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CASE 10.737

REPORT ON THE MERITS

VÍCTOR MANUEL ISAZA URIBE AND FAMILY
COLOMBIA

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INDEX

I.	SUMMARY	2
II.	PROCESSING BY THE IACHR	2
III.	POSITIONS OF THE PARTIES	3
	A. The petitioners.....	3
	B. The State	5
IV.	PROVEN FACTS.....	7
	A. Detention and disappearance of Victor Manuel Isaza Uribe	8
	B. Domestic proceedings relating to the disappearance of Víctor Manuel Isaza Uribe	12
	1. Criminal investigation.....	12
	2. Disciplinary proceedings	12
	3. Actions under Administrative law.....	13
	4. Report of the National Center for Historical Memory.....	14
	C. Relevant contextual data	14
	1. Regarding the paramilitary phenomenon in Colombia.....	15
	2. The context surrounding aggression against trade unionists.....	18
	3. The Unión Patriótica party and the risks run by persons associated with it.....	21
V.	LEGAL ANALYSIS.....	23
	A. Rights to juridical personality, personal liberty, humane treatment, and life (Articles 3, 7, 5, and 4 of the American Convention); and the Inter-American Convention on Forced Disappearance of Persons [Article I (a)].....	23
	1. Considerations on the State's obligations as guarantor with respect to persons deprived of their liberty	24
	2. Analysis of whether what happened to Víctor Manuel Isaza Uribe constitutes forced disappearance.....	26
	B. Right to freedom of association (Article 16 of the American Convention)	30
	C. Rights to a fair trial and judicial protection (Articles 8(1), 25 of the American Convention)	31
	D. Right to humane treatment of the families of victims (Article 5(1) of the American Convention).....	35
VI.	CONCLUSIONS.....	35
VII.	RECOMMENDATIONS.....	36

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July, 21, 2015

I. SUMMARY

1. In December 1990, the Inter-American Commission on Human Rights (hereinafter “the Commission”) received a complaint submitted by the Asociación de Familiares de Detenidos Desaparecidos (ASFADDES) and the Comisión Colombiana de Juristas (hereinafter “the petitioners”) alleging violation by the Republic of Colombia (hereinafter “the State,” “the Colombian State,” or “Colombia”) of the rights to recognition of juridical personality, life, humane treatment, personal liberty, right to a fair trial, freedom of thought and expression, rights of the family and judicial protection, as established in Articles 3, 4, 5, 7, 8, 13, 17, and 25 of the American Convention on Human Rights (hereinafter the “Convention” or “American Convention”) in conjunction with Article 1(1) of that convention. The petitioners alleged the forced disappearance of Mr. Víctor Manuel Isaza Uribe since November 19, 1987, following his abduction by unknown persons with the acquiescence of State agents from the La Sierra prison in the municipality of Puerto Nare, Department of Antioquia.

2. For its part, the State alleged that the facts relating to the alleged violation of the human rights of Mr. Víctor Manuel Isaza Uribe could not be attributed to it because, although he had been in prison under State custody, it had not been established that State agents participated in any way in his disappearance. Accordingly, the State argued that one hypothesis pursued in the domestic investigation was that of an escape from prison facilitated by third parties. The State further asserted that it had complied with its duty to investigate *ex officio* what had happened to the alleged victim and had done so in a serious, impartial, and effective manner. It added that the absence of outcomes was due to the complexity of the case.

3. After reviewing the positions of the parties, the Inter-American Commission concluded that the State of Colombia is responsible for violating the right to juridical personality, to life, humane treatment, personal liberty, to a fair trial, to freedom of association, and to judicial protection, enshrined in Articles 3, 4, 5, 7, 8, 16, and 25 of the American Convention in conjunction with the obligations established in Article 1.1 and 2 of the same instrument, to the detriment of Mr. Víctor Manuel Isaza Uribe. The Commission also concluded that the State violated the rights to humane treatment, fair trial and judicial protection established in Articles 5, 8, and 25 of the American Convention in conjunction with the obligations established in Article 1.1 and 2 of the same instrument, to the detriment of his relatives. Finally, the Commission concluded that the Colombian State is responsible for violating the obligations established in Articles 1 (a) and 1(b) of the Inter-American Convention on Forced Disappearance of Persons.

II. PROCESSING BY THE IACHR

4. The initial petition was received in December 1990. The processing of the petition from the time it was lodged to the decision on admissibility is described in detail in Admissibility Report No. 102/11,¹ issued on July 22, 2011.

5. In that report, the Commission declared itself competent to hear the petition and stated that the facts denounced therein could constitute violations of the rights established in Articles 3, 4, 5, 7, 8, 16, and

¹ IACHR, Report No. 102/11 (admissibility), Petition 10.737, *Víctor Manuel Isaza Uribe* (Colombia), July 22, 2011, paragraphs 4, 5, and 6.

25 of the American Convention, in conjunction with the obligations established in Article 1.1 of the same instrument and in light of Article I of the Inter-American Convention on Forced Disappearance of Persons.

6. On July 26, 2011, the Commission notified the parties of its admissibility report and, pursuant to Article 37.1 of the Rules of Procedures then in force, gave the petitioners three months in which to submit their additional observations on the merits. Furthermore, pursuant to Article 48.1.f) of the American Convention, the Commission placed itself at the disposal of the Parties with a view to reaching a friendly settlement of the matter.

7. On October 26, 2011, the petitioners expressed interest in initiating a friendly settlement procedure and put forward a proposal. Given that the State did not respond to that proposal, the Commission, at the request of the petitioners ruled out that possibility in a communication dated October 5, 2012.

8. On November 8, 2012, the petitioners submitted their observations on the merits, which were forwarded to the State on December 21, 2012. In a communication dated April 22, 2013, the State presented its arguments on the merits. The petitioners sent in their observations regarding those arguments on December 13, 2013. The State submitted further observations in a note received on August 14, 2014. They, too, were forward to the petitioners.

III. POSITIONS OF THE PARTIES

A. The petitioners

9. The petitioners stated that Víctor Manuel Isaza Uribe worked at the Cementos Naré company and was a member of the Union of Construction Materials Workers (SUTIMAC) in Puerto Nare, Department of Antioquia. They alleged the forced disappearance of Mr. Víctor Manuel Isaza Uribe on November 19, 1987 at the hands of members of a paramilitary group who had no difficulty entering the prison in Puerto Nare, where he had been held since October 28 of that year.

10. The petitioners pointed out that eye witnesses, such as the workers ending their shift and the street cleaners, saw Víctor Manuel Isaza Uribe and three other detainees being taken away in two cars by individuals dressed in civilian clothes and others in military uniform. They also saw one of the detainees who resisted being beaten unconscious and then placed in the vehicle.

11. They stated that the disappearance of Víctor Manuel Isaza Uribe was not a random act. They explained that, starting in 1986, a series of members of SUTIMAC, were murdered or disappeared by the paramilitary group MAS (Muerte a Secuestradores, which means Death to Kidnappers). They added that it was common to see members of the MAS on patrol by the river with members of the Coast Guard unit of the Colombian Navy or taking part in Army patrols. They said that in 1986 and 1987 numerous members of SUTIMAC and of the Empresa Colombiana de Carburos trade union -- some of whom were also members of Unión Patriótica (UP), -- had been murdered or disappeared by paramilitary groups operating with military units billeted in the region.

12. In that connection, the petitioners reported that Mr. Horacio de Jesús Gil Gómez,, an inmate of the municipal prison at the time, had recognized one of the captors as a member of MAS. According to them, he had told the judicial authorities that "among those dressed in civilian clothes was a man who I believe killed Pablo Emilio Córdoba Madrigal, a UP councilor." The petitioners said that right after that statement by Mr. Gil Gómez, the proceeding was suspended and never resumed, despite the seriousness of that allegation.

13. The petitioners stated that the criminal investigations were never directed to shed light on the circumstances surrounding the forced disappearance of Víctor Manuel Isaza Uribe; nor to identify the perpetrators of the crime or reveal the participation of the Army, Navy, or police units stationed in the municipality of Puerto Nare. They added that in 1995 two people said to be members of the paramilitary group MAS were to be included in the criminal investigation proceedings, but no action was taken against

them and indeed, in 1997, the initial investigation was archived by the Medellín Regional Prosecutor's Office and did not resume until 2010. They added that no real effort was made to find witnesses; that no steps were taken to ascertain who wrote the allegedly FARC (*Fuerzas Armadas Revolucionarias de Colombia*) pamphlets that surfaced in the prison on the day of the abductions and of which there is no trace in the file on the case; that no inspections were carried out to investigate the possible responsibility for what happened of members of the Bárbula Battalion and of the Navy Base, stationed in Puerto Nare, even though former members of paramilitary groups and military officers provided significant information regarding the MAS paramilitary group and its ties to the Army, and to the Bárbula Battalion in particular, and its responsibility for the murders of several members of SUTIMAC.

14. The petitioners further claimed that the State ignored the fact that most of the leaders and members of the trade union who were victims of summary executions and disappearances between 1986 and 1989, including Mr. Isaza Uribe, were Communist Party and Unión Patriótica activists and the object of a domestically and internationally well-known campaign, involving members of the security forces and paramilitary groups, aimed at exterminating them.

15. Thus, they pointed out that, at the time these events unfolded, the National Army of Colombia was issuing instructions and manuals that described trade union movements as "the enemy within," "subversives," "civilian sympathizers" (i.e. sympathizing with guerrilla groups) and "the insurgent civilian population."

16. The petitioners said it was unconscionable that, 25 years after the facts, the criminal investigation was still at the preliminary investigation stage and that not even minimal steps had been taken to shed light on the forced disappearance of Víctor Manuel Isaza Uribe or establish his whereabouts.

17. They said that in the disciplinary proceeding the investigation carried out by the Office of the State Attorney for Human Rights Cases had culminated in the provisional archiving of the case on October 20, 1992. They added that the State Attorney had stated as grounds for his decision the impossibility of gathering evidence and the fact that potential witnesses did not want to testify for fear of being murdered.

18. The petitioners reported that action had been brought under administrative law, instituted by the family of Víctor Manuel Isaza Uribe, which ended with the Administrative Court of Antioquia ruling in favor of the State on November 26, 1993. That ruling was confirmed on appeal by the Administrative Litigation Chamber of the Council of State on September 23, 1994. They claimed that both decisions were based on the criminal investigations, which were never directed to perform an exhaustive and serious investigation into the forced disappearance of Víctor Manuel Isaza Uribe or to identify the perpetrators of the crime, much less to reveal the participation of military, Naval, and police personnel and staff at the Puerto Nare municipal prison. They added that there was no juridical basis supporting the trial court judgment, while the ruling of the appellate court was self-contradictory because, on the one hand, the Council of State admitted that the administration was at fault, while, on the other, it rejected the petitioners' claims because harm had not been proven.

19. The petitioners considered that these facts constituted violations of the rights protected under Articles 3, 4, 5, 7, 8, 16, and 25 of the American Convention, in conjunction with Articles 1.1 and 2 of that same instrument. Following is a summary of the petitioners' principal arguments according to law.

20. The petitioners alleged that the State violated its obligation to **respect rights and adopt provisions based on domestic law**, as well as the right to **freedom of association** when it issued provisions and implemented policies and practices labeling trade unions as "enemies of the State" (*enemigos internos*) and "subversive" and encouraged the formation of paramilitary groups. They reiterated that the forced disappearance of Víctor Manuel Isaza Uribe formed part of a pattern of persecution against members of the SUTIMAC trade union.

21. They added that the State had failed to take the steps it is required to take to ensure that all parties to these deeds are identified, brought to trial, and punished. The State had not taken steps to fulfill its

duty to conduct the exhaustive and effective investigation required of it, thereby failing to provide **judicial guarantees and protection**.

22. Regarding the **right to life and personal integrity**, the petitioners maintained that the State was obliged to prevent any activity that violated rights protected under the Convention, such as forced disappearance, which constitutes a crime against humanity. They pointed out that Víctor Manuel Isaza Uribe was disappeared, abducted, which was tantamount to destroying his physical, moral, and mental integrity.

23. As for the **right to personal liberty**, the petitioners pointed out that Víctor Manuel Isaza was, legally detained, with regard to whom the State was duty-bound to provide the same custody, surveillance, and safeguards as for other detainees, including returning them in the same state as when they were handed to it.

24. They alleged that the Colombian authorities had attempted to elude their responsibility on the pretext that what happened was a prison break organized by the FARC. Accordingly, they maintain that the State appears to ignore the fact that, in this as in other cases, one of the mechanisms used to perpetuate impunity is to attempt to shift the focus of investigations, even if it means printing false guerrilla leaflets.

25. As regards the **rights of the family, the right to know the truth and the right to personal integrity of the relatives**, the petitioners alleged that the forced disappearance of Víctor Manuel Isaza Uribe and the wave of violence unleashed in the region forced the family to move to another municipality within the same department of Antioquia, for fear of attacks on their personal integrity. Furthermore, they had been subjected to the pain of going from office to office and having to hear that their family member had taken advantage of the "jailbreak." They claimed that those replies meant that the family went from being victims to being labeled accomplices. They also pointed out that in this case they have been denied access to the truth of what happened, because, 25 years later, the proceedings were still at the preliminary investigation phase, without Mr. Isaza Uribe's fate and whereabouts having been established. They said that all that had inflicted grave suffering on his family members, who still do not know whether he is alive or dead.

B. The State

26. The State maintained that the facts presented by the petitioners do not prove the alleged collaboration or acquiescence of State agents through either actions or omissions supposedly coordinated with, parallel to, or linked to those of the private individuals responsible for the acts committed. Nor had it been demonstrated that the Colombian State had failed to adopt effective preventive and protection measures in respect of the persons taken from the municipal prison of Puerto Nare on November 19, 1987, including Víctor Manuel Isaza Uribe.

27. The State affirmed that what was certain was that Mr. Isaza had been held at the municipal prison in Puerto Nare by order of the Criminal Investigation Court 64 of that municipality, which, on October 28, 1987 established his legal status when it issued a restraining order against him in the form of his being remanded in custody, without release from prison, for the murder of Mr. Humberto García Montoya.. It added that it had also been established that on the night of November 19, 1987, a group of between 8 and 10 armed individuals entered the prison and, after disarming and locking up the guards, took four inmates with them, including Víctor Isaza Uribe, to an unknown destination. The State pointed out that, in a judgment handed down on November 7, 1989, the 9th Higher Court of Medellín sentenced to 16 years in prison for aggravated homicide.

28. It also pointed out that in their statements to the Criminal Investigation Court 64 in Puerto Nare, two persons who had been inmates at the same prison at the time declared that it looked as if everything had been planned and that it was an escape facilitated by third parties, a conclusion that was reached by the Administrative Court in Antioquia, in connection with a direct reparation lawsuit filed by the family members of Mr. Isaza Uribe, and confirmed by the Council of State. The State added that from the evidence in the files for the criminal, disciplinary, and administrative proceedings, it transpired that there

was not a shred of circumstantial evidence indicating that State agents had a part in the facts of the instant case.

29. The State asserted that uncertainty persisted as to the motives behind the abduction of the four detainees, so that several hypotheses had been put forward in the domestic courts: a) a possible jailbreak; b) participation by self-defense groups; and c) participation by members of the FARC. It also asserted that in none of the hypotheses put forward during the internal jurisdiction proceedings and investigations was there any mention of the possible involvement of State agents.

30. The State argued that the facts assigned no liability at all to the State for failing to fulfill its prevention obligations, inasmuch as they contained none of the prerequisites for such a failure, namely a) knowledge of a real and imminent risk; b) the existence of a specific individual or groups of individuals in such a situation of risk, and c) reasonable chances of preventing it.

