

OEA/Ser.L/V/II.155
Doc. 21
July 28, 2015
Original: Spanish

REPORT No. 41/15
CASES 12.335; 12.336; 12.757; 12.711
REPORT ON MERITS

GUSTAVO GIRALDO VILLAMIZAR DURÁN *et al.*
COLOMBIA

Approved by the Commission during the 2044 session held on July 28, 2015
155th Ordinary Period of Sessions

Cite as: IACHR, Report No. 41/15, Cases 12.335; 12.336; 12.757; 12.711, Merits, Gustavo Giraldo Villamizar Durán *et al.*, Colombia, July 28, 2015.

REPORT NO. 41/15
 CASES 12.335; 12.336; 12.757; 12.711
 MERITS
 GUSTAVO GIRALDO VILLAMIZAR DURÁN *et al.*
 COLOMBIA
 JULY 28 2015

TABLE OF CONTENTS

I.	SUMMARY	2
II.	PROCEEDINGS BEFORE THE COMMISSION	3
III.	POSITIONS OF THE PARTIES.....	4
	A. Position of the petitioners.....	4
	B. Position of the State	5
IV.	PRELIMINARY CONSIDERATIONS.....	6
	A. Determining the victims of Case 12.711	6
	B. Requests of the State in relation to Case 12.335	8
V.	FACTUAL AND LEGAL ANALYSIS	8
	A. The <i>modus operandi</i> of the “false positives” as a pattern of extrajudicial executions in Colombia for the period of the facts	9
	B. Rights to life, personal integrity, personal liberty and honor and dignity.....	12
	1. The Rights to life, personal liberty and honor and dignity of Mr. Gustavo Villamizar Durán	17
	2. The rights to life, personal integrity, personal liberty and honor and dignity of Mr. Elio Gelves Carrillo.....	24
	3. The Rights to life, personal integrity and personal liberty of Mr. Carlos Arturo Uva Velandia	32
	4. The Rights to life, personal integrity and personal liberty of Messrs. Wilfredo Quiñónez Bárcenas, José Gregorio Romero Reyes and Albeiro Ramírez Jorge	41
	C. The rights to a fair trial and judicial protection, the duty to adopt provisions of domestic law ..	52
	1. The rights to a fair trial and judicial protection of the next of kin of Mr. Gustavo Giraldo Villamizar Durán	54
	2. The rights to a fair trial and judicial protection of the next of kin of Mr. Elio Gelves Carrillo	60
	3. The rights to a fair trial and judicial protection of the next of kin of Mr. Carlos Arturo Uva	65
	4. The right to a fair trial and judicial protection of Messrs. Wilfredo Quiñónez, José Gregorio Romero and Albeiro Ramírez Jorge’s next of kin.....	67
	D. The right to Humane Treatment to the detriment of the next of kin	80
VI.	CONCLUSIONS.....	81
VII.	RECOMMENDATIONS	82

REPORT NO. 41/15
CASES 12.335; 12.336; 12.757; 12.711
MERITS
GUSTAVO GIRALDO VILLAMIZAR DURÁN *et al.*
COLOMBIA
JULY 28 2015

I. SUMMARY

1. Between March 2, 1999 and February 23, 2003, the Inter-American Commission on Human Rights (hereinafter “The Inter-American Commission”, “the Commission” or “the IACHR”), received four petitions, which respectively alleged the extrajudicial execution of Elio Gelves Carrillo, Gustavo Giraldo Villamizar Durán, Carlos Arturo Uva Velandia and Wilfredo Quiñónez committed by agents of the State of Colombia (hereinafter “the Colombian State”, “The State” or “Colombia”).¹

2. In the majority of the petitions it was alleged that the deaths of the alleged victims are framed in a context of extrajudicial executions in Colombia. In this regard, it was alleged that State agents executed extrajudicially the alleged victims and later they were presented as alleged subversives killed during confrontations with members of the Army. According to the petitioners, there existed no diligent investigation of the acts nor integral reparation for the victims, therefore the State would have violated several rights enshrined in the American Convention on Human Rights (hereinafter, “the Convention” or “the American Convention”).

3. The State of Colombia denied the existence of the context of the extrajudicial executions and considered that none of the deaths entails their international responsibility. It stated that in the cases of Mr. Elio Gelves Carrillo, Mr. Gustavo Villamizar Durán and Mr. Wilfredo Quiñónez their deaths had been verified as the result of a legitimate self-defense by the members of the Army, while in the case of Mr. Carlos Arturo Uva Velandia, even though it recognized that a soldier deprived him of his life, it pointed out that it was not responsible for his individual conduct. The State indicated that in all the cases a diligent investigation was followed with statements of the internal authorities that defined the responsibility of the agents, therefore it has not incurred in violations to the American Convention.

4. After considering the arguments and evidence presented by both parties, the Commission declared the international responsibility of the State of Colombia for: i) the violation to the rights to life and honor and dignity enshrined in Articles 4 and 11 of the American Convention in relation to Article 1(1) of said instrument to the detriment of Mr. Gustavo Giraldo Villamizar Durán; ii) the violation to the rights to life, personal integrity, personal liberty and honor and dignity enshrined in Articles 4, 5, 7, 11 of the American Convention in relation to Article 1(1) of said instrument to the detriment of Mr. Elio Gelves Carrillo; iii) the violation to the rights to life, personal integrity and personal liberty enshrined in Articles 4, 5 and 7 of the American Convention in relation to Article 1(1) of said instrument to the detriment of Mr. Carlos Arturo Uva Velandia; iv) the violation of the rights to life, personal integrity and personal liberty enshrined in Articles 4, 5, 7 of the American Convention in relation to Article 1(1) of said instrument to the detriment of Wilfredo

¹In this regard: i) on March 2, 1999 a petition was received, presented by Humanidad Vigente – Corporación Jurídica which alleged the extrajudicial execution of Elio Gelves Carrillo, allegedly perpetrated by agentes of the State on May 27, 1997 in the municipality of Fortul, department of Arauca, as well as the lack of an effective investigation, aimed to the judging and sanction[ing] of the responsible individuals of the acts; ii) on March 30, 1999 a petition was received, presented by Humanidad Vigente – Corporación Jurídica which alleged the death of Gustavo Giraldo Villamizar Durán by agents of the State on August 11, 1996, in the municipality of Saravena, department of Arauca and the lack of judicial clarification of the acts; iii) on October 5, 2000 a petition was received, presented by Horacio Perdomo Parada for the death of Carlos Arturo Uva Velandia by a member of the Police Force, in the municipality of Hato Corozal, department of Casanare, on June 21, 1992, in absense of clarification of the responsibility of the State in the acts and consequently the lack of compensation of damages in favor of the parents and brothers of the alleged victim; and iv) on February 23, 2003 a petition was received presented by the Corporación Colectivo de Abogados José Alvear Restrepo which alleged the extrajudicial execution of Wilfredo Quiñónez Barcenasi, allegedly perpetrated by agents of the State on September 3, 1995 in the municipality of Barracabermeja, deparment of Santander.

Quiñónez, José Gregorio Romero and Albeiro Ramírez Jorge;^{2 v)} the violation of the rights to mental and moral integrity, judicial guarantees and judicial protection enshrined in Articles 5, 8 and 25 of the Convention in conjunction with Article 1(1) of the said instrument to the detriment of the next of kin of the six deceased victims; and vi) the violation of the rights to Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture for the lack of investigation after January 19, 1999, to the detriment of the next of kin of Wilfredo Quiñónez, José Gregorio Romero and Albeiro Ramírez Jorge.

II. PROCEEDINGS BEFORE THE COMMISSION

5. In relation to the Case 12.335, the petition was received on March 30, 1999 and the Commission adopted Admissibility Report 99/09 on October 29, 2009.³ The observations on the merits of the petitioners were received on February 17, 2010. The State presented its observations on the merits on August 26, 2010. The petitioners presented additional communications on October 27, 2010 and April 5, 2011. Likewise, the State presented additional information February 23, 2011 and June 27, 2011.

6. In relation to Case 12.336, the petition was received on March 2, 1999 and the Commission adopted Admissibility Report 104/11 on July 22, 2011.⁴ The petitioners presented their observations on the merits on December 7, 2011. The State presented its observations on the merits on April 16, 2012. The petitioners presented additional information on March 1, 2013. On April 19, 2012 the IACHR requested the petitioners to present observations within a period of one month. On September 25, 2013, the Commission reiterated this request, but did not receive additional observations from the petitioners.

7. In relation to Case 12.757, the petition was received in October 5, 2000 and the Commission adopted Admissibility Report 49/10 on March 18, 2010.⁵ On October 10, 2013, the petitioner presented his observations reiterating “the claims made when the initial request was submitted.” On April 10, 2014 the State presented its observations on the merits of the petition. The petitioner presented additional information on June 4, 2014, which was transmitted to the State on June 6, 2014 for its observations within a period of one month. To date the State has not responded to this request.

8. In relation to Case 12.711, the petition was received on February 23, 2003 and the Commission adopted Admissibility Report 68/09 on August 5, 2009.⁶ On December 6 and 20, 2010, the petitioners presented their observations on the merits. On July 27, 2011 the State submitted its observations on the merits. The Commission held a hearing on the merits on March 26, 2012. The petitioners presented additional information on June 3, 2011; August 26, 2011; March 14, 2011; March 26, 2012; and, May 11, 2012. The State submitted additional information on September 16, 2011; February 21, 2012; and, April 16, 2012.

9. In the four cases, the Commission made itself available to the parties for a friendly settlement without reaching minimum conditions to initiate such process.

10. After verifying in the merits phases that the four cases “deal with similar facts” and could reveal “the same pattern of conduct”, in compliance of Article 29(5) of its Rules of Procedure, the Commission joined them in this merits report.

² The Commission decided the inclusion of the latter according to the considerations set out in literal A of the section entitled ‘Previous issues’.

³ IACHR, Report No. 99/09, Admissibility Gustavo Giraldo Villamizar Durán (Colombia), October 29, 2009. Available at: <http://www.cidh.org/annualrep/2009eng/Colombia12335eng.htm>

⁴ IACHR, Report No. 104/11, Admissibility Elio Gelves Carrillo, *et al.* (Colombia), July 22, 2011. Available at: <https://www.oas.org/en/iachr/decisions/2011/COAD12336EN.DOC>

⁵ IACHR, Report No. 49/10, Admissibility Carlos Arturo Uva Velandia (Colombia), March 18, 2010. Available at: <http://www.cidh.org/annualrep/2010eng/COAD509-00EN.doc>

⁶ IACHR, Report 68/09, Admissibility Wilfredo Quiñónez Bárcenas and Familia (Colombia), August 5, 2009. Available at: <http://www.cidh.oas.org/annualrep/2009eng/Colombia164.06eng.htm>

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

11. The petitioners denounced that the victims they represent were subjected to extrajudicial executions that would have happened between the years 1992 and 1996 in the context of the Colombian armed conflict. In most of the petitions, they pointed out that in the context of the militarization that took place during that period, a series of confrontations occurred between the guerrillas, the armed forces and paramilitaries for the control of the national territory and its natural resources, which led to a strong stigmatization of various social movements and a series of extrajudicial executions of civilians whose deaths were frequently made to appear as if they belonged to the guerrillas and had happened during armed confrontations.

12. They stated that the manner in which the alleged victims lost their lives fits the aforementioned pattern. In the cases related to the deaths of Mr. Gustavo Giraldo Villamizar Durán, Mr. Elio Gelves Carrillo, Mr. Wilfredo Quiñónez, Mr. José Gregorio Romero and Mr. Albeiro Ramírez Jorge, the petitioners denounced that the military criminal jurisdiction and a lack of due diligence in the investigations constituted obstacles to access to justice, in such a way that to date a situation of impunity would exist and the absence of an integral reparation to the family of the victims. With regard to the related case of the death of Mr. Carlos Uva Velandia, the petitioner states that even though it was determined that a soldier deprived him of his life, the lack of due diligence by the State to date precludes the next of kin obtaining an adequate reparation.

13. The detail of the facts and judicial processes of each of the cases shall be referred to in the factual analysis by the Commission on the basis of the information provided by both parties. In this section, a summary is made of the main legal arguments outlined in the merits phase.

14. The petitioners in Case 12.335, concerning the death of Gustavo Giraldo Villamizar Durán, which happened on August 11, 1996 in the department of Arauca, stated that the State incurred in the violation of the following rights: i) to life, by virtue of the extrajudicial execution and not guaranteeing the conditions that could prevent this act from happening; ii) to judicial guarantees and judicial protection, due to the lack of access of the next of kin to an effective recourse as a consequence of a series of omissions in the investigation, the absence of adequate technical evidence and the facts that could have been valued in the military criminal justice; iii) to honor and to dignity, by virtue of the State's qualification of Gustavo Giraldo Villamizar as member of "ELN", which affected the "good name" of the victim and generated public contempt for and persecution of his family.

15. The petitioners in Case 12.336, concerning the death of Elio Gelves Carrillo, which occurred between May 27 and 28, 1997 in the department of Arauca, indicated that the State violated the rights to life and integrity by extrajudicially executing him. They stated that it violated rights to judicial guarantees and judicial protection due to the impunity in which the facts are situated as a result of the implementation of the military criminal jurisdiction. They stated that the rights of the child were violated in virtue that the State did not adopt the suitable to avoid the death of the youth Elio Gelves Carrillo. They added that the rights to honor and dignity were violated by having unfoundedly announced that he was a guerrilla killed in combat.

16. The petitioners in Case 12.757, concerning the death of Mr. Carlos Uva Velandia, which happened on June 20, 1992 in the department of Casanare, requested that their initial claims be reiterated; these are, by virtue of the extrajudicial execution and the lack of reparation to the next of kin, the State violated the rights to life, personal integrity, prohibition of slavery and [involuntary] servitude, personal liberty, judicial guarantees, judicial protection and the right to honor and dignity, contained in Articles 4, 5, 6, 7, 8, 25 and 11 of the American Convention on Human Rights, as well as Articles 1, 6 and 8 of the Convention to Prevent and Punish torture.

17. The petitioners in Case 12.711, concerning the death of Wilfredo Quiñónez, which took place between September 3 and 4, 1995 in the department of Santander, requested the inclusion in the case, as

alleged victims, of Mr. José Gregorio Romero and Mr. Albeiro Ramírez Jorge, whose representation was acquired after the adoption of the Admissibility Report. They indicated that these people died in the same circumstances of mode, time and location as Wilfredo Quiñónez. They pointed out that the State violated the following rights protected by the Convention: i) to life, by virtue of the State not adopting measures to prevent the deprivation of the life of the alleged victims nor abstaining from carrying out such actions; ii) to personal integrity in relation to articles 1, 6 and 8 of the American Convention to Prevent and Punish Torture, because the victims suffered torture and degrading treatment as part of an acting pattern by the members of the police force which, in their opinion, pretends that the victims were in combat and, therefore, were members of the guerrillas; iii) to personal liberty, because the victims were detained by the police force and obliged to enter a truck without detainment orders or being found in a flagrant situation; and iv) to judicial guarantees and judicial protection, by virtue of the impunity of the facts given the application of military immunity, as well as the lack of due diligence and of definite judgment by the civil jurisdiction.

B. Position of the State

18. The State requested the rejection of the denounced facts as being consistent with an alleged systemic practice of extrajudicial executions. It pointed out the facts do not correspond to a policy of the State and these are isolated situations that have been duly investigated. The State carried out a narration of the human rights situation that happened in diverse areas of the country as a result of the armed conflict, largely for the acts of guerrilla groups, as well as related acts of self-defense. The State pointed out that, faced with acts of violence, it has adopted a series of measures through joint actions with the Attorney General, the Prosecutor's Office and the Public Force. The State conducted in each of the petitions a detailed narration of the normative and public policy actions carried out with the objective of improving the situation and developing a policy of promotion of and respect for human rights.

19. In relation to Case 12.335, related to the death of Gustavo Giraldo Villamizar Durán, the State requested a finding that the Convention has not been violated because the death happened as a result of the legitimate use of force. Likewise it stated that such use of force was carried out within a regulated normative framework, that the operation was duly planned, and the military officers who intervened were adequately trained. With regard to judicial guarantees and judicial protection, the State stated that the military criminal jurisdiction was competent to know the facts and that the investigation was carried out within the guidelines established by the Convention and "the rules of hermeneutics." With regard to the right to honor and dignity, it stated that the membership of Mr. Villamizar in the ELN was duly demonstrated.

20. In relation to Case 12.336, concerning the death of Mr. Elio Gelves Carrillo, the State indicated that it did not violate the rights to life and personal integrity because his death was a result of a confrontation where the military acted in legitimate self-defense. It stated that it did not violate the rights of the child because Elio Gelves was born on February 23, 1979 and, therefore, on the date of his death in May 1997 he was already 18 years old. It stated that it did not violate rights to judicial protection and judicial guarantees since the military criminal jurisdiction took a decision motivated, diligent and respectful of due process in a reasonable time. Finally, it stated that in relation to the right to honor and dignity, the Commission did not declare admissible said Article in its Admissibility Report No. 104-11, therefore "it is inadequate to debate the merits" of acts and rights already rejected by the Commission.

21. In relation to Case 12.757, concerning the death of Carlos Uva Velandia, the State indicated it did not violate the rights alleged by the petitioners because the judgment of the criminal jurisdiction as well as the judgment proffered in the contentious-administrative field constituted adequate and effective remedies, allowing the victims final judgments in a reasonable time. It added that those processes resulted in the strong condemnation of the soldier who deprived Mr. Uva of his life. The State indicated that if the Commission reviewed those judgments it would be acting as a fourth instance.

22. In relation to Case 12.711, concerning the death of Wilfredo Quiñónez, the State noted that the petitioners added as alleged victims of the acts José Gregorio Romero Reyes and Albeiro Ramírez Jorge and their next of kin, who "were not admitted" in the admissibility report. It pointed out that if the Commission ruled with regard to these persons it would affect the adversarial principle and the principles of

defense, juridical certainty and procedural equality. It stated that it did not violate rights to life, personal integrity and personal liberty to the detriment of Mr. Quiñónez given that the facts occurred in the course of an operation and these “happened *in flagrante delicto* and were the sole responsibility of the victim.” It pointed out that there is no evidence to conclude extrajudicial executions occurred in relation to Messrs. Romero and Ramírez. It added that through a forensic report it identified that the findings of the autopsy did not show torture and the Commission does not have competence to rule with regard to the violations of the Inter-American Convention to Prevent and Punish Torture, given that it had not been ratified by Colombia at the time of the facts. Finally, indicated it did not violate the rights to the judicial guarantees and judicial protection because a diligent investigation was carried out on the facts that resulted in a sanctioning judgment in the first instance, after which diverse procedural activities and evidence practice have been carried out. It added that through the contentious-administrative process the next of kin of Wilfredo Quiñónez were duly repaired.

IV. PRELIMINARY CONSIDERATIONS

23. Prior to carrying out its analysis of the facts and the law, the Commission will rule on certain aspects of a preliminary character raised by the petitioners and the State.

A. Determining the victims of Case 12.711

24. The petitioners requested that Mr. José Gregorio Romero and Mr. Albeiro Ramírez Jorge be recognized as alleged victims, as they would have been arbitrarily detained jointly with Mr. Wilfredo Quiñónez and, later, tortured and executed. The petitioners explained that at the moment of submitting the petition they were not authorized to represent these persons, solely Mr. Wilfredo Quiñónez. Meanwhile, the State opposed the request, indicating that their addition would violate the adversarial principle and principles of defense, juridical certainty and procedural equality. Specifically, it indicated that the Commission did not carry out a prior admissibility analysis of the processes in the internal jurisdiction with the objective of determining whether the requirements established by the Commission were met. Concretely, with regard to the requirement of prior exhaustion of domestic remedies, the State explained that the final treatment of the cases in the contentious process was different because in the case of Mr. Wilfredo Quiñónez, the State had recognized administrative responsibility for his death, but this was not true for the other cases.

25. The Commission recalls that, according to the jurisprudence of the Inter-American Court, the alleged victims must be identified in the merits report.⁷ In this regard, given the relationship with the analysis carried out in the admissibility report, the request of the petitioners may be addressed at that procedural stage.

26. With regard to said request, the Commission observes that since the admissibility stage, the situation of Mr. Romero and Mr. Ramírez was brought to the attention of the State, as stated in Admissibility Report No. 68-09⁸, specifically in paragraphs 6, 7 and 8. The petitioners indicated that on September 3, 1995 Mr. Quiñónez along with Messrs. Romero and Ramírez rode their bicycles to a party when they were chased and detained by members of the Army and the next day their bodies found. With respect to this version, which constitutes the claim that allegedly generates international responsibility, as noted in paragraph 23 of the Admissibility Report, the State argued that eyewitness at no time identified Messrs. Quiñónez, Ramírez and Romero as the persons who got on board the truck where there were allegedly military officers. Likewise, as noted in the case file before the Commission, during the merits stage, the State has presented its arguments in relation to these deaths, indicating that these were isolated events distinct the death of Mr. Quiñónez and which are not attributable to its agents.

⁷ I/A Court H. R., *Case of Expelled Dominicans and Haitians v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 28, 2014. Series C No. 282, para. 53.

⁸IACHR, Report 68/09, Admissibility Wilfredo Quiñónez Bárcenas y Familia (Colombia), August 5, 2009.

27. In light of the preceding, the Commission observes that the State has been able to present a defense during the proceedings in relation to the deaths of Messrs. Romero and Mr. Ramírez, both in its responses to the observations of the petitioners and in the public hearing held on the merits of the case where this issue was specifically discussed.⁹ The Commission observes, therefore, that an allegation exists in relation to the link between the three deaths and thus in accordance with the principle of procedural economy it is not reasonable to demand separate proceedings before the inter-American system when the respective allegations have been known to and widely debated by both parties and, therefore, the right to defense and the adversarial principle have been safeguarded.

28. Furthermore, the Commission notes that at the domestic level the existence of a linkage between the three deaths has been acknowledged. The Commission also notes that in the issues decisions of the contentious-administrative process, the relationship between the facts is noted. This, in addition to strengthening the coincidence of the circumstances of time and location in which they happened, allows for the consideration of the admissibility analysis conducted on the situation of Mr. Quiñónez, in principle also applicable to the situation of Mr. Romero and Mr. Ramírez.

29. Without prejudice of the above, bearing in mind the issue raised by the State about the possible effects on its right to defense due to the absence of an express statement of admissibility with regard to Mr. Romero and Mr. Ramírez, the Commission will conduct a specific analysis to ensure that, indeed, the considerations contained in the admissibility report are analogous to the situation of the two alleged victims whose inclusion is requested at this stage.

30. In relation to the analysis of the requirement of prior exhaustion of domestic remedies established in Article 46(1)(a), the Commission reiterates that in cases in which a person is deprived of their life, the decisions of the contentious-administrative jurisdiction do not constitute ideal mechanisms to comply with Article 46 of the Convention, given that said jurisdiction is a mechanism that pertains to the supervision of the administrative activity of the State and that, at least until the date of the facts, only permits compensation for damage and harm caused by irregularities in that system.¹⁰ Nevertheless, these remedies do not constitute a means for obtaining justice with regard to the responsible parties. With regard to the disciplinary jurisdiction, this has been understood to comply with the requirement of exhausting domestic remedies as complementary to other means, but not as a mechanism that, on its own, can be considered ideal and effective for justice.

31. With regards to the criminal proceedings started ex officio by the State, in accordance with the criteria reiterated by the Commission, constitutes the ideal remedy to deal with cases related to the violent death of a person,¹¹ the information available indicates that to date, as with the case of Mr. Quiñónez, more than 19 years after the deaths of Messrs. Romero and Ramírez occurred no definitive judgment on the facts exists and the criminal process pursued before 67th Office of the Prosecutor (*Fiscalía 67 de la Unidad Nacional de Derechos Humanos y Derecho Internacional Humanitario*) cumulated the three persons in light of the identity of circumstances in which they would have lost their lives. Additionally, the Commission observes that analysis of the other requirements of admissibility, particularly the requirement of timely submission, also applies analogously.

32. In light of the above, the Commission confirms that, given the existence of allegations about the link between the three deaths and the manner in which they have been addressed domestically, the considerations of admissibility in the case of Mr. Quiñónez apply in the same way to the claim related to the deaths of Messrs. José Gregorio Romero and Albeiro Ramírez Jorge. In this regard, the Commission considers that the inclusion of these persons in the merits stage, dealing with the same issues and the admissibility

⁹ IACHR, Hearing of Case 12.711, *Wilfredo Quiñónez Bárcenas et al.* (Colombia), held during the 144 Period of Sessions, March 26, 2012. Available at: http://www.oas.org/OASPage/videosasf/2012/03/032612_PVidal_3.wmv.

¹⁰ IACHR, Report No. 123/10, Case 11.144, *Gerzon Jairzinho González Arroyo and others.*, (Colombia), October 23, 2010, para. 45; IACHR, Report No. 68/09, *Wilfredo Quiñónez Barcenás and Family*, August 5, 2009, para. 42.

¹¹ IACHR, Report No. 8/11, *Anibal Aguas Acosta (Ecuador)*, March 22, 2011, para. 30.

analysis being analogous, does not affect the State's right to defense and is consistent with the principle of procedural economy. Consequently, the Commission will proceed to incorporate them into the merits analysis as alleged victims in the case.

B. Requests of the State in relation to Case 12.335

33. First, the Colombian State indicated that the petitioners incorporated a "new factual situation" in the merits observations, to the effect that the death of Mr. Villamizar happened pursuant to an alleged systematic practice of extrajudicial executions in the area. The State indicated that in order to make a statement about this alleged context, the Commission would have to "revert the current proceedings to the admissibility report." In this regard, the Commission notes that the admissibility report has the objective of analyzing whether the petition fulfills the requirements established in the Convention for it to be cognizable by the organs of the inter-American system. The definition of the factual framework, including the facts of the case and the context in which they are framed, takes place at the merits stage. It is in the merits stage that both parties have ample opportunity to present their positions about the factual and juridical aspects of the case and provide the evidence they consider to be relevant. It corresponds to the Commission, as it will do, to conduct its analysis of the facts and the law in light of all the information in the case file or other public information that may be relevant, as specified in Article 43.1 of its Rules of Procedure. The inclusion of factual or contextual information in the merits stage that relates to the object of an admitted case does not affect the right to juridical certainty, nor the State's right of defense. The Commission reiterates that, as occurred in the instant case, all the documentation in the case file is subject to the adversarial principle. In light of the preceding, the Commission will consider the examination of the alleged context in its merits analysis.

34. Second, the Commission notes that the State objected to the extrajudicial testimonies of the next of kin because these would lack spontaneity, the contents would be "basically identical" and they would contain contradictions. The Commission recalls that in the inter-American system the weighing of evidence proceeds with greater flexibility than in the domestic legal systems. This is the case because the objective of the analysis is not to determine the criminal responsibility of perpetrators of human rights violations, but rather the international responsibility of the State based on the acts and omissions of its authorities. The Commission observes that the referenced testimonies were rendered before a notary public, therefore there is no reason to doubt its authenticity. In relation to the alleged contradictions, the Commission will analyze and assess the content of said testimonies together with the rest of the evidence in the case file.

V. FACTUAL AND LEGAL ANALYSIS

35. The Commission observes that the allegations provided by the parties, describe a series of alleged extrajudicial executions that take place in more general context of extrajudicial executions in Colombia known by the Commission, in relation to extrajudicial executions committed during the 1990's in diverse areas of the country, as a result of the armed conflict and battle to control of the national territory and its natural resources between the armed actors in the conflict. The Commission decided to jointly analyze the cases due to identifying in the allegations of the petitioners common elements in the manner in which the alleged victims claim to have lost their lives, specifically: i) the authors are members of the Army; ii) the deaths were purportedly justified by alleged confrontations in which the members of the Army exercised their right to legitimate self-defense; and iii) the victims were ostensibly linked to subversive acts or to the guerrillas.

36. This phenomenon has been monitored by the Commission and by other international authorities for several years through various mechanisms. In this regard, the Commission considers it necessary before turning to the specific factual considerations in each case to determine preliminary considerations based on the findings of its monitoring as well as that conducted by other international bodies on the alleged *modus operandi* in which the alleged executions were perpetrated.

37. The Commission will then rule on the violations of specific rights. The Commission will rule in the following order: i) the rights to life, personal integrity, personal liberty and honor and dignity of Mr. Gustavo Giraldo Villamizar Durán; ii) the rights to life, personal integrity, personal liberty and honor and

dignity of Mr. Elio Gelves Carrillo; iii) the rights to life, personal integrity and personal liberty of Mr. Carlos Uva Velandia; iv) the rights to life, personal integrity and personal liberty of Messrs. Wilfredo Quiñónez, José Gregorio Romero Reyes and Albeiro Ramírez Jorge; v) the rights to judicial guarantees and judicial protection of the next of kin of Mr. Gustavo Giraldo Villamizar Durán; vi) the rights to judicial guarantees and judicial protection of the next of kin of Mr. Elio Gelves Carrillo; vii) the rights to judicial guarantees and judicial protection of the next of kin of Carlos Arturo Uva Velandia; viii) the rights to judicial guarantees and judicial protection of Messrs. Wilfredo Quiñónez, José Gregorio Romero Reyes and Albeiro Ramírez Jorge; and ix) the rights to personal integrity of their next of kin. Within each of these classifications, the Commission will describe the facts it considers proven and will assess them in light of the relevant dispositions of the Convention.

A. The *modus operandi* of the “false positives” as a pattern of extrajudicial executions in Colombia for the period of the facts

38. In its *Second and Third Reports on the Situation of Human Rights in Colombia*, the Commission analyzed the impact on the human rights during the 1990s of the armed conflict between the Armed Forces, guerrilla groups –such as the Revolutionary Armed Forces of Colombia (“*Fuerzas Armadas Revolucionarias de Colombia*” – FARC), the *Ejército Popular de Liberación (EPL)* and the *Movimiento 19 de abril (M-19)*- and various paramilitary groups.¹²

39. The Commission received information showing that between 1981 and 1991, 14,150 murders occurred allegedly for political motives and 1,588 disappearances took place, with an average of 78 murders per day.¹³ The Commission noted that the right to life “is the right most often violated” and that the number of violations to this right reached “atrocious levels.”¹⁴ With regard to the reported executions, the Commission expressed its concern because the available information demonstrated that several occurred in acts unrelated to combat.¹⁵ Meanwhile, UN Special Rapporteurs jointly noted that according to official statistics in the 15 years prior to 1995 the figures for homicides increased from approximately 10,000 homicides in 1980 to 20,000 in 1988, and were close to 30,000 in 1994.¹⁶

40. According to data received by the UN Rapporteurs, during the Government of President César Gaviria, between June 1990 and June 1994, a total of 9,497 persons were killed for political or ideological reasons. Between January 1993 and March 1994, almost 70% of the alleged extrajudicial executions, summary or arbitrary, were attributed to members of the security forces of the State (50.28%)

¹² IACHR, *Second Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/V/II.84, Chapter VII. The Right to Life, 14 October 1993. Available at: <http://www.cidh.org/countryrep/Colombia93eng/toc.htm>; See also, IACHR, *Third Report on the Human Rights Situation in Colombia*, Chapter IV. Violence and Violations of International Human Rights and Humanitarian Law, OEA/Sr.L/V/II.102, 26 February 1999, para. 166.

¹³ IACHR, *Second Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/V/II.84, Chapter VII. The Right to Life, 14 October 1993. Available at: <http://www.cidh.org/countryrep/Colombia93eng/toc.htm>

¹⁴ IACHR, *Second Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/V/II.84, Chapter VII. The Right to Life, 14 October 1993. Available at: <http://www.cidh.org/countryrep/Colombia93eng/toc.htm>

¹⁵ In 1997, noted that according to information received, in 1995, state agents would have murdered or disappeared approximately 154 persons outside of acts of combat; in 1996, 126 persons; and in 1997, 59. IACHR, *Third Report on the Human Rights Situation in Colombia*, Chapter IV. Violence and Violations of International Human Rights and Humanitarian Law, OEA/Sr.L/V/II.102, 26 February 1999, para. 166.

¹⁶ Economic and Social Council, Joint report of the Special Rapporteur on the question of torture, Mr. Nigel S. Rodley, and the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Bacre Waly Ndiaye, submitted pursuant to Commission on Human Rights resolutions 1994/37 and 1994/82, E/CN.4/1995/111, 16 January 1995, para. 20. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G95/101/73/PDF/G9510173.pdf?OpenElement>

and paramilitary groups (18.98%)¹⁷ As reported by the Rapporteurs in 1995, each year between 28,000 and 30,000 murders were committed.¹⁸

41. The UN Rapporteurs particularly noted with regard to the extrajudicial executions that, at the time, the label of “internal enemy” was frequently applied to any person considered to be supporting the guerrillas in one way or another (even where the latter used force to obtain, for example, food or money from civilians). The Rapporteurs indicated that this label was extended to all persons who expressed dissatisfaction with the political, economic and social situation, particularly in the rural areas.¹⁹ Leaders and members of trade unions, political opposition parties, human rights organizations, social workers, etc., were, together with peasants, the main victims of human rights violations in areas affected by the armed conflict.²⁰

42. With respect to one of the *modus operandi* for some extrajudicial executions, during its visit in 1997, the Commission has received information about violence against civilians committed in the course of installing and maintaining military checkpoints due to a perception that guerillas were operating in the area.²¹ The Commission noted a relevant element in this context that “there usually does not exist information to suggest that the security forces had sufficient reason to believe that they were actually firing upon members of armed dissident groups;”²² and that on various occasions it was shown that members of the Army attacked civilians passing through roadblocks “without any warning and without verifying that the vehicles contained any members of armed dissident groups.”²³

43. The Commission pointed out that “the State's security forces sometimes suggest to the press and to the public that the executed individuals were members of armed dissident groups killed in combat.”²⁴ The Commission stressed rgar it was “extremely concerned by this information indicating that the State security forces carry out extrajudicial executions of individuals believed to support the guerrillas based on their presence in an area or their supposed indirect participation in hostilities.”²⁵

44. The aforementioned *modus operandi* in the perpetration of extrajudicial executions was identified in further detail by the UN Rapporteurs in 1995, who explained that “often, the civilians killed

¹⁷ Economic and Social Council, Joint report of the Special Rapporteur on the question of torture, Mr. Nigel S. Rodley, and the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Bacre Waly Ndiaye, submitted pursuant to Commission on Human Rights resolutions 1994/37 and 1994/82, *E/CN.4/1995/111*, 16 January 1995, para. 20. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G95/101/73/PDF/G9510173.pdf?OpenElement>

¹⁸ Economic and Social Council, Joint report of the Special Rapporteur on the question of torture, Mr. Nigel S. Rodley, and the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Bacre Waly Ndiaye, submitted pursuant to Commission on Human Rights resolutions 1994/37 and 1994/82, *E/CN.4/1995/111*, 16 January 1995, para. 103. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G95/101/73/PDF/G9510173.pdf?OpenElement>

¹⁹ Economic and Social Council, Joint report of the Special Rapporteur on the question of torture, Mr. Nigel S. Rodley, and the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Bacre Waly Ndiaye, submitted pursuant to Commission on Human Rights resolutions 1994/37 and 1994/82, *E/CN.4/1995/111*, 16 January 1995, para. 25. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G95/101/73/PDF/G9510173.pdf?OpenElement>

²⁰ Economic and Social Council, Joint report of the Special Rapporteur on the question of torture, Mr. Nigel S. Rodley, and the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Bacre Waly Ndiaye, submitted pursuant to Commission on Human Rights resolutions 1994/37 and 1994/82, *E/CN.4/1995/111*, 16 January 1995, para. 25. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G95/101/73/PDF/G9510173.pdf?OpenElement>

²¹IACHR, *Third Report on the Human Rights Situation in Colombia*, Chapter IV. Violence and Violations of International Human Rights and Humanitarian Law, para. 190.

²²IACHR, *Third Report on the Human Rights Situation in Colombia*, Chapter IV. Violence and Violations of International Human Rights and Humanitarian Law, para. 190.

²³IACHR, *Third Report on the Human Rights Situation in Colombia*, Chapter IV. Violence and Violations of International Human Rights and Humanitarian Law, para. 194.

²⁴ IACHR, *Third Report on the Human Rights Situation in Colombia*, Chapter IV. Violence and Violations of International Human Rights and Humanitarian Law, para. 200.

²⁵IACHR, *Third Report on the Human Rights Situation in Colombia*, Chapter IV. Violence and Violations of International Human Rights and Humanitarian Law, para. 202.

during such operations are later presented to the public as guerrillas who died in combat, their corpses being dressed by the soldiers in military clothes, and guns and grenades placed into their hands.”²⁶ The Rapporteurs indicated that “torture and ill-treatment often take place in the context of other human rights violations, in particular summary executions or disappearances.”²⁷

45. According to the UN Special Rapporteur on Summary and Arbitrary Executions, the evidence of the phenomenon of simulating unlawful killings of civilians as lawful killings in combat dates back to the 1980s and began occurring with disturbing frequency across Colombia from 2004.²⁸ Said finding also coincides with that of the Prosecutor of the International Criminal Court.²⁹

46. Likewise, in 2008 and 2009 the Inter-American Commission noted the continuity and repetition of these practices. In the Commission’s words:

As the IACHR has observed in 2008, the high number of extrajudicial executions reported led to the identification of a number of patterns followed when extrajudicial executions are committed, in particular the following: extrajudicial executions committed in the course of anti-insurgent military operations, although witnesses state that no combat was involved; in many instances, the victim is unlawfully taken into custody at his home or workplace and taken to the place of execution; persons executed or disappeared are generally *campesinos*, indigenous persons, laborers, youth, disadvantaged persons or community leaders; the military or police report the victims as being insurgents who died in combat; often the victims turn up wearing uniforms and with arms and military equipment of various kinds, even though, according to the testimony, at the time of their disappearance they were wearing their customary attire and unarmed; occasionally the victims are fingered beforehand by anonymous informants wearing hoods, or re-assimilated persons; at other times, the victims are selected at random; the inspection of the body is done by the same military or police force that had previously listed the victims as “fallen in combat”; the crime scene is not preserved nor is any evidence or proof; frequently the body shows signs of torture; they are stripped of personal objects and their identification papers are disposed of; the bodies are taken to places far from where the abduction occurred and there are serious difficulties locating family members to identify the body; bodies are buried as unidentified persons, even when they have been identified by family members or third persons; members of the military and police are given financial and professional incentives and rewards for producing “positives”; from the outset, military criminal courts have jurisdiction over such cases and often the Prosecutor’s Office does not challenge the military court’s jurisdiction; relatives of the victims, witnesses and human rights defenders trying to solve such cases are threatened and intimidated; the percentage of those convicted for such crimes is infinitesimal.³⁰

²⁶ Economic and Social Council, Joint report of the Special Rapporteur on the question of torture, Mr. Nigel S. Rodley, and the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Bacre Waly Ndiaye, submitted pursuant to Commission on Human Rights resolutions 1994/37 and 1994/82, *E/CN.4/1995/111*, 16 January 1995, para. 26. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G95/101/73/PDF/G9510173.pdf?OpenElement>

²⁷ Economic and Social Council, Joint report of the Special Rapporteur on the question of torture, Mr. Nigel S. Rodley, and the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Bacre Waly Ndiaye, submitted pursuant to Commission on Human Rights resolutions 1994/37 and 1994/82, *E/CN.4/1995/111*, 16 January 1995, para. 29. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G95/101/73/PDF/G9510173.pdf?OpenElement>

²⁸ Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston*, A/HRC/14/24/Add.2, 31 March 2010, para. 10. Available at: http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.24.Add.2_en.pdf

²⁹ International Criminal Court, Prosecutors Office, Situation in Colombia. Interim Report, November 2012, para. 93. <http://www.icc-cpi.int/NR/rdonlyres/3D3055BD-16E2-4C83-BA85-35BCFD2A7922/285102/OTPCOLOMBIAPublicInterimReportNovember2012.pdf>

³⁰ IACHR. Annual Report, 2009. Chapter IV. Colombia, para. 67. Preliminary report of the “International Mission of Observers on Extrajudicial Executions and Impunity in Colombia” made public in Bogotá on October 10, 2007. See also Human Rights and International Humanitarian Law Observatory of the Colombia–Europe–USA Coordination, “False Positives: Extrajudicial killings directly
[continues ...]

