

REPORT N° 22/93
CASE 9477
COLOMBIA
October 12, 1993(*)

BACKGROUND:

1. On November 28, 1984, the Inter-American Commission on Human Rights received a petition dated November 22, 1984, which was forwarded to the Colombian Government on December 5, 1984. The text of the petition, which was supplemented by information supplied by the parties, recounted the following facts:

At approximately 3:00 p.m. on December 10, 1982, in the city of Bogota, in the presence of a number of witnesses, PATRICIA RIVERA, her small daughters ELIANA and KATHERINE BERNAL RIVERA, ages 9 and 4, respectively, were seized on the street, despite their protests, their fierce resistance and their desperate cries for help. Also seized was an elderly gentleman, MARCO ANTONIO CRESPO, who had intervened to try to help. Mrs. Rivera and her daughters were in the vicinity of their residence when they were intercepted by persons who identified themselves as belonging to a State security agency. Mr. Crespo, aged 74, tried to prevent the arbitrary arrest, but in the process became another victim. Neighborhood eyewitnesses to the abduction were Carlos Alfonso Olave Uribe, Ana Tulia Angel Angel, María Beatriz Roa, Crispin Rios Alvarez and Irma Mahecha de Montoya, who identified the abductors as detectives Alfonso Suárez Jaime, Campo Elías Tirado Amado and Jorge Luis Barrero or Borrero, members of the Administrative Security Department, DAS.

Based on their statements and on the oral descriptions that some of them provided, the identities of the officers who had participated in the abduction were established. Later, it was also shown that at the time of the disappearance, the yellow taxi, license plates SD-1485, which the witnesses had seen as the captives were forced inside, belonged to the Military Institutes Brigade, today the XIII Army Brigade, headquartered in Bogota. It was also clarified that Patricia was taken because state security agencies had mistakenly linked her with the kidnapping, some months earlier, of a well-known woman in Bogota society.

(*) Commission member Dr. Alvaro Tirado Mejia abstained from participating in the consideration and voting on this report.

The requirements regarding exhaustion of the remedies under domestic law, stipulated in the American Convention and the Commission's Regulations, have been fulfilled, because more than ten years after the event, the criminal proceedings have failed to produce any result. This also constitutes unwarranted delay: though the time which has passed has exceeded all legal limits, the authors of this crime have never been punished and enjoy all the unlawful advantages of impunity. Thus, Article 46.2.a of the Pact of San Jose applies.

2. In a note dated December 19, 1984, the Colombian Government acknowledged receipt of the petition, reporting that as soon as it had the information requested it would make it available to the Commission.

3. When no reply was forthcoming, the request for information on this case was repeated on February 28, 1985, June 10, 1985, February 12, 1986 and July 23, 1986.

4. In a note dated September 18, 1986, the Commission received the following communication from the Government of Colombia.

As to Case No. 9477, which concerns the petition filed with the Commission involving the "alleged" disappearance of PATRICIA RIVERA DE BERNAL, GILMA BERNAL RIVERA, KATHERINE BERNAL RIVERA and MARCO ANTONIO CRESPO, I would like to inform Your Excellency that through Memorandum No. 582, dated September 11, 1986, the Criminal Circuit Judge recorded the following: "In response to the communication in question, I would like to inform you that Case No. 11928 against ARMANDO RODRIGUEZ OSSA and others for the crime of kidnapping PATRICIA EUGENIA RIVERA CHAVES, her two small daughters, and MARCO ANTONIO CRESPO, was received on the 8th of this month from the 24th Criminal Court, as it had been assigned to that legal office.

ARMANDO RODRIGUEZ OSSA testified in that proceeding on June 6, 1983, after a warrant for his arrest was issued. In a court order dated October 19 of that year, the arrest warrant was nullified and he was released.

ALBERTO ALFONSO SUAREZ JAIME testified on August 22, 1985, and was released that same day; CAMPO ELIAS TIRADO AMADO testified on August 23, 1985 and was released that day. JORGE LUIS BARRERO or BARRERO has been declared a defendant in absentia.

At present, the proceedings are being studied in order to determine whether the investigation is now complete or whether additional inquiries must be

conducted.

As Your Excellency can appreciate, the competent judicial authority, i.e., the Fourth Criminal Judge, is conducting the appropriate proceedings in connection with the disappearance of these individuals. I should add that the remedies under domestic law have not been exhausted.

5. On October 31, 1986, the Government's note was forwarded to the petitioner. When no reply was forthcoming, the Commission's earlier request was repeated on February 9, 1987.

6. In a note dated March 24, 1987, the Government of Colombia sent additional information, which was also forwarded to the petitioner on July 31, 1987. That information was as follows:

In connection with Case No. 9477 concerning the alleged disappearance of PATRICIA RIVERA DE BERNAL, GILMA ELIANA BERNAL RIVERA, KATHERINE BERNAL RIVERA and MARCO ANTONIO CRESPO, the Second Special Prosecutor for the Judicial Police-Human Rights reported the following:

The 24th Criminal Court is conducting the criminal investigation into the events described above, which had been joined to the administrative inquiry through an investigation into the following individuals: ARMANDO RODRIGUEZ OSSA, JORGE LUIS BARRERO, CAMPO ELIAS TIRADO, AMADO and ALBERTO ALFONSO SUAREZ JAIME (the latter belong to the Administrative Security Department [DAS]).

