

**REPORT No. 38/13**  
PETITION 65-04  
ADMISSIBILITY  
JORGE ADOLFO FREYTTTER ROMERO *ET. AL.*  
COLOMBIA  
July 11, 2013<sup>1</sup>

**I. SUMMARY**

1. On January 30, 2004, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received a petition alleging the responsibility of the Republic of Colombia (hereinafter the “State” or “the State of Colombia”) in the illegal detention, disappearance, torture, and extrajudicial execution of Jorge Adolfo Freytter Romero (hereinafter, the “alleged victim”), which occurred between August 28 and 29, 2001 in the city of Barranquilla, as well as the failure on the part of the legal authorities to fully investigate the facts. The petition likewise alleges violations of the right to humane treatment and of movement and residence to the detriment of Mr. Freytter Romero’s family.<sup>2</sup> The petition was filed by Mr. Jorge Enrique Freytter Florián, son of the alleged victim, and the Corporación Colectivo de Abogados José Alvear Restrepo [José Alvear Restrepo Collective Association of Attorneys] (hereinafter, “the petitioners”) subsequently became the petitioner before the IACHR.

2. The petitioners hold that the State is responsible for violating Articles 4, 5, 7, 8, 13, 17, 22, and 25 of the American Convention on Human Rights (hereinafter, “the American Convention” or “the Convention”), pursuant to Article 1(1) thereof, and Articles I(b) and III of the Inter-American Convention on Forced Disappearance of Persons (hereinafter, “the Convention on Forced Disappearance”), as well as Articles 6 and 8 of the Inter-American Convention to Prevent and Punish Torture. The State, for its part, maintains that legal proceedings based on the substance of the petition are ongoing in both the regular criminal justice system and under the Justice and Peace Law and therefore considers the petition to be inadmissible by virtue of the fact that domestic remedies have not been exhausted in accordance with Article 46(1)(a) of the American Convention.

3. Having analyzed the parties’ positions and verified compliance with the requirements set forth under Articles 46 and 47 of the Convention, the Commission decided to declare the petition admissible for purposes of examining the alleged violation of Articles 3, 4, 5, 7, 8, 13, 16, 22, and 25, in accordance with Articles 1(1) and 2 of the American Convention, Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, and Article I(b) of the Inter-American Convention on Forced Disappearance of Persons. The Commission further decided to declare inadmissible the petition with respect to the alleged violation of Article 17 of the American Convention, notify the parties of the report, and order it be published in its annual report to the OAS General Assembly.

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<sup>1</sup> Pursuant to the provisions of Article 17(2) of the Commission’s Rules of Procedure, Commissioner Rodrigo Escobar Gil, a Colombian national, did not take part in either the discussion or decision on this petition.

<sup>2</sup> The petition lists the following family members of Mr. Jorge Freytter as alleged victims: Mónica Patricia Florián Restrepo (wife), Jorge Stalin Freytter Franco (son), Jorge Enrique Freytter Florián (son), Vanessa Del Carmen Freytter Florián (daughter), Mónica Isabel Freytter Florián (daughter), and Sebastián Adolfo Freytter Florián (son).

## **II. PROCEEDINGS BEFORE THE COMMISSION**

4. The Commission received the petition and assigned it number 65-04, and after conducting a preliminary analysis, on August 17, 2005, the IACHR forwarded to the State the relevant portions of the petition so it could provide its observations. The State's response was received on January 3, 2006 and was forwarded to the petitioners for their observations.

5. On April 2, 2009, the IACHR asked the petitioners to provide updated information on the case. The petitioners' response was received on October 9, 2009 and was forwarded to the State for its observations. On November 13, 2009, the State requested an extension for presenting its response; such extension was granted. On December 17, 2009, the State submitted its response, which was forwarded to the petitioners for their observations. On January 13 and October 15, 2010, the IACHR repeated its request for a response from the petitioners. On February 8, 2011 the petitioners submitted their response, which was then forwarded to the State for its observations. On March 17, April 18, and June 3, 2011, the State requested extensions for submitting its observations; such requests were granted. On July 26, 2011, the State submitted its response, which was forwarded to the petitioners for their information.