47. In the report published in 2010 by the United Nations Rapporteur on Extrajudicial, Summary or Arbitrary Executions, he concretely referred to this phenomenon classifying it as “false positives,” defined as “unlawful killings of civilians, staged by the security forces to look like lawful killings in combat.”³¹

48. In relation to the dynamic by which said executions were carried out, the Rapporteur stated that once the civilian victims were killed a scene was staged to make it look like “lawful killings in combat”, and this staging sometimes involved “placing weapons in the hands of victims; firing weapons from victims’ hands; changing their clothes to combat fatigues or other clothing associated with guerrillas; and putting combat boots on victims’ feet.” The victims “were reported by the military and in the press as guerrillas or criminals killed in combat.”³² The Rapporteur pointed out that even though he saw no evidence to suggest that these killings were an “official policy” there have been too many killings of a similar nature to characterize them as isolated incidents.³³

49. The Prosecutor of the International Criminal Court indicated that this *modus operandi* of unlawful killings of civilians reported as guerrillas killed in combat after alterations to the crime scene. It stated that these these killings were carried out by members of the armed forces, at times operating jointly with paramilitaries and civilians, as a part of an attack directed against civilians in different parts of Colombia. Killings were in some cases preceded by arbitrary detentions, torture and other forms of ill-treatment.³⁴

50. On the subject of access to justice for extrajudicial executions committed by the military during the 1990s, the Commission stated both in its 1993 report as well as in the one published in 1999 that one of the most important obstacles is the use of the military court system to address cases of human rights violations as they classifying them as “service-related.”³⁵ In this regard, it was also noted by the UN Rapporteurs in their Joint Report according to which the military courts “are composed of officers who can also be responsible for ordering military operations” and were even responsible for ordering military operations in connection with which human rights violations have occurred.”³⁶

B. Rights to life³⁷, personal integrity³⁸, personal liberty³⁹ and honor and dignity⁴⁰

[... continuation]

attributed to the security forces in Colombia, July 2002 to June 2006.” Annual Report 2008, Chapter IV Colombia. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Chap4.a.eng.htm>.

³¹ Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston*, A/HRC/14/24/Add.2, 31 March 2010, para. 10. Available at: http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.24.Add.2_en.pdf

³² Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston*, A/HRC/14/24/Add.2, 31 March 2010, para. 11. Available at: http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.24.Add.2_en.pdf

³³ Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston*, A/HRC/14/24/Add.2, 31 March 2010, para. 14. Available at: http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.24.Add.2_en.pdf

³⁴ International Criminal Court, Prosecutors Office, Situation in Colombia. Interim Report, November 2012, para. 93.

³⁵ IACHR, *Second Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/V/II.84, Chapter VII. The Right to Life, 14 October 1993. Available at: <http://www.cidh.org/countryrep/Colombia93eng/toc.htm>; IACHR, *Third Report on the Human Rights Situation in Colombia*, Chapter V. Administration of Justice and Rule of Law, para. 19.

³⁶ Economic and Social Council, Joint report of the Special Rapporteur on the question of torture, Mr. Nigel S. Rodley, and the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Bacre Waly Ndiaye, submitted pursuant to Commission on Human Rights resolutions 1994/37 and 1994/82, E/CN.4/1995/111, 16 January 1995, para. 91. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G95/101/73/PDF/G9510173.pdf?OpenElement>

³⁷ Article 4(1) of the American Convention states: 1. 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.

³⁸ Articles 5(1) and 5(2) of the American Convention state: 5(1) Every person has the right to have his physical, mental, and moral integrity respected. 5(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.

51. The Commission recalls that the international protection of human rights should not be confused with criminal justice. The objective of international human rights law is not to punish those individuals who are guilty of violations, but rather to protect the victims and to provide for the reparation of damages resulting from the acts of the States responsible.⁴¹

52. **With regard to the right to life**, the Inter-American Court has considered on various occasions that the right to life is a fundamental right, the full exercise of which is a prerequisite for the enjoyment of all other human rights.⁴² This means States have the obligation to guarantee the creation of the conditions required in order that violations of this basic right do not occur and, in particular, the duty to prevent its agents from violating it.⁴³ According to the Court, the object and purpose of the Convention, as an instrument for the protection of the human being, requires that the right to life be interpreted and enforced so that its guarantees are truly practical and effective (*effet utile*).⁴⁴

53. As the Court has repeatedly stated in its jurisprudence “compliance with the duties imposed by Article 4 of the American Convention, in conjunction with Article 1(1) thereof, not only presupposes that no person can be arbitrarily deprived of his life (negative duty) but also requires, pursuant to its obligation to guarantee the full and free exercise of human rights, that the States adopt any and all necessary measures to protect and preserve the right to life (positive duty) of the individuals under their jurisdiction.”⁴⁵

54. The Commission considers relevant to recall at this time the relevant international standards on the use of lethal force by State security forces. In this regard, the Commission has indicated that even though the State has the right and obligation to protect the population against threats and that, in such circumstances it may use lethal force, such a mandate must be restricted to circumstances where it is strictly necessary and proportionate. If it does not adhere to these principles, the use of lethal force may constitute an arbitrary deprivation of life or a summary execution; that is to say, the use of lethal force must be necessary as having been justified by a state’s right to protect the security of all.⁴⁶

[... continuation]

³⁹ Articles 7(1) – 7(5) of the American Convention state: 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.

⁴⁰ Article 11(1) of the Convention states: “Everyone has the right to have his honor respected and his dignity recognized.” Article 11(2) states “No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation.” Article 11(3) states that “Everyone has the right to the protection of the law against such interference or attacks.”

⁴¹ I/A Court H.R., *Case Velásquez Rodríguez v. Honduras*. Preliminary Exceptions. Judgment of 26 June 1987. Series C No. 1, para. 134.

⁴² I/A Court H.R., *Case Zambrano Vélez et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166. para. 78; I/A Court H.R., *Case of the "Street Children"* (Villagran-Morales et al.). Judgment of November 19, 1999. Series C No. 63. para 144.

I/A Court H.R., *Case of the "Street Children"* (Villagran-Morales et al.). Judgment of November 19, 1999. Series C No. 63. para 144.

⁴⁴ I/A Court H.R., *Case Zambrano Vélez et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166. para. 79. I/A Court H.R., *Case of Baldeón-García*. Judgment of April 6, 2006. Series C No. 147, para. 83.

⁴⁵ I/A Court H.R., *Case Zambrano Vélez et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166. para. 80; I/A Court HR, *Case of the "Street Children"* (Villagran-Morales et al.). Judgment of November 19, 1999. Series C No. 63. para 144.

⁴⁶ IACHR, *Report on Terrorism and Human Rights*, OEA/Ser.L/V/II.116, 22 October 2002, para. 88.

55. The Commission has also stated that the use of force may be justified, for example, in situations of self-defense or to disarm individuals involved in an armed conflict. Nevertheless, if a person is deprived of his life as a result of the use of lethal force in an excessive and disproportionate manner by State agents responsible for the maintenance and preservation of domestic order it must be considered arbitrary.⁴⁷ Likewise, the Court has stated that the use of force by governmental security forces must be based on the existence of exceptional circumstances and should be planned and proportionally limited by the government authorities. In this aspect, the Court has established that force or coercive means can only be used once all other methods of control have been exhausted and failed.⁴⁸

56. According to the Court, in exceptional circumstances, the use of firearms and lethal force against people by law enforcement officers -which must be generally forbidden- is only justified in even more extraordinary cases. The exceptional circumstances under which firearms and lethal force may be used shall be determined by the law and restrictively construed, so that they are used to the minimum extent possible in all cases, but never exceeding that what is "absolutely necessary" in relation to the force or threat to be repelled.⁴⁹ When excessive force is used, any deprivation of life is arbitrary.⁵⁰

57. When it is alleged that a death has occurred as a result of the excessive use of lethal force, the Inter-American Court has defined clear rules on the burden of proof. In words of the Court:

[W]henever the use of force [by state agents] results in death or injuries to one or more individuals, the State has the obligation to give a satisfactory and convincing explanation of the events and to rebut allegations over its liability, through appropriate evidentiary elements.⁵¹

58. Specifically the Court has stated that it is the duty of the State to demonstrate that State authorities attempted to use less lethal means of intervention in the specific case and this failed, and that the action of its security forces was necessary and proportional in relation to the exigencies of the situation, particularly the threat the victim represented.⁵²

59. **In relation to the right to personal liberty**, the Inter-American Court has pointed out that according to the dispositions of Article 7(1) of the Convention, the protection of liberty safeguards "both the individuals' physical liberty and their personal safety, in a context in which the lack of guarantees may result in the subversion of the rule of law and in the deprivation of the minimum forms of legal protection against detainees"⁵³ The Commission recalls that according to the jurisprudence of the Inter-American Court, when it

⁴⁷ IACHR, Case 10.559. *Chumbivilcas v. Perú*. Report 1/96. 1 March 1996; IACHR. Case 11.291. *Carandiru v. Brasil*. Report 34/00. 13 April 2000. paras. 63, 67, 91.

⁴⁸ I/A Court H.R., *Case Montero Aranguren et al. (Detention Center of Catia)*, Judgment of July 5, 2006. Series C No. 150. para. 67.

⁴⁹ I/A Court H.R., *Case Montero Aranguren et al. (Detention Center of Catia)*, Judgment of July 5, 2006. Series C No. 150. para. 68. Similarly see ECHR, Case of Erdogan and Others v. Turkey. Judgment of 25 April, 2006. Application No. 19807/92, para. 67; ECHR, Case of Kakoulli v. Turkey. Judgment of November 22, 2005. Application No. 38595/97, para. 107-108; ECHR, Case of McCann and Others v. the United Kingdom. Judgment of September 27, 1995. Series A No. 324, paras. 148-150 and 194; Código de Conducta para Oficiales de Seguridad Pública adopted by the General Assembly of the United Nations, Resolution 34/169, dated December 17, 1979, Article 3.

⁵⁰ I/A Court H.R., *Case Montero Aranguren et al. (Detention Center of Catia)*, Judgment of July 5, 2006. Series C No. 150. para. 68. Similarly see Basic Principles on the Use of Force and Firearms by Law Enforcement Officials Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, Principle 9.

⁵¹ I/A Court H.R., *Case Zambrano Vélez et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166. para. 108; I/A Court of H.R. *Case Montero Aranguren et al. (Detention Center of Catia)*, Judgment of July 5, 2006. Series C No. 150. para. 80; I/A Court H.R., *Case of Baldeón-García*. Judgment of April 6, 2006. Series C No. 147, para. 120.

⁵² I/A Court H.R., *Case Zambrano Vélez et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166. para. 108

⁵³ I/A Court H.R., *Case García Asto and Ramírez Rojas*. Judgment of November 25, 2005. C Series No. 137, para. 104; *Case of Acosta-Calderón*. Judgment of 24 June 2005. C Series No. 129, para. 56; *Case of Tibi*. Judgment of September 7, 2004. C Series No. 114, para. 97; and *Case of the Gómez-Paquiyaury Brothers*. Judgment of July 8, 2004. C Series No. 110, para. 82.

is demonstrated that the deprivation of liberty was a step prior to the execution or disappearance of the victims, it is not necessary to determine whether or not the alleged victims were informed of the reasons for their detention; whether or not said detention was effected regardless of the motives and conditions established in the legislation in force at the time of the events and, least of all, whether the acts of the detention were unreasonable, unpredictable or disproportionate.⁵⁴ In relation to the duty to guarantee the right to personal liberty, the Court has pointed out that the State must prevent the liberty of the individual being violated by the actions of public officials and private third parties, and must also investigate and punish acts that violate this right.⁵⁵

60. **In Relation to the right to personal integrity**, enshrined in Article 5 of the Convention, the Court has stated that: “[the] infringement of the right to physical and mental integrity of the human person is a type of violation which has a varying connotation and which encompasses torture and other types of mistreatment or cruel, inhuman, or degrading treatment whose physical and psychological consequences may have different degrees of intensity according to the extrinsic and intrinsic factors which should be proved in each specific situation.”⁵⁶

61. The Court has reiterated that “torture and cruel, inhuman, or degrading punishment or treatment are strictly prohibited by international human rights law. The absolute prohibition of torture, both physical and psychological, is currently part of the domain of international *jus cogens*. Said prohibition remains valid even under the most difficult circumstances, such as war, threat of war, the fight against terrorism and other crimes, state of siege, or a state of emergency, civil unrest or domestic conflict, suspension of constitutional guarantees, domestic political instability or other public emergencies or catastrophes.”⁵⁷

62. Likewise the Court has indicated that various universal and regional instruments set forth said prohibition and enshrine the right of all human beings not to be tortured. Similarly, various international instruments enshrine this right and reaffirm that prohibition, including international humanitarian law.⁵⁸

63. Finally, **in relation to the right to honor and dignity**, the Inter-American Court has affirmed in its jurisprudence that the stigmatization of victims of human rights violations implicates this right.⁵⁹ The Commission has indicated that cases in which state authorities make statements or issue

⁵⁴ I/A Court H.R., *Case La Cantuta*. Judgment November 29, 2006. C Series No. 162. para. 109.

⁵⁵ I/A Court H.R., *Case González et al. “Cotton Field”*. Judgment November 16, 2009. para. 247.

⁵⁶ I/A Court H.R., *Case Ximenes López vs. Brasil*, C Series. No. 149, Judgment July 4, 2006, para. 127; *Case of Loayza-Tamayo*. Judgment of September 17, 1997. C Series No. 33, para. 57.

⁵⁷ I/A Court H.R., *Case Bueno Alves*. Judgment May 11, 2007. C Series. No. 164. para 76; *Case of the Miguel Castro-Castro Prison*. Judgment of November 25, 2006. C Series No. 160 para. 271; *Case of Baldeón-García*. Judgment of April 6, 2006. C Series No. 147, para. 117.

⁵⁸ I/A Court H.R., *Case Bueno Alves*. Judgment May 11, 2007. C Series. No. 164. para 77. Quoting: International Covenant on Civil and Political Rights, Article 7; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 2; Convention on the Rights of the Child, Article 37, and International Convention on the protection of the rights of all migratory workers and the members of their families relatives, Article 10. Inter-American Convention to Prevent and Punish Torture, Article 2; African Charter on the Rights of Men and of People, Article 5; African Charter on the Rights and Welfare of the Child, Article 16; Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convención de Belém do Pará), Article 4, and European Convention for the Protection of Fundamental Freedoms, Article 3. Set of principles for the protection of all individuals subject to any form of detention or imprisonment, Principle 6; Code of conduct for law enforcement officers, Article 5; UN Rules on Juveniles Deprived of the Liberty, Rule 87(a); Declaration on the Human Rights of Individuals who are not Nationals of the Country in which they Live, Article 6; Rules for the Administration of Juvenile Justice (Rules of Beijing), Rule 17(3); Declaration on the Protection of Women and Children in Emergency and Armed Conflict, Article 4, and Guidelines on the European Council of Ministers on human rights and the fight against terrorism, Guideline IV; and Article 3 common to the four Geneva Conventions; Geneva Convention governing war prisoners (Convention III), Articles 49, 52, 87, 89, and 97; Geneva Convention relative to the protection of civilian persons in time of war (Convention IV), Articles 40, 51, 95, 96, 100 and 119; Additional Protocol to the Geneva Conventions of August 12, 1949, on protection of victims in international armed conflict (Protocol I), Article 75(2)(ii), and Additional Protocol to the Geneva Conventions of August 12, 1949, on protection of victims of non-international armed conflict (Protocol II), Article 4(2)(a).

⁵⁹ Therefore as it has stated in its jurisprudence “regarding to Article 11 of the Convention, it has been proven that the alleged victims were treated as “terrorists”, subjecting them and their family to hatred, public contempt, persecution, and discrimination, for
[continues ...]

communiqués publicly incriminating a person of acts that have not been legally proven constitute a violation of the right to honor.⁶⁰ The Commission has asked that the Court declare the State responsible for the statements made by senior State officials against the next of kin, when these statements constituted “acts of stigmatization” that harmed them “and the [...] memory of the victim and promote persecution, [...] and incit[e] violence against the victim and his next of kin.”⁶¹

[... continuation]

which reason there has been a violation of Article 11 of the American Convention, in combination with Article 1(1) of this same Convention, to the detriment of los members of the family [...]” I/A Court H.R., *Case of the Gómez-Paquiyaui Brothers*. Judgment of July 8, 2004. C Series No. 110, para. 182.

⁶⁰ IACHR. *Report No. 43/96*, Case 11.430 (Mexico), October 15, 1996, para. 76; IACHR, *Democracy and Human Rights in Venezuela*, December 30, 2009, para. 601; IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, December 31, 2011, para. 123.

⁶¹ I/A Court H.R., *Case Manuel Cepeda Vargas v. Colombia*. Preliminary objections, merits, reparations and Costs. Judgment of May 26, 2010. Series C No. 213, para. 203.

1. The Rights to life, personal liberty and honor and dignity of Mr. Gustavo Villamizar Durán

a. Facts

64. On the date of this death Gustavo Giraldo Villamizar Durán was 25 years old⁶² and was the permanent partner of Ludy Lizarazo Vega⁶³ with whom he lived in Venezuela. According to several testimonies, he engaged in trading on the border between Venezuela and Colombia.⁶⁴ He was the eldest of his brothers and financially supported his family.⁶⁵ His nuclear family was comprised of his father Gustavo Villamizar Lizarazo;⁶⁶ his mother, Ana Jesús Durán Blanco;⁶⁷ his sisters Maribel;⁶⁸ Nancy Altura⁶⁹ and Marley Villamizar Durán⁷⁰ and his brothers Edidxon⁷¹ and Ilier Eduardo Villamizar Durán.⁷² Mr. Villamizar Durán had a son born after his death with Mrs. Celina Granados Galván, named Anderson Giraldo Villamizar Granados.⁷³

65. The statements available state that on August 11, 1996 the following took place moments prior to the murder of Mr. Villamizar:

- Mr. Bautista Bustos stated that Mr. Gustavo Giraldo Villamizar Durán presented himself in Port Contreras in Colombia around midday to “collect money [...] owed to him for gasoline.” He explained that he “worked in Venezuela [...], arrived in Puerto Contreras and left his Venezuelan identification document.” Mr. Bustos stated that he paid “five hundred thousand pesos” and Mr. Villamizar got onboard of a blue-colored motorcycle.”⁷⁴

⁶² Annex. 1. National institute of Legal Medicine and Forensic Sciences, Autopsy Protocol No. 040-96-ILS. Annexed to the written brief of the State received on August 26, 2010.

⁶³ *Testimony of Mrs. Ludy Lizarazo Vega before Municipal Ombudsperson*, August 20, 1996. Annexed to the petitioner’s communication received on March 12, 2001.

⁶⁴ In this regard see Annex 3. *Testimony of Pedro Antonio Anteliz before Notary Public*, October 14, 2010; Annex 4. *Testimony of Luis José Mora Blanco before Notary Public*, October 14, 2010; Annex 5. *Testimony of Francelina Vera Mendoza before Notary Public*, October 14, 2010; Annex 6. *Testimony of María Olfa Rodríguez González before Notary Public*, October 14, 2010; Annex 7. *Testimony of Maribel Villamizar Durán before Municipal Ombudsperson*, August 20, 1996. Annexed to the communication of the petitioners received on March 12, 2001; Annex 2. *Testimony of Mrs. Ludy Lizarazo Vega before Municipal Ombudsperson*, August 20, 1996. Annexed to the communication of the petitioners received on March 12, 2001. Annex 8. Complaint rendered by the citizen Gustavo Villamizar Lizarazo before the Office of the Municipal *Ombudsperson*, August 20, 1996. Annexed to the communication of the petitioners, April 29, 2010.

⁶⁵ Annex 3. *Testimony of Pedro Antonio Anteliz before Notary Public*, October 14, 2010; *Testimony of Luis José Mora Blanco before Notary Public*, October 14, 2010; *Testimony of Francelina Vera Mendoza before Notary Public*, October 14, 2010.

⁶⁶ Annex 8. Complaint rendered by the citizen Gustavo Villamizar Lizarazo before the Office of the Municipal *Ombudsperson*, August 20, 1996. Annexed to the communication of the petitioners of April 29, 2010.

⁶⁷ Annex 9. Photocopy of the birth certificate of Gustavo Giraldo Villamizar. Annexed to the written brief of the petitioners of October 27, 2010.

⁶⁸ Annex 7. *Testimony* rendered by Mrs. Maribel Villamizar Durán before Municipal *Ombudsperson*, August 20, 1996. Annexed to the communication of the petitioners received on March 12, 2001.

⁶⁹ Annex 10. Photocopy of the birth certificate of Nancy Altura Villamizar Durán. Annexed to the written brief of the petitioners of October 27, 2010.

⁷⁰ Annex 11. Photocopy of the birth certificate of Anderson Giraldo Villamizar Granados. Annexed to the written brief of the petitioners of October 27, 2010.

⁷¹ Annex 12. *Testimony of Edidxon Villamizar Durán before Notary Public*, October 15, 2010.

⁷² Annex 13. Photocopy of the birth certificate of Ilier Villamizar Durán. Annexed to the written brief of the petitioners of October 27, 2010.

⁷³ Annex 14. Photocopy of the birth certificate of Anderson Giraldo Villamizar Granados. Annexed to the written brief of the petitioners of October 27, 2010

⁷⁴ Annex 15. Diligence rendered by Mr. Miguel Bautista Bustos before Municipal *Ombudsperson*, October 11, 1996. Annexed to the written brief of the State received on August 26, 2010

- Mrs. María Olfa Rodríguez stated she met Mr. Villamizar when he was on his motorcycle heading back from Puerto Contreras to Saravena. She stated that Mr. Villamizar “picked her up at the apex of *el pescado* bridge” and “when they had travelled for 5 minutes [...], the motorcycle got a flat tire” and they agreed she would wait there. She stated that she had to arrive “as soon as possible to Saravena” and took a vehicle that picked her up.⁷⁵
- Mr. Edgar Ortega Hernández stated he was headed in a bus along with twelve persons at 12:15pm, in the place called Alto Pescado, when he encountered “Gustavo, with a motorcycle with a flat tire.” He stated that Mr. Gustavo Giraldo Villamizar asked him “if he had anything to pump air into the tire, but [he] said no, so he proceeded.”⁷⁶

66. On the day of Mr. Villamizar’s death, the *Grupo del Ejército de Caballería Mecanizado* No. 16 General “Gabriel Rebeiz Pizarro” “Centinelas de Arauca” was conducting inspection and military control operations in the general area of the pathway “*Mata de Plátano*”, in the municipality of Saravena, where information had been received about the presence of a group of “narco-bandits” belonging to the ELN.⁷⁷ The members of the operation stated they left with an order to carry out an inspection and control of the area.⁷⁸

67. The members of the Army Patrol, under the command of Sergeant Gustavo Urbano, established a military roadblock on the road that leads from Saravena to “*Pescado Bajo*.”⁷⁹ This roadblock consisted of three sectors: a patrol in the middle making a roadblock, stopping and searching vehicles, under the command of Sergeant Urbano; and two security patrols, one at the exit of the road to Saravena and another in the entrance of the roadblock on the pathway to “*Pescado*”, under the command of Sergeants Inagan and Jiménez respectively.⁸⁰ The security patrol under the command of Sergeant Jiménez was stationed

⁷⁵ Anexo 6. *Testimony of* María Olfa Rodríguez González before Notary Public, October 14, 2010.

⁷⁶ Anexo 16. *Testimony* rendered by Mr. Edgar Ortega Hernández before Municipal *Ombudsperson*, October 11, 1996. Annexed to the communication of the petitioners received on March 12, 2001.

⁷⁷ Anexo 17. Military Forces of Colombia, Fragmentary Order No. 091, August 1996.

⁷⁸ Anexo 18. Diligence rendered by Second Sergeant Mr. Gustavo Urbano Mejía before Court 124 of Military Criminal Instruction, October 24, 1996; Anexo 19. Diligence rendered by Mr. SLV. Prieto Cáceres Leonardo before Court 124 of Military Criminal Instruction, October 24, 1996; Anexo 20. Diligence rendered by Regular Soldier Díaz Durán Wilson before Court 124 of Military Criminal Instruction, October 24, 1996; Anexo 21. Diligence rendered by SLV. Mr. Ariel Méndez Quirife before Court 124 of Military Criminal Instruction, October 24, 1996; Anexo 22. Diligence rendered by First Sergeant Mr. José Virgilio Jiménez Mahecha before Court 124 of Military Criminal Instruction, October 24, 1996; Anexo 23. Diligence rendered by Mr. Omar Duarte Herrera, before Court 124 of Military Criminal Instruction, October 16, 1996; Anexo 24. Diligence rendered by SLV. Mr. Reymund Piñeres before Court 124 of Military Criminal Instruction, October 26, 1996; Anexo 25. Diligence rendered by Second Sergeant Mr. Inagan Guaspud Armando before Court 124 of Military Criminal Instruction, October 26, 1996. Annexed to the written brief of the State received on August 26, 2010.

⁷⁹ Anexo 22. Diligence rendered by First Sergeant Mr. José Virgilio Jiménez Mahecha before Court 124 of Military Criminal Instruction, October 26, 1996. Annexed to the written brief of the State received on August 26, 2010.

⁸⁰ Anexo 19. Diligence rendered by SLV. Mr. Leonardo Prieto Cáceres before Court 124 of Military Criminal Instruction, October 24, 1996. Annexed to the written brief of the State received on August 26, 2010; Anexo 20. Diligence rendered by Regular soldier Mr. Díaz Durán Wilson before Court 124 of Military Criminal Instruction, October 24, 1996. Annexed to the written brief of the State received on August 26, 2010; Anexo 22. Diligence rendered by First Sergeant Mr. José Virgilio Jiménez Mahecha before Court 124 of Military Criminal Instruction, October 24, 1996. Annexed to the written brief of the State received on August 26, 2010; Anexo 18. Diligence rendered by Second Sergeant Mr. Gustavo Urbano Mejía before Court 124 of Military Criminal Instruction, October 24, 1996. Annexed to the written brief of the State received on August 26, 2010; Anexo 26. Diligence rendered by First Sergeant Mr. José Isabel Benavides Lina before Court 124 of Military Criminal Instruction, October 26, 1996. Annexed to the written brief of the State received on August 26, 2010; Anexo 24. Diligence rendered by SLV. Mr. Reymund Piñeres before Court 124 of Military Criminal Instruction, October 26, 1996. Annexed to the written brief of the State received on October 29, 2010; Anexo 25. Diligence rendered by Second Sergeant Mr. Inagan Guaspud before Court 124 of Military Criminal Instruction, 20 January, 1997. Annexed to the written brief of the State received on August 26, 2010; Anexo 21. Diligence rendered by SLV. Mr. Ariel Méndez Quirife before Court 124 of Military Criminal Instruction, October 24, 1996. Annexed to the written brief of the State received on August 26, 2010; Anexo 28. Diligence rendered by regular Soldier Nelson Alfredo Monroy de León before Court 124 of Military Criminal Instruction, August 30, 1996. Annexed to the written brief of the State received on August 26, 2010.

next to the road in a “thicket” and was comprised of Leonardo Prieto Cáceres, Wilson Días Durán, José Isabel Benavides Liñán, Omar Duarte Guerra, Ariel Méndez Quirife and Luis Villamizar Anaya.⁸¹

68. There is no dispute that the members of said roadblock firing on Gustavo Giraldo Villamizar, who lost his life due to “a massive destruction of the brain and wounds to abdominal organs” and which “together or separately are essentially fatal.”⁸² Likewise, there is no controversy that according to the diligence of the body collection a “shell was found close to the body of the deceased” as well a bag, containing: “two fragmentation grenades, 15 9mm caliber bullets with their respective plastic case, and two pamphlets indicative of the Subversive Group FARC-EP.”⁸³ There is no controversy about the contents of the autopsy protocol with regards to 4 wounds caused by firearms and the respective exit wounds: i) in the parietal region and part of the frontal region; ii) “presenting multiple bone fragments and irregular borders in the occipital region...”; iii) “left pectoral region of the thorax”; and iv) the “apex of the dorsal of the hand...” According to the autopsy protocol, none of the shots left traces or burns and they had an “inferior-superior” and “posterior-anterior” trajectory.⁸⁴

69. The version of events conveyed by the military present in the operation states that Mr. Giraldo Villamizar was driving a motorcycle in the direction of the military roadblock and, when he saw it, he abruptly turned around. At that time, Sergeant Urbano had given the order to stop on behalf of the National Army and, without stopping, Mr. Giraldo Villamizar had continued on his way back. At that time, Sergeant Urbano would have signaled Sergeant Jiménez, who was at the security patrol, warning him that the motorcycle was returning to the other side of the roadblock. The security patrol under the command of Sergeant Jiménez left the “thicket” to encounter Mr. Villamizar, and had given the order “stop National Army.” Mr. Giraldo Villamizar is said to have disobeyed this order, produced a gun and shot at members of the patrol, which caused them to start firing back. Mr. Giraldo Villamizar jumped off the motorcycle and as a result was “killed in action” (*dado de baja*).⁸⁵

⁸¹Annex. 22. Diligence rendered by First Sergeant José Virgilio Jiménez Mahecha León before Court 124 of Military Criminal Instruction, August 30, 1996. Annexed to the written brief of the State received on August 26, 2010.

⁸²Annex. 29. National institute of Legal Medicine and Forensic Sciences, Autopsy Protocol No. 040-96-ILS. Annexed to the written brief of the State received on August 26, 2010.

⁸³Annex. 30. *Unidad Investigativa de Policía Judicial Saravena*, Arauca, Photographic album, October 28, 1996. Annexed to the written brief of the State received on August 26, 2010.

⁸⁴According to the autopsy protocol: i) the first, with an entrance orifice 11cm of the vertex and 8cm from the posterior line in the right retroauricular region of the head and an exit orifice that compromises the entire parietal region and part of the front; ii) the second, with an entrance orifice 23cm of the vertex and 5cm of the posterior median line of the right lateral region of the neck and exit orifice presenting multiple bone fragments and irregular borders in the lower left occipital region of the head, 10cm from the vertex and 6cm from the posterior median line; iii) the third, 55cm from the vertex and 2.5cm from the posterior median line in the left paravertebral region of the back and exit orifice 53cm from the vertex and 11 cm from the anterior line in the left pectoral region of the thorax; iv) the fourth, with an exit orifice 99cm from the vertex in the third proximal of the second phalanx of the left hand second finger, dorsal side, and exit orifice 90cm from the apex of the dorsal side of the hand on the edge between the metacarpal of the first and second finger. Annex. 29. National institute of Legal Medicine and Forensic Sciences, Autopsy Protocol No. 040-96-ILS. Annexed to the written brief of the State received on August 26, 2010

⁸⁵The previous sequence of acts follows in general terms from the entire narrative of the statements of the military men as contained in the casefile. See in this regard, Annex. 18. Diligence rendered by Second Sergeant Mr. Gustavo Urbano Mejía before Court 124 of Military Criminal Instruction, October 24, 1996. Annexed to the written brief of the State received on August 26, 2010; Annex. 22. Diligence rendered by First Sergeant Mr. José Virgilio Jiménez Mahecha before Court 124 of Military Criminal Instruction, October 24, 1996. Annexed to the written brief of the State received on August 26, 2010; Annex. 31 Diligence by Mr. Luis Villamizar Anaya, October 24, 1996. Annexed to the written brief of the State received on August 26, 2010; Annex. 19. Diligence rendered by SLV. Mr. Leonardo Prieto Cáceres before Court 124 of Military Criminal Instruction, October 24, 1996. Annexed to the written brief of the State received on August 26, 2010; Annex. 20. Diligence rendered by Regular soldier Mr. Días Durán Wilson before Court 124 of Military Criminal Instruction, October 24, 1996. Annexed to the written brief of the State received on August 26, 2010; Annex. 21. Diligence rendered by SLV. Mr. Ariel Méndez Quirife before Court 124 of Military Criminal Instruction, October 24, 1996. Annexed to the written brief of the State received on August 26, 2010; Annex. 23. Diligence rendered by Mr. Omar Duarte, before Municipal Ombudsperson, October 16, 1996. Annexed to the written brief of the State received on August 26, 2010; Annex. 26. Diligence rendered by First Sergeant Mr. José Isabel Benavides Lina before Court 124 of Military Criminal Instruction, October 26, 1996. Annexed to the written brief of the State received on August 26, 2010; Annex. 24. Diligence rendered by SLV. Mr. Reymund Piñeres before Court 124 of Military Criminal Instruction, October 26, 1996. Annexed to the written brief of the State received on October 29, 2010; Annex. 25. Diligence rendered by Second Sergeant Mr. Inagan Guaspud before Court 124 of Military Criminal Instruction, 20 January, 1997. Annexed to the written brief of the State received on August 26, 2010. Annexed to the written brief of the State received on August 26, 2010.

70. Mrs. Maribel Villamizar Durán and Mr. Edidxon Villamizar Durán stated that a neighbor informed them that apparently their brother had been killed.⁸⁶ Maribel Villamizar Durán and Gustavo Villamizar Lizarazo stated that the next day they heard the news on the “*Emisora de Radio La Voz de Cinaruco de Arauca*” informing that the Army had “killed in action” a guerilla member of the ELN and had seized armaments from him.⁸⁷

71. In relation to one of the members of the Army who participated in the operation, a.k.a “Careleche”, Maribel Villamizar Durán,⁸⁸ Edidxon Villamizar Durán⁸⁹ and Gustavo Villamizar Lizarazo⁹⁰ stated that they had been harassed by him prior to and after the death of Giraldo Villamizar. Ludy Lizarazo stated that “since he heard the news [...] he had a feeling that it was a man from the Army, called “*Careleche*”, who did it because he had made threats.”⁹¹ The Commission observes that the evidence indicates that the *alias* “*Careleche*” corresponds to Mr. “SLV. Reymund Piñeres”, who was part of the patrol assigned to the military roadblock.⁹² In his statement, this soldier stated he previously “had not seen [...] the subject on the motorcycle” and that “at no time” had he encountered “the today deceased, nor the wife or partner nor the sister of the subject.” Likewise he stated that “at no time” had he “entered the shop or liquor shop of Mr. Miguel.”⁹³

⁸⁶ Annex 27. Testimony of Maribel Villamizar Durán before Notary Public, October 15, 2010. Annex. 32. Testimony of Edidxon Villamizar Durán before Notary Public, October 15, 2010.

⁸⁷ Maribel Villamizar Durán pointed out that “the news was passed by the *Emisora de Radio La Voz del Cinaruco de Arauca*, informing that the army had killed in combat a guerilla member of the ELN and had seized armament from him”. Annex. 27. *Testimony of Maribel Villamizar Durán before Notary Public, October 15, 2010.* Likewise, Mr. Gustavo Villamizar Lizarazo stated “according to the news on the radio [his son] supposedly died in a combat.” Annex. 8. Complaint rendered by the citizen Gustavo Villamizar Lizarazo before the Office of the Municipal *Ombudsperson*, August 20, 1996. Annexed to the communication of the petitioners of April 29, 2010.

⁸⁸ She stated that approximately two months before her brother’s death she was travelling on [a] motorcycle with her brother and his partner and “one block away from “*los centauros*” [they] found a group o soliders, amongst them was a soldier who is called “*cara de leche*”, he shouted stop, *papá*, stop, come, come.” She stated they told “Gustavo to continue because they were afraid” and “then the soldier briefly ran to the middle of the road and pointed at them with his rifle.” At that time “they told Giraldo to accelerate more the motorcycle and the when the soldier saw they sped up [...] lowered his gun and kicked the ground in an angry attitude.” Annex. 7. Testimony rendered by Mrs. Maribel Villamizar Durán before Municipal *Ombudsperson*, August 20, 1996. Annexed to the communication of the petitioners received on March 12, 2001. Likewise, she pointed out that “afterwards approximately 3 months later we were with the permanent partner of him mi sister in law Ludy Lizarazo at the fairground of Saravena and the soldier who was called CARELECHE, threw a paper we had to the ground and my sister in law opened it and said hurting, we did not respond anything..., later we sat in a table and the same soldier sat down next to us and placed his rifle on the table in a challenging attitude.” Annex. 27. *Testimony of Maribel Villamizar Durán before Notary Public, October 15, 2010.*

⁸⁹ Stated that said soldier “frequently would search me, my brothers and some friends.” Annex. 12. *Testimony of Edidxon Villamizar Durán before Notary Public, October 15, 2010.*

⁹⁰ He indicated that the night of “wake good (sic) to buy some beers to Mr. Miguel’s place, who is called “*pistolojon*”, upon arriving to the warehouse it was closed, I rang the bell and he took some time in opening, the boy who joined me told me he was at the corner of the park and his name was or was called “*careleche*”, at that time Don Miguel opened the door, when I entered the boy told me “they came this way”, I told him let them come and they entered the warehouse and a man named “*careleche*” told the owner of the warehouse, Don Miguel “Sell me a liter of *aguardiente* too, to celebrate the twenty five years”, and suddenly he turned around and said “but I don’t know when was my birthday”, talked about other things I don’t remember, the soldier who was with him told him “let’s go” and left and didn’t buy anything, which makes me understand it was for harassing us.” Stated that he ignores the name of who joined him to the warehouse, but “they call him son of Reinalda” and stated “he lives in front of his house.” Annex. 8. Complaint rendered by the citizen Gustavo Villamizar Lizarazo before the Office of the Municipal *Ombudsperson*, August 20, 1996. Annexed to the communication of the petitioners of April 29, 2010.

⁹¹ Concretely referred to the fact described by Maribel Villamizar Durán quoted *supra*. Also added that the the next day of the facts “we were having lunch in a restaurant but I do not remember the name of the restaurante nor the location where it is, that time the soldiers came and along with them came “*careleche*” Annex 2. *Testimony* rendered by Mrs. Ludy Lizarazo Vega before Municipal *Ombudsperson*, August 20, 1996. Annexed to the communication of the petitioners received on March 12, 2001.

⁹² Annex. 24. Diligence rendered by SLV. Mr. Reymund Piñeres before Court 124 of Military Criminal Instruction, October 26, 1996. Annexed to the written brief of the State received on October 29, 2010.

⁹³ Annex. 24. Diligence rendered by SLV. Mr. Reymund Piñeres before Court 124 of Military Criminal Instruction, October 26, 1996. Annexed to the written brief of the State received on October 29, 2010;

72. Edidxon Villamizar Durán stated that “following the death of Gustavo and, because he claimed the body, he became the object of remarks and harassment by the National Police. He stated that where “he crossed paths with them they would call him guerrillero and *Eleno*.” He stated that one day “he lost his nerve and pushed one of them and told them if they were going to kill him to do it [...] in front of all the people, their reaction was to leave the place.” He stated “those police men were [...] of the *SIJIN*, who questioned him the day the claimed the body.”⁹⁴

73. Mr. Gustavo Villamizar Lizarazo stated that the day following the death of his son “a sign appeared on the wall of my house, [...] [that] said “*El ELN son unas putas*” *Att. La Simacota*.” Likewise, he stated that the next day his wife and his daughters “went back to the cemetery and found the grave with a burned crown and that the remaining flowers had been thrown around.”⁹⁵

b. Considerations of the Commission

74. The Commission observes that in the present case there are various elements present that must be taken into consideration when establishing whether the facts occurred as indicated by the State in the context of a confrontation between the army, in the exercise of legitimate self-defense, or whether this was an extrajudicial execution, as indicated by the petitioners. When carrying out this assessment the Commission recalls that whenever the use of force by state agents results in death or injuries to one or more individuals, the State has the obligation to give a satisfactory and convincing explanation of the events and to rebut allegations over its liability, through appropriate evidentiary elements.⁹⁶

75. In this regard, the Commission considers that the alleged confrontation is verified by the State, fundamentally, through the following evidentiary elements: the testimony of the military men; the finding of a variety of armaments in a bag next to the body of Mr. Villamizar, containing two grenades, bullet cartridges and a gun; and the report from the “Ballistic Laboratory” stating that the gun was fired without being able to establish the time or date”, that “its percussion in the fulminant is weak” as well as the shell found at the crime scene that has characteristics of “identity with the patterns” of the gun found (see *infra* para. 205).