31. As regards the **right to judicial guarantees and judicial protection**, the State indicated that there was no international liability for the violation of these rights. It explained that the criminal investigation into the facts of the case was suspended and provisionally archived by the Office of the Attorney General on August 25, 1997. Nevertheless, the State pointed out, the investigation had resumed in 2010 and was still at the preliminary stage before the Eighth Specialized Public Prosecutor's Office in Medellín. It added that it was fair to say that the criminal investigation had been diligent and unflagging in its pace and in the way it had been handled given the extremely complex facts of the case.

32. The State alleged that the family members of Víctor Manuel Isaza Uribe had abstained from taking part in the investigation, even though Colombian criminal legislation accords amply powers to family members of victims of human rights violations to join the proceedings as civil parties thereto, to file suit and submit such considerations, requests, and evidence as they deem fit, in the quest for justice and truth.

33. The State pointed out that, although it was true, as the petitioners said, that the option of joining the proceedings as civil parties at the preliminary phase of an investigation only became possible following the Constitutional Court decision of 2001 and the criminal investigation into the facts of the instant case only resumed in 2010, it remained of the utmost importance that the petitioners join the proceedings as civil parties to the investigation into the facts being conducted by the Eighth Specialized Public Prosecutor's Office in Medellín. The State said it meant that as an "invitation to directly interested parties to participate as fully as possible in the proceedings being conducted by the investigative body."

34. The State affirmed that the lack of criminal outcomes with respect to punishment of the perpetrators was due to the highly complex nature of the facts of the case. It said that the criminal investigation had been conducted ex officio and in a serious, impartial, and effective manner, despite which it had not been possible to get beyond the preliminary phase of the investigation. The Attorney General's Office was continuing to strive to shed light on what happened and to identify all the perpetrators.

35. Regarding the **obligation to respect rights and adopt provisions based on domestic law**, the State declared that the petitioners, in their arguments on the merits, had asked the Commission to state that Article 2 of the American Convention had been violated, even though the Commission, in its Report 102/11 of July 22, 2011, did not declare the admissibility of that article, and the petitioners had not claimed that it had been violated until the merits stage. For that reason, the State asked the Commission to disregard the petitioners' request and exclude it from analysis of the merits of the instant case.

36. As for the petitioners' references to the facts of the case occurring in a highly militarized municipality with the presence of paramilitary groups operating in the area with the complicity, tolerance, and acquiescence of the regional authorities, the State pointed out that the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") has stated that while references to the context may be made to ensure a proper grasp of the facts, it is not possible to derive international liability from the existence of that context because it does not address the specific facts of the case being litigated. The State added that it was not possible to derive liability in the specific case at hand from references to the context, in

and of themselves. Thus, it stated that, in the instant case, no proof had been shown of an alleged collaboration, acquiescence, or complicity, in acts or omissions, on the part of State agents.

37. With respect to the right to **freedom of association**, the State considered that it is not possible to infer without a reasonable doubt that the disappearance of Víctor Manuel Isaza Uribe formed part of a context in which trade unionists in the municipality of Puerto Nare were broadly at risk and especially vulnerable. It also reiterated that it had not been proven that the unknown individuals who perpetrated the crime had received the collaboration or acquiescence of State agents, nor that the facts formed part of a pattern of persecution of members of the SUTIMAC trade union.

38. As regards the **right to life, personal liberty, and personal integrity**, the State maintained that no separate proof had been shown of the alleged support, acquiescence, collaboration, or tolerance of State agents in the disappearance of Mr. Víctor Manuel Isaza Uribe and that the State had in no way knowledge of a real and imminent threat. The State argued that Mr. Isaza Uribe had been detained in the municipal prison of Puerto Nare by court order and that the disappearance of the alleged victim was not attributable to the State, but rather to third parties.

39. The State reported that Mr. Alejandro Acevedo Birgue, a guard at the Puerto Nare prison, had told Criminal Investigation Court 64 and the town's Municipal Spokesperson on November 19, 1987 and September 24, 1989, respectively, that the assailants had "taken them by surprise" and had forced them to unlock the cell; that the men had covered their faces and had left FARC leaflets; and that they had taken four detainees with them, including Víctor Manuel Isaza.

40. The State stressed that detainee Horacio de Jesús Gil had told the same Court that Mario Patiño, another inmate, had told him that if by chance an opportunity to escape arose, he could accompany them and that subsequently he had said that "it had all been planned already." According to the State, Mr. Gil had declared that the assailants' faces were covered and they were wearing FARC bracelets; they had said they belonged to that guerrilla group and had come to fetch their fellow guerillas, but that anyone who wanted to could go with them.

41. In general terms, the State maintained that it cannot be held responsible for the facts in respect of which the petitioners allege violation of the right to juridical personality, life, humane treatment, personal liberty and freedom of association, established in Articles 3, 4, 5, 7, and 16 of the American Convention. In addition, the State argued that it had met the obligations to investigate established in Articles 8 and 25, since investigations were carried out to the extent possible, given the complexity of the case.

IV. PROVEN FACTS

42. The Commission considers it pertinent to recall that according to the case law of the inter-American system, the criteria for assessing evidence are less rigid than for domestic legal systems and it has maintained that it may "weigh the evidence freely."² In that regard, the Inter-American Court has found that "it must apply an assessment of the evidence that takes into account the gravity of attributing international responsibility to a State and that, despite this, is able to create confidence in the truth of the facts that have been alleged."³ The Court has held that it is "legitimate to use circumstantial evidence, indications and presumptions to found a judgment, provided that conclusions consistent with the facts can be inferred from them."⁴ In particular, indicia and presumptive evidence are of special importance in a case of alleged forced

² I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Judgment of July 29, 1988. Series C No. 4, pars. 127 and 128.

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

⁴ I/A Court H.R., *Case of Velásquez Rodríguez v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 27, 2012, Series C No. 240, par. 134, citing *Case of the "Las Dos Erres" Massacre v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 24, 2009, Series C No. 21, par. 197.

disappearance because “this type of violation is characterized by the attempt to eliminate any element that would allow the detention, whereabouts, and fate of the victims to be determined.”⁵

43. Bearing in mind the particularities of the instant case, the Commission will ascertain the facts by referring, first, to the circumstances surrounding the detention and disappearance of Víctor Manuel Isaza Uribe; second, to the domestic proceedings initiated in relation to those facts; and, third, to factors in the context that have a bearing on its decision.

A. Detention and disappearance of Victor Manuel Isaza Uribe

44. The facts of the instant case occurred in the municipality of Puerto Nare, Department of Antioquia, in the region known as Magdalena Medio. According to the National Center for Historical Memory, this region was the epicenter of guerrilla presence, starting in the early 1970s. For that reason, it became heavily militarized, as of the early 1980s. The Center itself has explained how paramilitary groups surfaced in the region toward the end of the 1970s/early 1980s. It also reports that, from the mid-1980s, paramilitary groups expanded their territorial control and stepped up military operations designed to give them control over the whole of Magdalena Medio.

45. Mr. Victor Manuel Isaza Uribe, of 33 years of age, husband of Carmenza Vélez and father of Jhony Alexander and Haner Alexis Isaza Vélez, was arrested on October 27, 1987 by the officers of the police post in the village known as La Sierra in the municipality of Puerto Nare. The next day he was placed at the disposal of Criminal Investigation Court 64 in Puerto Nare, questioned by the Judge, and remanded to the Puerto Nare prison.⁶

46. As pointed out by the National Center for Historical Memory, this prison is located a few meters away from the Coast Guard unit of the National Navy and a few blocks from the Bárbula Battalion's military base and the police station.⁷

47. At the time of his detention, Mr. Víctor Manuel Isaza Uribe had worked for 13 years at Empresa Cementos Nare S. A. and was an active member of the SUTIMAC trade union.⁸ The petitioners reported that, at the time, Mr. Víctor Manuel Isaza Uribe was also an active member of the UP party. The State did not submit information questioning these statements.

48. Bearing in mind the fact that Mr. Isaza Uribe was a member of the SUTIMAC trade union and, at least, a supporter of the UP party, the Commission considers that the contexts described above are relevant for an analysis of the instant case.

49. A warrant for the preventive detention of Mr. Isaza Uribe was issued on October 28, 1987, without possibility of release, on charges of aggravated homicide.⁹

⁵ I/A Court H.R., *Case of Velásquez Rodríguez v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 27, 2012, Series C No. 240, par. 134.

⁶ Appendix. Decision handed down in the appeal against the judgment of the Administrative Court of Antioquia on November 26, 1993. Council of State, Administrative Litigation Division, Unit Three . Santa Fé de Bogotá, September 23 1994. Page 101.

⁷ Huellas y Rostros de la Desaparición Forzada (1970-2010). Volume II National Center for Historical Memory. Case 4. Víctor Manuel Isaza Uribe: Desaparición Forzada y Represión Antisindical. Available at: <http://www.centrodehistoriahistorica.gov.co/micrositios/desaparicionForzada/libros-tomo2.html>.

⁸ Appendix. Copy of a certificate issued on November 13, 1989 by the President of the Sole Union of Construction Materials Workers (SUTIMAC). Annex to the initial petition.

⁹ On November 7, 1989, two years after his disappearance, Mr. Víctor Manuel Isaza Uribe was sentenced by the Ninth Higher Court of Medellín to 16 years in prison, after being convicted of the crime of aggravated homicide. as the instigator and perpetrator of the murder of Mr. Francisco Humberto García Montoya. Decision handed down in the appeal against the judgment of the Administrative Court of Antioquia on November 26, 1993. Council of State, Administrative Litigation Division, Unit Three . Santa Fé de Bogotá, September 23, 1994. Page 102.

50. On November 19, 1987, Mr. Víctor Manuel Isaza Uribe was abducted by unknown individuals from the Puerto Nare prison, along with three other inmates.¹⁰ Since then, there has been no news of his whereabouts.

51. There are several hypotheses as to the perpetrators. In what follows, the Commission summarizes the sources of these hypotheses, which will be duly assessed later in this report.

52. According to the statements of the Commander of the Puerto Nare station to the Criminal Investigation Judge on November 19, 1987:

[...] based on information provided by Mr. Evelio Rúa, who turned up at the police station at around 2:20 a.m. and reported that something appeared to be amiss as he was passing the jail because the gate was open and no guards were to be seen. When he went in to check out the premises, he had found the guards locked in one of the cells. As he was on his way to the Police Station to report what he had seen, he had found leaflets on the street containing subversive propaganda about the FARC's Ninth Front. Then, when the patrol on duty went to the prison, it found that of the nine inmates held there, four were missing [...].¹¹

53. In connection with the action for direct reparation referred to below in pars. 69-71, the Administrative Litigation Division simply stated that the administration had failed in its surveillance of the detainee, but the responsibility for what happened could not be assigned because it had not been proved that the prisoners were freed in order for State or private individuals to exact revenge. Based on that, this Division considered that everything pointed to the "jailbreak having been planned" to free the trade union members.¹²

54. In its resolution, the Office of the State Attorney's Office for the Defense of Human Rights states that "it was not possible to credibly establish what had happened with Isaza Uribe, much less who was responsible for his alleged disappearance."¹³ In that same resolution, the State Attorney's Office also acknowledges people's reluctance to give statements because of fear: a circumstance pointed out to the State authorities by Carmenza Vélez, Francisco Javier Gómez, and the Spokesperson for the Municipality. Literally, the statement reads as follows:

The reluctance to testify of the eye-witnesses was the main reason why it proved impossible to shed light on the facts of the case. That was why the same complainant, CARMENZA VELEZ, pointed out in her complaint that the criminal investigation had been archived "...there was nobody prepared to testify."

Mr. Francisco Javier Gómez similarly stated that "it should be noted that at that time [...] there was a Public Order Court [Juzgado de Orden Público (sic)] and one itinerant judge, who were able to garner some piecemeal statements from the local population; piecemeal in the sense that nobody accuses anyone for fear of being threatened or murdered."

The Spokesperson for the Municipality of Puerto Nare reported: "...There are no witnesses. or rather the few that do exist have refused to testify for fear of reprisals in the form of attacks on their bodily integrity."

¹⁰ Appendix. The other three inmates: William Mejía Restrepo, Pedro Delgado Jurado, and Mario Patiño Gutiérrez. State's communication of April 22, 2013.

¹¹ Appendix. State's communication of April 22, 2013.

¹² Appendix. Decision handed down in the appeal against the judgment of the Administrative Court of Antioquia on November 26, 1993. Council of State, Administrative Litigation Division, Unit Three . Santa Fé de Bogotá, September 23, 1994. Page 104. Appended to a writ submitted by the petitioners on August 04, 1995.

¹³ Appendix. Decision of the Office of the State Attorney for the Defense of Human Rights, October 20, 1992. Appendix to the comments of the petitioners dated August 4, 1995.

55. The Commission has no information at its disposal showing that the State Attorney's office followed up on the situation of threats and fear described in its resolution.

56. In the same resolution and on the matter of the perpetrators possibly being members of the FARC, the State Attorney's Office for the Defense of Human Rights had the following to say:

The refusal by some of those who gave statements to accept any possibility that members of the FARC might be responsible for the abduction of Isaza and his fellow inmates was due to the fact that, according to them, at that time guerrilla groups were not operating in that zone. Nevertheless, it is worth pointing out that DAS and Army Intelligence reports do not corroborate that claim. It is also generally accepted that paramilitary groups were present, and they would not have been there unless guerrilla groups were also in the area. Here, it is necessary to stress that there is no evidence, either, that the so-called "paramilitary" perpetrated the disappearance of ISAZA.¹⁴

57. The petitioners remitted a copy of statements taken by the Departmental State Attorney's Office at the behest of the State Attorney's Office for the Defense of Human Rights. Asked about the acts of violence, the disappearance of Mr. Isaza, and the leaflets purportedly left by the Ninth Front of the FARC, Mr. Alirio Antonio Sierra Pérez declared:

In 1986, I was the President of SUTIMAC [...] 1987 was all about persecution, threats, disappearances and murders of my fellow trade unionists and activities, all of it sponsored by the Army, which was supporting the paramilitary groups in the region [...]. About 17 of us left the region in 1987, and more followed suit in 1988.

Our fellow worker Víctor Isaza had been detained [...] At the time, Army Cost Guard Unit 122 was in Puerto Nare, about 50 meters from the prison {...}. Likewise, the police station is just three blocks away from the prison, and, what is more, the members of the MAS were on patrol in the town. So not even the local population can see how our fellow workers could have disappeared [...] because not a single shot was fired or anything. The way I see it, that was a paramilitary operation.

I used to have one of their leaflets, but I can pretty well assure you that at that time and at that every moment there was no guerrilla presence in the region and I don't see how, surrounded by the army, police, and paramilitary, a guerrilla group could enter the prison to rescue four of their pals and nobody sees anything. Personally, I believe that that leaflet was produced by the paramilitary themselves with a view to creating further confusion in the region.¹⁵

58. Mr. Francisco Javier Gómez testified as follows:

I was a resident and Colcarbuero worker in La Sierra, Puerto Nare, from 1973 until 1988. For 12 years I was a trade union leader at Cocarbuero and in that capacity it strikes me that the acts of violence at that time basically had to do with vested economic interests [...]. Early in 1986, one of the great workers' leaders at Cementos Nare was murdered after defending workers' interests acquired in over 30 years of struggle. Many workers at Cementos Nare

¹⁴ Appendix. Decision of the Office of the State Attorney for the Defense of Human Rights, October 20, 1992. Appendix to the comments of the petitioners dated August 4, 1995.