## **III. POSITIONS OF THE PARTIES**

### **A. The Petitioners' Position**

6. In terms of background, the petitioners state that Jorge Freytter was a professor at the Universidad del Atlántico, which is located in the city of Barranquilla, for approximately 20 years; during this time, he is said to have been actively involved in different trade union-related activities. They indicate that while he was no longer teaching at the time the events referred to in this complaint occurred, Mr. Freytter had reportedly remained on as an "active member" of several organizations such as the Asociación de Profesores Universitarios [Association of University Professors] (ASPU), the Cooperativa de trabajadores, profesores y jubilados de la Universidad del Atlántico [Universidad del Atlántico Workers, Professors, and Retirees Cooperative] (COOTRAUDEA), and the Asociación de Jubilados de la Universidad del Atlántico [Universidad del Atlántico Retirees Association] (ASOJUA). The petitioners point out that in July 2001, a number of protests were reportedly held because the Universidad del Atlántico had failed to make back payments for pensions; they add that, at that time, the alleged victim was responsible for management activities on behalf of the ASOJUA.

7. The petitioners note that the facts referred to in this petition would fall under the category of persecution of student leaders, trade union members, and professors at the Universidad del Atlántico by the Autodefensas Unidas de Colombia [United Self-defense Units of Colombia] (AUC – Northern Block) in the department of Atlántico; at the time these events occurred (2001), this group was reportedly conspiring with members of law enforcement who belonged to the National Police's Grupo de Acción Unificada por la Libertad Personal [Unified Action Group for Personal Freedom] (GAULA) and the National Army in Barranquilla. They hold that the disappearance and extrajudicial execution of the alleged victim was committed in retaliation for his activities as a union leader. In this regard, the petitioners allege that the information on context provided should be taken into account in order to determine the nature of the violations being alleged and the circumstances under which they were reportedly committed.

8. Regarding the facts, the petitioners allege that at noon on August 28, 2001, just as Jorge Freytter was arriving at his place of residence, located in the city of Barranquilla, he was taken by a group of “heavily armed” men who are said to have violently shoved him into a vehicle headed in an unknown direction. They allege that after he was abducted, Jorge Freytter was taken to an “airless warehouse” where he was reportedly kept handcuffed and was subjected to torture until he ultimately died of suffocation caused by a “bag” that had been used to cover his head.

9. Based on the information provided by the petitioners, the alleged extrajudicial execution is understood to have been committed by a state agent, and that such an occurrence was reportedly consistent with the way illegal armed groups acted in coordination with members of law enforcement in the department of Atlántico; this *modus operandi* was governed by an “agreement under [which] in operations in which [state law enforcement agents] were involved [,] people had to be executed.” The petitioners allege that—as a former member of the AUC implicated in this case reportedly testified—the site where the alleged victim is said to have been grabbed before his death was a place used for this type of operations where “people [were] held [...] while information was extracted from them.”

10. The petitioners note that on the day he disappeared, the alleged victim’s family members notified the authorities of what had happened. They state that they [the family] filed a report with the GAULA in the department of Atlántico; based on this report, GAULA officers went to their home to question them about what had happened. As the family members tell it, the authorities reportedly launched a search operation in the sector and were in constant contact with some members of the alleged victim’s family. The petitioners allege that government law enforcement agents were aware of the alleged victim’s whereabouts, but despite that, his family was not given timely information about his location. They state that Jorge Freytter was found dead in the early morning hours of August 29, 2001; he had been shot and showed signs of torture and was found in a “gutter” at kilometer 12 on the road between Ciénaga and Barranquilla, *corregimiento* [town] of Palermo, department of Magdalena.<sup>3</sup>

11. In terms of the investigation of the facts, the petitioners state that a standard criminal investigation was launched on August 29, 2001. They claim that family members of the alleged victim became a civil party within these criminal proceedings and gave several statements to the competent authorities in order to help with the investigation of the facts. The petitioners argue that, in its initial stage—for approximately five years after it was first opened—the investigation allegedly remained in a preliminary phase with no relevant actions having been taken in an effort to solve the case. The petitioners point out that, despite the existence of signs of ties between what is said to have happened and the alleged victim’s position as a trade union leader, in addition to the foregoing, lines of investigation were ruled out from the outset that took into special consideration the alleged victim’s involvement in activities tied to the Universidad del Atlántico and his position as a union activist.

