BAR HUMAN RIGHTS COMMITTEE OF ENGLAND & WALES

INTERIM OBSERVATION REPORT

TRIAL OF SANTIAGO URIBE VÉLEZ

In the matter of "the Twelve Apostles"

AUGUST 2021

Kirsty Brimelow QC

and

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Produced by BHRC

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About the Bar Human Rights Committee of England and Wales

The Bar Human Rights Committee of England and Wales ("BHRC") is the international human rights arm of the Bar of England and Wales, working to protect the rights of advocates, judges and human rights defenders around the world. BHRC is concerned with defending the rule of law and internationally recognised legal standards relating to human rights and the right to a fair trial. It is independent of the Bar Council. BHRC's mission is to protect and promote international human rights through the rule of law, by using the international human rights law expertise of some of the UK's most experienced and talented human rights barristers. BHRC members are barristers called to the Bar of England and Wales, trainees, law students or academics. Our members include some of the UK's foremost human rights barristers and legal practitioners. They offer their services pro bono, alongside their independent legal practices, teaching commitments and legal studies. BHRC elects an Executive Committee every two years to lead on the policy, strategy and delivery of its work. They are supported by a full-time Project Officer, part-time Administrative Assistant, and an Advisory Board.

BHRC's objectives are to:

- uphold the rule of law and internationally recognised human rights norms and standards;
- support and protect practising lawyers, judges and human rights defenders who are threatened or oppressed in their work;
- further interest in and knowledge of human rights and the laws relating to human rights, both within and outside the legal profession, and
- support and co-operate with other organisations and individuals working for the promotion and protection of human rights.

As part of its mandate, BHRC undertakes trial observations to monitor proceedings where there are concerns as to the proper functioning of due process and fair trial rights. The remit of BHRC extends to all countries of the world, apart from its own jurisdiction of England and Wales. This reflects the Committee's need to maintain its role as an independent but legally qualified observer and critic.

Executive Summary

Between 2018-2021, Kirsty Brimelow QC, former Chair of BHRC, attended and observed the trial of Santiago Uribe Vélez at the *Juzgado de Circuito Penal Especializado de Antioquia* (specialised Penal Circuit Court) in Medellín. The hearings in 2021 were conducted remotely over Zoom due to the COVID-19 pandemic. Ms Brimelow QC was joined by BHRC member Camila Zapata Besso for the hearings in January 2021.

Mr Uribe is a Colombian landowner and cattle rancher, and the brother of the former President of Colombia and current senator, Álvaro Uribe Vélez. He is accused of directing an illegal armed group during the early 1990s, the "Twelve Apostles". The Twelve Apostles was alleged to have been set up with the aim of killing those considered by them to be 'social undesirables', including sex workers and drug addicts, as well as those perceived to be linked to 'subversive groups', such as FARC guerrillas, operating in the area.

This is an interim report. Proceedings have concluded and at the time of writing this report the final judgment is pending. This report is published to support the justice process in Colombia and to keep awareness and focus upon the protection of judges, witnesses, and lawyers as this case and other cases of utmost seriousness progress. All observations are subject to revision pending the learned Judge's judgment. The delegation remains open to any comments from any parties in these proceedings in order to better inform its final report.

BHRC remains concerned as to the stigmatisation of human rights lawyers in Colombia and the impunity with which accusations are made against them. Being a human rights lawyer has always been a high-risk profession in Colombia. That is particularly so for lawyers who seek justice for victims of the armed conflict against high-ranking public officials. They often receive threats to their life and are publicly vilified in the media by state representatives as being linked to guerrilla organisations. This was true of Dr Daniel Prado Albarracin who represented alleged victims in these proceedings. Polarisation and stigmatisation of lawyers were issues observed by the delegation throughout the hearings observed. This stigmatisation fuels a culture of risk for lawyers and impunity which the profession itself should be concerned to alleviate.

The protection of judges, lawyers and witnesses also remains a concern. There appeared to be little structured protection for witnesses in this case and there was a reported history of threats towards and killing of witnesses by unknown actors.

At all stages, the observers intended to function as a physical reminder of the importance of a fair process for the accused, judicial independence, and unacceptability of victimisation of those working within the criminal justice system. The presence of the observers underscored the importance that witnesses, lawyers, court officials and judges should be able to carry out their roles without threats to their lives and they emphasised when the opportunity arose that those at risk should be adequately protected.

The defendant appeared to be well represented and appeared to have no difficulty accessing his lawyers. The defendant was tried in a specialist court with a dedicated statute and procedure. The delegation awaits full detail of the procedure and rulings that resulted in three key prosecution witnesses not giving live evidence, as well as the admission of significant amounts of hearsay evidence.

There was a significant delay in bringing this case to trial, and the investigation was pursued in part by private civilians. This has meant that much of the case has already been argued in the public arena. The adjournments in the case itself added to the delays associated with this trial, although the delegation notes that the adjournment applications they observed were all made by the defence.

The procedural framework for these proceedings appeared to be loose, particularly with regard to the content and length of submissions and the granting of adjournments. The delegation observed all parties making legal submissions in vacuums from each other, without reply and at differing times. It appeared to the delegation that the lack of procedural rigour makes the task of reaching judgment more onerous for the trial judge.

Further, Mr Uribe was not charged with crimes against humanity, but with the domestic crimes of aggravated conspiracy to commit crime and aggravated homicide. However, the *fiscalía* submitted in its *'resolución de acusación'* that the prosecution of Mr Uribe would not be time-limited because the conduct in question amounted to crimes against humanity. Even if only relevant to the question of limitation, this issue was not addressed in oral argument until the

end of the trial. BHRC emphasises that it is critical for an accused to know the crime they are alleged to have committed, and parties to know the legal requirements to prove or defend the alleged crime(s). This is particularly so for such serious offences and where there is significant public interest. This ensures that the issues are properly ventilated in evidence and that the defence has adequate time to address the case against them. It also avoids any misconception on the part of victims and the public that conduct which could potentially amount to an international crime has not been properly prosecuted.

The delegation notes the strength of support for the international trial observation from all parties and from the Judge.

A final report with specific findings and final recommendations will be published once judgment has been given.

Introduction

1. Santiago Uribe Vélez ("Mr Uribe") is a Colombian landowner and cattle rancher, and the brother of the former President of Colombia and current senator, Alvaro Uribe Vélez.

2. From 29 January 2018 to 10 February 2021 Mr Uribe was tried in the *Juzgado de Circuito Penal Especializado de Antioquia* (specialised Penal Circuit Court)[1] before Judge Jaime Herrera Niño on the following charges:

   "*Based on the witness and documentary evidence, the citizen SANTIAGO URIBE VELEZ is accused of forming and directing, from his hacienda La Carolina, which is in the jurisdiction of the Yarumal municipality in Antioquia, in the early nineties, an illegal armed group that was set up with the purpose of carrying out a policy of exterminating those considered to be social undesirables, and to eliminate militants and supporters of subversive groups that operated in the region, a purpose for which they relied on the participation, by action or omission, of members of the National Police and members of the military intelligence services.*

   In addition, this concerns the criminal enterprise that initially fulfilled its objectives at the hands of HERNÁN DARÍO ZAPATA, alias "Pelo de Chonta", and "Rodrigo", lieutenants of the illegal armed group who were in charge of its urban and rural military faction, who with the support of the Police Force, extended their criminal activities to the municipalities of Santa Rosa, Valdivia, Campamento, Angostura, Briceño, Gómez Plata and Carolina del Príncipe; this being the context in which they perpetrated the murder of CAMILO BARRIENTOS DURAN, who they considered to be a guerrilla helper."[2]

[1] The *Juzgado de Circuito is* a branch of the regular courts. Its jurisdiction is defined by Article 35 of the Colombian Code of Penal Procedure (Law 906/2004) and covers very serious crimes including genocide, torture, war crimes and aggravated homicide. Its Judges are nominated by a higher court (see Article 131 of Law 270/1996).

[2] Translation is authors' own. The 'Resolución de acusación' dated 21 October 2016 (Spanish) can be accessed here.

3. “Los Doce Apóstoles” (“the Twelve Apostles”) were asserted by the prosecution to be an illegal armed group which was set up with the aim of killing those considered by them to be social undesirables, including sex workers and drug addicts, as well as those perceived to be linked to ‘subversive groups’, such as FARC guerrillas, operating in the area. It was alleged to be a paramilitary group, working with members of the national police, which operated as a death squad in Antioquia in north-western Colombia from 1988 to 1997. It was alleged that Mr Uribe’s *hacienda* (large estate), La Carolina, provided a meeting point and training ground for “the Twelve Apostles”.

4. The allegations were that the paramilitary group killed over 500 people, although Mr Uribe was charged only with one specific murder. He was accused of being part of a criminal enterprise that murdered a bus driver, Camilo Barrientos Durán (“Mr Barrientos”), in Yarumal, Antioquia in February 1994. The motivation was alleged to be that Mr Barrientos was aiding guerrillas.

5. The allegations against Mr Uribe have a long and protracted history. The original allegations against him date back to 1995 when the prosecution opened an investigation into “the Twelve Apostles”. On 3 November 1996, Mr Uribe was made a suspect in the investigation. In 1999, the prosecution concluded that the evidence was insufficient, and closed the case. On 15 April 2010, Juan Carlos Meneses Quintere (“Mr Meneses”), a former Commander of the Police in Yarumal, Antioquia, spoke to a group of human rights defenders in Argentina in relation to “the Twelve Apostles”, for whom he said he had worked. He stated that the paramilitary group was led by Mr Uribe. Mr Meneses eventually gave an affidavit to a similar effect to the *fiscalía general de la nación* (general prosecutor of the nation) of Colombia. The prosecution reopened the investigation, and, in February 2016, Mr Uribe was arrested and subsequently charged.

6. The defence challenged whether “the Twelve Apostles” had actually existed, and Mr Uribe denied that he played any part in “the Twelve Apostles” or in any paramilitary death squad. Mr Uribe gave evidence and stressed that he was innocent of the charges. He also advanced that there was a political motivation to his prosecution, driven by those who were seeking to attack his brother, Alvaro Uribe Vélez, through himself. Alvaro Uribe Vélez was one of Antioquia’s senators and Governor of Antioquia during the alleged operations of “the Twelve Apostles” death squad.

Terms of Reference and Acknowledgments

7. The aim of this observation was to monitor whether the process and procedure of the trial was in accordance with international fair trial and due process standards. All BHRC observers are entirely independent of any party to the trial and the observations and conclusions are based on independent and impartial observations.

8. At all stages of its observation, the observers intended to function as a physical reminder of the importance of a fair process for the accused, judicial independence, as well as the unacceptability of victimising those working within the criminal justice system. It underscored the importance of witnesses, lawyers, court officials and judges being able to carry out their roles without threats to their lives and emphasised when it had the opportunity that those at risk should be adequately protected.

9. This is an interim report. Proceedings have concluded and at the time of writing this report the final judgment is pending. In light of the length of time these proceedings have taken, this interim report is published in the interests of transparency, so all those involved in the case can see the basis of its observations, prior to, and irrespective of, the final judgment.

10. The conclusions of this report may be subject to change once the judgment is available. Likewise, any comments by any parties to the case will be further considered.

11. The observation delegation was led by Kirsty Brimelow QC ("Ms Brimelow QC) who observed hearings on 3 and 4 December 2018, 3 and 4 April 2019, 27 May 2019, 6 to 8 November 2019, 26 to 29 January 2021 and 8 to 10 February 2021. She was joined by Camila Zapata Besso ("Ms Zapata Besso") from 26 to 29 January 2021. The hearings in January and February 2021 were conducted over Zoom for all parties and observers. In 2018 and 2019 Ms Brimelow QC attended the hearings in person in Medellín, Colombia.

12. Ms Brimelow QC's practice includes criminal law and international human rights law. She practises at the highest levels before the courts in the UK and internationally. She is the former chair of BHRC and the head of the International Human Rights Team at

Doughty Street Chambers. She is recently elected Vice Chair of the Criminal Bar Association of England and Wales (incoming Chair in 2023). Ms Zapata Besso is a barrister who practises in international human rights and public law at Doughty Street Chambers and is a member of BHRC.

