

## **Inter-American Court of Human Rights**

### **Case of the 19 Merchants v. Colombia**

#### **Judgment of July 5, 2004 (Merits, Reparations and Costs)**

In the case of the *19 Tradesmen*,

the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court"), composed of the following judges:\*

Sergio García Ramírez, President  
Alirio Abreu Burelli, Vice President  
Oliver Jackman, Judge  
Antônio A. Cançado Trindade, Judge  
Cecilia Medina Quiroga, Judge  
Manuel E. Ventura Robles, Judge, and  
Ernesto Rey Cantor, Judge *ad hoc*;

also present,

Pablo Saavedra Alessandri, Secretary, and  
Emilia Segares Rodríguez, Deputy Secretary,

pursuant to Articles 29, 31, 55, 56 and 57 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure")\*\* and to Article 63(1) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"), delivers this judgment.

#### **I**

#### **INTRODUCTION OF THE CASE**

1. On January 24, 2001, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") filed before the Court an application against the State of Colombia (hereinafter "the State" or "Colombia"), originating from petition No. 11,603, received by the Secretariat of the Commission on March 6, 1996.

2. The Commission filed the application based on Article 61 of the American Convention, for the Court to decide whether the State violated Articles 4 (Right to Life) and 7 (Right to Personal Freedom) of the American Convention, as a result of the detention, disappearance and execution on October 6, 1987, of the tradesmen Alvaro Lobo Pacheco, Gerson Rodríguez, Israel Pundor, Ángel Barrera, Antonio Florez

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\* Judge Diego García-Sayán excused himself from taking part in the deliberation and signature of this judgment.

\*\* According to the Order of March 13, 2001, on Transitory Provisions to the Rules of Procedure of the Court in force since June 1, 2001, this judgment is delivered in the terms of the Rules of Procedure adopted in the Order of the Court of September 16, 1996, which entered into force on January 1, 1997.

Contreras<sup>1</sup>, Carlos Arturo Riatiga, Víctor Ayala, Alirio Chaparro, Huber Pérez, Alvaro Camargo, Rubén Pineda, Gilberto Ortíz, Reinaldo Corso Vargas, Hernán Jáuregui, Juan Bautista, Alberto Gómez and Luis Sauza, and of Juan Montero and Ferney Fernández<sup>2</sup> (hereinafter “the alleged victims” or “the 19 tradesmen”) on October 18, 1987, in the municipality of Puerto Boyacá, Department of Boyacá, in the Magdalena Medio region. The Commission also requested the Court to decide whether the State had violated Articles 5 (Right to Humane Treatment), 8(1) (Right to a Fair Trial) and 25 (Judicial Protection) of the American Convention, to the detriment of the said alleged victims and their next of kin, and also to determine whether Colombia failed to comply with the provisions of Article 1(1) (Obligation to Respect Rights) thereof, with regard to the last two of the abovementioned articles. The Commission alleged that the acts were committed by the “paramilitary” group that operated in the municipality of Puerto Boyacá masterminded by and with the support of Colombian Army officers.

3. The Commission also requested the Court to order the State to adopt all necessary measures to ensure that the next of kin of the alleged victims received adequate and prompt reparation as a result of the alleged violations, including a complete, impartial and objective investigation in the ordinary jurisdiction, in order to prosecute and punish those responsible for the extrajudicial execution of the alleged victims. Lastly, the Commission requested the Court to condemn the State to pay the costs and expenses arising from processing the case in the domestic jurisdiction and before the Inter-American System.

## **II COMPETENCE**

4. Colombia has been a State Party to the American Convention since July 31, 1973, and accepted the contentious jurisdiction of the Court on June 21, 1985. Therefore, the Court is competent to hear this case under the terms of Articles 62 and 63(1) of the Convention.

## **III PROCEEDING BEFORE THE COMMISSION**

5. On March 6, 1996, the Colombian Jurists Commission filed a petition before the Inter-American Commission based on the alleged forced disappearance of the 19 tradesmen (*supra* para. 2) carried out by members of the National Army and members of a “paramilitary” group in the municipality of Puerto Boyacá, Department of Boyacá, in the Magdalena Medio region.

6. On March 29, 1996, the Commission opened case No. 11,603.

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<sup>1</sup> In its application brief the Inter-American Commission indicated that the last names of this alleged victim were Flórez Ochoa. However, subsequently, according to the documentary evidence on possible reparations and costs, the Secretariat requested the Commission to clarify the correct last names of this alleged victim; and the Commission rectified and stated that the correct last names were Flórez Contreras.

<sup>2</sup> The names of the 19 alleged victims were incomplete in the application, so hereafter the Court will use their complete name, as it appears in the information included in the body of evidence of the case.

7. On September 27, 1999, the Commission adopted Report No. 112/99, in which it declared that the case was admissible and made itself available to the parties in order to reach a friendly settlement.

8. On December 16, 1999, the petitioners presented a proposal for a friendly settlement to the Commission, and it was forwarded to the State so that the latter could submit its comments. On January 21, 2000, the State remitted a document referring to the report on admissibility; this was forwarded to the petitioners.

9. On March 2, 2000, the Commission held a hearing to examine the possibility of reaching a friendly settlement. According to the Commission, the State declared that it could not acknowledge responsibility because the final judgments of the domestic courts did not prove that State agents were responsible for the reported facts. The State also indicated that the next of kin of the alleged victims would receive reparation if the administrative court so ordered. The petitioners decided to terminate the attempt to reach a friendly settlement.

10. On October 4, 2000, the Commission adopted Report No. 76/00, in accordance with Article 50 of the Convention. In the report it recommended that the State:

1. Conduct a complete, impartial and effective investigation in the ordinary jurisdiction in order to prosecute and punish those responsible for the extrajudicial execution of Alvaro Lobo Pacheco, Gerson Rodríguez, Israel Pundor, Ángel Barrera, Antonio Flores Ochoa, Carlos Arturo Riatiga, Victor Ayala, Alirio Chaparro, Huber Pérez, Alvaro Camargo, Rubén Pineda, Gilberto Ortíz, Reinaldo Corso Vargas, Hernán Jáuregui, Juan Bautista, Alberto Gómez, Luis Sauza, Juan Montero and Ferney Fernández.

2. Adopt the necessary measures to ensure that the victims' next of kin receive adequate and prompt reparation for the violations [...] that have been established.

3. Adopt the necessary measures to comply fully with legal doctrine developed by the Colombian Constitutional Court and by [the Inter-American] Commission regarding the investigation and prosecution of similar cases by ordinary criminal justice.

11. On October 24, 2000, the Commission forwarded the abovementioned report to the State and granted it two months, from the date of transmittal, to provide information on the measures adopted to comply with the recommendations. On December 22, 2000, the State requested an extension in order to respond to Report No. 76/00. The extension was granted until January 19, 2001. On that day, the State presented its response to the Commission and, on the same day, the Commission decided to submit this case to the jurisdiction of the Court.

#### **IV PROCEEDING BEFORE THE COURT**

12. The Commission filed the application before the Court on January 24, 2001.

13. In accordance with Articles 22 and 33 of the Rules of Procedure, the Commission appointed Robert K. Goldman and Juan E. Méndez as delegates and Verónica Gómez as legal adviser. The Commission also designated Viviana Krsticevic and Roxanna Altholz, of the Center for Justice and International Law (CEJIL), as assistants, and Gustavo Gallón Giraldo, Carlos Rodríguez Mejía and Luz Marina Monzón, members of the Colombian Jurists Commission, as representatives of the alleged victims and their next of kin.

14. On February 15, 2001, on the instructions of the President of the Court (hereinafter "the President") and pursuant to Articles 33 and 34 of the Rules of Procedure, the Secretariat of the Court (hereinafter "the Secretariat") informed the Commission that, although, in the core of the application, it had set out the names of 19 alleged victims, in the purpose and the plea of the application it had failed to include that of Luis Sauza. Consequently, the Secretariat requested the Commission to advise it, within 20 days, whether that person should be included as an alleged victim in the case, and also to forward certain attachments to the application, which were incomplete or illegible. On March 8, 2001, the Commission advised that the name of Luis Sauza had been omitted from the plea of the application owing to an "involuntary administrative error" and confirmed that he was one of the 19 alleged victims in the case. The Commission also advised that it did not have a better copies of the attachments to the application that had been presented incomplete or illegible; it indicated that those attachments appeared in the list of evidence described in paragraph 68 of the application, and it considered that the attachments should be requested from the State (*infra* para. 19).

15. On March 20, 2001, after the President had made a preliminary review of the application, the Secretariat notified it to the State, together with its attachments, and informed the State of the time limits for answering it and appointing its representative in the proceeding.

16. On April 11, 2001, the State appointed Luz Marina Gil García as its agent.

17. On May 25, 2001, on the instructions of the President, the Secretariat informed the State that it had the right to appoint to appoint a judge *ad hoc*, because, based on Article 19 of the Statute of the Court and Article 19 of its Rules of Procedure, the President had accepted the request made by Judge Carlos Vicente de Roux Rengifo, a Colombian national, to excuse himself from hearing the instant case. On June 27, 2001, the State appointed Rafael Nieto Navia as Judge *ad hoc*.

18. On August 10, 2001, the State submitted its answer to the application, after having requested two extensions of the time limit, which were granted by the President.

19. On March 15, 2002, on the instructions of the President, the Secretariat requested the State to forward, within 20 days, all the documentation that had been requested by the Commission in paragraph 68 of the application; this referred to the files of the investigations and the proceedings in the domestic sphere and the reports produced by the Administrative Department of Security (DAS).

20. On April 5, 2002, the State submitted a communication, requesting an extension of 10 days to present the documentation requested by the President, and described in paragraph 68 of the application. The same day, the Secretariat informed the State that, on the instructions of the President, an extension had been granted until April 16, 2002.

21. On April 16, 2002, the State sent a facsimile with the list of the documentation that it would remit, as requested on the instructions of the President (*supra* para. 19). On April 18, 2002, the State presented the attachments to the said communication. When acknowledging receipt and forwarding the said communication and its attachments, the Secretariat indicated which documents had

been forwarded by the State and which had not been remitted, according to the list of documents included in paragraph 68 of the application.

22. On May 28, 2002, the State submitted documents corresponding to the documentary evidence requested on the instructions of the President, and described in paragraph 68 of the application (*supra* para. 19).

23. On June 12, 2002, the Court delivered judgment on the preliminary objection filed by Colombia, in which it decided unanimously, in the single operative paragraph, "to dismiss the preliminary objection raised by the State of Colombia and to continue hearing the [...] case."

24. On November 29, 2002, on the instructions of the Court and based on Articles 31, 44 and 56 of its Rules of Procedure and on the principle of procedural economy, the Secretariat asked the Inter-American Commission to present its arguments and evidence on possible reparations and costs in this case by January 20, 2003, at the latest, and indicated that the State would subsequently be granted the same time limit to present its comments and evidence on the said matter. Also, since this case was being processed under the Rules of Procedure adopted in the Order of the Court of September 16, 1996, the Court requested the Commission to advise the representatives of the alleged victims and their next of kin that, if they wished to present arguments and evidence on possible reparations and costs, they should do so through the Inter-American Commission.

25. On March 25, 2003, the Commission presented its arguments and evidence on possible reparations and costs, after having requested two extensions, which were granted by the President. The attachments to this brief were received on March 31, 2003. The Commission also requested the Court to accept statements sworn before a public notary or judicial official of twelve next of kin of the alleged victims.

26. On March 26, 2003, on the instructions of the President, the Secretariat advised that Colombia had been granted until May 26, 2003, to submit its comments and evidence on possible reparations and costs.

27. On April 2, 2003, on the instructions of the President, the Secretariat advised that the State had been given until April 9, 2003, to submit its comments on the Commission's request – in the brief with arguments on possible reparations and costs (*supra* para. 25) – that the statements sworn before a public notary or judicial official of twelve next of kin of the alleged victims be accepted.

28. On April 21, 2003, the State forwarded a brief presenting its comments on the Commission's abovementioned request concerning evidence, after having requested an extension of the time limit, which was granted by the President (*supra* paras. 25 and 27). Colombia indicated that it did not object to the statements sworn before a public notary or a judicial official of twelve next of kin of the alleged victims being received "provided that [it] was ensured the right to an adversary proceeding."

29. On April 22, 2003, the President of the Court issued an Order in which he decided to admit the sworn written statements of twelve next of kin of the alleged victims as proposed by the Inter-American Commission, and requested that the statements should be made in writing under oath before a public notary or a judicial official. The President requested the Inter-American Commission to coordinate and

take the necessary steps for the said sworn statements to be made, and to forward them to the Inter-American Court, by May 22, 2003, at the latest. The President also told the Secretariat that, when the sworn written statements had been received and in accordance with the right of defense and the adversary proceeding, they should be forwarded to the State to enable it to present any comments it deemed pertinent within a non-extendible period of 20 days from the date they were received.

30. On April 30, 2003, the State presented a brief, in which it requested that:

The scope of the right to an adversary proceeding recognized to the State in the Order of April 22, should be reconsidered. Accordingly, when taking measures to obtain the sworn statements, the Commission should be ordered to inform [the State] of the day, time and address of the office of the judicial official or notary where the witnesses will testify, so that it could assist and be able to cross-examine them [...].

And that:

Since, [the State] would already be fully informed about the testimonial statements when [the Court] received them, it would not be necessary to forward them. Thus, the 20 days that [the State] had been granted to formulate comments on the statements [should] be added to the period granted for presenting comments and evidence on the arguments concerning possible reparations and costs in [the] case of the 19 tradesmen filed by the Commission.

31. On May 6, 2003, following the instructions of the President, the Secretariat informed the State that:

a) The Court considers that the sworn written statements requested from the Inter-American Commission in the Order of the President of the Court of April 22, 2003, are documentary evidence. Therefore, they are processed in the same way as documentary evidence, and not as expert or testimonial evidence, which is received in the presence of the Court, the Inter-American Commission and the State. Consequently, the Colombian State's request is not admissible; and

b) The period granted to the State to submit its comments and evidence on possible reparations and costs in the case is independent of the period granted to the Inter-American Commission for presentation of the sworn written statements and, to the State, for any comments it deems pertinent. Should the State require an extension in order to present the said comments, it should advise the Secretariat as soon as possible.

32. On May 15, 2003, the Commission forwarded a communication in which it requested an extension for the presentation of the sworn written statements (*supra* para. 29). The following day, on the instructions of the President, the Secretariat advised that a non-extendible period until June 23, 2003, had been granted for the Commission to present the said statements.

33. On June 23, 2003, in response to the Order of the President of April 22, 2003 (*supra* para. 29), the Commission remitted copies of the ten sworn written statements made by Carmen Rosa Barrera Sánchez, Lina Noralba Navarro Flórez, Luz Marina Pérez Quintero, Miryam Mantilla Sánchez, Ana Murillo de Chaparro, Suney Dinora Jauregui Jaimes, Ofelia Sauza de Uribe, Rosalbina Suárez de Sauza, Marina Lobo Pacheco and Manuel Ayala Mantilla. The Commission also advised that "[o]wing to unforeseen circumstances, the testimonies of Bernardo Barragán Flórez and Marco Antonio Chaparro were not included." On June 30, the Commission submitted the originals of the said statements.

34. On June 25, 2003, the Secretariat forwarded to the State the sworn written statements submitted by the Commission and reiterated that, in accordance with the fifth operative paragraph of the Order of the President of April 22, 2003 (*supra* para. 29), it had 20 days to present any comments it deemed pertinent.

35. On June 26, 2003, the State presented its comments on possible reparations and costs (*supra* paras. 24 and 26), after having requested an extension to present them, which had been granted, on the instructions of the President.

36. On July 2, 2003, the President of the Court issued an Order in which he decided to convene the Inter-American Commission and the State to a public hearing to be held at the Bougainvillea Hotel (Bromelias Room), located in Santo Domingo de Heredia, Costa Rica, on September 15, 2003, to hear the final oral arguments on merits and possible reparations and costs, and also the statements of the witnesses and the reports of the expert witnesses proposed by the Inter-American Commission. It also established a time limit for the Commission and the State to submit their final written arguments.

37. On July 23, 2003, the State submitted a communication in which it forwarded its comments on the sworn written statements presented by the Commission (*supra* paras. 29, 33 and 34).

38. On September 8, 2003, the Commission submitted a communication to which it attached a copy of a communication of September 4, 2003, from the Colombian Jurists Commission, the representative of the alleged victims and their next of kin. In this communication, the Inter-American Commission, based on Article 19 of the Statute of the Court and on the arguments presented by the Colombian Jurists Commission, informed the Court of its opinion on the supervening existence of certain impediments for Rafael Nieto Navia to exercise the post of Judge *ad hoc* in the case.

39. On September 8, 2003, the Court issued an Order in which it decided:

1. To suspend the public hearing on merits and possible reparations and costs [...] and also the time limit granted to the parties to present their final written arguments, owing to the Inter-American Commission's request that Judge *ad hoc* Rafael Nieto Navia be disqualified.
2. To forward the communication of the Inter-American Commission on Human Rights of September 8, 2003, and its respective attachments to the Judge *ad hoc*, so that he may present his comments on them within six weeks of receiving this communication.
3. To transmit the [...] Order to the State of Colombia and to the Inter-American Commission on Human Rights, for their information.

40. On October 6, 2003, Rafael Nieto Navia forwarded a communication with its respective attachments, in which he indicated that "[he did] not consider that any impediment existed for him [to exercise the function of Judge *ad hoc*], but in the interests of transparency, he [left] the Colombian Government free to appoint another judge" in this case.

41. On October 20, 2003, on the instructions of the President, the Secretariat granted the State 30 days to appoint a Judge *ad hoc* to take part in the consideration of this case.

42. On December 18, 2003, the State presented a communication in which it informed the Court that it had appointed Ernesto Rey Cantor as Judge *ad hoc* in the case and attached a copy of his curriculum vitae.

43. On February 18, 2004, the President issued an Order in which he decided that the reasons had ceased, which had caused the Inter-American Court to suspend, by the Order of September 8, 2003 (*supra* para. 39), the public hearing convened on merits and possible reparations and costs, and the time limit granted to the parties to submit their final written arguments. Consequently, the President convened the Commission and the State to a public hearing to be held at the seat of the Inter-American Court on April 21, 2004, to hear the final oral arguments on merits and possible reparations and costs, as well as the testimonial statements and the expert reports proposed by the Inter-American Commission. In this Order the President also informed the parties that they had until May 22, 2004, to submit their final written arguments on merits and possible reparations and costs.

44. On March 17, 2004, the Inter-American Commission submitted a brief in which it requested that the State should be reminded to forward the pending documentary evidence (*supra* para. 21), which had been requested on the instructions of the President (*supra* para. 19).

45. On March 19, 2004, on the instructions of the President, the Secretariat requested Colombia to present, by April 5, 2004, at the latest, the documentary evidence indicated by the Commission in paragraph 68 of the application, which had been requested on the instructions of the President and was pending submission (*supra* paras. 19 and 21).

46. On April 5, 2004, the State requested an extension until May 10, 2004, to present the documentary evidence indicated by the Inter-American Commission in paragraph 68 of the application, which was pending submission (*supra* paras. 19, 21 and 45). On April 6, 2004, on the instructions of the President, the Secretariat informed the State that the requested extension had not been granted, because the State should have submitted those documents by April 16, 2002, and because it was essential that the State should submit the said evidence as soon as possible, so that it could be incorporated into the file before the Court prior to the public hearing on merits and possible reparations and costs.

47. On April 7, 2004, the Commission forwarded a communication in which it advised that it had appointed Susana Villarán and Santiago A. Canton as new delegates in this case.

48. On April 13, 2004, the State presented a brief in which it referred to the documentary evidence indicated by the Inter-American Commission in paragraph 68 of the application, which had been requested on the instructions of the President and which was pending submission (*supra* paras. 19, 21, 45 and 46) and requested an extension for sending "the files that had been considered by the Human Rights Unit of the Attorney General's Office and those that had been considered by the Cúcuta Regional Court and the San Gil Specialized Court," because they represented more than "20,000 folios."

49. On April 14, 2004, on the instructions of the President, the Secretariat requested the Commission to present any comments it deemed pertinent regarding



the information provided by the State on the documentary evidence pending submission, by April 16, 2004, at the latest.

50. On April 14, 2004, on the instructions of the President and pursuant to Article 44(2) of the Rules of Procedure, the Secretariat requested the State to present specific documentation as helpful evidence on possible reparations and costs by May 7, 2004, at the latest.

51. On April 16, 2004, the Commission submitted its comments on the submission by the State of the pending documentary evidence, described by the Inter-American Commission in paragraph 68 of the application (*supra* paras. 19, 21, 45, 46, 48 and 49). In this regard, the Commission requested that Colombia's failure to comply should be noted "and that this affected the equality of arms in the proceeding and the ability of the Inter-American Commission [...] to present and respond to arguments in the instant case."

52. On April 21 and 22, 2004, the Court received the statements of the witnesses and the report of the expert witness proposed by the Inter-American Commission, in a public hearing on merits and possible reparations and costs. The Court also heard the final oral arguments of the Inter-American Commission and the State.

There appeared before the Court:

for the Inter-American Commission on Human Rights:

Susana Villarán de la Puente, delegate  
Santiago A. Canton, delegate  
Verónica Gómez, legal adviser  
Lilly Ching, legal adviser  
Carlos Rodríguez Mejía, assistant  
Luz Marina Monzón, assistant  
Viviana Krsticevic, assistant  
Roxanna Altholz, assistant, and  
Paulina Vega González, assistant

for the State of Colombia:

Luz Marina Gil García, agent

Witnesses proposed by the Inter-American Commission on Human Rights:

Salomón Flórez Contreras  
Sandra Belinda Montero Fuentes  
Jorge Corzo Viviescas  
Alejandro Flórez Pérez  
Wilmar Rodríguez Quintero, and  
Luz Marina Pinzón Reyes

Expert witness proposed by the Inter-American Commission on Human Rights:

Carlos Martín Beristain

53. On April 22, 2004, while presenting its final oral arguments in the public hearing on merits and possible reparations and costs, the Commission submitted documentation related to the case.

54. During the public hearing on merits and possible reparations and costs, the State undertook to forward to the Court a copy of all the files of the proceedings processed before the Cúcuta and San Gil courts, and indicated that it should not be understood "that the Colombian State had any intention of hiding documents or failing to provide them," but that the problem arose from "the difficulty for the State to photocopy nearly 60,000 folios" (*supra* paras. 19, 21, 45, 46, 48, 49 and 51).

55. On April 24, 2004, the Court issued an Order, in which it requested the State to submit to the Court several certifications concerning the proceedings and investigations conducted in the domestic sphere in the ordinary criminal jurisdiction, in the military criminal jurisdiction, in the administrative jurisdiction and by disciplinary action, in relation to the facts of the instant case, as helpful evidence on merits. The Court also reiterated to the State that, as had been requested during the public hearing on merits and possible reparations and costs, it should submit the domestic legislation cited by the parties to the Court. Lastly, the Court reiterated to the State that, in accordance with the request made to it, on the instructions of the President, in a note from the Secretariat of April 14, 2004 (*supra* para. 50), it should submit to the Court all the documents that had been requested as helpful evidence on possible reparations and costs. The Court requested Colombia to present all the said helpful documentary evidence by May 7, 2004, at the latest.

56. On May 23, 2004, the Commission presented its final written arguments. On June 1, 2004, the Commission presented the attachments to this brief.

57. On May 24 and 26, 2004, the State forwarded a copy of the files of the criminal proceedings processed in the ordinary criminal jurisdiction and in the military criminal jurisdiction that were pending submission, in accordance with the request made, on the instructions of the President, in relation to the documentation described in paragraph 68 of the application (*supra* paras. 19, 21, 45, 46, 48, 49 and 51).

58. On May 24 and 26, 2004, the State forwarded part of the helpful documentary evidence on possible reparations and costs, which had been requested in a note of the Secretariat of April 14, 2004, on the instructions of the President and pursuant to Article 44(2) of the Rules of Procedure (*supra* paras. 50 and 55). The Secretariat requested Colombia to forward the pending documents and information as soon as possible.

59. On May 25, 2004, Colombia forwarded its final written arguments with an attachment.

60. On May 24 and 26, 2004, the State forwarded the documentary evidence on merits requested in the Order of the Court of April 24, 2004 (*supra* para. 55). However, the State did not forward all the information requested regarding the certifications of the domestic proceedings, so the Secretariat asked it to forward the remaining information as soon as possible.

61. On June 25, 2004, on the instructions of the President, the Secretariat requested the State to present as helpful evidence, by July 2, 2004, at the latest, the

birth certificates or copies of the birth registration of Huber Pérez Castaño and Luis Alberto Gómez Ramírez, which had been requested previously, but could not be forwarded by the State owing to lack of information on the complete names of these alleged victims. The Secretariat also reiterated to the State that it should forward by July 2, 2004, at the latest, the documents and information that were pending with regard to the helpful evidence on possible reparations and costs (*supra* para. 58) and with regard to helpful evidence on merits (*supra* para. 60), requested by the Court in the Order of April 24, 2004 (*supra* para. 55). The State failed to submit this documentation.

62. On June 26, 2004, Colombia presented a brief, with which it forwarded a copy of the birth registration of the alleged victim, Rubén Emilio Pineda Bedoya, and of eight of his next of kin, in relation to the helpful evidence on possible reparations and costs requested by the Secretariat of the Court on the instructions of the President (*supra* paras. 50 and 55).

## V THE EVIDENCE

63. Before examining the evidence received, the Court will make some observations, in light of the provisions of Article 43 and 44 of the Rules of Procedure, which are applicable to the specific case, most of which have been developed in its case law.

64. First, it is important to point out that the adversary principle, which respects the right of the parties to defend themselves, applies to matters pertaining to evidence; it is one of the principles on which Article 43 of the Rules of Procedure is based, concerning the time at which the evidence should be submitted to ensure equality between the parties.<sup>3</sup>

65. In the matter of receiving and assessing evidence, the Court has indicated previously that its proceedings are not subject to the same formalities as domestic proceedings and, when incorporating certain elements into the body of evidence, particular attention must be paid to the circumstances of the specific case and to the limits imposed by respect for legal certainty and the procedural equality of the parties.<sup>4</sup> Likewise, the Court has taken account of international case law; by considering that international courts have the authority to assess and evaluate the evidence according to the rules of sound criticism, it has always avoided a rigid determination of the *quantum* of evidence needed to support a judgment.<sup>5</sup> This criterion is especially true for international human rights courts, which have greater latitude to assess the evidence on the pertinent facts, in accordance with the

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<sup>3</sup> Cf. *Case of Maritza Urrutia*. Judgment of November 27, 2003. Series C No. 103, para. 46; *Case of Myrna Mack Chang*. Judgment of November 25, 2003. Series C No. 101, para. 118; and *Case of Bulacio*. Judgment of September 18, 2003. Series C No. 100, para. 40.

<sup>4</sup> Cf. *Case of Maritza Urrutia*, *supra* note 3, para. 48; *Case of Myrna Mack Chang*, *supra* note 3, para. 120; and *Case of Bulacio*, *supra* note 3, para. 42.

<sup>5</sup> Cf. *Case of Maritza Urrutia*, *supra* note, para. 48; *Case of Myrna Mack Chang*, *supra* note 3, para. 120; and *Case of Bulacio*, *supra* note 3, para. 42.

principles of logic and on the basis of experience, in order to determine the international responsibility of a State for the violation of human rights.<sup>6</sup>

66. Based on the foregoing, the Court will now proceed to examine and weigh all the elements of the body of evidence in this case, according to the principle of sound criticism within the applicable legal framework.

#### A) DOCUMENTARY EVIDENCE

67. The Inter-American Commission provided documentary evidence when it submitted the application brief (*supra* paras. 1 and 12) and the brief on possible reparations and costs (*supra* para. 25).<sup>7</sup>

68. The State presented the helpful documentary evidence, requested by the Secretariat on the instructions of the President, in relation to the documents described by the Commission in paragraph 68 of the application (*supra* paras. 19, 21, 22, 45, 46 and 57).<sup>8</sup>

69. The State presented part of the helpful evidence on possible reparations and costs, requested by the Secretariat on the instructions of the President (*supra* paras. 50, 55, 58 and 62), and also the evidence requested by the Court in the Order of April 24, 2004 (*supra* paras. 55 and 60).<sup>9</sup>

70. The Commission submitted documentation during the presentation of its final oral arguments on merits and possible reparations and costs, and when submitting its final written arguments (*supra* paras. 53 and 56).<sup>10</sup>

71. The Commission forwarded the sworn statements of Carmen Rosa Barrera Sánchez, Lina Noralba Navarro Flórez, Luz Marina Pérez Quintero, Miryam Mantilla Sánchez, Ana Murillo Delgado de Chaparro, Suney Dinora Jáuregui Jaimes, Ofelia Sauza Suárez de Uribe, Rosalbina Suárez Bravo de Sauza, Marina Lobo Pacheco and Manuel Ayala Mantilla, next of kin of the alleged victims, given in writing before a

<sup>6</sup> Cf. *Case of Maritza Urrutia*, *supra* note 3, para. 48; *Case of Juan Humberto Sánchez. Interpretation of the judgment on preliminary objections, merits and reparations*. (Art. 67 American Convention on Human Rights). Judgment of November 26, 2003. Series C No. 102, para. 42; and *Case of Myrna Mack Chang*, *supra* note 3, para. 120.

<sup>7</sup> Cf. attachments A to B10 of the application brief of January 24, 2001, filed by the Commission (folios 547 to 1036 of tomes I and II of the file of attachments to the application) and attachments I to XV of the brief on possible reparations and costs of March 25, 2003, submitted by the Commission on March 31, 2003 (folios 1600 to 2038 of the file of attachments to the brief on possible reparations and costs).

<sup>8</sup> Cf. attachments 1 to 10 submitted by the State on April 18, 2002 (folios 1037 to 1507 of tomes I and II of the files of evidence submitted by the State on April 18, 2002, which was requested by the President – paragraph 68 of the application), attachment 1 submitted by the State on May 28, 2002 (folios 1508 to 1599 of the file of evidence submitted by the State on May 28, 2002, requested by the President – paragraph 68 of the application) and copies of the files of the criminal proceedings submitted by the State on May 24 and 26, 2004.

<sup>9</sup> The State did not forward all the information requested regarding the certifications of the domestic proceedings. Cf. File of helpful evidence on reparations submitted by the State on May 24 and 26, 2004.

<sup>10</sup> Cf. attachments 1 to 59 submitted by the Commission on April 22, 2004 (folios 2039 to 2942 of tomes I and II of the files of documentation produced by the Inter-American Commission during the public hearing on merits and possible reparations and costs).

public notary (*supra* para. 33), in accordance with the decision of the President contained in the Order of April 22, 2003 (*supra* para. 29).<sup>11</sup> The Court will now summarize the relevant parts of these statements:

**a) Testimony of Carmen Rosa Barrera Sánchez, sister of the alleged victim, Ángel María Barrera Sánchez**

The witness was 25 years of age when her brother Ángel María disappeared. She lived in Ocaña with her parents, Delfina Sánchez and Ramón Barrera, and with her two brothers, Jesús Barrera and Ángel María Barrera Sánchez, and her cousin, José Erasmo Barrera.

Ángel María Barrera Sánchez was 26 years of age at the time of his disappearance and worked as a tradesman. He owned a truck, together with Alvaro Lobo Pacheco; he transported household appliances to Medellín and traded them. He was a generous person, ambitious, and a hard worker. From the age of 17, he had been responsible for his family, because his father had bone cancer, which made it impossible for the latter to work. The alleged victim supported the household, paying for clothing, food, daily expenses, his brother's schooling, and his parents' medication. Consequently, the witness presumed that he earned about "a million pesos each month" at the current exchange rate, because he was lavish with the household.

About 12 days after Ángel María's disappearance, his cousin José Erasmo went with next of kin of the other alleged victims to look for them, but they were not given any relevant information. They did not renew the search, because they were told that it was very dangerous; also, they did not have money to pay for the expenses that the search entailed. Accordingly, they requested the help of the Association of Next of Kin of Detained and Disappeared (hereinafter "ASFADDES").

The disappearance of Ángel María profoundly affected all aspects of the lives of the entire family. Since then, they had endured significant difficulties.

Since Ángel María's disappearance, his father began to smoke much more than before. Each night he went outside to wait for him; this went on for a long time, almost until he was unable to do so, owing to the cancer from which he suffered. His family could not pay for him to consult a doctor, so he was obliged to take "natural remedies," and the witness believes that these led to a rapid deterioration in his health. Ramón Barrera died on July 5, 1995.

Her mother had "attacks," sudden fainting bouts, she became confused; at times she mumbled incoherently, she cried each afternoon, she lost her appetite, and developed cirrhosis owing to malnutrition; she even had to go to a psychologist. These crises lasted from three to four years. The family could not pay for her to consult a doctor either, so Mrs. Sánchez also had to take "natural remedies." Delfina Sánchez died on June 29, 1998.

Her brother Jesús lost all motivation and said that life was not worth living; he had to suspend his studies for two years, because he had to work in order to shoulder the

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<sup>11</sup> Cf. folios 254 to 285 of tome I and 313 to 350 of tome II of the files on merits and possible reparations and costs.

responsibilities that Ángel María had assumed previously. Jesús was depressed for a long time, because he was the closest to Ángel María.

The witness endured very difficult moments because she depended entirely on her brother, who was "like a father" for her and her family, a reference point for respect and authority. She and her next of kin found it very difficult to assimilate the "disappearance" of her brother. They have still not accepted it. The fact that the events have not been clarified and that those responsible have not been prosecuted or punished makes the witness and her family feel indignant and impotent.

Her cousin, José Erasmo, who was always like her bother, was also very much affected by the events, because Ángel María helped him financially; he even had to suspend the "driving lessons" that the latter was paying for.

To have a little peace and tranquility, the witness and her family requested the Court to ensure that those responsible for the facts are punished, because "the impunity maintains their [...] feelings of pain and impotence, and does not allow them to overcome their grief;" that they are informed of the whereabouts of the remains of the alleged victims in order to erect a "mural, crosses" or some form of identification in the place where the bodies are, or that they receive the remains in order to give them Christian burial.

The witness was afraid to testify, fearing reprisals against herself or her family.

**b) Testimony of Lina Noralba Navarro Flórez, niece of the alleged victim Antonio Flórez Contreras**

The witness was 13 years of age at the time of the disappearance of her uncle Antonio. She lived in Ocaña with her mother, Margoth del Carmen Contreras, her grandmother, Librada Contreras, and her aunt, Torcoroma Flórez Contreras.

Antonio Flórez Contreras, her uncle, headed the house after the death of her grandfather. Antonio was a very hard worker and helped with the household expenses and needs. Although the alleged victim lived with his companion and sons, he was always attentive to his family. Antonio was very affectionate. He was like a father to the witness and also to her mother.

About ten days after Antonio had "disappeared", the witness's uncles, Salomón and Jorge Flórez Contreras, went to look for him and a woman told them that "she had seen them [the tradesmen] pass by"; she also told them that they had "two hours to go back" or, to the contrary, "there would be no sign of [them] there." They turned back and the case was reactivated through ASFADDES.

Since her uncle's "disappearance" everything changed; the family no longer had emotional and financial support. They endured great penury. The witness's mother had to work to pay for her schooling and the needs of her grandmother, Librada Contreras. Margoth del Carmen, the witness's mother, became very depressed, because she lived with pain, sadness and resentment, and this contributed to her death at an early age; she had a very good relationship with Antonio. Margoth del Carmen Contreras died on August 17, 1995, aged 39.

The witness's grandmother is always waiting at the door for Antonio. She stopped going out and is constantly in a state of nervousness and anxiety, because she has

no news of her son. She asks people whether they have news of him and when they tell her that she should accept that he is dead, she asks where his remains are. She speaks incoherently, she wakes frequently, and she has lost her appetite.

Her aunt, Torcoroma Flórez, was very affected by the events because she looked after the alleged victim and depended on him financially and emotionally. She felt great assurance, owing to his financial support. She has been unable to overcome the feeling of helplessness resulting from the "disappearance" of her brother, and feels that each day "she wastes away a little more."

The witness thinks that if her uncle had not been "disappeared", she would have been able to undertake university studies, because he encouraged her education. The alleged victim hoped that his sons would study, and also to leave them "a well-ordered house."

The witness asked the Court to ensure that justice is done, that the facts are clarified and do not remain unpunished, and that the remains of the alleged victim are returned in order to give them burial. The witness believes that this would bring peace and tranquility to the family.

The witness was afraid to testify, fearing reprisals against herself or her family.

**c) Testimony of Luz Marina Pérez Quintero, permanent companion of the alleged victim, Antonio Flórez Contreras**

The witness lived with Antonio Flórez Contreras from 1980 until his "disappearance." They had four children: Alejandro, Angélica Librada, Nixon Andrés and Magreth Karina. Also, when she started to live with Antonio Flórez Contreras, the witness had a son, Luis Antonio Villamizar Pérez, who the alleged victim "adopted as his own son." When Mr. Flórez Contreras disappeared, the witness was eight months pregnant.

Antonio Flórez Contreras was 35 years of age at the time of the events. He drove a blue van, which he owned together with Álvaro Lobo Pacheco. They transported merchandise, which they bought in Venezuela and sold in Medellín. Antonio was a very responsible, affectionate person, devoted to his home, and he had an excellent relationship with the witness. All his earnings, which at that time were about forty thousand pesos a month, were devoted to household expenses and maintenance, and to his children's schooling. Before he began his last trip, Antonio told the witness that he would be carrying merchandise with a value of seventy-two million pesos. He also told the witness that this would be his last trip because, during the previous trip, he had had problems with the vehicle, and also someone had told him that that stretch of the road was very dangerous owing to the presence of "armed men." Antonio explained to the witness that the territory was controlled by "self-defense" or "paramilitary" groups in collaboration with the Police and the Army, on the one hand, and by the guerrilla, on the other hand.

Before the "disappearance" of the alleged victim, the witness worked as a teacher, but her income was dedicated to financing the needs of her parents and three sisters who were epileptic.

When Antonio "disappeared," the witness made several trips to Bogotá to find out about his whereabouts in the district attorney's office, where they told her that "they

were alive." After the Antonio's "disappearance," the witness spoke to the San Gil 16th Investigating Judge for criminal matters and he showed her a document issued by the Police of Puerto Araujo that said "I, Antonio Flórez Contreras, was detained at the Police Station; I declare that I was well treated." However, the witness alleges that the signature on the document was not that of her husband, but that "it was signed by the Senior Officer of the Puerto Araujo Police Station." The alleged victim had previously told her that this person was always "causing him problems."

The witness kept in contact with the San Gil judge, who told her that the investigation was going well, that they already had evidence about those who were responsible, and that "members of the Police and the Army of Puerto Boyacá or Puerto Araujo were involved." The judge warned the witness that "she should not tell anyone because [both] their lives were in danger."

The sudden "disappearance" of the alleged victim ended household harmony. Her standard of living was drastically reduced. Food began to be scarce; the witness had to pawn her things and sell the house to pay off debts and for her children's schooling. While she worked as a teacher, the witness had to leave her youngest children in childcare centers, where they were mistreated.

In 1989, she agreed to live with a person much older than herself, Cristóbal Navarro, out of necessity, in exchange for financial but not affective support. In 1994, Mr. Navarro was attacked and became a paraplegic for life, which increased the family's emotional and financial crisis.

As a result of Antonio's "disappearance," the witness began to work for ASFADDES in 1989. Since then, she has been threatened by a group called "Mano Negra" [Black Hand]. Also, she began to work for MINGA, the coordinating team for the defense and promotion of human rights and, in 1990, was attacked "at home." She later found out that the person who had carried out the attack belonged to the "self-defense" groups, who "worked closely with the Police." As a result of the threats from this group, the witness had to move to Cúcuta and then to Bogotá.

The personal consequences for the witness are a deep and irreversible change in her personality and her expectations. She feels very bitter, impotent and sad. Neither she nor her children will ever recover from what happened. Her children suffer greatly because of what happened to their father. They cried, they called for him, they waited for him, then they became rebellious; they became sad and bitter and had to grow up prematurely.

The witness hopes that justice will be done, that those responsible for the events that occurred in this case will be identified, that the remains of the alleged victim will be delivered to them so that they can bury them, and that his name is cleared, because an attempt has been made to link it with the guerrilla.

**d) Testimony of Miryam Mantilla Sánchez, sister of the alleged victim, Víctor Manuel Ayala Sánchez**

The witness was 46 years of age when her brother, Víctor Manuel, disappeared.

Víctor Manuel Ayala Sánchez was 32 years of age at the time of his disappearance; he lived in Bucaramanga with his wife, Sandra Montero, and their two children, Caterine and Juan Manuel. Víctor Manuel also had another child, Víctor Hugo Ayala.



The alleged victim drove a taxi for the transport company "Motilones" and had another automobile working with the same company. He was a very hardworking, happy and generous person; he used to help and advise the witness on the care of her five children, and he took time to be with them, since her situation was not easy. Víctor Manuel was always attentive to the needs and expenses of his parents and of the witness.

The witness hear of her brother's "disappearance" when her mother advised her that Víctor Manuel's wife had told her that he "was nowhere to be found." Consequently, Sandra went to look for him at "La Dorada," where her own brother had also disappeared; when she was there, she was told to go away because the situation was very dangerous.

Immediately, the witness and her family went to the Brigade headquarters, to the Attorney General's office, to the radio stations and to the newspaper "*Vanguardia Liberal*." They received no help from the Brigade headquarters or from the Attorney General's office; at the latter, they were told that an investigation was underway, but they were not given any information. The radio stations helped them because they broadcast news and interviews and were attentive for news of those who had disappeared.

Víctor Manuel's "disappearance" had very serious consequences for his family. His parents and his sister-in-law suffered many hardships. Víctor Manuel's wife has suffered many hardships since his disappearance; she had to start working to cover the needs of her children, particularly one who became ill; she even had to go and live with her mother. Víctor Manuel's mother was always crying; she said she wanted to die; she was very ill; she had to visit a psychologist; she lost a lot of weight and slept very little and, when she did sleep, she dreamed of her son. Since the event, she has been very ill. Víctor Manuel's father is very resentful and stopped "believing in institutions," because they never helped them or gave them any information in their search for the alleged victim.

The witness feels sadness, anger and despair, owing to her brother's disappearance. He gave her considerable support.

In this case, "justice has not been done," because many of the people involved have not been investigated. The witness asked the Court to ensure that justice is done and that a memorial service "in memory of those who disappeared" is held in Bucaramanga. The witness considers that this would comfort the family and help ensure that the facts do not remain unpunished. She also asked that they should be informed of the whereabouts of the alleged victim so that they can bury him.

**e) Testimony of Ana Murillo de Chaparro, mother of the alleged victim, Alirio Chaparro Murillo**

The witness was 44 years of age when her son, Alirio, "disappeared." She lived in a rural area with her husband, Juan de Jesús Chaparro Orozco, and a brother-in-law, Ruben Chaparro Orozco.

Alirio Chaparro Murillo was 26 years of age at the time of his "disappearance" and worked as a tradesman selling shoes. He lived in Bucaramanga with his wife, Rita Ariza, and his two daughters, Angie and Yeimi. He began to work at 12 years of age and obtained a diploma from the National Apprenticeship Service (SENA). Alirio was

very hardworking, affectionate and honest. He was always attentive to his parents. He used to visit them constantly and always took them things they needed. Also, when the witness had cancer, the alleged victim paid all her medical expenses. Alirio always wanted his parents to move to the city to live with him so that they would never suffer hardships.

The witness found out that her son had "disappeared" through her daughter-in-law, who advised her that she had had no news of him for a week. From then on, the witness began to despair; she cried, could not sleep, lost her appetite and became very ill.

The witness could not carry out any investigation or search because she lived in the countryside and did not have the necessary money. It was Alirio's wife who took these steps.

The witness asked the Court to order that an investigation should be conducted to determine what happened and that those responsible for the facts should be identified and punished; that they should receive reparation for all the damage done to them; that they should be given "a book or statue" recalling Alirio Chaparro Murillo, and that the remains of her son should be returned to her so that she could bury him.

**f) Testimony of Suney Dinora Jauregui Jaimes, sister of the alleged victim, Luis Hernando Jauregui Jaimes**

The witness was 13 years of age at the time of the "disappearance" of her brother, Luis Hernando. She lived in Pamplona in the house of her parents, Luis María Jauregui Jauregui and Teresa de Jesús Jaimes Cruz, together with her siblings, Juan Antonio, Carlos Alberto, Edith Stella, Nubia Esperanza, José Francisco, Lorena del Pilar and Marcela Elizabeth.

Luis Hernando Jáuregui Jaimes was about 32 years of age when he disappeared; he had lived alone in Cúcuta for about a year, after separating from his wife, Marleny Angarita. Luis Hernando traveled constantly to Pamplona, to his parents' home. He worked "in whatever he could," at one time selling chickens, then selling pigs and, subsequently, selling electrical household goods which he brought from San Antonio to sell in Medellín. Luis Hernando was "a pillar of the household," setting an example to follow, a very hardworking, happy persons, with no bad habits. He was always attentive to his family; he helped pay for the household expenses, his siblings' schooling and his parents' medical expenses.

After Luis Hernando's "disappearance," his father began to drink every day; he quarreled with his wife, he became bad tempered, he abandoned the home about a year after the said "disappearance," and he disassociated himself from his family. Luis Hernando and his father had been great friends. Luis María Jauregui Jauregui died in 1996.

When she found out about the events, Luis Hernando's mother cried and screamed; her sugar level rose significantly, which caused complications and illnesses. After the events, she had heart problems, became depressed and had to be hospitalized, because she suffered the onset of a heart attack. When her husband abandoned her, she had to face the situation alone, supported by her son, Juan Antonio, because her

husband disassociated himself from the family. Teresa de Jesús Jaimes Cruz died on February 13, 2002.

The witness was one of the last persons to find out about the "disappearance" of the alleged victim, who she thought of as a father. Luis Hernando was always attentive to the needs of the witness.

The family experienced feelings of terrible sadness, impotence, frustration and anxiety while waiting for Luis Hernando to appear. There was a very tense environment in the home and no one could refer to the matter, because that brought back the pain. The whole family suffered financial hardship and she considers that, if the facts of the case had not occurred, she could have studied at university, her parents would not have separated and they would not have died prematurely. Her parents could never accept what happened to Luis Hernando. They felt very frustrated by Luis Hernando's "disappearance," especially owing to the impossibility of doing anything to look for him. The family was afraid of asking about what had happened and did not have the resources to pay for help.

The witness asked the Court to ensure that justice is done, that those responsible are punished, that the remains of Luis Hernando are returned to them so that they can bury him, that her brother's name be cleared, as efforts had been made to link it to the guerrilla, and that information that he was an honest tradesman and a good person be published. She believed that the latter could be achieved if a documentary describing the facts is made, for international distribution.

The witness was afraid to testify, fearing reprisals against herself or her family.

**g) Testimony of Ofelia Sauza de Uribe, sister of the alleged victim, Luis Domingo Sauza Suárez**

Luis Domingo Sauza Suárez was 34 years of age at the time of his disappearance. In June 1987, he moved to Cúcuta with his wife, Marina Cáceres, their four children, Martha Yolima, Oscar, Luis Omar and Yudani. Before his marriage, the alleged victim had had another child, Nirama Sauza Suárez. At the time of the facts, he sold merchandise that he took to Medellín. Luis Domingo was ambitious, very affectionate and happy, and had a good relationship with the witness.

The witness heard of the "disappearance" of her brother, because his wife told her sister that Luis Domingo had not been seen for two weeks. At that time, the witness and her sister-in-law decided to inform the alleged victim's parents about his "disappearance."

About two years after Luis Domingo's "disappearance," his family heard about ASAFADDES and became members. There, they were advised about the investigation into the events. The witness believes that the investigations conducted have not explained the facts completely and that those responsible have not been punished.

After Luis Domingo's "disappearance," his mother became ill; she had heart problems, diabetes and stress. For the last 15 years, she has been taking medication every day.

The alleged victim's father remains very sad and asked for his son up until the day he died.

Luis Domingo's "disappearance" caused the family great anxiety. The alleged victim's wife and children were also very much affected, emotionally and financially. In 1992, Oscar, the alleged victim's son, drowned at sea.

The witness asked the Court to clarify the facts; that the truth about what happened be told; that the remains of Luis Domingo be returned to them so that he can be buried, and to know with certainty that he had died; and, if this is not possible, then, at least, "a plaque or monument" should be made to recall those who had disappeared, and that the name of her brother be cleared, because efforts had been made to link him to the guerrilla.

**h) Testimony of Rosalbina Suárez de Sauza, mother of the alleged victim, Luis Domingo Sauza Suárez**

The witness was approximately 67 years of age when her son, Luis Domingo, disappeared. Her husband died in 1999.

Luis Domingo Sauza Suárez was 34 years of age at the time of his "disappearance." As of June 1987, he lived with his wife, Marina Cáceres, and his three children in Cúcuta, where he had bought a house and began to work in the sale of merchandise. In October that year, he was "disappeared." Luis Domingo was an honest person, very affectionate and hardworking, a good husband and father.

The witness has not stopped crying, praying and dreaming about her son since she found out about his disappearance. She suffers from diabetes and high blood pressure.

The witness asked that those responsible for the facts should be punished and that the remains of her son should be returned to her.

**i) Testimony of Marina Lobo Pacheco, sister of the alleged victim, Álvaro Lobo Pacheco**

The witness was 30 years of age at the time of the "disappearance" of her brother, Alvaro. She lived in Ocaña with her mother, María Cristina Pacheco de Lobo, her father, Marco Aurelio Lobo, her siblings, Aurelio, Lubin and Álvaro, and three nephews and nieces, Nini Johanna, Diana Cristina and Álvaro Eliecer, the children of her other brother, Eliecer, who lived in Aguachica.

Álvaro Lobo Pacheco was around 27 years of age at the time of his "disappearance." He was very hardworking and responsible. He had been working as a tradesman for about six years. He had his own van and a truck, the latter owned together with Angel María Barrera. They used these vehicles to transport merchandise - such as electrical household goods and groceries - for third parties, who paid for the transport from Cúcuta to Medellín. He kept himself and paid about 75% of the household expenses, because he earned much more than the witness, who paid the remaining expenses. They both paid for the schooling of their siblings, Aurelio and Lubin, and for their mother's needs.