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<sup>3</sup> The petitioners add that before these events occurred, on July 26, 2001, the alleged victim was reportedly “approached” by officers of the SIJIN [Seccional de Policía Judicial e Investigación] (Local Branch of the Judicial and Investigative Police) and taken to the SIJIN offices where he is said to have been held for several hours without a court order, and his “criminal record” was reportedly checked. They claim that such facts were not taken into account by the authorities responsible for the investigation opened subsequently into the death of Mr. Freytter. The petitioners allege that even though in the case before the IACHR, the State has denied that this happened (see III(B) below), this fact has reportedly been established in the criminal case in Colombia based on a statement given by Mrs. Mónica Florián, wife of the alleged victim, to the Office of the Attorney General of the Nation.

12. The petitioners state that later, the involvement in this case of members of the Northern Block of the AUC and officers of the National Police and of the Army assigned to the GAULA in Barranquilla was reportedly established. They point out that the criminal court of Barranquilla convicted a former member of the AUC (Carlos Arturo Cuartas, a.k.a. "Montería") and two state officials in June 2010, though they note that the conviction is not set in stone because an appeal was filed and has been under examination by Barranquilla's higher court since August 9, 2010. The petitioners add that two other law enforcement agents were reportedly implicated in the case via a decision handed down by the Office of the Attorney General of the Nation on May 28, 2008. That notwithstanding, the petitioners reiterate their claim that in this case, the criminal proceeding underway in the regular courts is not an effective avenue for investigating the facts and determining the attendant criminal liability.

13. The petitioners allege that because of how long the investigation has reportedly remained in its preliminary phase, it has been difficult to identify, in a timely manner, other individuals involved, some of whom are said to have died or been extradited from Colombia, making it impossible to establish different levels of responsibility vis-à-vis their involvement in the circumstances giving rise to this petition. They argue, for example, that even though the involvement of the Northern Block of the AUC in this case has reportedly been proven, paramilitary leader Rodrigo Tovar Pupo, a.k.a. "Jorge 40," was extradited to the United States in 2008, without having been included in the investigation.

14. The petitioners also claim that in the framework of the local criminal case, the crimes of torture and forced disappearance of which Mr. Jorge Freytter was allegedly victim were neither duly investigated nor punished. They hold that this was not an avenue of investigation pursued "autonomously" by the Office of the Prosecutor and that, despite having the evidence necessary to prove that these crimes had been committed, they were not included in the aforementioned conviction handed down by the criminal court of Barranquilla. The petitioners thus claim that these facts have not been addressed in the terms required by the American Convention or by the inter-American instruments having to do with preventing and punishing torture and forced disappearance;<sup>4</sup> this, they believe, would constitute a factor of "structural impunity" in this case.

15. The petitioners further maintain that following Mr. Jorge Freytter's death, members of his family were victims of acts of harassment and persecution because of actions they took in pursuit of justice. Specifically, they allege that because of threats received, two of Mr. Freytter's sons, Jorge Freytter Franco and Jorge Freytter Florián, were forced to move, initially within Colombia, and ultimately to request asylum and move abroad as a way to save their lives and protect their personal safety. The petitioners claim that these circumstances were not duly investigated and that the State was derelict in its duty to provide them the protection necessary so they could remain and move freely within their own country. They add that the disappearance and subsequent death of Jorge Freytter, in addition to the purported unwarranted delay in law enforcement's investigation of the facts, caused the family members of the alleged victim "[to] suffer deep sorrow and anguish."

16. Regarding compliance with the requirement for prior exhaustion of domestic remedies stipulated in Article 46(1)(a) of the American Convention, the petitioners claim the exception provided for in Article 46(2)(c) that has to do with the unwarranted delay in rendering a final judgment applies. In

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<sup>4</sup> With respect to the Inter-American Convention on Forced Disappearance of Persons, the petitioners note that the alleged violations refer to the failure, as of April 4, 2005, to investigate and punish what occurred; that is the date on which the State of Colombia ratified this instrument.

that connection, the petitioners argue that 10 years after the events transpired, a final decision has yet to be handed down in the domestic proceeding and the shortcomings in handling the investigations aimed at diligently clarifying the facts have yet to be overcome.

