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CASE 12.685

REPORT ON MERITS

JUAN FRANCISCO ARROM SUHURT Y ANUNCIO MARTIN
MENDEZ

PARAGUAY

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TABLE OF CONTENTS

I. SUMMARY.....	4
II. PROCEEDINGS	4
III. POSITION OF THE PARTIES	5
A. PETITIONERS.....	5
B. THE STATE.....	6
IV. FACTS OF THE CASE.....	7
A. Background relating to the abduction of Maria Edith Bordón de Debernardi.....	7
B. Information available on the events between January 17 and 30, 2002.....	8
1. Version according to which Juan Arrom and Anuncio Martí were ‘disappeared’ and tortured with the criminal participation of State agents.....	9
2. Version according to which there is no State participation in the events	16
C. The judicial proceedings and the complaints about what happened to Juan Arrom and Anuncio Martí	17
D. On the granting of refugee status to Juan Arrom and to Anuncio Martí and State’s requests	22
V. LEGAL ANALYSIS	24
A. Preliminary Issues.....	24
B. The rights to judicial guarantees, judicial protection and the duty to investigate possible enforced disappearance and torture (Articles 8 and 25.1 of the American Convention, Articles 1, 6 and 8 of the ICPPT and Article 1b of the ICFDP)	24
1. Considerations on the right to judicial guarantees and judicial protection and on the duty to investigate possible enforced disappearance and torture.....	25
2. Analysis of the Case.....	27
3. Conclusion	36
C. The right to physical integrity and the prohibition of torture.....	36
1. General considerations on the prohibition of torture and cruel, inhuman or degrading treatment	36
2. Analysis of the present case.....	37
D. Rights to the recognition of legal personality, life, physical integrity and personal liberty, and Article 1 (a) of the Inter-American Convention against Forced Disappearance of Persons.....	40
1. General considerations on enforced disappearance and its protection in Inter-American instruments.....	40

2.	Analysis of the Present Case	40
E.	The right to personal integrity with respect to the next of kin of Juan Francisco Arrom Suhurt and Anuncio Martí Méndez.....	41
VI.	CONCLUSIONS AND RECOMMENDATIONS.....	42

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I. SUMMARY

1. On September 23 and 27, 2002, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission", "the Commission" or "the IACHR") received a petition from Marina and Cristina Arrom Suhurt (hereinafter "the petitioners"),² alleging the international responsibility of the Republic of Paraguay (hereinafter "the State of Paraguay", "the State", "the Paraguayan State" or "Paraguay") to the detriment of Juan Francisco Arrom Suhurt and Anuncio Martí Méndez.

2. The petitioners alleged that the State of Paraguay is responsible for the disappearance and torture of leaders of the political party *Patria Libre*, Juan Arrom and Anuncio Martí, between January 17 and 30, 2002, and that the Public Prosecutor's Office failed to conduct an efficient investigation leading to the prosecution and punishment of those responsible for the crimes. They alleged that certain criminal procedural rules conferred the power of indicting exclusively on the Public Prosecutor's Office and that the Penal Code does not contain specific offenses of torture and forced disappearance in harmony with the instruments of international law. Both these circumstances generate impunity.

3. The State maintained that state agents did not participate in the alleged torture and disappearance of Juan Arrom and Anuncio Martí, and it controverted aspects of their allegations. It stated that it undertook the investigation into the events denounced in accordance with the criteria in the case law of the Inter-American Court, and stated that the legislator considered it reasonable to confer the power to indict exclusively to the Public Prosecutor's Office. It added that there was a draft bill to reform the criminal offenses of torture and forced disappearance.

4. The Commission concluded that the State of Paraguay was responsible for violating Articles 3 (right to recognition of legal personality), 4.1 (right to life), 5.1 and 5.2 (right to humane treatment), 7 (the right to personal liberty), 8.1 and 8.2 (judicial guarantees) and 25.1 (judicial protection) of the American Convention on Human Rights, in relation to the obligations established in Article 1.1 of the same instrument. The Commission also concluded that the State was responsible for violating Articles 1(a) and 1(b) of the Inter-American Convention on Forced Disappearance of Persons and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture.

II. PROCEEDINGS

5. The processing of the petition until issuance of the admissibility report is recorded in Report No. 86/08 of October 30, 2008.³ In that report, the Commission declared the petition concerning Juan

¹ The Commissioner Paulo Vanucchi, a Brazilian national, considered that –based on Article 17.3 of the Rules of Procedure of the IACHR - he should refrain from participating in the study and decision of the question. The Inter-American Commission accepted its decision to excuse itself, reason why Commissioner Paulo Vannuchi did not participate in the deliberation and vote of this case.

² Subsequently, on September 20, 2004, lawyers Andrés Dejesús Ramírez and Matthias Mailleux Santana filed a petition relating to the same facts as those presented by the Arrom family in which they alleged the international responsibility of Paraguay, to the detriment of Messrs. Juan Francisco Arrom Suhurt, Anuncio Martí Méndez, Víctor Antonio Colmán Ortega, Ana Rosa Samudio de Colmán, Jorge Samudio Ferreira and the relatives of the alleged victims. On April 19, 2005, the Commission accumulated the petitions. Subsequently, attorney Carlos Abadie Pankow acted as proxy of the petitioners.

³ IACHR, Admissibility Report No. 86/08, of October 30, 2008. Petition 04-03. Juan Francisco Arrom Suhurt, Anuncio Martí Méndez, Víctor Colmán Ortega, Ana Rosa Samudio de Colmán, Jorge Samudio Ferreira and their immediate family. Paraguay.

Arrom and Anuncio Martí admissible, and the petition concerning the allegations made by Victor Colmán, Ana Rosa Samudio de Colmán and Jorge Samudio inadmissible.

6. On November 14, 2008, the Commission notified the parties of the report and made itself available to reach a friendly settlement. On June 24 and 25, 2010, the State and the petitioners, respectively, expressed their desire not to continue with the friendly settlement process. On August 23, 2010, the petitioners presented their observations on the merits. On February 28, 2011, the State submitted its observations on the merits. On June 6, 2011, the petitioners submitted a brief with their comments on the State's observations and on December 12, 2011, the State submitted observations on said brief. In subsequent years, the Commission continued to receive communications from the parties, the last on July 13, 2017, in which the State requested an extension to present its views in connection with some documents – which, to date, have not been received by the Commission - and of the petitioners on June 30, 2017. The substantive information has been duly notified to both parties.⁴

III. POSITION OF THE PARTIES

A. PETITIONERS

7. The petitioners stated that from January 17 to 30, 2002, state agents participated in the detention, confinement at hidden locations and acts of torture against Juan Francisco Arrom Suhurt and Anuncio Martí Méndez, who were leaders of the *Patria Libre* political party.

8. They stated that the alleged disappearance and torture to which Juan Arrom and Anuncio Martí were subjected was aimed at forcing them to plead guilty to the abduction of Mrs. María Edith Bordón and to investigate their political activity. They alleged that despite the complaints filed, these events remain in impunity. The petitioners reported that the alleged victims are currently in Brazil, where they were granted status as refugees.

9. The petitioners alleged that the Paraguayan State has violated Articles 5, 7, 8 and 25, in connection with Articles 1.1 and 2; as well as Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture.

10. With regard to the violation of the right to personal liberty, the petitioners alleged that it originated in the arbitrary detention of Arrom and Martí and their being held at secret locations from January 17, 2002, until January 30 of that same year. They added that the habeas corpus petitions filed were ineffective.

11. With respect to the violation of the right to physical integrity and of the Inter-American Convention to Prevent Torture, the petitioners maintained that while Juan Arrom and Anuncio Martí were being held, they suffered physical, psychological and moral afflictions. In addition, they stated that because they were held in clandestine detention sites and because of the lack of effectiveness of the judicial remedies, their right to personal integrity was also affected. Likewise, their legal representatives stated that the families of Arrom and Martí "suffered the violence that characterizes the anguish caused by the disappearance."

12. As regards the violation of judicial guarantees and protection, the petitioners pointed out that because of their secret imprisonment, Arrom and Martí were denied access to judicial remedies to challenge the conditions of their detention.

13. In addition, they argued that the State of Paraguay failed to comply with its obligation to carry out an exhaustive, adequate and impartial investigation concerning their arbitrary detention and

⁴ On February 6, 2002, IACHR granted precautionary measures in the case and requested the Government of Paraguay "to take whatever measures are necessary to ensure the life and physical integrity of Juan Francisco Arrom Suhurt and Anuncio Martí Méndez." On 12 June 2006, the Commission lifted the precautionary measures.

torture. They allege that since the Public Ministry failed to sufficiently appreciate the testimony that incriminated agents of the State in the events under investigation, focusing instead on the testimony of Public Officials from the Attorney General's Office, despite the allegedly involvement of the Attorney General himself. In the same sense, they pointed out that the Public Ministry failed to ensure their effective participation in the proceedings by not ordering the production of evidence that the alleged victims considered relevant.

14. The petitioners also questioned the fact that the criminal proceedings only allowed the Public Prosecutor's Office to bring a high-profile case to trial as a complaint of torture, without the alleged victims or their representatives had had this opportunity as complainants.

15. Regarding the violation of the obligation to adapt domestic legislation, the petitioners pointed out that Article 309 of the Criminal Code on the offense of torture is incompatible with the definitions in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and in the Inter-American Convention to Prevent and Punish Torture. They further emphasized that the Committee against Torture stated that in Paraguay torture is not criminalized in terms consistent with article 1 of the U.N. Convention. In that order of ideas, they pointed out that the State has violated articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture.

16. The petitioners pointed out that these violations of the American Convention arise both from State actions in the investigation of the disappearance and torture of Mr. Arrom and Mr. Martí, as well as from the judicial process accusing them of participating in the abduction of Mrs. María Edith Bordón of Debernardi, in view of the fact of the context in which the events took place.

17. As a result, they requested that the following recommendations be made to the State: (i) compensate the victims for material and moral damages; (ii) investigate and try the State agents responsible for crimes against the alleged victims; (iii) modify Article 309 of the Penal Code; (iv) respect the refugee status of the alleged victims in Brazil; and (v) other security measures for their families in Paraguay.

B. THE STATE

18. The State rejects the petitioners' claims and stated that it had not violated any Article of the American Convention. The State questioned some of the petitioners' statements on the alleged forced disappearance and torture Juan Arrom and Anuncio Martí and stated that they did not take place in institutions under State control, nor were State resources involved to violate human rights as the petition argues.

19. The State claimed that the investigation carried out by the Public Prosecutor's Office did not demonstrate the existence of the alleged events, since the statements of the complainants have not been corroborated by other elements. The State indicated that, in contrast, there are numerous testimonies of people unconnected with the events and some without any connection with the parties, all of which could objectively distort the version of the complainants.

20. Regarding the alleged violation of the right to personal liberty, the State argued that it was not possible to show that such violation effectively took place on January 17, 2002, because "judicial investigations had not provided any certainty as to [its] date". In addition, the State argued that the accused Saturnino Antonio Gamarra, Jose David Schembori and Javier Casal were somewhere else on the day of the events alleged by the petitioners. Likewise, the State pointed out that the events complained of could not have happened in state institutions or that such could have been used as a means for the commission of the crimes because there are no centers of detention or imprisonment for these purposes.

21. With regard to the alleged violation of the right to humane treatment and of the Inter-American Convention on the Prevention and Punishment of Torture, the State pointed out that a criminal case was initiated based on the statements of the alleged victims, but the accused were found not to be responsible due to the contradictory statements of the victims; that some of the evidence could not be corroborated and

that the defendants were active on demonstrate that they were not involved. Therefore, the State alleged that the criminal proceedings failed to show the responsibility of a state official in the allegedly violations.

22. Regarding the alleged violation of judicial protection and the duty to ensure rights and freedoms, the State indicated that the complainants enjoyed full guarantees at each stage of the proceedings, had legal counsel; that the decisions of the Public Prosecutor's Office were carried out within the relevant time period and that they were afforded the opportunity to challenge judicial decisions, both as complainants and when charged with offenses.

23. The State challenged the allegation that habeas corpus had been rejected in order to cover up official state actions and emphasized that the State expects the Commission to abide by the standard established by international doctrine on Habeas Corpus not interfering in a judicial investigation into criminal offenses such as those that gave rise to the arrest warrant issued in the course of legitimate criminal proceedings.

24. With regard to the violation of the duty to adopt provisions of domestic law, the State indicated that the National Congress was in the process of drafting a Bill to amend articles 236 and 309 of the Penal Code in order to conform to international law. In addition, regarding the article of the Code of Criminal Procedure granting the Public Prosecutor's Office a monopoly on criminal prosecutions, the State considered that the functions granted to this Office in Paraguay are based on the criteria of the legislators. Finally, the State undertook to adapt the definition of torture and forced disappearance to the standards established by international instruments.

IV. FACTS OF THE CASE

25. The purpose of the present case is the alleged forced disappearance and torture of Juan Arrom and Anuncio Martí, leaders of the *Patria Libre* movement. However, the case file also shows that the background of the case includes the abduction of Mrs. Maria Edith Bordón, taking into account that in these proceedings the alleged victims appear as possibly responsible. Therefore, certain determinations are made in this regard below.

26. The Commission will present the facts in the following order: (i) the background relating to the abduction of Maria Edith Bordón de Debernardi; (ii) the information available about the events taking place between January 17 and 30, 2002; (iii) the judicial proceedings and the complaints about what happened to Juan Arrom and Anuncio Martí; and (iv) the refugee status accorded to Juan Arrom and Anuncio Martí.

A. Background relating to the abduction of Maria Edith Bordón de Debernardi

27. On November 16, 2001, Mrs. María Edith Bordón was abducted by armed men and kidnapped for 64 days. Her captors demanded large sums of money for her release⁵. The kidnapping was widely reported by the national press. According to a press article from *Diario ABC*, published on November 27, 2001, Antonio Debernardi, María Edith Bordón's husband, stated that the abduction might have had a political or economic motive.⁶

28. According to the investigation into the events, two payments were made to free Mrs. Bordón⁷. The first payment was made on January 14, 2002, when Antonio Debernardi paid the kidnappers the amount of four hundred thousand (\$ 400,000) US dollars. According to the State, the following day, on

⁵ Annex 1. Decision of the Criminal Judge of July 12, 2003. Annexed to communication of the State dated October 3, 2003.

⁶ Annex 2. *Diario ABC* article, entitled "Tinte político-económico", published on November 27, 2001. Annexed to communication from petitioners dated July 8, 2003.

⁷ Annex 1. Decision of the Criminal Judge of July 12, 2003. Annexed to communication of the State dated October 3, 2003.

January 15, 2002, Marcos Antonio Álvarez Pereira, who was familiar with Juan Arrom and worked in the Ministry of Justice, handed over three hundred and fifty thousand dollars (\$350,000) to the Public Prosecutors office, claiming that his friend Juan Arrom had given the money to him.⁸

29. On January 18, Antonio Debernardi made a second payment.⁹ Before doing so, he took photocopies of each of the bills handed over to the captors, as recorded in a Memorandum¹⁰. The State maintains that in Víctor Colmán's house (also leader of the *Patria Libre* Party), the authorities seized the sum of fifty thousand US dollars (\$ 50,000), which matched as a part of the bills given by Antonio Debernardi to the kidnappers. On this point, the petitioners stated that counsel of the aforementioned accused had claimed "evidence had been set up in advance ... on the spot by the Police themselves in collusion with the prosecutor of the case."¹¹

30. On January 19, 2002, Mrs. Maria Edith Bordón de Debernardi was released¹².

31. According to a press report from *Diario La Nación* of January 20, 2002, Interior Minister Julio César Fanego stated that several leaders of the *Patria Libre* Party were involved in the abduction of Mrs. María Edith Bordón and that "since last Tuesday those responsible were already under observation, and that therefore he was very sure that all those who participated in the kidnapping would be caught."¹³ Likewise, *Diario ABC* published a report of the same date indicating that Juan Arrom had been singled out as one of the perpetrators of Maria Edith Bordón's kidnapping.¹⁴ The Commission finds that the report referred to the fact that the Police considered Juan Arrom as a participant in the abduction.

32. As indicated by the State, Commissioner Antonio Gamarra asked the Prosecutor's Office for the arrest of Juan Arrom, Anuncio Martí and three others through Police Order No. 13/02, in the context of the investigation that was being carried out to try those responsible for Mrs. María Edith Bordón de Debernardi's abduction.¹⁵

B. Information available on the events between January 17 and 30, 2002

33. According to national and local press reports, since January 20, 2002, it was widely reported that Juan Arrom and Anuncio Martí had disappeared.¹⁶

34. According to press information, high-ranking State officials were interviewed about the alleged disappearance of Juan Arrom and Anuncio Martí. On January 23, 2002, *Diario Noticias* published an

⁸ Annex 1. Decision of the Criminal Judge of July 12, 2003. Annexed to communication of the State dated October 3, 2003.

⁹ Annex 1. Decision of the Criminal Judge of July 12, 2003. Annexed to communication of the State dated October 3, 2003.

¹⁰ Annex 3. Order of the Supervisory Criminal Judge on May 21, 2002. Annexed to communication from petitioners dated July 8, 2003.