When her brother "disappeared," the witness went, with some of the next of kin of the other alleged victims to file the respective reports "to the Attorney General's office, [to the] office of the *Personero*, [to the] Santander No. 15 Battalion, [to the] National Police." She also filed a report with the municipal traffic office with regard to Alvaro's vehicles.

Her siblings took part in the different searches conducted by the next of kin of the other alleged victims. During the first trip, they did not obtain any information; they merely had expenses of about sixty thousand pesos. During the second trip, a woman stated "that she had seen them pass by" and then they met more than a hundred armed men who told them to "turn back if you don't want there to be any more disappeared persons in your families." Subsequently, the investigations were conducted through ASFADDES.

The loss of her brother had a psychological, social and financial impact on her family, and also irreparable damage, because the family life deteriorated and the relationships among the members were increasingly distant, since the alleged victim used to be the "central link" of the family. Álvaro helped the rest of his siblings financially, even those who had their own household.

Following the events, her father began to drink and, five years later, he abandoned the household. Her mother became a different person; she lost interest in life, she stopped taking care of herself, she did not take care of her health and she took refuge in religion. Her brother, Lubin, had to abandon his studies to help with the household expenses. He subsequently studied another career.

The witness's state of mind was profoundly affected by the "disappearance" of her brother and she became very subdued owing to the many obligations she had to assume. She had to pay debts relating to pending payments for her brother's vehicles and to repairs that were being carried out in the house where they lived, because the witness was the guarantor for these obligations. She devoted herself to her mother and never had a life of her own. She led the search for those who had disappeared. This affected her performance at work, which added to her problems.

The witness asked the Court to ensure that those responsible for the facts are punished, that a book is written relating the personal and family life of her brother and that it is distributed to clear his name, and that his remains are returned to them, in order to give them proper burial.

The witness was afraid to testify, fearing reprisals against herself or her family.

**j) Testimony of Manuel Ayala Mantilla, father of the alleged victim, Víctor Manuel Ayala Sánchez**

The witness was 69 years of age at the time of the "disappearance" of his son, Víctor Manuel, who was responsible for all his household and medical expenses.

The alleged victim was around 33 years of age when "he disappeared" and he lived in Bucaramanga with Sandra Montero and their two children, Caterine and Juan Manuel. Manuel also had another son, Víctor Hugo. The alleged victim worked as a driver of two taxis working with a transport company called "Motilones" and he offered his services on the Bucaramanga-Cúcuta route.

When the witness learned of his son's disappearance, he went to the police station to file a report. Then, he went to the press and the radio. He also went to the Army's Fifth Brigade, where the General who attended him, mocked him. Consequently, he returned to the radio station and to the newspaper "Vanguardia Liberal", where they told him that he should file a report with the Santander Attorney, who told him that he should have recourse to the Attorney General in Bogotá, who did not receive them. Subsequently, a new Attorney General took office, and he received them and immediately called the Ministry of Justice and the Administrative Department of Security (DAS); at which time, the investigations began. The witness made four trips to Bogotá to report what had happened to his son.

One of those who participated in the "disappearance," said later that "they had dismembered them and thrown them in the river."

The wife of the witness changed a great deal; she became ill, she could not leave the house, she remained lying down, she cried a lot, she developed an irregular heartbeat; she lost her voice, and her appetite.

Since the disappearance of his son, the witness feels deep despair, terrible frustration, anger, impotence and pain. From then on, the witness and his wife suffered great penury, since it was Víctor Manuel who took care of them. The witness feels very bad because he does not know where his son's remains are. Also, because those responsible, that is, "the self defense groups" and "accomplices of the Government", have not been punished; he feels pain and impotence owing to the impunity that this implies.

The witness requests the Court to ensure that justice is done. The witness would like to receive the remains of his son in order to give them a Christian burial and that "a plaque or something similar" be made in memory of the alleged victims.

#### *B) TESTIMONIAL AND EXPERT EVIDENCE*

72. On April 21, 2004, the Court heard the statements of the witnesses and the report of the expert witness proposed by the Inter-American Commission (*supra* para. 52). The Court will now summarize the relevant parts of these statements and the expert report:

##### **a. Testimonial statement by Salomón Flórez Contreras, brother of the alleged victim, Antonio Flórez Contreras**

When the alleged victim disappeared, the witness had nine siblings and Antonio was one of the youngest. The father of the witness had died and Antonio took charge of his mother. In 1987, Antonio was married to Marina Pérez and they had five children.

Antonio was a good, peaceful person. The witness had an excellent relationship with his brother. They worked together transporting people in the witness's car; they worked on a route in the northern part of Colombia.

For the journey on which the alleged victim was disappeared, he was driving a blue 1955 model van that Alvaro (Lobo Pacheco), also disappeared, had given him for work. This work consisted in transporting electrical home appliances from Cúcuta to

Ocaña and then on to Medellín. They carried merchandise valued at about 70 million pesos.

The tradesmen had previously made eight trips transporting merchandise from Cúcuta to Medellín. Every eight days they made a trip; they took about eight days to travel to Medellín and return to Cúcuta. The tradesmen took the alternate route to Medellín trying to avoid Customs and pay very little at the military bases and on the road, so as to make a profit.

The witness's brother and the other tradesmen left Ocaña for Medellín on October 4, 1987, in five vehicles: the blue vehicle driven by Antonio, a red 1960 truck, a black taxi, a blue and white jeep, and an orange and white jeep.

The witness learned that his brother Antonio had disappeared, because the man who drove the orange and white jeep, who traveled with the tradesmen to a "posada" [inn] and then had to meet up with them again, called him to tell him that the tradesmen had not appeared either in Medellín or at the inn where he had left them. Consequently, they formed a group to go and look for the tradesmen, comprising the witness, his elder brother (Jorge Flórez), his nephew, the alleged victim's father, Israel Pundor, and a brother of the alleged victim, Ángel Barrera. The witness and the other people who began the search for the tradesmen knew the route they had taken, because the witness's elder brother had previously made the journey to Medellín with Antonio and knew they always took the same route. They left Ocaña and went to San Alberto and then on to Barrancabermeja, where they met with some police agents who told them that the tradesmen had passed by. From Barrancabermeja they continued on to Puerto Boyacá. When passing Campo Seco, several members of the guerrilla, who had a checkpoint on the highway, told them that the tradesmen had passed by that point. When they arrived at the Cimitarra Battalion, a soldier told them that he had seen the cars in which the tradesmen were traveling pass by. From Cimitarra they went to Campo Capote, where a teacher informed them that the tradesmen had parked there to make a telephone call; she also told the witness that she had spoken to Antonio. Another man, who had a store in front of the school, also informed the witness that the tradesmen had passed by there.

Subsequently, the search group went to the farm of Henry Pérez, but one of the workers warned them not to visit the place because it was dangerous, since it was a zone where "paramilitary" groups were active. The witness and the next of kin of the alleged victims slept near the workers' camp and, the following day, they went to the "El Diamante" farm, which belonged to Henry Pérez. They asked a man who was leaving the farm with several dogs whether he knew anything about the possible whereabouts of their next of kin, but he gave them no information, so they went to Puerto Boyacá. In Puerto Boyacá they were detained by several armed men dressed in civilian clothing who described themselves as members of a "self-defense" group, asked for their identity cards, made them get out of the van, and pointed their guns at them. They asked the group where it was going and the witness and his companions answered that they were looking for their next of kin. One of the armed men went to ask his "commander" for instructions. When he returned, he gave them back their identity cards and told them that his "commander" had authorized them to pass. After this incident, the search group went to Nutrias, at the "Y" of Puerto Boyacá; then they took the road to the Pata de Vaca military base and later went "to see the emerald workers." Since no one provided them with information on the

whereabouts of their next of kin, the witness and his companions returned to Ocaña. This first trip lasted around seventeen days.

After returning to Ocaña, they continued without any information about the whereabouts of the tradesmen. The witness, together with four other next of kin of the tradesmen organized a second trip to look for them. During this trip they covered the same route as the first search trip. However, the second trip was quicker, because they knew that they were in danger. In Puerto Araujo, they stayed at the El Diamante Hotel; the same hotel in which the tradesmen had stayed. At first the woman in charge of the hotel told them that she could not let them stay, because "there were many members of the paramilitary groups;" then she allowed them to stay, but warned them that she could not answer for their lives. At approximately 10.30 p.m., some men arrived in jeeps and said "it smells of new meat." That night, the witness and the tradesmen's other next of kin slept under the beds in the room. The next day, the woman in charge of the hotel recommended that they leave, because the men were looking for them; she also told them that the vehicles in which the tradesmen had been traveling had been taken by the soldiers of the Puerto Araujo base. The witness and his companions went to the Puerto Araujo military base, where they were informed by some soldiers that the cars had been seized, and had been taken by the Army, probably to the "paramilitary" post or to the Bárbula Battalion. The witness and his companions went to that Battalion to ask; however, when they arrived, they saw that a jeep and two vans, one with a machine gun mounted on top, were approaching and that "the paramilitary personnel entered" the Battalion, so they decided not to ask. Subsequently, they went to Puerto Boyacá to talk to the Police and the Mayor. The asked the latter to help them, telling him that it was very probable that the Army had their next of kin's vehicles. The Mayor told them they should go and ask Henry Pérez, who was a "commander" of the "paramilitary group," or they should ask the Army Commander.

The witness and the other next of kin of the alleged victims left Puerto Boyacá and went to have lunch at a hotel located in a place known as the "Y". While they were there, several people arrived in a jeep, two vans and other cars, and entered. The witness saw when a tall, thin man entered, with a cowboy (*llanero*) hat and boots, with his guns "on his belt" and a grenade. The witness assumed that the man was Henry Pérez, but could not say anything to him at that time. The woman from the hotel recommended they leave cautiously and ask for information in a bar in Nutrias. When the witness and the other next of kin of the alleged victims were in Doradal, two men on a motorcycle approached them, asked whether they were looking for the men who had disappeared, and said they would join the group. The witness told them it was very dangerous to travel by motorcycle. However, the two men said they would return to the highway leading to the Bárbula Battalion. The witness and his brother explained the route that the two men should follow. Later, the search group found a very poor woman who gave them food and warned them that they should be careful, because armed "paramilitary personnel" were in the area and the same could happen to them as had happened to "the ones who disappeared." The woman told them that several days previously, some men had passed by in a van with sacks, which they took to the farm of Henry Pérez; she assumed the sacks contained corpses which they were taking to throw into the river or into a lake near that farm. The witness and his companions were horrified and decided to go back and speak to Henry Pérez. On the way, they did not see the two men on the motorcycle. They found Henry Pérez in a bar and asked him whether he had any information on the whereabouts of the tradesmen. Henry Pérez told them he was the "commander" of that region and had not seen anyone; furthermore, he ordered



them to leave the region, because they, too, could "disappear" and something could happen to their families. The witness and the other next of kin of the alleged victims departed in the direction of Bárbula Battalion, but could not reach it, because they were followed and had to return to Puerto Boyacá.

On the return route, a woman told them she had seen a van carrying two young men and a motorcycle and had recommended them to leave the area. The witness and his companions asked the Medellín Police for help. At the Police station, they were taken to the morgue and shown all the corpses to verify whether any of them were the tradesmen. This took them three days and, seeing that they could not get any results and were not given protection, they returned to Ocaña. This second trip lasted about fifteen days.

The witness considers that those responsible for the "disappearance" of his brother, Antonio, were the Army and the "paramilitary personnel." The witness distinguishes the members of the guerrilla from the "paramilitary personnel" and the Army, because the guerrilla use their own uniform and arms, while the "paramilitary personnel" do not use uniforms and the soldiers are "well dressed." The witness considers that the "paramilitary personnel" and the Army are connected, because the former enter the Army's Battalions easily, whereas the guerrilla do not.

The witness did not find the remains of his brother, Antonio, and hopes that he can receive help to recover his remains. For the witness and his family, what happened to his brother was very harsh. Currently, the witness's mother is 86 years of age and still hopes that Antonio will return, because she believes that he is not dead.

The witness does not know whether the persons who made his brother disappear have been tried or punished by the authorities.

The witness was afraid to testify, because, where he lives, there are many "paramilitary personnel" who have the support of the Police and the Army. The witness fears for the lives of his family and his mother.

**b. Testimonial statement by Sandra Belinda Montero Fuentes, wife of the alleged victim, Víctor Manuel Ayala Sánchez, and sister of the alleged victim, Juan Alberto Montero Fuentes**

At the time of the facts, the witness and the alleged victim, Víctor Ayala, had been married for three years and lived in Bucaramanga. They had two children, one of whom is disabled.

The witness is the sister of the alleged victim, Juan Alberto. He was 28 years of age when he disappeared. Juan Alberto worked as a driver.

Víctor Ayala worked as a driver transporting passengers and, at the same time, he was a tradesman, because he carried merchandise. He usually took the route from Bucaramanga to Cúcuta and he carried merchandise to Medellín. The witness assumes that, before she met him, Víctor had been doing this for about ten years.

Víctor Ayala's last trip was the second one he made transporting people and taking merchandise from Cúcuta to Medellín. The alleged victim told the witness that he was afraid of making the trip because, during the previous trip, "they had been told" they should not take that road again; nevertheless, he decided to do it because it

paid him well and because he wanted to earn extra money to buy a house for his family.

The alleged victim, Víctor Ayala, and the other tradesmen decided to travel to Medellín using the route from Cúcuta to Ocaña, from Ocaña they would go down to Aguachica and from Aguachica they would travel to Barranca, and from there they would take a "short cut" to reach the urban areas around Medellín. The region the tradesmen crossed is a "danger zone" where "paramilitary personnel," the guerrilla, and the Army operate.

Víctor Ayala telephoned the witness from Campo Capote and told her that all was well, but the witness assumes he said this so as not to worry her. This was the last telephone call the alleged victim made to his next of kin. After a certain length of time, the witness began to be very concerned because Victor did not return, so she telephoned the hotel in Medellín, but no one could give her information about her husband.

The witness's brother, Juan Montero, was told to come and collect Víctor Ayala, "because he was being eaten by raptors," but, when that occurred, Juan did not tell the witness so as not to increase her anxiety. When Victor Ayala had disappeared for fifteen days, and observing the witness's anguish, Juan Montero accompanied her to search for Víctor Ayala. Juan was a very good brother to the witness.

The witness and Juan Montero went to the Puerto Boyacá Police Inspectorate to file a report on the "disappearance" of Victor Ayala and the vehicle. At the Police Inspectorate, they were told to leave the information and that "an investigation was being conducted." The witness and Juan Montero also went to file a report on the disappearance of Victor Ayala at the Bárbula Battalion headquarters, located at the start of the descent towards the "short cut." The "short cut" consisted of stony paths, impossible to cross in a car. At the Bárbula Battalion headquarters, they were attended by a lieutenant.

Juan Montero went by motorcycle, with his friend Ferney, to try and find the witness's husband. The witness did not go with them, because there was no room on the motorcycle, so she returned to the hotel. The following day, Juan Montero telephoned the witness to tell her that they were "stranded." That was the last time she spoke to her brother, Juan.

When several days had passed, without news of her husband or her brother, the witness decided to go and look for them. She got into a truck that was descending the "short cut" and reached a store, where she asked a man for help, and told him about the disappearance of the tradesmen and her brother. The man told the witness that there were guerrilla, "paramilitary" and Army personnel in the region and that, if she continued investigating, they would retain her as a "cook." The man said that she should leave the place, because something bad had happened to her next of kin who had disappeared, that she should save her own life and fight for her children. By coincidence, a jeep passed by and the man saw that the witness was given a lift and suggested to her that she should not talk to anyone in the region. When the witness returned to the hotel, she found that someone had left her a ticket and money to return home. She did not know who had left the ticket and money, but she took them because she had no money to return home.

The witness returned to Bucaramanga. The whole family was waiting for her and, when they saw she had not come back with her husband and brother, the family was filled with grief.

The witness continued filing reports and continued struggling. She went to the Attorney General's office and to the SIJIN to ask them to detain the vehicle if it was seen driving around. She also went to the headquarters of the Bucaramanga Battalion, where she found the lieutenant who had received her report earlier at the Bárbula Battalion. Recognizing him, she approached him to ask about her report and the lieutenant asked her whether it was about the case of "those guerrillas who had been killed." When the lieutenant said this to her, the witness was frightened and asked why, if he knew that and had seen how anxious she was when she filed the report, he had not given her an answer that day at the Battalion Bárbula. The witness stated that her husband and her brother were not guerrillas.

On one occasion, the witness received a telephone call telling her she should go to Cúcuta because they might free her husband. The witness thought the call had been made by the State authorities. When the witness arrived at the Cúcuta terminal, which was six hours from where she lived, some men were waiting for her in a black vehicle. She got into the vehicle and asked them about her husband and her brother, but they told her what had happened was a "settling of accounts." They told her she should go home and her husband would arrive for Christmas. The witness told her family and they gathered together at Christmas time to wait for her husband and brother. It was terrible when the latter did not appear; it was a cruel lie.

The witness found out what had happened to her husband and brother in the media and thinks the "paramilitary personnel" who operate in the region were responsible for the disappearance of her husband and brother. Although, from the first moment, the authorities told her they would keep her informed about the investigations into the disappearance of her husband and brother, the witness has not received any telephone calls from any authority, or any response, much less, compensation.

The witness and her family have been very affected by the "disappearance" of her husband and brother. She is very depressed because she does not know the whereabouts of his remains. The witness did not get married again, because she was afraid of something happening and being left alone again. The witness's children have grown up with the decompensation resulting from the absence of their father, and are therefore unsure of themselves and fear that something may happen to the witness. The witness has been both mother and father to her children and has had to work to maintain them.

The witness was very afraid to testify, because, in her country, when people talk, they are "shut up"; but she was also very brave because she wants justice to be done.

**c. Testimonial statement by Jorge Corzo Viviescas, padre of the alleged victim, Reinaldo Corzo Vargas**

At the time of the facts, Reinaldo had seven siblings and worked as a tradesman, selling merchandise, mainly groceries and electrical household appliances that he acquired in Cúcuta. He usually took the route Cúcuta-Ocaña, Ocaña-San Alberto and San Alberto-Barranca. Reinaldo helped his family financially.

At the time of the facts, the witness worked transporting passengers on the routes San Gil -Bucaramanga, Bucaramanga - Aguachica, Bucaramanga - Barrancabermeja and Barranca-bermeja-Bucaramanga. According to the witness, the region was apparently controlled and managed by "paramilitary" forces and the Army and "it was at a time the guerrilla were active."

Reinaldo Corzo, the witness's son "was detained and disappeared." The witness considers that the Armed Forces and the "paramilitary" personnel are responsible for the disappearance of his son and the other tradesmen, because they controlled that region.

According to the witness, the "paramilitary force" had ousted the "guerrilla forces" from many sites and now occupied the place the latter had occupied, so as to impose their own conditions, and detain and extort people.

Through the media, the witness heard of the existence of a group called ACDEGAM, which later changed its name to "Macetos" or individuals who killed kidnappers, and he also heard about the "events" that were occurring in the Magdalena Medio region, committed by these "armed groups." For example, the witness remembered the massacre of the officials who went from San Gil to that region to investigate the disappearance of the 19 tradesmen.

The alleged victim had told the witness that when he went to buy merchandise, he sometimes had to pay some "contributions" at the roadblocks that he came across, and "did not know whether they were Army or paramilitary roadblocks;" he also told the witness that he was afraid of passing through these roadblocks.

The witness has not found the remains of his son and hopes that justice will be done.

**d. Testimonial statement by Alejandro Flórez Pérez, son of the alleged victim, Antonio Flórez Contreras**

The witness was five years of age when his father, Antonio Flórez Contreras, disappeared. At the time, the witness lived in Ocaña with his parents and siblings. The witness's mother was pregnant when Antonio disappeared.

The witness recalls that his father was very affectionate with him and his siblings, and very kind; whenever he traveled, he brought them presents and candy, and, at the weekend, "he played [with them] on their beds."

The first time the witness heard what had happened to his father was when his mother was reading the report by the Attorney General's office with another relative of the alleged victims, and the witness was behind a door listening. His mother read the report and cried at times. The report related the statement made by "Vladimir," the alleged "paramilitary" leader in which he described what he had done to the tradesmen. The witness recalls that his mother cried a lot when she read the description of his father's death, because, before he died, he asked for mercy because he had five children. The witness always remembers that part.

At first, the witness's mother took her children to his grandmother's house every Saturday to wait for Antonio Flórez, because they were told that he would return.

After the disappearance of Antonio Flórez, the witness's mother lost a lot of weight, she was always very sad and she had to work a great deal, because she had given birth to a girl and that meant that she had five children. The witness and his siblings had to grow up without a father or mother, because the latter had to go and work. The witness's mother worked as a teacher in a rural school outside Ocaña, so that she had to travel a long way to reach her work. Years later she was transferred to Ocaña.

They did not discuss what had happened to Antonio in the witness's family. When the witness was small, he saw his mother cry at night and it was difficult to speak to her of what had happened, so he did not question her about it.

The witness's mother tried to find out what had happened to Antonio; she spoke to an attorney who was later murdered in La Rochela. She also began to work for ASFADDES, an organization that carried out different activities to determine the whereabouts of people who had disappeared and which opened an office in Ocaña. The witness's mother also worked for the Ocaña Human Rights Committee.

In 1989, when he was about nine years of age, the witness went to speak about his father's death at a congress of victims of people who had disappeared and of "the dirty war." He was accompanied by his mother, his brother, Luis Antonio, and by Cristóbal Navarro - who later became his mother's companion. At the congress, the witness related what had happened to his father in front of 5,000 people. For the witness, this event caused him to "lose his childhood", because afterwards he no longer thought like a child but like an adult; he had to begin to think about why these things happened, who did it and how it was done.

Rumors began to circulate that they were going to kill the witness's mother and stepfather, owing to their activities in ASFADDES and in the Human Rights Committee. People who were fond of them told them to take care and suggested they should leave. The witness remembers that, one day in 1991, in the middle of the night, a man, who was arrested by the Police, tried to throw a grenade into his mother and stepfather's room, and also carried a gun.

The witness was attacked one night, after leaving his theatre classes, when he was walking with his brother, José Antonio, one of his stepfather's sons and other people in the main park in Ocaña and the lights went out. When he began to cross the park, someone opened the door of a vehicle and tried to force the witness into it. His elder brother helped him and the other people with them began to shout. Following this attack, he had to stop going to theatre classes at night and began to take greater care.

In 1994, when the witness's stepfather was walking in the principal park of Ocaña, someone fired at him five times. That person was captured. The Police captured other individuals and then let them go. The witness's stepfather was transferred to Bucaramanga in a small plane for surgery, but from then on he was paraplegic.

After this attack, the witness and his family spent two or three of the worst months of their lives because a "paramilitary" group in Ocaña said that it was going to kill his mother and stepfather, and all the members of the Human Rights Committee. After one member of the Human Rights Committee was murdered, people stood in front of the witness's house every evening, shouted that they would be killed and fired shots. Almost every night, the witness's mother told him and his siblings to sleep under a

bed in the back room. On November 10, 1994, a relative of the witness who was going to marry an Ocaña policeman, sent to tell them they should leave because they would be killed that night. The same night they went to Cúcuta with only their clothes.

The witness and his family lived in Cúcuta until 2001; during that time, they moved house every six months to avoid being in one place for too long. In 2002, there was a strong "paramilitary presence" in the sector. Also, a teacher and a non-governmental organization advised the witness's mother that they should leave, because there was a rumor that there were plans to kill her and the family was in danger; so they moved from Cúcuta para Bogotá. When they were in Bogotá, the non-governmental organization, MINGA, decided it would be better for the witness and his family to seek asylum in Canada. They requested asylum and the witness and his family left for Canada on August 28, 2003.

Exile in Canada has been difficult for the witness; it has been like "being born again;" he has had to begin again, learn another language, adapt to other customs and to the cold.

The witness believes that, if his father had not disappeared, his life and that of his family would have been totally different. His mother would not have worked for ASFADDES or for the Human Rights Committee; they would not have needed to search for his father, and they would have led a normal life.

The witness considers that the best reparation would be to recover the remains of his father, in order to place them in an appropriate place, and to know what happened to him. All the senior members of the Army who were involved in the facts were absolved; and the witness and his family have found this situation very difficult to comprehend, because they feel anger, helplessness and frustration.

The witness appeared before the Court to testify, because he hopes that justice will be done through the Court's judgment.

**e. Statement of Wilmar Rodríguez Quintero, brother of the alleged victim, Gerson Javier Rodríguez Quintero**

The witness was 11 years of age when his elder brother, Gerson, disappeared. They had a good, close relationship. The alleged victim paid for the witness's schooling and helped him.

Gerson Javier was 23 years of age at the time of his "disappearance." He was a very understanding son, particularly with the witness and his parents.

The journey during which the alleged victim disappeared was his first trip, because previously he worked as a driver in a service station. Gerson was driving a blue Ford van, in which he transported electrical household appliances and alcoholic beverages. Before Gerson Javier left, the witness was very sad and had a premonition, but Gerson told him not to worry, that all would be well. The witness's nephew, who was raised in his house from the age of three months, recalls when Gerson said goodbye and told him he would bring him some shoes.

Gerson's disappearance affected the whole family. The witness's mother struggled to find out the truth, and "went on a journey" to do this. No one knew if Gerson was

alive or dead. When the witness's mother became ill with cancer, he had to hide the information about what had happened to his brother Gerson from her, so as not to increase her suffering. The witness's mother died when she was 53 years of age with the hope that her son Gerson was alive. The witness's father was also very much affected by the disappearance of Gerson, because he was his favorite son. The witness's father also died.

The witness had to finish his high school certificate and could not continue studying; he had to go to work, because he became head of the household, responsible for his nephew and two siblings. The witness believes that if his brother Gerson had not disappeared, he would be a professional in Ocaña.

The witness learned about what had happened to his brother Gerson through the ASFADDES office in Ocaña. The witness began to visit this organization when he was around 13 or 14 years of age and they gave him the position of secretary. The witness read the newspapers and reports to find out what had happened to his brother Gerson. The ASFADDES office does not operate any longer, because, on one occasion, "paramilitary personnel" entered the office and threatened them. The closure of this office has affected him, because it was there that he found out what was happening, and it was there to save people.

When the witness found out what had been done to the alleged victim, he felt sadness and anger. The only individuals punished for the facts are "Vladimir," who was "a paramilitary leader who conspired with the Army," and another person whose name he does not remember. Moreover, Farouk Yanine Díaz, one of the masterminds, is free. This man "and his military militants" agreed to deliver the tradesmen to the "paramilitary personnel," who treated them with great cruelty.

The witness does not know the whereabouts of the remains of his brother Gerson Javier and would like to know. He considers that, even though it would be painful to have the remains of the "brother he loved most," at least, it would give him the satisfaction of being able to bury his brother.

The witness hopes that justice will be done and that the names of the tradesmen will be cleared, because they were hardworking individuals, who merely sought to support their families.

**f. Testimonial statement of Luz Marina Pinzón Reyes, wife of the alleged victim, Juan Alberto Montero Fuentes**

The witness and Juan Montero were married when she was 19 years of age and he was 23. They lived together for five years and had a daughter, Dina Luz. When the facts occurred, they had been separated for a year. At the time of the facts, Juan Montero had a new sentimental relationship and his companion, with whom he was living, was expecting his child.

Juan Montero worked driving a taxi for an inter-municipal transport company. He covered the routes Bucaramanga-Cúcuta, Cúcuta-Bucaramanga; Bucaramanga-Aguachica, Agua-chica-Bucaramanga; and Bucaramanga-Barrancabermeja, Barrancabermeja-Bucaramanga.

The alleged victim was affectionate, honest and good. He wanted his daughter Dina Luz to study at the university so that she would have a profession and a nice home.

During the year in which the witness and Juan Montero were separated, he was always attentive to his daughter; he paid for her schooling and helped with her food and clothing. Juan also took his daughter Dina to spend weekends with him at his mother's house.

When Juan's mother called the witness to tell her what had happened, the witness was very sad and angry.

After the disappearance of Juan Montero, the witness could not pay the rent of her apartment, so she asked Juan's mother to let her live with her for a time and rented a room from her. The witness had to pay all the expenses and her daughter had to change school.

Dina Luz was five years of age when her father disappeared. The witness did not want to tell her what had happened to her father immediately; she told her that Juan was traveling. The witness told her daughter what had happened to her father two years later; she showed her documents that had been published in the press. When Dina was about 12 or 13 years of age, the witness tried to talk to her about what had happened to her father, but she asked the witness "not to talk about it." Dina did not want to talk about the disappearance of her father. Dina is very introverted and became pregnant when she was 15 years of age, owing to the lack of her father, because she sought his affection in another man.

The witness has a new companion, with whom she had a daughter who is 11 years of age, Nicole. The witness has seen the difference between her two daughters. For example, Dina generally wears dark-colored clothes, while Nicola is very "happy." The witness considers that these differences are due to Nicole always having had her father beside her, while Dina lost her father when she was 5 years old.

The witness hopes that Juan Montero is still alive. Once, the witness was traveling by bus and saw an indigent person on the street, who she thought was Juan, so she got off the bus thinking she had found him.

The witness considers it very important to know the truth about what happened and to have the remains of Juan, if he is dead. The witness considers that justice has not been done with regard to the disappearance of Juan, because the masterminds and perpetrators of his disappearance have not been punished.

The witness appeared before the Court to ensure that the State acknowledges what it did, that it punishes the masterminds and perpetrators, and that it apologizes publicly for the facts. The witness considers that the State is responsible for what happened to Juan, because the armed forces are part of the State and have assisted the "paramilitary" movement.

The witness was afraid to testify before the Inter-American Court because, in her country, every day many people are harassed and, if someone is against the armed forces, they are harassed.

**g. Expert report of Carlos Martín Beristain, doctor, specialist in the care of victims of torture, human rights violations and other forms of violence**



The expert witness traveled to Colombia for the first time in 1995. He got to know some of the work that ASFADDES was doing and conducted many emotional support workshops with groups of human rights defenders, displaced people, victims of communities affected by violence in general, and people affected by forced disappearance. The expert witness has also kept in contact with the nuclear families of the alleged victims in this case, and interviewed 28 next of kin of 13 of the alleged victims. The results of the interviews reflect the impact of the forced disappearance of the 19 tradesmen on the respective victims' nuclear families.

Disappearance is a sudden act that raises many questions for the victims' next of kin. It is called a "traumatic experience," because it is an experience that leaves an indelible scar people's memories and lives, which they have to learn to live with. In the context of human rights violations, disappearance affects the "mourning process," which is the way in which individuals confront the loss of those with whom they have a special affective relationship. Disappearance involves a very traumatic and difficult mourning process.

Mourning includes four principal tasks in the process of emotional recovery and healing. The first task is for people to accept that the loss is a final event in their lives. The second is the possibility of emotional expression, so that people have the opportunity to cry and to tell others how they feel. The third is the adjustment to the new context in which the family member is no longer there; this includes financial adjustment, because they no longer have this source of support. The fourth task is developing ways of remembering the person who has disappeared; how to symbolize the loss, how to recall the disappeared relative, and the possibility of re-establishing emotional relationships with other significant persons.

There are serious reservations about these four tasks in cases of forced disappearance, because the fact is unacceptable *per se*, since there is no certainty that the person has died, and, if their next of kin have died, the family does not have the remains. The ambivalence with regard to what happened means that there is no acceptance. It is also much more difficult to find an opportunity to express the mourning, because there is a social stigma attached to the person who has disappeared that makes it difficult and even dangerous for the next of kin to express themselves. The victims' next of kin do not have opportunities to express their sorrow in public, such as rites, ceremonies or funerals; in other words, places where they can manifest what they are suffering and receive the comfort of others. Disappearance also means that mourning is carried out under much more stressful conditions for the victims' next of kin. Often, there is no opportunity to acknowledge feelings, because daily survival becomes the most important factor for the family. The next of kin of the disappeared feel guilty if they try to build relationships with other people, because they find it difficult, or because they feel guilty trying to rebuild their lives or improve their emotional lives without knowing what has happened to their next of kin.

Certain types of acts have more impact than others, but it is not appropriate to measure pain by making comparisons designed to determine who has suffered most.

Disappearance entails the "de-structuring" of the family dynamics, and this, in turn, results in a loss of social and family support for the children. They do not have a father figure as a reference nor do they understand what has happened; moreover, they are very sensitive to the dynamics of silence that frequently settle into the families of the disappeared.

Rites are a way of helping the next of kin to recover. The absence of the remains means that the victim's family cannot conduct the usual rites. Rites help to make a separation between life and death; they help alleviate the damage caused by the impact of separation and achieve some acknowledgement by society. The rite allows people to express solidarity and a person can feel accompanied in their sorrow. In the case of disappearance, this form of recovery is blocked, because the next of kin who have not recovered the remains of their loved ones are unable to conduct rites. Often, the next of kin who consider conducting this type of ceremony feel guilty, because it is as if they are accepting the death or "killing" of the family member who has disappeared.

The lack of clarification of the facts generates uncertainty among the next of kin. One factor that helps them progress towards concluding the mourning process is being certain about the facts, not merely hearing different versions. The next of kin need to understand why the event happened and know who the perpetrators were. Public recognition helps to free up the pain locked up inside the person, which causes a "privatizing of the damage." The next of kin's feelings of guilt are very frequent in cases of forced disappearance. If there is no social response, acknowledging the facts and the dignity of the victims, the interiorization of the damage will be much greater.

From a psycho-social perspective, ways should be sought to alleviate the damage caused by the disappearance. Accordingly, measures must be taken to provide healthcare and psychological support, and also to ensure acknowledgement, recovery of reputation, and forms of collective memory. From the psycho-social perspective, this case is characterized by being a collective case, which has a greater impact than an individual case. It has the particularity that, first, one group of individuals was disappeared, and then two more people were disappeared during the effort to search for the former. This has meant that the remaining next of kin have had to halt any effort to discover the truth, because they have seen the consequences of that effort for two people who tried to find the disappeared.

The "meaninglessness" of disappearance in this case is much greater, because there is no connection between the activities those individuals carried out and forced disappearance.

The alleged victims were young men, with elderly fathers and small children in most cases. There has been a general pattern of very serious emotional pain and suffering. The disappearance has had considerable impact on the stress levels of the mothers, who have had to take charge of their families alone, and have had to assume the role of both mother and father, and also of the sisters of those who disappeared, who have had to take on the care of the family.

Most of the next of kin of the victims have had symptoms of traumatic memories and recollections associated with a feeling of profound emotional agitation, as effects of repressing their emotions and "emotional anesthesia." The latter refers to the mechanisms that the next of kin adopted to protect themselves from an indeterminate pain, such as pretending they were all right or making a tacit agreement within the family not to talk about what had happened. As a result, each member of the family endures his or her own private personal feelings without knowing what the other members of the family are going through. "Emotional

anesthesia" is a form of protection against grief that has very negative effects in the long term, particularly on physical health.

The expert witness noted that some families grew closer together around the pain they were suffering, while others manifested negative feelings when they met to talk about what had happened. Other families had had problems with overuse of alcohol and drugs.

Another significant problem is the level of "frozen mourning" that the expert had observed in many of the interviews with the next of kin of the tradesmen, which entails considerable psychological suffering. Some family members have left the things of their loved one in place, cut their social ties and do not leave their houses.

The expert witness noted that some of the information in the press and the details from the legal judicial proceedings made a deep impression on the next of kin of the alleged victims; these referred to the way in which the latter were attacked and their bodies were destroyed. Information about these facts made it evident to the next of kin that State agents were heavily involved in the case, which caused frustration, owing to the lack of response and attribution of responsibilities.

The "life plan" of the next of kin of the alleged victims has been affected by the facts of the case. By "life plan", the expert understands the hopes of a person or a family with regard to his personal relationships, his family, personal, financial and professional development, and also his ability to be happy.

The expert witness considers that public acknowledgement of the truth is a very important step in the emotional recovery of the next of kin of the alleged victims in this case. Most of the next of kin that the expert interviewed expressed the fundamental need for the truth to be known, in order to try and overcome the uncertainty of the current situation and so that the facts do not remain unpunished. A few of the next of kin interviewed did not know that some trials had taken place. Most of the next of kin knew about these trials, but the revelations made about the traumatic event had raised many doubts about whether the versions of the facts put forward were a way of concealing the perpetrators or eliminating the evidence-seeking process. Other family members considered that the proceedings were incomplete, because some evidence that was not investigated; this resulted in a feeling of injustice and lack of clarity about the high-level implications regarding responsibility for the facts.

Another important measure that should be taken to help the next of kin of the alleged victims is to make more efforts to locate the remains, because, in order to confront the facts, they need to have evidence of whether the alleged victims are dead or not.

The expert witness was unable to say whether it is possible to close the mourning process while the remains of the alleged victims have not been found. Most of the next of kin of the disappeared insist on the return of some of the remains, should they have been murdered, or something that reminds them of their relative, even if it is only a piece of clothing, a small bone, anything that has something to do with their relative.

The expert considers that it is important to provide support to the next of kin of the alleged victims in specific areas such as health, because some of them have had both

mental and physical health problems, and many families have a very precarious financial situation and do not have access to medical care.

The expert considers that, as part of the treatment to aid recovery, the next of kin need a care procedure that takes into account the social and political nature of the act and a type of psychological help that understands the consequences of the disappearance. Collective mechanisms should be provided, provided the next of kin want and accept this; but they also need individual forms of care or support for their needs. It is important that the program put in place take into consideration the needs and requirements of the next of kin.

As a way of alleviating the damage, most of the next of kin of the alleged victims have stated that they need a form of acknowledgment by society, such as a monument or some publicly identified place, which recognizes the dignity of the tradesmen and also provides some kind of public expression.

The financial compensation offered to the next of kin of the alleged victims will contribute to the development (education and training) of the children and has been a fairly frequent request by those who have dependent parents or who are in financial need.

In the case of the financial compensation, the expert considers it important that the damage should not be presented on a comparative basis, because that could lead to a form of privatization of the harm, or even conflicts about the damage.

### C) EVIDENCE ASSESSMENT

#### *Documentary evidence assessment*

73. In this case, as in others,<sup>12</sup> the Court accepts the probative value of the documents presented by the parties at the proper procedural opportunity or as helpful evidence, that were not contested or opposed, and whose authenticity was not questioned.

74. The Court considers useful for deciding this case, the documents submitted by the Commission on April 22, 2004, during the presentation of the final oral arguments at the public hearing on merits and possible reparations and costs (*supra* paras. 53 and 70), and also those presented as attachments to their final written arguments (*supra* paras. 56 and 70), particularly as they were not contested or opposed, and their authenticity was not questioned, so it adds them to the body of evidence, applying the provisions of Article 44(1) of the Rules of Procedure.

75. Regarding the documentary evidence requested from the State on the instructions of the President and indicated in paragraph 68 of the application, the latter submitted most of this helpful evidence late, specifically the copies of the files of the criminal proceedings before the ordinary jurisdiction and of the file of the military criminal proceeding (*supra* paras. 19, 21, 22, 45, 46, 57 and 68). Even though the State had been asked to forward this evidence on March 15, 2002 (*supra* para. 19), it presented the copies on May 24 and 26, 2004, (*supra* para. 57), after

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<sup>12</sup> Cf. *Case of Maritza Urrutia*, *supra* note 3, para. 52; *Case of Myrna Mack Chang*, *supra* note 3, para. 128; and *Case of Bulacio*, *supra* note 3, para. 57.

the public hearing on merits and possible reparations and costs had been held, and after the deadline for presenting the final written arguments had expired.

76. The State did not forward all the helpful documentary evidence on possible reparations and costs, which had been requested on the instructions of the President (*supra* paras. 50, 55, 58, 61, 62 and 69). Also, in the case of the certifications of the domestic investigations and proceedings requested in the Order of the Court of April 24, 2004, (*supra* para. 55), in the certifications, Colombia did not provide all the information requested.

77. With regard to the evidence submitted late by the State, and the documentation and information that it did not present, the Court noted that the parties must provide the Court with the evidence it requests, either documentary, testimonial, expert reports, or any other kind. The Commission and the State must provide all the probative elements requested as evidence to help it arrive at a decision, so that it has the maximum information to evaluate the facts and substantiate its decisions. In that regard, it must be borne in mind that, in proceedings on human rights violations, the applicant may not be able to provide evidence that can only be obtained with the State's cooperation<sup>13</sup>.

78. In the case of the documents requested by this Court based on Article 44 of the Rules of Procedure, which were presented by the State (*supra* paras. 50, 55, 58, 61, 62 and 69), the Court incorporates them into the body of evidence of this case, applying the provisions of the second paragraph of that Article.

79. With regard to the sworn written statements made before a public notary by ten of the next of kin of the alleged victims (*supra* paras. 33 and 71), as instructed by the President in the Order of April 22, 2003 (*supra* paras. 29 and 71), the Court admits them to the extent that they correspond to their purpose and assesses them in the context of the body of evidence, applying the rules of healthy criticism. In that respect, this Court considers that, as they are next of kin of the alleged victims and have a direct interest in the case, their statements must be assessed together with all the evidence in the proceedings and not in isolation. In matters concerning merits and to reparations, the statements of the next of kin of the alleged victims are useful insofar as they can provide more information on the consequences of the violations perpetrated.<sup>14</sup>

#### *Testimonial and expert evidence assessment*

80. During the public hearing, the State declared, with regard to the testimonies given before the Court, that "the proliferation of value judgments incorporated in the statements detracts from [their] objectivity, since contrasting evidence is lacking." Regarding the statements made during the public hearing by the next of kin of the alleged victims in this case (*supra* paras. 52 and 72), the Court admits them, to the extent that they correspond to the purpose of the questioning and assesses them

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<sup>13</sup> Cf. *Case of Juan Humberto Sánchez. Interpretation of the judgment on preliminary objections, merits and reparations*, *supra* note 6, para. 47; *Case of El Caracazo. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of August 29, 2002. Series C No. 95, para. 56; and *the Case of the Mayagna (Sumo) Awaj Tingni Community*. Judgment of August 31, 2001. Series C No. 79, para. 99.

<sup>14</sup> Cf. *Case of Maritza Urrutia*, *supra* note 3, paras. 53 and 54; *Case of Myrna Mack Chang*, *supra* note 3, para. 132; and *Case of Bulacio*, *supra* note 3, para. 66.

within the entire body of evidence. In that respect, the Court considers that, since they are next of kin of the alleged victims and have a direct interest in the case, their statements must be assessed together with all the evidence in the proceedings and not in isolation. In matters concerning merits and to reparations, the statements of the next of kin of the alleged victims are useful insofar as they can provide more information on the consequences of the violations perpetrated.<sup>15</sup>

81. With regard to the expert report (*supra* paras. 52 and 72), which was not contested or opposed, the Court admits it and accords it probative value.

82. In view of the above, the Court will assess the probative value of the documents, statements and expert report submitted in writing or made before it. The evidence presented during the proceeding has been integrated into a single body of evidence, which is considered as a whole.<sup>16</sup>

## VI PROVEN FACTS

83. Having examined the different documents, the statements of the witnesses, the report of the expert witness, and the communications of the Commission and the State during this proceeding, this Court considers that the following facts are proven:

84. *Background and social and legal context of the country*

84(a) Starting in the 1960s, various guerrilla groups emerged in Colombia and, owing to their activities, the State declared "the disturbance of public order and a state of emergency in national territory."<sup>17</sup> In this context, on December 24, 1965, the State issued Legislative Decree No. 3398 "organizing national defense;" it was transitory in nature, but was adopted as permanent legislation by Act 48 of 1968 (with the exception of articles 30 and 34). Articles 25 and 33 of the Legislative Decree provided the legal basis for the creation of the "self-defense groups." The preambular paragraphs of this legislation indicated that "the subversive activities carried out by the extremist groups to disturb the legal order, call for a coordinated effort by all the nation's law enforcement bodies and community leaders;" in this respect, the said article 25 stipulated that "[a]ll Colombians, men and women, not affected by conscription to obligatory military service, may be used by the Government in activities and tasks contributing to re-establish normality." Also, paragraph 3 of the said article 33 established that "[a]cting through the authorized commands and when it deems necessary, the Ministry of National Defense may dispose of, as its private property, weapons restricted to the exclusive use of the Armed Forces."<sup>18</sup> The "self-defense groups" were established legally under the said norms, so they were supported by the State authorities.<sup>19</sup>

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<sup>15</sup> Cf. *Case of Maritza Urrutia*, *supra* note 3, paras. 53 and 54; *Case of Myrna Mack Chang*, *supra* note 3, para. 132; and *Case of Bulacio*, *supra* note 3, para. 66.

<sup>16</sup> Cf. *Case of Maritza Urrutia*, *supra* note 3, para. 57; *Case of Myrna Mack Chang*, *supra* note 3, para. 129; and *Case of Bulacio*, *supra* note 3, para. 68.

<sup>17</sup> Cf. Legislative decree 3398 of December 24, 1965 (helpful evidence submitted by the State on May 26, 2004, requested by the Court in the Order of April 22, 2004, tome II, folios 3548 to 3553).

<sup>18</sup> Cf. Legislative decree 3398 of December 24, 1965; and Act 48 of December 16, 1968 (helpful evidence presented by the State on May 26, 2004, requested by the Court in an Order of April 22, 2004, tome II, folios 3548 to 3556).

84(b) In the context of the struggle against the guerrilla groups, the State encouraged the creation of such "self-defense groups" among the civilian population; their purpose was to help the law enforcement personnel in anti-subversive operations and defend themselves against the guerrilla groups. The State granted them permission to own and bear arms, and gave them logistic support.<sup>20</sup>

84(c) In the 1980s, principally after 1985, it was notorious that the goals of many "self-defense groups" changed and they became criminal groups, usually known as "paramilitary groups."<sup>21</sup> They operated, above all, in the Magdalena Medio region and gradually extended to other regions of the country.<sup>22</sup>

84(d) In 1984, a "self-defense group" known as the *Asociación de Campesinos y Ganaderos del Magdalena Medio* [Association of Peasants and Livestock Owners of Magdalena Medio] (ACDEGAM) was established in the municipality of Puerto Boyacá. At its inception, it was formed for social purposes and for defense against possible guerrilla attacks. With time, the group became a "paramilitary" or criminal group, which, not only sought to defend itself from the guerrilla, but also attack and eradicate it. This group kept a firm control in the municipalities of Puerto Boyacá, Puerto Berrío and Cimitarra, and was led by Gonzalo Pérez and his sons Henry and Marcelo Pérez. At the time of the events in this case, the Magdalena Medio was a region where there was considerable activity in the struggle between the Army and the "self-defense" groups against the guerrilla, in which the senior military leaders of

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<sup>19</sup> Cf. judgment delivered by the Superior Military Court on March 17, 1998 (evidence file presented by the State on April 18, 2002, requested on the instructions of the President of the Court - paragraph 68 of the application - tome II, attachment 9, folios 1496 to 1498); and report of the United Nations Special Rapporteur on summary and arbitrary executions on a visit to Colombia from October 11 to 20, 1989, E/CN.4/1990/22/Add.1 of January 24, 1990 (file of attachments to the application, tome II, attachment B9, folio 965).

<sup>20</sup> Cf. judgment delivered by the National Court on April 14, 1998; judgment delivered by the Superior Military Court on March 17, 1998 (evidence file presented by the State on April 18, 2002, requested on the instructions of the President of the Court - paragraph 68 of the application - tome II, attachments 5 and 9, folios 1276 to 1279 and 1496 to 1498); judgment delivered by the Cúcuta Regional Court on May 28, 1997 (evidence file presented by the State on April 18, 2002, requested on the instructions of the President of the Court - paragraph 68 of the application - tome I, attachment 4, folios 1221 and 1223); report of the United Nations Special Rapporteur on summary or arbitrary executions on a visit to Colombia from October 11 to 20, 1989, E/CN.4/1990/22/Add.1 of January 24, 1990 (file of attachments to the application, attachment B9, tome II, folio 965); and report of the Administrative Department of Security (DAS) of March 15, 1989 (file of attachments to the application, tome I, attachment B3, folio 614).

<sup>21</sup> Cf. public hearing held at the seat of the Court on April 21 and 22, 2004, the State's reply to a question posed by the Court; Decree 0180 of January 27, 1988; Decree 0815 of April 19, 1989; Decree 1194 of June 8, 1989 (helpful evidence presented by the State on May 26, 2004, requested by the Court in an Order of April 22, 2004, tome II, folios 3557 to 3572); judgment delivered by the Superior Military Court on March 17, 1998 (evidence file presented by the State on April 18, 2002, requested on the instructions of the President of the Court - paragraph 68 of the application - tome II, attachment 9, folios 1496 to 1498); and report of the United Nations Special Rapporteur on summary and arbitrary executions on a visit to Colombia from October 11 to 20, 1989, E/CN.4/1990/22/Add.1 (file of attachments to the application, tome II, attachment B9, folios 965, 968, 978, 991, 992 and 994).

