

## Inter-American Court of Human Rights

### Case of Las Palmeras v. Colombia

#### Judgment of November 26, 2002 (Reparations and Costs)

In the Las Palmeras Case,

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

Antônio A. Cançado Trindade, President;  
Alirio Abreu Burelli, Vice-President;  
Máximo Pacheco Gómez, Judge;  
Hernán Salgado Pesantes, Judge;  
Oliver Jackman, Judge;  
Sergio García Ramírez, Judge; and  
Julio A. Barberis, Judge *ad hoc*;

also present,\*\*

Manuel E. Ventura Robles, Secretary,

pursuant to Articles 29, 55, 56 and 57 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure")\*\*\*, in combination with Article 63(1) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and in compliance with operative paragraph five of the December 6, 2001 Judgment on the merits of the instant case, issues the instant Judgment on reparations.

### I FILING OF THE CASE

1. The case was filed before the Court by the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") by means of its July 6, 1998 application. On September 14, 1998 the State of Colombia (hereinafter "the State" or "Colombia") raised five preliminary objections

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\* Judge Carlos Vicente de Roux Rengifo, a Colombian national, excused himself from hearing the instant case.

\*\* Deputy Secretary Pablo Saavedra Alessandri excused himself from participating as he had acted as an assistant to the Inter-American Commission on Human Rights in the instant case, before holding his current position.

\*\*\* Pursuant to the March 13, 2001 Order of the Court on Temporary Provisions of the Rules of Procedure of the Court adopted by the November 24, 2000 Order of the Court, in force since June 1, 2001, the instant Judgment on reparations is issued under the terms of said Rules of Procedure.

and on February 4, 2000 the Court issued the respective judgment.<sup>1</sup> Finally, on December 6, 2001 the Court rendered judgment on the merits of the case, in which it:

DECLARE[D]:

1. That the State's responsibility for the deaths of Artemio Pantoja Ordóñez, Hernán Javier Cuarán Muchavisoy, Julio Milciades Cerón Gómez, Wilian Hamilton Cerón Rojas and Edebraes Norberto Cerón Rojas, corresponding to the violation of Article 4 of the American Convention on Human Rights, was established in the two definitive judgments delivered by the Administrative Law Court of the Council of State on December 14, 1993 and January 15, 1996.

[AND] DECIDE[D]:

2. That the State is responsible for the death of N.N./Moisés or N.N./Moisés Ojeda, in violation of Article 4 of the American Convention on Human Rights.

3. That there is insufficient evidence to determine whether Hernán Lizcano Jacanamejoy died in a skirmish or was extrajudicially executed by agents of the State, in violation of Article 4 of the American Convention on Human Rights.

4. That the State violated, to the detriment of the relatives of Artemio Pantoja Ordóñez, Hernán Javier Cuarán Muchavisoy, Julio Milciades Cerón Gómez, Wilian Hamilton Cerón Rojas, Edebraes Norberto Cerón Rojas, NN/ Moisés or NN/ Moisés Ojeda and Hernán Lizcano Jacanamejoy, the right to judicial guarantees and to judicial protection, recognized in Articles 8(1) and 25(1) of the American Convention on Human Rights.

5. To open the reparations phase, to which end it commissions its President to duly adopt any measures necessary.

## II

### PROCEDURE DURING THE REPARATIONS STAGE

2. On December 20, 2001 the President of the Court (hereinafter "the President"), in compliance with the order set forth in operative paragraph five of the judgment on the merits, decided to grant the next of kin of the victims and the Commission a common term until February 5, 2002 to submit their arguments and evidence for purposes of establishing reparations and legal costs. He also granted Colombia, once that term had expired, 45 days time to submit its observations and evidence to determine reparations and legal costs.

3. The term granted was extended twenty days, and on February 25, 2002 the representatives of the next of kin of the victims filed their brief on reparations. The Commission also filed its brief on reparations on February 26, 2002. Said briefs were forwarded to the State on March 7 of that same year.

4. On April 12, 2002 the Secretariat of the Court (hereinafter "the Secretariat"), following instructions of the President, asked the representatives of the next of kin of the victims and the State to supply several documents as evidence to facilitate adjudication, pursuant to Article 44(1) of the Rules of Procedure.

5. On April 24, 2002 the President issued an Order in which he summoned the parties to a public hearing to be held at the seat of the Court on June 14 of that year, to hear testimonial evidence offered, the opinion of the expert witness

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<sup>1</sup> Cf. *Las Palmeras Case. Preliminary Objections*. February 4, 2000 Judgment. Series C No. 67.

appointed, and the final conclusions of the parties on reparations. He also decided to accept the sworn statements of ten next of kin of the victims, who would state to the Court the alleged damage caused to them by the facts in violation of Articles 8 and 25 of the Convention due to non-elucidation of the death of the victims and the fact that those responsible had not been prosecuted. He also ordered that said testimony be rendered in a written statement that, together with the signature of the witnesses, should be certified by a notary public, and it should be submitted by the representatives of the next of kin of the victims no later than May 14, 2002.

6. On May 6, 2002 the representatives of the next of kin of the victims filed a note in which they referred to the evidence to facilitate adjudication requested by the Secretariat (*supra* para. 4) and on the 13th and 16th of that same month and year some of the required documents were received, together with others that had not been requested.

7. On May 14, 2002 the representatives of the next of kin of the victims submitted nine written statements by the next of kin, in compliance with the April 24, 2002 Order of the President (*supra* para. 5).

8. On May 16, 20 and 27, 2002 the State submitted the evidence requested to facilitate adjudication (*supra* para. 4). Also, on the 27th of that same month and year, after two extensions of the term granted, the State filed its brief with observations on the briefs by the representatives of the next of kin of the victims and by the Commission on reparations.

9. On June 14, 2002 the Court held a public hearing on reparations at its seat, and there appeared before the Court:

for the next of kin of the victims:

Gustavo Gallón Giraldo, representative;  
Luz Marina Monzón Cifuentes, representative; and  
Roxana Altholz, representative;

for the Inter-American Commission:

Ariel Dulitzky, Delegate; and  
Verónica Gómez, assistant;

for the State of Colombia:

Marcela Briceño Donn, Agent;  
Héctor Adolfo Sintura Varela, Deputy Agent; and  
André Viana Garcés, advisor;

witnesses:

María Córdula Mora Jacanamijoy; and  
Jorge Franclin Cuarán Muchavisoy;

expert witness:

Ana C. Deutsch.

10. On July 5 and 6, 2002 the Secretariat, under instructions by the President, requested information and some documentation from the representatives of the next of kin of the victims and from the State as evidence to facilitate adjudication, pursuant to Article 44(1) of the Rules of Procedure. On July 26, 2002 the State submitted the information and legislation requested, and on the 30<sup>th</sup> of that same month and year, the representatives of the next of kin of the victims submitted the documents requested.

11. On August 26, 2002 the representatives of the next of kin of the victims, the Commission and the State filed their respective briefs with final arguments. The representatives of the next of kin of the victims also submitted several appendices together with that brief.

### **III COMPETENCE**

12. The Court is competent, under the terms set forth in Articles 62 and 63(1) of the Convention, to decide on reparations, legal costs and expenses in the instant case, in view of the fact that Colombia has been a State Party to the American Convention since July 31, 1973, and it recognized the contentious jurisdiction of the Court on June 21, 1985.

### **IV REPRESENTATION OF THE NEXT OF KIN OF THE VICTIMS**

13. With respect to representation of the next of kin of the victims in these proceedings, the Court notes that the principals and their proxies were clearly identified in the powers of attorney supplied by the representatives of the aforementioned next of kin, as well as the purpose of the representation. However, in some powers of attorney there is no specification of the reason why each of the next of kin did not directly grant a power of attorney to those who have acted as proxies before the bodies of the inter-American system for protection of human rights.

14. The Court deems it pertinent to issue a reminder that proceedings before an international tribunal are not subject to the same formalities followed under domestic legislation,<sup>2</sup> and therefore the acts and instruments used in proceedings before the Court are not subject to said formalities. The usual practice of this Court with respect to rules of representation has been based on those principles, and therefore it has been flexible and this has been applied indiscriminately to the States, to the Inter-American Commission and, during the reparations phase, to the victims in the case or their next of kin.<sup>3</sup>

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<sup>2</sup> Cf. *El Caracazo Case. Reparations* (Art.63(1) American Convention on Human Rights). August 29, 2002 Judgment. Series C No. 95, para. 38; *Trujillo Oroza Case. Reparations* (Art.63(1) American Convention on Human Rights). February 27, 2002 Judgment. Series C No. 92, para. 37; and *Bámaca Velásquez Case. Reparations* (Art.63(1) American Convention on Human Rights). February 22, 2002 Judgment. Series C No. 91, para. 15.

<sup>3</sup> Cf. *Castillo Páez Case. Reparations* (Art.63(1) American Convention on Human Rights). November 27, 1998 Judgment. Series C No. 43, paras. 65 and 66; and *Loayza Tamayo Case. Reparations* (Art.63(1) American Convention on Human Rights). November 27, 1998 Judgment. Series C No. 42, paras. 99 and 100.

15. The Court deems that, given the characteristics of the instant case, taking into account the situation of the next of kin of the victims and the modes of life in the region where the facts of the case took place, the powers of attorney granted are a clear expression of the will of the persons granting them and of the other next of kin of the victims, for which reason said instruments must be considered suitable. In cases where direct representation of some of the next of kin of the victims is lacking, when the power of attorney is not included in the case file, the Court will act on the basis of the relevant information at hand.

## V EVIDENCE

16. Before examining the evidence received, the Court will, in light of the provisions of Articles 43 and 44 of the Rules of Procedure, state certain considerations applicable to the specific case, most of which have been developed in the case law of the Court itself.

17. According to the usual practice of the Court, during the reparations stage the parties must state what evidence they offer, at the first opportunity granted to them to make a statement in writing. The discretionary authority of the Court, set forth in Article 44 of its Rules of Procedure, allows it to request additional probatory elements, as evidence to facilitate adjudication, without this possibility granting the parties a new opportunity to expand upon or to complement their arguments or to offer new evidence on reparations, unless the Court were to allow this.<sup>4</sup>

18. The Court has repeatedly stated that inclusion of certain elements in the body of evidence must be effected paying special attention to the circumstances of the specific case and bearing in mind the limits established by respect for legal certainty and procedural balance among the parties.<sup>5</sup>

19. Based on the above, the Court will now examine and assess the set of elements that constitute the body of evidence of the case, based on the rules of competent analysis,<sup>6</sup> within the legal framework of the case under consideration.

### A) DOCUMENTARY EVIDENCE

20. When they filed their brief on reparations (*supra* para. 3), the representatives of the next of kin of the victims attached 1,387 documents as evidence.<sup>7</sup>

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<sup>4</sup> Cf. *El Caracazo Case. Reparations*, *supra* note 2, para. 37; *Hilaire, Constantine and Benjamin et al. Case*. June 21, 2002 Judgment. Series C No. 94, para. 64; and *Trujillo Oroza Case. Reparations*, *supra* note 2, para. 36.

<sup>5</sup> Cf. *El Caracazo Case. Reparations*, *supra* note 2, para. 38; *Hilaire, Constantine and Benjamin et al. Case*, *supra*, note 4, para. 65; and *Trujillo Oroza Case. Reparations*, *supra* note 2, para. 37.

<sup>6</sup> Cf. *El Caracazo Case. Reparations*, *supra* note 2, para. 39; *Hilaire, Constantine and Benjamin et al. Case*, *supra* note 4, para. 65; y *Trujillo Oroza Case. Reparations*, *supra* note 2, para. 38.

<sup>7</sup> Cf. evidence file received during the reparations phase in *Las Palmeras Case*, sheets 1 to 1727.

<21. The Commission, in its brief on reparations, stated that it endorsed the evidence submitted by the representatives of the next of kin of the victims in the brief mentioned in the previous paragraph.

22. The State, in its brief on the reparations requested (*supra* para. 8), filed one document as evidence.<sup>8</sup>

23. The representatives of the next of kin of the victims submitted a number of documents requested by the Court as evidence to facilitate adjudication (*supra* paras. 4, 6 and 10).<sup>9</sup> They also submitted several documents that had not been requested.<sup>10</sup>

24. The State also submitted the evidence requested to facilitate adjudication (*supra* paras. 4, 8 and 10).<sup>11</sup> During the public hearing on reparations (*supra* para. 9), the Deputy Agent supplied a copy of a document,<sup>12</sup> and witness Jorge Franclin Cuarán Muchavisoy supplied two videocassettes, one of which was shown before the Court during the hearing, as well as copies of fifteen documents.<sup>13</sup>

25. The representatives of the next of kin of the victims once again submitted documents backing expenses to substantiate the requests made together with their final arguments brief, as well as two additional documents.<sup>14</sup> Those representatives also submitted, in accordance with the April 24, 2002 Order of the President, the written statements before a notary public made by Blanca Flor Rojas, Bladimir Cerón Rojas, María Adelina López, Carmen Leonor Pantoja López, Jaime Pantoja López, Luis Edmundo Pantoja Ordóñez, Carmen Cuarán Muchavisoy, Doris Silvia Cuarán Muchavisoy, and Umberto Enrique Cuarán Muchavisoy (*supra* paras. 5 and 7),<sup>15</sup> summarized as follows:

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<sup>8</sup> Cf. evidence file received during the reparations phase in *Las Palmeras Case*, under the title "Prueba presentada por el Estado de Colombia junto con el escrito de observaciones a las reparaciones", sheets 2328 to 2343.

<sup>9</sup> Cf. evidence file received during the reparations phase in *Las Palmeras Case*, under the title "Prueba para mejor resolver presentada por los representantes de los familiares de las víctimas", sheets 1728 to 1756, 1764 to 2024 and 2343 bis to 2345; and "Prueba para mejor resolver presentada por the Colombian Commission of Jurists mediante escrito de fecha 30 de julio de 2002," sheets 3378 to 3568.

<sup>10</sup> Cf. evidence file received during the reparations phase in *Las Palmeras Case*, sheets 1757 to 1763.

<sup>11</sup> Cf. evidence file received during the reparations phase in *Las Palmeras Case*, under the title "Prueba aportada por el Estado de Colombia para mejor resolver", sheets 2056 to 2327 and sheets 2346 and 2347; and "Prueba presentada por el Estado de Colombia mediante escrito de fecha 24 de julio de 2002, recibida en la Secretaría el 26 de julio de 2002", sheets 2348 to 3377; and processing file of the reparations phase in *Las Palmeras Case*, Volume II, sheets 428 to 448.

<sup>12</sup> Cf. processing file of the reparations phase in *Las Palmeras Case*, Volume II, sheets 366 to 368.

<sup>13</sup> Cf. processing file of the reparations phase in *Las Palmeras Case*, Volume II, sheets 369 to 412.

<sup>14</sup> Cf. processing file of the reparations phase in *Las Palmeras Case*, Volume II, sheets 475 to 476; and evidence file received during the reparations stage in *Las Palmeras Case*, under the title "Nueva relación de gastos de la Comisión Colombiana de Juristas presentada junto con su escrito de alegatos finales," sheets 3569 to 4415.

<sup>15</sup> Cf. evidence file received during the reparations stage in *Las Palmeras Case*, sheets 2025 to 2055.

**a) Luis Edmundo Pantoja Ordóñez**, a brother of Artemio Pantoja Ordóñez.

He had a very close relationship with the victim due to their kinship and because they had worked together in construction. On January 23, 1991 a friend informed him of the death of his brother. When he arrived at the hospital to corroborate this, the policemen did not allow him to enter through the main door, they asked him "if he was going to see the guerrilla fighter;" they hit him with the butt of a weapon, and they implied that they were going to shoot at him. The day of the funeral, several men who were recognized as members of the police took photographs from the second floor of the houses. After the burial, members of the police went to his house and watched it. At that time he did not go out to the street alone out of fear. When the policemen saw him they asked him to identify himself, threw his identification card on the ground, and insulted him. He was afraid that they might do something to him like they did to his brother, so he filed a claim before the Government Attorney's Office. The Government Attorney accompanied him to an appointment with the Police Commander, Pedro Pablo Linares, who referred to his brother as the "black sheep" of the family because he was allegedly a guerrilla fighter. The Government Attorney warned the Commander that whatever happened to the witness would be the Commander's responsibility, and since then they did not bother him any more.