## **B. The State's Position**

17. In response to the petition filed, the State holds that it does not meet the requirement for prior exhaustion of domestic remedies since proceedings are still underway in Colombia and, consequently, because the inter-American system is complementary in nature, the petition should be declared inadmissible.

18. Preliminarily speaking, the State holds that the allegations made by the petitioners with respect to the context in which the facts being claimed should be framed should not be part of the "purpose of the petition," and in this regard the State claims that: (i) It is not possible to attribute international responsibility to the State for the contextual situation; (ii) the elements of context alleged in this case have not been duly proven by the petitioners and this is a requirement that is especially relevant in cases such as this where there are allegations of State tolerance of widespread human rights violations; and (iii) the causal link between the facts being reported and the alleged "context of human rights violations against professors and union members at the Universidad del Atlántico" has also not been proven. On that last point, the State alleges that, based on the information collected locally, at the time he died, the alleged victim was not "actively involve[d] [in] union-related activities."

19. Regarding the facts, the State notes that, "on August 28, 2001, Mr. Jorge Freytter was abducted by four armed suspects [who forced him] into a van [...] headed in an unknown direction."<sup>5</sup> The State indicates that on that same day, security agencies were informed about what had happened and "immediately organized operations aimed at locating and freeing [him]." The State indicates that one day later, after the alleged victim's body was found, Prosecutors Office 37 of the Unidad Especializada de Vida [Specialized Life Unit] of Barranquilla ordered a preliminary investigation to be opened; this investigation was subsequently assigned to the National Human Rights and International Humanitarian Law Unit of the Office of the Attorney General of the Nation by means of a resolution issued by the National Bureau of Prosecutors Offices on October 9, 2001.

20. The State holds that criminal investigations are the appropriate and effective channel and that they have enabled progress to be made in "determining criminal responsibility, both individual and collective, in the death of the alleged victim;" hence, the State claims that it has been meeting its obligations to handle this case under the terms required by the Convention. The State argues that the petitioners' claim about the alleged unwarranted delay is not admissible since the criteria set forth for determining "a reasonable time period" should be taken into account and that this is an issue having to do with the "very dynamic" of the matter and not simply the time the process has taken domestically.

21. In this regard, the State notes that in the context of the criminal case, it has been possible to establish the involvement of "members of groups operating outside the law in collusion with agents of the State," a situation marked by a "special complexity" and one that reportedly made it difficult to identify and individually pinpoint the perpetrators. The State does, however, provide

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<sup>5</sup> Though the State does not deny these facts, it does note that pursuant to the determinations made by the General Office of the National Police, the alleged detention of Mr. Jorge Freytter by SIJIN officers on July 26, 2001 reportedly did not take place and thus the State rejects the petitioners' claims on this point.

information on the legal action taken since the investigation was launched in 2001, and based thereon claims that local authorities have been diligent in their pursuit of the criminal case; this is proven by the significant progress made, which has made possible the identification of the perpetrators as well as the prosecution and punishment of several individuals connected to the investigation.

22. In this connection, the State notes that on December 31, 2008, after accepting a plea bargain, Carlos Romero Cuartas was sentenced to 223 months in prison for the crimes of aggravated extortive kidnapping and aggravated conspiracy. The State likewise notes that on June 18, 2010, the criminal court of the specialized circuit of Barranquilla sentenced a former National Police officer and a member of the Army to 420 months in prison as co-perpetrators in the crimes of aggravated homicide, extortive kidnapping, and aggravated conspiracy. The State further indicates that two formal National Police officers are being investigated as "individual[s] who remain at large with outstanding capture and arrest warrants." The State adds that on April 8, 2011, Rodrigo Tovar (a.k.a "Jorge 40" or "PAPA TOVAR"), an AUC leader, was implicated in the investigation as having command responsibility for the crimes of kidnapping and aggravated homicide.