¹¹ Petition of Legal Advisors Matthias Malleus Santana and Andrés Dejesus Ramirez, dated September 20, 2004.

¹² Communication of the State of Paraguay's brief dated October 5, 2005, and petition of legal advisors Matthias Malleus Santana and Andrés Dejesus Ramirez of September 7, 2004.

¹³ Annex 4. Newspaper La Nación, Article "Secuestradores son de Patria Libre", January 20, 2002. Press book No.1 provided by petitioners.

¹⁴ Annex 5. Newspaper ABC, Article "Policía dice que identificó a autor intelectual del secuestro" from January 20, 2002. Press book No.1 provided by petitioners.

¹⁵ State of Paraguay's brief dated October 5, 2005.

¹⁶ Annex 6. Press book No. 1 with Press articles, provided by petitioners.

interview with the then President of the Republic Luis González Macchi¹⁷. On January 28, 2002, the newspaper *La Nación* published an interview with the then Minister of the Interior Julio César Fanego.¹⁸

35. The Commission notes that there is controversy between the allegations of the petitioners and the State as to the participation of State agents in the events of the case. The petitioners claim that the alleged victims were detained by State agents as from January 17, 2002, while the State alleges that there is no evidence of State actor's involvement. Therefore, each version of the events and supporting evidence will be presented below.

1. Version according to which Juan Arrom and Anuncio Martí were 'disappeared' and tortured with the criminal participation of State agents

36. With regard to Juan Arrom's version, the case file contains the first statements he made to the press when he was released¹⁹, in which he described the conditions of the disappearance and did not identify any individual person as the perpetrator of the crimes against him. He did state that he needed to consult his lawyers before making further statements; in addition, there is also the testimony of Arrom related by his legal advisors, which does refer to State agents' participation in the events. What follows is based on both sources²⁰.

37. According to the statements of Juan Arrom and his lawyers, on January 17, 2002, he and Anuncio Martí were detained on their way to Marcos Alvarez's home, with whom Juan Arrom had an appointment. According to Juan Arrom's version:

As he approached the aforementioned address, about ten armed civilians jumped out from behind the wall of the house and other places he could not pinpoint, they lunged at him, all of them aiming pistols at his body and head, forcefully beating and kicking him; he was then bundled into a white Gol vehicle, and then they proceeded very quickly to handcuff his feet and hands; they covered his head with a towel. At that moment Arrom asked who these people were, what was happening, and if there was any warrant for his arrest; thereupon an unidentified person told him that: '... you are a disappeared person, there is no arrest warrant, there is no judge here, there is no prosecutor ...'; Arrom then added that he wanted to speak with a lawyer, to which his captors responded with laughter; he asked to speak with a family member, and was again told: '... no, you know where Mrs. De Debernardi (sic) is and if she does not appear tonight, you will disappear and first you will see how we murdered your children.'²¹

38. According to the account, Juan Arrom was tortured by strong blows all over his body, pressure on his testicles and asphyxiation while being interrogated about Mrs. Bordón de Debernardi's whereabouts. He also described being assaulted on the Paraguay River, where he was told that he was going to die, while they plunged him face down into the river, beat him on the back and squeezed his testicles until he lost consciousness. As part of the psychological torture, he was told that he had been disappeared, they simulated his execution, accused him of being a communist and told him that he would be killed. He described the questioning being about his political activity and his organization²².

¹⁷ Annex 7. Article of *Diario Noticias*, entitled "Presidente no garantiza si tienen (...)". Annexed to communication from petitioners, dated August 18, 2010.

¹⁸ Annex 8. Article in *La Nación* newspaper entitled "Fanego dice: "Si Arrom está muerto, es gravísimo"". Annexed to communication from petitioners, dated August 18, 2010.

¹⁹ Annex 9. Video Recording. Annexed to communication from petitioners dated September 7, 2004.

²⁰ Petition of legal representatives Matthias Mailleux Santana and Andrés Dejesús Ramírez, dated September 7, 2004.

²¹ Petition of legal representatives Matthias Mailleux Santana and Andrés Dejesús Ramírez, dated September 7, 2004.

²² Petition of legal representatives Matthias Mailleux Santana and Andrés Dejesús Ramírez, dated September 7, 2004.

39. According to the account, Antonio Gamarra told Juan Arrom to sign a document or he would die; Arrom refused. In addition, it is pointed out that Juan Arrom recognized one of the men who tortured him as José David Schémbori. On another occasion, Juan Arrom met Minister Silvio Ferreira, told him he was being tortured and requested to be released. Ferreira stated that no more harm would come to him and that Minister Fanego would protect him. Later Minister Fanego called Juan Arrom and asked for collaboration with some individuals that would ensure their release and travel abroad. Likewise, according to the account, the detainees were visited by a doctor who prescribed various drugs to heal their wounds and Gamarra assured Juan Arrom that on his recovery he would be brought before the Prosecutor. In addition, Arrom also said that he had seen the official Javier Cazal.

40. In the same account, on the morning of January 30, Gamarra told Juan Arrom that they would be brought before the Public Prosecutor's Office after they had had a good meal; and that in the afternoon they heard urgent calls on the captors' walkie-talkies and vehicular movements away from the house. The account relates that Juan Arrom heard Martí scream, so he went to his room, where he asked him to shout, which he then did and was rescued by his relatives who were outside the house.

41. Regarding of Anuncio Martí's version, the case file contains his first statements to the press, describing the conditions of his disappearance and expressing the need to talk to his lawyers because he had several things to say²³. The case file also contains an account of the facts made by his lawyers²⁴. According to the account, the abduction began as follows:

[...] On Thursday, January 17, 2002, at around 20.30 he left his house in his vehicle, a white LADA NIVA van, together with Juan Arrom, on the way to the city center, zone Mcal. López. [...] At the intersection of Colón and Lugano, Juan Arrom received a telephone call; the vehicle stopped, Juan Arrom got out to speak on the telephone, and having stopped his vehicle he proceeded to wait for him. In those circumstances, four men unexpectedly approach him from the left window side of the vehicle, with guns and held him up, forcing him out; when questioned, they identified themselves as policemen in charge of the investigation into the kidnapping of Mrs. Maria Edith Bordón de Debernardi [...]. Then he lost sight of Juan Arrom; the individuals identified as policemen began to search the vehicle, and their personal documents; they put him back into the vehicle on the back seat."²⁵

42. According to the account, Anuncio Martí was beaten in the stomach and face while he was asked about the kidnapping of Mrs. María Edith Bordón and his relationship with the Revolutionary Armed Forces of Colombia -FARC- and the Zapatista Army. In addition, he described being asphyxiated and beaten in the testicles until he fainted. He said that he was pressured to incriminate himself in Mrs. Bordón's abduction. According to Anuncio Martí, they drove him to a river where they were suffocating Juan Arrom, and he even thought that his companion was dead. He added that on other occasions they put them in cars to go to other places or to return to the same place they were. He also described them staging mock executions.

43. According to the account transcribed by the petitioners' legal advisers, one night Anuncio Martí witnessed that Antonio Gamarra had arrived at the place where they were being detained and that on another occasion he heard that Silvio Ferreira was interested in them. They described the presence of Javier Cazal, Antonio Gamarra and an individual from police intelligence who questioned him about Karl Marx's "Das Kapital", Ché Guevara, and the FARC, among other things. He added that a doctor was present who wrote prescriptions to cure his injuries and that Gamarra offered him money to turn against Arrom and tell them everything.

²³ Annex 9. Video Recording. Annexed to communication from petitioners dated September 7, 2004.

²⁴ Petition of legal representatives Matthias Mailleux Santana and Andrés Dejesús Ramírez, dated September 7, 2004.

²⁵ Petition of legal representatives Matthias Mailleux Santana and Andrés Dejesús Ramírez, dated September 7, 2004.

44. According to the legal advisers' comments about Anuncio Martí's account, on January 30, 2002, more intense medical care was provided for the wounds. In the afternoon he heard the captors' cell phones ringing and the sound of vehicles leaving the house. They reported that Anuncio Martí peeked through a crack in his room facing the street and, seeing reporters, began to shout that it was Anuncio and that he wanted to see his son. Then he told Juan Arrom to shout and he started to scream and went to the front door.

45. As shown on the video recordings provided by the petitioners, on January 30, 2002, Juan Arrom's sisters went to a house, which according to the petitioners and the State was located in Villa Elisa²⁶. According to the testimony later filed by the Arrom sisters, they went there because they received a call from an individual informing them that Juan Arrom and Anuncio Martí could be found there²⁷.

46. The video recording shows vehicles with tinted windows parked at the house, leaving the area. Juan Arrom and Anuncio Martí then shouted alerting that they were there. Some police officers turned up but did not enter the house despite the request of relatives who remarked that Anuncio Martí and Juan Arrom were there. Finally, the two men then left the house²⁸.

47. According to the video provided by the petitioners, Juan Arrom and Anuncio Martí were taken by Arrom's sisters and by the Ombudsman to the Migone Clinic²⁹.

48. On January 30, 2002, a group of thirteen (13) medical staff undertook a medical examination of Juan Arrom at the Migone Clinic. In summary, the Report indicates that Juan Arrom had wounds or bruises on the head, neck, thorax, abdomen, buttocks, penis, testicles and upper and lower limbs. By way of conclusion, the report states:

From the medical examination carried out on Mr. Juan Francisco Arrom Suhurt, it can be concluded that he has suffered various traumas from blunt natural weapons (hands and feet), blunt weapons proper (from a gun butt and from metal objects such as handcuffs). These injuries may have been caused 15 days ago, except for the large aforementioned hematoma that is between 5 and 7 days old³⁰.

49. Also on January 30, 2002, the group of thirteen (13) medial staff performed a medical examination on Anuncio Martí. Overall, the report found that Anuncio Martí had a recently inflicted scar on his the head, ecchymosis on the abdomen and injuries on the upper right and lower limbs. In conclusion, the report noted:

From the examination carried out on Anuncio Martí Méndez it can be concluded that he has suffered various injuries from blunt natural weapons (hands and feet), and blunt weapons

²⁶ Annex 9. Videos on discovery of Juan Arrom and Anuncio Martí. Annexed to communication from petitioners dated September 7, 2004.

²⁷ Annex 23. Mrs. María Auxiliadora Arrom's witness statement before the Public Prosecutor, dated February 11, 2002. Annexed to communication from petitioners, dated August 18, 2010. And Annex XX. Witness statement of Cristina Haydee Arrom de Fresco before the Public Prosecutor, dated February 11, 2002. Annexed to communication from petitioners, dated August 18, 2010.

²⁸ Annex 9. Videos on discovery of Juan Arrom and Anuncio Martí. Annexed to communication from petitioners dated September 7, 2004.

²⁹ Annex 9. Videos on discovery of Juan Arrom and Anuncio Martí. Annexed to communication from petitioners dated September 7, 2004.

³⁰ Annex 10. Medical Report on Juan Arrom performed at the Battilana Migone Clinic on January 30, 2002. Annexed to communication from petitioners, dated August 18, 2010.

proper (from a firearm butt and from metal objects such as handcuffs). These injuries are about 15 days old³¹.

50. In turn, the case file before IACHR contains photos of Juan Arrom and Anuncio Martí's injuries after their release. Severe wounds on different parts of the body can be seen in these pictures, consistent with the medical reports.³²

51. A psychiatric medical report performed on Juan Arrom, on January 26, 2006, after several interviews found:

State of alarm (acute stress) due to overload of threatening stimuli and state of danger, manifested by signs of psychosomatic origin such as tachycardia, peaks of arterial hypertension, insomnia, verbiage by psychic excitation with tendency to euphoria. In the following³³ weeks and months manifestations of: emotional lability (affective) by a desire for crying or uncontrollable crying from minimal stimuli, feelings of guilt, rejection and humiliation or impairment of abilities, nightmares and insomnia, sadness and a tendency to depression, anguished crisis, periods of emotional numbness and alterations in attention span, concentration and memory, inevitable images and flashbacks of experiences that constitute the painful re-experiencing of the events³⁴.

52. Juan Arrom's psychiatric medical report of July 4, 2009, indicated that he had been a victim of arbitrary detention during the dictatorship and of a kidnapping by a paramilitary group in 2002. The Report highlights the consequences of these events as follows:

In the days immediately after release fatigue, weariness, sensations of exhaustion, perceptions of numbness and persecution, disturbed sleep consisting of difficulty in falling asleep, interrupted or faltering sleep or awakening with fatigue or of not having rested during sleep, threatening or persecutory nightmares, crises and feelings of insecurity and fear about being re-arrested, periods of sadness, anxiety, a desire to cry without being able to do so. Hematuria (bleeding through the urinary tract). Headaches (migraines) [...].³⁵

53. The petitioners also attached a medical report dated July 4, 2009, undertaken in Brazil on Anuncio Martí. The report recounts the arbitrary detentions that Anuncio Martí said he had suffered³⁶.

54. In Juan Arrom's medical history, according to an opinion dated September 30, 2010, in 2004 the patient had had two years of recurring hip pain in the lumbar region³⁷.

³¹ Annex 11. Medical Report on Anuncio Martí performed at the Battilana Migone Clinic on January 30, 2002. Annexed to communication from petitioners, dated August 18, 2010.

³² Annex 12. Photos of Juan Arrom and Anuncio Martí after their release. Annexed to communication from petitioners, dated July 8, 2003.

³³ From the narration, the Commission understands that the Medical Report refers to the weeks after the events that took place between January 17 and 30, 2002.

³⁴ Annex 13. Psychiatric Medical Report of Juan Arrom dated January 26, 2006. Annexed to communication from petitioners, dated August 18, 2010.

³⁵ Annex 14. Psychiatric Medical Report of Juan Arrom in Brazil, on July 4, 2009. Annexed to communication from petitioners, dated August 18, 2010.

³⁶ Annex 15. Psychiatric Medical Report of Anuncio Martí in Brazil, on July 4, 2009. Annexed to communication from petitioners, dated August 18, 2010.

³⁷ Annex 16. Juan Arrom's brief to the IACHR, dated February 10, 2011. Annexed to communication from Juan Arrom to IACHR, dated February 10, 2011.

55. In addition to the statement and accounts of Messrs. Juan Arrom and Anuncio Martí, as well as the medical reports described in the previous paragraphs, other statements supporting this version of the events are recorded in the case file.

56. Luis Alfonso Resck Haiter, who resided near the location where Juan Arrom and Anuncio Martí claimed to have been detained, testified before the Public Prosecutor's Office that on the night of Thursday, January 17, 2002, there was an incident near his house. There were vans belonging to the Public Prosecutor's Office and he saw that one of the victims was put in a vehicle. In addition, he was told that a slender individual had been taken away in handcuffs. He concluded that two people had been apprehended. That night he identified Javier Casal in the operation³⁸.

57. According to Mr. Ramón Alberto López Noguera's testimony before the Public Prosecutor's Office during in the second week of January, at approximately 10 pm he saw Professor Resck talking loudly and gesturing because there was a crowd of people in the street. He stated that he was providing testimony in solidarity with Mr. Resck because his sanity had been questioned³⁹. Similarly, Mrs. Amada Concepcion Coquette de Cáceres, a neighbor of Professor Resck, said that on January 17, 2002, there was a lot of movement in the area, cars without number plates and armed individuals, identified as policemen by the neighbors⁴⁰. On April 30, 2002, Mr. Pedro Pablo Cáceres Barrios testified before the Public Prosecutor's Office that on January 17 there were several cars parked in front of the house on Lugano and Hernandarias streets, and Mr. Resck had tried to found out what was happening⁴¹.

58. Héctor Lacognata Zaragoza, a friend of Juan Arrom, testified before the Public Prosecutor's Office that Silvio Ferreira's wife, Gladis Maubet, told him that Juan Arrom was detained by a special unit and that he would soon be brought to trial. He said that he was in contact with Ms. Maubet for several days, and he proposed the mediation of Monsignor Lugo for the delivery of the detainees, and that Mrs. Maubet assured him that her husband Silvio Ferreira had the situation under control⁴².

59. Mónica Laneri Ferreira, a journalist, testified before the Public Prosecutor's Office that when Mrs. María Edith Bordón was released, she was informed that Juan Arrom had been detained, but that police commissioner Roberto González Cuquejo denied it on air. She was told by a colleague that an individual known as "the leftist" had been detained, but that the recommendation was not to disclose Arrom's arrest. She questioned prosecutor Velásquez regarding Anuncio Martí's situation, to which he replied that Martí's situation was "very negotiable" and that he had to appear before the Public Prosecutor's Office⁴³.

60. María Auxiliadora Arrom stated that through her brother Felipe, her sister Cristina received a call and the address of a house in Villa Elisa. They went there and, on arrival, saw two Gol cars without number-plates. She said that they waited for her sister Carmen to call the media to attend and spotted a white

³⁸ Annex 17. Mr. Luis Alfonso Resck Haiter's witness statement before the Public Prosecutor on February 7, 2002. Annexed to communication from petitioners, dated August 18, 2010.

³⁹ Annex 18. Mr. Ramón Alberto López Noguera's sworn witness affidavit before the Public Prosecutor, May 3, 2002. Annexed to communication from petitioners, dated August 18, 2010.

⁴⁰ Annex 19. Mrs. Amada Concepción Cerquetti de Cáceres' sworn witness affidavit before the Public Prosecutor, dated April 30, 2002. Annexed to communication from petitioners, dated August 18, 2010.

