

**INTER-AMERICAN COURT OF HUMAN RIGHTS**

**CASE OF TABARES TORO ET AL. V. COLOMBIA**

**JUDGMENT OF MAY 23, 2023**

***(Merits, reparations, and costs)***

In the case of *Tabares Toro et al. v. Colombia*,

the Inter-American Court of Human Rights (hereinafter also “the Inter-American Court,” “the Court,” or “this Court”), composed of the following judges:\*

Ricardo C. Pérez Manrique, President,  
Eduardo Ferrer Mac-Gregor Poisot, Vice President,  
Nancy Hernández López, Judge,  
Verónica Gómez, Judge,  
Patricia Pérez Goldberg, Judge, and  
Rodrigo Mudrovitsch, Judge;

also present:

Pablo Saavedra Alessandri, Registrar,  
Romina I. Sijniensky, Deputy Registrar,

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter also “the American Convention” or “the Convention”) and Articles 31, 32, 62, 65, and 67 of the Rules of Procedure of the Inter-American Court (hereinafter also “the Court’s Rules of Procedure” or “the Rules of Procedure”), delivers this judgment structured as follows:

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\* Judge Humberto Antonio Sierra Porto, a Colombian national, did not take part in the deliberation and signing of this judgment, in accordance with Articles 19(1) and 19(2) of the Court’s Rules of Procedure.

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## I INTRODUCTION OF THE CASE AND CAUSE OF ACTION

1. *The case submitted to the Court.* On May 25, 2021, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) submitted to the jurisdiction of the Court the case of Tabares Toro et al. against the Republic of Colombia (hereinafter “the State” or “Colombia”). The Commission stated that the case concerns the international responsibility of Colombia for the forced disappearance of Óscar Iván Tabares Toro (hereinafter also “Mr. Tabares Toro,” “serviceman Tabares,” “Óscar Tabares,” “Óscar Iván,” or “the alleged victim”), as well as for the failure to investigate the facts and clarify the circumstances of his disappearance. The Commission also argued the State was responsible for violating the right to personal integrity of Mr. Tabares Toro's relatives, namely: María Elena Toro Torres (hereinafter also “María Elena Toro” or “Ms. Toro”), Óscar de Jesús Tabares, Holmar de Jesús Gallego Márquez, María Bibiancy Tabares Toro, Jhon Fredy Tabares Giraldo, Leidy Julieth Gallego Toro, and María Isabel Gallego Toro.
2. *Procedure before the Commission.* The procedure before the Commission was as follows:
  - a) *Petition.* On November 18, 2002, the Commission received the initial petition, which was submitted by the Interdisciplinary Group for Human Rights (GIDH) and the Colombian Commission of Jurists (hereinafter “CCJ”).
  - b) *Reports on admissibility and merits.* On October 13, 2005, the Commission approved Admissibility Report No. 73/05, in which it concluded that the petition was admissible. On December 6, 2019, it approved Merits Report No. 239/19 (hereinafter “Merits Report” or “Report No. 239/19”), in which it drew certain conclusions and made recommendations to the State.
3. *Notification to the State.* The Commission notified the State of Report No. 239/19 on February 25, 2020, giving it two months to report back on its compliance with the recommendations. After four extensions, the State requested a fifth, which the Commission did not grant.
4. *Submission of the case to the Court.* On May 25, 2021, the Commission<sup>1</sup> submitted to the Court all the facts and violations determined in the Merits Report. This Court notes with concern that over 21 years passed between the presentation of the initial petition to the Commission and the submission of the case to the Court.
5. *Request of the Inter-American Commission.* Based on the above, the Inter-American Commission asked this Court to declare the State internationally responsible for the violations enumerated in the Merits Report corresponding to the rights enshrined in Articles 3, 4(1), 5(1), 7(1), 8(1), and 25(1) of the American Convention, in conjunction with its Article 1(1), as well as for the failure to fulfill the obligations contained in Articles I(a) and I(b) of the Inter-American Convention on the Forced Disappearance of Persons (hereinafter also “CIDFP”). It also requested that the State be ordered to take the measures of reparation contained in that report, which are detailed below (*infra* chapter VIII).

## II PROCEEDINGS BEFORE THE COURT

6. *Notification to the State and to the representatives.*<sup>2</sup> The State and the representatives were notified of the submission of the case on July 12, 2021.
7. *Brief with pleadings, motions, and evidence.* On September 13, 2021, the representatives presented their brief with pleadings, motions, and evidence (hereinafter “pleadings and motions brief”), pursuant to Articles 25 and 40 of the Court’s Rules of Procedure. They agreed substantially with the

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<sup>1</sup> The Commission named Commissioner Antonia Urrejola Noguera as its delegate, as well as Marisol Blanchard Vera, then-Assistant Executive Secretary, and Analía Banfi Vique and Jorge Humberto Meza, then-legal advisors.

<sup>2</sup> The alleged victims are represented by the Colombian Commission of Jurists. The State named María Angélica Velandia Rivero and Susana Arango Haupt as its agents.

Commission's allegations, but they also argued that Articles 5(1), 5(2), 11(2), 13, and 17(1) of the American Convention had been violated, as well as the right of the alleged victim's family to the truth. They asked that Colombia be ordered to adopt several measures of reparation.

8. *Answering brief.* On December 31, 2021, the State presented to the Court its answering brief to the submission of the case by the Commission and to the pleadings and motions brief (hereinafter "answering brief" or "answer"), in which it denied international responsibility for the rights violations alleged by the Commission and the representatives.

9. *Public hearing.* On October 18, 2022,<sup>3</sup> an Order of the President called the parties and the Commission to a public hearing on the merits and potential reparations and costs, which was held in person at the Court's headquarters in Costa Rica on November 8, 2022, during the 154th regular session of the Court.<sup>4</sup> In that hearing, the State acknowledged its international responsibility, which will be analyzed below (*infra* chapter IV).

10. *Amicus brief.* This Court received one amicus brief.<sup>5</sup>

11. *Final written arguments and observations.* On December 6, 2022, the State presented its final written arguments and annexes. On December 8, 2022, the Commission presented its final written observations, and the representatives presented final written arguments and annexes.

12. *Provisional measures.* On February 8, 2023, the Court issued an order granting provisional measures in favor of Leidy Julieth Gallego Toro, Jhon Alber Urrego, María Bibiancy Tabares Toro, Víctor Alonso León, María Camila Henao, and Miguel Angel Orozco because the information provided indicates that these individuals are at risk due to the persecution and harassment suffered by relatives of Óscar Iván Tabares Toro.

13. *Disbursements of the Assistance Fund.* On April 20, 2023, pursuant to instructions from the President of the Court, the secretariat sent information to the State on disbursements from the Victims' Legal Assistance Fund (hereinafter "FALV") in this case. Pursuant to Article 5 of the Court's Rules of Procedure on the Operations of the Fund, the State was given a deadline for submitting any observations it deemed relevant. The State did not submit any observations before the deadline.

14. *Deliberation of the case.* The Court began deliberating this judgment on May 23, 2023.

### III JURISDICTION

15. The Inter-American Court has jurisdiction to hear this case under Article 62(3) of the American Convention because Colombia has been a State Party to that convention since July 31, 1973, and it accepted the contentious jurisdiction of the Court on June 21, 1985. Furthermore, on April 12, 2005, the State deposited its instrument of ratification of the Inter-American Convention on the Forced Disappearance of Persons, which went into effect for Colombia 30 days later, in accordance with Article XX of the convention.

### IV ACKNOWLEDGMENT OF RESPONSIBILITY

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<sup>3</sup> Cf. *Case of Tabares Toro et al. v. Colombia*. Call for a hearing. October 18, 2022, Order of the President of the Inter-American Court of Human Rights. Available in Spanish at: [https://www.corteidh.or.cr/docs/asuntos/tabares\\_toro\\_18\\_10\\_2022.pdf](https://www.corteidh.or.cr/docs/asuntos/tabares_toro_18_10_2022.pdf)

<sup>4</sup> The following attended the hearing: a) for the Inter-American Commission: the attorneys Erick Acuña Pereda and Karin Masel; b) for the representatives: Ana María Rodríguez Valencia, Moisés David Meza, and David Andrés Iregui Delgado, attorneys of the Colombian Commission of Jurists; and c) for the State: Martha Lucía Zamora Ávila, Director General of the National Agency for Legal Defense of the State, agent.

<sup>5</sup> The brief was signed by Julian David Ortiz Guarín, Elba María Arrunátegui Giraldo, Yesica Naranjo Álvarez, Diana Carolina Sulez Díaz, and Jhoan Steven Idrobo. It argues that the State of Colombia should be found responsible for the forced disappearance of serviceman Óscar Iván Tabares Toro.

**A. The State's acknowledgment of responsibility and observations of the representatives and the Commission**

16. The **State**, in the public hearing for this case and in its final written arguments, acknowledged its international responsibility for the forced disappearance of the professional soldier Óscar Iván Tabares Toro, which began on December 28, 1997, while he was serving in the "Tigre" Company of Anti-guerrilla Battalion 20 of the National Army, near the municipality of San Juanito in the department of Meta. The State also acknowledged that state agents directly participated in this event. It stated that serviceman Tabares Toro was under the authority of the National Army, and that in this special situation, the State assumes the role of guarantor. It also acknowledged its responsibility for the failure of state authorities to diligently investigate the disappearance within a reasonable period of time, which made it impossible to clarify the events, identify those responsible, and locate the soldier.

17. The State acknowledged its international responsibility for violating Óscar Iván Tabares Toro's rights to juridical personhood (Article 3), life (Article 4(1)), personal integrity (Article 5(1)), and personal liberty (Article 7(1)), all recognized in the American Convention, in conjunction with the obligations established in Article 1(1) of that convention and Article I(a) of the CIDFP.

18. It also stated that these facts gave rise to the violation of the rights to judicial guarantees (Article 8(1)) and judicial protection (Article 25(1)) established in the American Convention, in conjunction with Article 1(1) of that convention, as well as Article I(b) of the CIDFP, to the detriment of Óscar Iván Tabares Toro, María Elena Toro Torres, Óscar de Jesús Tabares, Holmar de Jesús Gallego Márquez, María Bibiancy Tabares Toro, John Freddy Tabares Giraldo, Leidy Juliette Gallego Toro, and María Isabel Gallego Toro. Lastly, the State acknowledged its responsibility for the serious harm caused to the family of serviceman Tabares Toro, including the violation of the rights to personal integrity, protection of the family, and honor, enshrined in Articles 5(1), 17, and 11 of the American Convention, due to the State's failure to obtain justice and the family's rootlessness and stigmatization after the events.

19. Regarding measures of reparation, the State asked in its final arguments that the Court order those measures that are directly connected to the harm suffered and the violations the State has acknowledged and that have been proven. It also expressed its intention to implement any measures of reparation the Court orders in this judgment, in concert with the family of Tabares Toro.

20. In the public hearing for this case, the **representatives** welcomed the State's acknowledgment of responsibility and asked the Court to declare the State internationally responsible for the forced disappearance of Óscar Iván Tabares Toro, which is directly attributable to the Colombian army. They also asked that the State be declared responsible for violating the rights enshrined in Articles 5(1), 5(2), 8, 11, 13, 17, 22, and 25 of the Convention, in conjunction with its Article 1(1), to the detriment of Óscar Iván's relatives, as well as for violating Articles I(a) and I(b) of the CIDFP.

21. Finally, they requested the measures of reparation listed in the pleadings and evidence brief, those listed in the acknowledgment of responsibility, and those specifically related to prevention and non-repetition, the investigation and search for serviceman Tabares, the need to adopt mechanisms to ensure the implementation of measures of reparation for the family members who had to leave the country for their safety, and any others the Court deems relevant.

22. The **Commission** welcomed the State's full acknowledgment of its international responsibility in the public hearing and held that it encompasses "[...] all the considerations of fact and law established [...] in its Merits Report and in the representatives' pleadings and motions brief," which helps give dignity to the victims and advance justice and reparation. The Commission therefore asked the Court to find the State responsible for:

a) the forced disappearance of Óscar Iván Tabares Toro and the violation of his right to life, to recognition as a person before the law, to personal integrity, and to personal liberty, in accordance with the American Convention, as well as the violation of Article I(a) of the CIDFP;

b) the impunity and lack of due diligence in the investigation and search for Mr. Tabares, the violation of the rights to judicial guarantees and judicial protection established in the

American Convention, as well as of Article I(b) of the CIDFP, to the detriment of Óscar Iván Tabares Toro, his mother María Elena Toro Torres, his father Óscar de Jesús Tabares, his stepfather Holmar de Jesús Gallego Márquez, and his siblings María Bibiancy Tabares Toro, Jhon Fredy Tabares Giraldo, Leidy Julieth Gallego Toro, and María Isabel Gallego Toro; and

c) the insecurity experienced by the victim's relatives, which led not just to multiple moves but also to exile for Ms. Toro and her daughter. This has torn the family apart, in violation of the victim's and his family's rights to personal integrity, protection of the family, freedom of movement and residence, honor, and dignity, as established in Articles 5(1), 17, 22, and 11 of the American Convention.

23. With respect to reparations, the Commission asked that the State redouble its efforts to: (i) accelerate its investigation into the facts, as well as the prosecution and eventual punishment of those responsible for the disappearance of Óscar Tabares; (ii) carry out an effective search plan whose progress and results can be monitored and measured with the due participation of family members and their representatives; (iii) comprehensively make reparation for the consequences of the above-mentioned violations; and (iv) adopt the measures necessary to ensure that these kinds of violations do not happen again.

## **B. Considerations of the Court**

24. Pursuant to Articles 62 and 64 of the Rules of Procedure, and in its authority to exercise international judicial oversight of human rights, a matter of international public order, it is the responsibility of this Court to ensure that acknowledgments of responsibility are compatible with the aims of the inter-American system.<sup>6</sup> The Court will analyze below the issues raised by the case under review here.

### *B.1. The facts*

25. It follows from the State's acknowledgment of responsibility that the State has accepted the factual framework of the case described by the Commission in the Merits Report. Because of this, there is no longer any dispute, specifically regarding:

a) the forced disappearance of the professional soldier Óscar Iván Tabares Toro on December 28, 1997—involving the direct participation of state agents—while the soldier was encamped with the "Tigre" Company of Anti-guerrilla Battalion 20 of the National Army near the municipality of San Juanito, Meta;

b) serviceman Tabares Toro was subject to the authority of the National Army, and in this special situation, the State assumes the role of guarantor; and

c) the family members suffered rootlessness and stigmatization after the facts due to the State's failure to seek justice.

26. Colombia has also acknowledged that state authorities failed to diligently investigate the disappearance within a reasonable period of time, which made it impossible to clarify the events, identify those responsible, and locate Mr. Tabares Toro.

### *B.2. Legal claims*

27. It is clear from the State's acknowledgment of its human rights violations, as well as the observations of the representatives and the Commission, that there is no longer any dispute as to the State's responsibility for violating the American Convention and the CIDFP as enumerated below, to the detriment of the individuals indicated:

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<sup>6</sup> Cf. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary objections, merits, reparations, and costs.* Judgment of May 26, 2010. Series C No. 213, para. 17, and *Case of Aguinaga Aillón v. Ecuador. Merits, reparations, and costs.* Judgment of January 30, 2023. Series C No. 483, para. 16.

a) Articles 3, 4(1), 5(1), and 7(1) (rights to juridical personhood, life, personal integrity, and personal liberty), in conjunction with Article 1(1) (obligation to ensure human rights) of the American Convention, as well as Article I(a) of the CIDFP, to the detriment of Óscar Iván Tabares Toro for his forced disappearance;

b) Articles 8(1) and 25(1) (rights to judicial guarantees and judicial protection), in conjunction with Article 1(1) (obligation to ensure human rights) of the American Convention, as well as Article I(b) of the CIDFP, to the detriment of Óscar Iván Tabares Toro, his mother María Elena Toro Torres, his father Óscar de Jesús Tabares, his stepfather Holmar de Jesús Gallego Márquez, and his siblings María Bibiancy Tabares Toro, Leidy Julieth Gallego Toro, María Isabel Gallego Toro, and Jhon Fredy Tabares Giraldo; and

c) Articles 5(1), 11, and 17 (rights to personal integrity, protection of honor and dignity, and protection of the family), in conjunction with Article 1(1) (obligation to ensure human rights) of the American Convention, due to the failure of the State to seek justice and the serious harm the victim's family suffered as a result, including rootlessness and stigmatization.

28. The Court notes that the acknowledgment of responsibility expressly includes all the violations of the American Convention on Human Rights and the Inter-American Convention on the Forced Disappearance of Persons that were alleged by the Commission, as well as the majority of the violations alleged by the representatives. However, in their pleadings and motions brief, the representatives also alleged the violation of the right to not be subjected to cruel or inhuman treatment (Article 5(2)) and the violation of Mr. Tabares Toro's relatives' right to the truth<sup>7</sup>. Thus, the alleged violation of these rights remains a matter of dispute, and it will be analyzed in the merits of this judgment (*infra* chapter VII(2)(B)).

29. The representatives, in the public hearing and in their final arguments, and the Commission, in its final observations, belatedly asked the Court to declare the violation of Article 22 of the American Convention (right to freedom of movement and residence), in conjunction with Article 1(1),<sup>8</sup> to the detriment of the family of Mr. Tabares Toro, arguing that the family members had to move on multiple occasions over the years and some had to leave the country. Furthermore, the representatives alleged the violation of Article 19 of the American Convention (rights of the child), to the detriment of Mr. Tabares Toro's sisters due to the impacts of the forced disappearance on them. The representatives also alleged the violation of Article I(d) of the CIDFP, though they offered no specific arguments in support of that claim.

### B.3. Reparations

30. Bearing in mind the claims of the Commission and the representatives as well as the arguments of the State (in its acknowledgment of responsibility) concerning measures of reparation, the Court notes that the State asked it to order measures that are directly connected to the harm suffered, the violations acknowledged by the State, and the violations the Court considers proven. The State also expressed its intention to implement the measures of reparation in concert with the family of Mr. Tabares Toro (*supra* para. 19). Accordingly, in the chapter on reparations, the Court will analyze the measures of reparation requested by the Commission and the representatives, without prejudice to the State's declaration regarding the appropriateness of measures intended to achieve comprehensive reparation.

### B.4. Conclusions: assessment of the acknowledgment of responsibility

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<sup>7</sup> On this matter, the Court reiterates that the victims and their representatives can invoke the violation of rights not contained in the Merits Report as long as they fall within the factual framework established by the Commission, as they are the ones who hold all the rights enshrined in the American Convention. *Cf. Case of Pacheco Tineo Family v. Bolivia. Preliminary objections, merits, reparations, and costs.* Judgment of November 25, 2013. Series C No. 272, para. 22, and *Case of García Rodríguez et al. v. Mexico. Preliminary objections, merits, reparations, and costs.* Judgment of January 25, 2023. Series C No. 482, para. 35.

<sup>8</sup> The Court understands that the State did not include Article 22 of the Convention in its acknowledgment of responsibility because the alleged violation of it is based on assertions related to the facts concerning displacement within Colombia and the recent facts concerning the exile of some of Mr. Tabares Toro's family members.

31. The Court stresses that the State’s acknowledgment of responsibility encompasses the entirety of the facts and human rights violations alleged by the Commission in its submission and Merits Report, and it refers to the individuals specified by the Commission and the representatives as victims. This Court holds that the acknowledgment of international responsibility is a positive contribution to the development of this case and to the advancement of the principles undergirding the Convention, as well as the need for reparation for the alleged victim.<sup>9</sup>

32. As it has in other cases, the Court holds that an acknowledgment of responsibility produces full legal effects, in accordance with Articles 62 and 64 of the Rules of Procedure.<sup>10</sup> This Court finds that there is no longer any dispute as to the facts, the majority of the allegations of law, and the need to adopt measures of reparation. Because of the grave violations in this case, the Court deems it necessary to issue a judgment in which it establishes the facts—consistent with the evidence gathered in these proceedings and bearing in mind the acknowledgment of international responsibility—and examines the alleged human rights violations. This contributes to reparation for the victims, the prevention of similar acts in the future, and, in sum, the fulfillment of the purposes of the inter-American legal system.<sup>11</sup> Moreover, this Court will rule on the measures of reparation, bearing in mind the relevant assertions made by the State.

