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Session:	Hundred Thirty-Second Regular Session (17 – 25 July 2008)
Title/Style of Cause:	Luis Gonzalo "Richard" Velez Restrepo, Aracelly Roman Amariles, Mateo Velez Roman and Juliana Velez Roman v. Colombia
Doc. Type:	Decision
Decided by:	Chairman: Paolo Carozza; First Vice-Chairwoman: Luz Patricia Mejia Guerrero; Second Vice-Chairman: Felipe Gonzalez; Commissioners: Sir Clare K. Roberts, Paulo Sergio Pinheiro, Florentin Melendez, Victor E. Abramovich.
Dated:	24 July 2008
Citation:	Velez Restrepo v. Colombia, Petition 864-05, Inter-Am. C.H.R., Report No. 47/08, OEA/Ser.L/V/II.134, doc. 5 rev. 1 (2008)

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I. SUMMARY

1. On July 29, 2005, the Inter-American Commission on Human Rights (hereinafter, “the Inter-American Commission” or “the IACHR”) received a complaint lodged by Mr. Luis Gonzalo Vélez Restrepo – also known as Richard Vélez – and Aracelly Román Amariles (hereinafter “the petitioners”), on their own behalf and that of their children, Mateo Vélez Román and Juliana Vélez Román (hereinafter “the children” and jointly “the Vélez family,” “the petitioners,” or “the alleged victims”), claiming the responsibility of agents of the Republic of Colombia (hereinafter, “the State” or “Colombia”) for an August 29, 1996, attack which occurred in the municipality of Morelia, Caquetá department, and was allegedly perpetrated by the National Colombian Army against Mr. Luis Gonzalo Vélez Restrepo as he filmed a peasant protest against the destruction of coca crops.

2. The petitioners claim that the attack left Mr. Vélez Restrepo unconscious and he was hospitalized with a perforated liver, severe blood loss, severe damage to one testicle, several broken ribs, and multiple injuries to the abdomen and legs. They further claim that following the attack, Mr. Vélez Restrepo and his family received death threats, that on October 6, 1997, Luis Gonzalo Vélez Restrepo was the victim of an “attempted forced disappearance,” and that neither the attack nor the threats were adequately investigated. They also indicated that as a result of the alleged events, Mr. Vélez Restrepo had to censor his own work, his professional life was altered, he had to change his residence within Colombia and later seek asylum in the United States on October 9, 1997, where his children and wife joined him approximately one year later.

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3. They assert that these events constitute a violation of Articles 4 (right to life), 5 (right to personal integrity), 7 (right to personal liberty), 13 (right to freedom of thought and expression), 11 (right to honor), 17 (protection of the family), 19 (rights of the child), 22 (freedom of movement and residence), 8 (right to a fair trial) and 25 (judicial protection) of the American Convention in relation to Articles 1(1) and 2 of the Convention.

4. In relation to the admissibility of the complaint, the petitioners claim that the Colombian state has failed to fulfill its duty to investigate, prosecute and punish the perpetrators of the violations since the domestic remedies used were ineffective to remedy the infringed legal situation, which they assert constitutes one of the exceptions to the requirement of prior exhaustion of domestic remedies set forth in Article 46.2 of the American Convention.

5. The State, for its part, claimed that the petitioners' complaint does not satisfy the admissibility requirements set forth in Article 46 of the ACHR concerning the existence of international litispendence, since the case is still being processed before the United Nations Human Rights Committee. The State further claimed a failure to respect the time frame for presenting the petition, for which it requested that the petition be declared inadmissible in accordance with the provisions of paragraphs 1(b) and (c) of Article 46 of the Convention.

6. After examining the positions of the parties, the Commission concludes that it is competent to decide the complaint lodged by the petitioners and that the petition is admissible under Articles 46 and 47 of the American Convention. As a result, the Commission decides to notify the parties of its decision and to proceed to examine the merits of the alleged violations of the rights to personal integrity (Article 5), freedom of thought and expression (Article 13), protection of the family (Article 17.1), the rights of the child (Article 19), freedom of movement and residence (Article 22), a fair trial (Article 8) and judicial protection (Article 25) of the American Convention in relation to the general obligations enshrined in Articles 1(1) and 2 of that instrument. The Commission also decides to publish this decision and include it in its Annual Report to the General Assembly of the OAS.

II. PROCESS BEFORE THE COMMISSION

7. The petition was presented before the Executive Secretariat of the Inter-American Commission on July 29, 2005, and was assigned the number P-864-05. In the petition initial development, the IACHR request additional information to the petitioners which was received on June 12 and October 4, 2006.

8. The IACHR, on February 22, 2007, forwarded the pertinent portions to the State requesting that it submit its response within a two month period. On May 29, 2007, following an extension, the State submitted its response concerning the admissibility of the petition.

9. On August 24, 2007, the Commission forwarded to the petitioners the response of the State of Colombia and requested it to submit its observations within one month.

10. On November 14, 2007, the petitioners submitted their observations, following an extension, and these were forwarded to the State on December 18, 2007, with a one month

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period in which to submit its observations. On January 18, 2008, the State submitted its final observations.

III. POSITION OF THE PARTIES

A. The petitioners

Attacks suffered by Mr. Luis Gonzalo Vélez Restrepo

11. The petitioners claim that on August 29, 1996, Mr. Luis Gonzalo Vélez Restrepo, in the course of his work as a journalist and cameraman for the news program Colombia 12:30, went to the town of Morelia, Caquetá department, to cover peaceful demonstrations by peasants protesting efforts to eradicate coca leaf crops in the area.

12. They assert that on that date, a torrential rainstorm flooded the precarious peasant encampments and they wanted to cross a bridge guarded by Infantry Battalion No. 36 of the Twelfth Brigade of the National Army. As they attempted to do so, battalion troops began to fire on them, brutally beat them, and fire off tear gas to block their advance. Mr. Vélez Restrepo, who was filming the event, was intercepted by soldiers from the same battalion, who demanded that he hand over the film from his camera, while insulting him and holding a gun to his head. They state that when Mr. Vélez Restrepo refused to hand over the film, they began to beat him with their rifle butts, kick him, and yell, “Give us the damned film.” The camera was destroyed in the attack but the incident was recorded and later broadcast in Colombia and throughout the world. They indicate that this attack occurred in the context of a pattern of attacks on journalists and the impunity of the perpetrators.