The investigation has been in the Office of the Special Prosecutor for the National Police since August 28, 1986. By an order dated December 12, 1986, the Special Prosecutor commissioned an attorney, who visited the 40th Criminal Court of this city. During her visit on February 5 of this year, she stated: "Four (4) years have passed during which the investigation has been prosecuted in various criminal courts and in the 40th Criminal Circuit Court, though thus far the abduction of PATRICIA RIVERA DE BERNAL and her young daughters GILMA ELIANA and KATHERINE and of Mr. MARCO ANTONIO CRESPO has not been established. There was a violation of the summons issued in the names of Messrs. ARMANDO RODRIGUEZ OSSA, JORGE LUIS BARRERO or BORRERO (an employee declared defendant in absentia), ALBERTO ALFONSO SUAREZ JAIME and CAMPO ELIAS TIRADO AMADO, all detectives with the Administrative Security Department (DAS). However, no member of the National Police has in any way been

implicated. Those who testified have since been released."

On February 7, 1987, the individual assigned to this case submitted a report to the effect that there were insufficient grounds to open a formal inquiry against members of the National Police. Her view, therefore, was that the proceedings should be filed pending the decision by the Special Prosecutor for the National Police.

It is vitally important to the Colombian Government that it cooperate with the Commission in clarifying this case, just as it has been doing since it learned of the facts in this case, as evident from the countless proceedings on file. We hope that this reply meets with the Commission's satisfaction and that it will therefore close this case.

7. When no reply was received from the petitioner, on November 30, 1987, February 16, 1988, and August 4, 1988, observations and response to the earlier communication were reiterated.

8. In communications dated May 4 and August 23, 1989, additional information was received from the petitioner as well as the following statements from eyewitnesses, all of which was forwarded to the Colombian Government on June 8 and August 23, 1989:

Exhaustion of remedies under domestic law: The initial proceedings concerning the facts in question began in the 81st Criminal Court of Bogota, where the accused were Alberto Alfonso Suárez Jaime, Campo Elías Tirado Amado, Armando Rodríguez Ossa and Jorge Luis Barrero or Borrero, who were then active members of the DAS. The first three made statements in that court on August 22 and 23, 1985.

As for Jorge Luis Barrero or Borrero, he was declared defendant in absentia, since he was not taken into custody even though the court in question had issued the appropriate warrant. The individual Barrero or Borrero is known to have been charged with the disappearance of Miguel Angel Díaz and Faustino López Guerra, and was sentenced to 5 years imprisonment by the First Circuit Court of Tunja (Colombia) and apparently is now serving that sentence in El Barne prison in Tunja, as he was captured on July 17, 1987.

At present the investigation into the disappearance of Patricia Rivera, her young daughters and Mr. Crespo is in the 103rd Criminal Court; even though almost seven years have passed since the crime, no ruling has been handed down on the merits.

Administrative Proceeding in the Office of the Prosecutor: The father and grandfather of the missing women and children, Mr. José Modesto Rivera, reported these facts to the Office of the Attorney General of the Nation, requesting the appropriate investigation.

The Office of the Special Prosecutor for the National Police conducted a preliminary inquiry in the period between August 25, 1986 and January 20, 1988. Because it found no grounds to link any member of the National Police with this crime, it decided to remit the file to the Special Prosecutor for the Administrative Jurisdiction, to investigate the conduct of the members of the DAS named in the criminal proceeding.

On March 7, 1988, the Office of the First Regional Prosecutor for Administrative Jurisdiction of Bogota ordered the case filed on the grounds that the statute of limitations for disciplinary action had expired. (This decision is incomprehensible on two counts: first, because legally speaking, there is no statute of limitation in a case of enforced disappearance, so long as the victim has not reappeared; second, because the First Prosecutor himself had declared, six months earlier, in August 1987, that he disqualified himself from continuing to prosecute the investigation).

The Office of the Third Regional Prosecutor undertook prosecution on August 25, 1987, inasmuch as the First Regional Prosecutor had disqualified himself from continuing to prosecute the investigation. However, thus far, no disciplinary proceeding has been instituted against anyone.

Conclusion: From the foregoing, it can be inferred that all domestic remedies have been exhausted and that even though 78 months have passed since the disappearance of the individuals in question, there is not even the slightest sign of their existence or even of their bodies, much less a ruling from any of the courts whose job is to indict and convict persons guilty of such acts. This has perpetuated the mental and material damage to the victims' next of kin. It is our understanding, therefore, that the provisions of Art. 37.2.c of the Commission's Regulations apply.

Response from the Colombian Government: The Colombian Government's response to the Commission is remarkable in that it requests that the case be closed though it has no argument other than the fact that the court has not ruled on the merits, despite the number of years that have passed. On that basis it is asking the Commission to file the case.

9. Next came the statements made by the eyewitnesses:

1. CARLOS ALFONSO OLAVE URIBE: I have known Patricia Rivera for around five years, because she worked with me at Seguros Tequendama and Aseguradora del Valle; I know the little girls by sight, but I do not know the gentleman. I've known Patricia for about five years. In connection with the disappearance of PATRICIA EUGENIA RIVERA CHAVES, her two daughters and Mr. MARCO CRESPO he said: She came to my shop, which is a cigarette shop that I tend to personally. I believe it was December 10, at around 3:00 p.m. She was with her little girls and a gentleman and she told me that the gentleman was going to take her to the F-2. I then told her to request identification or something, or the warrant giving him the authority to bring her in. The gentleman then took out a billfold like those used to carry identification cards, and inside was a police badge. It was turned around so that you couldn't see the number. He showed it to her, but he showed it to her from a distance. I was behind the counter. He then showed her a paper (the witness then held up a piece of letter-size paper). She walked out, went halfway down the block. The man continued to walk beside her. They spoke with a man that I believe was Mr. Crespo, who also had someone walking at his side. Then they all met together and returned to my establishment. I then said to her that she should go in and call home to tell them. At that point the man who was going to take her in took hold of her arm and did not let her call. He had handcuffs and they took her to the car that was parked at the corner. She, Mr. Crespo and the two girls were placed in a yellow and black taxi, the bottom part was black and the upper part was yellow, and they drove off. In about an hour I called Patricia's home and told them that the F-2 had taken her and that is all I know.

