of Brigades of the Fifth Division of the Ministry of National Defense, and the Office of the General Prosecutor of the Nation assumed the investigation. The case was initially assigned to Specialized Prosecutor 24 of the National Human Rights Unit, and later to Prosecutor 50 of the same Unit. At the time the petition was presented to the IACHR, this process was in the investigation phase, and the four military agents involved had been formally brought to the case, although they were still free. The member of the Army who was in command of the Corcel Company on the day of the events had not been formally brought to the process; and the agents of the Army nicknamed "el costeño" and "el paisa" had not been brought to the investigation either. On the other hand, the criminal investigation only dealt with the murder of Helvir Antonio Torres, and did not cover the attempted murder of Freddy Torres. In the opinion of the petitioners, the case presents an unjustified delay in the administration of criminal justice, which constitutes an exception to the duty to exhaust domestic remedies. They argue that at the time of submitting the petition, three years and eight months had elapsed since the attack without a serious criminal investigation advancing in the identification of those responsible, in addition to the facts that the proceedings were initially conducted by the military criminal justice system, that not all of the alleged perpetrators had been brought to the investigation, and that neither the attempted murder of Freddy Torres nor the internal displacement of the relatives of both of them were being investigated.

7. In sum, the petitioners argue that the State is internationally responsible for: (i) a state policy of extrajudicial executions; (ii) the extrajudicial execution of Helvir Antonio Torres by members of the Army so as to later present his body as that of a guerrilla killed in combat; (iii) the attempted extrajudicial execution of Freddy Torres by agents of the Public Force; (iv) the impunity surrounding the facts due to lack of progress in the criminal investigation and lack of investigation of all those responsible, with the consequent lack of full

reparations for the victims; (v) the forced displacement of Freddy Torres as a result of the attack out of fear that it could be repeated, and the subsequent followings and pressures that, in his perception, crossed the threshold of severity for torture; and (vi) the subsequent internal displacement of the next-of-kin of Freddy Torres and Helvir Antonio Torres, as a consequence of these events.

8. The State, in its response, holds that the petition must be declared inadmissible because Colombia has already given reparations to the victims in this case, in compliance with a judicial order, and because the domestic criminal justice system is currently advancing in the corresponding investigative and judicial processes.

9. In the first place, the State reports that on October 16, 2008, Freddy Torres, his relatives, and the family members of Helvir Antonio Torres filed a direct reparation lawsuit against the Ministry of National Defense and the National Army before the contentious-administrative jurisdiction, seeking that the Colombian State be held responsible for the extrajudicial execution of Helvir Antonio and the attempted murder of Freddy, as well as for the damages derived therefrom for his relatives. On July 16, 2013, the First Administrative Decongestion Court of the Girardot Judicial Circuit denied the claims, considering that the action had been time-barred due to the statute of limitations, as more than two years had elapsed between the date of the events and the filing of the claim. Once this decision was appealed, it was reversed on May 7, 2015 by the Administrative Court of Cundinamarca, which decided to declare the Nation responsible for the extrajudicial execution of citizen Helvir Antonio Torres and his subsequent presentation as a guerrilla killed in combat; and ordered the payment of monetary compensation to his relatives; as well as non-pecuniary measures of reparation of the damages sustained, specifically a public act of acknowledgment of responsibility and request for forgiveness. The State holds that this ruling has already been complied with, since the pecuniary compensations were paid, and a public act of request for forgiveness and acknowledgment of responsibility was held on September 19, 2016, with the presence of the Vice-minister of Defense. In view of the foregoing, the State concludes that:

> (a) The adequate and effective remedies provided by the Colombian legislation to obtain reparations for the victims of extrajudicial executions were diligently conducted by the Colombian administrative judges. (b) As a result of the foregoing, the next of kin of Helvir Torres and Freddy Torres received full reparations through pecuniary and non-pecuniary reparation measures that have already been complied with. (c) The Colombian State held a public act of acknowledgment of responsibility for the events described in these international proceedings.

