

OEA/Ser.L/V/II
Doc. 35
April 22, 2020
Original: Spanish

REPORT No. 25/20
CASE 12.780
REPORT ON MERITS (PUBLICATION)

CARLOS ARTURO BETANCOURT ESTRADA AND FAMILY
COLOMBIA

Approved by the Commission electronically on April 22, 2020

Cite as: IACHR. Report No. 25/20. Case 12.780. Merits (Publication). Carlos Arturo Betancourt Estrada and family. Colombia. April 22, 2020.



Organization of
American States

INDEX

I. SUMMARY	2
II. CLAIMS OF THE PARTIES.....	2
A. Petitioner.....	2
B. State	3
III. FINDINGS OF FACT	3
A. Context.....	3
B. Available information on the alleged victim and his family	4
C. Facts of the case.....	4
1. The kidnapping (November 14, 1999) and release (February 17, 2000) of Carlos Arturo Betancourt Estrada	5
2. The post-release threats, abandoning the territory of Colombia, and the impact of monetary losses on the life of the Betancourt family	6
3. The judicial investigation of the abduction	7
IV. ANALYSIS OF LAW.....	9
A. Rights to personal integrity (Article 5.1), to personal liberty and security (Article 7.1), and to freedom of movement and residence (Article 22.1) of the American Convention, in conjunction with Article 1.1 thereof	9
1. General considerations related to the prevention and protection component of the obligation to ensure rights.....	9
2. Specific considerations regarding the obligation of ensuring rights in the context of kidnapping for ransom committed by non-state actors	11
3. Analysis of the duty of prevention and protection in the case of Carlos Arturo Betancourt Estrada	13
B. The right to personal integrity (Article 5.1) and the right to freedom of movement and residence (Article 22.1), in conjunction with Article 1.1 of the American Convention	15
C. Right to a fair trial and to judicial protection (Articles 8 and 25.1 of the American Convention), in conjunction with Article 1.1 thereof	16
1. Standards governing due diligence, initiative, and reasonable time in the Inter-American system.....	16
2. Due diligence in investigating the kidnapping for ransom of Carlos Arturo Betancourt Estrada	17
3. Analysis of the reasonable time standard in the criminal investigation of Carlos Arturo Betancourt Estrada's kidnapping	18
4. Conclusion.....	19
V. MERITS REPORT No. 108/18	19
VI. PROCEEDINGS SUBSEQUENT TO MERITS REPORT No. 108/18	19
VII. REPORT NO. 107 /19 AND INFORMATION REGARDING COMPLIANCE	20
VIII. CONCLUSIONS AND FINAL RECOMMENDATIONS	22
IX. NOTIFICATION	23

I. SUMMARY¹

1. On September 18, 2000, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission,” or “the IACHR”) received a petition lodged by attorney Javier Villegas Posada (hereinafter “the petitioner”) alleging the international responsibility of Colombia (hereinafter “the Colombian State,” “the State,” or “Colombia”) with respect to Carlos Arturo Betancourt Estrada (hereinafter “the alleged victim” or “Mr. Betancourt”) and his family.

2. The Commission adopted Report on Admissibility No. 122/10 on October 23, 2010.² On November 10, 2010, the Commission served notice of that report to the parties and made itself available to reach a friendly settlement; however, that procedure was not activated because the agreement of the two parties was not obtained. The petitioner and the State were given the deadlines established in the Rules of Procedure for presenting their additional comments on the merits. All the information received was duly conveyed between the parties.

3. The petitioner claimed that Mr. Betancourt was abducted by Colombian guerrillas on November 14, 1999, and that, after the ransom demanded by the kidnappers was paid, he was released on February 17, 2000. He stated that before the kidnapping, a threat was received and duly reported, but that the State afforded no protection. The threats continued after the alleged victim was released, the petitioner added, and so Mr. Betancourt and members of his family were forced to leave the country out of fear of reprisals and the absence of State protection. This caused an interruption of their life plans, a profound impact, and monetary losses. To date, he said, the criminal investigation has not been successful in identifying the perpetrators or punishing them.

4. The State said that it guaranteed access to justice and pursued the relevant formalities in connection with the kidnapping and the threats. Regarding the threats of abduction, the State said that it was not informed about that possible situation, and so it was unable to prevent it; consequently, international responsibility could not be attributable. It claimed that it furnished the family with all the available tools for negotiating with the kidnappers, to the extent that was possible. It added that the delay in pursuing the formalities was connected with the family’s level of participation in the process.

5. Based on its findings of fact and law, the Inter-American Commission concluded that the State was responsible for the violation of Articles 5.1 (right to integrity), 7.1 (personal liberty and security), 22.1 (free movement and residence), 8.1 (right to a fair trial), and 25.1 (judicial protection) of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”), in conjunction with the obligations set out in Article 1.1 thereof, with respect to Carlos Arturo Betancourt Estrada and his family. The Commission issued the corresponding recommendations.

II. CLAIMS OF THE PARTIES

A. Petitioner

6. The petitioner contended that Carlos Arturo Betancourt Estrada was abducted in Medellín, Colombia, on November 14, 1999, and that he was held in captivity by an illegal armed group until February 17, 2000, when his family paid the ransom. He stated that the day before the abduction, the alleged victim received an anonymous threatening telephone call informing him that “something unpleasant was about to happen”; he reported this by telephone to the local police, who replied that “when what had to happen happened, they would be there.” He added that during his kidnapping, the alleged victim was subjected to physical and psychological torture.

¹ In compliance with the terms of Article 17.2 of the Commission’s Rules of Procedure, Commissioner Luis Ernesto Vargas Silva, a Colombian national, did not participate in discussing or deciding this case.

² IACHR, Report No. 122/10, Case 12.780, Carlos Arturo Betancourt Estrada and others (Colombia), October 23, 2010. The Commission acknowledged it lacked competence *ratione materiae* to deal with the petitioner’s claims relating to corporate entities.

7. He said that the kidnapping was reported to the authorities on November 15, 1999, with which the intermittent assistance of the National Police's Antikidnapping and Antiextortion Directorate (hereinafter "GAULA") began; however, over the months he was kept in captivity, the authorities were unsuccessful in locating the alleged victim or his abductors. The petitioner stated that following Mr. Betancourt's release, the threats and demands for money continued, and that in response, the family requested guarantees from the Army, the Metropolitan Police and GAULA; however, those efforts were fruitless. He claimed that fearing for their lives, Mr. Betancourt and two of his children left the country for the United States and his elder daughter relocated to Bogotá. This crisis, he added, led to the bankruptcy of the alleged victim's companies, the embargoing of his assets, and monetary losses.

8. He alleged the violation of the **right to personal liberty** through the kidnapping suffered by the alleged victim. He stated that despite being informed, by telephone, of the threatening calls, the State took no preventive steps whatsoever to prevent Mr. Betancourt's abduction. He alleged the violation of the **right to integrity**, through the physical and psychological torture the alleged victim suffered during the kidnapping when he was held in an underground cell, and through his and his family's suffering caused by the impunity surrounding the crime, the loss of family stability, the need to flee from Medellín, and the absence of protection and guarantees for their lives, which, in turn, led to significant material losses.

9. He alleged the violation of the **right to a fair trial and the right to judicial protection**, in that after many years the criminal proceedings have produced no results and the perpetrators of the abduction have not been punished. He further claimed that the protective measures were not deployed in response to the extortion that followed the alleged victim's release and that the attitude of the authorities was indifferent.

B. State

10. Colombia claimed that it was not responsible for violating the **right to personal liberty** because the abduction was perpetrated by third parties. Specifically, it stated that the alleged threat prior to the kidnapping was not reported to the authorities and that consequently, the State was unaware of the risk of abduction and was therefore unable to deploy any kind of preventive action to avoid it. It stressed that it was only made aware of the situation on November 15, 1999. It further stated that GAULA provided advice and made itself available to the family for their negotiations with the abductors, although that offer was rejected by the family, who were opposed to any type of rescue attempt.

11. Regarding the alleged violations of the **right to integrity**, Colombia refuted the claims that it provided no protection to the alleged victims or abandoned them to their fate. It stated that it was only made aware of the threats and extortion that followed the alleged victim's release on March 3, 2000, and that his leaving the country for Colombia prevented GAULA from deploying the available protective measures.

12. Colombia stated that it was not responsible for violating the **right to a fair trial and to judicial protection**, because the alleged victims encountered no problems in accessing the criminal justice system and because the obligation of conducting an investigation is one of procedure and not of results. Thus, it stated, formalities for the alleged victim's liberation began on the same day the complaint was filed, steps were taken to trace the number used to make the extortion calls, witnesses were interviewed, and other forms of assistance were provided during the negotiations. It held that the investigation had not suffered from unwarranted delays, that the files of the proceedings have on occasions been reopened, and that some formalities that required their involvement were delayed by the alleged victims themselves.

III. FINDINGS OF FACT

A. Context

13. According to the Commission's observations at the time of the facts, Colombia had the world's highest rate of kidnappings, generally carried out by armed dissident groups in order to secure ransom payments.³ In

³ IACHR, *Third Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/V/II.102 doc. 9 rev. 1, February 26, 1999, para. 55.

2010 the IACHR noted that kidnappings and abductions “of the population by what are known as ‘emergent structures or criminal gangs’” continued to occur.⁴ In addition, the IACHR has stated that the crimes of kidnapping and abduction for ransom have an enormous negative effect on the victims and their families, through their simultaneous impact on integrity and liberty and the threat they pose to life,⁵ as will be examined in greater detail below.

14. Likewise, the National Center for Historical Memory (hereinafter “the CNDH”) has indicated that the crime of kidnapping in Colombia affected 39,058 victims, although only 28,477 cases were reported to the authorities. According to that same source, of that total “the justice system conducted investigations in 14,715 of the cases and a total of 3,114 convictions were handed down, representing almost 11% of those of which the State was informed and 8% of those recorded in the abductions database.”⁶ It also indicates that Colombia’s period with the greatest numbers of kidnappings was between 1996 and 2000, during which in more than 80% of the cases, the abductees were released following the payment of ransom and not as a result of State actions.⁷ Given those circumstances, the CNDH’s study concluded that the figures “indicate an impunity rate of 92% among the total during the period, or of 89% if only those cases reported to the authorities are taken into account.”⁸

15. In addition, the CNDH also reported on information related to kidnapping, according to which “the deficiencies in investigations and prosecutions between 1998 and 2010 were due to such issues as the absence of efficiency indicators, failures in the training of officials, scant active participation by victims, and the lack of a culture of recording information within the justice system.”⁹

16. This information, along with the Commission’s historic concern about kidnappings in Colombia, points to the existence of a context in which abductions were carried out by non-State actors on the margins of the law and in connection with which the State agency in question identified the lack of effectiveness in the response and justice mechanisms, creating situations of impunity in the punishment of such crimes. The Commission notes that those findings are from the same period as the facts of the case at hand, as regards both Mr. Betancourt’s abduction and the subsequent investigation.

