

REPORT No. 136/10
CASE 12.658
MERITS
LUIS GONZALO "RICHARD" VÉLEZ RESTREPO AND FAMILY
COLOMBIA¹
October 23, 2010

I. SUMMARY

1. On July 29, 2005, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission", "the Commission", or "the IACHR") received a petition lodged by Mr. Luis Gonzalo Vélez Restrepo - also known as Richard Vélez - and Aracelly Román Amariles (henceforth "the petitioners"), in their own name and representing their children Mateo Vélez Román and Juliana Vélez Román (henceforth "the children" and all together as "the Vélez Román family" or "the petitioners") alleging the responsibility of agents of the Republic of Colombia (henceforth "the State" or "the State of Colombia") for an attack on August 29, 1996 that took place in the Morelia Municipality, Caquetá Department, allegedly carried out by the Colombian National Army against Mr. Luis Gonzalo Vélez Restrepo while he was filming peasants [*campesinos*] demonstrating against the destruction of a crop of coca leaves. In addition, the petitioners allege that after the attack, and in the context of the respective judicial and disciplinary investigations, Mr. Vélez Restrepo and his family suffered repeated death threats, that on October 6, 1997, Mr. Luis Gonzalo Vélez Restrepo was the victim of an "attempted forced disappearance," and that the State failed in its duty to undertake an adequate investigation of the attacks and the threats received. They also point out that due to these allegations Mr. Vélez Restrepo had to self-censor his work as a journalist and has suffered radical changes in his professional life. Lastly, they point out that given the serious risk he ran in Colombia and the lack of timely action by the State of Colombia, on October 9, 1997, he was obliged to seek asylum in the United States of America. One year later, his family members were granted asylum and were able to travel to the United States. The petitioners point out that in the said country Mr. Vélez had to abandon his profession as a journalist and endure enormous financial and emotional difficulties to be able to maintain his family.

2. The petitioners allege that these facts amount to a violation of Articles 4 (right to life), 5 (right to humane treatment), 7 (right to personal liberty), 11 (right to honor), 13 (right to the freedom of thought and expression), 8 (judicial guarantees) and 25 (judicial protection) of the American Convention on Human Rights (hereinafter the "Convention" or the "American Convention"), in relation to Articles 1.1 and 2 of the Convention.

3. On July 24, 2008, the IACHR approved report No. 47/08, declaring the petition admissible in relation to Articles 5 (right to humane treatment), 13 (right to the freedom of thought and expression), 17.1 (protection of the family), 19 (rights of the child), 22.1 (right to free movement and residence), 8 (judicial guarantees) and 25 (judicial protection), in relation to Articles 1.1 and 2 of the American Convention.

4. With regard to the merits of the case, the State of Colombia alleged that it had duly investigated and punished those responsible for the attack on August 29, 1996 against Mr. Vélez and that the petitioners have not proved the existence of the alleged harassment after this attack and much less that it was carried out by state agents. As a result, the State denied the violations alleged by the petitioners.

¹ In accordance with the provisions of Article 17.2 of the Commission's Rules, Commissioner Rodrigo Escobar Gil, of Colombian nationality, did not take part in either the deliberations or the decision in the present case.

5. The Commission concludes that the State violated, to the prejudice of Luis Gonzalo "Richard" Vélez Restrepo, Articles 5, 13, 17, 22.1, 8.1, and 25 of the American Convention, in conjunction with the general obligation to guarantee these rights, enshrined in Article 1.1 of the said Treaty. In addition, the Commission concludes that the State violated Articles 5, 17, 22.1, 8.1, and 25 to the prejudice of Aracelly Román Amariles, Mateo Vélez Román and Juliana Vélez Román, and Article 19 of the Convention to the prejudice of Mateo and Juliana Vélez Román, all in relation to Article 1.1.

II. PROCEEDINGS BEFORE THE IACHR SUBSEQUENT TO ADMISSIBILITY REPORT No. 47/08

6. After approving Report No. 47.08 on admissibility, the Commission assigned No. 12.658 to the case. On August 1, 2008, the Commission notified both parties of the approval of the admissibility report, offered the possibility of reaching a friendly settlement of the case, and fixed a time limit of two months for the petitioners to present their observations on the merits.

7. On November 7, 2008, the petitioners presented their allegations on the merits. These allegations were sent to the State on November 12, 2008, with a request for observations within a time limit of two months.

8. On April 1, 2009, the State expressed its willingness to commence a friendly settlement, and requested the Commission to inform the petitioners. On April 15, 2009, the State's brief was sent by the IACHR to the petitioners, requesting that they indicate if they were interested in initiating the procedure set out in Article 48.1.f of the American Convention.

9. On May 18, 2009, the petitioners replied to the IACHR's request, indicating "we are not interested at this time in searching for a friendly settlement with the Colombian Government". On May 20, 2009, the State of Colombia was made aware of this information.

10. On August 6, 2009, the State presented its allegations on the merits. On October 26, 2009, these allegations were sent to the petitioners.

11. On April 30, 2010, the IACHR requested from the State, within a time limit of one month, "a copy of the main procedural elements in the criminal and disciplinary proceedings initiated by the Public Prosecutor of the Nation, the Procurator General of the Nation, the Armed Forces, or by any other state entity regarding the alleged physical attack suffered by Mr. Luis Gonzalo Vélez on August 29, 1996, and the alleged threats and harassment received by Mr. Luis Gonzalo Vélez and his family subsequent to August 29, 1996". In a submission of June 2, 2010, the State sent "the disciplinary proceedings referred to in the note of April 30", and informed the Commission that "once the information relating to the criminal proceedings has been received from the Prosecutor General of the Nation, it will be immediately sent to the IACHR." As of the date of this Report, the State has not sent any additional information to the IACHR.

12. On September 8, 2010, the petitioners sent to the Commission "a number of additional elements relating to the same disciplinary and criminal proceedings".

II. POSITION OF THE PARTIES

A. The Petitioners

On the alleged attack suffered by Mr. Luis Gonzalo Vélez Restrepo on August 29, 1996

13. From their initial briefs, the petitioners allege that on August 29, 1996, Mr. Luis Gonzalo Vélez Restrepo, in the course of his employment as a journalist and cameraman for Colombia 12:30 news, went to the town of Morelia, in the Department of Caquetá in order to cover the peaceful demonstrations of some peasants protesting against the attempt to eradicate the coca leaf crop in the region.

14. The petitioners maintain that on the said date, torrential rain caused flooding to the peasants' temporary camp. They wished to cross a bridge guarded by 36th Infantry Battalion of the 12th National Army Brigade and in attempting to do so, the members of the said battalion started to shoot at them, to savagely beat them and launch tear gas to prevent them moving forward. Mr. Vélez Restrepo, who was filming the events, was accosted by three soldiers of the said battalion who demanded that he hand over his camera film, insulted him and pointed a gun at his head. The petitioners stress that when Mr. Vélez Restrepo refused to hand over his film, they started to hit him with their rifle barrels and kick him, shouting "give us the damned film". His camera was broken as a consequence of the attacks but the footage of the incident was still recorded and disseminated in Colombia and around the world.

15. The petitioners point out that, due to the physical aggression he suffered, Mr. Luis Gonzalo Vélez Restrepo lost consciousness after the attack and was taken as an emergency case to the Inmaculada María de Florencia Hospital and later transferred to the Asistir Clinic in Bogotá, where he remained for two days and required 15 days' convalescence at home. The petitioners maintain that because of the attack he suffered a ruptured liver, profuse bleeding, the loss of one testicle, several fractured ribs and multiple blows on the body and legs.

16. The petitioners state that the aggression suffered by Mr. Vélez Restrepo on August 29, 1996, fits a pattern of threats and violence against journalists in Colombia, and of impunity for these acts.

On the alleged threats, acts of harassment and intimidation, the attempted kidnapping and consequent forced exile

17. The petitioners point out that the threats and acts of harassment and intimidation started a couple of weeks after the August 1996 attacks against Mr. Vélez Restrepo in Caquetá. The petitioners allege that they received a series of telephone calls making death threats against both the journalist and his family. The petitioners point out that on September 11, 1996, unknown individuals knocked on the Vélez family's door, and when Mr. Luis Gonzalo Vélez Restrepo was not home, pretended to be officials from the Procurator General's Office and tried to obtain information on the journalist's schedule. They state that on the same day, the Chief Editor of Colombia 12.30 brought these facts to the attention of the Procurator General's Office.

18. The petitioners state that due to a statement that Mr. Vélez Restrepo made before the Military Court at the end of September 1996 in relation to the attacks against him and the group of peasants in Caquetá, the threats drastically worsened. The petitioners mention the following as an example of some of the written, telephone and personal threats against Mr. Vélez Restrepo: "you're going to die you son of a bitch", "you have the power of information, but we have the power of guns. You're going to die, you dog". In addition, they detail that the following threats

were made against his wife and family, *inter alia*, "you're very pretty, I'm going to leave you a widow", "I'm going to take these two bastards from you", referring to his children.

19. The petitioners allege that based on these threats and acts of harassment, in October 1996, Mr. Vélez and his wife turned to the Procurator General's Office and the Public Prosecutor, and handed over the written threats received at work to the Administrative Department of Security, but none of these complaints led to the trial and punishment of those responsible. Due to this, Mr. Vélez had to change where he lived. The petitioners indicate that the threats temporarily stopped after Mr. Vélez Restrepo told two influential government employees of the harassment.

20. The petitioners stress that despite this short lull, the death threats resumed and intensified after Mr. Vélez Restrepo gave evidence in August 1997 before the Procurator General for the facts occurring during the demonstration in Caquetá and for the threats suffered by him and his family. The petitioners point out that these death threats sought to persuade him not to testify against the Army. The petitioners maintain that Mr. Vélez Restrepo reported the new threats to the Public Prosecutor's Office and he was verbally told that his reports would be taken into account in a large-scale investigation conducted against certain military officials and that even if any measures were taken against them, it would not be within a short period of time.

21. The petitioners alleged that in addition to the telephone calls and threatening visits to his home, his son Mateo was photographed at school by an unknown man on board a motorcycle. The petitioners indicate that Mr. Vélez Restrepo withdrew his son from the school and that their family was practically living in hiding. In addition, the petitioners point out that Mr. Vélez Restrepo, at various times, recognized military personnel among his persecutors.

22. The petitioners state that in response to the restart of the threats, Mr. Vélez requested the help of the Colombian Commission of Jurists, an organization that in September 1997 wrote to the Presidential Council for Human Rights (COPDH) and the Interior Ministry insisting on the State's duty to investigate the threats against the Vélez Román family and requesting protection for them. On October 3, 1997, they repeated their obligation to investigate the threats against the Vélez Román family and requesting protection for them. On October 3, 1997, in light of the lack of response to this communication, Mr. Vélez visited the COPDH in person in order to request protection for himself and his family. The petitioners point out that the COPDH organized a meeting for the Vélez family with the Special Administrative Unit for Human Rights of the Interior Ministry. Once this meeting had taken place, and given the seriousness of the threats, the State decided to register them in the Ministry's Witness and Threatened Persons Protection Program for Cases Involving Human Rights Violations, and agreed to provide police protection to Mr. Vélez at his house, to supply him with a bullet-proof vest, and to study his security. The petitioners state that on the day after this meeting with the Interior Ministry, two employees of the Administrative Department for Security (DAS) started to guard the Vélez family home and to accompany Mr. Vélez to and from work.

23. The petitioners indicate that the death threats and the harassment suffered by the family reached its peak on October 5 and 6, 1997. They allege that on October 5, Mr. Vélez received a card stating, "Mr. Vélez: toads get squashed". According to the petitioners, "in the Republic of Colombia, these cards are seen as a sign that the recipient is going to be killed within the following 24 hours". The petitioners confirm that on the following day, October 6, employees of the DAS who were acting as Mr. Vélez's armed bodyguard did not arrive at his home, and when he left on foot for his work, he suffered an "attempted forced disappearance". They point out that a taxi pulled up and a man armed with a gun forced Mr. Vélez to get into the vehicle. Fortunately he managed to free himself from his attackers and flee. Mr. Vélez Restrepo states that the recognized military personnel among them.

24. The petitioners state that they immediately informed the COPDH, and that the COPDH concluded that Mr. Vélez and his family should leave the country as soon as possible. They indicate that on October 9, 1997, by reason of the "attempted forced disappearance" and the Presidential Council for Human Rights' recommendation, Mr. Vélez Restrepo left Colombia with the support of the International Committee of the Red Cross and sought asylum in the United States, since his life was in imminent danger. The rest of his family moved to Medellín to seek protection while they applied for asylum.

25. The petitioners stress that as a consequence of the threats, the acts of harassment, intimidation and the "attempted forced disappearance", the professional career of Mr. Vélez Restrepo has been affected and he was finally forced to leave his country in October 1997. They allege that "the news program put intense pressure on Mr. Vélez to tone down his work and encouraged him not to pursue any legal action relating to the attack and subsequent threats." They also allege that after the attack suffered on August 29, 1996, he was "forced to withdraw from a special group of reporters who were permitted access to sources of military news", and that these factors seriously compromised his professional career.

26. The petitioners indicate that for the same reasons highlighted in the preceding paragraph, Mrs. Aracelly Román, Mr. Vélez Restrepo's wife, also had to compromise her profession life since she was forced to abandon her studies. The children, provisionally, had to leave the school they attended and remain for much of the time hidden at home without being able to meet friends, that produced strong feelings of fear and anxiety that prevented them from enjoying a normal childhood. Due to this series of events, the whole family were affected and even had to resort to individual and marital psychological therapy when their precarious economic situation permitted.

27. The petitioners indicate that in 1998, asylum status was granted to Mr. Vélez and his family, who remained hidden in Medellín until September 12, 1998. The petitioners stress that during the year the family were separated Mateo Vélez Román and Juliana Vélez Román's integrity was profoundly affected. During this time, for economic reasons, Aracelly Román had to live apart from her son Mateo and neither she nor the children were able to receive medical treatment.

28. The petitioners describe that they live in a strange country, far from their family, friends and culture. They state that in Colombia they were economically stable and were even owners of their own home. They state that due to the disruption caused by their exile, Mr. Vélez Restrepo went from being a member of a recognized group of Colombian journalists to being unemployed, looking for any work to be able to provide for his family. The petitioners point out that during nearly a decade, until 2007, they were not able to visit Colombia, and that during this period, Mr. Vélez Restrepo's mother died.