23. Regarding the petitioners' claims with respect to the failure to investigate and punish the perpetrators for the crimes of torture and forced disappearance, the State notes that due to the nature of these crimes, "the relevant actions were taken to enable the Prosecutors Office to continue to pursue the case in question and thoroughly investigate these facts."

24. The State further notes that on February 16, 2007, the civil suit filed by the petitioners in representation of Jorge Freytter's family was admitted. The State points out that while the family members of the alleged victim may have had "a mechanism available domestically to gain redress," they did not exercise the legal powers provided for in keeping with the "legal status" that they were granted in the proceedings, which is why it would be improper to bring this claim before international bodies.

25. Lastly, the State notes that several of the defendants in this case have invoked "[Law 975, known as] the Justice and Peace Law," and that this is an appropriate mechanism through which the State has been meeting its obligations in terms of truth and justice, and one that offers the family of the alleged victim effective means of redress. In this regard, the State holds that compliance with the requirement for a reasonable time period must also be analyzed bearing in mind the nature of the proceedings based on the facts set forth in this petition.

#### **IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY**

##### **A. Competence of the Commission *ratione materiae*, *ratione personae*, *ratione temporis*, and *ratione loci***

26. The petitioners are entitled, under Article 44 of the American Convention, to file complaints with the Commission. The petition names as alleged victims individuals on whose behalf the State of Colombia undertook to respect and ensure the rights enshrined in the American Convention. Regarding the State, the Commission notes that Colombia has been party to the American Convention since July 31, 1973, to the Inter-American Convention to Prevent and Punish Torture since January 19, 1999, and to the Inter-American Convention on Forced Disappearance since April 4, 2005, when it deposited the instrument of ratification, respectively. The Commission, therefore, has *ratione personae* to examine the petition.

27. The Commission likewise has *ratione temporis* inasmuch as the American Convention and the Inter-American Convention to Prevent and Punish Torture were already in force for the State when the facts alleged in the petition are said to have occurred. The Commission notes that the Convention on Forced Disappearance entered into force for Colombia on April 4, 2005. The IACHR is therefore competent *ratione temporis* with respect to the obligation set forth in Article I of said Convention by virtue of the fact that the crime of forced disappearance has not yet been investigated.<sup>6</sup>

28. The Commission is competent *ratione loci* inasmuch as it alleges violations that are said to have taken place with the territory of a state party to the American Convention. Lastly, the Commission is competent *ratione materiae* because the petition alleges violations of human rights protected by the American Convention and the applicable provisions of the Inter-American Convention to Prevent and Punish Torture and the Inter-American Convention on Forced Disappearance of Persons.

## **B. Admissibility Requirements**

### **1. Exhaustion of domestic remedies**

29. Article 46(1)(a) of the American Convention provides that for a petition alleging violations of the Convention to be admitted, the remedies under domestic law are required to have been pursued and exhausted in accordance with generally accepted principles of international law. Article 46(2) of the Convention, for its part, recognizes that the requirement of prior exhaustion of domestic remedies does not apply: (i) when the domestic legislation of the state concerned does not afford due process of law for the protection of the right or group of rights that have allegedly been violated; (ii) when the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or (iii) when there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

30. According to the Commission's Rules of Procedure and the Inter-American Court's rulings, whenever a State alleges a petitioner's failure to exhaust domestic remedies, it shall be up to the State concerned to demonstrate to the Commission that the remedies that have not been exhausted are "enough" to rectify the alleged violation, that is, that the function of such remedies within the domestic legal system is suitable for protecting the legal right infringed.<sup>7</sup>

31. In this case, the State argues that the petition fails to meet the requirement for prior exhaustion of domestic remedies since proceedings on the facts alleged therein are ongoing in both the regular criminal justice system and under the Justice and Peace Law; the State further argues that due to the complexity of the matter and the actions undertaken by Colombian authorities, the exceptions provided for in Article 46(2) would not apply. The petitioners, for their part, argue that the exception stipulated in Article 46(2)(c) of the Convention applies given that 10 years have lapsed since these events occurred and criminal investigation was opened, and yet no effective criminal responsibility has been definitively established nor have all the crimes been investigated or punished, specifically the crimes of torture and forced disappearance.