The fact that the police stated that his brother was a guerrilla fighter, even though he was known to be a hard-working person, has affected his family and, in his case, has affected his work, and no government institutions hired him any more. Given the impunity of the facts, the authorities continue to consider his brother and his family guerrilla fighters. The witness feels anger, indignation, and grief because those responsible have not yet been punished, even though it is known who they are. The authorities do not punish these facts and what they do is transfer the policemen elsewhere, to give the impression that they were punished.

He has never been summoned to render testimony in the investigations regarding the death of his brother, and since the case was transferred to Bogotá, it is difficult to find out the status of the proceedings. He hopes that the Court will order the State to punish all those responsible and to publicly announce, with the best possible coverage, and especially in Mocoa, where his family lives, that his brother was not a guerrilla fighter and that he was arbitrarily deprived of his life.

**b) María Adelina López**, the widow of Artemio Pantoja Ordóñez.

She is a housewife. On January 23, 1991 her children went to the hospital to find out who the dead persons were, but the policemen did not allow them to enter, until a physician who was a friend of Artemio arrived and asked the policemen to let them in; then they found out that their father had died. The next of kin took a coffin to the hospital, and the policemen inspected it with the excuse that there might be a bomb in it. The first night of the vigil for her husband, the police issued a report signed by Pedro Pablo Linares, stating that her husband was one of the dead guerrilla fighters. She could not understand how the policemen had killed him because he had friends there and one of his daughters worked with the police, and she also thought that they protected them. At that time, her children were afraid to stay out late on the street, and her son Ramiro was harassed, and they branded him as the "son of a guerrilla fighter." When the policemen saw him, they asked him to identify himself and she was afraid that they might do to him what they had done to his father. The day she went with Blanca Flor Rojas and Amanda Anacona to claim

their husbands' belongings, the policemen showed them some weapons and they said that this "had been found at the Cerón's farm," and this caused them great humiliation and grief.

Those days were "very stigmatizing" and painful for her family, because people had heard the police account and they made remarks. She had to work to cover her family's needs. She sold food on the streets. Despite all her efforts, her children were unable to complete their schooling. Since the events, she suffers pain in her knees and shoulders and the physicians say that it is nervous arthritis. In her family, her youngest daughter has been the one suffering the greatest trauma, as she was ten years old at the time.

She made her statements before all the officials who summoned her, certain that her husband was not a guerrilla fighter and believing that those responsible would be punished. Impunity has caused her great grief and a feeling of powerlessness as the police account has not changed. She hopes that there will be a public rectification regarding the facts, and that the Court will render justice.

**c) Jaime Pantoja López**, a son of Artemio Pantoja Ordóñez.

He is a mason like his father was; they had a very close relationship, and he accompanied him in his work. On January 23, 1991 he was informed of his father's death. When he arrived at the hospital to corroborate this, there were many people and policemen, who did not allow him to enter, arguing that "he was the son of a guerrilla fighter." After the facts he became very nervous and he drinks liquor "to feel relief." Since then he feels hatred against the police and fear that they are going to kill him, he is even terrified by darkness. One of the persons who has been affected most severely is his sister Adalí Oneyda, who was his father's "favorite" and after his death she left school and drinks liquor. The day of the funeral there were members of the police in civilian clothing walking next to the coffins and taking photographs. Also, they were on the terraces of several buildings, in uniform and watchful. When his father was killed they said that he and his family were guerrilla fighters, and this has not been cleared up, for which reason his family is at grave risk. He has never testified before any authorities regarding the death of his father, because he has never been summoned; furthermore, he was not an eyewitness of the facts. He hopes that those responsible are punished, because that massacre affected the whole community, and he also expects the damage to be redressed. He wants the image left by the official account of the facts to be corrected as soon as possible on television, clarifying that neither his father nor his family have been guerrilla fighters nor have any connection with the guerrillas.

**d) Carmen Leonor Pantoja López**, a daughter of Artemio Pantoja Ordóñez.

She works as a secretary in the Police Department of Putumayo. At the time of the facts in the instant case, she had been working in that Department for a year. The day of the facts, colonel Pedro Pablo Linares informed her that there were several wounded persons at the hospital and gave her permission to go and see whether her father was among them. Due to her father's death, they gave her leave of absence that week, and when she returned to work they handed her a "vacations slip" without having requested them, which was the procedure prior to dismissal. During those vacations she was arbitrarily denied her right to health services for control of her pregnancy, with the excuse that she was no longer part of the police. She felt powerless due to her family's conditions and considered it unfair for the police to cause her new harm after having killed her father. Her appointment was declared



"null", with no reason being given, and the commander did not allow the respective medical exams for her to recover her job, which was very "disheartening." Two months later she filed a complaint against the dismissal before the Office of the Director of the Police in Bogotá, after which she was reinstated, but she was assigned functions pertaining to meals for the members of the police force, so as to isolate her from all information in the institution and lower her job status. She felt discriminated and mistreated by the police. Then she went on maternity leave, and subsequently returned to the same position as a secretary.

After the facts, the Police commander stated at meetings that there were undercover operatives and informants of the guerrilla forces in the department. Furthermore, the members of the "SIJIN", which is an intelligence and investigative body, harassed the men in her family by means of searches, following them, and through surveillance. They realized that their phones were tapped. However, they never denounced these facts. The aforementioned events continue to affect the family because persons who arrive at Mocoa, especially police Agents, hear the account that her next of kin are guerrilla fighters. For this reason, many people have kept a distance from her family. Lack of punishment of those responsible and persistence of the idea that her father was a guerrilla fighter have morally affected her family. One way to avoid repetition of these facts is for everything that happened to be made known publicly and officially, clearly explaining how it happened and that it was a mistake by the police. She has never testified regarding her father's death. She also feels fear in testifying before the Court.

**e) Blanca Flor Rojas**, the widow of Julio Milciades Cerón Gómez and the mother of Wilian Hamilton and Edebraes Norverto, both of them Cerón Rojas.

The day of the facts she was worried because her sons had not returned and she sent a boy to take lunch to them where they were working, but the police did not let him by and threatened him. She saw that the fire truck had arrived at the hospital with several persons, among whom she recognized her husband and sons. Then she was informed that the police had taken her son Bladimir and she was told that her next of kin had been killed because they were guerrilla fighters. She then requested help at the secondary school and at the Government Attorneys' Office for Bladimir to be set free, and he was. After the facts, the police watched their house constantly. Bladimir's motorcycle was taken from him several times even though all the documents were in order. It was he whom they intimidated, threatened, and harassed most. The day she went with María Adelina López and Amanda Anacona to claim their husbands' belongings, the police showed them some weapons and said that they had found them "at the Cerón's farm," which caused her great humiliation and grief. The witness and her family had to abandon the farm for a long time due to threats by the police, and no one wanted to accept the job of milking the cows out of fear.

She testified before the respective authorities whenever she was summoned, but she felt intimidated. She told the police that they were not guerrilla fighters, but when she went to testify they always told her that they were. She even accompanied the criminal trial judge conducting an enquiry, and paid the fare for witnesses to go testify. The fact that those responsible have not been punished makes her fearful due to the presence of the paramilitary forces, who surely believe that her son Leyman, who works in the villages, is the son of a guerrilla fighter. Her sons became very withdrawn as a consequence of the facts. Her health has been affected as she suffers insomnia and depression, and she now has a heart ailment.

One way to avoid these facts happening again is for what occurred to be made known publicly and officially, clearly explaining how the facts took place and that the victims were not guerrilla fighters. She is also fearful in testifying before the Court.

**f) Bladimir Cerón Rojas**, a son of Julio Milciades Cerón Gómez and a brother of Wilian Hamilton and Edebraes Norverto, both of them Cerón Rojas.

The day of the facts when he was getting ready to go to his secondary school, a plainclothes police officer came, insulted him, pointed a gun at him and told him that his father and brothers had been killed because they were guerrilla fighters, and that only he remained. The officer took him to the police station; there a lieutenant said they should lock him up and that when the helicopter came they should kill him. They also repeated that they had killed his next of kin, which he did not believe. He denied that they were guerrilla fighters; he told them that he was a secondary school student and that his father and brothers worked in the countryside. When he heard the helicopter he thought they were going to kill him. They maltreated him, kicked him, and told him that if he accepted that he was a guerrilla fighter they would set him free. About five o'clock a man in civilian clothing visited the place and told the policemen that they had to release him before six because he was a minor. When they set him free, a policeman told him that they had found weapons and uniforms at his father's farm. When they told him that his next of kin were dead he lost control.

After that he was "very frightened." Every day when he went to school he passed in front of the police and he thought they were going to lock him up again, for which reason he sought company. Since they were unable to find someone who would go and work on the family farm, he went with his mother to milk the cows even though the police said they should not go because the guerrilla forces might do something to them. When he distributed milk on the motorcycle, the police stopped him, searched him, told him that the motorcycle was stolen, and took it to the station; he lost much time recovering it. Another time he had to drop out of a training course because the police intimidated him again. He feels very indignant because of impunity regarding the facts, as if things had actually happened as they were described by the police, and even more so because his family has suffered so much intimidation.

He has already testified before the Inter-American Court, during the public hearing on the merits, about almost all the acts of harassment and intimidation by the National Police that he suffered. He hopes that through the Court it will be possible for those responsible to be punished and for the truth of the facts to be made known. He also feels fear in rendering this statement.

**g) Carmen Cecilia Cuarán Muchavisoy**, a sister of Hernán Javier Cuarán Muchavisoy.

Hernán Javier Cuarán Muchavisoy was a school teacher and a musician. The witness heard of the facts the same day they happened, and her brothers Pablo Isidoro and Umberto went on a motorcycle to inquire about their brother Hernán Javier. She received a phone call to go urgently to see whether her brother was one of those wounded, and when she arrived at the hospital she found out that he had died. There were many people protesting, and the police did not allow her to enter. Her sister Rosa Alba, who worked there, was not allowed to enter either. When her brother Pablo attempted to take the coffin to the hospital, they hit him and did not

allow him to enter. That night the police had distributed a press release on the streets saying that they had "caused seven casualties of subversive guerrilla fighters," one of whom was her brother. This made her very angry and fearful because they were told that now they were going to harass them to make them keep quiet. The day of her brother's vigil, there were policemen conducting surveillance in the city and there was a curfew, despite which the people came to be with them. In the following days they noticed the presence of policemen; they were very fearful and anguished, and this lasted several months. This situation affected her at work.

One of the harassments suffered was that her brother was detained by members of the "SIJIN" while in Mocoa for Hernán Javier's funeral, and they asked him whether he was studying to become a guerrilla fighter. Her sister Doris was detained because she was distributing leaflets in connection with the facts, and at the "SIJIN" they told her that this was subversive propaganda. Her mother became hypertense and diabetic, and the medicine was not supplied by the health program. Hernán Javier's daughter cried a lot and they did not know how to tell her that their father had died. The witness feels very indignant due to impunity of the facts, as if they had actually occurred the way described by the police, and even more so that her family has suffered so much intimidation. Since then, she has felt insecure.

She was never summoned to testify before any official. She hopes that through the Court it will be possible to attain punishment of those responsible and for the truth of the facts to be made known, that they were not guerrilla fighters.

**h) Doris Silvia Cuarán Muchavisoy**, a sister of Hernán Javier Cuarán Muchavisoy.

She heard of the facts the same day they happened. The police would not allow anyone to enter the hospital, where they confirmed that her brother was dead. People did not respect the curfew and accompanied them at the vigil. There were community meetings to analyze what had happened, roughly two months after the facts, but her next of kin did not attend out of fear. When she distributed leaflets with information on those meetings, they took her to the "SIJIN", where a lieutenant told her that the police did not do the things stated in the leaflets and that her brother was a guerrilla fighter. When the people came to protest her detention, they set her free. The police watched the family house, shot guns and carried out other intimidating acts. There are people outside the town who think that they were guerrilla fighters because the facts have not been clarified.

She has never been summoned to testify nor have they come looking for her. She is afraid for her children, nephews and grandchildren due to this statement before the Court. To avoid repetition of the facts, it would be necessary for the police force to be restructured, for its members not to act that way. Impunity has caused irreparable damage to the whole family and worsening of her mother's health.

**i) Umberto Enrique Cuarán Muchavisoy**, a brother of Hernán Javier Cuarán Muchavisoy.

The day of the facts, after the wife of his brother Hernán Javier stated her concern, she went out with her brother Pablo Isidoro to find out where he was. They went to the hospital. There the police did not allow them to enter, and they hit her brother Pablo. During the vigil, they were told that there were plainclothes policemen, who also filmed the funeral. The family was watched by the police day and night.

Whenever she saw members of the police they were wearing uniforms, and this situation continued for several months. Her brother Franclin was detained once and they told him that he was studying to become a guerrilla fighter, and her sister Doris was detained because she was distributing documents on the massacre.

Hernán Javier's death caused her great pain, especially because she was part of the musical group he directed, and she was furious about the police report that accused him of being subversive. Her children and those of her other brothers were deeply affected by the death of their uncle, and this made them resentful of the police. They feel great mistrust of the police and are very indignant because the State is unfair and does not punish those responsible. The facts can be avoided by giving the policemen new training and making it known that her brother was not a guerrilla fighter.

### *B) TESTIMONY*

26. At the public hearing on reparations, the Court heard the statements of witnesses María Córdula Mora Jacanamijoy and Jorge Franclin Cuarán Muchavisoy. Said testimony is summarized below:

**a) Testimony of María Córdula Mora Jacanamijoy**, a sister of Hernán Lizcano Jacanamijoy.

She lives in the Municipality of Mocoa, Department of Putumayo, and has worked in the general services area of the Hospital in that region since 1972. After the facts, the witness lived in a situation of constant preoccupation and seclusion, as the police remained on the street and near her doorstep, from ten p.m. to one or two a.m. The witness fell ill and received assistance from a *curandero* or traditional doctor in the area, and after what happened her sons failed the year at school due to the fear they felt. Her brother had a permanent companion, Inés Sigindioy Narvárez, and a daughter, Johana Carolina Lizcano. They were forced to move from the place where they lived with the victim, also due to fear and stigmatization. She did not file a claim before Colombian administrative or judicial authorities for reparation of damage and detriment caused by the death of her brother, due to her fear of the police. This same fear made her reject the legal assistance that was offered to her at that time. She states that no Colombian judicial authorities have given her an explanation of how her brother died.

**b) Testimony of Jorge Franclin Cuarán Muchavisoy**, a brother of Hernán Javier Cuarán Muchavisoy.

He is 41 years old, with a licentiate degree in music, and he teaches in the city of Cali, where he lives. One week after his brother's funeral, he was detained by the police in Mocoa and released that same day due to pressure by friends and relatives. He never received any explanation of that detention. His family sent letters signed by many people in the community of Mocoa to various Colombian authorities, even to the President of the Republic and to the media, for them to rectify the information broadcast in connection with the case. He always sought the opportunity to say the truth to Colombia and to the international community, as the media, reflecting the official report, stated that the victims were guerrilla fighters. His father died in October, 2002 at the age of 94, with no hope of justice. His mother is very ill, suffering hypertension and pain in one leg. She is perturbed by helicopters coming to the military station that remains on the hill, as she associates them with what

happened. Despite the time elapsed, he continues to suffer and feel upset because justice has not been attained. He believes the judgment by which they received compensation does not mean that justice has been attained. He believes that he did what he had to do for the State to respond, but due to lack of punishment of those guilty he does not believe there is justice nor guarantees to do anything; he feels alone, without support nor backing. He is not aware of any criminal proceedings to investigate those responsible for his brother's death, and he has not been summoned to testify. He feels mistrust for the country's institutions, which also makes him fear and have work-related difficulties to resettle in Mocoa.

### *C) EXPERT TESTIMONY*

27. At the public hearing on reparations, the Court also heard the expert opinion of psychologist Ana C. Deutsch, summarized as follows:

#### **Expert opinion of Ana C. Deutsch, a psychologist<sup>16</sup>**

The expert witness interviewed Blanca Flor Rojas, Bladimir Cerón Rojas, María Adelina López, Carmen Leonor Pantoja López, Jaime Pantoja López, Luis Edmundo Pantoja Ordóñez, Carmen Cecilia Cuarán Muchavisoy, Doris Silvia Cuarán Muchavisoy, and Umberto Enrique Cuarán Muchavisoy in Bogotá, Colombia; and Jorge Franklin Cuarán Muchavisoy and María Córdula Mora Jacanamijoy in San José, Costa Rica. In the cases she evaluated, the common pattern found is a feeling of anguish and frustration due to powerlessness, associated with other symptoms such as depression. In general, these individuals feel bad, which means that they do not enjoy small things as they did before, they do not enjoy life, nor can they exercise the right we all have to enjoy our milieu, our family.