29. The petitioners maintain that both Mr. Vélez Restrepo and Mrs. Aracelly Román had to abandon their careers, suffering radical changes in their financial situation as a result of their enforced exile. They underline that it has been difficult for Mr. Vélez Restrepo to find work as a journalist in the United States, and today he is completely isolated from his profession. They indicate that the acts of violence against Mr. Vélez Restrepo, aimed at silencing him, forced him to practice self-censorship and have generated deep feelings of pain and frustration.

On the Proceedings Undertaken in the Domestic Jurisdiction

30. The petitioners stress that by virtue of the physical attacks inflicted on Mr. Vélez Restrepo on August 29, 1996, and of the subsequent threats, acts of harassment and intimidation suffered by him and his family, and of the "attempted forced disappearance" of which Mr. Vélez

Restrepo was allegedly a victim, proceedings were commenced before different courts, but that none of the said proceedings was effective. The petitioners allege that "none of the military personnel involved has been duly punished".

31. The petitioners state that in relation to the acts described above the following were initiated: a) proceedings in the military courts for the attacks against the peasants and against Mr. Vélez Restrepo in Caquetá in 1996; b) separate disciplinary proceedings, for the physical attacks against Mr. Vélez Restrepo in Caquetá in 1996; c) disciplinary proceedings before the Procurator General of the Nation for the threats and acts of harassment and intimidation against Mr. Luis Gonzalo Vélez Restrepo and his family; d) preliminary conciliation administrative proceedings before the Contentious Administrative Court, at the petitioners' request; and e) ordinary criminal proceedings at the investigation phase before the National Public Prosecutor for the threats and acts of harassment and intimidation against Mr. Luis Gonzalo Vélez Restrepo and his family.

1. Criminal Military Proceedings for the attacks against the peasants and against Mr. Vélez Restrepo in Caquetá in 1996

32. The petitioners point out that soon after the attack on Mr. Vélez Restrepo, the Public Prosecutor publically announced that it would be starting a criminal investigation, though in response to a specific request from the military authorities, the Public Prosecutor's investigation was transferred from the ordinary justice system to the military courts.

33. The petitioners stress that these courts had apparently started their own investigation based on a report presented by a Lieutenant describing the attacks on the peasants in Caquetá and the perpetrators against Mr. Vélez Restrepo. The petitioners indicate that the Public Prosecutor asked Mr. Vélez Restrepo to hand in his medical reports describing the injuries caused as a consequence of the attack and even subpoenaed him to make a statement on the facts in question at the end of September 1996.

34. The petitioners consider that the military court investigation did not constitute an adequate forum to examine the facts, especially when the military judge was designated by the Commander of the same 36th Battalion whose members were being investigated for perpetrating the attacks. The petitioners point out that up until the presentation of the petition, they have not been told of the results of this investigation and that they were even denied access to the said information in October 1996, on the grounds that it was a "confidential portion" of a closed investigation. They argue that the State of Colombia has not brought its legislation in the area military jurisdiction into line with the provisions of the American Convention, in violation of Article 2 of the said Treaty.

35. The petitioners allege that they filed motions requesting information on the state of the proceedings at various times, without receiving any response whatsoever until, finally, on June 3, 2006, the 67th Military Criminal Court informed them that on October 3, 1997, the case relating to the attack of August 29, 1996, had been archived by interlocutory order and that then the case files had been lost because the military premises where they were being kept had been occupied by FARC guerrillas, rendering it impossible for the State to make copies of the relevant proceedings.

36. The petitioners point out that neither General Néstor Ramírez, Commander of the 12th Army Brigade and Chief of the military operations in Caquetá, nor other officials involved in the facts above proceedings in the military criminal courts were investigated by the military justice system.

2. Disciplinary Proceedings for the Physical Attacks against Luis Gonzalo Vélez Restrepo in Caquetá in 1996

37. The petitioners point out that in accordance with the information they received, two disciplinary investigations had been opened in 1996 for the physical attacks suffered by the alleged victim in 1996. On the one hand, proceedings were started against General Néstor Ramírez by the Procurator General of the Nation's Office. This was archived. The petitioners allege that they are unaware of the reason for the archiving.

38. As regards the proceedings against the members of No.36 Battalion, the petitioners pointed out that they received information according to which at least two non-commissioned officers had been disciplined by the Armed Forces, although it is not known whether these punishments were upheld at second instance. The petitioners stress that non-commissioned officer William Moreno Pérez had been disciplined for having ordered the confiscation of Mr. Vélez Restrepo's video camera on August 29, 1996, and for the insults committed against him, in fulfillment of said order. In addition, the petitioners allege that non-commissioned officer José Fernando Echevarría Calle was disciplined "for the events that occurred in Morelia (Caquetá) and for the excessive use of Public Force". The petitioners point out that the two soldiers appealed the above decisions and the results of these proceedings are not known.

3. Disciplinary Proceedings before the Procurator General of the Nation for the threats and acts of harassment and intimidation against Mr. Luis Gonzalo Vélez Restrepo and his family

39. The petitioners point out that in accordance with a report of July 1998 of the National Department for Special Investigations (Human Rights Unit) of the Procurator General of the Nation's Office, non-commissioned officers Echevarría Calle and Moreno Pérez were also involved in the threats and acts of harassment and intimidation against Mr. Vélez Restrepo and his family. The petitioners stress that only one investigation was initiated with the Second District Attorney General against Non-commissioned officer Echevarría Calle, whose case file had been archived, without any further procedural steps being undertaken. The petitioners submit that in March 2001, an investigation was launched in the Inspectorate of the Procurator General of the Nation's Office with respect to the complaints of threats, acts of harassment and intimidation which involved members of the Procurator's Office, which was also archived in 2002.

40. In this sense, the petitioners point out that in none of the disciplinary proceedings have they been told of any final decision, and that if they have obtained any information, it is off-the-record or was finally obtained in 2006, after the State's response when multiple requests were lodged by the petitioners' lawyer in Colombia.

41. The petitioners also stress that in accordance with what the IACHR has held in other cases, disciplinary proceedings cannot in themselves constitute an adequate or effective remedy to safeguard the human rights violated in the present case.

4. Proceedings for a Preliminary Administrative Settlement

42. In 1998, the petitioners presented a request for a preliminary administrative settlement before the Contentious Administrative Court of Cundinamarca for the personal injuries against Luis Gonzalo Restrepo and for the harassment of him and his family. On November 9, 1998, the State offered approximately 1,200.00 US dollars as compensation for the 1996 attack and for the subsequent harassment suffered by the journalist and his family. The petitioners did not agree to this in any way due to the fact that the State did not assume responsibility for the events and that the sum of money offered was considered insufficient by the petitioners, given the

effective damage suffered - including the withdrawal of Mr. Vélez from his profession, his forced exile, the moral and psychological damage to the journalist and his family - and thus the preliminary contentious administrative proceedings came to an end.

43. They indicate that the said proceeding does not constitute adequate means to compensate violations of human rights and it is not necessary to exhaust it, for which they decided not to continue with the proceedings.

5. Ordinary Criminal Proceedings before the Public Prosecutor

44. The petitioners state that the National Public Prosecutor has not indicted anyone allegedly responsible for the acts perpetrated against the petitioners, i.e.: the attack carried out by military personnel on August 29, 1996, in the Municipality of Morelia, Department of Caquetá, against Mr. Vélez Restrepo; the threats and harassment directed against Mr. Vélez Restrepo and his family, despite lodging complaints on two occasions about such acts before the Public Prosecutor; and the "attempted forced disappearance" that occurred on October 6, 1997.

45. The petitioners allege that they lodged multiple and specific complaints before the Attorney General's Office and the Public Prosecutor providing direct information relating to the threats and harassment they were suffering. They also alleged that: a) in September 1996, they sent a letter to the Procurator General of the Nation's Office because individuals pretending to be officials of the said office came to the Vélez family home to enquire about the whereabouts and schedule of the journalist; b) in October 1996 they went to the Public Prosecutor's Office to relate the death threats; and c) in August 1997, Mr. Vélez again notified the Public Prosecutor of the death threats and that he and his family were in danger. According to the petitioners, the Public Prosecutor assured them that their complaints would form part of a large investigation being undertaken against military personnel.

46. The petitioners state that, apart from the above complaints, they also lodged similar complaints with the Special Administrative Unit for Human Rights of the Interior Ministry and the Presidential Council for Human Rights in September and October 1997. Given the serious risk he was running, said request gave rise to the adoption of certain protective measures, but did not give impetus in any way to the existing criminal investigations.

47. The petitioners allege that the only thing they are aware of is that an investigation was underway for the crime of kidnapping before the Public Prosecutor of Medellín, in the Crimes against Freedom Unit, the final result of which was never known.

On the International Responsibility of the State

48. In their arguments on the merits, the petitioners point out that the acts complained of represent violations of Articles 4, 5, 8, 11, 13, 17, 22 and 25 of the American Convention in relation to Article 1.1 to the prejudice of Mr. Luis Gonzalo Vélez Restrepo; and Articles 5, 8, 17, 22 and 25 of the Convention in relation to Article 1.1 to the prejudice of Aracelly Román Amariles; and Articles 5, 17, 19, 22 and 25 of the Convention in relation to Article 1.1 to the prejudice of Mateo Vélez Román and Juliana Vélez Román.

49. The petitioners requested in this regard a series of reparations, *inter alia*: that the State acknowledge responsibility and make a public apology; that the State make reparations to the family for the damages suffered, including the moral damage and the cost of medical and psychological treatment; that the State inform the petitioners of the position of the judicial proceedings relating to the attack against Mr. Vélez Restrepo in Caquetá in 1996, the subsequent threats and harassment, and the "attempted kidnapping and assassination" against Mr. Vélez, as

well as identifying, trying and punishing those responsible; and that the State establish a special unit within the National Public Prosecutor's Office to investigate crimes against journalists

B. Position of the State

On the Alleged Attack suffered by Mr. Luis Gonzalo Vélez Restrepo

50. The State of Colombia states that in 1996 there was a public announcement that in the month of August throughout the national territory there would be some peasants' movements composed of individuals dedicated to the cultivation and processing of the coca leaf, known as the "coca marches."

51. The State indicates that in accordance with intelligence information provided by the Ministry of Defense "the outlawed armed group FARC were coercing thousands of peasants to oppose the eradication of the illegal crops in Caquetá" and that the said group "had control of the drugs trade which netted them considerable economic profits and that they have the capacity to mobilize peasants' and/or coca workers demonstrations."

52. The State alleges that by virtue of this and of the constitutional duty to protect the civilian population, the Security Forces through the XII National Army Brigade based in Florencia, Caquetá, undertook the operations necessary to guarantee the peaceful outcome of the demonstrations, looking to "guarantee the rights both of the participants as well as of other civilians not participating in the said events but who could suffer some effects." It states that once the demonstration began, the military units responsible reported that the peasants who attempted to return home were pressured by members of the FARC to continue on the march.

53. The State maintains that through a number of operational orders, precise instructions were issued to members of the Public Force to protect the civilian population and avoid confrontations with the demonstrators. They allege that instructions were given as to the use of loud speakers and in case they failed, the use of tear gas as a deterrent to control the demonstrations.

54. The State points out that during the march, military units tried to control the approximately 13,700 demonstrators only by using persuasion via loud speakers and tear gas, notwithstanding the almost constant use of stones, Molotov cocktails and other material by the demonstrators toward the uniformed personnel.

55. The State indicates that with respect to the acts that occurred in Morelia, Caquetá on August 29, 2006, "in accordance with the available evidence, it is clear that Mr. Vélez Restrepo suffered an act of aggression by members of the National Army due to his refusal to hand over his video cameral." The State points out that these facts were conceded at the time by high-ranking members of the National Government and the Military Forces, and that this criticism was evident in the investigations and punishments given to those responsible.

56. The State denies that the acts committed against Mr. Vélez Restrepo bear the hallmarks of a general pattern of aggression against journalists in the context of the demonstration. It stresses that the peasants' demonstration was covered by both the national and international press and that the acts committed against Mr. Vélez Restrepo were isolated, since at no time did the members of the Security Forces generally behave in a way to prevent journalists from carrying out their work.

On the Alleged Threats, Acts of Harassment and Intimidation, Attempted Kidnapping and Consequent Forced Exile

57. The State points out that the evidence provided by the petitioners is not decisive or sufficient to show the existence of the alleged threats and intimidation, even less the involvement of state agents in such activity. It stresses that the disciplinary investigations undertaken against the state agents for the alleged threats were archived for being groundless.

58. The State points out that the petitioners do not show conclusive proof of the alleged link between the agents involved in the events of August 29, 1996, and the alleged threats, and that the mere statements of the petitioner that in case he were to return to Colombia he would continue to be in danger, have no basis whatsoever.

59. The State points out that once the alleged threats and harassment were brought to the attention of the competent authorities in October 1997, the State, via the Interior Ministry's witness protection program, immediately provided different protective measures aimed at offering security to Mr. Vélez and his family, even despite the lack of certainty on the existence of such threats. The State alleges that three days after having granted him protective measures, Mr. Vélez decided to leave the country.

60. The State points out that with respect to the alleged kidnapping attempt that occurred on October 6, 1997, there was no evidence in the case file establishing with certainty whether it occurred. The State alleges that it is not possible to determine whether the kidnapping actually occurred, and if it did, whether it was a direct consequence of the facts giving rise to the petition or the complaints lodged by Mr. Vélez or with his status as a journalist. The State stressed that the petitioners have also not shown the alleged involvement of State agents.

61. The State alleges that the petitioners made a groundless assertion to the effect that the allegations bear the hallmarks of a pattern of intimidation, violence and censorship against journalists in Colombia, an assertion that completely goes beyond the object of this case.

On the Proceedings Undertaken in the Domestic Jurisdiction and the State's International Responsibility

62. The State made it clear that it would not comment on the alleged violation of Articles 4, 7, 11 and 22.5 of the Convention, in view of the fact that they were examined and declared inadmissible by the IACHR in its Report No. 47/08.

63. With respect to Articles 17 and 19 of the Convention, the State alleges that the petitioners made a mistake "by confusing the alleged violations of the rights to family life and the protection of minors with the possibility that his wife and children might be considered as alleged victims of other convention rights." The State requested that the Commission declare that the State had not violated Articles 17, and 19 of the Convention.

64. With respect to Article 5 of the Convention, the State does not deny the aggressions and consequent injuries suffered by Mr. Vélez. It alleges, however, that it acted in a preventive way to avoid any excessive use of force in the context of the demonstration, and acted immediately and effectively to investigate and punish the state agents responsible as the direct perpetrators. The State therefore requests that the Commission declare that there is no violation of Article 5 in relation to the events occurring on August 29, 1996.