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<sup>6</sup> IACHR. Report No. 65/09, *Juan Carlos Flores Bedregal*, August 4, 2009, paragraph 45; and Report No. 72/07, *Edgar Quiroga and Gildardo Fuentes*, October 15, 2007, paragraph 44.

<sup>7</sup> Article 31(3) of the Commission's Rules of Procedure. See also Inter-American Court of Human Rights, *Velásquez Rodríguez Case*, July 29, 1988 judgment, paragraph 64.

32. Given the parties' allegations, it is first necessary to clarify which domestic remedies must be exhausted in the case of this petition in light of inter-American case law. The Commission notes that the substance of this petition has to do with facts related to the alleged forced disappearance, torture, and death of Jorge Adolfo Freytter Romero and to matters related to the investigations into the circumstances under which such events occurred. The Commission has ruled that when an alleged crime involving State officials is committed, the State is obliged to bring and pursue criminal proceedings<sup>8</sup> and that, in such cases, this is the best way to clarify the facts, adjudicate any possible responsibility, and determine the corresponding criminal punishments, in addition to enabling other forms of monetary compensation to be established.

33. The Commission notes that because of the reported violations that gave rise to the petition, in which allegations are made that such violations were committed by members of illegal armed groups together with law enforcement officers, a conviction was reportedly handed down in the regular criminal justice system against a demobilized member of the Northern Block of the AUC for the crimes of aggravated extortive kidnapping and aggravated conspiracy. Paramilitary leader Rodrigo Tovar (a.k.a "Jorge 40"), for his part, reportedly could have been implicated in the investigation in 2011.

34. Moreover, four State agents were reportedly implicated in the case, two of whom were apparently convicted by means of a judgment handed down on June 18, 2010 by the criminal court of the specialized circuit of Barranquilla on the crimes of aggravated homicide, extortive kidnapping, and aggravated conspiracy. This judgment is reportedly not final since it was appealed in 2010. Based on the information contained in the case file, the ruling on the charges against these two individuals issued by the National Human Rights and International Humanitarian Law Unit of the Office of the Attorney General of the Nation on May 29, 2009, considered, as an aggravating circumstance for the crime of homicide, the fact that this murder was committed against an individual, who, while he "did not enjoy the legal protection of organized labor [at the time of his death], was part of [an organization] as a union leader." Regarding the other state officers involved, capture and arrest warrants were reportedly issued for them, however, they remain "at large" in this case. Furthermore, no legal charges were reportedly brought for the crimes of torture and forced disappearance, crimes provided for under Colombian criminal law.<sup>9</sup>

35. Furthermore, a number of the individuals implicated in the regular criminal case are also reportedly being prosecuted in the framework of the Justice and Peace Law. The IACHR lacks information on who might be being prosecuted under that law and what the impact thereof could be on the investigation of the facts put forth in this petition. As to Rodrigo Tovar's ties to the case, the Commission has taken into account the fact that this individual was extradited to the United States of America in 2008.<sup>10</sup>

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<sup>8</sup> IACHR, Report No. 52/97, Case 11.218, *Arges Sequeira Mangas*, 1997 IACHR Annual Report, paragraphs 96 and 97. See also Report No. 55/97, Case 11.137, *Abella Et. Al.*, paragraph 392.

<sup>9</sup> The crime of torture is provided for under Article 178 of the Criminal Code (established under Law 599 of 2000) and was subject to interpretation by the Constitutional Court in its ruling C-148/05 of February 22, 2005. The crime of forced disappearance, for its part, is established under Article 165 of the aforementioned Criminal Code and was also subject to constitutional oversight in ruling C-317/02 of May 2, 2002.

<sup>10</sup> See: IACHR. Press release 21/08 of May 14, 2008. Available at: <http://www.cidh.org/Comunicados/Spanish/2008/21.08sp.htm>

36. The Commission has indicated that, as a general rule, criminal investigations should be conducted promptly in order to protect the interests of the victims, preserve evidence, and even safeguard the rights of all individuals who might be considered suspects in the context of the investigation.<sup>11</sup> The Commission notes that, despite the fact that certain progress has reportedly been made in terms of the actions undertaken by the regular justice system, the information provided by both parties indicates that the investigation aimed at clarifying the facts is ongoing, with all levels of responsibility regarding who the perpetrators and masterminds of the facts presented in this petition were not yet having been fully determined. Consequently, given the characteristics of this petition and the time lapsed since the events behind the claim took place, the Commission considers that the exceptions stipulated under Article 46(2)(c) of the American Convention apply with respect to the unwarranted delay in domestic legal proceedings and that the requirement on exhausting domestic remedies is not actionable.