10. In second place, the State affirms that, in relation to the events described in the petition, the Office of the General Prosecutor of the Nation initiated two criminal investigations: one (case No. 4015) for the homicide of Helvir Torres and the attempted homicide of Freddy Torres, currently ongoing; and another one for the threats and the attack suffered later by Freddy Torres, which was archived. Regarding investigation No. 4015, after recounting the prosecution of the case in the military criminal justice system and its transfer to the ordinary criminal justice system - in the same terms referred by the petitioning party-, the State reports that the Office of the General Prosecutor of the Nation has carried out the following relevant actions between 2006 and 2012: (i) numerous testimonial, documentary, forensic, technical, ballistic and other pieces of evidence have been gathered; (ii) the Lieutenant Colonel of Battalion No. 39, the Commander of the Platoon that carried out the alleged counter-guerrilla operation, the two Second Officers known as alias “el costeño” and alias “el paisa”, as well as three other members of the Army, were formally brought to the proceedings via interrogation; and (iii) some relatives of Helvir Antonio and Freddy filed for civil damages in the criminal proceedings. On December 31, 2012, a resolution was issued defining the legal situation of the Lieutenant Colonel of Battalion 39 and the Platoon Commander, imposing on them the measure of preventive detention in a prison facility; arrest warrants were also issued against four military agents. Later, on June 18, 2013, said Lieutenant Colonel, named Luis Fernando Borja Aristizábal, requested the Prosecutor's Office to summon him to a hearing in order to admit the charges of which he was being accused and thus avail himself of an early judgment. This hearing to admit the charges was held on December 12, 2013, and in its course Lieutenant Borja admitted the accusation made by the Prosecutor's Office in the sense that *“the death of Mr. Helvir Torres had been the result of a plan of deception devised by him and other members of Battalion 39 to assassinate Helvir Torres and Freddy Torres and later present them as FARC guerrillas killed in combat ”*; for this he was charged with the crimes of aggravated homicide against Helvir Antonio Torres and attempted aggravated murder against Freddy Torres.

Given his guilty plea to the charges, on February 27, 2015, the Criminal Court of the Fusagasugá Circuit issued an early judgment against Luis Fernando Borja, sentencing him to 22 years and 2 months in prison, and to the payment of damages to the victims' families. The State also reports that the other persons implicated in the events and brought to the criminal investigation, in particular the military agents known as alias "el paisa" and "el costeño", continue to be under investigation, and the Prosecutor's Office continues to collect evidence in relation to them for the purpose of an eventual prosecution.

11. On the other hand, with regard to the investigation initiated following the complaint filed by Freddy Torres for the firearm attack against him in February 2007, the State indicates that said investigation was closed without the alleged victim having contested the decision to archive it. Additionally, the State reports that the Office of the Attorney General of the Nation initiated a disciplinary investigation against four military agents for the events of July 2007, an investigation that is currently underway after the Office of the Delegate Attorney for the Defense of the Human Rights formulated disciplinary charges on October 29, 2010 against those investigated for having incurred a serious disciplinary offense consisting of an alleged violation of international humanitarian law.

12. On the grounds of the above, the State alleges:

> [T] he national jurisdiction has already taken the necessary actions to punish and provide reparations for the violations of the ACHR alleged by the petitioners. This conclusion is based on the rulings issued by the Fusagasugá Circuit Court and the Cundinamarca Administrative Tribunal. Through said judgments, the State definitively resolved the violations derived from the murder of Mr. Helvir Torres and the attempted murder of Freddy Torres, in accordance with the conventional guarantees.

Along this line, the State alleges that the IACHR cannot re-examine these two domestic judicial decisions, which were respectful of human rights and have not been contested nationally or internationally by the victims, at the risk of acting as a fourth instance. The State specifies in this regard that the criminal conviction of Lieutenant Colonel Luis Fernando Borja Aristizabal not only convicted the top culprit of the crime, but also clarified the circumstances of time, manner and place in which the homicide and the attempted homicide were committed, indicating the inconsistencies in the statements of the military agents and refuting the veracity of the false operations order and the Corcel Company's operations reports. The victims did not file any remedy against this judgment, and furthermore, the criminal investigation continues with regard to the other possible perpetrators, including alias "el paisa" and alias "el costeño". In this connection, the State argues that, based on the jurisprudence of the Inter-American Court, the subsidiary jurisdiction of the organs of the Inter-American Human Rights System is not activated when the State has failed to prosecute all those responsible for a specific crime, if that State has acted diligently in the clarification of the facts, the punishment of the top culprits, and the reparation of the victims.