B. Available information on the alleged victim and his family

17. According to the available information, at the time of the facts Carlos Arturo Betancourt Estrada was a businessman in the city of Medellín and was married to Luz Viviana Cano Pineda. The alleged victim is the father of three children (Juli Susana, Carlos David, and Claudia Andrea), two of whom fled with him to Miami, United States, shortly after his release from captivity, as will be described below. His elder daughter, Claudia Andrea, had to abandon her studies and relocate to Bogotá, because she feared for her life.¹⁰

18. The petitioner claimed that as a result of the suffering caused by the kidnapping and extortion, which led to severe material losses, the alleged victim’s father, mother, siblings, nephews and nieces, and uncles and aunts were forced to flee the country and establish themselves in Costa Rica and the United States.¹¹ The petitioner indicated that Mr. Betancourt’s mother, Mrs. Esneda Estrada de Betancourt (hereinafter “Mrs. Estrada”), was sentenced to five years in prison for tax evasion, as a result of financial constraints following the family’s bankruptcy, which further worsened the crisis.¹²

C. Facts of the case

⁴ IACHR, *Annual Report of the IACHR 2010*, OEA/Ser.L/V/II doc. 5 corr., March 17, 2011, p. 48.

⁵ IACHR, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II doc. 57, December 31, 2009, pp. 136 and 137.

⁶ CNDH, *Una sociedad secuestrada*, Bogotá: Imprenta Nacional, 2013, p. 121.

⁷ CNDH, *Una sociedad secuestrada*, Bogotá: Imprenta Nacional, 2013, p. 135.

⁸ CNDH, *Una sociedad secuestrada*, Bogotá: Imprenta Nacional, 2013, p. 155.

⁹ CNDH, *Una sociedad secuestrada*, Bogotá: Imprenta Nacional, 2013, p. 151.

¹⁰ Annex 1. Initial petition of September 18, 2000.

¹¹ Annex 2. Petitioner’s submission of July 11, 2008.

¹² Annex 3. Regular judgment No. 018, case file 2005-0050, handed down by the 24th Criminal Circuit Court, Medellín, April 12, 2005. Annexed to the petitioner’s submission of July 11, 2008.

1. The kidnapping (November 14, 1999) and release (February 17, 2000) of Carlos Arturo Betancourt Estrada

19. There is no dispute regarding the fact that the alleged victim was abducted and held in captivity between November 14, 1999, and February 17, 2000, by an outlawed armed group, identified as a dissident faction of the National Liberation Army (hereinafter “the ELN”). Mr. Betancourt was kidnapped during a family celebration at a rural estate, known as “Normandía,” of which he was the owner. The incursion of the kidnappers and the alleged victim’s abduction, according to the police report, was witnessed by members of the family, domestic staff, and the friends in attendance, who were told not to call the police or leave the estate; the kidnappers also deflated the tires of their vehicles and stole a car belonging to Rubén Darío Echeverry Zapata (brother of the alleged victim’s former partner and hereinafter “Mr. Echeverry”).¹³

20. The Commission notes that one of the main controversies regarding this incident is whether the alleged victims notified the authorities in any way, so that the kidnapping might have been prevented. According to the petitioner, the day before the abduction, a threatening call was received at the alleged victim’s home, to his telephone number 2303941, which was reported by telephone to “the local police”¹⁴ between 7:00 p.m. and 8:30 p.m. that same day. The petitioner stated that “as regards the possibility of officially obtaining the record of that call and any recordings of the conversation it involved, if they exist, the petitioners are in a position of inferiority, since the possibility of accessing that information or not depends on the State.”¹⁵

21. In turn, the State indicated that the family gave Nos. 4127268 and 3610060 as the Betancourt family’s telephone numbers and at no time submitted the number cited in the previous paragraph. Colombia further stated that “neither do the records of the National Police contain any evidence that a call was received from telephone number 2303941 reporting the threatening situation” described by the petitioner.¹⁶ It is noted that this claim by the State reportedly comes from the document “National Police Communication, Human Rights Area, Deed No. S-2013-26000 of July 19, 2013,” which has not been submitted for inclusion in the case file before the Commission. The State concludes by saying that “thus, the National Police received no reports of threats toward Mr. Betancourt made either directly or indirectly, much less any written requests for protective measures for him or his family prior to the kidnapping.”¹⁷

22. The petitioner stated that the alleged victim was held in a clandestine, underground cell for the duration of his abduction. He also stated that the day after the kidnapping, Mr. Echeverry filed the corresponding police report (for the kidnapping and the theft of his vehicle) and GAULA was informed of the case.¹⁸ On November 18, 1999, the Specialized Prosecutor ordered the opening of an investigation and instructed GAULA to pursue the formalities necessary to “fully identify and locate the perpetrators” of the abduction. The prosecutor also ordered intelligence work and the taking of statements from the family and other persons who witnessed the incursion and kidnapping.¹⁹

23. According to a deed from the prosecutor’s office, Mr. Echeverry’s vehicle was found abandoned at 5:30 a.m. on November 15, 1999, with no serious damage but with several items and money missing. According to the deed, “since the vehicle was driven by several persons following its recovery, ordering the relevant fingerprint analysis is not appropriate,” and, for that reason, it was returned to Mr. Echeverry with no further examination.²⁰

¹³ Annex 4. Report filed with the National Police on November 15, 1999. Annexed to the petitioner’s submission of September 16, 2008.

¹⁴ Annex 1. Initial petition of September 18, 2000.

¹⁵ Annex 5. Petitioner’s submission of April 18, 2013.

¹⁶ Annex 6. State’s submission of April 16, 2014.

¹⁷ Annex 6. State’s submission of April 16, 2014.

¹⁸ Annex 7. Certificate of the complaint of November 15, 1999, issued by GAULA on February 28, 2000. Annexed to the initial petition of September 18, 2000.

¹⁹ Annex 8. Prosecutor’s resolution opening the investigation of November 18, 1999. Annexed to the petitioner’s submission of July 11, 2008.

²⁰ Annex 9. Prosecutor’s resolution Cod. 264, GAULA No. 2, release of vehicle, November 19, 1999. Annexed to the petitioner’s submission of July 11, 2008.

24. Subsequently, in coordination with GAULA, the family began negotiations with the kidnappers. The Commission notes that according to the petitioner's narrative, that assistance was requested intermittently for certain decisions, but that primarily the family negotiated directly with the abductors.²¹ The State said that "the competent authorities received no assistance from the victim's family prior to the abduction, during it, or afterward";²² specifically, it stated that GAULA tried "to take sworn statements from other persons who were present the night of the incident; however, they refused to do so on the grounds that they were very fearful regarding the situation."²³ Regarding this lack of cooperation, the petitioner said that the State does not require the victims' permission to pursue its duties of maintaining order and preventing abductions, and that this was "cruel and revictimizing."²⁴

25. According to the State, GAULA began its work by tracing and monitoring the telephone numbers provided by the victims and advised the family regarding the negotiations, with which it succeeded in reducing the ransom amount from the 700 million Colombian pesos originally demanded to 80 million.²⁵ The State also reported that the family categorically refused logistical support to secure the alleged victim's release through a rescue operation, with which the State was unable to deploy all its specialized structures to free Mr. Betancourt.²⁶ According to GAULA's report, the alleged victim was released two days after the ransom payment was made.²⁷

2. The post-release threats, abandoning the territory of Colombia, and the impact of monetary losses on the life of the Betancourt family

26. The petitioner stated that following Mr. Betancourt's release, the family continued to receive death threats and demands for more money from the kidnappers. According to his narrative, the family "duly notified the relevant criminal justice authorities and asked them to extend the necessary protection."²⁸ The case file indicates that Mr. Betancourt asked the National Army,²⁹ the Metropolitan Police,³⁰ and GAULA³¹ for protection on March 1, 2001.³² The thrust of all those letters is as follows: "Ever since I regained my freedom, my family has received blackmail attempts and threats over the telephone, to the extent that I will be forced to leave the country if the chaotic situation we are facing continues (...) we therefore respectfully request THE PROTECTION THAT MY FAMILY REQUIRES, since it is the only way that the Colombian State can act to defend our interests."

27. According to the State, it was not until March 3, 2000, that it was made aware of the risks facing Mr. Betancourt, and that according to Deed No. 2401 of March 10, 2000, which has not been annexed to the case file, the Medellín Regional GAULA "informed Mr. Betancourt Estrada of the steps taken in connection with his protection request; however, by that date, Mr. Carlos Arturo Betancourt Estrada was already outside the country." It further stated that given his departure, "any control measures adopted by the National Police (...) would therefore be fruitless." Similarly, the State also maintained that the alleged victim "decided voluntarily and freely to leave the country, without even waiting for the actions of the National Police intended to afford him security and tranquility."³³

28. Regarding the decision to abandon Colombian territory, the Commission identifies two positions held by the parties. First, the petitioner indicated that the move to the United States and Costa Rica was the result of a recommendation made by GAULA,³⁴ which he backed up by presenting a statement made by the alleged victim's sister after relocating to Costa Rica, in which she stated that "GAULA (...) advised us to leave the

²¹ Annex 5. Petitioner's submission of April 18, 2013.

²² Annex 6. State's submission of April 16, 2014.

²³ Annex 10. State's submission of February 28, 2013.

²⁴ Annex 5. Petitioner's submission of April 18, 2013.

²⁵ Annex 11. Report of GAULA, work order No. 75, August 15, 2000. Annexed to the petitioner's submission of July 11, 2008.

²⁶ Annex 6. State's submission of April 16, 2014.