¹⁵ Appendix. Statement by Mr. Alirio Antonio Sierra Pérez to the Departmental State Attorney's Office in Medellín, on January 30, 1992. Appended to the comments of the petitioners received on March 23, 1992.

and Cocarbueros met the same fate, some murdered and others disappeared in a bid to counter workers' efforts to defend their interests.¹⁶

59. Mr. Omar de Jesús Correa Isaza testified as follows:

The public order situation reached its worst point on December 6 or 8, when they murdered Julio César Uribe, who was president of the trade union and a council member in the Municipality of Puerto Nare. [...]Although the region was already pretty highly militarized prior to that event, it led to militarization of every nook and cranny of the Municipality. And yet, despite the militarization, there was no drop in the number of disappearances and murders. On the contrary, paramilitary squads directly commanded by the Fourteenth Brigade through the Bárbula Battalion billeted in Puerto Boyaca, patrolled the town as if they owned the place, threatening, intimidating, and murdering people [...]. Thus it came to pass that people were murdered 10 meters away from the police station and the police didn't see or hear anything.

What I know if what everybody knows: that he was taken out of the jail and nothing more was heard of him, but the worrying thing in this case is that that night Navy Coast Guard Unit 12 was moored less than 50 meters away from the jail, while the municipality was completely militarized with checkpoints at all the entrances to the town, and yet that same night the town hall is flooded with leaflets signed by the FARC. The weird thing is that there was no kind of confrontation.

[...] I filed this denunciation a long time ago, asking the Prosecutor General's Office to examine the municipal administration's typewriters to see if there were any signs that they had something to do with the leaflets found, but nothing was done about that.

[...]The armed forces did absolutely nothing to find them. On the contrary, then lieutenant Bohorquez, Commander of the Bárbula Battalion [...] spent his time threatening all of us trade union leaders for our alleged collaboration with the guerrilla groups.¹⁷

60. In their communication of July 11, 1991, the petitioners pointed out that it could not be concluded from a study of the statements given by inmates at the time who were not abducted that members of the FARC had been involved, because the versions they gave contradicted each other in several respects, such as whether those in uniform were or were not wearing FARC bracelets, whether they harangued all the inmates inviting them to escape or simply called out those they intended to take with them by name, and whether there were acts of violence or not.

61. In that same communication, the petitioners stated that page 73 of the file in Higher Court 9 in Medellín accusing Víctor Manuel Isaza of homicide, contains a certificate of Criminal Investigation Court 64 in Puerto Nare that literally reads as follows: "This office received the denunciation of said facts and judging by the way the unknown individuals acted when they entered the prison and abducted the four inmates, it is hard to believe that they were members of a subversive group. Rather, it appears that they were members of the paramilitary groups."¹⁸

62. As this report will point out in due course, the criminal investigations did not shed light on what happened to the victim.

¹⁶ Appendix. Statement by Mr. Francisco Javier Gómez to the Departmental State Attorney's Office in Medellín, on January 30, 1992. Appended to the comments of the petitioners received on March 23, 1992.

¹⁷ Appendix. Statement by Mr. Omar de Jesús Correa Isaza to the Departmental State Attorney's Office in Medellín, on January 30, 1992. Appended to the comments of the petitioners received on March 23, 1992.

¹⁸ Verbatim quotation included in the petitioners' written comments dated July 11, 1991.

B. Domestic proceedings relating to the disappearance of Víctor Manuel Isaza Uribe

63. The Commission lacks complete information regarding domestic proceedings relating to the facts of this case. Accordingly, the Commission will conduct a determination of the facts regarding domestic proceedings based on information provided by the parties and contained in the file.

1. Criminal investigation

64. The State submitted a breakdown of the main actions taken in the course of the criminal investigations, as follows:

- a) On November 19, 1987, Criminal Investigation Court 64 in Puerto Nare ordered the initiation of preliminary inquiries.
- b) Subsequently - no date is cited - the prosecution ordered the suspension of the investigation on the grounds that there was insufficient cause to either initiate pre-trial proceedings or issue a *recusal (proferir resolución inhibitoria)*.
- c) The investigation was re-opened on February 28, 1995 by the Anti-kidnapping Unit in Puerto Berrio, and the corresponding order issued on September 8, 1995.
- d) A warrant for the arrest of four individuals was issued on September 11, 1995 and in that same month the Medellín Regional Prosecutor's Office refrained from issuing a restraining order for lack of evidence of liability.
- e) The investigation was closed on March 19, 1996, and on April 30 of the same year an order was issued to terminate the investigation into the four individuals, on the grounds that "none of the witnesses [...] directly identify those investigated as the persons who took away the prisoners from the Puerto Nare jail [...]."
- f) The opening of preliminary investigations was formally announced on July 15, 1996 marking a resumption of investigations into the facts. To that end, an order was issued to examine several pieces of evidence.
- g) On August 25, 1997, the Medellín Regional Prosecutor's Office ordered a suspension of the investigation, given that the examination of the evidence had not yielded results likely to shed light on the facts.
- h) In 2010, an order was issued to re-open the investigation.
- i) On August 24, 2011, the office in charge of the investigation ordered that a hearing be granted to those applying for the benefits of Law 975 of 2005 on Justice and Peace, who had committed crimes in Magdalena Medio. The State reported that none of the applicants for benefits had referred to or confessed to the facts of this case nor were said facts registered in the Justice and Peace Information System (SIJYP) of the Attorney General's Office.¹⁹

65. Based on the actions listed above and information provided by the Parties, the Commission notes that the investigation was suspended and provisionally archived in 1997 and reactivated in 2010, and is currently at the preliminary state before the 8th Specialized Prosecutor's Office in Medellín.

2. Disciplinary proceedings

66. On January 11, 1989, Mrs. Carmenza Vélez, wife of Mr. Víctor Manuel Isaza Uribe, filed a complaint regarding the detention and subsequent disappearance of her husband with the Office of the State Attorney for Human Rights. Mrs. Vélez amplified her complaint on July 22 of that year, when she denounced the lack of progress in the criminal investigation; specifically, she alleged that on July 17, 1989 she had gone to Criminal Investigation Court 64 to inquire about the investigation and had been told that it had been archived because nobody wanted to testify, that unfortunately nobody was speaking out. In that amplification of her complaint, Mrs. Vélez wrote that "it is not possible for them not to do anything knowing that he was taken from the prison by armed men, some in uniform and others dressed in civilian clothes" and "people

¹⁹ Appendix. State's communication of April 22, 2013.

working for the INMARCO company who come by at that time of day saw how they were being forced out of the prison. They even saw one of the prisoners being beaten because he said they were taking him away to kill him. They beat him unconscious, tied him up and dumped him in the vehicle." ²⁰

67. According to information provided by the State, the following actions were taken:²¹

- a) On March 10, 1989, the Office of the State Attorney for the Defense of Human Rights instructed the Regional Prosecutor in Puerto Berrío to pay a visit to the Court in charge of the case. For his part, on April 22, 1989, the Prosecutor in Puerto Berrío instructed the Municipal Spokeswoman to look into the investigation carried out by the local Police Inspector's Office and, on May 16, 1989, gave instructions that Mrs. Carmenza Vélez; be allowed to testify.
- b) On June 1, 1989, the Regional Prosecutor of Puerto Berrío sent his evaluation report to the State Attorney for the Defense of Human Rights, in which he indicates that based on the evidence gathered it was to be inferred that the group of unidentified men would appear to be members of the FARC.
- c) Pursuant to the instructions received from the Office of the State Attorney for the Defense of Human Rights, the Municipal Spokeswoman in Puerto Nare took testimony from Messrs. Orfano de Jesús Marín, Jorge Obed Rendón, Horacio de Jesús Urrego, Manuel García Gracia, Alejandro Acevedo Birgue, and Gildardo Martínez.
- d) On June 5, 1991, the Administrative Department of Security (DAS) remitted to the Office of the State Attorney for the Defense of Human Rights a report that describes how at the time of the facts of the case there were widespread acts of violence against various segments of the population. The report indicates that the men who took Víctor Manuela Isaza from the prison in the Municipality of Puerto Nare were members of the FARC guerrilla movement.

68. On October 20, 1992, the Office of the State Attorney for Human Rights ordered the investigation to be archived "as there was no evidence pointing to the involvement of any civil servant in the disappearance of Víctor Manuel Isaza Uribe."²²

3. Actions under Administrative law

69. The petition was filed on August 8, 1989 by Mrs. Carmenza Vélez, the wife of Víctor Manuel Isaza Uribe, with the Administrative Litigation Court of the Department of Antioquia, on her own behalf and on behalf of her children Jhony Alexander and Haner Alexis Isaza Vélez, demanding direct reparation for the disappearance of Mr. Isaza Uribe. Her petition was registered under No. 25,861.²³

70. On August 19, 1990, that Court asked the Office of the State Attorney for the Defense of Human Rights to provide copies of all the investigation material.²⁴

71. On November 26, 1993, the Administrative Court of Antioquia resolved to reject the petition filed by Mrs. Carmenza Vélez, who contested the resolution. On September 23, 1994, the Administrative Litigation Division of the Council of State confirmed the resolution, endorsing the lower court's assessment of the law, facts, and evidence in the instant case. It is worth noting that the Administrative Tribunal in Antioquia resolved as follows: "the failure of service or illegal damage attributable to the entities sued has not been demonstrated"; while, for its part, the Council of State found a surveillance failure but not the damage

²⁰ Appendix. Amplification of complaint on July 22, 1989 by Mrs. Carmenza Vélez,, submitted as an appendix to the initial petition.

²¹ Appendix. State's communication of Friday, October 11, 1991.

²² Appendix. Resolution of October 20, 1992. Appended to a writ submitted by the petitioners on August 4, 1995.

²³ Appendix. The State's communication of September 16, 1991.

²⁴ Appendix. State's communication of October 11, 1991.

attributed [to state agents].²⁵ Specifically, the Administrative Litigation Division of the Council of State indicated that:

Within the above evidentiary framework, the Division finds that in the case under review although the administration can be seen to have FAILED in its surveillance of the detainee, failure of service was not proven, because one of its components, DAMAGE, was not accredited.

[...] That being so, everything points to the escape having been planned and carried out ON BEHALF OF AND TO PROTECT THE FOUR TRADE UNIONISTS. If the Division concludes within that framework, it is because LIBERTY was a BENEFIT for them and PRISON was a BURDEN.

Accordingly, whoever claims that the outcome was different, bore the burden of truth, that is to say, he or she had to prove that the detainees were free in order for either the security forces or private individuals to wreak vengeance on them.²⁶

4. Report of the National Center for Historical Memory.

72. The Commission notes that in November 2013, the National Center for Historical Memory, a state entity whose purpose is to help achieve comprehensive reparation and establish the truth,²⁷ published its report entitled “Huellas y rostros de la desaparición forzada (1970-2010)” [Traces and Faces of Forced Disappearance (1970-2010)]. That report highlights the case of Mr. Víctor Manuel Isaza Uribe and concludes as follows:

The forced disappearance of Víctor Manuel Isaza Uribe vividly illustrates how National Security Doctrine as applied, as well as the paramilitary strategy pursued by the Colombian Armed Forces, along with the demonization of the social and political opposition and the elimination of trade union movements in the 1980s.

The failure of ordinary courts to act and the complicity of local public authorities were the principal elements used to ensure impunity in the case of the forced disappearance of Víctor Manuel Isaza Uribe. The position taken by the State in the processing of the case before the Inter-American Commission on Human Rights is an example of denial (*negacionismo*).²⁸

73. The Commission does not have any information to the effect that, in response to that report and its conclusions, the State has taken steps to investigate.

C. Relevant contextual data

74. In light of the facts thus far established, the Commission deems it relevant to take certain contextual data regarding how paramilitary groups operated in the area; the risks run by trade unionists at that particular time and place; and the risks run by persons with ties to the Unión Patriótica party.

²⁵ Appendix. Decision handed down in the appeal against the judgment of the Administrative Court of Antioquia on November 26, 1993. Council of State, Administrative Litigation Division, Unit Three. Santa Fé de Bogotá, September 23, 1994. Pages 97 and 104. Appendix to the comments of the petitioners dated August 4, 1995.

²⁶ Appendix. Decision handed down in the appeal against the judgment of the Administrative Court of Antioquia on November 26, 1993. Council of State, Administrative Litigation Division, Unit Three. Santa Fé de Bogotá, September 23, 1994. Page 104. Appended to a writ submitted by the petitioners on August 4, 1995.

²⁷ <http://www.centrodehistoriahistorica.gov.co/somos-cnmh/que-es-el-centro-nacional-de-memoria-historica>.

²⁸ Huellas y Rostros de la Desaparición Forzada (1970-2010). Volume II National Center for Historical Memory. Case 4. Víctor Manuel Isaza Uribe: Desaparición Forzada y Represión Antisindical. Available at: <http://www.centrodehistoriahistorica.gov.co/micrositios/desaparicionForzada/libros-tomo2.html>.

1. Regarding the paramilitary phenomenon in Colombia

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

76. As the IACHR established in its Third Report on the Human Rights Situation in Colombia, the State played a major part in developing the so-called paramilitary or self-defense groups, which it allowed to act with legal protection and legitimacy in the 1970s and 1980s,²⁹ and it is broadly responsible for their existence and strengthening.³⁰

77. These groups, either sponsored or accepted by sectors of the Armed Forces, were in large part created with the aim of combating armed dissident groups.³¹ Furthermore, as a result of their counter-insurgency motivation, paramilitary groups formed ties with the Colombian Army that strengthened over more than two decades³². Finally, on May 25, 1989, the Supreme Court of Justice declared the unconstitutionality of paragraph 3 of Article 33 of Legislative Decree 3398, which had provided a legal basis for the establishment of self-defense groups³³ and withdrew the legal support for their ties to national defense, following which the State adopted a series of legislative measures criminalizing the activities of these groups and of those lending them support.³⁴ In spite of that, the State did little to dismantle the structure it had created and encouraged, particularly when the groups conducted counterinsurgency activities; in fact, the ties remained in place at several levels, with the paramilitaries, in some cases, being asked or allowed to carry out certain illegal acts on the understanding that they would not be investigated, prosecuted, or punished.³⁵ The toleration of these groups by certain sectors in the Army has been denounced even by State bodies.³⁶

78. The Commission notes that initially the State encouraged the creation of "self-defense" groups with specific objectives, but these were overstepped, and they began to function outside the law, on occasion in collaboration with or with the acquiescence of agents of the State. The Court has observed that

²⁹ In fact, Decree 3398 of 1965 (National Defense Act) and Law 48 of 1968 authorized the establishment of civilian patrols that received weapons for the exclusive use of the State's security forces, thanks to authorization by the Ministry of Defense. Article 25 of Decree 3398 of 1965 established that "All Colombian men and women, not bound by obligatory military service requirements, may be used by the Government for activities and work contributing to the restoration of order (*la normalidad*)." IACHR, Report No. 75/06, Jesús María Valle Jaramillo, October 16, 2006, par. 61.

³⁰ IACHR, Third Report on the Situation of Human Rights in Colombia. OEA/Ser.L/V/II.102 Doc. 9 rev. 1, February 26, 1999, Chapter IV, par. 236. At: <http://www.cidh.org/countryrep/Colom99sp/indice.htm>. IACHR, Report No. 75/06, Jesús María Valle Jaramillo, October 16, 2006, par. 61.

³¹ IACHR, Third Report on the Situation of Human Rights in Colombia. OEA/Ser.L/V/II.102 Doc. 9 rev. 1, February 26, 1999, Chapter I, paragraphs 7-19. At: <http://www.cidh.org/countryrep/Colom99sp/indice.htm>. IACHR, Report No. 75/06, Jesús María Valle Jaramillo, October 16, 2006, par. 62.

³² I/A Court H.R., *Case of the "Mapiripán Massacre" v. Colombia*. Preliminary objections. Judgment of March 7, 2005. Series C No. 122, pars. 96.1-96.5.