13. They state that Mr. Luis Gonzalo Vélez Restrepo lost consciousness after the attack and was rushed to Hospital Inmaculada María de Florencia and subsequently transferred to the Clínica Asistir in Bogota, where he remained for two days and required an additional 15 days of convalescence at home. They assert that as a result of the attack he suffered a perforated liver, heavy blood loss, a destroyed testicle, several broken ribs, and multiple contusions on the abdomen and legs.

Threats, harassment and intimidation, attempted kidnapping, and subsequent forced exile

14. They assert that the threats and acts of harassment and intimidation began a couple of weeks after the August 1996 attack on Mr. Vélez Restrepo in Caquetá. The claim that they received a series of telephone calls in which the journalist and his family were threatened with death. They added that on some occasions unknown individuals knocked on the door of the Vélez family home when Mr. Luis Gonzalo Vélez Restrepo was not there, pretending to be officials from the Public Prosecutor’s Office [Procuraduría] and trying to obtain information about the journalist’s schedule.

15. They affirm that the threats intensified dramatically after Mr. Vélez Restrepo testified before a military court in late September 1996, concerning the attacks against him and a group of peasants in Caquetá (see infra paras. 26-29). They mentioned the following threats against Mr.

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Vélez Restrepo: “you’re going to die, you son of a bitch,” “…you have the power of information but we have the power of weapons. You’re going to die, dog.” They also related the following specific threats, as among those made against his wife and family: “you’re very pretty; I’m going to make you a widow,” and “I’m going to get rid of that pair of bastards of yours,” referring to their children.

16. They claim that due to the threats and harassment, Mr. Vélez approached the Office of the Public Prosecutor and the Office of the Attorney General, but neither institution initiated the relevant investigations. Because of this he had to change his residence. They assert that the threats stopped temporarily after Mr. Vélez Restrepo reported the harassment to two influential government officials.

17. They state that, despite the temporary respite, the death threats resumed and intensified after Mr. Vélez Restrepo testified in July 1997 before the Prosecutor General of the Nation about the incidents during the protest in Caquetá and the threats against Mr. Vélez Restrepo and his family. They indicate that the death threats were aimed at convincing him not to testify against the army. They assert that due to these incidents, Mr. Vélez Restrepo reported the new threats to the Attorney General’s Office, which told him that his reports would be included in a broader investigation currently underway against certain military officials and that no action against them would be taken in the short term, if at all.

18. They claim that in addition to the threatening telephone calls and visits, an unknown man on a motorcycle took photographs of their son, Mateo, at school. They state that Mr. Vélez Restrepo took his son out of school and the family was virtually living in hiding. They assert that Mr. Vélez Restrepo recognized military personnel among his attackers on different occasions.

19. They indicate that due to the aforementioned incidents, they tried again to request the protection of the State which, through the Office of the Presidential Advisor on Human Rights, registered them in the Ministry of the Interior’s Program for the Protection of Witnesses and Threatened Persons in Cases of Human Rights Violations, relocated the petitioner and his family, and provided them with police protection and a bullet-proof vest. However, they claim that those authorities did not notify the competent legal authorities of the threats and acts of harassment against the petitioners.

20. They assert that the death threats and harassment against the family culminated with an “attempted forced disappearance” on October 6, 1997, as Mr. Vélez Restrepo was walking to work. They state that a taxi stopped and a man armed with a pistol forced Mr. Vélez Restrepo to get into the vehicle, but that he fortunately was able to escape his attackers. Mr. Vélez Restrepo contends that he recognized military personnel among them.

21. They assert that as a result of the threats, acts of harassment and intimidation, and the “attempted forced disappearance”, Mr. Vélez Restrepo’s professional career also was affected since he had to self-censor his journalist work and, later, has to leave its country.

22. They indicate that by the same reasons stated in the preceding paragraph, Mrs. Aracelly Román, Mr. Vélez Restrepo’s wife, had to affect her professional life since she was forced to

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stop her studies and the children had to stop attending school temporarily. On account of these events, the children experienced terrible fear and anxiety, and this was intensified by the fact that they were unable to live a normal childhood. The family had to seek individual and marriage psychotherapy.

23. They assert that because of the "attempted forced disappearance", on October 9, 1997, Mr. Vélez Restrepo left Colombia to seek asylum in the United States, as his life was in immediate danger. They indicate that in 1998 he was granted political asylum along with his family, which had stayed behind in Medellín until September 12, 1998.

24. They claim that the petitioners feel as if they are living in a borrowed country, far from family and friends, adding that in Colombia they were financially secure, owned their own home, and that Mr. Vélez Restrepo went from being part of an elite group of Colombian journalists to a situation of protracted unemployment in a strange land.

Proceedings in the domestic jurisdiction

25. They indicate that because of the physical assaults perpetrated against Mr. Vélez Restrepo on August 29, 1996, the subsequent threats, acts of harassment and intimidation against him and his family, and the presumed "attempted forced disappearance" to which he was subjected, they initiated proceedings in different jurisdictions, none of which ultimately was effective.