### *D) ASSESSMENT OF THE EVIDENCE*

28. In the instant case, the Court accepts the probatory value of those documents that were submitted in a timely manner by the parties and were neither disputed nor objected, nor was their authenticity questioned.

29. The Court deems it necessary to specify that upon examining the vouchers submitted by the representatives of the next of kin of the victims regarding legal costs and expenses, it has noted that some of them are tables, presumably prepared as an auxiliary element to establish expenses incurred during the proceedings in this case. With respect to such tables, the Court deems that they are not evidentiary in nature, as they are auxiliary elements, and therefore they will not be included in the body of evidence in the instant case. Furthermore, in said appendices there are numerous vouchers that do not specify the expense they are supposed to back, or which do not make it possible to determine that the alleged expense was incurred in connection with the instant case. For this reason, the Court will assess said vouchers as reference elements when it determines expenses and legal costs.

30. With respect to the sworn written statements sent by Blanca Flor Rojas, Bladimir Cerón Rojas, María Adelina López, Carmen Leonor Pantoja López, Jaime Pantoja López, Luis Edmundo Pantoja Ordóñez, Carmen Cecilia Cuarán Muchavisoy, Doris Silvia Cuarán Muchavisoy, and Umberto Enrique Cuarán Muchavisoy (*supra*

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<sup>16</sup> Ana C. Deutsch has a licentiate degree in transcultural psychology and is the Clinical Director of the Torture Victims Attention Program in Los Angeles, California.

para. 7 and 25), the Court admits such statements insofar as they are in accordance with the object stated by the party that offered them and that was defined by the Court in the order for them to be received. With respect to the aforementioned statements and the testimony of María Córdula Mora Jacanamijoy and Jorge Franclin Cuarán Muchavisoy, the Court also deems it pertinent to point out that, in general, the statements of the next of kin of the victims are especially useful regarding reparations, insofar as they can provide pertinent information regarding the harmful consequences of the violations committed.<sup>17</sup> Nevertheless, the Court refers to its statement in previous cases, that it will assess their content within the context of the body of evidence and applying the rules of competent analysis.<sup>18</sup>

31. As regards the expert opinion of Ana C. Deutsch, the Court takes into account the arguments of the parties regarding the expert report, accepts it and will assess it within the context of the body of evidence in the instant case.

32. With respect to the documents offered as evidence to facilitate adjudication, sent by the representatives of the next of kin of the victims (*supra* para. 23) and by the State (*supra* para. 24), the Court deems them useful within the context of the body of evidence and includes them in it, pursuant to the provisions of Article 44(1) of the Rules of Procedure. It also accepts the videotapes submitted by Jorge Franclin Cuarán Muchavisoy as evidence to facilitate adjudication (*supra* para. 24).

33. As regards the documents submitted on May 13, 2002 by the representatives of the next of kin together with evidence to facilitate adjudication and which were not explicitly requested as evidence (*supra* para. 23), this Court deems them useful insofar as they can inform the Court of the specific ties of Yaneida Violeta Cerón Vargas with the family of Julio Milciades Cerón Gómez and the relationship between Hernán Lizcano Jacanamijoy e Inés Sigindioy Narváez, who were living together, and therefore it includes them in the body of evidence.

34. Finally, it is convenient to state that the body of evidence in a case is unique and indivisible, and is constituted by the evidence submitted during all stages of the proceedings,<sup>19</sup> and thus the evidence supplied by the parties during the preliminary objections and merits stages are also part of the probatory material that will be considered during the instant stage.

## VI PROVEN FACTS

35. With the aim of establishing the appropriate reparations in this case, the Court will base its ruling on what was set forth in the judgment on the merits. During the instant stage of the proceedings, the parties have also contributed new probatory elements to the file for purposes of establishing the aforementioned reparation measures. The Court has examined those elements and the arguments of the parties, and declares that the following facts have been proven:

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<sup>17</sup> Cf. *El Caracazo Case. Reparations*, *supra* note 2, para. 59; *Trujillo Oroza Case. Reparations*, *supra* note 2, para. 52; and *Bámaca Velásquez Case. Reparations*, *supra* note 2, para. 27.

<sup>18</sup> Cf. *El Caracazo Case. Reparations*, *supra* note 2, para. 60; *Hilaire, Constantine, Benjamin et al. Case*, *supra* note 4, para. 69; and *Trujillo Oroza Case. Reparations*, *supra* note 2, para. 37.

<sup>19</sup> Cf. *El Caracazo Case. Reparations*, *supra* note 2, para. 62; *Trujillo Oroza Case. Reparations*, *supra* note 2, para. 47; and *Bámaca Velásquez Case. Reparations* *supra* note 2, para. 22.

*Background pertaining to the victims:*

- a) during the January 23, 1991 operation carried out by members of the Special Armed Corps of the National Police and the National Army of Colombia, the following persons were extra-judicially executed while under their custody: Artemio Pantoja Ordóñez, Hernán Javier Cuarán Muchavisoy, Julio Milciades Cerón Gómez, Wilian Hamilton Cerón Rojas, and Edebraes Norverto Cerón Rojas. Said persons did not belong to any armed subversive group;<sup>20</sup>
- b) that same day a sixth person was detained and extra-judicially executed by members of the police and/or the army, who would later be called N.N./Moisés o N.N./Moisés Ojeda (hereinafter "N.N./Moisés");<sup>21</sup>
- c) during that same operation, Hernán Lizcano Jacanamijoy died in circumstances that have not been established;<sup>22</sup> and
- d) the members of the police and/or of the army involved in the facts carried out a series of actions to alter the circumstances under which they took place and to obstruct or not cooperate with the investigations opened to clarify the case, such as: changing the clothing of some of the bodies of the deceased persons for uniforms used by the police or the military, burning their clothing or other objects, transferring the seven corpses from the place where the facts took place to the hospital morgue in Mocoa without adequate evidence gathering at the place of the events, and issuing a press release by the Commander of the Police Department in Putumayo.<sup>23</sup>

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<sup>20</sup> Cf. *Las Palmeras Case*. December 6, 2001 Judgment. Series C No. 90, paras. 32 and 34 and operative paragraph one; official letter No. 0076/BR3-CEP-CDO dated February 20, 1993 from the Specific Commander of the National Army of the Military Forces of Colombia in Putumayo to the Police Commander in Putumayo; report No. 013/ Dragon Company dated January 23, 1991 from the Commander of the Fourth Company C.E.A. to the Commander of the Police Department in Putumayo; official letter No. 019/Dragon Company dated January 25, 1991 from the Commander of the Fourth Company CEA to the 75<sup>th</sup> Military Criminal Magistrates' Court; May 30, 2000 Order of the Special Prosecutor of the National Human Rights Unit in proceedings No. 348 U.D.H. regarding assessment of the merits of the preliminary proceedings; April 15, 1993 Judgment of the Administrative Court of Nariño in the joinder of proceedings No. 4620 and No. 4622; February 23, 1995 Judgment of the Administrative Court of Nariño in proceedings joinder No. 4534; January 15, 1996 Judgment of the Third Section of the Administrative Court of the State Council of Colombia; December 14, 1993 Judgment of the Third Section of the Administrative Court of the State Council of Colombia; and November 24, 1997 Order of the 51<sup>st</sup> Military Criminal Magistrates' Court of the Office of the Inspector General of the National Police, in preliminary proceedings No. 1114.

<sup>21</sup> Cf. *Las Palmeras Case*, *supra* note 20, para. 35 and operative paragraph two.

<sup>22</sup> Cf. *Las Palmeras Case*, *supra* note 20, paras. 36 to 47 and operative paragraph three. Note: in the Judgment on the merits, the second surname of the victim was written "Jacanamejoy". However, according to the documentation supplied during the reparations stage, it has been established that said surname is written "Jacanamijoy", and this spelling will be used both for that person and for his next of kin.

<sup>23</sup> Cf. *Las Palmeras Case*, *supra* note 20, para. 57; November 24, 1997 Order the 51<sup>st</sup> Military Criminal Magistrates' Court of the Office of the Inspector General of the National Police in preliminary proceedings No. 1114; May 30, 2000 Order of the Special Prosecutor of the National Human Rights Unit of the Office of the Solicitor General in preliminary proceedings No. 348 U.D.H. regarding assessment of the merits of the preliminary proceedings; April 15, 1993 Judgment by the Administrative Court in Nariño in the joinder of proceedings No. 4620 and No. 4622; February 23, 1995 Judgment of the Administrative Court in Nariño in proceedings joinder No. 4534; January 15, 1996 Judgment of the Third Section of the Administrative Court of the State Council of Colombia; December 14, 1993 Judgment of the Third Section of the Administrative Court of the State Council of Colombia; certificate of judicial inspection at the scene

*Regarding the victims and their next of kin:*

e) Hernán Javier Cuarán Muchavisoy was born on September 17, 1964, and on the day of his death he was working as a teacher at the school in Las Palmeras.<sup>24</sup> His wife was Amanda Anacona Chapal and his daughter is Diana Vanessa Cuarán Anacona.<sup>25</sup> His mother is Claudina Muchavisoy Osejos and his father was José Daniel Cuarán, who died on September 13, 2001, and his siblings are Luis Alberto Dávila Muchavisoy, Rosa Alba, Doris Silvia, José Remigio, Pablo Isidoro, Carmen Cecilia, Blanca Oliva, Umberto Enrique, Ana Baldamina, Jorge Franclin, and Daniel Antonio, all of them Cuarán Muchavisoy;<sup>26</sup>

f) Artemio Pantoja Ordóñez was born on March 24, 1939 and on January 23, 1991 he was working on the construction of a septic tank for the school in Las Palmeras.<sup>27</sup> His wife was María Adelina López and his children are Carmen Lidia, Carmen Leonor, Aura Esperanza, Miriam Lucy, Adali Oneyda, Artemio Ramiro, and Jaime, all of them Pantoja López.<sup>28</sup> His parents are Pastora Ordóñez Narváez and

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*of the facts on January 28, 1991, carried out by the 25<sup>th</sup> Criminal Magistrates' Court; February 19, 1991 official letter from the Provincial Public Prosecutor in Mocoa to the Public Prosecutor in the Intendancy of Mocoa; certificate of the inspection of corpses on January 23, 1991 at the José María Hernández Hospital morgue in Mocoa, Putumayo, signed by the Judge of the 25<sup>th</sup> Criminal Magistrates' Court; sworn certificate of testimony on June 17, 1995 by Hilda Restrepo Sánchez, Second Municipal Criminal Judge in Tumaco, Nariño, according to the request made by the 51<sup>st</sup> Military Criminal Magistrate's Court in preliminary proceedings No 1114; January 24, 1991 Putumayo Police Department newsletter of "events during the las 24 hours in the jurisdiction of Depuy", press release No. 001 of January 23, 1991 by the Commander of the Police Department in Putumayo; official letter No. 013/Dragon Company on January 23, 1991 from the Commander of the Fourth Company C.E.A. to the Commander of the Police Department in Putumayo; and official letter No. 019/Dragon Company on January 25, 1991 from the Commander of the Special Armed Corps of the National Police to the 75<sup>th</sup> Military Criminal Magistrates' Court.*

<sup>24</sup> Cf. copy of the civil registry birth certificate of Hernán Javier Cuarán Muchavisoy issued on May 3, 2002 by the National Directorate of the Civil Registry of the Legal Status National Registrar's Office of Colombia; corpse inspection certificate signed on January 23, 1991 by the Judge of the 25<sup>th</sup> Criminal Magistrates' Court; death certificate dated January 24, 1991 signed by the Notary Public's Office of the Mocoa Circle, Office of the Superintendent of Notaries and Registries; official letter dated February 18, 1991 from the Secretariat of Education of Putumayo to the 25<sup>th</sup> Criminal Magistrates' Court; technical service contract No. 29 signed in September, 1990 by Hernán Javier Cuarán Muchavisoy and Programas de Soluciones Educativas de Putumayo; April 15, 1993 Judgment of the Administrative Court of Nariño in the joinder of proceedings No. 4620 and No. 4622; and December 14, 1993 Judgment of the Third Section of the Administrative Court of the State Council of Colombia.

<sup>25</sup> Cf. copy of the marriage certificate of Amanda Anacona Chapal and Hernán Javier Cuarán Muchavisoy issued on May 12, 2002 by the Parish of Nuestra Señora de las Lajas, Puerto Umbría – Putumayo; and copy of the civil registry birth certificate of Diana Vanessa Cuarán Anacona issued on May 6, 2002 by the National Directorate of the Civil Registry of the Legal Status National Registrar's Office of Colombia.

<sup>26</sup> Cf. copies of the civil registry birth certificates of Luis Alberto Dávila Muchavisoy, Hernán Javier, Rosa Alba, Doris Silvia, José Remigio, Pablo Isidoro, Carmen Cecilia, Blanca Oliva, Umberto Enrique, Ana Baldamina, Jorge Franclin, and Daniel Antonio, all of them Cuarán Muchavisoy, issued on May 3 and 6, 2002 by the National Directorate of the Civil Registry of the Legal Status National Registrar's Office of Colombia; and copy of the death certificate of José Daniel Cuarán issued on May 6, 2002 by the National Directorate of the Civil Registry of the Legal Status National Registrar's Office of Colombia.

<sup>27</sup> Cf. birth certificate of Artemio Pantoja Ordóñez issued on February 4, 1991 by the Notary Public's Office of the Mocoa Circle of the National Intendancy of Putumayo; testimony of María Adelina López rendered on May 28, 2001 before the Court during the public hearing on the merits of the case; April 15, 1993 Judgment of the Administrative Court of Nariño in the joinder of proceedings No. 4620 and No. 4622 and December 14, 1993 Judgment of the Third Section of the Administrative Court of the State Council of Colombia.



Segundo Jorge Pantoja Moreno and his siblings are Blanca Elina, Faustino, María Bertila, María del Carmen, and Luis Edmundo, all of them Pantoja Ordóñez;<sup>29</sup>

g) Julio Milciades Cerón Gómez was born on December 23, 1944 and the day he died he was doing construction work at the rural school in the village of Las Palmeras, as he had been hired by the Autonomous Regional Corporation of Putumayo to build a septic tank and a bathroom in that school.<sup>30</sup> His wife was Blanca Flor Rojas Perafán and his children are Bladimir, Leyman, and Soraida Marley, and Edebraes Norverto and Wilian Hamilton were also his children, all of them Cerón Rojas.<sup>31</sup> His siblings are Luis Nectario, Bertilda Heroína, Digna Reinelda, Dolores Celina, Rosa Evila, Adela Nilda, Segundo Ulpiano, and Manuel Esteban, all of them Cerón Gómez.<sup>32</sup> Also his niece Yaneida Violeta Cerón Vargas who had been under the custody and care of the victim and his family since she was 6 years old;<sup>33</sup>

h) Wilian Hamilton Cerón Rojas was born on October 26, 1967. The day he died, he was in the field near the school in Las Palmeras, milking the cattle on his father's farm, together with his brother Edebraes Norverto.<sup>34</sup> His mother is Blanca Flor Rojas Perafán and his father was Julio Milciades Cerón Gómez. His siblings are Bladimir, Leyman, and Sorayda Marley, and Edebraes Norverto was also his sibling, all of them

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<sup>28</sup> Cf. marriage certificate of Artemio Pantoja López and María Adelina López issued on January 30, 1991 by the Notary Public's Office of the Mocoa Circle of the National Intendancy of Putumayo; and birth certificates of Carmen Lidia, Carmen Leonor, Jaime, Aura Esperanza, Artemio Ramiro, Mirian Lucy, and Adalí Oneyda, all of them Pantoja Lopez, issued on January 30, 1991 by the Notary Public's Office of the Mocoa Circle of the National Intendancy of Putumayo.

<sup>29</sup> Cf. marriage certificate of Segundo Pantoja Moreno and Pastora Ordóñez Narváez issued on February 9, 1991 by the Notary Public's Office of the Mocoa Circle – Putumayo; and birth certificates of Blanca Elina, Faustino, Artemio, María Bertila, María del Carmen, Luis Edmundo, all of them Pantoja Ordóñez, issued on January 30 and February 4, 1991 by the Notary Public's Office of the Mocoa Circle of the National Intendancy of Putumayo.