13. In their additional observations to the State's response, the petitioners report that the ruling of the Administrative Tribunal of Cundinamarca of May 7, 2015, which ordered the payment of financial reparations to the victims' next of kin, has not yet been complied with. They also argue that *"without disregarding the satisfaction measures ordered by the Administrative Tribunal, it is important for the Commission to be able to issue orders that include the dimensions of rehabilitation and guarantees of non-repetition, as well as compensation orders for victims and damages not recognized in the administrative ruling"*.

VI. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

14. In the first place, the IACHR recalls its constant position according to which, in cases in which violations of the right to life are alleged, the appropriate remedy that must be exhausted at the domestic level is that of criminal proceedings, through the ex officio and diligent conduction of investigations which can identify those responsible for the violation and subject them to trial and punishment in accordance with the American Convention[4]. This burden must be assumed by the State as its own legal duty, and not as a management of the

[4] IACHR, Report No. 72/18, Petition 1131-08. Admissibility. Moises de Jesus Hernandez Pinto and family. Guatemala. June 20, 2018, para. 10. IACHR, Report No. 70/14. Petition 1453-06. Admissibility. Maicon de Souza Silva. Renato da Silva Paixão and others. July 25, 2014, para.

interests of private persons, nor as one that depends on their private initiative or on the provision of evidence by them[5]. As for the direct reparation proceedings before the contentious-administrative jurisdiction, the Commission has reiteratively held that said avenue does not constitute a suitable remedy for the purposes of analyzing the admissibility of a claim of such nature as the present one, since it is not adequate to provide full reparations that include the clarification of the facts and the satisfaction of the legitimate expectations of justice of the victims' families, in addition to the other components of the full reparations that have been identified and applied by the organs of the Inter-American System.

15. In this sense, regarding the violation of the right to life of Mr. Helvir Antonio Torres Clavijo, as well as the attempted violation of the right to life of Mr. Freddy Torres Torres, the adequate remedy to exhaust was the criminal investigation of all those responsible for the attack. As it has done on other occasions[6], the IACHR considers that the aforementioned criminal justice route was also the adequate remedy to exhaust in relation to the crime of forced displacement of which Mr. Freddy Torres, and the next of kin of Mr. Helvir Antonio and Freddy, were victims, as a direct consequence of the crime and the alleged subsequent persecution. Thus, it has been proven in the record that the criminal investigation of these events, which occurred in 2006, has only resulted in one conviction, handed down against the top culprit, which was handed down through an early judgment issued in response to the admission of the charges made by Lieutenant Colonel Borja. The remaining military agents who allegedly participated in the attack are still being investigated, or have not been formally brought to the proceedings. In this sense, the Commission notes that more than thirteen years after the murder of Mr. Helvir Antonio Torres, all the criminal responsibilities corresponding to all of those responsible have not yet been established, although serious evidentiary indications about their identity and their culpability have already been produced in the course of the judicial and administrative processes developed over the case.

16. In light of these considerations, the Commission does indeed consider that the exception of unjustified delay has been configured, in accordance with Article 46.2.c) of the American Convention.

17. In connection with the above, it is observed that neither the internal displacement of Freddy Torres, nor that of the relatives of Helvir Antonio and Freddy, has been the subject of any criminal investigation whatsoever. Therefore, in this regard, the exception of unjustified delay to the duty to exhaust domestic remedies is also configured, in the terms of Article 46.2.c) of the American Convention.

18. Regarding the requirement of timely submission of the petition, the Commission notes that: (i) the attack on Helvir Antonio and Freddy took place in September, 2006; (ii) the criminal investigation into the extrajudicial execution of Helvir Antonio was initiated by the military criminal justice system and was transferred in October, 2007 to the ordinary jurisdiction; (iii) both Freddy Torres and his family members, as well as those of Helvir Antonio Torres, are still in a situation of internal displacement as a result of the crime and the ensuing persecution; (vi) the petition was received by the IACHR in June 2010; and (vii) the alleged impunity and its effects arguably extend to the present day. The Inter-American Commission concludes that the petition was therefore presented within a reasonable period of time, in the terms of Article 32.2 of its Rules of Procedure, in accordance with Article 46.1.b) of the American Convention.

19. It is relevant to recall that Article 46.2 of the Convention, given its nature and object, is a provision that has an autonomous content vis-á-vis the substantive rules of the American Convention. Therefore, the determination of whether the exceptions to the rule of exhaustion of domestic remedies are applicable to the case at hand must be carried out in a manner prior to, and separate from, the analysis of the merits of the matter, since it depends on a different standard of appreciation than that used to determine the possible violation of Articles 8 and 25 of the Convention.