26. They affirm that the following proceedings were initiated in relation to the aforementioned incidents: a) a military criminal proceeding for the attacks against the peasants and against Mr. Vélez Restrepo in Caquetá in 1996; b) a disciplinary proceeding before the Office of the Attorney General of the Nation for the physical attacks against Mr. Luis Gonzalo Vélez Restrepo in Caquetá in 1996; c) a disciplinary proceeding before the Office of the Attorney General of the Nation for the threats and acts of harassment and intimidation against Mr. Luis Gonzalo Vélez Restrepo and his family; d) a pre-trial administrative conciliation procedure before an Administrative-Contentious Court for the presentation of a request by the petitioners; and e) an ordinary criminal proceeding in the investigation stage before the Office of the Attorney General of the Nation.

a. Military criminal proceeding for attacks against peasants and against Mr. Vélez Restrepo in Caquetá in 1996

27. They indicate that shortly after the attack on Mr. Vélez Restrepo, the Attorney General's office publicly announced that it would open a criminal investigation. At the specific request of the military authorities, however, the Attorney General's investigation was transferred from the ordinary justice system to the military criminal justice system.

28. They state that apparently the latter jurisdiction had opened its own investigation of a report submitted by a lieutenant describing the attacks on the peasants in Caquetá and those perpetrated against Mr. Vélez Restrepo. They indicate that the military jurisdiction requested Mr. Vélez Restrepo to hand over medical records describing the injuries suffered in the attack, and

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they even summoned him to appear. He testified in late September 1996, about the events in question.

29. It is their view that the military criminal investigation was not adequate to discover the facts, particularly when the military judge had been appointed by the Commander of the same Battalion 36 whose members were being investigated as perpetrators of the attacks. They report that as of the date the petition was submitted, they had not been informed as to the outcomes of the investigation and had even been denied access to this information in October 1996, as "part of the confidentiality" of a closed investigation.

30. They claim to have petitioned for information about the status of the process on several occasions, without having received any response whatsoever, until finally, on June 3, 2006,[FN1] Military Criminal Court 67 [Juzgado 67 Penal Militar] informed them in an interlocutory judgment of October 3, 1997, the court had closed the case on the August 29, 1996 attack and that the file had subsequently been lost,[FN2] because the military installations where it was kept had been occupied by FARC guerrillas, making it impossible for the State to furnish a copy of the decisions.

[FN1] According to the additional information provided by the petitioners on October 4, 2006, p.2.

[FN2] Letter from Military Criminal Instruction Court 67, dated June 22, 2006, in response to Mr. Vélez Restrepo's request for information, annexed to the additional written information submitted by the petitioners.

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b. Disciplinary proceeding before the Office of the Attorney General of the Nation for the physical attacks against Mr. Luis Gonzalo Vélez Restrepo in Caquetá in 1996

31. They report that as far as they know, the Office of the Prosecutor General of the Nation opened two disciplinary investigations in 1996, in accordance with the rank of the personnel involved. The proceeding initiated against the commander of Battalion No. 36, General Néstor Ramírez, was closed and there is no information as to why it was closed. With regard to the proceeding against members of Battalion No. 36, at least 2 sub-officers [suboficial] received sanctions, although it is not known whether those sanctions were upheld on appeal.

32. They assert that sub-officer William Moreno Pérez was supposedly disciplined for having ordered the seizure of Mr. Vélez Restrepo's video camera on August 29, 1996 and for the attacks perpetrated against him in carrying out that order.[FN3] They claim that sub-officers William Moreno Pérez and José Fernando Echevarría Calle received disciplinary sanctions "for the events that occurred in Morelia (Caquetá) [and] for excesses of the Public Force [.]"[FN4] They assert that the two officers appealed the punishment and the outcome of that proceeding is unknown.[FN5] They indicate that no case was opened in the military criminal court against General Néstor Ramírez or any of the other officers involved in the aforementioned incidents.

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[FN3] Resolution No. 011 of August 30, 1996 issued by the Commander of the Twelfth Brigade, General Néstor Ramírez, annexed to the additional written information submitted by the petitioners.
[FN4] Decision to permanently close file No 143-17639198 [Decisión de archivo definitivo del expediente No. 143-17639198] by the Second District Office of the Prosecutor of Bogotá dated August 27, 2001, annexed to the additional written information submitted by the petitioners.
[FN5] See the DNIE Report of July 10, 1998 (Emilio Vieda), pp. 6-9, annexed to the additional written information submitted by the petitioners.
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c. Disciplinary proceeding before the Office of the Prosecutor General of the Nation for threats and acts of harassment and intimidation against Mr. Luis Gonzalo Vélez Restrepo and his family

33. They assert that according to a July 1998 report of the National Special Investigations Board (Human Rights Unit) [Dirección Nacional de Investigaciones Especiales (Unidad de Derechos Humanos)] of the Office of the Prosecutor General of the Nation, sub-officers Echevarría Calle and Moreno Pérez allegedly were also implicated in the threats and acts of harassment and intimidation against Mr. Vélez Restrepo and his family. They state that an investigation was opened in the Second District Office of the Prosecutor only against sub-officer Echevarría Calle, whose file appears to have been closed without any significant actions having been taken. They contend that in March 2001, an investigation was opened in the Oversight Unit [Veeduría] of the Office of the Prosecutor General of the Nation concerning the allegations of threats, acts of harassment and intimidation implicating members of the Prosecutor General's office, but it too was closed in 2002.

34. They report that in none of the disciplinary procedures were they ever informed of a final decision and that any information they have is extra-official or was not obtained until 2006, when the State issued a response after numerous requests submitted by the petitioners' attorney in Colombia.

35. They note that in accordance with what the IACHR has stated in the past, disciplinary procedures cannot, in and of themselves, constitute an adequate or effective remedy to protect the human rights violated in this case.

d. Pre-trial administrative conciliation proceedings

36. They assert that in 1998 they presented a pre-trial administrative conciliation request before the Administrative-Contentious Court of Cundinamarca based on the personal injuries against Luis Gonzalo Restrepo and the persecution he and his family had suffered. On November 9, 1998, the State offered them approximately US $1,200 in reparations for the 1996 attack and the subsequent harassment suffered by the journalist and his family. They indicate that no agreement was ultimately reached because the State did not take responsibility for the events and the sum offered was considered insufficient by the petitioners, thus concluding the administrative conciliation process.