76. In relation to the position of the State, the Commission first notes that technical tests were not carried out to determine if the found gun was actually fired by Mr. Villamizar. In this regard, the Commission notes that the State did not demonstrate the use of all evidentiary, technical and scientific mechanisms to define the most basic element of the controversy, this is, whether the death took place in a confrontation and in legitimate self-defense or whether it was an extrajudicial execution. Among the essential evidentiary elements there is, for example, “paraffin test”, “fingerprinting”, or “atomic absorption” which could have determined whether the gun was actually fired by Mr. Villamizar.

77. Secondly, according to the autopsy protocol, four wounds are described with an “inferior-superior” and “posterior-anterior” trajectory. The Commission observes that, in consequence, the version of the members of the patrol that they shot him when he was headed towards them is not consistent with the forensic evidence, which indicates that the shots came from behind and were fired upwards.

78. Thirdly, the Commission observes there are inconsistencies in the versions provided by the military men, the only remaining evidence of the facts. Two statements indicate having knowledge that one

⁹⁴ Annex. 12. *Testimony of Edidxon Villamizar Durán* before Notary Public, October 15, 2010.

⁹⁵ Annex. 8. Complaint rendered by the citizen Gustavo Villamizar Lizarazo before the Office of the Municipal *Ombudsperson*, August 20, 1996. Annexed to the communication of the petitioners of April 29, 2010.

⁹⁶ Inter-American Court of Human Rights. Case *Zambrano Vélez et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166. para. 79; I/A Court H.R. Case *Montero Aranguren et al. (Detention Center of Catia)*, Judgment of July 5, 2006. Series C No. 150. para. 80; I/A Court H.R., Case of *Baldeón-García*. Judgment of April 6, 2006. Series C No. 147, para. 120.

person was accompanying Mr. Gustavo Giraldo Villamizar,⁹⁷ while the others indicate that he was by himself.⁹⁸ Likewise, in relation to the number of gunshots that Mr. Gustavo Giraldo Villamizar fired at the patrol, there is a statement indicating there were “more or less six gunshots”;⁹⁹ the others indicate “two gunshots sounded”;¹⁰⁰ “I heard three impacts”;¹⁰¹ they were “four or five”¹⁰² and; “two to three impacts”¹⁰³, while according to the technical evidence only one shell was found that was allegedly shot by Mr. Villamizar.

79. Furthermore, the Commission notes that the testimonies of Mrs. María Olfa Rodríguez and Egar Ortega Hernández are consistent in indicating that Mr. Gustavo Giraldo Villamizar was traveling on a motorcycle that had a flat tire. The available information states that between the bridge and the military roadblock the tire was not repaired. Indeed, according to the technical test carried out afterwards on said vehicle, it “can be concluded that (because) of the hole in the neumatic tire it cannot be used with people on it” (see *infra* para. 204). In this regard, given the condition of the motorcycle, the Commission notes it would be difficult that Mr. Villamizar would have traveled on it “at a high speed” as stated by a soldier,¹⁰⁴ to attempt to evade the roadblock or to maneuver during the alleged confrontation. Also, assuming that Mr. Villamizar fired the only shot which is attributed to him, this is incompatible with the assertions of some military men in the process, in the sense that the alleged confrontation could have lasted “fifteen minutes”¹⁰⁵; “ten minutes”¹⁰⁶; or between “five to ten minutes”.¹⁰⁷

80. Fourth, the Commission observes that according to the available information in the casefile, it was only after the alleged confrontation with Mr. Villamizar that it was alleged that he was a guerilla. In this regard, the Commission notes that according to the internal investigation, said qualification was credited to

⁹⁷ Mr. Mamérito Pérez Mosquera stated that “the other “lynx” (lynx) told us there were two *manes* (men) on the motorcycle.” Annex. 33. Diligence rendered by regular soldier Mamérito Pérez Mosquera on August 20, 1996. Annexed to the written brief of the State received on August 26, 2010. Likewise, Nelson Alfredo Monroy stated “there were two, because they told us be aware, in that direction went the other, and the one who was there.” Annex. 28. Diligence rendered by regular soldier Regular Nelson Alfredo Monroy de León before Court 124 of Military Criminal Instruction, August 30, 1996. Annexed to the written brief of the State received on August 26, 2010.

⁹⁸Annex 20. Diligence rendered by Regular soldier Mr. Días Durán Wilson before Court 124 of Military Criminal Instruction, October 24, 1996. Annexed to the written brief of the State received on August 26, 2010; Annex. 23. Diligence rendered by Mr. Omar Duarte, before Municipal Ombudsperson, October 16, 1996. Annexed to the written brief of the State received on August 26, 2010; Annex. 21. Diligence rendered by SLV. Mr. Ariel Méndez Quirife before Court 124 of Military Criminal Instruction, October 24, 1996. Annexed to the written brief of the State received on August 26, 2010; Annex. 18. Diligence rendered by Second Sergeant Mr. Gustavo Urbano Mejía before Court 124 of Military Criminal Instruction, October 24, 1996. Annexed to the written brief of the State received on August 26, 2010.

⁹⁹Annex. 31. Diligence by Mr. Luis Villamizar Anaya, October 24, 1996. Annexed to the written brief of the State received on August 26, 2010. Annexed to the written brief of the State received on August 26, 2010.

¹⁰⁰Annex. 28. Diligence rendered by regular soldier Regular Nelson Alfredo Monroy de León before Court 124 of Military Criminal Instruction, August 30, 1996. Annexed to the written brief of the State received on August 26, 2010.

¹⁰¹Annex. 18. Diligence rendered by Sargent Segundo Gustavo Urbano Mejía before Court 124 of Military Criminal Instruction, 24 October 1996. Annexed to the written brief of the State received on August 26, 2010.

¹⁰²Annex. 20. Diligence rendered by Regular Soldier Días Durán Wilson before the Court 124 of Military Criminal Instruction, 24 October de 1996. Annexed to the written brief of the State received on August 26, 2010. Annex. 21. Diligence rendered by de SLV. Ariel Méndez Quirife before Court 124 of Military Criminal Instruction, 24 October de 1996. Annexed to the written brief of the State received on August 26, 2010.

¹⁰³Annex. 24. Diligence rendered by SLV. Reymund Piñeres before Court 124 of Military Criminal Instruction, 24 October de 1996. Annexed to the written brief of the State received on August 26, 2010. Diligence rendered.

¹⁰⁴ Anexo 22. Diligence rendered by First Sergeant Mr. José Virgilio Jiménez Mahecha before Court 124 of Military Criminal Instruction, October 24, 1996. Annexed to the written brief of the State received on August 26, 2010.

¹⁰⁵Annex.33. Diligence rendered by regular soldier Mamérito Pérez Mosquera before Court 124 of Military Criminal Instruction, August 20, 1996. Annexed to the written brief of the State received on August 26, 2010.

¹⁰⁶Annex. 28 Diligence rendered by regular soldier Regular Nelson Alfredo Monroy de León before Court 124 of Military Criminal Instruction, August 30, 1996. Annexed to the written brief of the State received on August 26, 2010.

¹⁰⁷Annex. 24. Diligence rendered by SLV. Mr. Reymund Piñeres before Court 124 of Military Criminal Instruction, October 26, 1996. Annexed to the written brief of the State received on October 29, 2010.

the statements of Mrs. Neyda Díaz Morales and Merly Díaz Morales¹⁰⁸, and that of Mr. Fredy Rodríguez Centeno¹⁰⁹ who asserted that he recognized Mr. Villamizar, a.k.a. *Cendales*, as a member of the ELN. The Commission notes that said statements were rendered between August 24 and November 8, 1996. Likewise, the alleged annotations of intelligence with regard to the alias *Cendales* were issued on May 23, 1998.¹¹⁰

81. In this regard, the Commission does not have additional evidence beyond the testimony of the military personnel and the alleged discovery of the pamphlets indicative of the subversive group FARC-EP allegedly found with the body that would have justified publicly informing the version that Mr. Villamizar was a member of the ELN, as it was informed the next day on the news reports on “*Emisora de Radio La Voz del Cinaruco de Arauca*.”¹¹¹ To the contrary, according to various statements of the military men, when they shot at Mr. Gustavo Giraldo Villamizar they had no record of his person.¹¹²

82. The Commission considers that in the immediate aftermath of the killing there was an intent to criminalize Mr. Villamizar and stigmatize him and his family as guerrilla members. This was repeated without, according to the case file before the IACHR, any existing information that would justify said accusations. Likewise, without the existence of any criminal process, members of the family have been repeatedly labelled as *elenos* or guerrilla members. Furthermore, graffiti appeared in the wall of Mr. Villamizar’s father’s house making reference to the ELN and various damages to the grave where the remains of Mr. Villamizar’s body are located.

83. In light of the above-discussed elements, the Commission considers that the State of Colombia did not satisfactorily address a series of indications pointing to the responsibility of state agents for the acts. On the contrary, the available information permits a conclusion that Gustavo Giraldo Villamizar was executed by agents of the State and there are different elements present of the *modus operandi* identified

¹⁰⁸In this regard, Ms. Neyda Díaz Morales stated she declared because of her “desire to collaborate with the authorities.” She stated knowing Mr. Giraldo Villamizar “only of hello, *quehubo*, no more” and that “[she] saw him every day in Saravena, on a motorcycle [...] but the only thing he did was killing people.” She stated “not seeing him, but being told he had killed a young woman” and that “it was commented that he was a guerilla member of the E.L.N.” In response of the question whether she identified “*alias Cendales*”, she stated that by driving “a bike 125, I believe was white.” Finally stated knowing that person “has or left a pregnant woman but I ignore the name.” Annex. 34. Diligence rendered by Neyda Díaz Morales before Court 124 of Military Criminal Instruction, November 1996. Annexed to the written brief of the State received on August 26, 2010. Likewise, Mrs. Merly Díaz Morales stated she came to declare “because the guerrilla will say [that Mr. Villamizar] is a peasant.” She stated that Mr. Giraldo Villamizar “was killed because it seems [...] he was [...] looking if the army was there because they were going to pass armaments, he was on a motorcycle, that is what I was told, because more or less people knew what he was going to do.” She stated knowing Mr. Giraldo Villamizar in the village “about two years ago” and the “people commented he worked in the organization [...]” Stated that the kind of relation she had with him was only “hello, *quiubo*, nothing more [...]” She Stated that “[...] he belonged to the ELENOS, because one knows who is whom there [...]” Stated “not knowing what position he would have held [...] and in the village, he was a cadre of a ELN cell” that “daily stayed in a motorcycle, seeing which girl spoke with a military man to later go and let know or take away her life.” To the question of who were his friends she replied that “the young man they took yesterday everyone called him Dumar, “*they were always together*” [...]” She stated that “they load guns daily, [...]” Annex. 35. Diligence rendered by Merly Díaz Morales before Court 124 of Military Criminal Instruction, November 8, 1996. Annexed to the written brief of the State received on August 26, 2010.

¹⁰⁹ Annex. 36. Diligence rendered by Fredy Rodríguez Guerrero before Court 124 of Military Criminal Instruction, August 24, 1996.

¹¹⁰ Annex. 37. Fuerzas Militares de Colombia, Ejército Nacional, Grupo Mecanizado No. 18 Rebez Pizarro, Informe del Oficial S-2 GMREB, 23 de mayo de 1998.

¹¹¹ Maribel Villamizar Durán stated that “the news was broadcasted by *Emisora de Radio La voz Cinaruco de Arauca* informing that the army had killed in combat a guerilla man of the ELN, and that they had seized armament.” Anexo 27. *Testimony of Maribel Villamizar Durán* before Notary Public, October 15, 2010. Likewise, Mr. Gustavo Villamizar Lizarazo stated that “according to the radio news [his son] supposedly died in a combat.” Annex. 8. Complaint rendered by the citizen Gustavo Villamizar Lizarazo before the Office of the Municipal *Ombudsperson*, August 20, 1996. Annexed to the communication of the petitioners of April 29, 2010.

¹¹² So, the regular soldier Mamérito Pérez Mosquera, to the question whether in the base of the village they had any information with regards to that subject, he stated “no, there was no information.” Annex. 33. Diligence rendered by regular soldier Mamérito Pérez Mosquera on August 20, 1996. Annexed to the written brief of the State received on August 26, 2010. Sergeant Jiménez stated he had no records of the subject “I did not recognize him because he was traveling at a high speed on his vehicle, afterwards we realized, through the intelligence information, that he had a record.” Annex. 22. Diligence rendered by First Sergeant Mr. José Virgilio Jiménez Mahecha before Court 124 of Military Criminal Instruction, October 24, 1996. Annexed to the written brief of the State received on August 26, 2010.

during the commission of the acts, namely: i) it pertained to a civilian; ii) the State did not sustain the actual existence of a combat situation, therefore, the IACHR infers that it was simulated; and iii) with the objective of justifying said simulation, he was accused of being a guerrilla member without any evidence to this effect at the time of the publication of the facts.

84. In this regard, the Commission considers that the State of Colombia is responsible for the violation to the right to life enshrined in Article 4 of the American Convention in conjunction with Article 1(1) of said instrument, to the detriment of Gustavo Giraldo Villamizar. Likewise, the Commission considers that the State of Colombia is responsible for the violation of the right to honor and dignity set forth in Article 11 of the American Convention in relation to the duties established in Article 1(1) of said instrument, to the detriment of his next of kin.

2. The rights to life, personal integrity, personal liberty and honor and dignity of Mr. Elio Gelves Carrillo

a. Facts

85. Mr. Elio Gelves Carrillo was 18 years old at the time of his death.¹¹³ His nuclear family is comprised of his parents, Griseldina Carrillo del Gelves and Manuel Gelves Guerrero; his brothers and sisters, Adelaida, Ismael, Alfonso, Eliceo María Leisy, Benigna, José Nain and Gabriel, all with the surname Gelves Carrillo.¹¹⁴ According to the testimonies of persons in the case file “he was not in politics”; he was “hard working” and was “the only one who helped at home” because his other brothers were little. He was “a baccalaureate student who quit school to take responsibility for his house” and always worked on cultivating cassava, plantain and corn.¹¹⁵ Various testimony states that he did not belong to the “guerrillas”¹¹⁶ and, according to a declaration, his parents belonged to “*la Unión Patriótica*.”¹¹⁷ At the date of his death there were no intelligence annotations referring to Mr. Elio Gelves.¹¹⁸

86. According to the testimony of Elio Gelves’ next of kin, the following facts occurred on the night of May 27, 1997 in the hours preceding his death:

- Mr. Manuel Gelves Guerrero stated he was with his wife and children in their home. Towards 9 PM they heard people calling “*patrón, patrón* open the door.” He stated that at that moment his son “Elio got up from the room where he was sleeping and opened the door and started talking” these people told him “if he could join them”, “he had to collaborate with them.”¹¹⁹
- Mr. Manuel Gelves Guerrero stated that his “wife Griseldina, grabbed his son by the arm”, “but the Army men got ahead to get him out of his room and hit him in the face.” He pointed out

¹¹³ According to the information submitted by the State and not disputed by the petitioners, mr Elio Gelves was born February 23, 1979, therefore at the date of his death he was 18 years old.

¹¹⁴ This fact is described in Annex 36. Contentious-Administrative Tribunal of Arauca, judgment of April 13, 2000. Annexed to the written brief of the petitioners, November 6, 2000.

¹¹⁵ This fact is described in Annex 36. Contentious-Administrative Tribunal of Arauca, judgment of April 13, 2000. Annexed to the written brief of the petitioners, November 6, 2000.

¹¹⁶ Mrs. Heilia Neira Gamboa stated that “that boy was not into politics, because he was a worker”; Belarmina Guzmán Garzón stated “that boy who died is a humble peasant”; Silvia Rosa Mosquera Cubides stated “that boy was not a member of the guerrilla, he was a worker”; Mr. Santiago Lesmes said that “Elio was a good son and his only defect was working”; Luis Jorge Castañera Zúñiga indicated that “Elio was a worker, who I never saw carrying a gun or military garment”. Annex. 37 *Comandante Décima Octava Brigada*, Judge of First Instance, Decision of June 13, 2000. Annexed to the written brief of the petitioners, November 6, 2000.

¹¹⁷ *Testimony of Otiliza Cediell Ibarra* found narrated in Annex, 37, *Comandante Décima Octava Brigada*, Judge of First Instance, decision of June 13, 2000. Annex to the written brief of the petitioners, November 6, 2000.

¹¹⁸ This fact is described in Annex. 36. Contentious-Administrative Tribunal of Arauca, judgment of April 13, 2000. Annexed to the written brief of the petitioners, November 6, 2000

¹¹⁹This testimony is found narrated in Annex. 37. *Comandante Décima Octava Brigada*, Judge of First Instance, decision of June 13, 2000. Annexed to the written brief of the petitioners, November 6, 2000.

that “then he got up and asked why they were taking him, and they answered it was so he could help take care of a car because they were coming to fight at the “Y”, and they would bring him back at four in the morning.”¹²⁰

- Mrs. Griseldina Carrillo de Gelves and Mr. Ariolfo Guerrero Gelves corroborated these facts.¹²¹
- Mrs. Griseldina Carrillo specified that her son slept only with “shorts”, therefore the ‘civilian’ “allowed him to get on a shirt and school pants, boots, and socks and then they got him in between them and took him away.”¹²²
- After the persons dressed as civilians took Mr. Elio Gelves, Mrs. Griseldina Carrillo states that “at half past three or four in the morning they heard gunshots, volleys that lasted about five minutes.”¹²³

87. Mr. Manuel Gelves stated that the persons who took his son were “three men armed with a handgun, revolver or gun, dressed as civilians”, that “two were short and another was taller who was wearing a painted shirt and grey pants and was wearing a hat, they were not masked.”¹²⁴ Mrs. Griseldina Carrillo stated that one of the persons who took their son was wearing a cross-body bag (“*morralla*”) almost full as if he were carrying a ball.¹²⁵ Mr. Ariolfo Guerrero Gelves stated that the person who “entered to the room where he (Elio Gelves) was sleeping ... was a person approximately 25 years old, brown skinned, short and had an accent similar to those spoken in the region.”¹²⁶

88. With regard to the identity of the persons who took Mr. Elio Gelves:

- Griseldina Carrillo reaffirms “that she determined that they would be paramilitary, that they did not say to which group they belonged or anything”;¹²⁷ she stated “thinking that her son was killed by the Army because if it would have been the guerrillas they would not have dressed him as a guerrilla member and would have killed him in his house.”¹²⁸
- Mr. Manuel Gelves, according to his testimony in the decision of the Judge of First Instance, stated that the persons said “they were from the guerrillas, they were *farianos*”, nevertheless, he stated he considered that “they were Army men, because they abducted his

¹²⁰This testimony is found narrated in Annex. 37. *Comandante Décima Octava Brigada*, Judge of First Instance, decision of June 13, 2000. Annexed to the written brief of the petitioners, November 6, 2000.

¹²¹ See their statements narrated in Annex. 37. *Comandante Décima Octava Brigada*, Judge of First Instance, decision of June 13, 2000. Annexed to the written brief of the petitioners, November 6, 2000.

¹²² This is found narrated in Annex 39. *Fiscal Delgado, Colisión de Competencia*, July 30, 1998. Annexed to the written brief of the petitioners, November 6, 2000.

¹²³This statement is found narrated in Annex. 37. *Comandante Décima Octava Brigada*, Judge of First Instance, decision of June 13, 2000. Annexed to the written brief of the petitioners, November 6, 2000. Likewise, the declaration is found narrated in Annex. 39. *Fiscal Delgado, Colisión de Competencia*, July 30, 1998. Annexed to the written brief of the petitioners, November 6, 2000.

¹²⁴This statement is found narrated in Annex 37. *Comandante Décima Octava Brigada*, Judge of First Instance, decision of June 13, 2000. Annexed to the written brief of the petitioners, November 6, 2000.

¹²⁵ The testimony is found narrated in Annex. 39. *Fiscal Delgado, Colisión de Competencia*, July 30, 1998.

¹²⁶This statement is found narrated in Annex. 37. *Comandante Décima Octava Brigada*, Judge of First Instance, decision of June 13, 2000. Annexed to the written brief of the petitioners, November 6, 2000.

¹²⁷Annex 37. *Comandante Décima Octava Brigada*, Judge of First Instance, decision of June 13, 2000. Annexed to the written brief of the petitioners, November 6, 2000

¹²⁸ The statement is found narrated in Annex. 37. *Fiscal Delgado, Colisión de Competencia*, July 30, 1998. Annexed to the written brief of the petitioners, November 6, 2000

son the hard way, forcibly.”¹²⁹ In another testimony narrated by the same judge, Mr. Manuel Gelves stated that the persons who came to his house “were not who they said they were, that they only said that [he] had to go with them and did not state the reason why they had to take him.”¹³⁰

- Ariolo Guerrero Gelves stated “it was the Army because Elio appeared dead near the military base of Fortul.”¹³¹

89. At dawn on May 28, 1997, the Special Group URE DELTA 6, under the command of Lte. Ditterich Dallatore Werner was executing an operation named “*ESCORPIÓN*” according to which the Group’s mission was “to capture and/or apprehend FARC bandits who were planning to attack a site “Y” where there was a permanent roadblock manned by troops.”¹³² The patrol “was organized in three groups”, the commanders were Lieutenant Ditterich and Sergeant Gómez.¹³³ The mission consisted of moving “cross country” from the headquarters of the Battalion of the Municipality of Fortul to the site known as “*Las Piscinas*”, where they would set up ambushes for passing subversives and at the same time provide support in case of an eventual attack to the “Y”.¹³⁴ According to the testimony of the Lieutenant in command, the operation had started on May 25 with an “infiltration in the area” and by May 28 they had advanced to the site known as “*las piscinas*”.¹³⁵ According to First Sergeant Mauricio Gómez Chacón the information that the guerillas “wanted to harass” was provided to army personnel located in the “Y” by civilians, but he did not know exactly which persons.”¹³⁶

90. The facts that occurred on May 28, 1997, the day the the body of Mr. Elio Gelves was found, were registered in the “patrolling report” in the following way:

Being on the sector located, at 3:35 in the morning, armed contact was initiated on the counter-guerillas located in the “Y”, the “delta 6” group takes position over the sector type-ambush. At 3:55 to 4:00, the “delta 6” group engaged in combat with the bandits and were (sic) retracting on the “Y” sector and maintained armed combat with said group. “Delta” 6 approximately. At 5:00 the contact continues and the group advances, at 5:10, the units (illegible) support the withdrawal of the bandts, and at dawn a search is carried out on the sector and as a result a bandit is killed.¹³⁷

¹²⁹This statement is found narrated in Annex. 37. *Comandante Décima Octava Brigada*, Judge of First Instance, decision of June 13, 2000. Annexed to the written brief of the petitioners, November 6, 2000.

¹³⁰This statement is found narrated in Annex. 37. *Comandante Décima Octava Brigada*, Judge of First Instance, decision of June 13, 2000. Annexed to the written brief of the petitioners, November 6, 2000.

¹³¹This statement is found narrated in Annex. 37. *Comandante Décima Octava Brigada*, Judge of First Instance, decision of June 13, 2000. Annexed to the written brief of the petitioners, November 6, 2000.

¹³²Annex. 37. *Comandante Décima Octava Brigada*, Judge of First Instance, decision of June 13, 2000. Annexed to the written brief of the petitioners, November 6, 2000.

¹³³ Annex. 40. Testimony of voluntary soldier William Cruz Libreros before *Despacho Promiscuo Municipal*, on July 2, 1997. Annexed to the written brief of the petitioners of April 10, 2001; Annex. 41. Testimony of voluntary soldier Miguel José Herrera Ospina before *Despacho Promiscuo Municipal*, on July 2, 1997. Annexed to the written brief of the petitioners of April 10, 2001.

¹³⁴Annex. 42. *Fiscalía 14 Penal Militar* before the Judge of First Instance of the Second Division Brigades, summary evaluation, April 23, 2001. Annexed to the written brief of the State, received June 19, 2009

¹³⁵See statement quoted in Annex. 37. *Comandante Décima Octava Brigada*, Judge of First Instance, decision of June 13, 2000. Annexed to the written brief of the petitioners, November 6, 2000.

¹³⁶ Annex. 43. Testimony of First Sergeant Mauricio Gómez Chacón before *Despacho Promiscuo Municipal*, on July 12, 1997. Annexed to the written brief of the petitioners of April 10, 2001

¹³⁷ Annex. 44. Patrol Commander, Patrolling Report. Annexed to the written brief of the petitioners of April 10, 2001.

91. The previous account also follows the reading of the accounts of the military personnel who participated in the operation on May 28, 1997,¹³⁸ who concur about the time of the confrontation being between three and four in the morning.¹³⁹

92. According to the statement of First Sergeant Mauricio Gómez Chacón, at five in the morning “a bandit was found dead.” The voluntary soldier, Miguel José Herrera Ospina, stated that soldiers Ferney Piedrahita Liaiza and Castro Buriticá informed “the commander” about the finding of the body.¹⁴⁰ According to the testimony of voluntary soldier Ferney Piedrahita Liaiza, after they found the body “they notified Sergeant Gómez”,¹⁴¹ the soldier Mauricio Chacón stated that he informed Lieutenant Ditterich who “stayed there...” while he was ordered to stand guard.”¹⁴²

93. Concerning the position in which the body of the person “killed” was found, First Sergeant Mauricio Chacón,¹⁴³ and Jhon Jairo Castro Buriticá¹⁴⁴ stated he was “face down”. In relation to the way the body was dressed, First Sergeant Mauricio Chacón stated that it “was dressed in green – pants and shirt and rubber boots”¹⁴⁵; Soldier Miguel Herrera Ospina stated he saw the body “for a few moments” and it “was dressed in police green”¹⁴⁶; soldier William Cruz Libreros stated that “when they were transporting him in the car, he was uniformed in police green.”¹⁴⁷

94. In relation to whether during the confrontation they were able to observe the person “killed” or the shots he may have fired at the troops, soldier William Cruz Libreros stated “not knowing how many shots were fired at the troops”¹⁴⁸ and that “I did not see him during or after the contact”¹⁴⁹; soldier Mauricio Gómez Chacón stated that “I did not see the subject that was killed before, nor during the contact”¹⁵⁰; soldier Miguel Herrera Ospina stated that “I do not know because it was nighttime, you could feel the lead and the

¹³⁸In this regard see the statements of Miguel José Herrera Ospina, William Cruz Libreros, Jhon Jairo Castro Buriticá, Ferney Piedrahita Liaiza, Mauricio Gómez Chacón and Werner Ditterich Dallatorre, quoted in Annex. 37. *Comandante Décima Octava Brigada*, Judge of First Instance, Decision of June 13, 2000. Annexed to the written brief of the petitioners, November 6, 2000.

¹³⁹According to the narrative of the testimonies carried out during the judgment of the First Instance the “CP. Mauricio” stated that it happened “at three or half past three in the morning”; soldier Miguel José Herrera Ospina stated that when “it was quarter to four”; voluntary soldier Ferney Piedrahita Liaiza it was around “three or half past three in the morning.” Annex. 37. *Comandante Décima Octava Brigada*, Judge of First Instance, Decision of June 13, 2000. Annexed to the written brief of the petitioners, November 6, 2000.

¹⁴⁰ Annex. 45.. Testimony of voluntary soldier Miguel José Herrera Ospina before *Despacho Promiscuo Municipal*, on July 2, 1997. Annexed to the written brief of the petitioners of April 10, 2001.

¹⁴¹*Comandante Décima Octava Brigada*, Judge of First Instance, decision of June 13, 2000. Annex to the written brief of the petitioners, November 6, 2000.

¹⁴² Annex. 43. Testimony of First Sergeant Mauricio Gómez Chacón before *Despacho Promiscuo Municipal*, on July 12, 1997. Annexed to the written brief of the petitioners of April 10, 2001

¹⁴³ Annex. 43. Testimony of First Sergeant Mauricio Gómez Chacón before *Despacho Promiscuo Municipal*, on July 12, 1997. Annexed to the written brief of the petitioners of April 10, 2001

¹⁴⁴ See his statement narrated in Annex. 39. *Fiscal Delgado, Colisión de Competencia*, July 30, 1998. Annexed to the written brief of the petitioners, November 6, 2000.

¹⁴⁵ Annex. 43. Testimony of First Sergeant Mauricio Gómez Chacón before *Despacho Promiscuo Municipal*, on July 12, 1997. Annexed to the written brief of the petitioners of April 10, 2001

¹⁴⁶ Annex. 45. Testimony of voluntary soldier William Cruz Libreros before *Despacho Promiscuo Municipal*, on July 2, 1997. Annexed to the written brief of the petitioners of April 10, 2001.

¹⁴⁷ See his statement narrated in Annex. 39. *Fiscal Delgado, Colisión de Competencia*, July 30, 1998. Annexed to the written brief of the petitioners, November 6, 2000.

¹⁴⁸ See his quoted statement narrated in Annex. 39. *Fiscal Delgado, Colisión de Competencia*, July 30, 1998. Annexed to the written brief of the petitioners, November 6, 2000.

¹⁴⁹ Annex. 40. Testimony of voluntary soldier William Cruz Libreros before *Despacho Promiscuo Municipal*, on July 2, 1997. Annexed to the written brief of the petitioners of April 10, 2001.

¹⁵⁰ Annex. 43. Testimony of First Sergeant Mauricio Gómez Chacón before *Despacho Promiscuo Municipal*, on July 12, 1997. Annexed to the written brief of the petitioners of April 10, 2001.

explosions but no one could be seen”, “no, I did not observe, neither before the contact nor after the contact.”¹⁵¹ In relation to the manipulation of the body or weapons, Sergeant Mauricio Gómez Chacón clarified that “no, I know nothing because the order is not to touch the cadavers”.¹⁵² Soldier Miguel Herrera Ospina indicated that “no, nothing was manipulated”¹⁵³ and soldier William Cruz Librero indicated that “I think it was left until the body was lifted”.¹⁵⁴

95. According to the “patrolling report” the “ammunition used during the Combat” was “ammunition 7.62 = 200; ammunition 5.56 = 480; 40 mil Grenade = 11; 60 ml Grenade = 3.”¹⁵⁵ According to the record of the body collection carried out at 7:55AM, “for security reasons it was conducted at the morgue facilities of the location”; the cadaver was found in “dorsal decubitus” position and the body wore “green color trousers, a white long-sleeve shirt, green-color wool-socks[,] yellow and white shorts[,] grey-color shorts with squares[,] green-color police private’s hat[,] and] black rubber boots”.¹⁵⁶ It indicated that various armaments were found on the deceased.¹⁵⁷

96. The testimony of Mrs. Gloria Carillo Angarita, Elio Gelves’ cousin, indicates that when they went to see the body “it had a green uniform, she took the uniform and it was too big, some boots, a hat and a *chinchorro*”.¹⁵⁸ Mrs. Griseldina Carrillo de Gelves indicated that a report in relation to the events was broadcast on “*La Voz del Cinaruco*” in which it was stated that “The army had a confrontation with the FARC and had killed a guerilla.”¹⁵⁹

97. According to the statement of the Municipal Ombudsman (“*Personero Municipal*”) narrated by the Administrative Tribunal “from the time it was known who the deceased was there was an atmosphere of astonishment in the Fortuñela community” and “spontaneously during his funeral a large crowd carried out a march demanding justice[,] which arrived at the sector of the “Y”; there were even people haranguing the troops present at the location that they were murderers.”¹⁶⁰

b. Considerations of the Commission

98. The Commission observes in the present case that various elements concur and must be taken into consideration when deciding whether the acts occurred as stated by the State, in the context of a

¹⁵¹ Annex. 45. Testimony of voluntary soldier Miguel José Herrera Ospina before *Despacho Promiscuo Municipal*, on July 2, 1997. Annexed to the written brief of the petitioners of April 10, 2001.

¹⁵² Annex. 43. Testimony of First Sergeant Mauricio Gómez Chacón before *Despacho Promiscuo Municipal*, on July 12, 1997. Annexed to the written brief of the petitioners of April 10, 2001.

¹⁵³ Annex. 45. Testimony of voluntary soldier Miguel José Herrera Ospina before *Despacho Promiscuo Municipal*, on July 2, 1997. Annexed to the written brief of the petitioners of April 10, 2001.

¹⁵⁴ Annex. 40. Testimony of voluntary soldier William Cruz Libreros before *Despacho Promiscuo Municipal*, on July 2, 1997. Annexed to the written brief of the petitioners of April 10, 2001.

¹⁵⁵ Annex. 44. Patrol Commander, Patrolling Report. Annexed to the written brief of the petitioners of April 10, 2001.

¹⁵⁶ Annex. 46. Institute of Legal Medicine, Format of the Record of the Body Collection, May 28, 1997. Annexed to the written brief of the petitioners of April 10, 2001.

¹⁵⁷ The following: “01. Handmade equipment, 01 chinese-type mine with dinamite and machinegun, 05 meters of detonating cord, 03 squibs, 02 fragmentation hand grenades, 01 rifle magazine which contained 20 cartridges 7.62 caliber Gavin brand, 59 cartridges 7.62 brand CAVIN and VEN, 01 *chapuza* for revolver[,] 01 Smith & Wesson Revolver ... caliber 38, found in the barrel of the revolver 3 shells and 03 Winchester cartridges, in the right pocket of the pants of the deceased 06 INDUMIL 38-caliber cartridges were found.” IAnnex. 46. nstitute of Legal Medicine, Format of the Record of the Body Collection, May 28, 1997. Annexed to the written brief of the petitioners of April 10, 2001

¹⁵⁸ Annex 37. *Comandante Décima Octava Brigada*, Judge of First Instance, decision of June 13, 2000. Annex to the written brief of the petitioners, November 6, 2000.

¹⁵⁹ This statement is found narrated in Annex. 37. *Comandante Décima Octava Brigada*, Judge of First Instance, decision of June 13, 2000. Annexed to the written brief of the petitioners, November 6, 2000.

¹⁶⁰ Annex. 36. Contentious-Administrative Tribunal of Arauca, judgment of Apr 13, 2000. Annexed to the written brief of the petitioners, November 6, 2000.

confrontation and the exercise of the right to legitimate self-defense, or whether, it was an extrajudicial killing, as indicated by the petitioners. When carrying out this assessment the Commission recalls that whenever the use of force [by state agents] results in death or injuries to one or more individuals, the State has the obligation to give a satisfactory and convincing explanation of the events and to rebut allegations of its liability, through appropriate evidentiary elements.¹⁶¹

99. In this regard, the Commission considers that the alleged confrontation is verified by the State, fundamentally, in the following evidentiary elements: the testimony of the military personnel; the finding of armaments, the ammunition used by the military during the confrontation; the report of the “Ballistics Lab” stating that the revolver found is optimally functioning but in a terrible condition of conservation (see *infra* para. 232).

100. The Commission notes that technical tests were not carried out to determine if the gun in question was actually fired by Mr. Villamizar. In this regard, the Commission notes that the State did not demonstrate that it had used all evidentiary, technical and scientific mechanisms to define the most basic element of the controversy, this is, whether the death took place in a confrontation and in legitimate self-defense, or whether it was an extrajudicial execution. Among the essential evidentiary elements there is, for example, “paraffin test”, “fingerprinting”, or “atomic absorption” which could have determined whether the gun was actually fired by Mr. Gelves. The Commission also considers, according to the explanation given by the Office of the Prosecutor, that the condition in which the weapon was found “in a terrible state of conservation” indicates that “the gun was not carried by anyone but rather that it was kept somewhere”.¹⁶² Likewise, the Office of the Prosecutor denounced the inconsistencies concerning the highly-flammable explosive-material that Mr. Gelves allegedly was carrying insofar as it did not explode after receiving multiple shots and due to the movement of the body”.¹⁶³ Consequently, the Commission cannot validate the statements of the State to the effect that the armaments were carried by Mr. Gelves and he himself fired the gun in a confrontation.

101. Second, according to the Office of the Prosecutor, the findings of the autopsy indicate that the body presented “10 punctures produced by a firearm projectiles, “Wound I” with POSTERIOR-ANTERIOR-RIGHT-LEFT trajectory: DOWN-UP” and the 9 wounds with the following trajectory “ANTERIOR-POSTERIOR-RIGHT-LEFT: DOWN-UP”.¹⁶⁴ The Office of the Prosecutor explained with regard to the wounds with a posterior-anterior trajectory that the “deceased at the time of receiving this wound, was lying face down (abdominal decubitus) and shot from behind or from the direction of his feet.” In relation to the additional 9 wounds, the Office of the Prosecutor stated that the trajectory indicates that “the body was lying face up (dorsal decubitus) and the shots were fired from the direction of his feet”.¹⁶⁵ The Commission considers that in the record there is no response whatsoever to satisfactorily explain what happened and the specific way in which the totality of the wounds could have happened in combat.

102. Third, the Commission observes that inconsistencies exist in the versions provided by the military personnel and the results of the operation, which hinder the affirmation that it was a confrontation. In this regard, the Commission considers that none of the military personnel identified Mr. Elio Gelves during

¹⁶¹ Inter-American Court of Human Rights. *Case Zambrano Vélez et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166. para. 108; I/A Court H.R. *Case Montero Aranguren et al. (Detention Center of Catia)*, Judgment of July 5, 2006. Series C No. 150. para. 80; I/A Court H.R., *Case of Baldeón-García*. Judgment of April 6, 2006. Series C No. 147, para. 120.

¹⁶² Annex. 39. *Fiscal Delgado, Colisión de Competencia*, July 30, 1998. Annexed to the written brief of the petitioners, November 6, 2000.

¹⁶³ Annex. 39. *Fiscal Delgado, Colisión de Competencia*, July 30, 1998. Annexed to the written brief of the petitioners, November 6, 2000.

¹⁶⁴ The findings of the necropsy are referred to Annex. 39. in *Fiscal Delgado, Colisión de Competencia*, July 30, 1998. Annexed to the written brief of the petitioners, November 6, 2000.

¹⁶⁵ Annex. 39. *Fiscal Delgado, Colisión de Competencia*, July 30, 1998. Annexed to the written brief of the petitioners, November 6, 2000.

combat. On the contrary, according to various testimonies, they could not observe the “subversives”.¹⁶⁶ Likewise, the Commission notes that even though the soldiers affirmed it was the “guerrillas” who were the first to fire on them¹⁶⁷ and that they “opened fire for approximately 20 minutes”; none of the troops in the alleged confrontation received wounds of any type, particularly considering the version of a soldier that “the guerrillas were approximately twenty” and “the shots came from the front”.¹⁶⁸ Also, even though the large amount of armaments that would have been used by the military consisting of more than 600 rounds of ammunition and 14 grenades, the sole result of the confrontation was the death of one person from the alleged enemy group, Mr. Elio Gelves.

103. Fourth, in relation to the acts immediately prior to the death of Mr. Elio Gelves, the Commission observes that upon establishing that his death was result of acts of State agents, the fact that unknown persons forcibly removed him from his house to support a possible conflict that would take place afterwards, adds to the series of indications of State responsibility, which corresponds to the State to rebut these.

104. The Commission notes that the State indicates that said persons were dressed as civilians and based on the testimony of Mr. Elio Gelves’ father, who said these were “*farianos*”, to point out that these were guerilla members and not members of the Army, paramilitary or civilians that collaborated with the Army. The Commission observes that the same Mr. Manuel Gelves, afterwards, in other declarations indicated that “the persons who went did not say who they were”, which coincides with Mrs. Griseldina Carrillo who stated that [the persons] “they did not say to which group they belonged or anything.” Likewise, in relation to the acts that took place before the death of Mr. Gelves, the Commission notes: i) that the approximate time of the alleged combat coincides with that in which the parents of Mr. Elio Gelves heard the gunshots close to their house; ii) there is no individualization of the members of the army which allows for the identification of the location occupied by each of them at the time of the operation; iii) at the time of the facts there existed an accredited context of support for the paramilitary forces by the military to commit the extrajudicial executions; and, iv) that even though the next of kin declared on various occasions that they thought it was the Army or paramilitary, this fact was not seriously investigated by the State. The Commission considers that in light of the above elements, the statement said words or Mr. Manuel Gelves on one occasion, which on its own does not conclusively, as argued by the State, rebut that the persons that came to the house of Mr. Gelves were members of the Army or paramilitary who delivered him afterwards to for execution.