65. With regard to the alleged threats and intimidation against Mr. Vélez, as well as the alleged attempted kidnapping, the State insists that the petitioners have failed not only to prove it

but also the alleged involvement of state agents in the said events. The State pointed out that although protective measures were provided to Mr. Vélez, this does not imply that the alleged involvement of state agents in such events is proven. The State indicated that the disciplinary proceedings in connection with the alleged threats were archived, and that at present there is an ongoing investigation before the ordinary criminal courts. The State requested the Commission to declare that there is no violation of Article 5 in relation to the alleged threats and intimidation against Mr. Vélez.

66. In regard to the alleged violation of the personal integrity of Mr. Vélez's immediate family as a result of the alleged threats, the State repeats that there is no conclusive proof corroborating either the existence of such threats or the involvement of state agents with them, so that it requests that the State is declared not to have violated Article 5 with respect to the Vélez Román family.

67. With respect to the alleged violation of Article 13, the State points out that it adopted a series of preventive measures in favor of those journalists who find themselves in a situation of risk when exercising their profession.

68. The State alleges that the events of August 29, 1996, did not violate the individual dimension of Article 13 of the Convention because Mr. Vélez was able to seek, receive and disseminate the information he obtained during the media coverage of the demonstration. It points out that members of the Security Forces intervened in a quick and effective way to break up the attack and take Mr. Vélez from the area.

69. The State alleges that it also did not violate the individual dimension of the freedom of expression and opinion with regard to the alleged threats, acts of harassment and intimidation and the attempted kidnapping of Mr. Vélez. The State restated that the evidence supplied by the petitioners does not demonstrate that the facts took place, or the alleged involvement of state agents. The State points out, however, that once Mr. Vélez had lodged the respective complaints for the alleged threats, he was provided with protection; however, three days later Mr. Vélez decided to leave the country, for which he received the State's assistance.

70. The State also denies having violated the social dimension of Article 13. It pointed out that the events of August 29, 1996, were broadcast by the private television news channels without any censorship whatsoever, so that the public received the information in an opportune and truthful way. The State also stresses that the military commander exercised disciplinary control and punished those responsible in an exemplary way, and that the civilian and military authorities issued a condemnation and offered a public apology.

71. With respect to Article 22.1 of the Convention, the State alleges that Mr. Vélez never requested protection prior to the alleged attempted kidnapping occurring on October 6, 1997, and that on the same day that the attempted kidnapping allegedly occurred, the Interior Ministry's Witness Protection Program offered Mr. Vélez and his family the opportunity to move to any other part of the country, guaranteeing them financial aid for three months. Nevertheless, at that time, Mr. Vélez showed a wish to leave the country since he would not feel safe in any part of the national territory, so that the State institutions contacted the International Committee of the Red Cross who arranged for Mr. Vélez to leave the country on October 9, 1997. The State indicated that up until the day of his departure, the Protection Program provided Mr. Vélez with a bullet-proof vest, a police escort for his journeys, and that it relocated Aracelly Román, Mateo Vélez Román and Juliana Vélez Román to the city of Medellín, granting them humanitarian aid. The State did not comment on the petitioners' allegation to the effect that on October 6, 1997, a DAS bodyguard assigned to protect Mr. Vélez did not turn up at his house to accompany him to work.

72. The State repeats that the threats and acts of harassment alleged by the petitioners have not been duly proved in the present case, and it alleged that Mr. Vélez decided to leave the country of his own accord, rejecting the protective measures offered by the State, having the ability to afford him the required protection and aid. The State alleged that the presumed ongoing risk preventing Mr. Vélez and his family from returning to Colombia has not been proved either. Therefore, it requests that the IACHR declare that the State has not violated Article 22.1 in relation to Mr. Vélez and his family.

73. In regard to Articles 8 and 25 of the Convention, the State points out that it undertook various investigations in different courts, with the purpose of determining who had been responsible for the acts of aggression aimed at Mr. Vélez on August 29, 1996, in the context of the demonstration, as well as for the alleged threats and the alleged attempted kidnapping, thereby fulfilling its obligations set out in the above Articles.

74. The State points out that the facts connected with Mr. Vélez's case were immediately investigated internally in the 12th Brigade, and that on August 30, 1996, Non-commissioned officer Second Class William Moreno Pérez and Non-commissioned officer First Class José Fernando Echevarría Calle were punished with severe reprimands. In this way, the State stresses that "the military commander exercised disciplinary control and punished those responsible for disobeying orders, in an exemplary manner." The State alleges that it was a matter for the Procurator General of the Nation to investigate Brigadier General Néstor Ramírez Mejía's participation, and that on May 27, 1998, this entity ordered the proceedings to be archived due to a lack of evidence.

75. Regarding the criminal jurisdiction, the State alleges that the Public Prosecutor initiated *sua sponte* the investigation into the events of August 29, 1996, and that on September 19, 1996, it was decided that the matter should be referred to the military jurisdiction. On October 3, 1997, the matter was archived via a writ of *nolle prosequi* on the ground of the lack of an active subject. The State also points out that due to the fact that the military facilities where the military court were subsequently occupied by the FARC guerillas, the case file of the said criminal investigation was lost, rendering it impossible for the State to furnish copies of the decisions. The State alleges that the facts of the case were within the jurisdiction of the criminal military courts, since they occurred while fulfilling the maintenance of the constitutional order and it is not possible to regard these facts within the context of a serious violation of human rights or a crime against humanity. The State points out that since Mr. Vélez did not file a complaint or lawsuit before the military criminal court, he missed the opportunity for appealing the writ of *nolle prosequi*.

76. The State points out that preliminary administrative conciliation proceedings were initiated within the contentious administrative courts, but that no agreement was reached and that faced with the absence of a conciliation agreement, the petitioners decided not to pursue the proceedings. The State alleges that when they did not continue with the proceedings begun before the said courts, the petitioners took the decision implicitly to renounce their right to obtain monetary compensation within the domestic court system.

77. In relation to the alleged threats aimed at Mr. Vélez and his family, the State indicates that the 2nd District Procurator's Office archived the proceedings against José Fernando Echevarría Calle due to insufficient grounds. The State also indicated that the Inspectorate of the Procurator General's Office ordered the archiving, for lack of merit, of the investigation begun for the alleged links between its officials and the threats against Mr. Vélez.

78. The State stresses that in criminal matters, the 13th Regional Prosecutor of Bélen de los Andaquíes (Caquetá) is currently pursuing the corresponding investigation aimed at identifying, trying and punishing those responsible for the acts of violence, the alleged threats and the alleged

attempted kidnapping, an investigation which in June 2009 was at the preliminary investigation stage. The State alleges that the fact that no one allegedly responsible has been singled out, does not in any way imply State responsibility. The State stressed that during the proceedings all legal guarantees were available to the parties, different logical lines of enquiry were developed, and progress was hindered on numerous occasions as a result of the silence exhibited by Mr. Vélez, his family and his attorney. The State requested via the Commission that the petitioners join the proceedings as a civil party.

79. In conclusion, the State requests that the Commission: declare that it lacks jurisdiction to examine the petitioners' allegations relating to Articles 4, 7, 11, and 22.5 of the Convention, and declare the lack of international responsibility of the State with respect to Articles 5, 8, 13, 17.1, 19, 22.1 and 25 of the Convention in relation to Articles 1.1 and 2 of the Convention.

III. ESTABLISHED FACTS

The Aggression Suffered by Mr. Vélez on August 29, 1996

80. Mr. Luis Gonzalo Vélez Restrepo was a cameraman for the news program Colombia 12:30 and covered, among other assignments, those relating to public order. On August 29, 1996, Mr. Vélez was in Morelia, in the Department of Caquetá, Colombia, covering a demonstration by peasants dedicated to the cultivation of coca leaves.²

81. According to the ample media coverage surrounding the events, thousands of people participated in the demonstration towards the city of Florencia, capital of the Department of Caquetá, to protest against the spraying of their crops. On the morning of August 29, when the security forces blocked the bridge over the river Bodoquero, the demonstrators attacked the military and the military responded with tear gas grenades and, subsequently, with gunshots.³ The disciplinary proceedings undertaken later by the State found that the actions of the military forces displayed "excessive use of the means available to control" the demonstration, and "physical aggression against persons participating in the disturbances, who were not in a position to defend themselves".⁴ In these proceedings, the "reports submitted by the different news media, especially those broadcast by the television news", served as proof in the proceedings, which ended with disciplinary punishments.⁵

82. Mr. Vélez, who was filming the disturbances, was physically attacked by various members of the 12th National Army Brigade to prevent him from continuing filming the actions of the military forces and to confiscate the recorded material.⁶ Among the images that Mr. Vélez took

² Initial Petition received on July 29, 2005, pp. 6-7. Facts recognized by the State of Colombia in its brief received on August 4, 2009, pp. 4-8.

³ Initial Petition received on July 29, 2005, Annex 3, Hans Sarmiento, "Battle on the Bridge", *Revista Cambio*, September 2, 1996; Annex 4, German Jiménez Leal, "Caquetá was for the taking", *El País*, August 30, 1996; Annex 5, "21 Injured by Disturbances in Morelia", *El Nuevo Siglo*, August 30, 1996; and Annex 6, video tape: attack on Mr. Vélez Restrepo in Caquetá (hereinafter the "Vélez Video").

⁴ Petitioners' Brief received on October 4, 2006, Annex, Colombian Armed Forces, 12th Brigade, Decision No. 011 of August 30, 1996 (this decision was submitted by the State in its brief received on June 2, 2010).

⁵ State's brief received on June 2, 2020, Annex, Colombian Armed Forces, 12th Brigade, Decision No. 012 of August 30, 1996.

⁶ Initial Petition received on July 29, 2005, Annex 6, Vélez Video. Facts recognized by the State of Colombia in its brief received on August 4, 2009, pp. 4-5.

and that appear in the case file before the IACHR, members of the armed forces can be seen striking defenseless demonstrators.⁷

83. Although the attack on Mr. Vélez destroyed his video camera, the film remained intact and the attack was recorded. This footage, which later received widespread coverage, shows that various individuals in fatigues and military boots surrounded and attacked Mr. Vélez while shouting phrases such as "take out the f[...]ing cassette".⁸

84. The attack on Mr. Vélez stopped when another soldier intervened to break up the aggression and helped the journalist to reach his colleagues.⁹ Mr. Vélez lost consciousness and was taken from the scene in an ambulance. As a result of the attack, he suffered various injuries, *inter alia* a ruptured liver, the loss of one testicle and several fractured ribs, and he remained in hospital for several days and then incapacitated at home for an additional period of two weeks.¹⁰

85. High-ranking officers of the Colombian Armed Forces, among them General Harold Bedoya, Commander of the National Army, and Brigadier General Nestor Ramírez Mejía, Commander of the 12th Brigade, initially denied that the attack had been committed by members of the Army.¹¹ Nevertheless, General Bedoya and the Defense Minister Juan Carlos Esguerra later acknowledged the Army's responsibility and offered apologies to Mr. Vélez.¹² The State of Colombia also acknowledged in the context of the present case that the attack on Mr. Vélez was perpetrated by members of the National Army, due to the journalist's refusal to hand over his video camera.¹³

Events Subsequent to August 29, 1996

86. After August 29, 1996, Mr. Vélez and his wife Aracelly Román Amariles say they received a series of threats and acts of harassment.¹⁴ These acts of harassment included intimidating telephone calls, written threats, the following of their son Mateo Vélez Román, and visits to the Vélez Román family home by unknown individuals purporting to be employees of the Procurator General of the Nation's Office and asking about Mr. Vélez's schedule.¹⁵ Mr. Vélez also alleges having suffered an attempted kidnapping on October 6, 1997, and that on that day the bodyguards assigned by the State did not turn up at this home.¹⁶ Finally, he alleges that the threats and acts of harassment significantly increased after he made a statement to the criminal

⁷ Initial Petition received on July 29, 2005, Annex 6, Vélez Video, minute 3:30 and following.

⁸ Initial Petition received on July 29, 2005, Annex 6, Vélez Video, minute 3:53 and following.

⁹ Initial Petition received on July 29, 2005, pp. 6-9. Facts recognized by the State of Colombia in its brief received on August 4, 2009, p. 27.

¹⁰ Initial Petition received on July 29, 2005, pp. 6-9 and Annex 10, Medical Reports of Luis Gonzalo Vélez Restrepo. Facts not denied by the State of Colombia.

¹¹ Initial Petition received on July 29, 2005, Annex 6, Vélez Video, minute 10:00 and following, and minute 11:00 and following.

¹² Initial Petition received on July 29, 2005, Annex 6, Vélez Video, minute 6:15 and following and minute 12:15 and following; Annex 8, "Trouble for Blows to Press Freedom", *El Mundo*, August 31, 1996; Annex 15, "Agreement in Caquetá", *El País*, August 31, 1996.

¹³ State's brief received on August 4, 2009, p. 4.

¹⁴ Initial Petition received on July 29, 2005, pp. 12-16

¹⁵ Initial Petition received on July 29, 2005, pp. 12-16.

¹⁶ Initial Petition received on July 29, 2005, pp. 16.

military courts in September 1996, and after making a statement to the Procurator General's Office in the second half of 1997.¹⁷

87. The petitioners filed complaints about these acts before the State authorities on various occasions. On September 11, 1996, the first time that men came to the Vélez Román family home claiming to be from the Procurator General of the Nation's Office, the Chief Editor of Colombia 12:30 notified the Attorney General about this incident.¹⁸ In October 1996, Mr. Vélez and his wife said they informed the Procurator General of the Nation and the National Public Prosecutor's Office they were receiving threats on a daily basis.¹⁹ On August 27, 1997, Mr. Vélez testified before the National Public Prosecutor on the threats he received as from August 29, 1996 until February 1997.²⁰ On September 29, 1997, after the threats resumed, the Colombian Commission of Jurists brought Mr. Vélez and his family's situation of risk to the attention of the Procurator General of the Nation and the Presidential Council for Human Rights.²¹ On October 3, 1997, Mr. Vélez visited the COPDH to reiterate his complaints.²² Mr. Vélez also had a meeting with the COPDH and with the Interior Ministry after the attempted kidnapping on October 6, 1996. At this point, the State provided him with protection given the seriousness of the complaints.²³

88. The State of Colombia argued that "the evidence adduced by Mr. Vélez to show that these threats occurred [...] are not decisive or sufficient to show the existence of the alleged threats and intimidation".²⁴ In this respect, the IACHR points out that the international protection of human rights should not be confused with the criminal justice system, and recalls that the standards of proof are less formal than those which exist in the domestic legal systems.²⁵ International tribunals have ample means to examine and evaluate evidence, in accordance with the rules of logic and based on experience, without being subject to the rules of assessed evidence.²⁶ Circumstantial evidence, indications and presumptions may be used, so long as conclusions consistent with the facts may be inferred from them.²⁷ In this case, the IACHR makes the corresponding determinations, observing, according to its practice, that the evidence, *inter alia*, the statements, coincide with each other, and that there are other pieces of evidence supporting them, and in

¹⁷ Initial Petition received on July 29, 2005, pp. 13-14.