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

³⁴ Decrees 1194 of June 8, 1989 and 2266 of 1991. IACHR. Report No. 75/06, Jesús María Valle Jaramillo, October 16, 2006, par. 62.

³⁵ IACHR, Third Report on the Situation of Human Rights in Colombia. OEA/Ser.L/V/II.102 Doc. 9 rev. 1, February 26, 1999, Chapter I, paragraphs 17-19. At: <http://www.cidh.org/countryrep/Colom99sp/indice.htm>. See also, Report of the United Nations High Commissioner for Human Rights on the Office in Colombia, April 2000, par. 30. See also, IACHR Report No. 75/06, Jesús María Valle Jaramillo, October 16, 2006, par. 62.

³⁶ IACHR, Third Report on the Situation of Human Rights in Colombia. OEA/Ser.L/V/II.102 Doc. 9 rev. 1, February 26, 1999, Chapter IV, paragraphs 37-239. IACHR. Report No. 75/06, Jesús María Valle Jaramillo, October 16, 2006, par. 62. At: <http://www.cidh.org/countryrep/Colom99sp/indice.htm>.

said "paramilitary groups are responsible for numerous murders [...] and many of the human rights violations committed [in Colombia] generally."³⁷

79. This situation has led the Commission to establish, for the purposes of determining the international responsibility of the State pursuant to the American Convention, that in cases in which the paramilitary and members of the Army conduct joint operations with the knowledge of higher-ranking officers, or when the paramilitary groups act with the acquiescence or collaboration of the Security Forces, it shall be considered that the paramilitary groups are acting as agents of the State.³⁸

80. For its part, the Inter-American Court has ascertained, at various times and in different geographical contexts, the existence of ties between the Colombian Armed Forces and paramilitary groups. A combined review of cases decided on by the Commission and subsequently by the Inter-American Court points to the existence of a link between the paramilitary groups and members of the security forces in connection with violations of human rights, such as [extra]judicial executions, forced disappearances, cruel, inhuman, or degrading treatment, forced displacement, and so on. This link is evidenced through either acts of direct support, collaboration, or coordination or through omissions by members of the security forces that have facilitated the actions of the paramilitary groups. Such cases include, but are not limited to: *19 Merchants*,³⁹ *the Mapiripán Massacre*,⁴⁰ *the El Aro and Ituango Massacres*,⁴¹ and *Cepeda Vargas*.⁴²

81. Specifically, in the case of the *La Rochela Massacre*, the Court summarized the grounds for assigning international responsibility to the State for acts committed by paramilitary. First, it reiterated the international responsibility of Colombia: 1) for having issued a legal framework that propitiated the creation of self-defense groups that turned into paramilitary groups; and ii) for failing to adopt all the measures needed to put an effective end to the situation of risk created by the State itself when it issued those provisions.⁴³ Second, the Court pointed out that it had declared Colombia responsible because of its failure to meet its duty to provide guarantees by adopting effective prevention and protection measures for the civilian population that found itself in a situation of risk with regard to paramilitary groups that could reasonably have been foreseen by members of the Armed Forces or State Security.⁴⁴ Third, the Court indicated that on several occasions it had found Colombia responsible for violations committed by paramilitary groups with the support, acquiescence, participation, and collaboration of members of the security forces.⁴⁵

82. Recently, in the case of the *Afro-descendant Communities displaced from the Cacarica River basin (Operation Genesis)*, the Court pointed out that "it is a well-known public fact that various decisions of Colombia's high courts have referred to the connections existing between paramilitary groups and members

³⁷ Cf. I/A Court H.R., *Case of the "Mapiripán Massacre" v. Colombia*. Preliminary Objections. Judgment of March 7, 2005. Series C No. 122, par. 96.18; I/A Court H.R., *Case of the Ituango Massacres*. Judgment of July 1, 2006. Series C No. 148, par. 125.23.

³⁸ IACHR. Report No. 37/00, *Monseñor Oscar Arnulfo Romero y Galdámez*, par. 64. IACHR. Report No. 75/06, Jesús María Valle Jaramillo, October 16, 2006, par. 63.

³⁹ I/A Court H.R., *Case of Blake v. Colombia*. Merits, Reparations and Costs. Judgment of July 5, 2004. Series C No. 109

⁴⁰ I/A Court H.R., *Case of the "Mapiripán Massacre" v. Colombia*. Merits, Reparations and Costs. Judgment of September 15, 2005. Series C No. 134

⁴¹ I/A Court H.R., *Case of the Ituango Massacres v. Colombia*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2006. Series C No. 148

⁴² I/A Court H.R., *Case of Cepeda Vargas v. Colombia*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 26, 2010. Series C No. 213

⁴³ I/A Court H.R., *Case of the Rochela Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 165, par. 78.

⁴⁴ I/A Court H.R., *Case of the Rochela Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 165, par. 78.

⁴⁵ I/A Court H.R., *Case of the Rochela Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 165, par. 78.

of the Armed Forces,⁴⁶ as have several reports of the Ombudsman's Office.⁴⁷ This Court's case law also reveals that, on other occasions, it has taken into account reports and decisions of the Public Prosecution Service in which the collaboration between members of the Army and paramilitary groups in the department of Antioquía was considered proved."⁴⁸ Furthermore, the reports published by the National Historical Memory Center (...) also contain accounts of different scenarios in which there were connections between the Colombian Armed Forces and the paramilitary groups."⁴⁹

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

In accordance with what has been indicated by several State institutions, different United Nations bodies and agencies (the Commission on Human Rights, the Office of the High Commissioner for Human Rights, the Human Rights Committee of the International Covenant on Civil and Political Rights⁵⁰) and the ILO⁵¹) have referred to this context of

⁴⁶ Operation Genesis. Citing. Cf. Supreme Court of Justice of Colombia, Criminal Cassation Chamber: Review Judgment No. 30516 of March 11, 2009 (evidence file, pp. 9851 and 9856), Cassation Judgment No. 24448 of September 12, 2007, cited in District Director Public Prosecutors' Offices Director Seccional de Fiscalías, Memorandum No. 0035 of April 28, 2009, pp. 106 to[1?]18 (evidence file, p. 10024). See also Colombian Constitutional Court Ruling 005 of January 26, 2009 and Council of State Third Section Direct Reparation Action Judgment No. 68001-23-15-000-1996-01698-01, Reporting Councilor Olga Melida Valle de la Oz of February 27, 2013, p 13.

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

⁴⁸ Operation Genesis. Citing. Office of the Attorney General, Decision issued by the Subdivision for the Defense of Human Rights on September 30, 2002. Decision cited in the *Case of the Ituango Massacres v. Colombia*, par. 125.100: "On September 30, 2002, the Office of the Delegate Attorney for the Defense of Human Rights decided to sanction Lieutenant Everardo Bolaños Galindo and First Corporal Germán Antonio Alzate Cardona, alias "Rambo," dismissing them from their functions as public officials because it found that they were responsible for collaborating with the paramilitary incursion in El Aro and the theft of livestock and facilitating it with criminal intent. On November 1, 2002, following an appeal filed by the said individuals, this ruling was confirmed in second instance by the Disciplinary Chamber of the Attorney General's Office."

⁴⁹Operation Genesis. Citing. Cf. National Historical Memory Center, "¡Basta ya! [Enough is Enough] Colombia: Memorias de guerra y dignidad. [Memoirs of war and dignity] [Memoirs of war and dignity] Report of the General Group on Historical Memory, National Print office, Colombia, 2013, pp. 20, 42, 48, 343 y 347; and "Justicia y Paz ¿verdad judicial o verdad histórica?" [Justice and Peace: Judicial Truth or Historical Truth?], Colombia, 2012, pp. 251, 377, 469, 498, 513, 514, and 515, "La Rochela: Memorias de un crimen contra la justicia [Records of a crime against justice], Ed. Semana, Colombia, 2010, pp. 20, 95, 96, 104, 105, and 116; "Silenciar en Democracia.[Silencing in Democracy] Las masacres de Remedios y Segovia, 1982-1997" [The massacres at Remedios and Segovia], Ed. Semana, Colombia, 2010, pp. 21, 22, 28, 29, 61, 73, 74, 75, and 76; "La masacre de Bahía Portete: Mujeres Wayuu en la mira", [The massacre at Bahía Portete: Wayuu Women at the Forefront] Ed. Semana, Colombia, 2010, pp. 23 and 33; "San Carlos: Memorias del éxodo en la guerra", (Report on the wartime exodus] Ed. Aguilar, Altea, Taurus, Alfaguara, S. A., Colombia, 2011, pp. 87 and 15; "Mujeres y guerra. Víctimas y resistentes en el Caribe colombiano", [Victims and resistance fighters in the Colombian Caribbean] Ed. Aguilar, Altea, Taurus, Alfaguara, S. A., Colombia, 2011, pp. 31, 32, and 240.

⁵⁰ Operation Genesis. Citing cf. The United Nations Commission on Human Rights, in the Report the Secretary-General's Representative on internally displaced persons, pursuant to resolution 1999/47 of the Commission, E/CN.4/2000/83/Add.1, of January 11, 2000, par. 25 (evidence file, p. 1571). United Nations High Commissioner for Human Rights, Reports on the Human Rights Situation in Colombia. E/CN.4/2001/15, March 20, 2001, par. 131 (evidence file, p. 2601), E/CN.4/2005/10, February 28, 2005, par. 149, Appendix No. II, paragraphs 5, 6, 7, and 8 (evidence file pp. 2337 and 2348); E/CN.4/2004/13, February 17, 2004, paragraphs.23, 24, 65, and 73; (evidence file pp. 2382, 2383, 2392, and 2393); E/CN.4/2003/13, February 24, 2003, paragraphs 9, 34, 44, 74, 75, and 77; (evidence file pp. 2445, 2450, 2452, 24659 and 2460); E/CN.4/2002/17, February 28, 2002, par. 62. (evidence file, p. 2520), E/CN.4/2000/11, March 9, 2000, paragraphs 25, 110, and 11; (evidence file pp. 2640, 2657 and 2658); E/CN.4/1998/16, March 9, 1998, paragraphs 29, 90, 91, and 175 (evidence file pp. 744, 751, and 762). See also, United Nations Human Rights Committee: Consideration of reports submitted by States parties under Articles 40 of the Covenant. Concluding Observations of May 5, 1997, par. 17, August 4, 2010, par. 8, and May 26, 2004, paragraph 12.

⁵¹ Operation Genesis. Citing cf. The Committee of Experts on the Application of Conventions and Recommendations (CEACR) of the ILO, Individual Observation for the year 2009, pp. 78 and 79.

connections between the Armed Forces and the paramilitaries. Lastly, some expert opinions presented in these proceedings⁵² and in other proceedings⁵³ before the Court (incorporated into the documentary evidence of this case) reveal these connections.

84. Specifically with regard to the existence of said ties in the area and at the time of the facts, in *Case 19 Merchants v. Colombia*, the Inter-American Court recapitulated the existence of evidence of close ties between the paramilitary and the Bárbula Battalion base of the Colombian Army,⁵⁴ which had jurisdiction over the municipalities of Puerto Triunfo, Puerto Nare, Caracol, and Puerto Boyacá.⁵⁵

85. As indicated above in paragraph 44, the facts in the instant case took place in Magdalena Medio, which, according to the National Center for Historical Memory, had been the epicenter of the presence of guerrilla groups since the early 1970s, which was why the area began to be militarized in the 1980s, along with the emergence of paramilitary groups in the region.

2. The context surrounding aggression against trade unionists

86. Since the beginning of the 1960s, the Armed Forces adopted the so-called "National Security Doctrine," sanctioned by Decree 3398 of 1965, which was subsequently enacted as Law 48 of 1968, "Organic Statute of National Defense."⁵⁶ According to a report of the National Center for Historical Memory, apart from that law, there were military⁵⁷ counter-insurgency regulations and manuals which amounted to a whole framework in which the concept of "internal enemy (...) went far beyond the scope of guerrilla groups to encompass all forms of political and social opposition and dissidence, including the trade union movement.⁵⁸ Those rules and regulations were in effect at the time of the disappearance of Víctor Manuel Isaza Uribe. Moreover, some information indicates that some of those manuals were still being applied up to 2009, at least.⁵⁹

⁵² Operation Genesis. Citing cf. Expert opinion of Javier Ciurlizza, the expert proposed by the Commission, rendered before the Inter-American Court of Human Rights during the public hearing on February 12, 2013: "[...]The existence of connections between paramilitary groups and some local economic or political agents is public knowledge [...]" Expert opinion rendered by anthropologist Jesús A. Flores López, proposed by the representatives, before the Inter-American Court of Human Rights, on February 12, 2013.

⁵³ Operation Genesis. Citing cf. Sworn statement by Federico Andreu-Guzmán in the Mapiripán and La Rochela massacres cases against Colombia. At various points in his statement, Mr. Andreu refers to the existence of connections between paramilitary groups and the military.

⁵⁴ I/A Court H.R., *Case of the 19 Merchants v. Colombia*. Merits, Reparations and Costs. Judgment of July 5, 2004. Series C No. 109, paragraph 130ff.

⁵⁵ Huellas y Rostros de la Desaparición Forzada (1970-2010). Volume II National Center for Historical Memory. Case 4. Víctor Manuel Isaza Uribe: Desaparición Forzada y Represión Antisindical. Available at: <http://www.centrodememoriahistorica.gov.co/micrositios/desaparicionForzada/libros-tomo2.html>.

⁵⁶ Huellas y Rostros de la Desaparición Forzada (1970-2010). Volume II National Center for Historical Memory. Case 4. Víctor Manuel Isaza Uribe: Desaparición Forzada y Represión Antisindical. Available at: <http://www.centrodememoriahistorica.gov.co/micrositios/desaparicionForzada/libros-tomo2.html>.

⁵⁷ Huellas y Rostros de la Desaparición Forzada (1970-2010). Volume II National Center for Historical Memory. Case 4. Víctor Manuel Isaza Uribe: Desaparición Forzada y Represión Antisindical. Available at: <http://www.centrodememoriahistorica.gov.co/micrositios/desaparicionForzada/libros-tomo2.html>. This report highlights the following:) Reglamento de combate de contraguerrillas [Counterinsurgency Regulations] – EJC 3-10, Armed Forces High Command, Order No. 005 of April 9, 1969; b) El Manual de Guerrillas y Contraguerrillas urbanas [Manual on Guerrillas and Urban Counterinsurgency] – EJC 3-18, of the National Army, Order No. 00006 of 1977; c) Las Instrucciones generales para operaciones de contraguerrillas [General Instructions for Counterinsurgency Operations], of Army High Command, 1979; d) El Manual ECJ-3-101, of the Army High Command, of June 25, 1982; y e) el Reglamento de combate de contraguerrilla [Counterinsurgency Regulations] – EJC-3-10, Armed Forces High Command], of 1987.

⁵⁸ Huellas y Rostros de la Desaparición Forzada (1970-2010). Volume II National Center for Historical Memory. Case 4. Víctor Manuel Isaza Uribe: Desaparición Forzada y Represión Antisindical. Available at: <http://www.centrodememoriahistorica.gov.co/micrositios/desaparicionForzada/libros-tomo2.html>.

⁵⁹ See Council of State. Administrative Litigation Division. Section One. February 5, 2009. File 11001-03-15-000-2008-01400-01. Actor, Javier Giraldo Moreno.