## V EVIDENCE

### A. Documentary evidence

33. The Court received various documents presented as evidence by the Commission, the representatives, and the State, which, as in other cases, it admits with the understanding that they were presented at the proper procedural time (Article 57 of the Rules of Procedure)<sup>12</sup>.

34. The Court notes that, along with the final written arguments, the State submitted one annex<sup>13</sup> and the representatives submitted three.<sup>14</sup> Neither the parties nor the Commission submitted observations on the annexes. With respect to the State’s written annex with information reported by the Group for the Search, Identification, and Handover of Disappeared Persons (hereinafter also “GRUBE”) from 2006–2022, as well as the representatives’ Annexes 1 and 2 with information on the search process, this Court admits them and considers them useful for deciding this case, in accordance with Article 58(b) of the Rules of Procedure. Finally, regarding the certification of costs and expenses and the receipts submitted by the representatives in Annex 3, this Court incorporates them into the body of evidence, insofar as they were incurred after the submission of the pleadings and motions brief, which the Court will assess in the corresponding section of this judgment.

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<sup>9</sup> Cf. *Case of Benavides Cevallos v. Ecuador. Merits, reparations, and costs*. Judgment of June 19, 1998. Series C No. 38, para. 57, and *Case of Aguinaga Aillón v. Ecuador, supra*, para. 21.

<sup>10</sup> Cf. *Case of Benavides Cevallos v. Ecuador, supra*, para. 57, and *Case of Aguinaga Aillón v. Ecuador, supra*, para. 21.

<sup>11</sup> Cf. *Case of Tiu Tojín v. Guatemala. Merits, reparations, and costs*. Judgment of November 26, 2008. Series C No. 190, para. 26, and *Case of Brítez Arce et al. v. Argentina. Merits, reparations, and costs*. Judgment of November 16, 2022. Series C No. 474, para. 22.

<sup>12</sup> Documentary evidence can be presented—in general and in accordance with Article 57(2) of the Rules of Procedure—with the submission briefs for the case, with pleadings and motions briefs, or with answering briefs, as appropriate. Evidence submitted outside of these procedural occasions is not admissible except under the circumstances specified in Article 57(2) of the Rules of Procedure (namely, force majeure, grave impediment) or if it concerns a supervening fact—that is, one that occurred after the specified procedural occasions. Cf. *Case of Barrios Family v. Venezuela. Merits, reparations, and costs*. Judgment of November 24, 2011. Series C No. 237, paras. 17 and 18, and *Case of Olivera Fuentes v. Peru. Preliminary objections, merits, reparations, and costs*. Judgment of February 4, 2023. Series C No. 484, para.39 and footnote 30.

<sup>13</sup> The State attached the following annex: Prosecutor General of the Nation, File No. 20221700092011 of December 5, 2022 (evidence file, folio 14303).

<sup>14</sup> The representatives attached the following documents: Annex 1, CCJ Record of May 19, 2021; Annex 2, Record of Specialized Prosecutor 124, May 31, 2021; and Annex 3, Certification of costs and expenses incurred (evidence file, folios 14197, 14199, and 14201–14301).



35. In addition, the representatives offered in their pleadings and motions brief an expert opinion from Yeiny Carolina Bocachica Torres on the psychosocial harm experienced by the family of Óscar Iván Tabares Toro. The representatives had been ordered to present this expert opinion by an Order of the President on October 18, 2022. However, the representatives reported before the deadline that the expert opinion, duly authenticated by affidavit, had been presented to the Court with their pleadings and motions brief. The Court notes that, indeed, the document was submitted as an annex and was signed jointly by the evaluators—Yeiny Carolina Torres Bocachica and Carlos Mario Quintero González—from the Colombian Psychosocial Collective on September 11, 2021. This indicates that the document was not submitted according to the terms set in the October 18, 2022, order calling for a hearing and that it is now part of the body of evidence in the case as documentary evidence. The Court will assess the document, but that does not mean that it carries the evidentiary weight or value of an expert opinion.

### **B. Admissibility of the testimonial and expert evidence**

36. The Court finds it appropriate to admit the statements provided at public hearing<sup>15</sup> and by affidavit,<sup>16</sup> as they are in keeping with the purpose established by the President in the orders requiring them in this case (*supra* para. 9).

## **VI FACTS**

37. In this chapter, the Court will set out the established facts of this case based on the State's acknowledgment of responsibility, the factual framework, and the body of evidence admitted, in the following order: (a) Óscar Iván Tabares Toro; (b) Óscar Iván Tabares Toro's disappearance and his family's search for him; (c) domestic proceedings; and (d) repercussions of the search for María Elena Toro and her family.

### **A. Óscar Iván Tabares Toro**

38. Óscar Iván Tabares Toro was born in the municipality of Heliconia in Antioquia, Colombia, on January 3, 1974. His parents are Óscar de Jesús Tabares and María Elena Toro Torres, and his siblings are: María Bibiancy Tabares Toro<sup>17</sup>, Leidy Julieth Gallego Toro<sup>18</sup>, María Isabel Gallego Toro<sup>19</sup>, and Jhon Fredy Tabares Giraldo<sup>20</sup>. Beginning in 1980, Óscar lived with his mother and Holmar de Jesús Gallego Márquez, who acted as his stepfather from that point on.<sup>21</sup>

39. In 1994, Óscar Tabares joined the National Army. He first did his mandatory military service and then stayed on as a paid soldier.<sup>22</sup> By December of 1997, Óscar Tabares was serving as an active-duty

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<sup>15</sup> The Court received public hearing statements from María Elena Toro Torres (by video conference), alleged victim, proposed by the representatives; Elsa María Moyano Galvis, witness, proposed by the State; and Jorge Eliécer Molano Rodríguez, expert witness, proposed by the Commission.

<sup>16</sup> The Court received statements by affidavit from María Bibiancy Tabares Toro and María Isabel Gallego Toro, alleged victims, proposed by the representatives; Carlos Eduardo Rayón Jiménez, Hugo Alexander Tovar Pérez, María Paula Leguizamón Zárate, and Roberto Ramírez García, witnesses, proposed by the State; Omar Eduardo Rojas Bolaños, expert witness proposed by the representatives; and Fanny Cecilia Merchán Merchán, expert witness proposed by the State.

<sup>17</sup> Cf. Identity card No. 43.583.003 and birth certificate of María Bibiancy Tabares Toro (evidence file, folios 5–7).

<sup>18</sup> Cf. Identity card No. 43.974.790 and birth certificate of Leidy Julieth Gallego Toro (evidence file, folios 13–15).

<sup>19</sup> Cf. Identity card No. 1.017.145.596 and birth certificate of María Isabel Gallego Toro (evidence file, folios 17–19).

<sup>20</sup> Cf. Identity card No. 1.017.168.287 and birth certificate of Jhon Fredy Tabares Giraldo (evidence file, folios 9–11).

<sup>21</sup> Cf. Statement record of Holmar de Jesús Gallego Márquez before the Prosecutor General of the Nation on July 11, 2002 (evidence file, folios 21–25). This individual passed away on June 4, 2010.

<sup>22</sup> Cf. Proofs of payment issued by the Ministry of National Defense to Óscar Iván Tabares Toro in June and July of 1997 (evidence file, folios 3726 and 3727).

soldier attached to the Artillery School of Bogotá—Carlos Gil Colorado School<sup>23</sup>—Mobile Brigade No. 1 of Battalion 20, “Tigre” Company of the National Army of Colombia.<sup>24</sup>

## **B. Óscar Iván Tabares Toro’s disappearance and his family’s search for him**

40. Óscar Tabares visited his family in Medellín for the last time from September 19, 1997, to October 4, 1997, when he was on vacation. At that time, Mr. Tabares Toro told his mother that he was having problems with the lieutenant in charge of the Company.<sup>25</sup> After that visit, he returned to his job in the army.

41. On December 28, 1997, the “Tigre” Company encamped in Vereda de San Luis de Toledo, a rural part of the municipality of San Juanito, Meta.<sup>26</sup> Around midnight, several witnesses heard a grenade explosion and three shots.<sup>27</sup> Óscar Iván Tabares Toro’s whereabouts have been unknown since that moment.

42. Because María Elena Toro Torres had not heard from her son, she began to seek information on his whereabouts. Ms. Toro contacted soldiers and military authorities. The authorities indicated that on December 28, 1997, Óscar Tabares had thrown a grenade within the company’s encampment and then fled. She was even told that he had joined the guerrillas, specifically the 53rd Front of the Revolutionary Armed Forces of Colombia (hereinafter also “FARC”).<sup>28</sup>

43. Óscar Tabares’s fellow soldiers told María Elena Toro a different version of the events. One of them reportedly told her that her son had been killed the night of the incident of the grenade explosion and gunfire. This account was confirmed by other soldiers. On January 18, 1998, another soldier apparently told Ms. Toro by telephone that her son’s body was in San Juanito, Meta<sup>29</sup>. Ms. Toro stated that another soldier told her that after he heard the grenade blast, he heard Óscar Tabares yell “It wasn’t me, it wasn’t me,” and that gunshots could also be heard. After this, the lieutenant reportedly moved

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<sup>23</sup> Cf. Statement of María Elena Toro before the Court at the November 8, 2022, public hearing.

<sup>24</sup> Cf. Sworn statement and complaint by María Elena Toro Torres before the Departmental Inspector General of Antioquia, Office of Human Rights, Medellín, on January 19, 1998 (evidence file, folios 68–71) and Decision of Military Criminal Court of Instruction 47 on June 25, 1998 (evidence file, folios 73–91).

<sup>25</sup> Cf. Statement of María Elena Toro before the Regional Prosecutor’s Office on November 17, 1998 (evidence file, folios 93–96).

<sup>26</sup> Cf. Decision of Military Criminal Court of Instruction 47 on June 25, 1998, *supra*, and Preliminary investigation 463 of the Second Specialized Prosecutor’s Office, National Unit of Human Rights and International Humanitarian Law Prosecutors, July 2, 2008 (evidence file, folios 1973–2012).

<sup>27</sup> Cf. Decision of Military Criminal Court of Instruction 47 on June 25, 1998, *supra*.

<sup>28</sup> On January 6, 1997, a soldier who had served with Óscar Tabares told María Elena Toro to “call the Artillery [S]chool directly.” On January 7th of the same year, María Elena Toro, along with her husband Holmar Gallego, went to the Fourth Brigade of Colombia and was told that Óscar Tabares had thrown a grenade and fled. On January 8th, she went to the Artillery School, where a colonel repeated this version of the facts and also stated that Óscar Tabares was a member of the 53rd Front of the FARC. She returned to the Military School a couple of times and was told that the investigation had been transferred to the military criminal justice system, but she was not informed of the whereabouts of her son. However, she was told by the judge of Mobile Brigade No. 1 of the Artillery School, which was in charge of the military investigation, that the reported gunshots had been confirmed. Ms. Toro also stated that at the Artillery School she was told that Óscar had withdrawn money from his bank account after the incident, but later it was confirmed that that information was untrue. Cf. Sworn statement and complaint by María Elena Toro Torres on January 19, 1998, *supra*; Addition to sworn statement by María Elena Toro before the Departmental Inspector General of Antioquia, Office of Human Rights, Medellín, on February 6, 1998 (evidence file, folios 159–161); Addition to statement by María Elena Toro before the Departmental Inspector General of Antioquia, Office of Human Rights, Medellín, on February 13, 1998 (evidence file, folios 163–165); and Statement of María Elena Toro before the Court at public hearing, *supra*. Moreover, the version of events according to which Óscar Iván Tabares Toro had joined the guerrillas had been gathered by the Second Specialized Prosecutor’s Office. Similarly, during the Preliminary Investigation of the Designated Disciplinary Inspector General for the Defense of Human Rights, a fellow soldier of Óscar Iván “when questioned about whether he knew anything about serviceman Tabares stated that the rumor was that he was with the guerrillas.” Cf. Preliminary investigation 463 of the Second Specialized Prosecutor’s Office, National Unit of Human Rights and International Humanitarian Law Prosecutors, July 2, 2008, *supra*, and Decision to close and dismiss Case 008-10804, of the Designated Disciplinary Inspector General for the Defense of Human Rights, December 13, 2002 (evidence file, folios 173–187).

<sup>29</sup> Cf. Sworn statement and complaint by María Elena Toro Torres on January 19, 1998, *supra*.

the company to another location and the body of Óscar Tabares remained in the village of Toledo.<sup>30</sup> This version was repeated by another soldier on January 27, 2003, and July 2, 2003,<sup>31</sup> and this soldier added that the day after the events, a group of soldiers went back to the place where they had been encamped, but they didn't find anything. However, he stated that he went to the village a couple of days later and that a villager told him the body of Óscar Tabares was "on the lower side of the path" and that "[...] yesterday they buried it on the pipeline side about 20 meters below the path."<sup>32</sup>

44. In March of 1998, María Elena Toro, her husband Holmar Gallego, and her brother Iván Toro went to San Juanito, Meta. On that visit, the locals told them that on the night of December 28, 1997, there was an explosion, then some shots fired, and that by the morning the troops had left. They also said that they had not seen anyone escape and had not seen any cadavers. From there, they also went to the place where the "Tigre" Company had been encamped in order to inspect it. There they found a buried canvas tent—of which Ms. Toro later gave a piece to the Prosecutor's Office<sup>33</sup>—about two meters long, stained with blood and perforated by splinters, and they also found the underclothes of Óscar Tabares inside his quarters. While they were there, in response to a tip from a local, they went to a ravine where they found a camouflaged military uniform that was bloody, damaged, and missing the name, but they left it where they had found it.<sup>34</sup>

45. In her search for information on her son's whereabouts, María Elena Toro communicated with the Inspector General's Office, the Ombudsman's Office, the Prosecutor's Office, the National and International Red Cross, and the High Commissioner for Peace in Colombia.<sup>35</sup> Moreover, several domestic proceedings were initiated. Nevertheless, the whereabouts of Óscar Iván Tabares Toro—or of his remains—are still unknown today.

### C. Domestic proceedings

#### C.1. Military criminal investigation of Óscar Iván Tabares Toro

46. In response to a December 29, 1997, report by the lieutenant of the "Tigre" Company, the military justice system initiated an investigation of Óscar Tabares for attempted homicide, which was to be handled by Military Criminal Court of Instruction 47.<sup>36</sup> On June 25, 1998, Military Criminal Court of Instruction 47 concluded that there had been a grenade explosion, a struggle between serviceman

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<sup>30</sup> Cf. Addition to statement by María Elena Toro, February 6, 1998, *supra*.

<sup>31</sup> On January 27, 2003, and July 2, 2003, a former soldier came to the Prosecutor's Office to give his statement; he had retired from the army on December 31, 1998. In his statement, he attested that: (a) several members of the company had been removed from the army after the events and that the lieutenant of the "Tigre" Company treated the soldiers badly; (b) after the grenade explosion, shots were heard, and "the lieutenant and corporal were shooting at serviceman Tabares;" (c) the explosion was not inside the lieutenant's and corporal's quarters but rather outside "as if to scare them," but they were not in their quarters when it happened because they had been warned beforehand. He clarified that Tabares's quarters were very close to those of the lieutenant and the corporal; (d) the shots were fired at Tabares, and "he yelled right after the shots rang out;" (e) the day before the events, as the lieutenant already knew what was going to happen, he "ordered his non-commissioned officers to kill Tabares and anyone who helped him;" (f) after Óscar Tabares was shot, he ran away "as if he were drunk," passed by his quarters, got tangled up and fell, dropped a bloody grenade there, propped himself up and was smeared in blood, and then got up "and fled downhill from there;" and (g) the lieutenant and the corporal gave the order to collect the equipment and papers of serviceman Tabares. Cf. Statement record of HGC before the Prosecutor's Office, Bogotá, on January 27, 2003 (evidence file, folios 290–299), and Addition to statement record of HGC, Bogotá, on July 2, 2003 (folios 301–310).

<sup>32</sup> Cf. Addition to statement record of HGC, Bogotá, on July 2, 2003, *supra*.

<sup>33</sup> On October 31, 2011, a report confirmed that María Elena Toro had turned over a piece of green cloth to the investigators at the Prosecutor's Office as part of the civilian criminal proceedings. That piece was sent to the Technical Information Unit (CTI) of the Prosecutor's Office to be analyzed, but the results were inconclusive. Cf. Report No. 638759 by a criminal investigator of the Prosecutor General of the Nation on October 31, 2011 (evidence file, folios 3136–3164); Statement and records of Specialized Prosecutor 20 of the National Human Rights and International Humanitarian Law Unit, December 5, 2011, and March 20, 2012 (evidence file, folios 3166–3168); and Genetics Expert Report No. 685393GE of June 20, 2012 (evidence file, folios 3170–3173).

<sup>34</sup> Cf. Statement of María Elena Toro before the Court at public hearing, *supra*, and Statement of María Elena Toro before the Regional Prosecutor's Office, November 17, 1998, *supra*.

<sup>35</sup> Cf. Statement of María Elena Toro before the Court at public hearing, *supra*.

<sup>36</sup> Cf. Decision of Military Criminal Court of Instruction 47 of June 25, 1998, *supra*.

Tabares and a superior, and three shots fired into the air as a result of the struggle. It also determined that serviceman Tabares intended to take the life of the lieutenant and a corporal. The act was thus considered attempted homicide and an order was issued for the capture of Óscar Tabares. Without prejudice to the foregoing, copies were ordered to be sent to the civilian courts to investigate the disappearance of Mr. Tabares Toro.<sup>37</sup>

47. On December 28, 2006, the 6th Military Court of First Instance acquitted Óscar Iván Tabares Toro of the charges. That court concluded that “[...] there is no doubt that the statements intended to incriminate [Óscar Tabares were] weak, inconsistent, and incapable of proving that [Tabares Toro] launched the grenade that exploded near the quarters of his immediate superiors, much less that it was an attempt against their lives.”<sup>38</sup>

48. That decision was appealed. On May 28, 2007, the Third Division of the Military High Court rejected the appeal. It stressed that despite the ample witness testimony, “[...] after weighing the evidence, it is not possible to confirm with certainty the charge made,” and it upheld the acquittal.<sup>39</sup>

*C.2. Complaint proceedings against the National Army, handled by the Office of Human Rights of the Departmental Inspector General of Antioquia*

49. On January 19, 1998, María Elena Toro filed a complaint against the army before the Office of Human Rights of the Departmental Inspector General of Antioquia (hereinafter “Office of the Inspector General”), for the disappearance and presumed death of her son. At that time, Ms. Toro described the steps she had taken and the differing accounts of what had happened to Óscar Iván<sup>40</sup> (*supra* paras. 42–44). Ms. Toro added to that complaint on February 6 and 13, 1998.<sup>41</sup>

50. During the preliminary investigation, witness testimonies were received from three soldiers<sup>42</sup> and from the person who had been lieutenant of the “Tigre” Company at the time of the events.<sup>43</sup> On December 13, 2002, the Designated Disciplinary Inspector General for the Defense of Human Rights of the Prosecutor General ordered the closure and final dismissal of the preliminary investigation. In the decision to close the investigation, family members were reportedly informed that efforts to locate serviceman Tabares would be undertaken<sup>44</sup>. The investigation led the Inspector General to conclude that both the lieutenant of the company and the commander of the Fifth Division “[...] were at all times

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<sup>37</sup> Cf. Decision of Military Criminal Court of Instruction 47 of June 25, 1998, *supra*.

<sup>38</sup> Cf. Decision of the Sixth Military Court of First Instance, Military criminal justice system, of December 28, 2006 (evidence file, folios 103–142).

<sup>39</sup> Cf. Decision No. 054 of the Military High Court in Case No. 158580-XIV-F253-EJC, from May 28, 2007, (evidence file, folios 144–157).

<sup>40</sup> Cf. Sworn statement and complaint by María Elena Toro Torres on January 19, 1998, *supra*; Statement of María Elena Toro before the Regional Prosecutor on November 17, 1998, *supra*; Statement record of María Elena Toro before the Prosecutor General of the Nation, July 12, 2002 (evidence file, folios 2033–2042); and Record No. 1062, Armed Forces of Colombia, National Army, December 31, 1997 (evidence file, folios 2014 and 2015).

<sup>41</sup> Cf. Addition to statement by María Elena Toro, February 6, 1998, *supra*, and Addition to statement by María Elena Toro, February 13, 1998, *supra*.