13. BHRC's observers was joined at various times by various lawyers representing another organisation, the Colombian Caravana. The following attended one or more hearings: Professor Sara Chandler QC (Hon), director of the Colombian Caravana; Sue Willman, solicitor and partner at Deighton Pierce Glynn and Chair of the Human Rights Committee of the Law Society of England and Wales; Alexandra Zernova, a human rights consultant; Rachel Rushby, a criminal law solicitor and Edward Abedian, a barrister, as well as Ana Bermejo Arteagabeitia, a representative of the Spanish NGO Observatorio Internacional de Abogados en Riesgo and member of the Bizcaia Bar Association. BHRC's observers are grateful to them for assistance at various meetings. In addition, Peace Brigades International ("PBI"), both in Colombia and in the UK, assisted in providing information and working to arrange meetings. The Alliance for Lawyers at Risk supported the observation.

14. The authors of this report are grateful for the valuable research of David Neale of Garden Court Chambers and Rizina Yadav of Stanford University and for the editing assistance of Josie Fathers, Project Officer of BHRC, Jodie Blackstock, Treasurer and Executive Committee Member of BHRC and Legal Director at JUSTICE and Dr Theodora Christou, Executive Committee Member of BHRC.

15. BHRC and the authors take this opportunity to express their gratitude to Clifford Chance Solicitors who assisted in translating this text into Spanish. They worked pro bono. Thanks go to Kelwin Nicholls of Clifford Chance Solicitors and the Alliance for Lawyers at Risk for facilitating this translation.

16. The observation delegation was also guided by the following:

- International Commission of Jurists, 'Trial Observation Manual for Criminal Proceedings: Practitioners Guide No 5' (2009).

- United Nations Office of the High Commissioner for Human Rights, 'Manual on human rights monitoring, chapter 22: trial observation and monitoring the administration of justice' (2011).
- Organisation for Security and Co-operation in Europe, 'Trial monitoring: a reference manual for practitioners' (2012).

Previous work by BHRC in Colombia

17. BHRC has been involved in human rights work in Colombia since the 1990s, sustaining strong links with the human rights community and legal profession in Colombia through working with Colombian lawyers, human rights activists, NGOs and state governments.

18. In 2009, BHRC provided training and supported capacity-building on human rights law for lawyers, judges, trade unionists, journalists, NGO leaders, academics and students in Colombia, focusing on the rule of law, access to justice, extrajudicial executions and enforced disappearances, impunity, indigenous peoples and minority rights, freedom of assembly and expression, and international and regional enforcement mechanisms.

19. BHRC has intervened in litigation before the Criminal Cassation Chamber of the Colombian Supreme Court of Justice in a case involving the imprisonment and fair trial rights of a human rights defender,[3] and before the Colombian Constitutional Court in cases involving the human rights of indigenous communities[4] and proposed reforms to the jurisdiction of Colombia's military courts.[5]

20. In 2016, BHRC welcomed the historic peace agreement between the Government and the FARC with its imperatives of peace and transitional justice. Ms Brimelow QC, then the Chair of the BHRC, was invited by the Colombian government to the signing of the peace accord at Cartagena. This marked the ostensible end of decades of internal armed conflict between the Colombian government, the FARC and paramilitaries. The armed conflict had been accompanied by decades of impunity which has allowed serious human rights violations to go unpunished, undermining attempts for democracy and

[3] BHRC, *Amicus curiae* brief dated 20 July 2014, accessible here.
[4] BHRC, *Amicus curiae* brief dated 29 July 2011, accessible here.
[5] BHRC, *Amicus curiae* brief dated 17 August 2015, accessible here.

stability to fully flourish. BHRC continues to advocate for the rights of those who have suffered and seek justice and supports a new context of stability and sustainable peace.

The case against Santiago Uribe Vélez

Background to the case

21. On 15 December 1995, Albeiro Martínez Vergara disclosed to the *fiscalía* (prosecutor's office) in Medellín that there was an armed group of paramilitaries in Yarumal, Antioquia, who called themselves "the Twelve Apostles". He stated that they operated with the support of the police and military, and had the mission of exterminating those deemed as "social undesirables". The *fiscalía* conducted an investigation which involved interviewing various inhabitants of the area.

22. On 3 November 1996, Mr Uribe was made a suspect in the investigation. He was well-known in the town for running a *hacienda* called 'La Carolina', and for being the brother of Álvaro Uribe Vélez, then-governor of Antioquia. In his interview Mr Uribe said he knew nothing about "the Twelve Apostles" or their activities. Three years later, in 1999, the *fiscalía* concluded that the account of a vulnerable witness which linked Mr Uribe to "the Twelve Apostles" was too weak, and ceased its investigation, closing the case. The decision to close the case was confirmed on appeal.

23. However, eleven years later, on 15 April 2010, Juan Carlos Meneses Quintero, a former Yarumal police commander, gave information before an informal commission headed by the Nobel Peace Laureate Adolfo Pérez Esquivel in Argentina,[6] that "the Twelve Apostles", for whom he had worked, had been led by Mr Uribe. On 22 June 2010 he gave an affidavit at the Colombian Consulate in Buenos Aires. He later made an affidavit before the *fiscalía general de la nación* (general prosecutor of the nation) of Colombia.

24. The *fiscalía* reopened the investigation on 23 September 2013 and arrested Mr Uribe on 29 February 2016 on suspicion of aggravated conspiracy to commit crime and aggravated homicide. On 21 October 2016, Mr Uribe was accused formally before the Supreme Court. The charges were upheld on appeal. The '*resolución de acusación'* in

[6] el Premio Nobel de la Paz Adolfo Pérez Esquivel, director del Servicio Paz y Justicia; Carlos Zamorano por la Liga Argentina por los Derechos del Hombre, el juez de la Cámara de Federal de Apelaciones en lo Criminal y Correccional Eduardo Freiler, el presidente consultivo de la Asociación Americana de Juristas, Beinusz Smuckler, y el representante de la Asociación Americana de Juristas, Ernesto Moreau.

Spanish can be accessed online.[7] Mr Uribe was detained for a period following his arrest and this may be considered in more detail in the final report.

25. As part of the proceedings, there were several witness testimonies attesting to the existence of a paramilitary group operating by the name of "the Twelve Apostles" in Yarumal in the 1990s, including the testimonies of inhabitants and the former mayor, Javier de Jesús Orrego Arango. The name '"the Twelve Apostles"' refers to the accounts of various witnesses that one of its leaders was a priest.

Key prosecution witnesses and defence response

26. There were four key prosecution witnesses in the case against Mr Uribe. The first was **Alexander de Jesûs Amaya Vargas** ("Mr Amaya Vargas"), a former police officer, who in 1996, under condition of anonymity, testified that Mr Uribe had headed "the Twelve Apostles". Later, with his identity known, he reaffirmed this testimony. He stated that he acted as a guard to Mr Meneses and attended a meeting with Mr Meneses, Mr Uribe and other members of the paramilitary group at La Carolina.

27. Mr Amaya Vargas is currently serving a 40-year prison sentence, which the defence asserted was the reason why he gave evidence against Mr Uribe. The defence argued that the version of his testimony given under condition of anonymity differed from the testimony given under his own name. The *fiscalía* argued that the variations were understandable given that memories can fade over the passage of time. In January 2018 Mr Amaya Vargas refused to expand on his testimony to the prosecution, saying he "*could not remember anything now*".[8] He did not give live evidence against Mr Uribe at the trial.

28. The second key prosecution witness was **Mr Meneses**. He stated that he was appointed as the police commander in Yarumal in January 1994. When he arrived at Yarumal to assume his role, the police captain Pedro Manuel Benavides ("Captain Benavides") informed him that a paramilitary group had been formed which was funded by Mr Uribe, and that he had been ordered to collaborate with them to continue the social

[7] See here.
[8] La Silla Vacía article, 'Los patrones que comparten los testigos de los hermanos Uribe Vélez' (26 January 2021), accessible here.

cleansing that was already underway. Mr Meneses stated that he was told he would be paid for assisting in the project, but that if he refused he would risk losing his job. Mr Meneses stated that on 7 or 8 January 1994 he met with Mr Uribe at La Carolina to discuss how his work would be carried out with the paramilitaries.

29. However, Mr Uribe gave evidence that from 7 January 1994 to after 8 January 1994 he was at the Feria de Manizales, which is 300 kilometres from Yarumal. He produced newspaper cuttings, photographs and witnesses to support his account. Mr Uribe also raised that Mr Meneses was unable to remember any details about his physical appearance, despite saying that he had met with him at least three times, including the fact that Mr Uribe is missing various fingers due to a childhood accident, which is a memorable physical feature.

30. Mr Meneses' explanation was that the meeting might have occurred on another date, or alternatively that Mr Uribe had returned to La Carolina for the meeting and then gone back to the Feria (by helicopter).

31. Mr Meneses had provided a recording he secretly made of a conversation between himself and Captain Benavides, where Captain Benavides told him that both of them were working for Mr Uribe. The defence contested the admissibility of this evidence as it was recorded secretly (alleging illegality) and also challenged its reliability on the basis that it may have been doctored.

32. Mr Meneses also stated that Mr Uribe murdered the conductor of a municipal bus, Mr Barrientos, on 25 February 1994, on suspicion that Mr Barrientos was a former guerrilla member. Mr Barrientos' body then was tied to a police car and paraded around the town. The defence did not dispute that Mr Barrientos was killed in the immediate vicinity of La Carolina, but stated that Mr Uribe denied involvement and conveyed information at the time that his employees had acted in self-defence following an attack from the bus driver. Photographs of damage to La Carolina following gunfire were located (it appears) in the original investigation file (there was no dispute by the defence that they were photographs of La Carolina at the relevant time).

33. Mr Meneses had previously pleaded guilty to having murdered Mr Barrientos through the work of "the Twelve Apostles". The relevance and significance of this guilty plea

was not addressed by the defence or the prosecution and the Judge did not request assistance as to how he should treat this conviction when considering the evidence of Mr Meneses and the defence assertion that Mr Barrientos had been killed in self-defence by employees of La Carolina (when Mr Uribe was absent).

34. The third key prosecution witness was **Eunicio Alfonso Pineda Luján** ("Mr Pineda"), who gave evidence against Mr Uribe from Spain, where he had travelled with the assistance of the NGO Justicia y Paz. Mr Pineda is a farmworker with little education. He stated that he observed conversations at La Carolina where Mr Uribe would meet with armed men and order that crimes be committed. He stated that he had fled when he heard that he was in line to be conscripted. He later returned, after which he was intercepted by the paramilitaries who tortured him, removed his teeth and shot at him. He again managed to escape.

35. The defence maintained that Mr Pineda could not be relied upon as a witness due to his mental health. It was asserted that he suffered from a form of schizophrenia, for which he has been medicated as an inpatient on several occasions. The *fiscalía* ordered two separate medico-legal expert reports which concluded that Mr Pineda suffered from extreme stress caused by his traumatic experiences but had capacity to give (truthful) evidence.

36. The final key prosecution witness was **Olguan de Jésus Agudelo Betancur** ("Mr Betancur"), an ex-paramilitary and admitted lower member of "the Twelve Apostles", who stated he saw Mr Uribe meeting with senior paramilitaries.

37. The prosecution also relied upon hearsay evidence from paramilitary leaders Diego Fernando Murillo, Daniel Rendón Herrera and Pablo Hernán Sierra who stated that they had heard others say that Mr Uribe was part of "the Twelve Apostles". The evidence was admissible, but the defence challenged its weight and argued that this evidence had been fabricated to get revenge against Álvaro Uribe Vélez, who during his time in office as President of the Republic of Colombia had ordered the extradition of several paramilitary leaders to the United States.

38. Several other witnesses who gave evidence to the *fiscalía* that linked Mr Uribe and "the Twelve Apostles" were not willing to waive their anonymity for the trial.[9] As a result, their evidence did not form part of the case against Mr Uribe.

39. The delegation was aware of reports that in November 2017 a plan had been uncovered to murder prosecution witness Mr Betancur.[10] A witness in a concurrent case against Álvaro Uribe Vélez, named Carlos Enrique Areiza Arango, was murdered in April 2018 despite the fact that he had been granted protection by the Colombian state.[11]

The legal professionals

40. The trial was presided over by Judge Jaime Herrera Niño ("the Judge"), the First Specialised Judge of Antioquia at the Administrative Centre in Alpujarra.