2. ANA TULIA ANGEL ANGEL, companion of Mr. Olave Uribe, on February 21, 1983: We have a business there at home. PATRICIA (came) to ask us to help because two men wanted to take her away. At that point a man walked up, the one who wanted to take her in and we asked him why he wanted to take her and to identify himself. He said that he was from the F-2 and that he had a warrant for her arrest. She began to cry and said she had nothing to do with it, and the man told her that he had to go with her. We told her to call home. I told her to come in and she was on the verge of coming in when the man told her she wasn't going to call anybody and he grabbed her by the arms. We then saw them placing her in a black taxi; then they put the girls in. Afterwards the other man came along with another gentleman and they placed him in the car, too. We don't know anything else because the car went backwards and we were unable to see the license plates. We located Patricia's telephone number in order to advise them at home of what had happened. I know CARLOS ALFONSO OLAVE URIBE because I've lived with him for fourteen years, but we're not married. I did

not know Patricia and I learned her name because the man who came to the shop said he had a warrant for PATRICIA RIVERA and the family came down later to inquire. She said that the business owned by her husband or companion CARLOS OLAVE owns is a shop located on Avenue 9a-A No. 5-94 South, which is also our residence. That she did not know exactly when CARLOS OLAVE and PATRICIA RIVERA met. That it made her nervous because Patricia Rivera was screaming and asking us not to let her go, and saying that she hadn't done anything. All I said was that he should let her call home and tell them that she was being taken away. She said that she saw the individual with the alleged "arrest warrant" and that he showed it to PATRICIA RIVERA and said that she should read it, that it was an arrest warrant, that he was from F-2 and that she had to go with him.

3. MARIA BEATRIZ ROA DAZA: I work at Avenue Sixth South, #9-A-60, La Milanese Bake Shop. I have been working there for three years and I am in charge of the cash register. The owner is CARLOS JULIO LEON. The bakers work in the morning; they leave after midday. There is a girl in the morning, ABIGAIL RODRIGUEZ and I work in the afternoon. On December 10 the bakers, one boy, JOSE RIOS, and ABIGAIL RODRIGUEZ were working. That afternoon, I had opened the business. I was having my lunch when Mr. MARCO ANTONIO came in; they say that's his name. He said to me: "Don't eat, the F-2 is following me". I didn't pay much attention and he left. But he came in again, and another man came in behind him and said to him "Don't be tough, I don't want to get violent with you." He identified himself as an F-2 agent. He took out a small radio and a little card and showed it to him. He told him that he was from F-2 and to come with him. The gentleman told him "I am a DANE pensioner", and took out his identification and showed it to the man. But the agent took him to where PATRICIA was standing with her two girls. I knew Mr. MARCO ANTONIO CRESPO because He came to the bakers shop frequently, to buy things, but I didn't know his name. I saw in the newspapers El Tiempo that his name is MARCO ANTONIO CRESPO. He came to buy bread and milk with his wife. He is short, fat, about 60 years old. He wears a little hat and glasses. I couldn't see his hair because he always used a little brown hat. He wore beige pants, a jacket of the same color. It was a complete suit. He also had a tie. He seemed nervous when he came in the bakery and said to me 'don't eat anything else, the F-2 is following me.' I heard him say to the man "You don't have to take me; I am an honorable person and I am an old man". The guy told him he was from F-2 and to start walking, and they took him to the spot where PATRICIA was and took him away in a car. The physical features of the individual who took Mr. MARCO ANTONIO CRESPO from the bake shop, claiming to be a member of the F-2 were: Tall but not too tall,

and thin. His hair was straight, I don't remember the color of his hair, but it was short. His skin was white but not too white, and he had no moustache, sideburns or goatee. He did not wear glasses and was about 30 years old. He had a blue check jacket, white pants, and his shoes were NORTH STAR but they were fuzzy or made of suede and yellow. He was not wearing a hat, and I don't remember whether the shirt was white or a light yellow. He was carrying a small, square radio; it was kind of wide, and about this big (she indicates the size using her left hand), and black. It didn't make any sound. It simply had a little antenna. The card was small and I could see his photograph. I could not read anything, it was an old card, plastic, about the size of an ID. He took it out of his pocket and showed it. It was a kind of yellow color. He was accompanied by two more men, whom I saw outside the cafeteria and they were in front of Don Carlos' shop. One was old, ugly, short; he was neither fat nor thin. He was dressed in dirty old clothes. The other one was young, but I didn't see his face. It was about ten meters from the door of the cafeteria to the spot where they were standing,

4. CRISPIN RIOS ALVAREZ, I work in La Milanesa Bakers Shop, at Sixth Street South No. 9-A-60. I have worked there for six months and I'm a baker. I don't personally know Mr. MARCO ANTONIO CRESPO or Mrs. PATRICIA EUGENIA RIVERA CHAVEZ. I saw them for the first time that day on December 10 when the elderly man entered the bakers shop and said that the F-2 was following him. It was at that moment that I came out, because I had been working. The old man went out the door of the bakers shop again, but then returned to the counter. It was then that a young man came in who apparently was from F-2 because he said he was from F-2 and because he showed the old man an identification card. I noticed that he had a radio inside his jacket, one of those kind that they use on motorcycles; he also took out handcuffs. He told the old man to come with him, because he didn't want to get violent. The old man asked him why he was taking him in, if he hadn't done anything, that they were there not to apprehend him, but rather the lady. Then the younger man told the elderly man to leave and the old man left without putting up a fight. I went to the door of the bakers shop and I saw them taking the elderly man. At the other corner I saw a woman with two children, who was accompanied by another young man who, I believe, was one of them. They then turned around the corner, heading south on foot, and I didn't see anything else. I saw the story later in the newspaper. He remembers that the elderly man asked the cashier Beatriz Roa Daza to use the phone in the bakers shop? But at that very moment the young man came in saying that he was from F-2 and he didn't let him make the call.