<sup>42</sup> Specifically, serviceman NDQ described hearing the grenade explosion and the shots and said he was informed by a sergeant that Óscar Tabares had tried to kill his superiors; and serviceman GATP also said he heard the explosion and the shots, and that it was very dark and impossible to see anything but that “he heard someone running,” and that “maybe ten minutes later, they tried to find serviceman Tabares but no one found him, and after about two hours, they packed everything up and went to the San Juanito Base,” later indicating that the rumor was that Tabares had joined the guerrillas. Cf. Decision to close and dismiss Case 008-10804, December 13, 2002, *supra*.

<sup>43</sup> Lieutenant IRRP emphasized a supposed drug addiction of Tabares and stated that the Military Oversight Office of Brigade No. 1 had sentenced him “in absentia” to 25 years of prison for attempted homicide. Cf. Decision to close and dismiss Case 008-10804, December 13, 2002, *supra*.

<sup>44</sup> The closure ruling refers to a March 6, 1998, report signed by the Commander of the Fifth Division of the National Army, which states that on January 7, 1998, the Chief of Personnel of Mobile Brigade No. 1 had personally informed the relatives of Óscar Tabares that the Commander of Anti-guerrilla Battalion 20 “[...] had initiated a search for serviceman Tabares in the area where the events had taken place.” It also asserts that on January 14, 1998 the Rear Command Post of Mobile Brigade No. 1 met again with the relatives and informed them that “[...] a radio campaign through the ‘Voz de Caqueza’ station had begun and was intended, like other measures, [to] locate serviceman Tabares but was unsuccessful.” Cf. Decision to close and dismiss Case 008-10804, December 13, 2002, *supra*.

focused on locating him, began searching for him immediately, and spared no effort in the search, but were ultimately unsuccessful."<sup>45</sup> The Inspector General concluded in the decision that all indications were that the disappearance of Óscar Tabares "[...] did not result from the actions of someone motivated by the desire to erase all evidence of his existence. It was instead the result of his own choice: his conduct toward his superiors was so egregious—throwing a grenade at them—that he knew that if he stayed, he would have to face the consequences, and he chose instead to abandon the ranks of the National Army."<sup>46</sup> Accordingly, the Inspector General determined that "[t]here is no evidence whatsoever that the officer or non-commissioned officer who were attacked by the soldier were responsible for his alleged disappearance,"<sup>47</sup> concluding that the testimonies were in agreement with the lieutenant's report in that the incident was provoked by Óscar Tabares when he tried to kill his superiors "by throwing a grenade at them while they slept, which led them to disarm the uniformed attacker and led to him fleeing to avoid being prosecuted."<sup>48</sup>

51. That order also indicates that the National Army, via communications in response to requests sent to the President of the Republic, informed Ms. Toro that "[...] the facts of Óscar Iván's attempt to kill members of this institution and his subsequent flight do not lead us to declare him missing." As a consequence, Óscar Tabares was removed from military service by administrative personnel order No. 1009, February 28, 1998, with "Determination of the Force Commander" recorded as the grounds.<sup>49</sup>

52. In this context, María Elena Toro sent different "right to petition" claims to the then-Minister of National Defense, to the Commander General of the National Army, and to the President of the Republic, in which she requested information on the whereabouts of her son and for the investigation into the matter to be expedited. These petitions were filed on January 26,<sup>50</sup> March 13,<sup>51</sup> March 19,<sup>52</sup> April 24,<sup>53</sup> July 23,<sup>54</sup> August 10,<sup>55</sup> and October 16,<sup>56</sup> of the year 1998. They were all unsuccessful. On December 8, 1998, the army responded to one of the "right to petition" documents sent by Ms. Toro by stating that "[...] due to the facts preceding the removal of [Tabares Toro] and his flight from the scene of the events, we consider him to have abandoned the service. For this reason, the [f]orce [c]ommander has conducted no investigation of the alleged disappearance."<sup>57</sup>

### *C.3 Investigation and criminal proceedings in the regular courts regarding the disappearance of Óscar Tabares Toro*

53. On January 8, 1998, María Elena Toro filed a complaint with the Tisquesusa de Bogotá Police Department about the disappearance of her son.<sup>58</sup> In addition, on July 7, 1998, the father of Óscar Iván, Óscar de Jesús Tabares, filed a criminal complaint with the 22nd Municipal Criminal Court of Medellín—

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<sup>45</sup> Cf. Decision to close and dismiss Case 008-10804, December 13, 2002, *supra*.

<sup>46</sup> Cf. Decision to close and dismiss Case 008-10804, December 13, 2002, *supra*.

<sup>47</sup> Cf. Decision to close and dismiss Case 008-10804, December 13, 2002, *supra*.

<sup>48</sup> Cf. Decision to close and dismiss Case 008-10804, December 13, 2002, *supra*.

<sup>49</sup> Cf. Decision to close and dismiss Case 008-10804, December 13, 2002, *supra*.

<sup>50</sup> Cf. Right-to-petition document signed by María Elena Toro, sent to the Ministry of National Defense, January 26, 1998 (evidence file, folio 2044).

<sup>51</sup> Cf. Right-to-petition document signed by María Elena Toro, sent to the Ministry of National Defense on March 10, 1998, and received on March 13, 1998 (evidence file, folios 2046–2048).

<sup>52</sup> Cf. Right-to-petition document signed by María Elena Toro, sent to the President of the Republic of Colombia on March 19, 1998 (evidence file, folios 2050–2052).

<sup>53</sup> Cf. Right-to-petition document signed by María Elena Toro, sent to the Ministry of National Defense, April 24, 1998 (evidence file, folio 2054).

<sup>54</sup> Cf. Right-to-petition document signed by María Elena Toro, sent to the Ministry of National Defense, July 23, 1998 (evidence file, folios 2056–2058).

<sup>55</sup> Cf. Right-to-petition document signed by María Elena Toro, sent to the Commander General of the National Army, August 10, 1998 (evidence file, folio 2060).

<sup>56</sup> Cf. Right-to-petition document signed by María Elena Toro, sent to the Ministry of National Defense, October 16, 1998 (evidence file, folio 2061).

<sup>57</sup> Cf. Petition response record of the Armed Forces of Colombia, National Army, December 8, 1998 (evidence file, folio 3679).

<sup>58</sup> Cf. Complaint No. 018 filed by María Elena Toro Torres with the Tisquesusa Police Department, SIJIN, Crimes against Life and Personal Integrity Section, January 8, 1998 (evidence file, folio 189).

against the lieutenant of the “Tigre” Company and a corporal—for the murder of his son.<sup>59</sup> On September 3, 1998, Military Criminal Court of Instruction 47 sent the records of its investigation to the Villavicencio Sectional Prosecutor's Office so that the latter could investigate the alleged disappearance of Óscar Tabares.<sup>60</sup> However, in an October 16, 1998, order, the assigned prosecutor declared himself not competent because he held that the complaint concerned a homicide, so he sent the records for reassignment to the Eastern Regional Prosecutor's Office.<sup>61</sup>

54. During this process, on August 4, 1998, María Elena Toro filed a request for information with the National Directorate of Prosecutors regarding the status of the investigation.<sup>62</sup> Subsequently, on September 11, 1998, her legal representative requested information on the “[...] criminal investigation filed with the Office of the Prosecutor.”<sup>63</sup> In response to that request, on September 22, 1998, the National Director of Prosecutors stated “[...] there is no investigation into these events,” so he instructed the Eastern Regional Director of Prosecutors to initiate the relevant investigations “as soon as possible.”<sup>64</sup> As a result, on November 17, 1998, the Fourth Eastern Regional Prosecutor's Office, headquartered in Villavicencio, ordered a preliminary investigation to determine the circumstances of the death or disappearance of Óscar Tabares.<sup>65</sup>

55. On March 5, 1999, the investigation was assigned to the National Human Rights Unit of the Prosecutor General of the Nation<sup>66</sup>. As part of the investigation, the Tisquesusa police were asked about María Elena Toro's January 8, 1998, complaint, but they responded that “[...] nothing related to the complaint was found during a review of the records in this Unit.”<sup>67</sup>

56. As part of this preliminary investigation, Ms. Toro gave numerous statements at the prosecutor's office, in which she reiterated what she had stated to other authorities about what she knew concerning the disappearance of Óscar Tabares and about her trip to San Juanito, Meta.<sup>68</sup> Iván de Jesús Toro Torres, Holmar de Jesús Gallego Márquez, and Ramiro Henao Echeverry, son-in-law of María Elena Toro, also made statements as part of the investigation and provided the same information.<sup>69</sup> Ms. Toro also

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<sup>59</sup> Cf. Preliminary investigation 463 of the Second Specialized Prosecutor's Office, National Unit of Human Rights and International Humanitarian Law Prosecutors, July 2, 2008, *supra*.

<sup>60</sup> Cf. Communication of Military Criminal Court of Instruction 47 on September 6, 1998 (evidence, folio 191).

<sup>61</sup> Cf. Order No. 432 of the Assigned Regional Prosecutor before the GAULA, Villavicencio, Meta, October 16, 1998 (evidence file, folio 2086).

<sup>62</sup> Cf. Right-to-petition document signed by María Elena Toro, sent to the National Directorate of Prosecutors, August 4, 1998 (evidence file, folio 2088).

<sup>63</sup> Cf. Letter on behalf of María Elena Toro, sent to the National Director of Prosecutors, September 11, 1998 (evidence file, folios 193 and 194).

<sup>64</sup> Cf. Record No. DNF/RAL/6255, National Directorate of Prosecutors, September 22, 1998, (evidence file, folio 196).

<sup>65</sup> Cf. Order of the Fourth Assigned Regional Prosecutor's Office, Ref: Preliminary 5166, November 17, 1998, (evidence file, folio 198).

<sup>66</sup> Cf. Order No. 105 of the National Directorate of Prosecutors, March 5, 1999, (evidence file, folios 2097 and 2098).

<sup>67</sup> Cf. Record DNF/AMP/No. 002700 of the National Directorate of Prosecutors, April 9, 1999, (evidence file, folio 2100).

<sup>68</sup> Ms. Toro gave a statement to the Prosecutor's Office on November 17, 1998—to which she added on February 7, 2000—explaining in greater detail the facts concerning Óscar Tabares's bank account, the information received from Óscar's fellow soldiers about the events, and her visit to San Juanito, Meta. She was later called to make statements again on July 12, 2002, October 13, 2006, August 13, 2009, and July 20, 2011. Cf. Statement of María Elena Toro before the Regional Prosecutor on November 17, 1998, *supra*; Addition to statement record of María Elena Toro before the Prosecutor General of the Nation, February 7, 2000 (evidence file, folios 200–202); Statement record of María Elena Toro before the Prosecutor General of the Nation, July 12, 2002, *supra*; Addition to statement record of María Elena Toro before the Second Specialized Prosecutor attached to the National Human Rights and International Humanitarian Law Unit, October 13, 2006 (evidence file, folios 98–101); Addition to statement record of María Elena Toro before the Prosecutor General of the Nation on August 13, 2009 (evidence file, folios 215–238); and Addition to statement record of María Elena Toro before the Prosecutor General of the Nation on July 20, 2011 (evidence file, folios 3110–3120).

<sup>69</sup> Cf. Statement of Iván de Jesús Toro Torres before the Prosecutor General of the Nation on December 14, 1998 (evidence file, folios 240–243); Statement of Holmar de Jesús Gallego Márquez before the Prosecutor General of the Nation on December 14, 1998 (evidence file, folios 2022–2024); Statement record of Iván de Jesús Toro Torres before the Prosecutor General of the Nation on July 12, 2002 (evidence file, folios 252–255); Statement record of Holmar de Jesús Gallego Márquez before the Prosecutor General of the Nation, July 11, 2002, *supra*; and Statement

described a series of threats she had received, which had prompted her to move several times “out of fear.”<sup>70</sup> In addition, the soldiers María Elena Toro had communicated with—who had mentioned the grenade explosion and the accounts of the alleged escape of Óscar Tabares—each made one statement.<sup>71</sup> The statements made by those soldiers during the proceedings before the National Inspector General were provided for this preliminary investigation.<sup>72</sup> Finally, the lieutenant of the “Tigre” Company and the corporal gave statements during these proceedings, in which they maintained their account of Óscar Tabares's flight.<sup>73</sup>

57. The prosecutor of the Judicial Police Sectional Investigations Service, as well as María Elena Toro, requested on different occasions that an inspection be carried out of the scene of the events, in San Juanito, Meta.<sup>74</sup> The Office of the Prosecutor refused to do so several times, citing the following problems: the lack of police authorization because of “[...] the issue of public order in the [c]ountry, especially in the region of Sumapaz, insufficient resources for travel allowances,”<sup>75</sup> “[...] circumstances related to public order,”<sup>76</sup> and the lack of authorization of the Fourth Division of the National Army, arguing that it would be “[...] necessary to do a helicopter operation, [...] which the Army cannot pay for.”<sup>77</sup> Finally, on September 25, 2001, the Office of the Prosecutor ordered the Police Inspector of San Juanito, Meta, to go to the Toledo road to determine whether the skeletal remains of Óscar Tabares were there, and notified the Office of the Mayor of San Juanito, Meta, so that it could collaborate.<sup>78</sup> The order directs the search team to look: “[...] under a flat rock” and indicates that “[a]pparently the town crazy” may have information about this.<sup>79</sup> The search was carried out on January 14, 2002, by the mayor, officials from the mayor's office, and locals. They found “[...] pieces of camouflaged fabric” and “[...] indications that holes had been dug,” but no remains.<sup>80</sup> Another attempt at an inspection by the Office of the Prosecutor in 2002 was dismissed due to opposition from the police and the air force because in that area “the 51st and 53rd fronts and the Ché Guevara mobile column of the FARC-EP are currently committing crimes,” and they stated that a visit to the area should only be undertaken with an army presence.<sup>81</sup> The search was finally carried out from January 24–28, 2005. Human remains were not found, and a simulated grenade explosion was conducted with the same type of grenade.<sup>82</sup>

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record of Ramiro Henao Echeverry before the Prosecutor General of the Nation, February 7, 2000 (evidence file, folios 2574 and 2575).

<sup>70</sup> Cf. Statement record of María Elena Toro before the Prosecutor General of the Nation on July 12, 2002, *supra*.

<sup>71</sup> Cf. Statement record of CANS before the Prosecutor Attached to the National Human Rights Unit, on July 26, 1999 (evidence file, folios 2103–2105); and Statement record of GD before the Prosecutor Attached to the National Human Rights Unit on July 26, 1999 (evidence file, folios 2107 and 2108). CANS passed away on March 24, 2002, and the whereabouts of GD are unknown. Cf. Report No. 478700 of the Prosecutor General of the Nation, Second Specialized Human Rights Office, August 11, 2009 (evidence file, folios 2571 and 2572).

<sup>72</sup> Cf. Judicial Inspection Record of the National Human Rights Unit of the Prosecutor General of the Nation, July 12, 1999 (evidence file, folios 2568 and 2569).

<sup>73</sup> Cf. Statement record of ERR before the National Human Rights Unit of the Prosecutor General of the Nation, April 20, 2001 (evidence file, folios 2601–2604; Statement record of ERR before the Human Rights and International Humanitarian Law Unit, April 24, 2002 (evidence file, folios 2620–2622); and Addition to statement record of IRRP before the National Human Rights Unit on November 26, 2004 (evidence file, folios 2827–2836).

<sup>74</sup> Cf. Record of the Specialized Prosecutor of the National Human Rights Unit of the Prosecutor General of the Nation, February 10, 2000; Letter signed by María Elena Toro to the Specialized Prosecutor of the National Human Rights Unit, September 25, 2000 (evidence file, folio 257); and Letter signed by María Elena Toro to the Specialized Prosecutor of the National Human Rights Unit, July 31, 2001 (evidence file, folio 259).

<sup>75</sup> Cf. Response to record [no number] of the Metropolitan Prosecutor's Office of Santafé de Bogotá, No. 356/PMSB.SIJIN.ACRIM, March 31, 2000 (evidence file, folio 261).

<sup>76</sup> Cf. Record No. 025 UNDH Office, October 31, 2000 (evidence file, folio 263).

<sup>77</sup> Cf. Judicial Police Central Office. No. 0301/DIJIN.GRUHO.DRH of Bogotá, August 29, 2001 (evidence file, folios 265–266).

<sup>78</sup> Cf. Record of the Specialized Prosecutor of the National Human Rights Unit of the Prosecutor General of the Nation, September 25, 2001 (evidence file, folio 268).

<sup>79</sup> Cf. Record of the Specialized Prosecutor of the National Human Rights Unit of the Prosecutor General of the Nation, September 25, 2001, *supra*.

<sup>80</sup> Cf. Office of the Municipal Mayor. Record of inspection of the potential site of the skeletal remains of Óscar Iván Tabares Toro, Proceeding No. 463 UNDH, January 15, 2002 (evidence file, folio 271).

<sup>81</sup> Cf. Office of the Prosecutor. 1-1191, Villavicencio. Record No. 362. Proceeding No. 463, September 12, 2002, (evidence file, folio 273).

<sup>82</sup> The grenade explosion simulation was repeated on September 20, 2008, and IRRP and ERR participated in that one. It was repeated again on August 21, 2009. Cf. Prosecutor General of the Nation. Order opening the

58. The representatives stated that on December 23, 2003, they presented a request to take part as a civil party. On January 20, 2004, the request was approved by the prosecutor, who recognized them as legal persons to act in the proceedings.<sup>83</sup>

59. Based on the records gathered, on October 17, 2006, the prosecutor opened an investigation against the lieutenant and the corporal as possible perpetrators of the forced disappearance of serviceman Óscar Tabares.<sup>84</sup> The corporal and the lieutenant made their initial formal statements on November 7, 2006, and November 17, 2006, respectively.<sup>85</sup> On July 2, 2008, after taking various investigatory steps and concluding that the explanation given by the lieutenant, the corporal, and the National Army was “[...] not credible by the rules of sound judicial discretion,”<sup>86</sup> the Second Specialized Prosecutor’s Office of the National Unit of Human Rights and International Humanitarian Law Prosecutors ordered preventive detention for the presumed perpetrators of the crime of forced disappearance against serviceman Óscar Tabares.<sup>87</sup> The defendants appealed the decision, but their appeal was rejected on August 28, 2008. The order denying the appeal was confirmed by Designated Prosecutor 11 of the Designated Unit before the High Court of the Judicial District of Bogotá, and it noted that “[...] the inconsistencies, contradictions, and attitudes of the defendants” were “grave and egregious” in the extreme.<sup>88</sup> On November 6, 2008, the defendants were granted provisional release because their pretrial detention of 128 days had exceeded the maximum allowed by law.<sup>89</sup>

60. From 2008-2009, the prosecutor issued several orders to close the investigation. However, motions for reversal were filed that ultimately prevented the investigation from being closed.<sup>90</sup> Furthermore, in 2009, the designated prosecutor on several occasions declared herself disqualified from continuing to hear the case,<sup>91</sup> until on March 31, 2010, she reassigned the investigation to Specialized Prosecutor 20 of the Human Rights and International Humanitarian Law Unit (hereinafter “Specialized Prosecutor 20”).<sup>92</sup>

61. On October 20, 2010, Specialized Prosecutor 20 ordered the Unified Virtual Identification Center of the Prosecutor General of the Nation to carry out a Specialized Search Plan to find the remains of Óscar Tabares.<sup>93</sup> The plan was submitted on November 23 of the same year.<sup>94</sup>

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investigation against IRRP and ERR. File No. 463, October 17, 2006 (evidence file, folios 275–288); Record of grenade explosion simulation, September 20, 2008 (evidence file, folios 2961–2965); Record of grenade explosion simulation, August 21, 2009 (evidence file, folios 3012–3014).

<sup>83</sup> Cf. Record No. 05-D2LMM of the Prosecutor General of the Nation, January 20, 2004 (evidence file, folio 2597).

<sup>84</sup> Cf. Order opening the investigation against IRRP and ERR by the Office of the Prosecutor. File No. 463, *supra*.

<sup>85</sup> Cf. Record of ERR’s initial formal statement before the National Human Rights and International Humanitarian Law Unit, November 7, 2006 (evidence file, folios 2866–2880; and IRRP’s initial formal statement before the National Human Rights and International Humanitarian Law Unit, November 17, 2006 (evidence file, folios 2882–2895).

