

INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF VEREDA LA ESPERANZA V. COLOMBIA

JUDGMENT OF AUGUST 31, 2017

(Preliminary objection, merits, reparations and costs)

In the *Case of Vereda La Esperanza v. Colombia*,

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

Roberto F. Caldas, President;
Eduardo Ferrer Mac-Gregor Poisot, Vice President;
Eduardo Vio Grossi, Judge;
Elizabeth Odio Benito, Judge;
Eugenio Raúl Zaffaroni, Judge, and
L. Patricio Pazmiño Freire, Judge;

also present,

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

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) and Articles 31, 32, 65 and 67 of the Rules of Procedure of the Court (hereinafter also “the Rules”), delivers this Judgment, structured as follows:

* Judge Humberto Antonio Sierra Porto, a Colombian national, did not participate in the deliberation of this Judgment, pursuant to Articles 19(2) of the Statute of the Court and 19(1) of its Rules of Procedure.

CASE OF VEREDA LA ESPERANZA V. COLOMBIA

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I INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE

1. *The case submitted to the Court.* On December 13, 2014, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) submitted to the jurisdiction of the Inter-American Court the case of “Vereda La Esperanza” against the Republic of Colombia (hereinafter “the State”, “the Colombian State” or “Colombia”), pursuant to Articles 51 and 61 of the American Convention. The Commission indicated that the case is related to the presumed international responsibility of the State for the alleged forced disappearances of 14 persons, the alleged extrajudicial execution of another person, and for the arbitrary and illegal deprivation of liberty of a child. These events allegedly occurred in Vereda La Esperanza, in the municipality of El Carmen de Viboral, Department of Antioquia, between June 21 and December 27, 1996. According to the Commission, officials of the Colombian Armed Forces coordinated with members of the paramilitary group known as the Self- Defense Forces of the Magdalena Medio (*Autodefensas Campesinas del Magdalena Medio*, hereinafter “ACMM”) various incursions into the village of La Esperanza, (Vereda La Esperanza), because the alleged victims were perceived as sympathizers or collaborators of the guerrilla groups operating in the area. Finally, it considered that the State failed to ensure the alleged victims’ access to justice in the context of the ordinary criminal jurisdiction and before the special Justice and Peace courts for the facts of this case. The Commission named the following individuals as alleged victims: 1) Aníbal de Jesús Castaño; 2) Óscar Zuluaga Marulanda; 3) Juan Crisóstomo Cardona Quintero; 4) Miguel Ancízar Cardona Quintero; 5) Juan Carlos Gallego Hernández; 6) Jaime Alonso Mejía Quintero; 7) Octavio de Jesús Gallego Hernández; 8) Hernando de Jesús Castaño; 9) Orlando de Jesús Muñoz Castaño; 10) Andrés Antonio Gallego; 11) Irene de Jesús Gallego Quintero; 12) Leonidas Cardona Giraldo; 13) alias “Fredy”; 14) “his wife”; 15) their son, “A.”, and 16) Javier Giraldo, as well as their next of kin.¹