41. The defence was led by lawyer Dr Jaime Granados Peña ("Dr Granados") and his junior was Juan Felipe Amaya. The *fiscalía* (prosecutor) was led by Dr Carlos Iban Mejia Abello and the *procuraduría* (attorney-general) was led by Dra Lilliana Marin.

42. The victims were represented by Dr Daniel Prado Albarracín ("Dr Prado") and Dr Orlando Bernal Morales ("Dr Bernal").

43. Of interest in terms of gender balance across the professionals in the case, was that all lawyers in the case were male except for the lead for the *procuraduría*, who was a woman leading two men.

Risks to the Security of Human Rights Lawyers

44. An important concern associated with trials of this kind in Colombia is the risk to human rights lawyers as a specific group. Being a human rights lawyer has always been a high-risk profession in Colombia. That is particularly so for lawyers who seek justice

[9] The New York Times article, 'Tres testigos vinculan a la familia Uribe con paramilitares' (8 July 2019), accessible here.
[10] El Espectador article, 'El testigo que involucra a "Julián Bolívar" con los 12 Apóstoles' (6 February 2018), accessible here.
[11] Human Rights Watch article, 'Colombia: Witness Linked to Uribe Probe Murdered' (26 April 2018), accessible here.

for victims of the armed conflict against high-ranking public officials. They often receive threats to their life and are publicly vilified in the media by state representatives as being linked to guerrilla organisations.

45. According to the Special Rapporteur on the situation of human rights defenders, Mary Lawlor, in her December 2020 report titled 'Final warning: death threats and killings of human rights defenders', Colombia has the highest death rate for human rights defenders in the Latin America and Caribbean region, with 397 killed between 2015 and 2019 according to OHCHR statistics.[12]

46. Dr Prado was granted precautionary measures by the Inter-American Commission on Human Rights ("IACommHR") in November 2017 in connection with his work on behalf of victims of crimes allegedly committed by "the Twelve Apostles".[13] BHRC co-wrote with other legal associations to the Colombian president in December 2018 about ongoing concerns for his safety.[14]

[12] UN Human Rights Council, 'Final warning: death threats and killings of human rights defenders Report of the Special Rapporteur on the situation of human rights defenders, Mary Lawlor' (24 December 2020) UN Doc A/HRC/46/35, §41.
[13] *In the matter of Daniel Ernesto Prado Albarracín*, Precautionary Measures in respect of Colombia, IACommHR resolution 47/2017 (20 November 2017).
[14] BHRC, letter dated 6 December 2018, accessible here.

Observations

47. The trial hearings started on 29 January 2018 and ended on 10 February 2021. BHRC's observation started on 3 December 2018 when the prosecution evidence had already been heard and the defence evidence was due to start. The observers understand that by this stage in the proceedings, Mr Meneses had refused to give oral evidence against Mr Uribe because he said the *fiscalía* was not keeping its promises as regards due process and keeping him safe.[15] Mr Pineda also did not give evidence in court.

48. The observers attended the following hearings:

- 3 and 4 December 2018;
- 3 and 4 April 2019;
- 27 May 2019;
- 6 to 8 November 2019;
- 26 to 29 January 2021 (remote due to the COVID-19 pandemic); and
- 8 to 10 February 2021 (remote due to the COVID-19 pandemic).

49. Throughout the in-person hearings Ms Brimelow QC had several meetings and interactions with the Judge, the defendant and his family, the defence, the *fiscal* (prosecutor) and the *procuraduría*, the victims' lawyers and the media. All the conversations were held in Spanish save for some discussions with Mr Uribe's wife, where she spoke English. Ms Brimelow QC's interaction was to listen to all parties, introduce herself and explain the independence of the observation. Ms Brimelow QC has offered open email communication with all parties so that they were able to send through any concerns or comments. This has been taken up by different parties to different degrees.

50. There was no verbatim record taken of the submissions during each hearing. This was not the role of the observers; rather they have provided a note of each hearing in line with the function of trial observing (Annex 2). Therefore, these notes are intended only to give an outline of the proceedings that were observed.

[15] El Tiempo article, 'Meneses, otro testigo clave que no declaró contra Santiago Uribe' (31 January 2018), accessible here.

Proceedings and procedure

51. At each hearing the Judge welcomed and thanked the presence of trial observers in open court, acknowledging their role as international observers. He recognised the importance of the independent observers both in open court and in private meetings. The Judge informed the observation delegations about the trial procedure and next steps.

52. On many occasions the Judge assisted in ensuring that the observers had access to the court and encouraged the parties to meet with them – with boundaries on discussions appropriately observed. At the beginning of the observation, security advised observers that they could not use their laptops. This was raised with the Judge and it was resolved that there was not an issue with the use of laptops. Ms Brimelow QC also requested permission to take photographs of the inside of the court room and this was granted (although it was unclear whether permission was actually required).

53. During the hearings observed the relevant procedure was the former Colombian investigative procedure, which applied due to transitional provisions in the legislation, so there were limited adversarial elements to the trial. Ms Brimelow QC was provided with a 205-page summary of the charges against Mr Uribe. This is available in hard copy.

54. The observers noted that the procedural framework appeared to be loose, particularly with regard to content and length of submissions and the granting of adjournments. In particular, the defence was allowed considerable time for closing submissions, such as may have been limited in other jurisdictions. There was no restriction at all on the content of submissions. During the defence's closing submissions they explicitly implicated other lawyers in a "*manipulation of the evidence*" and developed a wider conspiracy scenario against Mr Uribe. Further, all the defence requests for adjournments were granted, as observed by the delegation.

55. Interactions between lawyers and the Judge were often informal. This informal approach appeared entirely normal and within court functioning. For example, on one occasion at the end of the hearing, Dr Granados spoke to the Judge and jovially slapped him on the back. It was in the presence of others and there was nothing apparently

unusual or untoward about this gesture, seeming at worst to be an attempt to curry favour. On another occasion when the Judge's pen fell off his desk, Mr Uribe left his chair and walked across the court to pick it up and place it back on the Judge's desk. The Judge thanked him.

56. The press was observed to move freely in and out of the hearings which were filmed and recorded. Photographs also were taken in court and recording devices placed around the court.

57. At times, it appeared to the delegation that the submissions were aimed more at a public audience rather than being based on evidence for the court. At one point during his evidence on the 27 May 2019, Mr Uribe stood up and turned his back on the Judge in order to directly face the television camera to speak directly to the Colombian people.

The court building and security during the hearings

58. Attendance at the hearings was characterised by long queues to enter with lines divided into male and female. The building served various courts and other businesses. Transport to the court itself was via a lift which was crammed with people and dependent on a lift operator hearing the number of the floor. The trial took place on the 18th floor. It could be problematic getting a working lift going back down.

59. Security at the court building was fairly standard as experienced entering similar institutions in Colombia. Identification was required and bags were placed through a scanning machine. There did not appear to be particularly heavy security in relation to Mr Uribe's trial, although there would usually be one or two armed security staff at the back of the court.

60. Dr Granados, the defence lawyer had an armed bodyguard permanently sat behind him (carrying a bag containing his firearm). There was usually one other armed bodyguard.

61. Dr Prado was accompanied by Peace Brigades International ("PBI") but did not have security provided to him. Although the Colombian State Protection Unit provided him with a car as a security measure, the car that was provided lacked fortified (bullet proof)

glass and there were restrictions upon its use. Dr Prado travelled by public airplane from Bogotá to Medellín.

62. It was observed that the detail of Dr Prado's protective measures remained opaque and appeared fraught, although this was not raised as an issue by Dr Prado. At one stage of the proceedings, PBI informed Ms Brimelow QC that Dr Prado was awaiting allocation of a second bodyguard by the State Protection Unit. Later in the proceedings, it was brought to Ms Brimelow QC's attention that the State Protection Unit had not provided Dr Prado with the funds required for his bodyguard to attend the hearing. Although Ms Brimelow QC ensured that a communication was forwarded to PBI and offered to meet with the State Protection Unit with Dr Prado in Bogotá, this meeting did not take place due to a private matter concerning Dr Prado. In any event, in a meeting with the observers Dr Prado appeared to have little trust in the State Protection Unit.

Polarisation and stigmatisation of and between lawyers

63. Polarisation and stigmatisation were issues observed by the delegation throughout the hearings observed. In particular, lawyers for victims continue to work under considerable stress and fear.

64. Ms Brimelow QC noted that, in her opening conversation with Dr Granados, he made a casual reference to Dr Prado as being "FARC". It was difficult to understand whether Dr Granados meant "lawyer for the FARC" or a "supporter of the FARC" but the reference appeared to be stigmatisation of Dr Prado or at least association of him with former clients (if he had represented members of the FARC).

65. In April 2019, Ms Brimelow QC was informed of a tweet by Dr Prado where he accused Mr Uribe, his brother Álavaro Uribe Vélez, Dr Granados and the government of President Iván Duque Márquez as being behind personal attacks being made upon his integrity. In response, Dr Granados posted part of his letter dated 25 April 2018 refuting smears and setting out that for "*35 years of his professional life he had been always battling on the side of legality*". It is understood that he had filed a case against Dr Prado over his accusations, requesting investigation into the death threats. Further enquiries will be made for the final observation report.

66. The Judge was asked during proceedings about the social media arguments between the lawyers for the defence and the victims. He stated that it was not relevant to the evidence in the case. It was not apparent how much he knew of the detail. He stated that he did not follow Twitter. He stressed that the principle of open justice was central to the Colombian legal system.

67. During the second observation, Ms Brimelow QC asked Dr Prado and Dr Bernal about the issue of the stigmatisation of lawyers in Colombia and the perceived personal association with the client. She raised a query as to whether some human rights lawyers might make it harder for themselves in performing a role that could be perceived as identifying with their clients. She referred to the situation of barristers in England and Wales and the need to keep a distance from their clients. She received information that in Colombia - a very different environment to the UK- where there is conflict, attacks and smears, it is necessary to be an activist as well as a lawyer.

The Judge

68. Following the first hearing observed, the Judge agreed to a meeting with Ms Brimelow QC in his room. In total, over the course of the hearings Ms Brimelow QC attended three meetings with the Judge, together with various observers on behalf of the Colombian Caravana. These were conducted in his room with the door open.

69. During the second observation the Judge indicated in open court that he could not have a private meeting with the observation delegation. He gave reasons that he needed to ensure independence and impartiality. It was presumed that this was because the trial was hearing evidence during this part of the process.

70. In the May 2019 private meeting, the Judge stated that he had received no personal threats in relation to the case. However, he raised a concern as regards the scarcity of bullet proof cars for judges in his court, who tried the most serious crimes. Fundamentally, there were insufficient measures of protection. However, he was sometimes observed moving freely through the corridor of the court. There were no apparent bodyguards nearby. Outside his room were court staff who were working at their desks.

71. The Judge also spoke of a backlog of 180 pending cases which he had insufficient resources to deal with. He pointed towards a pile of documents. It appeared that much was paper based. However, it was observed that lawyers worked from computers and iPads in court.

The defence

72. During a meeting in April 2019, Dr Granados stated he had not received threats in the case but had received threats in other cases. He referred a little to the evidence and said he considered it wrong that the prosecution witness Mr Pineda, who lived in Spain, was being paid for by a NGO. He said he was against threats to anyone in the case and did not specifically know about any threats to Dr Prado. He was vague as to what he would do if Dr Prado was threatened (whether it was a matter for the court). He expressed confidence in the Judge and had no concerns about corruption or intimidation.

The defendant and family

73. Ms Brimelow QC would sometimes sit close to Mr Uribe's family during the hearings. Both Mr Uribe's wife, Ms Isabel Correa ("Ms Correa") and members of the family spoke with Ms Brimelow QC and welcomed the observation; they were friendly and polite. Ms Correa spoke about the length of time the case was taking to be resolved, and raised that the only reason Mr Uribe was there was because he was the brother of a politician. She emphasised that the trial was political. On occasions, Ms Correa seemed stressed and anxious – as is usual in any criminal case. The family raised no specific concerns outside their perception of general injustice of there being a prosecution. They were not observed engaging at all with the other parties or being spoken to by others. They kept to their own group and left immediately after the hearing. There was obvious separation between the various parties and their supporters. They did not acknowledge each other. During the evidence, Ms Correa often would place earphones in her ears; apparently so as not to hear the evidence but to be able to be in visible support.