87. This notion of the "internal enemy" or "enemy within" in national security doctrine was recognized in 1994 in a Joint Report of two United Nations Special Rapporteurs, who wrote, following their visit to Colombia:

In these areas, the armed forces allegedly continue to apply a counterinsurgency strategy based on the concept of "national security", whereby everybody who is known or suspected to be linked with the guerrillas is regarded as an internal enemy. . According to the information received, in the areas labelled as "zonas rojas" (red zones), where the insurgents are active and armed confrontations take place, the security forces view virtually all civilians as collaborators of the subversion (...). The category "internal enemy", applied to everyone who is regarded as supporting the guerrilla in one way or another (even if the insurgents use force to obtain, for example, food or money from civilians), is allegedly extended to all those who express dissatisfaction with the political, economic and social situation, particularly in the rural areas. Consequently, leaders and members of trade unions, political opposition parties, human rights organizations, social workers, etc., have been, alongside with peasants, the main victims of human rights violations in areas where there is armed conflict.⁶⁰

88. Indeed, in its Second Report on the Situation of Human Rights in Colombia, the Commission pointed out that between the constitution of the Central Unitaria de Trabajadores de Colombia [Colombian Workers Confederation - CUT] in November 1986 and May 1990, 538 activists and trade union leaders were murdered and disappeared.⁶¹

89. A press release published on May 1, 1987 by *El Colombiano* reported that 32 trade union leaders had been murdered in Colombia in one year, as denounced at the Fifth National Forum on Human Rights, held in Bogotá. It also stated that "the principal leaders of the trade union confederations received at least one death threat in the past year."⁶²

90. A press release published by the same newspaper on January 25, 1988 reported the disappearance of two trade union leaders in Puerto Nare, as well as a meeting held by leaders of the National Federation of Construction, Cement and Wood (sic) Workers with the Attorney General, at which they complained of the "difficult public order situation in the Antioquia region."⁶³

91. The file on this case contains copies of various communications sent, between 1987 and 1989, by the CUT, and the National Federation of Manufacturing, Construction, Cement and Construction Materials Workers (FENALTRACONCEM) to the President of the Republic, the Attorney General, the Minister of the Interior, and the Minister of Justice, reporting on the "wave of terror and violence to which the population and workers at the Cementos del Nare and Colombiana de Carburo were being subjected."⁶⁴

92. Those communications contain a list of murders and disappearances in the Magdalena Medio region, in the department of Antioquia, since December 8, 1986, the day when trade union leader Julio

⁶⁰ Huellas y Rostros de la Desaparición Forzada (1970-2010). Volume II National Center for Historical Memory. Case 4. Víctor Manuel Isaza Uribe: Desaparición Forzada y Represión Antisindical. Available at: <http://www.centrodehistoria.gov.co/micrositios/desaparicionForzada/libros-tomo2.html>. Citing. Joint report of the Special Rapporteur on the question of torture, Mr. Nigel S. Rodley, and the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Bacre Waly Ndiaye. E/CN.4/1995/111 of 16 January 1995.

⁶¹ IACHR, Second Report on the Situation of Human Rights in Colombia. OEA/Ser.L/V/II.84 Doc.39 rev., October 14, 1993, Chapter VIII. At: <http://www.cidh.org/countryrep/Colombia93sp/cap.8.htm>.

⁶² Press release: "En el último año murieron asesinados 32 sindicalistas" published by *El Colombiano* on May 1, 1987. Appended to the comments of the petitioners received on February 18, 1992.

⁶³ Press release: "Investigarán desaparición de dos líderes en Puerto Nare," published by *El Colombiano* on January 25, 1988. Appended to the comments of the petitioners received on February 18, 1992.

⁶⁴ Appendix. Letters to a series of authorities. Appendix to the comments of the petitioners dated Friday, February 7, 1992.

César Uribe Rúa, President of SUTIMAC, was murdered. The CUT and FENALTRACONCEM denounced those murders and disappearances to the Mayor, the Governor, military and police authorities, and national authorities. In those letters to national authorities, they reported that "the members of a paramilitary group comprising about 30 individuals and calling itself "Autodefensa Popular" was continuing to sow terror and confusion..." Thus, the CUT and FENALTRACONCEM asked for an end to the criminal policy against workers and for an investigation to be carried out. They also requested the withdrawal of the Army patrols billeted in Puerto Nare and "Montañitas", in the department of Antioquia.

93. Likewise, a report of the National Center for Historical Memory refers to the persecution and extermination of members of SUTIMAC's Puerto Nare branch. The report states:

(...) in the Antioquia region of Magdalena Medio, in 1986 and 1987, the vast majority of SUTIMAC members were murdered or disappeared by paramilitary groups operating with military units billeted in the region. Indeed, SUTIMAC was practically banished from the municipality of Puerto Nare, due to the murder, forced disappearance, and internal displacement of most of its trade union leaders and activists.⁶⁵

94. The aforementioned report cites numerous murders of members of SUTIMAC and Sintracolcarburos between 1986 and 1989,⁶⁶ most of them attributed to paramilitary groups and, specifically, the group known as MAS. It points out that several of these people also had ties to the UP.⁶⁷ As a matter of particular relevance to the instant case, the Commission notes that, according to that report, several of those deaths and disappearances took place in circumstances that suggest joint actions and collaboration between the paramilitary groups and the State security forces, that is, when persons were formally held in installations run by the State's security forces or close by.⁶⁸

95. Some examples of the situation cited in the National Center for Historical Memory's report entitled *Huellas y Rostros de la Desaparición Forzada (1970-2010)* are: i) Luis Antonio Gómez, handed over on January 11, 1987 to alleged paramilitary groups by the police at the police station in La Sierra in the

⁶⁵ *Huellas y Rostros de la Desaparición Forzada (1970-2010)*. Volume II National Center for Historical Memory. Case 4. Víctor Manuel Isaza Uribe: Desaparición Forzada y Represión Antisindical. Available at: <http://www.centrodehistoria.gov.co/micrositios/desaparicionForzada/libros-tomo2.html>.

⁶⁶ *Huellas y Rostros de la Desaparición Forzada (1970-2010)*. Volume II National Center for Historical Memory. Case 4. Víctor Manuel Isaza Uribe: Desaparición Forzada y Represión Antisindical. Available at: <http://www.centrodehistoria.gov.co/micrositios/desaparicionForzada/libros-tomo2.html>. The murders and/or disappearances cited are: Julio César Uribe Rúa, President of the Nare branch of Sutimac and of Sutimac Nationwide, a Unión Patriótica activist and council member of Puerto Nare, on December 8, 1986; Luis Antonio Gómez on January 11, 1988; Gonzalo Madrigal who was trying to find his brother-in-law Carlos Darío Zea, a trade union leader, on February 4, 1987; Marcial González, a worker at Colcarburos, a relative of the same trade union leader, on February 5, 1987; Jhon Alberto Montoya on March 7, 1987; Jesús Antonio Molina, trade union leader of the Nare branch of Sutimac, on March 9, 1987; Alfonso Miguel Lozano Pérez, a leader at Sintracolcarburo and member of Unión Patriótica, on March 30, 1987; Jorge Alberto González Uribe, brother-in-law of a leader at Sintracolcarburo on May 5, 1987; Ignacio Bedoya, a member of the Nare branch of Sutimac, on August 8, 1987; Pablo Emilio Córdoba Madrigal, a Unión Patriótica council member, a member of the executive board of Sintracolcarburo and a Sutimac leader; Gustavo Jesús Callejas and Héctor Alonso Loaiza Londoño, activists in Sutimac and workers at the Cementos Nare company; Carlos Arturo Salazar and Darío Gómez, trade unionists at Cementos Nare and Unión Patriótica activists, on January 19, 1988; Jesús Emilio Monsalver Mesa, trade unionist in the Nare branch of Sutimac and Unión Patriótica activists, on January 24, 1988; Juan de Jesús Grisales Urrego, a member of Sutimac and watchman at Cementos Nare, on February 3, 1988; Héctor Julio Mejía, trade union leader at the Nare branch of Sutimac, on February 8, 1988; Jesús Anibal Parra Castrillón, director of the Nare branch of Sutimac, on March 28, 1988; León de Jesús Cardona Isaza, National President of Sutimac and member of Fenaltraconcemand of Unión Patriótica, on August 30, 1988; José Manuel Herrera, member of the organization committee of the Cementos Nare trade union, affiliated to Sutimac, on September 4, 1988; Carlos Alfonso Tobón Zapata, member of Sutimac, on January 28, 1989; Juan Rivera, machinist at Colcarburos and Vice President of Sutimac on August 12, 1989; and Luis E. Durán, a worker affiliated to Sutimac, on September 29, 1989.

⁶⁷ *Huellas y Rostros de la Desaparición Forzada (1970-2010)*. Volume II National Center for Historical Memory. Case 4. Víctor Manuel Isaza Uribe: Desaparición Forzada y Represión Antisindical. Available at: <http://www.centrodehistoria.gov.co/micrositios/desaparicionForzada/libros-tomo2.html>.

⁶⁸ *Huellas y Rostros de la Desaparición Forzada (1970-2010)*. Volume II National Center for Historical Memory. Case 4. Víctor Manuel Isaza Uribe: Desaparición Forzada y Represión Antisindical. Available at: <http://www.centrodehistoria.gov.co/micrositios/desaparicionForzada/libros-tomo2.html>.

municipality of Puerto Nare; ii) Jhon Alberto Montoya, murdered on March 7, 1987 by paramilitary from the MAS group at the Departmental Police Inspectorate in La Sierra in the municipality of Puerto Nare; iii) Jesús Antonio Molina, a UP leader and trade union leader in Sutimac's Nare branch, murdered by the MAS paramilitary group on March 9, 1987 barely half a block away from the police post in the village of La Sierra; iv) Pablo Emilio Córdoba Madrigal, a member of the UP council, member of the governing board of SINTRACOLCARBURO and a SUTIMAC leader, murdered on September 30 1987 by the MAS paramilitary group when he was at the Departmental Police Inspectorate in La Sierra; and v) Gustavo de Jesús Callejas and Héctor Alonso Loaiza Londoño, activists in the Caracol branch of SUTIMAC and workers at the Cementos Nare company, murdered on November 16, 1987 by the MAS paramilitary group a few meters away from the La Sierra police station, in the municipality of Puerto Nare.⁶⁹

96. Along similar lines, the United Nations Development Programme published a report in 2012 in which it described the violence against trade unionists at the time and in the region to which the instant case refers, as follows:

In the 1980s, —after Fenaltraconcem had been superseded by the Construction Materials Industry Workers Union (SUTIMAC), which began to combine union activity with leftist political activity through the Patriotic Union (UP)—the Puerto Boyacá paramilitary group, led by Gonzalo Rodríguez Gacha, appeared in Puerto Nare in 1986 to oppose the union's efforts and to threaten and kill SUTIMAC members (...). The incident that signaled the preeminence of paramilitary forces in Puerto Boyacá was the December 1986 killing of Cementos del Nare's union president, who was a member of SUTIMAC and a Communist member of the city council. He was forced off a bus and executed. (...). Killings of SUTIMAC members increased sharply after that. Besides being unionists, all of the victims were also local politicians—almost all of them city council members—who belonged to the Patriotic Union. (...) The 1986–1990 period alone saw 25 killings. This number includes two boards of directors of the Cementos del Nare union that were completely wiped out.⁷⁰

97. In light of the above, the Commission considers that sufficient information exists to conclude that, at the time of the facts of this case, there was a context of violence perpetrated by paramilitary groups against trade unionists all over Colombia and particularly markedly in the department of Antioquia, in Puerto Nare, and with a high incidence of attacks of persons who were members of SUTIMAC, so much so that that context was even described as a form of extermination.

3. The Unión Patriótica party and the risks run by persons associated with it.

98. Unión Patriótica was formed as a political party on May 28, 1985, as a result of peace negotiations between the FARC and the State of Colombia presided over by President Belisario Betancur.⁷¹ According to the *Commission in its Third Report on the Situation of Human Rights in Colombia*, that party was not conceived as a political party in the strictest sense of the term, but more as a political alternative to the traditional power structure that would serve as a vehicle for the various manifestations of civil and popular protest. However, Unión Patriótica was also envisioned as the political vehicle of the FARC for possible reassimilation into civilian life.⁷²

⁶⁹ Huellas y Rostros de la Desaparición Forzada (1970-2010). Volume II National Center for Historical Memory. Case 4. Víctor Manuel Isaza Uribe: Desaparición Forzada y Represión Antisindical. Available at: <http://www.centrodememoriahistorica.gov.co/micrositios/desaparicionForzada/libros-tomo2.html>.

⁷⁰ Huellas y Rostros de la Desaparición Forzada (1970-2010). Volume II National Center for Historical Memory. Case 4. Víctor Manuel Isaza Uribe: Desaparición Forzada y Represión Antisindical. Available at: <http://www.centrodememoriahistorica.gov.co/micrositios/desaparicionForzada/libros-tomo2.html>.

⁷¹ IACHR, *Third Report on the Situation of Human Rights in Colombia*, Chapter IX, "Freedom of Association and Political Rights," OEA/Ser.L/V/II.102, February 26, 1999, par. 50.

⁷² IACHR, *Third Report on the Situation of Human Rights in Colombia*, Chapter IX, "Freedom of Association and Political Rights," OEA/Ser.L/V/II.102, February 26, 1999, par. 50.

99. With respect to the situation of people linked to UP, the Ombudsman's Office noted that "there is a direct relationship between the emergence, activity of and electoral support for the Patriotic Union and the murder of its activists and leaders in regions where this party's presence was interpreted as a danger to the preservation of the privileges of certain groups."⁷³

100. The Commission referred to the wholesale assassination of members of Unión Patriótica in its *Second Report on the Situation of Human Rights in Colombia* and in the report on the country included in its 1996 annual report. According to that information, more than 1,500 members of the Patriotic Union political party had allegedly been killed since the party's formation in 1985. In the same report, the Commission noted that the party's leadership estimated that in 1996 "a member of the party was killed every two days."⁷⁴ For their part, in 1995, the United Nations special rapporteurs on torture and on extrajudicial executions said that since 1985 UP was thought to have lost more than 2000 members, all of whom were assassinated for political reasons.⁷⁵

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

[t]he acts of violence carried out selectively against the UP representatives were accompanied by crimes perpetrated against members of the communities or social sectors that belonged to or supported its political project in the different regions of the country. Abuses were committed in order to repress and teach a lesson. Using this mechanism, a generalized feeling of fear and terror was instilled that was able to progressively reduce the popular and electoral support for the UP, first in the areas where it received its main support and, subsequently, at the national level.⁷⁶

102. The Inter-American Court said that the perpetrators of those acts of violence "belonged to different groups, including the most important, the paramilitary groups, but State agents also allegedly took part in them directly and indirectly."⁷⁷ The Court also mentioned that the data provided by the State indicated that "State agents (principally members of the Army and the Police) occupied second place among those responsible for the violence against the UP," while the Ombudsman observed that, "when they could not confront the guerrilla directly, paramilitary or self-defense groups had converted the UP 'into the visible part and the military objective of their strategy.'"⁷⁸

103. The Inter-American Court noted that "the violence against the UP has been characterized as systematic."⁷⁹ For its part, the Constitutional Court of Colombia indicated with respect to the determination of

⁷³ Cf. Report of the Ombudsman for the Government, Congress, and Attorney General, titled *Estudio de casos de homicidio de miembros de la Unión Patriótica y Esperanza, Paz y Libertad*, October 2002, cited in I/A Court H.R., *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of May 26, 2010. Series C No. 213, par. 76.

⁷⁴ IACHR, *Third Report on the Situation of Human Rights in Colombia*, Chapter IX, "Freedom of Association and Political Rights," OEA/Ser.L/V/II.102, February 26, 1999, par. 52.

⁷⁵ United Nations, Report by the United Nations High Commissioner for Human Rights, E/CN.4/1998/16, 9 March 1998.

⁷⁶ Opinion provided by expert witness Eduardo Cifuentes Muñoz, cited in I/A Court H.R. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of May 26, 2010. Series C No. 213, footnote 84.

⁷⁷ I/A Court H.R., *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of May 26, 2010. Series C No. 213, par. 78.