105. Fifth, the Commission observes that the labelling that stigmatised Mr. Elio Gelves as a guerilla was based on the premise that he left the house with persons from the guerrillas and that his death happened during a confrontation. Furthermore, this was done based on the armaments and clothing he allegedly wore. The Commission has already explained its considerations in relation to the persons that forcibly removed Mr. Elio Gelves from his house and the inconsistencies in the versions of the military personnel (*supra* paras. 103 and 104). Likewise, the Commission has already stated that it was not sufficiently validated that Mr. Elio Gelves carried the weapons. (*supra* para. 100).

¹⁶⁶ In this regard, soldier Jhon Jairo Castro Buriticá stated that “[he] did not see any of the subversives nor how many were they, he doesn’t know where the gunshots were heard from and they shot being on the ground. Annex. 36. Contentious-Administrative Tribunal of Arauca, judgment of April 13, 2000. Annexed to the written brief of the petitioners, November 6, 2000. Soldier William Cruz Libreros “says that the rest shot in response of the harassment [...] and] does not know how many meters away were the subversive harassers, [he] did not see the subversives, does not recall how many were the soldiers”. Annex. 36. Contentious-Administrative Tribunal of Arauca, judgment of April 13, 2000. Annexed to the written brief of the petitioners, November 6, 2000. Soldier Miguel José Hererra Ospina stated that “he shot while standing up, did not see the deceased before nor after, does not recall the name of who comprised the squad ... of the troop no one result injured/wounded nor dead.” Annex. 40. *Testimony of* voluntary soldier William Cruz Libreros before *Despacho Promiscuo Municipal*, on July 2, 1997. Annexed to the written brief of the petitioners of April 10, 2001.

¹⁶⁷ In this regard, soldier Squad Commander, Mauricio Gómez Chacón, stated that “when we were going to cross the road we were shot from different places and we reacted...” Annex. 36. Contentious-Administrative Tribunal of Arauca, judgment of April 13, 2000. Annexed to the written brief of the petitioners, November 6, 2000. Meanwhile CP. Mauricio Gómez Chacón” stated “the guerrilla were the first to shoot because as soon as they came to the road they were detected.” Annex. 37. *Comandante Décima Octava Brigada*, Judge of First Instance, Decision of June 13, 2000. Annexed to the written brief of the petitioners, November 6, 2000.

¹⁶⁸ Annex. 40. *Testimony of* voluntary soldier William Cruz Libreros before *Despacho Promiscuo Municipal*, on July 2, 1997. Annexed to the written brief of the petitioners of April 10, 2001.

106. As to whether the body could have been manipulated to clothe him, the Commission considers that while the death of Mr. Elio Gelves, according to the “Patrol Report” happened between 3:35 and 5:10 AM, the notification to the inspector of the Institute of Legal Medicine was made at 5:45 AM, and removal of the body occurred at 7:55 AM. The above indicates that the body was in the exclusive control of the armed forces for over two hours.

107. The Commission observes that the next of kin of the youth Elio Gelves has consistently described that he left his house with a short and high school pants, and there is no evidence that allows for the possibility he carried his uniform with him. Likewise, in relation to whether the body could have been manipulated, the Commission notes that while First Sergeant Mauricio Chacón¹⁶⁹, and Jhon Jairo Castro Buriticá¹⁷⁰ indicated the body was “face down” and various statements of the soldiers indicate that said body was not manipulated¹⁷¹, the record of the body collection carried out at the morgue reveals it was found in a different position, “dorsal decubitus”, meaning, face up, without the record establishing whether this was the position at the scene (see *infra* para. 228). Also, according to Ms. Lucy Vega Blanco, the uniform that Mr. Elio Gelves wore did not comport with his size and “it was too big”.

108. In light of the above findings, the Commission considers that the available evidence does not sustain that Mr. Gelves was in fact wearing, before the time of his death, the uniform the State indicates. In this regard, in this case there are no elements to publicly connect him to the guerrillas. On the contrary, the Commission observes that according to the evidence provided by the petitioners, Mr. Elio Gelves did not belong to the guerrillas and his death caused such outrage in the area that, according to the *Municipal Ombudsperson* (“*Personero Municipal*”), a march was held that day and loud demands for justice for his death were expressed by the participants.

109. In summary, the Commission considers that, after the analysis of all the above elements, the State of Colombia has not satisfactorily rebutted the series of indications of the responsibility of State agents for the acts. On the contrary, the evidence supports a series of indications that Mr. Elio Gelves was forcibly removed from his home to be executed by agents of the State, who acted in accordance with one of the *modus operandi* identified during the time of the acts, namely: i) it pertained to a civilian; ii) he was executed under circumstances which the State did not verify constituted a combat situation, which also permits the view that it was simulated; and iii) in order to justify this simulation, he was accused of being a guerrilla without providing the Commission with any basis to, or that it is recorded in the case file, the basis for support such an accusation.

110. By virtue of the preceding, the Commission considers that the State of Colombia is responsible for the violation of the right to life enshrined in Article 4 of the American Convention in conjunction with the obligations in Article 1(1) of said instrument, to the detriment of the youth Elio Gelves. Likewise, due to the unjustified linking of the victim with the guerillas, the Commission concludes that the State of Colombia is responsible for the violation of the right to honor and dignity protected in Article 11 of the American Convention in relation to Article 1(1) of said instrument, to his detriment.

¹⁶⁹ Annex. 43. *Testimony of* First Sergeant Mauricio Gómez Chacón before *Despacho Promiscuo Municipal*, on July 12, 1997. Annexed to the written brief of the petitioners of April 10, 2001.

¹⁷⁰ See his quoted statement in Annex. 39. *Fiscal Delgado, Colisión de Competencia*, July 30, 1998. Annexed to the written brief of the petitioners, November 6, 2000.

¹⁷¹ In relation to the manipulation of the body or weapons, Sergeant Mauricio Gómez Chacón cleared that “no, I know nothing because the order is not to touch the cadavers”. Annex. 43. *Testimony of* First Sergeant Mauricio Gómez Chacón before *Despacho Promiscuo Municipal*, on July 12, 1997. Annexed to the written brief of the petitioners of April 10, 2001. Soldier Miguel Herrera Ospina indicated “no, nothing was manipulated”. Annex. 45. *Testimony of* voluntary soldier Miguel José Herrera Ospina before *Despacho Promiscuo Municipal*, on July 2, 1997. Annexed to the written brief of the petitioners of April 10, 2001. Soldier William Cruz Librero indicated “I think it was delayed until the body was lifted”. Annex. 40. *Testimony of* voluntary soldier William Cruz Libreros before *Despacho Promiscuo Municipal*, on July 2, 1997. Annexed to the written brief of the petitioners of April 10, 2001.

111. Additionally, the Commission considers that in light of the absence of a satisfactory explanation by the State concerning the persons who forcibly removed Mr. Elio Gelves from his home, the Commission considers that the State did not rebut the indications that Mr. Gelves was detained illegally and arbitrarily by persons who collaborated with State agents to accomplish his execution, therefore the State has incurred a violation of Article 7 of the American Convention.

112. For the purpose of carrying out these considerations, the Commission considers that even though its Admissibility Report No. 104/11¹⁷² did not rule on Articles 7 and 11 of the Convention, the facts substantiate the existence of such violations, which arise from the information and evidence submitted by the parties to the proceedings before the IACHR and to which the State had the opportunity to submit its observations.

113. Finally, by virtue of the physical and psychological suffering, which is reasonable to infer, suffered by Mr. Elio Gelves, from the time he left his house until the moment of his death caused by the gun shots he received, the Commission concludes that the State violated to his detriment the right to personal integrity enshrined in Article 5 of the American Convention.

114. Finally, the Commission notes that in its Admissibility Report No. 104/11 adopted in this case it stated that in the merits analysis it would rule on Article 19 of the Convention to the extent that the death of Mr. Elio Gelves, being a teenager, was verified.¹⁷³ In relation to this point, the Commission observes that according to the information submitted by the State and not rebutted by the petitioners, Mr. Elio Gelves was born on February 23, 1979, therefore at the time of his death he was 18 years old. In light of the aforementioned, the Commission finds that said Article of the Convention is inapplicable.

3. The Rights to life, personal integrity and personal liberty of Mr. Carlos Arturo Uva Velandia

a. Facts

115. Mr. Carlos Uva Velandia was 25 years old at the date of his death¹⁷⁴ and worked as a cattle-truck driver.¹⁷⁵ His nuclear family is comprised of his father, Antonio María Uva Olarte, his mother, Eliza Velandia de Uva, and his sisters Orfa Uva Velandia, Alicia Uva Velandia, Marieta Uva Velandia and Luz Estella Uva Velandia, and his brothers Antonio Uva Velandia and Eduardo Uva Velandia.¹⁷⁶

116. In the afternoon of June 20, 1992, Mr. Carlos Uva Velandia was at “*Los Cristales*” discotheque¹⁷⁷ and, according to Mr. José Gersaín Uva, was “organizing a serenade to fathers because the next day was father’s day”.¹⁷⁸ According to the testimony of Mr. Norberto Nuñez Pérez, owner of the discotheque, “at around seven thirty” Mr. Carlos Uva left on his motorcycle to look for some girlfriends to bring to dance but didn’t find them, later “about half an hour later [he] left again” to look for them.¹⁷⁹ Ms. Fluvia Nina

¹⁷²IACHR, Report 104/11, Admissibility, Elio Gelves Carrillo *et al.* (Colombia), July 22, 2011, para. 39.

¹⁷³IACHR, Report 104/11, Admissibility, Elio Gelves Carrillo *et al.* (Colombia), July 22, 2011, para. 39.

¹⁷⁴ Annex. 47. Diligence of body collection, June 21, 1992. Annex 1.

¹⁷⁵ Annex. 48. *Testimony of* Napoleón Rodríguez Vidales before the *Juzgado Promiscuo de la Municipalidad*, August 30, 1993. Annexed to the initial petition.

¹⁷⁶ See in this regard, Initial petition received on October 5, 2000.

¹⁷⁷ Annex. 49. Record of the Testimony of Norberto Nuñez Pérez before Court 120 of Military Criminal Instruction, December 20, 1992. Annex 1. Testimony of Gersain Uva Fuentes before the *Juzgado Promiscuo de la Municipalidad*, September 27, 1993. Annexed to the initial petition. Annex. 51. Record of the *Testimony of* Norberto Nuñez Pérez before Court 120 of Military Criminal Instruction, December 21, 1992. Annex 1 to the written brief of the petitioners of October 13, 2000..

¹⁷⁸ Annex. 51. Testimony of José Gersaín Uva Fuentes, before the *Juzgado Promiscuo de la Municipalidad*, 30 August 1993. Annexed to the initial petition.

¹⁷⁹ Annex. 49. Record of the *Testimony of* Norberto Nuñez Pérez before Court 120 of Military Criminal Instruction, December 20, 1992. Annex 1 to the written brief of the petitioners of October 13, 2000.

Benítez, who Mr. Carlos Uva went looking for to bring back to the discotheque, indicated that “that afternoon and in the evening the soldiers were following him”; “he was going to leave on a motorcycle and was not allowed to pass and returned and left the motorcycle at the discotheque and left walking and the soldiers showed up”. She stated that “the lieutenant asked her what was his name” to which she replied “his name is Carlos Arturo Uva Velandia”, and later the lieutenant “told the soldiers to let him pass because he is coming to this house.” So Mr. Carlos Uva entered her house and “invited them to come to the discotheque”.¹⁸⁰

117. After returning to the discotheque, according to the testimonies of persons present, Mr. Carlos Uva was in the company of Mr. Santos Adilio Sandoval, Norberto Núñez Pérez and Mr. Maximino Vargas; and Mrs. Fluvia Nina Benítez, Sandra Benítez and Edilma Benítez. According to Mr. Norberto Núñez “they danced until around eleven” and, later, Mr. Carlos Uva was accompanied by Mrs. Nubia Esmir Carrascal, who worked at the place, to one “place” of the disco in which Mr. Carlos Uva fell asleep. Later, Fulvia Benítez, Sandra Benítez and Edilma Benítez, left the place, and Mr. Maximino left on a motorcycle accompanied by Mr. Santos Adilio Sandoval. Later Mr. Carlos Uva woke up and left the discotheque alone.¹⁸¹ According to Mr. Norberto Núñez, when asked “where he was going”, he “said to las *peladas*, as one of them was his friend.”¹⁸²

118. Miss Fulvia Nina Benítez stated that when she arrived along with her sisters to the house “at the door there were two soldiers” and “there was another standing on a tree stump that was there but he was as a civilian”. She stated that “when they entered the house she hid” and then they closed the door.¹⁸³ She stated that “close to twelve thirty at night” Mr. Maximino Vargas went looking for Carlos Uva Velandia.¹⁸⁴ Mr. Santos Adilio Sandoval indicated that when he arrived home he went to lie down “it was around eleven thirty” and “a while after lying down” heard “some shouts which said do not kill me, do not kill me”.¹⁸⁵ Likewise, Mr. José Gersaín Uva Fuentes stated that while he was in his house around twelve at night he heard “that a person was complaining and shouting”; and the last words he heard were “*cuñadito* (little son in law) you killed me”.¹⁸⁶

¹⁸⁰ Annex. 52. *Testimony of Fulvia Nina Benítez* before the *Juzgado Promiscuo de la Municipalidad*, September 29, 1993. Annexed to the initial petition. In relation this act to Mr. Norberto Núñez indicated that “the Army told him he could not travel on a motorcycle, they would let him leave but by foot”. Annex. 49. Record of the *Testimony of Norberto Nuñez Pérez* before Court 120 of Military Criminal Instruction, December 20, 1992. Annex 1 to the written brief of the petitioners of October 13, 2000. According to Mr. Maximino Vargas Uva, that day Carlos Uva “ony argued with some soldiers who searched him and he dropped some papers and said ‘there’, please do not spill the papers of the girlfriend, any more.” Annex. Record of the *Testimony of Maximino Vargas Uva* before the *Juzgado Promiscuo de la Municipalidad*, September, 29, 1993. Annex 1 to the written brief of the petitioners of October 13, 2000.

¹⁸¹ The above version follows the following statements: Annex. 52. *Testimony of Nubia Esmir Carrascal* before the *Juzgado Promiscuo de la Municipalidad*, September 27, 1993. Annexed to the initial petition; Annex. 49. Record of the *Testimony of Norberto Nuñez Pérez* before Court 120 of Military Criminal Instruction, December 20, 1992. Annex 1 to the written brief of the petitioners of October 13, 2000; Annex. 54. Record of the *Testimony of Santos Adilio Sandoval Morales* before Court 120 of Military Criminal Instruction, December 20, 1992. Annex 1; Annex. 53. Record of the *Testimony of Maximino Vargas Uva* before Court 120 of Military Criminal Instruction, January 12, 1993. Annex 1; Annex. 52. *Testimony of Fulvia Nina Benítez* before the *Juzgado Promiscuo de la Municipalidad*, September 29, 1993. Annexed to the initial petition.

¹⁸² Annex. 49. Record of the *Testimony of Norberto Nuñez Pérez* before Court 120 of Military Criminal Instruction, December 20, 1992. Annex 1.

¹⁸³ Annex. 52. *Testimony of Fulvia Nina Benítez* before the *Juzgado Promiscuo de la Municipalidad*, September 29, 1993. Annexed to the initial petition.

¹⁸⁴ Annex. 52. *Testimony of Fulvia Nina Benítez* before the *Juzgado Promiscuo de la Municipalidad*, September 29, 1993. Annexed to the initial petition.

¹⁸⁵ On December 20, 1992 Mr. Santos Adilio Sandoval Morales who indicated met with Mr. Uva Velandia at around 10 at night “I arrived at the discotheque with Maximino, there he was. First, we were outside, when he told us, stay there a short while and we go dancing, then, with the girls he had brought, we entered the Discotheque there, when he, the *chinas* (girls) said they were going to sleep now, Maximino, Norberto, the deceased and myself remained there, because the *chinas* (girls) went out and left. And he came out and told us wait for us, wait for me that I will go and come back, then when he left, I told Maximino, please take me home in the motorcycle. When he took me home, I went to bed it was around eleven thirty. After being in bed for a while, my woman told me listen ... some *fritos* saying do not kill me, do not kill me ... the next day .. we heard that ... they killed Arturo” Annex. 54. Record of the *Testimony of Santos Adilio Sandoval Morales* before Court 120 of Military Criminal Instruction, December 20, 1992. Annex 1

¹⁸⁶ Annex. 51. *Testimony of Gersain Uva Fuentes* before the *Juzgado Promiscuo de la Municipalidad*, August 30, 1993. Annexed to the initial petition.

119. According to the result of the investigation and the criminal process carried out domestically, Mr. Carlos Uva Velandia was deprived of his life by a soldier, Juan Alexis Burgos. The *Juzgado Promiscuo de Circuito* describes the facts that occurred the night of June 20, 1992 as follows:

On June 20, 1993, Carlos Arturo Uva Velandia was about to leave and drink alcohol with some friends in the urban perimeter of Hato Corozal. On the same date, soldier Juan Alexis Rodríguez Burgos, assigned to the base of *La Paz de Ariporo*, arrives to that community with two fundamental functions: first, to deliver food supplies to the counter-guerrilla company located there; and, second, to pick up intelligence information. Finalizing these tasks, the soldier dedicates himself to the consumption of alcohol and past nine hours at night he heads to the military garrison to request help to capture an alleged guerrilla with whom he had differences. There, the duty officer convinced of the state of (drunkenness) of the soldier Rodríguez Burgos, orders him to lie down, but in blunt contempt he left and headed back again to the village.

Meanwhile, Carlos Arturo Uva Velandia leaves the establishment where he was consuming liquor and heads by himself to his house with such bad luck that on the way he runs into soldier Juan Alexis, who in company of other persons, manages to subdue him, tying his wrists and causing his death by inflicting fourteen (14) stabs, seven of these in the back side of his torso.

Having consummated the act, the soldier heads to another camp where the soldiers are quartered and there he reports that he just killed a guerilla.¹⁸⁷

120. The above version is corroborated by the fundamentals of the reports rendered by lieutenants Erick Rodríguez Aparicio¹⁸⁸ and Alfonso Portilla Castro,¹⁸⁹ who communicated about said act to

¹⁸⁷ Annex. 55. *Juzgado Promiscuo de Circuito*, Judgment of May 10, 1994. Annexed to the initial petition.

¹⁸⁸ In his report, Commander Erick Rodríguez Aparicio stated that “on the afternoon of June, 20 I met said soldier, who introduce himself dressed as a civilian explaining that he had been sent to the Military Base of *La Paz* of Ariporo to pick up information and that he would spend the night in the office of the Gugamuxi Agency and would go back to his base the following morning. Later, approximately at midnight this subject arrived at the camping site of my counter-guerrilla unit and the sentinels knowing him let him pass as far as my hammock where he presented himself a second time requesting me to leave with a patrol to detain a subject that was seeking for trouble with him, according to the soldier he was with three friends drinking at a liquor selling establishment where this individual arrived and insisted in fighting him. Due to his drunkenness I told the soldier not to look for trouble and ordered him to stay that night in the campsite for his own security, said this the soldier nodded and left. An hour later arrived in my campsite Mr. TE Portilla Castro Alfonso, Commander of the *contra*guerrilla camped in the airport, who informed me that Soldier Rodríguez Burgos just stabbed to death a subject barely two blocks away from where we were located. Talking to the sentinels I found out that soldier Rodríguez at the moment he spoke with me had reached his post with four civilians three whom had left and one stayed waiting for him, when he came out the soldier threatened to death this subject and tied him by the wrists with his shoelaces, as this happened the sentinels went to inform Cs. Quivano Cedeño Jacinto, Commander of the Squadron of said counter-guerrilla unit which was located as on duty at that time, yells were heard from someone who was asking for help because he was going to get killed, minutes later arrived Mr. TE. Portillo to inform me about the murder.” Annex. 56. Report of the Commander Esc. B Erick Rodríguez Aparicio of June 13, 1992. Annex 1.

¹⁸⁹ In his report, Commander Alfonso Portilla Castro stated “the soldier mentioned before had orders from the Commander of the Military Base of Ariporo to take food supplies and confirm information in Hato Corozal, he arrived in the bus of 13:00 and the supplies would arrive in the bus at 18:00 hours, which for time reasons did not arrive ... until the next day. Being 18:00 hours, soldier Rodríguez ate at the base and expressed he had not met with the informant. At 01:00 hours of the 21, the soldier entered through the sentry post of soldier Botia Acosta Nixon of the first counter-guerrilla with a *puñalita* (knife) in his hand and without a shirt, the sentry informed me immediately and he expressed having killed a subject, allegedly a guerrilla. At that time he asked him why he had done that and he responded that he was sure he was a guerilla, that he already knew because he had been in the area with another patrol under the command of Lieutenant Ariza, likewise I asked why he had not informed if he had already located him to detain him with a patrol and expressed he had to do it that way. The soldier expressed having also informed Sub-lieutenant Rodríguez Aparicio Erick who was in command of the other counter-guerrillas, once this was heard, I headed to where the said officer was and asked him what he had informed soldier Rodríguez and he responded that the soldier was looking for trouble with some civilians and to get a patrol it was noticeable his drunkennes state ordered him to leave it and lie down to sleep. According to the information of the soldiers ... sentinels at the time of the acts, soldier Rodríguez Burgos in company of three more civilians took a civilian to the post where the sentry were while talking to the Commander of the other counter-guerrillas, after all this he told the civilians to leave that he would do it alone, at that time he took off his shoelaces and tied him with his hands behind and took him, approximatley two blocks away the soldier expressed that the civilian ran away, he ran in persecution and there was where he killed him according to this the soldiers that were sentry heard the yells ... at 2:00 AM soldier Rodríguez took us to the place where he left the cadaver we verified it and it really was dead, at that time we headed

[continues ...]

Court 120 of Military Criminal Instruction.¹⁹⁰ In relation to the acts, in one of his subsequent testimonies, Lieutenant Alfonso Portilla indicated, in relation to the persons who would have joined Soldier Rodríguez Burgos that night, he did not give him the names, “only said they were his friends and according to him, he mentioned to them that he was going to do that job, that they were reliable” and “that in previous occasions they had worked together”.¹⁹¹ Likewise, in relation to the motives for which he did not get up “from his *cambuche* (hut)” when Mr. Rodríguez Burgos told him that “he was in danger”, Lieutenant Erick Rodríguez Aparicio indicated that it was “because in reality the soldier was not in danger” and “at the moment in which he spoke to him he was in a drunken state”, therefore he told “the soldier to stay and sleep there where his *contra guerrillera* was, not to leave the camping area, that really he had some problem out of the village”.¹⁹² Lieutenant Alfonso Portilla indicated “the soldier remained the entire time as a civilian. He arrived as a civilian and remained as a civilian”.¹⁹³

121. Even though the above version was the one finally adopted by the domestic authorities, during the investigation the Soldier, Juan Alexis Rodríguez Burgos, held various versions of the facts. In two of his statements he accepted depriving Mr. Uva Velandia of his life in self-defense as he would have been attacked by him.¹⁹⁴ Nevertheless, in the casefile appears a later version, in which he clarified the fact, claiming to “not have committed it on his own free will”, because the directly responsible persons were “lieutenants Portilla, Castro and Rodríguez Aparicio Erin”. He explained he received an order from Lieutenant Portilla to get up in the evening and joining them in a place where Lieutenant Rodríguez had Mr. Uva Velandia hands tied, and when he denied killing him, Lieutenant Portilla “pulled a knife and started stabbing him”, indicating that being under threat he had not informed about these facts before.¹⁹⁵

[... continuation]

to the National Police to inform of the performed acts, likewise to the Police Inspector and the Personero Municipal (Municipal Ombudsperson) came to the scene and immediately proceeded with body collection.” Annex. 57. Report of Commander 1^o Battalion Esc “B” Portilla Alonso, June 22, 1992. Annex 1

¹⁹⁰ Annex 58. Report of Commander 1^o Battalion Esc “B” Portilla Alonso, June 22, 1992. Annex 1

¹⁹¹ Annex. 59. Ratification of the Report of Lieutenant Portilla before Court 120 of Military Criminal Instruction, June 23, 1992. Annex 1

¹⁹² Annex. 60. Diligence rendered by Mr. ST. Rodríguez Aparicio Erick before Court 15 of Military Criminal Instruction, February 11, 1992. Annex 1

¹⁹³ Annex. 59. Ratification of the Report of Lieutenant Portilla before Court 120 of Military Criminal Instruction, June 23, 1992. Annex 1

¹⁹⁴ In his first declaration, indicated that “on coming to the inn a man appeared and told him [...] I’m going to kill you because you are a paramilitary”. He indicated that he replied to said person “I don’t have any trouble with you” and followed and “the man appeared ahead. Pulsed out a knife [and] was going to stab him”. He stated that “the man followed him, running behind”, “punched him and knocked him down and took away the knife and that’s when the case took place”. Also clarified that he “was not drinking”. Diligence rendered by Juan Alexis Rodríguez before Court 120 of Military Criminal Instruction, (illegible date). Annex 1. In an elaboration of his statement the soldier stated that “the man followed him [...] and [he] reached the sentinel post and told them [...] where was [...] the] Lieutenant Rodríguez and they replied, he is asleep”. Stated that he requested that “he went to him ... and told him what is the problem Rodríguez and replied ... there is a man who wants to kill me and he told me, do you know the man?” Stated that “he told him that [the man] was a guerilla” so the Lieutenant said “I won’t get up [...] go to sleep and I replied to my Lieutenant, as you command”. Stated that “he exited through the same sentinel post and a soldier told him, where are you going Burgos” and he replied “I’m going to sleep to the *cambucha* “the hut” of my Lieutenant Portilla”. Stated that the sentinel soldier warned him “be very careful because that man is suspicious” and later “the man appeared ahead and [...] and followed him behind with a knife”. He then “punched him” and by doing so “he cut the fingers”. There “pulled a knife he carried and on the road stabbed him “*pa’ tras (sic)*” from behind”. Then he felt “someone fell”. Stated that the knife he used is “held by another soldier” by the name of “CANTOR”. Annex. 62. Diligence of Amplification of Investigation of Soldier Juan Alexis Rodríguez Burgos, August 12, 1992. Annex 1.

¹⁹⁵ In this regard, he stated that after fulfilling the entrusted mission “[...] he entered where the counter-guerrilla unit was quartered in Hato Corozal, with the objective of lying down, and when he was asleep, Lieutenant Portilla ordered him to get up because he needed him, it was 21:30 hours approximately, left next to him [...]” and “arrived in the scene of the acts, there was Lieutenant Rodríguez and the today deceased; he had him tied by the hands with a nylon” and the “lieutenant Portilla ordered he had to kill him”. Stated that the man started yelling and lieutenant ordered “to hold him”, “he pulled out a knife and started to “*chuzarlo*” stab him”. Then “the deceased fell to the ground and stopped yelling”. Stated that after “the lieutenant Portilla told him to release that dog; then they left to get another [person] who was in the holding cells and as he recognized him as a friend, because they had worked together at the *finca* of Henry Uva [...] the lieutenants started kicking him, messed him up and took him back to the holding cells”. Stated that this boys name is “Jhon Uva” and that after these events lieutenant Portilla gave the order to return to the base of *Paz de Ariporo*. Added that “these lieutenants had already done the same with Soldier Rodríguez Jurijuri, who when he saw himself in trouble committed suicide”. He

[continues ...]

122. During the internal investigation the declarations of various soldiers who saw Soldier Rodríguez Burgos the night of the events were obtained. In this regard, soldier Nidier Roney Romero León indicated that Soldier Rodríguez Burgos “arrived at twelve and he was drunk” and called the lieutenant, and ask him “to join him with a patrol” because “there was a man who was giving him trouble”. The Lieutenant would have instructed “no, that he should stay there in a hammock”.¹⁹⁶ Likewise, Soldier Henry Reyes who was working as a sentry in the counter-guerrilla unit of “Ariporo” indicated that he saw Mr. Rodríguez Burgos at around “ten thirty at night” “drinking with some civilians the town”. He stated that “he did not come but with more persons, I did not see more” and “he left with the three”.¹⁹⁷ He clarified he did not see that one of the civilians “was tied with shoelaces or anything”.¹⁹⁸

123. Soldier Edgar Enrique Monso, who was also a sentry at “Ariporo”, indicated that he saw that Soldier Burgos “was drinking with that boy” because he had “passed by” and had “seen them at around five thirty in the afternoon”. He stated that Soldier Burgos arrived at around “nine in the evening” and told them “that a man was going to kill him, when later he arrived, he came with the boy, they came/were arguing” and told them “the man was giving him trouble”. He stated that “the man was shirtless”¹⁹⁹.

124. The soldier Enrique Monzo also stated that soldier Rodríguez Burgos told them that “that man ... he was an accomplice of the guerrillas who drove a truck and wanted to give him trouble because he was a military”. He added that soldier Rodríguez Burgos told them that “he was going to settle with that man” and “that he knew how”, supposing that “it was going down because both were drunk”.²⁰⁰ Soldier Enrique Monzo stated that in response he told Mr. Burgos “you shall see what you are going to do” and “he exited and left with the man”. He stated that he then proceeded to notify the Sergeant of the previous events “when he heard some screams over there and it became silent and Burgos did not appear.” He indicated that “I did not see the civilians arrive” but yes “I saw him with the civilian”, that it “seems he was taking him tied, because the man had his hands behind him”. He stated he knew that Mr. Rodríguez Burgos “carried a long blade with him always”. With respect to the version that Mr. Uva Velandia had attacked Mr. Rodríguez Burgos, he replied “that is not that way, I think not, because he came out with the subject who went without a shirt and earlier we had seen them drinking.”²⁰¹

125. Soldier Nixon Botia Acosta, who was a sentry in “*el Aeropuerto*” with lieutenant “Portilla”, indicated that “at one in the morning” soldier Rodríguez Burgos arrived who indicated he was hurt and showed him “the hand, he was cut” and told him “I almost got killed”. He stated that he reported these events to the Lieutenant, who “got up and remained talking”. He stated that Soldier Burgos was not drunk.²⁰²

[... continuation]

stated that “he had not revealed these facts because of fear, since they had threatened to kill him”. Annex. 63. District Superior Court, Criminal Chamber, Judgment of December 19, 1994. See section of *antecedentes procesales*. Annexed to the initial petition.

¹⁹⁶ Annex. 64. Report of the Sworn Testimony (affidavit) of soldier Nidier Roney Romero Leon before Court 120 of Military Criminal Instruction, November 23, 1992 Annex 1.

¹⁹⁷ Annex. 56. Report of the Sworn Testimony (*testimony*) of soldier Reyes Henry before Court 120 of Military Criminal Instruction, December 19, 1992 Annex 1.

¹⁹⁸ Annex. 65. Report of the Sworn Testimony (*testimony*) of soldier Reyes Henry before Court 120 of Military Criminal Instruction, December 19, 1992 Annex 1.

¹⁹⁹ Annex. 66. Report of the Sworn Testimony (*testimony*) of soldier Monzo Edgar Enrique before Court 120 of Military Criminal Instruction, December 19, 1992 Annex 1.

²⁰⁰ Annex. 66. Report of the Sworn Testimony (*testimony*) of soldier Monzo Edgar Enrique before Court 120 of Military Criminal Instruction, December 19, 1992 Annex 1.

²⁰¹ Annex. 66. Report of the Sworn Testimony (*testimony*) of soldier Monzo Edgar Enrique before Court 120 of Military Criminal Instruction, December 19, 1992 Annex 1.

²⁰² Annex. 67. Report of the Sworn Testimony (*testimony*) of soldier Botía Acosta before Court 120 of Military Criminal Instruction, December 20, 1992 Annex 1.

According to the soldier Hernán Cordero, a nurse at the counter-guerilla unit, Soldier Burgos “had a cut to the three fingers of the right hand, the little, the ring finger and the middle”.²⁰³

126. In relation to the mission that soldier Burgos went to perform, Captain Franco Jesús Enríquez Hidalgo clarified that “he was obeying orders” which “were to deliver food supplies ... and at the same time find him a collaborator that worked in Hato Corozal”. He stated that “when he talked to the soldier he had a series of wounds on the hand, which he told me had been caused by the attacker”. He stated that after he was inquiring in person about Mr. Uva Velandia and they “commented that in reality [...] he was part of a subversive group of the E.L.N. and that he worked as [...] a “truck driver” and “that by using that façade he served the subversive group”²⁰⁴

127. The cause of death was “a secondary hypovolemic shock to hemothorax, a secondary massive wound by a sharp weapon that compromised the right pulmonary hilum”.²⁰⁵ It was identified that the body had “parallel circular hematomas on each wrist” and a total of 14 wounds caused by a sharp weapon, three of them in the posterior thoracic region”.²⁰⁶ The body had a naked torso, blue jean pants and no shoes. It was “dorsal decubitus/or supine, arms more or less 80 degrees separate from the body, inferior limbs bent at a right angle and joined and the head was pointing toward the south”. The body had wounds caused in totality by a sharp weapon: 5 of one centimeter located in the right ribs; 1 on the right shoulder; 1 on the thorax; 1 in the sternum; and ligature marks on both wrists.”²⁰⁷

b. Considerations of the Commission

128. The petitioner alleged from the outset in the initial petition that what happened to Carlos Arturo Uva Velandia was an extrajudicial execution by a soldier, which entails the responsibility of the State. Likewise, the State recognized that Mr. Carlos Uva Velandia was murdered by a person who was a soldier, nevertheless, it indicated that said act, punished domestically, does not entail its international responsibility, because it is not proven that the perpetrator acted on the instructions nor with acquiescence of the State, nor that it was related to an act of service, on the contrary, the members of the Army, took reasonable measures to avoid, by his individual conduct, that Soldier Rodríguez Burgos, murdered Mr. Carlos Arturo Uva Velandia.

129. The Commission considers it pertinent to recall that the cause of the death of Mr. Carlos Uva Velandia was Mr. Juan Alexis Rodríguez Burgos, who at the time of the events was a soldier in the National Army and was assigned to the *Grupo de Caballería Montado N. 7 “Guías de Casanare”* fulfilling a mission consisting in delivering food rations and locating a “collaborator” who worked in Hato Corozal. In this regard, the classification of Mr. Rodríguez Burgos as an agent of the State is verified, nonetheless, during the course of the events he was dressed as a civilian.

130. The Commission observes that with regard to the conduct of Soldier Rodríguez Burgos, the controversy submitted by the State consists, on one side, in determining whether his conduct was disobedience of his instructions, or acting outside of these, thereby compromising or not its international responsibility. Likewise, with respect to the rest of the agents of the State, in light of the indications of the State, it corresponds to identify whether they effectively adopted measures to prevent the acts.

i) With regard to the participation of Soldier Rodríguez Burgos and the international responsibility of the State

²⁰³ Annex. 68. Report of the Sworn Testimony (*testimony*) of soldier Hernán Cordero Castro before Court 120 of Military Criminal Instruction, December 21, 1992 Annex 1.

²⁰⁴ Annex. 69. Report of the Sworn Testimony (*testimony*) of Captain of the National Army, Franco Jesús Enríquez Hidalgo before Court 120 of Military Criminal Instruction, October 9, 1992 Annex 1.

²⁰⁵ Annex. 70. *Servicio Seccional de Salud de Casanare*, Necropsy, June 21, 1991. Annex 1.

²⁰⁶ Annex. 70. *Servicio Seccional de Salud de Casanare*, Necropsy, June 21, 1991. Annex 1.

²⁰⁷ Annex. 47. Diligence of body collection, June 21, 1992. Annex 1.

131. The Commission recalls that since the first of its judgments, the Inter-American Court has stated that “the international protection of human rights should not be confused with criminal justice.”²⁰⁸ As detailed by the International Law Commission in resolution 56/83 on the *Responsibility of States for internationally wrongful acts*:

The characterization of an act of a State as internationally wrongful is governed by international law. Such characterization is not affected by the characterization of the same act as lawful by internal law.²⁰⁹

132. Therefore, the Commission considers that the international responsibility of a State cannot be subject to nor is it dependent on the classification of the events domestically or the malice or wrongful modalities upon which its agents acted, rather it depends on the existence of an internationally illicit fact attributable to the State. In this regard, the definition of “act of service” used domestically at the time to determine if the State was or not responsible for the acts of its agents is not relevant to determine whether there is international responsibility for the violation of a norm on the part of its agents.

133. With regards to the conduct of the State agents who engage the responsibility of the State, the Commission recalls with regard to internationally illicit acts that according to the Inter-American Court of Human Rights:

[T]he impairment of the human rights recognized by the Convention which, pursuant to the international legal standards, may be attributed to the action or failure to act by any public official, is an act attributable to the State which entails its liability under the terms of the Convention.²¹⁰

134. The Inter-American Court has established that:

[U]nder any circumstance in which a State body or official or a public institution unduly impairs one of such rights, either as the result of an act or failure to act there is an alleged non-compliance of the duty to respect the rights enshrined in Article 1(1) of the Convention.²¹¹

135. The Commission considers that in light of the preceding, it is the duty of the State in the present case to demonstrate that the deprivation of the life of Mr. Uva Velandia caused by the act of Soldier Burgos was justified in accordance with international law. Nevertheless, as analyzed and determined in the domestic investigation, during the moments prior to the death of Mr. Carlos Uva, according to the testimonies of Mr. Henry Reyes and Edgar Enrique Monzo, Soldier Rodríguez Burgos arrived at the counter-guerrilla unit accompanied by three civilians, among them, according to the testimony of sentry Monzo, one that “seems to be drawing him tied” and “without a shirt”,²¹² which corresponds to the description of Mr. Carlos Uva, who, according to the autopsy, had ligature marks on his wrists and was without a shirt. Likewise, after Soldier Burgos indicated that “he was goin to fix it with that man” and that “he knew how to do it”, and being in an apparent state of drunkenness, he participated in the murder of Mr. Carlos Uva, who died of 14 stab wounds inflicted without any justification.

²⁰⁸ I/A Court H.R., *Case Velásquez Rodríguez v. Honduras*. Preliminary Exceptions. Judgment of 26 June 1987. Series C No. 1, para. 134

²⁰⁹ United Nations General Assembly, Resolution 56/83 Responsibility of States for internationally wrongful acts, AG/RES/56/83, 28 January 2002. See Article 3.

²¹⁰ I/A Court on H.R. *Case Ximenes Lopes v. Brasil*, C Series. No. 149, Judgment July 4, 2006, para. 83.

²¹¹ I/A Court on H.R. *Case Ximenes Lopes v. Brasil*, C Series. No. 149, Judgment July 4, 2006, para. 84.

²¹² Annex. 47. Diligence of body collection, June 21, 1992. Annex 1.

136. The Commission notes that according to the testimony of Mr. Enrique Monso, Soldier Rodríguez Burgos, before depriving Mr. Carlos Uva of his life, alleged that he “was an accomplice of the guerillas and drove a truck” and “he wanted give him trouble because he was a military”. Likewise, after depriving him of his life he attempted to justify this by claiming that he was attacked by a guerilla and he had killed him. Nevertheless, aside from the testimony of Mr. Enriquez Hidalgo, who claimed afterwards that he heard a comment that Mr. Uva employed the “façade” of a sales person driving a truck as he was member of the ELN, there is no evidence or judicial determination whatsoever to sustain the justification asserted by Soldier Rodríguez Burgos to give credence to his version by which Mr. Carlos Uva attacked him because he was a guerilla. Besides, according to the testimonies of the persons who were with him at the disco, the victim was in reality headed to the house of a girlfriend, was organizing a serenade for his father and has been harassed by the military that day.

137. Concerning the manner in which the previous acts may entail the international responsibility of the State, the Inter-American Court, in the *Velásquez Rodríguez v. Honduras Case* explained that “whenever a State organ, official or public entity violates one of those rights, this constitutes a failure of the duty to respect the rights and liberties set forth in the Convention.” The Court detailed that this “is independent of whether the organ or official has contravened provisions of internal law or overstepped the limits of his authority.”²¹³

138. With regard to the engagement of the responsibility of the State for the acts of State agents in these type of circumstances, *Resolution 56/83 on the Responsibility of States for internationally wrongful acts*, presented to the United Nations General Assembly by the International Law Commission, states that an internationally illicit act can be attributable to the State for “the conduct of an organ of a State or of a person or entity empowered to exercise elements of governmental authority [...] even if it exceeds its authority or contravenes instructions.”²¹⁴

139. In light of the preceding, the Commission considers that even though the behavior of Mr. Rodríguez was in contravention of the instructions issued by his superiors, the detainment of Mr. Carlos Uva Velandia, the fear that may be inferred and that he suffered, and the wounds that resulted in depriving a civilian of his life, by a state agent, entail the international responsibility of the State.