74. Ms Brimelow QC spoke with Mr Uribe and Dr Granados on 4 April 2019 which was facilitated by Ms Correa and Dr Granados. Ms Brimelow QC asked Mr Uribe questions about the trial process and whether he had faced any problems or threats himself. Dr Granados joined the conversation. Mr Uribe said he was happy with the process so far, as the Judge had been honest and compassionate. He stated that there had been no

problems, other than that day when he had been required to give evidence – he had not been ready and the Judge had granted his application to adjourn.[16] Mr Uribe stated that he had not received any threats in this case, either by letter, WhatsApp or phone, but said that there had been kidnap attempts against him in the past and mentioned his father as an example of the family knowing about threats.[17] Mr Uribe claimed his was the longest open case against any individual in Colombian history. He emphasised that he was just a farmer. His last words to Ms Brimelow QC before he left were that he had faith in justice.

75. Ms Brimelow QC saw Mr Uribe on other occasions over the following hearings. He was always polite and exchanged greetings. On one occasion, when he and his family were present in the same coffee shop as Ms Brimelow QC in the morning before a hearing, he asked whether being in the same place was acceptable. Ms Brimelow QC reassured him and indicated that there would be other times when she would be in the same coffee shop as other parties, possibly asking them questions. The delegation considered that general lack of trust was a feature of the Colombian justice system.

76. It was observed that Mr Uribe appeared to be under considerable strain from the court process; in a similar way to many people charged with serious criminal offences. The stress of the prosecution was apparent. It was noted that he was consistently polite to the court and to all parties in the courtroom.

The victims' lawyers

77. Ms Brimelow QC and the trial observation delegation met with the victims' lawyers, Dr Prado and Dr Bernal, on each occasion after the hearing in order to receive updates in relation to any issues relevant to the trial observation. During the first meeting, Dr Prado did not report any immediate issues with threats. The lawyers later indicated that they had confidence in the Judge and there were no issues with corruption.

[16] This referred to a proposed second round of questioning of Mr Uribe. It appears that Mr Uribe had given some evidence earlier in the trial process. Mr Uribe said that had his application to adjourn been refused he would have appealed as he was not prepared to go ahead that day.
[17] The delegation was aware that Mr Uribe's father was killed in 1983 allegedly by the FARC – although this was denied by the FARC's "Pablo Catatumbo" in 2016.

78. On one occasion, in December 2018, there was a concern that someone nearby was taking a photograph of a meeting between the trial observation delegation and the victims' lawyer, which was at a café near to the courthouse. The group were seated in a food mall type area, not in a place that would attract photographers. However, the person appeared to notice that he had been observed and quickly disappeared.

The *fiscal and procuraduria*

79. In a meeting with the *fiscal* in April 2019, the *fiscal* said that no threats had been made against him, although he had felt threatened by smear campaigns and social media abuse by the family and friends of Mr Uribe, which could undermine him professionally. He considered that threats to the prosecution no longer came in the form of bullets but in the form of reputational destruction. In particular, he spoke of a Supreme Court case dated October 2018, involving a conspiracy to tamper with witnesses, giving false evidence, and an attempt to discredit him, which would have meant he was removed from the case. He said there had been a corrupt person within the *fiscalía* with links to narco-traffickers. He spoke of intercepted telephone calls which both proved the conspiracy and that he was not guilty of the allegations. He said that if the conspiracy had succeeded, he would have been off the case and there would have been no prosecution against Mr Uribe.

80. The *fiscal* also spoke of threats to prosecution witnesses over the years, including the murder of witnesses.

81. He described the process of collecting evidence about "the Twelve Apostles" and spoke of how they carried out social cleansing. He gave examples of the killings of sex workers and drug dealers and emphasised it was not simply a fight against the guerrillas. He spoke of how "the Twelve Apostles" targeted "*undesirables*", and apologised for his use of the word, which he said he hated. He said he was driven by justice. He had no doubt as to the activities of "the Twelve Apostles" and said that the case was not about whether "the Twelve Apostles" existed but about whether criminal liability lay with Mr Uribe. He said the majority of the witnesses in the case had been called by the defence. He mentioned the importance of there being international observers at the trial. Ms Brimelow QC questioned him about the lack of bodies and forensic evidence in

order to try and understand the strength of the prosecution's case. It was apparent that the age and circumstances of the allegations were significant in the case.

82. In a separate conversation, the *procuraduría* explained that their role is to guarantee constitutional rights in the case. They indicated that they had no additional concerns.

Remote hearings

83. The closing submissions of the defence (in January and February 2021) were all conducted entirely remotely due to the COVID-19 pandemic, meaning all parties appeared over video-link on separate screens. The observers are grateful for the personal assistance of the Judge in ensuring that the delegation could access the proceedings.

84. Overall, the video-link worked smoothly, save for a few minor technical difficulties. Viewers of the remote proceedings consistently numbered from around 50 to 170 people. This number was far more than the physical courtroom could have accommodated. In any event, attendees of the in-person hearings - beyond the parties - were in the single figures. There appeared to be easy access for the press, which was acknowledged by the Judge at the start of hearings, and the hearings were fully reported in mainstream press and live-tweeted.

85. However, there was no obvious procedure during the hearings as to when cameras needed to be on or off (apart from the speakers whose cameras were on when they spoke) and each party took their own individual decision with regards to this. At various points Ms Correa could be seen sitting at the back of the room on Mr Uribe's camera. There was not much control on when people could join the hearing. Cats walking in and out was a feature of both Dr Prado's and Mr Uribe's appearance.

86. Dr Granados referred to authorities and page numbers but there was no visible following of the documentation by the Judge. He did not interrupt or ask questions. The first part of the arguments was in the form of legal submissions but there was a lack of engagement from other parties to argue whether his submission on the law was correct. It may be more helpful for the court for legal arguments to be separate from evidential submissions, with arguments on matters of law made by all parties simultaneously. However, it is presumed that rulings were previously made as to the admissibility of

the evidence of absent witnesses. In these circumstances, the defence would have been revisiting arguments already ruled upon and the Judge would have been entitled to stop repeat submissions/repeat his ruling.

87. Further, the process allowed unrestricted reference to findings of other courts in relation to witnesses in Mr Uribe's case without a clear legal framework as to how those judgments should be applied to matters of fact in issue in the case. The defence also referred to previous investigations of the prosecution against Mr Uribe which had not proceeded. Again, there were no legal principles advanced as to admissibility or relevance of previous closed investigations.

88. There was apparent communication between Dr Granados and his junior and so there was no obvious disadvantage to the defence in their working together remotely.

89. After the completion of the remote hearings, Ms Brimelow QC wrote to the Judge and the defence inviting communications of any issues arising from the remote hearings. No issues were reported.

Legal framework

90. The right to a fair trial is a fundamental right which manifests itself in various forms. These include, *inter alia*, the principles of legality, the right to be judged before an impartial, independent and competent judge or tribunal, the presumption of innocence, the right to a defence and the right to a trial without undue delay.

91. Colombia ratified the International Covenant on Civil and Political Rights ("ICCPR") in 1969 and the American Convention on Human Rights ("ACHR") in 1973.

The right to a fair trial under Colombian domestic law

92. Article 29 of the Political Constitution of Colombia ("the Constitution") establishes the fundamental right to due process[18]: *"Due process will be applied to all classes of judicial and administrative actions. Nobody can be tried if not […] before a competent judge or tribunal with regards to the breadth of the particular issues of each trial. As a matter of law, proof obtained in violation of due process is null."*

93. This is given effect in the Criminal Procedure Code (Law 906 of 2004), of which Article 306 states that *"confirmation of the existence of substantial irregularities which affect due process"* is a reason to nullify a judgment in accordance with Colombian law. Article 10 of the Criminal Procedure Code further provides that *"criminal procedure shall be carried out taking account of respect for the fundamental rights of persons taking part in it, and the need to achieve efficacy in the exercise of justice."*

94. Articles 11 and 12 of Law 600 of 2000, which also form part of the Colombian Criminal Procedural Code, respectively state that *"nobody can be judged by anyone but a competent judge or tribunal"* and that a *"judicial official shall be autonomous and independent."* Article 20, which gives effect to this principle, states that prosecutors must investigate evidence which both favours and goes against the accused. Article 234

[18] The Constitutional Court in its judgment T-001/93 held that due process is centred around the *"principle of legitimacy […] and as a result excludes any action which is contra legem or praeter legem"*. Moreover, it held in its judgment C-252/2001 that *"if a decision is reached on the basis of an error of law, the right to due process is violated"* (authors' own translation).

states that it is the duty of the prosecutor to search for the *"determination of the real truth".* To this effect, the prosecutor should investigate *"the circumstances that prove, aggravate or accompany criminal conduct, with the same zeal with which he investigates circumstances which prove innocence.*"

95. Article 93 of the Constitution provides that *"international treaties and agreements ratified by Congress, which recognise human rights […] prevail in the internal order. The rights and duties which are consecrated in this [Charter], are to be interpreted in conformity with international treaties on human rights which have been ratified by Colombia."* Similarly, Article 3 of the Criminal Procedure Code states that norms which are *"established in international [human rights] treaties and conventions which Colombia has ratified shall prevail."*

96. The Colombian Constitutional Court referred to the applicability of international law as an *"inalienable part of the Constitution"* which must be respected by the judge and all parties, when discussing procedural guarantees in its judgment C-252/2001.[19]

The right to fair trial under international human rights law

97. The right to a fair trial is enshrined in all major international and regional human rights treaties. Article 14 of the ICCPR guarantees the right to equality before the courts, a fair and public hearing by a competent, independent and impartial tribunal established by law.

98. In the Inter-American context, Article 8(1) of the American Convention on Human Rights ("ACHR") protects 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,*

[19] The judgment reads in Spanish: *"El debido proceso, consagrado expresamente en el artículo 29 de la Constitución, resume la garantía de que todos los demás derechos reconocidos en la Carta serán rigurosamente respetados por el juez [...]. Tales derechos no son sólo los que figuran en la Constitución [...] en el sentido formal, sino también los consagrados en los instrumentos internacionales de los que el Estado Colombiano ha unido [...] que [...] son una parte inalienable de la Constitución en un sentido material. Dichos principios y garantías se convierten así en normas que rigen tanto las autoridades como las partes que intervienen deben ponerse de acuerdo con la ignorancia de los mismos ya que conduce a una violación de la Ley Suprema."*

or any other nature." Article 8(2) sets out the content of the right to a fair trial for those accused of a criminal offense.

The right to an impartial tribunal and a fair and public hearing

99. The UN Human Rights Committee ("UN HRC"), the chief interpretative body of the ICCPR, recognised in its General Comment No. 32 that the right to equality before the courts and to a fair trial "*serves as a procedural means to safeguard the rule of law*".[20] The Committee has interpreted the right to an impartial tribunal as having two aspects. First, judges must not allow their judgment to be influenced by personal bias, prejudice or preconceptions about the case. Second, the tribunal must appear to a reasonable observer to be impartial.[21] The notion of a fair trial also includes the guarantee of a fair and public hearing.[22]

Trial without undue delay

100. The accused must be tried without undue delay. General Comment No. 32 states that where the individual is held in pre-trial detention, "*the deprivation of liberty does not last longer than necessary in the circumstances of the specific case, but also to serve the interests of justice.*" The General Comment sets out the main factors to be taken into account relating to the circumstances of the case, "*the complexity of the case, the conduct of the accused, and the manner in which the matter was dealt with by the administrative and judicial authorities*."[23] The time starts with the formal charge until final judgment on appeal.