⁴¹ Annex 20. Mr. Pedro Pablo Cáceres Barrios' sworn witness affidavit before the Public Prosecutor, dated April 30, 2002. Annexed to communication from petitioners, dated August 18, 2010.

⁴² Annex 21. Héctor Ricardo Lacognata Zaragoza's witness statement before the Public Prosecutor, dated February 12, 2002. Annexed to communication from petitioners, dated August 18, 2010.

⁴³ Annex 22. Mónica Laneri Ferreira sworn witness statement before the Public Prosecutor, dated February 13, 2002. Annexed to communication from petitioners, dated August 18, 2010.

Gol car and a van. She reported that they then went to the house and, while the journalists were filming, she saw an individual whom she later identified as José David Schémbori. Later some individuals left in the cars and although they tried to follow them with the journalist Federico Anibal Emery, they were unsuccessful. She related that they then heard Anuncio Martí and Juan Arrom screaming. She added that once they were in the car, she spotted the truck of police commissioner Gonzalez Cuquejo, carrying him and his driver⁴⁴.

61. Cristina Arrom testified before the Public Prosecutor's Office and confirmed the statement made by her sister María Auxiliadora Arrom. She added that the family had lost contact with their brother Juan Arrom since Thursday afternoon. She also said that when she approached the house where her brother was, she saw a tall thin man in short pants, whom she later identified as Schémbori⁴⁵.

62. Federico Anibal Emery, a journalist, stated that he was present at the place where Juan Arrom and Anuncio Martí were found on January 30. He reported seeing a "tall individual with a beard, wearing a white shirt, black pants, and no shoes," coming out of the house and that this individual touched one of the gates, went back in and opened the garage door. Two Gol vehicles came out and joined another vehicle that constantly passed by the area. Then he said, "when the sisters' car arrived, and when I passed I looked again - there was a person in the back, I did not see his face, tiny, dark, short hair, totally dressed in black, black shirt and black pants, and closed the gate." He added that when the *Ultima Hora* newspaper published a photograph of José David Schémbori he recognized him as the tall bearded individual who had come out of the house in his shorts⁴⁶.

63. Esteban Centurión Vega gave a statement and indicated that he was in charge of Francisco Flores's house (where Juan Arrom and Anuncio Martí were found) and reported that on Thursday January 24th, 2002, at 11:30 pm, the homeowner, accompanied by Antonio Gamarra, asked him to leave and offered him another place to sleep. He added that the next day several individuals arrived, including Antonio Gamarra and they helped him to move. He stated that he always used to get up early to go to Abasto and was struck by the fact that there was a movement of vehicles without plates in the house of Mr. Francisco Flores, so he called Mrs. Cristina Arrom (who frequently had appeared in the national press complaining about the disappearance of her brother)⁴⁷. Likewise, Angela Estefanía Salinas de Lugo, Esteban Centurión's partner, said that the homeowner looking after them asked them to move to another place for a few days⁴⁸.

64. However, in accordance with the ratification of the request for the dismissal submitted by the Prosecutor's Office, the Commission notes that Esteban Centurión and Ángela Salinas subsequently withdrew the initial version of their testimony⁴⁹.

65. Víctor Colmán, member of *Patria Libre*, stated that on January 19, 2002, several police officers detained him at his house, handcuffed him, and put him in a white Gol car. Javier Cazal then told him

⁴⁴ Annex 23. Mrs. María Auxiliadora Arrom's witness statement before the Public Prosecutor, dated February 11, 2002. Annexed to communication from petitioners, dated August 18, 2010.

⁴⁵ Annex 24. Witness statement of Cristina Haydee Arrom de Fresco before the Public Prosecutor, dated February 11, 2002. Annexed to communication from petitioners, dated August 18, 2010.

⁴⁶ Annex 25. Witness statement of Federico Anibal Emery before the Public Prosecutor, dated May 7, 2002. Annexed to communication from petitioners, dated August 18, 2010.

⁴⁷ Annex 26. Statement of Esteban Domingo Centurión Vega before the Supervisory Criminal Judge on Duty during Recess, dated January 31, 2001. Annexed to communication from petitioners, dated August 18, 2010. The document is dated 2001, but the Commission understands this is a clerical error, since the events occurred in 2002.

⁴⁸ Annex 27. Statement of Ángela Estefanía Salinas de Lugo before the Supervisory Criminal Judge on Duty during Recess, dated, January 31, "2001". Annexed to communication from petitioners, dated August 18, 2010. The document is dated 2001, but the Commission understands this is a clerical error, since the events occurred in 2002.

⁴⁹ Annex 28. Request of the Public Prosecutor's Office for Final Dismissal, dated May 27, 2003. Annexed to communication of the State, dated October 5, 2005.

that on January 17 he had captured Juan Arrom and Anuncio Martí; that *Patria Libre* was over; and that they should assume responsibility for the abduction of Maria Edith Bordón. He alleged that he was tortured and that when taken home, police commissioner Gonzalez Cuquejo, Antonio Gamarra and prosecutors Cintia Lovera and Hugo Velásquez approached him, the latter telling him that the leader of *Patria Libre* had pleaded guilty to the abduction of Maria Edith Bordón. He asserted that at the Criminal Investigation Center, police commissioner Gonzalez told him to acknowledge the fifty thousand dollars that had been planted in his house that day and inquired about what had happened to Arrom and Martí. Colman replied that the police had them and Gonzalez commented "unless they are dead already."⁵⁰ He also said that Antonio Gamarra asked him why he had called Juan Arrom on January 18, 2002.

66. Ana Rosa Samudio de Colmán stated that on January 19, 2002, Messrs. Gamarra, Schembori and Cazal, as well as prosecutors Hugo Velásquez and Cintya Lovera, entered her house; that Mr. Cazal himself entered her room, ordering her to lift her clothes and touched her. She pointed out that prosecutor Velasquez told her that they must plead guilty to the abduction of María Edith de Debernardi and that Gamarra told her that they were going to kill Arrom, Martí, Colmán, herself, her brother and other members of *Patria Libre*. In addition, she claimed that she recognized Alderete, who brought the dollars to her house⁵¹.

67. On June 21, 2002, Teresita de María Rojas de Larriera, who claimed that Juan Arrom was her son-in-law, reported that she last saw Juan on January 17 of that year. She reported that a few days later 25 plain-clothed men with machine guns entered her home; that Prosecutor Cintya Lovera then informed her this was a raid and that officer Schembori went into Juan Arrom's bedroom and took items such as a union card belonging to Arrom's partner, and photos of him involved in politics and music. They even said they would take his car. She added that Prosecutor Velasquez told her that Juan was going to appear and that they still could not say anything because they expected the capture of "a big fish"⁵².

68. On July 9, 2002, the journalist Patricia Raquel Baudin Acosta said that she was present on the day of Juan Arrom and Anuncio Martí's rescue. She saw two Gol cars, one white, and one gray, parked in front of the house. She stated that she saw a white Gol car leaving and recorded it as it left. When asked about the first individual who came out, she stated that she could not identify him, but that the individual who did come out was "tall, and sturdy."⁵³

69. Likewise, according to the newspaper *Noticias'* February 2 article, Deputy Ombudsman Raúl Marín complained that the Prosecutor knew that Juan Arrom and Anuncio Martí had been detained by clandestine groups. According to this report: "Deputy Ombudsman, Raúl Marín, demanded the removal of prosecutors Hugo Velásquez, Sandra Quiñonez and Cynthia Lovera, from the case investigating the kidnapping of Maria Edith Bordón de Debernardi and involving Anuncio Martí and Juan Arrom. Marín claims that Velásquez was aware that clandestine groups had seized two individuals under investigation and had not yet filed a complaint". The newspaper indicates that Marín said that "if prosecutors continue their work in charge of the investigation and especially in this case, prosecutorial actions could be meaningless and may lack legitimacy in the eyes of the public."⁵⁴

⁵⁰ Annex 29. Sworn witness affidavit of Víctor Colman before the Public Prosecutor, of May 29, 2002. Annexed to communication from petitioners, dated August 18, 2010.

⁵¹ Annex 30. Sworn witness affidavit of Ana Rosa Samudio de Colmán before the Public Prosecutor, of May 29, 2002. Annexed to communication from petitioners, dated August 18, 2010.

⁵² Annex 31. Teresita de María Rojas de Larriera's sworn witness affidavit before the Public Prosecutor, dated June 21, 2002. Annexed to communication from petitioners, dated August 18, 2010.

⁵³ Annex 32. Sworn witness affidavit of Patricia Raquel Baudin Acosta before the Public Prosecutor, dated July 9, 2002. Annexed to communication from petitioners, dated August 18, 2010.

⁵⁴ Annex 33. Diario Noticias, Article "Marín pide remoción de los tres fiscales", of February 2, 2002. Annexed to communication from petitioners, dated July 8, 2003.

70. In addition, the case file contains a written request for impeachment against the National Attorney General signed by Marina, Cristina, Carmen and María Auxiliadora Arrom⁵⁵. According to the press, the Chamber of Deputies did not undertake such proceedings, because the required number of votes was not obtained⁵⁶.

2. Version according to which there is no State participation in the events

71. In challenging the veracity of the facts set out by Juan Arrom and Anuncio Martí, the State noted that at 10:00 pm on January 19, 2002, Juan Arrom filed a complaint on the loss of his driving license at Police Station 12 of Itá. Therefore, it states "How could Juan Arrom appear and sign the report of loss of his driver's license on January 19, 2002, before the police authorities of Police Station 12 of the City of Itá?"⁵⁷

72. Likewise, the file contains several statements of the accused for the alleged disappearance and torture of Juan Arrom and Anuncio Martí in which they assert that they did not participate in the events.

73. Silvio Gustavo Ferreira Fernández, who served as Minister of Justice and Labor, testified before the Public Prosecutor's Office and denied participating in the acts of kidnapping and torture in Juan Arrom and Anuncio Martí's complaint. He said that on January 18, 2002, he was sailing on the Paraguay River and, in relation to the statements of Mr. Héctor Lacognata, said that he knows him and that through his wife was informed that Juan Arrom was not in prison. He also stated that he knew Marcos Álvarez and that he was in telephone contact with Interior Minister, Julio César Fanego⁵⁸.

74. Víctor Alcides Bogado González testified before the Public Prosecutor's Office and stated that he had sailed with Silvio Ferreira on the Paraguay River on January 18, 2002, and spent the night on the boat. He stated that Silvio Ferreira did not receive any visits from Julio César Fanego⁵⁹. Likewise, José Flaviano Ibarrola Adorno⁶⁰, Natividad de Mercedes Bareiro⁶¹ and Bernardo Franco Coronel⁶² testified before the Public Prosecutor's Office that on January 18, 2002, passengers Silvio Ferreira, Kike Ibarrola and Victor Bogado were on board the boat, but that Julio César Fanego was never there.

75. José David Schémbori Ocampos, a member of the Police, testified before the Public Prosecutor's Office that he was on vacation during the first days of January until February 8, 2002, and that he was never called upon to carry out police work during that period. He stated that before starting his vacation he was, among other things, making inquiries in the case of the kidnapping of Mrs. Maria Edith Bordón. He described some of his activities during his rest period. He questioned the fact that the journalist Aníbal Emery

⁵⁵ Annex 34. Request for Impeachment signed by Marina, Cristina, Carmen and María Auxiliadora Arrom against General Prosecutor Oscar Latorre. Annexed to communication from petitioners, dated October 20, 2003.

⁵⁶ Annex 35. Article in Tema UH. Entitled "Oficialismo salva a Latorre", dated Thursday February 28, 2002. Press Book No. 3, provided by petitioners.

⁵⁷ State of Paraguay's brief dated October 7, 2005. The Commission does not have the complaint referred by the State.

⁵⁸ Annex 36. Silvio Gustavo Ferreira Fernández's sworn witness affidavit before the Public Prosecutor, dated April 22, 2002. Annexed to communication from petitioners, dated August 18, 2010.

⁵⁹ Annex 37. Victor Alcides Bogado González's sworn witness affidavit before the Public Prosecutor, dated August 26, 2002. Annexed to communication from petitioners, dated August 18, 2010.

⁶⁰ Annex 38. Jose Flaviano Ibarrola Adorno's sworn witness affidavit before the Public Prosecutor, dated August 30, 2002. Annexed to communication from petitioners, dated August 18, 2010.

⁶¹ Annex 39. Natividad de Mercedes Barreiro Vera's sworn witness affidavit before the Public Prosecutor, dated August 29, 2002. Annexed to communication from petitioners, dated August 18, 2010.

⁶² Annex 40. Bernardo Franco Coronel's sworn witness affidavit before the Public Prosecutor, dated August 30, 2002. Annexed to communication from petitioners, dated August 18, 2010.

had said that he was in the house in Villa Elisa where hostages Arrom and Martí were found, because the journalist had waited several days to say that he had identified him as being there⁶³.

76. Saturnino Antonio Gamarra Acosta, a member of the Police, testified before the Public Prosecutor's Office and denied having participated in the offenses in Juan Arrom and Anuncio Martí's complaints. He reported on his activities since becoming aware of Mrs. María Edith Bordón's kidnapping: he stated that on January 18, 2002, Javier Cazal called him and told him that he had information about those responsible for the kidnapping, and a few days later told him that Juan Arrom and others were involved. He reported his activities from that date until January 30 of the same year. He claimed that he owns a Mitsubishi L200 pickup truck for use in his official duties, and denied that the police use white Gol brand cars. He confirmed that his wife has a house in Villa Elisa, near the Health Center, which they used to rent, but chose to leave someone to look after the property. Finally, he pointed out that, in his opinion, Mrs. Bordón's kidnappers followed the same *modus operandi* as a case in Brazil in which when discovered, the criminals complained of being tortured and being victims of political persecution. He argued that during the alleged release, Arrom and Martí contradicted each other, demonstrating the lack of veracity in the allegations⁶⁴.

77. Javier Cazal, director of the Center for Judicial Investigation, testified before the prosecutors. He denied having participated in Juan Arrom and Anuncio Martí's abduction and torture. He recounted all his activities since November 16, 2001 [sic]. His lawyer stated that it was "very clear that the alleged kidnapping of Messrs. Arrom and Martí was a perfect ruse to divert attention from justice and all public opinion from an imminent sentence to be imposed in the case of Mrs. Maria Edith de Debernardi." In turn, Javier Cazal questioned the statements made against him and the veracity of Arrom and Martí's kidnapping⁶⁵.

C. The judicial proceedings and the complaints about what happened to Juan Arrom and Anuncio Martí

78. In this section, the Commission will refer to the habeas corpus writs submitted by Juan Arrom's and Anuncio Martí's next-of-kin while being unaware of their whereabouts, as well as to the subsequent investigation carried out as a result of their alleged disappearance and torture.

79. On January 19, 2002, Cristina Arrom and Carmen Marina Arrom filed a *Habeas Corpus* petition in favor of their brother Juan Arrom. They alleged that, according to the media, he had been apprehended on Thursday, January 17, 2002, by the police and had been taken to the Ybicuy area. They demanded that his release be ordered immediately. Upon judicial request, the Chief of the Judicial Department reported that Juan Arrom was not in custody and that the Department of Criminal Investigation stated that Arrom was currently subject to an arrest warrant. On January 23, 2002, in Final Judgment No. 4, the Judge decided not to grant a request for Habeas Corpus, on the grounds that there was no uncertainty that Juan Arrom had been deprived of his liberty, nor the place where he was being held; and that therefore there was no unlawful physical detention to redress. He added that Juan Arrom had a pending arrest warrant against him⁶⁶.

⁶³ Annex 41. Preliminary Testimony of José David Schembori before the Public Prosecutor, of January 13, 2003. Annexed to communication from petitioners, dated August 18, 2010.

⁶⁴ Annex 42. Statement of Interrogation of Saturnino Antonio Gamarra before the Public Prosecutor, of January 14, 2003. Annexed to communication from petitioners, dated August 18, 2010.

⁶⁵ Annex 43. Statement of Interrogation of Javier Benjamín Cazal of January 15, 2003. Annexed to communication from petitioners, dated August 18, 2010.

⁶⁶ Annex 44. Decision on the habeas corpus filed on behalf of Juan Arrom, of January 24, 2002. Annexed to communication of the State, dated October 5, 2005.

80. On January 23, 2002, Marina Cristina and Marta Ramona Martí filed a preventive habeas corpus petition in favor of Anuncio Martí Méndez on the grounds that the latter had been missing since Thursday, January 17. According to Press information, he was being detained at a police facility. The National Police said that there was an arrest warrant against Mr. Martí. On January 24, 2002, Criminal Judge decided not to grant the Habeas Corpus's request, because of a lack of elements for his illegal detention "in the light of the existence of an arrest warrant issued by the Prosecutor's Office against him."⁶⁷

81. According to documents of the Public Prosecutor's Office, on January 24, 2002, Mrs. Marta Ramona and María Cristina Martí filed a criminal complaint for Anuncio Martí's disappearance together with Juan Arrom.

82. On February 7 and 22, 2002, the Public Prosecutor charged Messrs. Antonio Gamarra, José David Schembori⁶⁸ and Javier Cazal Elizeche⁶⁹ with the crimes of deprivation of liberty, forced disappearance and torture⁷⁰ against Juan Arrom and Anuncio Martí.