<sup>22</sup> Cf. Report of the United Nations Special Rapporteur on summary or arbitrary executions on a visit to Colombia from October 11 to 20, 1989, E/CN.4/1990/22/Add.1 of January 24, 1990 (file of attachments to the application, tome II, attachment B9, folio 965).

the region not only helped this "self-defense group" defend itself from the guerrilla, but also supported their adoption of offensive activities.<sup>23</sup>

84(e) The provisions of legislative decree No. 3398, cited above (*supra* para. 84(a)) were in force in October 1987, when the facts of this case took place. At that time, the entire territory of Colombia was under a declared state of emergency.<sup>24</sup>

84(f) On January 27, 1988, Colombia issued legislative decree 0180 "which complemented several norms of the Penal Code and established other provisions designed to re-establish public order." This decree classified as a crime, *inter alia*, being a member of, promoting or leading groups of hired murderers, and also the manufacture or trafficking in arms and ammunition for the exclusive use of the Armed Forces of the National Police.<sup>25</sup> This decree was subsequently converted into permanent legislation by Decree 2266 of 1991.<sup>26</sup>

84(g) On April 19, 1989, Decree 0815 was issued suspending application of paragraph 3 of article 33 of legislative decree 3398 of 1965 (*supra* para. 84(a)), which empowered the Ministry of National Defense to authorize individuals to carry arms for the exclusive use of the Armed Forces. The preambular paragraphs of Decree 0815 indicate that "the interpretation of [legislative decree 3398 of 1965, adopted as permanent legislation by Act 48 of 1968, made] by some sectors of public opinion has caused confusion regarding its scope and purpose, in the sense that it could be considered as legal authorization to organize armed groups of civilians that then operate outside the Constitution and the law."<sup>27</sup> Subsequently, in a judgment of May 25, 1989, the Supreme Court of Justice declared "unenforceable" the said paragraph 3 of article 33 of legislative decree 3398 of 1965.<sup>28</sup>

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<sup>23</sup> Cf. judgment delivered by the Superior Military Court on March 17, 1998 (evidence file presented by the State on April 18, 2002, requested on the instructions of the President of the Court - paragraph 68 of the application - tome II, attachment 9, folios 1496 to 1498); judgment delivered by the Criminal Chamber of the Superior Court of the San Gil Judicial District on October 19, 2001; judgment delivered by the Criminal Court of the San Gil Specialized Circuit on March 23, 2001; judgment delivered by the Cúcuta Regional Court on May 28, 1997, file No. 1723 (evidence file presented by the State on April 18, 2002, requested on the instructions of the President of the Court - paragraph 68 of the application - tome I, attachments 2, 3 and 4, folios 1045, 1112, 1113, 1114 and 1223); report of the United Nations Special Rapporteur on summary or arbitrary executions on a visit to Colombia from October 11 to 20, 1989, E/CN.4/1990/22/Add.1 of January 24, 1990 (file of attachments to the application, tome II, attachment B9, folio 968); and report of the Administrative Department of Security (DAS) of May 10, 1988 entitled "Organización de sicarios que opera en el Magdalena Medio" [Organization of hired murderers who operate in the Magdalena Medio] (file of attachments to the application, tome I, attachment B2, folios 593 and 594).

<sup>24</sup> Cf. Decree 0180 of January 27, 1988 (helpful evidence presented by the State on May 26, 2004, requested by the Court in an Order of April 22, 2004, tome II, folios 3557 to 3569).

<sup>25</sup> Cf. Decree 0180 of January 27, 1988 (helpful evidence presented by the State on May 26, 2004, requested by the Court in an Order of April 22, 2004, tome II, folios 3557 to 3566).

<sup>26</sup> Cf. Decree 2266 of October 4, 1991 (helpful evidence presented by the State on May 26, 2004, requested by the Court in an Order of April 22, 2004, tome II, folios 3573 to 3581).

<sup>27</sup> Cf. Decree 0815 of April 19, 1989 (helpful evidence presented by the State on May 26, 2004, requested by the Court in an Order of April 22, 2004, tome II, folios 3567 to 3569).

<sup>28</sup> Cf. judgment delivered by the Supreme Court of Justice on May 25, 1989 (file of attachments to the brief with final arguments presented by the Inter-American Commission on June 1, 2004, attachment 6, folios 3943 to 3950).



84(h) On June 8, 1989, the State issued Decree 1194 “extending legislative decree 0180 of 1988, to punish new criminal activities, since this was required in order to re-establish public order.”<sup>29</sup> One of the preambular paragraphs of this norm stated that “events that have been occurring in the country have demonstrated that there is a new criminal activity consisting in horrendous acts being committed by armed groups, mistakenly called “paramilitary groups,” formed into death squadrons, bands of hired murderers, self-defense or private justice groups, whose existence and activities gravely affect the social stability of the country, and which should be suppressed in order to re-establish public order and peace.” This decree classified as crimes the promotion, financing, organization, leadership, encouragement and execution of acts “designed to train or provide access of individuals to the armed groups, commonly known as death squadrons, bands of hired murderers or private justice groups, erroneously called paramilitary groups.” It also classified as a crime, having connections to or belonging to such groups, as well as instructing, training or equipping “individuals in military tactics, techniques or procedures for carrying out the criminal activities” of these armed groups. It also stipulated that acts “committed by active or retired members of the Military Forces or National Police or State security agencies” would be considered as aggravating the said conduct. This decree was subsequently converted into permanent legislation by Decree 2266 issued on October 4, 1991.<sup>30</sup>

85. *Regarding the disappearance and death of the 19 alleged victims*

85(a) Álvaro Lobo Pacheco, Gerson Javier Rodríguez Quintero, Israel Pundor Quintero, Ángel María Barrera Sánchez, Antonio Flórez Contreras, Víctor Manuel Ayala Sánchez, Alirio Chaparro Murillo, Álvaro Camargo, Gilberto Ortíz Sarmiento, Reinaldo Corzo Vargas, Luis Hernando Jáuregui Jaimes, Luis Domingo Sauza Suárez, Juan Alberto Montero Fuentes, Rubén Emilio Pineda Bedoya, Carlos Arturo Riatiga Carvajal, Juan Bautista, Alberto Gómez (whose second last name was possibly Ramírez) and Huber Pérez (whose second last name was possibly Castaño) made a living by carrying out commercial activities, such as the transport of merchandise or persons, the purchase of merchandise on the border between Colombia and Venezuela, and the sale of this in Bucaramanga, Medellín and other towns on the connecting highway.<sup>31</sup>

85(b) The “leadership” of the “paramilitary” group that exercised firm control over the municipality of Boyacá (*supra* para. 84(d)) had a meeting at which they decided to kill the tradesmen and seize their merchandise and vehicles, because the tradesmen did not pay the “taxes” that the said “paramilitary” group charged to transit the region with merchandise and because they considered that the alleged

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<sup>29</sup> Cf. Decree 1194 of June 8, 1989 (helpful evidence presented by the State on May 26, 2004, requested by the Court in an Order of April 22, 2004, tome II, folios 3570 to 3572).

<sup>30</sup> Cf. Decree 2266 of October 4, 1991 (helpful evidence presented by the State on May 26, 2004, requested by the Court in an Order of April 22, 2004, tome II, folios 3573 to 3581).

<sup>31</sup> Cf. judgment delivered by the Criminal Court of the San Gil Specialized Circuit on March 23, 2001 (evidence file presented by the State on April 18, 2002, requested on the instructions of the President of the Court - paragraph 68 of the application - tome I, attachment 3, folio 1083); and copy of the file before the Cúcuta Regional Court in case No. 1728 against Alonso de Jesús Baquero Agudelo for the crimes of extortive kidnapping and aggravated homicide to the detriment of “Alvaro Pacheco and 18 other tradesmen”, “Regional Prosecutor’s File 087” (U.N.D.H.) (helpful evidence presented by the State on May 26, 2004, requested on the instructions of the President of the Court - paragraph 68 of the application).

victims sold arms bought in Venezuela to the guerrilla or subversive groups in the Magdalena Medio region.<sup>32</sup> The meeting was held with the acquiescence of several Army officers who agreed to the plan.<sup>33</sup>

85(c) On October 4, 1987, Álvaro Lobo Pacheco, Gerson Javier Rodríguez Quintero, Israel Pundor Quintero, Ángel María Barrera Sánchez, Antonio Flórez Contreras, Víctor Manuel Ayala Sánchez, Alirio Chaparro Murillo, Álvaro Camargo, Gilberto Ortíz Sarmiento, Reinaldo Corzo Vargas, Luis Hernando Jáuregui Jaimés, Luis Domingo Sauza Suárez, Rubén Emilio Pineda Bedoya, Carlos Arturo Riatiga Carvajal, Juan Bautista, Alberto Gómez (whose second last name was possibly Ramírez) and Huber Pérez (whose second last name was possibly Castaño) left from Cúcuta for Medellín in a red and white truck, license plate UZ-0265, a blue, cream and red van, license plate XK-3363, a black and yellow taxi, license plate UR-3780 and a blue and white Nissan jeep, license plate MC-2867, transporting merchandise for sale.<sup>34</sup>

85(d) On October 6, 1987, in the afternoon, the said alleged victims passed through the hamlet of Puerto Araujo, where they were searched by members of the Military Forces, which was the last official indication of their whereabouts.<sup>35</sup> At the military

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<sup>32</sup> Cf. judgment delivered by the Criminal Court of the San Gil Specialized Circuit on March 23, 2001; judgment delivered by the Cúcuta Regional Court on May 28, 1997, file No. 1723 (evidence file presented by the State on April 18, 2002, requested on the instructions of the President of the Court - paragraph 68 of the application - tome I, attachments 3 and 4, folios 1084, 1085, 1086, 1219, 1220, 1223, 1224, 1227 and 1228); report of the Administrative Department of Security (DAS) of February 13, 1990 entitled "Información adicional sobre la masacre de 19 comerciantes en jurisdicción de Puerto Boyacá" [Additional information on the massacre of 19 tradesmen in the jurisdiction of Puerto Boyacá] (file of attachments to the application, tome I, attachment B4, folio 687); judgment delivered by the National Court on April 14, 1998; and article in the newspaper "El Tiempo" entitled "Nuevas luces en investigación de masacre de 19 comerciantes" [New light on the investigation into the massacre of 19 tradesmen] published on August 30, 1990 (evidence file presented by the State on April 18, 2002, requested on the instructions of the President of the Court - paragraph 68 of the application - tome II, attachments 5 and 7, folios 1263, 1264 and 1306).

<sup>33</sup> Cf. judgment delivered by Sole Court of the San Gil Specialized Circuit on March 23, 2001; and judgment delivered by the Cúcuta Regional Court on May 28, 1997 (evidence file presented by the State on April 18, 2002, requested on the instructions of the President of the Court - paragraph 68 of the application - tome I, attachments 3 and 4, folios folio 1086, 1227, 1229, 1230 and 1231).

<sup>34</sup> Cf. testimony of Salomón Flórez Contreras given before the Court on April 21, 2004; judgment delivered by the Superior Military Court on March 17, 1998 (evidence file presented by the State on April 18, 2002, requested on the instructions of the President of the Court - paragraph 68 of the application - tome II, attachment 9, folios 1402 and 1425); judgment delivered by the Criminal Court of the San Gil Specialized Circuit on March 23, 2001; judgment delivered by the Cúcuta Regional Court on May 28, 1997 (evidence file presented by the State on April 18, 2002, requested on the instructions of the President of the Court - paragraph 68 of the application - tome I, attachments 3 and 4, folios 1083 and 1202); and copy of the report on the disappearance of the vehicles filed by Marina Lobo Pacheco before the legal representative of the municipality of Ocaña on January 29, 1988 (copy of the file before the Cúcuta Regional Court in case No. 1728 against Alonso de Jesús Baquero Agudelo for the crimes of extortive kidnapping and aggravated homicide to the detriment of "Alvaro Lobo Pacheco and 18 other tradesmen", "Regional Prosecutor's File 087", helpful evidence presented by the State on May 26, 2004, requested on the instructions of the President of the Court - paragraph 68 of the application).

<sup>35</sup> Cf. judgment delivered by the Criminal Court of the San Gil Specialized Circuit on March 23, 2001; judgment delivered by the Cúcuta Regional Court on May 28, 1997 (evidence file presented by the State on April 18, 2002, requested on the instructions of the President of the Court - paragraph 68 of the application - tome I, attachments 3 and 4, folios 1083, 1102, 1214 and 1215); official record of the search carried out on October 6, 1987 in Puerto Araujo by the Army (copy of the file before the Cúcuta Regional Court in case No. 1728 for Alonso de Jesús Baquero Agudelo for the crimes of extortive kidnapping and aggravated homicide to the detriment of "Alvaro Lobo Pacheco and 18 other tradesmen", "Regional Prosecutor's File 087," helpful evidence presented by the State on May 26, 2004, requested on the instructions of the President of the Court - paragraph 68 of the application); and judgment delivered by

checkpoint where the tradesmen were searched, the lieutenant in charge simply verified whether they were carrying arms and allowed them to continue, ignoring the considerable quantity of contraband merchandise that he had noticed.<sup>36</sup>

85(e) In the afternoon of October 6, 1987, Álvaro Lobo Pacheco, Gerson Javier Rodríguez Quintero, Israel Pundor Quintero, Ángel María Barrera Sánchez, Antonio Flórez Contreras, Víctor Manuel Ayala Sánchez, Alirio Chaparro Murillo, Álvaro Camargo, Gilberto Ortíz Sarmiento, Reinaldo Corzo Vargas, Luis Hernando Jáuregui Jaimes, Luis Domingo Sauza Suárez, Rubén Emilio Pineda Bedoya, Carlos Arturo Riatiga Carvajal, Juan Bautista, Alberto Gómez (whose second last name was possibly Ramírez) and Huber Pérez (whose second last name was possibly Castaño) were detained by members of the abovementioned "paramilitary" or criminal group that operated in the municipality of Puerto Boyacá near the farm known as "El Diamante", owned by the leader of that group and located in the Cimitarra district of that municipality.<sup>37</sup>

85(f) On October 6, 1987, or during the night of October 7, 1987, members of this "paramilitary" group that operated in the municipality of Puerto Boyacá murdered the 17 tradesmen, dismembered their bodies and threw them into the waters of the "Ermitaño" stream, an affluent of the Magdalena River, in front of the place known as "Palo de Mango" [the mango tree].<sup>38</sup>

85(g) Several of the next of kin of the alleged victims formed "search committees" and traveled the routes over which the 17 tradesmen had passed. The following

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the Superior Military Court on March 17, 1998 (evidence file presented by the State on April 18, 2002, requested on the instructions of the President of the Court - paragraph 68 of the application - tome II, attachment 9, folios 1402, 1425 and 1484).

<sup>36</sup> Cf. judgment delivered by the Cúcuta Regional Court on May 28, 1997 (evidence file presented by the State on April 18, 2002, requested on the instructions of the President - paragraph 68 of the application - tome I, attachment 4, folio 1224).

<sup>37</sup> Cf. judgment delivered by the Criminal Chamber of the Superior Court of the San Gil Judicial District on October 19, 2001; judgment delivered by the Criminal Court of the San Gil Specialized Circuit on March 23, 2001; judgment delivered by the Cúcuta Regional Court on May 28, 1997 (evidence file presented by the State on April 18, 2002, requested on the instructions of the President - paragraph 68 of the application - tome I, attachments 2, 3 and 4, folios 1041, 1042, 1084, 1107, 1110, 1203, 1217 and 1220); judgment delivered by the Superior Military Court on March 17, 1998 (evidence file presented by the State on April 18, 2002, requested on the instructions of the President of the Court - paragraph 68 of the application - tome II, attachment 9, folios 1428 and 1484); report of the Administrative Department of Security (DAS) of May 10, 1988; report of the Administrative Department of Security (DAS) of March 15, 1989; and report of the Administrative Department of Security (DAS) of February 13, 1990, entitled "Información adicional sobre la masacre de 19 comerciantes en jurisdicción de Puerto Boyacá" [Additional information on the massacre of 19 tradesmen in the jurisdiction of Puerto Boyacá] (file of attachments to the application, tome I, attachments B2, B3 and B4, folio 600, 662 and 687).

<sup>38</sup> Cf. judgment delivered by the Criminal Chamber of the Superior Court of the San Gil Judicial District on October 19, 2001; judgment delivered by the Criminal Court of the San Gil Specialized Circuit on March 23, 2001; judgment delivered by the Cúcuta Regional Court on May 28, 1997 (evidence file presented by the State on April 18, 2002, requested on the instructions of the President of the Court - paragraph 68 of the application - tome I, attachments 2, 3 and 4, folios 1041, 1042, 1084, 1107, 1110, 1118, 1203, 1216, 1218 and 1219); judgment delivered by the National Court on April 14, 1998; judgment delivered by the Superior Military Court on March 17, 1998; judgment delivered by the Superior Military Court on March 17, 1998 (evidence file presented by the State on April 18, 2002, requested on the instructions of the President of the Court - paragraph 68 of the application - tome II, attachments 5 and 9, folios 1263 and 1484); report of the Administrative Department of Security (DAS) of May 10, 1988, entitled "Organización de sicarios que opera en el Magdalena Medio" [Organization of hired murderers who operate in the Magdalena Medio]; and report of the Administrative Department of Security (DAS) of March 15, 1989 (file of attachments to the application, tome I, attachments B2 and B3, folios 600 and 662).

participated in one of these journeys: two brothers and a nephew of the alleged victim, Antonio Flórez Contreras, the father of the alleged victim, Israel Pundor Quintero, and a brother of the alleged victim, Ángel María Barrera Sánchez. At the Cimitarra Battalion, a soldier told them that the 17 tradesmen had passed by, and in Campo Capote several civilians told them, that the tradesmen had also passed by. When they were on the way to Puerto Boyacá, several armed civilians, who identified themselves as members of "self-defense groups" detained them on the road. On another journey, in which five next of kin of the alleged victims participated, they were told in Puerto Araujo that the vehicles of the 17 tradesmen had been taken by soldiers to the Puerto Araujo base. When they went to ask the mayor of Puerto Boyacá for help, the latter told them that they should ask Henry Pérez, commander of the "paramilitary" personnel, or the Army Commander. They spoke to Henry Pérez, who told them that he had not seen anything and threatened that if they did not leave the region something could happen to them and their families. They proceeded toward the Bárbula Battalion, but could not reach it because they were followed, so they went to the Medellín Police. They returned to Ocaña because they did not obtain any information.<sup>39</sup>

85(h) About 15 days after the disappearance of the 17 tradesmen, Juan Alberto Montero Fuentes -brother in law of the alleged victim, Víctor Manuel Ayala Sánchez- and José Ferney Fernández Díaz, went to search for those who had disappeared, traveling on a gray Yamaha 175 cc motorcycle. While they were carrying out this search, members of the said "paramilitary" group who were operating in the municipality of Puerto Boyacá detained Mr. Montero and Mr. Fernández, and "the same happened to them as to the first seventeen (17) disappeared persons" (*supra* para. 85(e) and 85(f)).<sup>40</sup>

85(i) The tradesmen's merchandise was put on sale in stores belonging to the leaders of the said "paramilitary" group, located in Puerto Boyacá. In addition, part of this merchandise was shared out among the members of this group and another part was given as "presents" to peasants in the region.<sup>41</sup>

<sup>39</sup> Cf. testimony of Salomón Flórez Contreras given before the Court on April 21, 2004; testimonial statement of Lina Noralba Navarro Flórez made before a public notary on June 12, 2003 (file on merits and possible reparations and costs, tome II, folios 318 to 320); judgment delivered by the Criminal Court of the San Gil Specialized Circuit on March 23, 2001; judgment delivered by the Cúcuta Regional Court on May 28, 1997 (evidence file presented by the State on April 18, 2002, requested on the instructions of the President of the Court - paragraph 68 of the application - tome I, attachments 3 and 4, folios 1103, 1104, 1105 and 1216); and judgment delivered by the National Court on April 14, 1998 (evidence file presented by the State on April 18, 2002, requested on the instructions of the President of the Court - paragraph 68 of the application - tome II, attachment 5, folio 1275).

<sup>40</sup> Cf. testimony of Sandra Belinda Montero Fuentes given before the Court on April 21, 2004; judgment delivered by the Criminal Court of the San Gil Specialized Circuit on March 23, 2001; judgment delivered by the Cúcuta Regional Court on May 28, 1997 (evidence file presented by the State on April 18, 2002, requested on the instructions of the President of the Court - paragraph 68 of the application - tome I, attachments 3 and 4, folios 1086, 1105, 1109, 1111 and 1203); judgment delivered by the National Court on April 14, 1998 (evidence file presented by the State on April 18, 2002, requested on the instructions of the President of the Court - paragraph 68 of the application - tome II, attachment 5, folios 1288 and 1289); and report of the Administrative Department of Security (DAS) of May 10, 1988 entitled "Organización de sicarios que opera en el Magdalena Medio" [Organization of hired murderers who operate in the Magdalena Medio] (file of attachments to the application, tome I, attachment B2, folio 600).

<sup>41</sup> Cf. judgment delivered by the Criminal Chamber of the Superior Court of the San Gil Judicial District on October 19, 2001; judgment delivered by the Criminal Court of the San Gil Specialized Circuit on March 23, 2001; judgment delivered by the Cúcuta Regional Court on May 28, 1997 (evidence file presented by the State on April 18, 2002, requested on the instructions of the President of the Court - paragraph 68 of the application - tome I, attachments 2, 3 and 4, folios 1042, 1084, 1085, 1123, 1124,

85(j) The next of kin of the alleged victims informed the State authorities responsible for investigating the disappearance of the alleged victims of the characteristics of the vehicles in which the latter were traveling.<sup>42</sup> The vehicles were kept for use on the farms of leaders of the "paramilitary" group; however, owing to the search by the next of kin and the investigations, they were subsequently dismembered and thrown into the bottom of a lake on the "El Diamante" farm. The "truck" was also thrown into this lake, but first it was set on fire. Also, they altered the color of the motorcycle on which Juan Alberto Montero Fuentes and José Ferney Fernández Díaz traveled and it was used by members of the "paramilitary" group.<sup>43</sup>

85(k) Owing to the disappearance of the 17 tradesmen and, subsequently, of Juan Alberto Montero Fuentes and José Ferney Fernández Díaz, their next of kin resorted to different State authorities to ask for help and report the disappearances. However, the authorities did not conduct an immediate search for the 19 alleged victims.<sup>44</sup>

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1125 and 1218); and report of the Administrative Department of Security (DAS) of February 13, 1990 entitled "Información adicional sobre la masacre de 19 comerciantes en jurisdicción de Puerto Boyacá" [Additional information on the massacre of 19 tradesmen in the jurisdiction of Puerto Boyacá] (file of attachments to the application, tome I, attachment B4, folios 687 and 688).

<sup>42</sup> Cf. copy of the file before the prosecutor of the National Human Rights Unit in the case against Jairo Iván Galvis Brochero, Robinson Gutiérrez de la Cruz, Waldo Patiño García and others for crimes of "extortive kidnapping, aggravated homicide [...]," file No. 087-DH; and copy of the file before the Cúcuta Regional Court in case No. 1728 against Alonso de Jesús Baquero Agudelo for the crimes of extortive kidnapping and aggravated homicide to the detriment of "Alvaro Pacheco and 18 other tradesmen", "Prosecutors File Reg. 087-DH" (helpful evidence presented by the State on May 26, 2004, requested on the instructions of the President of the Court - paragraph 68 of the application).

<sup>43</sup> Cf. judgment delivered by the Criminal Chamber of the Superior Court of the San Gil district on October 19, 2001; judgment delivered by the Criminal Court of the San Gil Specialized Circuit on March 23, 2001 (evidence file presented by the State on April 18, 2002, requested on the instructions of the President of the Court - paragraph 68 of the application - tome I, attachments 2 and 3, folios 1042, 1085, 1105 and 1111); and report of the Administrative Department of Security (DAS) of February 13, 1990 entitled "Información adicional sobre la masacre de 19 comerciantes en jurisdicción de Puerto Boyacá" [Additional information on the massacre of 19 tradesmen in the jurisdiction of Puerto Boyacá] (file of attachments to the application, tome I, attachment B4, folio 687).

<sup>44</sup> Cf. testimony of Salomón Flórez Contreras given before the Court on April 21, 2004; testimony of Sandra Belinda Montero Fuentes given before the Court on April 21, 2004; testimony of Wilmar Rodríguez Quintero given before the Court on April 21, 2004; testimony of Alejandro Flórez Pérez given before the Court on April 21, 2004; testimony of Luz Marina Pinzón Reyes given before the Court on April 21, 2004; testimony of Jorge Corzo Viviescas given before the Court on April 21, 2004; sworn written statement made by Carmen Rosa Barrera Sánchez before a public notary on June 12, 2003; sworn written statement made by Lina Noralba Navarro Flórez before a public notary on June 12, 2003; sworn written statement made by Luz Marina Pérez Quintero before a public notary on June 16, 2003; sworn written statement made by Myriam Mantilla Sánchez before a public notary on June 13, 2003; sworn written statement made by Manuel Ayala Mantilla before a public notary on June 13, 2003; sworn written statement made by Ana Murillo Delgado de Chaparro before a public notary on June 13, 2003; sworn written statement made by Suney Dinora Jáuregui Jaimes before a public notary on June 13, 2003; sworn written statement made by Marina Lobo Pacheco before a public notary on June 12, 2003 (file on merits and possible reparations and costs, tome I, folios 255 to 276 and 282 to 285); judgment delivered by the National Court on April 14, 1998 (evidence file presented by the State on April 18, 2002, requested on the instructions of the President of the Court - paragraph 68 of the application - tome II, attachment 5, folios 1263, 1276 and 1279); judgment delivered by the San Gil Specialized Judge on March 23, 2001 (evidence file presented by the State on April 18, 2002, requested on the instructions of the President of the Court - paragraph 68 of the application - tome I, attachment 3, folios 1103 and 1185); order issued by the Prosecutor of the National Human Rights Unit on March 7, 1996 (helpful evidence presented by the State on May 26, 2004, requested on the instructions of the President of the Court - paragraph 68 of the application - tome I, folio 2961); copy of the file before the Cúcuta Regional Court in case No. 1728 against Alonso de Jesús Baquero Agudelo for the crimes of extortive kidnapping and aggravated homicide to the detriment of "Alvaro Pacheco and 18 other tradesmen", "Reg. Prosecutor's File 087 (U.N.D(h))"

85(l) At the date of this judgment, more than sixteen years have elapsed since the facts occurred, and the remains of the 19 alleged victims have not been located and identified.<sup>45</sup>

85(m) The competent State authorities did not conduct any activities to seek for or identify the remains of the 19 alleged victims. However, Jorge Corzo Viviescas, father of the alleged victim, Reinaldo Corzo Vargas, reported on October 23, 1987, to the Eighth Criminal Trial Court of the San Gil Judicial District that "the body of Reinaldo Corzo Vargas had been found in the waters of the Guayabito River." In response, the judge in charge merely asked the Police Inspectorate of Puerto Olaya, Puerto Araujo, Campo Capote and the Municipal Police of Berrío "if the removal of [Mr.] Corzo Vargas or anyone corresponding to his physical description had been verified" within their area, and obtained negative replies.<sup>46</sup> Also, On July 14, 1989, the Seventeenth Criminal Trial Court of the Tunja Judicial District did not order any records to be made of the removal or identification of corpses, but merely requested those in charge of the Preliminary Investigation Section of the Technical Unit of the Judicial Police of Puerto Boyacá "to ask whether, in any office of that municipality, there were records of the removal of the corpses, autopsy results or official death certificates of the tradesmen who had disappeared," obtaining negative replies from the different courts of the First Municipal Police Inspectorate of Puerto Boyacá and from the magistrate's office of the Puerto Boyacá Circuit.<sup>47</sup>

86. *Relationship between the "paramilitary" group and the security forces*

86(a) In a number of significant cases, the investigations conducted by the Judiciary and the Attorney General's office have demonstrated the active participation of members of the security forces in the so-called "paramilitary" groups. On different

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(helpful evidence presented by the State on May 26, 2004, requested on the instructions of the President of the Court -paragraph 68 of the application); and judgment delivered by the Cúcuta Regional Court on May 28, 1997 (evidence file presented by the State on April 18, 2002, requested on the instructions of the President of the Court - paragraph 68 of the application - tome I, attachment 4, folio 1215).

<sup>45</sup> Cf. testimony of Salomón Flórez Contreras given before the Court on April 21, 2004; testimony of Sandra Belinda Montero Fuentes given before the Court on April 21, 2004; judgment delivered by the Criminal Chamber of the Superior Court of the San Gil Judicial District on October 19, 2001; and judgment delivered by the Criminal Court of the San Gil Specialized Circuit on March 23, 2001 (evidence file presented by the State on April 18, 2002, requested on the instructions of the President of the Court - paragraph 68 of the application - tome I, attachments 2 and 3, folios 1065, 1066 and 1100).

<sup>46</sup> Cf. copy of the file before the prosecutor of the National Human Rights Unit in the case against Jairo Iván Galvis Brochero, Robinson Gutiérrez de la Cruz, Waldo Patiño García and others for the crimes of "extortive kidnapping, aggravated homicide, [...]" to the detriment of "Alvaro Lobo Pacheco and 18 other tradesmen," file 087-DH (helpful evidence presented by the State on May 26, 2004, requested on the instructions of the President of the Court - paragraph 68 of the application); and judgment delivered by the Superior Military Court on March 17, 1998 (evidence file presented by the State on April 18, 2002, requested on the instructions of the President of the Court - paragraph 68 of the application - tome II, attachment 9, folio 1408).

<sup>47</sup> Cf. copy of the file before the prosecutor of the National Human Rights Unit in the case against Jairo Iván Galvis Brochero, Robinson Gutiérrez de la Cruz, Waldo Patiño García and others for the crimes of "extortive kidnapping, aggravated homicide [...]" to the detriment of "Alvaro Lobo Pacheco and 18 other tradesmen," file 087-DH (helpful evidence presented by the State on May 26, 2004, requested on the instructions of the President of the Court - paragraph 68 of the application).

occasions, the State has imposed administrative and criminal punishments on law enforcement personnel owing to their connections to “paramilitary” groups.<sup>48</sup>

86(b) At the time of the facts of this case, the abovementioned “paramilitary” group that operated in the Magdalena Medio region acted with the collaboration and support of different military authorities of the battalions in that region. The members of the “paramilitary” group had the support of the senior military leaders in the activities preceding the detention of the alleged victims and when they committed the crimes against the latter.<sup>49</sup>

86(c) Even though, at the time of the events, law enforcement personnel knew that the “paramilitary” group operating in the region exercised substantial control over it and acted against the law, “they let them [gain] advantage and failed to control and monitor them.”<sup>50</sup>

87. *With regard to the domestic judicial proceedings*

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<sup>48</sup> Cf. copy of the file before the prosecutor of the National Human Rights Unit in the case against Jairo Iván Galvis Brochero, Robinson Gutiérrez de la Cruz, Waldo Patiño García and others for the crimes of “extortive kidnapping, aggravated homicide [...]” to the detriment of “Alvaro Lobo Pacheco and 18 other tradesmen,” file 087-DH (helpful evidence presented by the State on May 26, 2004, requested on the instructions of the President of the Court - paragraph 68 of the application); copy of the file before the Cúcuta Regional Court in case No. 1728 against Alonso de Jesús Baquero Agudelo for the crimes of extortive kidnapping and aggravated homicide to the detriment of “Alvaro Pacheco and 18 other tradesmen,” “Regional Prosecutor’s File 087-DH” (helpful evidence presented by the State on May 26, 2004, requested on the instructions of the President of the Court - paragraph 68 of the application); and report of the United Nations Special Rapporteur on summary and arbitrary executions on a visit to Colombia from October 11 to 20, 1989, E/CN.4/1990/22/Add.1 of January 24, 1990 (file of attachments to the application, tome II, attachment B9, folios 968 and 991).

<sup>49</sup> Cf. judgment delivered by the Criminal Chamber of the Superior Court of the San Gil Judicial District on October 19, 2001; judgment delivered by el San Gil Specialized Judge on March 23, 2001; judgment delivered by the Regional Judge of Cúcuta on May 28, 1997 (evidence file presented by the State on April 18, 2002, requested on the instructions of the President of the Court - paragraph 68 of the application - tome I, attachments 2, 3 and 4, folios folio 1045, 1142 and 1203); judgment delivered by the National Court on April 14, 1998; judgment delivered by the Superior Military Court on March 17, 1998 (evidence file presented by the State on April 18, 2002, requested on the instructions of the President of the Court - paragraph 68 of the application - tome II, attachments 5 and 9, folios 1264, 1276, 1279 and 1465 to 1468); resolution issued by the Human Rights Unit of the Prosecutor General’s office on May 29, 1996; resolution issued by the Human Rights Unit of the Prosecutor General’s office on August 8, 1996; resolution issued by the Human Rights Unit of the Prosecutor General’s office on September 13, 1996 (evidence file provided by the Inter-American Commission during the public hearing on merits and possible reparations and costs of April 22, 2004, tome II, attachments 45, 47 and 51, folios 2681, 2683, 2710, 2773 and 2775); testimony of Salomón Flórez Contreras given before the Court on April 21, 2004; testimony of Jorge Corzo Vargas given before the Court on April 21, 2004; Report of the United Nations Special Rapporteur on summary or arbitrary executions on a visit to Colombia from October 11 to 20, 1989, E/CN.4/1990/22/Add.1 of January 24, 1990 (file of attachments to the application, tome II, attachment B9, folios 968 and 992); report of the Administrative Department of Security (DAS) of March 15, 1989; and report of the Administrative Department of Security (DAS) of February 13, 1990 entitled “Información adicional sobre la masacre de 19 comerciantes en jurisdicción de Puerto Boyacá” [Additional information on the massacre of 19 tradesmen in the jurisdiction of Puerto Boyacá] (file of attachments to the application, tome I, attachments B3 and B4, folios 667 and 688).

<sup>50</sup> Cf. judgment delivered by the Military Trial Court on June 18, 1997 (helpful evidence presented by the State on May 26, 2004, requested on the instructions of the President of the Court - paragraph 68 of the application); and judgment delivered by the Superior Military Court on March 17, 1998 (evidence file presented by the State on April 18, 2002, requested on the instructions of the President of the Court - paragraph 68 of the application - tome II, attachment 9, folios 1425, 1428 and 1429).

As a result of the facts of this case, several judicial proceedings were undertaken in Colombia.

88. *Ordinary criminal jurisdiction*

88(a) Several different authorities were in charge of the preliminary investigation stage. The first to hear it was the Eighth Criminal Trial Judge of Cimitarra (Santander Department), who, on October 27, 1987, delivered a decision regarding the proceeding ordering the opening of the preliminary investigation stage.<sup>51</sup> Then, for reasons of competence, he transferred the case to the Sixteenth Criminal Investigation Judge of San Gil (Santander Department), who returned it to the Eighth Criminal Trial Judge of Cimitarra. The latter sent it to the Sixteenth Criminal Investigation Judge of Tunja (Boyacá Department), and this resulted in a conflict of competence. On July 17, 1989, the Supreme Court of Justice issued a procedural decision on the conflict of competence and assigned the hearing of the preliminary investigation to the Eighth Criminal Trial Judge of Cimitarra (Santander Department). As of December 1992, the office of the Cúcuta Regional Prosecutor (North Santander Department) was in charge of the preliminary investigation.<sup>52</sup>

88(b) On February 10, 1995, the office of the Cúcuta Regional Prosecutor delivered a decision on the proceeding, in which he ordered the initiation of the “formal investigation” and that Nelson Lesmes Leguizamón, Marceliano Panesso Ocampo, Wilson de Jesús Pérez Durán and Carlos Alberto Yepes Londoño should be investigated for the crimes of kidnapping and homicide.<sup>53</sup> The Prosecutor’s office also issued warrants for the arrest of the said defendants. The files show that, during the investigation stage, orders were given to examine the evidence linking Gonzalo de Jesús Pérez, Henry de Jesús Pérez and Marcelo Pérez Durán, all of whom died in 1991, to the facts investigated.<sup>54</sup> However, there is no document that

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<sup>51</sup> Cf. copy of the file before the prosecutor of the National Human Rights Unit in the case against Jairo Iván Galvis Brochero, Robinson Gutiérrez de la Cruz, Waldo Patiño García and others for the crimes of “extortive kidnapping, aggravated homicide [...]”, file 087-DH (helpful evidence presented by the State on May 26, 2004, requested on the instructions of the President of the Court -paragraph 68 of the application); and judgment delivered by the Superior Military Court on March 17, 1998 (evidence file presented by the State on April 18, 2002, requested on the instructions of the President of the Court - paragraph 68 of the application - tome II, attachment 9, folio 1408).

<sup>52</sup> Cf. official communication MP#3,542 of October 25, 1991, from the Delegate Prosecutor of the Attorney General’s office to the Delegate Prosecutor for the Defense of Human Rights (evidence file presented by the State on April 18, 2002, requested on the instructions of the President of the Court - paragraph 68 of the application - tome II, attachment 7, folio 1353); and copy of the file before the Prosecutor of the National Human Rights Unit in the case against Jairo Iván Galvis Brochero, Robinson Gutiérrez de la Cruz, Waldo Patiño García and others for the crimes of “extortive kidnapping, aggravated homicide [...]”, file 087-DH (helpful evidence presented by the State on May 26, 2004, requested on the instructions of the President of the Court - paragraph 68 of the application).

<sup>53</sup> Cf. copy of the file before the prosecutor of the National Human Rights Unit in the case against Jairo Iván Galvis Brochero, Robinson Gutiérrez de la Cruz, Waldo Patiño García and others for the crimes of “extortive kidnapping, aggravated homicide [...]”, file 087-DH (helpful evidence presented by the State on May 26, 2004, requested on the instructions of the President of the Court - paragraph 68 of the application); and judgment delivered by the Superior Military Court on March 17, 1998 (evidence file presented by the State on April 18, 2002, requested on the instructions of the President of the Court - paragraph 68 of the application - tome II, attachment 9, folio 1409).

<sup>54</sup> Cf. judgment delivered by the National Court on April 14, 1998 (evidence file presented by the State on April 18, 2002, requested on the instructions of the President of the Court - paragraph 68 of the application - tome II, attachment 5, folio 1264).



expressly links these persons to the investigation into what happened to the 19 tradesmen.<sup>55</sup>

88(c) On April 24, 1995, the Cúcuta Regional Prosecutor decided to investigate the witness, known as "Pablo", whose identity was kept secret, and whose real name was Alonso de Jesús Baquero Agudelo, because, evidence against him had arisen during the investigation.<sup>56</sup>

88(d) On September 25, 1995, the National Director of Prosecutors reassigned the hearing of the investigation to the National Human Rights Prosecutors Unit.<sup>57</sup> On March 7, 1996, the National Human Rights Prosecutors Unit issued an order in which, *inter alia*, it declared that the criminal action for the death of Gonzalo de Jesús Pérez, Henry de Jesús Pérez and Marcelo Pérez Durán had extinguished.<sup>58</sup>

88(e) On April 9, June 25 and September 5, 1996, the Regional Prosecutor of the National Human Rights Unit began to investigate retired Sergeant Otoniel Hernández Arciniegas, retired Major Oscar de Jesús Echandía Sánchez, retired General Farouk Yanine Díaz and retired Lieutenant Colonel Hernando Navas Rubio in connection with the facts.<sup>59</sup>

88(f) On May 28, 1997, the Cúcuta Regional Judge delivered judgment convicting Nelson Lesmes Leguizamón, Marceliano Panesso Ocampo and Carlos Alberto Yepes Londoño as co-authors of the crimes of extortive kidnapping and aggravated homicide to the detriment of the 19 tradesmen. The judgment imposed a basic sentence of 30 years' imprisonment and an accessory punishment of prohibition to

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<sup>55</sup> Cf. copy of the file before the prosecutor of the National Human Rights Unit in the case against Jairo Iván Galvis Brochero, Robinson Gutiérrez de la Cruz, Waldo Patiño García and others for crimes of "extortive kidnapping, aggravated homicide [...]", file 087-DH (helpful evidence presented by the State on May 26, 2004, requested on the instructions of the President of the Court - paragraph 68 of the application).

<sup>56</sup> Cf. copy of the file before the prosecutor of the National Human Rights Unit in the case against Jairo Iván Galvis Brochero, Robinson Gutiérrez de la Cruz, Waldo Patiño García and others for crimes of "extortive kidnapping, aggravated homicide [...]", file 087-DH (helpful evidence presented by the State on May 26, 2004, requested on the instructions of the President of the Court - paragraph 68 of the application); and judgment delivered by the National Court on April 14, 1998 (evidence file presented by the State on April 18, 2002, requested on the instructions of the President of the Court - paragraph 68 of the application - tome II, attachment 5, folio 1265).

<sup>57</sup> Cf. copy of the file before the National Human Rights Unit in the case against Jairo Iván Galvis Brochero, Robinson Gutiérrez de la Cruz, Waldo Patiño García and others for the crimes of "extortive kidnapping, aggravated homicide [...]" against "Alvaro Lobo Pacheco and 18 other tradesmen", file 087-DH (helpful evidence presented by the State on May 26, 2004, requested on the instructions of the President of the Court - paragraph 68 of the application).

<sup>58</sup> Cf. order issued by the prosecutor of the National Human Rights Unit on March 7, 1996 (helpful evidence presented by the State on May 24, 2004, requested on the instructions of the President of the Court - paragraph 68 of the application - tome I, folio 3007).

<sup>59</sup> Cf. copy of the file before the prosecutor of the National Human Rights Unit in the case against Jairo Iván Galvis Brochero, Robinson Gutiérrez de la Cruz, Waldo Patiño García and others for the crimes of "extortive kidnapping, aggravated homicide [...]" against "Alvaro Lobo Pacheco and 18 other tradesmen", file 087-DH (helpful evidence presented by the State on May 26, 2004, requested on the instructions of the President of the Court - paragraph 68 of the application); and judgment delivered by the Superior Military Court on March 17, 1998 (evidence file presented by the State on April 18, 2002, requested on the instructions of the President of the Court - paragraph 68 of the application - tome II, attachment 9, folio 1460).

exercise public office or rights for 10 years; they were also condemned to pay 1,000 grams of gold for non-pecuniary damage and 3,000 grams of gold for pecuniary damage to the heirs of the 19 victims.<sup>60</sup>

88(g) On July 25, September 30, and December 3, 1997, the Regional Prosecutor of the National Human Rights Unit decided to investigate, Diego Viáfara Salinas, Luz Marina Ruiz Gómez and Lanfor Miguel Osuna Gómez in connection with the facts.<sup>61</sup>

88(h) On April 14, 1998, the National Court delivered a judgment, deciding on the appeals filed against the judgment delivered by the Cúcuta Regional Judge Regional on May 28, 1997 (*supra* para. 88(f)). The National Court revoked the sentences imposed on Nelson Lesmes Leguizamón, Marceliano Panesso Ocampo and Carlos Alberto Yepes Londoño on the following grounds: for the crime of the homicide of Juan Montero and José Ferney Fernández and for the crime of the extortive kidnapping of the 19 tradesmen, because “both the counsel for the prosecution and the judge of the court ignored an elementary aspect to meet the requirements of extortive kidnapping, in accordance with the norm that punished it at that time [...], which is that, in addition to deprivation of the right to freedom of movement, there must, of necessity, be a demand for something in exchange for the liberty of the passive subject.” Consequently, he absolved them of those charges and from payment of the compensation for non-pecuniary and pecuniary damage to the heirs of Juan Montero and Ferney Fernández. The National Court also modified the sentence delivered against Carlos Alberto Yepes Londoño and convicted him as an accomplice to the crime of aggravated homicide to the basic punishment of 20 years’ imprisonment. Lastly, the Court confirmed the sentence imposed on Nelson Lesmes Leguizamón and Marceliano Panesso Ocampo as co-authors of the crime of the aggravated homicide of the other 17 alleged victims.<sup>62</sup>

88(i) In November and December 1998, the counsels for the defense of Nelson Lesmes Leguizamón and Carlos Alberto Yepes Londoño filed an appeal for annulment against the judgment delivered by the National Court on April 14, 1998 (*supra* para. 88(h)). On March 12, 2001, the Criminal Cassation Chamber of the Supreme Court of Justice declared that the criminal action for the death of the accused, Nelson Lesmes Leguizamón on September 26, 2000, had extinguished and, consequently, ordered the filing of the proceeding concerning the said accused.<sup>63</sup>

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<sup>60</sup> Cf. judgment delivered by the Cúcuta Regional Court on May 28, 1997 (evidence file presented by the State on April 18, 2002, requested on the instructions of the President of the Court - paragraph 68 of the application - tome I, attachment 4, folios 1258 to 1261).

<sup>61</sup> Cf. copy of the file before the Prosecutor of the National Human Rights Unit in the case against Jairo Iván Galvis Brochero, Robinson Gutiérrez de la Cruz, Waldo Patiño García and others for the crimes of “extortive kidnapping, aggravated homicide, [...] and others” against “Alvaro Lobo Pacheco and 18 other tradesmen”, file 087-DH (helpful evidence presented by the State on May 26, 2004, requested on the instructions of the President of the Court - paragraph 68 of the application).

<sup>62</sup> Cf. judgment delivered by the National Court on April 14, 1998 (evidence file presented by the State on April 18, 2002, requested on the instructions of the President of the Court - paragraph 68 of the application - tome II, attachment 5, folios 1290 to 1291); and certification issued on May 22, 2004, by the Second Judge for Criminal Affairs of the Bucaramanga Specialized Circuit (helpful evidence on merits presented by the State on May 26, 2004, requested by the Court in the Order of April 22, 2004, tome II, folios 3587 and 3588).

<sup>63</sup> Cf. copy of the file before the Criminal Cassation Chamber of the Supreme Court of Justice Nelson Lesmes Leguizamón and Carlos Alberto Yepes Londoño in the case against Carlos Alberto Yepes Londoño, Nelson Lesmes Leguizamón, Wilson de Jesús Pérez Durán and Marcelino Panesso Ocampo for “[...]the concurrent crimes of extortive kidnapping, aggravated homicide” (helpful evidence presented by the State

88(j) On April 25, 2002, the Criminal Cassation Chamber of the Supreme Court of Justice delivered a judgment in which it decided the appeal for annulment filed against the judgment delivered by the National Court on April 14, 1998 (*supra* para. 88(h) and 88(i)). The Chamber decided "not to annul the contested judgment."<sup>64</sup>

88(k) On October 7, 1999 the Criminal Court of the San Gil Specialized Circuit delivered an early judgment on Alonso de Jesús Baquero Agudelo for the crime of the extortive kidnapping of the 19 tradesmen, imposing a sentence of 10 years' imprisonment and prohibition to exercise public office or rights for 10 years.<sup>65</sup>

88(l) The Judge for Criminal Affairs of the San Gil Specialized Circuit (Santander Department) held a public hearing on November 23, 2000.<sup>66</sup>

88(m) On March 23, 2001, the Criminal Court of the San Gil Specialized Circuit (Santander Department) delivered a judgment in which it sentenced Waldo Patiño García, as author of the crime of the aggravated homicide of the 17 tradesmen, to 30 years' imprisonment and prohibition to exercise public office and rights for 10 years and absolved him from the crimes of extortive kidnapping and aggravated homicide against Juan Montero and Ferney Fernández. It also sentenced Luz Marina Ruiz Gómez, as accomplice to the crime of aggravated homicide of the 17 alleged victims, to the basic punishment of 25 years' imprisonment and to the accessory punishment of prohibition to exercise public office and rights for 10 years, and absolved her from the crimes of extortive kidnapping and aggravated homicide against Juan Montero and Ferney Fernández. Lastly, the judge sentenced Diego Viáfara Salinas, as accomplice to the crime of aggravated homicide of the 17 alleged victims, to the basic punishment of 23 years' imprisonment and to the accessory punishment of prohibition to exercise public office and rights for 10 years, and absolved him from the crimes of extortive kidnapping and aggravated homicide against Juan Montero and Ferney Fernández.<sup>67</sup>

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on May 26, 2004, requested on the instructions of the President of the Court - paragraph 68 of the application).

<sup>64</sup> Cf. certification issued by the Second Judge on Criminal Affairs of the Bucaramanga Specialized Circuit on May 22, 22 2004 (helpful evidence presented by the State on May 26, 2004, requested by the Court in the Order of April 22, 2004, tome II, folios 3587 and 3588).

<sup>65</sup> Cf. certification issued by the Secretary of the Criminal Courts of the Bucaramanga Specialized Circuit on May 12, 2004 (helpful evidence presented by the State on May 26, 2004, requested by the Court in an Order of April 22, 2004, folios 3585); and judgment delivered by the Criminal Court of the San Gil Specialized Circuit on October 7, 1999 (copy of the file before the Criminal Court of the San Gil Specialized Circuit in the case against Alonso de Jesús Baquero Agudelo for the crime of extortive kidnapping, file JE-052, "Original provisional case record number," helpful evidence presented by the State on May 26, 2004, requested on the instructions of the President of the Court - paragraph 68 of the application).

<sup>66</sup> Cf. copy of the file before the Criminal Court of the San Gil Specialized Circuit in the case against Waldo Patiño García, Jairo Iván Galvis Brochero, Lanfor Miguel Osuna Gómez, Diego Viáfara Salinas and Luz Marina Ruiz Gómez for the crimes of extortive kidnapping, aggravated homicide [...], against "Alvaro Lobo Pacheco and 16 tradesmen" (helpful evidence presented by the State on May 26, 2004, requested on the instructions of the President of the Court - paragraph 68 of the application); and judgment delivered by the Criminal Chamber of the San Gil Superior Court on October 19, 2001 (evidence file presented by the State on April 18, 2002, requested on the instructions of the President of the Court - paragraph 68 of the application - tome I, attachment 2, folio 1043).

<sup>67</sup> Cf. judgment delivered by the Criminal Chamber of the San Gil Superior Court on October 19, 2001; and judgment delivered by the Criminal Court of the San Gil Specialized Circuit on March 23, 2001

88(n) On October 19, 2001 the Criminal Chamber of the Superior Court of the San Gil Judicial District (Santander Department) delivered judgment on the appeal, deciding the appeals filed by the accused, Luz Marina Ruiz Gómez and her defense counsel. The Court annulled the adverse judgment delivered on March 23, 2001 by the Criminal Court of the San Gil Specialized Circuit against Luz Marina Ruiz Gómez (*supra* para. 88(m)) and absolved her of the charges of which she had been accused.<sup>68</sup> On March 11, 2003, the Criminal Cassation Chamber of the Supreme Court of Justice ruled on the formal admissibility of the application for annulment presented by the legal representative of the civil party against the judgment of October 19, 2001, and declared the appeal void.<sup>69</sup>

88(o) In summary, the results of the previous ordinary criminal proceedings<sup>70</sup> were as follows:

i) With regard to what happened to the first 17 alleged victims, the civilians, Marceliano Panesso Ocampo (*supra* para. 88(f) and 88(h)) and Waldo Patiño García (*supra* para. 88(m)) were convicted as authors of the crime of the aggravated homicide of the 17 tradesmen. Nelson Lesmes Leguizamón was also sentenced as author of the crime of the aggravated homicide of the 17 tradesmen (*supra* para. 88(f) and 88(h)); however, the latter died while an appeal for annulment was pending a decision, so that the Criminal Cassation Chamber of the Supreme Court of Justice declared the extinction of the criminal action due to the death of the accused (*supra* para. 88(i));

ii) With regard to what happened to the first 17 alleged victims, the civilians, Carlos Alberto Yepes Londoño (*supra* para. 88(f), 88(h) and 88(j)) and Diego Viáfara Salinas (*supra* para. 88(m)) were convicted as accomplices to the crime of aggravated homicide;

iii) With regard to what happened to the first 17 alleged victims, in an early judgment, Alonso de Jesús Baquero Agudelo was convicted for the crime of extortive kidnapping (*supra* para. 88(k)); and

iv) With regard to what happened to Juan Alberto Montero Fuentes and Ferney Fernández Díaz, in an early judgment, the Criminal Court of the San Gil Specialized Circuit convicted Alonso de Jesús Baquero Agudelo for the crime of extortive kidnapping (*supra* para. 88(k)). Also, when delivered the

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(evidence file presented by the State on April 18, 2002, requested on the instructions of the President of the Court - paragraph 68 of the application - tome I, attachments 2 and 3, folios 1041 and 1195 to 1199).