¹⁸ Initial Petition received on July 29, 2005, p. 12; Annex 30, Hans Sarmiento's Letter, Chief Editor, *Noticias Colombia* Program, to Dr. Ramón Alberto Puentes, National Director of Special Investigations, Procurator General of the Nation's Office, September 11, 1996.

¹⁹ Initial Petition received on July 29, 2005, p. 13.

²⁰ Petitioners' Brief received on September 8, 2010, Annex 2, National Public Prosecutor, Statement of Luis Gonzalo Vélez Restrepo, August 27, 1997.

²¹ See Petitioners' Brief received on October 4, 2006, Annex, Procurator General of the Nation, Human Rights Unit of the National Department of Special Investigations, October 10, 1997. See Petitioners' Brief received on September 8, 2010, Annex 5, President's Office, Department for Human Rights, Letter to Gustavo Gallon in *sua sponte* reply of September 29, 1997, October 14, 1997.

²² Initial Petition received on July 29, 2005, p. 15. Fact recognized by the State in its brief received on August 4, 2009, p. 11.

²³ Initial Petition received on July 29, 2005, p. 15. Fact recognized by the State in its brief received on August 4, 2009, p. 11. See also Petitioners' Brief received on September 8, 2010, Annex 6, Interior Ministry, General Department Special Administrative Unit for Human Rights, letter to the Foreign Relations Ministry, November 29, 1997.

²⁴ State's brief received on August 4, 2009, p. 10. See also p. 12.

²⁵ Cf. I/A Court H.R., *Case of Godínez Cruz v Honduras*. Merits. Judgment of January 20, 1989. Series C No. 5, paras. 134 and 140.

²⁶ Cf. I/A Court H.R., *Case of Perozo et al. v Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 195, para.112

²⁷ Cf. I/A Court H.R., *Case of Perozo et al. v Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 195, para.112.

general, that the evidence presented is sufficient, varied, apt, trustworthy and relevant to demonstrate the facts that are the object of this analysis.²⁸

89. In relation to the death threats, acts of harassment and attempted kidnapping alleged in the present case, the IACHR observes that among the pieces of evidence submitted by the petitioners are: the statements of Mr. Vélez, of Mrs. Román, and of one of Mr. Vélez's co-workers²⁹; a letter sent to the Procurator General of the Nation's Office by Mr. Vélez's employer³⁰; a copy of a written threat;³¹ State documents certifying approval of protective measures for the Vélez Román family;³² and a decision of the Procurator General's Office that registers as a "fact" the harassment by armed individuals who came to Mr. Vélez's home on September 24, 1997.³³ The Commission also observes that the State has acknowledged providing protection for the Vélez Román family beginning in October 1997, and having initiated disciplinary and criminal proceedings based on the complaints about the threats to the family and Mr. Vélez's attempted kidnapping.³⁴ The respective criminal investigations have not been completed and are still pending 14 years after the first complaints. In consequence, the IACHR considers that the evidence is varied and consistent and in accordance with the abovementioned standard of proof in the Inter-American system, concludes that after August 29, 1996, Mr. Vélez and his family suffered a series of threats and acts of harassment culminating in an attempted kidnapping on October 6, 1997.

90. The Commission also considers that there is sufficient evidence to conclude that these acts are linked to the attack suffered by Mr. Vélez on August 29, 1996, and with his subsequent actions aimed at propelling the investigation and punishment of those responsible for the attack. In effect, as explained below, this conclusion is not only reasonable in light of various pieces of evidence, but also that there is no alternative hypothesis to be drawn from the file of the case that might explain the threats and acts of harassment culminating in the actions of the State of Colombia itself so that the journalist could leave the country. In addition, the Commission considers it reasonable to presume that the threats, acts of harassment and the attempted kidnapping originated from state agents involved in the attack against Mr. Vélez, a presumption that has not been overcome by the State. In this respect, it is relevant to mention that the Procurator General's Office itself considered that the threats against Mr. Vélez, as well as the attempted kidnapping, were motivated by his profession, specifically mentioning his filming of the peasants' coca march in

²⁸ Cf. I/A Court H.R., *Case of Perozo et al. v Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 195, para.113.

²⁹ Initial Petition received on July 29, 2005, Annex 1, Sworn statement of Mr. Vélez Restrepo; Annex 2, Sworn Statement of Mrs. Román Amariles. Petitioners' Brief received on September 8, 2010, Annex 2, National Public Prosecutor's Office, Statement of Luis Gonzalo Vélez Restrepo, August 27, 1997; Annex 4, Procurator General of the Nation's Office, National Department of Special Investigations, Human Rights Unit, Statement of Eduin Yesid Cristancho Merchan, October 17, 1997; Annex 8, Procurator General of the Nation's Office, National Department of Special Investigations, Antioquia Section, Statement of Aracelly Román Amariles, February 2, 1998.

³⁰ Initial Petition received on July 29, 2005, Annex 30, Hans Sarmiento's Letter, Chief Editor, *Noticias Colombia* Program, to Dr. Ramón Alberto Puentes, National Director of Special Investigations, Procurator General of the Nation's Office, September 11, 1996.

³¹ Initial Petition received on July 29, 2005, Annex 37, written threat received by Mr. Vélez on October 5, 1997.

³² Initial Petition received on July 29, 2005, Annex 35, Letter of Luis Manuel Lasso Lozano, Case Coordinator, Office of the Human Rights Presidential, to Raúl Hernández, July 6, 1998; Annex 36, Evidence of Submission, Interior Ministry, Office of the General Director of the Special Administrative Human Rights Unit, Petitioners' Brief received on September 8, 2010; Annex 6, letter to Foreign Relations Ministry, November 29, 1997.

³³ Petitioners' Brief received on October 4, 2006, Annex, Procurator General of the Nation, Inspectorate, automatic archiving, filing No. No. 030-54410/2001, May 3, 2002.

³⁴ State's brief received on August 4, 2009, p. 10. See also p. 11, 20.

Caquetá³⁵. It also observed that "those who could be most interested in harassing and threatening Mr. Vélez and his family are those individuals who attacked him during the acts of violence that occurred in the Morelia-Caquetá Municipality on August 29, 1996."³⁶ This analysis is also supported both by the content of the threats themselves³⁷ as well as coincidence in time between the worsening of the threats and Mr. Vélez's contributions to the judicial and disciplinary proceedings. In addition, contemporary published documents record that at that time the Colombian military forces were fiercely opposed to investigations against their own members and in some cases they undertook action, including threats and attacks, directed at obstructing these procedures.³⁸ Finally, the Commission observes that the criminal investigation with respect to these acts of harassment are still in a preliminary stage without having clarified the facts, and points out that the State cannot shelter behind the negligence and ineffectiveness of its own criminal investigation.³⁹ Based on these considerations, the IACHR concludes that the threats, acts of harassment and the attempted kidnapping suffered by the petitioners was linked to the attack suffered by Mr. Vélez on August 29, 1996, and his subsequent efforts to obtain justice, and emanated from Colombian state agents.

The effects on Mr. Vélez and his family

91. The threats and acts of harassment against Mr. Vélez and his family that began in September 1996 have caused profound effects on the lives of the petitioners, forcing them to leave their home, to hide, to abandon daily work and experience a difficult economic situation, as well as the deep and lasting feelings of fear and anxiety generated by being the objects of constant death threats.⁴⁰ In addition, Mr. Vélez experienced strong professional pressure to censure his work and withdraw his legal complaints against the Army, and was forced to withdraw from the group of reporters with access to sources of military news.⁴¹

92. On October 9, 1997, based on the abovementioned threats and acts of harassment, and above all the attempted kidnapping on October 6, 1997, Mr. Vélez was forced to leave

³⁵ Petitioners' Brief received on October 4, 2006, Annex, National Department for Special Investigations, Human Rights Unit, Procurator General of the Nation's Office, Evaluation Report on Preliminary Inquest D.H.I.E., 125/98, July 10, 1998.

³⁶ State's brief received on August 4, 2009, p. 47. Petitioners' Brief received on October 4, 2006, Annex, Procurator General's Office, Inspectorate, automatic archiving, filing No. No. 030-54410/2001, May 3, 2002.

³⁷ See Initial Petition received on July 29, 2005, p. 16 and Annex 37, written threat received by Mr. Vélez on October 5, 1997, saying "Mr. Vélez: toads get squashed". The petitioners state that the word "toads" refers to "informants"; p.13 and Annex 1, Sworn Statement of Mr. Vélez Restrepo, according to which he received a threat stating "You have the power of information, we have the power of guns." See also Petitioners' Brief received on September 8, 2010, Annex 2, General Public Prosecutor of the Nation, Statement of Luis Gonzalo Vélez Restrepo, August 27, 1997, "in the calls they told me that if I wasn't dead yet, they would treat me like a toad".

³⁸ See IACHR, *Third Report on the Human Rights Situation in the Republic of Colombia*, OEA/Ser.L/V/II.102 Doc. 9 rev. 1, February 26, 1999, Chapter V, para.67, "Those responsible for abusing human rights sometimes gain impunity by threatening or attacking those who might contribute to punishing them." See also, U.S. Department of State, *Colombia Country Report on Human Rights Practices for 1997*, available at: http://www.state.gov/www/global/human_rights/1997_hrp_report/colombia.html, January 30, 1998, "Although top military leaders hailed the cases brought against guerrilla leaders, they strongly objected, and in some cases tried to obstruct, prosecution of cases against members of the armed forces and of paramilitary organizations". See also, Human Rights Watch, *War without Quarter: Colombia and International Humanitarian Law*, 1998, Chapter 3, available at: <http://www.hrw.org/spanish/reports/colombia/>, "The civil investigators charged with cases relating to the armed forces continue to be harassed and threatened, and some have been forced to quit their posts (or leave the country)."

³⁹ Cf. I/A Court H.R., *Case of Kawas Fernández v Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009, Series C No. 196, para.97.

⁴⁰ Initial Petition received on July 29, 2005, p. 14. A fact not denied by the State.

⁴¹ Initial Petition received on July 29, 2005, p. 14. A fact not denied by the State.

Colombia and seek asylum in the United States.⁴² Mr. Vélez had the assistance of the Colombian State for this purpose.⁴³ On July 30, 1998, Mr. Vélez was granted political asylum in the United States of America.⁴⁴ Between October 9, 1997 and September 12, 1998, he was forced to remain separated from this family.

93. In effect, while Mr. Vélez was waiting for a decision on his asylum application in the United States and while he was trying to find work to help his family, his wife Aracelly Román Amariles and children Mateo and Juliana Vélez Román remained in Colombia. The members of the family had to abandon their home in Bogotá and move to Medellín, where they stayed for almost one year in fear and in a precarious economic situation that forced Mrs. Román to send her son Mateo to live with another family member, causing deep psychological effects.⁴⁵ Finally, on August 13, 1998, they also obtained political asylum in the United States and were able to be reunited with Mr. Vélez on September 12, 1998.⁴⁶ The family has lived in the United States since then for fear of returning to Colombia.⁴⁷

94. The Vélez Román family has been profoundly affected by the harassment they suffered, by the family separation they lived through for almost one year, and by their exile in the United States. All the members of the family suffer from tension and anxiety and have had to seek psychological help.⁴⁸ The professional lives of Mr. Vélez, who is separated from his career as a journalist, and of Mrs. Román, who had to abandon her studies, have been affected, with negative consequences for the economic situation of the whole family group.⁴⁹ The members of the family have suffered from the separation of their families in Colombia, especially their elderly parents.⁵⁰ Mr. Vélez's mother died in December 2000 without his being able to travel to Colombia either before or after her death.⁵¹

Procedural Steps

95. In relation to the acts of aggression suffered by Mr. Vélez on August 29, 1996, and the subsequent threats against him and his family, various judicial and disciplinary proceedings were initiated at the domestic level.

96. Based on the August 29, 1996, attack and the public circulation of the evidence obtained by the journalist Vélez, Brigadier General Néstor Ramírez Mejía, in his position as Commander of the 12th Army Brigade, disciplined Non-commissioned officer Second Class William

⁴² See Initial Petition received on July 29, 2005, p. 16; Petitioners' Brief received on November 7, 2008, p. 15. A fact partially conceded by the State of Colombia in its Brief received on August 4, 2009, p. 11.

⁴³ Petitioners' Brief received on November 7, 2008, p. 15. A fact conceded by the State of Colombia in its Brief received on August 4, 2009, p. 29.

⁴⁴ Initial Petition received on July 29, 2005, Annex 42, Letter of Patricia A. Trubiano, Director of the Asylum Office, United States Immigration and Naturalization Service, to Luis Gonzalo Vélez Restrepo, July 30, 1998.

⁴⁵ Initial Petition received on July 29, 2005, p. 17. A fact not denied by the State.

⁴⁶ Initial Petition received on July 29, 2005, p. 18; Annex 44, United States Immigration and Naturalization Service, action notification, August 14, 1998. A fact not denied by the State.

⁴⁷ Petitioners' Brief received on November 7, 2008, pp. 16-17.

⁴⁸ Initial Petition received on July 29, 2005, pp. 18-19; Annex 32, letter of psychiatrist Dr. Constanza Velásquez. A fact not denied by the State.

⁴⁹ Initial Petition received on July 29, 2005, pp. 18-19; Petitioners' Brief received on November 7, 2008, p. 14-16. A fact not denied by the State.

⁵⁰ Petitioners' Brief received on November 7, 2008, p. 17. A fact not denied by the State.

⁵¹ Petitioners' Brief received on November 7, 2008, p. 17. A fact not denied by the State.

Moreno Pérez and Non-commissioned officer First Class José Fernando Echevarría Calle with serve reprimands⁵² in Resolutions Nos. 011 and 012 of August 30, 1996, respectively.⁵³ With regard to Non-commissioned officer Second Class William Moreno Pérez, the disciplinary proceedings found that he "ordered a soldier under his command to confiscate cameraman Luis González Vélez's video camera."⁵⁴ With regard to Non-commissioned officer First Class José Fernando Echevarría Calle, the disciplinary proceedings mention that "from the images transmitted by the television news it appears that an attempt was made to take a video cassette from an accredited media cameraman," and found that Echevarria "physically attacked one of the people participating in the disturbances against the Security Forces, who was in a defenseless position," although it does not refer to any specific act committed against Mr. Vélez.⁵⁵ According to a Report of the Procurator General of the Nation, the disciplinary punishments imposed were appealed;⁵⁶ however, the State did not provide the IACHR with the result of these proceedings.