<sup>30</sup> Cf. birth certificate of Julio Milciades Cerón Gómez issued on February 26, 1991 by the Notary Public's Office of the Mocoa Circle of the National Intendancy of Putumayo; work order No. 034 of December 26, 1990 by Julio Milciades Cerón Gómez and the Autonomous Regional Corporation of Putumayo; February 13, 1991 note by the Executive Director of the Autonomous Regional Corporation of Putumayo to the 25<sup>th</sup> Criminal Magistrates' Court; statement rendered by Blanca Flor on February 7, 1991 before the 25<sup>th</sup> Criminal Magistrates' Court; February 23, 1995 Judgment of the Administrative Court of Nariño in proceedings joinder No. 4534 and January 15, 1996 Judgment of the Third Section of the Administrative Court of the State Council of Colombia.

<sup>31</sup> Cf. marriage certificate of Julio Milciades Cerón Gómez and Blanca Flor Rojas Perafán issued on May 30, 1991 by the Notary Public's Office of the Mocoa Circle of the National Intendancy of Putumayo; and birth certificates of Blanca Flor Rojas Perafán, and Wilian Hamilton, Edebraes Norverto, Bladimir, Soraida Marley and Leyman, all of them Cerón Rojas, issued on February 6, 1991 by the Special Inspector of the Nápoles (Cauca) Judiciary Police.

<sup>32</sup> Cf. birth certificates of Julio Milciades, Bertilda Heroína, Luis Nectario, Dolores Celina, Digna Reinelda, Adela Nilda, Rosa Evila, Segundo Ulpiano, and Manuel Esteban, all of them Cerón Gómez, issued on February 25 and 26, 1991 by the Notary Public's Office of the Mocoa Circle of the National Intendancy of Putumayo.

<sup>33</sup> Cf. copy of the civil registry birth certificate of Yaneida Violeta Cerón Vargas issued on May 6, 2002 by the National Directorate of the Civil Registry of the Legal Status National Registrar's Office of Colombia; and briefs by Blanca Flor Rojas and Yaneida Violeta Cerón Vargas included in the evidence file received during the reparations phase of Las Palmeras Case, *supra* note 11, sheets 1759 and 1760.

<sup>34</sup> Cf. birth certificate of Wilian Hamilton Cerón Rojas issued on February 6, 1991 by the Special Inspector of the Nápoles (Cauca) Judiciary Police; October 16, 1991 evaluation report by the visiting attorney of the Delegate Attorney General's Office for Human Rights; February 23, 1995 Judgment of the Administrative Court of Nariño in proceedings joinder No. 4534 and January 15, 1996 Judgment of the Third Section of the Administrative Court of the State Council of Colombia.

Cerón Rojas;<sup>35</sup>

i) Edebraes Norverto Cerón Rojas was born on August 5, 1969 and the day he died he was working in the field near the school in Las Palmeras, milking the cattle on his father's farm, together with his brother Wilian Hamilton.<sup>36</sup> His mother is Blanca Flor Rojas and his father was Julio Milciades Cerón Gómez. His siblings are Bladimir, Leyman, and Sorayda Marley and Wilian Hamilton was also his sibling, all of them Cerón Rojas;<sup>37</sup>

j) at the time the instant judgment is issued, the victim called N.N./Moisés has not been identified nor his mortal remains located; they may be buried somewhere in the Mocoa Cemetery. His next of kin have not been identified. After his death, his remains were claimed by a person called Omar de Jesús Ojeda Pacinga to bury them in the Mocoa Cemetery, who told them that his name was "Moisés" and stated that he had no blood relationship with this person;<sup>38</sup> and

k) Hernán Lizcano Jacanamijoy was born on November 24, 1960. His mortal remains were exhumed at the Mocoa cemetery by order of the Court and are currently under the keeping of the Forensic Medicine Department of the Office of the Solicitor General of the Republic.<sup>39</sup> His permanent companion was Inés Sigindioy Narváez and his daughter is Johana Carolina Lizcano Sigindioy.<sup>40</sup> His siblings are

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<sup>35</sup> Cf. birth certificates of Wilian Hamilton, Edebraes Norverto, Bladimir, Soraida Marley and Leyman, all of them Cerón Rojas, issued on February 6, 1991 by the Special Inspector of the Nápoles (Cauca) Judiciary Police.

<sup>36</sup> Cf. birth certificate of Edebraes Norverto Cerón Rojas issued on February 6, 1991 by the Special Inspector of the Nápoles (Cauca) Judiciary Police; evaluation report by the visiting attorney of the Delegate Attorney General's Office for Human Rights; February 23, 1995 of the Administrative Court of Nariño in proceedings joinder No. 4534 and January 15, 1996 Judgment of the Third Section of the Administrative Court of the State Council of Colombia.

<sup>37</sup> Cf. birth certificates of Wilian Hamilton, Edebraes Norverto, Bladimir, Soraida Marley and Leyman, all of them Cerón Rojas, issued on February 6, 1991 by the Special Inspector of the Nápoles (Cauca) Judiciary Police.

<sup>38</sup> Cf. Las Palmeras Case, supra note 20, paras. 27 and 35 to 38; archaeological report on the excavation in the Mocoa, Putumayo cemetery, ordered by the Court to locate the mortal remains of N.N./Moisés, included in the processing file of the merits phase of Las Palmeras Case, sheets 689-772; November 24, 1997 Order of the 51st Military Criminal Magistrates' Court of the Office of the Inspector General of the National Police in preliminary proceedings No. 1114; official letter No. 0075/PSJI C/701 dated February 7, 1991 from Sijin Deputy Head of the Putumayo Police Department to the 75<sup>th</sup> Military Criminal Magistrates' Court.

<sup>39</sup> Cf. Las Palmeras Case, supra note 20, paras. 27 and 28; archaeological report on the excavation in the Mocoa, Putumayo cemetery, to locate the mortal remains of Hernán Lizcano Jacanamijoy and forensic anthropological examination of his mortal remains, ordered by the Court, included in the processing file of the merits phase of Las Palmeras Case, sheets 688 to 772; and photocopy of citizen identification card No. 17.610.238 of Hernán Lizcano Jacanamijoy.

<sup>40</sup> Cf. certified copy of the birth record of Johana Carolina Lizcano Sigindioy issued on February 17, 1999 by the Superintendent of Notaries and Records of the Civil Records Office of the Republic of Colombia; copy of the civil registry birth certificate of Inés Sigindioy Narváez issued on May 6, 2002 by the National Directorate of the Civil Registry of the National Legal Status Registrar's Office of the Republic of Colombia; and testimony rendered by María Córdula Mora Jacanamijoy on June 14, 2002 before the Court during the public hearing on reparations in this case.

Humberto Lizcano Jacanamijoy, María Córdula, and Víctor Hugo, both of them Mora Jacanamijoy.<sup>41</sup>

*Steps taken, actions carried out, and judicial proceedings conducted in connection with the facts in the instant case*

l) Preliminary steps taken by the 25<sup>th</sup> Criminal Magistrates' Court: on January 23, 1991 said Court started the preliminary proceedings in an ordinary criminal court action regarding the event at the village of Las Palmeras in Mocoa, and on February 8, 1991 it declined competence in favor of military criminal jurisdiction, to which it referred the investigation conducted.<sup>42</sup>

*Criminal proceedings*

m) Military criminal proceedings: on January 29, 1991 the 75th Military Criminal Magistrates' Court opened an investigation (preliminary proceedings No. 034) which started the military criminal proceedings against captain Antonio Alonso Martínez and 41 members of the National Police for the facts occurred in the village of Las Palmeras in Mocoa.<sup>43</sup> The proceedings were continued by the 51<sup>st</sup> Military Magistrates' Court in preliminary proceedings 1114.<sup>44</sup> On May 13, 1994 the Trial Court of the Office of the Inspector General of the National Police declared the criminal investigation closed "because it has been completed."<sup>45</sup> On May 25, 1994 the latter Court decided that the prerequisites were not met to issue an order to convene the Oral Court Martial and it ordered all proceedings dismissed in favor of all the policemen investigated for the crimes of homicide and personal injuries.<sup>46</sup> On July 26, 1994 the High Military Court of the Military Forces of Colombia annulled the action by the trial court and ordered the proceedings returned to the investigative phase for "the irregularities to be corrected."<sup>47</sup> The 51st Military Criminal Magistrates' Court of the Office of the Inspector General of the National Police

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<sup>41</sup> Cf. copy of the civil registry birth certificate of Humberto Lizcano Jacanamijoy issued on May 3, 2002 by the National Directorate of the Civil Registry of the Legal Status National Registrar's Office of Colombia; birth certificate of Víctor Hugo Mora Jacanamijoy issued by the Police Inspector of José María Putumayo, Municipality of Puerto Guzmán, Department of Putumayo, Colombia; and baptism certificate of María Córdula Mora Jacanamijoy issued on April 29, 2002 by the Diocese of Mocoa, Sinbunday, San Miguel Parish.

<sup>42</sup> Cf. January 23, 1991 writ of the 25th Criminal Magistrates' Court in Mocoa, Putumayo; and February 8, 1991 writ of the 25th Criminal Magistrates' Court.

<sup>43</sup> Cf. January 29, 1991 writ of the 75th Military Criminal Magistrates' Court of the Office of the Inspector General of the National Police.

<sup>44</sup> Cf. writ of the 53d Military Criminal Magistrates' Court receiving the preliminary proceedings; March 20, 1991 writ of transfer of preliminary proceedings to the Trial Court of the Office of the Inspector General through the Military Judge Advocate; May 9, 1991 writ of the Trial Court, Office of the Inspector General, National Police for transfer and assignment to the 75th Military Criminal Magistrates' Court to carry out the probatory proceedings; June 19, 1991 writ of the 75th Military Criminal Magistrates' Court to receive the preliminary proceedings and suspend the terms until the judge took charge; and August 12, 1991 brief transferring the preliminary proceedings from the Trial Court, Office of the Inspector General, National Police, back to the 75th Military Criminal Magistrates' Court.

<sup>45</sup> Cf. May 13, 1994 writ of the Trial Court, Santa Fe de Bogotá Bureau, Office of the Inspector General, National Police.

<sup>46</sup> Cf. May 25, 1994 Order of the Trial Court, Santa Fe de Bogotá Bureau, Office of the Inspector General of the National Police.

<sup>47</sup> Cf. July 26, 1994 Order of the High Military Court of the Military Forces of Colombia.

continued the investigation and on November 24, 1997 it reached a decision on “the juridical situation of the accused” of the crimes of homicide and personal injuries as follows: it ordered preventive detention and issued an arrest warrant against retired major Antonio Alonso Martínez, captain Jaime Alberto Peña Casas and agent Carlos Arturo Oliveros for the homicide of Artemio Pantoja Ordóñez, Hernán Javier Cuarán Muchavisoy, Julio Milciades Cerón Gómez, Wilian Hamilton Cerón Rojas, Edebraes Norverto Cerón Rojas, and N.N./Moisés and for the crime of personal injuries against minor Enio Quinayas Molina, and it abstained from issuing detention measures against the other individuals accused.<sup>48</sup> On January 14, 1998 the First Criminal Court Government Attorney 233 asked the Inspector General of the Police, the Trial Court, to refer the file of preliminary proceedings No. 1114 to ordinary criminal justice, for reasons of competence and to comply with the provisions of the August 5, 1998 judgment C-358 of the Constitutional Court.<sup>49</sup> In its January 16, 1998 order, that Court accepted the aforementioned request, declared that military criminal justice did not have jurisdiction to hear the proceedings against the policemen, and ordered that the file be forwarded to the Office of the Solicitor General of the Republic for the proceedings to continue under ordinary criminal justice.<sup>50</sup> On February 27, 1998 the High Military Court of the Military Forces of Colombia confirmed that decision,<sup>51</sup> and on March 25, 1998 the 57<sup>th</sup> Judge Advocate General of the Military under the Office of the Inspector General of the National Police referred the proceedings to the Solicitor General of the Republic, together with the evidence, the judicial proceedings conducted, detainee captain Jaime Alberto Peña Casas, and the arrest warrants pending.<sup>52</sup>

n) Ordinary criminal proceedings: on March 30, 1998 the 57<sup>th</sup> Delegate Public Prosecutor of the Fifth Unit on Crimes Against Life of the Office of the Solicitor General of the Republic undertook the investigation.<sup>53</sup> Subsequently, on May 14, 1998 the Regional Public Prosecutor of the National Human Rights Unit undertook the investigative steps and ordered certain evidence to be gathered.<sup>54</sup> On December 7, 1999 the National Human Rights Unit decided “the legal situation of the individuals accused” as follows: it decided to continue the preliminary proceedings in accordance with a new provisional classification of the crimes of aggravated kidnapping, aiding aggravated kidnapping, and aggravated homicide with conspiracy,

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<sup>48</sup> Cf. November 24, 1997 Order of the 51st Military Criminal Magistrates’ Court of the Office of the Inspector General of the National Police.

<sup>49</sup> Cf. January 14, 1998 official letter by the 233 Government Attorneys’ Office Judicial I Criminal, of the Office of the Attorney General, to the Office of the Inspector General of the Police, Trial Court, in file No. 426.

<sup>50</sup> Cf. January 16, 1998 Order of the Trial Court, Santa Fe de Bogotá Bureau, Office of the Inspector General of the National Police.

<sup>51</sup> Cf. February 27, 1998 Order of the High Military Court of the Military Forces of Colombia.

<sup>52</sup> Cf. official letter No. 171/INSGE. AUXIN. 57. JUPEM. 789 dated March 25, 1998 sent by the 57th Judge Advocate of the Office of the Inspector General of the National Police to the Office of the Solicitor General of the Republic, Office of the Director of the Public Prosecutors’ Bureau.

<sup>53</sup> Cf. March 30, 1998 Order of the 57th Local Prosecutors’ Office of the Fifth Unit on Crimes against Life of the Office of the Solicitor General of the Republic.

<sup>54</sup> Cf. May 14, 1998 Order of the National Human Rights Unit of the Office of the National Director of Public Prosecutors’ Offices of the Office of the Solicitor General of the Republic.

committed by Antonio Alonso Martínez, Jaime Alberto Peña Casas, Pedro Palomino Antury, and Elías Sandoval Reyes, against all victims except Hernán Lizcano Jacanamijoy, and personal injuries against minor Enio Quinayas; it declared an *estoppel* of the investigation regarding Pablo Lugo Herrera because it was established that this accused person had not “incurred in criminal conduct in connection with the facts investigated” and regarding Carlos Arturo Oliveros Vargas because he was deceased; it ordered continuation of preventive detention for Antonio Alonso Martínez and Jaime Alberto Peña Casas; and it ordered this same measure against Pedro Palomino Antury and Elías Sandoval Reyes.<sup>55</sup> On March 21, 2000 partial closing of the investigation was ordered with respect to accused persons Pedro Antonio Palomino Antury, Elías Sandoval Reyes, Antonio Alonso Martínez, and Jaime Alberto Peña Casas for the crime of aggravated homicide.<sup>56</sup> On May 10, 2000 the Attorney General of the Republic asked the Public Prosecutors’ Office to declare partial nullity of the previous resolution and to issue a resolution accusing Antonio Alonso Martínez, Elías Sandoval Reyes, and Jaime Alberto Peña Casas as coauthors of aggravated homicide.<sup>57</sup> On May 30, 2000 the Public Prosecutors’ Office issued a “temporary injunction regarding assessment of the merits of the preliminary proceedings” in which it decided: to order the immediate release of Pedro Antonino Palomino Antury; to indict Antonio Alonso Martínez, Jaime Alberto Peña Casas, and Elías Sandoval Reyes as alleged co-perpetrators of the crime of aggravated homicide with conspiracy, without the right to be released on bail, and therefore extinguishment of penal action was interrupted; and to order the “unity of the trial process broken”, for which reason the investigation continued with respect to the remaining 37 accused persons under a new “case file” No. 876 UDH.<sup>58</sup> With respect to the other 37 persons accused, on April 6, 2000 the Delegate Public Prosecutor of the Human Rights Unit took over the hearing of this new investigation under case file No. 876 UDH. On September 6, 2000 the National Human Rights Unit deemed that more than nine years had elapsed from the opening of the investigation under criminal jurisdiction, for which reason the maximum pre-trial investigative period had been exceedingly surpassed without there being evidence to establish the merits of the preliminary proceedings with respect to the 37 persons accused, and it therefore declared the pre-trial proceedings closed. This resolution was “declared firm” on April 16, 2002, for which reason on May 30 of that same year the Public Prosecutors’ Office issued a resolution “assessing the merits of the preliminary proceedings,” in which it ordered *estoppel* of the investigation in favor of the 36 persons accused “due to lack of evidence regarding their participation in the *hors de combat* homicides committed;” it declared the penal action extinguished, in their favor, due to lapsing of the time to bring prosecution with respect to the crimes of personal injuries and aiding kidnapping; and it declared the penal action extinguished, in connection with those same crimes, due to the death of one of the

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<sup>55</sup> Cf. December 7, 1999 Order of the Special Public Prosecutor of the National Human Rights Unit of the Office of the Solicitor General of the Republic in preliminary proceedings No. 348 U.D.H..