83. Juan Arrom filed a complaint alleging he was a victim from January 17, 2002, until the day of his release, against: (i) Saturnino Antonio Gamarra, a member of the National Police; (ii) Javier Cazal, member of the Judicial Investigation Center; (iii) Marcos Álvarez; (iv) Silvio Ferreira, former Minister of Justice and Labor; (v) Julio César Fanego; (vi) Hugo Velásquez, an official of the Public Prosecutor's Office, for the offenses against his liberty, kidnapping, threats, attempted murder, forced disappearance, grievous injury, serious injury in the exercise of public functions, torture, persecution of innocent victims, all committed as part of a criminal conspiracy⁷¹.

84. Similarly, Anuncio Martí filed a complaint as a victim alongside Juan Arrom, against: (i) Saturnino Antonio Gamarra, deputy commissioner of the Department of Criminal Investigations of the National Police; (ii) José David Schembori Ocampos, non-commissioned officer of the Police; (iii) Javier Cazal, from the Judicial Investigation Center; (iv) Pablo Ignacio Morinigo, non-commissioned officer of the investigations department; (v) Silvio Ferreira, former Minister of Justice and Labor; (vi) Roberto González Cuquejo, former head of the Investigations Department; (vii) Marcos Antonio Álvarez; (ix) Gladys Maubet de Ferreira, wife of former Minister Silvio Ferreira; (x) other officers identified only by surname for offenses of kidnapping, torture, forced disappearance, grievous injury, intentional homicide, serious injury in the exercise of public functions, persecution of innocent victims, all committed as part of a criminal conspiracy⁷².

85. On February 8, 2003, the Public Prosecutor's Office requested the final dismissal of the accused in the proceedings⁷³.

⁶⁷ Annex 45. Decision on the habeas corpus filed on behalf of Anuncio Martí, of January 24, 2002. Annexed to communication of the State, dated October 5, 2005.

⁶⁸ Annex 46. Indictment of Antonio Gamarra and José David Schembori, of February 7, 2002. Annexed to communication of the State, dated October 5, 2005.

⁶⁹ Annex 47. Indictment of Javier Cazal, of February 22, 2002. Annexed to communication of the State, dated October 5, 2005.

⁷⁰ Annex 46. Indictment of Antonio Gamarra and José David Schembori, of February 7, 2002. Annexed to communication of the State, dated October 5, 2005.

⁷¹ Annex 48. Complaint filed by Juan Arrom, date illegible. Annexed to communication of the State, dated October 5, 2005.

⁷² Annex 49. Complaint filed by Anuncio Martí on February 26, 2002. Annexed to communication of the State, dated October 5, 2005.

⁷³ Annex 50. Request of the Public Prosecutor's Office dismissal of the complaints, of February 8, 2003. Annexed to communication of the State, dated October 5, 2005.

86. In the analysis of Javier Cazal's conduct, he maintained that Juan Arrom's and Anuncio Martí's statements were insufficient to demonstrate his involvement and that, in addition, his credibility had to be evaluated in light of the fact that the former were accused in the proceedings investigating Maria Edith Bordón's kidnapping. This process was conducted by Javier Cazal. It was not unreasonable to suppose the existence of a campaign to publicly discredit the official. He considered that the victims' versions were not corroborated by other evidence. With regard to the statement of Mr. Luis Resck against Cazal, the Public Prosecutor's Office considered that his testimony was contradictory, because on one occasion he said that he recognized Javier Cazal and on another he said that he could not identify anyone and only saw one individual in charge of the proceedings. He also pointed out that in a reconstruction of the events that took place, Professor Resck could not identify an individual who was in the same place where he had seen Javier Cazal. This conclusion was confirmed by the scene of crime plans undertaken by the architect Enriqueta Cristaldo⁷⁴.

87. With regard to José David Schembori's conduct, the Public Prosecutor's Office considered that the statements made against him by Juan Arrom and Anuncio Martí were not supported by any other evidence. He mentioned the cogency of the testimony against Schembori and emphasized that other statements showed that he was on vacation and involved in family activities. Finally, the Public Prosecutor's Office concluded that the complaint against José David Schémbori should be dismissed because, based on the evidence, there was "irrefutable certainty as regards his non-participation in the facts under investigation."

88. Regarding Antonio Gamarra's conduct, the Public Prosecutor's Office evaluated the testimonies of Anuncio Martí, Juan Arrom, Esteban Centurión (who initially incriminated Antonio Gamarra), Angela Salinas de Lugo (Esteban Centurión's wife), their later retractions, the testimony of Antonio Gamarra, several journalists and individuals who claimed to have seen Gamarra in another judicial operation on January 17, 2002 and other dates of the alleged kidnapping. The Public Prosecutor's Office considered that the last testimonies "weakened the statements of the victims because the latter testimonies [of the victims] were not corroborated by any testimonial evidence; whereas Gamarra was seen and accompanied by other police officers and journalists from different media outlets who even recorded the procedure in question in newspaper form on that date."

89. Regarding Minister of the Interior Julio César Fanego's possible participation, the Public Prosecutor's Office considered that the only testimony against him was Juan Arrom's, who provided no other evidence. In contrast, the Prosecutor's Office considered that Mr. Fanego described in detail his activities on the day he was told to speak with Juan Arrom and several witnesses testified confirming the veracity of his testimony. Consequently, he considered that "Fanego's conduct, first, is non-existent, and that is the most accurate illustration that his eventual criminal conduct does not constitute a punishable offense."

90. Regarding Silvio Ferreira's actions, the Public Prosecutor's Office considered that Ferreira showed that he took a boat sailing on the Paraguay River. He could not, therefore, have been with Juan Arrom, as the latter stated. In addition, in relation to the evidence of Mr. Héctor Lacognata, who stated that Gladis Maubet, Ferreira's wife, had told him that Arrom was in the hands of state forces, the Public Prosecutor's Office considered that this completely contradicted Gladis Maubet's statement. Therefore, any doubt existing as to the true version should favor the accused. For this reason, he requested a final dismissal of the investigation.

91. With regard to Hugo Velásquez Moreno, who was acting as Prosecutor, the Public Prosecutor's Office maintained that there were two witness statements against him: one from Juan Arrom - who stated that Prosecutor Velásquez would prepare a document for Arrom to sign; and the other from Héctor Raúl Marín - stating that Velásquez informed him that Arrom and Martí were in the custody of paramilitary groups. In contrast, the accused argued that he effectively spoke with Raul Marín, but did not say

⁷⁴ Annex 50. Request of the Public Prosecutors Office dismissal of the complaints, of February 8, 2003, p.16. Annexed to communication of the State, dated October 5, 2005.

that Juan Arrom and Anuncio Martí were being held by paramilitary groups. The Public Prosecutor's Office considered that Juan Arrom's accusation was a subjective assessment, and from the conversation between Marín and Velásquez, it could be inferred with certainty that the latter did not participate in the facts under investigation.

92. On February 8, 2003, Anuncio Martí confirmed his complaint with the Supervising Criminal Judge, offered evidence and requested the indictment of the accused⁷⁵. On February 10, 2003, Diego Bertolucci, Juan Arrom's legal representative, filed a brief with the Criminal Judge setting out the indictment, offered evidence for an oral hearing, and requested the opening of a trial⁷⁶. On March 28, 2003, Anuncio Martí and Juan Arrom opposed the request for dismissal and requested that evidence be taken⁷⁷.

93. Juan Arrom explained that on January 19th 2002, while he was disappeared, State's actors raided his house and took his driving license. Months later, he requested a new driving license and the authorities told him that he had to present a complaint, explaining when he lost his license. For this reason, he declared before the Police Station of Itá that he had lost his driving license on January 19th, 2002, because it was the date of the raid.

94. According to the briefs of the alleged victims' legal representatives and to the judicial decisions, the Supervising Criminal Judge considered that the Public Prosecutor's Office's request lacked sufficient grounds to justify a dismissal of the case against the accused Javier Cazal, Antonio Gamarra and José David Schembori, explaining that "the non-participation of the accused should be *prima facie* APPARENT and without a doubt"⁷⁸. Consequently, the Judge ordered that the procedural steps should be sent back to the Attorney General for an indictment or acceptance of the request initially made by the prosecutors, as provided for in the Code of Criminal Procedure for these types of case.

95. On May 27, 2003, the Deputy Prosecutor, in charge of the National Prosecutor General's Office, confirmed the request for dismissal previously filed by prosecutors in favor of Saturnino Antonio Gamarra, José David Schémbori and Javier Cazal⁷⁹.

96. With regard to Antonio Gamarra, the Prosecutor pointed out that the case against him was based only on the victims' statements and would therefore be "thoroughly investigated in order to determine whether they are apt to demonstrate such circumstances; or, on the contrary, are insufficient to rebut the presumption of innocence of the accused". He concluded with a request for dismissal⁸⁰.

⁷⁵ Annex 51. Brief of Anuncio Martí filing the accusation, of February 8, 2003. Annexed to communication of the State, dated October 5, 2005.

⁷⁶ Some of the evidence offered by the attorney consisted of videos or audio recordings of interviews with lawyers and respondents in the process, as well as the video of Juan Arrom and Anuncio Martí's appearance alive, medical reports and the register of telephone calls and testimonies of the accused.

⁷⁷ Annex 52. Brief of Juan Arrom for the purpose of objecting to the request for dismissal, to request the revocation of the precautionary measures and to present evidence. Annexed to communication of the State, dated October 5, 2005. Some of the evidence required were: extension of declarations, requests to the Prosecutor's Office and to the Supreme Court of Military Justice to forward proceedings of some of the accused, orders to the municipalities to request information about the ownership of a property, orders to request information on the ownership of white Peugeot vehicles, and the criminal background of some of those individuals potential involved.

⁷⁸ Judicial decision is not in the case file; however, the petitioners and another judicial decision refer to it. See Annex 56. Judicial Decision ordering a dismissal, November 4, 2003. Annexed to communication of the State, dated October 5, 2005. Annex 57 Appeal lodged by Diego Bertolucci, date illegible. Annexed to communication of the State, dated October 5, 2005.

⁷⁹ Annex 28. Request of the Public Prosecutor's Office requiring final dismissal, dated May 27, 2003. Annexed to communication of the State, dated October 5, 2005.

⁸⁰ The Commission notes that various pages of the brief for ratification of the dismissal presented by the Prosecutor are missing from the case file.

97. With regard to José David Schémbori, the Prosecutor considered that the evidence of the individuals claiming to have recognized him did not know or were mistaken in his distinguishing features, understandable "because of the atrocious circumstances in which they were observed." He also questioned the claims of journalist Anibal Emery and criticized the Arrom sisters for not referring to recordings showing an individual at the front window of the house. In conclusion, he considered that the evidence provided was insufficient to indict the accused "especially taking into account the lack of other corroborating evidence to draw conclusions with the intellectual certainty required by the criminal procedural system."

98. As regards Javier Cazal, the Prosecutor questioned the coherence of Mr. Luis Resck's statements, considering that there was no evidence of his alleged meeting with Juan Arrom and concluded that "in comparison with the absence of supporting evidence from accusers, the request for acquittal is backed up by corroborating evidence proving that the accused Javier Cazal was in a place distant from the scene of the crime at the time of its commission."

99. The Prosecutor also stated that on November 1, 2002 (nine months after his reappearance), Juan Arrom made a statement at the Itá police station that on January 19, 2002, he had lost his driving license between Asunción and Itá. He noted that this statement weakened the credibility of his evidence as to his alleged disappearance and torture. This led him to "seriously consider the possibility that such events did not occur in the way reported by the complainants."

100. On June 19, 2003, Diego Bertolucci, Juan Arrom's legal representative, filed a motion of unconstitutionality alleging that Article 358 of the Code of Criminal Procedure's application in this case breached the constitutional rights of his client⁸¹. This Article states that the Judge cannot order a trial unless there is a prosecutor's indictment. In Bertolucci's opinion, the absence of a Public Prosecutor's indictment when the latter requested a dismissal was not binding on the Natural Judge, considering that the option to indict could be shared with the victims⁸².

101. On September 19, 2003, the Constitutional Chamber of the Supreme Court of Justice decided to dismiss the unconstitutionality objection filed by Diego Bertolucci, Juan Arrom's legal advisor. The Court considered that Article 358 of the Code of Criminal Procedure was part of a series of provisions of the mixed accusatory criminal system in which the Public Prosecutor's Office has the function of indicting and the Supervisory Judge of ensuring the protection of both the accused and the victim's rights; as well as to analyze the evidence obtained in the investigation. The Court considered that the petitioner's request sought to modify the current penal system; such an aim could only be achieved through legislative reform. It also held that the objection of unconstitutionality was not filed timely, in accordance with the provisions of Articles 538 and 546 of the Code of Criminal Procedure, and that "the legal provision in question does not in any way affect or cause irreparable harm to" the victims⁸³.

102. On November 4, 2003, the Criminal Judge ordered the final dismissal and termination of criminal proceedings in the case against Javier Cazal Elizeche, Saturnino Antonio Gamarra and José David Schémbori⁸⁴. The Judge stated that Article 358 of the Code of Criminal Procedure provides that if the Public Prosecutor's Office has not filed an indictment, the Judge shall request that proceedings be referred to the

⁸¹ The aforesaid Article stated: "Lack of accusation. When the Public Prosecutor's Office has not made an accusation and the judge considers the opening of a trial to be admissible, he shall order that the proceedings be referred to the State Attorney General to acknowledge and ratify the lower prosecutor's decision. In the latter case, the judge will decide according to the request of the Public Prosecutor's Office. // In no case shall the judge order a motion of opening the trial in the absence of a prosecutorial accusation. "

⁸² Annex 53. Request for Unconstitutionality Plea, dated June 19, 2003. Annexed to communication of the State, dated October 5, 2005.

⁸³ Annex 54. Unconstitutionality Plea Proceedings, dated September 19, 2003. Annexed to communication of the State, dated October 5, 2005.

⁸⁴ Annex 55. Transcript of Public Hearing of November 4, 2003. Annexed to communication of the State, dated October 5, 2005.

Attorney General to indict or uphold the decision of the earlier prosecutor. If the Attorney General upholds the decision not to indict, the Judge must rule according to the Public Prosecutor's request. Consequently, considering that the petition for dismissal was upheld by prosecutors of the Public Prosecutor's Office, the judge considered that, regardless of his own views, it was incumbent on him to order a dismissal of the case against the accused.⁸⁵

103. Attorney Diego Bertolucci filed a general appeal against the decision of the Criminal Judge of November 4, 2003. He stated that there were various grounds in the investigation justifying the opening of a trial. Additionally, the attorney maintained that the State's Attorney General confirmed that "the Public Prosecutor's Office does not investigate itself"⁸⁶. He added that applying the rule of the Code of Criminal Procedure did not allow access to justice and the protection of constitutional rights⁸⁷.

104. On March 24, 2004, the Fourth Chamber of the Court of Criminal Appeals held that the role of Prosecutor responsible for the action was to present only those "rationally sustainable" cases to the Judge. Therefore, the Prosecutor's Office had to present the indictment before the beginning of an oral and public trial. The Court concluded that in this case the Judge had to decide in accordance with Article 358 of the Code of Criminal Procedure which provides that in the absence of an indictment, the Judge could not order the trial to begin⁸⁸.

D. On the granting of refugee status to Juan Arrom and to Anuncio Martí and State's requests

105. Juan Arrom and Anuncio Martí obtained recognition of refugee status in Brazil. According to the technical brief provided by the petitioners, on December 1, 2003, the National Committee for Refugees - UNARE - unanimously decided to accord refugee status to the three citizens for having "demonstrated or justified fear of persecution for reasons of political policy, thereby fulfilling the conditions of eligibility provided for in Article 1, paragraph 1, of Law No. 9,474, of July 22, 1997." In addition, UNHCR was in favor of granting refugee status. Likewise, the brief indicates that the President of CONARE met with the Paraguayan Public Prosecutor's Office and informed them that if the information or criminal acts by the refugees against the Government of Paraguay was shown to be false at any time, their refugee status proceedings could be reopened. According to the same brief, on October 27, 2006, the Paraguayan authorities requested a review of the case and CONARE considered that their arguments presented were insufficient to undertake a review; and on a second occasion, the Government of Paraguay requested a review of the case; however, an examination of the case was pending a meeting to be held in May 2010⁸⁹. According to press releases provided by the petitioners, on May 3, 2010, *Diario ABC* ran a headline "Arrom, Martí and Colmán remain in Brazil" and asserted that Brazil's President Luiz Inacio Lula da Silva had rejected the extradition request for Juan Arrom, Anuncio Martí and Víctor Colmán⁹⁰.

⁸⁵ Annex 56. Judicial Decision ordering a dismissal, November 4, 2003. Annexed to communication of the State, dated October 5, 2005.

⁸⁶ Annex 57. Appeal lodged by Diego Bertolucci, date illegible. Annexed to communication of the State, dated October 5, 2005.

⁸⁷ Annex 57. Appeal lodged by Diego Bertolucci, date illegible. Annexed to communication of the State, dated October 5, 2005.