<sup>86</sup> The prosecutor pointed out the implausibility of the idea that a commander who has been the target of a murder attempt “[...] would allow the attacker to simply flee, when he has at his disposal a group of men he could have ordered to pursue him.” Cf. Order on the legal status of IRRP and ERR. Preliminary investigation 463. Bogotá, July 2, 2008 (evidence file, folios 27–66).

<sup>87</sup> Cf. Order on the legal status of IRRP and ERR. Preliminary investigation 463. Bogotá, July 2, 2008 (evidence file, folios 27–66).

<sup>88</sup> Cf. Decision on appeal of IRRP and ERR. File No. 463. Bogotá, August 28, 2008 (evidence file, folios 312–356).

<sup>89</sup> Cf. Decision on provisional release of IRRP and ERR. Preliminary investigation No. 463. Bogotá, November 6, 2008 (evidence file, folios 358–361).

<sup>90</sup> Cf. Filing brief for motion for reversal, submitted by the Colombian Commission of Jurists, October 8, 2008 (evidence file, folios 2967–2971); Decision of the Second Specialized Prosecutor’s Office, April 20, 2009 (evidence file, folios 2985–2989); and Filing brief for motion for reversal, submitted by the Colombian Commission of Jurists, May 22, 2009 (evidence file, folios 2991–2997).

<sup>91</sup> Cf. Brief of the Second Specialized Prosecutor’s Office declaring disqualification, July 22, 2009 (evidence file, folio 3004); and Brief of the Second Specialized Prosecutor’s Office declaring disqualification, December 24, 2009 (evidence file, folio 3038).

<sup>92</sup> Cf. Order No. 0731 of the Prosecutor General of the Nation, March 31, 2010 (evidence file, folios 3040–3043).

<sup>93</sup> Cf. Order of Prosecutor 20 of the National Unit of Human Rights and International Humanitarian Law Prosecutors, October 20, 2010 (evidence file, folio 3070).

<sup>94</sup> Cf. Missing Person Search Strategy “Case of Óscar Iván Tabares Toro.” SAUNFJYP 13613. Bogotá, November 23, 2010 (evidence file, folios 3071–3082).



62. In 2011, Sectional Prosecutor 184 ordered a search for and potential retrieval of the body of Óscar Tabares. The search was added on to other activities being carried out by the Peace and Justice Unit, but it did not yield results.<sup>95</sup> In 2012, some statements were gathered from neighbors in the area of San Juanito, Meta.<sup>96</sup> In 2013, RHS, another military member, was linked to the proceedings, and his arrest was ordered.<sup>97</sup> He was granted provisional release on September 8, 2013.<sup>98</sup>

63. In December of 2013, the case was reassigned,<sup>99</sup> and the representatives indicated that there were no other proceedings until 2015, when some military members were interviewed but not called to make statements. In 2021, the Prosecutor's Office ordered an inspection of the scene of the events, and it was carried out from March 2–5.<sup>100</sup> Currently, the civilian criminal trial is still at the investigation stage.

#### **D. Repercussions of the search for María Elena Toro and her family**

64. María Elena Toro was away from home for long periods of time due to her search for information on her son's whereabouts. Because of her absence, Óscar Iván's younger sisters were left in the care of the oldest sister, María Bibiancy Tabares Toro. Moreover, Óscar Tabares Toro's relatives stated that they lived in fear because they had received threats due to his mother's search for him.<sup>101</sup> They also suffered stigmatization because of the accusation that Óscar Tabares had attacked his superiors and joined the FARC. Because of these circumstances, María Elena Toro, her husband, and her children had to move more than ten times<sup>102</sup> and also suffered financial consequences.<sup>103</sup> Finally, in the year 2022, serviceman Tabares Toro's mother, one of his sisters, and other relatives left Colombia in exile.

### **VII MERITS**

65. This case concerns the forced disappearance of Óscar Iván Tabares Toro, the subsequent failure to investigate the facts and clarify the circumstances of his disappearance, and the suffering, insecurity, and powerlessness of his relatives in the face of the events.

66. The Court recalls that the State recognized its international responsibility for the rights violations alleged by the Inter-American Commission, as well as for most of the rights violations alleged by the representatives. The Court will first address the violation of the rights to recognition of juridical personhood, to life, to personal integrity, and to personal liberty, as a result of the forced disappearance of Óscar Iván Tabares Toro. It will then address the violation of Mr. Tabares Toro's and his relatives' rights to judicial guarantees and judicial protection, as well as the relatives' right to the truth, through state actions after the victim's forced disappearance. Lastly, it will address the violation of the relatives'

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<sup>95</sup> Cf. Report by the Judicial Police, Department of Meta, Municipality of Villavicencio, June 30, 2011 (evidence file, folios 3103–3105), and Brief of the Inspector General of the Nation to Specialized Prosecutor 20, July 27, 2011 (evidence file, folios 3107 and 3108).

<sup>96</sup> Cf. Statement record of MJRG and VGR before Specialized Prosecutor 20 of the National Human Rights and International Humanitarian Law Unit, July 31, 2012, and August 1, 2012 (evidence file, folios 3175–3178 and 3180–3182).

<sup>97</sup> Cf. Linking brief issued by Specialized Prosecutor 20 of the National Human Rights and International Humanitarian Law Unit, March 8, 2013 (evidence file, folios 3192–3200).

<sup>98</sup> Cf. Decision of Specialized Prosecutor 20 of the National Human Rights and International Humanitarian Law Unit, September 8, 2013 (evidence file, folios 3279–3281).

<sup>99</sup> Cf. Brief of the National Unit of Human Rights and International Humanitarian Law Prosecutors. Specialized Prosecutor 20, December 20, 2013 (evidence file, folio 3285).

<sup>100</sup> Cf. Judicial Police Report No. 9-417935, March 16, 2021 (evidence file, folios 3305–3318).

<sup>101</sup> María Elena Toro stated that "the threats have not stopped since the moment of the disappearance of [her] son, but recently they have been even more frequent, to the point that our vehicle was shot at, and I don't know how I survived. I am currently in exile because of these threats, because of the Colombian army." Cf. Statement of María Elena Toro before the Court at public hearing, *supra*.

<sup>102</sup> Statement of María Elena Toro at public hearing, *supra*; Affidavit of María Isabel Gallego Toro, November 2, 2022 (evidence file, folios 14137–14154); and Affidavit of María Bibiancy Tabares, November 3, 2022 (evidence file, folios 14156–14161).

<sup>103</sup> María Elena Toro stated that "with all the moving, our finances tanked. We had to sell possessions, cars, everything we had." Cf. Statement of María Elena Toro before the Court at public hearing, *supra*.

rights to personal integrity, protection of honor, and protection of the family, as well as the rights of the child.

**VII.1**  
**RIGHTS TO RECOGNITION AS A PERSON BEFORE THE LAW, TO LIFE, TO PERSONAL INTEGRITY, AND TO PERSONAL LIBERTY, IN CONJUNCTION WITH THE OBLIGATION TO RESPECT AND ENSURE RIGHTS<sup>104</sup> AND ARTICLE I(A) OF THE CIDFP**

**A. Arguments of the Commission and the parties**

67. The **Commission** noted that sufficient evidence exists to classify what happened to Óscar Iván Tabares Toro as a forced disappearance. Regarding the deprivation of liberty and the participation of state agents, it noted that there was sufficient evidence that the last time Óscar Tabares was seen, he was under the control of state agents and that his whereabouts have been unknown since then. With respect to the refusal to disclose his whereabouts, it observed that after the disappearance of the alleged victim, the National Army did not initiate a search, alert the relatives to the situation, or provide assistance for a search. On the contrary, it initiated proceedings against him within the military criminal jurisdiction for attempted homicide, alleging that he had thrown a grenade at his superiors and fled. The Commission therefore held that the State had violated Articles 3, 4(1), 5(1), and 7(1) of the American Convention, in conjunction with Article 1(1), to his detriment. It also concluded that I(a) of the CIDFP had been violated. In assessing the State's acknowledgment of international responsibility, the Commission reaffirmed its arguments in the Merits Report.

68. In the portion of their brief with pleadings, motions, and evidence that addressed the forced disappearance of the victim, the **representatives** held that it is possible to infer a deprivation of liberty because Óscar Tabares was in San Juanito, Meta, for his military duties on the night of December 28, 1997, after which there is no information on him. They further noted that there was state participation because what happened to the alleged victim was the result of the antipathy his superiors had toward him. Lastly, they stressed the refusal to acknowledge the detention of Óscar Tabares and to disclose his whereabouts. They asked the Court to declare the State responsible for violating Articles 3, 4(1), 5(1), and 7(1) of the American Convention, in conjunction with Article 1(1) of that convention, as well as Article I(a) of the CIDFP.

69. After the State's full acknowledgment of responsibility, the representatives stressed in their final written arguments the importance of the Court ruling on the direct, active involvement of members of the National Army in carrying out the forced disappearance.

70. At the public hearing of this case, the **State** acknowledged its international responsibility for violating serviceman Tabares Toro's rights to recognition as a person, to life, to personal integrity, and to personal liberty established in Articles 3, 4(1), 5(1), and 7(1) of the American Convention, in conjunction with the obligations set forth in Article 1(1) of that instrument, as well as Article I(a) of the CIDFP, for his disappearance. Specifically, it recognized that state agents directly participated in the events and that the victim was in the special situation of being subject to the authority of the National Army, which was in the role of guarantor.

**B. Considerations of the Court**

71. This Court has repeatedly noted that forced disappearance violates multiple norms and is an ongoing or continuous offense that begins with the individual's deprivation of liberty and the lack of information about them, and continues as long as their whereabouts are unknown or until their remains are conclusively identified.<sup>105</sup> It has also established that forced disappearance is a human rights violation consisting of three concurrent elements: a) deprivation of liberty, b) direct involvement of governmental

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<sup>104</sup> Articles 3, 4, 5, 7, and 1(1) of the American Convention, respectively. Allegations concerning the obligations in Article I(a) of the CIDFP are also examined.

<sup>105</sup> Cf. Inter-American Convention on the Forced Disappearance of Persons. Article III; *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, paras. 155-157; and *Case of Flores Bedregal et al. v. Bolivia. Preliminary objections, merits, reparations, and costs*. Judgment of October 17, 2022. Series C No. 467, para. 75.

officials or their acquiescence, and c) refusal to acknowledge the deprivation of liberty and disclose the fate and whereabouts of the person.<sup>106</sup> These elements have also been identified in the Inter-American Convention on the Forced Disappearance of Persons;<sup>107</sup> the Rome Statute;<sup>108</sup> the definitions of the Working Group on Enforced or Involuntary Disappearances;<sup>109</sup> the case law of the European Court of Human Rights;<sup>110</sup> and the decisions of various international bodies.<sup>111</sup> Moreover, this Court has discussed cases of forced disappearance in Colombia on different occasions.<sup>112</sup>

72. Specifically, this Court has established that because deployed military members are in a situation analogous to a deprivation of liberty, the standards set in the case law with respect to deprivation of liberty apply to them.<sup>113</sup> The Court has established that the State is the guarantor and custodian of military service members because the latter have their rights and liberties restricted or limited.<sup>114</sup> Thus, with respect to deployed active duty members of the armed forces, the State has the duty to (i) safeguard the health and wellbeing of the active duty members; (ii) ensure that the training practices and methods do not cause more suffering than is necessary and inherent to that work; and (iii) provide satisfactory and credible explanations for any health problems the military members may have while in service. Accordingly, this Court has held that the State shall be considered responsible for any harm to personal integrity suffered by an individual who has been under the authority and control of state officials, as is the case in military service.<sup>115</sup>

73. The Court finds in this case that by acknowledging its responsibility, the State accepted the facts as described in the Merits Report (*supra* paras. 16, 25, and 31), which stated that government officials were involved in the disappearance of Mr. Tabares Toro on December 28, 1997, while he was encamped with the “Tigre” Company of Anti-guerrilla Battalion 20 of the National Army, near the Municipality of San Juanito, Meta.

74. The Court confirms that at the time of the events, Mr. Tabares Toro was a soldier in the “Tigre” Company of Anti-guerrilla Battalion 20 of the National Army of Colombia. The arguments of the parties and the Commission indicate that Óscar Iván Tabares was under the authority of the State, as he was subject to the army’s control and discipline. In this context, and in view of the State’s acknowledgment of responsibility, the Court holds that the State was in the role of a guarantor with respect to Mr. Tabares Toro and that those involved in his forced disappearance were government officials. Moreover, the State still has not provided satisfactory information on his whereabouts.

75. All of the above entails a violation of Article I(a) of the Inter-American Convention on the Forced Disappearance of Persons, according to which “[t]he States Parties to this Convention undertake: Not to practice, permit, or tolerate the forced disappearance of persons [...]”

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<sup>106</sup> Cf. *Case of Gómez Palomino v. Peru. Merits, reparations, and costs*. Judgment of November 22, 2005. Series C No. 136, para. 97, and *Case of Flores Bedregal et al. v. Bolivia, supra*, para. 75.

<sup>107</sup> Cf. Inter-American Convention on the Forced Disappearance of Persons. Article II.

<sup>108</sup> Cf. Rome Statute. Article 7(1)(i).

<sup>109</sup> Cf. Human Rights Council. Report of the Working Group on Enforced and Involuntary Disappearances. Best practices on enforced disappearances in domestic criminal legislation A/HRC/16/48/Add.3, December 28, 2010, paras. 21–32.

<sup>110</sup> Cf. ECHR, *Cyprus v. Turkey* [GC], No. 25781/94, Judgment of May 10, 2001, paras. 132–134 and 147–148, and ECHR, *Varnava et al. v. Turkey* [GC], Nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 y 16073/90, January 10, 2008, paras. 184–186.

<sup>111</sup> Cf. Human Rights Committee, *Nydia Erika Bautista de Arellana vs. Colombia* (Communication No. 563/1993), UN. Doc. CCPR/C/55/D/563/1993, November 13, 1995, paras. 8(3) to 8(6), and Human Rights Committee, *Messaouda Grioua and Mohamed Grioua v. Algeria* (Communication No. 1327/2004), UN Doc. CCPR/C/90/D/1327/2004, July 10, 2007, para. 7(2), 7(5)–7(9).

<sup>112</sup> Cf. *Case of Caballero Delgado and Santana v. Colombia. Reparations and costs*. Judgment of January 29, 1997. Series C No. 31, and *Case of the Members and Militants of the Patriotic Union v. Colombia. Preliminary objections, merits, reparations, and costs*. Judgment of July 27, 2022. Series C No. 455.

<sup>113</sup> Cf. *Case of Quispialaya Vilcapoma v. Peru, Preliminary objections, merits, reparations, and costs*. Judgment of November 23, 2015. Series No. 338, para. 123.

<sup>114</sup> Cf. *Case of Quispialaya Vilcapoma v. Peru, supra*, para. 119.

<sup>115</sup> Cf. *Case of Quispialaya Vilcapoma v. Peru, supra*, para. 124, and *Case of Ortiz Hernández et al. v. Venezuela. Merits, reparations, and costs*. Judgment of August 22, 2017. Series C No. 338, para. 107.

76. Based on the preceding paragraphs and on the State's acknowledgment of responsibility, the Court concludes that Óscar Iván Tabares Toro was the victim of a forced disappearance. Accordingly, it finds the State responsible for violating the rights to recognition as a person before the law, to life, to personal integrity, and to personal liberty established in Articles 3, 4(1), 5(1), and 7(1) of the American Convention, in conjunction with Article 1(1) of that instrument, and in Article I(a) of the CIDFP—the latter beginning on May 12, 2005.

**VII.2**  
**RIGHTS TO JUDICIAL GUARANTEES AND JUDICIAL PROTECTION, AND THE RIGHT TO KNOW THE TRUTH,<sup>116</sup> IN CONJUNCTION WITH THE OBLIGATION TO RESPECT AND ENSURE THE RIGHTS OF THE CONVENTION<sup>117</sup> AND ARTICLE I(B) OF THE CIDFP**

**A. Arguments of the Commission and the parties**

77. The *Commission* stated that impunity persists for the disappearance of Mr. Tabares Toro because the facts have not been clarified and no one responsible has been punished. It argued that after the disappearance of Mr. Tabares Toro, there was no immediate official response in the form of a search, but rather the opening of a military investigation against the alleged victim for attempted homicide, for which he was acquitted 14 years later. Furthermore, between January and September of 1998, the facts were known only to the military criminal justice system, which the Commission argued would not have the independence and impartiality required for hearing that kind of case. Moreover, the military authorities did not inform Mr. Tabares Toro's family about his alleged disappearance. It was almost a year after the events when an investigation was finally opened in the civilian courts, and that investigation was full of irregularities, flaws, and omissions. It argued that at least during the first few years of the investigation, the prosecutor's office did not take steps in a timely fashion to determine the alleged victim's whereabouts or explore all possible lines of investigation. It also argued that because the prosecutor's office did not go to the scene of the events until January of 2005, the passage of time and the many opportunities for third parties to interfere with the scene may have affected that evidence. It concluded that more than two decades after the events, the investigation remains at the preliminary stage, which represents an unreasonable length of time.

78. The Commission noted that the search for Mr. Tabares Toro has lacked seriousness and diligence because: (a) the requests to carry out inspections of the scene of the crime were delayed on several occasions by the state authorities; and (b) there were long periods of inactivity, even for years, in which no steps were taken to find him. The Commission further stated that no search plan has emerged and there has been no coordination between state officials or bodies toward that end.

79. The Commission thus held that the State violated Óscar Iván Tabares Toro's and his family's rights to judicial guarantees and judicial protection enshrined in Articles 8(1) and 25(1) of the American Convention, as well as Article I(b) of the CIDFP.

80. The *representatives* stressed that almost 25 years after the events, the State has neither conducted an immediate, serious, diligent, and effective investigation to determine what happened to Mr. Tabares Toro nor taken effective steps to find him. This has prevented María Elena Toro from finding out the truth and obtaining justice, which means the State has failed to ensure the right to the truth for the victim's families, in violation of Article 13 of the Convention. Furthermore, they asked the Court to rule on the cover-up that undermined the investigation and the lack of sufficient search efforts, as there is still no comprehensive work plan on which a search plan could be based.

81. With respect to the search efforts, the representatives noted that: (a) State institutions failed to initiate a search immediately; (b) the meager steps taken were not significant or systematic, not part of a robust search plan, and not aimed at finding the victim; (c) the formulation and implementation of a search plan based on the designed National Search Plan was requested, but it was not carried out; and (d) in response to the steps taken in November of 2021, the prosecutor's office was asked to report on that work plan and the search process. The prosecutor's office responded by stating that it had not

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<sup>116</sup> The right to truth was argued in this case on the basis of Articles 5(1) and 13 of the American Convention.

<sup>117</sup> Articles 8(1), 13, 25(1), and 1(1) of the American Convention, respectively. This section also discusses the arguments related to Article I(b) of the CIDFP.

developed the work plan with reference to field surveys specifically. Lastly, they alleged a complete absence of coordination between the various entities with a potential role in consolidating a search plan, such as the Office of the Prosecutor, the GRUBE, Legal Medicine, and especially the Search Unit for Missing Persons, whose relationship with and connection to the Office of the Prosecutor is tenuous with respect to this specific case.

82. The representatives concluded by asking the Court to declare the State responsible for violating Articles 8(1) and 25(1) of the American Convention, in conjunction with Article 1(1) of that convention, as well as Article I(b) of the CIDFP. They also asked that the Court declare a violation of Article 13 of the Convention, specifically the right to know the truth about what happened to Mr. Tabares Toro.

83. The **State** acknowledged its international responsibility for violating Articles 8(1) and 25(1) of the American Convention, in conjunction with Article 1(1) of that instrument, as well as Article I(b) of the CIDFP—the latter starting May 12, 2005.

## **B. Considerations of the Court**

84. Given the State's acknowledgment of responsibility, there is no longer a dispute as to the violation of Articles 8(1) and 25(1) of the American Convention, in conjunction with its Article 1(1), or of Article I(b) of the Inter-American Convention on the Forced Disappearance of Persons, to the detriment of Óscar Iván Tabares Toro and his relatives: María Elena Toro Torres, Óscar de Jesús Tabares, Holmar de Jesús Gallego Márquez, María Bibiancy Tabares Toro, Jhon Fredy Tabares Giraldo, Leidy Julieth Gallego Toro, and María Isabel Gallego Toro.