37. Invocation of the exceptions to the rule requiring exhaustion of domestic remedies established under Article 46(2) of the Convention is closely linked to the determination of possible violations of certain rights enshrined in the Convention, such as the guarantee of access to justice. Nevertheless, Article 46(2) is, by its very nature and purpose, a provision with autonomous content vis-à-vis the substantive precepts of the Convention. Consequently, whether or not the Convention's exceptions to the rule requiring exhaustion of domestic remedies are applicable in the case at hand must be decided prior to and separate from the analysis of the merits of the case, and that is because it depends on a standard of appreciation that is different from the one used to determine whether or not Articles 8 and 25 of the Convention have been violated. It bears clarifying that the causes and effects preventing the exhaustion of domestic remedies in the case at hand will be analyzed, as appropriate, in the Commission's future report on the merits of the matter, in order to verify whether or not they constitute possible violations of the American Convention.

## **2. Timeliness of the petition**

38. The American Convention provides that for petitions to be deemed admissible by the Commission, they must be filed within a period of six months following notification of the final judgment to the alleged victim. In the case at hand, the IACHR has already ruled above that exceptions to the rule requiring the exhaustion of domestic remedies apply pursuant to Article 46(2)(c) of the American Convention. In that connection, Article 32 of the Commission's Rules of Procedure provides that in those cases where the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time as determined by the Commission. To that end, the Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case.

39. In the case at hand, the petition was received on January 30, 2004, and the facts behind the claim occurred between August 28 and 29, 2001, and the effects thereof in terms of the alleged lack of resolution with respect to the criminal case would extend to the present. Hence, in view of the context and circumstances of this petition, as well as the fact that the criminal proceedings remain ongoing, the Commission considers the petition to have been filed within a reasonable period and the admissibility requirement for filing deadlines to have been met.

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<sup>11</sup> IACHR. Report No. 151/11, Petition 1077-06, Admissibility, *Luis Giován Laverde Moreno Et. Al.* (Colombia), November 2, 2011, paragraph 28.

### 3. Duplication of proceedings

40. The case file does not indicate that the substance of the petition is pending in any other international settlement proceeding or that it is substantially the same as another petition already examined by this Commission or any other international body. Hence, the requirements set forth in Articles 46(1)(c) and 47(d) of the American Convention have been met.

### 4. Characterization of the alleged facts

41. In light of the considerations of fact and law submitted by the parties and the nature of the matter filed before it, the IACHR considers that the petitioners' claims as to the scope of the State's alleged responsibility with respect to the substance of the petition could amount to violations of the rights established under Articles 4, 5, and 7, pursuant to Article 1(1) of the American Convention, in the case of Jorge Adolfo Freytter Romero.

42. The IACHR finds it is necessary to establish that the petitioners' claims with respect to the alleged violations of the rights to humane treatment, a fair trial, freedom of movement and residence, and judicial protection could amount to violations of Articles 5, 8, 22 and 25 of the American Convention against the family members of the alleged victim. Furthermore, given the nature of the alleged violations described in this petition—including forced disappearance, torture, and lack of a conclusive investigation by law enforcement—the Commission considers that during the merits stage, the possible responsibility of the State will have to be analyzed for alleged violations of Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture and of Article I(b) of the Inter-American Convention on Forced Disappearance of Persons.

43. Though the initial petition documents alleged a violation of the rights of the family, the Commission considers that the petitioners have not provided enough information to establish a possible violation of Article 17 of the American Convention and consequently, such claim is deemed inadmissible.

44. Neither the American Convention nor the IACHR's Rules of Procedure require the petitioners to identify the specific rights allegedly violated by the State in the matter submitted to the Commission, although the petitioners may do so. It falls to the Commission, based on the system's jurisprudence, to determine in its admissibility reports what provision of the relevant inter-American instruments applies and could establish a violation if the facts alleged are proven sufficiently.