⁸⁸ Annex 58. Order declaring appeals admissible, of March 24, 2004. Annexed to communication of the State, dated October 5, 2005.

⁸⁹ Annex 59. Technical Note of the General Coordinator of the National Committee for Refugees, CONARE. Annexed to communication from petitioners, dated August 18, 2010.

⁹⁰ Annex 60. Article entitled "Brasil negará extradição de refugiados políticos", May 3, 2010. Annexed to communication from petitioners, dated August 18, 2010.

106. On August 21, 2003, the Criminal Judge for Settlement and Judgment of the City of Asunción decided to find the defendants Juan Arrom and Anuncio Martí in default in the case involving those allegedly liable for Maria Edith Bordón's abduction; he ordered their arrest and was unaware of their whereabouts⁹¹.

107. On October 15, 2004, the Criminal Judge for Settlement and Judgment informed the Foreign Relations Ministry that Interpol had confirmed that citizen Anuncio Martí had been seen at Barajas Airport in Madrid, Spain; therefore, he requested that the relevant procedures be initiated to capture him⁹². On October 15, 2004, the International Police Organization (INTERPOL) informed the Criminal Judge for Settlement and Judgment that Mr. Anuncio Martí Méndez had been seen at Barajas Airport in Madrid, had not been arrested because the petition ought to have been made via diplomatic channels⁹³.

108. On August 29, 2006, the Criminal Judge for Settlement and Judgment asked the Ambassador of the Republic of Paraguay in Brazil and the Minister of Justice of the Federative Republic of Brazil for their good offices to secure the arrest of Juan Arrom and Anuncio Martí⁹⁴.

109. In the case file there is propaganda leaflet entitled at the top "WANTED - Enemies of the Paraguayan People" and then gives the names of several alleged criminals with their photos, including photos of Juan Arrom and Anuncio Martí, and offering a reward of 500,000,000 guaraníes for useful information leading to their arrest. At the bottom of the leaflet are badges of several institutions of the State of Paraguay, including the Interior Ministry, the National Police and the Public Prosecutor's Office⁹⁵.

110. The case file contains an Open Letter from the Commission for Human Rights and Minorities of the Brazilian Chamber of Deputies, signed by Deputy President Luiz Coto, addressed to the President of the Republic of Paraguay Fernando Lugo Méndez. The letter expresses surprise at the dissemination of Paraguayan propaganda in which a reward is offered for political refugees residing in Brazil⁹⁶. Likewise, Senator Cristovam Buarque admonished the Paraguayan authorities for having issued propaganda offering a reward for the refugees in Brazil⁹⁷.

111. On November 2, 2012, the President of the Commission for Human Rights and Minorities of the Brazilian Chamber of Deputies addressed the IACHR to request the speeding up of the trial of citizens Juan Arrom, Anuncio Martí and Victor Colmán⁹⁸.

⁹¹ Annex 61. Declaration of Contumacy against Juan Arrom and Anuncio Martí, dated August 21, 2003. Annexed to communication of the State, dated September 12, 2003.

⁹² Annex 62. Official Letter of the Criminal Judge for Settlement and Judgment directed to the Foreign Relations Ministry, dated October 15, 2004. Annexed to communication of the State, dated December 20, 2007.

⁹³ Annex 63. Official Request from the International Police Organization – Interpol, dated October 15, 2004. Annexed to communication of the State, dated December 20, 2007.

⁹⁴ Annex 64. Official Letter of the Criminal Judge for Settlement and Judgment No. 10, August 29, 2006. Annexed to communication from the State, dated December 20, 2007.

⁹⁵ Annex 65. Copy of the Announcement "Wanted – Enemies of the Paraguayan people". Annexed to communication of petitioners, dated August 18, 2010. Also annexed to communication of petitioners, dated June 2, 2011.

⁹⁶ Annex 66. Letter from the President of the Chamber of Deputies to the President of the Republic. Annexed to communication of petitioners, dated June 2, 2011.

⁹⁷ Annex 67. Article entitled "Os direitos humanos são a baliza, a referência e os suportes, que dão humanidade ao mundo. Sem eles, nossas sociedades iriam para a barbárie", from Senator Cristovam Buarque, of March 9, 2010. Annexed to communication of petitioners, dated June 2, 2011.

⁹⁸ Annex 68. Communication from the President of the Chamber of Deputies to the IACHR, dated October 9, 2012. Annexed to communication of petitioners, dated June 2, 2011.

V. LEGAL ANALYSIS

112. The present case focuses on whether the events that took place between January 17, and 30, 2002 constituted acts of torture and forced disappearance. Taking into account the information available in the case file, as well as the State's disputing the central allegations of the petitioners, in the circumstances of the instant case, the Commission considers it pertinent to examine, first, the investigations carried out at the internal level and, secondly, the determinations of the said investigations, on the alleged torture and enforced disappearance.

113. In this regard, the IACHR will conduct its legal analysis in the following order: (a) preliminary issues; (b) the right to judicial guarantees and judicial protection in respect of investigations undertaken on what happened to the alleged victims; (c) the analysis of whether the events involved torture; (d) the analysis of whether the events involved forced disappearance; and (e) the right to personal integrity with respect to the victims' next of kin.

A. Preliminary Issues

114. The petitioners pointed out that the State violated their rights in the judicial investigation into Mrs. María Edith Bordón's abduction. The State maintained that any irregularities in that procedure should be discussed in the national courts and that the Commission was not competent to give a ruling on the matter. The Commission considers that the main issue is the alleged disappearance and torture of Juan Arrom and Anuncio Martí. However, it is aware that the case is intertwined with the process connected with Mrs. Bordón's abduction. Therefore, it will address this last process whenever it is related to the possible violations presented by the alleged victims.

115. The Commission further notes that in its report on admissibility, it did not expressly include Articles 3 and 4 of the American Convention, nor Articles 1(a) and 1(b) of the Inter-American Convention on Forced Disappearance of Persons. However, from the totality of the allegations and evidence available, and in application of the *iura novit curia* principle, the IACHR deems it pertinent to analyze the facts of the case in light of the aforementioned provisions⁹⁹. The analysis of law that follows is based on facts known by the Paraguayan State, both during the admissibility and at the merits stages, and with respect to which it has had ample opportunity to submit arguments and evidence. Consequently, the inclusion of the abovementioned provisions does not affect the State's right of defense.

B. The rights to judicial guarantees, judicial protection and the duty to investigate possible enforced disappearance and torture (Articles 8¹⁰⁰ and 25.1¹⁰¹ of the American Convention, Articles 1¹⁰², 6¹⁰³ and 8¹⁰⁴ of the ICPPT and Article 1b¹⁰⁵ of the ICFDP)

⁹⁹ The Inter-American Court has established that the inclusion of articles of the American Convention by the IACHR at the Merits stage "does not imply a violation of the [State's] right of defense" in cases where the State has become aware of the facts support their alleged violation. See: I/A Court H.R, Case of Furlan and Family v. Argentina. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2012. Series C No. 246, para. 50.

¹⁰⁰ Article 8 of the American Convention provides: "Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature. 2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. [...]".

¹⁰¹ Article 25.1 of the American Convention provides: "Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties."

1. Considerations on the right to judicial guarantees and judicial protection and on the duty to investigate possible enforced disappearance and torture

116. The Court has observed that States are obliged to provide effective judicial remedies to victims of human rights violations (Article 25), which must be substantiated in accordance with the rules of legal due process (Article 8.1), all under the general obligation, by the States themselves, to guarantee the full and free exercise of the rights recognized by the Convention to any person under their jurisdiction (Article 1.1)¹⁰⁶.

117. It is apparent from inter-American jurisprudence that, when it comes to denouncing the disappearance of a person, there is an inseparable link between the State response and the protection of the life and integrity of the person who is reported missing. The immediate and exhaustive nature of the state response applies when it comes to a possible disappearance by private individuals or state agents. The Commission reiterates that whenever there are reasonable grounds to suspect that a person has been subjected to disappearance, it is essential that prompt and immediate action be taken by judicial authorities, ordering timely and necessary measures to determine the whereabouts of the victims or the place where they may be deprived of liberty¹⁰⁷.

118. In the words of the Court, when the authorities are aware of an act of possible enforced disappearance, they must "promote all relevant administrative and judicial mechanisms and initiate the search for the person."¹⁰⁸ The authorities that know of a possible disappearance must make the necessary

[... continuation]

¹⁰² Article 1 of the ICPPT provides: "The State Parties undertake to prevent and punish torture in accordance with the terms of this Convention".

¹⁰³ Article 6 of the ICPPT provides: "In accordance with the terms of Article 1, the States Parties shall take effective measures to prevent and punish torture within their jurisdiction.//The States Parties shall ensure that all acts of torture and attempts to commit torture are offenses under their criminal law and shall make such acts punishable by severe penalties that take into account their serious nature.//The States Parties likewise shall take effective measures to prevent and punish other cruel, inhuman, or degrading treatment or punishment within their jurisdiction."

¹⁰⁴ Articles 8 of the ICPPT provide: "The States Parties shall guarantee that any person making an accusation of having been subjected to torture within their jurisdiction shall have the right to an impartial examination of his case.// Likewise, if there is an accusation or well-grounded reason to believe that an act of torture has been committed within their jurisdiction, the States Parties shall guarantee that their respective authorities will proceed properly and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal process.// After all the domestic legal procedures of the respective State and the corresponding appeals have been exhausted, the case may be submitted to the international fora whose competence has been recognized by that State".

¹⁰⁵ Article 1b of the Inter-American Convention on Forced Disappearance of Persons provides: "to punish within their jurisdictions, those persons who commit or attempt to commit the crime of forced disappearance of persons and their accomplices and accessories[...]"

¹⁰⁶ I/A Court H.R., Case of Velásquez Rodríguez v. Honduras. Preliminary Objections. Judgment of June 26, 1987. Series C No. 1, para. 91; Case of Gutiérrez and Family v. Argentina. Merits, Reparations and Costs. Judgment of November 25, 2013. Series C No. 271, para. 97; and Case of Landaeta Mejías Brothers et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 27, 2014. Series C No. 281, para. 215.

¹⁰⁷ IACHR. Report No. 111/09. Case 11.324. Merits. Narciso González Medina. Dominican Republic. November 10, 2009. Para. 225; I/A Court H.R., Case of Anzualdo-Castro v. Peru. Preliminary Objection, Merits, Reparations and costs. Judgment of September 22, 2009. Series C No. 202, para. 134; Case of Radilla Pacheco v. Mexico. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2009. Series C No. 209, para. 221, Case of Ibsen Cárdenas and Ibsen-Peña v. Bolivia. Merits, Reparation and Costs. Judgment of September 1, 2010. Series C No. 217, para. 167. See also Matter of Natera Balboa regarding Venezuela. Provisional Measures. Order of the Inter-American Court of Human Rights of February 01, 2010, Thirteenth Consideration, and Matter of Guerrero Larez regarding Venezuela. Provisional Measures. Order of the Inter-American Court of Human Rights of August 19, 2013. Sixth Consideration.

¹⁰⁸ I/A Court H.R., Case of Rodríguez Vera et al. (The Disappeared from the Palace of Justice) v. Colombia. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 14, 2014. Series C No. 287. Para. 479, citing Case of Anzualdo-Castro v. Peru. Preliminary Objection, Merits, Reparations and costs. Judgment of September 22, 2009. Series C No. 202, para. 134, and Case of García and family members v. Guatemala. Merits, Reparations and Costs. Judgment of November 29, 2012. Series C No. 258, para. 138.

inquiries to assure the rights of the possible victim until finding the person's whereabouts, to establish the truth or to discard the hypothesis of a disappearance. As the Inter-American Court has pointed out, "the authorities must presume that the disappeared person is deprived of liberty and remains alive until the uncertainty about the fate he has run out of."¹⁰⁹

119. Pursuant to Article 1 (1) of the American Convention, the obligation to guarantee the rights recognized in Articles 5.1 and 5.2 of the Treaty implies the duty of the State to investigate possible acts of torture or other cruel, inhuman or degrading treatment¹¹⁰. This obligation to investigate is strengthened by the provisions of Articles 1, 6 and 8 of the Inter-American Convention against Torture, which require the State to "take effective measures to prevent and punish torture within its jurisdiction", as well as to "prevent and punish other cruel, inhuman or degrading treatment or punishment"¹¹¹.

120. It is clear from inter-American jurisprudence that, under Articles 8 and 25 of the Convention, when the authorities are aware of a possible case of enforced disappearance or torture, they have a heightened duty to promote and develop an investigation including, as relevant to the present case: (i) initiating the investigation *ex officio* whenever there is a complaint or a founded reason to suspect that such crimes occurred; (ii) ordering and gathering evidence in accordance with the duty of due diligence; (iii) ensuring the independence and impartiality of the investigation; and (iv) removing any obstacles to the proper development of the investigation, among others.

121. With regard to the duty to initiate the investigation *ex officio*, the organs of the system have consistently pointed out that "whenever there are reasonable grounds to suspect that a person has been subjected to enforced disappearance, a criminal investigation must be initiated"¹¹². The same action is required when the authorities are aware of alleged acts of torture¹¹³.

122. Regarding the duty to order and gather the relevant evidence with due diligence, the Commission and the Court have specified that in cases involving human rights violations, the State may be held accountable for not doing so and that the investigation must explore all the possible avenues, leading to the identification of the perpetrators of said violation¹¹⁴. They have also expressed repeatedly that in certain cases,

¹⁰⁹ I/A Court H.R., Case of González et al. ("Cotton Field") v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 283.

¹¹⁰ IACHR. Merits Report 74/15. Mariana Selvas Gomez and others (Mexico). October 28, 2015. Para. 378; I/A Court H.R., Case of J. v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 27, 2013. Series C No. 275, para. 341.

¹¹¹ IACHR. Merits Report 74/15. Mariana Selvas Gomez and others (Mexico). October 28, 2015. Para. 378; I/A Court H.R., Case of J. v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 27, 2013. Series C No. 275, para. 341.

¹¹² IACHR. Complaint before the I/A Court H.R., in the case Rainer Ibsen Cárdenas and José Luís Ibsen Peña v. Bolivia. 12.529. May 12, 2009. Para. 275; I/A Court H.R., Case of Anzualdo-Castro v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, para. 65, and Case of Osorio Rivera and Family members v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 26, 2013. Series C No. 274, para. 178.

¹¹³ I/A Court H.R., Case of Cabrera García and Montiel-Flores v. Mexico. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 26, 2010 Series C No. 220, para. 135. Cf. Case of Gutiérrez Soler v. Colombia. Merits, Reparations and Costs. Judgment of September 12, 2005 Series C No. 132, para. 54; Case of Bayarri v. Argentina. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 30, 2008. Series C No. 187, above note 123, para. 92, and Case of Bueno Alves v. Argentina. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 164, para. 88.

¹¹⁴ IACHR. Report No. 25/09 Merits (Sebastião Camargo Filho) Brazil, March 19, 2009, para. 109; I/A Court H.R., Case of the "Street Children" (Villagrán-Morales et al.) v. Guatemala. Merits. Judgment of November 19, 1999. Series C No. 63, para. 230; I/A Court H.R., Case of J. v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 27, 2013. Series C No. 275, para. 344, citing I/A Court H.R., Case of Juan Humberto Sánchez v. Honduras. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 7, 2003. Series C No. 99, para. 128.

"the obligation to investigate entails the duty to direct the efforts of the state apparatus to unravel the structures that allowed for such violations, their causes, their beneficiaries and their consequences."¹¹⁵

123. The State should ensure that the investigating authorities¹¹⁶ and judicial authorities are independent and impartial. As for impartiality, they are expected to approach "the facts of the case by subjectively lacking any prejudice and, likewise, by providing sufficient guarantees of an objective nature that will remove any doubt that the individual or the community may have on their impartiality. Personal or subjective impartiality must be presumed unless there is evidence to the contrary. The so-called objective evidence, for its part, involves establishing whether the judicial authorities whose impartiality has been challenged provided convincing evidence that would allow the elimination of legitimate fears or justified suspicions of bias."¹¹⁷

124. With regard to the duty to remove all obstacles in the investigation, the Court has pointed out that States must remove all factual and legal obstacles contributing to impunity; as well as to use all the measures at its disposal to conduct the proceedings¹¹⁸.

125. Finally, the Commission and the Court have reiterated that the failure to investigate alleged human rights violations when there is evidence of participation by State agents "prevents the State from providing a satisfactory and convincing explanation of the alleged [facts] and substantiate the allegations of liability by means of appropriate evidence"¹¹⁹. In this way, the Court has taken this lack of clarification as a factor to be taken into account in the determination of the alleged involvement and consequent international responsibility. This topic will be discussed in detail later in this report¹²⁰.

2. Analysis of the Case

126. The Commission will now analyze the measures taken by the State in relation to the alleged forced disappearance and torture of Juan Arrom and Anuncio Martí, namely: (i) the first steps taken by state agents when they learned of the alleged disappearance; (ii) the initiation of the investigation; (iii) due diligence in the investigation; and (v) the propaganda spread by the State of Paraguay in which the alleged victims are described as "enemies of the people".

2.1 The initial steps taken by the authorities in connection with the disappearance

127. As established when addressing the facts of the case, the State became aware of the disappearance of Messrs. Arrom and Martí, through three means: the habeas corpus submitted by Juan Arrom's relatives on January 19, 2002; the news spread by the press as from January 20, 2002 and the habeas corpus filed by relatives of Anuncio Martí on January 23, 2002.