18; Report No. 3/12, Petition 12.224, Admissibility, Santiago Antezana Cueto et al., Peru, January 27, 2012, para. 24; Report No. 124/17, Petition 21-08, Admissibility, Fernanda Lopez Medina et al., Peru, September 7, 2017, paras. 3, 9-11.

[5] IACHR, Report No. 159/17, Petition 712-08. Admissibility. Sebastián Larroza Velázquez and family. Paraguay. November 30, 2017, para. 14.

[6] IACHR, Report No. 11/17. Admissibility. María Hilaria González Sierra and others. Colombia. January 27, 2017, para. 4; IACHR, Report No. 89/18. Petition 1110-07. Admissibility. Juan Simón Cantillo Raigoza, Keyla Sandrith Cantillo Vides and Family. Colombia. July 27, 2018, para. 10; IACHR, Report No. 44/18. Admissibility. Pijiguay Massacre. Colombia. May 4, 2018, para. eleven.

VII. ANALYSIS OF COLORABLE CLAIM

20. In the first place, and in light of the State's allegation the so-called "fourth instance" formula, the IACHR observes *prima facie* that the petition raises possible violations of several human rights protected in the American Convention, which do not derive from the content or the processing of either of the two judicial decisions adopted in the domestic realm regarding this case, both in the criminal jurisdiction and in the contentious-administrative jurisdiction. The State responsibility invoked by the petitioners refers to the violation of the rights to life, personal integrity, freedom of movement and residence, honor and dignity, fair trial guarantees and judicial protection, on account of the crime committed by military agents, their impact on the safety of the victims, and the subsequent alleged impunity. Consequently, the Commission considers that the State's allegation is unfounded.

21. In an admissibility report adopted in 2015, the IACHR accumulated for decision numerous cases of alleged extrajudicial executions carried out as part of the described pattern of the so-called "false positives" in Colombia. In said report, the IACHR took note of the *"context in which the alleged violations occurred, including the legal framework established to provide economic incentives to members of the military based on the number of deaths produced in combat"*, for which reason it considered that the duty of the State to adopt domestic law provisions in order to make the American Convention effective, under Article 2 of said instrument, was potentially compromised[7] - a position that will be reiterated in this report insofar as the crime, also in this case, occurred pursuant to stimuli enshrined in an Order of the Ministry of Defense.

22. In view of these considerations and after examining the factual and legal elements set forth by the parties, the Commission considers that the facts alleged by the petitioner, if corroborated, could characterize violations of the rights established in Articles 4 (right to life), 5 (humane treatment), 8 (fair trial), 11 (privacy), 22 (movement and residence), 25 (judicial protection) and 26 (economic, social and cultural rights) of the American Convention, in relation to Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) thereof, to the detriment of the alleged victims, in the terms of this report.

23. Likewise, the allegations about the suffering inflicted on Mr. Freddy Torres during the attack to which he survived and thereafter, with the alleged persecution of himself and his family, and the lack of a proper investigation into these events, could constitute violations of Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture.

VIII. SOME ADDITIONAL CONSIDERATIONS ON REPARATIONS BEFORE THE INTER-AMERICAN SYSTEM OF HUMAN RIGHTS

24. Colombia has argued that the petition currently has no object, since the victims have already received reparations domestically, in compliance with the ruling of the Cundinamarca Administrative Tribunal; the reparations ordered therein include both the payment of monetary sums and the holding of a public act of acknowledgment of responsibility and request for forgiveness. However, the petitioners dispute the State's position, arguing that the rights to truth, justice, and reparation of Freddy Torres, Helvir Antonio Torres, and their next of kin remain unfulfilled. In particular, they allege that the economic compensation ordered by the court has been insufficient and has not been paid; that not everyone who was responsible for the murder of Helvir Antonio and the attempted murder of Freddy has been criminally prosecuted; that the crimes of persecution and attack with a firearm against Freddy remain unpunished, as does the crime of forced displacement of the relatives of both; and that no rehabilitation measures nor guarantees of non-repetition consistent with the doctrine and jurisprudence of the Inter-American System have been ordered.

25. In this regard, the IACHR underscores that the international responsibility of the State which is claimed before the Inter-American System is of a fundamentally different nature than the legal-administrative State responsibility declared by the domestic administrative jurisdiction, given that it is made effective under different legal parameters, and seeks to establish the applicability of reparations whose components differ significantly.