97. In relation to these same facts, the National Public Prosecutor initiated *ex officio* a criminal investigation on August 30, 1996. On September 19, 1996, this investigation was sent to the criminal military court.⁵⁷ This investigation was archived by the criminal military court on October 3, 1997, via a writ of *nolle prosequi*, in concluding that individual responsibility had not been clearly established.⁵⁸ During the proceedings in the case, the IACHR was informed that the case file of the proceedings of the criminal military court had been lost, rendering its transmission to the IACHR impossible.⁵⁹ Nevertheless, on June 2, 2010, the State sent the abovementioned October 3, 1997, resolution, in which the 122nd Criminal Military Instructing Judge ordered a writ of *nolle prosequi* in favor of Non-commissioned officer First Class José Fernando Echevarría Calle, Non-commissioned officer First Class Luis Alberto Cruz Guatame, and soldier Danilo Urzolo Avilés, with respect to the events of August 29, 2006. This decision describes the injuries suffered by Mr. Vélez, without mentioning the particular circumstances giving rise to the injuries nor to the fact that the aggression was recorded.⁶⁰ The Military Instruction Judge found that "no evidence was offered allowing the individualization of responsibility for the facts under investigation, the only conclusion to be drawn is that relating to the existence of mutual acts of aggression between the participants

⁵² Reports at the time indicate that the "severe reprimand" of a member of the military forces would consist of a letter of admonishment placed in his career file. See Human Rights Watch, "The 'Sixth Division': Relations between the Military and Paramilitary and US policy in Colombia" (2001), Ch. 3, available at: http://www.hrw.org/spanish/Reports/2001/sexta_division4.html

⁵³ State's brief received on August 4, 2009, pp. 8, and 36. Petitioners' Brief received on October 4, 2006, Annex, Colombian Armed Forces, 12th Brigade, Decision No. 011 of August 30, 1996. State's brief received on June 2, 2010, Annex, Colombian Armed Forces, 12th Brigade, Decision No. 011 of August 30, 1996; Annex, Colombian Armed Forces, 12th Brigade, Decision No. 012 of August 30, 1996.

⁵⁴ State's brief received June 2, 2010, Annex, Colombian Armed Forces, 12th Brigade, Decision No. 011 of August 30, 1996.

⁵⁵ State's brief received on June 2, 2010, Annex, Colombian Armed Forces, 12th Brigade, Decision No. 012 of August 30, 1996.

⁵⁶ See, Petitioners' Brief received on October 4, 2006, Annex, National Department for Special Investigations, Human Rights Unit, Procurator General of the Nation's Office, Evaluation Report on Preliminary Inquest D.H.I.E., 125/98, July 10, 1998.

⁵⁷ State's brief received on August 4, 2009, p. 38.

⁵⁸ State's brief received on August 4, 2009, p. 38.

⁵⁹ Petitioners' Brief received on October 4, 2006, Annex, Military Court Judge No. 67, Petition in Reply No. 0605/MDN-DEJUM-J67IPM-BICAZ-742, June 22, 2006, stating with respect to the case file "the non-commissioned officer in charge of the archiving and correspondence made plain that all the documents existing prior to 2002 - the date on which peace talks with the FARC ended - were left in archive storage at the disposal of those staying at the Cazadores Battalion for the duration of the *zona de distencion* and when it was retaken as a military base, there was a fruitless attempt to rebuild the case file."

⁶⁰ State's brief received on June 2, 2010, Annex, Colombian Armed Forces, Decision of 122nd Judge of the Military Criminal Court, San Vicente del Caguán (Caquetá), October 3, 1997.

in the demonstration and the Security Forces."⁶¹ In consequence, the criminal military justice issued a writ of *nolle prosequi*, concluding that "it is not possible to start criminal proceedings and bring the investigation to trial until an active subject has been determined."⁶²

98. Finally, based on the facts of August 29, the Procurator General of the Nation started a disciplinary investigation against Brigadier General Ramírez Mejía. On May 27, 1998, the Procurator General ordered the archiving of the investigation for lack of merits, concluding that Brigadier General Ramírez Mejía had not been involved in irregular behavior, since he had issued precise orders to his subordinates on the prohibition of deploying methods that might violate the rights of individuals.⁶³

99. With regard to the threats, acts of harassment and attempted kidnapping that occurred after August 29, 1996, various proceedings were also initiated. The National Department of Special Investigations for the Human Rights Unit of the Procurator General of the Nation's Office recommended opening an investigation against Non-commissioned officer José Fernando Echevarria Calle, based on an analysis of the possible inducement for the threats and the similarity between the oral account constructed from Aracely Román testimony and a photo of Non-commissioned officer Echevarria Calle⁶⁴. Effectively, the 2nd District Attorney started a disciplinary procedure against Mr. Echevarria Calle in relation to the threats against Mr. Vélez and his family, but archived it for lack of merits since it was considered that there was no conclusive proof of the accused's responsibility in respect to the threats.⁶⁵ For its part, the Inspectorate of the Procurator General initiated a disciplinary investigation for the alleged links between officials of this entity and the threats against Mr. Vélez. It was ordered to be archived for lack of merits, concluding that the evidence did not allow the conclusion to be drawn that employees of the Procurator General of the Nation's Office had irregularly shown up at Mr. Vélez's home to enquire into his schedule and movements.⁶⁶

100. The 13th Sectional Prosecutor of Belén de los Andaquíes (Caquetá) is currently undertaking the corresponding criminal investigation in order to identify, try and punish those responsible for the threats, acts of harassment and attempted kidnapping of Mr. Vélez⁶⁷. As of at least June 2009, this investigation has been at a preliminary investigation stage.⁶⁸ The last procedural step reported to the IACHR was the receipt of Mr. Vélez's lawyer's testimony on November 26, 2009.⁶⁹

⁶¹ State's brief received on June 2, 2010, Annex, Colombian Armed Forces, Decision of 122nd Judge of the Military Criminal Court, San Vicente del Caguán (Caquetá), October 3, 1997.

⁶² State's brief received on June 2, 2010, Annex, Colombian Armed Forces, Decision of 122nd Judge of the Military Criminal Court, San Vicente del Caguán (Caquetá), October 3, 1997.

⁶³ State's brief received on August 4, 2009, pp. 37-38. State's brief received on June 2, 2010, Annex, Procurator General of the Nation's Office, Case File No. 001-3422, Decision of May 27, 1998.

⁶⁴ Petitioners' Brief received on October 4, 2006, Annex, National Department for Special Investigations, Human Rights Unit, Procurator General of the Nation's Office, Evaluation Report on Preliminary Inquest D.H.I.E., 125/98, July 10, 1998.

⁶⁵ State's brief received on August 4, 2009, p. 47. Petitioners' Brief received on October 4, 2006, Annex, Procurator General of the Nation's Office, Second Attorney General of the District of Bogotá, Final Archiving Case File No. 143-17639/98, August 27, 2006.

⁶⁶ State's brief received on August 4, 2009, p. 47. Petitioners' Brief received on October 4, 2006, Annex, Procurator General of the Nation's Office, Inspectorate, automatic archiving, filing No. No. 030-54410/2001, May 3, 2002.

⁶⁷ State's brief received on August 4, 2009, p. 47.

⁶⁸ State's brief received on August 4, 2009, p. 47.

⁶⁹ State's brief received on August 4, 2009, p. 49. Petitioners' Brief received on September 8, 2010, Annex 15 b), Public Prosecutor of the Nation's Office, Statement of Raúl Hernández Rodríguez to the Judicial Police, November 26, 2009.

101. Finally, in the contentious administrative courts, in 1998, the Vélez Román family began a procedure for preliminary administrative conciliation before the Contentious Administrative Court of Cundinamarca, based on the events of August 29, as well as on the subsequent threats.⁷⁰ The petitioners rejected the offer of reparations, equal to an indemnity of approximately 1,200 US dollars, made by the State.⁷¹

IV. ANALYSIS OF LAW

102. The Commission will analyze whether in the present case there has been a violation of Articles 5 (right to humane treatment), 13 (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 (judicial guarantees) and 25 (judicial protection) of the American Convention, in relation to Articles 1.1 and 2 of the said Treaty.

103. The Commission will not examine Articles 4, 11, and 22.5 of the American Convention, violations of which were alleged by the petitioners at the merits stage, taking into account that in its Admissibility Report No. 47/08, the Commission did not admit the present case in respect to the above Articles.⁷²

A. Right to Humane Treatment (Article 5 in relation to Article 1.1 of the American Convention)

104. Article 5 of the American Convention provides that:

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.

105. Both the Inter-American Commission and the Inter-American Court of Human Rights ("Court" or "Inter-American Court"), as well as other tribunals and international authorities, have found that there is a universal prohibition both against torture as well as other cruel, inhuman or degrading treatment or punishment, independently of any legislation or declaration.⁷³

106. In the present case, the IAHCR must consider, in the first place and in light of the proven facts, if the attack suffered by Mr. Luis Gonzalo "Richard" Vélez Restrepo on August 29, 1996, violated the State of Colombia's obligations enshrined in Article 5 of the Convention.

107. It is worth reiterating that the State has acknowledged that the attack suffered by Mr. Vélez was perpetrated by members of the National Army. The State does not deny that this aggression threatened Mr. Vélez's physical integrity; however, it argued that it did not violate Article 5 of the Convention. In particular, it alleged that the State acted in a preventive way to avoid any excess of the Security Forces at the time of controlling the demonstration and responding to acts of

⁷⁰ State's brief received on August 4, 2009, p. 44. Initial Petition received on July 29, 2005, p. 23; Annex 20, Request for Preliminary Administrative Settlement for the personal injuries and harassment of Luis Gonzalo Vélez et al.

⁷¹ State's brief received on August 4, 2009, p. 44. Initial Petition received on July 29, 2005, p. 23.

⁷² IACHR, Report No. 47/08 (Admissibility), Luis Gonzalo "Richard" Vélez Restrepo and Family, Colombia, July 24, 2008, para.91.

⁷³ Cf. I/A Court H.R., *Case of Caesar v Trinidad and Tobago*. Merits, Reparations and Costs. Judgment March 11, 2005. Series C No. 123, para.70; IACHR, Report No. 117/09 (Merits) Case 12.228, Alfonso Martín del Campo Dodd, Mexico, November 12, 2009, para.35.

violence by the demonstrators. It also alleged that it acted immediately and effectively to avoid greater damage and to investigate and punish those state agents responsible as direct perpetrators of the attack.⁷⁴

108. The Commission observes that as established by the Inter-American Court:

The State has a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation⁷⁵.

109. The Commission also reiterates that the international responsibility of the State arises immediately when the internationally illegal act attributed to it is committed, although, as the State of Colombia has correctly pointed out, it can only be demanded once the State has had the opportunity to correct it by its own means.⁷⁶

110. The Commission observes that in the case under review there is an abuse of public force, which led to the journalist's complete subjection to the *de facto* power of members of the Army who violently subdued him until rendering him defenseless, and in this state, indiscriminately beat him, causing him serious injuries. All the above, with the goal of preventing him from carrying out his work as a journalist and from denouncing the excessive use of force that was unfolding. The Commission considers that the attacks by state agents against Mr. Vélez constitute a violation of Articles 5.1 and 5.2,⁷⁷ and it must decide whether this violation is attributable in the international sphere to the State of Colombia, or whether, on the contrary, the State acted reasonably to prevent the violation, punish those responsible and make reparations to the victim.

111. In this respect, the Commission considers it sufficient to observe, without entering into a detailed analysis of the judicial proceedings undertaken --developed below in the section on Articles 8 and 25 of the Convention-- that the criminal justice system failed to render results. As will be explained *infra*, the criminal proceedings were undertaken in an inadequate jurisdiction --the military courts-- and did not accomplish the identification or punishment of any of those responsible for the August 29, 1996, attack, such that the only punishment imposed for these serious acts was the disciplinary sanction of a "severe reprimand" applied to two Army non-commissioned officers. In these circumstances, Colombia's position that there is no international responsibility because the State investigated and punished those responsible for the violation is untenable. On the contrary, the attack committed on Mr. Vélez by uniformed agents of the State of Colombia has not been duly clarified, punished or compensated. The Commission therefore declares that the State of Colombia has violated Articles 5.1 and 5.2 of the Convention, in relation to Article 1.1, with respect to the acts of aggression suffered by Mr. Vélez on August 29, 1996.

112. However, the Commission must also consider whether the State has violated Article 5 in relation to the acts of harassment, threats and attempted kidnapping suffered by Mr. Vélez and

⁷⁴ See State's brief received on August 4, 2009, p. 18.

⁷⁵ Cf. I/A Court H.R., *Case of Velásquez Rodríguez v Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para.174.

⁷⁶ Cf. I/A Court H.R., *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004. Series C No. 110, para.75.

⁷⁷ Cf. I/A Court H.R., *Case of Tibi v Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 7, 2004. Series C No. 114, para.149; *Case of Servellón García et al. v Honduras*. Merits, Reparations and Costs. Judgment of September 21, 2006. Series C No. 152, para.99; *Case of the Miguel Castro Castro Prison v Peru*. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, paras.320 and 333.

his family, comprised of his wife Aracelly Román Amariles and his children Mateo and Juliana Vélez Román.

113. As already established, after the August 29, 1996, attack, Mr. Vélez and his family suffered a number of threats and acts of harassment culminating in the attempted kidnapping on October 6, 1997. These events brought about substantial changes in their way of life and profound feelings of tension and fear among the family members. In the *Gutiérrez Soler* case, the Inter-American Court considered that "a campaign of threats, harassment, surveillance, arrests, searches and attempts against their lives and physical integrity" of the victim and his family which produced "constant fear, distress and family separation" constituted a violation of Article 5.1 of the Convention.⁷⁸ The Commission considers that, in accordance with this interpretation, the repeated threats in the present case breached the family members' right to moral and mental integrity, also taking into account that the threats were aimed at preventing Mr. Vélez from seeking justice.⁷⁹ The Commission has established that there are sufficient indications to conclude that the threats, acts of harassment and attempted kidnapping originated from agents of the State of Colombia. Consequently, in relation to these facts, the State violated Article 5.1 of the Convention to the prejudice of Mr. Vélez and his family.