²⁷ Annex 11. Report of GAULA, work order No. 75, August 15, 2000. Annexed to the petitioner's submission of July 11, 2008.

²⁸ Annex 1. Initial petition of September 18, 2000.

²⁹ Annex 12. Request for protection from the National Army, March 1, 2000. Annexed to the initial petition of September 18, 2000.

³⁰ Annex 13. Request for protection from the National Police, March 1, 2000. Annexed to the initial petition of September 18, 2000.

³¹ Annex 14. Request for protection from GAULA, March 1, 2000. Annexed to the initial petition of September 18, 2000.

³² These letters are stamped "received" on March 3, 2000.

³³ Annex 10. State's submission of February 28, 2013.

³⁴ Annex 5. Petitioner's submission of April 18, 2013.

country.”³⁵ In contrast, the State identified a contradiction in the petitioner’s arguments, in that he first stated that the decision to abandon the country was taken independently and, later, the story was changed to claim that the relocation was recommended by GAULA.³⁶ In connection with this, the State contended that the petitioner displayed “inadequate clarity regarding the contentions, and provided no evidence in which the authorities made such a recommendation.” According to Colombia, “the National Police cannot take any protection actions on behalf of persons who are outside the country.”³⁷

29. Regarding this, the petitioner stated that “prior to March 3, 2000, the Betancourt family contacted the GAULA Group to request the protection they required; the group’s officers told Mrs. Esneda and Mrs. Doris Betancourt Estrada that they did not have the wherewithal needed to protect them.”³⁸ The Commission notes on this point that in the reply dated March 10, 2000, the Medellín Regional GAULA sent a letter to the alleged victim stating that:

(...) your [protection] request was processed by the Command of the Valle de Aburrá Metropolitan Police and by the Department of Security DAR, Medellín section, in documents Nos. 0399 and 0400 of 10.03.00, respectively, and those agencies have more infrastructure for complying with the protection sought, since the number of personnel available to this unit is insufficient for combating this Department’s problem with the crimes of abduction and extortion, and that is the specialty for which the GAULA groups were created (...) and that limitation does not allow us to offer personal protection to the victims of those crimes, but rather advice and the investigation of the different cases that are reported on a daily basis.³⁹

30. The petitioner stated that the kidnapping, the abandoning of Colombian territory, and the State’s failure to provide security protection caused the Betancourt family monetary losses and suffering. As he saw it, because of “the lack of protection (...) from the State, [the family] had to abandon its only assets.”⁴⁰ According to his narrative, the failure to cancel taxes following the loss of assets caused by paying Mr. Betancourt’s ransom led to a criminal conviction for Mrs. Estrada, the liquidation and bankruptcy of their companies, the embargo of property when mortgage payments were not made, the sale of property and vehicles, and “Mr. Betancourt, because of his new economic status, was forced to abandon all the institutions and social groups to which he had belonged, and the social, economic, and emotional pressure to which the family was subjected (...) led to the breakdown of the family, include divorce and estrangement from his children, since because of the situation they had to interrupt their studies and change their style of life.”⁴¹

31. The petitioner submitted a number of financial documents to the case file, although he provided no detailed explanation of the connection between them and the alleged harm other than the references made in the preceding paragraph. Regardless of the foregoing, the IACHR records the reception of those documents.⁴²

3. The judicial investigation of the abduction

32. As already stated in this report, the abduction was reported to the authorities by Mr. Echeverry on November 15, 1999. According to his statement, the sequence of events was as follows:

[we were] in the living room of the house on the NORMANDÍA estate, the property of the abductee CARLOS ARTURO, (...) in attendance were my sisters and their husbands, including MARÍA, NAZARETH, GERMÁN the husband of NAZARETH, and LIZANDRO the husband of MARÍA. I then left the room to join another group of friends invited by CARLOS ARTURO, including DARÍO and MARIO, I remember that (...) they were outside in the house’s yard (...) when from the estate’s roadway two or three individuals appeared, in civilian clothing but their faces covered with balaclavas, carrying a submachine gun, a pistol, and one with a rifle (...) pointing their guns at CARLOS ARTURO’s son, whose name

³⁵ Annex 15. Statement given by Doris Amparo Betancourt Estrada to the 24th Criminal Circuit Court, March 17, 2005. Annexed to the petitioner’s submission of April 18, 2013.

³⁶ Annex 6. State’s submission of April 16, 2014.

³⁷ Annex 6. State’s submission of April 16, 2014.

³⁸ Annex 5. Petitioner’s submission of April 18, 2013.

³⁹ Annex 16. Letter from the Chief of Medellín Regional GAULA, March 10, 2000. Annexed to the initial petition of September 18, 2000.

⁴⁰ Annex 17. Petitioner’s submission of August 14, 2009.

⁴¹ Annex 2. Petitioner’s submission of July 11, 2008.

⁴² Annex 18. Various financial documents. Annexed to the initial petition of September 18, 2000. Annex 19. Various financial documents. Annexed to the petitioner’s submission of July 11, 2008.

is CARLOS DAVID and is about 16 years old; he had gone somewhere, I don't know where, perhaps to play billiards at the estate manager's home which is about fifty meters away; they walked up to the yard where we were and they forced us into the house, where they brought us all together and asked who else was there. Then they asked who Mr. CARLOS ARTURO BETANC[O]UR[T] was; he identified himself and they went out to talk (...) Then they told us to close and lock all the doors and they sent the keys to the estate manager so he could open up for us, and they asked for the keys to a number of cars, including the keys to my taxi (...) We heard them start several cars, they moved some of them around and deflated the tires on others, and then they left.⁴³

33. In his complaint Mr. Echeverry was asked by GAULA whether the alleged victim had suffered other similar attacks or had received threats; he replied that he did not know.⁴⁴

34. On November 18 of that year, the prosecutor assigned to Medellín's Urban GAULA No. 2 ordered the opening of a preliminary investigation "in order to commence, or otherwise, the bringing of criminal action" for the abduction of Carlos Arturo Betancourt Estrada⁴⁵ and the theft of Mr. Echeverry's vehicle. Regarding the finding of the vehicle and tests carried out on it, the Commission refers back to the remarks made previously in this report. In addition, the Commission reiterates its comments regarding the request for GAULA to investigate the telephone numbers provided by Mr. Betancourt's family. Furthermore, the IACHR places on record that the prosecutor reported the opening of the investigation to the Judicial Prosecutor,⁴⁶ the Antiextortion and Abduction Unit (CONASE),⁴⁷ the Presidential Antikidnapping Program,⁴⁸ and the Coordinator of the Specialized Prosecution Service.⁴⁹

35. Thus, between the abduction and the release, according to the State's submissions to the IACHR, the main steps taken in the investigation were taking a statement from Mr. Echeverry, recovering the stolen vehicle, providing advice in the negotiations with the kidnappers, the investigation of the telephone lines referred to above,⁵⁰ and the deeds served on other agencies identified in the previous paragraph for coordinating the search effort. There is no information available on whether those documents led to any coordinated actions by the state agencies listed. The available information indicates that the State's actions during the period in question were limited to the measures described.

36. Following the alleged victim's release, there is another report that describes other steps taken by GAULA. The Commission notes that the report indicates that "no sworn statements could be taken from the family members present at the estate at the time of the incident because the victim's sisters did not know exactly who" those persons were. The IACHR also notes that neither could Mr. Echeverry be located for him to give an expanded statement. Next, it also indicates the intelligence work carried out according to which, based on names mentioned in letters written by the alleged victim during his captivity, GAULA concluded that two other people were being held along with Mr. Betancourt and, based on that information, the group of kidnappers was identified as "a dissident faction of the BERNARDO LOPEZ ARROYAVE guerrilla group of the ELN."⁵¹

37. The Commission notes that on August 16, 2000, Mr. Hernán Duque Salazar gave a statement to GAULA. He indicated that the family's negotiations with the abductors were carried out in the utmost secrecy. He said that his participation, at the family's request, involved on-site dealing with the captors, as a part of which on December 4, 1999, he received proof that Mr. Betancourt was still alive (a letter) and on which occasion he saw two individuals—one in a uniform and the other in civilian clothes— of whom he gave physical descriptions in his testimony. He added that he performed tasks of that kind (conveying documents, delivering medicines, etc.)

⁴³ Annex 20. No. 083/GAULA-UIPJ, record of criminal complaint, November 15, 1999. Annexed to the petitioner's submission of July 11, 2008.

⁴⁴ Annex 20. No. 083/GAULA-UIPJ, record of criminal complaint, November 15, 1999. Annexed to the petitioner's submission of July 11, 2008.

⁴⁵ Annex 8. Prosecutor's resolution opening the investigation of November 18, 1999. Annexed to the petitioner's submission of July 11, 2008.

⁴⁶ Annex 21. Deed No. 1750 of November 18, 1999. Annexed to the petitioner's submission of July 11, 2008.

⁴⁷ Annex 22. Deed No. 1752 of November 18, 1999. Annexed to the petitioner's submission of July 11, 2008.

⁴⁸ Annex 23. Deed No. 1754 of November 18, 1999. Annexed to the petitioner's submission of July 11, 2008.

⁴⁹ Annex 24. Deed No. 1756 of November 18, 1999. Annexed to the petitioner's submission of July 11, 2008.

⁵⁰ Annex 10. State's submission of February 28, 2013.

⁵¹ Annex 25. GAULA "Preliminary Report No. 1029," August 15, 2000. Annexed to the petitioner's submission of July 11, 2008.

on two further occasions, when he was directed to specific locations where he met with the abductors for different purposes, the last of which was to hand over the ransom money and then pick up Mr. Betancourt. In his testimony, Mr. Duque stated that he had direct, spoken contact with the captors: a total of 10 guerrillas, all heavily armed.⁵²

38. On September 5, 2003, the Chief Prosecutor of the Specialized Prosecution Service resolved to suspend the preliminary investigation into the crime of Carlos Arturo Betancourt Estrada's kidnapping because it had exceeded the maximum time allowed for the investigation following the judicial proceedings.⁵³

39. Regarding the steps taken later, the State indicated that the case was reactivated and several formalities were subsequently pursued. While no supporting documents were included, the State said that on October 2, 2009, a resolution was adopted "removing the case file from the archive for the preliminary investigation to be reopened"⁵⁴ and efforts were made to determine the victims' whereabouts and take statements from them.⁵⁵ The State also said that on May 9, 2011, "the 47th Specialized GAULA Prosecutor's Office in Medellín (...) ordered that progress be made with the preliminary investigation"⁵⁶ and that "finally, on August 9, 2011, Messrs. Carlos David Betancourt Echeverry, the abductee's son, Rubén Darío Echeverry Zapata, the person who filed the police report, Luis Hernán Duque Salazar (...) and Carlos Arturo Betancourt Estrada (...) appeared before the authorities."⁵⁷

40. According to the Colombian State's narrative, the prosecution service collected seven additional statements, but none of the individuals involved was able to identify the perpetrators of the crime. The IACHR places on record that neither of the parties has indicated the current status of the investigation.