<sup>68</sup> Cf. judgment delivered by the Criminal Chamber of the San Gil Superior Court on October 19, 2001 (evidence file presented by the State on April 18, 2002, requested on the instructions of the President of the Court - paragraph 68 of the application - tome I, attachment 2, folios 1081 and 1082).

<sup>69</sup> Cf. copy of the file before the Criminal Cassation Chamber of the Supreme Court of Justice for the appeal filed by the legal representative of the civil party in the case against Luz Marina Ruiz Gómez, Waldo Patiño García, Diego Viáfara Salinas, Jairo Iván Galvis Brochero and Lanfor Miguel Osuna Gómez for the crime of aggravated homicide against "Alvaro Lobo Pacheco and 16 tradesmen" (helpful evidence presented by the State on May 26, 2004, requested on the instructions of the President of the Court - paragraph 68 of the application).

<sup>70</sup> Three trials were held in the ordinary criminal jurisdiction: one of them before the Cúcuta Regional Judge and two before the Criminal Court of the San Gil Specialized Circuit.

appeal judgment, the National Court absolved the three accused for the crimes of homicide and extortive kidnapping against Juan Montero and Ferney Fernández (*supra* para. 88(h)), regarding whom, it indicated that “even though it considered that it had been proved that the same unlawful group murdered Juan Montero and Ferney Fernández, at the plenary session, the evidence produced does not allow the persons who acted as the masterminds, perpetrators or accomplices to be identified or individualized.” The Criminal Court of the San Gil Specialized Circuit absolved another three people for the crimes of homicide and extortive kidnapping against Juan Montero and Ferney Fernández (*supra* para. 88(m)) and, in this respect, concluded that there was “no evidence [...] that [would] allow identifying those who were the authors” of the murders of Juan Montero and Ferney Fernández; however, it stated that “the same group,” led by Gonzalo, Henry and Marcelo Pérez, could be held responsible.”

89. *Positive conflict of competence between the military criminal jurisdiction and the ordinary criminal jurisdiction*

89(a) On October 31, 1996, the judge of first instance in the military criminal jurisdiction delivered a procedural decision declaring that he had jurisdiction to hear the criminal proceeding against retired General Farouk Yanine Díaz, retired Lieutenant Colonel Hernando Navas Rubio, retired Major Oscar de Jesús Echandía Sánchez and retired Sergeant Otoniel Hernández Arciniegas, for the death of the 19 tradesmen and, consequently, proposed a positive conflict of competence [in his favor] to the Regional Prosecutor of the National Human Rights Unit, who was in charge of the investigation in the ordinary criminal jurisdiction (*supra* para. 88(e)). The judge of first instance based his decision on the fact that the events investigated occurred when retired General Farouk Yanine Díaz was Commander of the National Army’s 14th Brigade in 1987 and that “the acts allegedly performed by the accused were an indirect expression of functions specific to their position [...].”<sup>71</sup>

89(b) On November 15, 1996, the Regional Prosecutor of the National Human Rights Unit issued an order in which he abstained from forwarding the criminal proceeding to the judge of first instance of the military criminal jurisdiction and transferred the file to the Disciplinary Jurisdictional Chamber of the Superior Council of the Judiciary to decide on the conflict. The said prosecutor based his decision on the fact that military officials who had ceased to exercise their functions would “only [...] retain [military privileges] for punishable conduct related to the functions they exercised,” and that the facts under investigation constituted “conduct outside the structure of military criminal legislation and characteristic of ordinary justice,” so that “such punishable conduct cannot be grounds for the pretext that it was carried out in compliance with their functions, as indirect expressions of functions specific to their positions.”<sup>72</sup>

<sup>71</sup> Cf. copy of the file before the prosecutor of the National Human Rights Unit in the case against Jairo Iván Galvis Brochero, Robinson Gutiérrez de la Cruz, Waldo Patiño García and others for the crimes of “extortive kidnapping, aggravated homicide, [...] and others” against “Alvaro Lobo Pacheco and 18 other tradesmen”, file 087-DH (helpful evidence presented by the State on May 26, 2004, requested on the instructions of the President of the Court - paragraph 68 of the application).

<sup>72</sup> Cf. copy of the file before the prosecutor of the National Human Rights Unit in the case against Jairo Iván Galvis Brochero, Robinson Gutiérrez de la Cruz, Waldo Patiño García and others for the crimes of “extortive kidnapping, aggravated homicide, [...] and others” against “Alvaro Lobo Pacheco and 18 other tradesmen”, file 087-DH (helpful evidence presented by the State on May 26, 2004, requested on the instructions of the President of the Court - paragraph 68 of the application).

89(c) On November 26, 1996, the Disciplinary Jurisdictional Chamber of the Superior Council of the Judiciary delivered a ruling, deciding on the positive competence conflict. The Disciplinary Jurisdictional Chamber declared that the hearing of the criminal proceeding against retired General Farouk Yanine Díaz, retired Lieutenant Colonel Hernando Navas Rubio, retired Major Oscar de Jesús Echandía Sánchez and retired Sergeant Otoniel Hernández Arciniegas corresponded to the judge of first instance of the military criminal jurisdiction. When stating the grounds for its decision, the Chamber indicated, *inter alia*, that: at the time of the investigated facts, the accused “were with active members of the Colombian Army, but at different posts to those located in the Magdalena Medio, so that [...] it is evident that there is a causal relationship with the military function they exercised;” and “if this criminal participation is true, as described by the conflicted prosecutor, it relates to military activities, because, when on duty in the Magdalena Medio region, as stated in the said judicial decisions, they knew about the criminal activities of the groups acting outside the law, they supported them and whitewashed the criminal events attributed to them (...).”<sup>73</sup>

#### 90. *Military criminal jurisdiction*

90(a) On November 29, 1996, the proceedings from the Delegate Prosecutor for Human Rights were forwarded to the military criminal jurisdiction.<sup>74</sup>

90(b) On June 18, 1997, the judge of first instance of the military criminal proceeding issued a dismissal order in favor of retired General Farouk Yanine Díaz, retired Lieutenant Colonel Hernando Navas Rubio, retired Major Oscar de Jesús Echandía Sánchez and retired Sergeant Otoniel Hernández Arciniegas, considering that “there [were] no merits to convene an oral court martial.”<sup>75</sup>

90(c) On July 2, 1997, the criminal prosecutor of the Attorney General’s office filed an appeal against the dismissal order of June 18, 1997, and requested the annulment of the criminal proceeding conducted by the judge of first instance of the military criminal proceeding against retired General Farouk Yanine Díaz, retired Lieutenant Colonel Hernando Navas Rubio, retired Major Oscar de Jesús Echandía Sánchez and retired Sergeant Otoniel Hernández Arciniegas, considering that,

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<sup>73</sup> Cf. decision issued by the Jurisdictional Disciplinary Chamber of the Superior Council of the Judiciary on November 26, 1996 (file of attachments to the application, tome I, attachment B6, folios 721 and 722); and copy of the file before the Prosecutor of the National Human Rights Unit in the case against Jairo Iván Galvis Brochero, Robinson Gutiérrez de la Cruz, Waldo Patiño García and others for the crimes of “extortive kidnapping, aggravated homicide, [...] and others” against “Alvaro Lobo Pacheco and 18 other tradesmen”, file 087-DH (helpful evidence presented by the State on May 26, 2004, requested on the instructions of the President of the Court - paragraph 68 of the application).

<sup>74</sup> Cf. copy of the file before the Military Superior Court in the proceeding against retired General Farouk Yanine Díaz, retired Lieutenant Colonel Hernando Navas Rubio, retired Major Oscar de Jesús Echandía Sánchez and retired Sergeant Otoniel Hernández Arciniegas for the crimes of “aggravated homicide, kidnapping [...], filed under No. 131668” (helpful evidence presented by the State on May 26, 2004, requested on the instructions of the President of the Court - paragraph 68 of the application).

<sup>75</sup> Cf. judgment delivered by the Superior Military Court on March 17, 1998 (evidence file presented by the State on April 18, 2002, requested on the instructions of the President of the Court - paragraph 68 of the application - tome II, attachment 9, folio 1400).

according to Constitutional Court judgment C-358 of 1997, crimes against humanity should be heard in the ordinary criminal jurisdiction.<sup>76</sup>

90(d) On March 17, 1998, the Military Superior Tribunal delivered a judgment confirming the dismissal order issued on June 18, 1997, by the judge of first instance of the military criminal proceeding in favor of retired General Farouk Yanine Díaz, retired Lieutenant Colonel Hernando Navas Rubio, retired Major Oscar de Jesús Echandía Sánchez and retired Sergeant Otoniel Hernández Arciniegas (*supra* para. 90(b)). In this decision, the court stated that, after “examining, analyzing and assessing the body of evidence, and taking into account the principles of health criticism[...] it [had] reached a final legal conclusion that [...] allows it to state [...] that, in this proceeding, the probative elements established in article 654 of the Military Penal Code for declaring a summons to trial had not been satisfied.”<sup>77</sup>

90(e) On April 24, 1998, the Superior Military Court issued an order in which it rejected the appeal for dismissal filed on April 13, 1998, against the judgment of second instance absolving the accused; consequently the judgments of the first and second instance were final.<sup>78</sup>

#### 91. *Administrative proceedings*

91(a) In 1997 and 1998, 17 applications for direct reparations were filed before the Santander Administrative Court against the State, the Ministry of National Defense and the National Army, by the next of kin of Víctor Manuel Ayala Sánchez, Ángel María Barrera Sánchez, Álvaro Camargo, Reinaldo Corzo Vargas, Alirio Chaparro Murillo, Luis Hernando Jáuregui Jaimes, José Ferney Fernández Díaz, Álvaro Lobo Pacheco, Juan Alberto Montero Fuentes, Gilberto Ortíz Sarmiento, Rubén Emilio Pineda Bedoya, Israel Pundor Quintero, Gerson Javier Rodríguez Quintero and Luis Domingo Sausa Suárez.<sup>79</sup>

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<sup>76</sup> Cf. copy of the file before the Military Superior Court in the proceeding against retired General Farouk Yanine Díaz, retired Lieutenant Colonel Hernando Navas Rubio, retired Major Oscar de Jesús Echandía Sánchez and retired Sergeant Otoniel Hernández Arciniegas for the crimes of “aggravated homicide, kidnapping [...], filed under No. 131668” (helpful evidence presented by the State on May 26, 2004, requested on the instructions of the President of the Court - paragraph 68 of the application); and judgment delivered by the Superior Military Court on March 17, 1998 (evidence file presented by the State on April 18, 2002, requested on the instructions of the President of the Court - paragraph 68 of the application - tome II, attachment 9, folio 1400).

<sup>77</sup> Cf. judgment delivered by the Superior Military Court on March 17, 1998 (evidence file presented by the State on April 18, 2002, requested on the instructions of the President of the Court - paragraph 68 of the application - tome II, attachment 9, folio 1502 and 1503).

<sup>78</sup> Cf. order issued by the Military Superior Court on April 24, 1998 (helpful evidence presented by the State on May 26, 2004, requested by the Court in an Order of April 22, 2004, folios 3123 to 3126); and official communication No. 6988/MD-DEJUM-ASJ of May 5, 2004, from the Executive Director of Military Criminal Justice to the agent in the case (helpful evidence presented by the State on May 26, 2004, requested by the Court in an Order of April 22, 2004, tome I, folios 3145 and 3146).

<sup>79</sup> Cf. certification issued by the Secretary of the Santander Administrative Court on May 3, 2004, (helpful evidence presented by the State on May 26, 2004, requested by the Court in an Order of April 22, 2004, tome I, folios 3136 to 3144); and public hearing held at the seat of the Court on April 21 and 22, 2004, during which the State clarified that 17 petitions had been filed.

91(b) The requests for direct reparation were accumulated in a single proceeding and, at May 3, 2004, were pending a declaration of an order to notify the parties to submit closing arguments.<sup>80</sup>

92. *Disciplinary jurisdiction*

92(a) On August 31 and September 6, 1990, the Association of Next of Kin of Detained and Disappeared of Colombia (ASFADDES) presented briefs to the Attorney General, requesting official information on the investigations that were in progress into what happened to the alleged victims, on the exact place in which they were thrown into the Magdalena River, and on the return of their corpses. In September 1990, the next of kin of the alleged victims also submitted a brief to the Attorney General formulating the same request. These requests were filed because several national newspapers published articles relating what had allegedly happened to the 19 tradesmen, based on investigations conducted by the Administrative Department of Security (DAS), and indicated that several members of the Army were linked to those events.<sup>81</sup>

92(b) On October 20, 1990, a preliminary investigation was opened<sup>82</sup> and on November 28, 1990, the Delegate Prosecutor for the Defense of Human Rights issued an order in which he decided "to open the preliminary investigation into the alleged irregularities incurred in by members of the Military Forces (Army) and the Police, concerning the facts [...] that occurred on October 7, 1987," to the detriment of the 19 tradesmen. This decision was based on the special visit made by the Vélez Provincial Prosecutor and the Cimitarra Municipal Agent (both Santander Department) to the Eighth Criminal Trial Court of Cimitarra, to look into the criminal investigation in that court for the crimes of kidnapping, homicide and theft of merchandise.<sup>83</sup>

92(c) On December 18, 1992, the Delegate Prosecutor for the Defense of Human Rights issued an order in which he decided "to excuse himself from opening the formal investigation against any member of the Army or the National Police for the facts that were the object of the investigation," because "there was an absence of probative elements to link members of the Army or the Police as participants in the massacre" and, consequently, he decided "[t]o file it, in accordance with the provisions of article 3(2) of Decree 3404 of 1983, owing to lack of merits."<sup>84</sup> He also

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<sup>80</sup> Cf. certification issued by the Secretary of the Santander Administrative Court on May 3, 2004, (helpful evidence presented by the State on May 26, 2004, requested by the Court in an Order of April 22, 2004, tome I, folios 3136 a 3144).

<sup>81</sup> Cf. documents that form part of file 008-107180 before the Delegate Prosecutor for the Defense of Human Rights (evidence file presented by the State on April 18, 2002, requested on the instructions of the President of the Court - paragraph 68 of the application - tome II, attachment 7, folios 1304, 1307 and 1335).

<sup>82</sup> Cf. certification issued by the Delegate Prosecutor for Human Rights on May 5, 2004, (helpful evidence presented by the State on May 26, 2004, requested by the Court in an Order of April 22, 2004, tome I, folio 3134).

<sup>83</sup> Cf. order issued by the Delegate Prosecutor for the Defense of Human Rights on November 28, 1990, with regard to case file 008-107180 (evidence file presented by the State on April 18, 2002, requested on the instructions of the President of the Court - paragraph 68 of the application - tome II, attachment 7, folio 1339).

<sup>84</sup> Cf. certification issued by the Delegate Prosecutor for Human Rights on May 5, 2004, (helpful evidence presented by the State on May 26, 2004, requested by the Court in an Order of April 22, 2004,



decided that copies of the proceedings should be forwarded to the Cimitarra (Santander) prosecutor so that he could continue the investigation and indicated that, if, in the course of this investigation, there was any evidence linking a public servant, the Delegate Prosecutor should be informed so that he could proceed as necessary.<sup>85</sup>

92(d) On February 21, 1997, the Human Rights Council of the Presidency of the Republic requested the Delegate Prosecutor for the Defense of Human Rights to examine "[t]he possibility of reopening the disciplinary investigation undertaken into the events that occurred on October 6, 1987, on the highway leading from Cúcuta to Medellín (near the "El Diamante" farm, municipality of Puerto Boyacá), in which 19 tradesmen disappeared." The Council presented this request because "it has been accepted, in both case law and legal doctrine, that carrying out forced disappearance is a permanent act and, in this case, it has not been possible to locate the whereabouts of the corpses, so that it has still not been proved that they have been murdered. This thesis would allow the annulment of the decision to file the proceeding, which had been declared by the Delegate Prosecutor for Human Rights on December 18, 1992, because it appears that the decision to file the case was based on the grounds that the disciplinary action had extinguished."<sup>86</sup>

92(e) On July 18, 1997, the Delegate Prosecutor for the Defense of Human Rights issued an order in which he decided "[t]o abstain from declaring reopened" the disciplinary investigation, because "the grounds adduce by those who requested the reopening are invalidated when they stated that the 19 tradesmen are disappeared[...] because the Attorney General's office has proved the approximate date of the death (at the end of October 1987)[,... so that] it is clear that more than nine (9) years have elapsed since the said massacre occurred, a period that exceeds the one established in article 34 of Law 200 of 1995, for proceeding with the respective disciplinary action."<sup>87</sup>

*Facts relating to reparations and costs*

93. *With regard to Álvaro Lobo Pacheco and his next of kin*

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tome I, folio 3134); and order issued by the Delegate Prosecutor for the Defense of Human Rights on December 18, 1992 (evidence file presented by the State on April 18, 2002, requested on the instructions of the President of the Court - paragraph 68 of the application - tome II, attachment 7, folio 1382).

<sup>85</sup> Cf. certification issued by the Delegate Prosecutor for Human Rights on May 5, 2004, (helpful evidence presented by the State on May 26, 2004, requested by the Court in an Order of April 22, 2004, tome I, folio 3134).

<sup>86</sup> Cf. official communication dh#0707 of February 21, 1997, addressed by the Human Rights Council of the Presidency of the Republic to the Delegate Prosecutor for the Defense of Human Rights (evidence file presented by the State on April 18, 2002, requested on the instructions of the President of the Court - paragraph 68 of the application - tome II, attachment 7, folios 1375 to 1378).

<sup>87</sup> Cf. decision issued by the Delegate Prosecutor for the Defense of Human Rights on July 18, 1997 (evidence file presented by the State on April 18, 2002, requested on the instructions of the President of the Court - paragraph 68 of the application - tome II, attachment 7, folios 1385 to 1388).

93(a) Álvaro Lobo Pacheco was born on June 7, 1958, and was 29 years of age when he disappeared.<sup>88</sup> The life expectancy of a man of 29 years of age in Colombia in 1987 was 47 more years.<sup>89</sup>

93(b) With regard to the next of kin of Álvaro Lobo Pacheco, his mother is María Cristina Pacheco Rojas de Lobo, his father was Marco Aurelio Lobo Pineda, who died on April 4, 2000, and his siblings are Lubin Alfonso, Aurelio, Nahún, Eliécer, Mariela, Marina and Aristóbulo, all Lobo Pacheco.<sup>90</sup>

94. *With regard to Gerson Javier Rodríguez Quintero and his next of kin*

94(a) Gerson Javier Rodríguez Quintero was born on August 9, 1964, and was 23 years of age at the time of his disappearance.<sup>91</sup> The life expectancy of a man of 23 years of age in Colombia in 1987 was 52 more years.<sup>92</sup>

94(b) With regard to the next of kin of Gerson Javier Rodríguez Quintero, his mother was Edilia Rosa Quintero de Rodríguez, who died on May 30, 1994, his padre was Eliécer Rodríguez Pallares, who died in 2003, and his siblings are Wilmar and Yimmy Efraín, both Rodríguez Quintero.<sup>93</sup>

95. *With regard to Israel Pundor Quintero and his next of kin*

95(a) Israel Pundor Quintero was born on October 2, 1961, and was 26 years of age at the time of his disappearance.<sup>94</sup> The life expectancy of a man of 26 years of age in Colombia in 1987 was 50 more years.<sup>95</sup>

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<sup>88</sup> Cf. copy of the birth registration of Alvaro Lobo Pacheco (helpful evidence on possible reparations and costs presented by the State on May 24, 2004, requested on April 14, 2004, by the Secretariat, on the instructions of the President, folio 3854).

<sup>89</sup> Cf. copy of Resolution No. 0497, issued by the Superintendence of Banks on May 20, 1997 (helpful evidence on possible reparations and costs presented by the State on May 24, 2004, requested on April 14, 2004, by the Secretariat, on the instructions of the President, folios 3613 and 3614).

<sup>90</sup> Cf. marriage certificate of Marco Aurelio Lobo Pineda and María Cristina Pacheco Rojas; birth certificate of Lubin Alfonso Lobo Pacheco; birth certificate of Aurelio Lobo Pacheco; birth certificate of Nahún Lobo Pacheco; birth certificate of Eliécer Lobo Pacheco; birth certificate of Mariela Lobo Pacheco; copy of the birth certificate of Marina Lobo Pacheco; birth certificate of Aristóbulo Lobo Pacheco; death certificate of Marco Aurelio Lobo Pineda (file of attachments to the brief with the Commission's arguments on possible reparations and costs, tome I, attachment 3, folios 1805 to 1813); and testimonial statement of Marina Lobo Pacheco made before a public notary on June 12, 2003 (file on merits and possible reparations, tome I, folios 282 to 285, tome II, folios 347 to 350).

<sup>91</sup> Cf. copy of the birth certificate of Gerson Javier Rodríguez Quintero (file of attachments to the brief with the Commission's arguments on possible reparations and costs, tome I, attachment 4, folio 1818).

<sup>92</sup> Cf. copy of Resolution No. 0497, issued by the Superintendence of Banks on May 20, 1997 (helpful evidence on possible reparations and costs presented by the State on May 24, 2004, requested on April 14, 2004, by the Secretariat, on the instructions of the President, folios 3613 and 3614).

<sup>93</sup> Cf. copy of the marriage certificate of Eliécer Rodríguez Pallares and Edilia Rosa Quintero; copy of the birth certificate of Wilmar Rodríguez Quintero; copy of the birth certificate of Yimmy Efraín Rodríguez Quintero; copy of the death certificate of Edilia Rosa Quintero de Rodríguez (file of attachments to the brief with the Commission's arguments on possible reparations and costs, tome I, attachment 4, folios 1819 to 1822); and testimony of Wilmar Rodríguez Quintero given before the Court on April 21, 2004.

<sup>94</sup> Cf. copy of the identity card of Israel Pundor Quintero (file of attachments to the brief with the Commission's arguments on possible reparations and costs, tome I, attachment 5, folio 1826).

95(b) With regard to the next of kin of Israel Pundor Quintero, his children are Yamid Pundor Lobo and Leidy Pundor Lobo, his permanent companion is Nancy Estela Lobo Acosta, his mother is Ana Diva Quintero Quintero de Pundor, his father is Fermín Pundor Palacio, and his brother is Luis José Pundor Quintero.<sup>96</sup>

96. *With regard to Ángel María Barrera Sánchez and his next of kin*

96(a) Ángel María Barrera Sánchez was born on December 10, 1957, and was 29 years of age at the time of his disappearance.<sup>97</sup> The life expectancy of a man of 29 years of age in Colombia in 1987 was 47 more years.<sup>98</sup>

96(b) With regard to the next of kin of Ángel María Barrera Sánchez, his mother was Delfina Sánchez de Barrera, who died on June 29, 1998, his father was Ramón Barrera Sánchez, who died on July 5, 1995, his siblings are Carmen Rosa and José de Jesús Barrera Sánchez, and his cousin, with whom he lived as a brother, is José Erasmo Barrera.<sup>99</sup>

97. *With regard to Antonio Flórez Contreras and his next of kin*

97(a) Antonio Flórez Contreras was born on January 5, 1951, and was 36 years of age at the time of his disappearance.<sup>100</sup> The life expectancy of a man of 36 years of age in Colombia in 1987 was 40 more years.<sup>101</sup>

<sup>95</sup> Cf. copy of Resolution No. 0497, issued by the Superintendence of Banks on May 20, 1997 (helpful evidence on possible reparations and costs presented by the State on May 24, 2004, requested on April 14, 2004, by the Secretariat, on the instructions of the President, folios 3613 and 3614).

<sup>96</sup> Cf. copy of the marriage certificate of Fermín Pundor Palacio and Ana Diva Quintero Quintero; copy of the birth certificate of Luis José Pundor Quintero; copy of the birth certificate of Yamid Pundor Quintero (file of attachments to the brief with the Commission's arguments on possible reparations and costs, tome I, attachment 5, folios 1827 to 1831); copy of the birth registration of Leidy Pundor Lobo; and copy of official communication DNRC-SIN-001857 addressed by the National Registry Office Department to the State agent (helpful evidence on possible reparations and costs presented by the State on May 24, 2004, requested on April 14, 2004, by the Secretariat, on the instructions of the President, folios 3835 and 3866).

<sup>97</sup> Cf. copy of the birth certificate of Ángel María Barrera Sánchez (file of attachments to the brief with the Commission's arguments on possible reparations and costs, tome I, attachment 6, folio 1837).

<sup>98</sup> Cf. copy of resolution No. 0497, issued by the Superintendence of Banks on May 20, 1997 (helpful evidence on possible reparations and costs presented by the State on May 24, 2004, requested on April 14, 2004, by the Secretariat, on the instructions of the President, folios 3613 and 3614).

<sup>99</sup> Cf. copy of the marriage certificate of Ramón Barrera Sánchez and Delfina Sánchez; copy of the birth certificate of José de Jesús Barrera Sánchez; copy of the birth certificate of Carmen Rosa Barrera Sánchez; copy of the death certificate of Delfina Sánchez de Barrera; copy of the death certificate of Ramón Barrera Sánchez (file of attachments to the brief with the Commission's arguments on possible reparations and costs, tome I, attachment 6, folios 1838 to 1842); and testimonial statement of Carmen Rosa Barrera Sánchez made before a public notary on June 12, 2003 (file on merits and possible reparations, tome I, folios 255 to 257).

<sup>100</sup> Cf. copy of the birth certificate of Antonio Flórez Contreras (file of attachments to the brief with the Commission's arguments on possible reparations and costs, tome I, attachment 7, folio 1850).

<sup>101</sup> Cf. copy of resolution No. 0497, issued by the Superintendence of Banks on May 20, 1997 (helpful evidence on possible reparations and costs presented by the State on May 24, 2004, requested on April 14, 2004, by the Secretariat, on the instructions of the President, folios 3613 and 3614).

97(b) With regard to the next of kin of Antonio Flórez Contreras, his permanent companion is Luz Marina Pérez Quintero and his children are Alejandro, Angélica Librada, Nixon Andrés, Magreth Karina, all Flórez Pérez, and Luis Antonio Villamizar Pérez, son of his permanent companion, who he raised from 4 years of age and "adopted as his own son." His mother is Librada Conteras de Flórez, his father was Alejo Flórez, who died in 1986,<sup>102</sup> and his siblings are Salomón, Jorge, Amelia Rosa, Libardo, Aydee, Torcoroma, Edilsa, Nery del Socorro and Margoth del Carmen, all Flórez Contreras. His sister Margoth del Carmen died on August 17, 1995, and her daughter is Lina Noralba Navarro Flórez.<sup>103</sup>

98. *With regard to Víctor Manuel Ayala Sánchez and his next of kin*

98(a) Víctor Manuel Ayala Sánchez was born on May 28, 1955, and was 32 years of age at the time of his disappearance.<sup>104</sup> The life expectancy of a man of 32 years of age in Colombia in 1987 was 44 more years.<sup>105</sup>

98(b) With regard to the next of kin of Víctor Manuel Ayala Sánchez, his wife is Sandra Belinda Montero Fuentes and his children are Juan Manuel and Sandra Catherine Ayala Montero, and Víctor Hugo Ayala Mantilla (a previous son of the alleged victim). His mother is Braulia Sánchez de Mantilla, his father is Manuel Ayala Mantilla, and his siblings are Cecilia, Socorro, Esperanza, Evila, Myriam, Martha Patricia and Jairo, all Mantilla Sánchez and Alvaro Ayala Sánchez.<sup>106</sup>

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<sup>102</sup> Cf. brief with arguments on possible reparations and costs presented by the Inter-American Commission on March 25, 2003 (file on merits and possible reparations and costs, tome I, folio 161).

<sup>103</sup> Cf. copy of the marriage certificate of Alejo Flórez and Librada Contreras; copy of the birth certificate of Salomón Flórez Contreras; copy of the birth certificate of Jorge Flórez Contreras; copy of the birth certificate of Amelia Rosa Flórez Contreras; copy of the birth certificate of Libardo Flórez Contreras; copy of the birth certificate of Aydee Flórez Contreras; copy of the birth certificate of Torcoroma Flórez Contreras; copy of the birth certificate of Edilsa Flórez Contreras; copy of the birth certificate of Nery del Socorro Flórez Contreras; copy of the birth certificate of Lina Noralba Navarro Flórez; copy of the birth certificate of Luis Antonio Villamizar Pérez; copy of the birth certificate of Alejandro Flórez Pérez; copy of the birth certificate of Angélica Librada Flórez Pérez; copy of the birth certificate of Nixon Andrés Flórez Pérez; copy of the birth certificate of Magreth Karina Flórez Pérez; copy of the identity card of Luz Marina Pérez Quintero; copy of the record of the extrajudicial sworn statement by Carmen Rosa Barrera Sánchez certifying her knowledge of the common-law marriage between Antonio Flórez Contreras and Luz Marina Pérez Quintero (file of attachments to the brief with the Commission's arguments on possible reparations and costs, tome I, attachment 7, folios 1851 to 1871); testimonial statement of Luz Marina Pérez Quintero made before a public notary on June 16, 2003 (file on merits and possible reparations, tome I, folios 261 to 264); and testimony of Antonio Flórez Pérez given before the Court on April 21, 2004.

<sup>104</sup> Cf. copy of the birth registration of Víctor Manuel Ayala Sánchez (helpful evidence on possible reparations and costs presented by the State on May 24, 2004, requested on April 14, 2004, by the Secretariat, on the instructions of the President, folio 3856); and copy of the marriage registration of Víctor Manuel Ayala Sánchez and Sandra Belinda Montero Fuentes (file of attachments to the brief with the Commission's arguments on possible reparations and costs, tome I, attachment 8, folio 1892).

<sup>105</sup> Cf. copy of resolution No. 0497, issued by the Superintendence of Banks on May 20, 1997 (helpful evidence on possible reparations and costs presented by the State on May 24, 2004, requested on April 14, 2004, by the Secretariat, on the instructions of the President, folios 3613 and 3614).

<sup>106</sup> Cf. copy of the marriage certificate of Víctor Manuel Ayala Sánchez and Sandra Belinda Montero Fuentes; copy of the identity card of Braulia Sánchez de Mantilla; copy of the identity card of Manuel Ayala Mantilla; copy of the birth certificate of Martha Patricia Mantilla Sánchez; copy of the birth certificate of Jairo Mantilla Sánchez; copy of the birth certificate of Myriam Mantilla Sánchez; copy of the birth certificate of Evila Mantilla Sánchez; copy of the birth certificate of Alvaro Ayala Sánchez; copy of the birth certificate of Cecilia Mantilla Sánchez; copy of the birth certificate of Juan Manuel Ayala Montero; copy of the birth certificate of Víctor Hugo Ayala Mantilla; copy of the birth certificate of Sandra Catherine Ayala

99. *With regard to Alirio Chaparro Murillo and his next of kin*

99(a) Alirio Chaparro Murillo was about 26 years of age at the time of his disappearance.<sup>107</sup> The life expectancy of a man of 26 years of age in Colombia in 1987 was 50 more years.<sup>108</sup>

99(b) With regard to the next of kin of Alirio Chaparro Murillo, his daughters are Yeinny Alexandra and Angie Vinlley Chaparro Ariza, his permanent companion is Rita Ariza Flórez, his mother is Ana Murillo Delgado de Chaparro, his father is Juan de Jesús Chaparro Orozco, and his siblings are Luis José, Marco Antonio, Nohemi, Raquel, Mariela and Juan de Jesús, all Chaparro Murillo.<sup>109</sup>

100. *With regard to Álvaro Camargo and his next of kin*

100(a) Álvaro Camargo was born on June 7, 1953, and was 34 years of age at the time of his disappearance.<sup>110</sup> The life expectancy of a man of 34 years of age in Colombia in 1987 was 42 more years.<sup>111</sup>

100(b) With regard to the next of kin of Álvaro Camargo, his wife is Elba Marlen Meléndez and their children are Nancy, Edinson Andrés and Yair Eduardo, all Camargo Meléndez. His permanent companion is Elizabeth Abril García and their son is Johan Arley Camargo Abril. At the time of the facts, Álvaro Camargo was married to Mrs. Meléndez and had a son with her in 1986; at the same time he was living

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Montero (file of attachments to the brief with the Commission's arguments on possible reparations and costs, tome I, attachment 8, folios 1879 to 1898); testimonial statement of Myriam Mantilla Sánchez made before a public notary on June 13, 2003 (file on merits and possible reparations, tome I, folios 265 to 267); testimonial statement of Manuel Ayala Mantilla made before a public notary on June 13, 2003 (file on merits and possible reparations, tome I, folios 268 to 270); and the brief on possible reparations and costs presented by the Inter-American Commission on March 25, 2003 (file on merits and possible reparations and costs, tome I, folio 162).

<sup>107</sup> Cf. sworn written statement made before a public notary by Ana Murillo Delgado de Chaparro on June 13, 2003 (file on merits and possible reparations and costs, tome I, folios 271 and 272).

<sup>108</sup> Cf. copy of resolution No. 0497, issued by the Superintendence of Banks on May 20, 1997 (helpful evidence on possible reparations and costs presented by the State on May 24, 2004, requested on April 14, 2004, by the Secretariat, on the instructions of the President, folios 3613 and 3614).

<sup>109</sup> Cf. copy of the marriage certificate of Juan de Jesús Chaparro Orozco and Ana Murillo Delgado, copy of the birth certificate of Raquel Chaparro Murillo, copy of the birth certificate of Nohemi Chaparro Murillo, copy of the birth certificate of Marco Antonio Chaparro Murillo, copy of the birth certificate of Luis José Chaparro Murillo, copy of the birth certificate of Yeinny Alexandra Chaparro Ariza, copy of the birth certificate of Angie Vinlley Chaparro Ariza, copy of the record of the sworn statement made by Fanny Corzo Vargas and Juan Rubén Contreras Sabogal to certify their knowledge of the common-law marriage between Alirio Chaparro Murillo and Rita Ariza Flórez (file of attachments to the brief with the Commission's arguments on possible reparations and costs, tome I, attachment 9, folios 1904 to 1917); and testimonial statement of Ana Murillo de Chaparro made before a public notary on June 13, 2003 (file on merits and possible reparations, tome I, folios 271 to 272).

<sup>110</sup> Cf. copy of the birth registration of Alvaro Camargo (helpful evidence on possible reparations and costs presented by the State on May 24, 2004, requested on April 14, 2004, by the Secretariat, on the instructions of the President, folio 3855).

<sup>111</sup> Cf. copy of resolution No. 0497, issued by the Superintendence of Banks on May 20, 1997 (helpful evidence on possible reparations and costs presented by the State on May 24, 2004, requested on April 14, 2004, by the Secretariat, on the instructions of the President, folios 3613 and 3614).

with Mrs. Abril García, with whom he had a daughter in 1985. His mother was Leonor Camargo, who died on September 13, 1998, his stepfather is Bernardo Barragán González, and his siblings are Germán, Myriam, Luis Fernando, Luz Helena, Martha Cecilia and Rodolfo, all Barragán Camargo, and Gustavo and Gloria Amparo, both Camargo, and Manuel Racero Camargo.<sup>112</sup>

*101. With regard to Gilberto Ortíz Sarmiento and his next of kin*

101(a) Gilberto Ortíz Sarmiento was born on November 5, 1959, and he was 27 years of age at the time of his disappearance.<sup>113</sup> The life expectancy of a man of 27 years of age in Colombia in 1987 was 49 more years.<sup>114</sup>

101(b) With regard to the next of kin of Gilberto Ortíz Sarmiento, his daughter is Rudy Esther Ortíz Álvarez, his mother is Ana Delina Sarmiento, his father is Abdón Ortíz, and his siblings are María Elisa, Humberto, Osvaldo, Marleny and EvÁngelina, all Ortíz Sarmiento.<sup>115</sup>

*102. With regard to Reinaldo Corzo Vargas and his next of kin*

102(a) Reinaldo Corzo Vargas was born on October 18, 1956, and he was 30 years of age at the time of his disappearance.<sup>116</sup> The life expectancy of a man of 30 years of age in Colombia in 1987 was 46 more years.<sup>117</sup>

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<sup>112</sup> Cf. copy of the marriage certificate of Alvaro Camargo and Elba Marlen Meléndez, copy of the birth certificate of Germán Camargo Barragán; copy of the birth certificate of Gustavo Camargo; copy of the birth certificate of Luis Fernando Barragán Camargo; copy of the birth certificate of Myriam Barragán Camargo; copy of the birth certificate of Luz Helena Barragán Camargo; copy of the birth certificate of Gloria Amparo Camargo; copy of the birth certificate of Rodolfo Barragán Camargo; copy of the birth certificate of Nancy Camargo Meléndez; copy of the birth certificate of Edinson Andrés Camargo Meléndez; copy of the birth certificate of Martha Cecilia Barragán Camargo; copy of the death certificate of Leonor Camargo; copy of the birth certificate of Manuel Racero Camargo; copy of the birth certificate of Yair Eduardo Camargo Meléndez; copy of the birth certificate of Johan Arley Camargo Abril; copy of the record of the extrajudicial statement made by Félix Eduardo Pedraza and Fanny Corzo Vargas to certify their knowledge of the common-law marriage between Alvaro Camargo and Elizabeth Abril García; copy of the extrajudicial statement made by David Chacón Anaya to certify his knowledge that Alvaro Camargo was raised by Bernardo Barragán González (file of attachments to the brief with the Commission's arguments on possible reparations and costs, tome I, attachment 10, folios 1927 to 1950).

<sup>113</sup> Cf. copy of the birth certificate of Gilberto Ortiz Sarmiento (file of attachments to the brief with the Commission's arguments on possible reparations and costs, attachment 11, folio 1955).

<sup>114</sup> Cf. copy of resolution No. 0497, issued by the Superintendence of Banks on May 20, 1997 (helpful evidence on possible reparations and costs presented by the State on May 24, 2004, requested on April 14, 2004, by the Secretariat, on the instructions of the President).

<sup>115</sup> Cf. copy of the birth certificate of Osvaldo Ortiz Sarmiento; copy of the birth certificate of Marleny Ortiz Sarmiento; copy of the birth certificate of Humberto Ortiz Sarmiento; copy of the birth certificate of EvÁngelina Ortiz Sarmiento; copy of the birth certificate of Yeinny Alexandra Chaparro Ariza, copy of the birth certificate of María Elisa Ortiz Sarmiento; copy of the birth certificate of Rudy Esther Ortiz Alvarez (file of attachments to the brief with the Commission's arguments on possible reparations and costs, tome I, attachment 11, folios 1953 a 1962).

<sup>116</sup> Cf. copy of the birth certificate of Reinaldo Corzo Vargas (file of attachments to the brief with the Commission's arguments on possible reparations and costs, tome I, attachment 12, folio 1967).

<sup>117</sup> Cf. copy of resolution No. 0497, issued by the Superintendence of Banks on May 20, 1997 (helpful evidence on possible reparations and costs presented by the State on May 24, 2004, requested on April 14, 2004, by the Secretariat, on the instructions of the President, folios 3613 and 3614).

102(b) With regard to the next of kin of Reinaldo Corzo Vargas, his mother is María Elvinia Vargas Herrera, his father is Jorge Corzo Viviescas, and his siblings are María Elena, Fernando, Jorge, Mireya, Alvaro, Clara Inés and Fany, all Corzo Vargas.<sup>118</sup>

103. *With regard to Luis Hernando Jáuregui Jaimés and his next of kin*

103(a) Luis Hernando Jáuregui Jaimés was born on August 5, 1958, and he was 29 years of age at the time of his disappearance.<sup>119</sup> The life expectancy of a man of 29 years of age in Colombia in 1987 was 47 more years.<sup>120</sup>

103(b) With regard to the next of kin of Luis Hernando Jáuregui Jaimés, his wife is Luz Marleny Angarita Laguado, his mother was Teresa de Jesús Jaimés de Jáuregui, who died on February 13, 2002, his father was Luis María Jáuregui Jáuregui, who died on January 15, 1996, and his siblings are Suney Dinora, Marcela Elizabeth, Lorena del Pilar, Nubia Esperanza, Eddy Stella, Carlos Alberto, Sonia Soledad, José Francisco, Juan Antonio and Ruth Cecilia, all Jáuregui Jaimés.<sup>121</sup>

104. *With regard to Luis Domingo Sauza Suárez and his next of kin*

104(a) Luis Domingo Sauza Suárez was born on March 22, 1953, and he was 34 years of age at the time of his disappearance.<sup>122</sup> The life expectancy of a man of 34 years of age in Colombia in 1987 was 42 more years.<sup>123</sup>

104(b) With regard to the next of kin of Luis Domingo Sauza Suárez, his wife is Marina Cáceres and his children are Yudani Patricia, Oscar Enrique<sup>124</sup> (who died in

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<sup>118</sup> Cf. copy of the birth certificate of Fernando Corzo Vargas; copy of the birth certificate of Jorge Corzo Vargas; copy of the birth certificate of Mireya Corzo Vargas; copy of the birth certificate of Alvaro Corzo Vargas; copy of the birth certificate of Clara Inés Corzo Vargas; copy of the birth certificate of Fany Corzo Vargas; copy of the birth certificate of María Elena Corzo Vargas (file of attachments to the brief with the Commission's arguments on possible reparations and costs, tome I, attachment 12, folios 1968 to 1976); and testimony of Jorge Corzo given before the Court on April 21, 2004.

<sup>119</sup> Cf. copy of the birth certificate of Luis Hernando Jáuregui Jaimés (file of attachments to the brief with the Commission's arguments on possible reparations and costs, tome I, attachment 13, folio 1981).

<sup>120</sup> Cf. copy of resolution No. 0497, issued by the Superintendence of Banks on May 20, 1997 (helpful evidence on possible reparations and costs presented by the State on May 24, 2004, requested on April 14, 2004, by the Secretariat, on the instructions of the President, folios 3613 and 3614).

<sup>121</sup> Cf. copy of the birth certificate of Sonia Soledad Jáuregui Jaimés; copy of the birth certificate of Juan Antonio Jáuregui Jaimés; copy of the birth certificate of Eddy Stella Jáuregui Jaimés; copy of the birth certificate of Nubia Esperanza Jáuregui Jaimés; copy of the birth certificate of Ruth Cecilia Jáuregui Jaimés; copy of the birth certificate of José Francisco Jáuregui Jaimés; copy of the birth certificate of Carlos Alberto Jáuregui Jaimés; copy of the birth certificate of Lorena del Pilar Jáuregui Jaimés; copy of the birth certificate of Marcela Elizabeth Jáuregui Jaimés; copy of the death certificate of Luis María Jáuregui Jáuregui; copy of the death certificate of Teresa de Jesús Jaimés de Jáuregui; copy of the birth certificate of Suney Dinora Jáuregui Jaimés; copy of the marriage certificate of Luis María Jáuregui Jáuregui and Teresa de Jesús Jaimés (file of attachments to the brief with the Commission's arguments on possible reparations and costs, tome I, attachment 13, folios 1982 to 1995); and testimonial statement of Suney Dinora Jáuregui Jaimés made before a public notary on June 13, 2003 (file on merits and possible reparations, tome I, folios 273 to 276).

<sup>122</sup> Cf. copy of the birth certificate of Luis Domingo Sauza Suárez (file of attachments to the brief with the Commission's arguments on possible reparations and costs, tome I, attachment 13, folio 2002).

<sup>123</sup> Cf. copy of resolution No. 0497, issued by the Superintendence of Banks on May 20, 1997 (helpful evidence on possible reparations and costs presented by the State on May 24, 2004, requested on April 14, 2004, by the Secretariat, on the instructions of the President, folios 3613 and 3614).

1992), Martha Yolima and Luis Omar, all Sauza Cáceres, and Nirama Sauza Suárez,<sup>125</sup> daughter of the alleged victim and another woman. His mother is Rosalbina Suárez Bravo de Uribe, his father was Joaquín Sauza Villarreal, who died on August 16, 1999, and his siblings are Flor Ángela, Marco Antonio, María Martha, Ernestina, Alfonso and Ofelia, all Sauza Suárez.<sup>126</sup>

*105. With regard to Juan Alberto Montero Fuentes and his next of kin*

105(a) Juan Alberto Montero Fuentes was born on August 22, 1959, and he was 28 years of age at the time of his disappearance.<sup>127</sup> The life expectancy of a man of 28 years of age in Colombia in 1987 was 48 more years.<sup>128</sup>

105(b) With regard to the next of kin of Juan Alberto Montero Fuentes, his daughter is Dina Luz Montero Pinzón, his wife is Luz Marina Pinzón Reyes, his mother is Hilda María Fuentes Pérez, his father is Juan de la Cruz Montero, and his siblings are Yimmy Reynel, Jacqueline and Sandra Belinda, all Montero Fuentes.<sup>129</sup>

*106. With regard to José Ferney Fernández Díaz and his next of kin*

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<sup>124</sup> Cf. sworn written statement made before a public notary by Ofelia Sauza Suárez de Uribe on June 14, 2003 (file on merits and possible reparations, tome I, folios 277 to 279).

<sup>125</sup> Cf. sworn written statement made before a public notary by Ofelia Sauza Suárez de Uribe on June 14, 2003 (file on merits and possible reparations, tome I, folios 277 to 279).

<sup>126</sup> Cf. copy of the birth certificate of Ofelia Sauza Suárez; copy of the birth certificate of Marco Antonio Sauza Suárez; copy of the birth certificate of Alfonso Sauza Suárez; copy of the birth certificate of Ernestina Sauza Suárez; copy of the birth certificate of María Martha Sauza Suárez; copy of the death certificate of Joaquín Sauza Villarreal; copy of the birth certificate of Luis Omar Sauza Cáceres; copy of the birth certificate of Martha Yolima Sausa Cáceres; copy of the birth certificate of Yudani Patricia Sauza Cáceres; copy of the marriage certificate of Joaquín Sauza Villarreal and Rosalbina Suárez Bravo; copy of the identity card of Flor Ángela Sauza Suárez (file of attachments to the brief with the Commission's arguments on possible reparations and costs, tome I, attachment 14, folios 2003 to 2017); testimonial statement of Ofelia Sauza de Uribe made before a public notary on June 14, 2003; and testimonial statement of Rosalbina Suárez de Sauza made before a public notary on June 14, 2003 (file on merits and possible reparations, tome I, folios 277 to 279).

<sup>127</sup> Cf. copy of the birth certificate of Juan Alberto Montero Fuentes (file of attachments to the brief with the Commission's arguments on possible reparations and costs, tome I, attachment 15, folio 2026).

<sup>128</sup> Cf. copy of resolution No. 0497, issued by the Superintendence of Banks on May 20, 1997 (helpful evidence on possible reparations and costs presented by the State on May 24, 2004, requested on April 14, 2004, by the Secretariat, on the instructions of the President, folios 3613 and 3614).

<sup>129</sup> Cf. copy of the birth certificate of Hilda María Fuentes Pérez; copy of the birth certificate of Luz Marina Pinzón Reyes; copy of the birth certificate of Juan Alberto Montero Fuentes; copy of the birth certificate of Sandra Belinda Montero Fuentes; copy of the birth certificate of Jacqueline; copy of the birth certificate of Yimmy Reynel Montero Fuentes; copy of the birth certificate of Dina Luz Montero Pinzón; copy of the identity card of Dina Luz Montero Pinzón; copy of the marriage certificate of Juan Alberto Montero Fuentes and Luz Marina Pinzón Reyes; copy of the identity card of Hilda María Fuentes Pérez; and copy of the identity card of Luz Marina Pinzón Reyes (file of attachments to the brief with the Commission's arguments on possible reparations and costs, tome I, attachment 15, folios 2023 to 2038).



106(a) José Ferney Fernández Díaz was born on March 17, 1956, and he was 31 years of age at the time of his disappearance.<sup>130</sup> The life expectancy of a man of 31 years of age in Colombia in 1987 was 45 more years.<sup>131</sup>

106(b) With regard to the next of kin of José Ferney Fernández Díaz, his mother is Lilia Díaz Rubio de Fernández, his father is Juan de Dios Fernández Delgado,<sup>132</sup> and his siblings are Jorge Julio, Elibardo, María Dulibia, María Celeni, María Omaira, José Ariel, Nelson and Alba Unice, all Fernández Díaz.<sup>133</sup>

107. *With regard to Rubén Emilio Pineda Bedoya and his next of kin*

107(a) Rubén Emilio Pineda Bedoya was born on July 30, 1954, and he was 33 years of age at the time of his disappearance.<sup>134</sup> The life expectancy of a man of 33 years of age in Colombia in 1987 was 43 more years.<sup>135</sup>

107(b) With regard to the next of kin of Rubén Emilio Pineda Bedoya, his father is Juan de Dios Pineda Miranda, his mother is Gabriela Bedoya Suescum,<sup>136</sup> and his siblings are Samuel de Jesús, Luis Bernabé, Jesús María, Hernán Darío, Carlos Alberto, Jorge Enrique, Ana María, Luz Arcenia, Gloria Isabel, María Briseida and Nubia, all Pineda Bedoya.<sup>137</sup>

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<sup>130</sup> Cf. copy of the birth registration of José Ferney Fernández Díaz (helpful evidence on possible reparations and costs presented by the State on May 24, 2004, requested on April 14, 2004, by the Secretariat, on the instructions of the President, folio 3865).