101. The same guarantee is found in the ACHR. The Inter-American Court of Human Rights ("IACtHR") has held that three factors should be taken into account in determining

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[20] CCPR, 'General Comment No 32, Article 14: Right to equality before courts and tribunals and to a fair trial' (23 August 2007) UN Doc CCPR/C/GC/32, §2.
[21] Ibid, §21.
[22] The UN HRC states that a "*hearing is not fair if, for instance, the defendant in criminal proceedings is faced with the expression of a hostile attitude from the public or support for one party in the courtroom that is tolerated by the court, thereby impinging on the right to defence, or is exposed to other manifestations of hostility with similar effects.*" (Ibid, §25).
[23] General Comment No 32, §35.

whether there has been undue delay: a) the complexity of the case, b) the procedural activity of the interested party, and c) the conduct of the judicial authorities.[24]

The right to examine prosecution witnesses

102. The accused has the right to examine or have examined the witnesses against them and to obtain the attendance and examination of witnesses on their own behalf under the same conditions as witnesses against them.[25]

103. Article 8(2)(f) of the ACHR similarly guarantees "*the right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts*." This has been interpreted by the IACtHR to require, *inter alia*, the right to cross-examine the key witnesses for the prosecution.[26] This right is not absolute.

104. The European Court of Human Rights ("ECtHR") has applied a tripartite test to determine whether a trial can be fair even though the evidence of a witness is admitted without the defendant being given an opportunity to cross-examine them: (i) whether there was a good reason for the non-attendance of the witness and, consequently, for the admission of the absent witness's untested statements as evidence; (ii) whether the evidence of the absent witness was the sole or decisive basis for the defendant's conviction; and (iii) whether there were sufficient counterbalancing factors to compensate for the handicaps caused to the defence as a result of the admission of the untested evidence and ensure that the trial, judged as a whole, was fair.[27] The IACtHR has followed a similar approach.[28]

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[24] *Case of Suárez-Rosero v Ecuador*, Merits (12 November 1997) IACtHR Series C No 35.
[25] This is elaborated in paragraph 39 of General Comment No 32. The UN HRC has found violations of the right to examine prosecution witnesses, for example, where the court refused to order forensic evidence "*of crucial importance to the case*" in a rape case (*José Luis García Fuenzalida v Ecuador*, UN Doc CCPR/C/57/D/480/1991 (12 July 1996)) and where the court refused to call witnesses requested by the accused's lawyer who could have shed light on whether his confession had been made under torture (*Idieva v Tajikistan*, UN Doc CCPR/C/95/D/1276/2004 (23 April 2009)).
[26] *Case of Castillo Petruzzi et al v Peru*, Merits, reparations and costs (30 May 1999) IACtHR Series C 52.
[27] *Al-Khawaja v United Kingdom* (15 December 2011) ECtHR (GC) App Nos 26766/05 & 22228/06, §§118-119 and §147; *Schatschaschwili v Germany* (15 December 2015) ECtHR App No 9154/10, §107.
[28] See, for example, *Case of Norín Catrimán v Chile*, Merits, reparations and costs (29 May 2014) IACtHR Series C No 279, §§245-247.

The right to the presumption of innocence

105. Article 14(2) of the ICCPR guarantees to everyone charged with a criminal offence, the right to be presumed innocent.[29] Similarly, Article 8(2) of the ACHR states that "*Every person accused of a criminal offence has the right to be presumed innocent so long as his guilt has not been proven according to law*."[30]

106. Excessive pre-trial detention may in itself violate the presumption of innocence, as found by the Human Rights Committee in *Cagas v Philippines*,[31] where the pre-trial detention lasted nine years, and by the Inter-American Court in the *Case of Suárez Rosero v Ecuador*.[32]

The rights of the victim under international law

The right to life and right to be free from torture and inhuman or degrading treatment or punishment

107. The ICCPR protects the right to life (Article 6) and the right to freedom from torture and inhuman or degrading treatment or punishment (Article 7). Article 6 is a non-derogable right. In its General Comment No 36 on the right to life, the Human Rights Committee explains that governments must protect the right effectively, and not only have a duty to refrain from conduct resulting in arbitrary deprivation of life, but also an obligation to take reasonable positive measures to protect individuals "*in response to reasonably foreseeable threats to life originating from private persons and entities.*"[33] The duty to protect the right to life requires States parties to take special measures of protection towards persons in situation of vulnerability whose lives have

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[29] See General Comment No 32, §30.
[30] In the *Case of Ricardo Canese v Paraguay*, the IACtHR indicated that "*Article 8(2) of the Convention requires that a person cannot be convicted unless there is clear evidence of his criminal liability*." The Court stated that it considers "*the right to presumption of innocence is an essential element for the effective exercise of the right to defense.*" See *Case of Ricardo Canese v Paraguay*, Merits, reparations and costs (31 August 2004) IACtHR Series C 111, §§153-154.
[31] *Geniuval M Cagas, Wilson Butin and Julio Astillero v Philippines*, UN Doc CCPR/C/73/D/788/1997 (23 October 2001).
[32] *Case of Suárez-Rosero v Ecuador*, §§76-78.
[33] CCPR, 'General Comment No. 36 (2018) on Article 6 of the International Covenant on Civil and Political Rights, on the right to life' (30 October 2018) UN Doc CCPR/C/GC/36, §21.

been placed at particular risk because of specific threats or pre-existing patterns of violence.

108. The ACHR also protects the right to life (Article 4) and the right to humane treatment which includes the right of every person to have his physical, mental and moral integrity respected (Article 5). According to Article 27 of the ACHR, these rights are non-derogable, because they are established as rights that cannot be suspended in times of war, public danger or other threats to the independence or security of the States parties.

109. Moreover, the IACtHR has stressed that no matter the circumstances in any State, there exists an absolute prohibition of torture, forced disappearance of individuals and summary and extrajudicial executions, and that such prohibition constitutes a mandatory rule of international law not subject to derogation.[34]

110. In the *Case of the Pueblo Bello Massacre. v Colombia*, the IACtHR adopted the test laid down by the ECtHR in the seminal case of *Osman v United Kingdom*,[35] for when the state's positive 'operational duty' to protect the right to life arises. It held that the state's obligation to adopt prevention and protection measures for individuals is engaged where there is an "*awareness of a situation of real and imminent danger for a specific individual or group of individuals and to the reasonable possibilities of preventing or avoiding that danger*".[36]

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[34] *Case of the Rochela Massacre v Colombia*, Merits, reparations and costs (11 May 2007) IACtHR Series C No 163, §132. See also the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary, and Summary Executions (adopted 15 December 1989) UNGA Res 44/162, and the Declaration on the Protection of All Persons from Enforced Disappearance (adopted 18 December 1992) UNGA Res 47/133.

[35] *Osman v United Kingdom* (28 October 1998) ECtHR App No 23452/94.

[36] *Case of the Pueblo Bello Massacre v Colombia*, Merits, reparations and costs (31 January 2006) IACtHR Series C No 140, §123. The IACtHR explained the positive obligation on the state which flows from the rights to life and personal integrity as follows: "*120. This Court has indicated that the right to life plays a fundamental role in the American Convention, as it is the essential corollary for realizing the other rights. The States have the obligation to guarantee the establishment of the conditions to ensure that violations of this inalienable right do not occur and, in particular, the obligation to prevent its agents from violating it. In compliance with the obligations imposed by Article 4 of the American Convention, in relation to Article 1(1) thereof, this not only assumes that no one shall be deprived of his life arbitrarily (negative obligation), but also, in light of the State's obligation to guarantee the full and free exercise of human rights, it requires States to adopt all the appropriate measures to protect and preserve the right to life (positive obligation). This active protection of the right to life by the State involves not only its legislators, but all State institutions, and those responsible for safeguarding security, whether they are members of its police forces or its armed forces. Consequently, States must adopt the necessary measures, not only at the legislative, administrative and judicial level, by issuing penal norms and*

The protection of the rights of the victim and the right to a fair trial

111. The IACtHR considers that Article 8 (right to a fair trial) must be given a broad interpretation to protect both the rights of the victim as well as the accused in criminal proceedings. In the *Case of Blake v Guatemala* it stated:

"*96. This Tribunal considers that Article 8(1) of the Convention must be… appreciated in accordance with Article 29 (c) of the Convention, whereby none of its provisions shall be interpreted as precluding other rights or guarantees that are inherent in the human personality or derived from representative, democratic form of government.*

97. Thus interpreted, the aforementioned Article 8(1) of the Convention also includes the rights of the victim's relatives to judicial guarantees, whereby "[a]ny act of forced disappearance places the victim outside the protection of the law and causes grave suffering to him and to his family" (no underlining in the original) (United Nations Declaration on the Protection of All Persons Against Enforced Disappearance, Article 1(2))."

112. This means that Article 8(1) of the American Convention recognizes the rights of relatives to have the disappearance and death of loved ones effectively investigated by State authorities; to have those responsible prosecuted for committing unlawful acts; to have the relevant punishment, where appropriate, meted out; and to be compensated for the damages and injuries they have sustained.[37]

113. In the *Case of Loayza-Tamayo v Peru*, the IACtHR analysed the content of the obligation to ensure justice for victims of extrajudicial executions and their kin under Article 8 (right to a fair trial) read together with Article 25 (right to justice) of the American Convention on Human Rights. It stated as follows:

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establishing a system of justice to prevent, eliminate and punish the deprivation of life as a result of criminal acts, but also to prevent and protect individuals from the criminal acts of other individuals and to investigate these situations effectively."

[37] *Case of Blake v Guatemala*, Merits (24 January 1998) IACtHR Series C 36, §97.

"*169. As this Court has held on repeated occasion, Article 25 in relation to Article 1(1) of the American Convention obliges the State to guarantee to every individual access to the administration of justice and, in particular, to simple and prompt recourse, so that, inter alia, those responsible for human rights violations may be prosecuted and reparations obtained for the damages suffered. As this Court has ruled, Article 25 "is one of the fundamental pillars not only of the American Convention, but of the very rule of law in a democratic society in the terms of the Convention"[…].*

170. Consequently, it is the duty of the State to investigate human rights violations, prosecute those responsible and avoid impunity. The Court has defined impunity as the failure to investigate, prosecute, take into custody, try and convict those responsible for violations of rights protected by the American Convention […]."[38]

114. Self-evidently, a situation of impunity is wholly offensive to the right to an effective remedy. It is also contrary to the fundamental obligation on states parties to respect the rights and freedoms recognised in the American Convention, "*since impunity fosters chronic recidivism of human rights violations, and total defencelessness of victims and their relatives*".[39]

115. In the *Case of the Mapiripán Massacre v Colombia*, the IACtHR explained that a non-fulfilment of the duty to investigate potential violations to the right to life had contributed to a situation of impunity, which was inexcusable, regardless of the difficult conditions in the country at the time:

"*235. In the instant case, non-fulfilment of the duties to protect and investigate, already established, has contributed to impunity of most of those responsible for the violations. Said non-fulfilment shows a form of continuity of the modus operandi of the paramilitary in covering up the facts and it has led to subsequent ineffectiveness of the ongoing criminal proceeding for the facts in the massacre, in which at least 100 paramilitary participated directly, with collaboration, acquiescence, and tolerance by members of the Colombian Armed Forces. […]*

[38] *Case of Loayza-Tamayo v Peru*, Reparations and Costs (27 November 1998) IACtHR Series C No 42.
[39] *Case of the "White Van" (Paniague-Morales et al.) v Guatemala*, Merits (8 March 1998) IACtHR Series C No 37, §173.