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37. They note that the aforementioned proceeding does not constitute an adequate means of compensating human rights violations and does not need to be exhausted.

e. Ordinary criminal proceeding before the Office of the Attorney General of the Nation

38. They claim that the Attorney General of the Nation has not charged any suspect in the incidents perpetrated against the petitioners, including: the attack perpetrated by military personnel on August 29, 1996, in the municipality of Morelia, Caquetá department against Mr. Vélez Restrepo; the threats and harassment against Mr. Vélez Restrepo and his family, even though they were reported directly to the Office of the Attorney General on two occasions; the "attempted forced disappearance" on October 6, 1997. They indicate that they are unaware of whether any investigation was even opened in the first two incidents mentioned.

39. They presented numerous, specific complaints to the Offices of the Prosecutor General and the Attorney General, with information related directly to the threats and persecution they were experiencing. They sent a letter in September 1996, after individuals pretending to be officials from that office disturbed the Vélez family at home. In October 1996, they approached the Office of the Attorney General to report death threats. In August 1997, Mr. Vélez again notified the Office of the Attorney General about the death threats and that he and his family were in danger. The Office of the Attorney General assured them that the complaints would be included in a broader investigation in progress against military officials.

40. They indicate that they lodged similar complaints before the Special Administrative Human Rights Unit of the Ministry of the Interior and the Office of the Presidential Advisor for Human Rights, which provided a certain degree of protection for the petitioners after determining that they were in grave danger, but did not open any sort of criminal investigation.

41. They claim that the only thing they were able to learn was that the Unit for Offenses against Liberty of the Office of the Attorney General of Medellín launched an investigation for the crime of kidnapping against Mr. Vélez Restrepo, the final outcome of which could not be ascertained.

With regard to the admissibility requirements of the petition

42. They state that under the auspices of Columbia University's Human Rights Clinic they lodged a petition before the United Nations Human Rights Committee of the International Covenant on Civil and Political Rights in early 2002 (hereinafter "the Human Rights Committee" or "the Committee"). They contend, however, that no situation of international litispendence exists since the Committee informed them that the complaint was written in English and hence could not be taken up unless it was resubmitted in Spanish, the official language of the Colombian State. They assert that on June 26, 2003, prior to lodging the petition before the Inter-American Commission, the petitioners withdrew their complaint from the Committee before it was forwarded to the State. They indicate that the Human Rights Committee has confirmed that the case is not under consideration by that organ pursuant to a decision adopted in July 2003 at its 78th session. This decision was communicated to the petitioners on September 20, 2004.[FN6]

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[FN6] According to the September 20, 2004 letter from the United Nations Human Rights Committee which indicated that as of its 78th session held in July 2003, the communication presented on behalf of Mr. Vélez Restrepo and his family was no longer being considered before that body.

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43. They assert that the exception to the requirement of exhaustion of domestic remedies is in order since, from the date on which the events began up to the present time, there has been no adequate investigation or punishment through the appropriate channels of those responsible for the events described herein. The disciplinary sanctions adopted, the final outcome of which is unknown, do not constitute an adequate legal remedy and the proceedings initiated by the Office of the Prosecutor were summarily closed without ever having established the responsibility of the individuals implicated. Therefore, the petitioners consider that the domestic proceedings have proven inadequate and ineffective and have been characterized by unwarranted delays in arriving at a decision.

44. They assert that the petition was lodged within a reasonable time frame in accordance with the criteria set forth by the Commission and its practice in this regard. They claim that it was not possible to lodge the complaint before the IACHR prior to July 2005 for a number of reasons, including the difficulties associated with forced exile, the poverty they have experienced as a result of the ongoing, continuous violations of their human rights attributable to the State, and the ineffectiveness of domestic remedies to investigate, prosecute and punish those responsible for the alleged events. They indicate that in the United States they are unemployed, have no family or friends, and cannot speak the language. This has obliged them to devote all of their energy to merely surviving. They indicate that only recently, in 2001, were they able to obtain pro bono legal representation through the Human Rights Clinic of Columbia University's Law School, which only had human resources available to litigate in English and which, in 2002, submitted the petition to the Committee that was subsequently withdrawn, as indicated earlier. Finally, they indicate that the petition should be admitted since the domestic remedies were inadequate and ineffective and the case has never been, and is currently not being, decided in any other international proceeding (see supra para. 41).

B. Position of the State

45. It claims that in 1996, there was a public announcement that peasant mobilizations would take place throughout the national territory in the month of August, with the participation of individuals involved in growing and processing coca leaf and referred to as "cocalera marches."

46. It indicates that according to intelligence provided by the Ministry of Defense, "…the outlaw armed group FARC was pressuring thousands of peasants to oppose the eradication of illicit crops in Caquetá" and this group "…controlled drug trafficking which supplied it with substantial economic dividends and had the capacity to promote marches by peasants and/or coca workers."

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47. It claims that in view of this situation, and the constitutional duty to protect the civilian population, the Public Force, by means of the 12th Brigade of the National Army headquartered in Florencia-Caquetá, proceeded to conduct the necessary operations to ensure that the march was carried out peacefully. They report that once the march began, the Brigade received information that it had been infiltrated by FARC members, and its presence was therefore required during the entire march.

48. It asserts that on August 20, 1996, the Commando of the Juanambú Battalion, a smaller Operational Unit [Unidad Operativa menor], responsible for enforcement during the march, issued Operations Order Dignity containing precise instructions for members of the Public Force to protect the civilian population and to avoid confrontations with the demonstrators. They assert that the instructions authorized the use of a loudspeaker system and, should that fail, tear gas, but that the use of firearms was prohibited at all times, including shots fired into the air, and the use of sticks or stones was also prohibited to contain the demonstration.

49. It indicates that the events that unfolded in Caquetá on August 29, 1996, despite the instructions issued initially, were acknowledged in a timely fashion by the State, and that the executive and judicial authorities issued a public reprimand for the order given by a one of the troops to seize Mr. Vélez Restrepo's video camera. They claim that this reprimand was included in the investigations and in the sanctions meted out to those responsible.