<sup>131</sup> Cf. copy of resolution No. 0497, issued by the Superintendence of Banks on May 20, 1997 (helpful evidence on possible reparations and costs presented by the State on May 24, 2004, requested on April 14, 2004, by the Secretariat, on the instructions of the President, folios 3613 and 3614).

<sup>132</sup> Cf. copy of the birth registration of José Ferney Fernández Díaz (helpful evidence on possible reparations and costs presented by the State on May 24, 2004, requested on April 14, 2004, by the Secretariat, on the instructions of the President, folio 3865).

<sup>133</sup> Cf. copy of the birth registration of Jorge Julio Fernández Díaz; copy of the birth registration of Elibardo Fernández; copy of the birth registration of María Dulibia Fernández Díaz; copy of the birth registration of María Celeni Fernández Díaz; copy of the birth registration of María Omaira Fernández Díaz; copy of the birth registration of José Ariel Fernández Díaz; copy of the birth registration of Nelson Fernández Díaz (helpful evidence on possible reparations and costs presented by the State on May 24, 2004, requested on April 14, 2004, by the Secretariat, on the instructions of the President, folios 3872 to 3878); and brief with arguments on possible reparations and costs presented by the Inter-American Commission on March 25, 2003 (file on merits and possible reparations and costs, tome I, folio 167).

<sup>134</sup> Cf. copy of the birth certificate of Rubén Emilio Pineda Bedoya (helpful evidence on possible reparations and costs presented by the State on June 26, 2004, which was requested on April 14, 2004, on the instructions of the President of the Court, file on merits and possible reparations and costs, tome III, folio 948).

<sup>135</sup> Cf. copy of resolution No. 0497, issued by the Superintendence of Banks on May 20, 1997 (helpful evidence on possible reparations and costs presented by the State on May 24, 2004, requested on April 14, 2004, by the Secretariat, on the instructions of the President, folios 3613 and 3614).

<sup>136</sup> Cf. copy of the birth certificate of Rubén Emilio Pineda Bedoya (helpful evidence on possible reparations and costs presented by the State on June 26, 2004, which was requested on April 14, 2004, on the instructions of the President of the Court, file on merits and possible reparations and costs, tome III, folio 948).

<sup>137</sup> Cf. copy of the birth certificate of Luis Bernabé Pineda Bedoya; copy of the birth certificate of Hernán Darío Pineda Bedoya; copy of the birth certificate of Carlos Alberto Pineda Bedoya (file of helpful evidence on possible reparations and costs presented by the State on May 24, 2004, requested on April 14, 2004, on the instructions of the President of the Court, folios 3857, 3859 and 3867); copy of the birth registration of Ana María Pineda Bedoya; copy of the birth registration of Gloria Isabel Pineda Bedoya;

108. *With regard to Carlos Arturo Riatiga Carvajal and his next of kin*

108(a) The Inter-American Commission did not provide evidence on the date of birth of Carlos Arturo Riatiga Carvajal or his approximate age at the time of this disappearance.

108(b) With regard to the next of kin of Carlos Arturo Riatiga Carvajal, his permanent companion is Luz Marina (or María) Arias Ortega.<sup>138</sup> The Commission did not indicate the name of any other next of kin of Mr. Riatiga Carvajal.

109. *With regard to Juan Bautista and his next of kin*

The Inter-American Commission did not provide evidence on the date of birth of Juan Bautista, his approximate age at the time of this disappearance, or the identity of his next of kin.

110. *With regard to Alberto Gómez (whose second last name was possibly Ramírez)<sup>139</sup> and his next of kin*

The Commission did not provide evidence on the date of birth of Alberto Gómez (whose second last name was possibly Ramírez), his approximate age at the time of this disappearance, or the identity of his next of kin.<sup>140</sup>

111. *With regard to Huber Pérez (whose second last name was possibly Castaño)<sup>141</sup> and his next of kin*

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copy of the birth certificate of Jesús María Pineda Bedoya; copy of the birth certificate of Jorge Enrique Pineda Bedoya; copy of the birth registration of Luz Arcenia Pineda Bedoya; copy of the birth registration of María Briseida Pineda Bedoya; copy of the birth registration of Nubia Pineda Bedoya; and copy of the birth certificate of Samuel de Jesús María Pineda Bedoya (helpful evidence on possible reparations and costs presented by the State on June 26, 2004, which was requested on April 14, 2004, on the instructions of the President of the Court, file on merits and possible reparations and costs, tome III, folios 949 to 956).

<sup>138</sup> Cf. judgment delivered by the Criminal Court of the San Gil Specialized Circuit on March 23, 2001 (evidence file presented by the State on April 18, 2002, requested on the instructions of the President of the Court - paragraph 68 of the application - tome I, attachment 3, folios 1186 and 1198).

<sup>139</sup> In the application brief, the Inter-American Commission indicated that the name of this alleged victim was Alberto Gómez. However, in the copy of tome No. 1 of the file before the Cúcuta Regional Court in case N° 1728 against Alonso de Jesús Baquero Agudelo for the crimes of extortive kidnapping and aggravated homicide to the detriment of "Alvaro Pacheco and 18 other tradesmen" and in the copy of tome No. 1 of the file before the Cúcuta Regional Court in case N° 1723 against Nelson Lesmes Leguizamón, Wilson de Jesús Pérez Durán, Carlos Alberto Yepes Londoño and Marceliano Panesso Ocampo for the crimes of extortive kidnapping and aggravated homicide to the detriment of "Alvaro Lobo Pacheco and 18 other tradesmen" forwarded by the State, it appears that the complete name of the alleged victim Alberto Gómez is Luis Alberto Gómez Ramírez and his identity card is CC 8,668,616 of Barranquilla (helpful evidence presented by the State on May 24, 2004, requested on the instructions of the President of the Court - paragraph 68 of the application).

<sup>140</sup> Cf. in the brief with arguments on possible reparations and costs presented by the Inter-American Commission on March 25, 2003, the Commission stated that "[t]here is no information to indicate who are the next of kin of this person who would be recognized as beneficiaries of a reparation in this case" (file on merits and possible reparations and costs, tome I, folio 166).

<sup>141</sup> In the application brief, the Inter-American Commission stated that the name of this alleged victim is Pérez. However, in the copy of tome No. 1 of the file before the Cúcuta Regional Court in the case N° 1728 against Alonso de Jesús Baquero Agudelo for the crimes of extortive kidnapping and

The Inter-American Commission did not provide evidence on the date of birth of Huber Pérez (whose second last name was possibly Castaño), his approximate age at the time of this disappearance, or the identity of his next of kin.<sup>142</sup>

*112. With regard to the damage caused to the next of kin of the alleged victims and the costs and expenses*

112(a) The next of kin of the alleged victims have suffered pecuniary and non-pecuniary damage as a direct consequence of the latter's forced disappearance and death, owing to the failure of State authorities to help them search immediately for the disappeared, the fear to start or continue the search for their next of kin because they were threatened or attacked, and owing to the threats and attacks they received when they continued seeking the alleged victims, all of which has affected their physical and psychological health, had an impact on their social and labor relations, changed their family dynamics and, in some case, put the lives and personal integrity of some of the family members at risk.<sup>143</sup>

112(b) The partial impunity that exists in this case has caused and continues to cause suffering to the next of kin of the alleged victims.<sup>144</sup>

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aggravated homicide to the detriment of "Alvaro Pacheco and 18 other tradesmen" and in the copy of tome No. 1 of the file before the Cúcuta Regional Court in case N° 1723 against Nelson Lesmes Leguizamón, Wilson de Jesús Pérez Durán, Carlos Alberto Yepes Londoño and Marceliano Panesso Ocampo for the crimes of extortive kidnapping and aggravated homicide to the detriment of "Alvaro Lobo Pacheco and 18 other tradesmen" forwarded by the State, it appears that the complete name of the alleged victim Huber Pérez is apparently Huber Pérez Castaño, and that he "was born in Pereira" (helpful evidence presented by the State on May 24, 2004, requested on the instructions of the President of the Court - paragraph 68 of the application).

<sup>142</sup> Cf. in the brief with arguments on possible reparations and costs presented by the Inter-American Commission on March 25, 2003, the Commission indicated that "[t]here is no information to indicate who are the next of kin of this person who would be recognized as beneficiaries of a reparation in this case" (file on merits and possible reparations and costs, tome I, folio 163).

<sup>143</sup> Cf. testimony of Salomón Flórez Contreras given before the Court on April 21, 2004; testimony of Sandra Belinda Montero Fuentes given before the Court on April 21, 2004; testimony of Alejandro Flórez Pérez given before the Court on April 21, 2004; testimony of Jorge Corzo Viviescas given before the Court on April 21, 2004; testimony of Wilmar Rodríguez Quintero given before the Court on April 21, 2004; testimony of Luz Marina Pinzón Reyes given before the Court on April 21, 2004; expert report of Carlos Martín Beristain given before the Court on April 21, 2004; testimonial statement made by Carmen Rosa Barrera Sánchez before a public notary on June 12, 2003; testimonial statement made by Lina Noralba Navarro Flórez before a public notary on June 12, 2003; testimonial statement made by Luz Marina Pérez Quintero before a public notary on June 16, 2003; testimonial statement made by Myriam Mantilla Sánchez before a public notary on June 13, 2003; testimonial statement made by Manuel Ayala Mantilla before a public notary on June 13, 2003; testimonial statement made by Ana Murillo de Chaparro before a public notary on June 13, 2003; testimonial statement made by Suney Dinora Jáuregui Jaimes before a public notary on June 13, 2003; testimonial statement made by Ofelia Sauza de Uribe before a public notary on June 14, 2003; testimonial statement made by Rosalbina Suárez de Sauza before a public notary on June 14, 2003; testimonial statement made by Marina Lobo Pacheco before a public notary on June 12, 2003 (file on merits and possible reparations and costs, tome I, folios 255 to 285); and judgment delivered by the Criminal Court of the San Gil Specialized Circuit on March 23, 2001 (evidence file presented by the State on April 18, 2002, requested on the instructions of the President of the Court - paragraph 68 of the application - tome I, attachment 3, folios 1103 and 1104).

<sup>144</sup> Cf. testimony of Salomón Flórez Contreras given before the Court on April 21, 2004; testimony of Sandra Belinda Montero Fuentes given before the Court on April 21, 2004; testimony of Alejandro Flórez Pérez given before the Court on April 21, 2004; testimony of Jorge Corzo Viviescas given before the Court on April 21, 2004; testimony of Wilmar Rodríguez Quintero given before the Court on April 21, 2004; testimony of Luz Marina Pinzón Reyes given before the Court on April 21, 2004; expert report of Carlos Martín Beristain given before the Court on April 21, 2004; testimonial statement made by Carmen Rosa

112(c) The next of kin of the alleged victims have taken measures to search for the alleged victims and have participated in the respective judicial proceedings under domestic law, which has generated different expenses.<sup>145</sup>

112(d) The Colombian Jurists Commission (CCJ) and the Center for Justice and International Law (CEJIL), representing the alleged victims or their next of kin, had recourse to the Inter-American System for the protection of human rights and, consequently, assumed a series of expenses.<sup>146</sup>

## VII

### **VIOLATION OF ARTICLES 7, 5 AND 4 IN RELATION TO ARTICLE 1(1) (RIGHT TO PERSONAL LIBERTY, RIGHT TO HUMANE TREATMENT AND RIGHT TO LIFE)**

#### *Arguments of the Commission*

113. In relation to the violation of Articles 7, 5 and 4 of the Convention, to the detriment of the 19 alleged victims, the Commission alleged that:

- a) The alleged victims were arbitrarily and unlawfully deprived of their liberty by a "paramilitary" group operating in the municipality of Boyacá, which did not have the authority to interfere with people's physical liberty. "Since [...] in this case, the acts of paramilitary personnel can be attributed to

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Barrera Sánchez before a public notary on June 12, 2003; testimonial statement made by Lina Noralba Navarro Flórez before a public notary on June 12, 2003; testimonial statement made by Luz Marina Pérez Quintero before a public notary on June 16, 2003; testimonial statement made by Myriam Mantilla Sánchez before a public notary on June 13, 2003; testimonial statement made by Manuel Ayala Mantilla before a public notary on June 13, 2003; testimonial statement made by Ana Murillo de Chaparro before a public notary on June 13, 2003; testimonial statement made by Suney Dinora Jáuregui Jaimes before a public notary on June 13, 2003; testimonial statement made by Ofelia Sauza de Uribe before a public notary on June 14, 2003; testimonial statement made by Rosalbina Suárez de Sauza before a public notary on June 14, 2003; testimonial statement made by Marina Lobo Pacheco before a public notary on June 12, 2003 (file on merits and possible reparations and costs, tome I, folios 255 to 285).

<sup>145</sup> Cf. testimony of Salomón Flórez Contreras given before the Court on April 21, 2004; testimony of Sandra Belinda Montero Fuentes given before the Court on April 21, 2004; testimony of Wilmar Rodríguez Quintero given before the Court on April 21, 2004; testimony of Alejandro Flórez Pérez given before the Court on April 21, 2004; Testimony of Luz Marina Pinzón Reyes given before the Court on April 21, 2004; testimony of Jorge Corzo Viviescas given before the Court on April 21, 2004; sworn written statement made by Carmen Rosa Barrera Sánchez before a public notary on June 12, 2003; sworn written statement made by Lina Noralba Navarro Flórez before a public notary on June 12, 2003; sworn written statement made by Luz Marina Pérez Quintero before a public notary on June 16, 2003; sworn written statement made by Myriam Mantilla Sánchez before a public notary on June 13, 2003; sworn written statement made by Manuel Ayala Mantilla before a public notary on June 13, 2003; sworn written statement made by Ana Murillo Delgado de Chaparro before a public notary on June 13, 2003; sworn written statement made by Suney Dinora Jáuregui Jaimes before a public notary on June 13, 2003; sworn written statement made by Marina Lobo Pacheco before a public notary on June 12, 2003 (file on merits and possible reparations and costs, tome I, folios 255 to 276 and 282 to 285); and judgment delivered by the Criminal Court of the San Gil Specialized Circuit on March 23, 2001 (evidence file presented by the State on April 18, 2002, requested on the instructions of the President of the Court - paragraph 68 of the application - tome I, attachment 3, folio 1102).

<sup>146</sup> Cf. petition of March 6, 1996, filed by the Colombian Jurists Commission before the Inter-American Commission (file before the Commission and attachments to the brief with final arguments presented by the Inter-American Commission on Human Rights on June 1, 2004, folios 4009 to 4170).

the State, it must be concluded that the latter is responsible for the violation of Article 7 of the American Convention to the detriment of the 19 [alleged] victims;"

b) The facts and circumstances that preceded the execution of the alleged victims allow it to be inferred that they suffered physically and mentally. The facts and circumstances signified a real and imminent threat that they would be deprived of their lives arbitrarily and violently, which constitutes inhuman treatment in the terms of Article 5 of the American Convention;

c) The alleged victims Alvaro Lobo Pacheco, Gerson Rodríguez, Israel Pundor, Ángel Barrera, Antonio Flores Ochoa, Carlos Arturo Riatiga, Víctor Ayala, Alirio Chaparro, Huber Pérez, Alvaro Camargo, Rubén Pineda, Gilberto Ortiz, Reinaldo Corso Vargas, Hernán Jáuregui, Juan Bautista, Alberto Gómez and Luis Sauza were killed by their captors and, subsequently, their bodies were destroyed brutally to avoid identification. Juan Montero and Ferney Fernández "suffered the same fate after their detention-disappearance on October 18, 1987." The alleged victims "were arbitrarily deprived of their lives in a state of defenselessness," while they were under the control of the "paramilitary" group that operated in the municipality of Puerto Boyacá. Such acts are attributable to the State;

d) The "paramilitary" group that perpetrated the disappearance of the 19 tradesmen "had the support and participation of members of law enforcement bodies when they planned, carried out and concealed the facts on which this case is based, so that the grave violations perpetrated can also be attributed directly to the State." The motive for the facts was identified by the judicial authorities as the alleged relationship of the victims with guerrilla groups, because they were accused of the sale and transport of arms and ammunition;

e) The State of Emergency Decree No. 3398 of 1965 provided legal grounds for the creation of "paramilitary" groups, by establishing that "[a]cting through the authorized commands and when it deems necessary, the Ministry of National Defense may dispose of, as its private property, weapons restricted to the exclusive use of the Armed Forces." The effect of this norm was the emergence and strengthening of "paramilitary" groups, as of the mid-1960s, which have been created and promoted by sectors of the military forces that sought to defend the interests of individuals or groups through violence. The "paramilitary" groups emerged linked to the Colombian Army, because of their counter-insurgency rationale;

f) On May 25, 1989, the Supreme Court of Justice of Colombia declared that the said decree was unconstitutional, following which the State adopted a series of legislative measures to "criminalize" the activities of these "paramilitary" groups and those who supported them;

g) In general, the Colombian State is responsible for the existence and strengthening of the "paramilitary" groups. In this case, the evidence indicates that members of the Army and the "paramilitary" group led by the owner of the El Diamante farm carried out surveillance and control activities together in the region where the facts occurred, in order to combat dissident

armed groups. In the judgment in first instance against the civilians involved in the facts, the Cúcuta Regional Court referred to this connection. Also, “[o]ther evidence produced in the proceeding heard in the military criminal justice jurisdiction indicates that members of the Army provided training and arms to these paramilitary groups.” In the same way, the reports of the Administrative Department of Security (DAS) confirm the nature of the relations between members of the Army and the “paramilitary” groups in the Magdalena Medio region. DAS forms part of the Executive and, both the Code of Criminal Procedure in force at the time of the facts and the one in force currently, grant the judicial police functions, so that its agents can act as auxiliary bodies in the administration of justice for the collection of evidence. The reports presented in this case were prepared in response to an express request made by the then President of the Republic to the DAS Director. The legislative changes promoted by the President of the Republic in 1989 were based on the conclusions of those reports, which “indicates that the State itself considered them in a very positive light;”

h) The reports produced by DAS, the decisions delivered in the ordinary justice and the military justice systems, and also the testimony of Salomón Flórez confirm that the “paramilitary” group which controlled the region where the facts occurred had the backing of the region’s military authorities;

i) The tranquility and openness with which the “paramilitary” groups who operated in the Magdalena Medio acted “indicates the support, collaboration and agreement of the State agents billeted in the military bases.” The authorities made no attempt to confront the “paramilitary” groups;

j) According to the Commission’s third report on the Human Rights Situation in Colombia, the State as played an important role developing the so-called “paramilitary” groups, “which it allowed to act with legal protection and legitimacy in the 1960s, 1970s and 1980s;” and

k) The State acknowledged before the Commission that the cooperation between the “paramilitary” group that was active in region at the time of the facts and its agents was grounded in the legislation. And it was these grounds that were used to absolve the members of the Army involved in the killing of the alleged victims of responsibility.

#### *Arguments of the State*

114. Regarding the violation of Articles 7, 5 and 4 of the Convention, to the detriment of the 19 alleged victims, the State declared that:

a) the 19 tradesmen were kidnapped by a group of common criminals. After passing through Lizama, they were taken to the “El Diamante” farm, owned by the leaders of the illegal group, where they were murdered, and their bodies were dismembered and thrown into the Ermitaño River. It has been proved that the facts “were masterminded and perpetrated by illegal groups of common criminals, entirely repudiated and rejected both socially and institutionally;”

b) “[T]he result of the evidence collected in the domestic proceedings, [...] and also the existence of several criminal judgments leads to the

conclusion that the Colombian State has not violated either directly or indirectly" Articles 7, 5 and 4 of the Convention;

c) The responsibility of State agents in the facts of this case has not been proved, "because criminal proceedings are the appropriate way to adjudicate and clarify individual responsibilities, and the administrative jurisdiction is the appropriate way to clarify State responsibility;"

d) The facts of this case were carried out directly and exclusively by a criminal group and the fact that it was the author is fully demonstrated in the domestic criminal proceedings, by judgments which have the effect of *res judicata*. "As the file processed before the military criminal justice system shows, some testimonies tell how some authorities used legal prerogatives to call on the citizens to support the anti-subversive struggle, but there is not one piece of evidence or testimony indicating that these authorities called for the crime or gave instructions for it to be committed;"

e) The Commission's third report on the Human Rights Situation in Colombia "cannot be accepted as evidence of specific, concrete facts such as those in this case." In its report, the Commission itself deems that evidence is needed to link State agents to the criminal groups in order to affirm that the State is responsible for the activities of such groups. "Therefore, it is the legally acceptable evidence that is provided at the appropriate time, assessed according to the rules of health criticism, in the domestic proceedings resulting from these facts that will determine the State's participation and responsibility in them;"

f) With regard to the Commission's arguments in relation to Decree No. 3398 of 1965, it should be pointed out that the legal prerogative of protection for carrying certain types of arms cannot be called a "safe-conduct" for the criminal groups that emerged in the 1970s and 1980s. Those groups owe their existence to the emergence of drug-traffickers, with sufficient financial clout to contract such groups. In this respect, the 2003 National Human Rights Report for Colombia of the United Nations Development Programme states that "at the beginning of the 1980s, a different type of paramilitarism emerged, which was neither "self-defense" nor 'State', but an extension of the private armies that illegal industries necessarily have" and that "even though they adopted a national political discourse, the self-defense groups are local responses to the guerrilla and, like the latter, belong to rural areas;"

g) An analysis of the norms designed to re-establish public order, which had been upset by such criminal phenomena shows that there has been a hardening of punishments and a criminal classification of conducts, "far from any intention of tolerance or sponsorship by the State or its Armed Forces of such conduct." Legislative Decree No. 0180 of 1988 and Decree 1194 of 1989 sought to combat the illegal armed self-defense groups. "[T]here is no moment in the political, legislative or institutional history of Colombia that reflects either tacitly or expressly the least tolerance for the formation and activities of illegal self-defense or 'paramilitary' groups;"

h) The reports of the Administrative Department of Security (DAS) "have a different significance to that of the corresponding criminal investigations." The intelligence information is only important in the juridical sphere when it

forms part of a proceeding before the criminal, disciplinary or prosecution jurisdiction. The Criminal Court of the San Gil Specialized Circuit gave the DAS reports the necessary significance with regard to those aspects in which they could be compared with other pieces of evidence, since they did not constitute complete evidence. The Military Trial Court used those intelligence reports as relevant factors, in association with other pieces of evidence. Although the disciplinary investigation "was based on the intelligence report of the Administrative Department of Security," the Attorney General's office did not find that it provided grounds as evidence to punish State agencies and ordered that the proceedings should be filed;

i) At no time in the proceeding before the Commission did the State recognize that there was a connection between its Armed Forces and these criminal groups, or that "the cooperation between the "paramilitary" group that was active in the region at the time of the facts and its own agents was supported by legislation;" and

j) The facts concerning the disappearance and death of the 19 tradesmen in October 1987 cannot be attributed to the State, because those crimes were not committed owing to an act or omission of its agents, and its agents did not provide support to the criminal groups who perpetrated them.

#### *Considerations of the Court*

115. Owing to the characteristics of this case, and in order to consider the alleged international responsibility of Colombia for the violation of Articles 7, 5 and 4 of the Convention in relation to Article 1(1) thereof, the Court considers it necessary to refer first to two situations that occurred in this case: a) the creation of "self-defense" groups, which became criminal or "paramilitary" groups; and b) the connection of members of the Armed Forces and the support they provided to the "paramilitary" group that controlled the Magdalena Medio region, and also the participation of the latter in the violations committed against the 19 tradesmen.

#### *a) The creation of "self-defense" groups, which became criminal or "paramilitary" groups*

116. It has been shown that, in the context of the fight against the guerrilla groups, Colombia enacted legislation (*supra* para. 84(a)) in order to organize national defense, which called for "a coordinated effort of all the bodies of the public authorities and the community leaders of the Nation" and, in that respect, established that "[a]ll Colombians, men and women, not affected by conscription to obligatory military service m[ight] be used by the Government in activities and tasks, contributing to re-establishing normality." It also stipulated that "[a]cting through the authorized commands and when it deems necessary, the Ministry of National Defense may dispose of, as its private property, weapons restricted to the exclusive use of the Armed Forces." These norms enacted in 1965 and 1968 were in force in October 1987, when the facts of the instant case took place.

117. With regard to the said legal basis of the self-defense groups, it is worth noting the words of the Military Superior Tribunal in its judgment of March 17, 1998, in which it made it clear that:



The 'self-defense groups' are considered to have been created legally in accordance with the contents of the National Defense Act, Decree No. 3398 of 1965 (DIC 24), which was adopted as permanent legislation by Act 48 of 1968, a legitimacy based particularly on article 25 [..., b]ut also, on the provisions of the third paragraph of article 33 of the said National Defense Act. [...]n view of the foregoing legal situation, it was considered that the 'self-defense groups' were lawful[,] and this was accepted by the authorities and, therefore, they enjoyed the latter's support.

118. The "self-defense groups" were formed lawfully under the protection of the said norms, so they had the support of the State authorities. The State encouraged their creation among the civilian population, with the main purpose of assisting the law enforcement bodies in anti-subversive operations and to defend themselves from the guerrilla groups; in other words, at their inception, they did not have criminal purposes. The State gave them permission to own and carry arms, and also provided logistic support. However, many "self-defense groups" changed their aims and became criminal groups, commonly called "paramilitary" groups.

119. As the State explained during the public hearing (*supra* para. 52), "more or less as of 1985, [...]evidence began to come to light that there were illegal armed groups with those objectives;" namely, groups that committed "criminal acts, massacres, collective murders." It also stated that, in view of this, "the State saw the need to take legislative measures to counteract these new activities and that is when legislative initiatives to counteract them commenced."

120. The Court notes that, when the facts of this case occurred, two years had already elapsed since the transformation of the self-defense groups, created under the protection of the State, into criminal groups had become evident. However, it was not until January 27, 1988, that Colombia began to take measures, some of them of a legislative nature, to "counteract" the new criminal activities carried out by those groups. In April 1989, Decree 0815 was issued, which suspended the effect of paragraph 3 of article 33 of Legislative Decree 3398 of 1965 (*supra* para. 84(a)), which had empowered the Ministry of National Defense to authorize private individuals to carry arms that were for the exclusive use of the Armed Forces. It is worth noting that the preambular paragraphs of that decree state that "the interpretation [of Legislative Decree 3398 of 1965, adopted as permanent legislation by Act 48 of 1968] by some sectors of public opinion *has resulted in confusion about its scope and purposes, in the sense that it can be taken as giving legal authorization to organize armed civilian groups, which then act outside the Constitution and the law.*" Subsequently, in a judgment of May 25, 1989, the Supreme Court of Justice declared that the said paragraph 3 of article 33 of legislative decree 3398 of 1965 was "unenforceable."

121. On June 8, 1989, the State issued Decree 1194 "by which Legislative Decree 0180 of 1988 was added to punish new criminal activities, since it was necessary to re-establish public order." The preambular paragraphs of this decree stated that "the events that have been occurring in the country have shown that there is a new criminal activity consisting of horrendous acts committed by armed groups, wrongly called "paramilitary groups," which have formed death squads, bands of hired murderers, self-defense or private justice groups, whose existence and activities gravely affect the social stability of the country, and which must be suppressed in order to re-establish public order and peace. This decree classified as an offence the promotion, financing, organization, management, promotion and execution of acts "intended to result in the training or recruitment of people to armed groups of those commonly known as death squads, bands of hired murderers, self-defense or private

justice groups, wrongly called paramilitary groups.” It also classified as offences links to or belonging to such groups, as well as instructing, training or equipping “people in military tactics, techniques and procedures for carrying out the criminal activities” of the said armed groups. The Court considers it important to stress that, it was established as an aggravating factor, if the said acts were “carried out by active or retired members of the Armed Forces or the National Police or State security bodies.” From this it can be inferred that there was an important reason for the aggravating factor, and this was that members of the Armed Forces did have links to such criminal groups.

122. In the instant case, the violations against the 19 tradesmen were perpetrated by one of these “self-defense” groups that became a “paramilitary” group, at a time when the State had not taken the necessary measure to prohibit, prevent and punish adequately the criminal activities of such groups, even though such activities were already notorious.

123. Added to the above, the military authorities of Puerto Boyacá encouraged this “self-defense” group to carry out offensive activities against the guerrilla groups, as can be seen from the above-mentioned judgment of March 17, 1998, delivered by the Military Superior Court, when it stated that:

[I]t is worth commenting that, although it is true that the General was able to attend the peasants’ meeting, as confirmed by BAQUERO AGUDELO and also LUIS ALBERTO ARRIETA MORALES alias “PIRAÑA,” to express his support, so they would not continue to be victims of the guerrilla, and would adopt an offensive attitude, and authorized the sale of arms protected by safe-conduct to them, including obsolete arms for official use, these activities were not prohibited by law and were only intended to eradicate or reduce the guerrilla’s violent and cruel activities against those who opposed their ideology and will, and not for them to commit excesses and crimes, as the said “PIRAÑA”, personal escort of BAQUERO AGUDELO stated, when referring to what the General said: ‘...that if they did not have arms, they would help them obtain [arms], but that they never told them this was to commit massacres or kill someone; it was only to fight the guerrilla...’. (The original is not underlined)

124. Even though Colombia argues that it did not have a policy to encourage the formation of such criminal groups, that does not free the State of responsibility for the interpretation which, for many years, was given to the legal framework that protected such “paramilitary” groups, for the disproportionate use of the arms given to them, and for failing to adopt the necessary measures to prohibit, prevent and punish adequately the said criminal activities. Besides, the military authorities of Puerto Boyacá encouraged the “self-defense” group that controlled the said region to assume an offensive attitude towards the guerrilla, as happened in this case, because they believed the tradesmen collaborated with the guerrilla groups.

b) *The connection and support of members of law enforcement bodies to the “paramilitary” group that exercised control in the Magdalena Medio region, and the latter’s participation in the alleged violations committed against the 19 tradesmen*

125. It is also necessary to consider, in general, the relationship between the senior officials of the law enforcement forces of Puerto Boyacá and the “paramilitary” group that exercised control in the region when the facts of this case occurred, and also to establish specifically whether State agents participated directly in the planning and execution of the violations committed against the alleged victims. Accordingly, the Court has assessed the entire body of evidence in this case, which

includes the testimonies given before public notary, the testimonies given before the Court, the reports of the Administrative Department of Security (DAS) and the United Nations, and paid special attention to what the judicial authorities decided in the domestic proceedings.

126. In this respect, in the judgment in first instance delivered on May 28, 1997, the Cúcuta Regional Court stated that:

One of the relevant aspects in this proceeding, motive for profound concern, relates to the clear linkages that exist between these unlawful groups and legally established law enforcement bodies, who act together and with the same criminal designs, under the pretext that they pursue a common goal: ending subversion. It is evident that some of the military leaders – against whom the usual investigations appear to have been undertaken – assisted, assessed and participated in cruel acts such as the one that is the object of this investigation. Thus, in the implementation of the criminal plan, it is significant that Lieutenant NESTOR RAUL VARGAS, who had arranged a military checkpoint, merely verified whether or not the tradesmen were carrying arms and allowed them to continue, ignoring the considerable amount of contraband merchandise he had detected, because, several kilometers further on, a group of criminals were waiting for them who would end their lives and divide up their vehicles and merchandise.

[...]

The testimonial evidence has yielded the following results: A) that a large group of tradesmen went from Cúcuta to Medellín using the “La Paz” shortcut; B) that the region was under the control of the paramilitary groups commanded by HENRY PEREZ; C) that these unlawful groups, supported by the military command, are responsible for one of the cruelest acts that has troubled our martyred country, the kidnapping and murder of the 19 tradesmen of Sanandresito.

[...]

As will be recalled, a meeting was held, attended by NELSON LESMES, MARCELIANO PANESSO, HENRY PEREZ and ALONSO DE JESÚS BAQUERO, among others, with the acquiescence of the military command, at which the final decision was taken to dispose of the group of tradesmen. (The original is not underlined)

127. During the same proceedings, when delivering the appeal judgment on April 14, 1998, the National Court also stated:

The statements of the witnesses, Robinson Gutiérrez de la Cruz, Aucares de Jesús and Jesús Anibal Betancourt Ortiz, [...] received between June and September 1988, corroborate the information provided by the next of kin of the nineteen men who disappeared, in the sense that the latter had been murdered by a self-defense group, which was then camped in the Magdalena Medio with the permission and support of the commanders of the military battalions established in the region. Indeed, from the statements given by the three witnesses, it is evident that the organization known as “ACDEGAM” began to operate in that region as of 1984, and later degenerated into a group of common bandits, which, serving the interests of drug traffickers, assisted by senior military commanders, with the pretext of combating the subversive groups in the sector, freely committed the most perfidious and cruel violations of human rights; one of these was the massacre of the nineteen individuals to whom we have been referring, committed, as the said witnesses related, by the armed group then led by GONZALO PEREZ, and his two sons HENRY and MARCELO PEREZ [...]. (The original is not underlined)

128. The San Gil Specialized Judge stated in the judgment rendered on March 23, 2001, that:

[...] HENRY was the real mastermind; he was present at the meeting at which that decision was taken, he ordered BAQUERO AGUDELO to carry it out and it was he who discussed the matter of the tradesmen directly with some members of the army, owing to the problem they were creating in the region, because they had begun to help the guerrilla. (The original is not underlined)

129. It should also be pointed out that the judgment delivered by the Criminal Chamber of the Superior Court of the San Gil Judicial District on October 19, 2001, stated that:

The confidential report issued by the DAS Intelligence Unit is part of the evidence that further corroborates the certainty that a punishable fact occurred, because it refers to the existence of the criminal group "ACDEGAM", commanded by Gonzalo Pérez and his sons Henry de Jesús Pérez and Marcelo, an armed group which counted with the approval of most of the military command operating in the Magdalena Medio region and to which were attributed genocides that occurred in the Urabá Antioqueño; the report endorses the truth of the statement made by Robinson Gutiérrez, and includes other testimonies that denounce this unlawful association. (The original is not underlined)

130. The Court has also taken into consideration that, although the appeal judgment delivered by the Military Superior Court on March 17, 1998, stated that there was no connection between the "paramilitary groups" and the members of the Army, the evidence described in this judgment indicates that retired Lieutenant Colonel Hernando Navas Rubio stated that "the Bárbula Battalion supported the paramilitary groups."

131. The report of the United Nations Special Rapporteur on summary or arbitrary executions on his visit to Colombia from October 11 to 20, 1989, states that:

[...] investigations conducted, by the Judiciary, the Attorney General's office, and the Administrative Department of Security, have shown, in a significant number of cases, the active participation of members of law enforcement bodies in the so-called paramilitary groups, and have also provided further information on their organization and sources of financing. Thus, for example, the Administrative Department of Security states that one of the groups operating in Puerto Boyacá and using the self-defense group called the Association of Peasants and Livestock Owners of the Magdalena Medio (ACDEGAM) as a front, received active collaboration from the Commander and Deputy-Commander of the Puerto Calderón Military Base, and from the Commanders of the Police of La Dorada, Caldas and Puerto Boyacá, Boyacá. The same source reports that both the Mayor of Puerto Boyacá and the Regional Prosecutor of Honda, Tolima, collaborated with this group.

[...]

The paramilitary groups are formed and financed by drug traffickers and possibly by some landowners. They act in close collaboration with elements of the armed forces and the police. Most of the murders and massacres perpetrated by the paramilitary groups occur in highly militarized regions. The paramilitary groups can move easily through these regions and commit their murders without fear of punishment. As stated in the report, in some cases the soldiers or the police pretend they do not know what the paramilitary groups are doing, or they support them by providing safe-conducts to their members or hindering investigations. For example, with regard to the La Rochela massacre, the Director of the National Criminal Investigation Department said that what caused him most concern was that the investigations he led revealed growing evidence of leniency, tolerance and support for the groups on the extreme right by members of the police and the army. (The original is not underlined)

132. In his statement made before the Court on April 21, 2004, Salomón Flórez Contreras, brother of the alleged victim, Antonio Flórez Contreras, related details of the journeys that he made looking for his brother, in which he traveled for days through the places where the alleged victims had been before they were disappeared, and indicated that "[they] reached the Bárbula Battalion [and saw] two vans, one of them with a machine-gun mounted in the back, which entered the battalion, [...] the paramilitary personnel went in;" they therefore concluded that the soldiers and the "paramilitary personnel" were "united." Similarly, the witness, Jorge Corzo Vargas, father of the alleged victim, Reinaldo Corzo Vargas, explained to the Court that, when the events occurred, he also worked transporting people in the region where the events took place, and observed that the "region [was] managed

by armed guards and the so-called paramilitary personnel," who "handled public order on that route."

133. The reports of the Administrative Department of Security (DAS) of May 10, 1988, March 15, 1989, and February 13, 1990, which form part of the body of evidence in this case, also established that there were close ties between soldiers of the Bárbula Battalion and the "paramilitary" group in the region. According to articles 310 and 312 of the Codes of Criminal Procedure of 1991 and 2000, respectively, the competences of the Administrative Department of Security (DAS) include the functions of judicial police.

134. Based on the evidence submitted in this proceeding, the Court considers that, at the time of the relevant facts in the instant case, the "paramilitary" group that disappeared the 19 tradesmen had close ties to senior officers of the law enforcement bodies of the Magdalena Medio region, and received support and collaboration from them.

135. This Court considers that it has been proved (*supra* para. 86(b)) that members of law enforcement bodies supported the "paramilitary personnel" in the acts that preceded the detention of the alleged victims and the crimes committed against them. It has been proved (*supra* para. 85(b)) that the senior military commanders and the "paramilitary personnel" believed that the first 17 alleged victims sold arms and merchandise to the guerrilla groups in the Magdalena Medio region. This alleged relationship with the guerrilla and the fact that these tradesmen were not paying the "taxes" charged by this "paramilitary" group for transiting through the region with merchandise, caused the "leaders" of the "paramilitary" group to hold a meeting, at which the decision was taken to kill the tradesmen and seize their merchandise and vehicles. It has been proved (*supra* para. 85(b)) that this meeting was held with the acquiescence of some members of the Army, since they agreed with the plan. There is even some evidence indicating that some members of the Army took part in the said meeting.

136. Another event that reveals the collaboration of the army in the violations committed against the first 17 alleged victims, is the search that was carried out on October 6, 1987, during which the lieutenant in charge merely verified whether the tradesmen were carrying arms and allowed them to continue, ignoring the considerable amount of contraband merchandise that he had detected (*supra* para. 85(d)). Further on, the first 17 alleged victims were detained by "paramilitary" personnel (*supra* para. 85(e)).

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\* \* \*

137. Now that the Court has examined the two situations that occurred in this case, regarding the creation of "self-defense" groups, which became criminal" or "paramilitary" groups, and regarding the collaboration and support that members of law enforcement bodies provided to the "paramilitary" group that exercised control in the Magdalena Medio region, as well as the latter's participation in the violations committed against the 19 tradesmen, it will refer to the way in which the facts of the case occurred.

138. It has been proved in this case (*supra* paras. 85(b), 85(d), 85(e), 85(f), 85(h) and 86(b)), that members of the said "paramilitary" or criminal group that operated

in the municipality of Puerto Boyacá, with the support and collaboration of members of law enforcement bodies, detained and murdered the 19 tradesmen in October 1987, and that, not content with this, they dismembered their bodies and threw them into the waters of the "El Ermitaño" stream, an affluent of the Magdalena River, in front of the place known as "Palo de Mango" [mango tree], so that they would disappear and not be found or identified, which is what happened.

139. The Court must decide whether these facts give rise to the State's international responsibility. This calls for a thorough examination of the conditions in which a specific act or omission that harmed one or more of the rights embodied in the American Convention can be attributed to a State party and, consequently, entail its responsibility, under the rules of international law.

140. It is a basic principle of the law on the international responsibility of the State, embodied in international human rights law, that this responsibility may arise from any act or omission of any State agent, body or power, independent of its hierarchy, which violates internationally enshrined rights.<sup>147</sup> The Court has also considered that "an illegal act that violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified), can lead to the international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention."<sup>148</sup>

141. In order to establish that a violation of the rights embodied in the Convention has occurred, it is not necessary to determine, as it is under domestic criminal law, the guilt of the perpetrators or their intention, nor is it necessary to identify individually the agents to whom the violations are attributed.<sup>149</sup> It is sufficient to demonstrate that public authorities have supported or tolerated the violation of the rights established in the Convention.<sup>150</sup>

142. In other cases of forced disappearance, the Court has stated this constitutes an unlawful act that gives rise to a multiple and continuing violation of a number of rights protected by the Convention; it is a crime against humanity. Forced disappearance also means that the obligation to organize the apparatus of the State in such a manner as to guarantee the rights recognized in the Convention has been disregarded.<sup>151</sup>

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<sup>147</sup> Cf. *Case of Juan Humberto Sánchez*. Judgment of June 7, 2003. Series C No. 99, para. 142; *the Case of "Five Pensioners"*. Judgment of February 28, 2003. Series C No. 98, para. 163; and *the Case of "Street Children" (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, para. 220.

<sup>148</sup> *Case of Caballero Delgado and Santana*. Judgment of December 8, 1995. Series C No. 22, para. 56; *Case of Godínez Cruz*. Judgment of January 20, 1989. Series C No. 5, para. 182; and *Case of Velásquez Rodríguez*. Judgment of July 29, 1988. Series C No. 4, para. 172.

<sup>149</sup> Cf. *Case of Maritza Urrutia*, *supra* note 3, para. 41; *the Case of "Street Children" (Villagrán Morales et al.)*, *supra* note 147, para. 75; *Case of the "White Van" (Paniagua Morales et al.)*. Judgment of March 8, 1998. Series C No. 37, para. 91.

<sup>150</sup> Cf. *Case of Cantos*. Judgment of November 28, 2002. Series C No. 97, para. 28; *Case of Hilaire, Constantine and Benjamín et al.* Judgment of June 21, 2002. Series C No. 94, para. 66; and *Case of Constitutional Court*. Judgment of January 31, 2001. Series C No. 71, para. 47.

<sup>151</sup> Cf. *Case of Bámaca Velásquez*. Judgment of November 25, 2000. Series C No. 70, paras. 128 and 129; *Case of Blake*. Judgment of January 24, 1998. Series C No. 36, para. 65; and *Case of Fairén Garbí and Solís Corrales*. Judgment of March 15, 1989. Series C No. 6, paras. 147 and 152.

143. In order to give a ruling on the alleged violation of the rights to personal liberty, humane treatment and life, protected by Articles 7, 5 and 4 of the Convention, the Court will examine the facts which interrelatedly refer, respectively, to the respect or non-respect for such rights. As has been proved, the facts of this case conform a series of conducts that may be included in the said rights that are embodied in the Convention. Therefore, the Court will first consider the detention of the tradesmen, which relates to the right to personal liberty embodied in Article 7 of the Convention, it will then refer to their situation during this detention and, subsequently, it will refer to respect for the alleged victims' right to life.

144. Article 7 of the American Convention establishes that:

1. Every person has the right to personal liberty and security.
2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.
3. No one shall be subject to arbitrary arrest or imprisonment.
4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.
5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.
6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies.

[...]

145. In this case, it has been proved (*supra* paras. 85(b), 85(d), 85(e) and 86(b)) that the right to personal liberty of the first 17 alleged victims was violated, because they were deprived of their liberty when they were detained unlawfully and arbitrarily by the "paramilitary" group that controlled the region, with the support of State agents, thus, preventing any possibility of the safeguards of personal liberty embodied in Article 7 of the American Convention being exercised. Also, faced with the disappearance of the tradesmen, the State authorities approached by the next of kin failed to provide the latter with any official information or support when they started searching for the former.

146. It has also been proved that the right to personal liberty of Juan Alberto Montero Fuentes and José Ferney Fernández Díaz was violated, when they went to look for the first 17 alleged victims, following the route that the latter had taken and also putting their lives in danger. "The same fate befell" Mr. Montero Fuentes and Mr. Fernández Díaz as the first 17 disappeared, because, when they tried to find out what had happened to the latter, the same "paramilitary" group that had disappeared the first 17 alleged victims with the support of State agents, also

detained Juan Alberto Montero Fuentes and José Ferney Fernández Díaz, and they were victims of the same violations as the first 17 tradesmen.

147. Second, in this narration of interrelated facts, the Court refers to the situation of the alleged victims in the hands of the "paramilitary" personnel, while they were deprived of their liberty, and this relates to the right to humane treatment established in Article 5 of the Convention.

148. Article 5 of the Convention stipulates that:

1. Every person has the right to have his physical, mental, and moral integrity respected.

2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

[...]

149. In this respect, the European Court has stated that the mere threat of behavior that is prohibited by the provisions of the European Convention (article 3), which corresponds to Article 5 of the American Convention, when it is sufficiently real or imminent, may in itself be in conflict with the respective norm. In other words: creating a threatening situation or threatening an individual with torture may, at least in some circumstances, constitute inhuman treatment.<sup>152</sup>

150. In this case, it has been proved that the right to humane treatment of the 19 tradesmen was violated, because it is reasonable to infer that the treatment the alleged victims received during the hours before their death was extremely violent, particularly if it is considered that the "paramilitary" group believed that the tradesmen collaborated with the guerrilla groups. The brutality with which the bodies of the tradesmen were treated after their execution permits us to infer that the way in which they were treated while they were alive was also extremely violent, so that they could fear and foresee that they would be deprived of their lives arbitrarily and violently, which constituted cruel, inhuman and degrading treatment.

151. Finally, the Court must refer to respect for the alleged victims' right to life in the context of their disappearance, a right protected by Article 4 of the Convention.

152. According to Article 4(1) of the Convention:

Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

153. The Court has established that the right to life plays a fundamental role in the American Convention as it is the essential for the exercise of the other rights.<sup>153</sup> When the right to life is not respected, all the other rights are meaningless. States

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<sup>152</sup> Cf. *Eur. Court. H. R., Campbell and Cosans judgment of 25 February 1982, Series A, no. 48*, p. 12, § 26; and cf. *the Case of "Street Children" (Villagrán Morales et al.)*, *supra* note 147, para. 165.

<sup>153</sup> Cf. *Case of Myrna Mack Chang*, *supra* note 3, para. 152; *Case of Juan Humberto Sánchez*, *supra* note 147, para. 110; and *the Case of "Street Children" (Villagrán Morales et al.)*, *supra* note 147, para. 144.



have the obligation to guarantee the creation of the conditions required in order to ensure that violations of this basic right do not occur and, in particular, the duty to prevent its agents from violating it.<sup>154</sup> Compliance with Article 4 of the American Convention, in relation to Article 1(1) thereof, requires not only that no person be deprived of their life arbitrarily (negative obligation), but also that States adopt all appropriate measures to protect and preserve the right to life (positive obligation),<sup>155</sup> under their obligation to ensure the full and free exercise of the rights of all those subject to their jurisdiction.<sup>156</sup> This active protection of the right to life by the State involves not only its legislators, but all State institutions and those who must safeguard security, whether they are the police forces or the armed forces.<sup>157</sup> Therefore, States must adopt all necessary measures, not only to prevent, try and punish the deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces.<sup>158</sup>

154. The practice of disappearances has frequently involved the secret execution of those detained, without trial, followed by concealment of the corpse in order to eliminate any material evidence of the crime and to ensure absolute impunity, which entails a brutal violation of the right to life, established in Article 4 of the Convention.<sup>159</sup>

155. The Court considers that, in the instant case, the right to life of the 19 tradesmen was violated, because it has been proved, in accordance with the judgments delivered in the domestic proceedings (*supra* para. 85(f) and 85(h)), that members of the "paramilitary" group that operated in Puerto Boyacá murdered the alleged victims and subsequently dismembered their bodies and threw them into the waters of the "El Ermitaño" stream, an affluent of the Magdalena River. More than 16 years have elapsed since the events occurred and the remains have not been located or identified.

156. Based on the conclusions presented in this chapter, the Court considers that, in the present case, there are sufficient grounds to conclude that Colombia is responsible for the violation of Articles 7, 5 and 4 of the American Convention, in relation to Article 1(1) thereof, to the detriment of Álvaro Lobo Pacheco, Gerson

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<sup>154</sup> Cf. United Nations Human Rights Committee, General Comment 6/1982, para. 3 in Compilation of General Recommendations Adopted by Human Rights Treaty Bodies, U.N.Doc.HRI/GEN/1/Rev 1 in 6 (1994) and *cf.* also United Nations Human Rights Committee, General Comment 14/1984, para. 1 in Compilation of General Recommendations Adopted by Human Rights Treaty Bodies, U.N.Doc.HRI/GEN/1/Rev 1 in 18 (1994); and *cf.* *Case of Myrna Mack Chang*, *supra* note 3, para. 152; *Case of Juan Humberto Sánchez*, *supra* note 147, para. 110; and *the Case of "Street Children" (Villagrán Morales et al.)*, *supra* note 147, para. 144.

<sup>155</sup> Cf. *Case of Myrna Mack Chang*, *supra* note 3, para. 153; *Case of Bulacio*, *supra* note 3, para. 111; and *Case of Juan Humberto Sánchez*, *supra* note 147, para. 110.

<sup>156</sup> Cf. *Case of Myrna Mack Chang*, *supra* note 3, para. 153; *Case of Bulacio*, *supra* note 3, para. 111; and *Case of Juan Humberto Sánchez*, *supra* note 147, para. 110.

<sup>157</sup> Cf. U.N.Doc.CCPR/C/SR.443, para. 55.

<sup>158</sup> Cf. *Case of Myrna Mack Chang*, *supra* note 3, para. 153; *Case of Juan Humberto Sánchez*, *supra* note 147, para. 110; *Case of Bámaca Velásquez*, *supra* note 151, para. 172. Also, General Comment No. 6 (Sixteenth session, 1982), para. 3, *supra* note 123; *María Fanny Suárez de Guerrero v. Colombia*. Communication No. R.11/45 (February 5, 1979), U.N. Doc. Supp. No. 40 (A/37/40) in 137 (1982), p. 137.