140. In addition, the Commission considers that in the narrative of the acts there are indications that more persons could have participated in the death of Mr. Carlos Uva. In this regard, Mr. Rodríguez Burgos maintained at the domestic level that the murder of Mr. Carlos Uva Velandia was perpetrated as an activity planned by his superiors, who would have also participated in the acts. Likewise, according to the testimonies of the sentries of the counter-guerrilla unit, Soldier Rodríguez Burgos arrived in the barracks accompanied by civilians.

141. The Commission observes that with regard to the criminal responsibility of lieutenants Erick Rodríguez Aparicio and Alfonso Portilla Castro, the internal jurisdiction ruled indicating there was no evidence to connect them to the acts as maintained by Mr. Rodríguez Burgos. As concluded *infra* in the section related to the due diligence of the investigations, the Commission does not have sufficient elements to consider that this finding was reached in contravention of the international obligations of the State.

142. Nevertheless, with regard to the civilians, the Commission observes that according to the version of Commander Erick Aparicio and sentry Henry Reyes, Soldier Rodríguez Burgos arrived at the counter-guerrilla unit accompanied by “civilians” who brought Mr. Carlos Uva, who was seen by Soldier Monso “with his hands in his back” and “without a shirt”. According to Lieutenant Alfonso Portilla, Soldier

²¹³ Inter-American Court of Human Rights. *Case Velásquez Rodríguez v. Honduras*. Merits. Judgment of 29 July 1988. Series C No. 4, para. 170.

²¹⁴ United Nations General Assembly, Resolution 56/83 Responsibility of States for internationally wrongful acts, AG/RES/56/83, 28 January 2002.

Rodríguez Burgos stated that these civilians “were his friends” and that “they were reliable” and that they had in “previous occasions had worked together”.

143. The Commission notes with respect to the possibility of the participation of more persons in the acts within the framework of the internal investigation in the contentious-administrative process, it was stated that by virtue of the number of wounds, “it can be surmized that in committing the crime” more persons participated, but “unfortunately this was not investigated or elaborated on by the instructing officer”.²¹⁵ Eventhough the Commission will rule specifically on the lack of due diligence by the State in relation to this item in another section, for the purposes of this section, it is noted that the lack of an investigation providing an explanation of the identity of said persons and their absence of responsibility in relation to the acts, the available evidence allows the inference that the civilians who accompanied Mr. Rodríguez Burgos and brought Mr. Uva Velandia to the counter-guerrilla unit, at the least could have collaborated in his detention and subsequent execution.

144. In light of the preceding, the Commission notes that the acts of Soldier Rodríguez Burgos in collaboration with civilians has been verified in accordance with the *modus operandi* identified during the time of the acts, this is: i) it pertained to a civilian; ii) was executed in circumstances simulating the existence of an attack by him; and iii) to justify the crime, the victim was accused of being a guerrilla without any evidence to sustain this accusation.

145. In this regard, the Commission considers that the State of Colombia is responsible for the violation to the right to life enshrined in Article 4 of the American Convention in relation to Article 1(1) of said instrument, to the detriment of Carlos Uva Velandia. Likewise, taking into consideration that Mr. Carlos Uva Velandia was arbitrarily detained by Soldier Rodríguez Burgos, taken to the counter-guerrilla unit, hands bound and without a shirt, and later was the victim of 14 stab wounds, the Commission considers that the State also violated of the right to personal liberty and personal integrity protected by Articles 5 and 7 of the American Convention in relation to the duties established in Article 1(1) of said instrument.

ii) With regard to whether the other State agents fulfilled their duty to prevent the death of Mr. Uva Velandia

146. From an analysis of the totality of the evidence, the Commission considers that there were a series of opportunities in which the agents of the State involved in the acts could have adopted a number of measures that could have prevented the death of Mr. Carlos Uva Velandia.

147. First, the Commission notes that even though sentry Monso saw that Soldier Rodríguez Burgos was drinking with Mr. Carlos Uva Velandia during the afternoon and later announced “that a man was going to kill him” and presented the same person “without a shirt” and “with bound hands”, the only response was to let him pass to talk to the Commander. It is not evident that sentry Monso adopted any measures to avert the dangerous situation presented by Soldier Rodríguez Burgos and Carlos Uva Velandia.

148. Second, the Commission notes that once Mr. Rodríguez Burgos went to talk to Commander Erick Aparicio, he requested a patrol to assist in detaining a subject who was looking for trouble. In light of this fact, according to the Commander, due to the drunken state of the soldier, he “ordered him to stay in the camp that night for his own security”. Commander Aparicio explained that he took this measure because Rodríguez Burgos was not in danger as he was inside the camp, and “that in reality he had some problem outside in town”. With regard to this, according to Rodríguez Burgos, after explaining there was a man “who wanted to kill him” and “that he was a guerilla member”, the Lieutenant stated “I won’t get up, [...] go to sleep”. The Commission considers that in any of these versions the Commander did not further consider the subject that soldier Rodríguez Burgos allegedly pretended to detain, whether it really was necessary to detain him or the reasons why [the soldier] asserted that the subject wanted to kill him.

²¹⁵ See, Annex. 72. Contentious-Administrative Court of Casanare, Judgment of October 12, 1995. Annex 1.

149. Third, the Commission observes that upon the return of Soldier Rodríguez Burgos to the counter-guerrilla unit with Mr. Carlos Uva, as stated by sentry Monso, Rodríguez Burgos said that “that man was an accomplice of the guerrillas”, that “he was going to sort things with him” and “he knew how”, under the assumption that “he was going to go down because they were drunk”. According to the testimony of Mr. Monso, his only explanation was “you shall see what you are going to do”.

150. The Commission notes that while Mr. Monso said that it seemed that he was bound and proceeded to notify the Sergeant of this fact, according to Lieutenant Erick Rodríguez Aparicio and Commander Alfonso Portilla in their first versions, when they were informed of the facts, the sentry had indicated that he observed when Soldier Rodríguez took off his shoelaces, tied him with his hands behind his back and took him away.

151. The Commission considers that the above elements seen together allows the finding that the state agents involved incurred in multiple omissions leading to soldier Rodríguez Burgos depriving Mr. Carlos Uva Velandia of his life. On one hand, neither the sentries nor Lieutenant Aparicio clarified the nature of the danger that allegedly Soldier Burgos was facing, despite the fact that he had detained a person and requested a patrol to assist him. On the other hand, despite knowing that the soldier was in a drunken state and the person under his control was a subject without a shirt and “with hands tied behind his back”, and following the statement of sentry Monso, having a clear understanding that soldier Rodríguez “always carried a long blade”, no measures were adopted, not even the minimum to protect the life and integrity of Mr. Carlos Uva Velandia, civilian who was at the time was in the custody of an armed soldier, who has accused him of being a guerilla and was in a drunken state.

152. In conclusion, the Commission determines that the State of Colombia also failed its duty to guarantee the rights to life and personal integrity of Mr. Uva Velandia enshrined in Articles 4 and 5 of the American Convention, all in relation to Article 1(1) of said instrument.

4. The Rigths to life, personal integrity and personal liberty of Messrs. Wilfredo Quiñónez Bárcenas, José Gregorio Romero Reyes and Albeiro Ramírez Jorge

a. Facts

153. Young man Wilfredo Quiñónez Bárcenas was 18 years old at the time the events took place;²¹⁶ he was a potter and was working at the tile factory of Mr. Pedro Pedro Torres.²¹⁷ His family was composed of his father, Mr. Pedro Quiñónez Calderón; his mother, María Rosalba Bárcenas Quiñónez; and his sisters, María Esther Quiñónez Bárcenas, and Amparo Quiñónez Bárcenas.²¹⁸

154. Young man José Gregorio Romero Reyes was 19 years old at the time of the events;²¹⁹ he “worked as a masonry assistant.”²²⁰ His family was composed of his father, Eneth Romero Ávila; his mother, Miriam Elena Reyes Muñoz; his sisters Maryluz Urueta Reyes, and Beizabeth Muñoz Reyes; and his brothers Wiston Urueta Reyes, and Danys Arleth Romero Reyes.²²¹

²¹⁶ Annex. 73. National Institute of Legal Medicine and Forensic Sciences, Local Unit of Barrancabermeja, Collection of the body and Autopsy Report, September 5, 1995. Annex 3 of the petitioners’ brief received on December 6, 2010.

²¹⁷ Annex. 74. Complaint filed by Mrs. María Rosalba Bárcenas Torres with the Municipal Ombudsperson (*Personería Municipal*) of Barrancabermeja on September 7, 1995. Annex 5 of the petitioners’ brief received on December 6, 2010.

²¹⁸ Petitioners’ brief received on June 3, 2011.

²¹⁹ Annex. 73. National Institute of Legal Medicine and Forensic Sciences, Local Unit of Barrancabermeja, Collection of the body and Autopsy Report, September 5, 1995. Annex 3 of the petitioners’ brief received on December 6, 2010.

²²⁰ Annex. 74. Complaint filed by Mrs. María Rosalba Bárcenas Torres with the Municipal Ombudsperson (*Personería Municipal*) of Barrancabermeja on September 7, 1995. Annex 5 of the petitioners’ brief received on December 6, 2010.

²²¹ Petitioners’ brief received on June 3, 2011.

155. Young man Albeiro Ramírez Jorge was 19 years old at the time of the events²²² and he worked with his father in a “vegetable stand”.²²³ His family was composed of his father, Alfonso Ramírez Rincón; his mother, Ester Magaly Jorge Solis; his sister, Esmery Ramírez Jorge; and his brothers Frain Alfonzo Ramírez Jorge; Lisandro Ramírez Jorge, and Numael Antonio Ramírez Jorge.²²⁴

156. In relation to the events that took place between the evening of September 3rd, 1995 and the morning of September 4th, 1995, Mrs. María Rosalba Bárcenas Torres indicated that:

- Her son, Wilfredo Quiñones Bárcenas, left his house at approximately 7pm and “he stayed chatting with several youngsters in a store”. She said that “at approximately 10:00 pm he left with his two friends Albeiro Ramírez Jorge and José Gregorio Romero, by bicycle, to a dance party that was being held in the neighborhood of ‘la Esperanza’ in a peace bazaar”.²²⁵
- She said that “about midnight José Gregorio’s mother arrived” and she asked if her son was there yet, then she “stood up and went with her looking for them.”²²⁶ She stated that they went to the “1^o de Mayo Police Station”, asked and “nothing was said”. From there they went “down to the police” and they “told them they were not there.”²²⁷
- She stated that when they went to the “[Nueva Granada] Battalion a soldier told them that three youth were taken there but another soldier approached them and stated that nobody had been taken there.”²²⁸ In relation to this, Albeiro Ramírez Jorge’s brother, Mr. Numael Antonio Martínez, was with Mrs. Rosalba Bárcenas, and said that “before they gave us an answer, a soldier was able to tell us that three youth in bicycles were taken there but a Lieutenant or sub officer hit him.”²²⁹
- She said that between 12:15 and 12:30 pm she passed by an army truck and because its cover rose, she saw a pair of yellow boots like the ones Mr. Albeiro Ramírez Jorge was wearing that day.” She stated that “she was with Miriam Reyes, José Gregorio’s mother” and “both saw the same.”²³⁰

²²² Annex. 73. National Institute of Legal Medicine and Forensic Sciences, Local Unit of Barrancabermeja, Collection of the body and Autopsy Report, September 5, 1995. Annex 3 of the petitioners’ brief received on December 6, 2010.

²²³ Annex. 74. Complaint filed by Mrs. María Rosalba Bárcenas Torres with the Municipal Ombudsperson (*Personería Municipal*) of Barrancabermeja on September 7, 1995. Annex 5 of the petitioners’ brief received on December 6, 2010.

²²⁴ Petitioners’ brief received on June 3, 2011.

²²⁵ Annex. 75. Statement by María Rosalba Bárcenas Torres before the Municipal Ombudsperson (*Personería Municipal*) on September 7th, 1995. Annex 4 of the petitioners’ brief received on December 6, 2010.

²²⁶ Annex. 75. Statement by María Rosalba Bárcenas Torres before the Municipal Ombudsperson (*Personería Municipal*) on September 7th, 1995. Annex 4 of the petitioners’ brief received on December 6, 2010.

²²⁷ Annex. 75. Statement by María Rosalba Bárcenas Torres before the Municipal Ombudsperson (*Personería Municipal*) on September 7th, 1995. Annex 4 of the petitioners’ brief received on December 6, 2010.

²²⁸ Annex. 74. Complaint filed by Mrs. María Rosalba Bárcenas Torres with the Municipal Ombudsperson (*Personería Municipal*) of Barrancabermeja on September 7, 1995. Annex 5 of the petitioners’ brief received on December 6, 2010. In her statement to Municipal Legal Representative, Mrs. María Rosalba Bárcenas made a similar description of the events. In this regard, she indicated that she took the task of finding her son in the *Nueva Granada* Battalion; in the *1^o de Mayo* Police Station; and in the police headquarters located in the area of the pier, “and in every unit they said that they had not brought my son and the other two boys”. However, she indicated that “when she asked about her son and his two friends in the *Nueva Granada* Battalion, a soldier initially told her that three detainees had been taken there but she then asked those in charge of providing this kind of information in the Battalion and they denied the three boys had been brought”. See: Annex. 75. Statement by María Rosalba Bárcenas Torres before the Municipal Ombudsperson (*Personería Municipal*) on September 7th, 1995. Annex 4 of the petitioners’ brief received on December 6, 2010.

²²⁹ Annex. 76. Statement by Mr. Numael Antonio Ramírez before the General Prosecutor’s Office Province Investigator (*Visitador*) of Barrancabermeja on September 8th, 1995. Annex 6 of the petitioners’ brief received on December 6, 2010.

²³⁰ Annex. 77. Additional statement and ratification by Mrs. Rosalba Bárcenas Torres of October 19, 1995. Annex 8 of the petitioners’ brief received on December 6, 2010.

- She stated that after the Battalion, they went to her house where they waited. Later, “at about 5:30 am they went to the military base of Edabasa, where they were told they were not there.” They then went “down to the Battalion” and they were told that there was nobody there and that they were not picking up anyone.”²³¹ She said that at that moment she turned and saw “that the two soldiers hit their fists and made a thumb up.”²³² She said that later, they “went back to their residency and nothing either.”²³³
- She said that on September 4th, 1995, at approximately at 7 am, her son was picked up dead by employees of the funeral home “Foronda” in the *La Paz* neighborhood on the road to *el Llanito* town.²³⁴ She added that she received said news from a lady who was coming from the funeral home and told her “she was carrying a dead body of a person who was carrying a bicycle on his side.”²³⁵ Mrs. Bárcenas describes that her son’s body “had visible torture traces, a finger on his left hand had been amputated and his left eyeball taken out” and “part of his face was sunken as a result of a struck and his left arm was split and cracked.”²³⁶ Mr. Numael Antonio Ramírez declared that “he had something like pinches on his face, that it was cracked and missing an eye that his fingernails were taken out and some of his fingers were smashed.”²³⁷
- She said that “in the course of the next day his other two friends were found death in the road to the *el Centro* town”²³⁸ and added that they were also tortured, particularly “Albeiro Ramírez Jorge had

²³¹Annex. 74. Complaint filed by Mrs. María Rosalba Bárcenas Torres with the Municipal Legal Representative (Solicitor’s Office) of Barrancabermeja on September 7, 1995. Annex 5 of the petitioners’ brief received on December 6, 2010. In her statement to Municipal Legal Representative, Mrs. María Rosalba Bárcenas made a similar description of the events. In this regard, she indicated that she took the task of finding her son in the *Nueva Granada* Battalion; in the *1º de Mayo* Police Station; and in the police headquarters located in the area of the pier, “and in every unit they said that they had not brought my son and the other two boys.” However, she indicated that “when she asked about her son and his two friends in the *Nueva Granada* Battalion, a soldier initially told her that three detainees had been taken there but she then asked those in charge of providing this kind of information in the Battalion and they denied the three boys had been brought.” See: Annex. 75. Statement by María Rosalba Bárcenas Torres before the Municipal Legal Representative (or Solicitor’s Office) on September 7th, 1995. Annex 4 of the petitioners’ brief received on December 6, 2010.

²³² Annex. 77. Additional statement and ratification by Mrs. Rosalba Bárcenas Torres of October 19, 1995. Annex 8 of the petitioners’ brief received on December 6, 2010.

²³³Annex. 74. Complaint filed by Mrs. María Rosalba Bárcenas Torres with the Municipal Legal Representative (Solicitor’s Office) of Barrancabermeja on September 7, 1995. Annex 5 of the petitioners’ brief received on December 6, 2010. In her statement to Municipal Legal Representative, Mrs. María Rosalba Bárcenas made a similar description of the events. In this regard, she indicated that she took the task of finding her son in the *Nueva Granada* Battalion; in the *1º de Mayo* Police Station; and in the police headquarters located in the area of the pier, “and in every unit they said that they had not brought my son and the other two boys.” However, she indicated that “when she asked about her son and his two friends in the *Nueva Granada* Battalion, a soldier initially told her that three detainees had been taken there but she then asked those in charge of providing this kind of information in the Battalion and they denied the three boys had been brought.” See: Annex. 75. Statement by María Rosalba Bárcenas Torres before the Municipal Legal Representative (or Solicitor’s Office) on September 7th, 1995. Annex 4 of the petitioners’ brief received on December 6, 2010.

²³⁴ Annex. 75. Statement by María Rosalba Bárcenas Torres before the Municipal Ombudsperson (*Personería Municipal*) on September 7th, 1995. Annex 4 of the petitioners’ brief received on December 6, 2010.

²³⁵ Annex. 74. Complaint filed by Mrs. María Rosalba Bárcenas Torres with the Municipal Ombudsperson (*Personería Municipal*) of Barrancabermeja on September 7, 1995. Annex 5 of the petitioners’ brief received on December 6, 2010.

²³⁶ Annex. 75. Statement by María Rosalba Bárcenas Torres before the Municipal Ombudsperson (*Personería Municipal*) on September 7th, 1995. Annex 4 of the petitioners’ brief received on December 6, 2010. In its complaint before the Municipal Ombudsperson she stated that “he was all battered the face (illegible) the left eye, they broke his hands, he had them but were both cracked, half of his finger was missing –the lady points to her left arm- says that her son had (illegible) his flesh all opened up, large head hollows in his head and the (illegible) was all broken.” Complaint filed by Mrs. María Rosalba Bárcenas Torres with the Municipal Ombudsperson (*Personería Municipal*) of Barrancabermeja on September 7, 1995. Annex 5 of the petitioners’ brief received on December 6, 2010.

²³⁷ Annex. 76. Statement by Mr. Numael Antonio Ramírez before the General Prosecutor’s Office Province Investigator (*Visitador*) of Barrancabermeja on September 8th, 1995. Annex 6 of the petitioners’ brief received on December 6, 2010.

²³⁸ Annex. 75. Statement by María Rosalba Bárcenas Torres before the Municipal Ombudsperson (*Personería Municipal*) on September 7th, 1995. Annex 4 of the petitioners’ brief received on December 6, 2010.

his hands and stomach burnt.”²³⁹ According to Mr. Numael Antonio Ramírez, his brother’s and Mr. José Gregorio Romero’s corpses were found by the airport and “showed signs of torture.”²⁴⁰ Mrs. Diana Porras stated that when the bodies were found “they were dumped in a cattle grass ground, Albeiro’s body was face up, had acid burns in his face and mouth, he had purple nails, electric shocks, his pants were tore in the knees, as if they had been dragged, he had the original Brahman boots, he had no papers nor were their bicycles around there”. With respect to José Gregorio she stated that “his head was buried and his feet up as if they had tortured him.”²⁴¹

157. As a precedent, Mrs. Bárcenas described that “when the Army patrolled around the neighborhood and would find her son, who was coming from work, or somewhere else, they would stop him and ask for his papers; they would mistreat him, push him and hit him with their gun.” She said she knew about that because her son would tell her that “this always happened to him”, and “sometimes he would say, “if they kill me it’s because they are pissed off at me.” She said that “once he was stopped and asked for his papers, then taken to a lieutenant and when he was walking, the officer was moving his gun and loading it like to intimidate him.”²⁴²

158. The Commission observes that, in relation to the way Mr. Quiñónez’s death was confirmed, the report of the events that Lieutenant Alberto Prieto Rivera, Commander of *Compañía “A”* of Voluntary Soldiers, Battalion C/G No. 45 “*Héroes de Majaqual*” to the 24th Military Criminal Judge, states that:

[A]pproximately at 24:00 hours information was received about persons who were extorting and robbing vehicles in the road that leads from *Barrancabermeja* to *Llanito*, and its vicinities; an operation was carried out to confirm the information, the patrol was divided into two groups, one moving through the internal *fertilizantes* road and the other group moved around the high bridge to the seminary up to *La Paz* neighborhood, when taking the curve an individual riding a bicycle was observed. When he noticed the troops in the car, he jumped from the bicycle and tried to run to the *fertilizantes* road, he was yelled to stop several times and he did not obey, after shooting shots into the air to intimidate him, the individual reacted by shooting back, after receiving them then proceeded to respond, which resulted in the death of Quiñónez, who was found to be carrying a 9 mm caliber pistol, 01 provider for it, 04 cartridges, and 02 gun sheaths.²⁴³

159. The report makes no reference to the deaths of Messrs. Romero and Ramírez. The Lieutenant in charge of the operation stated that the “death of the subversive element that was killed by his patrol is a separate case” and that his “counterguerrilla had nothing to do” with regards to the death of the other two youths.²⁴⁴ He also indicated that he had seen Mr. Wilfredo Quiñónez in previous occasions when he was commander of the Company responsible for the security of the North-Eastern neighborhoods in Barrancabermeja in 1994 and “he was always found at the entrance of the *Nariño* neighborhood”. He said that “about him several reports were given that he belongs to an armed group, but we never verified that or

²³⁹Annex. 74. Complaint filed by Mrs. María Rosalba Bárcenas Torres with the Municipal Ombudsperson (*Personería Municipal*) of Barrancabermeja on September 7, 1995. Annex 5 of the petitioners’ brief received on December 6, 2010.

²⁴⁰ Annex. 76. Statement by Mr. Numael Antonio Ramírez before the General Prosecutor’s Office Province Investigator (*Visitador*) of Barrancabermeja on September 8th, 1995. Annex 6 of the petitioners’ brief received on December 6, 2010.

²⁴¹ Annex. 78. Statement by Mrs. Diana Isabel Porras Ramírez before the 67th Unit on Human Rights and International Humanitarian Law of the Attorney General’s Office of October 6, 2008. Annex 31 of the petitioners’ brief received on December 6, 2010.

²⁴² Annex. 77. Additional statement and ratification by Mrs. Rosalba Bárcenas Torres of October 19, 1995. Annex 8 of the petitioners’ brief received on December 6, 2010.

²⁴³Annex. 79. Letter from Lieutenant Alberto Prieto Rivera, Commander of *Compañía “A”* of Voluntary Soldiers, Battalion C/G No. 45 “*Héroes de Majaqual*” to the 24th Military Criminal Judge, September 4, 1995. Annex 2 of the petitioners’ brief received on December 6, 2010.

²⁴⁴ Annex. 80. Inquiry of Captain Jairo Alberto Prieto Rivera before the Military Criminal Court of April 7, 1998. Annex 13 of the petitioners’ brief received on December 6, 2010.

capture him when executing any illicit activities.” He said he was “called the witch”, and “was known in the Aguabarranca army base” but he didn’t know if he had criminal records in the Battalion.²⁴⁵

160. As established in the records from the body collection and autopsy performed by the National Institute of Legal Medicine and Forensic Sciences, Local Unit of Barrancabermeja, the bodies showed the following injuries:

- To the external examination of the body, Mr. Wilfredo Quiñónez showed “multiple wounds in the head, neck, thorax and upper limbs.”²⁴⁶ It was stated that a recovered projectile (remainings) was sent to the laboratory for the relevant study and that the cause of death was death by “hypovolemic shock secondary to laceration of the aorta (100%) caused by a firearm projectile.”²⁴⁷ With respect to the firearm, it was indicated that there were nine gunshot wounds of which three had a “front to back path” and six a “back to front” path.”²⁴⁸
- Mr. José Gregorio Romero showed “multiple wounds in the head and upper limbs.” It was described that the corpse had a “multiple laceration in the face, neck, thorax and abdomen” and a recovered projectile was sent to the laboratory for its study. It was concluded that he died “by secondary neurogenic shock and brain laceration caused by a firearm projectile.” With respect to the gunshot wounds, it was indicated that there were four all of them with a “back to front” path.²⁴⁹
- Mr. Albeiro Ramírez Jorge showed “multiple wounds in the head and neck,” an “excoriation of 28 x 14 cms that occupies the left side of his chest, left upper quadrant, left flank” of the thorax, and a “slight contusion of 15 x 11 cm in the front part of the left thigh.” It was noted that a projectile was recovered and sent to the laboratory for its analysis and that he died of “secondary neurogenic shock of brain laceration caused by a projectile of a firearm”. In relation to the gunshot wounds, it was described that the corpse showed three wounds, all of them with a “back to front” path and one of them in the left neck “with blackening” and “a power tattoo.”²⁵⁰

161. As indicated in the report of the lifting of the corpse corresponding to Wilfredo Quiñónez, prepared by the Judicial and Investigation Police “SIJIN”, a gun with the No. 1325485, with a cartridge caliber 9 mm in the chamber, with its respective supplier with three cartridges, was found next to the corpse. Besides to the body, two 9 mm cartridge casings were found.” Said gun was not found to be registered in the digital files and “its illegal possession and bearing is inferred”. As stated by the ballistic expert, “the two cartridge casings were fired by said gun, and gunpowder residue was found in the bore of the barrel.”²⁵¹

162. In relation to the events that took place the evening of September 3, 1999, Mr. Ángel María Noriega Gómez stated that he was with “Benigno Birueth, another Octavio García” and “Mrs. Leonor Gómez

²⁴⁵ Annex. 81. 15th Office of the Military Criminal Prosecutor before the Second Court of Second Division Brigades, investigation proceeding review, October 24, 2003. Annex 16 of the petitioners’ brief received on December 6, 2010.

²⁴⁶ Annex. 73. National Institute of Legal Medicine and Forensic Sciences, Local Unit of Barrancabermeja, Collection of the body and Autopsy Report, September 5, 1995. Annex 3 of the petitioners’ brief received on December 6, 2010.

²⁴⁷ Annex. 73. National Institute of Legal Medicine and Forensic Sciences, Local Unit of Barrancabermeja, Collection of the body and Autopsy Report, September 5, 1995. Annex 3 of the petitioners’ brief received on December 6, 2010.

²⁴⁸ Annex. 73. National Institute of Legal Medicine and Forensic Sciences, Local Unit of Barrancabermeja, Collection of the body and Autopsy Report, September 5, 1995. Annex 3 of the petitioners’ brief received on December 6, 2010.

²⁴⁹ Annex. 73. National Institute of Legal Medicine and Forensic Sciences, Local Unit of Barrancabermeja, Collection of the body and Autopsy Report, September 5, 1995. Annex 3 of the petitioners’ brief received on December 6, 2010.

²⁵⁰ Annex. 73. National Institute of Legal Medicine and Forensic Sciences, Local Unit of Barrancabermeja, Collection of the body and Autopsy Report, September 5, 1995. Annex 3 of the petitioners’ brief received on December 6, 2010.

²⁵¹ The narrative accompanying this evidence is in: Annex. 81. 15th Office of the Military Criminal Prosecutor before the Second Court of Second Division Brigades, investigation proceeding review, October 24, 2003. Annex 16 of the petitioners’ brief received on December 6, 2010.

and Arladys”²⁵² and “approximately at 10pm”, “he was sitting in a shop in the *Versalles* neighborhood” when he saw three men in bicycles and behind them two white Army trucks “three and a half.” He said that he observed the military “shot a warning to the air and because of that one of the three men, the one in the front, threw the bicycle to the side and stood with his arms up, so did the other two. He stated that then “the Army trucks stopped and unloaded, seized the men and someone who was with him said that one of them was beaten there as well, they made them get into the truck carrying their bicycles on it.”²⁵³

163. Mr. Ángel María Noriega Gómez said that when “two soldiers approached the shop where they were sitting; he asked one of them, what is the scandal? He said that the soldier “did not want to answer,” “he turned around and went to where he was being awaited to continue their way.” He said that later the “truck passed by the side of the store” and he realized that it was carrying “two uniformed men with black face masks.” He said that there were two White trucks when the young men were detained, one stayed there with them and the other left.”²⁵⁴

164. Mr. Ángel Noriega clarified that he observed the “three youth climbing into the army truck” but he “did not recognize them.”²⁵⁵ He added “I am not saying that they are the same ones, only because of the circumstances around the disappearance of the three young men, when they went out...that they were riding bicycles, and the circumstances...I deduced...that perhaps they were the same than hopped into the truck.”²⁵⁶

165. In relation to this event, Mrs. Deysi Porras Ramírez noted that when she was “arriving at the store” saw “a fast coming army truck, that was coming as chasing some youth that were riding bicycles and the car was going towards them, even throwing one or two of them to the floor”. She stated that she went back to her house and when she arrived the army truck “went by the entire front”. She pointed out that there were about “two or three masked men in the truck” and that happened “between 9:30 or earlier than 10pm, and the young men were barely seen as they were lying on the floor there.”²⁵⁷

166. Mrs. Diana Isabel Porras Ramírez said that “comments were made in the sense that the same night there were more than 30 dead in Barrancabermeja” and “it was said it was the result of three soldiers been killed” and “that for every soldier they killed there were going to be ten ‘dogs’ killed.” She stated that she learnt that same day that in the truck were the three young men were being carried, a cousin of her was also being taken, his name Carlos Zabala, who said that if his mother, Blanca, didn’t make him get off the truck, he would have experienced the same fate.”²⁵⁸

²⁵² Annex. 82. Additional statement and ratification by Mr. Ángel María Noriega Gómez of September 2, 1995. Annex 7 of the petitioners’ brief received on December 6, 2010.

²⁵³ Annex. 83. Statement by Ángel María Noriega Gómez of September 21, 1995. Annex 7 of the petitioners’ brief received on December 6, 2010. In the confirmation of his statement, Mr. Ángel Noriega said the same. To that respect, he indicated that he was with his friends and one child, when all of a sudden they heard “a rifle shot.” At that moment, he turned “to see where was the shot coming from” and he “realized that three young men were coming by bicycle...one threw it, the one in front put his arms up, the other two stopped before he did.” He said that one person with him observed “army member beating one of the youth” and “they were also searching the surrounding area to see if the boys had thrown something around.” He stated that he saw that the young men “were placed in the ‘three and a half’ white truck.” Annex. 82. Additional statement and ratification by Mr. Ángel María Noriega Gómez of September 2, 1995. Annex 7 of the petitioners’ brief received on December 6, 2010.

²⁵⁴ Annex. 82. Additional statement and ratification by Mr. Ángel María Noriega Gómez of September 2, 1995. Annex 7 of the petitioners’ brief received on December 6, 2010.

²⁵⁵ Annex. 82. Additional statement and ratification by Mr. Ángel María Noriega Gómez of September 2, 1995. Annex 7 of the petitioners’ brief received on December 6, 2010.

²⁵⁶ Annex. 82. Additional statement and ratification by Mr. Ángel María Noriega Gómez of September 2, 1995. Annex 7 of the petitioners’ brief received on December 6, 2010.

²⁵⁷ Annex. 84 Statement by Deysi Porras Ramírez before the 67th Unit on HR and IHL of April 28, 201. Annex to the petitioners’ brief received on March 14, 2012.

²⁵⁸ Annex. 78. Statement by Mrs. Diana Isabel Porras Ramírez before the 67th Unit on Human Rights and International Humanitarian Law of the Attorney General’s Office of October 6, 2008. Annex 31 of the petitioners’ brief received on December 6, 2010.

167. In relation to this event, Mrs. Blanca Nieves Serrano Perdomo indicated that she was with her husband at home when a youngster “told them that they had taken her son.” She said that they immediately called the Battalion and were told “that they had called the truck and they were to be released.” Due to the fact that “they were not released and hadn’t made it home” they went to La Esperanza, via the bamboo way, she waited for “the truck” and stopped it. She said that her son and “two other young men” were released then; however, “they took Albeiro and the others; she didn’t know how many they were.” According to her, she knew Albeiro because “he was married to, Diana Porras, a cousin of her husband.” She said that her “son and two other young men” who were neighbors from the same block, “David Guiza” and his “brother Alberto” were at the store. She stated that she was able to see that Albeiro was on the truck, “in the back,” that she saw him “well” and that “her son was closer to the truck’s exit.” The bicycles were there, “lying against the truck.”²⁵⁹

168. Mrs. Amparo Quiñónez Bárcenas, Wilfredo Quiñónez’s sister, stated that the witnesses of these events are “those who have made witness reports before ‘the human rights’, we have asked them to come to the Prosecutors Office and they decline.” Also “a lady from *el LLANITO* who saw the corpses but we haven’t found her.” “Another man with a car with a coconut seed whose name we don’t know and is from *HACIENDA LAS PALMERAS*,” who heard when the soldiers were saying, “let’s leave this dog here and ...let’s go get the other two.”²⁶⁰ Mrs. Amparo Quiñónez also indicated that she learnt that the vehicle in which his brother was being transported had a license with “numbers 677 but I don’t know the letters,” “it was kind of a flat truck with a white front” that “was carrying a black cover.”²⁶¹

169. Mrs. María Rosalba Bárcenas indicated that according to “several neighbors, her son was “detained by the Army” and “taken from a house in diagonal” to where there was a “military roadblock” and “the Army members threatened the house owners.”²⁶² Mrs. Bárcenas stated that the house where they kept her son had the door number 393, on the other side the number 36240 and in the diagonal plate the number 60.²⁶³ She also learned that “around September 5, soldiers passed by the sector and when they saw the posters they expressed that those were the robbers that they killed the night before.”²⁶⁴ Amparo Quiñónez, Wilfredo’s sister, stated that “the neighborhood’s youth comment that the Army would pass by over and over again and would say that they needed to clean the block.”²⁶⁵

170. The Judicial Investigator said that in the search of information “the comments of the residents of the North-Eastern part were known in the sense that on September 3rd, 1999 three young men were detained by a military patrol after they were seized and asked about the identity of those who killed three soldiers that had happened there.” She said that she knew that “the three persons who were retained were taken by a military vehicle to different places and where then found death, two in the way to *al Centro* with visible signs of torture and about the other, it was said that he was a subversive who was killed in a clash with the Army.”²⁶⁶

²⁵⁹Annex. 85. Statement by Mrs. Blanca Nieves Serrano Perdomo before the 67th Unit on HR and IHL of October 5, 2011. Annex to the petitioners’ brief received on March 14, 2012.

²⁶⁰Annex. 86. Statement by Amparo Quiñónez Bárcenas before the Judicial Investigator of the 39th Prosecutor’s Office at the Circuit Criminal Court, October 19, 1995. Annex 9 of the petitioners’ brief received on December 6, 2010.

²⁶¹Annex. 86. Statement by Amparo Quiñónez Bárcenas before the Judicial Investigator of the 39th Prosecutor’s Office at the Circuit Criminal Court, October 19, 1995. Annex 9 of the petitioners’ brief received on December 6, 2010.

²⁶² Annex. 75. Statement by María Rosalba Bárcenas Torres before the Municipal Ombudsperson (*Personería Municipal*) on September 7th, 1995. Annex 4 of the petitioners’ brief received on December 6, 2010.

²⁶³ Annex. 77. Additional statement and ratification by Mrs. Rosalba Bárcenas Torres of October 19, 1995. Annex 8 of the petitioners’ brief received on December 6, 2010.

²⁶⁴ Annex. 77. Additional statement and ratification by Mrs. Rosalba Bárcenas Torres of October 19, 1995. Annex 8 of the petitioners’ brief received on December 6, 2010.

²⁶⁵Annex. 87. Statement by Amparo Quiñónez Bárcenas before the Judicial Investigator of the 39th Prosecutor’s Office at the Circuit Criminal Court, October 19, 1995. Annex 9 of the petitioners’ brief received on December 6, 2010.

²⁶⁶ Annex. 88. Report from the Chief of Technical Investigations Corps, 1709 GH-CTI, October 25, 1995. Annex 10 of the petitioners’ brief received on December 6, 2010.

171. Mr. Luis Alfonso Agudelo Martínez stated that Mrs. Eneida Bolivar, who had a romantic relationship with someone from the “EPL”, told her that “three soldiers” were killed and because of that, “that same night there was a takeover of the neighborhoods by Army soldiers looking for the guerrilla and weapons.” He established that his daughter, Yamile Agudelo Peñaloza, “learned that several of her good friends were being killed because of the death of the soldiers” and said that he knew that “from 9 to 12 young women had been killed.” He added that on March 22, 2006, his “daughter Yamile went to her friend Yuli’s house and never came back” “her dead body was found on March 23, 2006 in the way to *llanito* in the trash site.” He noted that “it is known that the troop went to the neighborhoods to seize and detained and they took several Young persons from the neighborhood for lack of documentation or for suspicious and they disappeared.”²⁶⁷

b. Considerations of the Commission

172. The Commission observes that in relation to when Messrs. Quiñónez, Romero and Ramírez died, there are several elements to be taken into account to establish if the events that took place as indicated by the State, that is to say, the death of Mr. Quiñónez in the context of a clash and the deaths of Messrs. Romero and Ramírez as isolated events for which it’s not possible to attribute the State’s responsibility. When making this analysis, the Commission recalls that since Mr. Quiñónez death was a result of the use of force by State agents, the State has the obligation to give a satisfactory and convincing explanation of the events and to rebut allegations over its liability, through appropriate evidentiary elements.”²⁶⁸

173. The Commission notes that the alleged confrontation between Mr. Quiñónez and the military is sustained fundamentally in the following evidence: testimonies of members of the military forces; the discovery of weapons alongside the corpse of Mr. Quiñónez; and the report from the “Ballistics Laboratory” that indicates that the two cartridge casings found were shot by said weapon, and gunpowder residue was also found in the bore of its barrel.”

174. In relation to what has been stated by the State, the Commission observes that firstly, no specific technical tests were conducted to determine if the gun was effectively triggered by Mr. Quiñónez. In this sense, the Commission notes that the State did not demonstrate having used all the probatory, technical and scientific mechanisms to determine the most basic element of the dispute, that is, if the death occurred in a clash and in self-defense, or if it was a result of an extrajudicial execution. For example, those of “gauntlet”, “dactiloscopia” or “atomic absorption” were some of these basic tests that could have determined if the gun was triggered by Mr. Quiñónez.

175. The Commission observes that in relation to these tests, it was admitted that “the gauntlet (paraffin test) was not performed by those who retrieved the corpse” (see *infra* para. 267). In addition, a professional employee of the Bucaramanga SIJIN indicated that at the time of the events, paraffin for the gauntlet “was very scarce and was finished in a short time” and “at that time, paraffin was completely used”. Also in relation to the atomic absorption test said official indicated in the framework of the investigation they never had “those elements for use of the Unit in charge of lifting corpses (see *infra* para. 267). In light of the aforementioned omissions, the Commission finds that the explanation offered by the State about the confrontation, is not satisfactory as it is not the result of the practice of evidence leading to such determinations.

²⁶⁷Annex. 89. Statement by Mr. Luis Alfonso Agudelo Martínez before the 67th Attorney General’s Office, of October 6, 2008. Annex 30 of the petitioners’ brief received on December 6, 2010.

²⁶⁸ I/A Court H.R., *Case of Zambrano Vélez et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, para 108; I/A Court H.R., *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 5, 2006. Series C No. 150, para. 80; *Case of Baldeón García v. Peru*. Merits, Reparations and Costs. Judgment of April 6, 2006. Series C No. 147, para. 120.