238. In this regard, the Court recognizes the difficult circumstances of Colombia, where its population and its institutions strive to attain peace. However, the country's conditions, no matter how difficult, do not release a State Party to the American Convention of its obligations set forth in this treaty, which specifically continue in cases such as the instant one. The Court has argued that when the State conducts or tolerates actions leading to extra-legal executions, not investigating them adequately and not punishing those responsible, as appropriate, it breaches the duties to respect rights set forth in the Convention and to ensure their free and full exercise, both by the alleged victim and by his or her next of kin, it does not allow society to learn what happened, and it reproduces the conditions of impunity for this type of facts to happen once again."[40]

The protection of human rights defenders, judges and witnesses under international human rights law

116. General Comment No. 32 recognises that human rights defenders and witnesses to crime are subjects of special protection due to the risks they may be subjected to because of their role.[41]

117. The IACtHR has specifically recognised the special duty on the state to protect the life and personal integrity of human rights defenders, given the heightened risks which they are exposed to as a result of the work they do, and the fact that their "*work is essential to strengthen democracy and the rule of law*".[42]

118. In May 2017, the IACommHR released a report on the extrajudicial killing of a Colombian human rights defender, Valentín Basto Calderón, likely by a paramilitary group. The report found that Colombia had created a situation of risk, including by establishing paramilitary groups, which heightened its obligation to protect individuals

[40] *Case of the Mapiripán Massacre v Colombia*, Merits, reparations and costs (15 September 2005) IACtHR Series C No 134.
[41] General Comment No. 36, §27.
[42] *Valle Jaramillo et al v Colombia*, Merits, reparations and costs (27 November 2008) IACtHR Series C No 192, §87.

from that risk. It noted the state's special obligations to protect and respect the rights of human rights defenders working in this context. Following the killing, the state did not conduct a prompt, impartial, or thorough investigation. No judicial action was taken until twenty-five years after the death. The IACommHR accordingly found Colombia responsible for violations of the rights to life and humane treatment.[43]

119. In the *Case of the Rochela Massacre v Colombia*, the Court articulated the obligation on the state to protect those involved in investigations and prosecutions of human rights violations, which flows from the obligation to ensure justice for victims, as follows:

"[*t]he State must take all necessary measures to protect judicial officers, investigators, witnesses and the victims' next of kin from harassment and threats which are designed to obstruct the proceedings, prevent a clarification of the events of the case, and prevent the identification of those responsible for such events.*"[44]

120. The protection of judges from external pressures such as threats is also intimately connected to the right to an impartial tribunal, which is a key element of the right to a fair trial. In the *Case of Reverón Trujillo v Venezuela* the IACtHR stated:

"*67. Now, judges, unlike other public officials, have reinforced guarantees due to the necessary independence of the Judicial Power, which the Court has understood as "essential for the exercise of the judicial function." The Tribunal has said that one of the main objectives of the separation of the public powers is the guarantee of the judges' independence. Said autonomous exercise shall be guaranteed by the State both in its institutional aspect, that is, with regard to the Judicial Power as a system, as well as in connection with its individual aspect, that is, with regard to the specific judge as an individual. The objective of the protection lies in avoiding that the justice system in general and its members specifically be submitted to possible improper restrictions in the exercise of their duties by bodies foreign to the Judicial Power or even by those judges that exercise duties of revision or appeal. Additionally, the State has the duty to*

[43] *Valentin Basto Calderon and others v Colombia*, Case 10.455, IACommHR Report No. 45/17, OAS Doc. OEA/Ser.L/V/II/162, doc. 57 (25 May 2017).
[44] *Case of the Rochela Massacre v Colombia*, §171.

guarantee an appearance of independence of the Magistracy that inspires legitimacy and enough confidence not only to the parties, but to all citizens in a democratic society.

68. The principle of judicial independence constitutes one of the basic pillars of the guarantees of the due process, reason for which it shall be respected in all areas of the proceeding and before all the procedural instances in which decisions are made with regard to the person's rights. The Court has considered that the principle of judicial independence results necessary for the protection of fundamental rights, reason for which its scope shall be guaranteed even in special situations, such as the state of emergency."[45]

Crimes Against Humanity

121. Colombia has been a state party to the Rome Statute since 1 November 2002. The Office of the Prosecutor of the International Criminal Court has been conducting an ongoing preliminary examination into the situation in Colombia since June 2004, focusing on the admissibility of cases it identified in its 2012 interim report,[46] although it has continued to receive communications under Article 15 of the Rome Statute. Under the principle of complementarity, the Office of the Prosecutor is closely monitoring whether Colombia is able and willing to investigate and prosecute crimes potentially falling within the ICC's jurisdiction, or whether they warrant the opening of a formal investigation.

122. This does not require Colombia to bring prosecutions for international crimes *per se*. It would be enough for Colombia to prosecute the accused for a domestic crime under its own national criminal code, such as aggravated homicide, provided it is prosecuting the same conduct that would found an international crime.

123. Article 7 of the Rome Statute defines Crimes against Humanity as "*any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:*

[45] *Case of Reverón Trujillo v Venezuela*, Preliminary objections, merits, reparations and costs (30 June 2009) IACtHR Series C No 197.
[46] Office of the Prosecutor of the International Criminal Court, 'Situation in Colombia: Interim Report' (November 2012).

(a) *Murder;*

(b) *Extermination;*

(c) *Enslavement;*

(d) *Deportation or forcible transfer of population;*

(e) *Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;*

(f) *Torture;*

(g) *Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;*

(h) *Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;*

(i) *Enforced disappearance of persons;*

(j) *The crime of apartheid;*

(k) *Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health*."

124. The ICC does not have jurisdiction over Crimes against Humanity committed in Colombia before 1 November 2002. However, it is arguable that the historic allegations against Mr Uribe are capable of amounting to Crimes against Humanity, given that the prohibition of the crime amounted to customary international law and *jus cogens* at the time they were allegedly committed.[47]

125. Both the ECtHR and IACtHR have ruled that crimes against humanity are not susceptible to amnesty nor extinguishable.[48] In the *Case of Almonacid Arellano et al v Chile*, the IACtHR held that "*the State may not invoke the statute of limitations, the*

[47] *Prosecutor v Tadić*, Appeal Judgment, IT-94-1-AR72, Appeals Chamber (2 October 1995), §§140-142; *Case of Almonacid Arellano et al v Chile*, Preliminary objections, merits, reparations and costs (26 September 2006) IACtHR Series C No 154, §§95-99.

[48] See *Kolk and Kislyiy v Estonia* (17 January 2006) ECtHR App no 23052/04, p9; *Case of Barrios Altos v Peru*, Merits (14 March 2001) IACtHR Series C no 75, §41 y §44 and *Case of Almonacid Arellano et al v Chile*, §§114-115 y §§152-153.

non-retroactivity of criminal law or the ne bis in idem principle to decline its duty to investigate and punish those responsible" for crimes against humanity.[49]

[49] *Case of Almonacid Arellano et al v Chile*, §151.

Interim conclusions

Fair trial rights

126. The defendant appeared to be well represented and appeared to have no difficulty accessing his lawyers.

127. The delegation does bear in mind that the defendant was tried in a specialist court, which has a specialised statute and procedure and looks forward to further consideration of the procedure. However, the loose procedural framework could be seen as being used to the perceived benefit of the defence. It certainly did not restrict the defence. Indeed, it may provide an explanation for the length of cases and the delays between hearing and judgment.

128. Ms Brimelow QC also observes that the defence was granted all the adjournments that she observed being requested. Further, the defence was allowed a considerable time for closing submissions, such as may even have been limited in other jurisdictions. There was no limit at all on content of submissions. At times, it appeared to the delegation that the submissions were aimed more at a public audience rather than being based on evidence for the court. Whilst it is understandable where so much had already been reported in the press, the delegation considered that it did not assist the court process.

129. The observers awaits the judgment in order to further consider the procedure/rulings whereby three key prosecution witnesses, Mr Amaya Vargas, Mr Meneses and Mr Pineda, did not give live evidence.

130. During the hearings that the delegation attended, there was no clear indication as to the weight to be given to their evidence. However, it is important to note that the delegation does not have copies of earlier rulings.

131. In addition, significant amounts of hearsay evidence were admitted as part of the prosecution case. Once admissible, there is a need for a clarity as to the reason for the admissibility. Again, this is likely to have been addressed in earlier legal arguments.

However, the results of the rulings were not clear in application in the hearings observed.

132. Considering closing submissions - they might have assisted the court by referring to the content of the earlier rulings in relation to absent witnesses and then commenting in a way that did not go behind the ruling(s). Further, it was not apparent as to how the Judge would/will consider the oral evidence of witnesses whose quality might have been diminished by the passage of time against statements which might have carried more weight nearer the time itself.

Delay and lack of Investigation

133. The investigation was pursued in part by private civilians. Whilst the fact of the case being brought to court is noteworthy, much had already been argued in the public arena. Ms Brimelow QC found that many people had their own view on the case according to what they had seen in the media over many years. It was difficult for members of the public to separate evidence in court and that that had been trailed in the media over the preceding decades.

134. The adjournments in the case itself added to the delay in bringing the case to trial. Directions for written submissions in advance of hearings and a more robust procedural rule framework may assist the process itself in future. Written legal directions from the Judge as to how he would assess and approach different types of evidence might also assist the trial process towards conclusion. These observations are caveated by the fact that the observers did not have the written material. However, it is a factor that it was difficult to follow what legal rulings had been made as there appeared to be no restrictions upon comments on witnesses in speeches.

135. Of interest was that the public gallery was largely poorly attended but when the proceedings were heard remotely there were consistently high numbers in attendance. This may demonstrate that those local to the court in Medellín did not wish to be physically present. It is unknown whether it was due to fear or lack of interest.

Participation of victims

136. Of note was the lack of relatives of victims visible in any part of the process. There were no victims giving instructions to lawyers or liaising with the *procuraduría*.

Protection of judges

137. This remains a concern. The building where the court was housed did have security on the door. However, other than checking identification, with the usual airport-type scanners for bags and persons, there were no additional checks.

138. Concern had been raised by the Judge as to the lack of sufficient bullet proof cars for all the judges in the court building.

Protection of lawyers and witnesses

139. There appeared to be little structured protection for witnesses in this case and there was a reported history of threats towards and killing of witnesses by unknown actors. There seemed to have been an opaque procedure to deal with anonymous witnesses with the prosecution having no choice under this process but to cease reliance upon them.

140. Threats towards the victims' lawyers and complaints of lack of provision of adequate security remain a real concern and feed into impunity.

Court procedure

141. The delegation noted that there appeared to be little procedural framework separating submissions of law from closing submissions. Further, there appeared to be no decisions made as to how previous courts judgments on evidence which affected the trial should be treated by the trial court. Evidence and decisions from other processes flowed through the hearing and were deployed arbitrarily by parties wishing to rely on all or parts of those judgments. The observation caveats this by recognising that the delegation did not have copies of court rulings and the final judgment is awaited.

142. However, it seemed to the delegation that the lack of procedural rigour made the task of the trial judge more onerous whilst reaching judgment. In summary, Ms Brimelow QC observed all parties making legal submissions in vacuums from each other. There

was not a system of submissions, response and reply in one oral argument. In addition, there appeared to be no restriction on the strength of the evidential baseline that was required before theories could be advanced and the difference between circumstantial evidence and speculation was not enforced to focus submissions on the evidence.

Justice for international crimes

143. Mr Uribe was not charged with Crimes against Humanity, but with the domestic crimes of aggravated conspiracy to commit crime and aggravated homicide. However, the fiscalía submitted in its '*resolución de acusación*' that the prosecution of Mr Uribe would not be time-limited because the conduct in question amounted to Crimes against Humanity.

144. The observation delegation was concerned that the issue of Crimes against Humanity, even if only relevant to the question of limitation, was not addressed in detailed oral legal argument until the end of the trial.

145. It is important during prosecutions, particularly those that attract widespread media attention and to which there is a real public interest, that all the parties are clear as regards the relevant test that needs to be met by the prosecution in respect of the crime that has been charged. This ensures that the issues are properly ventilated in evidence and that the defence has adequate time to address the case against them. It also avoids any misconception on the part of victims and the public that conduct which could potentially amount to an international crime has not been properly prosecuted. This risk would have been avoided had the limitation point been orally argued as a preliminary matter at the outset of the trial.

146. The observers await the Judge's ruling on this point and may comment further on the relevant legislation and jurisprudence in its final report.

The politicisation of the lawyer's role

147. Being a human rights lawyer in Colombia is highly politicised and there is no Code of Conduct governing boundaries of behaviour in and outside court. The defence lawyers in open court accused one of the victims' lawyers, Dr Prado, of being involved in

manipulating evidence. These accusations did not raise any reaction from the Judge nor the other parties, nor the press. Dr Granados made other far-ranging accusations of conspiracy and attempts to pervert the course of justice. The accusations were serious and yet proceeded without interruption – by lawyers or the Judge.

148. There was no argument in court around the accusations. This gave the impression that they were not unusual accusations for one lawyer to make against another. Rules on restraint in relation to accusing other lawyers of criminal behaviour should be considered.