[7] IACHR, Report No. 34/15, Petition 191-07 and others. Admissibility. Álvaro Enrique Rodriguez Buitrago and others. Colombia. July 22, 2015, par. 262.

26. Indeed, the organs of the Inter-American System have developed a robust jurisprudence on the foundations, content, and components of the right of victims of human rights violations to receive full reparation, a jurisprudence which is directly relevant to the present case. The IACHR, through its merits reports and in line with the jurisprudence of the Inter-American Court, has historically characterized itself by recommending, for each case of violation or threat to human rights that it hears, a complex combination of remedial measures of different types and scopes which, as a whole, tend to configure a comprehensive reparation of the damage sustained that guarantees its non-repetition. Under current International Law, reparation is an autonomous human right, the bearers of which are those persons who have been affected by a specific violation of their rights. From another perspective, the right to obtain reparations for the violation of human rights is one of the components of the right of access to justice, judicial protection and access to effective remedies at the national level, enshrined in Article 25 of the American Convention[8]. The IACHR has sought from its earliest pronouncements to advance towards the consolidation and application of a comprehensive notion of **full reparation**. This parameter seeks to undo, in each particular case, the negative effects of a violation of rights, and to remedy their harmful impacts through a complex scheme of specific remedial measures that complement each other in addressing different aspects of the harm suffered. When full restitution of the situation that pre-existed the violation - or *restitutio in integrum* - is not possible to achieve, as happens in cases in which the victims have died as a result of the violation, the organs of the IAHRS strive to establish a combination of diverse modalities of reparatory measures that, together, will produce a remedial result as close as possible to that ideal[9].

27. In their current jurisprudential development, the modalities of reparation to which the IACHR resorts in its decisions can be grouped into the following six categories: (1) restitution measures, understood as the reestablishment of the situation that existed before the violation of human rights was consummated, which must place the victim in the position in which he or she would have been if the violation had not occurred; (2) compensation measures, understood as the payment of a monetary indemnity to repair the material or immaterial damages, suffered by the victim and their next of kin, which can be economically assessed; (3) rehabilitation measures, which include those actions aimed at achieving the physical, psychological and social rehabilitation of the victims vis-á-vis the severe and lasting impacts derived from the violation of their human rights; (4) measures of satisfaction, which include symbolic, moral, or non-pecuniary actions aimed at repairing non-material damages through the restoration of the dignity, honor, and historical memory of the victims; (5) measures of access to justice aimed at investigating, prosecuting, and punishing those responsible for the human rights violation in question, in accordance with the pertinent international standards; and (6) guarantees of non-repetition, which may have either an individual scope and translate into protection and prevention measures for individuals and families, or a public connotation or structural dimension aimed at eliminating the root causes of the violation of human rights in question, so as to prevent its replication. Due to their direct relevance to the matter under consideration, the IACHR will provide below some brief schematic elements that are critical for a proper understanding of the content and applicability of compensation, satisfaction, access to justice, and guarantees of non-repetition, as modalities of reparation enforceable at the Inter-American level; this will be done in general terms and without implying in any way a pre-judgment of the merits of the matter, in the manner of legal guidance for the parties during the subsequent development of the regulated phases of the present proceedings.

28. As for compensation, it must cover any types of damages which can be economically assessed, both material (pecuniary) and moral or immaterial (non-pecuniary).[10] This includes the physical and psychological damages sustained by the victims, as well as the loss of income and opportunities, the material damages derived from the violation, the expenses incurred in activities and procedures related to the violation, the costs of medical and psychological services, funerary expenses, and the immaterial or moral damages they have suffered. Like the other forms of reparation, monetary compensation or indemnification must be granted in an appropriate manner and in proportion to the seriousness of the violation, and to the circumstances of each

[8] I/A Court H.R., Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, Reparation and Costs. Judgment of September 1, 2010. Series C No. 217, par. 226.