114. Without prejudice to the direct responsibility of the State for the commission of these acts, the IACHR proceeds to examine whether the State has fulfilled its duty of guarantee⁸⁰ in the present case, in particular its obligation to reasonably prevent the threats, acts of harassment and the attempted kidnapping, and to investigate these facts in a serious manner.⁸¹

115. With respect to the protection provided to Mr. Vélez, the State argues that there is no proof of the complaints allegedly filed by the petitioners, and that once the threats were brought to the attention of the competent authorities in October 1997, the State immediately provided Mr. Vélez and his family with alternative means of protection.⁸²

116. In this regard, the Commission reiterates the consistent doctrine of the Inter-American system, according to which it is in principle the State that has control of the means to clarify acts occurring within its territory and, as such, its defense cannot be based on the fact that the claimant finds it impossible to produce evidence which, in many cases, cannot be obtained without the cooperation of the state authorities themselves.⁸³ In this case, there is documentary evidence of the complaints made to the Procurator General of the Nation in September 1996⁸⁴ and

⁷⁸ Cf. I/A Court H.R., *Case of Gutiérrez Soler v Colombia*. Merits, Reparations and Costs. Judgment of September 12, 2005. Series C No. 132, paras.56-57. See also, I/A Court H.R., *Case of Tibi v Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 7, 2004. Series C No. 114, para.147; 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, para.226.

⁷⁹ Cf. I/A Court H.R., *Case of Manuel Cepeda Vargas v Colombia*. Preliminary Objections, Merits and Reparations. Judgment of May 26, 2010. Series C No. 213, para.195.

⁸⁰ Cf. I/A Court H.R., *Case of Velásquez Rodríguez v Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para.174., para.182.

⁸¹ Cf. I/A Court H.R., *Case of Velásquez Rodríguez v Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para.174., para.177; *Case of Manuel Cepeda Vargas v Colombia*. Preliminary Objections, Merits and Reparations. Judgment of May 26, 2010. Series C No. 213, para.125.

⁸² State's brief received on August 4, 2009, p. 11.

⁸³ Cf. I/A Court H.R., *Case of Velásquez Rodríguez v Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, paras.135-136; I/A Court H.R., *Case of Ríos et al. v Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 194, para.98.

⁸⁴ Initial Petition received on July 29, 2005, p. 12; Annex 30, Hans Sarmiento's Letter, Chief Editor, *Noticias Colombia* Program, to Dr. Ramón Alberto Puentes, National Director of Special Investigations, Procurator General of the Nation's Office, September 11, 1996.

September 1997,⁸⁵ before the National Public Prosecutor in August 1997,⁸⁶ and before the COPDH in September 1997⁸⁷ and October 1997,⁸⁸ with respect to the threats and acts of harassment against Mr. Vélez and his family. The State has also recognized that there is an investigation with the Public Prosecutor for the said threats and for the attempted kidnapping on October 6, 1997.⁸⁹ The State has not submitted copies of the case file of this investigation, despite the express request of the IACHR,⁹⁰ and therefore the Commission has not been in a position to examine the dates of the complaints that gave rise to the opening of the said investigation and must therefore adopt the corresponding presumptions.⁹¹ The Commission thus finds that it has been established that, since September 1996 and until Mr. Vélez left the country in October 1997, the petitioners repeatedly informed various state authorities of the threats and acts of harassment they were suffering.

117. The Inter-American Court has established that States' obligations to adopt prevention and protection measures are conditioned on the awareness of a situation of real and imminent danger for a specific individual or group of individuals and on the reasonable possibilities of preventing or avoiding that danger.⁹² In this respect the Commission observes that, in the present case, the situation of harassment and threats against Mr. Vélez and his family was known to the State of Colombia since September 11, 1996, when there was a complaint that four men, who claimed to belong to the Procurator General of the Nation's Office without providing identification, came to Mr. Vélez's home and questioned his wife about his schedule and activities. Threats and acts of harassment continued after this incident that were duly denounced by the petitioners. The Commission must therefore determine whether these complaints were sufficient to activate the obligation of State protection.

118. The Commission considers it relevant to mention in this respect the Colombian Constitutional Court itself, in interpreting "the right to personal security, as a right to receive state protection in the face of extraordinary risks which the individual should not have the legal duty to bear", has considered that the circumstances that allow reliance on this right "essentially depend on the case at hand, and must be evaluated as a whole, from a holistic perspective, to establish the nature, reach, strength and duration of the risks threatening each individual."⁹³ From a similar holistic perspective and applying the abovementioned criteria of the Inter-American System, the Commission considers that the complaints lodged before the competent authorities beginning on September 11, 1996, over the threats against the Vélez Román family ought to have immediately activated a risk analysis by the State and the adoption of the corresponding protective measures,

⁸⁵ See Petitioners' Brief received on October 4, 2006, Annex, Procurator General of the Nation, Human Rights Unit of the National Department of Special Investigations, October 10, 1997.

⁸⁶ Petitioners' Brief received on September 8, 2010, Annex 2, National Public Prosecutor's Office, Statement of Luis Gonzalo Vélez Restrepo, August 27, 1997.

⁸⁷ See Petitioners' Brief received on September 8, 2010, Annex 5, Council for Human Rights of the Presidency of the Republic, Letter to Gustavo Gallon in *sua sponte* reply of September 29, 1997, October 14, 1997.

⁸⁸ Initial Petition received on July 29, 2005, Annex 35, Letter of Luis Manuel Lasso Lozano, Case Coordinator, Office of the Presidential Advisor for Human Rights, to Raúl Hernández, July 6, 1998.

⁸⁹ State's brief received on August 4, 2009, p. 47.

⁹⁰ Letter of the IACHR to the State of Colombia, Case 12.658, April 30, 2010.

⁹¹ *I/A Court H.R., Case of González et al. ("Campo Algodonero") v Mexico, Decision of the Inter-American Court of Human Rights, January 19, 2009, para. 59.* s

⁹² Cf. *I/A Court H.R., Case of the Pueblo Bello Massacre v Colombia*. Merits, Reparations and Costs. Judgment of January 31, 2006. Series C No. 140, para.123. See also, IACHR, Application before the Inter-American Court in the case *Campo Algodonero (Cases 12.496, 12.497 and 12.498) against the United States Mexicans*, November 4, 2007, para.159; Report No. 24/98, Case 11.287, João Canuto de Oliveira, Brazil, April 7, 1998, para.53.

⁹³ Constitutional Court of Colombia, Judgment T-1254/08, Case File T-1900262, Judge Rapporteur Manuel José Cepeda Espinosa, December 12, 2008, p. 17.

taking into account the nature of the harassment as well as the contextual elements such as the legal complaints made by Mr. Vélez regarding the events of August 29, the individuals and institutions implicated in the complaints, and the abovementioned practice of the Colombian armed forces at that time of resisting and at times obstructing investigations against them.

119. According to the State itself and in conformity with the information present in the case file, it was not until October 6, 1997, that the State adopted concrete protective measure to protect Mr. Vélez and his family.⁹⁴ The Commission therefore concludes that the State of Colombia did not adopt in a diligent manner and in good time the necessary measures to protect Mr. Vélez and his family from the threats and attacks brought to the attention of the authorities since September 11, 1996. Therefore, in light of its failure to guarantee these rights, the violation of the physical and moral integrity of Mr. Vélez and his family members is attributable to the State for omitting to implement effective means of protection despite having been notified and made aware of the risk run by the journalist and his family.

120. The State also failed to undertake an investigation that would permit the source of the threats against the Vélez Román family to be established and removed. The duty of state diligence implies that the investigation into the threats made against Mr. Vélez and his family should have been a preventive measure to stop the continuation and escalation of the threats.⁹⁵ However, the criminal investigation into these facts, as has been mentioned, remained in a preliminary investigation stage until at least June 2009.

121. Based on these considerations, the Commission finds that the State failed to fulfill its obligation to guarantee the personal integrity of the Vélez Román family by preventing and investigating the threats, acts of harassment and attempted kidnapping.⁹⁶ The Commission therefore concludes that in relation to these facts, the State of Colombia has violated Article 5 of the Convention, in relation to Article 1.1, to the prejudice of Luis Gonzalo Vélez Restrepo, Aracelly Román Amariles, and Mateo and Juliana Vélez Román.

B. Freedom of thought and Expression (Article 13 in relation to Article 1.1 of the American Convention)

122. Article 13 of the American Convention provides that:

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

[...]

3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.

[...]

⁹⁴ State's brief received on August 4, 2009, p. 11. Petitioners' Brief received on September 8, 2010, Annex 5, Human Rights Council of the Presidency of the Republic, Letter to Gustavo Gallon in *sua sponte* reply of September 29, 1997, October 14, 1997, Interior Ministry, General Department Special Administrative Unit for Human Rights, letter to Foreign Relations Ministry, November 29, 1997.

⁹⁵ I/A Court H.R., *Case of Manuel Cepeda Vargas v Colombia*. Preliminary Objections, Merits and Reparations. Judgment of May 26, 2010. Series C No. 213, para.101.

⁹⁶ Cf. I/A Court H.R., *Case of the Pueblo Bello Massacre v Colombia*. Merits, Reparations and Costs. Judgment of January 31, 2006. Series C No. 140, paras. 140-42.

123. The IACHR's Special Rapporteur on Freedom of Expression has observed that freedom of expression is a means for the exchange of information and ideas between individuals and for mass communication between human beings.⁹⁷ In this sense, the Inter-American Court has stressed that freedom of expression has an individual as well as a social dimension. The first dimension of the freedom of expression is not limited to the theoretical acknowledgement of the right to speak and write, but also encompasses the indivisible right to use any appropriate means to spread thought and cause it to reach the widest audience.⁹⁸ With regard to the second dimension of the right to freedom of expression, i.e., the social dimension, the Court has established that freedom of expression is a means for the exchange of ideas and information among individuals; it covers the right to attempt to communicate to others one's point of view, but also implies the right of everyone to be informed of opinions, stories and news of all kinds.⁹⁹

124. The full exercise of the right to express one's own ideas and opinions and to circulate the available information and the possibility of discussion in an open and unfettered way of the themes that concern all of us, is a *sine qua non* for the strengthening, functioning and preserving of democratic regimes. The formation of public opinion, well-informed and aware of its rights, citizens' control over public acts and the demands of responsibility on the part of state agents, would not be possible if this right were not guaranteed. In the same sense, its jurisprudence has stressed that the democratic purpose of freedom of expression has turned it into a necessary condition to prevent the spread of authoritarian regimes, to bring about personal and collective self-determination¹⁰⁰ and to render operative the "mechanisms of control and citizen complaint".¹⁰¹

125. In the present case, the Commission must examine whether the attack against journalist Luis Gonzalo Vélez Restrepo on August 29, 1996, as well as the subsequent threats and acts of harassment, violated Mr. Vélez's freedom of thought and expression.

126. The Commission has held that acts of aggression towards journalists with the aim of silencing them constitute violations of the victim's freedom of expression as well as of society's right to unimpeded access to information.¹⁰² Acts of aggression such as those suffered by Mr. Vélez generate fear for the recording and dissemination of certain information and ideas, to the prejudice of the unhindered circulation of opinions and views, so vital in a democratic regime. The Inter-American Court has stressed that in a democratic society "the greatest possible dissemination of news, views

⁹⁷ IACHR, *Inter-American Judicial Framework on the Right to the Freedom of Expression* OEA/Ser.L/V/II IACHR/RELE/INF. 2/09, December 30, 2009, para.14

⁹⁸ Cf. I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Articles 13 and 29 Inter-American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para.31.

⁹⁹ Cf. I/A Court H.R., *Case of Herrera Ulloa v Costa Rica*. Judgment of July 2, 2004. Series C No. 107, para.110; I/A Court H.R., *Case of Ricardo Canese v Paraguay*. Judgment of August 31, 2004. Series C No. 111, para.79; I/A Court H.R., *Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v Chile*. Judgment of February 5, 2001. Series C No. 73, para.66.

¹⁰⁰ Cf. I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Articles 13 and 29 Inter-American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5 para.70; *Case of Claude Reyes et al. v Chile*. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, para.85.

¹⁰¹ Cf. I/A Court H.R., *Case of Ríos et al. v Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 194, para.105; I/A Court H.R., *Case of Perozo et al. v Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 195, para.116.

¹⁰² IACHR, *Report on the Human Rights situation in Mexico*, September 24, 1998, para.649, p.142. See also IACHR, *Annual Report 1999*, Report N° 50/99, Case 11.739 (Héctor Félix Miranda), Mexico.

and opinions, as well as the fullest access to information by society as a whole"¹⁰³ must be guaranteed.

127. The States also have the positive obligation to guarantee the right of journalists to freely seek and distribute information. The IACHR has explained that the authorities have the duty to guarantee the protection of journalists so they can fully exercise their right to the freedom of expression.¹⁰⁴ Journalists covering public order situations or armed conflicts must be the object of special protection and assistance on the State's part, and any attack or reprisal by the authorities as a result of the coverage of these issues constitutes a violation of the right to the freedom of thought and expression.¹⁰⁵

128. The Commission has also considered that in cases of attacks against journalists or social commentators, the absence of an investigation or the administration of justice by the State breaches its international responsibility. Freedom of expression must be protected in practice by effective judicial guarantees allowing for the investigation, punishment and compensation of abuses and crimes committed against journalists by reason of the exercise of their profession.¹⁰⁶ The absence of a full investigation by the State of the murder of a journalist is especially serious due to its impact on society.¹⁰⁷ This effect can only be avoided by decisive action on the part of the State to punish all the perpetrators; the State must send a clear and unambiguous message to society, in the sense that it will punish those who resort to violence to block the free exercise of the right to the freedom of expression.¹⁰⁸

¹⁰³ Cf. I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Articles 13 and 29 Inter-American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5 para.69.

¹⁰⁴ IACHR. Report No 5/99, Case 11.739, *Héctor Félix Miranda*. Mexico. April 13, 1999; IACHR. Report No 130/99. Case 11.740. *Víctor Manuel Oropeza*. Mexico. November 19, 1999; IACHR, Annual Report 2008, OEA/Ser.L/V/II.134 Doc. 5 rev. 1, February 25, 2009, Volume III, Report of the Special Rapporteur for Freedom of Expression, Chapter IV, para.47.

¹⁰⁵ Cf. IACHR, *Inter-American Judicial Framework on the Right to the Freedom of Expression* OEA/Ser.L/V/II IACHR/RELE/INF. 2/09, December 30, 2009, paras. 193-195.