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

⁷⁹ I/A Court H.R., *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of May 26, 2010. Series C No. 213, par. 81.

the situation of risk faced by someone because of their link to UP since 1992, the year in which the events in this case occurred, that "being formally or reportedly linked to Unión Patriótica in the context of the political and ideological persecution unleashed against its members or supporters, is a key determinant in the case for saying that they felt their lives to be in danger."⁸⁰

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

V. LEGAL ANALYSIS

A. Rights to juridical personality, personal liberty, humane treatment, and life (Articles 3, 7, 5, and 4 of the American Convention); and the Inter-American Convention on Forced Disappearance of Persons [Article I (a)]

105. Article 3 of the American Convention provides:

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

106. Article 4 (1) of the Convention states:

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

107. Article 5 of the American Convention provides:

1. Every person has the right to have his physical, mental, and moral integrity respected.
2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

108. Article 7 of the American Convention provides:

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

109. Article 1(1) of the Convention stipulates:

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

110. Article 2 of the Convention provides:

Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in

⁸⁰Constitutional Court of Colombia, Judgment T-439/92, M.P.: Eduardo Cifuentes Muñoz, July 2, 1992. Available at: <http://www.corteconstitucional.gov.co/relatoria/1992/t-439-92.htm>

accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

111. In turn, Article I(a) of the Inter-American Convention on Forced Disappearance of Persons provides as follows:

Article I

The States Parties to this Convention undertake:

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

112. In this case, the dispute concerns whether or not the State bears international responsibility for the alleged forced disappearance and execution of Víctor Manuel Isaza Uribe. The petitioners argue that what happened to Víctor Manuel Isaza Uribe qualifies as forced disappearance attributable to the State, at least through the acquiescence or complicity of state agents. The State, for its part, contends that the evidence adduced is not sufficient to demonstrate its responsibility.

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

114. Bearing in mind its determinations in its factual analysis herein, the Commission reiterates that it has taken the following as proven: (i) a context of paramilitarism; (ii) a context of violence against UP party members or supporters and trade unionists in the area where the events occurred, which has not been contested by the State; (iii) a regulatory framework in which it may assumed that trade unions were identified as internal enemies; (iv) at the time of the disappearance Mr. Isaza Uribe was a trade unionist and at the least a UP supporter; (v) Víctor Manuel Isaza Uribe disappeared while in State custody; (vi) nothing is known of Mr. Isaza Uribe or his whereabouts since November 19, 1987.

115. In that regard, the Commission notes that a peculiarity of this case is that it concerns an alleged forced disappearance of a person while that person was formally deprived of liberty in the context of a criminal proceeding. Thus, the Commission finds it appropriate to begin its analysis of legal considerations in this case by recalling a number of relevant standards concerning the position of the State as guarantor of persons who are in its custody, as well as with respect to the presumption of State responsibility for what befalls a person deprived of liberty and the resulting burden of proof on the State. The Commission will then examine whether the facts in this case amount to a forced disappearance.

1. Considerations on the State's obligations as guarantor with respect to persons deprived of their liberty

116. The Commission and the Court have determined that, where persons who have been deprived of their liberty are concerned, the State is in a special position of guarantor, as the prison authorities

⁸¹ I/A Court H.R., *Case of Gonzalez Medina and Family v. Dominican Republic. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of February 27, 2012, Series C No. 240, par 133; *Case of the Massacre of Pueblo Bello v. Colombia*, Judgment of January 31, 2006, Series C, No. 140, par. 112.

exercise heavy control or command over the persons in their custody.⁸² Thus, there is a special relationship and interaction of subordination between the person deprived of liberty and the State, characterized by the particular intensity with which the State can regulate his or her rights and obligations, and by the inherent circumstances of imprisonment, where the prisoner is prevented from satisfying, on his own account, a series of basic needs that are essential for leading a decent life.⁸³ The Court has found that the State, in its capacity as guarantor of the rights enshrined in the Convention, is responsible for observance of the right to humane treatment of everyone in its custody.⁸⁴

117. In addition, the Court's case law has indicated that whenever an individual is deprived of liberty in normal health and subsequently displays health problems, the State must provide a satisfactory and credible explanation for this situation⁸⁵ and disprove the allegations of its responsibility with adequate probative elements.⁸⁶ The absence of such an explanation leads to the presumption of State responsibility for the injuries revealed by a person who has been in the custody of State agents.⁸⁷

118. Although this case does not concern physical injuries displayed by a person deprived of their liberty, the Commission considers that presumption to be even more applicable in circumstances where a person disappears while in the custody of the State without a satisfactory explanation on the latter's part. Indeed, in the *Osorio Rivera and Family v. Peru*, the Inter-American Court applied a similar presumption in a case of forced disappearance in which the person was last known to have been in state custody.⁸⁸ Specifically, the Court found that it was incumbent upon said state to prove its version of the facts lest it be concluded, perforce, that it was responsible.⁸⁹ In the same case, the Court took into particular consideration circumstantial evidence and its inconsistency with the version provided by the State.⁹⁰

119. It follows from the foregoing, then, that the State had a special obligation to guarantee the rights of Mr. Isaza Uribe as a person deprived of liberty, and as well as the duty to conduct a thorough

⁸² I/A Court H.R., *Case of the "Juvenile Reeducation Institute" v. Paraguay. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of September 2, 2004. Series C, No. 112, par. 152; *Case of Vera Vera et al. v. Ecuador. Preliminary Objection, Merits, Reparations and Costs.* Judgment of May 19, 2011. Series C, No. 226, par. 42; and *Case of Mendoza et al. v. Argentina. Preliminary Objections, Merits and Reparations.* Judgment of May 14, 2013. Series C, No. 260, par. 188. See also IACHR, Report on the Human Rights of Persons Deprived of Liberty, December 30, 2011, pars. 46 and ff.

⁸³ I/A Court H.R., *Case of the "Juvenile Reeducation Institute" v. Paraguay. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of September 2, 2004. Series C, No. 112, par. 152; *Case of Vélez Loo v. Panama. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of November 23, 2010. Series C, No. 218, par. 216; and *Case of Mendoza et al. v. Argentina. Preliminary Objections, Merits and Reparations.* Judgment of May 14, 2013. Series C, No. 260, par. 188. See also IACHR, Report on the Human Rights of Persons Deprived of Liberty, December 30, 2011, pars. 46 and ff.

⁸⁴ I/A Court H.R., *Case of López Álvarez v. Honduras. Merits, Reparations, and Costs.* Judgment of February 1, 2006. Series C, No. 141, pars. 104-106; *Case of Cabrera García and Montiel Flores v. Mexico. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 26, 2010. Series C, No. 220, par. 134; and *Case of Mendoza et al. v. Argentina. Preliminary Objections, Merits and Reparations.* Judgment of May 14, 2013. Series C, No. 260, par. 202. See also IACHR, Report on the Human Rights of Persons Deprived of Liberty, December 30, 2011, pars. 46 and ff.

⁸⁵ I/A Court H.R., *César Mendoza et al. Argentina. Preliminary Objections, Merits and Reparations.* Judgment of May 14, 2013. Series C, No. 260, par. 203, citing *Cf. Case of Juan Humberto Sánchez v. Honduras. Preliminary Objection, Merits, Reparations and Costs.* Judgment of July 10, 2007. Series C, No. 99, par. 100; and *Case of Fleury et al. v. Haiti*, par. 77.

⁸⁶ I/A Court H.R., *César Mendoza et al. Argentina. Preliminary Objections, Merits and Reparations.* Judgment of May 14, 2013. Series C, No. 260, par. 203, citing *Cf. Case of Juan Humberto Sánchez v. Honduras*, par. 111; and *Case of Fleury et al. v. Haiti*, par. 77.

⁸⁷ I/A Court H.R., *César Mendoza et al. Argentina. Preliminary Objections, Merits and Reparations.* Judgment of May 14, 2013. Series C, No. 260, par. 203, citing *Cf. The "Street Children" Case (Villagrán Morales et al.) v. Guatemala. Merits*, pars. 95 and 170; and *Case of Fleury et al. v. Haiti, Merits and Reparations*, par. 77.

⁸⁸ I/A Court H.R., *Case of Osorio Rivera and Family v. Peru, Interpretation of the Judgment on Preliminary Objections, Merits, Reparations, and Costs.* Judgment of November 20, 2014. Series C, No. 290, pars. 141 and 155;

⁸⁹ I/A Court H.R., *Case of Osorio Rivera and Family v. Peru, Interpretation of the Judgment on Preliminary Objections, Merits, Reparations, and Costs.* Judgment of November 20, 2014. Series C, No. 290, pars. 141 and 155;

⁹⁰ I/A Court H.R., *Case of Osorio Rivera and Family v. Peru, Interpretation of the Judgment on Preliminary Objections, Merits, Reparations, and Costs.* Judgment of November 20, 2014. Series C, No. 290, pars. 141 and 155;

investigation of what occurred in order to provide a satisfactory explanation of what happened and, as applicable, refute the presumption of responsibility.

120. In reference to the special obligation as a guarantor, the Commission is of the view that, regardless of whether or not the incident constituted a forced disappearance—an aspect examined in paras. 123-141 below—there is evidence to conclude that the State failed to meet its guarantor's obligation in relation to Mr. Isaza Uribe. As is noted in the section on established facts, the Commission observes that even though the Administrative Litigation Chamber inclined toward the jailbreak hypothesis, it noted and declared that there had been a lapse on the administration's part with respect to surveillance of the detainee. Bearing in mind that the violence waged by paramilitaries against members of the SUTIMAC trade union and UP supporters in Puerto Nare was well known—and described as an extermination campaign by the Historical Truth Commission (*Comisión de Esclarecimiento Histórico*), the fact that Mr. Isaza Uribe was both a member of that trade union and a UP supporter in that very area, meant that he was at particular risk while deprived of his liberty in the custody of state security forces that had links to the aforementioned paramilitary groups. As was indicated in the established facts, in the year that Víctor Isaza Uribe disappeared, other UP supporters and/or trade unionists in the same municipality were murdered or disappeared at or very close to facilities of state security forces. In that regard, the Commission believes that the authorities must have been aware of the grave danger to Mr. Isaza Uribe in that context and, consequently, and should adopted special preventive measures against that situation.

121. The State has not furnished any information that would allow the Commission to understand how the surveillance system at the detention center in question operated at the time of the events, or about special protection measures for people deprived of liberty in special situations of danger such as the one faced by Mr. Isaza Uribe. Bearing that situation in mind and the aforementioned conclusion of the Council of State regarding a security lapse, the Commission concludes that the State failed in its duty to protect by not adopting necessary measures to protect the life and well-being of Mr. Isaza Uribe, who was in its custody and exposed to a situation of grave danger.

122. As to whether the State provided a satisfactory explanation of what happened to Víctor Manuel Isaza Uribe while he was in its custody, the Commission observes that 28 years have passed since his disappearance without any judicial clarification of the facts being. The State's investigative response will be examined in detail in the section that deals with the rights recognized in Articles 8(1) and 25(1) of the Convention and Article I.b of the Inter-American Convention on Forced Disappearance of Persons. For the purposes of this section, it suffices to conclude that the State has not offered a satisfactory explanation about what occurred under its custody and, therefore, it has not refuted the presumption of responsibility described hereinabove. This has a bearing on the Commission's following analysis as to whether or not the facts are consistent with the crime of forced disappearance.

2. Analysis of whether what happened to Víctor Manuel Isaza Uribe constitutes forced disappearance

123. Among its earliest cases, the Inter-American Court referred to the practice of forced disappearance in the following terms:

Forced or involuntary disappearance is one of the most serious and cruel human rights violations, in that it not only produces arbitrary deprivation of freedom but places the physical integrity, security and the very life of the detainee in danger. It also leaves the detainee utterly defenseless, bringing related crimes in its wake. Hence, it is important for the State to take all measures as may be necessary to avoid such acts, to investigate them and to sanction those responsible, as well as to inform the next of kin of the disappeared person's whereabouts and to make reparations where appropriate.⁹¹

⁹¹ I/A Court H.R., *Case of Blake v. Guatemala*. Preliminary Objections. Judgment of July 2, 1996. Series C, No. 36, par. 66.

124. Forced disappearance has been defined as a crime of a continuing or permanent nature, which means that its effects are prolonged over time so long as the fate or whereabouts of the victim are not established. That characteristic places the State in a situation of permanent infringement of its international obligations until the fate of the victim has been clarified.⁹²

125. Given its nature as a permanent, autonomous violation that entails multiple offenses, the Inter-American Court has held that the analysis of a possible forced disappearance should not be approached in an isolated, divided and segmented way, based only on the detention or possible torture or risk to lose one's life, but on the set of facts presented in the case brought to the Court's attention.⁹³ Thus, the Court's holistic approach to forced disappearance as a complex human rights violation has led it to jointly analyze the violation of several rights recognized in the Convention.⁹⁴

126. Accordingly, the Court has adopted a comprehensive view of forced disappearance based on the plurality of behaviors that joined together toward a single purpose; permanently violate juridical rights protected by the Convention.⁹⁵ In particular, in cases of forced disappearance, the Court has jointly assessed violation of the rights to juridical personality, life, humane treatment, and personal liberty, enshrined in Articles 3, 4, 5, and 7 of the Convention, respectively.⁹⁶

127. Thus, for instance, with respect to the right to juridical personality, in *Anzualdo Castro v. Peru*, the Court considered that:

given the multiple and complex nature of this serious human right violation, the Tribunal reconsiders its previous position and deems it is possible that, in this type of cases, the forced disappearance may entail a specific violation of said right. Despite the fact that the disappeared person can no longer exercise and enjoy other rights, and eventually all the rights to which he or she is entitled, his or her disappearance is not only one of the most serious forms of placing the person outside the protection of the law but it also entails to deny that person's existence and to place him or her in a kind of limbo or uncertain legal situation before the society, the State and even the international community.⁹⁷

128. As regards the specific characteristics of the crime of forced disappearance, the court has found that the Inter-American Convention on Forced Disappearance of Persons, like other international instruments,⁹⁸ establishes that forced disappearance comprises the following concurrent, basic elements: (a) deprivation of liberty; (b) direct involvement of governmental officials or acquiescence thereof; and (c)

⁹² IACHR, Report 101/01, Case 10.247 and others. Extra-legal Executions and forced disappearance of persons. *Peru*, October 10, 2001. par. 178; IACHR, Application to the Inter-American Court of Human Rights in the Case of *Renato Ticona Estrada et al. (Case 12.527) v. Republic of Bolivia*, August 8, 2007, par. 108.

⁹³ I/A Court H.R., *Case of Ticona Estrada et al. v. Bolivia. Merits, Reparations, and Costs*. Judgment of November 27, 2008, Series C, No. 191, par. 56.

⁹⁴ I/A Court H.R., *Case of Tiu Tojin v. Guatemala. Merits, Reparations and Costs*. Judgment of September 3, 2012 Series C No. 190, and *Case of Ticona Estrada et al. v. Bolivia. Merits, Reparations and Costs*. Judgment of November 27, 2008, Series C, No. 191.

⁹⁵ I/A Court H.R., *Case of Radilla Pacheco v. Mexico. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 23, 2009. Series C, No. 209, par. 138.

⁹⁶ I/A Court H.R., *Case of Anzualdo Castro v. Peru. Preliminary Objection, Merits, Reparations and Costs*. Judgment of September 22, 2009. Series C, No. 202, pars. 51-103; *Case of Radilla Pacheco v. Mexico. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 23, 2009. Series C, No. 209, pars. 138-59.

⁹⁷ I/A Court H.R., *Case of Anzualdo Castro v. Peru. Preliminary Objection, Merits, Reparations and Costs*. Judgment of September 22, 2009. Series C, No. 202, par. 90.