¹ They are: María Oveida Gallego Castaño, Leidy Yohana Castaño Gallego, Santiago Castaño Gallego, Hernando Castaño Gallego, Abelino Castaño Gallego, Bernabé Castaño Gallego, Rubén Antonio Castaño Gallego, María Brigida Castaño Gallego, Ester Julia Castaño Gallego, Heriberto Antonio Castaño Gallego, María Elvira Castaño Gallego; María Romelia Marulanda de Zuluaga, José Bernardo Zuluaga Aristizábal, Arbey Esteban Zuluaga Marulanda, Sandra Liliana Zuluaga Marulanda, Luz Marina Zuluaga Marulanda, Blanca Orfilia Zuluaga Marulanda, Bernardo Efrén Zuluaga Marulanda, Daniel Antonio Zuluaga Marulanda, Adolfo de Jesús Zuluaga Marulanda, Gladis Elena Zuluaga Marulanda, María Noelia Zuluaga Marulanda, Omaira Lucía Zuluaga Marulanda, Jhon Arnilson Zuluaga Marulanda, Aníbal Alonso Zuluaga Marulanda; María Diocelina Quintero, Héctor Hugo Quintero, Jessica Natalia Cardona Quintero, Diana Marcela Quintero, Clara Rosa Cardona Quintero, Jorge Enrique Cardona Quintero, Pedro Claver Quintero, Luis Alberto Quintero, Martha Lucía Quintero, Luz Marina Quintero, Duvan Alexander Quintero; Ester Julia Quintero de Gallego, José Apolinar Gallego Quintero, María Lucely Gallego Quintero, Eladio Gallego Quintero, María Luz Mery Gallego Quintero, Luz Mary del Socorro Gallego Quintero, Marleny Gallego Quintero, José Iván Gallego Quintero; María Engracia Hernández de Gallego, Florinda de Jesús Gallego Hernández, María Aurora Gallego Hernández, María de los Ángeles Gallego Hernández; Alba Rosa Mejía Quintero, Oliva del Socorro Mejía Quintero, Luz Dary Mejía Quintero, Marta Edilma Mejía Quintero, Elda Emilsen Mejía Quintero, José Octavio Mejía Quintero, Pedro Nel Mejía Quintero, Ana Oveida Mejía Quintero, Consuelo de Jesús Mejía Quintero, Rubén de Jesús Mejía Quintero, Dolly Amanda Mejía Quintero, Luz Mery Mejía Quintero, Luis Albeiro Mejía Quintero, Edgar de Jesús Mejía Quintero; Nelly Soto de Castaño, Cruz Verónica Giraldo Soto; Jhon Fredy Castaño Gallego, Claudia Yaneth Castaño Gallego, Wilder Castaño Gallego, Juan Diego Castaño Gallego, Celeni Castaño Gallego, Jasmin Lorena Castaño Gallego, Héctor de Jesús Castaño Castaño, Bernardo de Jesús Castaño Castaño, María Sofía Castaño Castaño, Josefina Castaño Castaño, Blanca Inés Castaño Castaño, Edilma de Jesús Castaño Castaño; María Florinda Gallego Hernández, Yanet Gallego Gallego, Deicy Gallego Gallego, Johana Gallego Gallego, María Engracia Hernández de Gallego, María Aurora Gallego Hernández, María de los Ángeles Gallego Hernández; Rubén Darío Muñoz Castaño, Abelardo Muñoz Castaño, Carlos Amador Muñoz Muñoz, Arsecio Muñoz, Rosa María Muñoz Muñoz, María Aurora Muñoz Muñoz, Marco Aurelio Muñoz Muñoz, María Rubiela Muñoz Castaño, Cruz Elena Muñoz Castaño, Bertha Inés Muñoz Castaño, María Florinda Muñoz Castaño; María de la Cruz Hernández de Gallego, Ricaurte Antonio Gallego Hernández, Eusebio Gallego Hernández,

2. *Procedure before the Commission.* The procedure before the Commission was as follows:

a. *Petition.* On July 1, 1999, the Commission received a petition lodged by *Corporación Jurídica Libertad* (hereinafter “the petitioners”) against Colombia.

b. *Report on Admissibility and Merits.* On November 4, 2013, the Commission issued the Report on Admissibility and Merits N° 85/13, pursuant to Article 50 of the Convention (hereinafter “Merits Report”), in which it reached a series of conclusions and made several recommendations to the State:

i. *Conclusions.* The Commission concluded that Colombia was responsible for the violation of the rights established in Articles 3, 4, 5, 7, 8, 19, 21 and 25 of the Convention, in relation to the obligations established in Articles 1(1) thereof; and of Articles I. a) and I. b) of the Inter-American Convention on Forced Disappearance of Persons² (hereinafter “ICFDP”).

ii. *Recommendations.* Consequently, it recommended that the State:

1. “Provide integral reparation, both in material and moral terms, for the violations of the human rights declared in this report;
2. Establish a mechanism that would facilitate, to the greatest extent possible, the complete identification of the two persons whose identity has been partially established, so that their next of kin can receive the reparations provided for in the preceding paragraph;
3. Undertake to find out, by all means possible, the fate or whereabouts of the disappeared victims or their mortal remains;
4. Continue to conduct an impartial and effective investigation within a reasonable period of time to fully clarify the facts, identify the intellectual and material authors of the crime, and administer the relevant punishments, bearing in mind the ties and patterns of joint action identified in the present report;
5. Issue the relevant administrative, disciplinary or criminal measures to address the deeds or omissions of the State’s civil servants who contributed to denying justice and fostering the impunity in which the incidents of the case now lie, or who participated in the measures taken to hamper the proceedings filed to identify and punish those responsible;
6. Establish, with the participation of the community of Vereda La Esperanza, a measure for community reparation that acknowledges the impact that the sequence of violent events had on the civilian population in the present case.
7. Adopt the measures needed to prevent patterns of violence against the civilian population from being repeated, in line with the duty to protect and guarantee the basic rights enshrined in the American Convention. In particular, to implement human

María Nubia Gallego Hernández, Lucelly Gallego Hernández, Omaira Gallego Hernández, Rosa Linda Gallego Hernández, Belarmina Gallego Hernández, María Florinda Gallego Hernández, Miguel Antonio Gallego Castaño, Juan de Jesús Gallego Castaño, Juan Cristóbal Gallego Castaño; María del Rocío Cardona Fernández, Yor Martí Cardona, Luz Dary Cardona Giraldo, María Cemida Cardona Giraldo, Aura Luz Cardona Giraldo, Cándida Rosa Giraldo Gallego, María Isabel Giraldo Gallego, Bernardo de Jesús Giraldo Gallego, Elda Nury Giraldo Gallego, Luz Marcela Giraldo Gallego, and Óscar Santiago Muñoz Giraldo. Single Annex to the Admissibility and Merits Report No. 85/13 presented by the Inter-American Commission (Merits file, folios 94 to 96).

² Colombia ratified the Inter-American Convention on Forced Disappearance of Persons on December 4, 2005.

rights and international humanitarian law programs in the training academies of the Armed Forces.”

c. *Notification to the State.* On December 13, 2013, the Merits Report was notified to the State, which was granted two months to report on compliance with the recommendations. Colombia requested three extensions, which were also granted by the Commission. However, after one year the State had not made substantive and concrete progress in compliance with the recommendations of the Merits Report. Although the State reported on the start of a procedure to provide reparations under Law 288 of 1996, the Commission decided that insufficient progress had been made in that regard, and that the information submitted showed that the procedure did not cover all of the victims identified by the Commission in its report.

3. *Submission to the Court.* On December 13, 2014, the Commission submitted to the jurisdiction of the Inter-American Court all the facts and alleged human rights violations described in the Merits Report “owing to the need to obtain justice for the victims in this case.”

4. *Request of the Commission.* Based on the foregoing, the Inter-American Commission requested that the Court find and declare the international responsibility of Colombia for the violations established in the conclusions of the Merits Report. It also asked the Court to order the State to implement certain measures of reparation (*infra* Chapter IX).

II. PROCEEDINGS BEFORE THE COURT

5. *Notification to the State and to the representatives.*³ The submission of the case was notified to the State and to the representatives on February 19, 2015.

6. *Brief with pleadings, motions and evidence.* On April 24, 2015, the representatives submitted their brief with pleadings, motions and evidence (hereinafter “pleadings and motions brief”), pursuant to Articles 25 and 40 of Rules of the Court.

7. *Answering brief.*⁴ On September 7, 2015, the State submitted to the Court its brief in answer to the submission of the case and to the pleadings and motions brief (hereinafter “answer” or “answering brief”), in which it filed a preliminary objection, pursuant to Article 41 of the Rules of the Court. In that brief the State made a partial acknowledgement of its international responsibility.

8. *Observations to the preliminary objection and to the State’s partial acknowledgment of responsibility.* On December 16, 2015, the representatives and the Commission presented their observations on the State’s partial acknowledgment of responsibility, and on the preliminary objection.

9. *Amici curiae.* The Court received four *amicus curiae* briefs presented by: 1) *Centro de Derechos Humanos y Pluralismo Jurídico* and the Faculty of Law at McGill University, on State responsibility, control of evidence, the attribution of international responsibility for the *ultra vires* conduct of State agents, the rights of the child and the amnesty laws; 2) the organization Open Society Justice Initiative on the obligation to investigate; 3) Professor Eduardo Bertoni and Florencia Saulino of the Policy Advocacy Clinic in Latin America, of New York University Law School, on the Justice and Peace Law and other mechanisms of transitional justice, and

³ The representatives of the alleged victims were *Corporación Jurídica Libertad* (CJL), and the Center for Justice and International Law (CEJIL).