5. IRMA MAHECHA DE MONTOYA: On December 10, 1982 I was cleaning the windows of the house when I saw that a car was parked in front of the house, but not against the curb; instead it was in the middle of the street and not the way a car is usually parked. Instead the car was parked in the middle. Since I was standing on a chair cleaning the window, I stepped off the chair and looked to see if the driver was my son-in-law who drives a taxi that is yellow on top and black on the bottom. When I saw that that driver did not have a little beard like his son in law, I went on cleaning the windows. Then I saw a woman, two little girls, an old man and another gentleman get into the car and the car left. I observed all of this happening about in the middle of the street, about two meters or perhaps a little further.

10. In a letter dated September 3, 1989, the petitioner sent the Commission the following additional testimony:

6. The father of Patricia Rivera, JOSE MODESTO RIVERA VELANDIA: On December 10, at around 4:00 p.m., I arrived home. I heard one of my sons, GABRIEL ENRIQUE, received a telephone call from Mr. CARLOS OLAVE, who told him something. But at that very moment, I went to the telephone and this gentleman told me that he had witnessed the abduction of my daughter PATRICIA EUGENIA RIVERA, my two granddaughters GILMA ELIANA BERNAL and KATHERINE BERNAL RIVERA, as well as that of an elderly gentleman who was with them at that moment. According to what this gentleman told me, he had heard these people say that they were members of F-2 and they were carrying identification. They put her in a yellow and black public service vehicle. They would not let her take the two little girls home. They wouldn't let her leave them with Mr. OLAVE either, who is an acquaintance of my daughter. I have known him since the time my daughter worked at Aseguradora del Valle. I immediately went to the F-2 offices at Avenue 15 and 6th Street, but I didn't get any information there. I then went to the F-2 station at Avenue 15 and 10th Street, and again I learned nothing. I went back to the station at Avenue 15 and 6th Street, where they suggested that I go to Police Station 100, to ask if she was at any police station. But again the answer was no. That night, I went to a friend and neighbor, Police Lt. LUIS EDUARDO SUAREZ, who accompanied me to the F-2 offices at Avenue 15 and 6th street again, where I explained the situation to a Captain MORENO. He immediately assigned a patrol to help with the inquiries, and they did that, but have found nothing. On Saturday, December 11, I went to the DAS Office in Paloquemao to explain the situation. Once again, they assigned another patrol to conduct inquiries, but without any positive results. And that's where matters stand now. Based on the questions they asked, the F-2

and DAS agents are all looking for reasons to explain the disappearance of my daughter and her daughters. They asked me if I might have some problem or if there was anything that might have brought this on. I said no. They then asked me about the activities of the father of the two little girls, OMAR BERNAL. I told them that I couldn't give them any exact information about his activities because I didn't know what he did. I don't have any sort of personal contact with him. However, as frightened and anxious as we had every right to be, this Mr. OMAR BERNAL went to newspapers in this city to report the case and to request the cooperation of the newspapers, including El Bogotano, which on December 17 carried big headlines about the kidnapping of my daughter, my granddaughter and Mr. Crespo, who is 74 years old. We were later surprised to see that the newspaper again published a photograph of my daughter Patricia, but this time linking her with one of the persons arrested in the death of Doña GLORIA LARA. The newspaper account said that my daughter was the sister of the suspect FREDDY RIVERA, that she had been living with him since her separation from her husband "OMAR BERNAL", all of which is totally false.

JORGE CLIMACO CARRASCO SAAVEDRA: This attorney, who defended MR. JUAN TADEO ESPITIA, a student leader associated with a leftist group by the name of the COLOMBIAN LABOR PARTY (PTC) who was accused of participating in the kidnapping of Mrs. Gloria Lara, appeared to report that he had learned that the car in which his client JUAN TADEO ESPITIA SUPELANO was kidnapped was the same taxi with license plate DS-1485 that had been used to kidnap Mrs. PATRICIA RIVERA. Dr. Carrasco, upon learning of Patricia's kidnapping and the facts of the case which were similar to those of the Juan Taddo case, wished to be of assistance and called the newspaper El Tiempo to put him in touch with PATRICIA's family so he could give them that lead. The car in which Juan Tadeo had been kidnapped was identified by eyewitnesses of the crime, which took place at 7:30 in the morning on December 17 in front of the ESPITIA SUPELANO residence, who provided the license plate number and a description of the vehicle.

11. In a note dated September 20, 1989, the Government of Colombia reported that the national authorities were conducting investigations to update the case.

12. In a note dated December 1, 1989, the Colombian Government sent a reply, which was forwarded to the petitioners. That reply stated the following:

At present the 103rd Criminal Court of Bogota has the criminal proceedings in progress. On May 4, 1989, it closed the investigatory phase.