[9] I/A Court H.R., Case of Atala Riffo and daughters v. Chile. Request for Interpretation of the Judgment on Merits, Reparations and Costs. Judgment of November 21, 2012. Series C No. 254, par. 241

[10] See, among many others, the following decisions by the Inter-American Court of Human Rights: (1) I/A Court H.R., Case of Castillo Páez v. Peru. Reparations and Costs. Judgment of November 27, 1998. Series C No. 43, par. 53; and (2) I/A Court H.R., Case of Blake v. Guatemala. Interpretation of the Judgment of Reparations and Costs. Judgment of October 1, 1999. Series C No. 57, par. 42.

case, for all of the economically assessable damages that are a consequence of the violations. In many cases, the victims of human rights violations who come to the Inter-American System have already received, at the time of the judgment of the Inter-American Court, monetary reparations at the national level, be they of a judicial nature, or through administrative reparation programs. In the Cepeda Vargas case, the Inter-American Court explained its position in this regard: *"The Court considers that, when national mechanisms exist to determine forms of reparations, these procedures and results can be assessed (…). If these mechanisms do not satisfy criteria of objectivity, reasonableness and effectiveness to make adequate reparation for the violations of rights recognized in the Convention that have been declared by this Court, it is for the Court, in exercise of its subsidiary and complementary competence, to order the pertinent reparations."*[11] The IACHR and the Inter-American Court normally take into account the reparations that the victims have already received. In some cases, this fact has been enough for the Court not to order any additional indemnity at the international level.[12] In other cases, it has been ordered that what has already been paid by the State be deducted from the value of the Inter-American compensation, if the latter is higher.[13]

29. As for satisfaction, the reparatory measures grouped under this heading include, in practice, five large non-exhaustive categories: (i) acts of acknowledgment of responsibility, presentation of public apologies and official testimonies; (ii) official statements and judicial decisions that restore the honor and reputation of the victims; (iii) the publication or dissemination of the merits report of the IACHR or of the judgment of the Court; (iv) the performance of tributes to, and commemorations of, the victims; and (v) the provision of educational measures, socioeconomic measures, or measures of support for the social reintegration of the beneficiaries. Additionally, among the measures of satisfaction, insofar as their purpose is to publicly acknowledge the damage suffered by the victims in order to dignify them, the IACHR includes (vi) measures of justice (investigation, prosecution, and punishment of the perpetrators of serious human rights violations), and (vii) knowledge and dissemination of the truth, including the search for the disappeared and the location and return of the remains of dead. However, the catalogue of satisfaction measures may be as broad as the diversity

[11] I/A Court H.R., Case of Cepeda Vargas v. Colombia. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 26, 2010. Series C No. 213, par.246. In that specific case, the next of kin of the victim had received compensation from the national courts which the Court considered was objective and reasonable, evaluating it in a positive manner.

[12] For example, in the Almonacid Arellano case, the Inter-American Court abstained from ordering the payment of compensation for immaterial damages to the victims because, at the domestic level ,they had already received compensation within a transitional justice process which included the disbursement of monetary reparations; even though the Court did order other forms of reparation, in addition to emphasizing that the sentence itself was a form of satisfaction [I/A Court H.R., Case of Almonacid Arellano et al. v. Chile. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 26, 2006. Series C No. 154, par. 161]. Likewise, in the case of the Santo Domingo Massacre, the Court decided not to order the payment of compensation to the next of kin of the deceased victims and to the surviving victims who had already obtained administrative judicial reparations for the same events at the national level [I/A Court H.R., Case of the Santo Domingo Massacre v. Colombia. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 30, 2012. Series C No. 259, par. 336].

[13] In the case of the Ituango Massacres, several of the victims who had come to the IAHRS had already received reparations at the domestic level through settlement agreements executed in the course of administrative judicial proceedings, and others had such proceedings still in progress before the domestic courts. The Inter-American Court took note of said compensation already received, especially insofar as they repaired the same material and immaterial damages that were being evaluated at the inter-American level, in order not to duplicate them in its ruling; and it recalled that one of the guidelines for international compensation is that it should neither enrich nor impoverish the victim. Regarding the people who had legal proceedings in progress, the Inter-American Court ordered that they be compensated but expressly instructing the State to communicate that fact to the courts that were hearing the cases so that they could decide what was appropriate there [I/A Court H.R., Case of the Ituango Massacres v. Colombia. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2006. Series C No. 148, par. 376]. A similar decision was adopted in the case of the Rochela Massacre, in which the Court authorized the Colombian State to deduct the amounts that the victims had already received for judicially ordered reparations at the domestic level, at the moment of making the payment [I/A Court H.R., Case of the Rochela Massacre v. Colombia. Interpretation of the Judgment on Merits, Reparations and Costs. Judgment of January 28, 2008. Series C No. 175, par. 250]. Likewise, in setting the inter-American compensation, the Court has taken into account the amounts that people have received as administrative reparations at the domestic level, as is the case with the victims of forced displacement in Colombia; in the case of the Ituango Massacres, it was taken into account that several of the beneficiaries had already received such national administrative aid [I/A Court H.R., Case of the Ituango Massacres v. Colombia. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2006. Series C No. 148, par. 378]. An interesting case in this regard is that of the Rochela Massacre. The victims, who were surviving relatives of the persons who died in the massacre, had already obtained reparations for immaterial damages in Colombia through domestic administrative judicial proceedings. However, given that the Colombian legal system does not recognize the moral damages suffered by the deceased victims themselves in order to compensate them, but only the moral damages of the surviving next of kin, the Court considered that the reparations already received were insufficient in that aspect, and ordered that said personal suffering of the deceased be compensated, so as to deliver the indemnification to their next of kin as heirs [I/A Court H.R., Case of the Rochela Massacre v. Colombia. Series C No. 163, pars. 256-257, 267].