149. The observation delegation was aware that Dr Prado initially worked to progress an investigation into "the Twelve Apostles". This reflects a lack of state support or interest in ensuring a thorough, prompt, and impartial investigation. It also left Dr Prado vulnerable to accusations that he manipulated evidence. It seems that there was no option for him to consider whether he would be better placed to become a witness in the case rather than a lawyer. The aspect of potential conflict did not seem to have been considered due to the way human rights lawyers often have to drive investigations into human rights violations in Colombia.

150. BHRC remains concerned as to the stigmatisation of human rights lawyers in Colombia and the impunity with which accusations are made against them. In addition, accusations by human rights lawyers against lawyers who typically represent the Uribe family such as Dr Granados added to a continuous cycle of accusations and counteraccusations. The Judge did not consider that it was a matter for him, nor was it raised with him by either party.

151. However, this stigmatisation fuels a culture of risk for lawyers and impunity which the profession itself should be concerned to alleviate.

152. Finally, Ms Brimelow QC noted the strength of support for the international trial observation from all parties and from the Judge. In a country where people easily move to taking a side, an objective viewpoint was welcomed.

153. This is a lengthy interim report. Annex 2 contains notes of what occurred at each hearing observed. However, it is not intended to be a detailed recital of all the evidence

before the court or all submissions made. There is a focus upon the defence submissions as the fair trial of a defendant must be a focus of trial observations.

154. This interim report is published to support the justice process in Colombia and to keep awareness and focus upon protection of Judges, witnesses and lawyers as this case and other cases of utmost seriousness progress. All observations are subject to revision pending the learned Judge's judgment. The delegation remains open to any comments from any parties in these proceedings in order to better inform its final report.

155. A final report will be published once the judgment has been handed down with specific findings as a result of the observation and final recommendations.

Annexures

Annex 1 – Funding of the observations

1. Flights and accommodation for the in-person trials in 2018 and 2019 were funded in-part through BHRC's trial observation fund, with the remainder self-funded by observers. BHRC's trial observation funds are provided by the Bar Council of England and Wales. The trial observations and production of this report were completed on an entirely pro bono basis.

Annex 2 – Notes of proceedings observed

3 and 4 December 2018

1. The hearing on 3 December started late due to the lateness of the defence lawyers arriving from Bogotá. The hearing was adjourned to the next day to allow the defence to provide further information about its witnesses. Ms Brimelow QC did not attend court on that day and received information from other members of other delegations.

2. On 4 December, the trial was adjourned upon the application of the defence to allow defence witnesses to be traced. There was no objection from any of the parties. There also was little probing by any party or by the Judge as to why the application was being made on the first day of the trial.

3. Ms Brimelow QC gave one television interview speaking about the importance for the functioning of a judicial system and that witnesses should be able to give evidence - and lawyers should be able to work - without reprisals or fear of reprisals, as well as the importance of trial observations.

3 April 2019

4. Dr Granados (for the defence) made an application to adjourn the trial to make contact with further defence witnesses. He addressed the Judge that contact with a witness had been attempted on 1 December 2017 and end of March 2018, however a response had only been received the previous day, on 2 April 2019. The witness had said he needed money so was unable to take any time off work to attend the trial. He outlined that the options were to obtain a police order for the witness to be found and obliged to attend, or to allow them to give evidence via video-link.

5. The prosecution stated it needed more details about the witness's whereabouts, not just his WhatsApp number, even if they were to give evidence over video-link.

6. However, the hearing continued and two defence witnesses gave evidence.

7. Firstly, **Mario Sánchez Sierra** was sworn (although there were no Bibles available and this did not appear to be a requirement). Introductory questions were asked as to identity by the Judge. In evidence in chief (defence questions), Mr Sánchez stated that he recognised Mr Uribe, and explained that 20 years ago he had known him through his wife, who used to be Mr Uribe's neighbour. For over 40 years Mr Sánchez had worked in the Cauca Department cultivating flowers. He stated that he knew Mr Meneses. He explained that in *pueblos* (towns), when a police commander changes, they are introduced to the community. He had spoken to Mr Meneses directly on multiple occasions on the issue of security on farms. He had never witnessed Mr Meneses interacting with Mr Uribe or acted as an intermediary between Mr Meneses and Mr Uribe.

8. In questioning by the prosecution, Mr Sánchez accepted he had been subject to an investigation regarding illegal structures and vehicles but stated that he had been cleared of any criminal liability. He said that he had never had any contact with Mr Uribe and had only seen him in public places. He gave evidence that he had been in contact with Mr Meneses, to whom he had asked for protection because he had received threats from those who had killed his son. He stated that he had contacted Mr Meneses by telephone, because he had confidence in Mr Meneses who he believed was conscientious. He agreed that he had not contacted the *fiscalía*. He gave evidence that after his son's murder he had locked himself in his farm and that he did not remember much, due to psychological trauma. Mr Sánchez further stated that he had never seen Mr Meneses interacting with Mr Uribe. He had not asked Mr Meneses and Mr Uribe to communicate. He did not recall passing a phone to him. Regardless of his memory, he would have never asked Mr Meneses and Mr Uribe to communicate regarding his situation and protection.

9. In further questioning by the victims' lawyer, Mr Sánchez stated he had never been a neighbour of Mr Meneses. They had lived in different places, himself in a village near his farm, and Mr Meneses in the city.

10. Secondly, **Alvaro Ruiz Hernandez** was sworn. Introductory questions were asked as to his identity by the Judge. In evidence in chief (defence questions), Mr Ruiz explained he was a colonel who had started his military career in 1973 at a military academy. He

was made a colonel in 1994. He had various different roles in different departments, including the Ministry of Defence, the School of Information, being a commander in the army in Medellín and the US Commission. From 1994 to the end of 1995 he worked in the Antioquia district, where his main task was to control the main roads and highways and provide protection. He also had responsibility over a military base. He had never met Mr Uribe face-to-face and had no memory of ever having had other forms of contact, but could not be sure. He had no memory of paramilitary groups working in his area, including "the Twelve Apostles", though he could remember the FARC and the Union Patriotica working in the area. He was given his role in the interior and US Commission following the retirement of his first commander, whose name he could not remember.

11. There was no prosecution questioning of Mr Ruiz. In questioning from the victims' lawyer, he stated he had no memory of La Carolina. The observer noted that some deference was paid to Mr Ruiz, who continued to be addressed by the 'colonel' title.

12. At the end of the hearing, there was a conversation between the lawyers and the Judge around the Judge's bench.

4 April 2019

13. The British Embassy sent a junior representative to observe court on this day. The representative was a Colombian national. The representative seemed surprised that Ms Brimelow QC was trying to speak to Mr Uribe. This was interpreted as another example of the high level of polarisation that occurs in these types of high-profile proceedings in Colombia.

14. Ms Brimelow QC sat next to Ms Correa for the evidence of the first witness of the day, as her view was blocked to the video screen from the other side of the public gallery. Ms Correa agreed that Ms Brimelow QC could sit next to her.

15. The first defence witness for the day, **Jose Luis Mercado**, appeared over video-link. The screen cut off the top of his head and should have been adjusted so his eyes could be seen. Otherwise, the link occurred smoothly and clearly. The Judge asked introductory questions.

16. In evidence in chief (defence questions), leading questions were put to Mr Mercado which went through the accusations in the case and received answers of denial. He said he had previously worked in Armenia, and knew La Carolina because it was near Pereira, a few kilometres from the entrance to Salento. In around the year 2000, he had worked for Fernando Castaño. He had contact with workers at the restaurant, Balcon del Quindio, which was next to the farm. He knew Mr Pineda (the third key prosecution witness). There was no guerrilla or paramilitary armed presence or intimidation when he was working on the farm or visiting the restaurant, only police and law enforcement. The place was not insecure, it was normal. He said that Mr Pineda did not ever mention his work or issues of security. He said that strangely, Mr Pineda had talked about receiving large sums of money. However, no other conversations with him stood out. None of the conversations seemed far-fetched or unrealistic to him.

17. During the prosecution questions Mr Mercado stated it would take him an hour to get to the restaurant, where he would wait and have food, then go back. He would spend about half the day there, until around 1pm. He would spend the rest of the day on the farm. He would not be able to know what happened in the restaurant for the rest of the day when he was not there. People who would go there at other times of day were workers, people from Armenia and tourists. The restaurant was open to the public. He did not know the economic and personal activities of all those people and those in the surrounding area of the restaurant.

18. In questioning by the victims' lawyer, Mr Mercado said he would normally arrive at the restaurant at 6 or 7am and leave at 1pm. There would be a police presence in the morning and evening. The police would retire at around 6 or 7pm. He would leave the restaurant at around 2pm. Mr Pineda lived above the restaurant. He insisted that there were no paramilitaries.

19. Questioning by the *procuraduría* elicited that Mr Mercado had worked there until 2011. He had met Mr Pineda in 2006. He was in contact with him, but not that frequently – they would talk in the restaurant whilst having food. He had never had long conversations with him. His personality had seemed normal.

20. The Judge had no questions. He thanked Mr Mercado and the lawyer with him. He read a procedural document out loud.

21. The second defence witness for the day, **Doris Johanna Medina**, appeared over video-link. There was an initial issue with the witness not being able to hear, but this was resolved by the witness being given headphones. She did not appear used to Skype but settled. The Judge did not repeat the initial warning against self-incrimination once he was sure the witness could hear. It might have been prudent to do so (although it was academic in the case of all the defence witnesses). The Judge asked introductory questions to ascertain identity.

22. In questioning by the defence, Ms Medina stated she knew Mr Meneses, who was her husband for 26 years, from 1983 up until their divorce in 2003. She gave evidence that she had never had a conversation with her lawyer about Mr Uribe or Alvaro Uribe Vélez. She had never asked him to contact the offices of the Uribes' lawyers. She said that her husband had never mentioned Mr Uribe. The prosecution, victims' lawyer and *procuraduría* had no questions.

23. This concluded the witness evidence. The Judge indicated that he wanted to proceed to the evidence of Mr Uribe. The defence lawyer asked for a moment to speak to his client and they left the court room.

24. Upon return, Mr Uribe addressed the court himself. He said that he did not know much about the law, but was under the impression that he would be given time to analyse the witness evidence before he was questioned. He had thought that on 3 and 4 April 2019 only witness testimony would be heard and asked for more time to prepare before giving evidence himself.

25. The Judge said it had been previously agreed with his own defence team that he would be questioned after the witness testimonies. The *fiscalía* said it would remain neutral and had no issue with whatever decision the Judge could take. The *procuraduría* agreed that Mr Uribe had the right to analyse evidence and prepare, which would not affect the timings of the case. The victims' lawyer asked the Judge to end the current stage of defence evidence that day if possible, as this had been the timetable agreed, so they could proceed to the closing stages of the trial.

26. The Judge granted Mr Uribe an adjournment. He adjourned the trial to 27 May 2019, when Mr Uribe would give evidence and when final submissions would be made and closing speeches would begin.

27. Each day had lasted less than half a day in court for 3-4 April 2019.

27 May 2019

28. In this hearing **Mr Uribe** gave evidence in his defence. He claimed that the prosecution was a politically motivated attack upon him because he was the brother of ex-President Alvaro Uribe Vélez ("*una perscución política*").

29. Mr Uribe denied the allegations, denied knowing of the existence of "the Twelve Apostles", denied knowing Mr Meneses and denied that La Carolina was used as a centre for "the Twelve Apostles". He stated that Mr Pineda had been manipulated by Padre Javier Giraldo who was an enemy of his brother.

30. At one point, Mr Uribe stood up and turned his back on the Judge in order to face the television camera filming behind him and speak directly to the Colombian people, telling them that he was innocent. He also used the space to demonstrate his height and point to differences in description between that of witnesses and his actual appearance.

31. The hearing did not progress further as the defence applied for an adjournment in order to instruct a further expert to examine Mr Pineda, which was granted.

6 to 8 November 2019

32. Ms Brimelow QC attended and listened to the closing submissions of the *fiscal*, the *procuraduría* and Dr Bernal for the victims. The *fiscal* closing was accompanied by a PowerPoint presentation and he asked for the conviction of Mr Uribe on both charges. He also raised the issue of Mr Uribe being guilty of Crimes against Humanity. The *procuraduría* submitted that evidence was sufficient to convict Mr Uribe of directing "the Twelve Apostles". However, the *procuraduría* submitted that there was insufficient evidence that he was guilty of the murder of Mr Barrientos.