¹¹⁵ I/A Court H.R., Case of Rodríguez Vera et al. (The Disappeared from the Palace of Justice) v. Colombia. Judgment of November 14, 2014, para. 500.

¹¹⁶ IACHR. Report 13/15. Admissibility and Merits. Mayra Angelina Gutiérrez (Guatemala). March 23, 2015. Para. 112.

¹¹⁷ I/A Court H.R., Case of Barreto Leiva v. Venezuela. Merits, Reparations and Costs. Judgment of November 17, 2009. Series C No. 206, para. Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, para. 56.

¹¹⁸ I/A Court H.R., Case of Carpio Nicolle et al. v. Guatemala. Merits, Reparations and Costs. Judgment of November 22, 2004. Series C No. 117, para. 134.

¹¹⁹ IACHR. Report 13/15. Admissibility and Merits. Mayra Angelina Gutiérrez (Guatemala). March 23, 2015. Para. 162; I/A Court H.R., Case of J. v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 27, 2013. Series C No. 275, para. 353.

¹²⁰ IACHR. Report 13/15. Admissibility and Merits. Mayra Angelina Gutiérrez (Guatemala). March 23, 2015. Para. 162; I/A Court H.R., Case of J. v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 27, 2013. Series C No. 275, para. 354.

128. The Commission considers that the judges who heard habeas corpus actions did not act with the due diligence required in a case involving a possible disappearance, since they only ordered the police authorities to inform of the existence of arrest warrants in force and on the possible places of detention in which Arrom and Martí could be. Faced with a negative response on the deprivation of liberty, and positive one regarding the arrest warrants, the judges rejected the habeas corpus remedies almost immediately and prematurely - four days later in the case of Juan Arrom and a day later in the case of Anuncio Martí.

129. The judges who were aware of the habeas corpus made no additional effort to establish the whereabouts of the alleged victims. For example, no evidence was gathered in order to obtain clues on the whereabouts, no inspection was carried out in any places of detention or information was requested from other State entities. Due to these serious omissions, the Paraguayan State endangered Mr. Arrom and Mr. Martí's personal integrity, in view of the fact that, as indicated above, in the face of the knowledge of the disappearance of a person, whether by state agents or individuals, immediate search is the means of protection.

130. Moreover, in the present case, there were indications of participation by State agents and, therefore, that there might be a forced disappearance. Since one of the distinguishing features of enforced disappearance is the refusal to acknowledge the arrest and the activation of various concealment mechanisms, frequently in these cases state authorities deny that the person is in their custody¹²¹. Therefore, it is completely ineffective, in the face of a possible enforced disappearance, to exhaust the possibilities of searching through a habeas corpus, by requesting information on whether the person is formally deprived of liberty. In such circumstances, in order for a habeas corpus to be a timely and effective remedy to a potential enforced disappearance, the authorities must start from the premise that the person in question might be held in a clandestine manner and outside the institutional framework.

131. Along the same lines, the judicial authorities' grounds for rejection of the habeas corpus expose the ineffectiveness of this remedy. First, in relation to the Judge who argued that there was no certainty that Juan Arrom was deprived of his liberty and therefore there was no right requiring protection, the Commission considers that certainty of illegal detention should not be demanded from those filing a habeas corpus, because it is up to the Judge to investigate said hypothesis and rule out disappearance. Second, with regard to the Judge who stated that the rudiments to consider Anuncio Martí's detention as illegal were not met because the Prosecutor's Office had issued an arrest warrant against him, the Commission considers that the existence of an arrest warrant when the individual in question has not been formally detained on the basis of that order, can not be invoked as a justification for ceasing to inquire about a possible clandestine, illegal, detention typical of enforced disappearance. The Judge's reasoning seems to suggest that the existence of a warrant could justify any form of deprivation of liberty.

132. In view of the foregoing, the Commission notes that the judicial authorities did not act with due diligence in the first hours and days on which they became aware of the disappearance of Messrs. Arrom and Martí. In addition, the IACHR considers that the habeas corpus remedy was not effective, for the reasons stated.

2.2 The duty to investigate ex officio

133. The Commission notes that the judicial investigation was not initiated ex officio, but rather on the basis of the compliant filed by relatives of Anuncio Martí on January 24, 2002; and those filed by Messrs. Arrom and Martí themselves, after their liberation. Although it is true that the families and Messrs. Arrom and Martí exercised their right to resort to the authorities to denounce the disappearance as well as the alleged torture, this does not exempt the State from initiating and promoting the investigation.

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¹²¹ I/A Court H.R., Case of Gonzalez Medina and family v. Dominican Republic. Judgment of February 27, 2012, para. 161.

134. With respect to the disappearance, this obligation arose as from the moment that the authorities learned of it, as indicated above, through the submission of the habeas corpus remedies, on January 19 and 23, 2002, and the news in the press since January 20, 2002. It should be mentioned that the news in the press expose that high-ranking officials were clearly aware of the disappearance of Juan Arrom and Anuncio Martí¹²². Regarding possible torture, the obligation to investigate ex officio arose from the moment in which indicia was apparent and in any case as from the video coverage of the liberation of both, which showed visible injuries. In view of the State's omission to initiate the investigation of torture ex officio, Messrs. Arrom and Martí filed their complaints. The Commission emphasizes that, in the case of a serious violation of human rights, the alleged victims' complaint did not exempt the State from promoting an ex officio investigation.

135. Accordingly, the IACHR considers that the State of Paraguay violated its duty to initiate the investigation ex officio for the possible enforced disappearance and torture of Messrs. Juan Arrom and Anuncio Martí. Also, as the Commission will consider later, the omission to initiate an ex officio investigation continued and was decisive in the results.

2.3 Due diligence in the course of the investigation

136. With regard to due diligence, the Commission will rule on: (i) minimum standards of investigation and burden of proof; (ii) the actions of the authorities *vis-a-vis* the possible involvement of state agents; and (iii) the independence and impartiality of the authorities in charge of the investigation.

a. Minimum standards of investigation and burden of proof

137. The State had an obligation to investigate the facts with the utmost diligence in response to complaints on enforced disappearance and torture. The Public Prosecutor's Office was responsible for investigating the facts ex officio and exhaustively. However, on a recurring basis, the investigating body grounded its determinations - first of a request for dismissal and then of ratification of that request - in that the testimony of Juan Arrom and Anuncio Martí were not sufficient, or not corroborated. At the same time, the testimony of the state agents involved was taken, in most cases and without other investigative measures, as sufficient evidence to discredit the sayings of Messrs. Arrom and Martí.

138. In such cases, there are often contradictory versions of the facts, which cannot constitute an obstacle to the clarification of serious violations of human rights. It is up to the investigating body to take all necessary measures to seek the truth in the face of these contradictions and not to use them to justify halting the investigation. In neither of the two resolutions issued by the Public Prosecutor's Office it is indicated that all necessary measures had been taken to overcome the contradiction in the versions. This was essential for the Public Ministry to fulfill its obligation to investigate diligently. Thus, for the Commission, it is clear that the investigation was superficially carried out following some formalities without the intention to clarify the facts and impose the responsibilities, which is especially serious considering the existence of multiple indications of agents' participation state, an aspect that will be dealt with in detail below.

139. Similarly, the Public Prosecutor's Office did not comply with the minimum standards that a diligent investigation of allegations of torture must meet. The Istanbul Protocol¹²³ constitutes a guide that incorporates these minimum standards, which were ignored by the Paraguayan State *vis-a-vis* the allegations of torture suffered by Juan Arrom and Anuncio Martí. For example, there is no indication of measures taken by the State to document and describe the physical and mental injuries suffered by them, despite showing severe wounds. In fact, post-release medical examinations were carried out at the request of the victims

¹²² File with Press Articles, provided by petitioners; Annex 7. Article from Diario Noticias, entitled, "Presidente no garantiza si tienen (...)" Annex 8. Article from Diario La Nación, entitled "Fanego dice: "Si Arrom está muerto, es gravísimo"".

¹²³ United Nations. Istanbul Protocol. Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, August 9, 1999.

themselves and not as a measure adopted by the State in order to clarify what had happened. Nor does it appear that the State had given any follow-up to these determinations in the framework of the investigation.

140. The actions of the Paraguayan State did not take into account the difficulty of the victims to provide evidence under the circumstances they described. In addition to manifest breach of minimum standards of due diligence, it was unreasonable for the Public Prosecutor's Office to require the victims to prove their allegations beyond what emerged from their testimony, which was concrete, consistent and detailed. On the other hand, it was the complainants who provided the medical examinations that account for the consequences of the injuries, but that cannot by themselves point to the perpetrators. The same is true of enforced disappearance. If a person is being subjected to this serious violation that has as central element the elimination of all evidence, it is clear that the victims or their relatives will not be in a position to produce direct evidence of its occurrence. None of these facts, pertaining to the nature of the type of violation denounced in the present case, were taken into account by the Public Ministry.

141. Notwithstanding the foregoing, the Commission observes that on several occasions the victims and their lawyers did request the production of evidence that the Public Ministry denied by considering such evidence unnecessary. For example, the Commission notes that the complainants requested information on some of the accused since such evidence could be relevant to establish the background of several state agents in previous arrests similar to those suffered by Juan Arrom and Anuncio Martí and to clarify if there was an organized action by State agents to carry out this type of operations.

142. Thus, the Commission finds that the investigating body set the burden of proof on Messrs. Arrom and Martí, thereby failing to comply with their due diligence obligations in the investigation and imposing a procedural obligation on the victims that did not fall to them and which did not take into account the circumstances of the serious human rights violations that they claimed to have suffered.

b. Steps taken by the authorities regarding the possible involvement of State agents

143. In the present case, the Commission finds that two issues arise from the facts that deserve special attention by the investigating entity and were not properly addressed, namely: (i) evidence of State involvement in the disappearance and alleged torture of Juan Arrom and Anuncio Martí; and (ii) the victim's status as leaders of a political party as a possible motive for them to be singled out as targets of the alleged crimes.

144. With regard to the first, the Commission notes that, from the outset of the investigation, multiple elements pointed to the hypothesis that State agents participated in the disappearance and alleged torture of Juan Arrom and Anuncio Martí.

145. In the first place, Messrs. Arrom and Martí described in detail their version of events involving state agents from different institutions and ranks ranging from Ministers to members of the Police, prosecutors, among others. Juan Arrom said that police officer Antonio Gamarra told him to sign a document or he would die and that throughout the deprivation of liberty they told him that he would be delivered to the Prosecutor's Office once the injuries were healed. He also recognized police officer José David Schémbori as one of his torturers. He added that at some point he had contact with Minister Silvio Ferreira who in turn told him that he would meet with Minister Julio Fanego who would afford him guarantees. He also said that he saw Javier Casal, from the Judicial Investigation Center. Meanwhile, Anuncio Martí said that the day of the arrest was removed from his vehicle by four armed men who identified themselves as police officers in charge of the investigation of the kidnapping of Mrs. Bordón. He added that one night during his detention, he saw Antonio Gamarra arrive. He also noted that on one occasion he heard that Silvio Ferreira was interested in them. He pointed out that during the events Javier Casal and someone from the intelligence services were present.

146. In the second place, other testimonies in the file also point to State agents that in many cases coincide with those identified by Messrs. Arrom and Martí.

147. Luis Alfonso Resck, a resident near the place of detention, said that on the night of January 17, 2002, there was an incident near his house, involving vans of the Public Ministry and he identified Javier Casal in the operation. Amada Concepcion Cerquetti de Cáceres, also a resident near the place of detention, said that on the same date there was movement in the area, carelessness and individuals with weapons that the neighbors identified as police. Héctor Lacognata Zaragoza, a friend of Juan Arrom, said that Minister Ferreira's wife, Mrs. Gladis Maubet, told him that his friend was detained by a special group and that he would be brought to justice soon. He added that the lady told him that her husband had the situation under control. Mónica Laneri Ferreira, a journalist, said that when Mrs. Bordón was released, a colleague told her that they had captured the "leftist" but that the recommendation was not to make known the detention of Juan Arrom. He added that he asked the prosecutor Velásquez about the situation of Martí and that the prosecutor replied that his situation was "very negotiable" and that he should be brought before the Prosecutor's Office. The two sisters of Juan Arrom, Maria Auxiliadora and Cristina Arrom, indicated that on the day of the liberation, they saw a person leave and later they could identify him as José David Schémbori. Federico Anibal Emery, a journalist, said that he was present at the place where they were found and that he saw a person coming out whom, in a photo, he could recognize as José David Schémbori. Esteban Centurión Vega, the person in charge of the house where Juan Arrom and Anuncio Martí were found, said that the owner of the house, accompanied by Antonio Gamarra, asked him to vacate the place and got him another place to sleep¹²⁴. Víctor Colmán and Ana Rosa Samudio de Colmán, also mentioned in their statements to Antonio Gamarra, the prosecutor Cintia Lovera, the prosecutor Hugo Velasquez, José David Schémbori and Javier Casal. Finally, Teresita de Maria Rojas de Larriera said that as part of a search of her house, prosecutor Velásquez told her that her son in law - Juan Arrom - was going to appear.

148. In the third place, the Commission notes the information indicating that around the time of the disappearance, the State was seeking Juan Arrom and Anuncio Martí, who were held responsible for the kidnapping of Mrs. Bordón. Thus, according to the press statement issued by the Minister of the Interior of 20 January 2002, the "masterminds" of the abduction were being monitored. Days later, an arrest warrant was issued against Juan Arrom and Anuncio Martí for the abduction.

149. Fourthly, the Commission has a press release dated 2 February 2002, referring to the fact that the then Ombudsman complained that prosecutors Velásquez, Quiñonez and Lovera (two of them the previous statements) knew that Messrs. Arrom and Martí, were detained by clandestine groups, in spite of which, a complaint was not brought forward.

150. The Commission has already taken note of what the Public Prosecutor's Office described as contradictions in the evidence and has already analyzed and indicated that the lack of proof corroborating the allegations is mainly a consequence of the omissions that prevented the completion of a diligent investigation. As regards indications of involvement of State agents, the Commission observes in general terms that the information provided by Messrs. Arrom and Martí, as well as a number of other witnesses, is concrete, detailed and consistent with each other.

151. From all of the above, the Commission considers that there were reasons enough to justify a rigorous investigation into the possible participation of the State in the victims' disappearance and alleged torture. The information in the previous paragraphs shows elements of state responsibility at different levels and times throughout the sequence of events involving Juan Arrom and Anuncio Martí. However, the Commission observes that the Public Prosecutor's Office dealt with the multiple hypotheses of responsibility that arose, essentially through the simple confrontation of the testimonies of the victims and of the accused, giving a greater weight to those of the latter, which will be discussed below. Regarding this point, the Commission finds that the State did not promote a serious investigation through all available means, to clarify the truth regarding the alleged facts and to verify the indications of state participation.

¹²⁴ According to the case file, these individuals later retracted their statements, as situation that will be evaluated below.

152. Furthermore, it does not follow from the investigation that the State would have provided an alternative hypothesis that would explain consistently what happened while the petitioners alleged that they were missing, even when the authorities stated that they were watching over them.

153. With respect to the second issue, the Commission points out that the Public Prosecutor's Office never considered as a possible hypothesis in the case that the alleged violations of human rights were related to Juan Arrom's and Anuncio Martí's status as leaders of a political party, although they stated that, while being tortured, they were questioned about their political organization.

154. As the Court recently held in the case of *Acosta et al. v. Nicaragua*, "Due diligence must be assessed in relation to the need to determine the veracity of the versions or hypotheses about what happened, particularly if the alleged shortcomings in relation to all the proceedings carried out by the judicial authorities, had a decisive influence on the clarification of the circumstances of the case, on a legal classification of the facts according to what happened or in the final result of the process."¹²⁵

155. In the present case, the Commission notes that the deficiencies in the investigation carried out by the Public Prosecutor's Office directly affected the possibilities for clarifying the facts and determining responsibilities. Thus, the dismissal of the accused was subsequently requested and ratified, without duly exhausting the multiple hypotheses of state responsibility that arose from the beginning. Nor was a logical line of investigation initiated or exhausted in connection with the links of Messrs. Arrom and Martí with a particular political party. In addition, once the request for dismissal of the state agents involved was upheld, the Public Prosecutor's Office ceased all investigative activity on other possible perpetrators in connection to what happened to Juan Arrom and Anuncio Martí, although it was clear that they had been victims of human rights violations during the days of their disappearance.

c. Independence and impartiality in the investigation

156. The Commission emphasizes that one of the procedural guarantees that must be afforded is that of an impartial and independent investigation.

157. With regard to independence, the Commission notes that the accusations of Juan Arrom and Anuncio Martí involved Ministers, Police and Prosecutors. The file does not contain all the investigation made by the Public Prosecutor's Office, but it is emphasized that in the procedural documents to which the Commission had access, it is not evident that the State has taken measures to ensure that Prosecutors in charge of the case of Juan Arrom and Anuncio Martí were independent of the accused. In particular, it is noteworthy that the victims involved the Attorney General (whom the victims proposed to impeach) and, according to a brief from the lawyer of one of the victims, that same high-ranking official once stated that "the Public Prosecution does not investigate its own actions" (an assertion that was not contested by the State)¹²⁶.