of immaterial damages suffered by the victims of human rights violations. The form and nature of the satisfaction measures are not rigid, and they depend on the circumstances of each case[14].

30. As for access to justice as a measure of reparation, it is recalled that the IACHR and the Inter-American Court habitually order the conduction of an investigation of the respective violation of rights by the State, to be undertaken with due diligence, within a reasonable period of time and in accordance with the standards established by international norms and jurisprudence. For example, in the case of Leidy Dayán Sánchez (Colombia), the IACHR recommended that the State *"[c]arry out an impartial and effective investigation in the general jurisdiction with a view to prosecuting and punishing those responsible for the death of Leydi Dayán Sánchez Tamayo"*; [15] and in the case of Rafael Cuesta Caputi (Ecuador), the IACHR recommended that the State *"[c]arry out a complete, impartial, and effective investigation into the attack on Rafael Ignacio Cuesta Caputi"*[16]. The IACHR and the Inter-American Court have indicated that the duty to investigate must be carried out in a serious and diligent manner, not as a mere formality that is doomed in advance to fail, and that is must be undertaken by the State as the reasoned fulfilment of its own legal duty rather than as a mere management of private interests, or as one that depends on the procedural initiative of the victim or the victim's next of kin[17] or on the contribution of evidence by private parties, without an actual quest for truth on the part of the public authorities[18]; while the IACHR, based on Article 1 (1) of the American Convention, has explained that *"said obligation is not met merely with the formal institution of proceedings in which it is up to the petitioners to supply information to sustain momentum in the proceedings, but should be discharged by the State in a serious manner as a matter of duty"*.[19] The Court has also held that compliance with said obligation is a necessary requirement to avoid impunity. [20] These obligations remain in force until their full satisfaction –that is, despite the passage of time, the duty of investigation and prosecution subsists for as long as the objective it seeks has not been achieved, namely, full knowledge of the facts, the identification of all of its authors, and the imposition of the corresponding punishment–;[21] they are owed to the victims;[22] and they are applicable regardless of whether those responsible for the violations are public officials, private individuals, or groups.[23] The obligation to investigate includes all of the material and intellectual authors, as well as all possible accessories.[24] In the respective proceedings, the victims or their next of kin must have full access and capacity to act in all stages and instances,[25] and the State must refrain from resorting to or applying figures such as amnesty and statutes of limitation, or the establishment of measures of exclusion of responsibility.[26] The IACHR also customarily provides that multidimensional measures be adopted in matters of justice at different complementary levels, not only in the sense of carrying out the investigation and prosecution of specific cases, but also of adopting measures against the officials who caused a situation of impunity, and of strengthening the capacity of the administration of justice institutions in order to avoid such an outcome of impunity in the future – thus

[14] Draft Articles on Responsibility of the State for Internationally Wrongful Acts, International Law Commission. Comment to Art. 37, par. 5.

[15] IACHR. Merits report N. 43/08. Case No. 12.009 – Leydi Dayán Sánchez (Colombia), July 23, 2008.

[16] IACHR. Merits report N. 36/08. Case No. 12.487 – Rafael Ignacio Cuesta Caputi (Ecuador), July 18, 2008.

[17] I/A Court H.R., Case of Las Palmeras v. Colombia. Reparations and Costs. Judgment of November 26, 2002. Series C No. 96., par. 68.

[18] I/A Court H.R., Case of Albán Cornejo et al. v. Ecuador. Interpretation of the Judgment on Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 183, par. 62.