The investigation implicated Mr. Jorge Luis Barrera, who is presently serving a sentence in La Picota prison in Bogota, for a crime other than the one being investigated in this case. The judge heard the accused under cross-examination, but did not order any measure to keep him in court custody. As of August, the evidence requested by the attorney for the civil party and ordered by the court had not as yet been taken.

As for the proceedings in the administrative jurisdiction, in a ruling dated March 7, 1988, the First Regional Prosecutor of Bogota ruled that the statute of limitations had expired for the disciplinary action in the preliminary hearing against detectives Alfonso Suárez Jaime, Campo Elías Tirado Amado and Jorge Luis Barrera.

As Your Excellency can appreciate, the remedies under domestic law are still under way.

13. On April 6, 1990, the Commission sent a note to the Government of Colombia requesting information on the present status of the investigation. In a note dated May 7, 1990, the Colombian Government replied to the earlier communication and requested that the Commission grant a reasonable extension on the deadline, which it needed to enable the competent national authorities to compile and update the information requested. Therefore, in a note of June 18, 1990, the Commission gave the Government a 60-day extension on the deadline.

14. In a letter of April 10, 1990, the petitioners forwarded the following additional information, which was sent to the Colombian Government on August 6, 1990:

In a note of December 1, 1989, the pertinent parts of which were sent to our office in March of this year, the Colombian Government stated that the 103rd Criminal Examining Judge had a criminal proceeding in progress. On May 4, 1989, the investigatory phase was completed. It further indicated that in a decision issued on March 7, 1988, the Office of the First Regional Prosecutor of Bogota found that the statute of limitations had expired for the disciplinary action against detectives Alfonso Suárez, Campo Elías Tirado and Jorge Luis Barrera. The Government states that "the remedies under domestic law are still under way."

More than eight years since the disappearance of Patricia, her small daughters and Mr. Crespo, there is indeed a criminal proceeding still in progress, but one which has arrived at no decision whatever of any substance. The Colombian Government cannot point to that proceeding to contend that the remedies under domestic law are fully under way. Quite the

contrary, what it demonstrates, once again, is how ineffective such remedies are in our country. This is not the only case where, after a number of years, legal proceedings are still in progress that have failed to produce any result whatever and that allows such serious crimes as this one to go utterly unpunished. The inefficacy of the domestic remedies has become commonplace. The case of Patricia Rivera is not the only example; there are others, of which the Commission is aware. Consequently, as we have informed you on past occasions, this is one of those cases covered under the exception contemplated in Article 46.2 of the Pact of San Jose and Article 37.2 of the Regulations of the Inter-American Commission, which provide that the remedies under domestic law need not be exhausted when there is an unwarranted delay in the final judgments in respect to those remedies.

With regard to the information which the Government of Colombia presented to the Commission on the prescription of the disciplinary actions which the Office of the Regional Prosecutor ordered in the case of the DAS members involved in this violation, in our communication of August 23, 1989, we sent you a copy of the ruling of March 7, 1988, which blatantly disregards that enforced disappearance is a crime against humanity; hence, there is no statute of limitations. The Colombian Government makes reference to that very decision.

No one has yet been punished for the disappearance of Patricia Rivera, her small daughters Gilma Eliana and Katherine Bernal Rivera, and Mr. Marco Antonio Crespo. The members of the intelligence force that arbitrarily apprehended the disappeared did it in broad daylight and in the presence of a number of witnesses, as the statements sent to the Commission show. That style of enforced disappearance has been common in Colombia since that time. The manner in which Patricia, the Bernal Rivera girls and Mr. Crespo were apprehended is similar to numerous other cases of disappearance during that period, of which the Commission is well aware. In all of them, the apprehensions are conducted in broad daylight and in the presence of witnesses.

Patricia, Gilma Eliana, Katherine and Mr. Crespo were forced into a taxicab, license plate DS-1485. This license plate number originally belonged to a FIAT POLSKY owned by Mr. Pedro Julio Quintero. In testimony given in the Office of the Anti-extortion and Kidnapping Group and later in a proceeding conducted before the Ninth Criminal Examining Judge, Mr. Quintero stated that the FIAT vehicle bearing license plates SF-1485 was purchased by him in December 1978 from Mr. Guillermo Duque. Mr. Quintero stated that in

February 1979, the F-2 expropriated that car from him by an order handed down by the 47th Military Criminal Examining Court (Military Institutes Brigade) and that the vehicle was never returned. In the Ninth Court, Mr. Quintero presented a voucher that the Military Court had given him for the vehicle, bearing the judge's signature and seal.

These license plates, which were the license plates on the automobile into which the disappeared were placed, had been in the military's possession since 1979 and were put on the Dodge automobile used to arrest Patricia. As the Bureau of Transit and Transportation noted in Memorandum SMP 341, addressed to the 81st Criminal Examining Court, "it is the Military Institutes Brigade that must explain why the 1979 Dodge is illegally bearing those plates (it refers to plates DS-1485)" (Annex 3). Also attached is the document whereby the vehicle in question was turned over to the Commandant of the Military Institutes Brigade via the Office of the Senior Military Inspector, dated May 3, 1979. The fact that the Military Institutes Brigade was in possession of the license plates which were put on an automobile whose characteristics did not fit those of the automobile to which the plates were originally assigned, once again shows that the intention was to create confusion as to who was responsible for the apprehension, given how difficult it is to track the ownership of the vehicle, so as to thereby hide behind the shield of impunity.

REQUEST: Therefore, we are requesting that the Commission regard the information that we have supplied thus far as proof of the commission of the violation and of exhaustion of internal remedies and that it declare the Colombian State responsible so that this crime against humanity does not go unpunished.