IV. ANALYSIS OF LAW

A. Rights to personal integrity⁵⁸ (Article 5.1), to personal liberty and security⁵⁹ (Article 7.1), and to freedom of movement and residence⁶⁰ (Article 22.1) of the American Convention, in conjunction with Article 1.1 thereof

1. General considerations related to the prevention and protection component of the obligation to ensure rights

41. The Commission has stated that a violation of the human rights protected by the Convention can trigger the international responsibility of a state party either when the violation is committed by its own agents and—although at first not directly attributable to the State by reason of having been committed by a private citizen—when the perpetrator cannot be identified because of the State's lack of diligence in taking reasonable steps to prevent the violation or to deal with it in accordance with the Convention's provisions. The key element is determining if the illicit act involved the participation, support, or tolerance of agents of the State or was the result of the State's failure to abide by its obligation of taking reasonable steps to prevent human rights violations, of conducting serious investigations in order to identify and punish the perpetrators thereof, and of providing victims and their families with appropriate redress for the harm suffered.⁶¹

⁵² Annex 26. Record of sworn statement given by Mr. Duque, August 16, 2000. Annexed to the petitioner's submission of July 11, 2008.

⁵³ Annex 27. Prosecutor's resolution to suspend the investigation, case file 333855-1029, September 5, 2003. Annexed to the petitioner's submission of July 11, 2008.

⁵⁴ Annex 10. State's submission of February 28, 2013.

⁵⁵ Annex 6. State's submission of April 16, 2014.

⁵⁶ Annex 10. State's submission of February 28, 2013.

⁵⁷ Annex 6. State's submission of April 16, 2014.

⁵⁸ Article 5.1 of the American Convention establishes, in its pertinent parts, that: "1. Every person has the right to have his physical, mental, and moral integrity respected."

⁵⁹ Article 7.1 of the American Convention establishes, in its pertinent parts, that: "1. Every person has the right to personal liberty and security."

⁶⁰ Article 22.1 of the American Convention establishes: "Every person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law."

⁶¹ IACHR, Report No. 65/01, Case 11.073, Merits, Juan Humberto Sánchez, Honduras, March 6, 2001, para. 88.

42. The Inter-American Court has established that the obligation of ensuring Convention-protected rights implies the States' duty to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, States must prevent, investigate, and punish any violation of the rights recognized by the Convention and, moreover, if possible, attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation.⁶²

43. The Commission has repeatedly affirmed that those obligations also apply to the actions of non-state actors.⁶³ Specifically, the Inter-American Court has ruled that "the State's international responsibility can arise from human rights violations committed by third parties or private citizens but attributed to the State, as part of its official obligation to ensure respect for rights among such individuals⁶⁴ (...) The *erga omnes* obligations of upholding and ensuring the observance of the protection standards incumbent on states parties to the Convention have effects that go beyond the relationship between its agents and the persons under its jurisdiction, in that also they arise in the State's positive obligation of adopting all the measures necessary to ensure the effective protection of human rights in relations between individuals."⁶⁵ These obligations devolve upon all subjects of international law and presumptions of noncompliance must be determined in function of the need for protection in each particular case.⁶⁶

44. Regarding the duty of prevention, the Court has specifically stated that a State cannot be held responsible for any violation of human rights committed by private persons under its jurisdiction. Thus, the *erga omnes* nature of the State's conventional obligation to ensure rights does not imply its unlimited responsibility for any action by private citizens,⁶⁷ since its duty of adopting preventive and protective measures in citizens' interactions is subject to whether: (i) the State was or should have been aware of a situation of risk, (ii) that risk was real and immediate, and (iii) the State adopted such measures as could reasonably be expected to prevent that risk from becoming a reality.⁶⁸

45. In line with the above, the Commission recalls that in cases involving disappearances of persons, inter-American precedent has determined the existence of an inseparable bond between the State's response and protecting the life and integrity of a person reported to have disappeared. The Convention requires an immediate and exhaustive response from the State regardless of whether the suspected disappearance was at the hands of private citizens or agents of the State. The Commission holds that those considerations apply to situations in which the State is aware of a kidnapping for ransom, in that there are similarities between the rights already violated and those that are at extreme risk, as will be analyzed below.

46. Thus, the Commission finds that, as in cases in which "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,"⁶⁹ the same Inter-American standard of protection is applicable in cases involving abductions by non-state actors, as indicated by the nature of the rights involved. In addition, that standard is of heightened importance in the case at hand, in that there was a widespread

⁶² I/A Court H. R., *Case of Velásquez Rodríguez v. Honduras*, Merits, Judgment of July 29, 1988, Series C No. 4, para. 166.

⁶³ IACHR, Report No. 80/11, Case 12.626, Merits, Jessica Lenahan (Gonzales) and Others, United States, July 21, 2011, para. 119.

⁶⁴ I/A Court H. R., *Case of the Massacre of Pueblo Bello*, Judgment of January 31, 2006, Series C No. 140, para. 113.

⁶⁵ I/A Court H. R., *Case of the "Mapiripán Massacre,"* Judgment of September 15, 2005, Series C No. 134, para. 111.

⁶⁶ I/A Court H. R., *Case of the Massacre of Pueblo Bello*, para. 117.

⁶⁷ I/A Court H. R., *Case of the Massacre of Pueblo Bello*, para. 117.

⁶⁸ The jurisprudence of the European Court regarding the elements inherent in the duty of prevention has been cited by the Inter-American Court in several of its judgments. In this regard, see: I/A Court H. R., *Case of the Massacre of Pueblo Bello v. Colombia*, Judgment of January 31, 2006, Series C No. 140, para. 124; 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, para. 284; I/A Court H. R., *Case of Luna López v. Honduras*, Merits, Reparations, and Costs, Judgment of October 10, 2013, Series C No. 269, para. 124.

⁶⁹ I/A Court H. R., *Case of Anzaldo Castro v. Peru*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of September 22, 2009, Series C No. 202, para. 134; *Case of Radilla Pacheco v. Mexico*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 23, 2009, Series C No. 209, para. 221; and *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia*, Merits, Reparations, and Costs, Judgment of September 1, 2010, Series C No. 217, para. 167. See also: *Matter of Natera Balboa*, Provisional Measures regarding Venezuela, Order of the Court of February 1, 2010, 13th recital.

context of kidnapping for ransom at the time of the armed conflict in Colombia, which had serious repercussions for the victims' rights and, in some cases, resulted in their deaths.⁷⁰

2. Specific considerations regarding the obligation of ensuring rights in the context of kidnapping for ransom committed by non-state actors

47. The IACHR notes that a broad consensus exists in the member states of the Organization of American States (hereinafter "the OAS" or "the Organization") that public security is a state duty and is "intended to safeguard the well-being and security of persons and protect the enjoyment of all their rights."⁷¹

48. Accordingly, incidents involving kidnapping for ransom have been a source of constant concern to the Organization. Since the 1970s, the OAS member states have identified such crimes as "serious violations of fundamental rights and freedoms" and have expressed their firm determination "to prevent the repetition of such acts."⁷² The Commission finds that although the Organization first addressed kidnapping for ransom from the viewpoint of terrorism and its political and ideological motivation, subsequently—on account of its proliferation and its impact on victims and their families—its concern expanded to cover the actions of "common criminals, organized criminal groups, and illegal armed groups" and to roundly condemn the crime of "kidnapping, under any circumstances and whatever its motive or purpose."⁷³ The Organization has also acknowledged the need for its member states to adopt guidelines for preventing, prosecuting, punishing, and eliminating the crime of kidnapping, as well as for the care of victims and their families.⁷⁴

49. In addition, the Commission sees that combating kidnapping in all circumstances and regardless of its purpose, together with its repercussions on the human rights of victims and their families, is a concern also found in the systems and mechanisms of the United Nations.⁷⁵ Thus, the Economic and Social Council (hereinafter "ECOSOC") defined kidnapping as the practice that consists of "unlawfully detaining a person or persons against their will for the purpose of demanding for their liberation an illicit gain or any other economic gain or other material benefit, or in order to oblige someone to do or not do something."⁷⁶ That definition is consistent with the elements of the crime of kidnapping that the United Nations Secretary-General identified as common to a large number of legal systems across the world:⁷⁷ "(a) the illegal seizing, carrying off or deprivation of liberty of an individual without consent, (b) the use of violence, the threat of violence and/or fraud and deception in the commission of the offense, (c) the holding of the victim in a place that could not be found, (d) the specific objective of economic or financial gain and/or political or other influence, including through the practice of extortion."⁷⁸

50. Of course, the Commission acknowledges that kidnapping can, by reason of its nature, be classified in different ways; however, regardless of the motivation behind it, the United Nations Office on Drugs and Crime (hereinafter "UNODC") has stated that the authorities are responsible for determining the most appropriate

⁷⁰ See, *mutatis mutandis*: 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, para. 283.

⁷¹ OAS, Commitment to Public Security in the Americas, OEA/Ser.K/XLIX. 1 MISPA/doc. 7/08 rev. 4, First Meeting of Ministers Responsible for Public Security in the Americas, Mexico City, October 29, 2008. Similarly: OAS, Consensus of Santo Domingo on Public Security, OEA/Ser.K/XLIX. 1 MISPA II/doc. 8/09 rev. 2, Second Meeting of Ministers Responsible for Public Security in the Americas, Santo Domingo, Dominican Republic, November 5, 2009.