158. The Commission observes that, in the face of reasonable doubt as to the independence of the Public Prosecutor's Office, the State did not provide information indicating that there were sufficient institutional safeguards for the victims to have independent State officials conducting the investigation. The State did not explain why the prosecutors involved in the case satisfied the requirement of independence despite being part of the same institution headed by one of the individuals challenged in connection with the disappearance and torture of Juan Arrom and Anuncio Martí, and despite being colleagues of other prosecutors whose performance was also under examination, for example, Prosecutor Velásquez and the other prosecutors whose removal was demanded by the Ombudsman.

¹²⁵ I/A Court H.R., Case of *Acosta et al. v. Nicaragua*. Judgment of March 25, 2017, para. 142. Cf. Case of *Luna López v. Honduras*, para. 167; and Case of *García Ibarra et al. v. Ecuador*, above, para. 139.

¹²⁶ Annex 57. Appeal filed by lawyer Diego Bertolucci, date illegible. Annexed to communication of the State, dated October 5, 2005.

159. With respect to impartiality and, specifically, subjective impartiality, the Commission observes that the manner in which the investigation was conducted and, in particular, the grounds of the Public Prosecutor's Office in its request for dismissal of February 8, 2003 and the ratification of 27 May 2003, shows a biased approach. In this regard, it is worth recalling the decisive impact of the Public Ministry's decision to accuse or not to accuse the individuals under investigation. The Commission considers that it is clear from the grounds offered by the Prosecutor's Office that the conduct of the investigation and the analysis of the evidence did not seek to clarify the truth of what had happened and to identify the individuals involved.

160. As indicated above, the evidence provided by the Public Ministry was mainly testimonial. In evaluating the available evidence, the Public Prosecutor's Office confronts the versions of Juan Arrom, Anuncio Martí and of the other individuals who testified of possible participation of state agents, against the statements of the officials under investigation. In that exercise of confrontation, it is clear from the decisions of the Public Prosecutor's Office that it gives credibility to the statements of the defendants without inquiring about their possible participation in the events denounced because it considers that there is insufficient evidence against them, which is particularly serious taking into account that many of the incriminating references against state agents were consistent with each other.

161. Thus, for example, in the ratification of the request for a dismissal, the Deputy Prosecutor concluded, in the case of José David Schémbori, mentioned in numerous statements already cited, that "the evidence by which it was intended to hold an indictment against the suspect does not present the sufficiency required to form a conviction directed to that decision", in contrast, he considered that the defendant's alibi hypothesis was fully corroborated. This line of argumentation is repeated on multiple occasions in the decisions of the Prosecutor's Office.

162. Another element that evidences the biased assessment of testimonies is that in the case of Juan Arrom and Anuncio Martí, their credibility is questioned as being an interested party in the process. Specifically, it is pointed out that "the condition of an interested party in the process of the victim impregnates him with a certain subjectivism that weakens his impartiality." However, with regard to the officials under investigation (also an interested party in the process), not only is credibility given to their sayings in order to cast doubt on the accusation but in some cases the Public Ministry even says, based on statements of the accused, that there exists a "state of unquestionable certainty" of their lack of responsibility or that "it is inferred with certainty", among other similar formulas.

163. In addition, the Commission notes that the Public Prosecutor's Office relied on a series of unproven speculations in order to exonerate the State agents. For example, when examining evidence against Javier Casal, the Public Prosecutor's Office argued that if Cristina Arrom's possible coercion of Esteban Centurión was certain, the credibility of the victims 'and family members' pronouncements was noticeably reduced, since it could reasonably be assumed the "fury" that they would profess about the accused. Likewise, with respect to the same person and to reduce credibility to what Arrom and Martí testified, the Public Prosecutor made another speculation indicating that "it is not unreasonable to suppose the existence of a policy of public discredit against the public official."

164. Another aspect that the Commission cannot ignore is that, as indicated above, much of the basis of the request for a dismissal is that the accused provided information on their activities in the days of the disappearance. In this regard, the Commission points out that some "alibis" to which the Prosecutor's Office granted full credibility were not sufficient to rule out the specific indications of participation of such individuals. The Commission considers that the work of the Public Prosecutor's Office is to investigate seriously what has been denounced in order to establish its veracity, including the adoption of diligent measures to corroborate it with other evidentiary elements. In addition, it considers that the fact that some of the State agents were on vacation or in family activities does not demonstrate that they were not present at any time during Messrs. Arrom and Martí deprivation of liberty, taking into account that the victims' testimony does not indicate that the state agents identified remained at all times guarding or torturing them. Likewise, it is not clear how the fact that one of the officials under investigation had been seen in other police

operations in the days of the disappearance, ruled out his presence in the place of detention of Messrs. Arrom and Martí.

165. In addition, the Commission points out that, given the circumstances of the alleged disappearance and torture, it was reasonable for the respondents not to indicate exactly the day on which the state agents they identified were present during their detention. It was incumbent upon the State to account for presence not only in the exact moments indicated by the alleged victims, but in the time frame of the disappearance.

166. The Commission explains that it is perfectly possible for such an investigation to end with a dismissal. What is not acceptable is that the dismissal takes place in a case of potentially serious human rights violations with possible state involvement, without exhaustively and impartially exhausting the lines of investigation necessary to exclude such participation and, in general, to achieve clarification of the facts with a view to avoiding impunity.

167. As indicated in this section, the Commission concludes that the investigation did not provide adequate safeguards on the independence of the authorities involved and that it was not conducted in an impartial manner.

2.4. Regarding the removal of obstacles in the investigation

168. With regard to the duty to remove obstacles to the proper investigation, the Commission finds that the State did not fulfill its duty for two reasons: (i) because it did not take adequate measures to ensure some measure of judicial control on the final decisions of the Prosecutor's Office that could hinder the continuity of the investigation of serious violations of human rights; and (ii) because its agents were not diligent in investigating the reasons for the retraction of two key witnesses, such as Esteban Centurión and Ángela Salinas.

169. First, the Commission notes that the criminal procedural rules prevented the accusation of the officials under investigation in case the Prosecutor's Office decided not to do so. In the specific case, the request of the Public Prosecutor's Office of definitive dismissal prevented the prosecution of the officials under investigation and terminated the process. When States become aware of serious violations of human rights, they must at all times respect the guarantees of those involved, but they must also protect the rights of victims to truth, justice, reparation and non-repetition. Therefore, by virtue of the gravity of the crime, States heightened duties to ensure that there is no impunity. When procedural rules impose limits on the continuity of investigations into serious violations of human rights in certain cases, the State must demonstrate that it has acted with the highest level of diligence before applying such procedural rules and, in any case, it must ensure some measure of judicial control against possible decisions of the Prosecutor's Office that may be incompatible with the Convention.

170. In the present case, and as indicated in the previous sections of this report, the Commission notes that the State did not demonstrate such a level of diligence, so that, in the circumstances of the case, the application of the procedural rules (Article 358 of the Code of Criminal Procedure) preventing the accusation in light of a ratified request for dismissal, became an obstacle to continuing with the investigation, and also to the participation of the victims in the process.

171. Second, the Commission considers that the Public Prosecutor's Office was not diligent in clarifying the facts because it failed to investigate the motives and circumstances of the change in the testimonies of Mr. Esteban Centurión and his wife, Angela Salinas, who were key witnesses to elucidate the

possible participation of State agents. They retracted their testimony claiming that they had been pressured by Juan Arrom's sister¹²⁷.

172. The Commission has indicated that "in the event of a statement or testimony in which there is any evidence or well-founded presumption that it was obtained by any kind of coercion, whether physical or psychological, the [national] courts must determine whether there existed such coercion "¹²⁸.

173. Particularly in cases of enforced disappearance in which it is common for cover-up mechanisms to be used to divert investigations, it is essential that in the face of any indication of acts of this nature, such as retraction, it is essential to find out whether any type of coercion took place, either in the first or second statement. The Commission has understood that this obligation is part of the duty of due diligence¹²⁹.

174. In view of the foregoing, the Commission considers that in the face of a substantial change of testimony regarding an important piece of evidence, the Public Prosecutor's Office should investigate the context and the reasons for the change of testimony of Messrs. Esteban Centurión and Ángela Salinas. Although they stated that they were pressured by the sister of Juan Arrom to give the first statement, this statement is not sufficient to rule out that the coercion could have arisen from the officials under investigation once they became aware that such testimony incriminated at least one of them, and that part of that coercion could have translated into stating that they had been pressured by relatives of the complainants.

2.5. The impact on the procedural safeguards of the propaganda spread by the State of Paraguay in which the alleged victims are described as "enemies of the people"

175. According to information provided by the petitioners and not disputed by the State, several state institutions issued a circular called "Enemigos del Pueblo Paraguayo," with the logo of the Public Prosecutor's Office, which included a photo of suspected criminals, including Juan Arrom and Anuncio Martí, accused of having a "criminal record" relating to the kidnapping of Mrs. María Edith Bordón. However, the Commission notes that there is no final decision or sentencing in the process against Juan Arrom and Anuncio Martí for the kidnapping of Mrs. Bordón, since they were found in default for not attending the judicial proceedings.

176. The Commission observes that the circular issued by the State, presenting them as guilty and unworthy of national citizenship, shows State prejudice against Juan Arrom and Anuncio Martí, since there is no criminal conviction against them. The Commission considers that their classification of "People's Enemies", because of the high level of implied hostility before an entire nation, can have an impact, not only in the process against them, but also in its life and personal integrity

177. In addition, it should be recalled that "the right to presumption of innocence requires the State not to informally condemn a person or to give judgment to the society, thus contributing to forming a public opinion, as long as there is no evidence of criminal liability under the law. This right can therefore be violated by both the judges in charge of the process and by other public authorities, so that they must be discreet and

¹²⁷ Annex 28. Request of the Public Prosecutor's Office for Final Dismissal, dated May 27, 2003. Annexed to communication of the State, dated October 5, 2005. In accordance with the ratification of the request for final dismissal of the Public Prosecutor's Office, the defendants recanted their accusations against Mr. Gamarra.

¹²⁸ IACHR. Report Cabrera Garía and Montiel Flores v Mexico. Para. 138. IACHR, Report on the Humans Rights Situation in Mexico, Chapter IV: The Right to Personal Liberty, OEA/Ser.L/V/II.100, Doc. 7 rev. 1, September 24, 1998, para. 320.

¹²⁹ IACHR. Complaint before the Inter-American Court, Case No. 11.324, Narciso González and others, Dominican Republic, May 2, 2010, para. 234.

prudent in making public statements about a criminal process, before the person has been tried and condemned."¹³⁰

178. The IACHR finds that the stigmatizing treatment by the Paraguayan State through multiple institutions --in which it is stated that Messrs. Arrom and Martí have a "criminal history", without having been convicted-- constitutes a violation of the principle of presumption of innocence.

179. The Commission also notes that one of the institutions sponsoring this type of prejudice is the Public Prosecutor's Office. This is further evidence of the lack of impartiality on the way in which investigations were conducted *vis-a-vis* Juan Arrom and Anuncio Martí. The Commission also considers that, because of the seriousness of the violations alleged by them, the investigation should continue beyond the responsibility of the officials investigated, in compliance with the obligation of the State to clarify allegations of serious human rights violations. The Commission emphasizes that in this scenario, there were no guarantees of impartiality in conducting the investigation because of the stigmatizing treatment and the obvious prejudice of the judicial entity towards Juan Arrom and Anuncio Martí.

3. Conclusion

180. In light of the foregoing, the Commission concludes that the State of Paraguay is responsible for violating the rights to judicial guarantees and judicial protection established in Articles 8.1, 8.2 and 25.1 of the American Convention in relation to Article 1.1 of the same instrument, to the detriment of Juan Francisco Arrom Suhurt and Anuncio Martí Méndez. Likewise, the State is responsible for violating the obligations established in Article 1b of the ICPT and Articles 1, 6 and 8 of the ICFDP.

C. The right to physical integrity¹³¹ and the prohibition of torture

1. General considerations on the prohibition of torture and cruel, inhuman or degrading treatment

181. The IACHR has emphasized that the American Convention prohibits the imposition of torture or cruel, inhuman or degrading treatment or punishment against persons under any circumstances. The Commission has stated that "an essential aspect of the right to personal security is the absolute prohibition of torture, a peremptory norm of international law creating obligations *erga omnes*."¹³² In addition, the IACHR has described the prohibition of torture as a *jus cogens* norm¹³³. The Court has repeatedly pointed out that "torture and cruel, inhuman or degrading treatment or punishment is strictly prohibited by international human rights law." The absolute prohibition of torture, whether physical or psychological, pertain to the domain of international *jus cogens*."¹³⁴

¹³⁰ I/A Court H.R., Case of Lori Berenson Mejía v. Peru. Merits, Reparations and Costs. Judgment of November 25, 2004. Series C No. 119. Para. 160.

¹³¹ Article 5 of the American Convention establishes: "1. Every person has the right to have his physical, mental, and moral integrity respected./2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person."

¹³² IACHR, Report on Terrorism and Human Rights, OEA/SER.L/V/II.116, Doc. 5 rev. 1, corr., October 22, 2002. Citing. IACHR, Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System, OEA/Ser.L/V/II.106, Doc. 40 rev., February 28, 2000, para. 118.

¹³³ IACHR, Report on Terrorism and Human Rights, OEA/SER.L/V/II.116, Doc. 5 rev. 1, corr., October 22, 2002. Citing IACHR, Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System, OEA/Ser.L/V/II.106, Doc. 40 rev., February 28, 2000. Para. 154.

¹³⁴ I/A Court H.R., Case of Bueno Alves v. Argentina. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 164, para. 76; I/A Court H.R., Case of the Miguel Castro Castro Prison v. Peru. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, para. 271; and I/A Court H.R., Case of Baldeón García v. Peru. Merits, Reparations and Costs. Judgment of April 6, 2006. Series C No. 147, para. 117.

182. According to the jurisprudence of the inter-American system, for a conduct to be classified as torture, the following elements must concur: (i) that it is an intentional act committed by a State agent or with his authorization or acquiescence; ii) that causes intense physical or mental suffering and, iii) that is committed with a specific object or purpose¹³⁵.

2. Analysis of the present case

183. The Commission will then analyze whether the three constituent elements of torture are met in this case. To begin with, it will be examined whether Juan Arrom and Anuncio Martí were subjected to intense physical or mental suffering; then will be studied if there was direct participation or authorization or acquiescence of state agents; to finally determine if it met a particular object or purpose.

184. With regard to intense physical or mental suffering, the Commission finds that the pieces of evidence in the file are consistent with each other and show that Juan Arrom and Anuncio Martí suffered intense physical and mental suffering.

185. Messrs. Arrom and Martí described the following physical abuse: strong blows to different parts of the body (for example, the neck, the head, the stomach); pressure on the testicles with an intensity that caused them to lose consciousness; and suffocation. Their accounts are consistent with the medical reports they have been given, which describe various injuries; bruises on the head, neck, thorax, abdomen, buttocks, penis, testicles, arms and legs; scar of recent excoriation in the head, ecchymosis in abdomen and lesions in limbs. In addition to recording the physical injuries observed, medical reports state that they suffered injuries with "natural" and "actual" blunt weapons. The evolution of the injuries, according to the medical reports, reasonably coincide with the days when Messrs. Arrom and Martí were missing.

186. In addition to the medical reports, the Commission has in its file photographs of Messrs. Arrom and Martí, which clearly show physical injuries consistent with their descriptions and medical reports.

187. As regards psychological abuse, the accounts of Messrs. Arrom and Martí are consistent with the assessments of psychiatric reports on the consequences of ill-treatment and the severe psychological suffering to which they alleged to have been subjected. For example, the Commission emphasizes that, according to the findings of facts, part of the psychological torture that Juan Arrom narrated was that they told him that he was missing, they simulated his execution and told him that they would kill him. In the same vein, Juan Arrom's psychiatric reports of 2006 and 2009 (years after the events reported) state that some of the consequences he endures, in part because of the alleged acts of torture and disappearance, include a state of alarm connected to overload of threatening stimuli, perception of stunning, persecutory perception, as well as nightmares, insomnia, periods of sadness, anxiety and fear of being detained again.

188. The Commission therefore finds that Messrs. Arrom and Martí were subjected to multiple forms of physical and psychological mistreatment. The Commission considers that such abuses described are serious and are liable to cause profound physical pain and extreme fear. In this way, the first constituent element of torture, is satisfied.

189. With regard to the participation of State agents, the Commission recalls that, according to the facts established and as previously explained in the analysis of the investigation, there were many indications of the participation of State agents in the alleged torture of Juan Arrom and Anuncio Martí. The Commission finds that the statements of Juan Arrom and Anuncio Martí are consistent with each other, since the description of time, mode and place that each one makes is congruent, in general with the story of the other. In addition to the multiple references in the testimonies to state agents, the Commission highlights the following additional elements that would point to varying degrees of state participation in the violations and which coincide precisely with the specific officials identified by Juan Arrom and Anuncio Martí:

¹³⁵ IACHR, Report No. 5/96, Case 10.970, Merits, Raquel Martín Mejía, Peru, March 1, 1996, section 3. analysis and I/A Court H.R., Case of Bueno Alves v. Argentina. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 164, para. 79.