<sup>159</sup> Cf. *Case of Bámaca Velásquez*, *supra* note 151, para. 130; *Case of Castillo Páez*. Judgment of November 3, 1997. Series C No. 34, para. 73; and *Case of Godínez Cruz*, *supra* note 148, para. 165.

Javier Rodríguez Quintero, Israel Pundor Quintero, Ángel María Barrera Sánchez, Antonio Flórez Contreras, Víctor Manuel Ayala Sánchez, Alirio Chaparro Murillo, Álvaro Camargo, Gilberto Ortíz Sarmiento, Reinaldo Corzo Vargas, Luis Hernando Jáuregui Jaimes, Luis Domingo Sauza Suárez, Juan Alberto Montero Fuentes, José Ferney Fernández Díaz, Rubén Emilio Pineda Bedoya, Carlos Arturo Riatiga Carvajal, Juan Bautista, Alberto Gómez (whose second last name was possibly Ramírez) and Huber Pérez (whose second last name was possibly Castaño).

**VIII  
VIOLATION OF ARTICLES 8(1) AND 25  
IN RELATION TO ARTICLE 1(1)**

**(RIGHT TO A FAIR TRIAL AND JUDICIAL PROTECTION)**

*Arguments of the Commission*

157. With regard to Articles 8(1) and 25 of the Convention, in relation to Article 1(1) thereof, the Commission alleged that:

a) The judicial remedies used by the State in order to clarify the death of the alleged victims "do not comply with the standards of justice established in the American Convention." "These norms establish the obligation to provide access to justice with guarantees of competence, independence and impartiality in a reasonable period of time, and also the general obligation to provide an effective judicial recourse for the violation of fundamental rights, incorporating the principle of the effectiveness of the procedural mechanisms or instruments;"

b) On October 27, 1987, the Eighth Criminal Trial Court of Cimitarra opened the investigation into the facts of this case and, for more than seven years, it remained filed in the office of the Cúcuta Regional Prosecutor, without anyone being investigated, despite the existence of evidence about the authorship and location of the place where the alleged victims were killed and their vehicles destroyed. "The first conviction of any of the perpetrators was announced by the National Court on April 14, 1998, [...] more than 10 years after the facts had occurred." "17 years after the massacre, all the perpetrators have still not been tried;"

c) After the Human Rights Unit implicated Major Oscar de Jesús Echandía Sánchez, Sergeant Otoniel Hernández Arciniegas, Colonel Hernando Navas Rubio and General Farouk Yanine Diaz in the investigation in April and June 1996, the judge of first instance of the military criminal jurisdiction initiated a positive conflict of competence with the Human Rights Unit. The Superior Council of the Judiciary decided in favor of the military jurisdiction and, subsequently, the military judge of first instance ordered the "filing of the proceeding" in favor of the army officers who had been implicated, and the Military Superior Court confirmed this decision;

d) The serious situation of violence in the region of Colombia where the events occurred, and the difficulties and risks which the judicial officials entrusted with the investigation into the facts of this case might have faced, "do not justify omissions in complying with the basic obligation to provide justice, such as the seven-year delay in the formal opening of the

investigation into a massacre." Also, regarding the complexity of the case and the activities of the interested parties, it should be pointed out that, despite the available testimonies and evidence, the necessary measures to investigate what happened and recover the remains of the alleged victims were not taken;

e) The trial by military courts of the army officers, who were the alleged masterminds behind the murder of the 19 tradesmen, which culminated in the "filing of the proceeding," resulted in the violation of the guarantees established in Articles 8(1) and 25 of the American Convention, in relation to Article 1(1) thereof;

f) The military criminal jurisdiction does not comply with the standards of independence and impartiality called for in Article 8(1) of the Convention, owing to its nature and structure. According to the Convention, the victims of an unlawful act or their next of kin have the right to "an ordinary criminal court determining the identity of those responsible, trying them and imposing the corresponding punishments with the due guarantees." The trial before the military justice system of the army officers, who were the alleged masterminds of the massacre, which culminated in the filing of the proceeding, violated the guarantees established in Articles 8(1) and 25 of the American Convention," in relation to Article 1(1) thereof;

g) In judgment C-358 of August 5, 1997, the Constitutional Court of Colombia ruled on the competence of the military courts and stated, *inter alia*, that "the punishable act must be an excess or abuse of power that occurs in the context of an activity directly connected to functions inherent to the armed forces. The connection between the criminal act and the activity related to military service is broken when the offence is extremely serious; this is the case of offences against an individual. In those circumstances, the case must be remitted to the civil justice system." In this case, the ordinary courts considered that there was significant evidence that members of the army had masterminded the crimes; consequently, the Human Rights Unit requested the corresponding arrest warrants. The activity attributed to the members of the army cannot be considered legitimate and connected to a function inherent to the Armed Forces. The above, "added to the closeness and permissiveness of the links between the members of the army who trained and armed the "paramilitary" groups in the zone and frequently encouraged their violent activities instead of suppressing them, shows that the officers involved must be tried before the ordinary justice system;"

h) Although, the domestic proceedings in the instant case "provided much hard evidence pointing to the responsibility of members of law enforcement bodies in committing, by act or omission, serious human rights violations, the case is characterized by the impunity behind which those responsible have taken refuge." 17 years have elapsed since the disappearance of the 19 tradesmen and not one member of the law enforcement bodies has been convicted;

i) The judicial activities of the ordinary and military courts for more than a decade "does not comply with the standards established in the Convention with regard to judicial protection." The situations described constitute a violation of the State's obligation to clarify the facts, and prosecute and

punish those responsible for grave violations, in accordance with standards of a reasonable time and effective judicial protection established in Articles 8(1) and 25 of the Convention, in relation to Article 1(1) thereof;

j) "Several offences were not investigated, or an investigation was undertaken several years later; for example, the offences of theft and misuse of documents committed by some members of the military forces;" and

k) The State has not taken the necessary measures to comply with the obligation to investigate the extrajudicial execution of the alleged victims, prosecute and punish those responsible, and make reparations to their next of kin, according to the standards established in Articles 8(1) and 25 of the Convention, and it has not complied with its obligation of guarantee pursuant to Article 1(1) thereof.

### *Arguments of the State*

158. With regard to Articles 8(1) and 25 of the Convention, in relation to Article 1(1) thereof, the State declared that:

a) When the Commission filed the application before the Court, "the domestic remedies were not exhausted and, to the contrary, were in progress; consequently, it was not possible to evaluate compliance with international standards of effectiveness;"

b) "[A]ll the State's investigation and punitive bodies have been involved in the fight against impunity in this painful case:" the Attorney General's office, the Prosecutor General's office, the ordinary criminal jurisdiction, the military criminal jurisdiction, and the administrative jurisdiction;

c) The Commission considers that intelligence reports and testimonies taken out of context are conclusive evidence and disregards the significance of judgments with the effect of *res judicata*;

d) 17 administrative proceedings in the ordinary jurisdiction for direct reparations are pending before the Santander Administrative Court in Bucaramanga. The general purpose of these proceedings is for the court to declare that "the Nation-Ministry of Defense-Army is administratively responsible for all the damage[,] both pecuniary and non-pecuniary[,] resulting from the disappearance of [...]caused to the following next of kin [...]." Colombian case law recognizes the State's declaration of responsibility established in the different regimes, either for a proven fault or for an alleged or objective fault, and orders the payment of compensation to the surviving victims and to their next of kin for the non-pecuniary, pecuniary and physiological damage caused by the facts that are the object of the declared State responsibility;

e) Domestic measures of protection and judicial guarantees have been effective. Regarding the investigation and prosecution of civilians involved in the facts, the juridical status of all the civilians implicated and investigated was decided within a reasonable time, in keeping with the complexity of the matter. The legal measures, including the civil and administrative actions

"necessary to obtain the appropriate recognitions and reparations" have always been available to the next of kin of the alleged victims;

f) With regard to the prosecution of the members of the army involved in the facts by the military justice system, the State does not share the Commission's general disqualification of the military criminal jurisdiction. The Commission has not provided any evidence about the alleged violation in this specific case, but has restricted itself to considering this jurisdiction as incompetent and partial. Regarding the conflict of competence that occurred in the investigation of the facts, this conflict was decided in favor of the case being heard by the military criminal justice system, because it was shown "that those involved were soldiers in active service and that the actions that they were accused of [could only have been] carried out in compliance with or in the performance of their military functions in the region where the events took place." Today, case law and legislation have evolved to establish that some grave offences cannot be tried in the military criminal jurisdiction, but must always be heard by ordinary judges. However, "this was not the legal or case law approach at the time of the facts." The military criminal proceeding ceased with "the filing of the proceeding," because "it had been fully proved by the judge that the accused had not committed the acts with which he had been charged as perpetrator or accomplice; in other words, that they were carried out by someone else." The judge analyzed the differences between the so-called "self-defense" groups and the criminal groups, called "paramilitary" groups, and also examined the location and behavior of each of the soldiers involved. The trial judge "found the activities attributed to the soldiers, especially to General Yanine, to be lawful [...] and legitimate, because they occurred within the pertinent legal framework and in exercise of their profession, so that he considered them to be legal." The judge considered the possibility that the soldiers had masterminded the facts "and found that given their location and their functions at the time of the facts, the evidence did not permit any responsibility to be inferred;"

g) Like the judge of first instance in the military criminal proceeding, the *a quo* "considers the conducts attributed to the soldiers by the witness in light of legislation in force when the facts occurred and, particularly the probability of that the self-defense groups were created illegally, to conclude that the acts attributed to the officer did not constitute a criminal offence." The military criminal judges were characterized by their independence, autonomy and critical expertise to assess the evidence [...] in compliance with treaty standards for judicial guarantees relating to the qualities of the judge;"

h) Based on the convictions handed down, "it can be inferred that those responsible were punished. The decisions of the judicial authorities are extensive, copious in the examination of evidence, rich in arguments, and conform rigorously to the rules of healthy criticism." The testimonies given before the Court "are referential and insufficient to nullify the evidence in the files, such as the judgments that are *res judicata*, particularly those delivered by the military criminal justice system;"

i) The investigations were conducted within reasonable time, "given the complexity involved in dealing with the macro-criminality implicit in the facts;"

- j) It has not failed to comply with its obligation to respect rights embodied in the American Convention, in relating to the provisions of Article 1(1) thereof; and
- k) Colombia should not be attributed with international responsibility for the violation of Articles 8(1), 25 and 1(1) of the Convention.

*Considerations of the Court*

159. Article 8(1) of the American Convention establishes that:

Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

160. Article 25 of the American Convention establishes that:

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.
2. The States Parties undertake:
  - a) to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
  - b) to develop the possibilities of judicial remedy; and
  - c) to ensure that the competent authorities shall enforce such remedies when granted.

161. As described above (*supra* paras. 88 and 90), the Colombian courts have delivered judgments with regard to the facts of this case in ordinary criminal proceedings and in a military criminal proceeding. The Court will now examine the actions of the State in the ordinary jurisdiction and in the military criminal jurisdiction, so that its consideration of the alleged violation of Articles 8(1) and 25 of the Convention, which embody the right of access to justice will be divided into two main issues: a) the competence of the military criminal jurisdiction to hear the facts of this case; and b) the proceedings in the ordinary jurisdiction.

162. Regarding the requirement that remedies under domestic law must be exhausted that the State claims is a "matter that precedes merits," Colombia alleges that when the Inter-American Commission filed the application before the Court, the domestic remedies "were in progress" (*supra* para. 158(a)).

163. In this case, the question of the exhaustion of domestic remedies is closely related to compliance with the obligations to provide access to justice and judicial protection and, in particular, to respect for the principle of a reasonable time stipulated in Article 8(1) of the American Convention. The Court will therefore consider compliance with the requirement of the prior exhaustion of domestic remedies in subsection (b) of this chapter, which concerns the proceedings in the ordinary jurisdiction.

a) *The competence of the military criminal jurisdiction to hear the facts of the instant case*

164. First, the Court will rule on the competence of the military judges to hear the investigation of the facts of this case, in relation to the retired soldiers implicated by the investigation; consequently, it will refer to the responsibility of members of law enforcement bodies in what befell the 19 tradesmen.

165. The Court has already established that, under the democratic rule of law, the military criminal jurisdiction should have a very restricted and exceptional scope and be designed to protect special juridical interests associated with the functions assigned by law to the military forces. Hence, it should only try military personnel for committing crimes or misdemeanors that, due to their nature, harm the juridical interests of the military system.<sup>160</sup>

166. It should be indicated that the military jurisdiction is established in different legislations to maintain order and discipline within the armed forces. In the case of Colombian legislation, article 221 of the 1991 Constitution establishes that military courts will hear “[o]ffences committed by the members of law enforcement bodies on active service and with regard to this service.” This norm clearly indicates that military judges have exceptional and restricted competence to hear the conduct of members of law enforcement bodies which is directly related to the legitimate military or police task.

167. In this respect, the Court has said that “[w]hen the military courts assume jurisdiction over a matter that should be heard by the ordinary courts, the right to the natural judge is violated as is, *a fortiori*, due process”; this, in turn, is intimately linked to the right to access to justice itself.<sup>161</sup> As the Court has previously established, the judge in charge of hearing a case must be competent, independent and impartial.<sup>162</sup>

168. In this respect, in a judgment of August 5, 1997, when deciding on an appeal for a declaration of unconstitutionality, the Plenary Chamber of the Colombian Constitutional Court ruled on the military criminal jurisdiction and stated, *inter alia*, that:

[...] for an offence to fall within the competence of the military criminal justice system [...], the punishable act must arise from an abuse of power occurring in the context of an activity related directly to a function inherent to an armed body. [...] If, from the start, the agent has criminal intentions and then uses his investiture to execute the punishable act, the case corresponds to ordinary justice, including those events in which there could be a certain abstract relationship between the purposes of the law enforcement bodies and the punishable act of the author. [...]he link between the criminal act and the activity related to the service is broken when the crime is extremely serious, as in the case of crimes against humanity. In those circumstances, the case must be assigned to

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<sup>160</sup> Cf. *Case of Las Palmeras*. Judgment of December 6, 2001. Series C No. 90, para. 51; *Case of Cantoral Benavides*. Judgment of August 18, 2000. Series C No. 69, para. 113 and *Case of Durand and Ugarte*. Judgment of August 16, 2002. Series C No. 68, para. 117.

<sup>161</sup> Cf. *Case of Las Palmeras*, *supra* note 160, para. 52; *Case of Cantoral Benavides*, *supra* note 160, para. 112; and *Case of Castillo Petruzzi et al.*. Judgment of May 30, 1999. Series C No. 52, para. 128.

<sup>162</sup> Cf. *Case of Las Palmeras*, *supra* note 160, para. 53; *Case of Ivcher Bronstein*. Judgment of February 6, 2001. Series C No. 74, para. 112; and *Case of Castillo Petruzzi et al.*, *supra* note 161, para. 130.

ordinary justice, given the total contradiction between the crime and the constitutional terms of reference of law enforcement bodies.

169. In the investigation into the facts conducted by the Regional Prosecutor of the National Human Rights Unit in the ordinary criminal jurisdiction, between April and September 1996, four retired members of the army were implicated in the investigation, and this Prosecutor had significant evidence that they had masterminded the crimes. He therefore ordered their pretrial detention, without the right to release on bail, for the crimes of extortive kidnapping, aggravated homicide and aggravated theft. On October 31 that year, the judge of first instance in the military criminal jurisdiction issued a writ in which he declared himself competent to hear the criminal proceeding filed against the soldiers for the death of the 19 tradesmen and, consequently, alleged a positive conflict of jurisdiction with the Prosecutor of the National Human Rights Unit, who was in charge of the investigation in the ordinary criminal jurisdiction. The judge of first instance based his action on the grounds that the facts investigated occurred when the accused were members of the Army and that "the actions allegedly carried out by the accused were indirect manifestations of specific functions of their positions they occupied [...]." On November 26, 1996, the Disciplinary Jurisdictional Chamber of the Superior Council of the Judiciary issued an interlocutory judgment, in which it decided the positive conflict of jurisdiction in favor of the judge of first instance of the military criminal jurisdiction, on the grounds that it considered it evident that there was a "causal relationship with the military function they performed" and that "if their criminal participation in the type of crimes mentioned by the said Prosecutor is true, it relates to military activities, because, when performing their duties in the Magdalena Medio region, as stated in the judicial decisions cited, they learned about the criminal activities of unlawful groups, supported them, and concealed the criminal acts attributed to the latter [...]."

170. On June 18, 1997, the judge of first instance of the military criminal proceeding delivered judgment, declaring that the proceeding should be filed, in favor of the four accused. The Attorney General's office appealed this judgment, arguing principally that, according to the judgment of unconstitutionality delivered by the Colombian Constitutional Court on August 5, 1997, the military criminal jurisdiction did not have competence to hear cases of crimes against humanity. On March 17, 1998, the Military Superior Court delivered the appeal judgment, in which it confirmed the validity of the judgment of the Superior Council of the Judiciary of December 4, 1997, which stated that judges must abide by the ruling in a conflict of jurisdictions, unless new facts arise that modify the assignment of competence.

171. The Court will not rule on this internal dispute, because it is not an appellate court or a court for judicial review of rulings handed down by national jurisdictional bodies.<sup>163</sup>

172. Article 31(1) of the 1969 Vienna Convention on the Law of Treaties indicates that:

A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

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<sup>163</sup> Cf. *Case of Genie Lacayo*. Judgment of January 29, 1997. Series C No. 30, para. 94.



173. In this case, the right to due process must be considered in accordance with the object and purpose of the American Convention, which is the effective protection of the human being;<sup>164</sup> in other words, it should be interpreted in favor of the individual. There is no doubt that the participation of the members of the Army under investigation, by “knowing about the criminal activities of unlawful groups, [...] providing support and concealing the criminal activities” (*supra* para. 169) of the detention, disappearance and murder of the 19 tradesmen, as well as the seizure of their vehicles and merchandise, bears no direct relationship to their military tasks or duties. This Court considers that the said attribution of competence to the military criminal jurisdiction to hear the alleged crimes perpetrated against the 19 tradesman by members of the Army, who were already under investigation in the ordinary criminal jurisdiction, did not respect the parameters of the restrictive and exceptional nature that characterize the military justice system, because that jurisdiction was not competent to hear such facts, all of which violated the principle of the natural judge that forms part of the right to due process and the right of access to justice, embodied in Articles 8(1) and 25 of the American Convention.

174. The trial of the soldiers implicated in the investigation of the crimes committed against the 19 tradesmen by military criminal judges who lacked competence, culminating in the filing of the proceeding in favor of the former, entailed a violation of the principle of the natural judge and, consequently, the right to due process and access to justice, and also signified that law enforcement personnel who took part in the facts were not investigated and punished by competent courts (*infra para. 263*).

175. On repeated opportunities, the Court has declared that the State has the obligation to avoid and combat impunity, which the Court has defined as “the absence of any investigation, pursuit, capture, prosecution and conviction of those responsible for the violations of rights protected by the American Convention.”<sup>165</sup> In this respect, the Court has cautioned that:

[...] the State has the obligation to combat that situation with all available legal means, because impunity leads to the chronic repetition of human rights violations and to the total defenselessness of the victims and their next of kin.<sup>166</sup>

176. The Court has pointed out that, only if all circumstances of the violation involved are clarified, can it be considered that the State has provided the victims and their next of kin with an effective remedy and complied with its general obligation to investigate and punish, allowing the victim’s next of kin to know the truth, not only about the whereabouts of his remains, but also about what happened to the victim.<sup>167</sup>

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<sup>164</sup> Cf. *Case of Baena Ricardo et al.. Competence*. Judgment of November 28, 2003. Series C No. 104, paras. 94, 98, 99 and 100; *Case of Cantos. Preliminary Objections*. Judgment of September 7, 2001. Series C No. 85, para. 37; and *Case of Constantine et al. Preliminary Objections*. Judgment of September 1, 2001. Series C No. 82, paras. 75 and 86.

<sup>165</sup> *Case of Maritza Urrutia*, *supra* note 3, para. 126; *Case of Bulacio*, *supra* note 3, para. 120; and *Case of Juan Humberto Sánchez*, *supra* note 147, para. 143.

<sup>166</sup> *Case of Maritza Urrutia*, *supra* note 3, para. 126; *Case of Bulacio*, *supra* note 3, para. 120; and *Case of Juan Humberto Sánchez*, *supra* note 147, para. 143.

<sup>167</sup> Cf. *Case of Trujillo Oroza. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of February 27, 2002. Series C No. 92, para. 109; *Case of Bámaca Velásquez. Reparations* (Art.

177. Therefore, the Court concludes that the State violated Articles 8(1) and 25 of the American Convention, in relation to Article 1(1) thereof, to the detriment of Álvaro Lobo Pacheco, Gerson Javier Rodríguez Quintero, Israel Pundor Quintero, Ángel María Barrera Sánchez, Antonio Flórez Contreras, Víctor Manuel Ayala Sánchez, Alirio Chaparro Murillo, Álvaro Camargo, Gilberto Ortíz Sarmiento, Reinaldo Corzo Vargas, Luis Hernando Jáuregui Jaimes, Luis Domingo Sauza Suárez, Juan Alberto Montero Fuentes, José Ferney Fernández Díaz, Rubén Emilio Pineda Bedoya, Carlos Arturo Riatiga Carvajal, Juan Bautista, Alberto Gómez (whose second last name is possibly Ramírez) and Huber Pérez (whose second last name is possibly Castaño) and their next of kin.

b) *Proceedings in the ordinary jurisdiction*

178. It has been established that actions were processed before the criminal courts in the ordinary jurisdiction (*supra* paras. 88, 89 and 90) and that no investigation was opened against members of law enforcement bodies in the disciplinary jurisdiction, even though the Human Rights Council of the Presidency of the Republic requested the Delegate Prosecutor for the Defense of Human Rights to study the possibility of reopening the disciplinary investigation (*supra* para. 92).

179. Also, the State advised that several applications for direct reparation filed by next of kin of 14 of the victims in 1997 and 1998 are being processed before the Santander Administrative Court against the State, the Ministry of National Defense, and the National Army. However, according to the abovementioned certification presented by Colombia, in these proceedings, no judgment has been delivered and no order issued requesting final arguments (*supra* para. 91). In this respect, the Court notes that about seven years have elapsed since the applications were filed and, at the date of this judgment, they have not been decided by this Administrative Court.

180. With regard to the criminal actions in the ordinary jurisdiction, the Court will consider the alleged violation of Articles 8(1) and 25 from two perspectives; respect for the principle of reasonable time and the effectiveness of the proceedings.

181. The Court recalls that the purpose of international human rights law is to provide the individual with the means to protect internationally recognized human rights before the State (its bodies, agents and all those who act in its name), and that it is a basic principle of the law of the international responsibility of the State, embodied in international human rights law, that all States are internationally responsible for any and every act or omission of any of their powers or bodies that violates internationally enshrined rights.<sup>168</sup> In the international jurisdiction, the parties and the matter in dispute are, by definition, different from those in the domestic jurisdiction.<sup>169</sup> As it has on other occasions,<sup>170</sup> in this case, the Court has

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63(1) American Convention on Human Rights). Judgment of February 22, 2002. Series C No. 91, para. 75; and *Case of Caballero Delgado and Santana*, *supra* note 148, para. 58.

<sup>168</sup> Cf. *Case of Juan Humberto Sánchez*, *supra* note 147, para. 142; *the Case of "Five Pensioners"*, *supra* note 147, para. 163; and *The Case of the Mayagna (Sumo) Awas Tingni Community*, *supra* note 13, para. 154.

<sup>169</sup> Cf. *Case of Cesti Hurtado. Preliminary Objections*. Judgment of January 26, 1999. Series C No. 49, para. 47.

attributions, not to investigate and punish the individual conduct of the State agents who took part in the violations, but to establish the State's international responsibility as a result of the violation of the rights embodied in Articles 8(1) and 25 of the American Convention. In this case, the substantial aspect of the dispute before the Court is not whether, in the domestic domain, convictions were handed down for the violations committed against the 19 tradesmen, but whether the domestic proceedings guaranteed access to justice in accordance with the standards established in the American Convention.

182. In similar cases, this Court has stated that "[i]n order to clarify whether the State has violated its international obligations, owing to the acts of its judicial organs, the Court may have to examine the respective domestic proceedings."<sup>171</sup>

183. The active protection of the right to life and of the other rights embodied in the American Convention is contained in the State obligation to ensure the free and full exercise of the rights of all those subject to its jurisdiction and requires that the State must adopt the necessary measures to punish the deprivation of life and other human rights violations, and also to prevent its own security forces or third parties acting with their acquiescence violating any of those rights.<sup>172</sup>

184. This Court has stated repeatedly that the obligation to investigate must be carried out "in a serious manner and not as a mere formality preordained to be ineffective"<sup>173</sup> The investigation conducted by the State to comply with this obligation "[m]ust be objective and assumed by the [State] as an essential legal obligation, not as a measure taken by private interests that depends upon the procedural initiative of the victim or his next of kin or upon evidence provided privately, without an effective search for the truth by public authorities."<sup>174</sup>

185. The Court has declared that "Article 8(1) of the Convention should be interpreted broadly so that this interpretation is supported by both the literal text of this provision and its spirit."<sup>175</sup> Interpreted in this way, the said text:

Includes also the right of the next of kin of the victim to a fair trial, because "*any act of forced disappearance places the victim outside the protection of the law and causes*

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<sup>170</sup> Cf. *The Case of "Street Children" (Villagrán Morales et al.)*, supra note 147, para. 223; and *Case of Castillo Petrucci et al.*, supra note 161, para. 90.

<sup>171</sup> Cf. *Case of Myrna Mack Chang*, supra note 3, para. 200; *Case of Juan Humberto Sánchez*, supra note 147; and *Case of Bámaca Velásquez*, supra note 151, para. 188.

<sup>172</sup> Cf. *Case of Myrna Mack Chang*, supra note 3, para. 153; *Case of Bulacio*, supra note 3, para. 111; and *Case of Juan Humberto Sánchez*, supra note 147, para. 110. Similarly, General Comment No. 6 (Sixteenth session, 1982), para. 3, supra note 123; *María Fanny Suárez de Guerrero v. Colombia*. Communication No. R.11/45 (February 5, 1979), U.N.Doc. Supp. No. 40 (A/37/40) in 137 (1982), p. 137.

<sup>173</sup> Cf. *Case of Bulacio*, supra note 3, para. 112; *Case of Juan Humberto Sánchez*, supra note 147, para. 144; and *Case of Bámaca Velásquez*, supra note 151, para. 212.

<sup>174</sup> Cf. *Case of Bulacio*, supra note 3, para. 112; *Case of Juan Humberto Sánchez*, supra note 147, para. 144; and *Case of Bámaca Velásquez*, supra note 151, para. 212.

<sup>175</sup> *Case of Las Palmeras*, supra note 160, para. 58; *Case of Durand and Ugarte*, supra note 160, para. 128; and *Case of Blake*, supra note 151, para. 96.

*grave suffering to both the him and his family"* (United Nations Declaration on the Protection of All Persons against Enforced Disappearance, article 1(2)).<sup>176</sup>

186. This Court has also stated that:

From Article 8 of the Convention it is evident that the victims of human rights violations, or their next of kin should have substantial possibilities of being heard and acting in the respective proceedings, in order to clarify the facts and punish those responsible, and to seek due reparation.<sup>177</sup>

187. Consequently, Article 8(1) of the American Convention, together with Article 25(1) thereof, confers on the next of kin of the victims the right that the death of the latter will be investigated effectively by the State authorities; that proceedings will be filed against those responsible for these unlawful acts; and, if applicable, the pertinent punishments will be imposed, and the losses that the said next of kin have suffered will be repaired.<sup>178</sup>

188. The right to access to justice is not exhausted by the processing of domestic proceedings, but it also ensures the right of the victim or his next of kin to learn the truth about what happened, and for those responsible to be punished, in a reasonable time.<sup>179</sup>

189. To consider whether the State respected the principle of reasonable time in the domestic proceedings to investigate what happened to the 19 alleged victims, it is necessary to point out that the proceedings end when a final and firm judgment is delivered on the matter and that, particularly in criminal matters, the reasonable time must cover the whole proceeding, including any appeals that may be filed.<sup>180</sup>

190. With regard to the principle of reasonable time established in Article 8(1) of the American Convention, this Court has established that three elements should be taken into account in determining whether the time in which the proceeding was conducted was reasonable: a) the complexity of the case; b) the procedural activity of the interested part, and c) the conduct of the judicial authorities.<sup>181</sup>

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<sup>176</sup> *Case of Durand and Ugarte, supra* note 160, para. 128; and *Case of Blake, supra* note 151, para. 97.

<sup>177</sup> *Case of Las Palmeras, supra* note 160, para. 59; *Case of Durand and Ugarte, supra* note 160, para. 129; and *the Case of "Street Children" (Villagrán Morales et al.), supra* note 147, para. 227.

<sup>178</sup> *Cf. Case of Las Palmeras, supra* note 160; and *Case of Durand and Ugarte, supra* note 160, para. 130.

<sup>179</sup> *Cf. Case of Myrna Mack Chang, supra* note 3, para. 209; *Case of Bulacio, supra* note 3, para. 114; and *Case of Hilaire, Constantine and Benjamin et al., supra* note 150, paras. 142 to 145.

<sup>180</sup> *Cf. Case of Juan Humberto Sánchez, supra* note 147, para. 120; *Case of Hilaire, Constantine and Benjamin et al., supra* note 150; and *Case of Suárez Rosero*. Judgment of November 12, 1997. Series C No. 35, para. 71.

<sup>181</sup> *Cf. Case of Hilaire, Constantine and Benjamin et al., supra* note 150, para. 143; *Case of Suárez Rosero, supra* note 180, para. 72; and *Case of Genie Lacayo, supra* note 163, para. 77. Similarly, *Cf. European Court of Human Rights, Motta v. Italy*. Judgment of February 19, 1991, Series A No. 195-A, para. 30; *European Court of Human Rights, Ruiz-Mateos v. Spain*. Judgment of June 23, 1993, Series A No. 262, para. 30.

191. The Court considers that a prolonged delay may, in some cases, constitute a violation of the right to a fair trial.<sup>182</sup> The State must explain and prove why it has required more time that would be reasonable, in principle, to deliver final judgment in a specific case, according to the said criteria.

192. With regard to the effectiveness of the remedies, it should be noted that the Court has emphasized that:

[...] the formal existence of remedies is not sufficient; these must be effective, in other words, they must provide results or responses to the violations of rights included in the Convention. [...] those remedies that, owing to the general conditions of the country or even the particular circumstances of a case, are illusory cannot be considered effective. This may occur, for example, when there uselessness has been shown in practice, because the jurisdictional body lacks the necessary independence to decide impartially or because the means to execute its decisions are lacking; or owing to any other situation that establishes a situation of denial of justice, as happens when there is unjustified delay in the decision.<sup>183</sup>

193. The Court has repeated that it is not enough to establish the existence of remedies,<sup>184</sup> if these are not effective to combat the violation of the rights protected by the Convention. The guarantee of an effective remedy "constitutes one of the basic pillars, not only of the American Convention, but also of the rule of law in a democratic society in the meaning of the Convention."<sup>185</sup> This guarantee to protect the rights of the individual includes not only the direct safeguard of vulnerable people but, also, the next of kin, who, owing to the specific circumstances and events of the case, are those who file the claim in the domestic order.<sup>186</sup>

194. Also, the Court has said that Article 25(1) of the Convention incorporates the principle of the effectiveness of the procedural protection mechanisms or instruments designed to ensure those rights. As the Court has already stated, according to the Convention:

States Parties have an obligation to provide effective judicial remedies to the victims of human rights violations (Art. 25), remedies that must be substantiated in accordance with the rules of due process of law (Art. 8(1)), all in keeping with the general obligation of such States to guarantee the free and full exercise of the rights recognized by the Convention to all persons subject to their jurisdiction.<sup>187</sup>

195. The Court has confirmed that, although the Eighth Criminal Trial Judge of Cimitarra, Santander, ordered the opening of the preliminary investigation on

<sup>182</sup> Cf. *Case of Hilaire, Constantine and Benjamin et al.*, *supra* note 150, para. 145.

<sup>183</sup> Cf. *Case of Baena Ricardo et al. Competence*, *supra* note 164, para. 77; *the Case of "Five Pensioners"*, *supra* note 147, para. 126; and *Case of Las Palmeras*, *supra* note 160, para. 58.

<sup>184</sup> Cf. *Case of Hilaire, Constantine and Benjamin et al.*, *supra* note 150, para. 150; *the case of the Mayagna (Sumo) Awas Tingni Community*, *supra* note 13, para. 114; and *the Case of Constitutional Court*, *supra* note 150, para. 90.

<sup>185</sup> Cf. *Case of Juan Humberto Sánchez*, *supra* note 147, para. 121; *Case of Cantos*, *supra* note 150, para. 52; and *Case of Hilaire, Constantine and Benjamin et al.*, *supra* note 150, para. 150.

<sup>186</sup> Cf. *Case of Juan Humberto Sánchez*, *supra* note 147, paras. 132 and 136; *Case of Las Palmeras*, *supra* note 160, para. 61; and *Case of Bámaca Velásquez*, *supra* note 151, paras. 195 and 196.

<sup>187</sup> Cf. *Case of Las Palmeras*, *supra* note 160, para. 60; *Case of Godínez Cruz, Preliminary Objections*. Judgment of June 26, 1987. Series C No. 3, para. 93; and *Case of Fairén Garbí and Solís Corrales, Preliminary Objections*. Judgment of June 26, 1987. Series C No. 2, para. 90.

October 27, 1987, it was not until February 10, 1995, that the Cúcuta Regional Prosecutor (North Santander Department) ordered the opening of the investigation and implicated four civilians for the crimes of kidnapping and murder; in other words, no one was implicated in the criminal investigation for more than seven years.

196. With regard to the duration of the preliminary investigation in the domestic criminal proceedings before the Cúcuta Regional Court, the National Court, when hearing an appeal on that court's decision of May 28, 1997, stated in its judgment of April 14, 1998, that:

Although the above was established irrefutably in the preliminary inquiry only one year after the facts, the inquiry continued without giving rise to the necessary opening of the investigation and consequent order to implicate, at least, the principal masterminds and perpetrators of the horrendous massacre, and this stage was prolonged unjustifiably for slightly more than seven years. During this period the violent deaths of GONZALO PEREZ, HENRY DE JESÚS PEREZ and MARCELO PEREZ DURAN occurred – between July and September 1991 – and, only after receiving the statement of the witness, “Clave Pablo” on September 1, 1994, which not only corroborated the events related in previous paragraphs, but also disclosed the participation of senior military leaders in the execrable facts and of other persons such as NELSON LESMES LEGUIZAMON, WILSON DE JESÚS PEREZ DURAN, CARLOS ALBERTO YEPES LONDOÑO and MARCELIANO PANESSO OCAMPO, was the investigation finally opened on February 10, 1995. (The original is not underlined).

197. Also, the National Tribunal pointed out that “the next of kin of the nineteen disappeared” provided information to the said preliminary inquiry, “that they had been murdered by a self-defense group that, at that time, was camping in the Magdalena Medio with the support and tolerance of the commanders of military battalions established in that region,” and that this information was corroborated “by the statements of the witnesses, Robinson Gutiérrez de la Cruz, Aucares de Jesús and Jesús Anibal Betancourt Ortiz [...], received between June and September, 1988.”

198. This ordinary criminal proceeding before the Cúcuta Regional Court began on October 27, 1987, and ended on April 25, 2002, when the Criminal Chamber of the Supreme Court of Justice decided not to annul the appeal judgment, and the conviction was upheld. In other words, this first proceeding in the ordinary criminal jurisdiction lasted for more than fourteen years.

199. The Court must now refer to the issue of the requirement that remedies under domestic law must be exhausted raised by the State (*supra* para. 158(a)). Article 46 of the Convention stipulates that:

1. Admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the following requirements:

a. that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law;

[...]

2. The provisions of paragraphs 1.a and 1.b of this article shall not be applicable when:

[...]

- c. there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

200. In this case, on the date on which the petition was submitted to the Inter-American Commission, March 6, 1996, more than eight years had elapsed since the disappearance of the 19 tradesmen, and the domestic courts had not delivered any judgment regarding the investigation into the facts of the case. The Court considers that, according to the foregoing conclusions in this case, there are grounds for making an exception to the requirement that remedies under domestic law must be exhausted, indicated in Article 46(2)(c) of the Convention.

201. In the ordinary criminal jurisdiction there were also two other proceedings, which were started nine years after the disappearance of the 19 tradesmen:

a) In 1996, the Regional Prosecutor of the Human Rights Unit ordered a criminal investigation to be initiated against five civilians for the crimes of extortive kidnapping, aggravated homicide and qualified robbery. On May 25, 1999, the Regional Prosecutor of the National Human Rights Unit issued a substantiation resolution, ordering the investigation to be closed. However, it was more than two years later, on March 23, 2001, when the Criminal Judge of the San Gil Specialized Circuit (Santander Department) delivered the judgment of first instance convicting four of those implicated by the investigation. On October 19, 2001, the Criminal Chamber of the Superior Court of the San Gil Judicial District (Santander Department) delivered judgment on the appeal, absolving one of the accused. Subsequently, on March 11, 2003, the Criminal Chamber of the Supreme Court of Justice decided not to admit the application for annulment filed against the judgment in second instance. This proceeding in the ordinary criminal jurisdiction lasted around six years; and

b) In 1995, the Cúcuta Regional Prosecutor implicated one civilian in the investigation and, four years later, on October 7, 1999, the Criminal Court of the San Gil Specialized Circuit delivered an early judgment convicting him for the crime of extortive kidnapping. This proceeding lasted around four years.

202. In summary, the results of the abovementioned criminal proceedings in the ordinary jurisdiction were as follows:

i) Regarding what happened to the first 17 alleged victims, two civilians were convicted as perpetrators of the crime of the aggravated homicide of the 17 tradesmen to 30 years' imprisonment and to prohibition to exercise public functions and rights for 10 years (*supra* para. 88(f), 88(h) and 88(m)). Also, another civilian was convicted as a perpetrator of this crime (*supra* para. 88(f) and 88(h)); however, the latter died while the decision on an appeal for annulment was pending, so the Criminal Cassation Chamber of the Supreme Court of Justice declared that the criminal action had extinguished, owing to the death of the accused (*supra* para. 88(i));

ii) Regarding what happened to the first 17 alleged victims, two civilians were convicted as accomplices to the crime of aggravated homicide to 23 years' imprisonment and to prohibition to exercise public functions and rights for 10 years (*supra* para. 88(f), 88(h), 88(j) and 88(m));

iii) Regarding what happened to the first 17 alleged victims, one civilian was convicted in an early judgment for the crime of extortive kidnapping to 10 years' imprisonment and to prohibition to exercise public functions and rights for 10 years (*supra* para. 88(k)); and

iv) Regarding what happened to Juan Alberto Montero Fuentes and José Ferney Fernández Díaz, one civilian was convicted in an early judgment for the crime of extortive kidnapping to 10 years' imprisonment and to prohibition to exercise public functions and rights for 10 years (*supra* para. 88(k)). Also, when delivering judgment in second instance, the National Court absolved three of those accused of the crimes of the murder and extortive kidnapping of Juan Alberto Montero Fuentes and José Ferney Fernández Díaz (*supra* para. 88(h)) and, in this regard, stated that "although it is considered that the murder of Juan Montero and Ferney Fernández by the same unlawful group has also been proved, the body of evidence provided does not permit determining or identifying specifically who acted as masterminds, perpetrators or accomplices." The Criminal Court of the San Gil Specialized Circuit absolved another three persons from the crimes of the murder and extortive kidnapping of Juan Alberto Montero Fuentes and José Ferney Fernández Díaz (*supra* para. 88(m)) and, in this respect, concluded that "there was no proof [...] that [would] permit identifying who were the perpetrators" of the murder of Juan Montero and Ferney Fernández; however, it stated that "the same group [headed by Gonzálo, Henry and Marcelo Pérez] can be held responsible."

203. When considering the criteria that should be taken into account to determine whether a proceeding has been conducted in a reasonable time (*supra* para. 190), the Court has confirmed that, although this was a complex case, from the onset of the investigation, important pieces of evidence were provided to the proceeding, which would have permitted the judicial authorities to act more diligently and more promptly regarding the opening of the investigation, the determination of the whereabouts of the remains of the 19 tradesmen, and the punishment of those responsible. The Court considers that the proceedings in the ordinary criminal jurisdiction before the Cúcuta Regional Court disregarded the principle of reasonable time embodied in the American Convention.

204. Based on the above, it can be said that, a global analysis of the measures taken to investigate the facts that caused the violations, and to identify and punish those responsible, shows that the State did not respect the principle of reasonable time embodied in the American Convention. The Court also considers that those measures have not been effective as regards the search for the remains of the 19 tradesmen, which has caused and continues to cause intense suffering to their next of kin.

205. Therefore, the Court declares that the State violated Articles 8(1) and 25 of the Convention, in relation to Article 1(1) thereof, to the detriment of Álvaro Lobo Pacheco, Gerson Javier Rodríguez Quintero, Israel Pundor Quintero, Ángel María Barrera Sánchez, Antonio Flórez Contreras, Víctor Manuel Ayala Sánchez, Alirio Chaparro Murillo, Álvaro Camargo, Gilberto Ortíz Sarmiento, Reinaldo Corzo Vargas, Luis Hernando Jáuregui Jaimes, Luis Domingo Sauza Suárez, Juan Alberto Montero Fuentes, José Ferney Fernández Díaz, Rubén Emilio Pineda Bedoya, Carlos Arturo Riatiga Carvajal, Juan Bautista, Alberto Gómez (whose second last name was



possibly Ramírez) and Huber Pérez (whose second last name was possibly Castaño), and of their next of kin.

206. In the case of Alexander Fernández Piraneque and Lina Noralba Navarro Flórez, who the Commission includes in the list of beneficiaries, as nephew of the victim, José Ferney Fernández Díaz, and niece of the victim, Antonio Flórez Contreras, respectively, the Court considers that these next of kin are not victims of the violations of Articles 8(1) and 25 of the Convention, in relation to Article 1(1) thereof, and may not claim reparation, because it has not been proved that they had close ties to the victims.

**IX  
VIOLATION OF ARTICLE 5  
IN RELATION TO ARTICLE 1(1)  
REGARDING THE NEXT OF KIN**

**(RIGHT TO PERSONAL INTEGRITY)**

*Arguments of the Commission*

207. Regarding the violation of Article 5 of the Convention to the detriment of the next of kin of the 19 tradesmen, the Commission argues that, to determine the violation of the mental and moral integrity of the next of kin of the alleged victims, the circumstances in which the violation of the right to life occurred must be taken into consideration, "and also the impunity and brutality used to dispose of the bodies of the victims," facts that caused great pain and anguish to their next of kin, who will probably never recover the remains of their loved ones, or bury and honor them. Also, the State authorities were indifferent to what happened to the alleged victims, because they failed to take part in the search. These elements represent cruel and inhuman treatment to the detriment of the mental and moral integrity of the next of kin of the alleged victims, in the terms of Article 5 of the American Convention.

*Arguments of the State*

208. With regard to the violation of Article 5 of the Convention to the detriment of the next of kin of the alleged victims, the State declared that:

- a) The pending administrative proceedings "will determine whether this violation occurred as is inferred from and established by the obligations and responsibilities of the Colombian State to provide compensation." Also, it has not been proved that the next of kin of the alleged victims required help to look for them; what has been proved is that when some of them went to search for their next of kin, they also became victims of criminal acts;
- b) "The result of the evidence gathered in the domestic proceedings, [...] and the existence of several criminal judgments allow us to conclude that the Colombian State has not violated, directly or indirectly," Article 5 of the Convention; and
- c) It is not responsible for the alleged violation, "taking into account the rulings on non-pecuniary and pecuniary damage made by the judges for criminal affairs in the domestic jurisdiction, where responsibility and the amount of the compensation were established [...]."

*Considerations of the Court*

209. Article 5 of the American Convention establishes that:

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

[...]

210. On many occasions, the Court has considered that the right to mental and moral integrity of the direct victims' next of kin has been violated, owing to the additional suffering they have endured as a consequence of the circumstances arising from the violations perpetrated against the direct victims, and owing to the subsequent acts or omissions of the State authorities in dealing with the facts; for example, with regard to the search for the victims or their remains, and also with regard to how the latter have been treated.<sup>188</sup>

211. In this case, it has been shown that, as a direct consequence of the disappearance of the 19 tradesmen, their next of kin have suffered profound grief and anguish, to the detriment of their mental and moral integrity, resulting from all the circumstances subsequent to this disappearance that are described below.

212. The bodies of the victims were dismembered and thrown into a river, in order to make them disappear, so that they could not be found and identified, which is what happened (*supra* para. 85(f), 85(h) and 85(l)). This situation has caused the victims' next of kin great suffering and uncertainty because they do not know their whereabouts and are unable to honor their remains, according to their beliefs and customs.

213. The testimonies of the victims' next of kin have shown that, in the instant case, the State authorities failed to provide support for the initial search for the victims, which meant that their next of kin had to form "search parties" and put their lives in danger by traveling through the same regions that the first 17 tradesmen had passed through, where they were threatened by "paramilitary" groups to make them desist from seeking their next of kin. In this respect, it should be emphasized that when Juan Alberto Montero Fuentes and José Ferney Fernández Díaz went to look for the victims who were disappeared on October 6, 1987, "the same happened to them" as to the first 17 disappeared; namely, they were disappeared, which made it clear that any next of kin who went to look for the disappeared ran an imminent risk of death. These circumstances caused the victims' next of kin to feel utter impotence, insecurity and anguish, because the days passed and the authorities did not conduct a genuine search for those who had been disappeared; they had no news of their next of kin and, at the same time, they could not travel to the region where the events had taken place to look for them because they could be killed.

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<sup>188</sup> Cf. *Case of Juan Humberto Sánchez*, *supra* note 147, para. 101; *Case of Bámaca Velásquez*, *supra* note 151, para. 160; and *Case of Blake*, *supra* note 151, para. 114.

214. In this respect, it should be emphasized that, even after such horrendous facts, it has been proved that the next of kin of Antonio Flórez Contreras continued taking measures to find him. To that end, his permanent companion became a member of the Association of Next of Kin of Detained and Disappeared Persons (ASFADDES), and, for this motive, her family was threatened and suffered several attacks, owing to which they had to move several times, until they were obliged to go into exile (*supra* paras. 71(c) and 72(d)).

215. The consequences of the delay in the investigation and punishment of the civilians who took part in the violations also caused great uncertainty in the next of kin of the 19 tradesmen, because the first criminal judgment was delivered on May 28, 1997, almost ten years after the disappearances. During this long period, the next of kin of the victims heard several versions of what had occurred, some of them from the media.

216. Finally, for more than 16 years, the next of kin of the victims have felt impotent because military courts without jurisdiction conducted the investigation and prosecution of the law enforcement personnel, in relation to the violations against the 19 tradesmen; and the participation of States agents in the violations against the 19 tradesmen remained unpunished.

217. In view of the above, the Court concludes that the next of kin of Álvaro Lobo Pacheco, Gerson Javier Rodríguez Quintero, Israel Pundor Quintero, Ángel María Barrera Sánchez, Antonio Flórez Contreras, Víctor Manuel Ayala Sánchez, Alirio Chaparro Murillo, Álvaro Camargo, Gilberto Ortíz Sarmiento, Reinaldo Corzo Vargas, Luis Hernando Jáuregui Jaimes, Luis Domingo Sauza Suárez, Juan Alberto Montero Fuentes, José Ferney Fernández Díaz, Rubén Emilio Pineda Bedoya, Carlos Arturo Riatiga Carvajal, Juan Bautista, Alberto Gómez (whose second last name was possibly Ramírez) and Huber Pérez (whose second last name was possibly Castaño) have been victims of cruel, inhuman and degrading treatment, which constitutes a violation, by the State, of Article 5 of the American Convention, in relation to Article 1(1) thereof.

218. In the case of Alexander Fernández Piraneque and Lina Noralba Navarro Flórez, who the Commission includes in the list of beneficiaries, as nephew of the victim, José Ferney Fernández Díaz, and niece of the victim, Antonio Flórez Contreras, respectively, the Court considers that these next of kin are not victims of the violations of Article 5 of the Convention, in relation to Article 1(1) thereof, and may not claim reparation, because it has not been proved that they had close ties to the victims.

## **X REPARATIONS APPLICATION OF ARTICLE 63(1)**

### *Obligation to repair*

219. As stated in the preceding chapters, the Court has found the State responsible for the violation of Articles 7 and 4 of the American Convention to the detriment of the 19 tradesmen and of Articles 5, 8(1) and 25 thereof, to the detriment of the 19 tradesmen and their next of kin, all in relation to Article 1(1) thereof. In its consistent case law, the Court has established that it is a principle of international law that any violation of an international obligation that has caused

damage gives rise to the obligation to remedy it adequately.<sup>189</sup> To this end, the Court has based itself on Article 63(1) of the American Convention, according to which:

If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

220. As the Court has indicated, Article 63(1) of the American Convention contains a norm of customary law that is one of the fundamental principles of contemporary international law on State responsibility. When an unlawful act occurs, which can be attributed to a State, this gives rise immediately to its international responsibility for violating the international norm, with the consequent obligation to cause the consequences of the violation cease and to repair the damage caused.<sup>190</sup>

221. Whenever possible, reparation of the damage caused by the violation of an international obligation requires full restitution (*restitutio in integrum*), which consists in the re-establishment of the previous situation. If this is not possible, as in the instant case, the international Court must determine a series of measures to ensure that, in addition to guaranteeing respect for the violated rights, the consequences of the violations are remedied and compensation is paid for the damage caused.<sup>191</sup> The responsible State may not invoke provisions of domestic law to modify or fail to comply with its obligation to provide reparation, all aspects of which (scope, nature, methods and determination of the beneficiaries) are regulated by international law.<sup>192</sup>

222. It has to be taken into consideration that, in many cases of human rights violations such as the instant case, *restitutio in integrum* is not possible; therefore, bearing mind the nature of the juridical right affected, reparation is made, *inter alia*, according to international case law, by means of fair indemnity or pecuniary compensation. It is also necessary to add any positive measures that the State must adopt to ensure that the harmful acts, such as those that occurred in this case, are not repeated.<sup>193</sup>

223. As the term implies, reparations are measures intended to erase the effects of the violations committed. Their nature and amount depend on the damage caused at both the pecuniary and the non-pecuniary levels. Reparations are not meant to

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<sup>189</sup> Cf. *Case of Maritza Urrutia*, *supra* note 3, para. 141; *Case of Myrna Mack Chang*, *supra* note 3, para. 234; and *Case of Bulacio*, *supra* note 3, para. 70.