⁷² OAS, General Action and Policy of the Organization with regard to Acts of Terrorism and, Especially, the Kidnapping of Persons and Extortion in Connection with that Crime, AG/RES. 4 (I-E/70), resolution adopted at the sixth plenary session, held on June 30, 1970.

⁷³ OAS, Hemispheric Cooperation against the Crime of Kidnapping and for Support for Victims, AG/RES. 2574 (XL-O/10), adopted at the fourth plenary session, held on June 8, 2010.

⁷⁴ OAS, Hemispheric Cooperation against the Crime of Kidnapping and for Support for Victims, AG/RES. 2574 (XL-O/10), adopted at the fourth plenary session, held on June 8, 2010.

⁷⁵ UN, International cooperation in the prevention, combating and elimination of kidnapping and in providing assistance to victims, A/RES/59/154, resolution adopted by the General Assembly at its 59th session, 74th plenary meeting, 20 December 2004. Similarly: UN, International cooperation in the prevention, combating and elimination of kidnapping and in providing assistance to victims, A/RES/61/179, resolution adopted by the General Assembly at its 61st session, 82nd plenary meeting, 20 December 2006.

⁷⁶ ECOSOC, International cooperation in the prevention, combating and elimination of kidnapping and in providing assistance for the victims, ECOSOC Resolution 2002/16, 37th plenary meeting, 24 July 2002, 59th session, 74th plenary meeting.

⁷⁷ The study covers some 65 legal systems from around the world.

⁷⁸ ECOSOC, *International cooperation in the prevention, combating and elimination of kidnapping and in providing assistance to victims*, Report of the Secretary-General, E/CN.15/2003/7, 5 March 2003, p. 3.

strategy for enforcing the law⁷⁹ and, at times of instability, if the risk of detection is low and the opportunity for corruption is high, the incentives for kidnapping are strong.⁸⁰

51. According to UNODC, this enables the following objectives to be set in investigating abductions, in order of priority: (i) the preservation of life, (ii) the prompt and safe return of the victim, (iii) the provision of protection and support to the family of the victim, (iv) the protection of public security, and (v) the gathering of information, intelligence, and evidence leading to the successful arrest and conviction of the perpetrators. UNODC also holds that the main priority is the preservation of life rather than the arrest of the offenders, which “may mean reconsidering tactical options if their use increases the risk to the victim. It is essential that objective risk assessments be made, reviewed, and documented during every kidnapping investigation.”⁸¹

52. Likewise, in addition to being in line with the objectives identified above, the search and negotiation strategy requires the deployment of specific actions for it to be considered diligent. For example: appointing an authority, to whom the investigation and intelligence team are answerable, to be responsible for the case and to deal directly with the family; determining protective measures and public security mechanisms; and establishing effective cooperative ties with such bodies as telephone companies, financial institutions, private closed circuit and surveillance networks, and the media, when a reporting embargo is required.⁸² Similarly, the IACHR has said that states “should have the human and technical resources at hand for a proper police investigation and intelligence gathering; when necessary and as a last resort, they should also have special police units that can perform interventions with the minimum risk to the kidnapped victim’s life and integrity of person.”⁸³

53. Along the same lines, and as already noted in the section dealing with the context, the Inter-American Commission has expressed specific concern about the violations arising from kidnapping for ransom and its proliferation in Colombia and the Americas. In its *Report on Citizen Security and Human Rights*, the IACHR stated that kidnapping was among the crimes that “affect the right to liberty and security of persons in the Americas.” As a result, “member states have an obligation to enforce legislation and operational measures—by way of preventive actions and necessary and legitimate police work—so that their policy on citizen security is a dexterous and apt tool to ensure and protect the right to liberty and security of person against these kinds of criminal acts committed by private parties.”⁸⁴

54. The IACHR has also recognized the enormous toll that the crime of kidnapping takes on its victims and their families, for which reason member states should take the necessary measures to prevent criminal acts of this kind, which also put the victims’ rights to life and to the integrity of person in serious peril.⁸⁵ In addition to the foregoing, the Commission understands that by its nature, and as identified in the definition and components thereof, the crime of kidnapping involves the physical relocation of the victim, against his or her will, to a place of captivity, which could also constitute a violation of the right of freedom of movement.

55. Furthermore, the IACHR has specifically held that in abduction cases, not only can a state be held responsible for violations of the rights enshrined in the American Convention perpetrated by its agents, but also for the actions of private citizens acting with its collusion or acquiescence or through its omissions; for failures in duly investigating the violation; and for a lack of due diligence in preventing the violation.⁸⁶

56. In light of the foregoing, taking into consideration that the OAS acknowledges the existence of a general obligation to prosecute, combat, and eliminate kidnapping because of the severe human rights violations it entails, together with the definition and constituent elements of the offense as developed by the agencies of the United Nations, and in conjunction with the specific violations of the American Convention that the IACHR has associated with the commission of such crimes, it can be concluded that ransom kidnapping is a serious offense

⁷⁹ UN Office on Drugs and Crime, *Counter-kidnapping Manual*, Vienna, January 2006, p. 5.

⁸⁰ UN Office on Drugs and Crime, *Counter-kidnapping Manual*, Vienna, January 2006, p. 17.

⁸¹ UN Office on Drugs and Crime, *Counter-kidnapping Manual*, Vienna, January 2006, p. 24.

⁸² UN Office on Drugs and Crime, *Counter-kidnapping Manual*, Vienna, January 2006, p. 25 et seq.

⁸³ IACHR, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II doc. 57, December 31, 2009, pp. 136 and 137.

⁸⁴ IACHR, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II doc. 57, December 31, 2009, pp. 136 and 137.

⁸⁵ IACHR, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II doc. 57, December 31, 2009, pp. 136 and 137.

⁸⁶ IACHR, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II doc. 57, December 31, 2009, pp. 136 and 137.

that leads to violations of the rights to personal integrity, liberty, security, and freedom of movement and that it poses a grave threat to the right to life, with respect to the abductees, and of the right to integrity, with respect to their families.

57. Furthermore, although kidnapping for ransom, when committed by non-state actors, does not trigger the state's international responsibility under its obligation to ensure rights, the Commission believes that in accordance with international human rights law and in light of that obligation, it does give rise to duties of due diligence as regards the strategy for searching for and liberating the victim, negotiating with the captors, and assisting the victim's family during the time when he or she is held in captivity.

58. In light of the above, the Commission believes that the State's obligations of prevention and protection as regards kidnapping for ransom must be analyzed at two junctures: first, an analysis of international responsibility in connection with the real and imminent risk prior to the alleged victim's abduction, in the terms set out in this report; and second, an analysis of the protective measures adopted by the State from the time it learns of the abduction up until the victim's release, as regards the following elements: (a) the existence of a strategy for and the deployment of specific search, rescue, and negotiation actions, agreed on in conjunction with the alleged victim's family and consistent with the objectives of kidnapping investigations, and (b) specific assistance and protection measures extended to the family.

3. Analysis of the duty of prevention and protection in the case of Carlos Arturo Betancourt Estrada

59. The Commission notes the existence of a disagreement between the parties regarding whether Mr. Betancourt did or did not inform the authorities of a threatening call received the day before his abduction. In keeping with the standards cited above, in order to analyze the State's obligations under the duty of prevention, the IACHR must determine whether the State was aware of the existence of a real and immediate danger to the alleged victim. Accordingly, the petitioner indicated that the call to "the local police" was made the previous day, between 7:00 and 8:30 p.m. The State said that its records contain no indication that such a telephone call was received. The Commission further notes that neither party submitted any evidence to support its contentions, although the petitioner said that in such circumstances the burden of proof was on the State.

60. On this point, the Commission notes that although an inversion of the burden of proof may apply as regards certain information held only by the State, in the case at hand the petitioner failed to adequately explain what prevented him from accessing his telephone records and attempting to prove that the call to the "local police" was in fact made or for what reason that information could not be accessed. In addition, the petitioner provided no other testimony or evidence to indicate that such a call was placed. As a result, the Commission does not have sufficient evidence to establish that the Colombian State was aware of the risk facing Mr. Betancourt prior to this abduction. Accordingly, with the available information, the IACHR believes that the State cannot be held responsible for the kidnapping itself.

61. Subsequently, after Mr. Betancourt had been kidnapped and after the relevant authorities had been informed the following day, and because of the grave threat to the victim and his family posed by the kidnapping as described above, an immediate and heightened duty to protect their right to life, humane treatment, personal liberty, and freedom of movement and residence was triggered. As explained in the previous section, the minimum elements of that obligation in abduction cases include the following: (a) the existence of a strategy for and the deployment of specific search, rescue, and negotiation actions, agreed on in conjunction with the alleged victim's family and consistent with the objectives of kidnapping investigations, and (b) specific assistance and protection measures extended to the family of the kidnapping victim.

62. Regarding the first element, the State informed the IACHR that GAULA took a series of steps to locate Mr. Betancourt. These including tapping telephone lines, taking statements from Mr. Echeverry, and providing Mr. Betancourt's family with assistance and advice. The Commission notes that on several occasions the State said that the family was unwilling to cooperate and had, instead, assumed private control over the negotiations with the abductors. On this point, the petitioner told the Commission that the family's attitude could not be

considered an obstacle to the State's fulfillment of its international obligations during the course of the abduction.

63. As has already been said, the complex phenomenon of kidnapping demands a detailed analysis of the particular circumstances and characteristics of each case, in order to draw up a strategy with the primary goal of preserving the life of the abductee. In Mr. Betancourt's case, the Commission notes that, first, the State did not communicate its operational strategy for dealing with the kidnapping and that, on the contrary, the family opposed a rescue attempt and received sporadic support for the negotiations from the State. The Commission notes that although the involvement of the family and coordination with them is a basic element in abduction cases, the responsibility for establishing a relationship of cooperation, trust, and security with victims' families, in light of the clearly critical situation they are facing, falls on the State. This is essential so that the family's decisions—regarding, for example, rescue operations or negotiations with the captors—are the result of an appropriate and specialized state response that includes information on the different approaches available, the safeguards and risks in each, the family's protection, the assurance that preserving life will be the central concern, and other elements to ensure that informed decisions are taken; that, however, did not occur in the case at hand. It should also be noted that the State was under a heightened duty to meet those obligations, given that this kidnapping was not an isolated incident in Colombia.