50. It further reports that several people were injured and three civilians were killed during the events in Caquetá. This led to the opening of a preliminary criminal investigation under the auspices of Military Instruction Court 66, in order to establish the alleged responsibility of military personnel in this incident. They contend that this investigation concluded with a judgment dated October 29, 2004, in which it was decided not to open a formal criminal proceeding insofar as it was impossible to infer the responsibility of the agents in the incidents based on the evidence.

51. It states that the peasant march was covered by the national and international press and that the acts perpetrated against Mr. Vélez Restrepo were isolated incidents, since there was no problem whatsoever with the coverage by the rest of the news correspondents.

52. It points out that the attack against Mr. Vélez Restrepo occurred in a framework of legality, in which the Public Forces were discharging their constitutional duties. It claims, therefore, that the attack against Mr. Vélez Restrepo was not motivated by an indiscriminate attack on the civilian population as the petitioners have stated, in relation to peasants having been brutally beaten by other members of the Battalion, assertions which were duly investigated by the competent authorities.

53. It states that the incidents denounced by the petitioners were investigated first by the commander of the 12th Brigade, General Néstor Ramírez Mejía on August 30, 1996, who imposed sanctions of severe, formal, and simple punishment on several officers, sub-officers, and soldiers involved in the incidents. It indicates that it was up to the Office of the Prosecutor General of the Nation to investigate General Ramírez Mejía for the incidents claimed in the petition, and that office decided to order the case against him closed after concluding that he did

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not order or tolerate the alleged aggressions and that “he himself ordered the investigation which led to the punishment of those responsible." Therefore, in this particular case there was an effective and appropriate remedy for the disciplinary sanction of those officers and sub-officers in the chain of command who participated in the incident of August 29, 1996.

54. It indicates that Military Criminal Instruction Court 67 had opened a criminal investigation into the incidents set forth in the petition. However, since the military facilities where the Court was located had been occupied by guerrillas of the FARC, the file pertaining to the aforementioned criminal investigation was lost, for which it was impossible for the State to supply a copy of the decisions. It claims that notwithstanding that circumstance, the opening of criminal and disciplinary investigations and the outcomes of the latter, demonstrate the State’s total disapproval of the behavior of its agents. It therefore asserts that “[domestic] remedies have been effectively exhausted by the petitioner”[FN7] and that the remedies that were presented and exhausted were adequate and effective.

[FN7] Section 2.3 of the observations of the State to Petition No. 864-05.

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55. It requests the IACHR to declare the case inadmissible, claiming that the petition does not satisfy the admissibility requirements set forth in Articles 46(1)(b) and (c) of the ACHR, nor Articles 32.2 and 33 of the IACHR’s Rules of Procedures due to the existence of international litispendence before the United Nations Human Rights Committee and due to the failure to abide by the time period for filing the petition.

56. It states that the withdrawal of the petition before the Human Rights Commission alleged by the petitioners cannot have legal effects until due notification has been made to the State, since the latter was aware that the proceeding was still in progress before the Committee. It indicates that while it is not the petitioners’ responsibility that the State did not receive timely notification of this withdrawal, “it is also the case that while said notification has not been officially given, it is clear that the process remains under discussion in the headquarters of the Covenant’s Committee.”

57. It states that the withdrawal was done with the sole objective of lodging a new petition before the IACHR without allowing the Committee to pronounce on the merits of the matter. It indicates that the petitioners had no obstacles to access to the IACHR and claims that the dual proceedings are a case of human rights forum shopping, and that the petitioners have not conducted themselves in good faith in their international litigation or in keeping with procedural ethics, causing resources to be wasted.

58. The State claims that the petition was lodged extemporaneously before the IACHR in violation of the criterion of a reasonable time period for lodging the petition. It asserts that the petition does not satisfy the IACHR’s requirement of a reasonable time period and that there is nearly a decade separating the moment the petition was lodged from the incidents contained therein. It states that Mr. Vélez Restrepo’s procedural activity in domestic as well as international forums was intended to delay the lodging of the petition before the IACHR.

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59. It states that in the current context and the particular circumstances, there is no ongoing violation or objective circumstance of fear that could be substantiated, against Mr. Vélez Restrepo and his family, and therefore the extemporaneity in lodging the petition is unwarranted.

IV. ANALYSIS OF ADMISSIBILITY

A. The competence of the Commission ratione materiae, ratione personae, ratione temporis y ratione loci

60. The petitioners are entitled under Article 44 of the American Convention to lodge complaints before the IACHR. The petition indicates as alleged victims Luis Gonzalo Vélez Restrepo, Aracelly Román Amariles, Mateo Vélez Román and Juliana Vélez Román, natural persons with respect to whom Colombia has undertaken to respect and ensure the rights enshrined in the American Convention. With regard to the State, the Commission points out that Colombia has been a State party to the American Convention since July 31, 1973, when it deposited the respective ratification instrument. Therefore, the Commission has competence ratione personae to take up the petition.

61. The Commission has competence ratione materiae because the petitioners are alleging violations of rights protected by the American Convention. Likewise, the Commission has competence ratione loci to take up the petition insofar as it alleges violations of rights protected in the American Convention that would have occurred within the territory of Colombia, a State party to that treaty. Finally, the Commission has competence ratione temporis insofar as the obligation to respect and guarantee the rights protected in the American Convention were in force for the State on the date that the events described in the petition allegedly occurred.

B. Other admissibility requirements

1. Duplication of proceedings and international res judicata

62. In its observations concerning the petition, the State of Colombia claimed the existence of litispendence with respect to the subject matter of the petition in another international proceeding, since the case was supposedly pending before the United Nations Human Rights Committee, with identical victims, facts and petitions, and therefore does not comply with the requirements set forth in Articles 46(1) (c) and 47 (d) of the Convention and 33(1) of the Rules of Procedure of the IACHR. The petitioners, for their part, indicate that prior to lodging the petition before the IACHR, they had withdrawn their complaint before that Committee and the latter had made no decision in the case.