33. Dr Bernal made closing submissions for the victims. He submitted that there was sufficient evidence to convict Mr Uribe of both charges.

34. The Judge listened but did not take notes. It was presumed that the arguments would be submitted to him in writing. He did not ask questions in keeping with a non-interventionist style throughout the trial.

35. The defence applied for an adjournment in order to research further the allegation of Crimes against Humanity. Dr Granados (for the defence) further contended that the prosecution had changed the nature of the accusation of the case of murder of Mr Barrientos "*por autor mediático por aparato organizado de poder*". The Judge appeared exasperated at the application for another adjournment. However, he granted the adjournment.

26 January 2021 (remote)

36. All hearings in the January 2021 period lasted from 9am to approximately 6pm Colombia time, with two short breaks during each hearing. The Judge began the hearing by holding a one-minute silence for the victims of the pandemic.

37. Dr Granados, for the defence, submitted that the case against Mr Uribe was based on spurious claims, gossip and unfounded allegations from witnesses. Witnesses had not been identified in certain cases, due to laws relating to the ability of witnesses to withhold their identity. The entire case rested on the evidence of one such witness. The complaints made by the relevant communities could not be treated as proof, because they had no intrinsic or extrinsic reliability. They could have served as intelligence or a spring-board for further investigations, but not as reliable evidence in and of themselves. The police reports have no probative value, as a matter of precedent. None of the eyewitnesses mentioned Mr Uribe by name, save for one. He submitted that the suggestion that there was a "pact of impunity" was unbelievable. This would require the relevant authorities, which included human rights defenders, to have entered into such a pact. To so find would tarnish their name.

38. Dr Granados argued that Mr Pineda presented himself as a victim but that his mental health was fundamental to the reliability of his evidence. He accepted that what was decided by the Judge in that regard was of course respected (the evidence was admitted). It was submitted that nothing has been shown regarding Mr Uribe's connection to the municipality or relevant actors there. A lot of the case has to do with the homicide of Mr Barrientos. Mr Barrientos was not known to Mr Uribe and had nothing to do with him.

39. Dr Granados then embarked on an analysis of whether the alleged offence would constitute a Crime against Humanity. In short, he stated that not all serious crimes amounted to Crimes against Humanity (citing the decision of the Criminal Chamber of the Supreme Court of Justice in the case of Gloria Lara de Echeverri),[50] and that the allegations against Mr Uribe did not meet the elements of Crimes against Humanity under the Rome Statute, citing international jurisprudence on this issue. He said that conspiracy is not a relevant mode of responsibility for Crimes against Humanity. He did not address other forms of accessorial liability under the Rome Statute. He stated that the killing of Barrientos occurred before the accession of Colombia to the Rome Statute, which cannot apply retroactively. He did not address the status of Crimes against Humanity under customary international law. There did not appear to be any authorities or written arguments before the Judge and other parties. However, these may well have been submitted at a later date.

40. Dr Granados said there was a need to attain an adequate level of rigour when analysing the evidence in the case. The witness evidence must always be approached with scepticism, not a desire to believe. The presumption of innocence must be respected. Standards of doubt must be overcome based on experience, lack and inconsistency of evidence. The Judge must look at whether proof is required for a particular finding, and if it is tendered whether it is sufficient.

41. He explained he would go through each prosecution witness and show why they do not prove the allegations against Mr Uribe. He stated that doubt had to be resolved in favour of the accused. He stated that under international human rights law defendants are

[50] Auto Interlocutorio de la Corte Suprema de Justicia, Sala de Casación Penal número 34180 (23 May 2012).

entitled to have witnesses against them present in the case. Mr Amaya Vargas was not present at the hearing. Mr Meneses and Mr Pineda were not questioned by the defence.

42. He stated that Mr Amaya Vargas was a biased witness when he gave evidence against Mr Uribe in 1996 with his identity protected. There was an incentive for him to testify against Mr Uribe as he would have received a considerable reduction in his sentence for doing so. That was recognised by the *fiscalía* when it closed the investigation into Mr Uribe in 1999. He said that Mr Amaya Vargas then changed his account when his identity was known but continued to be inconsistent, which no doubt shows he was lying.

27 January 2021(remote)

43. At the outset of the hearing, 166 people had logged in to the video link. The Judge acknowledged the presence of press and international observers.

44. Dr Granados continued to focus on the evidence of Mr Amaya Vargas, who said he had never seen Mr Uribe give instructions to Mr Meneses. Dr Granados said Mr Amaya Vargas was therefore not a witness of fact to the issue of a criminal pact between Mr Meneses and Mr Uribe. He could not prove any of those facts.

45. He accused the Colectivo de Abogados Jose Alveár Restrepo ("CAJAR") of the serious offence of bribing witnesses in the context of helping Mr Amaya Vargas to hand himself in. CAJAR are involved in the concurrent prosecution of Álvaro Uribe Vélez.

46. Dr Granados turned to Mr Meneses and said he would demonstrate 20 lies told by Mr Meneses during the investigation, which showed he was not a credible witness of fact (Dr Granados went on to name and count these alleged lies during the course of his submissions). He started by setting out inconsistencies between the accounts of Mr Amaya Vargas and Mr Meneses, including as regards the physical appearance of Mr Uribe and La Carolina.

47. He built a picture as regards the political context of Mr Meneses' disclosures in Argentina. The conspiracies alleged by Dr Granados were wide-ranging; encompassing the former President of Venezuela (Hugo Chavez) and human rights lawyers in Bogotá.

48. Dr Granados said this was part of a plot with President of Venezuela Nicolás Maduro against Álvaro Uribe Vélez. He argued that Mr Meneses had been offered benefits by the Uribes' enemies, so had an incentive to take part. He said there is evidence of electronic communications where Mr Meneses tried to bribe Mr Buenavides to testify against the Uribe family.

49. He submitted that at the time of Mr Meneses' disclosures in Argentina, the re-election of Alvaro Uribe Vélez was a real possibility, although this was subsequently prohibited by the Constitutional Court. Dr Granados's case was that senator Gustavo Petro and CAJAR had both encouraged Mr Meneses to testify against Mr Uribe. These were serious allegations of attempts to pervert the course of justice. However, there was no interruption and no specific evidence was highlighted in the submissions.

50. During the submissions about various conspiracies, the delegation noted that the number of people viewing dropped to around 60.

51. Earlier, Dr Granados had said that the case attracted so much media attention because Mr Uribe was the brother of the person who had "*given the most to the country*" (referring to Álvaro Uribe Vélez). At times the submissions took on politics rather than an evidence-based analysis.

52. Dr Granados argued that there was nothing to corroborate what Mr Meneses had said and that other witnesses for the defence corroborated one another (namely that Mr Uribe was not part of a paramilitary group) and so the facts should be resolved in favour of Mr Uribe.

53. Dr Granados pointed to how Mr Meneses' account has developed over time, to include that Mr Uribe was implicated in the activities of "the Twelve Apostles". He said that the documentary evidence corroborated Mr Meneses' original account, which meant that the current account was wrong.

54. Dr Granados then analysed the evidence of the defence witnesses, starting with Captain Benavides. The observation delegation was aware that Captain Benavides had been found by the Colombian Constitutional Court to be an unreliable witness in 2018 in a

criminal case against Álvaro Uribe Vélez for manipulating witnesses.[51] Other defence witnesses were analysed in turn.

55. Dr Granados then exhibited the documentary and photographic evidence on screen. This was clearly visible and well highlighted on the screen. He took the Judge through all the evidence and its relation to Mr Uribe's case.

56. This included photographic evidence which he said demonstrated that Mr Uribe was in the Feria de Manizales before 7 January 1994 and for several days afterwards, which contradicted Mr Meneses' claim that there was a meeting between himself and Mr Uribe at La Carolina on 7 or 8 January 1994.

57. At the end of the day's submissions, Mr Uribe said he had struggled to hear due to internet connectivity issues and asked the court to rectify the matter tomorrow. The Judge agreed to do so. However, we note that as Dr Granados appeared to be reading from a script, it would be able to be shared with Mr Uribe and so it was unlikely that there would be any prejudice.

28 January 2021 (remote)

58. Dr Granados dealt with the provenance of bullet holes which had been shown to exist at La Carolina. Dr Prado objected to the relevance of this to the case, but the Judge dismissed the objection. The objection appeared to the observers to be surprising at this point if the photographs had already been produced in evidence. If they were newly relied upon in closing, this would have been a very unusual procedure. However, it was difficult to understand any prejudice caused by their production.

59. Dr Granados continued to refer to photographs of the outside and inside of La Carolina and to point out bullet holes. Dr Granados explained that according to Captain Benavides (the delegation is unsure as to when he gave evidence – one feature of the case was reference to what was said in other proceedings, official and unofficial), Mr Barrientos was killed by Mr Uribe's employees in self-defence, when Mr Barrientos

[51] Sentencia en la que se ordena investigar a Álvaro Uribe por manipulación de testigos en el caso Cepeda, Corte Suprema de Justicia, Sala de Casación Penal, Sala de Instruccion número 2, radicación número 38451(16 February 2018).

and another group attempted to attack La Carolina. That explained the bullet holes, asserted Dr Granados. He stated that the body was then wrapped in blankets. Mr Uribe was not in La Carolina at the time. He had provided a similar account in 1996 when questioned, as had his employees. It was stated that Mr Barrientos's autopsy showed bullet wounds but no signs of torture. It was submitted that this contradicted Mr Meneses' evidence that Mr Barrientos was tortured and killed in La Carolina and then paraded around town in a police car. The delegation did not have sight of the pathology evidence.

60. During Dr Granados's submissions regarding the implausibility of the Mr Uribe family bribing or reaching deals with judges, Dr Prado appeared to smile and shake his head. He then got up from his chair and remained off screen for around 10 minutes.

61. Dr Granados made a wider point about the implausibility of the Uribe family bribing the judiciary in light of the fact that the process had been going on for several years and had been effective in many respects, and given the low power exercised by Alvaro Uribe Vélez and Mr Uribe at the relevant times. He linked this to the wider modus operandi of Mr Meneses making disclosures in Argentina. He said the terms of his disclosure themselves betray his ulterior motive.

62. The relevance of the submissions to the evidence was not clear. It was not understood that there was evidence of judicial bribes. If there had been it is hard to see its relevance to a trial where the trial judge was not being accused of taking a bribe and there was no application to recuse that judge.

63. However, it was a feature of the case that submissions were wide-ranging. At times, it felt to the delegation like the audience was not the court but the press, perhaps to attempt to correct stories reported over the years.

64. Dr Granados submitted that Mr Pineda, who had not given live evidence, was unreliable due to his mental health issues and had not told the truth.

65. For another 10 minutes of the submissions the Judge's camera was off, it appears because his internet cut out. He then appeared but cut out again, and re-appeared. However, there were no issues and Dr Granados repeated submissions where required.

66. It appeared that Mr Uribe was making contact with his lawyers throughout. Towards the end, Mr Uribe's screen also turned black, but he informed his lawyer that he could hear and see perfectly.

67. Generally the remote hearing progressed smoothly.

29 January 2021 (remote)

68. The hearing started late, at around 9.30am, due to connectivity issues. The defence submissions continued. The defence explicitly implicated Dr Prado in a "*manipulation of the evidence*", media, and a wider conspiracy against Mr Uribe.

69. There were further connectivity issues which were noted by the Judge and resolved, though this meant Dr Granados had to reiterate short portions of his submissions.

9 and 10 February 2021 (remote)

70. The hearings in February 2021 were half days. Fewer people were shown as viewing for this part of the closing submissions (around 54).

71. Dr Granados finished his closing submissions. He addressed whether "the Twelve Apostles" might have been part of Los Costeños. He addressed in detail the "indirect witnesses" and asked that they be not taken into account as they did not provide direct evidence. Law and submissions were mixed with a reference to a Supreme Court case (specific authority was not cited orally).

72. The submissions were wide-ranging, including reference to the motivation of extradited paramilitaries to lie in order to get revenge on former President Alvaro Uribe Vélez, who operated in the area, and whether the group was simply made up.

73. The Judge indicated that he would deliver his judgment as soon as he was able to do so, hoping that it would be within four months. He referred to the complexity of the case. All parties urged that the judgment be delivered as soon as possible.