15. In a note dated September 24, 1990, the Colombian Government replied to the earlier communication. Its reply was forwarded to the petitioners on October 1, and reads as follows:

In this regard I would like to inform the Commission that based on information supplied by the Office of the Special Prosecutor for Human Rights, the case is with the 103rd Criminal Examining Judge of Bogota, to weigh the merits of the pre-trial hearing.

At this phase in the process, the judge will decide, based on the evidence compiled in the case, whether an indictment should be handed down, once it has been shown that a crime has been committed and that there is sufficient evidence of the guilt of the individual or individuals suspected of

committing the crime.

Another legal option open to the judge would be to order the proceedings closed or to reopen the investigation in an effort to compile information that will enable him to take a very important decision.

In the instant case, even though the State, through the jurisdictional branch, has been ready to find the author(s) of the disappearances in question, this has not been possible because the evidence is not compelling enough to convince a judge of the guilt of any one person.

Moreover, the testimony of the individuals who allegedly were present at the time the events occurred, does not coincide.

The 103rd Criminal Examining Judge of Bogota took testimony from Carlos Olave, Crispín Ríos, Inéz Villalobos, Consuelo Crespo and Beatriz Roa, and found contradictions in the identification of Mr. JORGE LUIS BORRERO, which made it impossible to implicate him as one of those responsible for the alleged disappearances or to order any of the existing preventive measures in our legal system to be applied against him.

Under Article 414 of the Colombian Code of Criminal Procedure, a preventive measure can only be applied against an individual when there exists at least a grave suspicion of guilt based on evidence legally produced during the proceeding.

In his wisdom, the Judge was of the view that the statements made did not constitute serious information of the kind that would justify the arrest of Mr. JORGE LUIS BORRERO.

To the Colombian Government the protection of the human rights of all persons within its jurisdiction is fundamental and it therefore categorically rejects any speculation that it is in any way party to some policy of disappearances or that it tolerates such a policy.

As for the delay in the proceedings, it should be noted that the State has taken all legal measures available to it to clarify the facts described above, and has conducted a serious investigation headed by the 103rd Criminal Examining Judge of Bogota. However, the nature of the facts, the difficulty in compiling evidence, the inaccuracies in the testimony, the vagueness of how the events transpired, have made it impossible to act more swiftly.

As for the administrative disciplinary investigation in which the statute of limitations expired, the Minister of Foreign Affairs, in a communication of August 27, 1990, asked the Office of the First Regional Prosecutor of Bogota to study the possibility of reopening the aforementioned investigation in order to find the perpetrators of the alleged disappearances of Mrs. PATRICIA RIVERA DE BERNAL, her daughters GILMA ELIANA and KATHERINE and Mr. MARCO ANTONIO CRESPO.

As for the fact that the vehicle into which the above-named individuals were forced bore the license plates of a FIAT-POLSKY which had apparently been in the possession of a State military agency, the competent authorities were asked to establish whether or not that information was true.

The results of this investigation will be sent to the Commission once they are made available to us.

However, there are many discrepancies on this point as well, since according to the information on file with the Inter-American Commission and reported in a communication of December 5, 1984, the alleged incident was carried out in a black taxi without license plates.

I would also like to emphasize that up until now, no agent of the State has been implicated in the alleged disappearances of Mrs. PATRICIA RIVERA DE BERNAL, her daughters and Mr. MARCO ANTONIO CRESPO.

As Your Excellency can appreciate, the remedies under domestic law are still in progress, in the hope of shedding light on these events.

16. On September 19, 1991, the Colombian Government submitted information on the investigation, in reply to another request for information sent by the Commission on July 19, 1991. The Government's reply was sent to the co-petitioner on October 18. It was as follows:

As for the criminal investigation being conducted by the 103rd Criminal Examining Court of Bogota, D.C., the Human Rights Unit of the National Criminal Investigation Bureau informed the Foreign Ministry that the Court in question, through an order of October 4, 1990, ruled on the merits of the pre-trial hearing, and ordered that the investigation be reopened and that the following measures be taken, among others: To take a statement from Dr. Luis Eduardo Mariño Ochoa, who at the time was the 47th Criminal Examining Judge, and to take a statement from Mr. Modesto Rivera Valencia, father of Mrs. PATRICIA RIVERA.

Staff with the technical corps of the Judicial Police took the statement from Mr. Modesto Rivera, but were unable to obtain any additional information that would shed light on the facts.

The alleged eyewitnesses to the events were asked to identify individuals in a line-up, one of them being Campo Elías Tirado Amado, but the eyewitnesses were unable to identify anyone.

Dr. Luis Eduardo Mariño Acosta made his statement on July 24, but it provided nothing that could be used to identify those responsible for these events. The investigation is still with the 103rd Criminal Examining Judge of Bogota, D.C.; in spite of the Court's efforts, it has been unable to shed light on the facts or to ascertain who was responsible.

Dr. Eduardo Umaña became a civil party in this investigation. He was authorized to request and contribute evidence that would help shed light on the facts. This was because, despite all of the judge's efforts, it has been impossible to identify those responsible for the disappearances.

Furthermore, the length of the investigation is due solely to the desire and duty of the civil servants responsible for clarifying the facts and punishing those responsible.

With regard to the investigation by the Office of the Attorney General, Dr. Jaime Camacho Flores, Special Prosecutor for the Judicial Police and Administrative Police, informed this ministry that via a brief dated June 5, 1991, his office had requested and obtained the complete file on the investigation conducted by the Office of the First Regional Prosecutor of Bogota for administrative oversight. He also ordered an inspection of the proceedings being conducted by the 103rd Criminal Examining Court of Bogota in connection with this case.