85. The Court also notes that the representatives alleged the violation of the right to know the truth. They stated that because it has been over two decades since Mr. Tabares Toro disappeared, with no perpetrators identified or punished and his whereabouts not determined, impunity still prevails in this case. They added that the paltry search efforts have been unsuccessful, making it impossible to find the victim's remains. They stated that during that time, his relatives, especially his mother, have fought to find out the truth about what happened and to investigate and punish those responsible. They therefore argued that Mr. Tabares Toro's relatives had been denied the right to an effective remedy in accordance with Articles 8(1) and 25(1) of the Convention, as well as the right to know the truth about what happened to their loved one, in accordance with Article 13 of the Convention.

86. This Court has held that "everyone, including the next of kin of the victims of serious human rights violations, has the right to know the truth [about those violations]," which means that they "should be informed of everything that happened regarding such violations."<sup>118</sup>

87. This Court's case law has also established the autonomy and broad nature of the right to truth, which is not established explicitly in the American Convention but is linked to several of its provisions. Depending on the context and circumstances of the case, the violation of this right can be related to different rights explicitly established in the Convention,<sup>119</sup> as is the case with the rights to judicial

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<sup>118</sup> Cf. *Case of Trujillo Oroza v. Bolivia. Reparations and costs*. Judgment of February 27, 2002. Series C No. 92, para. 100. Similarly, *Case of Barbosa de Souza et al. v. Brazil. Preliminary objections, merits, reparations, and costs*. Judgment of September 7, 2021. Series C No. 435, para. 134, and *Case of Sales Pimenta v. Brazil. Merits, reparations, and costs*. Judgment of June 30, 2022. Series C No. 454, para. 114.

<sup>119</sup> Cf. *Case of the Massacre of the Village of Los Josefinos v. Guatemala. Preliminary objection, merits, reparations, and costs*. Judgment of November 3, 2021. Series C No. 442, para. 114; *Case of Maidanik et al. v. Uruguay. Merits and reparations*. Judgment of November 15, 2021. Series C No. 444, para. 176; *Case of Vereda La Esperanza v. Colombia. Preliminary objections, merits, reparations, and costs*. Judgment of August 31, 2017. Series C No. 341, para. 220; *Case of Omeara Carrascal et al. v. Colombia. Merits, reparations, and costs*. Judgment of November 21, 2018. Series C No. 368. para. 256; and *Case of the Members and Militants of the Patriotic Union v. Colombia, supra*, para. 479.

guarantees and to judicial protection, recognized in Articles 8 and 25 respectively,<sup>120</sup> or the right of access to information, protected by Article 13.<sup>121</sup>

88. The Court has noted the importance of the right to the truth with respect to forced disappearances.<sup>122</sup> Fulfilling this right is in the interests not only of the families of the forcibly disappeared but also of society as a whole, which is thereby aided in the prevention of these kinds of violations in the future.<sup>123</sup> The right to the truth is broadly related to the State's obligation to take steps to clarify the facts of violations and to identify the perpetrators.<sup>124</sup>

89. This Court has also held in its case law that the right to know the whereabouts of disappeared persons is an essential component of the right to know the truth<sup>125</sup> about what happened to loved ones.<sup>126</sup> In this regard, the Court has stressed the autonomous nature of the obligation to search for and locate disappeared persons;<sup>127</sup> this obligation shall be fulfilled in an effective, comprehensive, appropriate, and diligent manner.<sup>128</sup>

90. By expressly stipulating the right to seek and receive information, Article 13 of the Convention protects the right of all individuals to request access to State-held information, with the exceptions permitted by the restrictions established in the Convention.<sup>129</sup> Consequently, this article protects the right of the individual to receive such information and the positive obligation of the State to provide it, so that the individual may have access to such information or receive an answer that includes a justification when, for any reason permitted by the Convention, the State is allowed to restrict access to the information in a specific case.<sup>130</sup> It also protects the two dimensions—individual and social—of the right to freedom of thought and expression that must be guaranteed simultaneously by the State.<sup>131</sup> In cases of forced disappearance, the right to access to information requires the active participation of all authorities involved. In order to ensure the right to information access, it is not enough for the authorities

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<sup>120</sup> Cf. *Case of Velásquez-Rodríguez v. Honduras. Merits, supra*, para. 181; *Case of Guachalá Chimbo et al. v. Ecuador. Merits, reparations, and costs. Judgment of March 26, 2021. Series C No. 423, para. 213; and Case of the Members and Militants of the Patriotic Union v. Colombia, supra*, para. 479.

<sup>121</sup> Cf. *Case of Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil. Preliminary objections, merits, reparations, and costs. Judgment of November 24, 2010. Series C No. 219, para. 200; and Case of the Members and Militants of the Patriotic Union v. Colombia, supra*, para. 479.

<sup>122</sup> Cf. *Case of Goiburú et al. v. Paraguay. Merits, reparations, and costs. Judgment of September 22, 2006. Series C No. 153, para. 84, and Case of Movilla Galarcio et al. v. Colombia. Merits, reparations, and costs. Judgment of June 22, 2022. Series C No. 452, para. 156.*

<sup>123</sup> Cf. *Case of Gómez Palomino v. Peru, supra*, para. 78, and *Case of Movilla Galarcio et al. v. Colombia, supra*, para. 157.

<sup>124</sup> Cf. *Case of Gómez Palomino v. Peru, supra*, para. 80, and *Case of Movilla Galarcio et al. v. Colombia, supra*, para. 157.

<sup>125</sup> Cf. *Case of Ticona Estrada et al. v. Bolivia. Merits, reparations, and costs. Judgment of November 27, 2008. Series C No. 191, para. 80; Case of Isaza Uribe et al. v. Colombia. Merits, reparations, and costs. Judgment of November 20, 2018. Series C No. 363, para. 160; Case of Munárriz Escobar et al. v. Peru. Preliminary objection, merits, reparations, and costs. Judgment of August 20, 2018. Series C No. 355, para. 110; and Case of Movilla Galarcio et al. v. Colombia, supra*, para. 157.

<sup>126</sup> Cf. *Case of Flores Bedregal et al. v. Bolivia, supra*, para. 121.

<sup>127</sup> Cf. *Case of Garzón Guzmán et al. v. Ecuador. Merits, reparations, and costs. Judgment of September 1, 2021. Series C No. 434, para. 75, and Case of Flores Bedregal et al. v. Bolivia, supra*, para. 121.

<sup>128</sup> See: Committee on Enforced Disappearances, Guiding principles for the search for disappeared persons, U.N. Doc. CED/C/7, May 8, 2019, Principles 1, 4–8, 10, 12, 13, 15, and 16, and *Case of Flores Bedregal et al. v. Bolivia, supra*, para. 121.

<sup>129</sup> Cf. *Case of Claude Reyes et al. v. Chile. Merits, reparations, and costs. Judgment of September 19, 2006. Series C No. 151, para. 77, and Case of Flores Bedregal et al. v. Bolivia, supra*, para. 132.

<sup>130</sup> Cf. *Case of Claude Reyes et al. v. Chile, supra*, para. 77, and *Case of Flores Bedregal et al. v. Bolivia, supra*, para. 132.

<sup>131</sup> Cf. *Case of "The Last Temptation of Christ" (Olmedo-Bustos et al.) v. Chile Merits, reparations, and costs. Judgment of February 5, 2001. Series C No. 73, para. 67, and Case of Flores Bedregal et al. v. Bolivia, supra*, para. 132.

to merely facilitate a search or to claim they lack information; rather, they must take all possible measures to find the victim<sup>132</sup> and inform family members and society as a whole.<sup>133</sup>

91. The Court notes in this case that although Colombia's acknowledgment of responsibility did not encompass the right to know the truth, the State did expressly acknowledge its responsibility for the failure to diligently investigate the events within a reasonable timeframe and the failure to search for Mr. Tabares Toro, as has already been established in this judgment (*supra* paras. 16 and 27). In addition, the Court holds that the representatives' arguments are relevant for assessing Colombia's responsibility as regards the right to the truth. Indeed, it is evident from the established facts, the failure to find the alleged victim, and the State's acknowledgment of its failure to investigate and to exercise due diligence within a reasonable timeframe that the State has not succeeded in determining the truth of what happened. Moreover, the army members involved in the events gave differing accounts about what happened to Mr. Tabares Toro, which have not been confirmed, among them that Mr. Tabares had attacked his superiors, that he had deserted, and that he had joined the FARC guerrillas (*supra* paras. 42 and 46).

92. This Court also notes that Ms. Toro Torres made at least seven requests for information on her son's whereabouts and on the related investigations. However, she received only one response, which asserted that because serviceman Tabares had allegedly fled, an investigation had not been opened into his alleged disappearance (*supra* para. 52). The Court holds that the failure of the relevant civilian and military authorities to respond and to undertake investigative efforts to locate Mr. Tabares Toro constitutes a violation of the right to truth of the family of the alleged victim, in conjunction with the right to information access.

93. The Court concludes that at the time of this judgment, the truth about what happened has not been determined and that the right to the truth will not be guaranteed for the victim's relatives as long as this continues. Colombia is therefore responsible for violating the right to the truth to the detriment of María Elena Toro Torres, Óscar de Jesús Tabares, Holmar de Jesús Gallego Márquez, María Bibiancy Tabares Toro, Jhon Fredy Tabares Giraldo, Leidy Julieth Gallego Toro, and María Isabel Gallego Toro.

94. For all of these reasons, and in view of the State's acknowledgment of responsibility and the implications thereof, the Court concludes that the State violated the rights to judicial guarantees and to judicial protection enshrined in Articles 8(1) and 25(1) of the American Convention, in conjunction with Article 1(1) of the same, as well as Article I(b) of the Inter-American Convention on the Forced Disappearance of Persons, to the detriment of Óscar Iván Tabares Toro and his relatives: María Elena Toro Torres, Óscar de Jesús Tabares, Holmar de Jesús Gallego Márquez, María Bibiancy Tabares Toro, Jhon Fredy Tabares Giraldo, Leidy Julieth Gallego Toro, and María Isabel Gallego Toro. In addition, the State violated the aforementioned relatives' right to know the truth, based on the violation of the rights to judicial guarantees, judicial protection, and freedom of thought and expression enshrined in Articles 8(1), 25(1), and 13(1) of the American Convention, in conjunction with Article 1(1) of the same instrument.

### **VII.3 RIGHTS TO PERSONAL INTEGRITY, THE PROTECTION OF HONOR, THE PROTECTION OF FAMILY, AND THE RIGHTS OF THE CHILD, IN CONJUNCTION WITH THE OBLIGATION TO RESPECT AND ENSURE THE RIGHTS OF THE CONVENTION<sup>134</sup>**

#### **A. Arguments of the Commission and the parties**

95. The **Commission** noted that Óscar Iván Tabares Toro's relatives have experienced profound suffering and distress due to the lack of information about what happened, the failure to locate Mr. Tabares Toro, and the impunity that has prevailed for over two decades. The Commission therefore

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<sup>132</sup> Cf. *Case of Flores Bedregal et al. v. Bolivia*, *supra*, para. 136.

<sup>133</sup> Cf. *Case of the Members and Militants of the Patriotic Union v. Colombia*, *supra*, para. 479.

<sup>134</sup> Articles 5, 11, 17, 19, and 1(1) of the American Convention, respectively.

argued that the State had violated the right to personal integrity established in Article 5(1) of the American Convention, in conjunction with Article 1(1). Furthermore, in its final written observations, the Commission noted that Ms. Toro, “as a searching mother, had to endure hearing unfounded accounts of the events.” It also stated that Mr. Tabares Toro’s family members have been victims of harassment and threats and that the insecurity led them to move several times and led “to the exile of Ms. Toro and her daughter,” which has resulted in the breakdown of the family. It therefore argued that the State had also violated the rights to protection of the family and protection of honor set forth in Articles 17 and 11 of the American Convention.

96. The **representatives** argued that Mr. Tabares Toro’s family suffered many psychosocial impacts as a result of the disappearance. They also stated that those impacts have been aggravated by the passage of time; the lack of information about what happened; the lack of a serious, exhaustive, rigorous, and effective investigation to locate the victim and the secret burial place and to return his remains to the family; and the absence of concrete results in the investigation to identify those responsible and punish them. All of this is in addition to the official version of the events given by the National Army and the institutions investigating the events, “that the soldier fled to join Front 53 of the FARC, an account that aims to dishonor him, vilify him, and disparage him.” They noted that every forced disappearance represents for the families “a form of cruel and inhuman treatment, if not torture” and that “the lack of information on the fate [...] of the disappeared person [...] constitutes a form of cruel and inhuman treatment.” They emphasized that “the physical and emotional consequences were exacerbated by the threats received due to María Elena Toro’s tireless efforts [...] in seeking justice and information on the fate and whereabouts of her son. This situation, among others [...], forced her and her family to relocate for security reasons four times, as they feared there would be some kind of retaliation or the harassment would develop into attempts to kill or physically harm them.” They added that the disappearance of the alleged victim negatively affected family life, with the family being disrupted primarily by the search efforts of María Elena Toro. Thus, they requested that the State be found responsible for violating Articles 5(1), 5(2), 11, 13, and 17 of the American Convention, in conjunction with Article 1(1). Later, in their final arguments, the representatives argued that Article 19 of the Convention had been violated, to the detriment of Mr. Tabares Toro’s two minor sisters, because of the effect of the forced disappearance on them.

97. The **State** reiterated what it had stated in its acknowledgment of responsibility concerning the violation of Articles 5(1), 11, and 17 of the American Convention (*supra* para. 18), the harm suffered by the family of serviceman Tabares as a result of the State’s failure to seek justice, and the rootlessness and stigmatization they suffered.

## **B. Considerations of the Court**

98. The Court recalls that the alleged victims and their representatives can invoke the violation of rights not contained in the Merits Report as long as they fall within the factual framework established by the Commission, as the alleged victims are the ones who hold all the rights enshrined in the American Convention.<sup>135</sup> In this case, the representatives alleged the violation of Articles 11 and 17 of the Convention, as well as Article 19 of the same instrument (*supra* para. 29). The Court will not make reference in this section to the alleged violation of Article 13 because it was already analyzed in the previous chapter.

99. The Court has held on several occasions that the family members of the victims of certain human rights violations can be victims in their own rights, owing to the additional suffering they have experienced as a result of the violations perpetrated against their loved ones and due to the subsequent acts or omissions of state authorities in relation to those events.<sup>136</sup> The Court has stated that in cases of forced disappearance, “uncertainty surrounding the whereabouts of loved ones is one of the main sources of

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<sup>135</sup> Cf. *Case of the “Five Pensioners” v. Peru. Merits, reparations, and costs*. Judgment of February 28, 2003. Series C No. 98, para. 155, and *Case of Angulo Losada v. Bolivia, Preliminary objections, merits, reparations, and costs*. Judgment of November 22, 2022. Series No. 475, para. 25.

<sup>136</sup> Cf. *Case of Blake v. Guatemala. Merits*. Judgment of January 24, 1998. Series C No. 36, para. 114, and *Case of Leguizamón Zaván et al. v. Paraguay. Merits, reparations, and costs*. Judgment of November 15, 2022. Series C No. 473, para. 87.



psychological and moral suffering for the relatives of disappeared victims.”<sup>137</sup> In addition, according to the Working Group on Enforced Disappearances, “[e]nforced disappearance can cause deep anguish, suffering and harm to victims and their relatives,” to the point that, in the words of that group, “not knowing the whereabouts of a family member can amount to torture.”<sup>138</sup>

100. This Court has considered it appropriate to assume a violation of the right to personal integrity, applying a rebuttable presumption with respect to relatives such as parents, children, spouses, long-term partners, and siblings of the victims of certain human rights violations, depending to the particular circumstances of each case.<sup>139</sup> In this case, Colombia has also acknowledged the violation of the personal integrity of Holmar de Jesús Gallego Márquez, Mr. Tabares Toro's stepfather, who passed away on June 4, 2010.

101. As noted above, it has been over two decades since the events of December 28, 1997. Those events have had both psychological and social impacts for the family of Óscar Iván Tabares Toro, which have been exacerbated by the passage of time and the lack of information about what happened.

102. In her affidavit, María Isabel Gallego Toro stated that when they learned of her son's disappearance, “[his] immediate family reacted with surprise and deep sadness because even though they knew death was possible given Óscar's line of work, [they] never thought he would die in such a cruel and inhuman way. His disappearance left a mother desperate for answers on her son's whereabouts; obviously it affected all of us, but it destroyed [his] mom's life. The reaction of [his] parents, especially [his] mom, was to move heaven and earth to try to locate Óscar, to find out what had happened to him, where he was, or at least for them to hand over his body.”<sup>140</sup>

103. In her statements before the Court, María Elena Toro also said that the disappearance of her son affected her “[i]n every way: health, finances, because with all the moving, our finances tanked. We had to sell possessions, cars, everything we had, to the point where we stopped and asked ourselves, ‘What are we doing? My God!’ We devoted ourselves exclusively to finding Iván, and the other girls were very young—well, María Bibiancy was married by then, but we were neglecting the two little girls completely. As far as health, I am a cancer survivor, I was on the brink of death, and my husband was not able to win his battle with cancer; he died of sadness in 2010.”<sup>141</sup>

104. For her part, María Bibiancy Tabares Toro stated in her affidavit that “the lack of an investigation, justice, and a search affected [them] enormously because they went into ‘Óscar Iván’ mode. [His] mom lost her job because she was focused on searching for answers. She became depressed as she failed to get clear answers that made sense. The family sold things so they could travel and participate in meetings; the family's finances were affected a lot.”<sup>142</sup> Likewise, María Isabel Gallego Toro stated “[w]e were a solidly middle-income family because both of my parents worked, but when Óscar disappeared, the household's priorities immediately changed. Everything revolved around one thing: finding out what had happened to my brother.”<sup>143</sup>

105. The Court notes that the lack of a serious, exhaustive, rigorous, and effective investigation to clarify the facts in order to identify, try, and as appropriate punish those responsible, as well as the lack of information on the whereabouts of Óscar Iván or his remains, has affected his relatives emotionally.

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<sup>137</sup> *Case of Peasant Community of Santa Bárbara v. Peru. Preliminary objections, merits, reparations, and costs.* Judgment of September 1, 2015. Series C No. 299, and *Case of Movilla Galarcio et al. v. Colombia, supra*, para. 173.

<sup>138</sup> Report of the Working Group on Enforced or Involuntary Disappearances on standards and public policies for an effective investigation of enforced disappearances. Document A/HRC/45/13/Add.3, August 7, 2020, para. 60. The Court wishes to clarify that the fact that the quote from the Working Group mentions “torture” does not mean that the Court automatically considers a lack of knowledge of the whereabouts of a forcibly disappeared person an act of torture. Nevertheless, the quote shows the seriousness and the implications of forced disappearance, which can result in harm to personal integrity in violation of Article 5(2) of the American Convention. See also *Case of Movilla Galarcio et al. v. Colombia, supra*, para. 173.

<sup>139</sup> *Cf. Case of Blake v. Guatemala. Merits, supra*, para. 114, and *Case of Valencia Campos et al. v. Bolivia. Preliminary objection, merits, reparations, and costs.* Judgment of October 18, 2022. Series C No. 469, para. 199.

<sup>140</sup> *Cf. Affidavit of María Isabel Gallego Toro, supra.*

<sup>141</sup> Statement of María Elena Toro Torres before the Court at public hearing, *supra*.

<sup>142</sup> Affidavit of María Bibiancy Tabares Toro, *supra*.

<sup>143</sup> Affidavit of María Isabel Gallego Toro, *supra*.

This is because of the amount of time that has passed, the situation of impunity that persists in this case, and the lack of information on what really happened to their loved one.