63. In the case in point, the Commission observes that the individual communications procedure established by Articles 1 through 5 of the Optional Protocol to the International Covenant on Civil and Political Rights empowers the Committee to adopt decisions on specific facts and dispute resolution measures, similar to the provisions contained in the American Convention with respect to the Inter-American Commission. As a result, the competence and powers of the United Nations Human Rights Committee in the resolution of individual

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communications pursuant to that instrument can lead to international duplication in the terms set forth by Articles 46 (1) c) and 47(d) of the Convention. On previous occasions, the IACHR has considered the inadmissibility of petitions which had been previously submitted to that Committee.[FN8]

[FN8] See, for example, IACHR, Report on Inadmissibility 89/05 of October 24, 2005. Petition 12.103. Cecilia Rosana Nuñez Chipana. Venezuela IACHR, Report 22/05 (Admissibility), Case 12.270, Johan Alexis Ortiz v. Venezuela, Para. 49; Report 30/99, Colombia. Case 11.206, César Chaparro Nivia and Vladimir Hincapié Galeano. March 11, 1999, para. 25 and 26.

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64. In order to consider that a situation of duplication or international res judicata exists in a case, besides the identity of the subjects, the object, and the intent,[FN9] it is required that the petition is being considered, or has been decided, by an international body with competence to adopt decisions concerning the specific facts contained in the petition, and measures for the effective resolution of the dispute involved.[FN10]

[FN9] I/A Court H.R., Case of Baena Ricardo et al. Preliminary Exceptions. Judgment of November 18, 1999. Series C, Nº 61, Para. 53. The Inter-American Court has interpreted this article considering that the phrase “substantially the same” signifies that there should be identity between the cases. In order for this identity to exist, the presence of three elements is necessary, these include: that the parties are the same, that the object of the action is the same and that the legal grounds are identical.
[FN10] See, for example, IACHR, Report on Inadmissibility 89/05 of October 24, 2005. Petition 12.103. Cecilia Rosana Nuñez Chipana. Venezuela; Resolution 33/88, case 9786 (Peru), in OEA/Ser.L/V/II.76, doc. 10, September 18, 1989, whereas clauses d – h.

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65. The Commission finds that there is no disagreement over the identity of the petition lodged before the Committee (subjects, object, intent) and that subsequently lodged before the Commission. However, in the case it hand it has verified that the procedure before the Committee was discontinued at the request of the petitioners in 2003[FN11] without any decision having been made on the admissibility and the merits of the cases that would give rise to a situation of international res judicata. This has been confirmed by the Committee itself in a letter dated September 20, 2004, which states that communication No.1081/2002 submitted on behalf of Mr. Luis Gonzalo Vélez Restrepo and his family was no longer being considered before that organ, pursuant to a decision by the Committee at its 78th session in July 2003.[FN12]

[FN11] According to a letter from Columbia University’s Human Rights Clinic on behalf of the petitioners, addressed to the United Nations Human Rights Committee, dated June 26, 2003.
[FN12] According to the September 20, 2004 letter from the United Nations Human Rights Committee, indicating that during its 78th session held in July 2003, the communication

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presented on behalf of Mr. Vélez Restrepo and his family was no longer being considered before that body.

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66. In view of the foregoing, the Commission concludes that the requirements have not been met to determine the inadmissibility of the petition under Articles 46(1) (c) and 47 (d) of the Convention and 33 of the IACHR's Rules of Procedure.

2. Exhaustion of domestic remedies

67. Article 46(1)(a) of the American Convention provides that for a complaint lodged before the Inter-American Commission in accordance with Article 44 to be admissible, the remedies under domestic law must have been pursued and exhausted in accordance with generally recognized principles of international law. The purpose of this requirement is to ensure that the national authorities have the opportunity to take up an alleged violation of a protected right and where appropriate, resolve it, before it is taken up by an international entity.

68. The prior exhaustion of domestic remedies requirement is applied when the national system, in effect, has remedies available that are adequate and effective to rectify the alleged violation. However, subparagraph (2) stipulates that this requirement is not applicable whenever:

a) the domestic legislation of the State concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;
b) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or
c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

69. In the instant case, the petitioners have claimed that although domestic remedies have not been exhausted, an exception is applicable, since after having initiated a military criminal proceeding, a disciplinary proceeding, an administrative-contentious conciliatory proceeding, and one before the Office of the Attorney General, these remedies have been prolonged unjustifiably, which has rendered them absolutely ineffective and inadequate to rectify the infringed legal situation. They claim that this has meant that, to date, the State has not fulfilled its duty to investigate, prosecute, and punish those responsible, and therefore has failed to uphold the rights alleged to have been violated, which merits an exception to the exhaustion of domestic remedies stipulated by the Convention in Article 46.2(c).

70. For its part, the State "considers that the remedies have been effectively exhausted by the petitioner"[FN13] and that they "were adequate and effective."[FN14]

[FN13] Section 2.3 , Para. 1, of the State's observations to Petition No. 864-05, received by the IACHR on May 29, 2007.
[FN14] Section 2.3 , Para. 1, of the State's observations to Petition No. 864-05, received by the IACHR on May 29, 2007.

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71. The Inter-American Commission observes in a preliminary manner that, as of the date of approval of this report, over 11 years had transpired since the physical attack on Mr. Luis Gonzalo Vélez Restrepo on August 29, 1996, and those responsible for the incident have not been investigated, prosecuted, and punished under the law. Moreover, more than 10 years have elapsed since the lodging of the complaint before the Office of the Attorney General for the alleged threats and harassment against Mr. Vélez Restrepo and his family, without any serious and effective investigation having been opened or charges brought against any suspect to date. This is also the case with the complaint before that same judicial organ in relation to the attempted "forced disappearance" of Mr. Vélez Restrepo, which would have been prosecuted as a kidnapping offense.[FN15]

[FN15] Letter from the Medellín Office of the Attorney General dated April 20, 1998, states that the "Unit of Crimes Against Liberty is pursuing an investigation for the crime of kidnapping, in which the complainant appears as Luis Gonzalo Vélez Osorio, in file 164.579 of January, 1998." For the purposes of the instant case, the Commission deems it adequate to qualify the incident as an attempted kidnapping rather than an attempted forced disappearance.