¹⁰⁶ Cf. IACHR, Annual Report 2008, OEA/Ser.L/V/II.134 Doc. 5 rev. 1, February 25, 2009, Volume III, Report of the Special Rapporteur for Freedom of Expression, Chapter IV, para.47. One of the first cases in this area was the case of the journalist Hugo Bustíos Saavedra, murdered in 1988 by a Peruvian military patrol while he was investigating two murders committed in the context of the internal conflict then affecting the country. In that case, the IACHR found that the State was responsible, inter alia, for the violation of Article 13 of the American Convention, since the State had neglected to offer the necessary protection to the journalists it knew were present in the conflict zone. In addition, it understood that the acts of violence that occurred had prevented the free exercise of the right to the freedom of expression: (i) of the murdered journalist; (ii) of another commentator who had been injured by the same patrol; (iii) of the media and journalist community who were intimidated by these types of violent acts; and (iv) of course, of society in general who were deprived of knowing issues of the utmost importance with regard to the armed conflict. For the IACHR, journalists fulfill a fundamental role in situations of armed conflict, since, at a severe risk to themselves, they are able to offer to the public independent news on what is happening. As a result, it indicated that the State must provide them the highest protection possible for them to be able to carry on exercising their right to the freedom of expression, in such a way that society's right to be adequately informed is satisfied. Report N° 38/97. Case of 10.548. *Hugo Bustíos Saavedra*. Peru. October 16, 1997. In subsequent cases, such as the case of the murdered journalist Héctor Félix Miranda, in Mexico, the IACHR was clear in pointing out that the only way to avoid the effects leading to the murder of a journalist and the failure by the State in fully investigating these acts, that leads to encouragement for the continued commission of these crimes (of chilling effects), is via rapid State action to try and punish those responsible. The same argument was sustained by the IACHR in the case of the murder of Víctor Manuel Oropeza. In this case, the IACHR found that the State was not directly responsible for the death of the journalist. However, on alleging that the latter had been the target of threats due to his publications, that there had been no efforts at protection, and that the investigation into his murder had been deficient, the IACHR found that the had been a violation of the victim's right to the freedom of expression. IACHR. Report N° 5/99 Case of 11.739. *Héctor Félix Miranda*. Mexico. April 13, 1999.

¹⁰⁷ IACHR. Report No 5/99 Case of 11.739 Héctor Félix Miranda. Mexico. April 13, 1999, para.52.

¹⁰⁸ IACHR. Report No 5/99 Case of 11.739 Héctor Félix Miranda. Mexico. April 13, 1999, para.52.

129. In the present case, it has been established that members of the Colombian National Army surrounded and physically assaulted journalist Luis Gonzalo Vélez Restrepo to prevent him from continuing to film the actions of military personnel and to confiscate the recorded material. This means that the aggressors realized that Mr. Vélez had filmed images of soldiers physically abusing defenseless demonstrators, images that were widely broadcast subsequently. The Colombian Army itself concluded that these acts of aggression constituted an "attempt against the freedom of expression".¹⁰⁹ However, the State of Colombia argued that the circumstances of the present case did not violate Article 13 of the Convention, due to the fact that the attack on Mr. Vélez did not achieve its aim of preventing the broadcasting of the material obtained by Mr. Vélez in the context of the march, thanks in part to the intervention of other members of the Security Forces who broke up the attack.

130. The Commission cannot accept the State's argument. In the present case, the State itself recognized that agents of the State of Colombia brutally attacked a journalist with the explicit goal of preventing his professional activity of finding and disseminating information of great public interest. His attackers effectively succeeded in breaking his camera and interrupting his work as a journalist, thus violating his right to seek information. Although his attackers did not succeed in preventing the broadcast of the recorded material, it is clear that the attack, by its motives and nature, represented a serious risk to the possibility of Mr. Vélez's disseminating information regarding the behavior of the armed forces in the context of the demonstration. The circumstance that the recorded material survived the attack was a matter of pure chance, a fact that cannot excuse the behavior of the state agents.¹¹⁰ The Commission therefore considers that the State of Colombia violated Article 13 of the American Convention, in relation to Article 1.1, when its agents attacked Mr. Vélez with the intention and result of impeding his work as a journalist.

131. The Commission also notes the particular seriousness of the circumstances of the attack, especially the fact that it was caused by Mr. Vélez filming the abuses committed by military personnel, abuses that led to the application of disciplinary measures against members of the Army. The Commission observes that the acts of intimidation against journalists, particularly murders and physical assaults, limit the freedom of expression not only of journalists, but of all citizens, since they produce an intimidating effect on the free flow of information. This occurs as a result of the fear generated by reporting on abuses of power, illegal activities or other irregularities against society.¹¹¹ These considerations apply in full to the attack suffered by Mr. Vélez on August 29, 2006, which, it is appropriate to reiterate, was motivated by the fact that he filmed images and subsequently reported on abuses of power by the National Army.

132. With respect to the threats, acts of harassment and attempted kidnapping suffered by Mr. Vélez, the Commission again points out that it has found the State responsible for these acts (*supra*). The Commission must now examine whether this situation constituted an additional violation of Article 13 of the Convention.

133. In this regard, the Commission observes that Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR states that:

¹⁰⁹ State's brief received on June 2, 2010, Annex, Colombian Armed Forces, 12th Brigade, Decision No. 012 of August 30, 1996.

¹¹⁰ Cf. I/A Court H.R., Case of the Massacre of *la Rochela v. Colombia*. Merits, Reparations and Costs. Judgment of May 11, 2007, Series C No. 163, paras. 126-7.

¹¹¹ 2006 Joint Declaration of the UN Special Rapporteur for Freedom of Expression, the OSCE Representative for the Freedom of the Media, the OAS Special Rapporteur for the Freedom of Expression and the Special Rapporteur of the African Commission on Human Rights and of the Peoples for the Freedom of Expression and Access to Information.

The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.

134. The IACHR has also emphasized the importance of adopting special mechanisms to protect journalists and to combat impunity for crimes committed against them, such as the special protection programs, investigatory bodies and specialized judges.¹¹²

135. In the present case, the Commission has found the State responsible for a series of threats and acts of harassment caused by the complaints Mr. Vélez lodged with respect to the aggression he suffered at the hands of the Army on August 26, 1996. These acts were done with the clear intention of silencing Mr. Vélez and making him cease his complaints, causing self-censorship and intimidation not only to Mr. Vélez but to the body of journalists covering the activities of the military forces.

136. In this sense, the IACHR has indicated that violence aimed at a person as a result of the exercise of his right to the freedom of expression, as well as the absence of a criminal investigation and punishment of the perpetrators, not only has a 'chilling effect' on the crime victim, but also a profound impact on those who intend to exercise their right to freedom of expression in the same way. In addition, the Commission has emphasized that "the absence of a complete investigation, leading to the criminal punishment of all those responsible for the murder of a journalist is equally a violation of the right to the freedom of expression, for the intimidating effect that it has on the impunity of citizens." ¹¹³ It has also observed that:

these type of crimes have an intimidating effect on other journalists, but also on other ordinary citizens, as it instills the fear of denouncing any and all kinds of offenses, abuses or illegal acts. [...]Such an effect can only be avoided by swift action on the part of the State to punish all perpetrators, as is its duty under international and domestic law. In this sense, the State [...] must send a strong message to society that there will be no tolerance for those who engage in such a grave violation of the right to freedom of expression.¹¹⁴

137. In the same sense, the Inter-American Court has maintained that violations of human rights motivated by the exercise of a certain activity intimidates other individuals who equally try to exercise it.¹¹⁵ In the case of violence and intimidation against journalists, it produces a 'chilling effect' on the free flow of information affecting not only other journalists but all ordinary citizens.¹¹⁶

¹¹² Cf. IACHR, Annual Report 2008, OEA/Ser.L/V/II.134 Doc. 5 rev. 1, January 25, 2009, Volume III, Report of the Special Rapporteur for Freedom of Expression, Chapter IV, para.50. See also IACHR, Special Rapporteur for Freedom of Expression, Press Release R41-10. In this context the IACHR has recognized the importance of the Journalists' Protection Program established in Colombia via Decree 1592 in 2000 and those that modify or supplement it, especially Decree 2816 of 2006. Cf. IACHR, Annual Report 2008, OEA/Ser.L/V/II.134 Doc. 5 rev. 1, February 25, 2009, Volume III, Report of the Special Rapporteur for Freedom of Expression, Chapter IV, para.50.

¹¹³ IACHR. Report No. 130/99. Case No. 11.740. *Victor Manuel Oropeza (Mexico)*. November 19, 1999, para.47.

¹¹⁴ IACHR. Report No. 50/99. Case 11.739. *Héctor Félix Miranda (Mexico)*. April 13, 1999, para.52; IACHR. Report No. 130/99. Case No. 11.740. *Victor Manuel Oropeza (Mexico)*. November 19, 1999, para.58.

¹¹⁵ For example, in relation to the right to association and freedom to exercise union rights, in the case *Huilca Tecse*, the Court considered that the execution of a union leader due to his militancy and his public criticism of the administration, on the one hand, violated the freedom of association of the victim himself, and on the other hand, restricted the freedom of certain persons to associate freely, without fear. See I/A Court H.R., *Case of Huilca Tecse*. Judgment of March 3, 2005. Series C No. 121, para.66.

¹¹⁶ See IACHR, *Inter-American Judicial Framework on the Right to the Freedom of Expression* OEA/Ser.L/V/II IACHR/RELE/INF. 2/09, December 30, 2009, para.179.

138. In view of the above, it is necessary to repeat that the State did not act swiftly and diligently to protect Mr. Vélez in the face of a known situation of risk, nor did it effectively investigate the threats and acts of aggression that he suffered. It was in this situation of vulnerability that Mr. Vélez suffered the attempted kidnapping that forced him to leave the country and with it, his profession as a journalist. Mr. Vélez's forced exile meant that he could not continue searching for and disseminating information about events in his country, as he had done as a cameraman covering events of great public interest. Due to the reprisals against him as a journalist, he was forced to abandon journalism. In this sense, the Commission considers that the absence of protection and investigation in the face of the threats and acts of aggression suffered by Mr. Vélez, which caused a definitive break with journalism due to his exile, constituted an additional breach of his freedom of thought and expression in violation of Article 13 of the Convention in relation to Article 1.1.

C. Right to Freedom of Movement and Residence (Article 22.1 in relation to Article 1.1 of the American Convention), Protection of the Family (Article 17.1 in relation to Article 1.1 of the American Convention) and The Rights of the Child (Article 19 in relation to Article 1.1 of the American Convention)

139. Article 22.1 of the American Convention provides that "[e]very person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law." For its part, Article 17.1 of the Convention provides that "[t]he family is the natural and fundamental group unit of society and is entitled to protection by society and the state", and Article 19 provides that "[e]very minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state."

140. Article 22 of the American Convention, enshrining the right to free movement and residence, establishes the right to enter, remain, and leave the State territory without unlawful interference.¹¹⁷ The Inter-American Court has established that the right to free movement and residence:

may be affected when a person is the victim of threats or harassment and the State does not provide the guarantees necessary to allow him/her to move freely and reside in the territory in question, even when those threats and harassments are carried out by non-State actors.¹¹⁸

141. Thus, in the case of *Valle Jaramillo*, the Court found a violation of Article 22.1 of the Convention to the prejudice of various persons who were forced into exile "without being able or wishing to return home due to a well-founded fear of persecution".¹¹⁹ Equally, in the case of *Manuel Cepeda Vargas*, the Court declared that the temporary exile of the victim's immediate family, caused by threats surrounding his search for justice, constituted a violation of Article 22 of the Convention.¹²⁰

142. In this case, the Court also referred to the social, family and economic impact that leaving for exile had on these individuals, when finding that their condition as refugees broke the fabric that united their families, forcing them to lose contact with not only with their country, but

¹¹⁷ Cf. I/A Court H.R., *Case of Valle Jaramillo et al. v Colombia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, para.138.

¹¹⁸ Cf. I/A Court H.R., *Case of Valle Jaramillo et al. v Colombia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, para.139.

¹¹⁹ Cf. I/A Court H.R., *Case of Valle Jaramillo et al. v Colombia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, paras.140, 141, and 144.

¹²⁰ Cf. I/A Court H.R., *Case of Manuel Cepeda Vargas v Colombia*. Preliminary Objections, Merits and Reparations. Judgment of May 26, 2010. Series C No. 213, para.202.

also with their family and friends that remained in it.¹²¹ In the same sense, in the case of *Goiburú et al.*, the Court declared a violation of Article 5 of the Convention, in part based on the suffering caused to a victim and their immediate family who were forced to leave their country into exile.¹²²

143. The Commission has also stressed that the actions of the State which have the effect, even if indirectly, of separating individuals from their families and children may constitute violations of the protection of the family and the rights of the child.¹²³

144. In the present case, the Commission has found that the threats and acts of harassment against Luis Gonzalo Vélez Restrepo and his family, culminating in the attempted kidnapping on October 6, 1997, forced the journalist to leave Colombia for exile in the United States of America. It also found that the Vélez Román family was separated for almost one year, until Aracelly Román Amariles was finally able to leave for exile with her children Mateo and Juliana Vélez Román in September 1998. Finally, the Commission has stated that the separation and forced exile that the Vélez Román family experienced produced profound effects on the plans for the family members' lives, on their economic situation, and on their relationship amongst themselves and with other family members in Colombia. The dangerous situation confronted by the family had a particular impact on the children, Mateo and Juliana Vélez Román, who were forced to leave school, live apart from their father, and move homes and city within Colombia before going into exile.

145. As has been observed, the Commission considers that in this case the State of Colombia not only incurred direct responsibility for the threats and harassment against Mr. Vélez and his family, but also failed to fulfill its obligations of protection and investigation in a timely way. In this sense, both the acts of harassment in themselves as well as their foreseeable consequences, *inter alia*, exile, are attributable to the State. The Commission therefore finds that the State of Colombia violated Article 22.1 of the Convention to the prejudice of Mr. Vélez, Aracelly Román Amariles and Mateo and Juliana Vélez Román.

146. The State alleged with regard to Articles 17.1 and 19 of the Convention that the petitioners confused the violation of these rights with the possibility for Aracelly Román Amariles, Mateo and Juliana Vélez Román to allege violations of other rights. However, the Commission observes that the acts and omissions of the State of Colombia had profound and undeniable consequences on the Vélez Román family's lives. All members of the family had to resort to psychological therapy based on the situation in which they were living after August 29, 1996, and in the case of Mr. Vélez and his wife, they had to seek special therapy to overcome the damage inflicted on their family relationship. The family also had to live apart and in a situation of profound economic and emotional uncertainty for almost one year, while Mr. Vélez awaited a decision on his asylum application in the United States, and thus the possibility of being reunited with his family in that country. Up until the present time, their exile has forced them to live in a highly precarious economic position, separated from their family in Colombia. The Commission considers that, in the circumstances described, these consequences were foreseeable by the State of Colombia,¹²⁴ and

¹²¹ Cf. I/A Court H.R., *Case of Valle Jaramillo et al. v Colombia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, para.141.