⁴ The State appointed Ángela María Ramírez Rincón as its Agent for this case.

4) *Equipo Colombiano Interdisciplinario de Trabajo Forense y Asistencia Psicosocial (EQUITAS)* on the search for persons.

10. *Public hearing.* On May 10, 2016, the President of the Court issued an Order requiring the statements (provided by affidavit) of twenty-four (24) alleged victims, seven (7) expert witnesses proposed by the representatives, and two (2) witnesses.⁵ In that Order, the President also required the statements (by affidavit) of one (1) expert witness proposed by the State, two (2) deponents for information purposes, two (2) witnesses proposed by the State, and one (1) expert witness proposed by the Commission. The President summoned the parties and the Commission to a public hearing which took place on June 21 and 22, 2016, during the 54th Special Session of the Court, held at its seat.⁶

11. *Helpful evidence.* On May 3, 2016, pursuant to Article 58(b) of its Rules, the Court asked the State to present certain documentation as helpful evidence, which was forwarded on May 23 and 10 June 2016. On June 16, 2016, the Court invited the representatives and the Commission to submit any observations deemed pertinent to the documents presented by the State, together with their final arguments.

12. *Final written arguments and observations.* On July 26, 2016, the State and the representatives presented their final written arguments with their annexes, and the Commission forwarded its final written observations.

13. *Actions to contact one of the alleged victims who does not have representation:* Between June 29, 2016, until August 9, 2017, efforts were made to contact alleged victim "A." to inform him of the existence of the current proceedings and to enable him to express his willingness to participate therein. However, to date it has not been possible to establish contact.

14. *Deliberation of this case.* The Court began to deliberate this Judgment on August 30, 2017.

III JURISDICTION

15. The Court has jurisdiction to hear this case, in the terms of Article 62(3) of the Convention, given that Colombia has been a State Party to the Convention since July 31, 1973, and accepted the contentious jurisdiction of the Court on June 21, 1985.

⁵ Cf. *Case of Vereda la Esperanza v. Colombia*. Summons to a hearing. Order of the President of the Inter-American Court of Human Rights of May 10, 2016. On June 16, 2016, the expert witness Federico Andreu reported that he would be unable to provide his expert opinion by affidavit for health reasons. On May 31, 2016, the Commission informed the Court that the expert witness Javier Ciurlizza was unable to provide his expert opinion, owing to functions assumed recently.

⁶ The following persons appeared at the hearing: a) for the Inter-American Commission: José de Jesús Orozco Henríquez and Erick Acuña Pereda, and Silvia Serrano Guzmán; b) for the representatives: Liliana Uribe, Bayron Góngora, Elsa Meany, and Francisco Quintana, and c) for the State of Colombia: Angela María Ramírez Rincón, María del Pilar Gutiérrez Perilla and José Emilio Lemus Mesa. During the hearing, statements were received from the alleged victim Florinda de Jesús Gallego, the expert witness proposed by the representatives, David Martínez Osorio, the witness Liliana Calle proposed by the State, and the expert witness Juanita María Goebertus proposed by the State, together with the observations and final oral arguments of the Commission, the representatives and the State, respectively.