64. On this point, the IACHR sees that the family repeatedly contacted GAULA (for ransom negotiations, and for advice on handling messages and delivering documents, for instance), which means there was a degree of communication that would have allowed GAULA or other competent authorities to build an adequate relationship with the family for the correct deployment of intelligence actions to search for Mr. Betancourt and secure his release.

65. In addition, as regards the intelligence and investigation actions taken as part of the protection strategy adopted following Mr. Betancourt's kidnapping, the IACHR notes that there is no record of interviews with or statements taken from the individuals who witnessed the abduction, testimony that would constitute a logical and essential source of information relating to the duty of protection in abduction cases. On the contrary, the State merely noted that the witnesses were afraid to make statements, and nothing in the information furnished by the State indicates the offering of any protections or safeguards to enable them to give statements in secure conditions.

66. Notwithstanding the more detailed analysis that will be made in the section dealing with the right to a fair trial and the right to judicial protection, at this juncture the Commission reiterates the inseparable bond that exists between an immediate and exhaustive investigative response and complying with the duty of protecting the rights that have been violated or are at risk in a disappearance or abduction case. The Commission notes that in the case at hand, there was only a minimal amount of investigative activity between the filing of the police report for the kidnapping on November 15, 1999, and the victim's release on February 17, 2000. In addition to the comments in the previous paragraph, reference should also be made to the fact that Mr. Duque's statement—who clearly had information of relevance on account of his participation in the negotiations—was not taken until August 2000, months after the rescue.

67. Moreover, from the information furnished by the State, the IACHR cannot identify the structure of GAULA's strategy used in Mr. Betancourt's kidnapping. The Commission is unclear on who was responsible for decision-making, for negotiations with the family, and for leading the investigation and the intelligence actions, and on GAULA's level of initiative; as a result, it cannot identify the actions that were taken to search for Mr. Betancourt, negotiate with his captors, or secure his release, in accordance with the goals of kidnapping investigations.

68. Similarly, neither can the IACHR identify the State's adoption and implementation of any specific measures for the protection of the family; as a result, it cannot determine the extent to which the State fulfilled its obligation of protecting Mr. Betancourt's family. In its narrative the State describes what is more of a reactive position to the family's requests, but the Commission cannot determine whether GAULA assessed the risk and weighed up the adoption of protective measures suitable to the circumstances.

69. In light of the foregoing considerations, the Commission finds that the kidnapping that took place on November 14, 1999, cannot be blamed on the Colombian State. However, the Commission concludes that the Colombian State is responsible for endangering the life and for violating the rights to personal integrity, personal liberty and security, and freedom of movement and residence enshrined in Articles 5.1, 7.1, and 22.1 of the American Convention, in conjunction with its duty of protecting those rights in accordance with Article 1.1 thereof, during the time of the abduction, with respect to Mr. Carlos Arturo Betancourt, in the terms set out in this report.

B. The right to personal integrity (Article 5.1) and the right to freedom of movement and residence (Article 22.1), in conjunction with Article 1.1 of the American Convention

70. The Commission has established that threats and harassment in and of themselves represent attacks on people's mental and moral integrity, and that situation is aggravated when the State fails to afford protection.⁸⁷ The Court has ruled that the absence of a response from the State to a "campaign of threats, harassment, surveillance, arrests, searches, and attempts against [...] lives and [...] physical integrity" produces constant fear and distress, which amounts to a violation of the personal integrity of those affected.⁸⁸

71. The Court has also ruled that the right of freedom of movement and residence "may be violated formally or by *de facto* restrictions, when the State has not established the conditions or provided the means that allow it to be exercised."⁸⁹ On this point, the Court has established a connection between *de facto* threats and harassment and forced displacement or self-exile when "the State fails to provide the necessary guarantees to ensure they may move and reside freely within the territory in question."⁹⁰

72. In consideration whereof, the Commission notes that the petitioner stressed that following Mr. Betancourt's release, he and his family asked the State for protection because of continuing threats against their lives and integrity. Thus, the petitioner stated that because of their fears, the victims had to flee Colombia, which aggravated the aftermath of their suffering caused by the kidnapping and worsened the monetary losses it had generated. In turn, the State maintained that it is because the Betancourt family fled the country without waiting for the concrete results of its protection that the State cannot be held responsible for the consequences of their freely taken decision to leave Colombian territory. The IACHR notes that from the available information, it cannot clearly determine the moment when Mr. Betancourt and his family left Colombia.

73. However, the IACHR believes that regardless of the exact time they left Colombia, a connection can be established between their decision to flee and the threats and harassment they suffered as a result of the kidnapping. In this regard, it should be noted that Mr. Betancourt approached several authorities to request protection in connection with those threats, and that GAULA's only concrete response was to tell him that because of the constraints it faced, his protection would have to be provided by another agency. That reply was given a week after it received the explicit request for protection and, other than indicating that it was forwarded to other entities, Mr. Betancourt and his family received no response with the immediacy demanded by the nature of the threats. The Commission believes that this communication from Mr. Betancourt should have received an immediate response, in light of the serious crime of which he had recently been a victim.

74. Similarly, while the parties disagree regarding whether or not GAULA recommended that the victims leave Colombia, during the trial for tax evasion brought against Mrs. Estrada, Doris Amparo Betancourt Estrada

⁸⁷ IACHR. Report No. 45/17, Case 10.455, Merits (Publication), Valentín Basto Calderón and others, Colombia, May 25, 2017, para. 139.

⁸⁸ I/A Court H. R., *Case of Gutiérrez Soler v. Colombia*, Merits, Reparations, and Costs, Judgment of September 12, 2005, Series C No. 132, paras. 56 and 57; *Case of Tibi v. Ecuador*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of September 7, 2004, Series C No. 114, para. 147. See also: IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II doc. 66, December 31, 2011.

⁸⁹ I/A Court H. R., *Case of Vélez Restrepo and Family v. Colombia*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of September 3, 2012, Series C No. 248, para. 220; See also: *Case of the Moiwana Community v. Suriname*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of June 15, 2005, Series C No. 124, paras. 119 and 120; and *Case of Manuel Cepeda Vargas v. Colombia*, Preliminary Objections, Merits, Reparations, and Costs, para. 197.

⁹⁰ I/A Court H. R., *Case of Vélez Restrepo and Family v. Colombia*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of September 3, 2012, Series C No. 248, para. 220; See also: *Case of Valle Jaramillo and Others v. Colombia*, Merits, Reparations, and Costs, para. 139; and *Case of Manuel Cepeda Vargas v. Colombia*, Preliminary Objections, Merits, Reparations, and Costs, para. 197.

stated that GAULA recommended they leave the country because it was unable to offer them protection on account of a caseload in excess of its operational capacity, which is consistent with the written response that Mr. Betancourt received from GAULA.

75. In addition, following Mr. Betancourt's release, the IACHR finds that the State did not contact him on its own initiative to determine the level of risk he or his family faced. Finally, the Commission notes that the Betancourts have established that they had significant family and economic roots in Colombia, and so their leaving the country can only be explained by a serious, urgent reason, caused by threats to their lives and integrity of such magnitude that they were forced to absorb major monetary losses.

76. In light of the above considerations, the Commission believes it has been established that there was a connection between the threats and harassment that followed the kidnapping and the decision of Mr. Betancourt and his family to leave the country, caused by the lack of immediate protection from the State, which gave rise to the violation, with respect to Mr. Carlos Arturo Betancourt and his family, of the rights to personal integrity and freedom of movement and residence enshrined in Articles 5.1 and 22.1 of the American Convention, in conjunction with Article 1.1 thereof.

C. Right to a fair trial⁹¹ and to judicial protection⁹² (Articles 8 and 25.1 of the American Convention), in conjunction with Article 1.1 thereof

1. Standards governing due diligence, initiative, and reasonable time in the Inter-American system

77. The Inter-American Court has ruled that "as a result of the protection granted by Articles 8 and 25 of the Convention, the States are obliged to provide effective judicial recourse to the victims of human rights violations that must be substantiated according to the rules of due process of law."⁹³

78. The jurisprudence of the inter-American system has established that once it is aware of a violation of human rights—particularly of the rights to life, personal integrity, and personal liberty⁹⁴—the State is obliged to open, on an *ex officio* basis and without delay, a serious, impartial, and effective investigation⁹⁵ and to complete it within a reasonable time.⁹⁶ This implies the right of the victims and their next-of-kin to have the authorities of the State begin proceedings against the suspected perpetrators of such illicit acts, for any pertinent penalties to be imposed, and to receive redress for the losses suffered.⁹⁷

⁹¹ The relevant part of Article 8 of the American Convention provides: "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."

⁹² The relevant part of Article 25 of the American Convention provides: "1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties."

⁹³ 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, para. 124; I/A Court H. R., *Case of the La Rochela Massacre*, Judgment of May 11, 2007, Series C No. 163, para. 145; I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160, para. 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, para. 106.

⁹⁴ 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, para. 100.

⁹⁵ 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, para. 101; I/A Court H. R., *Case of the Gómez Paquiyauri Brothers*, Judgment of July 8, 2004, Series C No. 110, para. 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, para. 130.

⁹⁶ See also: I/A Court H. R., *Case of Bulacio*, Judgment of September 18, 2003, Series C No. 100, para. 114; I/A Court H. R., *Case of the La Rochela Massacre*, Judgment of May 11, 2007, Series C No. 163, para. 146; I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160, para. 382.

⁹⁷ See also: 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, para. 103; I/A Court H. R., *Case of Bulacio*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of September 18, 2003, Series C No. 100, para. 114; I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160, para. 382.

79. As regards investigating cases of threats, the Commission has stated that the duty of prevention does not merely entail providing material measures of protection, but also the obligation of addressing the structural causes that affect the security of those affected by threats. To fulfill that obligation, the State must conduct an investigation, which “must be done immediately and must be thorough, serious, and impartial in order to identify the source of the threats and punish those responsible, with the aim of trying to prevent the threats from being carried out.”⁹⁸ The Commission has also stated that if no progress is made in conducting the investigation and in detaining the perpetrators, the victims of the threats may face even more serious risks.