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72. The Commission has taken note of the different procedures which have been initiated in the instant case, which are: a) a military criminal proceeding for attacks against peasants and against Mr. Vélez Restrepo in Caquetá in 1996; b) a disciplinary proceeding before the Office of the Prosecutor General of the Nation for the physical attacks against Mr. Vélez Restrepo in Caquetá in 1996; c) a disciplinary proceeding before the Office of the Prosecutor General of the Nation for threats and acts of harassment and intimidation against Mr. Vélez Restrepo and his family; d) a pretrial administrative conciliation proceeding before an Administrative-Contentious Court, pursuant to a request presented by the petitioners; and e) an ordinary criminal proceeding in the investigatory stage before the Office of the Attorney General of the Nation.

73. With regard to the investigations in the military criminal jurisdiction for the alleged assaults and injuries of August 29, 1996 in Caquetá, the file before the IACHR reflects that the petitioners, after several requests for information on the status of the investigations, received a response from Military Criminal Instruction Court 67 in 2006, after the petition had been lodged before the IACHR. In its response, the State informs the petitioners that on October 3, 1997, the military investigation was closed pursuant to an interlocutory judgment but that the State, "owing to circumstances beyond its control could not provide a copies of the decisions since the military facilities where the Court's files were kept had been occupied by the FARC, as a result of which the file was lost and […] it has not been possible to reconstruct it."

74. In this regard, the Commission's view, as it has recognized previously,[FN16] is that the military jurisdiction does not constitute an appropriate forum for determining the responsibility of state agents through their acts or omissions. Hence, this jurisdiction does not provide an adequate remedy to investigate, prosecute, and punish violations of the human rights enshrined in the American Convention presumably committed by members of the Public Force, or with its

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collaboration or acquiescence. Moreover, the Inter-American Court has confirmed that military criminal justice can only constitute an adequate forum to judge military personnel for the commission of crimes or minor offenses which by their nature violate legal assets specific to the military order.[FN17]

[FN16] IACHR, Admissibility Report No. 45/07. Case of the Chengue Massacre, Colombia, dated July 23, 2007, para 49; see IACHR Third Report on the Situation of Human Rights in Colombia (1999), p. 175; Second Report on the Situation of Human Rights in Colombia (1993), p. 246; Report on the Situation of Human Rights in Brazil (1997), pp. 40-42. See I/A Court H.R., Durand and Ugarte Case, Judgment of August 16, 2000, paragraph 117.

[FN17] I/A Court H.R., Durand and Ugarte Case. Judgment of August 16, 2000. Series C No. 68, paragraph 117. See also Case of Almonacid Arellano et al. Judgment of September 26, 2006. Series C No. 154, para. 131; and Case of Palamara Iribarne. Judgment of November 22, 2005. Series C No. 135, para. 124.

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75. At the same time, the Commission appreciates the State's good intentions in imposing administrative sanctions on the sub-officials who participated in the incidents that occurred at the peasant demonstrations of August 1996, and the pre-trial administrative-contentious process as an attempt at conciliation. Nonetheless, the sole purpose of the disciplinary proceeding carried out in the administrative venue was to determine the individual responsibility of public servants in the discharge of their duties,[FN18] without upholding the rights of the petitioners and their future reparation. Moreover, according to the information contributed by the petitioners and that the State did not debate, the conciliation process (administrative-contentious) ostensibly ended because the State failed to recognize its responsibility for the violation of the rights of the victims and the amount of money offered was not considered satisfactory by the petitioners. Because of the absence of a conciliation agreement and the decision of the petitioners, the process administrative-contentious was not continued.

[FN18] IACHR, Admissibility Report No. 54/07. Case of Wilmer Antonio Gonzáles Rojas, Nicaragua, of July 24, 2007, para 57.

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76. Consequently, in light of events of the nature previously described which also were known to the authorities of the State, and in view of the limitations inherent to an administrative disciplinary proceeding —given the nature of the types of offenses investigated and the purposes of the organ responsible for it—the Commission does not consider that the administrative procedure formally pursued by the State constitutes an effective and sufficient remedy for the purposes of determining the inadmissibility of the instant petition.[FN19]

[FN19] Idem, para. 58.

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77. It is worth noting that to date no information is available on the outcomes of the complaints lodged by Mr. Vélez Restrepo before the Office of the Attorney General and it is not known whether there has been progress in any criminal investigation. It is likewise unknown whether any penalty has been imposed against those responsible for the alleged threats, harassment, and alleged attempted kidnapping of Mr. Vélez, which could lead to the conclusion that the domestic remedies were not effective or adequate, and have resulted in an unwarranted delay of over 10 years.

78. Finally, in its analysis of the requirement of exhaustion of domestic remedies, the IACHR must bear in mind the particular circumstance of the instant case, in which the alleged victims are living outside of Colombia in a situation of exile, due to the State's presumed failure to protect their rights.

79. Invoking the exceptions to the rule on exhaustion of domestic remedies set forth in Article 46(2) of the Convention is closely linked to the determination of possible violations of certain rights enshrined therein, such as the guarantees of access to justice. Nonetheless, Article 46(2), by its nature and purpose, is a provision with autonomous content in relation to the substantive provisions of the Convention. Therefore, the determination as to whether the exceptions to the rule on exhaustion of domestic remedies are applicable to the case in question should be made prior to and separate from the analysis of the merits, since it depends on a standard of appreciation distinct from that used to determine whether there has been a violation of Articles 8 and 25 of the Convention.

80. Based on all of the foregoing, and in accordance with the terms of Article 46(2)(c) of the Convention, Article 31 of the Rules of Procedures, and the review of the file, the Commission concludes that the exception is applicable for the unwarranted delay in rendering a final judgment under domestic remedies.