106. In addition, the statements of Mr. Tabares Toro's relatives indicate that from the beginning of the events, they have suffered harassment and threats, especially María Elena Toro, who has dedicated her life to the search for justice and for her son. In connection to this, it is important to recall that María Elena Toro stated before the Court that "the threats have not stopped since the moment of [her] son's disappearance, but [...] recently they have been even more frequent, to the point that [her] vehicle was shot at, and [she doesn't] know how [she] survived. [She is] currently in exile because of these threats, because of the Colombian army."<sup>144</sup>

107. María Isabel Gallego Toro also stated in her affidavit that "[she feels] that the Colombian State turned its back on [her] family's suffering because while [they] exhausted [their] financial resources on the search for [her] brother, [their] parents lost the emotional stability [they] had had, [they] had to move several times, and [they] changed schools, while those responsible for the events continued to move up the military ranks, and even though they were detained during the proceedings against them, they were later released just because of limits on the duration of detentions. [She thinks] justice has not been served and that the proceedings concerning [her] little brother have weighed on the family all [their] lives and will continue to do so until this wrong is made right."<sup>145</sup> Ms. Gallego Toro added that "[t]hey went from having a stable life, living in the same house, to a new normal of moving constantly, having almost no friends, and not even being allowed to work to raise awareness about the issue."<sup>146</sup>

108. The Court notes that in their statements, María Elena Toro and her daughters María Bibiancy Tabares Toro and María Isabel Gallego Toro affirmed that after the disappearance of their son and brother, respectively, María Elena devoted herself to the search. It is important to note that according to the 2013 General comment on women affected by enforced disappearances adopted by the Working Group on Enforced or Involuntary Disappearances at its ninety-eighth session, in cases of forced disappearance, women are negatively affected economically, socially, and psychologically: The emotional impact is exacerbated by the financial impact, especially when the woman undertakes a search for her loved one. When she also becomes the head of household, family obligations increase and the time she has to devote to everything else decreases.<sup>147</sup> In this case, Ms. Toro was away from home traveling to various places to make inquiries and search for information on her son's whereabouts, which changed her family life and meant that her two younger daughters had to be cared for by her older daughter, María Bibiancy Tabares Toro. Moreover, she lost her job and the family sold some of their belongings, such as their home and their car, in order to cover the cost of travel and meetings, which affected the family's finances.

109. The Court lacks sufficient evidence to analyze the violation of Article 5(2) with regard to the victim's relatives. However, it considers the harm to the personal integrity of Óscar Iván Tabares Toro's relatives to be established in accordance with Article 5(1) of the Convention. The Court notes that the statements of Mr. Tabares Toro's relatives, as well as the psychosocial evaluation performed by Yeiny Carolina Torres Bocachica and Carlos Mario Quintero González, are sound and mutually consistent, and reflect the harm suffered due to uncertainty and pain after the disappearance of the loved one. This is in addition to the lack of information about what happened, the unknown whereabouts of the victim, and the impunity in the case for over two decades.

110. It is also important to recall this Court's position that States Parties to the American Convention on Human Rights are obligated to take steps to acknowledge and safeguard the work of searching women in the prevention and investigation of forced disappearance. They must also ensure that such work can be carried out without obstacles, intimidation, or threats, guaranteeing the personal integrity of searching women and their right to political participation established in the Convention, confronting historical and cultural obstacles that limit the search, and ensuring that the women and their dependents can continue

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<sup>144</sup> Statement of María Elena Toro Torres before the Court at public hearing, *supra*.

<sup>145</sup> Affidavit of María Isabel Gallego Toro, *supra*.

<sup>146</sup> Affidavit of María Isabel Gallego Toro, *supra*.

<sup>147</sup> Cf. Working Group on Enforced or Involuntary Disappearances, General comment on women affected by enforced disappearances adopted by the Working Group on Enforced or Involuntary Disappearances at its ninety-eighth session (31 October – 9 November 2012), February 14, 2013, and *Case of Movilla Galarcio et al. v. Colombia*, *supra*, para. 180.

their life plans with dignity.<sup>148</sup> This should extend to reparations, which should be ordered in such a way as to avoid perpetuating gender stereotypes, instead reflecting the ways the searching women want to be represented.<sup>149</sup>

111. Furthermore, the Court reiterates that Article 11 of the Convention establishes that every person has the right to have their honor respected, prohibits unlawful attacks on honor or reputation, and imposes on States the duty to provide legal protection against such attacks. In broad terms, the right to have honor respected relates to self-esteem and self-worth, whereas reputation refers to the opinion other persons have about someone.<sup>150</sup> The Court has declared this right violated in cases in which it was proven that the State had subjected individuals or groups to hatred, stigmatization, public scorn, persecution, or discrimination through public statements by government officials.<sup>151</sup>

112. The proven facts in this case, the arguments of the representatives and the Commission, and the State's acknowledgment, make clear to this Court that different government officials have maintained the account that serviceman Tabares Toro attacked his superiors and joined the guerrillas, specifically Front 53 of the FARC (*supra* paras. 18, 42, 50, 51, 95, 96, and footnotes 28 and 42). This led to blame, stigmatization, and insecurity for the family due to the lack of an official response to what happened to the victim. For the relatives of Mr. Tabares Toro, this has affected family development and prompted interference in their private lives, which has harmed their honor and dignity in violation of Article 11 of the Convention.

113. Regarding the alleged violation of Article 17 of the Convention, the Court has found that the family—without defining a particular model for it—is the natural and fundamental unit of society and is entitled to protection by society and the State. In view of the importance of this right, the Court has found that the State has an obligation to support the development and strengthening of the nuclear family. It is therefore required to take both positive and negative actions to protect persons from arbitrary or illegal interference with their families and foster effective respect for family life.<sup>152</sup> At the same time, the Court has understood that among the most severe interference that the State could engage in against the family are actions that result in separation or division. This situation is especially grave when the breakdown affects the rights of children and adolescents.<sup>153</sup> The status of such persons, pursuant to Article 19 of the Convention, necessitates special protection by the State.<sup>154</sup>

114. The representatives in this case stated that for security reasons, on several occasions, María Elena Toro and her family had to relocate because of a fear of retaliations or of some threat being carried out. This prompted María Elena Toro, her daughter María Isabel Gallego Toro, her son-in-law, and two grandchildren to flee Colombia recently. One other family member had already left the country previously. All of this shows the uprooting and breaking up of the family, which harmed the family because of the distances separating them.

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<sup>148</sup> According to the Working Group on Enforced or Involuntary Disappearances, "Women as family members, particularly where they become household heads due to an enforced disappearance, are in specific material, financial, psychological and legal needs. The relevant governmental institutions must provide them adequate counselling, rehabilitation and support services, assistance and information." Working Group on Enforced or Involuntary Disappearances, General comment on women affected by enforced disappearances adopted by the Working Group on Enforced or Involuntary Disappearances at its ninety-eighth session (31 October – 9 November 2012) A/HRC/WGEID/98/2, February 14, 2013, and *Case of Movilla Galarcio et al. v. Colombia*, *supra*, para. 181.

<sup>149</sup> *Cf. Case of Movilla Galarcio et al. v. Colombia*, *supra*, para. 181.

<sup>150</sup> *Cf. Case of Tristán Donoso v. Panama. Preliminary objection, merits, reparations, and costs.* Judgment of January 27, 2009. Series C No. 193, para. 57, and *Case of Baraona Bray v. Chile. Preliminary objections, merits, reparations, and costs.* Judgment of November 24, 2022. Series C No. 481, para. 106.

<sup>151</sup> *Cf. Case of the Massacre of Pueblo Bello v. Colombia. Preliminary objections, merits, and reparations.* Judgment of November 30, 2012. Series C No. 259, para. 286, and *Case of Valencia Campos et al. v. Bolivia*, *supra*, para. 255.

<sup>152</sup> *Cf. Case of López et al. v. Argentina. Preliminary objections, merits, reparations, and costs.* Judgment of November 25, 2019. Series C No. 396, paras. 98 and 99, and *Case of Valencia Campos et al. v. Bolivia*, *supra*, para. 148.

<sup>153</sup> *Cf. Case of López et al. v. Argentina*, *supra*, paras. 98 and 99, and *Case of Movilla Galarcio et al. v. Colombia*, *supra*, para. 183.

<sup>154</sup> *Cf. Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/02 of August 28, 2002.* Series A No. 17, paras. 53, 54, 60, 86, 91, and 93, and *Case of Movilla Galarcio et al. v. Colombia*, *supra*, para. 183.

115. In her statement before the Court, María Elena Toro said that:

[...] [they are] currently in exile because of serious threats. [Her] son disappears, and immediately packages start arriving that hadn't before. Sometimes packages were delivered to [her] personally, and sometimes it was phone calls, telling [her] that they would give [her] a sum of money to stop searching for Tabares, and [she] immediately told them: "You do business, I do business too. Don't give me money—give me the body of my son," and hung up. They also pressured [them], saying they were going to cut them to pieces, and [...] the deceased [FL] knows about that. She was crucial in [her] efforts, supporting [her] and saying: "We must never tire. We cannot abandon our children." One of the other serious threats was when [she] was with [her] daughter María Isabel Gallego, son-in-law, and two small grandchildren in a shopping mall, and they did not even try to hide that they were trying to take [their] pictures, then followed [them] in the car, and when [they] realized it, [they] took a picture of that truck and reported it to the prosecutor's office. Since [their] son disappeared, [they] have been followed constantly [...] it never stops, and [she] begged the lieutenant [...] "you already killed my son, so leave us in peace now, you already made me leave the country, because I left everything behind, including my two daughters. So why don't you leave us in peace, these phone calls at all hours, taking the young kids to get their shots and being denied because they weren't listed as children of my son-in-law or my daughter, but of someone else; I reported that also. No, I just wouldn't have enough time to tell about all the persecution against us by the Colombian army."<sup>155</sup>

116. In view of the foregoing, the Court finds that the situations described had an immediate impact in terms of breaking up the family, causing physical and psychological harm to María Elena Toro's family members. This Court also observes that two of her daughters currently live in Colombia with their respective families and that recently Ms. Toro, another daughter, and that daughter's family left Colombia in exile. Mr. Tabares's relatives have been harmed by these events, with his mother being away from home for extended periods of time to look for her son, as well as by stigmatization prompted by the allegation that Óscar Iván Tabares Toro had joined the FARC, all of which caused fear and pain for the family. The disappearance of their loved one changed the family dynamics and clearly undermined family members' right to family protection.

117. Furthermore, this Court finds merit in the representatives' arguments regarding gender-based harm to María Elena Toro, which it analyzes here. In this case, María Elena Toro suffered gender-based harm as she abandoned her life plans to focus on looking for her son, lost her job, and became the person who has fought to uncover the truth about the disappearance of her son. Concerning her mother's work, María Bibiancy Tabares Toro stated that "[w]hile [her] mother asked questions and sought justice, [she] had to take care of [her] younger sisters. Even though [she] had been taking care of them anyway, [she] had to do it now for a specific purpose: to give [her] mom space to do what she needed to do to find [her] brother. That allowed [her] mom to talk to a lot of people who told her what she could do, what steps to take to get answers. According to her, and to an uncle who accompanied her, it was thanks to one person, who is still unknown today, that the case was not closed. [She feels] that [she] even had divine help."<sup>156</sup>

118. It is clear from the above that the relatives of serviceman Tabares received no official protection whatsoever from the risks they faced, and the body of evidence in the case shows a failure to take effective steps to prevent those risks. The Court understands that María Elena Toro and her family moved repeatedly—and some family members left the country—for several reasons, among them the State's failure to adopt protective measures, the lack of diligence and progress in the investigations, and the ongoing impunity in the case. These factors have created risks that led the family members to relocate. This situation remains unchanged, which led the Court to order provisional measures for certain relatives of Mr. Tabares Toro (*supra* para. 12).

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<sup>155</sup> Statement of María Elena Toro before the Court at public hearing, *supra*.

<sup>156</sup> Affidavit of María Bibiancy Tabares Toro, *supra*.

119. In addition, in their final written arguments, the representatives argued that the rights of the child enshrined in Article 19 of the Convention had been violated. Although this argument was made late, in application of the principle of *iura novit curia*, the Court will analyze it.

120. According to the representatives, at the time of Mr. Tabares Toro's disappearance, his sisters Leidy Julieth and María Isabel Gallego Toro were 13 and 10 years old respectively, and this event affected their childhood, as they spent long periods of time without a mother's presence and grew up in an environment of distrust toward the outside world. According to testimonies, this caused them to be deeply fearful of living a basically normal life. They were stigmatized by hostile comments. The representatives added that the two girls' experiences were the result of the actions of the government officials who disappeared their brother and that despite knowing the facts, the authorities never took concrete steps to help the girls.

121. In light of the above, and in consideration of the State's acknowledgment of responsibility (*supra* para. 27(c)), the Court finds that the State violated the rights to personal integrity, the protection of honor and dignity, and the protection of the family enshrined in Articles 5(1), 11, and 17 of the American Convention respectively, in conjunction with its Article 1(1), against María Elena Toro Torres, Óscar de Jesús Tabares, Holmar de Jesús Gallego Márquez, María Bibiancy Tabares Toro, Jhon Fredy Tabares Giraldo, Leidy Julieth Gallego Toro, and María Isabel Gallego Toro.

122. The Court further concludes that the State violated the rights of the child enshrined in Article 19 of the American Convention, in conjunction with Article 1(1), against Leidy Julieth Gallego Toro and María Isabel Gallego Toro, who were children at the time of the events.

## **VIII REPARATIONS<sup>157</sup>**

123. Pursuant to Article 63(1) of the American Convention, the Court has indicated that any violation of an international obligation that has caused harm entails the obligation to remedy it adequately, and that this provision reflects a customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility.<sup>158</sup>

124. Remedying the harm produced by the infringement of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists in restoring the prior situation. When this is not feasible, as in the majority of cases of human rights violations, the Court will determine measures to guarantee the violated rights and to remedy the consequences of those violations.<sup>159</sup> Therefore, the Court has found it necessary to grant various measures of reparation in order to redress the harm comprehensively; thus—in addition to pecuniary compensation—measures of restitution, rehabilitation, and satisfaction, as well as guarantees of non-repetition, are especially important to redress the harm caused.<sup>160</sup>

125. The Court has established that reparations must have a causal nexus with the facts of the case, the violations declared, the harm proven, and the measures requested to redress the respective harm. Accordingly, the Court must analyze all of these factors in order to rule appropriately and in keeping with the law.<sup>161</sup>

126. Bearing in mind the violations of the American Convention declared in the previous chapters, and in light of the standards established in the Court's case law regarding the nature and scope of the

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<sup>157</sup> Application of Article 63(1) of the American Convention.

<sup>158</sup> Cf. *Case of Velásquez-Rodríguez v. Honduras. Reparations and costs*. Judgment of July 21, 1989. Series C No. 7, para. 25, and *Case of Olivera Fuentes v. Peru, supra*, para. 130.

<sup>159</sup> Cf. *Case of Velásquez-Rodríguez v. Honduras. Reparations and costs, supra*, paras. 25 and 2, and *Case of Olivera Fuentes v. Peru, supra*, para. 131.

<sup>160</sup> Cf. *Case of the "Las Dos Erres" Massacre v. Guatemala. Preliminary objection, merits, reparations, and costs*. Judgment of November 24, 2009. Series C No. 211, *supra*, para. 226, and *Case of Olivera Fuentes v. Peru, supra*, para. 131.

<sup>161</sup> Cf. *Case of of Ticona Estrada v. Bolivia, supra*, para. 110, and *Case of Olivera Fuentes v. Peru, supra*, para. 132.

obligation to make reparations,<sup>162</sup> the Court will analyze the petitions of the Commission and the representatives, as well as the arguments of the State, to set forth below the measures of reparation for those violations.

127. The Court notes that the **State** asked it to order measures of reparation that are directly connected to the harm suffered and the violations acknowledged by the State and found proven by the Court. It also stated its intention to implement, in concert with the relatives of Mr. Tabares Toro, any measures of reparation ordered by the Court in this judgment. Accordingly, the discussion below refers only to requests made by the Commission and the representatives concerning measures of reparation.

#### **A. Injured party**

128. Pursuant to Article 63(1) of the American Convention, this Court considers that an injured party is anyone who has been declared a victim of the violation of any right in this judgment. The Court thus considers Óscar Iván Tabares Toro, his mother María Elena Toro Torres, his father Óscar de Jesús Tabares, his stepfather Holmar de Jesús Gallego Márquez (deceased), his sisters María Bibiancy Tabares Toro, Leidy Julieth Gallego Toro, and María Isabel Gallego Toro, and his brother Jhon Fredy Tabares Giraldo to be injured parties.

#### **B. Duty to investigate and determine individual responsibility**

129. The **Commission** asked the Court to order the State to continue and facilitate, with due diligence, domestic procedures directed toward an effective investigation, pursuit, capture, prosecution, and potential punishment of those responsible for the disappearance of Óscar Iván Tabares Toro and to carry out these investigations in an impartial and diligent manner within a reasonable period of time with the aim of fully determining the facts, identifying perpetrators and conspirators, and imposing the appropriate punishments.

130. The **representatives** agreed with the Commission and asked that the investigation be grounded in an approach that takes into consideration the context of grave human rights violations within the ranks of the army in order to exhaust all reasonable hypotheses to find those responsible and bring them to justice. Lastly, they asked the Court to order the State to designate a group from the Office of the Prosecutor General of the Nation to focus exclusively on furthering the criminal proceedings with the aim of identifying and punishing those responsible for the victim's disappearance. In their final written arguments, the representatives also requested that various members of the National Army be added to the investigation, arguing that they had been involved in committing, investigating, and trying the facts.<sup>163</sup>

131. The **Court** has established that the State failed to fulfill its duty to investigate the disappearance of Óscar Iván Tabares Toro (*supra* para. 94). Bearing in mind the failure to clarify the events, and taking into consideration this Court's consistent case law, the Court hereby orders the State to make every effort to continue the investigations and the ongoing criminal trial promptly with the utmost diligence, endeavoring to close the proceedings within a reasonable timeframe. To that end, it shall open any lines of investigation necessary to identify, prosecute, and, when appropriate, punish those responsible for the disappearance of Óscar Iván Tabares Toro within a reasonable time period in order to determine the truth about what happened. Due diligence in the investigation means that all state authorities are obligated to collaborate in gathering evidence. Accordingly, these authorities shall provide the relevant judicial body,

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<sup>162</sup> Cf. *Case of Velásquez-Rodríguez v. Honduras. Reparations and costs, supra*, paras. 25–27, and *Case of Olivera Fuentes v. Peru, supra*, para. 133.

<sup>163</sup> Specifically, they requested that the following be added: (a) "as collaborators, all of the members of the 'Tigre' Company of Anti-guerrilla Battalion 20, colleagues of Óscar Iván Tabares Toro, who through group solidarity and coercion participated jointly in the facts by not filing a complaint or providing information for the criminal investigation;" (b) "the members of the National Army who were part of the supposed search commission which took steps on December 29, 1997, to find serviceman Tabares. There are strong indications that these military members were responsible for burying his body, thereby permanently concealing the soldier's whereabouts;" and (c) "anyone in a position of leadership in the army battalion and brigade, as well as any officials of the military justice system or of any other entity who hindered the investigation into the facts."

prosecutor's office, or other competent authority involved in the proceedings all necessary information and avoid taking actions that hinder the investigative process.<sup>164</sup>

132. Furthermore, the State must ensure that the following criteria are observed: (a) carry out the relevant investigations, ensuring that evidence is gathered, and reasonable lines of investigation are pursued; (b) ensure that the investigations are comprehensive, encompassing all the elements involved in the forced disappearance; (c) identify the individuals believed to be the conspirators and perpetrators of the victim's forced disappearance; (d) ensure that the competent authorities carry out the pertinent investigations *ex officio* and that they have and utilize all the logistical and scientific resources needed to collect and process the evidence and, specifically, that they have the authority to examine the relevant documentation and information in order to investigate the acts reported and carry out, in a timely manner, the actions and inquiries that are essential to shed light on what happened to Óscar Iván Tabares Toro; (e) in view of the seriousness and continuous or permanent nature of Mr. Tabares's disappearance, the State shall not, as a matter of principle and pursuant to the relevant international law, apply statutes of limitation or immunity as an excuse to impede the investigation.<sup>165</sup>

133. In accordance with its settled case law, the Court reiterates that the State shall ensure the victims' or their families' full access and capacity to act during all stages of the investigation and prosecution of those responsible, including any necessary measures of protection. The purpose of their participation shall be to access justice and to find out the truth about what happened.<sup>166</sup>

### C. Locating Mr. Tabares Toro

134. The **Commission** asked that the State be ordered to investigate the fate and whereabouts of Óscar Iván Tabares Toro by means of an appropriate search plan with measurable, time-delimited results and, if his remains are found, to take steps to identify them and turn them over to the family. It noted that this should be an effective search plan whose progress and results can be monitored and measured with the due participation of family members and their representatives.