80. The Inter-American Court has said that the duty of conducting an investigation with due diligence means that inquiries must be pursued through all legal means available and must be oriented toward the determination of the truth.⁹⁹ The Commission and the Court have further ruled that in cases of human rights violations, the State can also be found responsible if it fails to order and carry out the relevant formalities in accordance with the duty of due diligence, and that the investigation must be geared toward exploring all possible lines of investigation in order to identify the perpetrators of the violation.¹⁰⁰ The Court has also held that in certain cases, “the obligation to investigate entails the duty to use the efforts of the State apparatus to clarify the structure that permitted these violations, the causes, the beneficiaries, and the consequences.”¹⁰¹

81. Finally, regarding the principle of reasonable time enshrined in Article 8.1 of the American Convention, the Inter-American Court has established that three elements must be taken into consideration in determining whether or not the time taken to discharge proceedings is reasonable: (a) the complexity of the matter, (b) the judicial activity of the interested party, and (c) the behavior of the judicial authorities.¹⁰² In addition, the Commission and the Court have also ruled that the affected interest must be taken into consideration.¹⁰³

2. Due diligence in investigating the kidnapping for ransom of Carlos Arturo Betancourt Estrada

82. The Commission will now analyze the due diligence in the investigations as regards the initiative shown, the gathering of testimony and expert evidence, witness protection, and the time taken by the investigation, in order to determine the State’s fulfillment of its obligations as regards the right to a fair trial and judicial protection.

83. First, as noted in the previous section, the State is under an obligation to pursue the investigation of human rights violations on its own initiative. In the case at hand, the Commission sees that after the police report was filed on November 15, 1999, the investigation began that same day. However, the IACHR also sees that following Mr. Betancourt’s release and his subsequent departure from Colombia with his family, there was a slowdown in the proceedings that led to the case being shelved four years later. Thus, and notwithstanding the previous section, a slight impulse can be perceived pursuing the investigation during the abduction but that after the victims had fled the country, the investigation slowed down, on the grounds of problems in taking statements from persons located abroad, and the only statement of which there is a record is the one taken from Mr. Duque in August 2000. The Commission does not believe that the State’s obligation to gather testimonial evidence is dependent on a person’s place of residence, other than the reasonable time that may be needed to coordinate the taking of a statement in a different jurisdiction. Accordingly, failing to discharge

⁹⁸ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 47.

⁹⁹ See also: 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, para. 101.

¹⁰⁰ IACHR, Report No. 25/09, Merits, Sebastião Camargo Filho, Brazil, March 19, 2009, para. 109; I/A Court H. R., *The “Street Children” Case (Villagrán Morales et al.)*, Judgment of November 19, 1999, Series C No. 63, para. 230; I/A Court H. R., *Case of J. v. Peru*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of November 27, 2013, Series C No. 275, para. 344, citing: I/A Court H. R., *Case of Juan Humberto Sánchez v. Honduras*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of June 7, 2003, Series C No. 99, para. 128.

¹⁰¹ I/A Court H. R., *Case of Rodríguez Vera et al. (The Disappeared from the Palace of Justice) v. Colombia*, Judgment of November 14, 2014, para. 500.

¹⁰² I/A Court H. R., *Case of Vargas Areco v. Paraguay*, Judgment of September 26, 2006, Series C No. 155, para. 196; *Case of the Ituango Massacres v. Colombia*, Judgment of July 1, 2006, Series C No. 148, para. 289; and *Case of Baldeón García v. Peru*, Merits, Reparations, and Costs, Judgment of April 6, 2006, Series C No. 147, para. 151.

¹⁰³ I/A Court H. R., *Case of Valle Jaramillo et al. v. Colombia*, Merits, Reparations, and Costs, Judgment of November 27, 2008, Series C No. 192, para. 155.

formalities because the family was forced to flee the country is not in keeping with the State's obligation of pursuing an ex officio investigation of human rights violations such as those alleged in the instant case.

84. Second, as regards the gathering of witness testimony, the IACHR notes that other than the statements taken from Mr. Echeverry in the immediate aftermath of the kidnapping and from Mr. Duque in August 2000, the prosecution service ignored testimony that was logically necessary for the investigation of the case. Thus, there is no record of the people who witnessed Mr. Betancourt's kidnapping being questioned, and it was not until 2013 that statements were taken from Mr. Betancourt's son—who had direct contact with the kidnappers on the day of the abduction—and from the other members of the family who negotiated the victim's release. Similarly, the Commission notes that according to the information in the case file, the kidnappers moved the vehicles belonging to the people present at the estate from which Mr. Betancourt was abducted and even took Mr. Echeverry's car away with them. Those vehicles were not tested to see if they held any form of forensic evidence (fingerprints or genetic material) that could have identified the perpetrators.

85. Third, and related to the above, the Commission notes that the persons present on the estate at the time of the abduction did not give statements to the authorities because they were "very afraid about the situation." On this point, the IACHR holds that it is the responsibility of the State to take the steps necessary to protect witnesses; hence, the failure to take witness statements from those present during Mr. Betancourt's kidnapping, caused by the absence of guarantees for their personal security, is contrary to the obligations of due diligence that govern investigations of this kind, in addition to the remarks already made in this report about the duty of protection.

86. Fourth, the Commission believes that those shortcomings in the investigation must be analyzed in the context already described in this report, characterized by the extensively documented proliferation of kidnapping for ransom and the failure to prosecute the perpetrators. Thus, the circumstances described are in line with the prevailing context, in which an inadequate judicial response was connected to an operational overload and a more widespread situation of impunity.

87. Fifth, the Commission notes that at no time during the investigation were any specific measures taken in order to trace and attempt to recover the ransom money paid. This of particular relevance since the State knew where the ransom money was handed over and even accompanied it on part of its journey; however, the Commission sees no evidence that this information was used in the intelligence work or investigation.

88. Finally, the Commission notes that according to information furnished by the State itself, since the reopening of the investigation in 2009 it has been characterized by a lack of due diligence: the reported activity has been minimal and no progress has been made in clearing up the facts or identifying the guilty. The impact of this situation on the delay in the investigation will also be examined below.

3. Analysis of the reasonable time standard in the criminal investigation of Carlos Arturo Betancourt Estrada's kidnapping

89. The Commission notes that the investigation was underway for almost four years (1999 to 2003) before being sent to the archive and that, once it was reopened, a number of formalities were carried out in and after 2009. Thus, the IACHR finds that although the prosecutorial inquiry has been ongoing for more than 18 years, no formal charges have been brought. Moreover, while the Commission understands that kidnappings for ransom can be complex cases, in its submissions the State gave no reasons for its complexity nor did it specifically connect the delays and omissions to the complexity of the matter. Regardless of the foregoing, in parallel to the State's arguments, the Commission notes the fact that the family was not cooperative and that following their departure from the country, communications between the two parties broke down.

90. As regards the procedural activity of the interested parties, the Commission notes that the case file contains no information to indicate that the alleged victims in any way hindered the judicial investigation. As already pointed out, the procedural initiative in investigations of this kind is the responsibility of the State, and so the departure from Colombia of Mr. Betancourt and his family cannot be considered a form of hindrance.

Responsibility for contacting witnesses and gathering witness testimony lies with the State, and that obligation is not dependent on the witnesses' place of residence.

91. Regarding the actions of the authorities, the Commission refers back to its analysis of the failings in the duty of due diligence. In addition to this, the Commission notes that the case was shelved for six years before statements were taken from the direct victims, and that it was not until 2013 that their statements were given.

92. Accordingly, the Commission concludes that the formalities pursued by the State were carried out only intermittently and with many delays, which was the result of the lack of initiative in the investigation and led to the late and inadequate gathering of the evidence that was logically necessary to identify and punish the perpetrators; hence, the Commission believes that the principle of reasonable time was violated in the investigation.

4. Conclusion

93. In light of the above considerations, the Commission concludes that the State of Colombia did violate the right to a fair trial and judicial protection enshrined in Articles 8.1 and 25.1 of the American Convention, in conjunction with the obligations contained in Article 1.1 thereof, with respect to Carlos Arturo Betancourt Estrada and his family.

V. MERITS REPORT No. 108/18

94. On October 5, 2018, the Commission adopted Report No. 108/18 on the merits of the instant case, which encompasses paragraphs 1 to 93 *supra*, and transmitted to the State on December 5, 2018. In the said Report the Commission issued the following recommendations to the State:

1. Provide comprehensive redress for the human rights violations established in this report, in both their material and nonmaterial dimensions. The State shall adopt measures for the economic compensation and satisfaction of the victims.
2. Order the mental health care measures necessary for the rehabilitation of Carlos Arturo Betancourt Estrada and the members of his family, if they so wish and in coordination with them.
3. Continue the criminal investigation in an diligent and effective fashion, and within a reasonable period of time, in order to thoroughly clarify the facts, identify all the individuals responsible, and impose punishment, as appropriate, for the human rights violations established in this report.

VI. PROCEEDINGS SUBSEQUENT TO MERITS REPORT No. 108/18

95. On December 5, 2018, the Commission transmitted the report to the State giving it two months to report on measures adopted to comply with the recommendations made therein.

96. Subsequent to notification of the report on the merits, the Commission received several communications from the parties regarding compliance with the recommendations made by the IACHR and, in particular, regarding the signing of the "AGREEMENT FOR COMPLYING WITH THE RECOMMENDATIONS FORMULATED BY THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS IN REPORT ON THE MERITS NO. 108-18 IN CASE 12.780 CARLOS BETANCOURT ESTRADA AND FAMILY (HEREINAFTER "The Compliance Agreement") signed on May 29, 2019. During that period, the Commission granted the State an extension for suspension of the deadline prescribed in American Convention. The State expressly waived the right to file preliminary objections regarding noncompliance with the aforementioned time limit in the event of the matter being referred to the Court.

97. In what follows, the IACHR underscored the main points in the Compliance Agreement of May 29, 2019:

FIRST: (...) Financial reparation: (...) moral and material injuries shall be recognized that are proven following issuance of the resolution of Law 288 of 1996. Prior to the settlement hearing, the National Legal Defense Agency of the State shall hold working meetings with the representatives of the victims with a view to holding preliminary talks about the reparation amounts in light of the evidence adduced and the criteria currently applied in national case law.

SECOND: (...) The Ministry of Health and Social Protection shall implement the health rehabilitation measures in the form of medical, psychological and psycho-social care through the General Social Security Health System and the Psycho-Social Care and Comprehensive Health Care for Victims Program (...).