(i) according to a statement by the Minister of the Interior Julio César Fanego published in the press, he was monitoring the leaders of Patria Libre, days before their alleged disappearance, for their possible responsibility in the kidnapping of Mrs. Maria Edith Bordón de Debernardi;

(ii) police officer Antonio Gamarra requested the Public Prosecutor's Office to issue an arrest warrant for Juan Arrom and Anuncio Martí, indicating that state agents were not only monitoring but looking for such persons;

(iii) there are several testimonies about an unusual activity in the neighborhood where Juan Arrom and Anuncio Martí claimed to have been captured, precisely at the moment of their detention, a context in which Mr. Resck claimed to have seen the director of the Center for Judicial Investigations, Javier Casal, who was also identified by Juan Arrom later;

(iv) Mr. Héctor Lacognata stated that the wife of the Minister of Labor Silvio Ferreira informed him that he was aware of the arrest of Juan Arrom and that he and Anuncio Martí would be delivered to the Prosecutor's Office;

(v) According to the press, Deputy Ombudsman Raúl Marín reported that the prosecutors, one of whom was named in other testimonies, were aware of the arrest of Juan Arrom and Anuncio Martí;

(vi) journalist Aníbal Emery indicated that in the context of the release of Messrs. Arrom and Martí, they saw Deputy Officer Jose David Schémbori, - identified by Juan Arrom as one of his torturers - in the house where Arrom and Martí were held;

(vii) the sisters of Juan Arrom identified José David Schémbori in the same context;

(viii) Víctor Colmán and Ana Rosa Samudio complained that state agents - specifically Javier Casal, Antonio Gamarra, José David Schémbori and prosecutor Velásquez whose removal was requested by the Ombudsman - broke into their house and told them that they had arrested Juan Arrom and Anuncio Martí;

(ix) journalist Monica Laneri said that she was informed that Juan Arrom had been arrested but that Commissioner Gonzalez Cuquejo denied it in the air, adding that she asked the same prosecutor Velásquez about the situation and that he said that the situation of Martí was "very negotiable"; and

(x) the statements - whose retraction was not properly investigated - of Esteban Centurión and Angela Estefanía Salinas involving police Antonio Gamarra

190. In similar cases, where the State's involvement in serious human rights violations is in dispute, the Commission has said that, in the face of indications of this nature that would imply a direct attribution of international responsibility to the State, the authorities in charge of the investigation must make every effort to clarify the possible responsibilities or links of state officials¹³⁶. In this way, the State was under an obligation to carry out a thorough, serious and diligent investigation to establish the truth or to disprove the indications of participation of State agents. Otherwise, the Commission has given probative force to the evidence not that has not been properly corroborated.

191. Along the same lines and after establishing the failure to meet due diligence in the investigation of state participation, the Inter-American Court has stated that it is:

¹³⁶ IACHR, Report No. 120/10, Case 12.605, Merits, Joe Luis Castillo González, Venezuela, October 22, 2010, para. 109.

(...) reasonable to give probative value to the series of indications arising from the file (...) on the participation of state agents in these events, particularly those managed by the state bodies responsible for the investigation that have not been distorted by the State. To conclude otherwise would mean allowing the State to rely on the negligence and ineffectiveness of the criminal investigation to evade its responsibility for the violation of Article 4.1 of the Convention¹³⁷.

192. The Court has also reiterated that the failure to investigate alleged violations committed against a person when there is evidence of participation by State agents "prevents the State from presenting a satisfactory and convincing explanation of the alleged facts and distorting the allegations on their responsibility, by appropriate evidence."¹³⁸ In this way, the Court has taken this lack of clarification as a factor to be taken into account to prove the alleged involvement and consequent international responsibility¹³⁹.

193. In the previous section of the present report, the Commission has already concluded that the Paraguayan State failed to comply with its obligation to investigate *ex officio*, with due diligence and in an independent and impartial manner what happened to Juan Arrom and Anuncio Martí, including the many indications of participation of state agents which are consistent in their essential aspects and which were recapitulated in detail both in this section and in the present. Consequently, the Commission considers that it is appropriate to give probative value to these elements, since, as indicated by the Court, to conclude otherwise would be to allow the Paraguayan State to rely on its non-compliance with its obligations under the American Convention

194. The Commission recalls that it is not for it to determine individual criminal responsibility but to determine whether there are sufficient elements which, taken as a whole, lead to the conclusion that the State was involved in the violations. The Commission has already recapitulated these elements, which are reinforced by the lack of their adequate investigation by the State.

195. Consequently, the Commission finds that the element relating to the participation of State agents in the alleged facts has been verified.

196. With regard to the object or purpose, the Commission observes that, according to the elements that point to State responsibility for which probative value has been granted, the acts of State agents were deliberate and, in accordance with testimonies of Juan Arrom and Anuncio Martí, the individuals involved in their detention had as their purpose that they self-incriminate in the kidnapping of Mrs. Maria Edith Bordón and sought to obtain information about their political organization, its members and the relationship with other organizations. In that sense, this requirement is also satisfied.

197. In accordance with the foregoing, the Commission concludes that the Paraguayan State is responsible for the commission of acts of torture, violating Articles 5.1 and 5.2 of the American Convention, in relation to Article 1 (1) of the Convention, in prejudice of Juan Francisco Arrom Suhurt and Anuncio Martí Méndez. In addition, the State violated Articles 1 and 6 of the Inter-American Convention to Prevent and Punish Torture.

¹³⁷ I/A Court H.R., Case of Kawas Fernández v. Honduras. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196, para. 97.

¹³⁸ I/A Court H.R., Case of J. v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 27, 2013. Series C No. 275, para. 353.

¹³⁹ I/A Court H.R., Case of J. v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 27, 2013. Series C No. 275, para. 354.

D. Rights to the recognition of legal personality¹⁴⁰, life¹⁴¹, physical integrity¹⁴² and personal liberty, and Article 1 (a) of the Inter-American Convention against Forced Disappearance of Persons¹⁴³

1. General considerations on enforced disappearance and its protection in Inter-American instruments

198. The consistent jurisprudence of the Inter-American System in cases of forced disappearance of persons indicates that it constitutes an unlawful act that generates a multiple and continuous violation of several rights protected by the American Convention and places the victim in a state of complete helplessness, involving other related crimes. The international responsibility of the State is aggravated when the disappearance is part of a systematic pattern or practice applied or tolerated by the State. It is, in short, a crime against humanity that implies a gross abandonment of the essential principles on which the Inter-American System is based¹⁴⁴.

199. Enforced disappearance violates the right to personal liberty and places the victim at serious risk of suffering irreparable damage to his or her rights to personal integrity and life. The Court has indicated that in cases of enforced disappearance, given the multiple and complex character of this serious human rights violation, its commission generates a specific violation of the right to recognition of legal personality¹⁴⁵.

200. Enforced disappearance has the following concurrent and constituent elements: (i) deprivation of liberty; ii) the direct intervention of state agents or their acquiescence; and (iii) refusal to recognize the detention or to reveal the fate or whereabouts of the missing person¹⁴⁶.

2. Analysis of the Present Case

201. Regarding deprivation of liberty, Juan Arrom and Anuncio Martí stated that they were deprived of their liberty on January 17, 2002, when they were detained near Marcos Álvarez's house. In the same sense Professor Resck and several inhabitants of the sector affirmed that there was an unusual activity

¹⁴⁰ Article 3 of the American Convention establishes: "Right to Juridical Personality// Every person has the right to recognition as a person before the law."

¹⁴¹ Article 4 of the American Convention establishes: "Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life."

¹⁴² Article 5 of the American Convention establishes: "1. Every person has the right to have his physical, mental, and moral integrity respected.//2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person."

¹⁴³ Ratified by the State on November 26, 1996.

¹⁴⁴ IACHR. Report No. 101/01. Case 10.247 et. al. Extrajudicial Executions and Forced Disappearances of Persons. Peru. December 10, 2001.. Para. 178; IACHR. Complaint before the Inter-American Court, Case No. 11.324, Narciso González et al., Dominican Republic, October 2, 2010, para. 103; IACHR. Complaint before the Inter-American Court, Case No. 12.517, Gregoria Herminia Contreras et al., El Salvador, June 28, 2010, para. 131; I/A Court H.R., Case of Goiburú et al. v. Paraguay. Merits, Reparations and Costs. Judgment of September 22, 2006. Series C No. 153. Para. 82; I/A Court H.R., Case of Gómez Palomino v. Peru. Merits, Reparations and Costs. Judgment of November 22, 2005. Series C No. 136. Para. 92; I/A Court H.R., Case of the Serrano Cruz Sisters v. El Salvador. Preliminary Objections. Judgment of November 23, 2004. Series C No. 118, paras. 100 to 106; I/A Court H.R., Case of Molina Theissen v. Guatemala. Reparations. (Art.63.1 of the American Convention on Human Rights) Judgment of July 3, 2004. Series C No. 108, para. 41.

¹⁴⁵ I/A Court H.R., Case of Anzualdo-Castro v. Peru. Preliminary Objection, Merits, Reparations and costs. Judgment of September 22, 2009. Series C No. 202, paras. 91-92; Case of Radilla Pacheco v. Mexico. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2009. Series C No. 209, para. 157.

¹⁴⁶ I/A Court H.R., Case of Gómez Palomino v. Peru, para. 97; Case of Ticóna Estrada et al. v. Bolivia. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 191, para. 55; and Case of Anzualdo-Castro v. Peru. Preliminary Objection, Merits, Reparations and costs. Judgment of September 22, 2009. Series C No. 202, para. 60.

at the moment in which the victims alleged to have been captured. In addition, Mr. Resck indicated that two persons were detained in that context. In the days following the arrest, relatives of both Juan Arrom and Anuncio Martí, filed habeas corpus, and reported in the press that their relatives were missing. In addition, there are several testimonies that show that on January 30, 2002 Juan Arrom and Anuncio Martí were released, which is also seen in the videos that the IACHR has in the file of the case.

202. In contrast, the State failed to present an alternative hypothesis on the situation of Juan Arrom and Anuncio Martí or on the place where they would have been during the days that they alleged to have been detained in clandestine places by agents of the State. The Commission considers that the State's assertion of the claim for the loss of Arrom's driving license does not call into question all the information concerning the deprivation of liberty.

203. With regard to the direct intervention of State agents or the acquiescence of State agents, the Commission refers in its entirety to the considerations set out in the previous section, specifically the second requirement for the legal classification of acts as torture

204. Regarding the refusal to acknowledge the detention, the Commission notes that both the police and the judicial authorities denied the arrest of the victims. When the next of kin of Juan Arrom and Anuncio Martí filed habeas corpus remedies in their favor, the judges limited themselves to requesting information from the entities responsible for keeping the records of detainees, which in turn reported that they had no record of their detention in any state detention center. As already analyzed, the judicial authorities, without any additional effort, accepted this refusal and quickly rejected the habeas corpus. In addition, the Commission notes that the national press widely publicized the disappearance of Juan Arrom and Anuncio Martí, and when questioned on the matter, senior state officials denied knowing of the arrest. Consequently, the Commission considers that the third element to consider the events as an enforced disappearance is satisfied.

205. On the basis of the foregoing, the Commission concludes that Juan Francisco Arrom Suhurt and Anuncio Martí Méndez were the victims of enforced disappearance by State agents between January 17 and 30, 2002, and that the State of Paraguay violated the rights established in Articles 3, 4.1, 5.1, 5.2 and 7 of the American Convention, in relation to Article 1.1 of the same instrument. Likewise, the State violated Article 1 (a) of the Inter-American Convention on Forced Disappearance of Persons. Although Articles 8 (1) and 25 (1) of the Convention also form part of the multifaceted nature of rights violated in cases of enforced disappearance of persons, in the circumstances of the instant case they have already been analyzed in the initial section of the legal analysis of this report.

E. The right to personal integrity with respect to the next of kin of Juan Francisco Arrom Suhurt and Anuncio Martí Méndez

206. The jurisprudence of the Court has stated that the next of kin of the victims of certain human rights violations may also become victims¹⁴⁷. Specifically, the relatives of the victims may be affected in their mental and moral integrity as a result of the particular circumstances experienced by their loved ones¹⁴⁸, and

¹⁴⁷ I/A Court H.R., Case of Cantoral Huamaní and García Santa Cruz v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167. para. 112; and I/A Court H.R., Case of Bueno Alves v. Argentina. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 164. para. 102.

¹⁴⁸ I/A Court H.R., Case of the Miguel Castro Castro Prison v. Peru. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, para. 335; I/A Court H.R., Case of Vargas Areco v. Paraguay. Merits, Reparations and Costs. Judgment of September 26, 2006. Series C No. 155, para. 96; and I/A Court H.R., Case of Goiburú et al. v. Paraguay. Merits, Reparations and Costs. Judgment of September 22, 2006. Series C No. 153, para. 96.

of the subsequent actions or omissions of the national authorities¹⁴⁹. In this cases, the lack of diligent investigation of the violations constitutes a source of suffering and anguish for the relatives of the victims¹⁵⁰.

207. In cases of enforced disappearance, the suffering derived from the uncertainty of the whereabouts of the disappeared person, as well as fear of the risk to his life and personal integrity, is presumed as a consequence of the very nature of this serious violation of human rights

208. In addition, in relation to Juan Arrom, the IACHR emphasizes that its sisters Marina, Cristina, Carmen and María Auxiliadora actively took up their search during the period of their arbitrary detention, which is why they filed a habeas corpus appeals. The Commission observes that the facts of the case show that at the time of the violations of his rights, Juan Arrom had a partner and children, who are presumed to have been affected in their psychological integrity.

209. In relation to Anuncio Martí, the Commission finds that its sisters Marina Cristina and Marta Ramona also actively took up their search and filed the habeas corpus petition. In addition, the Commission observes that from the information appearing in the file, Mr. Martí had a partner and a child of a few years of age, therefore, it is also presumed that they were affected by what happened.

210. The Commission also underlines the radical change that the family members suffered from the fact that Juan Arrom and Anuncio Martí had to leave the country and seek refugee status elsewhere.

211. In light of the foregoing, the Commission concludes that the State violated the right to physical and moral integrity enshrined in Article 5 (1) of the American Convention in relation to the duty of respect established in Article 1 (1). of the same to the detriment of the relatives of Juan Francisco Arrom Suhurt, namely, his partner and the children they had at that time and his sisters Cristina, Marina, Carmen and Maria Auxiliadora; as well as the relatives of Anuncio Martí Méndez, namely his partner and the son he had at the time when the events occurred and his sisters Marina Cristina and Marta Ramona.

VI. CONCLUSIONS AND RECOMMENDATIONS

212. The Commission concludes that the State of Paraguay is responsible for violating the rights to legal personality, life, personal integrity, personal liberty, judicial guarantees and judicial protection established in Articles 3, 4, 5, 7, 8 and 25 of the American Convention, in relation to the obligation established in Article 1 (1) thereof, to the detriment of Juan Francisco Arrom Suhurt and Anuncio Martí Méndez and their next of kin. In addition, the State violated the obligations contained in Articles 1a and 1b of the Inter-American Convention on the Forced Disappearance of Persons and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture

213. In the light of the foregoing conclusions, the INTER-AMERICAN COMMISSION ON HUMAN RIGHTS recommends to the State of Paraguay

1. To fully remedy the human rights violations declared in this report, both in material and non-material terms. The State must adopt measures of economic compensation and satisfaction

¹⁴⁹ I/A Court H.R., Case of Cantoral Huamaní and García Santa Cruz v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, para. 112; and I/A Court H.R., Case of Vargas Areco v. Paraguay. Merits, Reparations and Costs. Judgment of September 26, 2006. Series C No. 155. para. 96.

¹⁵⁰ I/A Court H.R., Case of Valle Jaramillo et al. v. Colombia. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, para. 102; I/A Court H.R., Case of the Rochela Massacre v. Colombia. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 163, para. 195; I/A Court H.R., Case of Heliodoro-Portugal v. Panama. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 12, 2008. Series C No. 186, para. 146; and I/A Court H.R., Case of García Prieto et al. v. El Salvador. Judgment of November 20, 2007. Series C No. 168, para. 102.

2. Provide the physical and mental health care necessary for the rehabilitation of Juan Arrom and Anuncio Martí, if it is their will and in a concerted manner. Taking into account that they are in Brazil, it is appropriate to provide them with a specific amount to cover the medical services that they must pay in that country.
3. To reopen and complete the criminal investigation diligently, effectively and within a reasonable time in order to fully clarify the facts, identify all possible responsibilities and impose corresponding sanctions in respect of human rights violations declared in this report
4. Provide non-repetition mechanisms that include
 - a. Strengthen the investigative capacity of the Public Prosecutor's Office, especially in cases of serious violations of human rights, to ensure the initiation of an investigation and due diligence in its development
 - b. Adopt the necessary measures so that the decisions of the Prosecutor's Office definitively closing the possibility of investigating serious human rights violations may be subject to judicial control
 - c. To take the necessary measures to ensure that, in the conduct of investigations and prosecutions, all authorities comply with the duty to respect the presumption of innocence and to avoid stigmatizing those who are being prosecuted and searched for detention.