135. The **representatives** asked that the State be ordered to continue making every effort to locate Óscar Iván Tabares Toro or his remains as soon as possible, diligently and expeditiously following proper procedures. They argued that this requires a search plan<sup>167</sup> that makes it possible to locate the victim's remains or conclusively ascertain his ultimate fate. They argued that the State should therefore take all possible steps to locate the victim or his remains. These steps must be taken with the agreement of the victim's family and their representatives, and in their presence. In the event that the remains are found, they should be turned over to the family after genetic confirmation of the relationship at no cost to the family. They also asked that the State cover the expenses of a funeral that is consistent with the family's beliefs, by mutual agreement with the family.

136. The **Court** has determined in this case that the State violated the rights to judicial guarantees, to judicial protection, and to the truth, including with respect to its failure to take sufficient measures to find the victim (*supra* paras. 92–94). This Court stresses that because Mr. Tabares Toro was forcibly disappeared nearly 25 years ago, it is only fair for his family to expect that he be located and that the State take all necessary steps to toward that end. This would in turn ease the grief and suffering the family has experienced due to that uncertainty.

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<sup>164</sup> Cf. *Case of Myrna Mack Chang v. Guatemala. Merits, reparations, and costs*. Judgment of November 25, 2003. Series C No. 101, para. 277, and *Case of Movilla Galarcio v. Colombia, supra*, para. 198.

<sup>165</sup> Cf. *Case of Vásquez Durand et al. v. Ecuador. Preliminary objections, merits, reparations, and costs*. Judgment of February 15, 2017. Series C No. 332, para. 203, and *Case of Movilla Galarcio v. Colombia, supra*, para. 199.

<sup>166</sup> Cf. *Case of the Caracazo v. Venezuela. Reparations and costs*. Judgment of August 29, 2002. Series C No. 95, para. 118, and *Case of Movilla Galarcio v. Colombia, supra*, para. 200.

<sup>167</sup> Specifically that (a) "an interinstitutional board" be established "including the Prosecutor General of the Nation through GRUBE, the prosecutor in charge of the case, the Institute of Legal Medicine, and most importantly, the Search Unit for Missing Persons, that meets with the participation of the victims and their representatives with the aim of supporting the search plan for this case through measurable and verifiable commitments, timeframes, and responsibilities within three (3) months;" and that (b) "the requested interinstitutional body take into consideration, as it develops hypotheses and search measures, the specifics of the case, including the pattern of serious human rights violations within the ranks and the existence of social pressure or pacts of silence to conceal the facts with respect to Óscar Iván Tabares Toro."

137. In that regard, the Court takes note, as it has in other cases,<sup>168</sup> that Colombia has a set of search mechanisms for missing persons. The Court observes that, in her statement before the Court at a public hearing, the witness Elsa María Moyano stated that there are both judicial and non-judicial bodies in Colombia responsible for searching for missing persons, and that these have trained staff and search strategies. These bodies are the Prosecutor General of the Nation and the Search Unit for Missing Persons. She also noted that they have a cooperative agreement and technical forums for joint work. Furthermore, the witness stated that although the National Search Plan was created by Law 589 in the year 2000, it is also necessary to “develop [...] strategies both for finding those criminally responsible and for finding the disappeared person” for cases that preceded the creation of that law.<sup>169</sup>

138. Accordingly, the Court orders the State to reinforce the steps it is taking to find the victim. The State shall work diligently and through appropriate legal and/or administrative channels, making every effort to find Óscar Iván Tabares Toro or identify his remains without delay. To that end, the State shall marshal appropriate human, technical, and scientific resources and develop any forms of institutional collaboration that are found to be necessary or advantageous. As part of these efforts, State shall develop a family communication strategy and facilitate agreement on a framework for coordinated action in order to seek the family’s participation, knowledge, and presence, in accordance with the relevant guidelines and protocols, while maintaining appropriate protection measures. If it is determined that the victim is deceased, his remains shall be turned over to the family after conclusive confirmation of identity, without delay and at no cost to the family. Moreover, the State shall cover the funeral expenses, if applicable, by mutual agreement with the family members.<sup>170</sup>

139. This Court notes that, based on “the International Convention for the Protection of All Persons from Enforced Disappearance<sup>171</sup> and other pertinent international instruments,”<sup>172</sup> the United Nations Committee on Enforced Disappearances adopted the “Guiding Principles for the Search for Disappeared Persons.”<sup>173</sup> The Court considers it important that they be taken into account in complying with the reparation measure ordered. The Court underscores the following in particular:

- a) The search for a disappeared person should continue until his or her fate and/or whereabouts have been determined with certainty, which means that the person “is again under the protection of the law” or, if found to be deceased, “has been fully identified.”<sup>174</sup>
- b) The victims’ relatives, who are also victims, and individuals who represent or assist them have the right to participate in the search, which necessitates, among other things, access to

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<sup>168</sup> Cf. *Case of Movilla Galarcio v. Colombia*, *supra*, para. 205. See also the State’s final oral arguments during the public hearing of this case.

<sup>169</sup> Statement of the witness Elsa María Moyano in the public hearing before the Court on November 8, 2022.

<sup>170</sup> Cf. *Case of Contreras et al. v. El Salvador. Merits, reparations, and costs*. Judgment of August 31, 2011. Series C No. 232, paras. 191 and 192, and *Case of Movilla Galarcio v. Colombia*, *supra*, para. 206.

<sup>171</sup> Ratified by Colombia on July 11, 2012. It entered into force for the State on the thirtieth day after the date of the deposit of the instrument of ratification, pursuant to Article 39(2) of the convention. Cf. *Case of Movilla Galarcio v. Colombia*, *supra*, para. 207.

<sup>172</sup> The document clarifies that the principles “also take into account the experience of other international bodies and various countries around the world” (Introduction, para. 1). Guiding principles for the search for disappeared persons, UN Committee on Enforced Disappearances, April 16, 2019. Cf. *Case of Movilla Galarcio v. Colombia*, *supra*, para. 207.

<sup>173</sup> Approved by the Committee on Enforced Disappearances at its 16th session (April 8–18, 2019). Doc. CED/C/7. Cf. *Case of Movilla Galarcio v. Colombia*, *supra*, para. 207.

<sup>174</sup> However, the document clarifies in Principle 7(4) that “[i]f the disappeared person has not been found and there is credible evidence beyond a reasonable doubt of his or her fate or whereabouts, the search may be suspended when it is not physically possible to recover the person and once all obtainable information has been exhaustively analysed and all possible scenarios investigated. This decision should be taken in a transparent manner and requires the prior and informed consent of the family members or persons close to the disappeared person.” Likewise, the Working Group on Enforced or Involuntary Disappearances has noted that, although the right of relatives to know the truth of the fate and whereabouts of the disappeared person is “not subject to any limitation or derogation,” “there is no absolute obligation of result,” because: “[i]n certain cases, clarification is difficult or impossible to attain, for instance when the body, for various reasons, cannot be found. [...] The State still has an obligation to investigate until it can determine by presumption the fate or whereabouts of the person.” (UN. Human Rights Council. Working Group on Enforced and Involuntary Disappearances. Report of the Working Group on Enforced and Involuntary Disappearances. January 26, 2001. A/HRC/16/48. Para. 39 General comments *General comment on the right to the truth in relation to enforced disappearance*. No. 4). Cf. *Case of Movilla Galarcio v. Colombia*, *supra*, para. 207.



information, without prejudice to any measures necessary for maintaining the integrity and effectiveness of the criminal investigation or the search itself.

c) The search should be carried out by means of a “comprehensive strategy,” taking into consideration all reasonable hypotheses about the disappearance, rejecting none except those that cannot be supported based on objective and verifiable criteria. This strategy should “take into account the contextual analysis.”

d) “[T]he activities to be performed are determined in an integrated fashion, through all necessary and appropriate means and procedures for the identification, release or exhumation of the disappeared person or establishment of the person’s identity. The comprehensive search strategy should include an action plan and a timeline and should be evaluated periodically.”

e) The search “should be centralized under, or coordinated by, a competent body that ensures effective coordination with all the other entities whose cooperation is needed for the search to be effective, exhaustive and prompt.”

f) “The search for the disappeared person and the criminal investigation of the persons responsible for the disappearance should be mutually reinforcing.” “When the search is conducted by non-judicial authorities independent of those that make up the justice system, mechanisms and procedures should be established to ensure cooperation, coordination and an exchange of information.”

140. In order to accomplish the above, the State shall, within three months of the notification of this judgment, develop a specific search plan for Óscar Iván Tabares Toro. This plan shall meet the standards established in the preceding two paragraphs. Colombia shall ensure the participation of Mr. Tabares Toro’s relatives who have been declared victims in this judgment and/or their representatives in the development of the specific search plan. The State shall not use the established timeframe, or any delays in the adoption of the plan ordered, to suspend search efforts. The State shall immediately inform this Court once it has developed the search plan, sending the Court a copy of the plan document. This is independent of the one-year period the State has to submit its first report, as ordered in operative paragraph 12 of this judgment.

#### **D. Measure of rehabilitation**

141. The **Commission** requested as a measure of rehabilitation the implementation of a program of psychological and psychosocial care that is appropriate for the relatives of the disappeared victim.

142. The **representatives** asked the Court to grant the relatives of Óscar Iván Tabares Toro free medical and psychological treatment that is specific to their situation as victims of serious human rights violations and that continues for as long as necessary. They also noted that the Program for Psychosocial Care and Comprehensive Health of Victims (PAPSIVI), created by the Victims’ Law, does not meet the standards of rehabilitation established by the Court in its settled case law, as acknowledged in the case of *Movilla Galarcio v. Colombia*. The representatives therefore asked the Court to order alternative measures for the rehabilitation of Óscar Iván Tabares Toro’s family and to apply the provisions of the judgment of that case, ordering the State to provide a sum for each of the victims to use for their comprehensive health care, including those who reside outside of Colombia.

143. The **State** noted that the purpose of PAPSIVI is to guarantee health assistance and physical, mental, and/or psychosocial rehabilitation for victims of serious human rights violations and violations of international humanitarian law in the context of Colombia’s armed conflict. To this end, the program provides psychosocial healthcare free of charge using various interdisciplinary strategies.

144. The **Court** has determined that the personal integrity of Mr. Tabares Toro’s relatives has been harmed (*supra* para. 121). Accordingly, as it has done in other cases,<sup>175</sup> the Court finds it necessary to order a measure of reparation to provide appropriate treatment for the physical, psychological, and/or

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<sup>175</sup> Cf. *Case of Barrios Altos v. Peru. Reparations and costs*. Judgment of November 30, 2001. Series C No. 87, paras. 42 and 45, and *Case of Cortés Espinoza v. Ecuador. Preliminary objections, merits, reparations, and costs*. Judgment of October 18, 2022. Series C 468, para. 172.

psychiatric problems experienced by those individuals. The Court appreciates the State's interinstitutional efforts to provide care to a large number of victims, but given the representatives' request, the Court finds it appropriate in this case to designate a sum of money that the victims can use to obtain the medical and psychological care they need. Accordingly, the State shall give each of the following individuals: María Elena Toro Torres, Óscar de Jesús Tabares, María Bibiancy Tabares Toro, Leidy Julieth Gallego Toro, María Isabel Gallego Toro, and Jhon Fredy Tabares Giraldo USD 6,000.00 (six thousand United States dollars). This amount shall not be conditional on prior or subsequent documentation of outlays for medical or psychological expenses. Also, the instructions set out below with regard to the delivery of funds shall be followed (*infra* paras. 178–183). The State shall immediately inform the Court once it has transferred all of the funds as ordered, irrespective of the one-year timeframe for submitting its first report ordered in operative paragraph 12 of this judgment.

#### **E. Measures of satisfaction**

145. The **Commission** made a general request for appropriate reparation, including measures of satisfaction, for all the human rights violations. For this reason, only the specific requests of the representatives will be discussed here.

##### *E.1 Publication of the judgment*

146. The **representatives** asked that the State be ordered to publish once in a legible font in the Official Gazette the important parts of this judgment, including the titles of the corresponding chapters and sections—without footnotes—as well as the operative section of the judgment, and to publish in another media outlet with broad national circulation the Court's official summary of the judgment. This shall be done within six months of the date of notification of this judgment. The entire text of the judgment shall be published immediately on the official websites of the Presidency of the Republic, the Ministry of Foreign Affairs, and the Ministry of Defense, for a period of one year.

147. The **Court** orders, as it has in other cases,<sup>176</sup> that the State publish within six months of the notification of this judgment, in a legible and appropriate font size: (a) the Court's official summary of this judgment, once, in the Official Gazette; (b) the Court's official summary of the judgment, once, in a media outlet with broad national circulation; and (c) this judgment in its entirety, available for one year on an official website of the Ministry of Defense, accessible to the public from the homepage. The State shall inform the Court immediately when it has made each of the publications ordered, irrespective of the one-year timeframe for presenting its first report established in operative paragraph 12 of this judgment.

148. In addition, within six months of the notification of this judgment, the State shall publicize the Court's judgment on the social media accounts of the Ministry of Defense. The State shall indicate in these publications that the Inter-American Court has issued a judgment in this case declaring Colombia internationally responsible, and it shall link directly to the full text of the judgment. This shall be done at least five times by the ministry, during working hours, and the publications shall remain published on its social media profiles. The State shall inform this Court immediately when it has made each of the publications ordered, irrespective of the one-year timeframe for presenting its first report, established in operative paragraph 12 of this judgment.

##### *E.2 Public acknowledgment of international responsibility*

149. The **representatives** asked that the State be ordered to carry out a public acknowledgment of responsibility within one year of the notification of this judgment and apologize to Óscar Iván Tabares Toro's family members for his forced disappearance at the hands of the National Army and for the denial of justice they have had to endure for almost 24 years. They asked that the details and content of the act of acknowledgment be agreed upon in advance with the victim and representatives and carried out by high-level officials with the broadest possible publicity and involvement, in particular with television, radio, digital media, and the national press. Lastly, they stated that the exile of certain relatives of the victim should be taken into consideration.

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<sup>176</sup> Cf. *Case of Cantoral Benavides v. Peru. Reparations and costs*. Judgment of December 3, 2001. Series C No. 88, para. 79; *Case of Vera Rojas et al. v. Chile. Preliminary objections, merits, reparations, and costs*. Judgment of October 1, 2021. Series C No. 439, para. 169; and *Case of Olivera Fuentes v. Peru, supra*, para. 109.

150. In their final written arguments, the representatives referenced the standard set out in the case of *Movilla Galarcio v. Colombia*, asking the Court to order the Court to publicly recognize the work and contributions of María Elena Toro in her role as a searching woman because she devoted her life to the fight against forced disappearances, to search and to memorialize, to do the work the State should have been doing.

151. The **Court** orders Colombia to carry out a public event acknowledging international responsibility for the facts of this case, referring to the violations declared in this judgment and to the State's commitment to fulfill its responsibility by locating the disappeared victim, investigating, and, as appropriate, punishing those responsible for the human rights violations committed in this case, as well as to make reparations for them. In this event, it shall be made clear that Óscar Iván Tabares Toro did not attack his superiors, desert, or join the FARC guerrillas. In addition, the event shall acknowledge the particular gender-based suffering of Ms. Toro Torres as a result of the disappearance of her son and her search for him, as well as the efforts of other women who have had to search for their forcibly disappeared loved ones. Moreover, this event shall highlight the harm caused by the forced disappearance of Mr. Tabares Toro and by the failure to take appropriate investigative measures.

152. This acknowledgment shall be carried out through a public ceremony led by high-level officials. The victims in this case shall attend the ceremony if they so desire. The State shall come to an agreement with the victims or their representatives on the nature of the public acknowledgment ceremony, as well as details such as the date and location, and it shall provide all means necessary to facilitate the presence of those individuals in the ceremony. If the victims express a desire to participate in person, the State shall provide any protective measures necessary for such participation and shall cover the transportation costs for victims in exile and the expenses for their stay in Colombia. If the victims cannot attend in person, the State shall ensure their virtual participation. This event shall be publicized in the media and shall take place within one year of the notification of this judgment.

### *E.3 Documentary*

153. The **representatives** noted that the authorities treated the victim like a disobedient soldier who had fled the army to join the ranks of the FARC and that they did not tell the truth about what had happened or mention the search efforts made independently by his mother. They therefore requested that a documentary film be made about Óscar Iván Tabares Toro for the purpose of restoring his good name and telling the truth about the events.

154. In response to the representatives' request and bearing in mind the importance of restoring Óscar Iván Tabares Toro's reputation and dignity, the **Court** orders the creation of an audiovisual documentary about the forced disappearance of Óscar Iván Tabares Toro and the impact it had on his family. This should be done in coordination with his family. The State shall cover all the expenses needed to produce and distribute this documentary. It shall be distributed as broadly as possible among the victims, their representatives, and military training facilities. This material shall also be made available on the online platforms of the Presidency of the Republic and the Ministry of Defense for a period of one year. The State has one year from the notification of this judgment to produce and disseminate this documentary film.

### **G. Other measures requested**

155. The **Commission** requested the adoption of measures necessary to prevent similar events in the future, namely: (i) the implementation of ongoing human rights training programs in the military schools, focusing especially on the prohibition in international law of the crime of forced disappearance; and (ii) the implementation of appropriate investigative protocols by the prosecutor's office for the rigorous investigation of this type of crime.

156. The **representatives** asked that the State be ordered to: (a) hold a public event for the installation of two plaques on which the State acknowledges its responsibility for the forced disappearance and extrajudicial killing of the victim, describes the events truthfully, including the clarification that Óscar Iván Tabares Toro never joined the FARC guerrillas, affirms that the violations in this case will not be repeated, and reiterates its commitment to the defense and protection of the legal rights of those under

its authority within the military; (b) build a music room within the school the victim attended, supply it with instruments, and install a plaque at the entrance with a biography of Óscar Tabares; (c) create and fund the “Óscar Iván Tabares Toro” scholarship for members of his family—both his parents and his siblings—so that they can receive an education or training in some profession either domestically or internationally; and (d) ensure the provision of all necessary protective measures for the family of Óscar Iván Tabares Toro, including, inter alia, political asylum in another country, security systems, and change of identity. In addition, the representatives asked that the State be ordered to develop new training and regular educational programs for high-ranking Colombian military officers and supervisors on respect for human rights and limits on military discipline. Lastly, they requested the creation of an interinstitutional board including the Prosecutor General of the Nation, GRUBE, Legal Medicine, the Search Unit for Missing Persons, and the Ministry of Defense—with the participation of civil society organizations—for the purpose of updating, reviewing, and implementing protocols suitable for the rigorous investigation of serious human rights violations committed within the ranks of the army.

157. In their final written arguments, they also requested as a measure of non-repetition that the State be ordered to adapt its domestic legal system by designing and implementing mechanisms to ensure that complaints and investigations of members of the Armed Forces of Colombia for forced disappearance within the ranks are not subject to the authority of military commands, military institutions, or the military justice system.<sup>177</sup>

158. The **Court** observes that the representatives, in their final written arguments, indicated that they would present a request for provisional measures that would contain more details on the need to safeguard the life and integrity of Mr. Tabares Toro’s relatives. The Court confirms that this request was submitted on December 7, 2022, and that on February 8, 2023, the Court adopted provisional measures for Leidy Julieth Gallego Toro, Jhon Alber Urrego, María Bibiancy Tabares Toro, Víctor Alonso León, María Camila Henao, and Miguel Ángel Orozco (*supra* para. 12). The Court thus considers it unnecessary to order additional protective measures in this judgment. With regard to the remaining requests, this Court considers that the measures of reparation ordered in this judgment are suitable and sufficient to remedy the violations against the victim. Consequently, it does not consider additional measures of reparation necessary.

## H. Compensation

159. The **Commission** requested appropriate reparation for all the human rights violations, including payment for both pecuniary and non-pecuniary damage.

160. The **representatives** requested that the State: (a) pay USD 212,566.00 to Óscar Iván Tabares Toro for established loss of earnings and potential future loss of earnings, which shall be paid to his mother, María Elena Toro; (b) pay USD 207,884.00 to María Elena Toro for established loss of earnings, potential future loss of earnings, and help she received from her son; and (c) set an amount in equity equivalent to the consequential damage suffered by María Elena Toro and her husband, Holmar de Jesús Gallegos, because of the expenses they had to incur while searching on their own.