¹²² Cf. I/A Court H.R., *Case of Goiburú et al. v Paraguay*. Merits, Reparations and Costs. Judgment of September 22, 2006. Series C No. 153, paras. 99(a)-(c), and 101(a).

¹²³ Cf. IACHR, Report No. 81/10, Case 12.562, *Wayne Smith, Hugo Armendariz, et al.*, United States, July 12, 2010, paras.48, 59, 60.

¹²⁴ Cf. IACHR, Report No. 81/10, Case 12.562, *Wayne Smith, Hugo Armendariz, et al.*, United States, July 12, 2010, para.48. See also, IACHR, Report No. 63/08, Case 12.534, *Andrea Mortlock*, United States, July 25, 2008, paras.76-79.

therefore concludes that the State has violated Article 17.1 of the Convention to the prejudice of Mr. Vélez, Aracelly Román Amariles, Mateo and Juliana Vélez Román, and Article 19 of the Convention to the prejudice of Mateo and Juliana Vélez Román.

D. Judicial Guarantees and Judicial Protection (Articles 8 and 25 in relation to Article 1.1 of the American Convention)

147. Article 8.1 of the American Convention recognizes every individual's right to be heard before a competent judge or court within a reasonable period of time:

Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

148. Article 25 of the American Convention in turn contemplates every individual's right to simple and speedy remedy before competent judges or courts for protection against acts that violate fundamental rights:

1. Every person has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.
2. The State parties undertake:
 - a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
 - b. to develop the possibilities of judicial remedy; and
 - c. to ensure that the competent authorities shall enforce such remedies when granted.

149. The Inter-American Commission has stressed on previous occasions the importance of the State's obligation to investigate and punish the perpetrators of human rights violations, and, if necessary, to make reparations to the victim or to this immediate family, when the violation has its origin in agents of the State.¹²⁵ In addition, as mentioned before, the State has an obligation to investigate, derived from the more general obligation of guarantee enshrined in Article 1.1 of the Convention, independently of the agent to whom the violation may eventually be attributed, even if a member of the public.¹²⁶

150. According to the Inter-American Court's decisions, in order to fulfill its duty to investigate, the State must seek "the truth effectively", must punish the actual perpetrators and the masterminds, and the investigation "must be undertaken in a serious manner and not as a mere formality preordained to be ineffective."¹²⁷ This obligation is a matter for the State, since it "has the duty to immediately and ex officio begin an effective investigation to identify, try, and punish

¹²⁵ Cf. IACHR, Report No. 36/08, Merits, Case 12.487, Rafael Ignacio Cuesta Caputi, Ecuador, July 18, 2008, para.66.

¹²⁶ Cf. I/A Court H.R., *Case of Velásquez Rodríguez v Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para.177.

¹²⁷ I/A Court H.R., *Case of Velásquez Rodríguez v Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para.177.

those responsible",¹²⁸ and must be completed within a reasonable time.¹²⁹ The due diligence on the part of the judicial authorities must take into account the complexity of the facts, the context within which they occurred and the patterns explaining their commission, avoiding omissions in the gathering of evidence and in the pursuit of logical lines of enquiry.¹³⁰

151. In regard to the attack suffered by Mr. Vélez in the present case, two members of the military forces were disciplined with "a severe reprimand" in connection with the acts of August 29, 1996.¹³¹ In this respect, the Commission observes, as has the Court, that an investigation of a disciplinary nature tends to protect the administrative function and the correction and control of public officials, so that it may supplement but must not entirely replace the function of the criminal courts.¹³² As such, it is necessary to examine the criminal proceedings undertaken in this respect.

152. The criminal investigation into the attack suffered by Mr. Vélez was started by the National Public Prosecutor but was then sent to the criminal military courts. These courts archived the investigation by writ of *nolle prosequi* on October 3, 1997, considering that it was not possible to identify the perpetrators.¹³³ As a consequence no individual was criminally punished in relation to the attack perpetrated by members of the Colombian Army against Mr. Vélez.

153. The Inter-American Court has established in a consistent manner that within a State under the democratic rule of law, the criminal military courts must have a restricted and exceptional scope in their jurisdiction and must seek to protect special juridical interests associated with the functions assigned by law to the military forces. As such, members of the military must only be tried for the commission of crimes or misdemeanors that due to their nature harm the juridical interests of the military system itself.¹³⁴

154. In regard to the attack against Mr. Vélez, the State of Colombia argued that the criminal military court's undertaking of the investigation was in accordance with international standards. The State basically advanced two arguments in this regard. Firstly, it stressed that the attack against Mr. Vélez was in contravention of, and in subordination against, issued orders, and that there was no intent to act outside the functions constitutionally assigned to the military forces.¹³⁵ Secondly, it alleged that the attack against Mr. Vélez did not constitute a grave violation of human rights such as extra-judicial executions, forced disappearance and torture, so that there was no basis to exclude the application of the criminal military courts.¹³⁶

155. The Commission observes in this regard that the jurisprudence of the Inter-American Court clearly establishes that "military criminal jurisdiction is not the competent jurisdiction to

¹²⁸ I/A Court H.R., *Case of Tibi v Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 7, 2004. Series C No. 114, para.159.

¹²⁹ See I/A Court H.R., *Case of the Miguel Castro Castro Prison v Peru*. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, para.436.

¹³⁰ 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, para.158

¹³¹ State's brief received on August 4, 2009, p. 18.

¹³² Cf. I/A Court H.R., *Case of the Pueblo Bello Massacre v Colombia*. Merits, Reparations and Costs. Judgment of January 31, 2006. Series C No. 140, para.203.

¹³³ State's brief received on August 4, 2009, p. 38.

¹³⁴ Cf. I/A Court H.R., *Case of the Pueblo Bello Massacre v Colombia*. Merits, Reparations and Costs. Judgment of January 31, 2006. Series C No. 140, para.189.

¹³⁵ State's brief received on August 4, 2009, p. 41.

¹³⁶ State's brief received on August 4, 2009, p. 42.

investigate and, in its case, prosecute and punish the authors of violations of human rights but that instead the processing of those responsible always corresponds to the ordinary justice system."¹³⁷ In this sense, the position of the State of Colombia, by stating that only grave violations of human rights must be excluded from the scope of the criminal military courts, is manifestly contrary to the doctrine of the Inter-American system. The Court has stated in clear terms that faced with situations that breach the human rights of civilians, under no circumstance must the military courts operate,¹³⁸ given that when the military courts assume jurisdiction over acts that constitute violations of human rights against civilians, they exercise jurisdiction not only with regard to the accused but also with regard to the civilian victim.¹³⁹ In addition, the victim must have the right to participate in the criminal proceedings not only for purposes of the corresponding reparation of the damage but also to exercise their rights to the truth and to justice.¹⁴⁰

156. The Commission thus considers that when the investigation into the attack committed against Mr. Vélez on August 29 1996, was assumed by the military criminal jurisdiction, Mr. Vélez's right to his natural judge was affected, and *a fortiori*, to due process which, in its turn, is inextricably linked to the right of access to justice.¹⁴¹ The decision to send the investigation to an inadequate jurisdiction violated in itself, Articles 8.1 and 25 of the American Convention to the prejudice of Mr. Vélez. The Commission considers it relevant to emphasize, at any rate, that the process undertaken in the military court was archived without linking anyone to the investigation, notwithstanding the limited number of possible perpetrators (the members of the 12th Brigade who participated in the operation), the existence of eyewitnesses, and the fact that the 12th Brigade commander had already disciplined two soldiers of the Army in relation to the facts of August 29, 1996.¹⁴² In addition, in conformity with the rules of the military criminal courts, Mr. Vélez was not permitted to receive information on the course of the investigation,¹⁴³ nor to appeal the archiving decision.¹⁴⁴ In brief, the Commission considers that sending the case to the military courts not only formally violated Mr. Vélez's right to access to justice, but also constitutes the principal reason for the impunity existing in relation to the attack that occurred on August 29, 1996.

157. In relation to the threats and acts of harassment against Mr. Vélez and his family, and the attempted kidnapping on October 6, 1997, the same considerations *supra* apply with respect to the disciplinary investigations, in the sense that these may supplement but must not replace the criminal jurisdiction. As concerns the criminal investigation into these acts, the Commission observes that the State of Colombia has only reported that the 13th Prosecutor of the Section of Belén de los Andaquíes (Caquetá) is currently undertaking the corresponding investigation, which was at the preliminary investigation stage until at least June 2009.¹⁴⁵ The last

¹³⁷ Cf. 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, para.273; I/A Court H.R., *Case of Durand and Ugarte v Peru*. Merits. Judgment of August 16, 2000. Series C No. 68, para.118.

¹³⁸ Cf. 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, para. 274.

¹³⁹ Cf. 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, para. 275.

¹⁴⁰ Cf. 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, para. 275.

¹⁴¹ Cf. 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, para. 273.

¹⁴² State's brief received on August 4, 2009, p. 18.

¹⁴³ Initial Petition received on July 29, 2005, Annex 23.

¹⁴⁴ State's brief received on August 4, 2009, pp. 42-43.

¹⁴⁵ State's brief received on August 4, 2009, pp. 47-49.

procedural steps of which the Commission is aware, consisting of the receipt of certain evidence, were ordered in April 2009.¹⁴⁶ One of these - the receipt of Mr. Vélez's attorney's testimony in Colombia - was undertaken on two occasions, on June 9, 2009, and on November 26, 2009, and on both occasions the testimony referred to basic issues such as the circumstances of the acts of aggression committed on August 29, 1996, the attempted kidnapping, and Mr. Vélez and his family's leaving the country.¹⁴⁷

158. The Commission observes that more than 13 years have elapsed since these acts occurred without the investigation identifying, trying or punishing anyone responsible. At the same time, the Commission repeats that the duty to investigate is an obligation of means or behavior and is not breached merely because the investigation does not produce a satisfactory result.¹⁴⁸ To examine whether the investigation has respected the principle of a reasonable time, it is necessary to analyze, in essence, the complexity of the matter, the procedural activities carried out by the interested party and the conduct of the judicial authorities.¹⁴⁹

159. Unfortunately, the information provided by the State and, in particular, the fact that a copy of the criminal case file requested by the Commission has not been supplied,¹⁵⁰ makes it impossible for the IACHR to conduct an adequate analysis in this regard. Since more than a decade has passed without the investigation producing any results, it is a matter in principle for the State to show that its judicial authorities have acted diligently,¹⁵¹ also remembering that the State's refusal to send certain documents cannot have a prejudicial result for the victims, but only to itself.¹⁵² In this case, the paucity of information supplied by the State as well as the information that suggests the investigation remains in a preliminary phase,¹⁵³ do not permit a conclusion other than that the criminal investigation into the harassment against Mr. Vélez and his family and the attempted kidnapping of October 6, 1997 was not undertaken in a diligent manner and within a reasonable time. The Commission concludes therefore that the State of Colombia has violated Articles 8.1 and 25 of the Convention, in relation to Article 1.1, to the prejudice of Luis Gonzalo Vélez Restrepo, Aracelly Román Amariles, Mateo and Juliana Vélez Román.

¹⁴⁶ State's brief received on August 4, 2009, pp. 47-49.

¹⁴⁷ State's brief received on August 4, 2009, p. 49. Petitioners' Brief received on September 8, 2010, Annex 15 a), Prosecutor General of the Nation, Statement of Raúl Hernández Rodríguez, June 9, 2009; Annex 15 b), Prosecutor General of the Nation's Office, Statement of Raúl Hernández Rodríguez to the Judicial Police, November 26, 2009.

¹⁴⁸ I/A Court H.R., *Case of Velásquez Rodríguez v Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para.177.

¹⁴⁹ I/A Court H.R., *Case of Escué Zapata v Colombia*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 165, para.102. In some cases the Court has also analyzed the effect on the judicial situation on the person involved in the process. Cf. 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, para.156.

¹⁵⁰ Letter of the IACHR to the State of Colombia, Case 12.658, April 30, 2010.

¹⁵¹ Cf. 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, para.156.

¹⁵² I/A Court H.R., *Case of González et al. (Cotton Field) . Mexico, Decision of 19 January 2009, para. 59.*

¹⁵³ See Petitioners' Brief received on September 8, 2010, Annex 13, National Public Prosecutor's Office, 13th Dispatch 43078, Act 160 F.13, February 13, 2009, indicating that the amplification of the complaint "is aimed at achieving that Luis Gonzalo Velez Restrepo inform which authority received his complaint." See also Petitioners' Brief received on September 8, 2010, Annex 15 b), Procurator General of the Nation's Office, Statement of Raúl Hernández Rodríguez to the Judicial Police, November 26, 2009, asking the witness "if his protégée wished to continue with the investigation of his complaints in view of the fact that the original file at the 67 Military Court had been lost and that to this date there was no progress in the clarification of the facts".

V. CONCLUSIONS

160. Based on the considerations of fact and law contained in the present report, the IACHR concludes that the State of Colombia has incurred international responsibility by having violated, to the prejudice of Luis Gonzalo "Richard" Vélez Restrepo, Articles 5, 13, 17, 22.1, 8.1 and 25 of the American Convention, in conjunction with the general obligation of guarantee rights enshrined in Article 1.1 of the said treaty. It has also violated Articles 5, 17, 22.1, 8.1 and 25 of the Convention to the prejudice of Aracelly Román Amariles, Mateo Vélez Román and Juliana Vélez Román and Article 19 of the Convention to the prejudice of Mateo and Juliana Vélez Román, all in relation to Article 1.1.

VI. RECOMMENDATIONS

161. Based on the analysis and conclusions in the present report,

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

1. Undertake, within a reasonable time and in the ordinary courts, a diligent investigation of all the acts of violence and harassment against Luis Gonzalo "Richard" Vélez Restrepo and his family, in order to identify, try and punish those responsible for the said acts;
2. Undertake an investigation in order to identify those eventually responsible for the deficiencies in the investigations and the omissions in the protection of Mr. Vélez and his family, and to apply the corresponding administrative, disciplinary or other type of sanctions;
3. Make holistic reparations to Luis Gonzalo "Richard" Vélez Restrepo and his family;
4. Adopt the necessary measures to protect or ensure the Vélez Román family's security in case they decide to return to Colombia on a temporary or permanent basis;
5. Continue with the adoption and strengthening of the special programs to protect journalists in danger and investigate crimes against them; and
6. Provide instruction to the military forces on the role that journalists fulfill in a democracy, and the right of journalists to cover freely and in conditions of security any situation related to public order and armed conflict.