176. Secondly, the Commission notes that the necropsy indicated that Mr. Quiñónez's body showed nine firearm wounds, six of which had a "back-front" path and three of which a "front-back" path. In the internal investigation, the Office of the Criminal Prosecutor questioned the hypothesis of the clash stating that such impacts mean that they came in from behind and came out from the front" which "questions the occurrence of aggression against the troop." Also, the Prosecutor noted that the trajectory of flat bottom "top" is difficult to explain when the field was tilted in favor of the deceased, which in any case should have been "horizontal or inferior superiors."²⁶⁹

177. With regards to those wounds, the Commission observes the explanation given in the military jurisdiction: while Mr. Quiñónez was shooting, he was running backwards from the truck to escape from the military officers when he was hit (see *infra* para. 277) or, because the combat was engaging ("envolvente"), which means that Mr. Quiñónez was in the middle of two trucks, from which he was being shot (see *infra* para. 271.) Notwithstanding these explanations were not backed by evidence from the internal investigation, the Commission observes that the 2nd Unit from the Attorney General's Office (*Fiscalía Segunda*) questioned the self-defense hypothesis as it indicated that it was outstanding that the body was only 12 meters away from the bicycle he was riding, which meant that "if he ran as alleged, he failed to move much and wasn't chased much, as there were neither the time nor the distance necessary to ask him to stop or shoot to the air." (see *infra* para. 272)

178. In view of the above and taking into account that to date, there is no information about a final decision in the national jurisdiction that could successfully explain how could these wounds be the result of a clash, the Commission finds that the State has failed to discredit this circumstantial evidence related to how Mr. Quiñónez was shot in the back and, given the distance in that the body was found, how could there was time for him to receive a stop order, flee and shoot against the troops.

179. Thirdly, the Commission notes that in accordance to the scope of the national investigations, there are inconsistencies in the versions provided by the military and the operational results that would allow to state that it was a clash. In this regard, the Commission emphasizes that the Prosecutors Office noted several inconsistencies between the accounts of the military and the available evidence. Among them: i) there would be inconsistencies over if the vehicles were advancing in the enveloping form, which could "at the end mean that they very close to having accident among the troops" as they would have been in a "cross fire;" ii) that Captain Prieto did not report on the patrolling and the report just stated the operation without giving much detail about it and instead, putting out names of soldiers as witnesses of the events, who then expressed that they had no direct link to the events, except for one who would have told the story differently; iii) that Captain Prieto was unclear in his statements as he referred to two groups that were "engaged" and that the young man died when he began to notice the presence of the troops; as well as that he was riding in the second car as a passenger, then in another statement he said he was driving and subsequently he said that he was riding "as a passenger in the first vehicle;" and iv) that Captain Prieto states that Mr. Quiñónez noticed the presence of the soldiers when they were inside a car, which was qualified as a "curious element" as the vehicles were travelling with their lights on, which prevents visibility of the occupants.²⁷⁰

180. As additional inconsistencies, the Military High Court noted that i) it was said that the corpse was "face down, which is different than what is stated in pages 43 and 49 of the first notebook;" ii) soldier Granados Ramírez refers to three trucks: yellow, green and red wine and Lieutenant Prieto "acknowledged the existence in his vehicle lot of at least one white truck", during of his statements. Also, with respect to the account supported by the military, that is what the Colombian State has assumed in the present case, the High Military High Court indicated that "its illogical to suppose that this young man, while being sane, when

²⁶⁹ Annex. 90. Criminal Judicial, Pre-classification murder, August 20, 2003. Annex 14 of the petitioners' brief received on December 6, 2010.

²⁷⁰ Annex. 90. Criminal Judicial, Pre-classification murder, August 20, 2003. Annex 14 of the petitioners' brief received on December 6, 2010.

surrounded by all these representatives of the States legitimate authority, with such dissuasive capacity and after listening to warning shots and stop cries, would go back to attack them by shooting from his bicycle.”²⁷¹

181. Fourthly, the Commission observes that according to the information in the file, once Mr. Quiñónez died, Captain Prieto, justified this death by saying he was a “subversive” “called the witch,” “about him several reports were given that he belong to an armed group, but we never verified that or capture him when executing any illicit activities.” The Commission notes that even though the Military High Court notes that there were charges presented against “the witch” by two paramilitaries²⁷² of March, 2005, as the file shows, said persons were not cited to testify before or after Mr. Wilfredo Quiñónez’s death.

182. Accordingly, the Commission considers that apart from the justification invoked by the Captain of the troop in order to legitimize their action, there is no additional evidence that would allow considering Mr. Quiñónez a subversive at the time he was killed.

183. The Commission observes, in contrast with the account supported by the State, which shows contradictions and inconsistencies, that there is evidence to demonstrating the authorship of State agents in the killing, not only of Mr. Wilfredo Quiñónez, but also of Messrs. Romero and Ramírez.

184. In this regard, the Commission noted that in accordance with the necropsy of Messrs. Ramírez and Romero, both were shot with a “posterior-anterior” path and Mr. Romero even had a shot in the neck with blackening and power tattoo, which means, from a short distance. The Commission infers that his death was not the result of a clash. As will be explained infra in the section of investigation analysis, the projectiles that killed them were not identified neither was it determined if they came from weapons that the military officers were carrying.

185. On the other hand, with regard to the attribution of responsibility for the killings to the military, witnesses, Ángel María Noriega and Deysi Porras Ramírez, state that the evening of September 3, a military truck chased three youth that were riding bicycles. According to Mr. Ángel María Noriega, said truck took the young men and their bicycles.

186. The Commission considers that, although the State argues that Mr. Ángel María Noriega did not establish that he saw Messrs. Quiñónez, Rivera and Romero, the above description matches the one from Mrs. Bárcenas when she said that her son and his two friends were bicycling, the same day and at the same area. Additionally, in the framework of the internal investigation, Mrs. Blanca Nieves Serrano said that her son was also taken in a military truck and when she rescued him, she herself identified Mr. Albeiro Ramírez Jorge in the truck. The Commission considers that this last statement is enough to give credibility to the consistent version that those people that Mr. Noriega saw were taken to the truck by State agents were Messrs. Quiñónez, Romero and Ramírez who were subsequently executed.

187. The Commission also notes that these statements together with Mrs. Bárcenas, who saw on the truck someone with yellow boots like those been worn by Mr. Albeiro Ramírez Jorge, as well as Mr. Numael Antonio Ramírez and Mrs. Bárcenas’ who said that when asking about their relatives in *Nueva Granada* Battalion, a soldier was able to tell them that three young men were taken them, before another soldier reprimand him. Additionally, the Commission observes that the events that led to the killing of Messrs. Quiñónez, Ramírez and Romero, happened within a context in which, according to the judicial investigator and the statements of Mr. Luis Alfonso Agudelo Martínez and Diana Isabel Porras, a series of killings, detentions, and seizures took place over those days in relation with a retaliation launched by the military in the town in order to avenge the death of three soldiers.

²⁷¹ Annex. 91. Military High Court, Judgment of July 31st, 2007. Annex 25of the petitioners’ brief received on December 6, 2010.

²⁷² Annex. 91. Military High Court, Judgment of July 31, 2007. Annex 25 of the petitioners’ brief received in December 6, 2010.

188. In view of the above, the Commission notes that Mr. Wilfredo Quiñónez's death was consistent to the *modus operandi* identified for the time of the events, that is: i) he was a civilian; ii) who was executed in circumstances in which the existence of a previous attack on his part was simulated, and iii) said attack was justified by incriminating him as subversive, without grounds to do so at that time.

189. In this regard, the Commission finds the State responsible for the violation of the right to life, enshrined in Article 4 of the Convention in relation with its Article 1(1) to the detriment of Wilfredo Quiñónez. Likewise, due to his arbitrary detention, the Commission established that there is a violation of the Right to Personal Liberty enshrined in Article 7 of the Convention in relation with Article 1(1) of the said instrument. With regards to Messrs. Albeiro Ramírez Jorge and José Gregorio Romero, the Commission concludes that they were also arbitrarily detained and extra judicially executed together with Mr. Quiñónez, which constitutes a violation of Articles 4 and 7 of the American Convention in relation to its Article 1(1).

190. In addition, the Commission observes that the petitioners have indicated that the victims were tortured before their death. This is supported by the statements provided by Mrs. Bárcenas, Numael Antonio Martínez and Diana Porras about the way in which the bodies were found, as well as by testimonies of the inhabitants of the sector which were referred to by the legal researcher and by the Institute of Legal Medicine, which included in its collection of the corpse and Autopsy Report a description of the wounds, as well as the photo album of the lifting the corpse.

191. In relation to the above findings, the Commission observes that the initial position of the State was to refute the existence of torture by means of the technical report of January 3, 2002, which indicated that "the findings described in the Autopsy No. SA-225-95 as bruises, fracture and abrasion with burnt edges are related to the damaged produced by an object that travels at a high speed and high temperature as a firearm projectile." However, as reported by the State in the hearing held in connection with this case, a "procedural break in which it was ordered to continue the investigations for torture to investigate the other participants" existed and noted that there was "other evidence that the Prosecutor has to exhaust, as the exhumation and the search for other witnesses."²⁷³

192. The Commission takes note that the petitioners submit a "Technical Report prepared by the Colombian Anthropology Forensic Investigations Team" (ECIAF) which establishes that the necropsy performed by the National Institute of Legal Medicine and Forensic Sciences is missing information related specifically to the description of the various injuries. In said autopsy references to abrasions, burns, fracture of the frontal bone, and explosion of the left eyeball, which are not explained by the shooting described in the report.²⁷⁴

193. In the absence of a definitive ruling by the State in relation to the wounds found in the bodies, the Commission considers that there is an obstacle attributable to the State to determine if such injuries were previous or concomitant to the death of the victims. Despite the above, the Commission considers that the information provided by the petitioners, the description of the extent of the injuries sustained by the victims and the sequence in which the events took place, are consistent with an arbitrary detention, taken by force into a military truck. This followed by the fear to be executed as it indeed happened with several shots to the front and back, is enough to consider that they were tortured, resulting in a violation of their right to humane treatment enshrined in Article 5 of the Convention.

²⁷³ IACHR, Hearing in Case 12. 711, Wilfredo Quiñónez Bárcenas, Colombia, held during the 144 Period of Sessions, March 26, 2012. Available at: <http://www.oas.org/es/cidh/audiencias/hearings.aspx?lang=en&session=125>

²⁷⁴ Annex. 92. Document prepared by the Colombian Anthropology Forensic Investigations Team. Submitted by the petitioners on May 18, 2012.

C. The rights to a fair trial²⁷⁵ and judicial protection²⁷⁶, the duty to adopt provisions of domestic law²⁷⁷

194. The Court has established that “as a result of the protection granted by Articles 8 and 25 of the Convention, the States are obliged to provide effective judicial recourses to the victims of human rights violations that must be substantiated according to the rules of due process of law.”²⁷⁸ It 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 to be heard and to act in the respective proceedings, both to clarify the facts and punish those responsible, and to seek due reparation.²⁷⁹

195. In that regard, the Court has indicated that the next of kin of the alleged victims have the right to expect, and the States the obligation to ensure, that what befell the alleged victims will be investigated effectively by the State authorities; that proceedings will be filed against those allegedly responsible for the unlawful acts; and, if applicable, the pertinent penalties will be imposed, and the losses suffered by the next of kin repaired.²⁸⁰ According to the aforementioned, State authorities, once they learn on a human rights violation, particularly related to the rights to life, humane treatment and personal liberty,²⁸¹

²⁷⁵ Article 8(1) of the American Convention establishes 1. 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.

²⁷⁶ Article 25(1) of the American Convention establishes: 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.

²⁷⁷ The Inter-American Court has stated that the general duty under Article 2 implies both, the elimination of any norms and practices that in any way violate the guarantees provided under the Convention, and the promulgation of norms and the development of practices conducive to effective observance of those guarantees. I/A Court H.R., *Case of Castillo Petruzzi et al. v. Peru*. Merits, Reparations and Costs. Judgment of May 30, 1999. Series C No. 52, para. 207; I/A Court H.R., *Case of Reverón Trujillo v. Venezuela*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of June 30, 2009. Series C No. 197, para. 60; and I/A Court H.R., *Case of the “Las Dos Erres” Massacre v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 24, 2009. Series C No. 211, para. 122.

²⁷⁸ I/A Court H.R., *Case of Cantoral Huamaní and García Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, para. 124; I/A Court H.R., *Case of the Rochela Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 163, para. 145; I/A Court H.R., *Case of the Miguel Castro Castro Prison v. Peru*. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, para. 381; and I/A Court H.R., *Case of the Dismissed Congressional Employees (Aguado - Alfaro et al.) v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2006. Series C No. 158, para. 106.

²⁷⁹ I/A Court H.R., *Case of García Prieto et al. v. El Salvador*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 20, 2007. Series C No. 168, para. 102; I/A Court H.R., *Case of the “Street Children” (Villagrán-Morales et al.) v. Guatemala*. Merits. Judgment of November 19, 1999. Series C No. 63, para. 227; and I/A Court H.R., *Case of Serrano Cruz Sisters v. El Salvador*. Merits, Reparations and Costs. Judgment of March 1, 2005. Series C No. 120, para. 63.

²⁸⁰ I/A Court H.R., *Case of García Prieto et al. v. El Salvador*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 20, 2007. Series C No. 168, para. 103; I/A Court H.R., *Case of Bulacio v. Argentina*. Merits, Reparations and Costs. Judgment of September 18, 2003. Series C No. 100, para. 114; and I/A Court H.R., *Case of the Miguel Castro Castro Prison v. Peru*. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, para. 382.

²⁸¹ I/A Court H.R., *Case of Cantoral Huamaní and García Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, para. 100.

should initiate a serious, impartial and effective investigation, *ex officio*,²⁸² which should be carried out within a reasonable time.²⁸³ As established by the Commission:

The judicial investigation must be undertaken in good faith and must be diligent, exhaustive and impartial and geared to exploring all possible lines of investigation that make it possible to identify the perpetrators of the crime, so that they can be tried and punished.²⁸⁴

196. On the content of the duty to investigate with “due diligence”, the Inter-American Court has established that the investigation should be undertaken utilizing all legal means available and should be oriented toward the determination of the truth.²⁸⁵ The Court has also stated that the State must ensure the right of the victim or his or her next of kin to learn the truth about what happened and for those responsible to be punished,²⁸⁶ and involving every State institution.²⁸⁷ The IACHR recalls that the obligation to investigate and punish every act that entails a violation of the rights protected by the Convention requires that not only the direct perpetrators of human rights violations be punished, but also the masterminds.²⁸⁸

197. The Court has also stated that the competent authorities adopt all reasonable measures to guarantee the necessary probative material in order to carry out the investigation.²⁸⁹

198. Even when the obligation to investigate is an obligation of means, rather than results, it must be carried out in all seriousness and not as a mere formality predestined to be unsuccessful or ineffective,²⁹⁰ or as a mere reaction to private interests, which would depend on the procedural initiative of the victims or their family members or on the submission of evidentiary elements by private individuals.²⁹¹

199. Under the aforementioned precedents, the Commission will analyze if in the instant cases the State of Colombia carried out a serious and diligent investigation within a reasonable time, on the facts

²⁸² I/A Court H.R., *Case of García Prieto et al. v. El Salvador*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 20, 2007. Series C No. 168, para. 101; I/A Court H.R., *Case of the Gómez Paquiyauri Brothers v. Peru*. Merits, Reparations and Costs. Judgment of July 8, 2004. Series C No. 110, para. 146; and I/A Court H.R., *Case of Cantoral Huamani and García Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, para. 130.

²⁸³ I/A Court H.R., *Case of Bulacio v. Argentina*. Merits, Reparations and Costs. Judgment of September 18, 2003. Series C No. 100, para. 114; I/A Court H.R., *Case of the Rochela Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 163, para. 146; and I/A Court H.R., *Case of the Miguel Castro Castro Prison v. Peru*. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, para. 382.

²⁸⁴ IACHR, Report No. 37/00, Case 11.481, Monsignor Oscar Arnulfo Romero y Galdámez, El Salvador, April 13, 2000, para. 80.

²⁸⁵ I/A Court H.R., *Case of García Prieto et al. v. El Salvador*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 20, 2007. Series C No. 168, para. 101.

²⁸⁶ I/A Court H.R., *Case of Bulacio v. Argentina*. Merits, Reparations and Costs. Judgment of September 18, 2003. Series C No. 100, para. 114; I/A Court H.R., *Case of the Rochela Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 163, para. 146; and I/A Court H.R., *Case of the Miguel Castro Castro Prison v. Peru*. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, para. 382.

²⁸⁷ I/A Court H.R., *Case of Cantoral Huamani and García Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, para. 130; I/A Court H.R., *Case of the Pueblo Bello Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of January 31, 2006. Series C No. 140, para. 120; and I/A Court H.R., *Case of Huilca Tecse v. Peru*. Merits, Reparations and Costs. Judgment of March 3, 2005. Series C No. 121, para. 66.

²⁸⁸ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124. Doc. 5 rev.1, 7 March 2006, para. 109.

²⁸⁹ I/A Court H.R., *Case of Zambrano Vélez et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, para. 122.

²⁹⁰ I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para. 177; I/A Court H.R., *Case of Cantoral Huamani and García Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, para. 131; and I/A Court H.R., *Case of Zambrano Vélez et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, para. 120.

²⁹¹ I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para. 177; and I/A Court H.R., *Case of Zambrano Vélez et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, para. 120.

described in this report, as a mechanism to ensure the substantive rights to life, humane treatment, and personal liberty and to ensure Access to an effective judicial remedy against violations of the human rights recounted so far. To do so, it is necessary to assess the domestic procedures that had taken place.

200. The Commission will take into account the *United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*, governing this type of investigations. The Manual establishes that the inquiry shall at minimum seek: to identify the victim; to recover and preserve evidentiary material related to the death to aid in any potential prosecution of those responsible; to identify possible witnesses and obtain statements from them concerning the death; to determine the cause, manner, location and time of death, as well as any pattern or practice that may have brought about the death; to distinguish between natural death, accidental death, suicide and homicide; to identify and apprehend the person(s) involved in the death; and to bring the suspected perpetrator(s) before a competent court established by law.²⁹²

201. On the other hand, the Commission recalls that in connection with violations to the right to humane treatment due to torture, the duty to investigate is reinforced by the provisions of Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, which established that the States undertake to “take effective measures to prevent and punish torture within their jurisdiction”, and to “take effective measures to prevent and punish other cruel, inhuman, or degrading treatment or punishment within their jurisdiction.” Article 8 of this Convention establishes:

if there is an accusation or well-grounded reason to believe that an act of torture has been committed within their jurisdiction, the States Parties shall guarantee that their respective authorities will proceed properly and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal process.

202. The Commission considers that although this Convention came into force for Colombia on January 19, 1999, which is subsequent to the facts regarding the claim, it corresponds to apply Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture in what concerns the obligation to investigate and punish alleged acts of torture subsequent to ratification.²⁹³

5. The rights to a fair trial and judicial protection of the next of kin of Mr. Gustavo Giraldo Villamizar Durán

a. Facts about the process

The investigation and process in the military criminal jurisdiction

203. On August 11, 1996 at 13:45 o'clock the corpse was collected by the investigative unit of the Saravena Judicial Police.²⁹⁴ The photographs taken signal that “a cartridge casing was found by the body of the deceased”, who was carrying a bag with: two fragmentation grenades; fifteen cartridges of 9 mm caliber in their respective plastic cases, two pamphlets alluding to the subversive group FARC-EP”.²⁹⁵ It was noted that a wallet with two driver's licenses for motorcycles from Saravena with different numbers but same name

²⁹² See. U.N. Doc E/ST/CSDHA/12 (1991). In previous cases the Commission has referred to United Nations guidelines to analyze the compliance with minimum actions to be taken in these cases. IACHR, Report 10/95. Case No. 10.580. Ecuador. September 12, 1995, para. 53.

²⁹³ IACHR, Report No. 137/11, Case 10. 738, Admissibility and Merits, Carlos Augusto Rodríguez Vera et al. (*Palacio de Justicia*), Colombia, October 31, 2011, para. 112.

²⁹⁴ Annex. 93. Institute of Legal Medicine, Ministry of Justice, Investigative Unit of the Saravena Judicial Police, National Format Report of Corpse Collection. August 11, 1996. Annex to the State's brief received on August 26, 2010.

²⁹⁵ Annex. 30. Investigative Unit of the Saravena, Arauca, Photographs, October 28, 1996. Annex to the State's brief received on August 26, 2010.

were found.²⁹⁶ The National Institute of Legal Medicine and Forensic Sciences describe in the autopsy report 4 firearm injuries with outlet holes: i) in the parietal region and part of the front; ii) with bone exposure and multiple bone fragments and irregular edges in the occipital region...;” iii) “left pectoral region of the thorax”; and iv) “top of the dorsal of the hand...” As stated in the report, none of the shots left a tattoo or blackening and had an “inferior-superior”, “posterior- anterior” trajectory.²⁹⁷

204. On August 13, 1996, an inspection of Mr. Villamizar’s motorcycle was carried out. The report indicates that “it is in good working condition to ride freely through public roads.”²⁹⁸ On August 14, 1996, an additional judicial inspection was performed and it stated that “the rear tire of the motorcycle had no air” and it can be “concluded that because of the broken tire it cannot carry people.”²⁹⁹

205. The report from the “Ballistics Laboratory” indicates that the weapon found “has been fired without establishing time or date”. It added that the “magazine is not original”; “to be able to shoot it que it was necessary to manually insert the cartridges into the chamber” and that “its percussion in the fulminant is weak” The cartridge casing found was consistent with the “identity of the pattern” of the gun.³⁰⁰

206. On August 20, 1996, Mr. Gustavo Villamizar Lizarazo, Gustavo Giraldo Villamizar’s father, submitted a “complaint” for his son’s death before the Municipal Ombudsperson.³⁰¹

207. The 124 Military Criminal Investigation Court took the investigation and criminal process for the homicide.³⁰² The process was against the army men José Virgilio Jiménez Mahecha; Reimond Piñeres; José Isabel Benavidez Liñan; Luis Felipe Villamizar Anaya; and Leonardo Prieto Cáceres, members of the troop that had shot Mr. Villamizar from the front.³⁰³

208. On August 24, 1996, Fredy Rodríguez Guerrero gave his statement and said that Mr. Villamizar’s nickname was “Cendales”, that he “doesn’t know” if “he participated in any activities related to the guerrilla” but “people said that he was the highest ranking chief of the E.L.N.” He said that he offered to cooperate with authorities and requested protection for the fear of being kicked out of the “FARC” and to be considered as a “whistle blower.”³⁰⁴ In November 1996, Mrs. Neyda Díaz Morales and Merly Díaz Morales stated that Mr. Gustavo Giraldo Villamizar was a member of the E.L.N.”³⁰⁵ His next of kin denied knowing either of the ladies.³⁰⁶

²⁹⁶Annex. 93. Institute of Legal Medicine, Ministry of Justice, Investigative Unit of the Saravena Judicial Police, National Format Report of Corpse Collection. August 11, 1996. Annex to the State’s brief received on August 26, 2010.

²⁹⁷ Annex. 1. National Institute of Legal Medicine and Forensic Sciences, Autopsy Report No. 040-96-ILS. Annex to the State’s brief received on August 26, 2010.

²⁹⁸Annex. 29. Arauca Police Department, Investigative Unit of the Saravena Judicial Police. Judicial Inspection, August 13, 1996. Annex to the State’s brief received on August 26, 2010.

²⁹⁹ Annex. 29. Arauca Police Department, Investigative Unit of the Saravena Judicial Police. Extension Proceeding of the Judicial Inspection, August 14, 1996. Annex to the initial petition.

³⁰⁰ Annex. 95. National Institute of Legal Medicine and Forensic Sciences. Ballistics Laboratory, Report 1584.96. LBA. RB. Annex to the State’s brief received on August 26, 2010.

³⁰¹ Annex. 8. Complaint submitted by Mr. Gustavo Villamizar Lizarazo before the Municipal Ombudsperson, August 20, 1996. Annex to the petitioners’ brief of April 29, 2010.

³⁰² Annex. 96. Judge of First Instance, Cavalry Group No. 18 “Rebeiz Pizarro”, Judgment of November 19, 1999. Annex to the State’s brief received on August 26, 2010.

³⁰³ Annex. 96. Judge of First Instance, Cavalry Group No. 18 “Rebeiz Pizarro”, Judgment of November 19, 1999. Annex to the State’s brief received on August 26, 2010.

³⁰⁴ Annex. 97. Statement from Mr. Fredy Rodríguez Guerrero before the 124 Military Criminal Investigation Court, August 24, 1996.

³⁰⁵Mrs. Neyda Díaz Morales stated that she was giving her statement because “she wanted to cooperate with authorities.” She mentioned that she knew Mr. Villamizar “only by greeting” and that she “would see him in Saravena every day, in a motorcycle....and his only job was to kill people.” She said that “she didn’t see him but was told that he had killed a young woman” and that “it was been gossiped that he was a member of the E.L.N. Guerrilla.” She replied that she would identify “alias Cendales” because he used to ride a
[continues ...]

209. On May 23, 1998 a Certificate from Officer S-2 GMREB was issued. In it, it's stated that Mr. "Gustavo Giraldo Villamizar (ak. Cendales)" has a file from the intelligence area.³⁰⁷ On February 23, 1999, the 124 Military Criminal Investigation Court accepted the request by the representative of the next of kin to be incorporated as civil claimants.³⁰⁸

210. On July 8, 1999, pursuant to Article 636 of the Criminal Military Code, the Military Criminal Trial Court denied ordering detention to the defendants in considering that, even though, the crime alleged to be committed is "typical," "circumstances to dismiss the non-juridical nature of the events or alibis that explain them, are also present."³⁰⁹

211. On November 19, 1999 the Commander of the Cavalry Group No. 18 "Rebeiz Pizarro," Judge of First Instance, passed judgment stating that there were no merits to judge them at the Oral War Council. The judge ordered "the cessation of all procedures in favor of the defendants" and the consultation of the decision with its "direct superior" should it not be appealed.³¹⁰ The ruling established that because "at the time of the events they were members of the military forces on duty [...] military criminal law applies." Among its considerations, the judge mentioned that the "now deceased was not a gentle dove, [...] he was no one else but the Chief of the militias of the E.L.N.," so "it was a man on the fringes of the law, and not a poor

[... continuation]

"125 motorcycle, I believe white in color." Finally she stated that she knew that "he got a young girl pregnant, but I don't know her name." Annex. 34. Statement of Neyda Díaz Morales before the 124 Military Criminal Investigation Court, November 1996. Annex to the State's brief received on August 26, 2010.

On the other hand, Mrs. Merly Díaz Morales said that she was giving her statement "because the guerilla might say that [Mr. Villamizar] was a peasant." She said that Giraldo Villamizar "was discharged because he was apparently trying to find out if the army was there to move along some weaponry, he was riding a motorcycle, she was told, as more or less everyone knew what he was doing". She mentioned that she met Mr. Giraldo Villamizar in the town "about two years ago" and "people would say that he used to work in the organization [...]" She said her relationship with him was only of a greeting kind, nothing else. She indicated that "[...] he belong to the ELENOS (member of the ELN), because there you know who is who [...]" She stated that "she did not know his ranking and in the town, he was a member of a ELN cell" that "daily would stay in his motorcycle waiting to see which girl would talk to a military person to then tell off and kill her." When asked who his friends were, she replied "the youth who was taken yesterday, everyone used to call him "Dumar," they would hang out a lot [...]" She said that "they would carry weapons daily, [...]" Annex. 35. Statement of Merly Díaz Morales before the 124 Military Criminal Investigation Court, November 8, 1996. Annex to the State's brief received on August 26, 2010.

³⁰⁶ Edidxon Villamizar Durán said "I haven't met, heard of, or known the names of Mrs. Neida Díaz Morales and Merly Díaz. According to the information we have received, they were not acquaintances with my brother because we were always together and we knew who each other's friends were." Testimony from Edidxon Villamizar Durán, October 15, 2010. Additionally, Maribel Villamizar Durán mentioned that "she didn't know Mrs. Neida Díaz Morales or Merly Díaz Morales; she hadn't even heard their names before, which made it very weird that they would have stated that her brother was a member of the ELN, as they didn't even know him, or lived close to the family. I recently learnt that one of them moved to Bogota with someone from the army, and the other one is still in Saravena." Annex. 27. Testimony from Maribel Villamizar, October 15, 2010.

³⁰⁷ Specifically these were mentioned: 19-abr-85 in Saravena, intelligence information from this unit states that this person was sent as an addition to the *compañía Simacota*, that he was a criminal at the Arauca Department from 1985 to 1990; 05-oct-91 in Saravena, intelligence information states that this person was one of the founders of the *Compañía Simacota* who commits crimes in Arauca; 21-aug-95, in Saravena, intelligence information states that ak. Cendales, member of the *Compañía Simacota* is the person in charge of extortion, kidnapping and murder of several persons from the vicinities related to alleged links to members of the military forces; 14-May-96, in Saravena, intelligence information states that Gustavo Villamizar (ak. Cendales) is an active member of the ELN and of the people's militia that commit crimes in the Saravena Municipality; 10-jun-96 in Saravena, intelligence information states that Gustavo Villamizar (ak. Cendales) is the new head of the people's militia of the ELN who commit crime in the Saravena Municipality, in replacement of José Orlando Patiño (ak. Matacuras); 10-Jun-96, in Saravena, intelligence information revealed that Gustavo Villamizar (ak. Cendales), commander of the people's militia of the ELN rides a motorcycle and goes to a Gym in the San Luis neighborhood; 11-aug-96, Saravena, discharged from." Annex. 98. Colombian Military Forces, National Army, Cavalry Group No. 18 Rebeiz Pizarro, Official Report from Officer S-2 GMREB, May 23, 1998.

³⁰⁸ Annex. 99. 124 Military Criminal Investigation Court, Order of February 23, 1999. Annex to the State's brief received on August 26, 2010.

³⁰⁹ Annex. 94. Military Criminal Investigation Court, Order of July 8, 1999. Annex to the State's brief received on August 26, 2010.

³¹⁰ Annex. 96. Judge of First Instance, Cavalry Group No. 18 "Rebeiz Pizarro", Judgment of November 19, 1999. Annex to the State's brief received on August 26, 2010.

youth dedicated to trade, and according to some, weapons trade.” The judge indicated that the members of the military forces had acted in self-defense and in the fulfillment of a duty to safeguard their lives as they were facing the shots from Mr. Giraldo Villamizar who had ignored the military’s order to stop.”³¹¹

212. On March 1, 2000 the Military High Court issued a statement confirming the judgment from the judge (primera instancia).³¹²

The process in the disciplinary jurisdiction

213. On April 27, 1998 a disciplinary investigation of Sergeant Gustavo Urbano Mejía and Corporal José Virgilio Mahecha was opened due to the death of Mr. Villamizar. On September 27, 2000, the Office of the Prosecutor Delegate for Discipline and Human Rights Defense decided the "termination of the proceedings" considering that "there were clear juridical and evidentiary grounds to determine the existence of a legitimate right."³¹³

b. Considerations of the Commission

i) In relation to the Independence and impartiality of the military jurisdiction authorities

214. The Commission recalls that the special jurisdictions, as the criminal military justice, must be exceptional and restrictive in scope and aimed at the protection of special legal interests, linked to the institution itself. The Inter-American Court has had the chance to analyze the structure and composition of these special jurisdictions, as the military, on the light of the *United Nations Basic Principles on the Independence of the Judges*. Some relevant elements are: i) they are made up of active-duty military members who are hierarchically subordinate to higher-ranked officers through the chain of command; ii) that their designation does not depend on their professional skills and qualifications to exercise judicial functions; and iii) that they do not have sufficient guarantees that they will not be removed. All this made it conclude that said courts lack independence and impartiality to hear violations of human rights.³¹⁴

215. Taking into consideration the aforementioned criteria, the Inter-American Court has mentioned the incompatibility of the American Convention to the application of the criminal military jurisdiction to human rights violations, stating that it is very troublesome to guarantee Independence and impartiality when “the very same military forces engaged in fighting the insurgent groups are those charged with prosecuting their peers for executing civilians.”³¹⁵ Therefore, the Inter-American Court has previously

³¹¹ The Judge took particular attention to the witness statements from militaries, as well as to the “technical expertise” written by the National Institute of Legal Medicine and Forensic Sciences according to which the “gun was shot.” The Judge established that there were no merits to judge them at the Oral War Council, ordered to “cease every proceeding in favor of those being investigated,” and to notify the decision. In case it was not appealed, to consult with the immediate superior. Annex. 96. Judge of First Instance, Cavalry Group No. 18 “Rebeiz Pizarro”, Judgment of November 19, 1999. Annex to the State’s brief received on August 26, 2010.

³¹² It was indicated that “it is possible to infer, with no hesitation whatsoever, that it has been proven that the members of the military forces were behaving within the framework that excludes the unlawfulness that operates as negative elements of an unfair typical objective [...] which are part of a crime, like the compliance with their legal duty and the need to self-defense from an unfair and real aggression.” The Court concluded that there were no elements to punish a defensive behavior from the militaries, which makes the unlawful element to disappear from their behavior. Annex. 100. Military High Court, Process No. 142237-XII-497-EJC, Judgment of March 1, 2000. Annex to the State’s brief received on August 26, 2010.

³¹³ Annex. 101. Office of the Prosecutor General, Order of the Prosecutor Delegate for Discipline and Human Rights Defense, Exp. 008-42739-2000, September 27, 2000. Annex to the State’s brief received on August 26, 2010.

³¹⁴ Cf. I/A Court H.R., *Case of Palamara Iribarne v. Chile*. Merits, Reparations and Costs. Judgment of November 22, 2005. Series C No. 135, paras. 155 y 156.

³¹⁵ I/A Court H.R., *Case of Las Palmeras v. Colombia*. Merits. Judgment of December 6, 2001. Series C No. 90, para. 53.

stated that only active soldiers shall be prosecuted within the military jurisdiction “for the commission of crimes or offenses that based on their own nature threaten the juridical rights of the military order itself”.³¹⁶

216. Available information, to the date of the events, finds that Article 221 of the Political Constitution already established the military criminal jurisdiction,³¹⁷ according to which said special jurisdiction was to be applied to offenses committed in active duty and with relation to the military service itself. The Commission notes that the lack of an enabling law for said Article, which is open in defining an “act of service,” allowed for a broader interpretation that also allowed for the special jurisdiction to be applied in the analysis of the cases that refer to human rights violations by members of the military forces during alleged clashes, like the instant. This finding coincides with what has previously held by the Commission and the United Nations Special Rapporteurs in the sense that this concept of an “act of service” established in Article 221 was interpreted broadly, to the point of including human rights violations, even under the basis of the argument that the act committed while in duty (act of service) includes anything that a member of the armed forces may do while in uniform.³¹⁸

217. The Commission notes that the study of cases of human rights violations by this special jurisdiction meant that these were studied by members of the public forces and not by judicial judges. It was a special jurisdiction in which members of the military forces heard and decided on actions of their peers and according to the chain of command existing in the military regimen. On this regard, these judges could be pressured and ordered to acquit soldiers from any responsibility in an incompatible way with the guarantees of impartiality and Independence.

218. Pursuant to the foregoing considerations, the Commission considers that the use of the military justice system to analyze this case in whole meant that the State did not offer Mr. Gustavo Giraldo Villamizar’s next of kin an investigation and criminal process with independent and impartial judges, in violation of Article 8 and 25 of the Convention, in relation with its Article 1(1).

ii) In relation to the due diligence in the investigation

219. Notwithstanding the aforementioned, as to which all the investigations and criminal processes were incompatible with the American Convention, the Commission deems it appropriate to include some considerations about the State’s duty to investigate with due diligence. A joint analysis of the proceedings carried out by the State, establishes that since the beginning of the investigation there were important omissions affecting the possibilities of knowing the truth about what happened. Thus, the Commission notes that the following omissions and shortcomings reflect the lack of due diligence on the part of the State:

- First, the crime scene was exposed to several members of the armed forces. While, according to some militaries, the clash took place between 11 pm and 1 am, the collection of the corpse took place at 1:45 pm, which means that there was a period of time in which Mr. Villamizar’s body was exposed and could have been touched or changed.

³¹⁶ I/A Court H.R., *Case of Radilla Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2009. Series C No. 209, para. 272.

³¹⁷ As described by the Commission in its *Third Report on the Human Rights Situation in Colombia*, the military jurisdiction is regulated by Article 221 of Constitution which establishes that the crimes committed by members of the armed forces “on active duty and in relation to the military service itself” will be of the jurisdiction of military courts. IACHR, *Third Report on the Human Rights Situation in Colombia, Chapter IV. Violence and Violations of International Human Rights and Humanitarian Law*, OEA/Sr.L/V/II.102, February 26, 1999, para. 166.

³¹⁸ IACHR, *Third Report on the Human Rights Situation in Colombia, Chapter IV. Violence and Violations of International Human Rights and Humanitarian Law*, Chapter V. Administration of Justice and Rule of Law, OEA/Sr.L/V/II.102, February 26, 1999, para. 27.

³¹⁸ Economic and Social Council, Joint report of the Special Rapporteur on the question of torture, Mr. Nigel S. Rodley, and the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Bacre Waly Ndiaye, submitted pursuant to Commission on Human Rights resolutions 1994/37 and 1994/82, E/CN.4/1995/111 16 January 1995, para. 90. Available at: http://extrajudicialexecutions.org/application/media/E_CN_4_1995_111.pdf

- No “gauntlet” or “atomic absorption” tests were performed to determine if the weapon that allegedly Mr. Villamizar had shot, was in fact used by him.
- With respect to the bag that allegedly Mr. Villamizar was wearing, there was no query to determine if it was recognized to be his by any of his next of kin or witnesses with whom he could have spent time with before his death.
- No explanation was given about the fact that the gun that Mr. Villamizar needed to be manually charged, and its significance in the context of a clash, or the fact that “its percussion in the fulminant is weak” No further studies were made to the weapon.
- There is no information that refers to any attempts to find the projectiles that killed him. No evidentiary material was recovered, ordered or preserved in relation to the State agent weapons of those members of the military forces that participated in the operation.
- Proceedings of reconstruction of the events will all the participants were not ordered either, nor were technical tests that would allow to clarify the number of shots made by each of those who participated in the operation, their exact location and the trajectories of these shots in order to explain those cases in which the deceased received shots with a back to front path.

220. The Commission notes, first, that as a result of the aforementioned omissions, the set of actions and judicial decisions was directed to dismiss the proceedings against the defendants due to the lack of additional elements to verify their accounts.

221. Second, the Commission notes that the judge took into account the fact that Mr. Villamizar was allegedly a guerrilla member to give credibility to the combat version. In that regard, the judge stated that the “now deceased was not a gentle dove, [...] he was no one else but the Chief of the militias of the E.L.N.,” so “it was a man on the fringes of the law, and not a poor youth dedicated to trade, and according to some, weapons trade.”

222. In relation to Mr. Villamizar’s guerrilla participation, the Commission notes that the alias “Cendales” and his alleged membership to the ELN is derived from the statements given by Mr. Fredy Rodríguez, Mrs. Neyda Díaz Morales, and Mrs. Merly Díaz Morales, as well as from intelligence reports from the army records. The Commission notes that although these people appear spontaneously in the investigation, the authorities did not gear to question their sayings. On that regard, the Commission observes that Mr. Merly Díaz established that Mr. Villamizar was Friends with a person called “Dumar,” there were no attempts to locate this person or to verify her hypothesis by which she sustained that Mr. Villamizar had a part in killing women that would visit members of the military forces.

223. Even though the witness statements and the technical evidence are not definite about how the events took place, the authorities did not confront the witnesses who had contradictory or inconsistent account of the events, which allowed the defendants to benefit from these omissions to justify a legitimate use of force by means of an incomplete, ineffective, and absent independence and impartiality.