161. In addition, they requested that the following be granted for non-pecuniary damage: (a) USD 100,000.00 to Óscar Iván Tabares Toro, to be paid to his mother María Elena Toro; and (b) USD 90,000.00 to each of the victims (mother, father, stepfather, and siblings).

162. The **State** asked that the measures of reparation be directly connected to the harm suffered and the violations recognized by the State and found proven by the Court.

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<sup>177</sup> The representatives specifically requested that the State: (i) designate impartial, independent civilian oversight authorities who can convey information on any serious human rights violations in the military to competent authorities so that searches and investigations can be conducted; (ii) adapt domestic laws such that there are genuine consequences if public employees learn of serious human rights violations within the ranks but fail to inform the appropriate authorities; (iii) take steps to ensure that individuals are suspended from military service if circumstantial evidence indicates that they participated in forced disappearance; and (iv) modify Article 27 of Order 1793 of the year 2000 such that the determination of forced disappearance is not made by a military authority but by an independent, impartial civilian authority, and such that this determination is made promptly, within 30 days, to increase the likelihood that the investigation and search will be successful.

163. In its case law, the **Court** has developed the concept of pecuniary damage and has established that it supposes the loss of, or harm to, the victims' earnings, the expenses incurred as a result of the facts, and the consequences of a pecuniary nature that have a causal nexus with the facts of the case.<sup>178</sup> The case law has also asserted repeatedly that damages serve a clearly compensatory purpose, and the nature and amount depend on the injury caused; thus, they may not entail either enrichment or impoverishment for the victims or their successors.<sup>179</sup>

164. Although the representatives did not provide documentation of consequential damage amounts, it can be assumed that Mr. Tabares Toro's family members incurred various expenses as a result of the forced disappearance and the search that has lasted over 25 years. The Court recalls that after the victim's disappearance, his relatives—especially María Elena Tabares Toro—made various attempts to obtain information on his fate and whereabouts from several Colombian institutions and organizations. The Court believes the State should provide compensation for those expenses, as they have a direct causal nexus with the violations in this case. In view of the specifics of this case, the Court finds it appropriate to set, in equity, the sum of USD 15,000.00 as compensation for consequential damage, which shall be paid within one year of the notification of this judgment to María Elena Toro Torres.

165. With respect to lost income, the Court holds, as it has in other cases of forced disappearance,<sup>180</sup> that when the victim's whereabouts are unknown, it is possible to apply the criteria of compensation for lost income, which includes income the victim would likely have earned during their lifetime. The representatives submitted at least two of the victim's pay receipts—for June and July of 1997—and reported on life expectancy in Colombia for that year. This Court finds that this evidence is insufficient to calculate with certainty the appropriate amount. It is reasonable to assume, however, that Mr. Tabares suffered a loss of earnings. Accordingly, the Court sets, in equity, the total sum of USD 90,000.00 for lost income for Óscar Iván Tabares Toro, which shall be paid to his mother, María Elena Toro Torres, within one year of the notification of this judgment.

166. In addition, the Court has developed in its case law the concept of non-pecuniary damage and has established that this can encompass pain and suffering caused to the direct victim and their immediate family, such as harm to values of great importance to them, as well as changes of a non-pecuniary nature in the living conditions of the victim or their family.<sup>181</sup> Since it is not possible to assign a precise monetary value to non-pecuniary damage, it can only be compensated, for the purposes of comprehensive reparation to the victim, by the payment of a sum of money or the provision of goods or services with a monetary value determined by the Court in reasonable application of sound judicial criteria and based on equity.<sup>182</sup>

167. Bearing in mind the compensation ordered by the Inter-American Court in other cases of forced disappearance, the circumstances of this case, and the magnitude, nature, and seriousness of the violations committed, the Court deems it appropriate to order, in equity, the sum of USD 100,000.00 to Óscar Iván Tabares Toro for non-pecuniary damage. This amount shall be paid to María Elena Toro Torres within one year of notification of this judgment.

168. Regarding the non-pecuniary damage suffered directly by Mr. Tabares Toro's family, the Court finds it appropriate to order the State, in equity, to pay USD 55,000.00 as reparation for that damage to María Elena Toro Torres, USD 40,000.00 as reparation for that damage to Óscar de Jesús Tabares and Holmar de Jesús Gallego Márquez (deceased), and USD 20,000.00 to each of the victim's siblings: María Bibiancy Tabares Toro, Leidy Julieth Gallego Toro, María Isabel Gallego Toro, and Jhon Fredy Tabares Giraldo. The amount for Mr. Gallego Márquez shall be paid to María Elena Toro Torres. These sums shall

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<sup>178</sup> Cf. *Case of Bámaca Velásquez v. Guatemala. Reparations and costs*. Judgment of February 22, 2002. Series C No. 91, para. 43, and *Case of Aguinaga Aillón v. Ecuador, supra*, para. 127.

<sup>179</sup> Cf. *Case of the "White Van" (Paniagua-Morales et al.) v. Guatemala. Reparations and costs*. Judgment of May 25, 2001. Series C No. 76, para. 79, and *Case of Nissen Pessolani v. Paraguay. Merits, reparations, and costs*. Judgment of November 21, 2022, para. 126.

<sup>180</sup> Cf. *Case of Bámaca Velásquez v. Guatemala. Reparations and costs, supra*, para. 43, and *Case of Movilla Galarcio v. Colombia, supra*, para. 245.

<sup>181</sup> Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and costs*. Judgment of May 26, 2001. Series C No. 77, para. 84, and *Case of Olivera Fuentes v. Peru, supra*, para. 165.

<sup>182</sup> Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala, supra*, para. 84, and *Case of Pavez Pavez v. Chile. Merits, reparations, and costs*. Judgment of February 4, 2022. Series C No. 449. para. 197.

be paid to the individuals named within one year of the notification of this judgment.

### I. Costs and expenses

169. The **representatives** noted that they have incurred various expenses in connection with their work, including for travel, lodging, communications, photocopies, stationery, mailing, and other expenses. Likewise, the CCJ has incurred expenses for the time spent performing legal work in connection with this case; for research, collection, and presentation of evidence; and for document preparation. They therefore requested, in their pleadings and motions brief before the Court, reimbursement for costs and expenses in the amount of USD 106,849.54<sup>183</sup> as detailed in a certificate and worksheet that they attached. This amount includes: (a) travel expenses to Washington for proceedings before the Inter-American Commission—incurred by CCJ during the years of litigation before the Commission—which has been divided by the number of cases handled by CCJ; and (b) fees CCJ incurred for the attorneys handling the case, for which the salaries have been divided according to the proportion of their workload this case represented.<sup>184</sup> They asked that this reimbursement be made directly from the State to the CCJ. Lastly, they requested reimbursement for future expenses for the remainder of the proceedings before the Court.

170. In their final arguments, the representatives asked that the expenses incurred in the context of the public hearing before the Court on November 8, 2022, be included, as follows: (a) for the participation of three CCJ attorneys, who incurred transportation, food, and lodging expenses in the amount of USD 2,766.02; and (b) other litigation expenses for evidence provided: (i) USD 1,454.58 for the expert opinion by Omar Rojas Bolaños and (ii) USD 1,454.58 for the COPSICO psychosocial expert opinion. They therefore asked the Court to recognize the amount of USD 5,675.19<sup>185</sup> after the presentation of the pleadings and motions brief, separate from the salary and fee expenses of the representatives.

171. The **State** argued that the costs and expenses ordered should be limited to those amounts proven by the representatives and should be directly connected to actions taken on this case, and that the amount should be reasonable, taking into consideration inter-American parameters and standards for setting the amounts that the State will have to pay. It requested that the annex titled “Certification of CCJ expenses and support,” which includes expenses for travel to Washington D.C., Haiti, Jamaica, and Quito, Ecuador and does not constitute a summary explanation of the connection between the travel listed and litigation on this case before bodies of the inter-American human rights system. The **Commission** did not submit a timely comment on this request.

172. The **Court** recalls that, pursuant to its case law, costs and expenses are part of the concept of reparation in all cases in which the efforts of the victims in seeking justice, both nationally and internationally, entail expenditures that must be compensated for when the international responsibility of the State is declared in a condemnatory judgment. It is the Court’s responsibility to prudently assess the scope of reimbursement for costs and expenses, which includes expenses incurred before domestic legal authorities, as well as those incurred in the course of the trial within the inter-American system, keeping in mind the circumstances of the specific case and the nature of international jurisdiction for the protection of human rights. This assessment can be done on the basis of the principle of equity and taking into consideration the expenses declared by the parties, provided the amounts are reasonable.<sup>186</sup>

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<sup>183</sup> For the currency conversion between Colombian pesos and United States dollars, the representatives noted that they used the exchange rate in effect at the New York Stock Exchange on August 31, 2021, of \$3,806.87.

<sup>184</sup> With respect to CCJ’s travel expenses for transportation and stays in various places, the representatives clarified that due to the pandemic, it was not possible to include travel expenses prior to the year 2010 because that would have required searching for the needed documentation within the inactive archive. Out of the total related travel expenses, 10% was for processing and litigating Case No. 12508, “Óscar Iván Tabares Toro.” Regarding salaries and benefits for litigation staff on this case, the representatives indicated that they took into consideration for these personnel expenses that the International Litigation Coordinator of CCJ devoted 10% of his work hours to processing and litigating Case No. 12508 “Óscar Iván Tabares Toro” and that the Director of CCJ devoted 4% of his time to that same purpose.

<sup>185</sup> For the currency conversion between Colombian pesos and United States dollars, the representatives noted that they used the exchange rate of \$4,812.37.

<sup>186</sup> Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and costs*. Judgment of August 27, 1998. Series C No. 39, paras. 82, and *Case of Olivera Fuentes v. Peru, supra*, para. 172.

173. This Court has indicated that “the claims of the victims or their representatives with regard to costs and expenses, and the evidence to support them, must be submitted to the Court at the first procedural opportunity granted to them; that is, in the pleadings and motions brief, without prejudice to such claims being updated subsequently, in keeping with the costs and expenses incurred during the proceedings before this Court.”<sup>187</sup> The Court also reiterates that it is not sufficient merely to forward evidentiary documents; rather, the parties are required to include arguments that relate the evidence to the facts that they represent and, in the case of alleged financial disbursements, clearly specify the items and their justification.<sup>188</sup>

174. The Court has reviewed the representatives’ requests for reimbursement for costs and expenses and whether they have provided documentation to support their requests. Concerning the request made in the pleadings and motions brief, this Court notes that the representatives presented an explanatory table for the expenses, and that the amount requested corresponds to expenditures during the proceedings before the Inter-American Commission, including the following categories: travel expenses for 2010–2021 (10%), salaries and benefits 1 for 2002–2021 (10%), and salaries and benefits 2 for 2002–2021 (4%). The amount for travel includes trips to Washington, D.C., Haiti, Jamaica, Mexico, Panama, Costa Rica, Peru, the United States, and Ecuador. Except for the travel to Washington D.C., no connection is demonstrated between those trips and this case before the Commission. They did not submit documentation to support the amount requested. Furthermore, regarding expenses incurred by the representatives after the presentation of the pleadings and motions brief, the Court observes that the representatives presented an explanatory table for travel expenses (tickets, lodging, and transportation expenses) and the amount paid for two expert opinions, attaching accounting records and numerous receipts. However, there are some inconsistencies between the receipts provided and the accounting records, as well as the travel expenses requested. In addition, the amount requested for the expert opinion of Omar Rojas Bolaños should have been claimed in the victims’ fund, as part of the needs requested for that purpose. Moreover, it is not possible to approve the expense for the psychosocial expert opinion from the Colombian Psychosocial Collective (COPSICO) because, as has been established, it was not submitted in accordance with the call for the hearing, so it was admitted as documentary evidence (*supra* para. 35).

175. Taking into consideration the amounts requested by the representatives, the arguments of the State, and the documentation provided on costs incurred, the Court sets, in equity, the payment of USD 50,000.00 for costs and expenses. This sum shall be paid directly to the Colombian Commission of Jurists. At the stage of monitoring compliance with this judgment, the Court will be able to order the state to reimburse the victims or their representatives for reasonable expenses incurred during that procedural stage.<sup>189</sup>

## J. Victims’ Legal Assistance Fund

176. As the October 18, 2022, Order of the President shows, it was decided on September 16, 2022, that the request to use the Legal Assistance Fund was admissible. Therefore, the financial support needed would be granted through the Fund to cover the expenses for presenting three statements, whether in person or by affidavit, at a future public hearing convened for this case. That order declared the following:

37. Accordingly, the **Presidency** orders that financial assistance from the Legal Assistance Fund be allocated to cover any expenses incurred for the presentation of three statements by affidavit, as the public hearing statements will be done by videoconference (*infra* paragraph 2 and operative 8). (bold in original)

38. Based on the above, the representatives shall inform the Court of the names of the three declarants whose reasonable expenses for drawing up statements from their

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<sup>187</sup> Cf. *Case of Garrido and Baigorria v. Argentina*, *supra*, para. 79, and *Case of Baraona Bray v. Chile*, *supra*, para. 188.

<sup>188</sup> Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary objections, merits, reparations, and costs*. Judgment of November 21, 2007. Series C No. 170, para. 277, and *Case of Nissen Pessolani v. Paraguay*, *supra*, para. 134.

<sup>189</sup> Cf. *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, reparations, and costs*. Judgment of September 1, 2010. Series C No. 217, para. 291, and *Case of Olivera Fuentes v. Peru*, *supra*, para. 173.

country of residence if applicable and sending the affidavits will be covered by the Assistance Fund. To that end, within the time period established in the operative section of this order, the representatives shall submit a quote for the cost of drawing up and sending the statements and as well as documentation supporting the expenditures with the final written arguments at the latest (*infra* operative paragraph 9)<sup>190</sup>.

177. The **representatives** have not submitted receipts for reimbursement. Thus, the Victims' Legal Assistance Fund was not used, and it is not appropriate to order reimbursement by the State.<sup>191</sup>

#### **K. Method of compliance with the payments ordered**

178. The State shall make the compensation payments for pecuniary and non-pecuniary damage, reimbursement of costs and expenses, and the measure of rehabilitation established in this judgment (*supra* paras. 164, 165, 167, 168, 175, and 144) directly to the individuals named herein and to the Colombian Commission of Jurists, within the timeframe specified or—in the absence thereof—within a year of notification of this judgment, without prejudice to the option of making the full payment in advance, under the terms of the following paragraphs.

179. In the event that the individual beneficiaries have died or die before their respective compensation is rendered to them, it shall be rendered directly to their heirs in accordance with applicable domestic law.

180. The State shall comply with its monetary obligations by payment in United States dollars or the equivalent in the national currency, calculated using the published market exchange rate or calculated by a relevant banking or financial authority, on the date closest to the payment date.

181. If, for reasons attributable to the individual beneficiaries of the pecuniary measures or their rights-holders, it is not possible to pay the amount determined within the indicated timeframe, the State shall deposit the amounts for them in a deposit account or certificate of deposit in a solvent Colombian financial institution, in United States dollars, with the most favorable financial terms permitted by banking law and practice. If those funds are not claimed within ten years, they shall be returned to the State along with the interest accrued.

182. The amounts set in this judgment as compensation for pecuniary and non-pecuniary damage, as reimbursement for costs and expenses, and as a measure of rehabilitation shall be rendered to the indicated individuals in full, in accordance with the provisions of this judgment, with no reductions resulting from potential tax charges.

183. If the State falls behind, it shall pay interest on the amount owed that is equivalent to the bank interest rate for arrears in Colombia.

### **IX OPERATIVE PARAGRAPHS**

184. Therefore,

#### **THE COURT**

unanimously,

#### **DECIDES,**

1. To accept the acknowledgment of international responsibility made by the State of Colombia,

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<sup>190</sup> *Case of Tabares Toro et al. v. Colombia*. Call for a hearing, *supra*, paras. 37 and 38.

<sup>191</sup> *Cf. Case of Mota Abarullo et al. v. Venezuela. Merits, reparations, and costs*. Judgment of November 18, 2020. Series C No. 417, para. 176, and *Case of Cuya Lavy et al. v. Peru. Preliminary objections, merits, reparations, and costs*. Judgment of September 28, 2021. Series C No. 438., para. 232.



under the terms of paragraphs 24 to 32 of this judgment.

**DECLARES,**

2. The State is responsible for violating Óscar Iván Tabares Toro's rights to recognition as a person before the law and to personal liberty enshrined in Articles 3, 4(1), 5(1), and 7(1) of the American Convention on Human Rights, in conjunction with Article 1(1) of that convention, as well as Article I(a) of the Inter-American Convention on the Forced Disappearance of Persons, under the terms of paragraphs 71 to 76 of this judgment.

3. The State is responsible for violating the rights to judicial guarantees and judicial protection enshrined in Articles 8(1) and 25(1) of the American Convention on Human Rights, in conjunction with Article 1(1) of that convention, and Article I(b) of the Inter-American Convention on the Forced Disappearance of Persons, to the detriment of Óscar Iván Tabares Toro and his family members: María Elena Toro Torres, Óscar de Jesús Tabares, Holmar de Jesús Gallego Márquez, María Bibiancy Tabares Toro, Jhon Fredy Tabares Giraldo, Leidy Julieth Gallego Toro, and María Isabel Gallego Toro. The State is also responsible for violating the above-named relatives' right to know the truth, on the basis of the violation of the rights to judicial guarantees, judicial protection, and freedom of thought and expression recognized in Articles 8(1), 25(1), and 13(1) of the American Convention on Human Rights, in conjunction with its Article 1(1). All of the above is under the terms of paragraphs 84 to 94 of this judgment.

4. The State is responsible for violating the rights to personal integrity, protection of honor and dignity, and protection of the family, enshrined in Articles 5(1), 11, and 17, respectively, of the American Convention on Human Rights, in conjunction with Article 1(1), to the detriment of María Elena Toro Torres, Óscar de Jesús Tabares, Holmar de Jesús Gallego Márquez, María Bibiancy Tabares Toro, Jhon Fredy Tabares Giraldo, Leidy Julieth Gallego Toro, and María Isabel Gallego Toro, under the terms of paragraphs 98 to 118 and 121 of this judgment. Furthermore, the State is responsible for violating Leidy Julieth Gallego Toro's and María Isabel Gallego Toro's rights of the child enshrined in Article 19 of the American Convention on Human Rights, in conjunction with Article 1(1), under the terms of paragraphs 119, 120, and 122 of this judgment.

**AND ESTABLISHES,**

5. This judgment constitutes, per se, a form of reparation.

6. The State shall continue the investigations and criminal proceedings for the forced disappearance of Óscar Iván Tabares Toro, under the terms of paragraphs 131 to 133 of this judgment.

7. The State shall intensify its efforts to locate Óscar Iván Tabares Toro, under the terms of paragraphs 136 to 140 of this judgment.

8. The State shall make the publications ordered in paragraphs 147 and 148 of this judgment.

9. The State shall hold a public event acknowledging its responsibility, under the terms of paragraphs 151 and 152 of this judgment.

10. The State shall make a documentary, under the terms of paragraph 154 of this judgment.

11. The State shall pay the amounts established in paragraphs 144, 164, 165, 167, 168, and 175 of this judgment as a measure of rehabilitation, compensation for pecuniary and non-pecuniary damage, and reimbursement of costs and expenses, under the terms of paragraphs 163, 166, 172, 173, and 174.

12. The State shall, within one year of notification of this judgment, provide the Court with a report on the measures taken to comply with it, without prejudice to the provisions in paragraphs 140, 144, 147, and 148.

13. The Court will monitor full compliance with this judgment, in exercise of its authority established in the American Convention on Human Rights, and will consider this case closed when the State has fully complied with all its provisions.

Done in Spanish in San José, Costa Rica, on May 23, 2023.

I/A Court HR. *Case of Tabares Toro et al. v. Colombia*. Merits, reparations, and costs. Judgment of May 23, 2023.

I/A Court HR. *Case of Tabares Toro et al. v. Colombia*. Merits, reparations, and costs. Judgment of May 23, 2023.

Ricardo C. Pérez Manrique  
President

Eduardo Ferrer Mac-Gregor Poisot

Nancy Hernández López

Verónica Gómez

Patricia Pérez Goldberg

Rodrigo Mudrovitsch

Pablo Saavedra Alessandri  
Registrar

So ordered,

Ricardo C. Pérez Manrique  
President

Pablo Saavedra Alessandri  
Registrar