⁹⁸ The Court makes references to the following instruments: United Nations Economic and Social Council, Report of the Working Group on Enforced or Involuntary Disappearances, General comment on article 4 of the Declaration on the Protection of all Persons from Enforced Disappearance, 15 December 1996. (E/CN. 4/1996/38), para. 55; and Article 2 of the International Convention for the Protection of all Persons from Forced Disappearance.

refusal to acknowledge the deprivation of liberty or to disclose the fate and whereabouts of the person concerned.⁹⁹

129. In order to determine if what happened to Víctor Manuel Isaza constituted forced disappearance, the Commission will assess each of those elements in the light of the established facts, taking into consideration the relevant contexts and the above-described rules on the burden of proof with respect to events that affect persons in State custody.

130. As regards **deprivation of liberty**, there is no controversy regarding the fact that on November 19, 1987, Mr. Víctor Manuel Isaza Uribe was detained in Puerto Nare jail as part of a criminal proceeding against him. It should be mentioned that deprivation of liberty as a prior step to forced disappearance is not necessarily illegal or arbitrary. The organs of the Inter-American system have examined a variety of cases in which a person's deprivation of liberty, though legal, was a prior step to their disappearance.

131. As for **direct involvement of government officials or acquiescence thereof**, the Commission notes that this is precisely the point on which the dispute in the case centers. Whereas the State says that there is no evidence that the disappearance of Mr. Isaza Uribe from Puerto Nare jail had anything to do with government officials or state agents, the petitioners claim that the victim was removed from that jail by paramilitaries who acted with the connivance of the State.

132. In that regard, the Commission recalls that, in first place, given that the matter concerned an alleged forced disappearance, it was incumbent upon the State to conduct a thorough investigation of the facts and clarify what occurred. That obligation was strengthened, as mentioned, by the fact that the matter involved a person in its custody. As the Commission concludes below, the State failed in those obligations and, therefore, did not refute its responsibility for what happened to Mr. Isaza Uribe.

133. The Commission notes a variety of evidence that suggests that there was at least acquiescence on the parts of State agents in what happened to Mr. Isaza Uribe. First, as the petitioners have consistently held, there is a witness statement from a detainee, who said that he had recognized one of the individuals who entered the jail on November 19, 1987, as a MAS paramilitary. Second, at the time there were multiple concurrent contexts that made it clear that Mr. Isaza Uribe was in grave danger of attack from paramilitaries, who, according to several above-cited statements (*supra* par. 57-59) were in the area and in 1987 committed multiple acts of persecution, intimidation, disappearance, and murder of labor leaders, a situation that also led other trade unionists to abandon the region. Thus, the Commission took as proven that there existed a context of violence by agents of the State and paramilitaries against UP members and supporters. The Commission also considered proven that there was a campaign by paramilitaries of persecution and even extermination of trade unionists who belonged to the same entity as Mr. Isaza Uribe, namely, SUTIMAC, specifically in the municipality of Puerto Nare. The Commission notes that within that context, several SUTIMAC members in the same area were murdered or disappeared either while inside or very close to facilities of State security agencies.

134. Added to these two contexts are two regulatory frameworks that the State kept in force at the time of the events, exacerbating the risk to Mr. Isaza Uribe. One concerned the activities of paramilitary groups that gave rise to patterns of joint actions with state agents; the other related to the identification of trade unionists as internal enemies in anti-subversive regulations and manuals. The Commission also regards as proven the fact that in the very municipality where the events occurred, there was a common pattern of joint actions between the Army and the paramilitary groups that dominated the area, particularly with the Bárbula Battalion of the Armed Forces, whose jurisdiction included Puerto Nare. The Commission notes that the report "Traces and Faces of Forced Disappearance" (*Huellas y Rostros de la Desaparición Forzada*) by the National Center for Historical Memory, points to Mr. Isaza Uribe's case as a prime example of forced

⁹⁹ I/A Court H.R., *Case of Anzualdo Castro v. Peru. Preliminary Objection, Merits, Reparations and Costs*. Judgment of September 22, 2009. Series C, No. 202, par. 60.

disappearance of trade unionists at a particular period in the armed conflict and takes precisely all those elements into account.

135. The account concerning a jailbreak as a result of a FARC attack on the jail is only supported by the statements of the very security agents who were possibly involved and the existence of "subversive propaganda" leaflets. Apart from the lack of sufficient elements of proof, the Commission cannot help but notice a number of points that detract from that version's credibility. The State has not disputed that the municipality of Puerto Nare was heavily militarized at the time of the events or that the jail in Puerto Nare was located a few meters from facilities of both the Bárbula Battalion and the police. Therefore, the Commission finds it reasonable to assume that an attack of the sort that would have enabled four people to escape from the jail would have led to at least some kind of confrontation with the police. There is no information whatsoever of such a situation.

136. Thus, on one hand, the Commission has an account of State acquiescence in the disappearance of Mr. Isaza Uribe from Puerto Nare jail, which is consistent with the various contexts that existed concurrently and coincided not only with the time of the disappearance but also with the area where it occurred. On the other hand, the Commission has an account of a putative jailbreak based exclusively on some leaflets and the statements of state agents who were possibly involved, which is at odds with the absence of a confrontation, bearing in mind the undisputed fact that Puerto Nare was heavily militarized and that there were both police and military facilities a few meters distance from the jail. The Commission notes that several elements that suggested the improbability of the jailbreak account as well as the possibility that the leaflets were left by the paramilitaries as a red herring were suggested to the domestic authorities in several statements, and yet there is no record of any line of investigation into that possibility.

137. Given the failure on the part of the State to meet the burden of proof necessary to refute its responsibility for what happened to Mister Isaza Uribe, the Commission considers that the contextual elements, indicia, and circumstantial evidence acquire special weight. Therefore, the Commission finds that there is sufficient evidence to conclude that there was state acquiescence in Mister Isaza Uribe's disappearance. To conclude otherwise under the circumstances in this case would be to allow the State to benefit from its failure to discharge its duty to investigate.

138. Finally, as regards **denial of detention and concealment**, the Commission notes that Mr. Isaza Uribe's family said that when they made inquiries about their loved one with different authorities, they were told that he had escaped. The available information also suggests that the investigations centered on that hypothesis. In the framework of the action for direct reparation, even the Council of State inclined to assume the escape hypothesis as true without considering all the above-cited contextual elements and the indicia of possible state acquiescence. On the contrary, the Commission found particularly troubling the Council of State's consideration that it was up to the claimant to prove the State's participation in a case such as this, when inter-American case law indicates the reverse: the obligation is on the State to refute evidence of its responsibility in matters concerning someone in its custody. Another relevant element with regard to concealment has to do with the information concerning witnesses' fear of reprisal for testifying. Although the Commission lacks detailed information to identify specific threats to witnesses, it is mindful that the prosecutor's office was aware of the reluctance of potential witnesses to testify based on fear. However, there is no information of what steps were taken to identify the source of the fear and, consequently, adopt measures to ensure that the situation would not obstruct disclosure of the facts. As is examined below, the State took no steps whatever to protect those persons and secure their statements, and the facts remain undisclosed. Finally, the closure of the case for more than 13 years without the lines of inquiry regarding possible state acquiescence having been exhausted is a relevant factor insofar as the concealment requirement is concerned.

139. Based on the foregoing, the Commission concludes that the State did not supply a satisfactory explanation about what happened to Víctor Manuel Isaza Uribe while he was in its custody and, therefore, it did not refute its responsibility. In such circumstances and in light of the available information, the Commission considers that there are sufficient elements to class the incident as a forced disappearance of a person carried out with the acquiescence of state agents. Therefore, the Commission concludes that the

Colombian State violated Víctor Manuel Isaza Uribe's rights to juridical personality, life, humane treatment, and personal liberty recognized at Articles 3, 4, 5, and 7 of the American Convention, taken in conjunction with the obligations established in Article 1(1) and 2 thereof.

140. The violation of the obligation established in Article 2 of the American Convention has to do with the fact that at the time that the events began there were in force a legal framework connected with the establishment and strengthening of paramilitary groups with state encouragement and a legal framework to do with the identification of trade unionists as internal enemies.

141. The Commission also concludes that the State violated Article I (a) of the Inter-American Convention on Forced Disappearance of Persons.¹⁰⁰

B. Right to freedom of association (Article 16 of the American Convention)

142. Article 16 of the American Convention provides:

Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes.

143. The Court has held: “These words establish literally that those who are protected by the Convention not only have the right and freedom to associate freely with other persons, without the interference of the public authorities limiting or obstructing the exercise of the respective right, which thus represents a right of each individual.” It added that, “they also enjoy the right and freedom to seek the common achievement of a licit goal, without pressure or interference that could alter or change their purpose.”¹⁰¹

144. The Court has determined that the right to form trade unions and to collectively pursue protection of labor rights is protected by freedom of association. This freedom translates into the ability to constitute labor union organizations, and to set into motion their internal structure, activities and action program, without any intervention by the public authorities that could limit or impair the exercise of the respective right. It also supposes that each person may determine, without any pressure, whether or not she or he wishes to form part of the association.¹⁰²

145. In addition to recognizing the autonomy and independence of labor unions and allowing free exercise of union rights, States must also ensure that human life and personal safety are fully respected when an individual exercises his or her union activities.¹⁰³

146. The ILO Committee on Freedom of Association has stated that:

Freedom of association can only be exercised in a situation in which fundamental human rights are fully guaranteed and respected, particularly those related to the life and safety of the individual.¹⁰⁴

¹⁰⁰ With regard to the Inter-American Convention on Forced Disappearance of Persons, the Commission notes that the State of Colombia ratified that instrument on April 12, 2005. Therefore, bearing in mind the aforementioned characteristics of the crime of forced disappearance of persons, the State bears responsibility for violation of the rights established in that Convention, following its ratification thereof and in connection with those cases of forced disappearance that still persist in time.

¹⁰¹ I/A Court H.R., *Case of Baena Ricardo et al. v. Panama. Merits, Reparations, and Costs*. Judgment of February 2, 2001. Series C No. 72, pars. 156 and 159. *Case of Huilca Tecse v. Peru. Merits, Reparations, and Costs*. Judgment March 3, 2005. Series C, No. 121, par. 69.

¹⁰² I/A Court H.R., *Case of Baena Ricardo et al. v. Panama. Merits, Reparations, and Costs*. Judgment of February 2, 2001. Series C, No. 72, par. 156.

¹⁰³ IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II.Doc 66, párr. 258.

¹⁰⁴ ILO. Decisions of the Committee on Freedom of Association: 233rd Report, Case No. 1233 (El Salvador), para. 682; 238th Report, Case No. 1262 (Guatemala), para. 280; 239th Report, Cases Nos. 1176, 1195 and 1215 (Guatemala), para. 225, c); 294th Report, Case No. 1761 (Colombia), para. 726; 259th Report, Cases Nos. 1429, 1434, 1436, 1457 and 1465 (Colombia), para. 660; see also UN

[continues ...]

147. As this report has established, Víctor Manuel Isaza Uribe was an active member of the SUTIMAC trade union. At the time of the events, acts of violence were committed against members of that trade union, a fact known to the authorities and the public at large. As the statements to which the Commission has had access attest, the members of the trade union in Puerto Nare lived in fear of being murdered or disappeared and several felt obliged to leave. In that connection, the Court has held that “[t]he State must ensure that people can freely exercise their freedom of association without fear of being subjected to some kind of violence; otherwise, the ability of groups to organize themselves to protect their interests could be limited.”¹⁰⁵

148. In this case, the Commission has already concluded that the State failed in its duty as guarantor of the rights of Mister Isaza Uribe while he was in its custody and also that what happened to the victim constituted forced disappearance of persons. Taking into account the existence, at the time of the facts, of a context of violence by paramilitaries against trade unions in the Department of Antioquia and, specifically, against members of SUTIMAC, the motive for the violations of the rights of Mr. Isaza Uribe was his union link to SUTIMAC in the Municipality of Puerto Nare and the union activities he performed. The Commission concludes that the State also violated Víctor Manuel Isaza Uribe’s freedom of association recognized in Article 16 of the American Convention, taken in conjunction with the obligations set forth in Articles 1(1) and 2 thereof.

C. Rights to a fair trial and judicial protection (Articles 8(1), 25 of the American Convention)

149. It follows from inter-American jurisprudence that insofar as a missing person's report is concerned the response of the State is inevitably linked to the protection of the life and well-being of the person reported missing. Whether the disappearance may have occurred at the hands of private citizens or at the hands of state agents is immaterial where duty of the State to render an immediate and exhaustive response is concerned. The Commission reiterates that “when there are reasonable grounds to suspect that a person has been disappeared, it is essential for prosecutorial and judicial authorities to take prompt and immediate action by ordering timely and necessary measures to determine the whereabouts of the victim or the place where he or she might be deprived of liberty.”¹⁰⁶

150. It should be recalled that the Court has held that the State is specially obliged to guarantee the rights of people deprived of their liberty¹⁰⁷ since the State has a special position of guarantor before them or of people in a situation of risk and has an obligation to undertake the necessary investigations to uncover the facts and, as appropriate, punish those responsible.¹⁰⁸

[... continuation]

Human Rights Committee, López Burgo case, Communication 52/1979: Uruguay, 29/07/81, referred to in I/A Court H.R., *Case of Huilca-Tecse v. Peru. Merits, Reparations, and Costs*. Judgment March 3, 2005. Series C, No. 121, par. 75.

¹⁰⁵ I/A Court H.R., *Case of Huilca Tecse v. Peru. Merits, Reparations, and Costs*. Judgment of March 3, 2005. Series C, No. 121, par. 77.

¹⁰⁶ I/A Court H.R., *Case of Anzualdo Castro v. Peru. Preliminary Objection, Merits, Reparations and Costs*. Judgment of September 22, 2009. Series C, No. 202, par. 134; *Case of Radilla Pacheco v. Mexico. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 23, 2009. Series C, No. 209, par. 221; *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, Reparations, and Costs*. Judgment of September 1, 2010. Series C, No. 217, para. 167. See, also, *Matter of Natera Balboa regarding Venezuela*. (Provisional Measures) Order of the Inter-American Court of Human Rights of February 1, 2010, Considering 13, and *Matter of Guerrero Larez regarding Venezuela*. Order of the Court, August 29, 2013, Considering 16.

¹⁰⁷ I/A Court H.R., *Matter of the Mendoza Prisons regarding Argentina*. Order of the President of the Inter-American Court of Human Rights of August 22, 2007, Considering 16, and *Matter of the Socio-Educational Internment Facility regarding Brazil*. Order of the Inter-American Court of Human Rights of November 20, 2012, Considering 21.

¹⁰⁸ I/A Court H.R. *Case of Carpio Nicolle et al. v. Guatemala*, Merits, Reparations and Costs. Judgment of November 22, 2004. Series C No. 117, Note 4, Considering 24; and *Matter of Álvarez et al. regarding Colombia*, Note 5, Considering 104.