224. In light of the aforementioned, the Commission concludes that the investigation was not carried out in a diligent manner of with the purpose to establish the events, and even when it was still revealing some possible indicia of State agents’ responsibility; said indicia was not investigated or dully dismissed. In conclusion, the Commission considers that the investigation was not carried out in a diligent and effective manner, in violation of Articles 8 and 25 of the Convention, in relation to its Article 1(1), to the detriment of Mr. Villamizar’s next of kin.

iii) Reasonable time

225. The criminal proceeding took 3 years 7 months. Notwithstanding, as indicated above, it was carried out and completed by the authorities in a special jurisdiction that lacked guarantees of independence and impartiality, geared in a way that after 17 years of Mr. Villamizar’s death, the events still haven’t been known by independent and impartial authorities. The Commission considers that this period is unreasonable and that there is no evidence in the record that would justify such delay. In particular, the investigation is not of greater complexity since it deals with only one victim and the possible perpetrators were identified in the

investigation from the first day. Authorities had complete access to the scene of the events and the opportunity to perform all the technical tests that were relevant.

226. On the other hand, the authorities entrusted with the case, have failed for 17 years to act on the adequate mechanism to guarantee that the events were known under the ordinary jurisdiction and not in a jurisdiction that results incompatible with the principles of independence, impartiality and natural judge in this case. Also, during this time, the domestic authorities have not ordered any more proceedings or technical tests geared to finding the truth of the events. This omission for such a prolonged time has become an obstacle to the access to justice for Mr. Villamizar's next of kin, who have contributed to the proceedings with their testimonies.

227. In light of the above, the Commission concludes that the State has engaged in an improper delay which is contrary to the guarantee of reasonable time established in Article 8 of the American Convention, to offer the victims next of kin an investigation and criminal proceedings independently and impartially.

2. The rights to a fair trial and judicial protection of the next of kin of Mr. Elio Gelves Carrillo

a. Facts about the process

i) The investigation and process in the military criminal jurisdiction

228. On May 28, 1997, the Fortul-Arauca Police from the Institute of Legal Medicine collected the corpse at 7:55 am. It was noted that "for safety measures, the record of the collection was practiced in the town morgue;" the corpse was found in a "supine" position and was wearing "Green pants, green long sleeved shirt, green wool socks, yellow and white underwear, gray plaid shorts, a green police hat, black rubber boots." The Inspector noted that she was informed of the events by Captain Juan Mesa who went to her house at approximately 5:45AM.³¹⁹

229. The inspector also noted that "the corpse had the following: 01. Handmade equipment, 01 Chinese style mine with dynamite and machinegun, 05 meters of detonating cord, 03 squibs, 02 fragmentation hand grenades, 01 G3 rifle magazine which contained 20 cartridges caliber 7.62 made: Gavin, 59 cartridges 7.62 CAVIN and VEN, 01 revolver cover, 01 Smith Wesson revolver... caliber 38, found in the barrel of the revolver 3 shells and 03 Winchester cartridges, in the right pocket of the pants of the deceased, 06 INDUMIL 38-caliber cartridges were found." It was noted that these things were given to "CO. Juan Carlos Mesa Serrano."³²⁰

230. About the autopsy, the Attorney General's office stated that it "10 fire arm perforations", "Wound I" with a "BACK-FRONT-RIGHT-LEFT: DOWN-UP" path and 9 wounds with a "FRONT-BACK-RIGHT-LEFT; DOWN-UP" path.³²¹

231. On May 28, 1997, Mr. Manuel Gelves Guerrero submitted a claim against the National Army before the Fortul Municipality judge for his son's death.³²²

³¹⁹ Annex. 46. Institute of Legal Medicine, Collection of the Body Report, May 28, 1997. Annex to the petitioners' brief of April 10, 2001.

³²⁰ Annex. 46. Institute of Legal Medicine, Collection of the Body Report, May 28, 1997. Annex to the petitioners' brief of April 10, 2001.

³²¹ The autopsy findings are included in brief from Annex. 39. Delegate Attorney General, Jurisdiction clash, July 30, 1998. Annex to the petitioners' brief of November 6, 2000.

³²²This fact and claim are included in Annex. 39. Decision from the Commander of the 18th Brigade, Judge of the First Instance, June 13, 2000. Annex to the petitioners' brief of November 6, 2000.

232. On June 26, 1997 a judicial inspection of the recovered material took place. It was noted that among the things found, there was a “38 caliber revolver” with “optimal functioning but very bad state of conservation permitted for private use”.³²³

233. The 124 Military Criminal Investigation Court was initially in charge of the investigation for the crime of homicide with Lieutenant “Ditterich Dallatorre Werner, CP. Gómez Chacón Mauricio, SLV. Castro Buriticá Jhon, SLV. Piedrahita Loaiza Ferney, SLV. Cruz Libreros William and SLV. Paz Rodríguez Angel” as defendants.³²⁴

234. On July 30, 1998 the 40th Attorney General’s office of Saravena proposed the “positive jurisdiction clash” to the 124 Military Criminal Investigation Court.³²⁵ The Judicial Council returned the file to 124 Military Criminal Investigation Court and later issued a new statement in which it assigned the case to the 124 Military Criminal Investigation Court.³²⁶

235. On June 13, 2000, the Military Criminal Court passed a judgment in which it decided that there were no merits to judge the defendants for the crime of homicide at the Oral War Council, and ordered to suspend any proceedings against them.³²⁷ With regard to the competence of the military criminal jurisdiction, the judge noted that at the time the events took place, the defendants were active military and considered that the events were justified in the compliance with their legal duty and the need to self-defense. The judge established that the events happened during a clash.³²⁸

236. In relation with the events of May 27, 1997, the judge noted that Elio Gelves’s father stated that “those who took his son said they were from the *farianos* guerrilla”, and when he asked what was he been taken for they said it was for him “to help taking care of a car, as they were there to fight with ‘Y’”. The judge considered this witness statement and the rest of the evidence “suggest that the three men that forced Elio to go with them were subversives.”³²⁹

³²³ In addition the following articles were seized: “two 126 A2 grenades of American make in perfect working order, complete, 4,5 second delay scale, provider of ... 7.62 mm cartridges, capacity of 20 cartridges used for a G3 rifle of German make, two casings for 38 long..., one casing 22 long, eight projectiles 38 long, one projectile 38 long American CCL, 72 Cavin and Ven cartridges caliber 7.62, four meters of slow wick, handmade black leather revolver cover, a handmade *footbreaker* mine, three squibs for load initiation...” Annex. 102. Judicial Inspection Proceeding, June 26, 1997. Annex to the petitioners’ brief of April 10, 2001.

³²⁴ Annex. 38. Decision from the Commander of the 18th Brigade, Judge of the First Instance. June 13, 2000. Annex to the petitioners’ brief of November 6, 2000.

³²⁵ The 40th Attorney General’s office analyzed the corpse’s wounds and noted a “POSTERIOR-ANTERIOR-RIGHT-LEFT: DOWN-UP” path and that “when the deceased received this injury he was lying face down and was shot from the back or from where his feet are”. With regards to the “other 9 wounds found” he noted that they had “ANTERIOR-POSTERIOR-RIGHT-LEFT; DOWN-UP” paths which indicates that the body was lying “face up and the shots were made from the direction of his feet”. The Attorney General noted that the statements from the members of the military force all agree in stating “the time when they arrived to the place, at 11 pm, which coincides with the time in which civilians stated that they arrived in ELIO’s house”; and “that the time of the clash coincides with those relatives who heard shots around Fortul”. He also noted that “the accounts also coincide in stating that the deceased was not seeing carrying weapons but war objects were impound, because that is what they were told”. He also established that “everyone said that they saw the corpse face down, and supposedly from close by, but when asked if he was carrying weapons, they excuse themselves from answering by stating that they were afar”. He stated that a “judicial inspection was performed to the impound war material and it is established there that the revolver was in good functioning shape but very bad state of conservation, which means that it wasn’t worn by anyone but rather kept somewhere”. Annex. 39. Delegate Attorney General, Jurisdiction clash, July 30, 1998. Annex to the petitioners’ brief of November 6, 2000.

³²⁶ Annex. 38. Decision from the Commander of the 18th Brigade, Judge of the First Instance. June 13, 2000. Annex to the petitioners’ brief of November 6, 2000..

³²⁷ Annex. 38. Decision from the Commander of the 18th Brigade, Judge of the First Instance. June 13, 2000. Annex to the petitioners’ brief of November 6, 2000.

³²⁸ Annex. 38. Decision from the Commander of the 18th Brigade, Judge of the First Instance. June 13, 2000. Annex to the petitioners’ brief of November 6, 2000.

³²⁹ Annex. 38. Decision from the Commander of the 18th Brigade, Judge of the First Instance. June 13, 2000. Annex to the petitioners’ brief of November 6, 2000.

237. On April 18, 2000, the juridical situation of the defendants was determined and it abstained from ordering the detention of the defendants for the crime of homicide.³³⁰ In an interlocutory order of September 5, 2000, the competent authority abstained from further proceedings and sent it to the 124 Military Criminal Investigation Court.³³¹ On March 8, 2001, an interlocutory order decided to close the investigation. On April 23, 2001 the 14 Military Prosecutor's office acting before the Second Division Brigade Court when determining the evidence prior to the hearings in the investigation proceedings³³² considered that the defendants behavior was fully justified in the strict compliance with their legal duty and self-defense.³³³

238. On March 6, 2003, the Ministry of National Defense, 1st Military Criminal Prosecutors office before the Military High Court, decided to confirm the decision of April 23, 2001 that was consulted with them.³³⁴ In its analysis, the Prosecutors office stated that the defendants were not involved in any event prior to the armed clash, which means that their link is only related to the death occurred during combat. It stated that according to Manuel Gelves Guerrero's witness statement, the persons expressed that they belong to the "farianos" guerrilla.³³⁵

ii) The process in the Administrative-Law jurisdiction

239. Mrs. Griselina Carillo de Gelves filed a suit seeking direct damages by proving that the State was liable in the case, at the Administrative-Law jurisdiction. Her suit was decided on April 13, 2000 by the Arauca Administrative-Law Court who found a failure in the military service and ordered compensation for moral and material damages.³³⁶ In its analysis, the tribunal noted some inconsistencies among the statements given by the soldiers with regards to how was Mr. Gelves' body found,³³⁷ how the clash happened,³³⁸ as well as with the explosive material and armament that he was allegedly carrying.³³⁹ The

³³⁰ This event is included as part of the prior proceedings in Annex. 38. Decision from the Commander of the 18th Brigade, Judge of the First Instance. June 13, 2000. Annex to the petitioners' brief of November 6, 2000..

³³¹This event is included as part of the proceedings Annex. 38. Decision from the Commander of the 18th Brigade, Judge of the First Instance. June 13, 2000. Annex to the petitioners' brief of November 6, 2000.

³³² Annex. 42. 14th Office of the Military Criminal Prosecutor before the Second Court of Second Division Brigades, investigation proceeding review, April 23, 2001. Annex to the State's brief received on June 19, 2009.

³³³ Annex. 42. 14th Office of the Military Criminal Prosecutor before the Second Court of Second Division Brigades, investigation proceeding review, April 23, 2001. Annex to the State's brief received on June 19, 2009.

³³⁴ Annex. 103. 1st Office of the Military Criminal Prosecutor before the Military High Court, Judgement of March 6, 2002. Annex to the State's brief received on June 19, 2009.

³³⁵ Annex. 103. 1st Office of the Military Criminal Prosecutor before the Military High Court, Judgement of March 6, 2002. Annex to the State's brief received on June 19, 2009.

³³⁶ Annex. 36. Arauca Administrative-Law Court, judgment of April 13, 2000. Annex to the petitioners' brief of November 6, 2000.

³³⁷ To that respect, it was noted that "there are outstanding contradictions among the soldiers that participated in the events: some saw the deceased's weapons and some didn't; some were coming from the left hand side of the road and some said they were ambushed; some say they shot while lying down some say while standing. Most of them saw the deceased's body face down and didn't see weapons, and the report of the collection of the corpse states that it was supine, that means face up." Annex. 36. Arauca Administrative-Law Court, judgment of April 13, 2000. Annex to the petitioners' brief of November 6, 2000.

³³⁸ The Court observed that in the combat report a diagram signed by Lieutenant Ditterich "shows a drawing of the enemy as moving forward along two fronts that are facing each other, in a way that if a clash were to happen in such position, the path of the shots would end up in the soldiers killing each other." Finally, he mentioned that in said diagram "the enemy is attacking four fronts simultaneously and the Army has three fronts. Then, why didn't more people result with injuries as the munition used by the Army was so much." Annex. 36. Arauca Administrative-Law Court, judgment of April 13, 2000. Annex to the petitioners' brief of November 6, 2000.

³³⁹ The Court indicated that in relation with the explosive material consisting of "Chinese type mine with dynamite and machinegun, five meters of detonating cord, three squibs, two fragmentation hand grenades, all of which are highly flammable and can explode easily," "if he was carrying all that material on his back, and his body had 10 firearm wounds with different entry and exit holes, from the back and front, how is it possible that the material didn't explode?" With regards to the revolver, it stated that according to the ballistic report, page 402, "it is stated that it was in optimal functioning but very bad state of conservation. What does that mean? That it

[continues ...]

Tribunal noted, in particular, as stated in the autopsy there were “ten firearm wounds, from which two were made from the back”, the first “with entry hole behind the right ear with output hole by the left eye, which displaced the cavity;” and the second “has an entry force in the right gluteal region.” The Tribunal concluded that there was no combat the day of the events³⁴⁰; that “records prove that Elio Gelves was taken from his house”; and there are unanimous witness statements about the “impeccable behavior” of young man Gelves.³⁴¹

b. Considerations of the Commission

i) In relation with the Independence and impartiality of the military criminal justice

240. Taking into account that the Commission already established in this report about the military criminal jurisdiction and the violation to the judicial guarantees of independence and impartiality that derives from its application (see *supra* paras. 214 and following,) the Commission recalls that this special jurisdiction was applied in the domestic proceedings under the argument that the death of Mr. Gelves was a result of members of the military forces in active service “who were executing duties directly related to the military activities.” As stated in the file, the criminal proceedings were carried out in the military criminal jurisdiction in full.

241. In light of the abovementioned, the Commission concludes that the use of the military jurisdiction to for the trial of soldiers accused of committing a possible extrajudicial execution, results in the violation by the State of Colombia of Articles 8 and 25 of the American Convention in relation with its Article 1(1), as it did not offer the next of kin and investigation and criminal proceedings from independent and impartial judges.

ii) In relation with the due diligence in the investigation

242. Notwithstanding the aforementioned in the sense that all the investigations and criminal proceedings were carried out in a way that is incompatible with the Convention, the Commission deems it relevant to make some considerations about the duty to investigate with due diligence. Available information suggests that from the beginning of the investigation relevant omissions were incurred in, these affected the possibilities to learn the truth of the events. Thus, the Commission notes that at least the following weaknesses and omissions represent an infringement to the due diligence owed by the State:

- a. The agent in charge of collection the body took more than two hours to get to the crime scene, which left the crime scene exposed to different members of the armed forces between 5:10 am and 7:55 am.
- b. It was said that due to safety measures, the report of the collection of the body was done in the town morgue. It is not motivated or reasoned how could a report of the collection of the corpse be done in a different place than the crime scene, and in any case, the report does not show minimum proceedings in the crime scene or in the morgue.
- c. No specific technical tests were performed to determine if the gun found was actually triggered by Mr. Elio Gelves. The “gauntlet,” “dactiloscopia” and “atomic absorption” to identify if the weapon or various armaments that were carried by him were used by him were not performed.

[... continuation]

was not been used for a long time? Because use is what keep them shining. And then the news informs that the belic material carried by the insurgents is better than that of the National Army.” Annex. 36. Arauca Administrative-Law, judgment of April 13, 2000. Annex to the petitioners’ brief of November 6, 2000.

³⁴⁰ From analysis of the witness statements and the diagram, the Court stated that there was no combat that day “because the combination of statements weakens the accounts of the members of the military forces together with the location and path of the wounds of the youth Elio Gelves Carrillo (who had just turn 18). Also, what to say about the weapons that the deceased “carried,” which were seen by very few notwithstanding that some of them were highly flammable, and -as mentioned before- in bad state of conservation?” Annex. 36. Arauca Administrative-Law Court, judgment of April 13, 2000. Annex to the petitioners’ brief of November 6, 2000.

³⁴¹ Annex. 36. Arauca Administrative-Law Court, judgment of April 13, 2000. Annex to the petitioners’ brief of November 6, 2000.

- d. According to the explanation given by the Prosecutor, the gun was in “bad conservation state” which indicates that “it was not carried by anyone but rather kept somewhere.” No further analysis was ordered or performed and no technical conclusion was made about the bad conservation state of the gun.
- e. Even though the Prosecutors Office denounced the inconsistency between the existence of highly flammable explosive material that had not exploded, the multiple shots received and the moving of Mr. Gelves’ body during the alleged combat, there are no further technical studies about that.
- f. There was no attempt to locate the projectiles of grenade fragments that had allegedly been used by the patrol in the alleged clash.
- g. The weapons used by the members of the military forces were not recovered or preserved to confirm the number of munitions that were allegedly used during the operation.
- h. In the Commission’s file records, there is no information about a thorough and serious investigation about the identity of those dressed as civilians that forcedly took Mr. Elio Gelves from his house. The only evidence used to determine that they were members of the guerrilla, were the statements given by Mr. Manuel Gelves in which he said they were “farianos,” without any additional proceedings even though the next of kin consistently said that those who took his relative were members of the Army or the paramilitary.
- i. There is no information that indicates that the clothes Mr. Elio Gelves was wearing were preserved. There was no verification if they fit him, or, if they were big, as indicated by Mrs. Lucy Vega Blanco, which is indicative that they could have been planted.
- j. Neither was a reconstruction of the events with the participants of the operation done, or technical tests that all together would allow to clarify the number of shots made by each of the members of the military forces who participated in the operation, their exact location and their paths gearing at explaining those shots that were received with a back to front path.

243. The Commission notes that the set of actions and military judicial decisions, show the absence of proceedings such as those listed, which made it possible that there were no additional elements for contrasting the versions of the military. Although witnesses and technical tests suggest contradictions over the way in which the events were confirmed, they allowed for the members of the military forces to benefit from the omissions to be able to justify a legitimate use of force as a result of an incomplete, ineffective and absence of Independence and impartiality.

244. In light of the abovementioned, the Commission concludes that the investigation was not diligent or was geared to clarify the events in violation of Articles 8 and 25 to the detriment of the next of kin of Mr. Gelves.

iii) Reasonable time

245. The criminal proceedings against the defendants lasted 4 years and 10 months. Notwithstanding, as stated, it was performed and closed by authorities in a special jurisdiction that lack the guarantees of independence and impartiality. So far, to date, more than 17 years since the death of Mr. Elio Gelves, the events haven’t been under the jurisdiction of independent and impartial authorities. The Commission considers this period to be unreasonable as there are no elements in the file that justify such delay. Particularly, the investigation is not complex, it is just one victim and those possibly responsible were identified in the investigation since the first day. Also, the relevant authorities had complete access to the crime scene and the opportunity to perform any relevant technical tests.

246. The authorities in charge of the case did not act with appropriate mechanisms to provide adequate judicial protection, ensuring that the facts were heard by the ordinary courts and encouraging the process to be maintained in the military jurisdiction in full. The Commission notes that the failure by the authorities to practice proceedings and technical tests geared at getting to the truth of the events has become a serious obstacle to access justice as time elapsed. This, even when the 40th Attorney General’s office of proposed the “positive jurisdiction clash” which gave the authorities the opportunity to decide the proceedings to be held at the ordinary jurisdiction. The Commission recalls that the next of kin have cooperated with their witness statements.

247. In light of the above considerations, the Commission concludes that the delay in the investigation of the case and the lack of an independent, and impartial investigation to date, about the circumstances in which young man Elio Gelves was taken from his home and killed are not reasonable and its a result of the omissions committed by the authorities in violation of Article 8(1) of the Convention.

3. The rights to a fair trial and judicial protection of the next of kin of Mr. Carlos Arturo Uva

a. Facts about the proceedings

i) The investigation and the proceedings in the military jurisdiction

248. When Lieutenant Portilla learned that soldier Burgos had taken the life of Mr. Carlos Uva, he called the Commander of the counter-guerrilla Erick Rodríguez Aparicio, to whom he was introduced to by Rodríguez Burgos.³⁴² Both lieutenants informed about the death of Mr. Uva Velandia to the 120 Military Criminal Investigation Court, who opened the criminal investigation on June 23, 1992.³⁴³

249. At 4 am on June 21, 1992, the corpse was collected. As stated in the report from said proceeding, the body had a naked chest, blue jeans and no shoes. It was “in supine position, arms separated from the body in less than 80 degrees, inferior limbs bent in angle and together, head to the south.” It was noted that he had wounds, all of them as a result of a sharp weapon: 5 of 1 centimeter on the right ribs; 1 on the right shoulder; 1 in the thorax; 1 in the sternum and marks of ties in his two wrists.³⁴⁴ The same day an autopsy was performed by the Health Service of Casanare.³⁴⁵

250. On August 11, 1992, after practicing a series of proceedings, the Court ordered the preventive detention of Mr. Rodríguez Burgos.³⁴⁶ By decision of February 10, 1993, the Command of the Cavalry Group No. 7 “*Guías del Casanare*,” acting as Criminal military court (of first instance) decided to send the process to the Peace prosecution unit of Paz de Ariporo, due to a lack of jurisdiction. The judge considered that when soldier Burgos “killed civilian Arturo Uva, he was not performing acts of the military service.”³⁴⁷

251. Prosecutors Office 18 took knowledge of the investigation and on March 2, 1993 decided the appeal lodged by Mr. Rodríguez Burgos for parole, which was granted prior bond.³⁴⁸ On August 4, 1993 the Prosecutors Office 18 appointed a defender to assist soldier Alexis Rodríguez.³⁴⁹ The defender took office September 1, 1993.³⁵⁰ On October 19, 1993, Prosecutors Office 18 criminally accused Juan Alexis Rodríguez Burgos for his responsibility as the author of murder against Carlos Arturo Uva Velandia and revoked its probation.³⁵¹

³⁴² Annex. 104. Statement from Lieutenant Portilla Castro Alfonso at 25th Military Criminal Investigation Court, February 18, 1993, Annex 1.

³⁴³ Annex. 105. Military Armed Forces of Colombia, 127 Military Criminal Investigation Court: Interlocutory Order of June 23, 1992.

³⁴⁴ Annex. 47. Collection of the corpse proceedings, June 21, 1992. Annex 1.

³⁴⁵ Annex. 71. Casanare Health Service, Autopsy, June 21, 1992. Annex 1.

³⁴⁶ Annex. 106. 120^o Military Criminal Investigation Court, Decision of August 11, 1992, that orders preventive detention.

³⁴⁷ Annex. 107. Command of the Cavalry Group No. 7 “*Guías del Casanare*”, First Instance Judgment, Decision of February 10, 1993. Annex 1

³⁴⁸ Annex. 108. Prosecutors Office 18, Decision of March 2, 1993. Annex 1.

³⁴⁹ Annex. 109. Prosecutors Office 18, Designation of defense attorney, Mr. Juan Alexis Rodríguez, November 4, 1993. Annex 1.

³⁵⁰ Annex. 110. Defense attorney takes office, September 1, 1993, Annex 1.

³⁵¹ Annex. 111. Prosecutors Office 18, investigation proceeding review, October 19, 1993. Annex 1.

252. The process was referred to the Paz de Ariporo Court which passed its ruling on May 10, 1994. In it, it condemned the defendant of the main sentence of 16 years in prison as the perpetrator of the crime of murder, as well as to the accessory penalties of interdiction of rights and public duties for ten years, together with the payment of 500 grams of gold to the parents of Mr. Uva Velandía.³⁵²

253. This decision was appealed by the Prosecutors office as well as by Mr. Rodríguez Burgos. The appeal was decided by the Criminal Section of the Santa Rosa High Court on December 19, 1994, confirming the guilty sentence.³⁵³ The Court indicated that the murder was committed outside of the service and the latest version sustained in appealed by soldier Rodríguez Burgos “has no evidence whatsoever to support it” and that “it seems like he invented a series of events that he presents as real to the administration of justice.”³⁵⁴

ii) Proceedings in the Administrative-Law jurisdiction

254. On October 12, 1995, the Casanare Administrative-Law Court³⁵⁵ passed a judgment deciding the direct damages suit filed by the next of kin of Mr. Carlos Uva denying direct damages by denying that the State was liable in the case.³⁵⁶ The Court stated that although a “reprehensive event had happened” “there is no causal relationship with the military service.”³⁵⁷ On March 30, 2000, the Council of State, Administrative-Law Court, Section 3rd, upheld the decision on appeal.³⁵⁸ The later states that the Court of first instance that sentenced the soldier Juan Alexis Rodríguez Burgos, was alleging in favor of the appeal when decided the appeal and even though it sent a copy of the criminal proceedings, the witness statements “were not ratified during the proceedings” and the statements received during the administrative-law process do not prove anything about the author of the murder, which prevents it to establish a direct relationship between damages caused and the provision of public service.”³⁵⁹

b. Considerations of the Commission

255. The Commission notes that the process had a total duration of two years and six months. The investigation began when the lieutenants in charge of the counter-guerrillas in which the events took place, gave notice to the 120 Military Criminal Investigation Court. Subsequently, un less than a year the case was sent to the ordinary jurisdiction which concluded the proceedings on December 19, 1994 with the sentence of soldier Burgos to 16 years in prison, among other accessory penalties. In relation to the actions of the domestic authorities, the Commission considers relevant to point out four aspects.

256. First, the investigation was sent to the ordinary jurisdiction when considering that the death of Mr. Carlos Uva was not an act of military service. The Commission underscores the fact that the understanding on the applicable jurisdiction was not grounded on the argument that it dealt with an alleged human rights violation involving a right of military nature, but on the grounds that soldier Burgos was not on active duty or undertook the Army’s responsibility. This interpretation is not compatible to the American Convention accordint to the relevant standards (see *supra* paras. 214 and following.)

³⁵² Annex. 55. Circuit Court, Judgment of May 10, 1994. Annex to the initial petition.

³⁵³ Annex. 63. District High Court, Judgment of December 19, 1994. See procedural antecedents. Annex to the initial petition.

³⁵⁴ Annex. 63. District High Court, Judgment of December 19, 1994. See procedural antecedents. Annex to the initial petition.

³⁵⁵ Annex. 112. Boyacá Administrative-Law Court, file No. 12. 986, Order of July 12, 1995. Annex 1.

³⁵⁶ Annex. 72. Casanare Administrative-Law Court, Judgement of October 12, 1995. Annex 1.

³⁵⁷ Annex. 72. Casanare Administrative-Law Court, Judgement of October 12, 1995. Annex 1.

³⁵⁸ Annex. 113. Council of State, Administrative-Law Court, Section 3rd, Judgment of March 30, 2000. Annex 1.

³⁵⁹ Annex. 113. Council of State, Administrative-Law Court, Section 3rd, Judgment of March 30, 2000. Annex 1.

257. Second, the Commission observes that a version from soldier Rodríguez Burgos was brought up during the investigation according to which he had received instructions from lieutenants Portilla and Aparicio to go with them at night and kill Mr. Carlos Uva in a place where he was held tied. The Commission notes that in relation to this account of the events, the domestic court stated that it “has no evidence whatsoever to support it”. The Commission does not have enough elements to consider that this decision from the ordinary jurisdiction has been passed in violation to the Convention.

258. Third, the Commission notes that guard Henry Reyes and lieutenant Portilla, indicated that Mr. Carlos Uva was accompanied by civilians who carried him shirtless and according to guard Monso, “with his hands back.” The Commission notes that although the amount of injuries suffered by Mr. Uva Velandia, the administrative-law court considered that there might have been more people participating in the crime and limited itself to inquire about the identity of the guards and the lieutenants Portilla and Aparicio. Apart from these proceedings, as stated in administrative investigation, this fact was not investigated further by the investigating agent.³⁶⁰ In this regard, the Commission observes that no further proceedings to identify such persons, like interviews to local people or even to soldier Rodríguez Burgos, took place.

259. Fourth, the Commission has concluded that lieutenant Portilla and the guards incurred in omissions that made it possible that the sequence of events culminate in the deprivation of life of Mr. Carlos Uva Velandia. On this aspect, the Commission recalls that according to the jurisprudence of the Inter-American Court, the responsibility of State agents can be of different nature. As established by the Court, “the determination of criminal and/or administrative responsibility each has its own substantive and procedural rules. Consequently, the failure to determine criminal responsibility should not prevent the continuation of the investigation into other types of responsibilities, such as administrative responsibilities.”³⁶¹ In the instant case, the Commission observes that more than 20 years have passed from the date of the events and still there is no investigation gearing to determine the disciplinary responsibility of the State agents involved in the events around the death of Mr. Uva Velandia.

260. In view of the above, the Commission considers that regardless the outcome of the investigation that led to the sanction of the direct perpetrator, the State incurred in omissions regarding the investigation of all of the people could have to participate in the events and the officials who committed omissions while in duty. In view of the above, the Commission considers that in such aspects, the investigation carried out by the State was not diligent, from which it is concluded that the State violated Articles 8 and 25 of the American Convention in relation to its Article 1(1).

- 4. The right to a fair trial and judicial protection of Messrs. Wilfredo Quiñónez, José Gregorio Romero and Albeiro Ramírez Jorge’s next of kin**
 - a. Facts about the proceedings**
 - i) The investigation and criminal proceedings**

261. Lieutenant Jairo Alberto Prieto Rivera stated that after Mr. Quiñónez’s death they informed the Battalion and the Battalion “coordinated with SIJIN for the corpse collection...”³⁶² As stated in the National Institute of Legal Medicine and Forensic Sciences, Local Unit of Barrancabermeja, Collection of the body and Autopsy Report, the bodies had the following injuries:

³⁶⁰ See: Annex. 72. Casanare Administrative-Law Court, Judgement of October 12, 1995. Annex 1.

³⁶¹I/A Court H. R., *Case of Mendoza et al. v. Argentina*. Preliminary Objections, Merits and Reparations. Judgment of May 14, 2013. Series C No. 260, para. 224.

³⁶² Annex. 114. Inquiry of Captain Jairo Alberto Prieto Rivera before the Military Criminal Court of April 7, 1998. Annex 13 of the petitioners’ brief received on December 6, 2010.

- Mr. Wilfredo Quiñónez showed “multiple wounds in the head, neck, thorax and upper limbs.”³⁶³ With respect to the firearm wounds, it was indicated that there were nine gunshot wounds of which three had a “front to back path” and six a “back to front” path.”³⁶⁴
- Mr. José Gregorio Romero showed “multiple wounds in the head and upper limbs.” It was described that the corpse had a “multiple lacerations in the face, neck, thorax and abdomen.” With respect to the gunshot wounds, it was indicated that there were four, all of them with a “back to front” path.³⁶⁵
- Mr. Albeiro Ramírez Jorge showed “multiple wounds in the head and neck,” an “excoriation of 28 x 14 cms that occupies the left side of his chest, left upper quadrant, left flank” of the thorax, and a “slight contusion of 15 x 11 cm in the front part of the left thigh.” In relation to the gunshot wounds, it was described that the corpse showed three wounds, all of them with a “back to front” path and one of them in the left neck “with blackening” and “a power tattoo.”³⁶⁶

262. As indicated in the Report from the Police Investigation Department (Judicial Police “SIJIN”) of the collection of the corpse corresponding to Wilfredo Quiñónez, a gun with the No. 1325485, with a cartridge caliber 9 mm in the chamber, and its respective supplier with three cartridges, was found next to the corpse. Besides to the body, two 9 mm cartridge casings were found.” As stated by the ballistic expert, “the two cartridge casings were fired by said gun, and gunpowder residue was found in the bore of the barrel.”³⁶⁷

263. On September 7, 1995, Mrs. María Rosalba Bárcenas Torres filed a complaint with the Municipal Ombudsperson (*Personería Municipal*) of Barrancabermeja for the murder of her son, Wilfredo Quiñónez Bárcenas, by members of the National Army forces;³⁶⁸ this claim was ratified on October 19, 1995.³⁶⁹

264. The Office of the Attorney General –Technical Investigation Group, Life, Barrancabermeja, Santander– started an investigation and issued a first report on October 25, 1995. The report mentions an interview held with Mr. Fernán Serra Miranda, who went to the Attorney General’s office to “state that he had information related to the murder that was been investigated.” However, it also states that “while in the premises, it was clear that his wish was only to negotiate a price for his information, and therefore didn’t give away any data.” It is also stated that Mr. Serra Miranda “was shot to death by unknown persons on October 14.”³⁷⁰ It was additionally noted that different people from the “northeastern” neighborhoods establish “that

³⁶³ In the face: “abrasion of 5.5x2 cms. In right malar region. Abrasion of 2.4x0.3 cms. In left supralabial region;” in the eyes; “open wound with burnt sides of 9x3.5 cms. in fronto-temporal región and left eyelid with a broken frontal bone and burs of left eyeball”; in the limbs: “abrasion of 4x0.6 cms. In external face of proximal third of right arm. Open wound with dislocation of metacarpo phalangeal joint of 1.7x0.7 cms in the first finger of right hand.” Annex. 73. National Institute of Legal Medicine and Forensic Sciences, Local Unit of Barrancabermeja, Collection of the body and Autopsy Report, September 5, 1995. Annex 3 of the petitioners’ brief received on December 6, 2010.

³⁶⁴ Annex. 73. National Institute of Legal Medicine and Forensic Sciences, Local Unit of Barrancabermeja, Collection of the body and Autopsy Report, September 5, 1995. Annex 3 of the petitioners’ brief received on December 6, 2010.

³⁶⁵ Annex. 73. National Institute of Legal Medicine and Forensic Sciences, Local Unit of Barrancabermeja, Collection of the body and Autopsy Report, September 5, 1995. Annex 3 of the petitioners’ brief received on December 6, 2010.

³⁶⁶ Annex. 73. National Institute of Legal Medicine and Forensic Sciences, Local Unit of Barrancabermeja, Collection of the body and Autopsy Report, September 5, 1995. Annex 3 of the petitioners’ brief received on December 6, 2010.

³⁶⁷ The description of the evidence is at: Annex. 81. 15th Office of the Military Criminal Prosecutor before the Second Court of Second Division Brigades, investigation proceeding review, October 24, 2003. Annex 16 of the petitioners’ brief received on December 6, 2010.

³⁶⁸ Annex. 74. Complaint filed by Mrs. María Rosalba Bárcenas Torres with the Municipal Ombudsperson (*Personería Municipal*) of Barrancabermeja on September 7, 1995. Annex 5 of the petitioners’ brief received on December 6, 2010.

³⁶⁹ Annex. 77. Additional statement and ratification by Mrs. Rosalba Bárcenas Torres of October 19, 1995. Annex 8 of the petitioners’ brief received on December 6, 2010.

³⁷⁰ Annex. 88. Report from the Head of the Technical Investigation Group, 1709 GH-CTI, October 25, 1995. Annex 10 of the petitioners’ brief of December 6, 2010.

under no circumstance would they approach the Attorney General's office to testify on these events, despite knowing of them, since they fear for their personal and their families' integrity. They even closed any possibility to dialogue about the events."³⁷¹

265. On November 15, 1995 a photo album of the collection of the body was made. According to it, Albeiro Ramírez Jorge's body was in "supine position" and "a wound with tattoo in the mouth area, top lip" was noted together with "a hole with tattoo in the cervical region, left side." In relation with Mr. Wilfredo Quiñónez's body, "it is noted that the corpse is in supine position;" and that "an open wound was observed in the right side of the zygomatic region;" "a wound in the left frontal region" and "a wound in the middle third region and upper left arm"; "two wounds in the supra mammary region right side and the hypochondria region on the same side;" "a wound in the inner region of the left hand's thumb." In relation with José Gregorio Romero Reyes, it was noted that the body was lying on his abdomen and that he had "multiple lacerations and wounds in the thorax and abdomen;" as well as "some lacerations and bruises in the region of the left arm, as well as lacerations in neck and face."³⁷²

266. On December 14, 1995, the 38 Military Criminal Investigation Judge informed that his office had started a preliminary investigation for the murder of Mr. Wilfredo Quiñónez Bárcenas on September 4, 1995, when he was allegedly killed by members of the troops of the "*Héroes de Majagual*" Battalion.³⁷³

267. On October 27, 1997, 1^o Judge of Criminal Investigation informed the Solicitor General that the gauntlet test was not performed by those who collected the body."³⁷⁴ Mr. José Gabriel Martínez Ramírez, expert in dactiloscopia, employee of the Bucaramanga SIJIN, stated that at the time of the events, paraffin for the gauntlet "was very scarce and was finished in a short time" and "at that time, paraffin was completely finished." In relation to the atomic absorption test, he said that "we never have those materials at the Unit that collects the corpses."³⁷⁵ He established that he had informed his boss about the absence of these tests and that they had requested the materials to Bucaramanga, with no results."³⁷⁶

268. On October 29, 1997, 1^o Judge of Criminal Investigation informed the 17 Solicitor General "Administrative Affairs" Office that "by means of an order dated September 1, 1997 he decided to continue the investigation for the 3 murders under the same line, as he noticed that witness testimonies and circumstances allow for some connection."³⁷⁷ The Bucaramanga 1^o Judge of Criminal Investigation started the investigation and on April 20, 1999 ordered the preventive detention of the defendants and granted them bail.³⁷⁸

269. Between May 15 and September 5, a jurisdiction clash between the 15th Office of the Military Criminal Prosecutor acting at the Second Court of Second Division Brigades, and 11th Office of the Military Criminal Prosecutor acting at the Second Court of Second Division, arose. This clash was resolved on

³⁷¹ Annex. 88. Report from the Head of the Technical Investigation Group, 1709 GH-CTI, October 25, 1995. Annex 10 of the petitioners' brief of December 6, 2010.

³⁷² Annex. 116. Photo-album of the collection of corpses, November 15, 1995. Submitted by the petitioners on May 18, 2012.

³⁷³ Annex. 117. Report from Judge 38 I.P.M, 738 BAGRA-J-24IPM-749, December 14, 1995. Annex 12 of the petitioners' brief of December 6, 2010.

³⁷⁴ Annex. 118. Communication from Judge of the 1o Criminal Investigation Court to the university professional at the Attorney General's Office, No. 480/BR5-J11PM-790, October 27, 1997. Annex 1 to the petitioner's brief received on September 6, 2011.

³⁷⁵ Annex. 119. Communication from Mr. José Gabriel Martínez Ramírez to the 1o Military Criminal Investigation Court, April 17, 1998. Annex 3 to the petitioner's brief received on September 6, 2011.

³⁷⁶ Annex. 119. Communication from Mr. José Gabriel Martínez Ramírez to the 1o Military Criminal Investigation Court, April 17, 1998. Annex 3 to the petitioner's brief received on September 6, 2011.

³⁷⁷ Annex. 118. Communication from Judge of the 1o Criminal Investigation Court to the Administrative Affairs Judicial Prosecutor 17, No. 492/BR5-J11PM-790, October 29, 1997. Annex 2 to the petitioner's brief received on September 6, 2011.

³⁷⁸ Annex. 120. Military High Court, Judgment of January 18, 2005. Annex 18 of the petitioners' brief received on December 6, 2010.

September 5, 2002, when the Second Military Prosecutor's Office determined that the Military Prosecutor's Office 15 had jurisdiction over the case.³⁷⁹

270. On August 20, 2003, the Criminal Prosecutor requested the 15th Office of the Military Criminal Prosecutor to pass accusation against "CT Prieto Rivera Jairo, SL. Matallana Luis and SL Ceballos Arboleda" as co-authors of the crime of murder to the detriment of Mr. Wilfredo Quiñónez. With respect to the other deaths, the Prosecutor indicated that "Wilfredo was found in the *La Paz* neighborhood and José and Albeiro were found in the road leading to the *Yarigüies* airport, which are distant locations."³⁸⁰ The Attorney General's office noted a number of inconsistencies between the versions of the military and the available evidence.³⁸¹

271. On October 24, 2003, the 15th Office of the Military Criminal Prosecutor decided to suspend the procedure against the military defendants and ordered to send copies of the record to the ordinary criminal justice for them to continue with the investigation of the death of José Gregorio Romero and Albeiro Ramírez Jorge.³⁸² The 15th Office of the Military Criminal Prosecutor dismissed the alleged findings of torture referring to a technical test of January 3, 2002, which supposedly indicated that "the findings described in the Autopsy No. SA-225-95, such as bruising, fracture and abrasion with burnt edges were related to the damage that an item that travels at a high speed and temperate, such as a firearm projectile, produces. That is possible even without direct contact with the tissue, like in the case of the eyeball and the bone structure; its explosive and vibrating wave could make it happen and that -as there is no inlet of outlet hole- the description of the wound is made as generalized findings." In relation to the trajectories of the shooting, the 15th Criminal Prosecutor stated that "we must necessarily conclude that, given the engaging operation deployed by the patrol at the time of the aggression, said shots came from both the personnel who descended from the first vehicle on the road and those who repelled it from the upper inferior level."