<sup>56</sup> Cf. March 21, 2000 Order of the Special Public Prosecutor of the National Human Rights Unit of the Office of the Office of the Solicitor General of the Republic in preliminary proceedings No. 348 U.D.H..

<sup>57</sup> Cf. May 10, 2000 brief of the 18th Government Attorneys’ Office Judicial Criminal II of the Office of the Attorney General of the Republic to the Delegate Public Prosecutor appointed before the Criminal Judges of Specialized Circuits, requesting an indictment Order.

<sup>58</sup> Cf. May 30, 2000 Order on assessment of the merits of the preliminary proceedings and indictment by the Special Public Prosecutor of the National Human Rights Unit of the Office of the National Director of Public Prosecutors’ Offices of the Office of the Solicitor General of the Republic, in preliminary proceedings No. 348 U.D.H..

persons accused. This resolution was “declared firm” on July 3, 2002, and therefore the case was closed.<sup>59</sup> With respect to the accusation against Antonio Alonso Martínez, Jaime Alberto Peña Casas, and Elías Sandoval Reyes, on April 10, 2001 the Specialized Public Prosecutors’ Office of the Human Rights Unit ordered the preliminary proceedings referred to the 41<sup>st</sup> Criminal Court of the Specialized Circuit in Bogotá. The Supreme Court of Justice ordered a “change of venue” for which reason on August 6, 2001 the proceeding under the jurisdiction of the Criminal Court of the Mocoa – Putumayo Circuit was referred to the 41<sup>st</sup> Criminal Court of the Specialized Circuit of Bogotá, which is currently processing the case under No. 212-2001.<sup>60</sup> At the date of the instant Judgment, this ordinary criminal proceeding is still being processed and no final judgment has been issued that, if that were the case, identifies and punishes those responsible for the facts in this case.

#### *Administrative-law proceedings*

ñ) Administrative-law proceeding No. 4534 before the Administrative-law Court of Nariño for the death of Julio Milciades Cerón Gómez, Edebraes Norverto Cerón Rojas, and Wilian Hamilton Cerón Rojas. On July 19, 1991 the next of kin of said victims<sup>61</sup> filed a claim for direct reparation for their death, before the Administrative-law Court of Nariño against the Republic of Colombia, Ministry of National Defense-National Police.<sup>62</sup> On February 23, 1995 the Administrative-law Court of Nariño issued a judgment within the proceeding in which it deemed the fault or lack of service of the respondent entity (Ministry of Defense – National Police) proven; it declared “the Republic of Colombia administratively responsible” for the death of the victims and ordered it to pay the pecuniary and non-pecuniary damages caused to the next of kin.<sup>63</sup> The applicant and respondent parties appealed this judgment. On January 15 the Third Section of the Administrative-law Court of the State Council issued a judgment confirming the decision of the court and establishing the amounts that the State must pay for pecuniary and non-pecuniary damages to the next of kin of the victims.<sup>64</sup> In compliance with the aforementioned judgment, on June 20, 1996 the Director General of the National Police ordered payment of 188,288,175.45 Colombian pesos for pecuniary and non-pecuniary damages, to Blanca Flor Rojas,

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<sup>59</sup> Cf. *September 6, 2000 Order of the Special Public Prosecutor of the National Human Rights Unit of the Office of the National Director of Public Prosecutors’ Offices of the Office of the Solicitor General of the Republic, in preliminary proceedings No. 348 U.D.H.*; file with evidence to facilitate adjudication, received during the reparations stage of *Las Palmeras Case*, sheets 2246 to 2327; and processing file of the reparations phase of *Las Palmeras Case*, Volume II, sheets 429 to 448.

<sup>60</sup> Cf. evidence file received during the reparations stage in *Las Palmeras Case*, under the title “Prueba aportada por el Estado de Colombia para mejor resolver”, at the Secretariat of the Court, sheets 2246 to 2327; and processing file of the reparations phase of *Las Palmeras Case*, Volume II, sheets 429 to 448.

<sup>61</sup> The next of kin who filed the application were Blanca Flor Rojas –on her own behalf and on that of Leyman and Soraida Marley Cerón Rojas–, Bladimir Cerón Rojas; and the siblings of Julio Milciades Cerón Gómez: Bertilda Heroína, Luis Nectario, Dolores Celina, Adela Nilda, Digna Reinalda, Segundo Ulpiano, Rosa Evila, and Manuel Esteban, all of them Cerón Gómez.

<sup>62</sup> Cf. *file of administrative proceedings No. 4534 which includes actions undertaken in the proceedings before the Administrative Court of Nariño initiated by the next of kin of victims Julio Milciades Cerón Gómez, Edebraes Norverto Cerón Rojas and Wilian Hamilton Cerón Rojas, filed at the Secretariat of the Court as evidence contributed by the State during the merits phase in Las Palmeras Case.*

<sup>63</sup> Cf. *February 23, 1995 Judgment of the Administrative Court of Nariño in proceedings joinder No. 4534.*

<sup>64</sup> Cf. *January 15, 1996 Judgment of the Third Section of the Administrative Court of the State Council of Colombia.*

Leyman, Soraida Marley, and Bladimir, all of them Cerón Rojas; and to the siblings of victim Julio Milciades Cerón Gómez: Bertilda Heroína, Luis Nectario, Dolores Celina, Adela Nilda, Digna Reynaldo, Segundo Ulpiano, Rosa Evila, and Manuel Esteban, all of them Cerón Gómez, according to the distribution set forth in that same resolution.<sup>65</sup>

o) Joindered Administrative-law proceedings No. 4620 and No. 4622 before the Administrative-law Court of Nariño for the death of Artemio Pantoja Ordóñez and Hernán Javier Cuarán Muchavisoy: in 1991 the next of kin of Artemio Pantoja Ordóñez<sup>66</sup> filed a claim for direct reparation for his death, before the Administrative-law Court of Nariño, against the Republic of Colombia, Ministry of Defense-National Police. That same year the next of kin of Hernán Javier Cuarán Muchavisoy<sup>67</sup> filed a similar claim for his death, before the Administrative-law Court of Nariño.<sup>68</sup> On April 15, 1993 the Administrative-law Court of Nariño issued a judgment in the proceedings in which the fault or lack of service of the respondent entity (Ministry of Defense – National Police) was deemed proven; it declared “the Republic of Colombia patrimonially responsible” for the death of both victims and it ordered the respondent to pay pecuniary and non-pecuniary damages caused to the next of kin.<sup>69</sup> The applicant and respondent parties appealed this judgment. On December 14, 1993 the Third Section of the Administrative-law Court of the State Council issued a judgment confirming the decision of the court and establishing the amounts that the State must pay for pecuniary and non-pecuniary damages to the next of kin of the victims.<sup>70</sup> In compliance with the aforementioned judgment, on March 27, 1995 the Administrative Secretariat of the Ministry of the Treasury ordered payment of the total amount of 377,342,481.75 million Colombian pesos for pecuniary and non-pecuniary damages plus current interest accrued and moratory interest, distributed as follows: 165,740,863.67 million Colombian pesos for the next of kin of Hernán Javier Cuarán Muchavisoy, who are: José Daniel Cuarán, Claudina Muchavisoy, Luis Alberto Davila Muchavisoy y Rosa Alba, Doris Silvia, José Remigio, Pablo Isidoro, Carmen Cecilia, Blanca Oliva, Umberto Enrique, Ana Baldamina, Jorge

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<sup>65</sup> Cf. June 20, 1996 Order No. 03246 of the General Director of the National Police of Colombia.

<sup>66</sup> First family group: spouses Segundo Jorge Pantoja Moreno and Pastora Ordóñez (Artemio's parents) and their children Blanca Elina, Faustino, María Bertila, María del Carmen and Luis Edmundo, all of them Pantoja Ordóñez (siblings of Artemio). Second family group: María Adelina López – Artemio's wife- on her own behalf and on that of their children who are minors, Miriam Lucy and Adalí Oneida Pantoja López; and Carmen Lidia, Carmen Leonor, Jaime, Aura Esperanza and Artemio Ramiro, all of them Pantoja López (Artemio's children).

<sup>67</sup> First family group: spouses José Daniel Cuarán and Claudina Muchavisoy (parents of Hernán Javier) and Luis Alberto Dávila Muchavisoy and Rosa Alba, Doris Silvia, José Remigio, Pablo Isidoro, Carmen Cecilia, Blanca Oliva, Umberto Enrique, Ana Baldamina, Jorge Franclin, and Daniel Antonio, all of them Cuarán Muchavisoy (siblings of Hernán Javier). Second family group: Amanda Anacona Chapal de Cuarán (wife of Hernán Javier) on her own behalf and on that of her daughter Diana Vanessa Cuarán Anacona (daughter of Hernán Javier), who is a minor.

<sup>68</sup> Cf. file of the joinder of administrative proceedings No. 4620 and No. 4622 which includes actions undertaken during the proceedings before the Administrative Court of Nariño, initiated by the next of kin of victims Artemio Pantoja Ordóñez and Hernán Javier Cuarán Muchavisoy, filed at the Secretariat of the Court as evidence submitted by the State during the merits phase of *Las Palmeras* Case.

<sup>69</sup> Cf. April 15, 1993 Judgment of the Administrative Court of Nariño in the joinder of proceedings No. 4620 and No. 4622.

<sup>70</sup> Cf. December 14, 1993 Judgment of the Third Section of the Administrative Court of the State Council of Colombia.

Franclin, and Daniel Antonio, all of them Cuarán Muchavisoy, Amanda Anacona Chapal de Cuarán and Diana Vanessa Cuarán Anacona; and 211,601,618.1 million Colombian pesos for the next of kin of Artemio Pantoja Ordóñez, who are: Segundo Jorge Pantoja Moreno, Pastora Ordóñez, Blanca Elina, Faustino, María Bertila, María del Carmen, and Luis Edmundo, all of them Pantoja Ordóñez, María Adelina López, Miriam Lucy, Adalí Oneida, Carmen Lidia, Carmen Leonor, Jaime, Aura Esperanza, and Artemio Ramiro, all of them Pantoja López.<sup>71</sup>

*Other actions taken by various administrative and judicial authorities in connection with the facts of the case*

p) Disciplinary proceeding before the Police Department of Putumayo: on January 24, 1991 the Investigative and Disciplinary Bureau of the Office of the Commander of the Police Department of Putumayo opened a disciplinary proceeding against the Agents of the National Police who had participated in the January 23, 1991 operation in Mocoa. On January 25, 1991 the investigative official declared the investigation closed because he deemed that the police officers investigated were not disciplinarily responsible for the death of the victims. On January 28, 1991 the Commander of the Police Department of Putumayo endorsed "each and every part" of the criterion of the investigative official and cleared the policemen investigated of all disciplinary responsibility for the death of the victims.<sup>72</sup>

q) Office of the Attorney General of the Republic: On January 23, 1991, the Government Attorneys' Office in Putumayo took several steps in connection with the facts of the instant case. On the following day it ordered the opening of a "preliminary disciplinary investigation" to conduct an investigation of the military and police forces in Putumayo regarding the facts of the case and on February 22, 1991 it issued its "evaluative report" of the preliminary actions. On October 16, 1991 the Visiting Attorney of the Delegate Government Attorneys' Office for Human Rights issued its evaluative report and concluded that the Police Department of Putumayo "in record time," five days after the facts, exonerated all the police staff who participated in the operation at the school, "thus exhausting the administrative proceedings," and it recommended that the Police commander and the investigative officer who were responsible for the decision on the disciplinary investigation be investigated for possible malfeasance of office.<sup>73</sup>

r) Criminal proceedings for malfeasance of office: on May 4, 1995 the 52d Military Criminal Magistrates' Court of the Office of the General Inspector of the National Police opened criminal proceedings to investigate possible malfeasance of office by the police commander and the investigative officer who were responsible

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<sup>71</sup> Cf. March 27, 1995 Resolution No. 0887 of the Ministry of the Treasury of the Republic of Colombia.

<sup>72</sup> Cf. January 24, 1991 writ by the Commander of the Police Department of Putumayo of the National Police in which he appoints an investigative official and secretary for the ordinary proceeding; January 24, 1991 writ ordering information on the disciplinary investigation, signed by the Investigative Official of the Office for Investigation and Discipline of the Putumayo Police Department Command of the National Police; January 25, 1991 Order of the Investigative Official of the Office for Investigation and Discipline of the Putumayo Police Department of the National Police; and January 28, 1991 of the Putumayo Police Department Commander of the National Police.

<sup>73</sup> Cf. file of actions taken by the Office of the Attorney General of the Republic (Government Attorneys' Office in Putumayo and Government Attorneys' Office in charge of the Protection of Human Rights), evidence supplied by the State during the merits phase of Las Palmeras Case.



for the decision on the disciplinary investigation conducted by the Police Department of Putumayo in connection with the facts. On December 11, 1995 the Director General of the National Police ordered "cessation of the proceedings" against the accused persons, and on February 15, 1996 this was confirmed by the High Military Court of the Military Forces of Colombia, due to extinguishment of the penal action for malfeasance of office, which made the proceedings against the accused persons cease.<sup>74</sup>

#### *Other facts*

s) That the State has recognized its responsibility for the death of six of the victims in the instant case and those responsible for the facts have not been identified nor punished in the criminal proceedings, ongoing for more than eleven years, for which reason denial of justice and impunity continue;

t) that the next of kin of the victims have been harassed and stigmatized by State authorities as next of kin of members of subversive armed groups, and they continue to suffer due to denial of justice and impunity prevailing in this case, which has affected their relations within the family, at a social level and at work, and in some cases has endangered their life and personal safety;<sup>75</sup> and

u) the Colombian Commission of Jurists undertook representation of the next of kin of the victims and resorted to the inter-American system for protection of human rights, for which it incurred a number of expenses before the Commission and the Court.<sup>76</sup> The Center for Justice and International Development participated as a

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<sup>74</sup> Cf. file of the military criminal proceedings opened by the 52d Military Criminal Magistrates' Court of the Office of the Inspector General of the National Police regarding possible commission of the crime of malfeasance of office, evidence supplied by the State during the merits phase of Las Palmeras Case.

<sup>75</sup> Cf. February 23, 1995 Judgment of the Administrative Court of Nariño in proceedings joinder No. 4534; sworn certification of testimony rendered on June 17, 1995 by Hilda Restrepo Sánchez, Second Municipal Criminal Judge of Tumaco, Nariño, as requested by the 51st Military Criminal Magistrates' Court in the preliminary proceedings No. 1114; testimony of Bladimir Cerón Rojas, Adelina López de Pantoja, Blanca Flor Rojas, and Pedro Elías Díaz Romero rendered on May 28, 2001 before the Court during the public hearing on the merits of the case; testimony of María Córdula Mora Jacanamijoy and Jorge Franclin Cuarán Muchavisoy rendered on June 14, 2002 before the Court during the public hearing on reparations in this case; written statements by Luis Edmundo Pantoja Ordóñez, María Adelina López, Jaime Pantoja López, Carmen Leonor Pantoja López, Blanca Flor Rojas, Bladimir Cerón Rojas, Carmen Cecilia Cuarán Muchavisoy, Doris Silvia Cuarán Muchavisoy, and Umberto Enrique Cuarán Muchavisoy, included in the file with evidence supplied during the reparations phase in Las Palmeras Case, under the title "Declaraciones juradas presentadas por los representantes de los familiares de las víctimas," sheets 2025 to 2055; and expert opinion of Ana Deutsch rendered on June 14, 2002 before the Court during the public hearing on reparations in this case.