The Special Prosecutor for the Judicial Police and Administrative Police believes that once the files have been analyzed, the efforts that the security agencies have been making to locate the missing persons must be increased and carried out always in cooperation with their families. The regrettable lack of results must not dampen the authorities' determination to find the truth, and must not deter their efforts to ascertain the whereabouts of Mrs. PATRICIA RIVERA, her daughters and Mr. MARCO ANTONIO CRESPO.

Finally, on June 5, 1991, Dr. Jaime Camacho Flores ordered that the file be

sent to the Special Prosecutor for Human Rights, so that he might study the possibility of reopening the case.

Thus far, there is no evidence to implicate State agents as the responsible parties for these reprehensible acts.

As soon as new information regarding the investigation in progress at the present time is available, it will be made available to the Commission.

Accordingly, another recourse available is a contentious-administrative suit. Interested persons who believe that an action of the State has injured their rights may file an action for direct damages, as stipulated in Article 6 of the Contentious-Administrative Law Code, to have the State, following a trial, found liable for any damage caused by the conduct of its agents.

As Your Excellency can see, the remedies under domestic law have not been exhausted.

17. In response to the preceding communication, the petitioners forwarded the following observations:

The Government of Colombia has reported that according to information received from the Human Rights Unit of the National Criminal Investigation Bureau, the 103rd Criminal Examining Court of Bogota, on October 4, 1990, weighed the merits of the pre-trial hearing and ordered that the investigation be opened and evidence taken. Under Article 473 of the Code of Criminal Procedure, investigations are reopened when there is no evidence to order that a proceeding be closed in favor of those accused or when there is not sufficient evidence to hand down an indictment. The reopening may not last for more than a year.

Since the events occurred on December 10, 1982, the effectiveness of the remedies under domestic law is arguable, because nine years after the disappearance of Mrs. Patricia Rivera and her two small daughters Gilma Eliana and Katherine and Mr. Marco A. Crespo, the criminal proceeding has not ended with a decision on the merits, to clarify the facts and punish those responsible. There is no reason to explain why the year of the reopened criminal investigation has passed without a decision in that regard and why the process should continue. This in itself constitutes an unwarranted delay in the administration of justice (Article 46.2.c of the American Convention on Human Rights).

As for the disciplinary investigation that the Attorney General's Office is conducting, it has produced nothing thus far and is not one of those remedies that, by its nature, must be exhausted before turning to the Inter-American Commission, since disciplinary-administrative action is simply a mechanism the Colombian State has to oversee, control and punish the conduct of its employees who, either by action or omission violate internal rules.

Finally, it illustrates that the administrative-contentious action has not been exhausted. Here we must point out that this action does not obligate the State to investigate those responsible for the disappearances in order to punish them and thereby prevent further human rights violations; nor does it oblige the Colombian State to fulfill the international obligations that it has undertaken by virtue of the human rights treaties it has signed and ratified. It is illogical that the Colombian Government should require exhaustion of another action when, as said before, the criminal proceeding, which is the proper one to punish those responsible for executing this crime, has failed to come to a satisfactory resolution of the case within a reasonable period of time.

As for proving the responsibility of the Colombian State, we must point out the following: 1) On December 16, 1990, we sent the Commission the certification issued by the Military Inspector, which made available to the Military Institutes Brigade a vehicle bearing license plates DS-1485, which was the vehicle into which Patricia Rivera, her two small daughters and Mr. Marco A. Crespo were forced. It was thus established that the means used to perpetrate the crime was the property of the State, which in itself is serious evidence since the parties who had free access to that automobile were agents of Colombian State security. Also sent was a statement made by Ms. Gloria Sagrario Espita Supelano, who made her statement before the 81st Criminal Examining Court of Bogota. She recounts how the aforementioned persons were put in a vehicle bearing license plates DS-1485; 2) We have also supplied evidence demonstrating how State security agencies linked Mrs. Patricia Rivero with the kidnapping of Mrs. Gloria Lara in 1981. According to a statement made by Mr. José Modesto Rivera, Patricia's father, which was sent with our communication of September 3, 1989, the Army had mistaken Mrs. Rivera for the sister of Mr. Freddy Rivera, someone who apparently was implicated in the criminal proceedings that were investigating the kidnapping of Mrs. Gloria Lara. This was confirmed by two special circumstances: 1) the newspaper El Bogotano carried a photograph of Mrs. Patricia Rivera and identified her as someone involved with that kidnapping, and 2) days after her capture, a search of her

grandparents home was ordered by the 47th Criminal Examining Court. That search was conducted by military personnel who inquired for someone by the name of Enán Lora, who was also linked to the criminal case into the kidnapping of Mrs. Gloria Lara. In the course of the proceedings, the agents who were conducting the search left a piece of carbon paper, which when held to the light showed that they expected to find Mr. Lora at that residence.

For all these reasons, the Colombia State's responsibility has been demonstrated, and no proof to the contrary has been provided thus far. Consequently, we are repeating our earlier request that the Commission declare that the remedies under domestic law have been exhausted and that it issue a resolution against the Colombian State during its forthcoming session, finding that it violates articles 4, 5, 7 and 8 of the American Convention on Human Rights and articles I, XVIII, XXV and XVI of the American Declaration.

18. During its Eighty-third Session in March 1993, the Commission issued Report 4/93, which was sent to the Government of Colombia so that the latter might submit any observations it deemed appropriate within a period of three months from the date of transmittal.