45. Regarding the reported forced disappearance of the alleged victim, the IACHR considers that the facts could constitute violations of Article 3 of the Convention, pursuant to Article 1(1) thereof, as well as of the aforementioned provisions of the Inter-American Convention on Forced Disappearance of Persons, due to the continued lack of an investigation of said crime by law enforcement.<sup>12</sup>

46. The IACHR likewise considers that, if proven, the allegations regarding the possible relationship between the disappearance and extrajudicial execution of the alleged victim and the activities the victim engaged in as a union activist at the Universidad del Atlántico, as well as the lack of

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<sup>12</sup> IACHR. Report No. 72/07, Petition 319-01, Admissibility, *Edgar Quiroga and Gildardo Fuentes* (Colombia), October 15, 2007, paragraph 60.

an investigation of the facts by law enforcement, could constitute a violation of Articles 13 and 16 of the American Convention.<sup>13</sup>

47. Lastly, in light of the petitioners' claims regarding the extradition of paramilitary leader Jorge 40, the Commission shall also consider during the merits stage the possible failure to comply with the obligations set forth under Article 2 of the American Convention in connection with the decision to extradite one of the potential perpetrators of the events alleged in the petition to the jurisdiction of a third State while he was at the disposal of the judicial authorities charged with the enforcement of the so-called Justice and Peace Law<sup>14</sup> and the alleged impact this had on the ability to obtain justice in the case presented in this petition.

## V. CONCLUSIONS

48. The Commission concludes that it is competent to examine the claims submitted by the petitioners for the alleged violation of Articles 3, 4, 5, 7, 8, 13, 16, 22, and 25, pursuant to Articles 1(1) and 2 of the American Convention; Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture; and Article I(b) of the Inter-American Convention on Forced Disappearance of Persons; and that these are admissible, pursuant to the requirements established under Articles 46 and 47 of the American Convention. The Commission likewise decides to declare inadmissible the claims with respect to the alleged violation of Article 17 of the American Convention.

49. Based on the foregoing considerations of fact and law,

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#### DECIDES:

1. To rule this petition admissible as regards Articles 3, 4, 5, 7, 8, 13, 16, 22, and 25, pursuant to Articles 1(1) and 2 of the American Convention; Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, and Article I(b) of the Inter-American Convention on Forced Disappearance of Persons.

2. To rule the complaint with respect to Article 17 of the American Convention inadmissible.

3. To notify the State of Colombia and the petitioners of this decision.

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<sup>13</sup> See, *mutatis mutandi*, IACHR. Report No. 71/08, Petition 1290-04, Admissibility, *José Dutra da Costa* (Brazil), October 16, 2008, paragraph 47; Report No. 73/08, Petition 1236-06, Admissibility, *Gabriel Sales Pimenta* (Brazil), October 16, 2008, paragraph 36; and Inter-American Court of Human Rights, *Fleury Et. Al vs. Haiti* case, Merits and Redress. Judgment of November 23, 2011. Series C, No. 236, paragraphs 99-102.

<sup>14</sup> On June 22, 2005, the Congress of the Republic of Colombia passed Law 975 of 2005—known as the “Justice and Peace Law”—which entered into force following presidential approval on July 22, 2005. When reviewing the constitutionality of this law, the Constitutional Court established that demobilized individuals implicated in the commission of crimes related to the armed conflict who wish to take advantage of the benefits established under Law 975 shall be required to cooperate with the judiciary in order to ensure that victims are able to avail themselves of their rights to the truth, justice, reparations, and non-repetition. Constitutional Court, Case file D-6032 – Judgment C-370/06, legal grounds made public on July 13, 2006. Cfr. IACHR Report No. 70/09 *José Rusbell Lara*, paragraph 41.

4. To continue the analysis of the merits of the case.
5. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 11 day of July 2013. (Signed): José de Jesús Orozco Henríquez, President; Tracy Robinson, First Vice-President; Rosa María Ortiz, Second Vice-President; Felipe González, Dinah Shelton, Rose-Marie Antoine, Commissioners.