<sup>76</sup> Cf. powers of attorney granted on December 8, 1993, February 18, 1999 and May 6, 2002 by Blanca Flor Rojas (on her own behalf and on behalf of her children Bladimir, Leyman, Zoraida Marley, all of them Cerón Rojas and Yaneida Violeta Cerón Vargas) in favor of Gallón Giraldo and Carlos Rodríguez Mejía, Members of The Colombian Commission of Jurists, as representatives before the Commission and the Court in Las Palmeras Case regarding the death of Julio Milciades Cerón Gómez and Edebraes Norverto and Wilian Hamilton Cerón Rojas; powers of attorney granted between August 21 and 27, 1998 by Luis, Bertilda Heroína, Digna Reinalda, Dolores Celina, Rosa Evilá, Adela Nilda, Ulpiano, and Manuel Esteban, all of them Cerón Gómez, in favor of Gustavo Gallón Giraldo, member of The Colombian Commission of Jurists, as representatives before the Commission and the Court in Las Palmeras Case regarding the death of Julio Milciades Cerón Gómez; power of attorney granted on August 18, 1998 by Inés Sigindioy Narváez (on her own behalf and on that of her daughter Johana Carolina Lizcano Sigindioy) in favor of Gustavo Gallón Giraldo, member of The Colombian Commission of Jurists, as representatives before the Commission and the Court in Las Palmeras Case regarding the death of Hernán Lizcano Jacanamijoy; power of attorney granted on August 18, 1998 by Humberto Lizcano Jacanamijoy in favor of Gustavo Gallón Giraldo, member of The Colombian Commission of Jurists, as representatives before the

representative of the next of kin of the victims before the Court, for which it has incurred a number of expenses.

## VII OBLIGATION TO REDRESS

36. In its December 6, 2001 Judgment, the Court found Colombia to be responsible for the death of an unknown person, given the name N.N./Moisés in this case, in violation of Article 4 of the Convention. It also found that Colombia breached Articles 8(1) and 25(1) of the Convention, which regulate the right to fair trial and to judicial protection, to the detriment of the next of kin of Artemio Pantoja Ordóñez, Hernán Javier Cuarán Muchavisoy, Julio Milciades Cerón Gómez, Willian Hamilton Cerón Rojas, Edebraes Norverto Cerón Rojas, NN/Moisés, and Hernán Lizcano Jacanamijoy. The aforementioned judgment also ordered the reparations stage to be opened.

37. Pursuant to Article 63(1) of the American Convention, when the Court has found that one of its provisions has been breached, it must order "that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party." This article reflects an unwritten law that is one of the fundamental principles of international law.<sup>77</sup>

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*Commission and the Court in Las Palmeras Case regarding the death of Hernán Lizcano Jacanamijoy; power of attorney granted on February 18, 1999 by María Córdula Mora Jacanamijoy (on her own behalf and on that of Víctor Hugo Mora Jacanamijoy, Humberto Lizcano Jacanamijoy, and Johana Carolina Lizcano Sigindioy) in favor of Carlos Rodríguez Mejía, member of The Colombian Commission of Jurists, as representatives before the Commission and the Court in Las Palmeras Case regarding the death of Hernán Lizcano Jacanamijoy; power of attorney granted on December 8, 1993 and May 6, 2002 by María Adelina López (on her own behalf and on that of her children Carmen Lidia, Carmen Leonor, Aura Esperanza, Miriam Lucy, Adalí Oneida, Ramiro Artemio, and Jaime, all of them Pantoja López) in favor of Gustavo Gallón Giraldo, member of The Colombian Commission of Jurists, as representatives before the Commission in Las Palmeras Case regarding the death of Artemio Pantoja Ordóñez; power of attorney granted on February 15, 1999 by Claudina Muchavisoy de Cuarán (on her own behalf and on that of her husband José Daniel Cuarán and her children Luis Alberto Dávila Muchavisoy, Rosa Alba, Doris Silvia, José Remigio, Pablo Isidoro, Carmen Cecilia, Blanca Oliva, Umberto Enrique, Ana Baldamina, Jorge Franclín, and Daniel Antonio, all of them Cuarán Muchavisoy) in favor of Gustavo Gallón Giraldo, member of The Colombian Commission of Jurists, as representatives before the Commission and the Court in Las Palmeras Case regarding the death of Hernán Javier Cuarán Muchavisoy; power of attorney granted on February 25, 2002 by Amanda Anacona as a proxy for Diana Vanessa Cuarán Anacona in favor of The Colombian Commission of Jurists and the Center for Justice and International Law, as representatives before the Commission and the Court in Las Palmeras Case regarding the death of Hernán Cuarán Muchavisoy; power of attorney granted on May 27, 2002 by Blanca Elina, María Bertilda, María del Carmen, Faustina, and Luis Edmundo, all of them Pantoja Ordóñez, in favor of The Colombian Commission of Jurists and the Center for Justice and International Law as representatives before the Commission and the Court in Las Palmeras Case regarding the death of Artemio Pantoja Ordóñez; power of attorney granted on May 27, 2002 by Bertilda Heroína, Luis Nectarario, Dolores Celina, Adela Nilda, Digna Reinelda, Rosa Evilva, Segundo Ulpiano, and Manuel Esteban, all of them Cerón Gómez, in favor of The Colombian Commission of Jurists and the Center for Justice and International Law as representatives before the Commission and the Court in Las Palmeras Case regarding the death of Julio Milciades Cerón Gómez, Willian Hamilton Cerón Rojas, and Edebraes Norberto Cerón Rojas; power of attorney granted on May 3, 2002 by Yaneida Violeta Cerón Vargas in favor of The Colombian Commission of Jurists as representatives before the Court in Las Palmeras Case regarding the death of Julio Milciades Cerón Gómez; and documents backing expenses of the Colombian Commission of Jurists submitted by the representatives of the next of kin of the victims, included in the evidence file of the reparations phase of Las Palmeras Case, at the Secretariat of the Court, sheets 376 to 448 and 455 to 1727.*

<sup>77</sup> Cf. *Suárez Rosero Case. Reparations* (Art.63(1) of the American Convention on Human Rights). January 20, 1999 Judgment. Series C No 44, para. 40; *Castillo Páez Case. Reparations*, *supra* note 3,

38. Reparation of the damage caused by violation of an international obligation requires, whenever possible, complete restitution (*restitutio in integrum*), which generally consists of reestablishment of the previous situation. If this is not possible, as in the instant case, the international court must determine the measures required, in addition to ensuring the rights that were infringed, to repair the consequences caused by the breaches, as well as to establish payment of compensation for the damage caused.<sup>78</sup> This obligation to provide reparation is regulated, in all its aspects (scope, nature, manner, and determination of beneficiaries) by international law, it cannot be modified by the State nor can it refuse to comply by invoking domestic legal provisions.<sup>79</sup>

39. Reparations, as their name suggests, are measures that tend to make the effects of violations that were committed disappear. Their nature and amount depend on the damage caused both on a pecuniary and on a non-pecuniary level. Therefore, the reparations determined here are in connection with the violations found in this Court's December 6, 2001 judgment on the merits.

40. Pursuant to the above, the Court will first determine the reparation due for the death of N.N./Moisés.

41. Secondly, the Court will analyze reparations due for infringements of Articles 8(1) and 25(1) of the Convention. In the instant case, the term "next of kin of the victims" has been constantly used, and it is convenient to clarify its meaning. In these proceedings, the six persons killed by government forces on January 23, 1991 in Las Palmeras are called "victims." With respect to five of them, the Colombian Courts already ordered compensation due to the victims and it was received by the assignees or their next of kin. With respect to violation of Articles 8(1) and 25(1) of the Convention, the persons entitled to the rights that were infringed are called "next of kin of the victims" who, in this regard, do not act as assignees, but rather as victims on their own behalf.

42. During this reparations stage, new evidence has been supplied to expand the ambit of infringement of Articles 8(1) and 25(1) of the Convention. The December 6, 2001 judgment on the merits already determined infringement of these provisions and its limits; in the instant Judgment, the Court will limit itself to determining the reparations due for the infringements committed.

## VIII REPARATIONS FOR LOSS OF LIFE (Article 4 of the American Convention)

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para. 50 and *Garrido and Baigorria Case. Reparations* (Art.63(1) of the American Convention on Human Rights). August 27, 1998 Judgment. Series C No. 39, para. 40.

<sup>78</sup> Cf. *El Caracazo Case. Reparations*, supra note 2, para. 77; *Hilaire, Constantine and Benjamin et al. Case*, supra note 4, para. 203; *Trujillo Oroza Case. Reparations*, supra note 2, para. 61.

<sup>79</sup> Cf. *El Caracazo Case. Reparations*, supra note 2, para. 77; *Hilaire, Constantine and Benjamin et al. Case*, supra note 4, para. 203; *Trujillo Oroza Case. Reparations*, supra note 2, para. 61.

### *Arguments of the Commission*

43. With respect to the request for reparations due for abridgment of the right to life of N.N./Moisés, the Commission stated that:

a) the identity of the victim should be established before determining the pertinent amount of reparation and its distribution among his assignees regarding pecuniary and non-pecuniary aspects. If the efforts to identify the victim and his assignees are fruitless, the Commission requested that the State be ordered to set up a trust fund for 10 years so as to maintain the amount ordered, while the process of establishing his identity continues; and

b) it rejects the argument of the State that N.N./Moisés has no right to compensation for pecuniary damages because he was allegedly a guerrilla fighter, as there is no clear identification of who he was nor evidence of his participation in or ties with any guerrilla movement in Colombia. Even if it were established that the victim was a guerrilla fighter, pursuant to case law of the Court the respective pecuniary compensation would be in order.

### *Arguments of the State*

44. The State, in turn, argued that:

a) N.N./Moisés was a "guerrilla fighter," as the State has serious and reliable indications from internal processes to establish that said person was in that situation, for which reason it is not possible to conclude that he was a rural worker based on the premise that he died in a rural area. Therefore, reparation for damage cannot be claimed nor is it possible to compensate the next of kin for pecuniary damages as lost income, as the money they ceased to receive came from a criminal activity and said earnings would not be subject to legal protection. The amount requested as compensation for pecuniary damages is unacceptable in relation to the compensation ordered by the Court in cases of extra-judicial executions; and

b) the next of kin of the victims would have a right to "compensation for non-pecuniary damages." However, the State is of the opinion that the compensation due to the next of kin should be US\$ 10,000.00 (ten thousand United States dollars), exclusively for non-pecuniary damage, with prior demonstration of the identity of the victim and that of his beneficiaries.

### *Considerations of the Court*

45. Pursuant to the December 6, 2001 judgment, Colombia is responsible for the death of N.N./Moisés (*supra* para. 36). The Court established this responsibility primarily due to the statement in this regard made by the State at the public hearing on the merits on May 28, 2001.

46. None of the parties in this case have been able to provide any clues that might make it possible to know who N.N./Moisés was, what he was doing at the site of the event, what his occupation and age were, where he was from, etc. Nor have his mortal remains been identified. It is thought that they are buried somewhere in

the Mocoa cemetery. Furthermore, no person has appeared in these proceedings who states that he or she has kinship or any other ties with the deceased.

47. Despite this total lack of information, Colombia is under the obligation to repair the damage caused. Given the circumstances of the case, the Court estimates, in fairness, that the amount of compensation owed by the State is US\$ 100,000.00 (one hundred thousand United States dollars), which should be distributed among the heirs according to Colombian inheritance law. The alleged next of kin must appear before the State within 24 months of the date when N.N./Moisés is identified, and must supply authentic evidence of their ties with the victim to receive the respective compensation.

**IX**  
**REPARATIONS FOR INFRINGEMENT OF THE RIGHTS TO FAIR TRIAL**  
**AND TO JUDICIAL PROTECTION**  
(Articles 8(1) and 25(1) of the American Convention)

*Arguments of the representatives of the next of kin of the victims*

48. With respect to this point, the representatives of the next of kin of the victims stated that:

a) the Court must determine compensation for damage caused to the detriment to the next of kin of the victims for infringement of the rights to fair trial and to judicial protection, in view of several aspects that were not assessed nor reparation ordered for them by the domestic courts, and the judgment on the merits is not, in and of itself, a means of comprehensive reparation of the "moral damage" suffered by the victims of impunity;

b) the impact of denial of justice on the next of kin occurred at several moments and is maintained and increased in view of the circumstances they face in their struggle for justice. Feelings of fear and insecurity caused by stigmatization of the next of kin by the authorities as a direct consequence of the suppression of the facts and, as they have stated in their testimony, have grave consequences for their life and personal well-being. The next of kin were followed, suffered surveillance and searches, were the victims of verbal and physical threats and aggressions by members of the police force, the same department to which those responsible for the death of the victims belonged. Colombia must compensate the next of kin for the "moral damage" it has caused them and for the insecurity and anguish of facing this harsh reality; and

c) it must be assumed that denial of justice causes objective damage with a "moral detriment" to the immediate household, which is different from the damage caused by the death of a next of kin, and compensation is justified. The Court must consider that this damage is always caused and need not be proven, contrary to the position adopted by the State, that such compensation is only in order when pecuniary damage is proven.

49. Pursuant to the above, said representatives submitted an estimate of compensation for "moral damages" with respect to the next of kin of the victims

whom they consider beneficiaries of the reparations and, in their brief with final arguments, said representatives also included fourteen next of kin.

*Arguments of the Commission*

50. With respect to this point, the Commission stated that:

a) the wishes of the next of kin of the victims, expressed by their representatives, must be an important consideration when reparations are determined to remedy, insofar as possible, the damage resulting from the “massacre” in Las Palmeras and its non-elucidation before domestic courts. The purpose of the requests made by the Commission is to complement those claims. Therefore, it agrees with the arguments of said representatives regarding the grounds for reparations in the instant case, as well as regarding payment of compensation for “moral damage;”

b) with respect to attribution of this damage, the expert opinion gives rise to a presumption that the consequences of impunity prevailing in the instant case affect the closest kinship group –parents, children, spouses, and siblings- of the victims who died. Evidence provided regarding eleven of the next of kin of the victims is representative of the emotional situation and the consequences suffered by the kinship groups referred to in the judgment on the merits and which must be applied in connection with all of them; and

c) it rejects the standards proposed by the State to determine reparations for denial of justice, as they are not applicable to this case, they are based on domestic legal theses, and they do not fulfill the criteria of the case law of the Court.

51. Likewise, in its brief with final arguments, the Commission submitted the list of persons who, in its opinion, should be deemed entitled to reparations.

*Arguments of the State*

52. The State argued that:

a) with respect to the claim of the representatives of the next of kin of the victim that the State should pay monetary compensation to them for the moral damage suffered due to judicial delay and fear of alleged imminence of harm, it believes that compensation for the detriment should be in direct proportion to the magnitude of the damage caused. The right to “prompt and complete justice” cannot be redressed by means of a sum of money, which is only useful to compensate for damage that can be quantified monetarily;

b) the State does not deny the generic obligation to compensate for moral damage caused by facts for which it is responsible. Nevertheless, since investigations are still ongoing, the only way to repair the detriment suffered by the next of kin of the victims, which consists of not having received the reply one would expect from prompt and complete administration of justice, is by swiftly and seriously accelerating the proceedings to modify the situation that fosters impunity, instead of ordering the State to pay indemnification. Furthermore, the amounts requested and their distribution among the next of kin are disproportional; and

c) the representatives of the next of kin of the victims confuse the existence of a damage with its quantification, on the mistaken basis that for this it is sufficient that the State has been found responsible for the fact. This moral detriment is different from the finding by the Court that justice was delayed. Said representatives should have proven the existence of the damage and the causal link before requesting that the amount of the detriment be appraised. Therefore, the request for compensation for moral damage suffered by the next of kin of the victims, due to fear of imminence of a danger over 11 years, is also unconvincing, because the existence of this damage has not been proven. The fear and anguish that the next of kin of the victims say they suffer allegedly derive from their struggle against impunity regarding the facts, which is not true because they have not participated in the proceedings.

#### *Considerations of the Court*

53. The December 6, 2001 judgment found that Colombia breached Articles 8(1) and 25(1) of the Convention to the detriment of the next of kin of the persons listed in operative paragraph four. Paragraphs 48 to 66 of that judgment analyze said violations. Reading these texts it can be seen that the main types of damage suffered can be classified in two groups, as follows:

a) On the one hand, all the damage caused by deficiencies in processing of the judicial proceedings, their delays and the obstacles placed to hinder attainment of a prompt and adequate decision. In this regard, the references to the disciplinary proceedings and to the ordinary criminal proceedings in the judgment should be recalled.<sup>80</sup> It should also be added that some members of the police altered, hid, and destroyed evidence. All this led the Court to state that there was a "situation of impunity." The damage caused by this situation consists of the impossibility of punishing those truly responsible, which creates a feeling of defenselessness and anguish among the next of kin of the victims.

b) On the other hand, there is the conduct of numerous members of the police force and other officials who distorted the truth of the facts, making it all appear to have been an attack by an armed subversive group. This led to the next of kin being deemed linked to the guerrilla forces. As a consequence thereof, some of them lost their jobs, their social and commercial relations; others were insulted, maltreated, and persecuted.