<sup>190</sup> Cf. *Case of Baena Ricardo et al.. Competence*, *supra* note 164, para. 65; *Case of Maritza Urrutia*, *supra* note 3, para. 142; and *Case of Myrna Mack Chang*, *supra* note 3, para. 235.

<sup>191</sup> Cf. *Case of Maritza Urrutia*, *supra* note 3, para. 143; *Case of Myrna Mack Chang*, *supra* note 3, para. 236; and *Case of Bulacio*, *supra* note 3, para. 72.

<sup>192</sup> Cf. *Case of Maritza Urrutia*, *supra* note 3, para. 143; *Case of Myrna Mack Chang*, *supra* note 3, para. 236; and *Case of Bulacio*, *supra* note 3, para. 72.

<sup>193</sup> Cf. *Case of Maritza Urrutia*, *supra* note 3, para. 144; *Case of Bulacio*, *supra* note 3, para. 73 and *Case of Juan Humberto Sánchez*, *supra* note 147, para. 150.

enrich or impoverish the victim or his next of kin.<sup>194</sup> In this respect, the reparations established should be in relation to the violations that have previously been declared.

224. In accordance with the evidence gathered during the proceedings and in light of the foregoing criteria, the Court proceeds to consider the claims presented by the Commission concerning reparations, in order to determine, first, who the beneficiaries of the reparations are, and then establish the measures of reparation to repair pecuniary and non-pecuniary damage, other forms of reparation and, finally, costs and expenses.

#### A) BENEFICIARIES

##### *Arguments of the Commission*

225. In this respect, the Commission alleged that:

a) The beneficiaries of the reparations are the 19 direct victims, and also their next of kin; the latter, first, as successors of the victims and, second, as victims of the violation of rights embodied in Articles 5, 8(1) and 25 of the Convention, in relation to Article 1(1) thereof. In this respect, the Commission indicated the names and relationships of the next of kin of 16 of the tradesmen, who it considers have a right to reparation;

b) With regard to the tradesmen Huber Pérez, Juan Bautista and Alberto Gómez, it stated that “[i]t did not have any information to indicate who might be the next of kin of [the said victims], who might have a right to reparation in this case,” and it declared that it is the duty of the State to locate, identify and make reparation to the next of kin of these three victims “as established by the Court;” and

c) The Commission stated that “the State has not contested either the content or the authenticity [of the list of beneficiaries of the reparations].”

##### *Arguments of the State*

226. The State indicated that it did not acknowledge “any obligation to repair,” because, at the date on which it submitted its comments on possible reparations and costs, no unlawful act that could be attributed to it had been proved. However, regarding the beneficiaries of the reparations listed by the Commission, it stated that there was no evidence “to prove the degree of closeness of the siblings of the [alleged] victims to them, or their financial dependency, or that permits the right to any compensation to be inferred. This is also true in the case of permanent companions or relatives other than parents, spouses and children[,] regarding whom affection can be presumed.” In its final oral arguments, the State declared that “the testimonies [given at the public hearing] enriched the case with details on the family relationships and the economic activities of the victims and some dependent relationships.”

##### *Considerations of the Court*

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<sup>194</sup> Cf. *Case of Cantos*, *supra* note 150, para. 68; *Case of El Caracazo. Reparations*, *supra* note 13, para. 78; and *Case of Hilaire, Constantine and Benjamin et al.*, *supra* note 150, para. 205.

227. The Court will now proceed to determine the persons who should be considered "injured parties" in the terms of Article 63(1) of the American Convention.

228. First, the Court considers that Álvaro Lobo Pacheco, Gerson Javier Rodríguez Quintero, Israel Pundor Quintero, Ángel María Barrera Sánchez, Antonio Flórez Contreras, Víctor Manuel Ayala Sánchez, Alirio Chaparro Murillo, Álvaro Camargo, Gilberto Ortiz Sarmiento, Reinaldo Corzo Vargas, Luis Hernando Jáuregui Jaimes, Luis Domingo Sauza Suárez, Juan Alberto Montero Fuentes, José Ferney Fernández Díaz, Rubén Emilio Pineda Bedoya, Carlos Arturo Riatiga Carvajal, Juan Bautista, Alberto Gómez (whose second last name was possibly Ramírez) and Huber Pérez (whose second last name was possibly Castaño) are "injured parties," as they are the victims of the violations of Articles 7, 5, 4, 8(1) and 25 of the Convention, in relation to Article 1(1) thereof. Consequently, they have a right to the reparations established by the Court for pecuniary damage, if applicable, and non-pecuniary damage.

229. Also, the victims' next of kin will have a right to the reparations established by the Court, as direct victims of the violation of the rights embodied in Articles 5, 8(1) and 25 of the Convention, in relation to Article 1(1) thereof, as well as those established by the Court, to repair the injury they suffered as a direct consequence of the violations committed against the 19 victims. In this respect, the Court deems that the suffering and death of a person causes his children,<sup>195</sup> spouse or companion,<sup>196</sup> parents, and siblings, non-pecuniary damage,<sup>197</sup> which does not have to be proved.<sup>198</sup>

230. Second, the compensation for loss of earnings and non-pecuniary damage that corresponds to the 19 victims shall be distributed among their next of kin, as follows:

- a) Fifty per cent (50%) of the compensation shall be shared, in equal parts, between the children of each of the victims. If one or several of the children have died, the part that corresponds to them shall accrue to the parts of the other children of the same victim;
- b) Twenty-five per cent (25%) of the compensation shall be delivered to the person who was the spouse or permanent companion of the victim, at the

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<sup>195</sup> Cf. *Case of Maritza Urrutia*, supra note 3, para. 169(a); *Case of the "White Van" (Paniagua Morales et al.)*. *Reparations*, supra note 195, paras. 108, 125, 143 and 174; and *Case of Suárez Rosero*. *Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of January 20, 1999. Series C No. 44, para. 66.

<sup>196</sup> Cf. *Case of the "White Van" (Paniagua Morales et al.)*. *Reparations*, supra note 195, paras. 173 and 174; *Case of Cesti Hurtado*. *Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of May 31, 2001. Series C No. 78, para.54; and *Case of Suárez Rosero*. *Reparations*, supra note 195, para. 66.

<sup>197</sup> Cf. *Case of Myrna Mack Chang*, supra note 3, paras. 245, 264(c) and 264(f); *Case of Trujillo Oroza*, *Reparations*, supra note 167, para. 57; and *Case of Cantoral Benavides*. *Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of December 3, 2001. Series C No. 88, paras. 37 and 61(a) and (d).

<sup>198</sup> Cf. *Case of Maritza Urrutia*, supra note 3, paras. 169 and 169(b); *Case of Myrna Mack Chang*, supra note 3, para. 264; and *Case of Bulacio*, supra note 3, para. 98.

time of his death. In the case of the wife and permanent companion of the victim, Alvaro Camargo (*supra* para. 100(b)), it shall be shared between them in equal parts;

c) Twenty-five per cent (25%) of the compensation shall be delivered to the parents. If one of the parents has died, the part that corresponded to him or her shall accrue to the other;

d) In the case of the victim who did not have either children or spouse or permanent companion, the compensation shall be distributed as follows: fifty per cent (50%) to his parents and the remaining fifty per cent (50%) to be shared in equal parts among his siblings; and

e) If there are no next of kin in one or some of the categories defined in the previous subparagraphs, what would have corresponded to the next of kin in the respective category shall accrue proportionately to the part corresponding to the others.

231. In the case of the victims' next of kin, whose right to the compensation has been established in this judgment, and who have died, the criteria for the distribution of the compensation indicated in paragraph 230 of this judgment shall apply.

232. Regarding José Erasmo Barrera, proved to be the cousin of the victim, Ángel María Barrera Sánchez, he will be dealt with as if he were the brother of Mr. Barrera Sánchez, because he lived in the same house and was like a brother to the victim; moreover, he took part in the search for him (*supra* para. 96(b) and *infra* para. 242).<sup>199</sup> The Court has established (*supra* paras. 206 and 218) that Alexander Fernández Piraneque and Lina Noralba Navarro Flórez, included by the Commission in the list of beneficiaries, as nephew of the victim, José Ferney Fernández Díaz, and niece of the victim, Antonio Flórez Contreras, respectively, are not victims of the violations of Articles 5, 8(1) and 25 of the Convention, in relation to Article 1(1) thereof and, consequently, may not claim reparation, because it has not been proved that they had close ties to the victims.

233. Finally, with regard to the next of kin of the tradesmen, Juan Bautista, Alberto Gómez (whose second last name was possibly Ramírez) and Huber Pérez (whose second last name was possibly Castaño), concerning whom the information needed to identify them is not available (*supra* paras. 109, 110 and 111), the Court considers it essential that the State take the necessary measures to find them and to deliver the corresponding reparations to them. To this end, among other measures, Colombia must broadcast by a radio station, a television channel and a newspaper, all with national coverage, an announcement indicating that it is trying to locate the next of kin of Juan Bautista, Alberto Gómez (whose second last name was possibly Ramírez) and Huber Pérez (whose second last name was possibly Castaño), to provide them with a reparation with regard to the facts of this case. In these publications, the State must specify that they are about the tradesmen who left from Cúcuta to travel to Medellín on October 4, 1987, in a red and white truck with license plate UZ-265, a blue, cream and red van with license plate XK-3363, a black and yellow taxi with license plate UR-3780, and a blue and white Nissan jeep with license

<sup>199</sup> Cf. *Case of El Caracazo. Reparations*, *supra* note 13, paras. 91(c) and 105; and *Case of the "White Van" (Paniagua Morales et al.)*, *Reparations*, *supra* note 195, para. 109.

plate MC-2867, transporting merchandise for sale, and who were detained and disappeared on October 6, 1987, by members of the "paramilitary" group or criminal group that operated in the municipality of Puerto Boyacá and, about whom the last official indication was that they were seized by members of the Armed Forces when they passed through the hamlet of Puerto Araujo.

234. This publication must be broadcast on at least three non-consecutive days and within six months of notification of this judgment. The recordings or, if applicable, copies of these announcements, and also a precise indication of the media in which they were published and on what dates must be submitted to the Court to be considered when monitoring compliance with this judgment.

235. In accordance with these considerations, the names and relationships of the next of kin of the 19 tradesmen are indicated in the following table:



<b>TRADESMEN</b>	<b>NEXT OF KIN</b>
1. Álvaro Lobo Pacheco	a) María Cristina Pacheco Rojas de Lobo (mother) b) Marco Aurelio Lobo Pineda (father) (deceased) c) Lubin Alfonso Lobo Pacheco (brother) d) Aurelio Lobo Pacheco (brother) e) Nahún Lobo Pacheco (brother) f) Eliécer Lobo Pacheco (brother) g) Mariela Lobo Pacheco (sister) h) Marina Lobo Pacheco (sister) i) Aristóbulo Lobo Pacheco (brother)
2. Gerson Javier Rodríguez Quintero	a) Edilia Rosa Quintero de Rodríguez (mother) (deceased) b) Eliécer Rodríguez Pallares (father) (deceased) c) Wilmar Rodríguez Quintero (brother) d) Yimmy Efraín Rodríguez Quintero (brother)
3. Israel Pundor Quintero	a) Yamid Pundor Lobo (son) b) Leidy Pundor Lobo (daughter) c) Nancy Estela Lobo Acosta (permanent companion) d) Ana Diva Quintero Quintero de Pundor (mother) e) Fermín Pundor Palacio (father) f) Luis José Pundor Quintero (brother)
4. Ángel María Barrera Sánchez	a) Ramón Barrera Sánchez (father) (deceased) b) Delfina Sánchez de Barrera (mother) (deceased) c) Carmen Rosa Barrera Sánchez (sister) d) José de Jesús Barrera Sánchez (brother) e) José Erasmo Barrera (primo)
5. Antonio Flórez Contreras	a) Alejandro Flórez Pérez (son) b) Angélica Librada Flórez Pérez (daughter) c) Nixon Andrés Flórez Pérez (son) d) Magreth Karina Flórez Pérez (daughter) e) Luis Antonio Villamizar Pérez (stepson) f) Luz Marina Pérez Quintero (permanent companion) g) Librada Contreras de Flórez (mother) h) Salomón Flórez Contreras (brother) i) Jorge Flórez Contreras (brother) j) Amelia Rosa Flórez Contreras (sister) k) Libardo Flórez Contreras (brother) l) Margoth del Carmen Flórez Contreras (sister) (deceased) m) Aydee Flórez Contreras (sister) n) Torcoroma Flórez Contreras (sister) o) Edilsa Flórez Contreras (sister) p) Nery del Socorro Flórez Contreras (sister)
6. Carlos Arturo Riatiga Carvajal	Luz Marina (or María) Arias Ortega (permanent companion)

TRADESMEN	NEXT OF KIN
7. Víctor Manuel Ayala Sánchez	<ul style="list-style-type: none"> <li>a) Víctor Hugo Ayala Mantilla (son)</li> <li>b) Juan Manuel Ayala Montero (son)</li> <li>c) Sandra Catherine Ayala Montero (daughter)</li> <li>d) Sandra Belinda Montero Fuentes (spouse)</li> <li>e) Manuel Ayala Mantilla (father)</li> <li>f) Braulia Sánchez de Mantilla (mother)</li> <li>g) Cecilia Mantilla Sánchez (sister)</li> <li>h) Socorro Mantilla Sánchez (sister)</li> <li>i) Esperanza Mantilla Sánchez (sister)</li> <li>j) Alvaro Ayala Sánchez (brother)</li> <li>k) Evila Mantilla Sánchez (sister)</li> <li>l) Myriam Mantilla Sánchez (sister)</li> <li>m) Martha Patricia Mantilla Sánchez (sister)</li> <li>n) Jairo Mantilla Sánchez (brother)</li> </ul>
8. Alirio Chaparro Murillo	<ul style="list-style-type: none"> <li>a) Yeinny Alexandra Chaparro Ariza (daughter)</li> <li>b) Angie Vinlley Chaparro Ariza (daughter)</li> <li>c) Rita Ariza Flórez (permanent companion)</li> <li>d) Juan de Jesús Chaparro Orozco (father)</li> <li>e) Ana Murillo Delgado de Chaparro (mother)</li> <li>f) Luis José Chaparro Murillo (brother)</li> <li>g) Marco Antonio Chaparro Murillo (brother)</li> <li>h) Nohemi Chaparro Murillo (sister)</li> <li>i) Raquel Chaparro Murillo (sister)</li> <li>j) Mariela Chaparro Murillo (sister)</li> <li>k) Juan de Jesús Chaparro Murillo (brother)</li> </ul>
9. Álvaro Camargo	<ul style="list-style-type: none"> <li>a) Nancy Camargo Meléndez (daughter)</li> <li>b) Edinson Andrés Camargo Meléndez (son)</li> <li>c) Yair Eduardo Camargo Meléndez (son)</li> <li>d) Johan Arley Camargo Abril (son)</li> <li>e) Elba Marlen Meléndez (spouse)</li> <li>f) Elizabeth Abril García (permanent companion)</li> <li>g) Bernardo Barragán González (stepfather)</li> <li>h) Leonor Camargo (mother) (deceased)</li> <li>i) Germán Barragán Camargo (brother)</li> <li>j) Myriam Barragán Camargo (sister)</li> <li>k) Luis Fernando Barragán Camargo (brother)</li> <li>l) Luz Helena Barragán Camargo (sister)</li> <li>m) Martha Cecilia Barragán Camargo (sister)</li> <li>n) Rodolfo Barragán Camargo (brother)</li> <li>o) Manuel Racero Camargo (brother)</li> <li>p) Gustavo Camargo (brother)</li> <li>q) Gloria Amparo Camargo (sister)</li> </ul>

TRADESMEN	NEXT OF KIN
10. Rubén Emilio Pineda Bedoya	<ul style="list-style-type: none"> <li>a) Juan de Jesús Pineda Miranda (father)</li> <li>b) Gabriela Bedoya Suescum (mother)</li> <li>c) Samuel de Jesús Pineda Bedoya (brother)</li> <li>d) Luis Bernabé Pineda Bedoya (brother)</li> <li>e) Jesús María Pineda Bedoya (brother)</li> <li>f) Hernán Darío Pineda Bedoya (brother)</li> <li>g) Carlos Alberto Pineda Bedoya (brother)</li> <li>h) Jorge Enrique Pineda Bedoya (brother)</li> <li>i) Ana María Pineda Bedoya (sister)</li> <li>j) Luz Arcenia Pineda Bedoya (sister)</li> <li>k) Gloria Isabel Pineda Bedoya (sister)</li> <li>l) María Briseida Pineda Bedoya (sister)</li> <li>m) Nubia Pineda Bedoya (sister)</li> </ul>
11. Gilberto Ortíz Sarmiento	<ul style="list-style-type: none"> <li>a) Rudy Esther Ortíz Alvarez (daughter)</li> <li>b) Abdón Ortíz (father)</li> <li>c) Ana Delina Sarmiento (mother)</li> <li>d) María Elisa Ortíz Sarmiento (sister)</li> <li>e) Humberto Ortíz Sarmiento (brother)</li> <li>f) Osvaldo Ortíz Sarmiento (brother)</li> <li>g) Marleny Ortíz Sarmiento (sister)</li> <li>h) EvÁngelina Ortíz Sarmiento (sister)</li> </ul>
12. Reinaldo Corzo Vargas	<ul style="list-style-type: none"> <li>a) Jorge Corzo Viviescas (father)</li> <li>b) María Elvinia Vargas Herrera (mother)</li> <li>c) María Elena Corzo Vargas (sister)</li> <li>d) Fernando Corzo Vargas (brother)</li> <li>e) Jorge Corzo Vargas (brother)</li> <li>f) Mireya Corzo Vargas (sister)</li> <li>g) Alvaro Corzo Vargas (brother)</li> <li>h) Clara Inés Corzo Vargas (sister)</li> <li>i) Fany Corzo Vargas (sister)</li> </ul>
13. Luis Hernando Jáuregui Jaimes	<ul style="list-style-type: none"> <li>a) Luis María Jáuregui Jáuregui (father) (deceased)</li> <li>b) Teresa de Jesús Jaimes de Jáuregui (mother) (deceased)</li> <li>c) Suney Dinora Jáuregui Jaimes (sister)</li> <li>d) Marcela Elizabeth Jáuregui Jaimes (sister)</li> <li>e) Lorena del Pilar Jáuregui Jaimes (sister)</li> <li>f) Nubia Esperanza Jáuregui Jaimes (sister)</li> <li>g) Eddy Stella Jáuregui Jaimes (sister)</li> <li>h) Carlos Alberto Jáuregui Jaimes (brother)</li> <li>i) Sonia Soledad Jáuregui Jaimes (sister)</li> <li>j) José Francisco Jáuregui Jaimes (brother)</li> <li>k) Juan Antonio Jáuregui Jaimes (brother)</li> <li>l) Ruth Cecilia Jáuregui Jaimes (sister)</li> <li>m) Luz Marleny Angarita Laguado (spouse)</li> </ul>

TRADESMEN	NEXT OF KIN
14. Luis Domingo Sauza Suárez	<ul style="list-style-type: none"> <li>a) Nirama Sauza Suárez (daughter)</li> <li>b) Yudani Patricia Sauza Cáceres (daughter)</li> <li>c) Martha Yolima Sauza Cáceres (daughter)</li> <li>d) Luis Omar Sauza Cáceres (son)</li> <li>e) Oscar Enrique Sauza Cáceres (son) (deceased)</li> <li>f) Marina Cáceres (spouse)</li> <li>g) Joaquín Sauza Villareal (father) (deceased)</li> <li>h) Rosalbina Suárez Bravo de Uribe (mother)</li> <li>i) Flor Ángela Sauza Suárez (sister)</li> <li>j) Marco Antonio Sauza Suárez (brother)</li> <li>k) María Martha Sauza Suárez (sister)</li> <li>l) Ernestina Sauza Suárez (sister)</li> <li>m) Alfonso Sauza Suárez (brother)</li> <li>n) Ofelia Sauza Suárez (sister)</li> </ul>
15. Juan Alberto Montero Fuentes	<ul style="list-style-type: none"> <li>a) Dina Luz Montero Pinzón (daughter)</li> <li>b) Luz Marina Pinzón Reyes (spouse)</li> <li>c) Hilda María Fuentes Pérez (mother)</li> <li>d) Juan de la Cruz Montero (father)</li> <li>e) Yimmy Reynel Montero Fuentes (brother)</li> <li>f) Jacqueline Montero Fuentes (sister)</li> <li>g) Sandra Belinda Montero Fuentes (sister)</li> </ul>
16. José Ferney Fernández Díaz	<ul style="list-style-type: none"> <li>a) Lilia Díaz Rubio de Fernández (mother)</li> <li>b) Juan de Dios Fernández Delgado (father)</li> <li>c) Jorge Julio Fernández Díaz (brother)</li> <li>d) Elibardo Fernández Díaz (brother)</li> <li>e) María Dulibia Fernández Díaz (sister)</li> <li>f) María Celeni Fernández Díaz (sister)</li> <li>g) María Omaira Fernández Díaz (sister)</li> <li>h) José Ariel Fernández Díaz (brother)</li> <li>i) Nelson Fernández Díaz (brother)</li> <li>j) Alba Unice Fernández Díaz (sister)</li> </ul>
17. Juan Bautista	The information needed to identify them is not available; they will therefore be determined in accordance with the provisions of paragraphs 233 and 234 of this judgment.
18. Alberto Gómez (his second last name is possibly Ramírez)	The information needed to identify them is not available; they will therefore be determined in accordance with the provisions of paragraphs 233 and 234 of this judgment.
19. Huber Pérez (his second last name is possibly Castaño)	The information needed to identify them is not available; they will therefore be determined in accordance with the provisions of paragraphs 233 and 234 of this judgment.

### B) PECUNIARY DAMAGE

236. In this section, the Court will determine the pecuniary damage, which presumes the loss of or harm to the income of the victims, the expenditure incurred as a result of the facts, and the pecuniary consequences that have a causal link to the facts of the case *sub judice*.<sup>200</sup> In this regard, it will establish a compensatory amount that seeks to compensate the patrimonial consequences of the violations declared in this judgment. To do this, it will take into account the evidence gathered in this case, its own case law and the arguments of the Commission and the State.

#### *Arguments of the Commission*

237. With regard to compensation for pecuniary damage, the Commission stated that:

- a) Loss of earnings should be calculated on the basis of the income that the tradesmen received from the exercise "of their activity." In this respect, it stated that, owing to the impossibility of establishing the amount of the victims' incomes, "it should be based on an amount equal to the minimum necessary for subsistence." To this end, the minimum legal wage in force at the time of the facts can be used, adjusted to current value, and "social benefits" should also be included;
- b) Annex 1 of the brief with arguments on possible reparations and costs contains an indication of the amounts requested for loss of earnings for each of the victims. In order to determine the amount for each victim, "the basic monthly wage equal to the minimum legal wage in force, which, in 1987, was 22,509.80 pesos (basic wage + transport subsidy), plus social benefits equal to 33% of this basic amount" was used as a basis. The calculations were made separately for "consolidated loss of earnings;" namely, that caused from October 1987 to March 20, 2003; and for "future loss of earnings;" namely, that caused from March 21, 2003, until the end of the life expectancy of each victim. The Commission indicated the compensatory amounts requested for each of the 19 tradesmen in Colombian pesos; and
- c) Indirect damage consists in the expenditure incurred in the search for the victims. The Commission did not request any specific amount for this expenditure.

#### *Arguments of the State*

238. The State indicated that it did not acknowledge "any obligation to repair," because, when it submitted its comments on possible reparations and costs, no unlawful act which could be attributed to it had been proved. Nevertheless, referring to the Commission's request for compensation for pecuniary damage, it stated that:

- a) The Court should not accept the Commission's request that "social benefits" be taken into account when establishing compensation for loss of

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<sup>200</sup> Cf. *Case of Maritza Urrutia*, *supra* note 3, para. 155; *Case of Juan Humberto Sánchez*. *Interpretation of the judgment on preliminary objections, merits and reparations*, *supra* note 6, para. 61; and *Case of Myrna Mack Chang*, *supra* note 3, para. 250.

earnings, in the case of the victims, regarding whom the minimum legal salary was used as a basis for calculating their income, because "in the impossibility of obtaining full evidence of income," social benefits could not be included since "they had not been generated." Social benefits, such as holidays and unemployment benefits "are social protection mechanisms designed to preserve employment capacity and, therefore, they are an attempt to provide some kind of compensation for the physical attrition caused by work. Thus, if the minimum legal monthly wage is a simple reference point for the calculation, it cannot give rise to the same advantages as a wage that is generated by real employment;"

b) Should the Court order payment of compensation, when determining the amounts, it should take into account the presumptions that "the persons who were disappeared in a context of violent acts and who have been disappeared for many years, are considered to be dead," and also that a person who attains his majority executes productive activities for which he receives, at least, a wage equal to the "legal minimum wage in force," from which must be subtracted at least 50% for concept of personal expenses. "The [latter] presumption is very important in calculating damages for the beneficiaries who were dependents of the [alleged] victims, because, in the case of children, the presumption must be taken into account when they reach their majority; therefore, the loss of earnings can only be calculated until then and not until the probable end of the life of the victim;" and

c) The damage caused by the death of the victim to their next of kin or to third parties can be claimed by the latter, based on an inherent right, if an "effective and regular relationship of dependency" is proved to exist between them and the victim, so that it can reasonably be assumed "that the claimant had a financial need that was satisfied regularly by payments from the victim. In such cases, the burden of the proof corresponds to the victim's next of kin or to third parties who claim the reparation."

### *Considerations of the Court*

239. Bearing in mind the information received during this proceeding, the facts considered proven, the violations confirmed and its consistent case law, the Court declares that compensation for pecuniary damage in the instant case should include the items that will be indicated in this section.

#### *a) Loss of earnings*

240. As regards unearned income for the 19 tradesmen, taking into account the circumstances of the case,<sup>201</sup> and the minimum legal wage,<sup>202</sup> the Court establishes in fairness the sum of US\$55,000.00 (fifty-five thousand United States dollars) or the equivalent in Colombian currency, for each of them. These amounts shall be

<sup>201</sup> Cf. *Case of Maritza Urrutia*, *supra* note 3, para. 182; *Case of Myrna Mack Chang*, *supra* note 3, paras. 253.1) and 290; and *Case of Bulacio*, *supra* note 3, para. 150.

<sup>202</sup> Cf. *Case of El Caracazo. Reparations*, *supra* note 13, para. 88; *the Case of "Street Children" (Villagrán Morales et al.)*. *Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of May 26, 2001. Series C No. 77, para. 79; and *Case of the "White Van" (Paniagua Morales et al.)*. *Reparations*, *supra* note 195, paras. 116 and 117.

delivered to the next of kin of the 19 tradesmen, as stipulated in paragraph 230 of this judgment.

*b) Indirect damage*

241. Considering the claims of the parties, the body of evidence, the facts proved in this case and its case law, the Court declares that the compensation for pecuniary damage in this case, should also include the compensation described below.

242. This Court considers that, in this case, some of the next of kin of the 19 tradesmen incurred expenditure to find their whereabouts, in view of the concealment of what happened and the failure of the State authorities to carry out an immediate search for them. This concept includes the expenses incurred by the victims' next of kin who made up "search parties" and traveled over the route which the 17 tradesmen had taken; and also expenses for visits to public institutions, expenditure on transport, accommodation, etc. In this respect, it has been confirmed before the Court that the next of kin of the tradesmen Juan Alberto Montero Fuentes, Víctor Manuel Ayala Sánchez, Gerson Javier Rodríguez Quintero, Antonio Flórez Contreras, Ángel María Barrera Sánchez, Alirio Chaparro Murillo, Álvaro Lobo Pacheco, Israel Pundor Quintero, Luis Hernando Jáuregui Jaimes, Rubén Emilio Pineda Bedoya and Reinaldo Corzo Vargas took an active part in the search for the victims (*supra* para. 85(g) and 85(k)). In fairness, the Court establishes the sum of US\$2,000.00 (two thousand United States dollars) or the equivalent in Colombian currency for the expenditure incurred by the next of kin of the said victims to discover their whereabouts. The total amount to be distributed as follows:

- i) The total amount corresponding to the search for the victim, Juan Alberto Montero Fuentes, shall be delivered to his sister, Sandra Belinda Montero Fuentes;
- ii) The total amount corresponding to the search for the victim, Víctor Manuel Ayala Sánchez, shall be distributed, in equal parts, between his wife, Sandra Belinda Montero Fuentes, his father, Manuel Ayala Mantilla, and his sister, Miryam Mantilla Sánchez;
- iii) The total amount corresponding to the search for the victim, Gerson Javier Rodríguez Quintero, shall be distributed: 50% to his brother, Wilmar Rodríguez Quintero, and the other 50%, in equal parts, between the victim's siblings, as heirs to the amount corresponding to his mother who has died;
- iv) The total amount corresponding to the search for the victim, Antonio Flórez Contreras, shall be distributed: 50% to his permanent companion, Luz Marina Pérez Quintero, and the other 50%, in equal parts, between his brothers, Salomón Flórez Contreras and Jorge Flórez Contreras;
- v) The total amount corresponding to the search for the victim, Ángel María Barrera Sánchez, shall be distributed, in equal parts, between his brother, José de Jesús Barrera Sánchez, and his cousin, José Erasmo Barrera;
- vi) The total amount corresponding to the search for the victim, Alirio Chaparro Murillo, shall be delivered to his permanent companion, Rita Ariza Flórez;

vii) The total amount corresponding to the search for the victim, Álvaro Lobo Pacheco, shall be distributed, in equal parts, between his siblings, Nahún Lobo Pacheco, Marina Lobo Pacheco and Aristóbulo Lobo Pacheco;

viii) The total amount corresponding to the search for the victim, Israel Pundor Quintero, shall be delivered to his father, Fermín Pundor Palacio;

ix) The total amount corresponding to the search for the victim, Luis Hernando Jáuregui Jaimes, shall be delivered to his sister, Sonia Soledad Jáuregui Jaimes;

x) The total amount corresponding to the search for the victim, Rubén Emilio Pineda Bedoya, shall be delivered to his brother, Hernán Darío Pineda Bedoya; and

xi) The total amount corresponding to the search for the victim, Reinaldo Corzo Vargas, shall be delivered to his brother, Jorge Corzo Vargas.

243. Based on the above, the Court establishes the following amounts as compensation for pecuniary damage resulting from the violations declared in this judgment:

<b>Compensation for pecuniary damage</b>			
<b>Victim</b>	<b>Loss of income<sup>203</sup></b>	<b>Expenditure incurred in searching for the victims</b>	<b>Total</b>
1. Álvaro Lobo Pacheco	US\$ 55,000.00	US\$ 2,000.00 To be distributed in equal parts between Nahún Lobo Pacheco, Marina Lobo Pacheco and Aristóbulo Lobo Pacheco.	US\$ 57,000.00
2. Gerson Javier Rodríguez Quintero	US\$ 55,000.00	US\$ 2,000.00 To be distributed: 50% to Wilmar Rodríguez Quintero and 50%, in equal parts, between the victim's siblings.	US\$ 57,000.00
3. Israel Pundor Quintero	US\$ 55,000.00	US\$ 2,000.00 To be delivered to Fermín Pundor Palacio.	US\$ 57,000.00
4. Ángel María Barrera Sánchez	US\$ 55,000.00	US\$ 2,000.00 To be distributed in equal parts, between José de Jesús Barrera Sánchez and José Erasmo Barrera.	US\$ 57,000.00
5. Antonio Flórez Contreras	US\$ 55,000.00	US\$ 2,000.00 To be distributed: 50% to Luz Marina Pérez Quintero and the other 50% in equal parts between Salomón Flórez Contreras and Jorge Flórez Contreras.	US\$ 57,000.00
6. Carlos Arturo Riatiga Carvajal	US\$ 55,000.00		US\$ 55,000.00
7. Víctor Manuel Ayala Sánchez	US\$ 55,000.00	US\$ 2,000.00 To be distributed in equal parts, between Sandra Belinda Montero Fuentes, Manuel Ayala Mantilla and Miryam Mantilla Sánchez.	US\$ 57,000.00
8. Alirio Chaparro Murillo	US\$ 55,000.00	US\$ 2,000.00 To be delivered to Rita Ariza Flórez.	US\$ 57,000.00
9. Álvaro Camargo	US\$ 55,000.00		US\$ 55,000.00
10. Rubén Emilio Pineda Bedoya	US\$ 55,000.00	US\$ 2,000.00 To be delivered to Hernán Darío Pineda Bedoya.	US\$ 57,000.00
11. Gilberto Ortíz	US\$ 55,000.00		US\$ 55,000.00

<sup>203</sup>

It will be distributed as indicated in paragraph 230 of this judgment.



Sarmiento			
12. Reinaldo Corzo Vargas	US\$ 55,000.00	US\$ 2,000.00 To be delivered to Jorge Corzo Vargas.	US\$ 57,000.00
13. Luis Hernando Jáuregui Jaimes	US\$ 55,000.00	US\$ 2,000.00 To be delivered to Sonia Soledad Jáuregui Jaimes.	US\$ 57,000.00
14. Luis Domingo Sauza Suárez	US\$ 55,000.00		US\$ 55,000.00
15. Juan Alberto Montero Fuentes	US\$ 55,000.00	US\$ 2,000.00 To be delivered to Sandra Belinda Montero Fuentes.	US\$ 57,000.00
16. José Ferney Fernández Díaz	US\$ 55,000.00		US\$ 55,000.00
17. Juan Bautista	US\$ 55,000.00		US\$ 55,000.00
18. Alberto Gómez (whose second last name was possibly Ramírez)	US\$ 55,000.00		US\$ 55,000.00
19. Huber Pérez (whose second last name was possibly Castaño)	US\$ 55,000.00		US\$ 55,000.00

### C) NON-PECUNIARY DAMAGE

244. Non-pecuniary damage can include the suffering and hardship caused to the direct victims and to their next of kin, the harm of objects of value that are very significant to the individual, and also changes, of a non-pecuniary nature, in the living conditions of the victims or their families. Since it is not possible to allocate a precise monetary equivalent to non-pecuniary damage, it can only be compensated in two ways in order to make integral reparation to the victims. First, by payment of a sum of money or the granting of goods or services with a monetary value, that the Court decides by the reasonable exercise of judicial discretion and in terms of fairness. Second, by performing acts or implementing projects with public recognition or repercussion, such as broadcasting a message that officially condemns the human rights violations in question and makes a commitment to efforts designed to ensure that it does not happen again. Such acts have the effect of rehabilitating the memory of the victims, acknowledging their dignity, and consoling their next of kin. The first aspect of reparation for non-pecuniary damage will be considered in this section and the second in section (D) of this chapter.

#### *Arguments of the Commission*

245. The Commission requested the Court to decide that the State should pay compensation for the non-pecuniary damage caused to the victims and their next of kin. In this respect, the Commission argued as follows:

a) The violation of fundamental rights, such as the right to life, personal liberty and integrity, and judicial protection, and also the anguish suffered by the victims and their next of kin, "the importance of families in Colombian society," and the impossibility of making *restitutio in integrum*, call for monetary compensation as a form of compensation; and

b) Independent compensation was requested for each of the following aspects:

- i) To compensate both the victims and their next of kin for the harm caused as a result of the wrongful retention, deprivation of liberty and harm to the victims' physical, mental and moral integrity. The latter suffered "grief, pain and anguish, owing to their unlawful retention and delivery by the Colombian Army to private individuals, members of a paramilitary group, who subjected them to ill-treatment and humiliations;"
- ii) To compensate the next of kin of the victims for "their grief owing to" the latter's "forced disappearance and/or presumed death;"
- iii) To compensate the victims for the changes in their living conditions; namely, for the abnormal change in the "course of the life" of the victim as regards his occupations, habits and projects;
- iv) To compensate the victims for "[d]amage, as a result of the loss of their lives." The Commission indicated that this damage should be repaired "through a payment, a way of repairing the loss of human life, as an autonomous item of damage;"
- v) To compensate the next of kin of the victims for "the non-pecuniary damage arising from the lack of material, real and effective access to the administration of justice, and/or the denial of justice" because: a) the facts, crimes and administrative failures "that occurred with the wrongful retention, forced disappearance and/or presumed death of [the 19] tradesmen" were not investigated at the opportune time; b) "the [lack of a] proper criminal investigation, which would have led to clarification of the facts and/or the effective punishment of the perpetrators, State agents and individuals;" c) of the "failure to prosecute and/or the filing and/or the suspension of the proceedings in favor of the members of the Colombian Army involved in [the] facts," and d) the impunity that benefited State agents and individuals involved in the facts; and
- vi) To compensate the next of kin of the victims for the harm caused to them "as a result of the changes in their relationships." The next of kin of the victims suffered psychological, affective and emotional harm as a result of the forced disappearance of the latter, the search for their remains, the uncertainty of not knowing if they were still alive, and from "the current anguish and presumption of their death," all of which caused a change in "the way in which the nuclear family have lived individually and in family during the time that has elapsed [since] the disappearance."

#### *Arguments of the State*

246. The State indicated that it did not acknowledge "any obligation to repair," because when it submitted its comments on possible reparations and costs, no unlawful act that could be attributed to it had been proved. However, referring to the Commission requests regarding compensation for non-pecuniary damage, it stated that:

- a) Pecuniary compensation is in order when the nature of the harm permits it. Compensation is only useful to compensate damage which can be quantified in monetary terms, even if it has been decided with fair and reasonable criteria. Consequently, the right of access to prompt and effective administration of justice cannot be repaired by compensation. This right "is exhausted by the investigations, whose results have already been heard in this instance and, therefore, there are no grounds for recognizing any compensation for this concept;"
- b) It objects to "reparations, the factual grounds for which have not been duly proved, according to the rules of healthy criticism;"
- c) All the non-pecuniary damage alleged by the Commission is inadmissible. "The petitioners confuse the existence of the damage with its quantification, and request the latter without having proved the former, based on the erroneous assumption that it is sufficient to declare that a fact attributable to the State exists;"
- d) The Commission must prove the existence of the damage and the causal link, because the damage must be proved by the person alleging it. The non-pecuniary damage, the "existential damage" and the "damage arising from changes in relationships" alleged by the Commission, must be proved; "there is no presumption regarding any of them, not even circumstantial evidence;"
- e) The Commission erroneously infers that non-pecuniary damage were caused to the victims, as a result of "facts which it appears were proved to have occurred in a different way, during the criminal proceedings;"
- f) It is not sufficient to express disagreement with the results of the proceedings or reject their effectiveness in order to allege that an unlawful fact attributable to the State exists, and that the State has caused losses that have not yet been proved;
- g) "There is no moderation or fairness in the claims for 'non-pecuniary damage'[, because] a calculation is made for each right that has presumably been violated, as if the 'premium for suffering' was a summation of different sufferings, separate and independent in time and space;"
- h) "Without attempting to impose domestic law," it should be noted that, according to the parameters used by the Colombian courts, "the suffering for the loss of a loved one, perhaps the worst of all sufferings, has been assessed internally at what would currently be the equivalent of approximately thirteen thousand dollars." On this basis, it is neither fair nor reasonable that the Commission should request double this amount for "a damage for which most of the [alleged] victims' next of kin are also plaintiffs in the administrative jurisdiction;" and
- i) There is no evidence "to prove the degree of closeness between the victims and their siblings, or the latter's financial dependency, which would permit the right to compensation to be inferred. This is also true of those cases before the Court involving permanent companions or relatives, other

than parents, spouses or children[,] regarding whom there can be a presumption of affection.”

*Considerations of the Court*

247. International case law has established repeatedly that the judgment constitutes, *per se*, a form of reparation.<sup>204</sup> However, owing to the circumstances of the instant case, the suffering that the facts caused to the direct victims and their next of kin, the change in the living conditions of the latter, and the other consequences of a pecuniary or non-pecuniary nature that they suffered, the Court considers that, in fairness, the payment of compensation for non-pecuniary damage is pertinent.<sup>205</sup>

248. As the Court has stated, the non-pecuniary damage inflicted on the victims is evident, because it is inherent in human nature that any persons subjected to violence and ill-treatment, such as that inflicted on the 19 tradesmen (unlawful detention, cruel, inhuman and degrading treatment, and death), experiences corporal pain and deep suffering and anguish; consequently, this damage does not require proof.<sup>206</sup>

249. With regard to the immediate next of kin of the 19 tradesmen, the Court has presumed that the suffering or death of a person causes his children,<sup>207</sup> spouse or companion,<sup>208</sup> parents and siblings, a non-pecuniary damage, which it is not necessary to prove.<sup>209</sup> As the Court has said, “it can be presumed that the parents have suffered morally as a result of the cruel death of their offspring, for it is essentially human for all persons to feel pain at the torment of their child,”<sup>210</sup> in the same way that it can be presumed that the death of a person causes his siblings a non-pecuniary damage.<sup>211</sup> As the Court has established, the suffering caused to the

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<sup>204</sup> Cf. *Case of Maritza Urrutia*, *supra* note 3, para. 166; *Case of Myrna Mack Chang*, *supra* note 3, para. 260; and *Case of Bulacio*, *supra* note 3, para. 96.

<sup>205</sup> Cf. *Case of Maritza Urrutia*, *supra* note 3, para. 166; *Case of Myrna Mack Chang*, *supra* note 3, para. 260; and *Case of Bulacio*, *supra* note 3, para. 96.

<sup>206</sup> Cf. *Case of Maritza Urrutia*, *supra* note 3, para. 168; *Case of Myrna Mack Chang*, *supra* note 3, para. 262; and *Case of Bulacio*, *supra* note 3, para. 98.

<sup>207</sup> Cf. *Case of Maritza Urrutia*, *supra* note 3, para. 169(a); *Case of Myrna Mack Chang*, *supra* note 3, paras. 243 and 264(b); and *Case of Juan Humberto Sánchez*, *supra* note 147, paras. 155 and 173.

<sup>208</sup> Cf. *Case of Juan Humberto Sánchez*, *supra* note 147, paras. 173 and 177; *Case of El Caracazo. Reparations*, *supra* note 13, paras 104(a) and 107(a); and *Case of the “White Van” (Paniagua Morales et al.)*. *Reparations*, *supra* note 195, paras. 173-174.

<sup>209</sup> Cf. *Case of Maritza Urrutia*, *supra* note 3, para. 169; *Case of Myrna Mack Chang*, *supra* note 3, para. 264; and *Case of Juan Humberto Sánchez*, *supra* note 147, para. 175.

<sup>210</sup> *Case of Aloeboetoe et al. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of September 10, 1993. Series C No. 15, para. 76; and Cf. *Case of Myrna Mack Chang*, *supra* note 3, para. 264(c); *Case of Trujillo Oroza. Reparations*, *supra* note 167, para. 88(b); and *Case of Castillo Páez. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 43, para. 88.

<sup>211</sup> Cf. *Case of Maritza Urrutia*, *supra* note 3, para. 169(c); *Case of Myrna Mack Chang*, *supra* note 3, paras. 243, 264(d), 264(e) and 264(f); and *Case of Bulacio*, *supra* note 3, para. 78.

victim "extends to the closest members of the family, particularly those who were in close affective contact with the victim."<sup>212</sup>

250. Taking into account the different aspects of the damage claimed by the Commission, and applying the previous presumptions, the Court establishes, in fairness, the value of the compensation for non-pecuniary damage, as described in the table that appears below (*infra* para. 252), according to the following parameters:

a) To establish compensation for the non-pecuniary damage suffered by the 19 tradesmen, the Court has taken into consideration that they were arbitrarily deprived of their liberty; it is therefore reasonable to infer that the victims were treated with extreme violence during the hours before their death. The brutality with which the bodies of the tradesmen were treated after their execution allows us to infer that, while they were still alive, they were also treated extremely violently and, consequently, could fear and foresee that they would be deprived of their lives arbitrarily and violently; and

b) When determining the compensation that corresponds to the next of kin of the 19 tradesmen, the Court must take into consideration the sufferings they have endured as a direct consequence of the disappearance and death of the 19 tradesmen, owing principally to the brutality with which the bodies of the tradesmen were treated after their execution. The Court also takes into account that the next of kin of the 19 tradesmen were victims of the violation of Articles 5, 8(1) and 25 of the Convention, in relation to Article 1(1) thereof. The next of kin of the 19 tradesmen have endured profound suffering and anguish affecting their mental and moral integrity as a result of all the circumstances following the disappearance of their next of kin, such as the fact that they have been unable to bury their next of kin, the lack of support from State authorities in the immediate search for the victims, and the apprehension about beginning or continuing the search for their next of kin, for fear of threats and attacks. It has also borne in mind the damage resulting from the delay in the investigation and punishment of the civilians who took part in the violations, and also the damage resulting from the partial impunity that subsists in this case. All the situations described above gave rise to feelings of great pain, impotence, insecurity, anguish, sadness and frustration in the next of kin of the victims, which has caused significant changes in their living conditions and their family and social relations, which represent a serious harm to their way of life.

251. Regarding the payment of compensation, the provisions described in paragraphs 230 and 231 of this judgment shall apply.

252. Taking into account the different aspects of the non-pecuniary damage caused, the Court establishes, in fairness, the amount of the compensation for non-pecuniary damage as follows:

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<sup>212</sup> Cf. *Case of Maritza Urrutia*, *supra* note 3, para. 169; *Case of Myrna Mack Chang*, *supra* note 3, para. 243; and *Case of Bulacio*, *supra* note 3, para. 78.

<b>Compensation for non-pecuniary damage</b>	
<b>Victims of the violations of Articles 7, 5, 4, 8(1) and 25</b>	<b>Amount</b>
1. Álvaro Lobo Pacheco	US\$ 80,000.00
2. Gerson Javier Rodríguez Quintero	US\$ 80,000.00
3. Israel Pundor Quintero	US\$ 80,000.00
4. Ángel María Barrera Sánchez	US\$ 80,000.00
5. Antonio Flórez Contreras	US\$ 80,000.00
6. Carlos Arturo Riatiga Carvajal	US\$ 80,000.00
7. Víctor Manuel Ayala Sánchez	US\$ 80,000.00
8. Alirio Chaparro Murillo	US\$ 80,000.00
9. Álvaro Camargo	US\$ 80,000.00
10. Rubén Emilio Pineda Bedoya	US\$ 80,000.00
11. Gilberto Ortiz Sarmiento	US\$ 80,000.00
12. Reinaldo Corzo Vargas	US\$ 80,000.00
13. Luis Hernando Jáuregui Jaimés	US\$ 80,000.00
14. Luis Domingo Sauza Suárez	US\$ 80,000.00
15. Juan Alberto Montero Fuentes	US\$ 80,000.00
16. José Ferney Fernández Díaz	US\$ 80,000.00
17. Juan Bautista	US\$ 80,000.00
18. Alberto Gómez (whose second last name is possibly Ramírez)	US\$ 80,000.00
19. Huber Pérez (whose second last name is possibly Castaño)	US\$ 80,000.00
<b>Next of kin (<i>supra para. 235</i>)</b>	<b>Amount</b>
To each of the sons of the 19 victims	US\$ 50,000.00
To each of the spouses and permanent companions of the 19 victims	US\$ 80,000.00
To each of the parents of the 19 victims	US\$ 50,000.00
To each of the siblings of the 19 victims	US\$ 8.500,00

#### D) OTHER FORMS OF REPARATION

253. In this section, the Court will begin to determine measures of satisfaction seeking to repair the non-pecuniary damage that are not of a pecuniary nature, and will also establish measures with public scope or repercussion.<sup>213</sup>

##### *Arguments of the Commission*

254. The Commission requested the Court to order that the following measures should be implemented:

- a) That the State should adopt the necessary measures to prosecute and punish those responsible and those who had "encouraged or allowed the disappearance and murder of the 19 tradesmen to go unpunished." In this case, the most important measure is that Colombia "[should] complete the investigation into the facts alleged in the application genuinely, promptly,

<sup>213</sup> Cf. *Case of Myrna Mack Chang*, *supra* note 3, para. 268; *Case of Bulacio*, *supra* note 3, para. 105; and *Case of Juan Humberto Sánchez*, *supra* note 147, para. 168.

impartially and effectively, and adopt the necessary measures to determine the individual responsibility of civilians and military personnel and punish them." The State intelligence and investigation bodies gathered conclusive evidence that clearly and directly identified the State agents "involved with the paramilitary group that perpetrated the disappearance and murder of the victims." Moreover, the military jurisdiction "organized the impunity of its own agents." Since the criminal proceedings extinguished, "and, respecting the principle of *non bis in idem*, under domestic law members of the A[rmed] F[orces] who have been absolved may not be subjected to criminal proceedings for the same offence;"

b) That a "Truth Commission or Panel" should be established, composed of reputable experts, in order to "clarify how the facts occurred[, and] reveal the nature of the difficulties or obstacles" that have prevented the identification and punishment of those responsible, and to establish the specific measures that should be adopted "to ensure that the Colombian State complies with its obligation to guarantee the right to justice to the next of kin of the [alleged] victims." It also requested that this group should be give six months to prepare its report, which should be submitted to the Court "in a public hearing in the presence of the parties." It also requested that, if the Court considered this report to be "convincing," it should order Colombia "to ensure its official and widespread dissemination;"

c) That the State should determine the whereabouts of the 19 tradesmen or locate their remains and, to this end, conduct a genuine and exhaustive search for the victims and "return them to their families, alive or dead." If the State is unable to find these persons, it must "establish their fate, without any doubt." This obligation subsists while any uncertainty remains about what actually happened to the victims. The lack of certainty about the fate of a disappeared person increases the grief of his next of kin. The evidence provided to the Court indicates that no judicial or other authority has taken any action to seek the 19 victims;

d) That a public act of reparation should be organized during which the President of the Republic should apologize to the victims' next of kin for the responsibility of State agents in the facts of the case, and make a commitment to them and to Colombian society to make every effort to ensure that the public authorities prevent a repetition of acts such as those in this case;

e) That the President of the Republic should address "a private, personal letter" to each of the victims' next of kin, apologizing to them for the responsibility of State agents in the facts of this case;

f) That an audio-visual report should be broadcast "on the way in which the [alleged] victims were disappeared and murdered, and the procedure followed to establish the motive." This measure is designed to provide information on the truth of what happened. In addition, it should be approved by the organizations representing the next of kin of the victims and should be broadcast by the State television channels and a private channel that covers most of the country;

g) That a site representing "the final resting place" of the victims should "be defined"; this will make it possible to arrange a symbolic reunion of the next of kin with their loved ones, who they have been unable to bury. The next of kin of the victims must take part in determining this site. "A plaque describing the facts, with the names of the victims, and the specific mention that it has been placed in compliance with the reparation ordered by the Inter-American Court" should be placed at the site; and

h) That the State should establish a "fund" in order to provide attention "immediately and urgently to the situation of the next of kin of those who are forcibly disappeared, in general, when the person disappeared is the head of the household." This fund should amount to a sum similar to the amount established by the Court for costs and expenses, and it should be administered by ASFADDES, because this organization "provide[d] considerable support in the search for truth and justice in this case, and [it was] through this organization [that] access to information on the facts surrounding the disappearance of their loved ones was obtain[ed];" and

i) That "the State has the obligation to provide health services, including psycho-social and family support programs for the next of kin affected by the disappearance, according to their needs and to the opinion of professionals trained in treating the effects of violence and forced disappearance." Both physical and mental health programs are required. Consequently, the Court was requested to "establish this measure as a way of repairing the damage," to be administered by ASFADDES, through the signature of an agreement or an appropriate legal mechanism.