3. Time period for submitting the petition

81. Article 46(1)(b) of the Convention provides that in order for a petition to be admitted, it must be submitted within a six month period counting from the date on which the party alleging a violation of his rights was notified of a final judgment at the domestic level. The provision of six months guarantees judicial certainty and stability once a decision has been adopted.

82. Pursuant to Article 32.2 of the Rules of Procedure of the IACHR, in cases where the exceptions to the prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time, as determined by the Commission. In accordance with this article, in its analysis the Commission "shall consider the date on which the alleged violation of rights occurred and the circumstances of each case."

83. With regard to the petition under study, the Commission has determined that the exception to Article 46(2)(c) is applicable due to the unwarranted delay in rendering a final judgment under domestic remedies. In this sense, the Commission must pronounce on whether the time period in which the petition was lodged is considered reasonable, in accordance with the aforementioned provision.

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84. The Commission observes that the petition was received on July 29, 2005, and that the events described in the initial complaint allegedly took place on August 29, 1996, with threats and harassment approximately two weeks after these facts, and the attempted kidnapping occurring in 1997. It likewise observes that its effects, in terms of the alleged lack of administration of justice persist to the present. Therefore, taking into account the context and characteristics of the instant case, in which the alleged victims remain in exile, the Commission considers that the petition was presented within a reasonable period of time and the admissibility requirement pertaining to the time period for lodging the petition has been satisfied.

4. Characterization of the alleged facts

85. In the instant case, it is not up to the Commission at this stage of the proceedings to decide whether the alleged violations of the articles of the American Convention actually occurred to the detriment of the presumed victim. For the purposes of admissibility, the IACHR must decide at this time only whether the facts, should they be proven, would tend to characterize violations of the Convention, as stipulated in Article 47(b) of the American Convention, and whether the petition is "manifestly groundless" or "obviously out of order" according to subparagraph (c) of that article.

86. The criterion for evaluating these points of law is different than that required to pronounce on the merits of a complaint. The IACHR must conduct a prima facie assessment to examine whether the complaint entails an apparent or potential violation of a right protected by the Convention and not to establish the existence of such a violation. The examination that must be conducted at this time is simply a summary analysis that does not imply a prejudgment or an advance opinion on the merits of the matter. The Commission's Rules of Procedure, by setting two clearly separate phases for admissibility and for merits, reflects the distinction between the evaluation that the IACHR must conduct to declare a petition admissible and the assessment necessary to establish a violation.

87. In the opinion of the Commission, the facts reported by the petitioners concerning the physical attack, the attempted confiscation of Mr. Vélez Restrepo's camera by members of the Colombian armed forces as he was filming a peasant demonstration in Caquetá department, and the subsequent threats, attempted kidnapping, changes in his professional life, self-censorship, and denial of access to information on the status of the investigations, should they be proven true during the merits stage, could tend to constitute a violation of the rights enshrined in Articles 5 (physical integrity) and 13 (freedom of thought and expression) of the American Convention in relation to Article 1(1) of that instrument, to the detriment of Mr. Vélez Restrepo. At the same time, the aforementioned threats could likewise constitute a violation of Article 5 of the Convention to the detriment of the alleged victim, his wife and children.

88. Moreover, the IACHR believes that the allegations of fact related to the forced exile to which the alleged victims were subjected following the attack and the threats, the impossibility of returning to Colombia, and the consequences of this situation in the nuclear family, should they be proven, could tend to constitute a violation of Articles 22(1) (freedom of movement and residence) and 17(1) (protection of the family), to the detriment of Luis Gonzalo Vélez Restrepo

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and Aracelly Román Amariles and their children, Mateo Vélez Román and Juliana Vélez Román. The IACHR likewise understands that the son and daughter of Mr. Vélez Restrepo and Mrs. Román Amariles were children at the time the events occurred, for which the allegations concerning the failure to fulfill the duty to adopt special protection measures in keeping with their status as children, should they be proven, could tend to constitute a violation of Article 19 of the Convention.

89. Moreover, in the view of the Commission, the arguments related to the impunity for human rights violations alleged by the petitioners are not manifestly groundless and could give rise to the international responsibility of the State for the violation of the right to a fair trial and to judicial protection enshrined in Articles 8 and 25 of the American Convention, to the detriment of the alleged victims, in relation to Article 2 of that treaty.

90. Lastly, the IACHR considers that it is not in possession of sufficient elements concerning the allegations put forth by the petitioners that would give rise to the admissibility of a possible violation of the rights to life (Article 4), personal liberty (Article 7) and honor (Article 11).

V. CONCLUSION

91. The Commission concludes that the petition is admissible and that it is competent to examine the complaint submitted by the petitioners concerning the presumed violation of Articles 5 (right to personal integrity), 13 (right to freedom of thought and expression), 17(1) (protection of the family), 19 (rights of the child), 22(1) (right to freedom of movement and residence), 8 (right to a fair trial) and 25 (judicial protection) of the American Convention in relation to Articles 1(1) and 2 of that treaty, in the terms set forth in this report.

92. In virtue of the foregoing arguments of fact and law , and without prejudging on the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the petition admissible in relation to Articles 5 (right to personal integrity), 13 (right to freedom of thought and expression), 17(1) (protection of the family), 19 (rights of the child), 22(1) (freedom of movement and residence), 8 (fair trial) and 25 (judicial protection) of the American Convention, in relation to Articles 1(1) and 2 of that treaty, in the terms set forth in this report.
2. To forward this report to the petitioners and to the State.
3. To continue its examination of the merits of the case.
4. To publish the instant report and include it in Commission's Annual Report to the General Assembly of the OAS.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., on the 24th day of July 2008. (Signed): Paolo G. Carozza, Chairman; Luz Patricia Mejía Guerrero, First Vice-Chairwoman; Felipe González, Second Vice-Chairman;

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Sir Clare K. Roberts, Paulo Sérgio Pinheiro, Florentín Meléndez, and Víctor E. Abramovich, members of the Commission.