54. The next of kin of the victims may have suffered the above stated damage in one of the aforementioned categories or in both at the same time. All such damage must be duly redressed. But the Court must specify that the indemnifications granted are to repair the detriment caused. Therefore, those claiming reparation must, in general, demonstrate the damage suffered. If the damage is caused by the situation of impunity, they must certify the ties of the applicant with one of the victims and that lack of punishment has caused detriment to him or her. Likewise, those who have suffered insults or maltreatment, or who have lost their jobs due to their ties with a victim, must also prove the damage suffered for the reparation to be

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<sup>80</sup> Cf. *Las Palmeras Case*, *supra* note 20, paras. 49-56.

granted. In general, evidence of kinship does not suffice. In some cases, it is sufficient because a close family tie presupposes the existence of shared grief.

55. The Court deems that it is necessary to prove the moral damage invoked, except in the case of very close relatives of the victim, or of persons linked to him or her as spouses or permanent companions. Under this hypothesis, the Court will apply the presumption, established in other cases,<sup>81</sup> that human rights violations and impunity in connection with them cause suffering.

56. The Court has analyzed the evidence supplied, has assessed it taking into account the situation of the persons involved, the modes of life in the region where the facts took place, and other conditions of time and place. Based on a competent analysis of the evidence supplied, the Court deems that Colombia must first indemnify those persons who are a father, mother, spouse, or child of Artemio Pantoja Ordóñez, Hernán Javier Cuarán Muchavosoy, Julio Milciades Cerón Gómez, Wilian Hamilton Cerón Rojas, or Edebraes Norverto Cerón Rojas. Due to the family ties, it is assumed that they have suffered detriment due to deficient processing of the judicial proceedings, their delay, and obstructions to hinder attainment of a prompt and adequate decision. Statements by the next of kin before this Court and those submitted in writing and authenticated by a notary public can also be considered, subject to the opinion of the Court, inasmuch as they make it possible to establish that their authors were affected in their moral wealth due to their kinship with one of the above stated persons.

57. The pecuniary reparations are as follows:

Pecuniary reparations	
<i>Next of kin of the victims</i>	<i>Amount</i>
<i>Next of kin of Julio Milciades Cerón Gómez, Wilian Hamilton Cerón Rojas, and Edebraes Norverto Cerón Rojas</i>	
Blanca Flor Rojas Perafán (spouse and mother)	US \$10,000.00
Bladimir Cerón Rojas (son and brother)	US \$8,000.00
Leyman Cerón Rojas (son and brother)	US \$6,000.00
Sorayda Marley Cerón Rojas (daughter and sister)	US \$6,000.00
<i>Next of kin of Hernán Javier Cuarán Muchavisoy</i>	
Amanda Anacona Chapal de Cuarán (mother)	US \$6,000.00
Diana Vanessa Cuarán Anacona (daughter)	US \$6,000.00
Claudina Muchavisoy (mother)	US \$6,000.00
José Daniel Cuarán (father) - <i>deceased</i>	US \$6,000.00
Doris Silvia Cuarán Muchavisoy (sister)	US \$4,000.00
Carmen Cecilia Cuarán Muchavisoy (sister)	US \$2,500.00
Umberto Enrique Cuarán Muchavisoy (brother)	US \$2,500.00

<sup>81</sup> Cf. *El Caracazo Case. Reparations*, supra note 2, para. 50 e); *Trujillo Oroza Case. Reparations*, supra note 2, para. 88; *Bámaca Velásquez Case. Reparations*, supra note 2, paras. 60, 63 to 65; *Cantoral Benavides Case. Reparations* (Art.63(1) American Convention on Human Rights). December 3, 2001 Judgment. Series C No. 88, paras. 37 and 61; *“Street Children” Case (Villagrán Morales et al.)*. *Reparations* (Art.63(1) American Convention on Human Rights). May 26, 2001 Judgment. Series C No. 77, paras. 66 and 68; *“White Van” Case (Paniagua Morales et al.)*. *Reparations* (Art.63(1) American Convention on Human Rights). May 25, 2001 Judgment. Series C No. 76, paras. 108, 110, 125, 126, 143, 144 and 158; *Castillo Páez Case. Reparations*, supra note 3, para. 88; *Loayza Tamayo Case. Reparations*, supra note 3, para. 140, 142 and 143; *Garrido and Baigorria Case. Reparations*, supra note 77, para. 62; and *Aloeboetoe et al. Case. Reparations* (Art.63(1) American Convention on Human Rights). September 10, 1993 Judgment. Series C No. 15, para. 76.



Jorge Franclin Cuarán Muchavisoy (brother)	US \$4,000.00
<i>Next of kin of Artemio Pantoja Ordóñez</i>	
María Adelina López (mother)	US \$6,000.00
Carmen Lidia Pantoja López (daughter)	US \$6,000.00
Carmen Leonor Pantoja López (daughter)	US \$8,000.00
Aura Esperanza Pantoja López (daughter)	US \$6,000.00
Miriam Lucy Pantoja López (daughter)	US \$6,000.00
Adali Oneyda Pantoja López (daughter)	US \$6,000.00
Ramiro Artemio Pantoja López (son)	US \$6,000.00
Jaime Pantoja López (son)	US \$6,000.00
Segundo Jorge Pantoja Moreno (father)	US \$6,000.00
Pastora Ordóñez (mother)	US \$6,000.00
Luis Edmundo Pantoja Ordóñez (brother)	US \$4,000.00

Pecuniary reparations	
<i>Next of kin of Julio Milciades Cerón Gómez, Wilian Hamilton Cerón Rojas, and Edebraes Norverto Cerón Rojas</i>	<i>Amount</i>
Yaneida Violeta Cerón Vargas (niece)	US \$6,000.00

58. The Court set the compensations stated in the foregoing tables, taking into account the specific situations of those entitled to reparations and the evidence included in the body of evidence. In the case of Blanca Flor Rojas, since she is a victim of denial of justice as a spouse and as a mother, this double category was taken into account when reparation was determined. On the other hand, the children or siblings of the victims who demonstrated that their detriment worsened due to interruption of the labor contract, problems in their interpersonal relations, and detainments, among others, were granted larger indemnifications than other children or siblings. The Court took into account detriment to labor relations when it determined said compensation, even though the representatives of the next of kin of the victims and the Commission only referred to non-pecuniary damage. Finally, Yaneida Violeta Cerón Vargas, a niece of one of the victims, was granted equal reparation to that granted to the children of the victims, because she proved that since she was six she lived in the household of Julio Milciades Cerón Gómez and that she has close ties with said family.

59. The December 6, 2001 judgment also states that Colombia must indemnify the next of kin of Hernán Lizcano Jacanamijoy. This person was killed in the events at Las Palmeras, but it was not proven that his death was attributable to the State in violation of Article 4 of the American Convention. The State, in turn, did not demonstrate that Lizcano Jacanamijoy was a guerrilla fighter. Therefore, Colombia did not have the right to treat him as such. Allegations that he was a guerrilla fighter have offended the next of kin of Lizcano Jacanamijoy. Therefore, his parents, children and permanent companion have the right to compensation, as do the next of kin who testified before the Court or submitted their statement made before a notary public.

60. The pecuniary reparations are as follows:

Pecuniary reparations	
<i>Next of kin of Hernán Lizcano Jacanamijoy</i>	<i>Amount</i>
Inés Sigindioy Narvaez (permanent companion)	US \$6,000.00

Johana Carolina Lizcano Jacanamijoy (daughter)	US \$6,000.00
María Córdula Mora Jacanamijoy (sister)	US \$2,500.00

61. It has been proven in these proceedings that some members of the police and other officials distorted evidence regarding what happened at Las Palmeras and persecuted the next of kin of the victims, subjecting them to affront, maltreatment, and insults. It has also been proven that this happened mainly in Mocoa. Since this is a small town and taking into account the evidence supplied, it was there that the State authorities primarily persecuted the next of kin of the victims. Therefore, the Court deems it appropriate to rule that the next of kin of the victims not included in paragraphs 56 to 60 who were living in Mocoa at the time of the facts judged in these proceedings and who continue to live there until today, should likewise be indemnified for the maltreatment suffered. The Court also deems that for the purposes of this case, the fact that next of kin not included in paragraphs 56 to 60 demanded prompt conclusion of the proceedings instituted before domestic entities is sufficient evidence of affective ties. It should be pointed out that these must be explicit requests for prompt punishment of those responsible. Since, given the circumstances of this case, it is not possible to individualize the next of kin who are beneficiaries of this paragraph 61, each of them will receive US\$ 6,000.00 (six thousand United States dollars) if they are parents or children, and US\$ 2,500.00 (two thousand five hundred United States dollars) to each of the siblings. In any case, they must demonstrate before the competent authorities in Colombia, in addition to the family ties, the fact that they have lived continuously in Mocoa or that they appeared before domestic entities, within six months of the date this judgment is notified.

## X OTHER FORMS OF REPARATION

### *Arguments of the representatives of the next of kin of the victims*

62. The representatives of the next of kin of the victims asked the Court to order the State to carry out certain measures of satisfaction or non-recidivism, base on the facts that:

- a) there has been no conviction in Colombia in connection with the facts of the case; the three persons accused of the death of six of the victims have not been detained, and the proceedings are stagnant, and given the *estoppel* decision regarding the investigation, issued on June 26, 2002 with respect to 37 of those accused, the facts may remain unpunished. This resolution was declared firm, without it being contested by the State to avoid its becoming *res judicata*, and therefore the State took no steps to comply with the provisions of the judgment on the merits, and the possibility of comprehensive elucidation of the facts has been closed. Therefore, the Court should order the State, as reparation for the right of the next of kin to the truth, to establish an investigative group, with the status of a truth committee, to elucidate how the fact occurred and to submit a report in this regard to the Court;
- b) it is an obligation of the State to render justice and to ensure the next of kin of the victims that the authors of the violations are adequately punished with the aim or eradicating impunity. Ten years later it is not possible to point out to the victims that it was their duty to participate in the

criminal proceedings for the State to fulfill its obligation. Failure of these investigations cannot be attributed to lack of cooperation by the victims who have not appeared as plaintiffs ("partie civile") as it has been proven that they did not have that possibility in the military criminal proceeding of 1991. Even though in 1994 the Constitutional Court ordered in another case that civil parties be admitted, this was not always complied with in military criminal proceedings. Furthermore, there was a lack of trust and credibility in Colombian criminal justice, and in several cases the next of kin did not have sufficient resources to participate;

c) arbitrary statements by State Agents, before local and national public opinion, that five of the victims were guerrilla fighters, were never corrected, despite what was set forth in the judgments by administrative-law courts regarding their personal conditions;

d) in this case the judgment cannot *per se* constitute sufficient reparation, for which reason the State must make public its acknowledgment of responsibility and restore the good name of the victims, by means of a writ of satisfaction drafted by the next of kin of the victims and signed by the President of the Republic, in one page of two national-coverage daily newspapers, as well as on radio and television, no later than thirty days after the judgment on reparations has been notified. The State must abstain from stating that Hernán Lizcano Jacanamijoy was a guerrilla fighter, and it must carry out actions to reinstate his good name;

e) with the aim of honoring the memory of the victims and to reestablish their good name, they request that the State comply with the following measures, within six months of the date when the judgment on reparations is notified:

e.i) to allocate the resources required to provide the school located in the town of Las Palmeras the infrastructure and human as well as material resources for it to adequately cover the primary education needs of children of the neighboring villages, in such a manner that each of the classrooms or play areas built bear the name of each of the victims;

e.ii) to give the name of the victims to the school in the Municipality of Mocoa; and

e.iii) to establish a formal or musical education center in the city of Bogotá, giving it the name of the victims.

#### *Arguments of the Commission*

63. The Commission, in turn, asked the Court to order the State to comply with the following measures of reparation:

a) to complete the investigation for violations addressed in the instant case in a serious, expedite, impartial, and effective manner, to establish the individual responsibility of its Agents and to apply the corresponding criminal and administrative sanctions. Full compliance with this aspect of the judgment of the Court is important both for the next of kin of the victims and

for the community to which they belonged and for society as a whole. It objects to the argument by the State that the next of kin are at fault for not having appeared *motu proprio* to promote the proceedings which the State must promote on its own motion;

b) that in case the *estoppel* ordered in favor of 37 accused persons by the Human Rights Unit becomes *res judicata*, the State is under the obligation to remove all domestic legal obstacles that impede fulfillment of this obligation. The obligation to investigate the facts and to try those responsible pursuant to the standards of the Convention is autonomous in nature and separate from the reparation due for denial of justice. Therefore, the Commission rejects the argument of the State that the only reparation due is its promise to continue the investigation;

c) to correct the acts of the State regarding the statements it made with respect to the next of kin of the victims, specifically of N.N./Moisés and Hernán Lizcano Jacanamijoy; the measures of satisfaction ordered must be public, effective, and involve participation of the next of kin, since the domestic judgments and the judgment on the merits issued by the Inter-American Court have not fulfilled this purpose. The Commission also requests that the mortal remains of N.N./Moisés be located and that his identity be established; and

d) to adopt all necessary measures to extend and improve functioning of the school located in Las Palmeras, Municipality of Mocoa. This gesture, together with inclusion of a reminder of the memory of the victims, would allow their memory to live on in the community to which they belonged and would contribute to avoid recidivism of the violations committed.

#### *Arguments of the State*

64. The State, regarding this point, stated the following:

a) with respect to the requirement for total elucidation of the facts, as was stated by the representatives of the next of kin of the victims, this cannot be posed in absolute terms, for the nature of the obligation to investigate is one of means, not of results;

b) the interested parties have not cooperated with criminal justice as allowed by domestic legislation, that is, appearing as plaintiffs once the proceedings have begun or promoting the preliminary investigation by exercising the right to petition. While it is clear that it is the State's obligation to effectively render justice, it does not seem logical for the interested parties to refuse to cooperate and to remain aside from the proceedings, and afterwards to request monetary compensation, which would not satisfy their wish to know the truth;

c) the civil parties had the right to contest the *estoppel* decision in favor of 37 persons, regarding the investigation. Furthermore, the trial against three clearly identified persons continues. As regards the statute of limitations of penal action, pursuant to Colombian legislation, it was interrupted with the resolution to prosecute, and the new term will not be less than five years nor more than ten, and therefore the proceedings are not about to prescribe;

d) references made to Press Release 001 issued by the National Police, where the victims were said to be guerrilla fighters, have been redressed by the State through judgments of the State Council, which are public and highlighted that none of the five victims carried out illegal activities; through explicit acknowledgment of responsibility by the State; through the judgment on the merits issued by the Inter-American Court, and through publicity of the case in the national and international press. The publicity measures requested are not proportional to the damage that said press release might have caused; and

e) with respect to the request regarding recovery of the memory of N.N./Moisés, the State considers that domestic criminal proceedings established that he was a FARC - EP guerrilla fighter who was captured alive and, subsequently, summarily executed, for which the State already acknowledged its responsibility.

#### *Considerations of the Court*

65. The Court has carefully studied the statements and arguments of the parties regarding guarantees of non-recidivism and measures of satisfaction.

66. As regards the request for the Court to declare that Colombia must investigate and punish the authors of the facts in the instant case, this Court must first state that the American Convention guarantees all persons' access to justice to protect their rights, and that it is the duty of the States Party to prevent and investigate human rights violations and to identify and punish their perpetrators and the accessories after the fact.<sup>82</sup> In other words, all human rights violations involve the duty of the State to conduct an effective investigation to identify the persons responsible of the violations and, if that were the case, to punish them.

67. Therefore, the State has the obligation to effectively complete the ongoing criminal proceedings with respect to the facts pertaining to the death of the victims and that generated the violations of the American Convention in the instant case, to identify the principals, as well as possible accessories after the fact, and to punish them. The results of the proceeding must be made known to the public, for Colombian society to know the truth.

68. States should not argue lack of procedural activity by the interested parties as a reason for not fulfilling their obligations, under the Convention, to investigate and punish human rights violations. In the instant case, the duty of the State to investigate, identify, and punish those responsible within the ongoing criminal proceeding (*supra* para. 35.n), is an obligation under the Convention which the State must fulfill and carry out *ex officio* in an effective way, whether the victims or their representatives do or do not exercise the capacities foreseen by domestic legislation for them to participate in the proceedings opened to that effect.

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<sup>82</sup> Cf. *El Caracazo Case. Reparations*, *supra* note 2, para. 115; *Trujillo Oroza Case. Reparations*, *supra* note 2, para. 99; and *Bámaca Velásquez Case. Reparations*, *supra* note 2, para. 75.