272. On May 21, 2004, the 2nd Office of the Prosecutor acting before the Military High Court decided the appeal submitted by the representative of the civil plaintiff against the aforementioned order.³⁸³ The Office of the Attorney General stated that the "negligence and carelessness of the investigators was obvious, both in the ordinary jurisdiction as well as in the Military Criminal jurisdiction." He also established that this situation was made obvious in the two year delay that took for the investigation to be opened, since the Military Criminal Judge was informed of the violent death of Wilfredo Quiñónez Bárcenas on September 4,

³⁷⁹ Annex. 120. Military High Court, Judgment of January 18, 2005. Annex 18 of the petitioners' brief received on December 6, 2010.

³⁸⁰ Annex. 90. Criminal Judicial, Preclassification murder, August 20, 2003. Annex 14 of the petitioners' brief received on December 6, 2010.

³⁸¹ Among them: i) there would be inconsistencies over if the vehicles were advancing in the enveloping form, which could "at the end mean that they very close to having accident among the troops" as they would have been in a "cross fire;" ii) that Captain Prieto did not report on the patrolling and the report just stated the operation without giving much detail about it and instead, putting out names of soldiers as witnesses of the events, who then expressed that they had no direct link to the events, except for one who would have told the story differently; iii) that Captain Prieto was unclear in his statements as he referred to two groups that were "engaged" and that the young man died when he began to notice the presence of the troops; as well as that he was riding in the second car as a passenger, then in another statement he said he was driving and subsequently he said that he was riding "as a passenger in the first vehicle;" iv) that Captain Prieto states that Mr. Quiñónez noticed the presence of the soldiers when they were inside a car, which was qualified as a "curious element" as the vehicles were travelling with their lights on, which prevents visibility of the occupants and that's "when he decided to flee by using his firearm;" v) six of the shots had a "back-front" path and three a "front-back" path, which allows to "question the occurrence of aggression against the troop," as the body was in "supine position;" vi) according to the shot trajectories "how could he receive the projectiles from the back?" and taking into account that they were in a the trajectory of flat bottom "top" it is difficult to explain when the field was tilted in favor of the deceased, which in any case should have been "horizontal or inferior superiors." Annex. 90. Criminal Judicial, Preclassification murder, August 20, 2003. Annex 14 of the petitioners' brief received on December 6, 2010.

³⁸² Annex. 115. 15th Office of the Military Criminal Prosecutor before the Second Court of Second Division Brigades, investigation proceeding review, October 24, 2003. Annex 16 of the petitioners' brief received on December 6, 2010.

³⁸³ Annex. 121. 2^o Office of the Attorney General acting before the Military High Court, Order of May 21, 2002. Annex 17 to the petitioners' brief received on December 6, 2010.

1995 and he opened the investigation on November 28, 1997.³⁸⁴ The 2nd Prosecutor's Office noted that the corpse of the deceased was only 12 meters away from the bicycle he rode, which was an indication that "if he ran as alleged, he failed to move much and wasn't chased much, as there was neither the time nor the distance to ask him to stop or to shoot to the air."

273. The Attorney General's office concluded that it was not proven that the defendants had caused the death of Wilfredo Quiñónez Bárcenas in circumstances what would be self-defense, he "revoked the suspension" and issued an accusation for the defendants to be brought before the Martial Court. In relation with the murders of Albeiro Ramírez Jorge and José Gregorio Romero Reyes, the Attorney General's office stated that "the circumstances in which the bodies were found" and the reiterative denial of any involvement from the members of the military forces, "constitutes an absolute obstacle that prevents a ruling from the military criminal jurisdiction."³⁸⁵

274. From August 20, 2004 until January 18, 2005 there was a jurisdiction clash between the Second Court of Division Brigades³⁸⁶ and the Sixth Court of Brigades³⁸⁷ that was decided in favor of the first by the Military High Court on January 18, 2005.³⁸⁸

275. On May 3, 2005, the Second Specialized Criminal Court of Bucaramanga declined to raise a positive jurisdiction clash requested by the representatives of the next of kin.³⁸⁹ A *tutela* action was filed against said order, and it was decided on October 12, 2005 by the Constitutional Section of the High Court of the Judicial District. The High Court denied the *tutela* action and stated that the assessment of torture no anyway corresponds to a determination via *tutela* and therefore the *tutela* did not proceed against a judicial decision.³⁹⁰

276. On December 1, 2005, the Second Brigade Court passed a judgment and sentenced the defendants, Major Prieto Rivera Jairo Alberto and Volunteer soldier, Pineda Matallana Luis Enrique, to 20 months in prison for the murder of Wilfredo Quiñónez. It also determined that the convicted had "the right to continue enjoying from their freedom" and further decided to "acquit the SLV. Ceballos Arboleda Orlando Evelio."³⁹¹

277. The aforementioned decision was appealed on December 2005 by the civil plaintiffs.³⁹² On June 1, 2006, Military Criminal Judicial Investigator II sent a letter to the Rapporteur Colonel Judge, explaining that according to the Judicial Investigator, the shots to the back of the deceased were a result of Mr. Wilfredo Quiñónez's attempt to flee and that is when "when the projectiles hit his back."³⁹³

³⁸⁴Annex. 121. 2º Office of the Attorney General acting before the Military High Court, Order of May 21, 2002. Annex 17 to the petitioners' brief received on December 6, 2010.

³⁸⁵Annex. 125. 2º Office of the Attorney General acting before the Military High Court, Order of May 21, 2002. Annex 17 to the petitioners' brief received on December 6, 2010.

³⁸⁶ Annex. 124. Military High Court, Judgment of January 18, 2005. Annex 18 of the petitioners' brief received on December 6, 2010.

³⁸⁷ Annex. 124. Military High Court, Judgment of January 18, 2005. Annex 18 of the petitioners' brief received on December 6, 2010.

³⁸⁸ Annex. 124. Military High Court, Judgment of January 18, 2005. Annex 18 of the petitioners' brief received on December 6, 2010.

³⁸⁹ Annex. 122. Tutela action filed before the Criminal Section of the Santander High Court in September 2005. Annex 19 of the petitioners' brief received in December 6, 2010.

³⁹⁰ Annex. 123. District Judicial High Court, Constitutional Section. Judgment of October 12, 2005. Annex 20 of the petitioners' brief received in December 6, 2010.

³⁹¹ Annex. 126. Edict of December 6, 2005. Annex 21 of the petitioners' brief received in December 6, 2010.

³⁹² Annex. 127. Appeal submitted by the civil plaintiffs. Annex 22 of the the petitioners' brief received in December 6, 2010.

³⁹³ Annex. 129. Prosecutors Office 19 Criminal Judicial II Penal, Communicatio of June 1, 2006. Annex 23 of the the petitioners' brief received in December 6, 2010.

278. On September 4, 2006, Mr. Ángel María Noriega Gomez, witness of the events, gave his statement about an incident that allegedly took place on August 26, 2006, around 9:30PM. He stated that he was in *Las Granjas* neighborhood, one block from the police station when “two guys showed up on a White motorcycle, that was rode by Mr. José del Carmen Arévalo Quintero, also known as “Carmelo”, a pensioner from the armed forces and on the back, Mr. Wilmer Arévalo Quintero”. He said that those persons “approached him and without getting off the bike, Wilmer pulled out a shiny weapon and when I saw him, I started to run.” He maintained that he chased him “around 50 meters, shooting repeatedly” and that he was “hit by shots to his back, right arm, left foot, and another grazed his right shoulder.” He stated that he fell to the ground but by that time the chase was over. He said that he ran 10 meters “when a policeman asked him to stop.” He said that Wilmer demobilized from the *Autodefensas* in Puerto Boyacá.³⁹⁴

279. On June 31, 2007, the Military High Court passed judgment in relation to the appeal and decided to send the proceedings to the Life and Human Rights Unit of the National Attorney General’s Office.³⁹⁵ The Court indicated that the investigation before the military and ordinary jurisdictions, “during the prolonged period that has passed”, “in no way meets the constitutional standards for a criminal proceeding ... in that it did not allow the clarification unequivocally of the precise place and time circumstances in which the events happened.”³⁹⁶ The Court noted that there is no explanation for “why such a delicate and complex situation was carried out on a preliminary basis for so long and was closed ... without clarifying the different topics”³⁹⁷, and named some of the aspects that were not analyzed thoroughly in the investigation.³⁹⁸ The Court stated that “under the circumstances it was not viable to close the investigation and reach the decision made by the Attorney General’s office” and that Lte. Prieto’s behavior had no direct and close relationship with his military duty.³⁹⁹

280. On January 22, 2008, the Criminal Section of the District High Court established that at the time the investigation phase took place, “the investigation could only be closed by the Attorney General’s office from the ordinary jurisdiction.” Therefore, it decided to declare null and void all the proceedings from the closure of the investigation of July 30, 2003 onwards.⁴⁰⁰ On February 12, 2008, the 5th Office of Attorney General took the case and “even though the terms for the investigation have elapsed,” it declared the investigation closed.⁴⁰¹ This decision was revoked on September 2, 2008 by the 67th Office of the Attorney General, which declared the connection between the case for the death of Mr. Quiñónez with those of Gregorio Reyes and Albeiro Ramírez, due to evidence sharing, and ordered additional proceedings.⁴⁰²

281. On October 3, 2008, the investigator submitted a report in relation to the proceedings that were completed. Among them, he signaled that Mr. Reynel, owner of the shop where the witnesses were chatting, died on April 20, 2005. He also stated that Mrs. Diana Isabel Porras informed that on the day of the events, Mr. Carlos Augusto Zabala Serrano was also taken to the military truck. He was identified with ID No.

³⁹⁴ Annex. 130. Written statement of Mr. Ángel María Noriega Gómez, September 4, 2006. Annex 24 of the petitioners’ brief received in December 6, 2010.

³⁹⁵ Annex. 91. Military High Court, Judgment of July 31, 2007. Annex 25 of the petitioners’ brief received in December 6, 2010.

³⁹⁶ Annex. 91. Military High Court, Judgment of July 31, 2007. Annex 25 of the petitioners’ brief received in December 6, 2010.

³⁹⁷ Annex. 91. Military High Court, Judgment of July 31, 2007. Annex 25 of the petitioners’ brief received in December 6, 2010.

³⁹⁸ The aspects named by the Court are cited in para. 289 of the instant report. Cf. Annex. 91. Military High Court, Judgment of July 31, 2007. Annex 25 of the petitioners’ brief received in December 6, 2010.

³⁹⁹ Annex. 91. Military High Court, Judgment of July 31, 2007. Annex 25 of the petitioners’ brief received in December 6, 2010.

⁴⁰⁰ Annex. 131. District High Court, Criminal Section, Judgment of January 22, 2008. Annex 26 of the petitioners’ brief received in December 6, 2010.

⁴⁰¹ Annex. 132. Barrancaberma’s Fifth Attorney General’s Office, decision of February 12, 2008. Annex 27 of the petitioners’ brief received in December 6, 2010.

⁴⁰² Annex. 133. 67th Office of the Attorney General’s Human Rights and International Humanitarian Law Section, decision of September 2, 2008. Annex 28 of the petitioners’ brief received in December 6, 2010.

9.439.341 from Barrancabermeja, resident in the *la Esperanza* neighborhood and who owns the mobile number 310-7000011. His life was saved thanks to his sister, Blanca Zabala Serrano.⁴⁰³ On October 6, 2008 the 67th Office of the Attorney General's Human Rights and International Humanitarian Law Section, took the declaration of Mr. Luis Alfonso Agudelo Martínez;⁴⁰⁴ on October 6, 2008 of Mrs. Diana Isabel Porras Ramírez;⁴⁰⁵ and on October 29, 2008 of Mr. Ángel María Noriega Gómez."⁴⁰⁶

282. On September 28, 2009 67th Office of the Attorney General determined the closing of the proceedings "as the investigation phase term has more than elapsed."⁴⁰⁷ According to the information provided by the State, on December 27, 2011 the 67th Office of the Attorney General reviewed the investigation procedure and accused the defendants Major Jorge Alberto Prieto Rivera and soldier Luis Enrique Pineda Matallana⁴⁰⁸ of the crime of murder under aggravated circumstances. The State also informed that there was a "procedural rupture in which it was ordered to continue the investigation for the crime of torture to investigate the other participants and the crime of torture" and established that there were "other probatory means that the attorney general's office shall exhaust, such as the exhumation for a possible autopsy and that other witnesses shall be located."⁴⁰⁹ The Commission does not have more information about the status of this subsequent process.

ii) Disciplinary proceedings

283. On June 28, 2000, the Disciplinary Prosecutor for the Defense of Human Rights from the Solicitor General's Office rendered an order about the disciplinary investigation into the events. In it, Mr. Jairo Alberto Prieto Rivera⁴¹⁰ was found responsible. The Delegate stated that, "the youth, while still alive – because the contrary is not stated- was subjected to torture." In relation with Mr. José Gregorio Romero Reyes she noted that the autopsy report "establishes that bruises were found in three places, but clarifies that they occurred post-mortem, which dismisses the occurrence of the conduct referred thereto (torture)." In relation to Mr. Albeiro Ramírez Jorge, "bruises were found in the left cheek bone and left chin and left lateral of the thorax, which implies that this victim was also subjected to torture while still alive."⁴¹¹ Finally, the Delegate concluded that "the accounts of the person being investigated and the soldiers that accompanied him the night of the events, are not worth of any credit since it has not been proven that the victim had any weapons, it becomes an indication of responsibility as it discards the combat situation alleged by the defendant."⁴¹²

⁴⁰³Annex. 134. Criminal investigator II UNDH-DIH CTI, Report of October 3, 2008. Annex 39 of the petitioners' brief received in December 6, 2010.

⁴⁰⁴ Annex. 89. Statement by Mr. Luis Alfonso Agudelo Martínez at the 67th Office of the Attorney General, October 6, 2008. Annex 30 of the petitioners' brief received in December 6, 2010.

⁴⁰⁵ Annex. 78. Statement by Diana Isabel Porras Ramírez before at the 67th Office of the Attorney General's Human Rights and International Humanitarian Law Section, October 6, 2008. Annex 31 of the petitioners' brief received in December 6, 2010.

⁴⁰⁶ Annex. 135. Statement by Mr. Ángel María Noriega Gómez at the 67th Office of the Attorney General's Human Rights and International Humanitarian Law Section, October 29, 2008. Annex 32 of the petitioners' brief received in December 6, 2010.

⁴⁰⁷ Annex. 136. 67th Office of the Attorney General's Human Rights and International Humanitarian Law Section, Decision of September 28, 2009. Annex 33 of the petitioners' brief received in December 6, 2010.

⁴⁰⁸ IACHR, Hearing Case 12. 711, Wilfredo Quiñónez Bárcenas, Colombia, held during the 144 Period of Sessions, March 26, 2012. Available at: <http://www.oas.org/es/cidh/audiencias/hearings.aspx?lang=en&session=125>

⁴⁰⁹ IACHR, Hearing Case 12. 711, Wilfredo Quiñónez Bárcenas, Colombia, held during the 144 Period of Sessions, March 26, 2012. Available at: <http://www.oas.org/es/cidh/audiencias/hearings.aspx?lang=en&session=125>

⁴¹⁰ Annex. 128. Disciplinary Prosecutor for the Defense of Human Rights, order of June 28, 2000. Annex 34 of the petitioners' brief received on December 6, 2010.

⁴¹¹ Annex. 137. Disciplinary Prosecutor for the Defense of Human Rights, order of June 28, 2000. Annex 34 of the petitioners' brief received on December 6, 2010.

⁴¹² Annex. 137. Disciplinary Prosecutor for the Defense of Human Rights, order of June 28, 2000. Annex 34 of the petitioners' brief received on December 6, 2010.

284. On September 27, 2000, the Disciplinary Prosecutor for the Defense of Human Rights decided the appeal filed against the aforementioned decision. The Delegate noted that the facts under investigation took place on September 3, 1995, and decided “the statute of limitation of the disciplinary action.”⁴¹³ In accordance with the analysis of the “enlisted defendants”, from the Solicitor General’s Office, Mr. Jairo Alberto Prieto Rivera had a total of 19 of asserted defences linked to violations of human rights, including “torture,” “threats” and “illegal detentions.”⁴¹⁴

iii) Proceedings in the Administrative-Law jurisdiction

285. After the filing of a suit seeking direct damages at the Administrative-Law jurisdiction by proving that the State was liable in the case, the accumulation of the proceedings was determined on August 10, 2001 “for damages caused by death of Wilfredo Quiñónez Bárcenas and José Gregorio Reyes”. In connection with the death of Mr. Wilfredo Quiñónez on August 27, 2007, the Administrative-Law Court of Barrancabermeja decided to approve an agreement of partial conciliation between Mr. Quiñónez next of kin and the National Ministry of Defense- Army.⁴¹⁵

286. In connection with the death of Mr. José Gregorio Romero Reyes, the Administrative-Law Court of Barrancabermeja passed a judgment and determined that “the circumstances in which Mr. José Gregorio Romero Reyes ended up dead and by extension Messrs. Albeiro Ramírez Jorge and Wilfredo Quiñónez Bárcenas [...] did not arise either as a result of a confrontation with criminals or as part of an organized operation pursuant to the duties of members of the military forces. On the other hand, they were extrajudicial executions. In said terms, the Court concluded that there was a “failure in military service” and declared the State responsible administratively for the death of Mr. José Gregorio Romero Reyes.⁴¹⁶

b. Considerations of the Commission

i) In relation with the Independence and impartiality of the authorities in charge of the case

287. Taking into account that the Commission has already stated its position on the scope of the military criminal jurisdiction and the violation of the independence and impartiality guarantees resulting from its application in cases such as the instant, (see *supra* paras. 214 and ongoing), the Commission notes that the information from the case file verifies that the criminal military jurisdiction was used to study the death of Mr. Quiñónez over more than 13 years from the start of the investigation. The events took place in 1995 and it was not until June 31, 2007 that the Military High Court decided to send the case to the Attorney General’s Office, which took over the case in year 2008.

288. In light of the aforementioned considerations, the Commission concludes that the State of Colombia did not offer Mr. Wilfredo Quiñónez’s next of kin a criminal investigation in proceedings by independent and impartial judges over a 13 year-long period, in violation of Articles 8 and 25 of the American Convention, in relation with its Article 1(1).

ii) In relation with the due diligence in the investigation for the deaths and torture of the victims

⁴¹³ Annex. 138. Disciplinary Prosecutor for the Defense of Human Rights, order of September 27, 2000. Annex 35 of the petitioners’ brief received on December 6, 2010.

⁴¹⁴ It was stated that he “does not have active sanctions or inhabitations in file.” Annex. 139. Solicitor General’s Office, list of registered defendants. Annex 39 of the petitioners’ brief received on December 6, 2010.

⁴¹⁵ Annex. 140. Administrative-Law Court of Barrancabermeja, Order of August 27, 2007. Annex 37 of the petitioners’ brief received on December 6, 2010.

⁴¹⁶ Annex. 141. Administrative-Law backlog Court of Barrancabermeja, ruling of first instance, June 3, 2011. Annex 5 of the petitioners’ brief received on September 6, 2011.

289. From the bundle of domestic investigations in the case file before the Commission, it is observed that from the beginning of the investigation there were important omissions that affected the possibility to learn the truth of the events. The Commission notes that these omissions by military and civilian authorities in charge of the case were established from the outset of the domestic proceedings. Thus, drawing from the statements of the domestic authorities, *inter alia*, the Commission highlights the following inconsistencies and omissions in the investigation:

- a. The employees of “SIJIN” that collected the body, “did not adopt indispensable measures to preserve the crime scene and guarantee the chain of custody or collect the remains in it, or the incriminated weapon, as well as other characteristics of the fire arms that were carried by the patrol, or undertake a ballistic comparison with regards to the “casing that was apparently found by the relatives of the deceased;”
- b. The “recovered projectiles” were apparently “lost in the Attorney General’s office of Barrancabermeja, a surprising aspect that has yet to be clarified;”
- c. The visual inspection of the crime scene and the reconstruction of the events were done “many years later, at a different time, without the participation of the witnesses, especially Ángel María Noriega Gómez, or experts in ballistics and mapping;”
- d. The record keeping of the shifts and archives of the *Nueva Granada* Battalion, *Counter guerrillas* No. 45 “*Héroes de Majagual*”, or the military bases of Aguabarranca, the refinery, ECOPETROL, or the Bucaramanga *gaula* were not revised “to verify the tactical antecedents of the case that could eventually clarify the events and confirm which vehicles were in use at the time;”
- e. “On page 503” “TE PRIETO, ST. FONSECA, SL. LARA y al TC. Sánchez” were included as members of the armed forces in the operation, and not the “defendant soldiers and their colleagues and supervisors as direct authors of the death of Mr. Wilfredo Quiñónez Bárcenas, especially Tabares y Tarazona, who apparently died;”
- f. The reasons for the deployment of the troops were not clarified, “if it was a ghost plan in the north Eastern part of the city of Barrancabermeja, specifically in the neighborhoods of: La Paz, La Esperanza and Primero de Mayo, to try and locate the authors of the killing of four volunteer soldiers of the Counter-guerrillas No. 45 Battalion, that were shot to death in a shop in la Esperanza neighborhood”;
- g. The “amount, characteristics and origin of the automotive vehicles used were not identified, truck, van, etc., one of which apparently had license plates ending in number 677;”
- h. “The distance between the vehicles and their occupants: the precise circumstances in which the attack started, the response to the warning raised and the shots fired by the troops, as warning signs” were not clarified;”
- i. It was not clarified if the visibility conditions were optimal or otherwise, an issue that affects the possibility to realize the presence of both the military and the witness when the events took place;”
- j. The “identity and location of the members of the army forces that fired their duty weapons and who killed the youth” were not clarified;”
- k. There are inconsistencies in connection with Mr. Wilfredo Quiñónez’s corpse, which was found face down, as stated by some of the members of the military forces, “in contradiction with what is stated in pages 43 and 49 of the first notebook;”

- l. The persons who demobilized Abel López and Roberto Gutiérrez, who made accusations in 2005 against “aka. la Bruja” (the witch) as a participant in the killing of the 4 soldiers, “haven’t even been cited to make a statement;”
- m. Soldier Esteban Carreño indicated that he was not aware of anything that happened as he had drunk some beers, without ever explaining why they “take an alcohol impaired person to a military operation;”
- n. Soldier Granados Ramírez refers to three vans: yellow, green and red, it was Lieutenant Prieto who “during one of his statements acknowledged the existence in his parking of at least one white truck;” however, this was not investigated thoroughly; and
- o. The contradictions posed by Lieutenant Prieto throughout the investigation were never investigated. In his voluntary deposition of March 1998, he said that he did not know who the members of the patrol were and who shot Mr. Quiñónez, even though in another statement he “accused SL. Tabares Mejía, who was killed on April 24, 1996 as the author,” also, he maintained that he was in the second vehicle and that only the first one was ambushed. However in the hearing before the Military War Court he admitted that “three vehicles participated in the operation and that he lost sight of the victim when he threw himself against the truck, an event that he had not referred to previously.

290. On the other hand, the Commission notes that according to the information from the Investigation Judge to the Solicitor General’s Office, “the paraffin test was not done to the corpse” to determine if the weapon found was fired by Mr. Wilfredo Quiñónez. According to the explanation given domestically, staff of SIJIN did not have the necessary materials to conduct such a test or the atomic absorption test at the time of the events.

291. The Commission notes that due to the lack of proceedings and evidence highlighted, the Second Office of the Attorney General acting at the Military High Court stated that “negligence and carelessness of the investigators was obvious, both in the ordinary jurisdiction as well as in the Military Criminal jurisdiction.” Also, the Military High Court described that the investigation “during the prolonged period that has passed,” “in no way meets the constitutional standards for a criminal proceeding ... in that it did not clarify unequivocally the precise place, time and circumstances in which the events happened.” As a result of these failures, the Commission observes that the investigation after been closed had to be reopened by the ordinary jurisdiction to finally be closed on September 28, 2009. This is more than 14 years from the moment that the events took place. The Commission notes that even though different authorities took note of the deficiencies, and the “negligence and carelessness” in the investigation, they failed to take measures to correct or sanction such deficiencies.

292. In addition, the Commission considers that from the analysis of the various proceedings and military judicial decisions, the absence of proceedings to count with additional elements to compare the accounts from military officers and identify all the members of the armed forces that participated in the events is to be noted. Some of these failures that took place during the long period of time in which the case was under the military criminal jurisdiction have not been fixed in the ordinary jurisdiction and some others had an impact on the real possibility to gather evidence.

293. As an example, one of the witnesses, Mr. Reynel, who according to Mr. Noriega was the owner of the shop from which the events could be observed and from where the three youths had taken in their bicycles, died on April 2005, which made his lack of participation in the proceedings irreparable. Also, it is to be noted that according to the case file, there was a person who allegedly wanted to contribute to the investigation, Mr. Fernán Sierra, and its later mentioned that his wish was to negotiate a price for his information, and therefore did not provide any data,” without any explaining if there was any follow up. This situation is especially serious taking into account that this person was killed under circumstances that are not clarified in the file and without determining if his death is related to the case.

294. The Commission also notes that even though the authorities had the telephone and identification numbers of Mr. Carlos Augusto Zabala Serrano, who was allegedly taken into the truck, where the victims were held, there is no information in the file that shows that any efforts were geared towards locating or interviewing him. To date there are no further investigations regarding the background denounced by Mr. Luis Alfonso Agudelo Martínez with regards to the perpetration of executions at the time of the events as retaliation for the deaths of soldiers. Also, there was no further investigation into the attack suffered by Mr. Noriega on August 26, 2006 and whether it was related to the events in the instant case.

295. On the other hand, the Commission notes that to date there is no definite ruling on the allegations of torture to which the victims would have been subjected. The aforementioned, notwithstanding the existence of declarations from Mrs. Bárcenas, Numael Antonio Martínez and Diana Porras who stated that the victims were tortured, as well as the description of the wounds that are contained in the report of the collection and autopsy of the bodies from the Institute of Legal Medicine as well as the photo album of such proceedings.

296. The Commission observes that at the time the Attorney General's office dismissed the alleged findings of torture, referring to a technical test of January 3, 2002, which supposedly indicated that "the findings described in the Autopsy No. SA-225-95, such as bruising, fracture and abrasion with burnt edges, were related to the damage caused by an item that travels at a high speed and temperature, such as a fire arm projectile." However, as reported by the State in the hearing held in connection with this case, a "procedural break in which it was ordered to continue the investigations for torture to investigate the other participants" existed and it noted that there was "other evidence that the Prosecutor has to exhaust, such as the exhumation and the search for other witnesses." The Commission considers therefore that no measures have been taken to have a definitive ruling by the State that would help clarify the specific circumstances in which the wounds found on the bodies happened and to investigate those responsible for the omissions in the autopsy and the collection of the body.

297. Finally, in relation to the progress of the proceedings before the ordinary jurisdiction, the Commission notes that even though Mr. Quiñónez's case took approximately 12 years in the military criminal jurisdiction, the files of Messrs. Romero and Ramírez were sent to the ordinary jurisdiction in 2003, by means of the 15 Criminal Prosecutor's order, to then be processed together with the case of Mr. Quiñónez, on September 2, 2008. The Commission notes that during this period of approximately five years, no information about any substantive progress has been received regarding the two cases. In addition, the Commission notes that the scarce proceedings executed by the civilian jurisdiction confirmed the fear and lack of trust from the people to give their witness statements, which is evident in the judicial report of October 25, 1995. In it, different people from the "northeastern" neighborhoods establish "that under no circumstance would they approach the Attorney General's office to testify on these events, despite knowing of them, since they fear for their personal and their families' integrity."

298. In light of the aforementioned, the Commission concludes that the investigation was not diligent and has not efficiently clarified the events that surrounded the deaths of the victims in violation of Articles 8 and 25 of the Convention. Also, the Commission considers that the lack of investigation of the torture and denial of justice for the events that occurred after January 19, 1999 involves the State's responsibility for the violation of Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture. For the purpose of carrying out this last consideration, the Commission notes that, although in its Admissibility Report No. 68/09,⁴¹⁷ it did not refer to the application of said Convention, the facts supporting the existence of such violation arise from the information and evidence provided by the parties in the course of the proceedings before the IACHR and for which the State has had the opportunity to submit its comments.

iii) Reasonable time

⁴¹⁷ IACHR, Report No. 68/09, Admissibility, Wilfredo Quiñónez Bárcenas and family (Colombia), August 5, 2009.

299. According to the information provided by the State, the last proceeding in this case was done in December 27, 2011, when the 67th Office of the Attorney General reviewed the merits of the pre-trial investigation and accused Major Jorge Prieto and Soldier Luis Enrique Pineda Matallana of the crime of aggravated murder. The Commission notes that said decision took place more than 16 years after the events and that to date, more than 19 years later, neither of the parties have informed it of a definite ruling with regards to the investigation for the death and torture of the victims. The Commission considers that this lapse is unreasonable and that there is no evidence in the file that could justify such delay.

300. In particular, the investigation is not too complex as it is related to three identified victims and the possible perpetrators were identified from the first day of the investigation, as they are members of the armed forces who were in a truck that participated in an operation that day in that specific location. In addition, the Commission notes that the relevant authorities had complete access to the scene of the events and the opportunity to perform all the technical tests that were relevant.

301. In terms of the behavior of the authorities, the Commission notes that the application of the military criminal jurisdiction, as well as the failure of the authorities to conduct the procedures and technical tests required to ascertain the truth of what happened have, with the passage of time, generated serious obstacles to access justice in the case. This situation was recognized by the head of the Unit for Human Rights and International Humanitarian Law of the Office of the Attorney General, who, at the hearing in the case, expressed the view that “unfortunately many years have passed; this hinders the development of the investigation.”⁴¹⁸

302. Thus, the Commission notes that since the opening of the proceedings an existing delay was brought up by the 2nd office of the Prosecutor before the Military High Court, which said that the “negligence and carelessness” of the investigators was obvious in the two year-long delay in opening the investigation, since the Military Criminal Judge was informed of the violent death of Wilfredo Quiñónez Bárcenas on September 4, 1995 and he opened the investigation on November 28, 1997. With regards to the application of the Criminal military justice system and its effects on the reasonable time, the Commission notes that the case related to the death of Mr. Wilfredo Quiñónez was kept in the military criminal jurisdiction for more than 13 years. In said time there were jurisdictional disputes between the military courts and there were no proceedings that allowed for the investigation phase to be closed. As noted by the Military High Court, “the prolonged period that has passed” in the investigation “did not allow for the clarification unequivocally of the precise place, time and circumstances in which the events happened” and considered that “under those circumstances it was not viable to close the investigation”.

303. The Commission observes that when the case was finally taken to the ordinary jurisdiction, on January 22, 2008, because the investigation could not be closed by a military court, the District High Court, Criminal Section, declared null and void all the proceedings up to July 30, 2003. The Commission notes that even though it was closed again on February 12, it was later required that this be revoked, and the closing was finally determined on September 28, 2009, that is, more than 14 years from the occurrence of the events, even when some fundamental proceedings had not taken place and some aspects were not duly clarified. On the other hand, with regards to the investigation of the deaths of youths Ramírez and Romero, the Commission notes that when the connection between their cases and Mr. Quiñónez’s was declared, there were no substantive advances during the more than 10 years that the investigation into their deaths was pending before the ordinary jurisdiction.

304. Finally, with regards to the behavior of interested parties, the Commission observes that the next of kin and representatives of the victims have not hampered the process, but contributed to the investigation of the events and have exercised the rights that derive from their participation in the process.

⁴¹⁸ IACHR, Hearing Case 12. 711, Wilfredo Quiñónez Bárcenas, Colombia, held during the 144 Period of Sessions, March 26, 2012. Available at: <http://www.oas.org/es/cidh/audiencias/hearings.aspx?lang=en&session=125>

305. In the light of the above considerations, the Commission concludes that the delay in investigating the circumstances in which Messrs. Quiñónez, Romero and Reyes were executed is not reasonable and was based on the omissions of the authorities in charge of the investigation and prosecution of the case, as well as the application of the Military Criminal law in the case of Quiñónez, all of these in violation of Article 8(1) of the Convention.

iv) In relation with the proceedings before the disciplinary and Administrative-Law jurisdiction

306. The Commission has previously held on several occasions that the disciplinary jurisdiction does not constitute a sufficient means for prosecuting, punishing, and repairing the consequences of human rights violations.⁴¹⁹ In addition, the Inter-American Court has stated that investigation in the disciplinary procedure “tends to protect the administrative function and the correction and control of public officials, so that, in cases of grave human rights violations, it can complement but not substitute completely the function of the criminal jurisdiction.”⁴²⁰

307. As for the administrative proceedings, the Commission has previously held that it is a mechanism that seeks to oversee the administrative activity of the State, and that –at the time of the events– only allowed one to obtain compensation for damages caused by an abuse of authority⁴²¹. Likewise, the Court has considered that

When establishing the international responsibility of the State for the violation of the human rights embodied in Articles 8(1) and 25 of the American Convention, a substantial aspect of the dispute before the Court is not whether judgments were delivered at the national level or whether settlements were reached on the civil or administrative responsibility of a State body with regard to the violations committed to the detriment of the next of kin of the persons disappeared or deprived of life, but whether the domestic proceedings allowed real access to justice to be ensured, according to the standards established in the American Convention.⁴²²

308. The Commission takes note of the results achieved in each of the process that were carried out in those jurisdictions and has analyzed their findings as part of the available information to determine the events in which the deaths of Messrs. Gustavo Giraldo Villamizar, Wilfredo Quiñónez and Gregorio Romero happened. The Commission acknowledges the efforts made by the State in order to repair the damage caused by the decisions entailed in the instant report. The Commission considers that such efforts are a partial response to the damages on behalf of some of the next of kin, which shall be taken into account when determining the additional reparations that are required. However, such investigations have not had an impact on the absolute and partial impunity, respectively, established in this report.

D. The right to Humane Treatment to the detriment of the next of kin

309. Article 5(1) of the American Convention establishes that “[e]very person has the right to have his physical, mental, and moral integrity respected.” With regard to the next of kin of the victims of certain human rights violations, the Court has determined that they can, in turn, be victims.⁴²³ In this regard, the Court has considered that the right to mental and moral integrity of the next of kin of victims has been violated based on the additional suffering they have endured as a result of the particular circumstances of the

⁴¹⁹ IACHR, Report No. 74/09, Admissibility, José Antonio Romero et. Al. (Colombia), October 15, 2007, para. 34.

⁴²⁰ I/A Court H.R., Case of the Pueblo Bello Massacre v. Colombia. Merits, Reparations and Costs. Judgment of January 31, 2006. Series C No. 140, para. 203.

⁴²¹ IACHR, Report No. 74/09, Admissibility, José Antonio Romero et. Al. (Colombia), October 15, 2007, para. 34.

⁴²² I/A Court H.R., Case of the Pueblo Bello Massacre v. Colombia. Merits, Reparations and Costs. Judgment of January 31, 2006. Series C No. 140, para. 206 and I/A Court H.R., Case of the “Mapiripán Massacre” v. Colombia. Merits, Reparations and Costs. Judgment of September 15, 2005. Series C No. 134, para. 211.

⁴²³ I/A Court H.R., Case of Cantoral Huamaní and García Santa Cruz v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, para. 112, and I/A Court H.R., Case of Bueno Alves v. Argentina. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 164, para. 102.

violations perpetrated against their loved ones and owing to the subsequent acts or omissions of State authorities in relation to the facts.⁴²⁴

310. According to the above, the Commission considers that the loss of a loved one in a context such as that described in the instant case, as well as the absence of a full and effective investigation, which in turn causes suffering and anguish of not knowing the truth, joined to the lack of a integral reparation, itself constitutes an affectation to the mental and moral integrity of the next of kin of the victims.

311. Consequently, the Commission concludes that the State violated the right to humane treatment enshrined in Article 5 of the American Convention in relation to the duties established in its Article 1(1), to the detriment of the next of kin of the victims included in this report. For the purposes of this consideration, in application of the *iura novit curia* principle, the Commission notes that although in some of the relevant admissibility reports there was no mention of Article 5 of the Convention with regard to the next of kin, the facts that support the existence of such violation arise from the information and evidence submitted by the parties during the proceedings before the IACHR and which the State has had the opportunity to offer its observations.

VI. CONCLUSIONS

312. The Commission considers that the International responsibility of the State of Colombia is aggravated in the instant case it relates to extrajudicial executions committed under a specific *modus operandi* that was proven in every case. Likewise, the Commission proved that in four of the cases the military criminal jurisdiction was applied and it became in most of the cases a critical obstacle that promoted the partial and total impunity in which these cases are situated. The Commission considers that the preponderance of the facts reveals a pattern of cover-ups that proceed from a fundamental misrepresentation of the acts of the perpetrators, the submission of the cases to a jurisdiction that lacks guarantees of independence and impartiality and continues with the absence of judicial clarification, and includes the stigmatization of the victims as 'subversives' or 'rebels', all with the aim of preventing the determination of the truth and the establishment of responsibilities.

313. In accordance with the legal and factual considerations set out in this report, the Commission concludes that Colombia is responsible for:

- a) The violation of the rights to life and privacy enshrined in Articles 4 and 11 of the American Convention in relation with its Article 1(1) to the detriment of Mr. Gustavo Giraldo Villamizar Durán;
- b) The violation of the rights to life, humane treatment, personal liberty and to privacy, enshrined in Articles 4, 5, 7 and 11 of the American Convention in relation with its Article 1(1) to the detriment of Mr. Elio Gelves Carrillo;
- c) The violation of the rights to life, humane treatment, and personal liberty enshrined in Articles 4, 5, and 7 of the American Convention in relation with its Article 1(1) to the detriment of Mr. Carlos Arturo Uva Velandia;
- d) The violation of the rights to life, humane treatment, and personal liberty enshrined in Articles 4, 5, and 7 of the American Convention in relation with its Article 1(1) to the detriment of Messrs. Wilfredo Quiñónez, José Gregorio Romero and Albeiro Ramírez Jorge;

⁴²⁴ I/A Court H.R., Case of Cantoral Huamaní and García Santa Cruz v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, para. 112 and I/A Court H.R., Case of Vargas Areco v. Paraguay. Merits, Reparations and Costs. Judgment of September 26, 2006. Series C No. 155, para. 96.

- e) The violation of the rights to humane treatment, fair trial, and judicial protection enshrined in Articles 5, 8 and 25 of the Convention in relation with its Article 1(1) to the detriment of the next of the kin of the deceased victims; and
- f) The violation of Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture for the lack of investigation of the events after January 19, 1999 to the detriment of the next of kin of Messrs. Wilfredo Quiñónez, José Gregorio Romero and Albeiro Ramírez Jorge.

VII. RECOMMENDATIONS

314. On the basis of the aforementioned conclusions,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS TO THE STATE OF COLOMBIA,

1. That it fully repairs the human rights violations established in this report, both in their material and moral aspects.
2. That it conducts a full and effective investigation of the human rights violations established in this report, including the criminal, administrative or other responsibilities that may be found. In the context of these investigations, the authorities must take into account the elements that led the Commission to establish the existence of a *modus operandi* in this merits report.
3. That it adopt all legislative, administrative and other measures to ensure the non-repetition of events such as those in this case. In particular, to ensure that the use of lethal force by State agents is compatible with the standards described in this report and that it adopts measures aimed at eradicating the problem of the so-called “false positives”, which follow the *modus operandi* described in this report, and that the military criminal justice system does not hear cases of human rights violations.