**IV.
ACKNOWLEDGMENT OF INTERNATIONAL RESPONSIBILITY BY THE STATE**

A. The State's acknowledgment of responsibility and observations of the Commission and of the representatives

16. The State acknowledged its international responsibility for:

- a. The failure to guarantee the rights to recognition of juridical personality (Article 3), life (Article 4), personal integrity (Article 5) and personal liberty (Article 7) enshrined in the American Convention, in relation to Article 1(1) of that instrument, in the cases of Aníbal de Jesús Castaño Gallego, Juan Carlos Gallego Hernández, Octavio de Jesús Gallego Hernández, Jaime Alonso Mejía Quintero, Hernando de Jesús Castaño Castaño, Orlando de Jesús Muñoz Castaño, Andrés Antonio Gallego Castaño, Leonidas Cardona Giraldo and Irene de Jesús Gallego Quintero. With respect to Irene de Jesús Gallego, the State explained that "the [...] acknowledgment of responsibility does not cover the events that took place between June 26 and 28, 1996, during which time [...] she was with agents of the State [...]."
- b. The failure to guarantee the rights to acknowledgment of juridical personality (Article 3), life (Article 4), personal integrity (Article 5), personal liberty (Article 7), and rights of the child (Article 19) recognized in the American Convention, in relation to Article 1(1) thereof, to the detriment of the children Óscar Hemel Zuluaga Marulanda, Juan Crisóstomo Cardona Quintero and Miguel Ancízar Cardona Quintero.
- c. The failure to guarantee the rights to life (Article 4) and personal integrity (Article 5) established in the American Convention, in relation to Article 1(1) of the same instrument, to the detriment of Javier de Jesús Giraldo Giraldo.
- d. For the violation of judicial guarantees (Article 8) and judicial protection (Article 25) established in the American Convention, in relation to Article 1(1) thereof, to the detriment of the direct relatives of the aforementioned victims, Aníbal de Jesús Castaño Gallego, Óscar Hemel Zuluaga Marulanda, Juan Crisóstomo Cardona Quintero, Miguel Ancízar Cardona Quintero, Irene de Jesús Gallego Quintero, Juan Carlos Gallego Hernández, Octavio de Jesús Gallego Hernández, Jaime Alonso Mejía Quintero, Hernando de Jesús Castaño Castaño, Orlando de Jesús Muñoz Castaño, Andrés Antonio Gallego Castaño, Leonidas Cardona Giraldo, and Javier de Jesús Giraldo Giraldo.⁷
- e. In relation to the foregoing, the State also recognized "the violations derived from the feelings of anguish, pain and uncertainty suffered by these persons, as a consequence of the lack of information on the specific circumstances in which the facts took place."
- f. For the violation of judicial guarantees (Article 8) and judicial protection (Article 25) established in the American Convention, in relation to Article 1(1) thereof, for the failure to investigate the facts related to the damage caused to the home of José Eliseo Gallego

⁷ Specifically, the State admitted that the prolonged delay in the investigation of these cases in the ordinary jurisdiction constituted, in itself, a violation of the victims' judicial guarantees and judicial protection, given that 19 years had elapsed since the start of the investigation, which exceeded a reasonable time. In addition, it recognized that there were some inconsistencies in those investigative processes: (i) omissions in the initial stages of the investigation, (ii) delays in the practice of various procedures, and (iii) periods of inactivity, which have hindered efforts to uncover the truth of the facts and punish those responsible. Consequently, the State's acknowledgement of responsibility encompassed Articles 5, 8 and 25 of the Convention.

Quintero. Consequently, the State also acknowledged its responsibility for the violation of the right to property (Article 21) of the Convention.

17. However, the *State* made it clear that its acknowledgment of responsibility “does not imply acceptance of responsibility for the international crime of forced disappearance in this specific case, since there are not yet sufficient elements to conclude that State agents participated in these acts. Therefore, the State does not acknowledge its responsibility for the alleged violation of the guarantees contained in Articles 1.a and 1.b of the [ICFDP].”

18. The *representatives* indicated that the State’s acknowledgment of international responsibility was strictly limited to its omission to guarantee rights, mainly referencing those already established in the investigations conducted by the domestic courts. In that sense, they considered that the acknowledgment of responsibility does not cover the totality of the facts or reflect the nature of the human rights violations perpetrated in Vereda La Esperanza. As to the State’s acknowledgment of responsibility for the violation of judicial guarantees, the representatives argued that, in addition to the harm caused to the families of the alleged victims owing to the impunity in the investigations, there were other effects derived from the presumed lack of effective actions to search for and recover the bodies of the disappeared, or to elucidate the truth in the special Justice and Peace courts. In addition, they mentioned the effects of a collective, family and personal nature produced by the alleged systematic sequence of disappearances, which were not acknowledged by the State.