### *Arguments of the State*

255. The State indicated that it did not acknowledged "any obligation to repair," because at the date on which it submitted its observations on possible reparations and costs, no unlawful fact, which could be attributed to it, had been proved. Also, in relation to the measures of satisfaction and the guarantees of non-repetition requested by the Commission, the State indicated that:

a) It has not failed to comply with the obligation to ensure justice, because "the appropriate investigations, in accordance with domestic legislation, were exhausted: criminal (ordinary and criminal military jurisdictions), disciplinary, and an administrative action, still in progress." The disappearance and alleged death of the 19 victims was investigated and heard by the national courts with full observance of judicial guarantees. "The application of the principles on which [the American Convention] is based did not allow the criminal responsibility of the military personnel investigated by military justice to be determined in light of domestic law." This demonstrates "the appropriate functioning and exhaustion of the remedies of the domestic jurisdiction" and, also, that there is no impunity in this case, because the authors have been identified, prosecuted and punished by the competent procedures and authorities;

b) "[It does] not agree with the request for the initiation of new investigations, or the establishment of a truth commission, for the effects proposed by the Commission." It has not been proved that the "domestic investigation procedures" were partial or ineffective;



- c) The determination of the whereabouts of the victims and the location of their remains is "an obligation that relates to procedure and not to results;"
- d) The Commission's request concerning the public acknowledgement of responsibility should be rejected, because, in the course of the criminal proceedings, those responsible for the facts were identified and punished;
- e) "[T]he Government does not intend events such as those [of this case] to be repeated." To this end, public policy on democratic defense and security provides for actions designed "to combat any type of criminal organization, including the illegal armed self-defense groups." Furthermore, in all the public acts carried out by the President of the Republic, there is a commitment to combat organized crime;
- f) If the Court declares that Colombia has violated any provision of the American Convention, it must be understood that the judgment of the Court is, in itself, a form of moral satisfaction and reparation for the next of kin of the victims. In this way, any other measure of satisfaction such as the audiovisual report and the determination of a final resting place for the victims, would be inappropriate, "without detriment to the State's procedural obligation to take steps to locate the remains of the victims and deliver them to their next of kin;"
- g) It has "many concerns about the viability of reparations of a collective nature, because it does not understand how they can be requested, when neither the victims nor their next of kin formed a community;" and
- h) Regarding the request to establish a "fund" for the next of kin of victims of forced disappearance, "[t]he procedural costs and expenses established should be sufficient, if the Court decides they are payable."

*Considerations of the Court*

- a) *Obligation to investigate the facts that gave rise to the violations, and identify and punish those responsible*

256. The Court has concluded, *inter alia*, that Colombia violated Articles 8(1) and 25 of the American Convention, in relation to Article 1(1) thereof, to the detriment of the 19 tradesmen and their next of kin, because military courts without jurisdiction carried out the investigation and prosecution of law enforcement personnel in relation to the violations to the detriment of the 19 tradesmen, contravening the standards established in the American Convention. Furthermore, the criminal proceedings in which the civilians involved in the facts were tried did not respect the principle of reasonable time and were not effective as regards the search for the remains of the 19 tradesmen. All this has caused and continues to cause intense suffering to their next of kin, as well as feelings of insecurity, frustration and anguish.

257. The Court recognizes that, in the instant case, the impunity of those responsible is partial, because ordinary criminal proceedings were conducted, although these did not observe the principle of reasonable time. However, for more than 16 years, there was a situation of impunity in relation to the investigation and

punishment by competent courts of the law enforcement personnel. This impunity continued harming the next of kin of the victims.<sup>214</sup>

258. This Court has referred repeatedly to the right of the next of kin of victims to know what happened and the identity of the State agents responsible for the respective facts.<sup>215</sup> As the Court has state, “[w]henver there has been a human rights violation, the State has a duty to investigation the facts and to punish those responsible, [...] and this obligation must be complied with seriously and not as a mere formality.”<sup>216</sup>

259. This measure benefits not only the next of kin of the victims, but also society as a whole, because, by knowing the truth about such crimes, it can prevent them in the future.<sup>217</sup>

260. The State has the obligation to avoid and combat impunity, which the Court has defined as “the overall failure to investigate, pursue, capture, prosecute and punish those responsible for violating the rights protected by the American Convention.”<sup>218</sup> In this respect, the Court has stated that:

[...] the State is obliged to combat this situation by all available legal means, because impunity promotes the chronic repetition of the human rights violations and the total defenselessness of the victims and their next of kin.<sup>219</sup>

261. The Court considers that the victims of grave human rights violations and their next of kin, if applicable, have the right to know the truth. Consequently, the next of kin of the victims must be informed of everything that happened concerning such violations. This right to the truth has been developed by international human rights law;<sup>220</sup> its recognition and exercise in any specific situation, is an important measure of reparation. Therefore, in the instant case, it gives rise to an expectation that the State must satisfy to the next of kin of the victims.<sup>221</sup>

262. In relation to compliance with this obligation to investigate and punish, the Court has established that:

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<sup>214</sup> Cf. *Case of Maritza Urrutia*, *supra* note 3, para. 126; *Case of Bulacio*, *supra* note 3, para. 120; and *Case of Juan Humberto Sánchez*, *supra* note 147, para. 143.

<sup>215</sup> Cf. *Case of Myrna Mack Chang*, *supra* note 3, para. 273; *Case of Trujillo Oroza. Reparations*, *supra* note 167, para. 100; and *Case of Cantoral Benavides. Reparations*, *supra* note 197, para. 69.

<sup>216</sup> Cf. *Case of Trujillo Oroza. Reparations*, *supra* note 167, para. 100; *Case of Cantoral Benavides. Reparations*, *supra* note 197, para. 69; and *Case of Cesti Hurtado. Reparations*, *supra* note 196, para. 62.

<sup>217</sup> Cf. *Case of Bámaca Velásquez. Reparations*, *supra* note 167, para. 77.

<sup>218</sup> Cf. *Case of Maritza Urrutia*, *supra* note 3, para. 126; *Case of Bulacio*, *supra* note 3, para. 120; and *Case of Juan Humberto Sánchez*, *supra* note 147, para. 143.

<sup>219</sup> Cf. *Case of Maritza Urrutia*, *supra* note 3, para. 126; *Case of Bulacio*, *supra* note 3, para. 120; and *Case of Juan Humberto Sánchez*, *supra* note 147, para. 143.

<sup>220</sup> Cf. *Case of Myrna Mack Chang*, *supra* note 3, para. 274; *Case of Trujillo Oroza*, *supra* note 167, para. 114; and *Case of Bámaca Velásquez. Reparations*, *supra* note 167, para. 76.

<sup>221</sup> Cf. *Case of Myrna Mack Chang*, *supra* note 3, para. 274; *Case of Trujillo Oroza. Reparations*, *supra* note 167, para. 114; and *Case of Bámaca Velásquez. Reparations*, *supra* note 167, para. 76.

[...] all amnesty provisions, provisions on prescription and the establishment of measures designed to eliminate responsibility are inadmissible, because they are intended to prevent the investigation and punishment of those responsible for serious human rights violations such as torture, extrajudicial, summary or arbitrary execution and forced disappearance, all of them prohibited because they violate non-derogable rights recognized by international human rights law.<sup>222</sup>

263. In light of the above, Colombia must investigate effectively the facts of this case, in order to identify, prosecute and punish all the masterminds and perpetrators of the violations committed to the detriment of the 19 tradesmen, for the criminal and any other effects that may result from the investigation into the facts. Competent ordinary criminal courts must investigate and punish the law enforcement personnel who took part in the facts. Moreover, the State must abstain from using figures such as amnesty, provisions on prescription and the establishment of measures designed to eliminate responsibility, as well as measures intended to prevent criminal prosecution or suppress the effects of a conviction. The proceedings must deal with the facts and their legal consequences. The next of kin of the victims must have full access and competence to act at all stages and in all bodies of these investigations, in accordance with domestic law and the provisions of the American Convention. Lastly, the Court rules that the result of this process must be disseminated publicly, so that Colombian society may know the truth about what happened.

*b) Obligation to conduct a genuine search for the remains of the victims*

264. This activity is extremely important to repair the non-pecuniary damage caused to the victim's next of kin in cases of forced disappearance, when uncertainty about the whereabouts of the victim's remains has caused and continues to cause intense suffering and anguish to the next of kin.

265. The right of the next of kin of the victims to know the whereabouts of their remains<sup>223</sup> constitutes a measure of reparation and, therefore, an expectation of the victims' next of kin that the State must satisfy.<sup>224</sup> The Court has also stated that a person's remains must be treated with respect, because of their significance for their next of kin.<sup>225</sup>

266. The Court considers that, in case of those detained and disappeared, the return of the remains is, in itself, an act of justice and reparation. It is an act of justice to know the whereabouts of the disappeared persons, and it is a form of reparation because it allows the victims to be dignified, by recognizing the

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<sup>222</sup> Cf. *Case of Myrna Mack Chang*, supra note 3, párr 276; *Case of El Caracazo. Reparations*, supra note 13, para. 119; and *Case of Trujillo Oroza. Reparations*, supra note 167, para. 106.

<sup>223</sup> Cf. *Case of Juan Humberto Sánchez*, supra note 147, para. 187; *Case of El Caracazo. Reparations*, supra note 13, paras. 122 and 125; and *Case of Trujillo Oroza. Reparations*, supra note 167, paras. 109, 113 and 114.

<sup>224</sup> Cf. *Case of Juan Humberto Sánchez*, supra note 147, para. 187; *Case of El Caracazo. Reparations*, supra note 13, paras. 122; and *Case of Trujillo Oroza. Reparations*, supra note 167, paras. 113 and 114.

<sup>225</sup> Cf. *Case of Trujillo Oroza. Reparations*, supra note 167, para. 115; *Case of Bámaca Velásquez. Reparations*, supra note 167, para. 81; and *Case of Blake*, supra note 151, para. 115.

importance of their memory for those who were their loved ones and by allowing the latter to give them appropriate burial.<sup>226</sup>

267. The continued lack of the truth about the fate of a disappeared person is a form of cruel and inhuman treatment for the close family and, as this Court has previously stated, the right of the next of kin of the victims to know what happened to them and, if applicable, the whereabouts of their remains, is a measure of reparation and therefore, an expectation that the State must satisfy to the next of kin of the victims.<sup>227</sup>

268. The Court has noted that all the next of kin of the 19 tradesmen who gave testimony before the Court, and also those who provided sworn written statements, declared that the remains of the victims must be found and returned to them, so that they could know what had happened to them and honor their remains according to their beliefs and customs. In this respect, they indicated that the uncertainty about the whereabouts of the remains had caused them and continues to cause them great suffering and insecurity. The statement of the witness, Alejandro Flórez Pérez, is representative of the feelings of the next of kin, when he indicated that "it is important to know that everything possible has been done to find their remains and that they are in a dignified place and, above all, to know what happened, and that justice should be done; that would be the best possible reparation for us."

269. Similarly, the expert witness, Carlos Martín Beristain, stated that, for the next of kin of the victims, it is important that "every possible effort" be made in the investigation into the whereabouts of the remains, because they need to know "what happened to their relatives, have proof of whether they are dead or alive, in order to confront the facts." In this respect, he also stated that:

[...] the next of kin of the disappeared [...] request insistently the return of some of their remains, should they have been murdered, or something that reminds them of their relative, even if it is only a piece of clothing, a small bone, or anything that has something to do with this person; something that helps them go through this process. Without this, the next of kin are obliged to undergo a very complex and difficult mourning process.

270. The Court recognizes that, in this case, the failure to return the remains to the next of kin has caused and continues to cause great suffering, uncertainty and insecurity to the next of kin of the victims. The Court also considers that it has been proved that, following their death in 1987, the bodies of the victims were dismembered and thrown into the waters of the "El Ermitaño" stream, an affluent of the Magdalena River, in front of the place known as "Palo de Mango" [the mango tree]. Owing to the way in which the remains of the 19 tradesmen were treated, and because more than 16 years have elapsed since their disappearance, it is very probable that it will be impossible to find their remains. However, it has also been proved that Colombia did not conduct a genuine search for the remains of the victims, and that the next of kin of the tradesmen resorted to different State authorities shortly after the disappearance and the latter did not provide help in the

<sup>226</sup> Cf. *Case of Juan Humberto Sánchez*, *supra* note 147, para. 187; *Case of Las Palmeras. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of November 26, 2002. Series C No. 96, para. 77; and *Case of El Caracazo. Reparations*, *supra* note 13, para. 123.

<sup>227</sup> Cf. *Case of Juan Humberto Sánchez*, *supra* note 147, para. 187; *Case of El Caracazo. Reparations*, *supra* note 13, para. 122; and *Case of Trujillo Oroza. Reparations*, *supra* note 167, paras. 113 and 114.

immediate search. These omissions of the State, at the time when it was still probable that the remains of the victims could be found, has meant that locating the remains is now a very difficult and improbable task. Despite this, the State declared that it has "the procedural obligation" to "take steps to locate the remains of the victims and deliver them to the next of kin."

271. Based on the above, the Court considers that it is fair and reasonable to order Colombia to conduct a genuine search, making every possible effort to determine with certainty what happened to the remains of the victims and, should it be possible, to return these to their next of kin. The State must inform the Court (*infra* para. 294) about the measures taken in this respect, including those taken in the past, so that the Court can duly evaluate compliance with this obligation.

c) *Monument in memory of the victims*

272. In the instant case, some of the victims' next of kin have requested that the State be ordered to create "a plaque or something similar" in memory of the victims. Ofelia Sauza de Uribe, sister of the victim, Luis Domingo Sauza Suárez, asked that, if it were not possible to deliver the remains of Luis Domingo in order to bury him, at least "a plaque or a monument" should be created to recall the disappeared.

273. The Court considers that the State should erect a monument in memory of the victims. The Court considers that the State and the victims' next of kin must reach an agreement on the choice of the place where the monument is to be erected. Colombia should place a plaque with the names of the 19 tradesmen, which expressly mentions that it is there in compliance with the reparation ordered by the Inter-American Court, at that place during a public ceremony in the presence of the victims' next of kin. This will also contribute to awakening public awareness to avoid repetition of acts such as those that occurred in the instant case and to keeping the memory of the victims alive.<sup>228</sup>

d) *Public act to acknowledge international responsibility and make reparation to the next of kin of the 19 tradesmen*

274. As it has ordered in other cases,<sup>229</sup> the Court considers it necessary, in order to repair the damage to the reputation and honor of the victims and their next of kin, and in order to avoid a repetition of acts such as those in this case, that the State must carry out a public act to acknowledge its international responsibility regarding the facts of this case and to make amends to the memory of the 19 tradesmen.<sup>230</sup> This act must be carried out in the presence of the next of kin of the victims and members of the highest State authorities must take part in it.<sup>231</sup> This act may be carried out during the same public ceremony during which the plaque is placed on the monument erected in memory of the victims (*supra* para. 273).

<sup>228</sup> Cf. *Case of Myrna Mack Chang*, *supra* note 3, para. 286; *Case of Trujillo Oroza. Reparations*, *supra* note 167, para. 122; and *the Case of "Street Children" (Villagrán Morales et al.)*. *Reparations*, *supra* note 202, para. 103.

<sup>229</sup> Cf. *Case of Myrna Mack Chang*, *supra* note 3, para. 278; *Case of Juan Humberto Sánchez*, *supra* note 147, para. 188; and *Case of Bámaca Velásquez. Reparations*, *supra* note 167, para. 84.

<sup>230</sup> Cf. *Case of Myrna Mack Chang*, *supra* note 3, para. 278; *Case of Juan Humberto Sánchez*, *supra* note 147, para. 188; and *Case of Bámaca Velásquez. Reparations*, *supra* note 167, para. 84.

<sup>231</sup> Cf. *Case of Myrna Mack Chang*, *supra* note 3, para. 278.

e) *Provision of medical care to the next of kin of the victims*

275. The Commission requested that, as a measure of reparation, the State should be ordered to provide the next of kin of the victims with physical and mental health care programs, including psycho-social and family support programs.

276. In his expert report, Mr. Beristain referred to the need of the next of kin of the victims to receive care to recover their physical and mental health. In this respect he indicated:

During the interview, [...] the next of kin evinced some problems [...] of excessive consumption of drugs and alcohol[,...] as a way of trying not to think or, at times, trying to channel the anger that this caused.

[...]

[...] it is necessary find ways to alleviate the damage resulting from the disappearance [...] ranging from measures relating to psychological support to health care [...].

[...]

Methods must be found that have a social perspective, that understand disappearance and, at times, generate collective mechanisms [...] provided the people want and accept this. Evidently, there are ways of providing support that will evolve more in collective terms, but the people will also certainly need methods of support or care for their needs in a more individualized way. In this case, it is important to ensure that [the program] is truly appropriate for the needs of the victims and not something designed from outside, [...] it must, in some way, be decided with the next of kin themselves as to their needs and requirements in this area [...].

277. Some of the next of kin of the victims who gave testimony before the Court also stated that they suffered from psychological and health problems as a result of the facts of this case. The Court observes that it is necessary to order a measure designed to reduce the physical and psychological sufferings of the next of kin, resulting from the violations.<sup>232</sup>

278. To help repair physical and psychological damage, the Court rules that the State has the obligation to provide without charge, through its specialized health institutions, the medical and psychological treatment required by the next of kin of the victims, including the medication they require, taking into consideration that some of them have suffered from drug addiction and alcoholism. Bearing in mind the opinion of the expert, who has evaluated or treated many of the next of kin of the 19 tradesmen (*supra* paras. 72(g) and 276), psychological treatment must be provided that takes into account the particular circumstances and needs of each of the next of kin, so that they can be provided with collective, family or individual treatment, as agreed with each of them and following individual assessment. Within one year, Colombia must inform the next of kin of the victims in which health establishments or specialized institutes they will receive medical and psychological treatment, and these institutions must be fully informed about this measure of reparation so that the treatment is provided as ordered above.

279. In relation to the other claims for reparations (*supra* para. 254(b), (e), (f), (g) and (h)), the Court considers that this judgment constitutes *per se* a form of reparation.<sup>233</sup> However, in the case of the next of kin of the victim, Antonio Flórez

<sup>232</sup> Cf. *Case of Myrna Mack Chang*, *supra* note 3, para. 253.2); *Case of Juan Humberto Sánchez*, *supra* note 147, para. 166(c); and *Case of Trujillo Oroza. Reparations*, *supra* note 167, para. 74(b).

<sup>233</sup> Cf. *Case of Maritza Urrutia*, *supra* note 3, para. 178; *Case of Myrna Mack Chang*, *supra* note 3, para. 260; and *Case of Bulacio*, *supra* note 3, para. 96.

Contreras, based on the statements made by his wife and his son, Alejandro, this Court considers that the State must be ordered to establish the necessary conditions for the members of this family who are in exile to be able to return to Colombia, if they so wish, and to cover the resulting expenses.

280. The Court has noted with concern that most of the next of kin of the victims who made statements before the Court and before a public notary (*supra* paras. 71 and 72) expressed the fear that reprisals would be taken against them. In this respect, the Court considers it essential that the State take special measures to guarantee the life, safety and security of those who made statements before the Court and their families, and must provide them with all necessary protection from any person, bearing in mind the circumstances of the instant case.

## **XI COSTS AND EXPENSES**

### *Arguments of the Commission*

281. The Commission stated that:

a) Owing to the time that has elapsed, there is no documentary information on the expenditure incurred by the next of kin of the victims before the domestic courts. The Commission requested the Court to establish a fair amount for the expenses and costs incurred by the next of kin of the victims and their representatives in the domestic instances;

b) The Colombian Jurists Commission advised that the expenditure it incurred to process the case before the Inter-American System from 1996 until March 2003 amounted to the sum of US\$4,304.84 (four thousand, three hundred and four United States dollars and eighty-four cents);<sup>234</sup>

c) In its final arguments, the Commission updated the total value of the expenses incurred by the Colombian Jurists Commission from March 1996 to the date on which they were submitted. Those expenses amount to the sum of US\$15,996.92 (fifteen thousand, nine hundred and ninety-six United States dollars and ninety-two cents);<sup>235</sup>

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<sup>234</sup> The total amount of US\$4,304.84 (for thousand three hundred and four United States dollars and eighty-four cents) breaks down as follows: US\$444.40 (four hundred and forty-four United States dollars and forty cents) for telephone calls and faxes to Washington D.C.; US\$70.73 (seventy United States dollars and seventy-three cents) for telephone calls and faxes to San José, Costa Rica; US\$109.13 (one hundred and nine United States dollars and thirteen cents) for mail sent by air to Washington D.C.; US\$67.78 (sixty-seven United States dollars and seventy-eight cents) for mail sent by air to San José, Costa Rica; US\$1,255.43 (one thousand two hundred and fifty-five United States dollars and forty-three cents) for transport and per diems to attend the hearings before the Inter-American Commission in Washington, D.C.; US\$1,271.43 (one thousand two hundred and seventy-one United States dollars and forty-three cents) for transport and per diems to attend the public hearing on the preliminary objection before the Inter-American Court; and US\$1,086.27 (one thousand and eighty-six United States dollars and twenty seven cents) for national transport and per diems.

<sup>235</sup> The table presented as an attachment to the final arguments details the expenses incurred (in Colombian pesos) during 2003 and 2004, and expense vouchers are attached. As indicated in this table, this amount includes expenditure for the food, accommodation and transport of witnesses; airport taxis, plane tickets, photocopies, visa processing, telephone calls, authentications and taxes.

d) With regard to the "legal agencies," the Court was requested to "determine an amount, at its discretion"; to this end, it indicated "as an element of information" that, in Colombia, the "legal agencies" are established by the Lawyers' Professional Association of the respective district, and "in cases like the instant case, amount to 39% of the amount awarded;" and

e) The Center for Justice and International Law (CEJIL) informed the Commission that, as representative of the victims before the Inter-American System, it incurred expenses totaling US\$3,929.08 (three thousand, nine hundred and twenty-nine United States dollars and eight cents).<sup>236</sup>

### *Arguments of the State*

282. The State argued that:

a) It should be recalled that the Court has established that it is not appropriate for the calculation of costs to be proportionate to the amount of compensation awarded, because more important elements exist to assess the role of lawyers before an international court. To be admissible, an expenditure must be necessary and reasonable, according to the characteristics of the case, and incurred by the alleged victims or their representatives;

b) The ruling to pay costs and expenses should be made with the same criteria that regulate responsibility for damage; consequently, it is not fair that Colombia should have to assume expenditure that was not originated by the applicants in this case, or that it should have to reimburse the cost of "useless, irrelevant or inadequate evidence;"

c) Expenses for travel, stationery, telephone calls and faxes must be directly related to this case; and

d) It does not agree with the way in which the Colombian Jurists Commission determined the expenses in which it allegedly incurred in this case, since it divided its total expenses into eight (the number of cases that it processed before the Inter-American Commission), which "is not fair, considering the different amount of attention required by each case."

### *Considerations of the Court*

283. As the Court as indicated on previous occasions,<sup>237</sup> costs and expenses are included in the concept of reparation embodied in Article 63(1) of the American Convention, because the measures taken by the next of kin of the victims in order to obtain justice, at the domestic and the international level, imply expenditure that must be compensated when the State's international responsibility has been declared

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<sup>236</sup> The expenses described by the Center for Justice and International Law refer to expenditure incurred for plane tickets, taxes and per diems, as a result of their participation in the public hearings on the preliminary objection and on merits and possible reparations and costs, as well as expenditure for telephone calls, faxes and supplies.

<sup>237</sup> Cf. *Case of Maritza Urrutia*, supra note 3, para. 182; *Case of Myrna Mack Chang*, supra note 3, para. 290; and *Case of Bulacio*, supra note 3, para. 150.



by means of a conviction. Regarding reimbursement, the Court must prudently assess their scope, which includes the expenses incurred before the authorities of the domestic jurisdiction, and also those incurred during the proceedings before the Inter-American System, taking into account the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights.<sup>238</sup> This assessment may be based on the principle of fairness and by evaluating the expenses indicated by the Inter-American Commission, provided that the amount is reasonable.<sup>239</sup>

284. With regard to recognition of costs and expenses, legal assistance to the victim does not begin merely at the reparations stage, but starts before the domestic judicial bodies and continues in the successive instances of the Inter-American System for the protection of human rights; namely, in the proceedings before the Commission and before the Court. Consequently, in the concept of costs, for these purposes, both those that correspond to the stage of access to justice at the national level, as those that refer to justice at the international level before the two instances: the Commission and the Court are included.<sup>240</sup>

285. To this end, the Court considers that, in fairness, the following amounts may be ordered for costs and expenses: the sum of US\$10,000.00 (ten thousand United States dollars) or the equivalent in Colombian currency, to be delivered to the Colombian Jurists Commission, and the sum of US\$3,000.00 (three thousand United States dollars) or the equivalent in Colombian currency, to be delivered to the Center for Justice and International Law (CEJIL).

## **XII METHOD OF COMPLIANCE**

286. To comply with this judgment, the State shall pay the compensations (*supra* paras. 240, 242, 243 and 252), reimburse costs and expenses (*supra* para. 285) and adopt the measures ordered in paragraphs 273, 274, 278 and 279 of this judgment, within one year of the date of its notification. In the case of the other reparations ordered (*supra* paras. 263 and 271), the State shall comply with the measures within a reasonable time.

287. The payment of the compensations established in favor of the victims shall be made as established in paragraph 230 of this judgment and the payment of the compensation established in favor of the next of kin of the victims, as applicable, shall be made directly to them or, if any of them should have died, the criteria set out in the said paragraph 230 shall apply.

288. The payments corresponding to the reimbursement of costs and expenses arising from the measures taken by the representatives of the victims' next of kin before the domestic legal system and in the international proceeding before the

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<sup>238</sup> Cf. *Case of Maritza Urrutia*, *supra* note 3, para. 182; *Case of Myrna Mack Chang*, *supra* note 3, para. 290; and *Case of Bulacio*, *supra* note 3, para. 150.

<sup>239</sup> Cf. *Case of Maritza Urrutia*, *supra* note 3, para. 182; *Case of Myrna Mack Chang*, *supra* note 3, para. 290; and *Case of Bulacio*, *supra* note 3, para. 150.

<sup>240</sup> Cf. *Case of Maritza Urrutia*, *supra* note 3, para. 183; *Case of Loayza Tamayo. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 42, para. 178; and *Garrido and Baigorria case. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of August 27, 1998. Series C No. 39, para. 81.

Inter-American System for the protection of human rights, shall be made in favor of the said representatives (*supra* para. 285).

289. If, for causes attributable to the beneficiaries of the compensation, they are unable to receive it within the said period of one year from notification of this judgment, the State shall deposit the amounts in their favor in an account or a deposit certificate in a reputable Colombian banking institution, in United States dollars or the equivalent in Colombian currency, and in the most favorable financial conditions allowed by banking practice and legislation. If, after ten years, the compensation has not been claimed, the amount shall be returned to the State with the earned interest.

290. In the case of the compensation ordered in favor of the minor beneficiaries, the State shall apply the amount to a banking investment in their name in a reputable Colombian banking institution, in United States dollars. The investment shall be made within one year, in the most favorable financial conditions allowed by banking practice and legislation, while they are minors. The investment may be withdrawn by the beneficiaries when they attain their majority, or when, in the higher interests of the child and by decision of a competent judicial authority, this is ordered. If ten years elapse from the date on which the minor attains majority and the compensation has not been claimed, the amount shall be returned to the State with the earned interest.

291. The State may comply with its pecuniary obligations by payment in United States dollars or the equivalent amount in Colombian currency, except in the case of the establishment of a bank investment (*supra* para. 290), using the rate of exchange between the two currencies in force on the New York, United States of America, market, the day before the payment, to make the respective calculation.

292. The payments ordered in this judgment shall be exempt from any current or future tax or charge.

293. Should the State fall into arrears, it shall pay interest on the amount owed, corresponding to bank interest on arrears in Colombia.

294. In accordance with its consistent practice, the Court reserves the authority, inherent in its attributions, to monitor full compliance with this judgment. The case shall be filed once the State has fully complied with the provisions of this ruling. Within one year from the notification of this judgment, Colombia shall submit to the Court a first report on the measures taken to comply with it.

### **XIII OPERATIVE PARAGRAPHS**

295. Therefore,

**THE COURT,**

DECLARES:

Unanimously,

1. That the State violated the rights to personal liberty, humane treatment and life embodied in Articles 7, 5 and 4 of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Álvaro Lobo Pacheco, Gerson Javier Rodríguez Quintero, Israel Pundor Quintero, Ángel María Barrera Sánchez, Antonio Flórez Contreras, Víctor Manuel Ayala Sánchez, Alirio Chaparro Murillo, Álvaro Camargo, Gilberto Ortíz Sarmiento, Reinaldo Corzo Vargas, Luis Hernando Jáuregui Jaimes, Luis Domingo Sauza Suárez, Juan Alberto Montero Fuentes, José Ferney Fernández Díaz, Rubén Emilio Pineda Bedoya, Carlos Arturo Riatiga Carvajal, Juan Bautista, Alberto Gómez (whose second last name was possibly Ramírez) and Huber Pérez (whose second last name was possibly Castaño), in the terms of paragraphs 134, 135, 136, 145, 146, 150, 155 and 156 of this judgment.

By six votes to one,

2. That the State violated the rights to a fair trial and to judicial protection embodied in Articles 8(1) and 25 of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Álvaro Lobo Pacheco, Gerson Javier Rodríguez Quintero, Israel Pundor Quintero, Ángel María Barrera Sánchez, Antonio Flórez Contreras, Víctor Manuel Ayala Sánchez, Alirio Chaparro Murillo, Álvaro Camargo, Gilberto Ortíz Sarmiento, Reinaldo Corzo Vargas, Luis Hernando Jáuregui Jaimes, Luis Domingo Sauza Suárez, Juan Alberto Montero Fuentes, José Ferney Fernández Díaz, Rubén Emilio Pineda Bedoya, Carlos Arturo Riatiga Carvajal, Juan Bautista, Alberto Gómez (whose second last name was possibly Ramírez) and Huber Pérez (whose second last name was possibly Castaño) and their next of kin, in the terms of paragraphs 173, 174, 177, 200, 203, 204 and 205 of this judgment.

Partially dissenting, Judge Medina Quiroga.

Unanimously,

3. That the State violated the right to humane treatment embodied in Article 5 of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of the next of kin of Álvaro Lobo Pacheco, Gerson Javier Rodríguez Quintero, Israel Pundor Quintero, Ángel María Barrera Sánchez, Antonio Flórez Contreras, Víctor Manuel Ayala Sánchez, Alirio Chaparro Murillo, Álvaro Camargo, Gilberto Ortíz Sarmiento, Reinaldo Corzo Vargas, Luis Hernando Jáuregui Jaimes, Luis Domingo Sauza Suárez, Juan Alberto Montero Fuentes, José Ferney Fernández Díaz, Rubén Emilio Pineda Bedoya, Carlos Arturo Riatiga Carvajal, Juan Bautista, Alberto Gómez (whose second last name was possibly Ramírez) and Huber Pérez (whose second last name was possibly Castaño), in the terms of paragraphs 212 to 218 of this judgment.

Unanimously,

4. That this judgment constitutes, *per se*, a form of reparation, in the terms of paragraph 279 thereof.

**AND DECIDES:**

Unanimously,

5. That the State shall, in a reasonable time, investigate effectively the facts of this case, in order to identify, prosecute and punish all the masterminds and

perpetrators of the violations committed against the 19 tradesmen, for the criminal and any other effects that may arise from the investigation into the facts, and the result of this measure shall be disseminated publicly, in the terms of paragraphs 256 to 263 of this judgment.

Unanimously,

6. That the State shall conduct, within a reasonable time, a genuine search during which it makes every possible effort to determine with certainty what happened to the remains of the victims and, if possible, return them to their next of kin, in the terms of paragraphs 270 and 271 of this judgment.

Unanimously,

7. That the State shall erect a monument in memory of the victims and, in a public ceremony in the presence of the next of kin of the victims, shall place a plaque with the names of the 19 tradesmen, in the terms of paragraph 273 of this judgment.

Unanimously,

8. That the State shall organize a public act to acknowledge its international responsibility for the facts of this case and to make amends to the memory of the 19 tradesmen, in the presence of the next of kin of the victims, and in which members of the highest State authorities must take part, in the terms of paragraph 274 of this judgment.

Unanimously,

9. That the State shall provide, free of charge, through its specialized health institutions, the medical and psychological treatment required by the next of kin of the victims, in the terms of paragraphs 277 and 278 of this judgment.

Unanimously,

10. That the State shall establish the necessary conditions for the members of the family of the victim, Antonio Flórez Contreras, who are in exile, to return to Colombia, if they so wish, and shall cover the costs they incur as a result of their return, in the terms of paragraph 279 of this judgment.

Unanimously,

11. That the State shall pay special attention to guaranteeing the lives, safety and security of the persons who made statements before the Court and their next of kin, and shall provide them with the necessary protection from any persons, bearing in mind the circumstances of this case, in the terms of paragraph 280 of this judgment.

Unanimously,

12. That the State shall pay the total amount of US\$55,000.00 (fifty-five thousand United States dollars) or the equivalent in Colombian currency for loss of

income for each of the 19 victims, in the terms of paragraphs 230, 231, 233, 234, 235, 240 and 243 of this judgment.

Unanimously,

13. That the State shall pay the total amount of US\$2,000.00 (two thousand United States dollars) or the equivalent in Colombian currency for the expenditure incurred by the next of kin of the victims Juan Alberto Montero Fuentes, Víctor Manuel Ayala Sánchez, Gerson Javier Rodríguez Quintero, Antonio Flórez Contreras, Ángel María Barrera Sánchez, Alirio Chaparro Murillo, Álvaro Lobo Pacheco, Israel Pundor Quintero, Luis Hernando Jáuregui Jaimes, Rubén Emilio Pineda Bedoya and Reinaldo Corzo Vargas when trying to discover their whereabouts, in the terms of paragraphs 242 and 243 of this judgment.

Unanimously,

14. That the State shall pay the total amount of US\$80,000.00 (eighty thousand United States dollars) or the equivalent in Colombian currency in compensation for non-pecuniary damage caused to each of the 19 victims, in the terms of paragraphs 230, 231, 235, 233, 234, 250, 251 and 252 of this judgment.

Unanimously,

15. That the State shall pay in compensation for non-pecuniary damage caused to the next of kin of the victims:

- a) The sum of US\$50,000.00 (fifty thousand United States dollars) or the equivalent in Colombian currency, to each of the children of the victims, in the terms of paragraphs 231, 233, 234, 235, 248, 249, 250 and 252 of this judgment;
- b) The sum of US\$80,000.00 (eighty thousand United States dollars) or the equivalent in Colombian currency, to each of the spouses and companions of the victims, in the terms of paragraphs 231, 233, 234, 235, 248, 249, 250 and 252 of this judgment;
- c) The sum of US\$50,000.00 (fifty thousand United States dollars) or the equivalent in Colombian currency, to each of the parents of the victims, in the terms of paragraphs 231, 233, 234, 235, 248, 249, 250 and 252 of this judgment; and
- d) The sum of US\$8,500.00 (eight thousand five hundred United States dollars) or the equivalent in Colombian currency, to each of the siblings of the victims, in the terms of paragraphs 231, 233, 234, 235, 248, 249, 250 and 252 of this judgment.

Unanimously,

16. That the State shall pay the Colombian Jurists Commission the sum of US\$10,000.00 (ten thousand United States dollars), or the equivalent in Colombian currency, and the Center for Justice and International Law (CEJIL) the sum of US\$3,000.00 (three thousand United States dollars), or the equivalent in Colombian currency, for costs and expenses, in the terms of paragraph 285 of this judgment.

Unanimously,

17. That the State shall pay the total amount of the compensation for pecuniary damage, non-pecuniary damage, and costs and expenses established in this judgment, and that none of the respective items may be subject to any current or future tax or charge, in the terms of paragraph 292 of this judgment.

Unanimously,

18. That the State may fulfill its pecuniary obligations by payment in United States dollars or the equivalent sum in Colombian currency, except when making a bank investment, in the terms of paragraphs 290 and 291 of this judgment.

Unanimously,

19. That the State shall pay the compensations, reimburse the costs and expenses, and adopt the measures ordered in operative paragraphs 7, 8, 9, 10, 12, 13, 14, 15 and 16 of this judgment within one year of its notification, in the terms of paragraph 286 of this judgment.

Unanimously,

20. That should the State fall in arrears, it shall pay interest on the amount owed corresponding to the bank interest on payments in arrears in Colombia, in the terms of paragraph 293 of this judgment.

Unanimously,

21. That if, due to causes that can be attributed to the beneficiaries of the compensation, they are unable to receive it within the said period of one year from notification of this judgment, the State shall deposit such amounts in their favor in an account or a deposit certificate in a reputable Colombian banking institution, in the terms of paragraph 289 of this judgment.

Unanimously,

22. That the State shall deposit the compensation ordered in favor of the beneficiaries who are minors in a banking investment in their names in a reputable Colombia banking institution, in United States dollars, within one year, and in the most favorable financial conditions allowed by legislation and banking practice, while they are minors, in the terms of paragraph 290 of this judgment.

Unanimously,

23. That it shall monitor compliance with this judgment and shall file the instant case, when the State has fully implemented all its provisions. Within one year of notification of this judgment, the State shall provide the Court with a report on the measures taken to comply with it, in the terms of paragraph 294 hereof.

Judge Medina Quiroga informed the Court of her partially dissenting opinion which accompanies this judgment.

Done, at San José, Costa Rica, on July 5, 2004, in Spanish and English, the Spanish text being authentic.

Sergio García-Ramírez  
President

Alirio Abreu-Burelli

Oliver Jackman

Antônio A. Cançado Trindade

Cecilia Medina-Quiroga

Manuel E. Ventura-Robles

Ernesto Rey-Cantor  
Judge *ad hoc*

Pablo Saavedra-Alessandri  
Secretary

So ordered,

Sergio García-Ramírez  
President

Pablo Saavedra-Alessandri  
Secretary

## PARTIALLY DISSENTING OPINION OF JUDGE MEDINA QUIROGA

Even though I consider proven the facts that the Court has considered violate the American Convention in chapter VIII of this judgment – which examines the violation of Articles 8(1), 25 and 1(1) of the American Convention – I submit this partially dissenting opinion rejecting the violation of Article 25 and explaining my reasoning (which differs from that of the Court), to conclude that Article 8 of the Convention has been violated.

1. Article 25 embodies the right of the individual to have his human rights protected in the domestic sphere, simply, promptly and effectively. In our hemisphere, this is known as the right to the remedy of *amparo* [protection].<sup>1</sup> This is underscored by the fact that the first version of this provision embodied this right only for the rights established in the Constitution and laws of the respective country.<sup>2</sup> Its subsequent amendment (incorporating the formulation of Article 2, paragraph 3, of the International Covenant on Civil and Political Rights), added the notion that the remedy of *amparo* should also protect the human rights embodied in the American Convention.<sup>3</sup>

In the American Convention, Article 25 is entitled "Judicial Protection." This could lead us to infer that it enshrines "the right of access to justice." However, we would have to say that, contrary to the International Covenant on Civil and Political Rights (article 2(3)), the title signifies that the remedies referred to must be of a judicial nature. The possible access to justice granted by Article 25 would only cover prompt, simple and effective remedies; namely, only the remedy of *amparo*.

2. Article 8, on the "Right to a Fair Trial" (Translator's note: the literal translation from Spanish is "Judicial Guarantees"), does not establish the right to a remedy, but to due process of law; namely, the series of formalities that must be observed in the procedural instances to protect the individual's right to have, on the one hand, any disputes that arise between two parties - whether individuals or State bodies, and whether they refer to matters in the sphere of human rights or not – and, on the other hand, the guilt or innocence of a person, decided with the highest level possible of justice.

Article 8 establishes a broad right of access to justice for all those effects and regulates the way in which justice should be dispensed.

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<sup>1</sup> ICourHR, *Habeas Corpus in Emergency Situations* (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights). Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, para. 32.

<sup>2</sup> Inter-American Specialized Conference on Human Rights, *Actas y documentos*, Doc. 5, p.22.

<sup>3</sup> *Ibidem*, p. 41.



3. Consequently, the two rights are different in nature and their relationship is one of substance to form, as this Court has said, since Article 26 embodies the right to a judicial remedy, while Article 8 establishes the way in which this is processed.<sup>4</sup>

I consider that it is very important to preserve the distinction between the two articles. If we examine Article 25 with the parameters of Article 8 - for example, the reasonable time limit - the meaning of the former article is nullified, because it requires, not a reasonable time limit, which could easily exceed a year in the terms of Article 8, but promptness; namely, resolution within a matter of days probably.

4. Based on the above, I cannot agree with paragraph 187 of the judgment of the Court which derives from Article 25, not the right to a simple, prompt and effective remedy, but the right to the opening of an investigation and, subsequently, a trial that, obviously, could not have those characteristics. Other paragraphs of the judgment examine the possible violation of Article 25 with parameters that, I consider, are correct for the examination of Article 8 (paragraph 173 to 177 and 195 and ff.). I consider that the Court should develop specific parameters to evaluate the compliance of States Parties with their obligations under Article 25.

5. I have a second difference of opinion to that of the majority of the members of the Court, which encompasses both Article 25 and Article 8, because the Court combines the, and refers to the affirmation mentioned above that they both confer:

“on the next of kin of the victims the right that the death of the latter will be investigated effectively by the State authorities; that proceedings will be filed against those responsible for these unlawful acts; and, if applicable, the pertinent punishments will be imposed, and the losses that the said next of kin have suffered will be repaired.”

6. In paragraph 187, the Court cites Articles 8 and 25 as the source of the right of the victims or their next of kin, as applicable, to require the State to prosecute the possible perpetrators of grave human rights violations. I agree that this right exists, but I consider that neither of the articles cited provides adequate grounds for the right in question.

7. Article 8, entitled "Right to a Fair Trial," embodies due process and, above all, access to justice; namely, the right to be heard by an independent and impartial court, in a reasonable time in two situations: a) when a criminal accusation is substantiated, in which case the bearer of the right is the accused; and b) for the determination of rights and obligations of a civil, labor, fiscal or any other nature.

As can be seen from examining this Article, it establishes the right of access to justice with regard to any criminal charge or litigation of a civil, labor, fiscal or any other nature. The breadth of this formulation means that the determination of any type of right requires compliance with due process, but does not, in itself, establish the previous existence of the rights that will be determined according to

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<sup>4</sup> ICourHR, *Judicial Guarantees in States of Emergency* (Arts. 27(2), 25 and 8 American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 24; and ICourHR, *Case of Hilaire, Constantine and Benjamin et al.*. Judgment of June 21, 2002. Series C No. 94, para. 148.

the procedural norms it describes. The missing step that connects Article 8 to the facts of the case is to determine the legal source of the next of kin's right to know the truth of what has happened, and to require the State to prosecute those allegedly responsible.

8. I consider that the legal grounds for requiring a trial that seeks to establish the responsibility of the participants in the violation of specific rights, to which those affected by the violation have access, should be found, not in a provision that embodies the right to a remedy or in one of a procedural nature, but in the substantive right that has been violated, in light of the general obligation to guarantee rights, contained in Article 1(1) of the American Convention, which can only be examined in connection with a substantive right, particularly in view of the way in which that obligation has been interpreted by both this Court and other international supervisory bodies.

It can be affirmed that, in compliance with its general obligation to guarantee, the State must protect the human rights of the individual when dealing with third parties, whether they are State agents or individuals. It must do so, by legal provisions that declare certain actions to be illegal (in the case of the right to life and not to be subjected to torture, by the establishment of the corresponding criminal offenses) and, when those prohibitions are violated, it must apply the full breadth of the law, in order to discourage further acts of the same nature from being committed. And, if a criminal norm has been violated, this implies investigating, prosecuting and criminally convicting all those who took part in the offense.

9. The Court has said this on more than one occasion:

- a. In paragraph 166 of the *Velásquez Rodríguez* case,<sup>5</sup> the Court stated that:

"[A]s a consequence of this obligation [that of guarantee], the Status must **prevent, investigate and punish** any violation of the rights recognized by the Convention ..." (My emphasis)

- b. In the chapter on violation of the right to life in the *Myrna Mack Chang* case,<sup>6</sup> it established:

"Therefore, the States must adopt all necessary measures, not only to prevent, **try and punish** deprivation of life as a consequence of criminal acts, in general, but also to prevent arbitrary executions by their own security agents." (My emphasis)

- c. This same idea may be inferred from the judgment in this case. In paragraph 153, where the Court examines the violation of Article 4 of the Convention, we read that the State should provide active protection to the right to life and that, therefore, "States must adopt all necessary measures, not only to **prevent, and punish** the deprivation of life as a consequence of criminal acts, but also to prevent arbitrary executions by their own security forces."

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<sup>5</sup> ICourtHR, Case of *Velásquez Rodríguez*. Judgment of July 29, 1988. Series C No. 4, para. 166.

<sup>6</sup> ICourtHR, Case of *Myrna Mack Chang*. Judgment of November 25, 2003. Series C No. 101, para. 153.

10. The United Nations Human Rights Committee has ruled similarly, as has the European Court.

In its General Comments 6/1982, paragraph 3, and 14/1984, paragraph 1, both referring to the right to life embodied in Article 6 of the International Covenant on Civil and Political Rights, the Committee stated:

"The protection against arbitrary deprivation of life which is explicitly required by the third sentence of article 6 (1) is of paramount importance. The Committee considers that States parties should take measures not only **to prevent and punish** deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities."<sup>7</sup>

In its recent General Comment on Article 2, which contains the obligations to respect and guarantee the rights of the Covenant, it has said that the obligations of the State will only be understood to be fully complied with if the State protects the individual, not only in the case of acts of its agents, but also of those of other entities or private persons, adding that:

"There may be circumstances in which a failure to ensure Covenant rights as required by article 2 would give rise to violations by States Parties **of those rights**, as a result of States Parties' permitting or failing to take appropriate measures or to exercise due diligence **to prevent, punish, investigate or redress the harm caused by such acts** by private persons or entities"<sup>8</sup> (My emphasis).

The European Court has consistent case law and, in cases concerning the right to life, examines what it calls "the procedural obligation of Article 2 of the European Convention." In *Hugo Jordan v. the United Kingdom*, the Court does not consider the requirements of Article 6 of the Covenant, which embody due process, as a separate violation, but examines how the investigation was conducted in its considerations on the right to life.<sup>9</sup>

11. Consequently, I believe that the obligation of the State to investigate and possibly try and punish should be considered to emanate from the respective substantive right. This definition is not due merely to the desire to apply the Convention strictly, but has substantive effects. For the purposes of reparation and of admonishment, it makes a difference to assert that a procedural norm, such as Article 8, has been violated or a substantive norm, such as those contained in Articles 4 or 5.

12. Evidently, if this obligation exists, the way to comply with it falls within the sphere of Article 8. From that point of view, I share the considerations described by the majority opinion with regard to the violation of different elements of that article.

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<sup>7</sup> Cited by this Court in the *Case of "Street Children" (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, para. 145.

<sup>8</sup> HRC, General Comment on Article 2. The Nature of the General Legal Obligation Imposed on State Parties to the Covenant (adopted at 2187th meeting on 29 March 2004), para. 8.

<sup>9</sup> *Case of Hugh Jordan v. United Kingdom*, Application No. 24746/94, judgment of 4 May 2001, particularly paragraphs 142 to 145. See also *Case of Anchova and others v. Bulgaria*, Applications Nos. 43577/98 and 43579/98, judgment of 26 February 2004, particularly paragraph 141.

13. In conclusion, I dissent from this judgment as regards Article 25 of the Convention having been violated in this case, and I dissent from the reasoning used in Chapter VIII of the judgment. I agree that the Colombian State has violated Articles 4 and 5, for the reasons set forth by the Court, but also because it did not comply with its obligation to guarantee the respective provisions, by not conducting a genuine and effective investigation into the facts of the case. Moreover, I conclude that the State violated Article 8 because the partial investigation that it conducted did not respect the requirements that Article 8 imposes on any procedure.

Cecilia Medina-Quiroga  
Judge

Pablo Saavedra-Alessandri  
Secretary