19 IACHR. Report No. 2/06. Petition 12.130, Merits, Miguel Orlando Muñoz Guzmán (Mexico), par. 62.

[20] I/A Court H.R., Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Reparations and Costs. Judgment of May 25, 2001. Series C No. 76, par. 173; I/A Court H.R., Case of Garrido and Baigorria v. Argentina. Reparations and Costs. Judgment of August 27, 1998. Series C No. 39., par. 170.

[21] I/A Court H.R., Case of Neira Alegría et al. v. Peru. Reparations and Costs. Judgment of September 19, 1996. Series C No. 29. Par. 69; *I/A Court H.R., Case of Caballero Delgado and Santana v. Colombia. Merits. Judgment of December 8, 1995. Series C No. 22*, pars. 58-59; *I/A Court H.R., Case of El Amparo v. Venezuela. Merits. Judgment of January 18, 1995. Series C No. 19, par.* 61.

[22] I/A Court H.R., Case of Castillo Páez v. Peru. Reparations and Costs. Judgment of November 27, 1998. Series C No. 43., par. 143.

[23] I/A Court H.R., Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Reparations and Costs. Judgment of May 25, 2001. Series C No. 76, pars. 174, 177.

[24] I/A Court H.R., Case of Juan Humberto Sánchez v. Honduras. Interpretation of the Judgment of Preliminary Objection, Merits, Reparations and Costs. Judgment of November 26, 2003. Series C No. 102, par. 186.

[25] I/A Court H.R., Case of Bulacio v. Argentina. Merits, Reparations and Costs. Judgment of September 18, 2003. Series C No. 100, par. 121.

[26] I/A Court H.R., Case of Myrna Mack Chang v. Guatemala. Merits, Reparations and Costs. Judgment of November 25, 2003. Series C No. 101, par. 276.

combining individual and structural reparation measures to produce complex remedial configurations in the field of justice, that restore the victims' rights and prevent the repetition of impunity.

31. Finally, the guarantees of non-repetition are usually associated to structural situations of human rights violations that have contributed to the victimization of the petitioners in specific cases, and that threaten to continue producing victims if they are not adjusted or remedied by the authorities. The IAHRS has established that it is the obligation of the State, in accordance with the general duty enshrined in Article 1.1 of the American Convention, to adopt all the necessary measures to ensure that human rights violations are not repeated. This duty expresses the general obligation of States to prevent human rights violations, that is, to guarantee their exercise, in light of Articles 1.1 and 2 of the American Convention.[27] Structural non-repetition measures may include, among many other possibilities, the following types of action: (i) the creation or adjustment of public policies, programs or structures; (ii) the adoption or adjustment of legislation and other regulations; (iii) institutional strengthening; and (iv) training for public officials and educating society on human rights.

32. The Commission reiterates that the evaluation criteria applied during the admissibility phase differ from those used to rule on the merits of a petition. Under this *prima facie* evaluation criterion, the IACHR considers that the allegations of the petitioners are not manifestly groundless and warrant an examination of the merits based on the evidence in the casefile, since they dispute, among others, the argument on the comprehensiveness of the reparation measures that the State has adopted in the domestic sphere, and they raise several possible violations of the rights protected in the American Convention, matters that must be studied and resolved in subsequent phases of the present proceedings. The Inter-American Commission takes note of the conviction imposed on an army officer, as well as of the reparation mechanisms that have already been activated at the domestic level, as a consequence of the facts established in the present petition. These actions will effectively be taken into account by the IACHR as part of its analysis on the merits of this case.

VIII. DECISION

1. To declare the present petition admissible in relation to Articles 4, 5, 8, 11, 22, 25 and 26 of the American Convention, in connection with Articles 1 (1) and 2 thereof, as well as in relation to Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture; and

2. To notify the parties of this decision; continue with the analysis of the merits of the matter; and publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 23rd day of the month of November, 2020. Joel Hernández, President; Antonia Urrejola, First Vice-President; Flávia Piovesan, Second Vice-President; Margarette May Macaulay, Esmeralda E. Arosemena de Troitiño, Julissa Mantilla Falcón, and Stuardo Ralón Orellana, Commissioners.

[27] I/A Court H.R., Case of Pacheco Teruel et al. v. Honduras. Merits, Reparations and Costs. Judgment of April 27, 2012. Series C No. 241, par. 92.