WHEREAS:

1. As to admissibility:
 - a. That the Commission is competent to examine the case inasmuch as it involves violations of the rights recognized in the American Convention on Human Rights: Article 4, the right to life; Article 5, the right to humane treatment; Article 7, the right to personal liberty; Article 8, the right to a fair trial; Article 19, children's rights; Article 25, the right to judicial protection, as provided in Article 44 of that Convention, of which Colombia is a State Party.
 - b. That the petition fulfills the formal requirements for admissibility, contained in the American Convention on Human Rights and the Regulations of the Inter-American Commission on Human Rights.
 - c. That in the instant case, it is more than evident that the petitioners have not been able to secure effective protection from the internal jurisdictional organs which, despite irrefutable evidence made available to them, have failed to formally try those members of the Department of Administrative Security "DAS" named directly in this report as the responsible parties. Hence, whether or not the remedies under domestic law have been exhausted, those remedies cannot be invoked by the Government of Colombia to

argue that processing of the case be suspended by this Commission, in view of the unwarranted delay which the internal investigation of this case has experienced.

d. That the present petition is not pending in another international proceeding and it is not a duplication of a petition already examined by the Commission.

2. As to the Colombian Government's investigations:

a. That the criminal investigations conducted by the Office of the Prosecutor for the Judicial Police, in cooperation with the Fourth Criminal Judge between May 22, 1984 and January 11, 1985, concluded the following: ".the testimony -which was later partially refuted- that three agents of the Administrative Security Department "DAS" may have been responsible for the disappearance of Mrs. Rivera, her two daughters and Mr. Crespo... "is at odds with the decisions that the competent authorities have taken; the decision taken by the Office of the First Regional Prosecutor of Bogota to the effect that the statute of limitations has expired for the disciplinary action against those members of the Administrative Security Department is contradictory, since a criminal case is still in progress.

b. That the decision of the 103rd Criminal Examining Judge on October 4, 1990, to reopen the investigation eight years after the events of 1982, without it reaching any conclusion to this date, constitutes unwarranted delay.

3. As for the other aspects related to the processing:

a. That, by their nature, the facts prompting the petition cannot be settled by means of the peaceful settlement procedure and the parties did not request this procedure of the Commission, which is provided for in Article 48.1.f of the Convention and Article 45 of the Regulations of the Commission.

b. That since the friendly settlement procedure is not applicable, the Commission must comply with the provisions of Article 50.1 of the Convention, and issue its opinion and conclusions on the matter submitted to it for consideration.

c. That in the prosecution of the instant case, all legal and regulatory procedures established in the Convention and in the Commission's Regulations have been exhausted.

4. Other considerations:

a. That in the present case, it has been shown, and the Colombian Government has not denied, that agents of the Administrative Security Department (DAS) and of the

Colombian Army participated in the arbitrary and illegal arrest and subsequent disappearance of the persons named as victims in paragraph 1 of the background information in this report. That the repeated evidence provided by the petitioners, consisting of personal and direct testimony, and who identified the car in which the victims were kidnapped as the vehicle owned and used by the Colombian police and by members of the Administrative Security Department, confirms this.

b. That the arbitrary and illegal arrest and subsequent disappearances of Patricia Bernal, her two daughters, Gilma Bernal, age 9, Katherine Bernal, age 4, and Mr. Marco Antonio Crespo, age 74, constitute a grave violation of the basic laws governing human rights in the domestic legal system and in the American Convention on Human Rights.

c. That to extent a judicial investigation for more than ten years without exhausting all the means to find the truth constitutes in itself a serious offense that directly affects the right to a fair trial of victims and their families.

d. That in resolution 666 (XIII-0/83) and Resolution 742 (XIV-0/84) the General Assembly of the Organization of American States declared that "forced disappearance of persons is an affront to the conscience of the hemisphere and constitutes a crime against humanity."

e. That the Government of Colombia, on July 8, 1993, presented its observations on Report 4/93 of March 11, 1993;

f. That, in the remarks contained in its reply note, the Government of Colombia does not provide any information that refutes the accusations made or that shows that appropriate measures have been taken to resolve the situation described in the complaint; and

g. That the Commission has no new evidence that would justify a modification of the original report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

CONCLUDES:

1. That the Government of Colombia has failed in its obligation to respect and guarantee Article 4 (the right to life); Article 5 (the right to humane treatment); Article 7 (the right to personal liberty); Article 8 (the right to a fair trial); Article 19 (children's rights); Article 25 (the right to judicial protection), in respect of Article 1.1, recognized in the

American Convention on Human Rights, of which Colombia is a State Party, in the kidnapping and subsequent forced disappearance of PATRICIA RIVERA de BERNAL, the minors ELIANA BERNAL RIVERA, age 9, KATHERINE BERNAL RIVERA, age 4, and MARCO ANTONIO CRESPO, age 74.

2. To recommend to the Colombian Government that it continue and further the investigation into the facts denounced and punish those responsible.

3. To recommend to the Colombian State that it pay fair compensation to the victims' next of kin.

4. To request that the Colombian Government guarantee the security of and to afford the necessary protection to the eyewitnesses of the events who, at risk to their lives, have cooperated to clarify these facts.

5. To order the publication of this report in the Annual Report to the General Assembly, pursuant to Article 53.1 of the American Convention and Article 48 of the Commission's Regulations, because the Government of Colombia did not adopt measures to correct the situation denounced, within the time period stipulated in Reports N° 4/93 of March 11, and N° 22/93 of October 12, 1993, approved by the Commission in its 83^o and 84^o sessions.