151. The Court has found that the States Parties have an obligation to provide effective judicial remedies to victims of human rights violations (Article 25), remedies that must be substantiated in accordance with the rules of due process of law (Article 8(1)), all in keeping with the general obligation of such States to guarantee the free and full exercise of the rights recognized by the Convention to all persons subject to their jurisdiction (Article 1(1)).¹⁰⁹

152. Thus, the Court has held that the obligation to investigate entails that, as soon as the State authorities become aware of the facts, they must initiate, ex officio and without delay, a serious, impartial, and effective investigation by all lawful means available in order to determine the truth and to ensure the pursuit, capture, trial, and eventual punishment, if applicable, of all the authors of the facts,¹¹⁰ especially when State agents are or may be involved.¹¹¹ The duty to investigate is one of means, not results, that must be assumed by the State as its own legal duty and be undertaken in a serious manner and not as a mere formality preordained to be ineffective, or simply as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof.¹¹² The State's obligation to investigate must be fulfilled diligently in order to avoid impunity and the recurrence of this type of event.¹¹³

153. The Court has established the obligation of the State to investigate the facts while there is uncertainty about the fate of the person who has disappeared, and the need to provide a simple and prompt recourse in the case, with due guarantees¹¹⁴ The Commission recalls in this regard that states must guarantee the right of the victim or his or her next of kin to the truth through an investigation and trial, as envisaged in Articles 8 and 25 of the Convention.¹¹⁵

154. Finally, the right to know the truth has also been recognized by several treaties of the United Nations and recently, by the General Assembly of the Organization of American States (OAS).¹¹⁶ For its part, the Inter-American Court has considered the content of the right to the truth in its case-law, especially in cases of forced disappearances. In the case of Velásquez Rodríguez the Court confirmed the existence of "the right to inform the relatives of the fate of the victims and, if they were killed, the location of their remains."¹¹⁷ In this type of cases, it is considered that the relatives of the disappeared victims are victims of the

¹⁰⁹ I/A Court H.R. *Case of Velásquez Rodríguez v. Honduras Preliminary Objections*. Judgment of June 26, 1987. Series C, No. 1, para. 91; *Case of Gutiérrez and Family v. Argentina. Merits, Reparations, and Costs*. Judgment of November 25, 2013. Series C, No. 271, para. 97; and *Case of Landaeta Mejías Brothers et al v. Venezuela. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of August 27, 2014. Series C, No. 281, par. 215.

¹¹⁰ I/A Court H.R., *Velásquez Rodríguez Case v. Honduras. Merits*, Judgment of July 29, 1988. Series C, No. 1, para. 177; *Case of Veliz Franco et al. v. Guatemala. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of May 19, 2014. Series C, No. 277, par. 183.

¹¹¹ I/A Court H.R., *Case of Myrna Mack Chang v. Guatemala. Merits, Reparations, and Costs*. Judgment of November 25, 2003. Series C, No. 101, par. 156; and *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, par. 371,

¹¹² I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras. Merits*, Judgment of July 29, 1988. Series C, No. 1, para. 177; *Case of Veliz Franco et al. v. Guatemala. Preliminary Objections. Merits, Reparations, and Costs*. Judgment of May 19, 2014. Series C, No. 277, par.183.

¹¹³ I/A Court H.R. *Case of the Ituango Massacres v. Colombia*, Judgment of July 1, 2006. Series C, No. 148, para. 402; *Case of Veliz Franco et al. v. Guatemala. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of May 19, 2014. Series C, No. 277, par. 183; and *Case of Landaeta Mejías Brothers et al v. Venezuela. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of August 27, 2014. Series C, No. 281, par. 216.

¹¹⁴ I/A Court H.R., *Case of Bámaca Velásquez v. Guatemala. Merits*. Judgment of November 25, 2000. Series C, No. 70, para. 197.

¹¹⁵ I/A Court H.R., *Case of the Rochela Massacre v. Colombia, Merits, Reparations, and Costs*. Judgment of May 11, 2007. Series C, No. 163, par. 147.

¹¹⁶ Set of principles for the protection and promotion of human rights through action to combat impunity (E/CN.4/2005/102/Add.1). Report of the independent expert to update the Set of Principles to combat impunity, Diane Orentlicher (E/CN.4/2005/102, 18 February 2005. Study by the Office of the UN High Commissioner for Human Rights on the right to the truth (E/CN.4/1998/16, 9 January 2006. OAS General Assembly, Resolutions on the Right to the Truth, AG/RES. 2175 (XXXVI-O/06), AG/RES. 2267 (XXXVIII/2267, and AG/RES. 2406 (XXXVIII-O/08).

¹¹⁷ I/A Court H.R., *Velásquez Rodríguez Case v. Honduras. Merits*, Judgment of July 29, 1988. Series C No. 4, par. 181.

phenomena of forced disappearance, by which they are entitled to have the facts investigated and the responsible prosecuted and punished.¹¹⁸ The Court has recognized that the right to the truth of the relatives of victims of serious human rights violations is framed within the right to access to justice.¹¹⁹

155. In that same connection see, the Inter-American Court has stated that:

the right to know the truth represents a necessary effect for it is important that a society knows the truth about the facts of serious human rights violations. This is also a fair expectation that the State is required to satisfy, on the one hand, by means of the obligation to investigate human rights violations and, on the other hand, by the public dissemination of the results of the criminal and investigative procedures. The right to know the truth requires from the State the procedural determination of the patterns of joint action and of all those who participated in various ways in said violations and their corresponding responsibilities. Moreover, in compliance with the obligation to guarantee the right to know the truth, States may establish Truth Commissions, which can contribute to build and safeguard historical memory, to clarify the events and to determine institutional, social and political responsibilities in certain periods of time of a society.¹²⁰

156. In first place, the Commission considers that in cases such as this it is incumbent upon the State to show that its officials proceeded diligently with their inquiries after being informed that a person was missing. According to information from the State, the commandant of Puerto Naré Police Station reported that "they were informed of the incident around 2:20 a.m. by Mr. Evelio Rúa, who, noticed something amiss as he was passing the jail because the gate was open..."¹²¹ In spite of that, the State has not provided information about any specific steps immediately taken to establish Mr. Isaza Uribe's whereabouts and protect his life and well-being, especially given that he had disappeared while in State custody.

157. In second place, although the Commission does not have the records of the domestic proceedings available to it, it notes from information supplied by the parties that the criminal proceeding was beset with unwarranted delays. The regular courts opened an investigation on November 19, 1987, which was suspended 10 years later in August 1997, after making no progress in clarifying the facts. Thereafter, the investigation remained closed for 13 years until 2010, when it was ordered reopened.

158. The Commission observes that as of the date of adoption of this report, 27 years after the incident occurred, the facts have still not been clarified and the criminal investigation remains at the preliminary inquiry stage. The State has not provided an explanation justifying those protracted delays and lack of initiative. The State argued that the case was a complex one; however, the Commission finds that it has not explained what specific bearing that supposed complexity had on the fact, for example, that the investigation was suspended for 13 years. In that regard, the Commission considers that the State has allowed excessive delays in the investigations and that those delays are not based on the complexity of the matter but on lack of initiative and diligence on the State's part.

159. Third, the information available indicates that arrest warrants were only issued for four persons in September 1995, two of whom, according to the petitioners, were named as members of the MAS paramilitary group. That month, the Medellín Regional Prosecutor's Office refrained from ordering pretrial detention on the ground that there was no compelling circumstantial evidence of responsibility. Since then no one else has been included in the criminal investigation proceedings, nor have investigations being conducted

¹¹⁸ I/A Court H.R., *Case of Blake. Guatemala*. Merits, Judgment of January 24, 1998. Series C, No. 36, par. 97.

¹¹⁹ I/A Court H.R., *Case of Anzualdo Castro v. Peru. Preliminary Objection, Merits, Reparations and Costs*. Judgment of September 22, 2009, Series C No. 202, par. 118.

¹²⁰ I/A Court H.R., *Case of Anzualdo Castro v. Peru. Preliminary Objection, Merits, Reparations and Costs*. Judgment of September 22, 2009, Series C No. 202, par. 119.

¹²¹ Annex. State's communication of April 22, 2013.

into the possible responsibility of state officials, such as the custodial staff at Puerto Nare jail, for example. Furthermore, the State has failed to investigate other members of paramilitary groups who, according to various statements, are linked to other earlier and later murders and disappearances in Puerto Nare, specifically of persons associated either with UP or with SUTIMAC.

160. Fourth, with regard to the duty to investigate contexts, the Court has held that “[i]n complex cases, the obligation to investigate includes the duty to direct the efforts of the apparatus of the State to clarify the structures that allowed these violations, the reasons for them, the causes, the beneficiaries and the consequences...” Thus, identification of the perpetrators of a violation such as the one with which this report is concerned “will only be effective if it is carried out based on an overall view of the facts that takes into account the background and context in which they occurred and that seeks to reveal the participation structure.”¹²² It should not be a question of “examining the crime in isolation, but rather of inserting it in a context that will provide the necessary elements to understand its operational structure.”¹²³

161. Thus, based on the context of the events, which was common knowledge, as well as several statements received, the Commission notes that the authorities did not pursue lines of investigation that must have emerged from the outset: (i) a possible relationship with the increasing violence at the time against UP supporters; (ii) a possible relationship with the increasing violence against trade unionists in that area at the time of the events; (iii) a context of paramilitarism, institutions' tendency to look the other way, and the patterns of joint actions with the state; and (iv) an investigation of the possible link with other people who disappeared from the jail that day and the identification of a possible relationship between those facts.

162. In addition, despite the fact that it emerges from the statements available that there was an atmosphere in which people were afraid to report complaints, the authorities did not adopt corrective measures to enable potentially key witnesses to come forward and offer statements in secure conditions. Thus, the Court has held that to meet the obligation to investigate within the framework of guarantees of due process of the law, the State must facilitate all necessary means to protect operators of justice, investigators, witnesses and family members of the victims from harassment and threats that are intended to hinder the investigation, prevent the truth of the facts from being known and concealing those responsible for them.¹²⁴

163. Finally, the Commission finds that there is no information to suggest that the State advanced the investigations bearing in mind elements obtained from the 2013 report of the Historical Truth Commission, which described the case as a prime example of forced disappearance of trade unionists.

164. Based on the foregoing, the Commission concludes that the State of Colombia has not adopted the necessary measures to meet its obligation to investigate, prosecute, and punish, within a reasonable time and with due diligence, those responsible for the human rights violations analyzed in this report. Consequently, the State of Colombia is responsible for violation of the rights to a fair trial and judicial protection recognized in Articles 8 and 25 of the American Convention, in relation to the obligations set forth in Article 1(1) thereof, to the detriment of Víctor Manuel Isaza Uribe and his family. Furthermore, the State of Colombia is responsible for violation of Article I (b) of the Inter-American Convention on Forced Disappearance of Persons.

¹²² I/A Court H.R., *Case of Manuel Cepeda Vargas v. Colombia, Preliminary Objections, Merits, Reparations, and Costs*. Judgment of May 26, 2010. Series C, No. 213, para. 118.

¹²³ I/A Court H.R., *Case of Manuel Cepeda Vargas v. Colombia, Preliminary Objections, Merits, Reparations, and Costs*. Judgment of May 26, 2010. Series C, No. 213, para. 119.

¹²⁴ I/A Court H.R., *Case of Myrna Mack Chang v. Guatemala. Merits, Reparations, and Costs*. Judgment of November 25, 2003. Series C, No. 101, par. 199; *Case of the Ituango Massacres v. Colombia*, Judgment of July 1, 2006. Series C, No. 148, para. 400; *Case of the Pueblo Bello Massacre v. Colombia*, Judgment of January 31, 2006. Series C No. 140, par. 268; and *Case of the Mapiripán Massacre v. Colombia*, Judgment of September 15, 2005. Series C No. 134, par. 299. *Case of the Rochela Massacre v. Colombia* Judgment of May 11, 2007 Series C No. 163, par. 171.

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

165. As the Inter-American Court has found in numerous cases that the next-of-kin of victims of human rights violations may, in turn, become victims.¹²⁵ In particular, in cases of forced disappearance, the Court has held that it can be understood that the violation of the right to mental and moral integrity of the victim's next of kin is a direct result of this phenomenon, and that the forced disappearance causes severe anguish owing to the act itself, which is exacerbated, among other factors, by the constant refusal of the State authorities to provide information on the whereabouts of the victim or to open an effective investigation to clarify what occurred.¹²⁶ Thus, the Court has concluded that the continued deprivation of the truth concerning the fate of a disappeared person constitutes a form of cruel and inhuman treatment for the close family.¹²⁷

166. In addition, faced with a forced disappearance, the State has an obligation to guarantee the right to personal integrity of the family members also by conducting effective investigations. Moreover, the Court has found the absence of effective remedies to be a source of additional suffering and anguish for the victims and their next of kin.¹²⁸ In this case, given that the family saw no response on the part of the authorities, the victim's wife took it upon herself to search for him, as is recorded in the statement presented on July 22, 1989, to the Office of the State Attorney for Human Rights:

I searched the region high and low for him, along the river, in cattle pastures, as that is where bodies in all these parts turn up, but I could not find him.¹²⁹

167. The Commission notes that as at this writing the family of Víctor Manuel Isaza Uribe were ignorant of his fate or whereabouts and had not received an adequate judicial response. The State has not provided the family of Víctor Manuel Isaza Uribe with an effective judicial remedy by which to establish the truth, punish the perpetrators and masterminds, and make adequate reparation.

168. It is also worth pointing out that because of the wave of violence and the fear that it caused, Mr. Isaza Uribe's wife and children felt compelled to leave Puerto Nare and moved to the municipality of Copacabana in Antioquia Department.

169. The Commission considers that, based on the nature of the facts in this case, the situation of impunity, and the inevitable effects on the victim's immediate family, the State also violated the right to humane treatment enshrined in Article 5 of the American Convention, taken in conjunction with the obligations set out in Article 1(1) thereof, to the detriment of Víctor Manuel Isaza Uribe's family.

VI. CONCLUSIONS

1. The Commission concludes that the State of Colombia is responsible for violating the rights to juridical personality, life, humane treatment, personal liberty, freedom of association, a fair trial, and judicial protection enshrined in Articles 7, 3, 4, 5, 7, 16, 8, and 25 of the American Convention, in conjunction with Articles 1(1) and 2 thereof to the detriment of the persons named in the course of this report. The

¹²⁵ I/A Court H.R., *Case of Bámaca Velásquez v. Guatemala*. Merits, Judgment of November 25, 2000. Series C, No. 70, par. 160.

¹²⁶ I/A Court H.R., *Case of Anzualdo Castro v. Peru. Preliminary Objection, Merits, Reparations and Costs*. Judgment of September 22, 2009. Series C, No. 202, par. 105.

¹²⁷ I/A Court H.R., *Case of Radilla Pacheco v. Mexico. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 23, 2009. Series C, No. 209, par. 166.

¹²⁸ I/A Court H.R., *Case of Anzualdo Castro v. Peru. Preliminary Objection, Merits, Reparations and Costs*. Judgment of September 22, 2009. Series C, No. 202, par. 113.

¹²⁹ Annex. Expanded complaint filed by Carmenza Vélez with the Office of the State Attorney for Human Rights. Annex to the initial petition.

Commission also finds that the State was responsible for violation of Articles I (a) and (b) of the Inter-American Convention on Forced Disappearance of Persons.

VII. RECOMMENDATIONS

2. Based on the foregoing conclusions,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THAT THE STATE OF COLOMBIA:

1. Conduct a thorough, impartial, and effective investigation to determine the whereabouts of Víctor Manuel Isaza Uribe and, as appropriate, take the necessary steps to identify his remains and return them to his family.
2. Carry out domestic proceedings in connection with the violations of human rights shown in this report and conduct the necessary criminal proceedings for the offense of forced disappearance of Víctor Manuel Isaza Uribe in an impartial, effective manner and within a reasonable time, with a view to fully clarifying the facts, identifying those responsible, and imposing the appropriate penalties.
3. Make adequate reparation for the human rights violations shown in this report, both materially and morally, including just compensation, the establishment and dissemination of the historical truth of what happened, and implementing an adequate program of assistance to his family.
4. Adopt the necessary non-repetition measures to prevent such acts from occurring in the future, including strengthening protection mechanisms for trade unionists so that they may pursue their activities freely and without fear of reprisal.
5. Publicly acknowledge the violations shown in this report and ensure adequate means of dissemination of that acknowledgment.