69. In the instant case, it has been stated that the passage of time may give rise to extinguishment of the penal action with respect to the principals of the massacre in Las Palmeras. However, this cannot happen because the statute of limitations is suspended while a case is pending before a body of the inter-American system for protection of human rights.<sup>83</sup> If that were not the case, the legal effect of the provisions of the American Convention would be denied with respect to domestic law of the States Party. Moreover, if the time elapsed while a case is being heard by the inter-American system were taken into account for purposes of extinguishment, this would assign the international proceeding a consequence radically opposed to its intention: rather than promoting justice, it would bring with it impunity of those responsible for the violation.

70. For all the above, Colombia must fulfill this obligation which will subsist until it has been fulfilled completely.

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71. According to the request by the Commission, in connection with determining the whereabouts of the mortal remains of the person called N.N./Moisés and his identification, this Court deems that Colombia must take all necessary steps to identify said person, within a reasonable time, as well as locate and exhume his remains and deliver them to his next of kin for them to bury those remains in an appropriate manner; the State must also cover the costs incurred in this regard.

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72. Since the existence and identity of the next of kin of N.N./Moisés is also unknown in the instant case, once he has been identified, the Court deems it necessary for the State to allocate the resources required to locate said next of kin.<sup>84</sup> For this it must, among other steps to be taken, publish an announcement, at least three non-consecutive days, in a newspaper and broadcast on a radio and a television station, all of them with national coverage, explaining that the next of kin of the victim are sought to pay them compensation regarding the facts in the instant case, that took place on January 23, 1991 in the village of Las Palmeras, Municipality of Mocoa, Department of Putumayo.

73. Recordings and copies of said announcements, as were the case, together with precise information on the media and dates published or broadcast, must be submitted to the Court for them to be considered in the process of overseeing compliance with this Judgment.

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<sup>83</sup> Cf. *James et al. Case. Provisional Measures*. November 24, 2001 Order of the Inter-American Court of Human Rights. Series E No. 3, Compendium: July 2000 – June 2001, Whereas 11; *James et al. Case. Provisional Measures*. August 16, 2000 Order of the Inter-American Court of Human Rights. Series E No. 3, Compendium: July 2000 - June 2001, Whereas 11; and *James et al. Case. Provisional Measures*. September 25, 1999 Order of the Inter-American Court of Human Rights. Series E No. 2, Compendium: July 1996 – June 2000, Whereas 10.

<sup>84</sup> Cf. *Barrios Altos Case. Reparations* (Art.63(1) American Convention on Human Rights). November 30, 2001 Judgment. Series C No. 87, paras. 31 and 32.

74. As regards the request by the representatives of the next of kin of the victims and of the Commission for Colombia to carry out symbolic acts as measures of non-recidivism and satisfaction, this Court deems that acknowledgment of responsibility by the State is a positive contribution to the development of these proceedings and to effectiveness of the principles that inspire the American Convention.<sup>85</sup> Taking into account the acknowledgment of responsibility by the State in connection with this specific request, the instant Judgment is *per se* a form of reparation and satisfaction for the next of kin of the victims.

75. Notwithstanding the above, the Court rules that the State, as a measure of satisfaction, must publish once, in the daily Official Gazette and in a press release of the National Police and of the Armed Forces of Colombia, the judgment on the merits issued by the Court on December 6, 2001 and chapter VI, Proven Facts, and operative paragraphs 1 to 4 of the instant judgment.

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76. In this section, the Court will refer to the remains of Hernán Lizcano Jacanamijoy, which were exhumed and which, according to the Report of the Criminalistics Division of the Technical Investigative Corps of the Office of the Solicitor General of the Republic, regarding the chemical analysis of the metal residues found in the bone remains of said victim,<sup>86</sup> are currently under keeping at the Forensic Anthropology Laboratory of the National Institute of Forensic Medicine.<sup>87</sup>

77. In view of the above, the Court orders the State to deliver the remains of Hernán Lizcano Jacanamijoy to his next of kin, for them to bury those remains in an appropriate manner. To this end, the State must cover the costs of transporting said remains, their burial, and any other steps required to comply with this provision.

## **XI LEGAL COSTS AND EXPENSES**

### *Arguments of representatives of the next of kin of the victims*

78. The representatives of the next of kin of the victims stated that:

- a) the Colombian Commission of Jurists, in face of the objections raised by the State in its brief with observations on reparations and at the public hearing, made several proposals at the latter to set legal costs and expenses. In the brief with their final arguments, the representatives proposed that legal costs and expenses be set by the Court in fairness, and supplementarily they

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<sup>85</sup> Cf. *El Caracazo Case. Reparations*, *supra* note 2, para. 128; *Trujillo Oroza Case. Reparations*, *supra* note 2, para. 118; and *Benavides Cevallos Case*. June 19, 1998 Judgment. Series C No. 38, para. 57.

<sup>86</sup> Cf. processing file of the merits stage of *Las Palmeras Case*, sheets 831 to 856.

<sup>87</sup> The complete name is Specialized Identification Area of the National Identification Section of the Criminalistic Division of the Technical Investigative Corps of the Office of the Solicitor General of the Republic, Forensic Laboratory of the National Institute of Forensic Medicine.

submitted a new estimate of said items adding up to US\$ 180,786.81 (one hundred and eighty thousand seven hundred and eighty-six United States dollars and eighty-one cents), instead of the original estimate included in their brief on reparations, which added up to 141,768,353 (one hundred and forty-one million seven hundred and sixty-eight thousand three hundred and fifty-three Colombian pesos).<sup>88</sup> Finally, they reiterated their willingness to waive restitution of the expenses if the State voluntarily agrees to adopt several measures of satisfaction; and

b) CEJIL requested in the brief on reparations, for expenses incurred during the proceedings before the Court, US\$ 10,388.70 (ten thousand three hundred and eighty-eight United States dollars and seventy cents).

#### *Arguments of the Commission*

79. The Commission argued that:

a) payment for legal costs and expenses requested by the representatives of the next of kin of the victims is reasonable and they agree with the request, fully justified in light of the economic efforts made by said representatives during the proceedings; and

b) they do not agree with the position of the State regarding non-reimbursement of expenses related, among other items, to appearance of witnesses at the hearing on the merits, as the Court had to take their testimony into account to reach its decision on the case. It is the understanding of the Commission that Colombia is under an obligation to cover the probatory expenses incurred during these proceedings because it is evidence gathered in view of decisions of the Court, and it is not at the will of the State to determine which evidence-gathering costs it must pay.

#### *Arguments of the State*

80. The State, in turn, argued that

a) it would not be fair in this case for the State to cover expenses that were not incurred by the representatives of the next of kin of the victims in connection with the proceedings or evidence that was decreed despite the opposition of the State and that was not useful for the proceedings, such as presentation of the witnesses, the expert witness, evidence involving exhumation, and expenses of the "observer in the spectrometry test;"

b) the amounts alleged by the representatives of the next of kin of the victims must be studied carefully to determine legal expenses and costs, as there are several inconsistencies in the appendices supplied by the Colombian Commission of Jurists regarding legal fees and they do not prove direct relationship of amounts charged for various expenses; and

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<sup>88</sup> This amount was roughly equivalent to US\$ 61,430.00 (sixty-one thousand four hundred and thirty United States dollars), at the exchange rate between the Colombian peso and the United States dollar at the time the brief on reparations was filed.



c) with respect to the possibility of negotiating legal costs and expenses, raised by the representatives, the State will abide by the decision of the Court regarding necessary and reasonable expenses effectively incurred by or caused to the next of kin of the victims or their representatives.

### *Considerations of the Court*

81. The Court has carefully examined the statements and arguments of the parties, as well as the appendices sent by the representatives of the next of kin of the victims.

82. Legal costs and expenses must be considered under the concept of reparations set forth in Article 63(1) of the American Convention, because the activities carried out by the victim or victims, their next of kin or their representatives to have access to domestic and international justice involve disbursements and financial commitments that must be indemnified when the judgment finds the State responsible.<sup>89</sup>

83. The Court must carefully appraise the scope of legal costs and expenses, taking into account the circumstances of the specific case, the nature of international jurisdiction for the protection of human rights, and the characteristics of the respective proceedings, which have specific traits that are different from those of other domestic or international proceedings.<sup>90</sup>

84. To this end, despite the numerous vouchers sent by the representatives of the next of kin of the victims, not all of which specify the disbursements with respect to various steps taken in the instant case, the Court deems that it is fair to recognize, as reimbursement for legal costs and expenses incurred under domestic jurisdiction and under inter-American jurisdiction, US\$ 50,000.00 (fifty thousand United States dollars) for the Colombian Commission of Jurists and US\$ 1,000.00 (one thousand United States dollars) to CEJIL, as representatives of the next of kin of the victims.

85. With respect to the request by the representatives of the next of kin of the victims for reimbursement of expenses incurred by Héctor Daniel Fernández during evidence-gathering in connection with the metal remains in the body of Hernán Lizcano Jacanamijoy, this Court deems that said request is not in order, pursuant to paragraph 46 of the judgment on the merits.

## **XII MODE OF COMPLIANCE**

86. To comply with the instant Judgment, the State must pay the compensatory indemnifications and reimbursement of legal costs and expenses, within six months of the date this Judgment was notified, except with respect to the provisions of paragraphs 47 and 61.

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<sup>89</sup> Cf. *El Caracazo Case. Reparations*, supra note 2, para. 138; *Trujillo Oroza Case. Reparations*, supra note 2, para. 126; *Cantoral Benavides Case. Reparations*, supra note 81, para. 85.

<sup>90</sup> Cf. *El Caracazo Case. Reparations*, supra note 2, para. 131; *Trujillo Oroza Case. Reparations*, supra note 2, para. 126; *Cantoral Benavides Case, Reparations*, supra note 81, para. 85.

87. Payment of compensations decided in favor of the next of kin of the victims shall be made directly to them. If any of them are deceased or die, payment will be made to their heirs.

88. The Court deems it appropriate to add that, if for any reason it is not possible for the beneficiaries of the compensations to appear to receive them, the State must deposit the amounts in their name in an account or certificate of deposit in a Colombian banking institution, in United States dollars or its equivalent in Colombian currency, within six months, and under the most favorable financial conditions allowed by banking practice and legislation. If after ten years the compensation has not been claimed, the amount shall return to the State, with the interest accrued.

89. With respect to compensation decided in favor of beneficiaries who are minors, the State will open an account or certificate of deposit in a Colombian banking institution, in United States dollars or its equivalent in Colombian currency, within six months, and under the most favorable financial conditions allowed by banking practice and legislation. Interest earnings will accrue to the principal, which will be turned over in full to the beneficiaries when they attain majority or when they marry.

90. Likewise, if it were not possible for the next of kin of N.N./Moisés to appear to receive their compensations within twenty-four months of the date he is identified, as set forth previously (*supra* para. 47), the State must deposit the respective amount in an account or certificate of deposit in a Colombian banking institution, in United States dollars or its equivalent in Colombian currency, within six months, and under the most favorable financial conditions allowed by banking practice and legislation. If after ten years the compensation has not been claimed, the amount shall return to the State, with the interest accrued.

91. Legal costs and expenses incurred for actions taken by the representatives of the next of kin of the victims before the inter-American system for protection of human rights will be paid directly in favor of the Colombian Commission of Jurists and of CEJIL, as set forth above (*supra* para. 84).

92. The State can fulfill its obligations in United States dollars or an equivalent amount in Colombian currency, using for this calculation the exchange rate between both currencies in the New York, United States of America exchange, the day before the payment.

93. Payments ordered in this Judgment will be exempt from all currently existing taxes and those that may be established in the future.

94. If the State is in arrears, it will pay interest on the amount owed in accordance with the moratory interest rate in Colombia.

95. In accordance with this Court's usual practice, the Court reserves the authority to monitor comprehensive compliance with the instant Judgment. The case will be closed once the State has faithfully complied with the provisions of this Judgment. Within a year from the date this Judgment is notified, the State must report to the Court on the actions taken to comply with this Judgment.

**XIII**  
**OPERATIVE PARAGRAPHS**

96. Therefore,

**THE COURT,**

**DECIDES:**

unanimously,

1. That, pursuant to the terms of paragraphs 67 to 70 of the instant Judgment, the State must effectively complete the ongoing criminal proceedings pertaining to the death of the victims and which generated violations of the American Convention in the instant case, identify the principals and their aiders and abettors, as well as possible accessories after the fact, and punish them, and publish the results of the proceedings.

2. That, pursuant to paragraphs 71 to 73 of the instant Judgment, the State must take all necessary steps to identify N.N./Moisés, within a reasonable time, as well as locate, exhume, and deliver his remains to his next of kin. The State must also apply all means necessary to locate the next of kin of N.N./ Moisés, for which it must publish an announcement, at least three non-consecutive days, in a newspaper and broadcast on a radio and a television station, all of them with national coverage, explaining that the next of kin of the victim are sought to pay them compensation regarding the facts in the instant case, that took place on January 23, 1991 in the village of Las Palmeras, Municipality of Mocoa, Department of Putumayo.

3. That the State must publish once, in the daily Official Gazette and in a press release of the National Police and of the Armed Forces of Colombia, the judgment on the merits issued by the Court on December 6, 2001 and chapter VI, Proven Facts, and operative paragraphs 1 to 4 of the instant judgment, pursuant to the terms of paragraph 75 of the latter.

4. That the State must return the remains of Hernán Lizcano Jacanamijoy to his next of kin, for them to bury them in an appropriate manner, pursuant to the terms of paragraphs 76 and 77 of the instant Judgment.

5. That the State of Colombia must pay US\$ 100,000.00 (one hundred thousand United States dollars), or its equivalent in Colombian currency, to the next of kin of N.N./Moisés, who must appear before the State within 24 months of the date when said person is identified, and must supply authentic evidence of their ties with the victim to receive the respective compensation, pursuant to the terms of paragraph 47 of the instant Judgment.

6. That the State of Colombia must pay US\$ 139,000.00 (one hundred and thirty-nine thousand United States dollars) or the equivalent amount in Colombian currency, as compensation for the damage in connection with violation of Articles 8(1) and 25(1) of the American Convention on Human Rights. Said amount must be paid to the next of kin of Julio Milciades Cerón Rojas, Willian Hamilton Cerón Rojas, Edebraes Norverto Cerón Rojas, Hernán Javier Cuarán Muchavisoy, and Artemio Pantoja Ordóñez, pursuant to the terms of paragraphs 56 to 58 of the instant Judgment.

7. That the State of Colombia must pay US\$ 14,500.00 (fourteen thousand five hundred United States dollars) or the equivalent amount in Colombian currency, as compensation for damage in connection with violation of Articles 8(1) and 25(1) of the American Convention on Human Rights. Said amount must be paid to the next of kin of Hernán Lizcano Jacanamijoy, pursuant to the terms of paragraphs 59 and 60 of the instant Judgment.
8. That the State of Colombia, pursuant to the terms of paragraph 61 of the instant judgment, must pay US\$ 6,000.00 (six thousand United States dollars) or US\$ 2,500.00 (two thousand five hundred United States dollars) or the equivalent amount in Colombian currency, as appropriate.
9. That the State of Colombia, pursuant to the terms set forth in paragraph 84 of the instant Judgment, must pay, as reimbursement for legal costs and expenses, US\$ 50,000.00 (fifty thousand United States dollars) or the equivalent amount in Colombian currency to the Colombian Commission of Jurists, and US\$ 1,000.00 (one thousand United States dollars) or the equivalent amount in Colombian currency to the Center for Justice and International Law (CEJIL).
10. That payments ordered in the instant Judgment will be exempt from any existing or future taxes.
11. That the State of Colombia must comply with the measures of reparation ordered in the instant Judgment within six months of the date when it is notified, except with respect to the provisions of paragraphs 47 and 61.
12. That within a year from the date when this Judgment is notified, the State must report to the Inter-American Court of Human Rights on actions taken to comply with it.
13. That the Inter-American Court of Human Rights will monitor compliance with this Judgment and will close the instant case once the State has fully applied the provisions set forth in it.

Done in the Spanish and English languages, the text in Spanish being authentic, in San José, Costa Rica, on November 26, 2002.

Antônio A. Cançado Trindade  
President

Alirio Abreu-Burelli

Máximo Pacheco-Gómez

Hernán Salgado-Pesantes

Oliver Jackman

Sergio García-Ramírez

Julio A. Barberis  
Judge *ad hoc*

Manuel E. Ventura-Robles

Secretary

So ordered,

Antônio A. Caçado Trindade  
President

Manuel E. Ventura-Robles  
Secretary