THIRD: (...) The State shall continue the criminal investigation, in accordance with domestic legal requirements and procedures.

FOURTH: (...) [the parties agreed that the procedure for verifying compliance with the present Agreement shall be conducted through the [IACHR]. (...)]

98. On March 5, 2019, after evaluating the information available and bearing in mind the wishes of the parties, who expressly stated in the Compliance Agreement that they supported issuing the Report on the Merits pursuant to Article 51 of the Convention, the IACHR decided by an absolute majority not to refer the case to the Inter-American Court and to proceed to publish the Report on the Merits.

VII. REPORT NO. 107 /19 AND INFORMATION REGARDING COMPLIANCE

99. On August 7, 2019, the Commission transmitted Final Report on the Merits No. 107/19 to the State, giving it one month to report on measures adopted to comply with the recommendations made therein. On September 16, 2019 and October 9, 2019, the State submitted reports on actions undertaken to comply with the recommendations of the report on the merits.

100. As regards the **first recommendation** concerning comprehensive reparation, the State did not provide updated information on that aspect during the follow-up period. However, the agreement signed by the parties on May 29, 2019, states that "moral and material injuries shall be recognized that are proven following issuance of the resolution of Law 288 of 1996."

101. It also indicated that "Prior to the settlement hearing, the National Legal Defense Agency of the State shall hold working meetings with the representatives of the victims with a view to holding preliminary talks about the reparation amounts in light of the evidence adduced and the criteria currently applied in national case law."

102. The Commission considers that it is indispensable to receive information regarding progress made with compliance with this recommendation, especially whether meetings have already taken place to determine the reparation amounts, or regarding when they are to take place and the date envisaged for payment of reparation for material and non-material damages.

103. The IACHR likewise recalls that in the Report on the Merits, the IACHR recommended that the State make full reparation for the human rights violations declared in that decision, with respect to both the material and non-material harm done and to adopt financial compensation and satisfaction measures for the victims, whereby it is up to the State, jointly with the victims, to determine the manner and amounts of reparation.

104. The IACHR points out once again that, because of the independent nature of international reparation ordered by both the Inter-American Court and the Commission, it is not up to the organs of the inter-American system to make said reparation subject to accreditation of violations of rights under the Convention or under domestic law using the State's own internal instruments. In this regard, the Commission recalls that, with respect to the relation between international reparation and States' own internal reparation mechanisms, the Inter-American Court has always specified, from its very first decision onwards, with regard to Article 63.1 of the Convention that:

"This article does not refer to or limit the ability to ensure the effectiveness of the means of reparation available under the internal law of the State Party responsible for the violation, so it is not limited by the defects, imperfections or deficiencies of national law, but functions independently of it."¹⁰⁴

105. As regards the **second recommendation** concerning health care for Carlos Arturo Betancourt Estrada and his relatives, the State reported that the Ministry of Health and Social Protection is responsible for implementing this measure and submitted information provided by that Ministry to the effect that the following persons and victims in the instant case have health insurance under the General Social Security System for Health (SGSSS), to which they are affiliated in various ways: 1) Carlos Betancourt Estrada; 2) Carlos David Betancourt; 3) Susana Betancourt; 4) Claudia Betancourt; 5) Esmeda Estrada de Betancourt; 6) Rosa Esmeda Betancourt Estrada; 7) Doris Amparo Betancourt Estrada; 8) Hector Jar Betancourt Estrada; 9) Jaime Horacio Betancourt Estrada. The State also indicated that it had no information regarding the health insurance status of: 1) Catalina Echeverri Betancourt; 2) Manuela Estefania Ospina Betancourt, and 3) Jhon Mario López, so that it is possible that they are not insured.

106. The Ministry of Health reported that since May 2019 it had asked the National Legal Defense Agency of the State for contact data of the persons who had requested comprehensive care, with an emphasis on psychological care, with a view to putting them in touch with the Victims' Comprehensive Psychosocial and Health Care Program. However, to this day, they had not received a reply. It stressed that the aforementioned information is particularly important in the case of the aforementioned persons whose health insurance status is unknown. The Ministry insisted on "the need to have contact data for the victims, in order to let them know the name of the provider and start implementing the measure."

107. The Commission takes note of the information provided and also notes the importance of the State adopting the institutional coordination measures needed to provide the necessary mental health care for Carlos Arturo Betancourt Estrada and members of his family, if they so wish, and in coordination with them.

108. At the same time, the IACHR recalls that, in connection with a series of cases regarding Colombia now being monitored by the Inter-American Court, the Commission identified a number of structural obstacles with respect to comprehensive health care-related reparation measures, due to the fact that, under the Colombian regulatory framework, this health care measure is neither timely nor cost-free.¹⁰⁵

109. Under these circumstances, the Commission considers that the State needs to make every effort to ensure that health care is provided in a timely manner. The IACHR also issues a reminder that a corollary of the reparation measures ordered by the Commission is that they be cost-free, so that no kind of payment should be required by persons receiving health care as part of an international reparation measure.

110. Finally, as regards the **third recommendation** concerning criminal investigation, the State furnished information presented by the Office of the Attorney General (FGN) to the effect that preliminary inquiries are being conducted into unknown persons charged with the crimes of aggravated extortionate kidnapping and other offenses to the detriment of Carlos Arturo Betancourt perpetrated on November 11, 1999. That report mentions that a series of procedures have been conducted and points out that the victim said he was not in a position to recognize any of those who perpetrated or took part in his kidnapping for numerous reasons, including the fact that for much of the time they were hooded and the fear he feels when recalling aspects of his kidnapping, so that it was possible that a resolution abstaining from investigation (*resolución inhibitoria*) might be issued in this case.

¹⁰⁴ I/A Court H.R., *Velásquez Rodríguez Case v. Honduras*. Reparations (Art. 63.1 of the American Convention on Human Rights). Judgment of July 21, 1989 Series C No. 7, par. 30. Along the same lines, see I/A Court H.R., *Case of Aloeboetoe et al. v. Suriname*. Reparations (Art. 63.1 of the American Convention on Human Rights). Judgment of September 10, 1993 Series C No. 15, par. 44.

¹⁰⁵ Medical and psychological treatment, 9 cases in Colombia.

111. The Commission also observes that the Prosecutor's Executive Summary listed a series of obstacles that have impeded progress with the investigation. In particular, it mentions that: 1) No judicial police officer has been assigned to Specialized Public Prosecutor's Office No. 54 of Medellín, which is handling the case; 2) the Public Prosecutor's Office went approximately 10 months without an Assistant Prosecutor to conduct the tasks ordered in each case; 3) no Supporting Public Prosecutor was ever appointed for the criminal investigation and tasks or jobs have been carried out intermittently; 4) no judicial investigator has been appointed or seconded to Specialized Public Prosecutor's Office No. 54; 5) Only on September 15, 2019 was real secretarial or assistant support assigned by the District Directorate of Public Prosecutors' Offices in Medellín.

112. The Public Prosecutor asked that a judicial police officer be assigned to Specialized Public Prosecutor's Office No. 54 in order to devote himself exclusively to the investigative tasks ordered as part of the criminal investigation, because while the judicial police officer who works there had performed some of those tasks, the other cases assigned to her do not allow her to focus exclusively to this case.

113. The IACHR takes note of the information provided by the Public Prosecutor's Office illustrating the series of ongoing challenge with conducting this criminal investigation appropriately. It therefore urges the State to boost the human and material resources of the Public Prosecutor's Office in charge of the criminal investigation into this case, in such a way that the investigation can be conducted with due diligence, complete all tasks planned, and pursue the lines of inquiry that have already been chosen or may be chosen subsequently. The Commission once again points out that, while the duty to investigate refers to a means, not an outcome, that does not imply that investigation may be regarded as a mere formality pre-ordained to end in failure. On the contrary, it is incumbent upon the State authorities to conduct a serious, impartial, and effective investigation using all legal means available and geared to ascertaining the truth and, where applicable, prosecuting and punishing perpetrators. Above all, the State must use all means at its disposal to carry out, within a reasonable period of time, whatever steps and inquiries are needed to attempt to achieve the goal pursued.¹⁰⁶

VIII. CONCLUSIONS AND FINAL RECOMMENDATIONS

114. Based on its determinations of fact and law, the Inter-American Commission concludes that the State is responsible for violating Articles 5.1 (humane treatment), 7.1 (personal liberty and security), 22.1 (freedom of movement and residence), 8.1 (judicial guarantees), and 25.1 (judicial protection) established in the American Convention, in conjunction with the obligations established in Article 1.1 of the same instrument, to the detriment of Carlos Arturo Betancourt Estrada and his family.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS REITERATES THE FOLLOWING RECOMMENDATIONS TO THE STATE OF COLOMBIA, WITH A VIEW TO ACHIEVING FULL AND EFFECTIVE COMPLIANCE WITH THEM:

1. Provide full reparation for the human rights violations found in the instant report, including both material and moral dimensions; Adopt measures that provide both financial compensation and satisfaction for the victims.
2. Take steps to provide the mental health care necessary for the rehabilitation of Carlos Arturo Betancourt Estrada and his relatives, should they wish it, in a manner agreed upon with them.
3. Continue the criminal investigation in a diligent and effective manner within a reasonable time in order to completely clarify the events, identify all those who bear possible responsibility, and impose the appropriate penalties for the human rights violations declared in this report.

¹⁰⁶ I/A Court HR. Case of the Afro-descendant communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 20, 2013 Series C No. 270, paras. 371-372.

IX. NOTIFICATION

115. Pursuant to the above and in accordance with Article 51.3 of the American Convention, and Article 47.3 of its Rules of Procedure, the Inter-American Commission on Human Rights decides to publish this report and to include it in its Annual Report to the General Assembly of the Organization of American States. In accordance with the rules established in the instruments governing its mandate, the Inter-American Commission will continue to evaluate the measures adopted by the Colombian State in respect of the aforementioned recommendations, until it ascertains full compliance with them.

Approved by the Inter-American Commission on Human Rights on the 22 days of the month of April, 2020. (Signed): Joel Hernández García, President; Antonia Urrejola Noguera, First Vice President; Flávia Piovesan, Second Vice President; Margarete May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño and Julissa Mantilla Falcón, Commissioners.