19. The *Commission* expressed its appreciation of the State’s acknowledgment of responsibility, considering it to be a constructive step in the international proceeding. However, it noted that this acknowledgement is partial and does not cover all of the facts, or the totality of the considerations formulated both in the Merits Report and in the pleadings and motions brief. More specifically it argued:

- a. In relation to the first three acknowledgments (*supra* para. 16, points a, b, and c), it emphasized that although the State had referred to the rights established in Articles 3, 4, 5 and 7 of the Convention, it considered that the dispute continues with regard to the forced disappearance of the alleged victims, as well as the execution of Javier de Jesús Giraldo, and regarding the implications of the violations defined under the American Convention and the ICFDP.
- b. With respect to the fourth acknowledgment (*supra* para. 16, point d), the Commission affirmed that both the Merits Report and the pleadings and motions brief include other factors of impunity. Thus, it noted that the dispute continues regarding certain factors not included in the acknowledgment of responsibility. On the other hand, it considered that the dispute concerning the violation of the guarantee of reasonable time in the ordinary judicial proceedings has ceased, along with the violation of certain components of the obligation to investigate with due diligence in the same process.
- c. The Commission argued that the State’s acknowledgment of its failure to investigate the damage caused to the home of José Eliseo Gallego Quintero and his wife María Engracia Hernández (*supra* para. 16, point f) coincides with the Commission’s findings on this point. However, it noted that the State did not explain the scope of its acknowledgment for the violation of the right to property, since it did not indicate whether it accepted the conclusions contained in the Merits Report on this matter. It indicated that the acknowledgment was ambiguous because the State did not specify whether it accepted the Commission’s factual conclusions concerning the shots fired by military agents at Mr. Gallego’s house, or their forced entry into his home and the destruction of his property.
- d. Finally, regarding the State’s acknowledgment of the violations stemming from the feelings of anguish, pain and uncertainty caused to the family members of the alleged

victims (*supra* para. 16 point e), it observed that the State did not specify the legal consequences of those violations.

20. For all the above reasons, the Commission considered it pertinent that the Court issue a full ruling on the facts, the law and the reparations due in this case, so as to contribute to elucidate the truth and thereby provide a restorative effect for the alleged victims.

B. Considerations of the Court

21. In accordance with Articles 62 and 64 of the Rules,⁸ and in exercise of its powers of international judicial protection of human rights, a matter of international public order, it is incumbent on this Court to ensure that acts of acknowledgment of responsibility are acceptable for the purposes sought by the inter-American system. In this task, the Court is not limited to confirming, recording or taking note of the acknowledgement made by the State, or verifying the formal conditions of such actions, but must weigh them against the nature and seriousness of the alleged violations, the requirements and interests of justice, the particular circumstances of the specific case, and the attitude and position of the parties,⁹ in order to determine, insofar as possible and in the exercise of its competence, the truth of what happened in the case.¹⁰ The Court advises that the acknowledgment of specific facts and violations may have effects and consequences in this Court's analysis of other facts and alleged violations, inasmuch as they all form part of the same set of circumstances.¹¹ This Court estimates that the State's partial acknowledgement of international responsibility constitutes a positive contribution to this process, to the effectiveness of the principles that inspire the Convention,¹² and to the victims' need for reparation.¹³

22. The State did not expressly acknowledge its responsibility for the facts alleged by the Commission and the representatives. Assuming that such acknowledgment of responsibility would not be plausible without at the same time recognizing the facts on which it was based, the Court considers that it also encompasses those facts related to the violations of rights that were recognized to the detriment of the alleged victims. Therefore, bearing in mind the violations acknowledged by the State, as well as the observations of the representatives and of the Commission, the Court considers that the dispute has ceased regarding:

⁸ Articles 62 and 64 of the Court's Rules of Procedure state the following: "Article 62. Acquiescence: If the respondent informs the Court of its acceptance of the facts or its total or partial acquiescence to the claims stated in the presentation of the case or the brief submitted by the alleged victims or their representatives, the Court shall decide, having heard the opinions of all those participating in the proceedings and the appropriate procedural moment, whether to accept that acquiescence, and shall rule upon its juridical effects." "Article 64. Continuation of a Case: Bearing in mind its responsibility to protect human rights, the Court may decide to continue consideration of a case notwithstanding the existence of the conditions indicated in the preceding articles."

⁹ Cf. *Case of Kimel v. Argentina. Merits, reparations and costs*. Judgment of May 2, 2008. Series C No. 177, para. 24, and *Case of the Garífuna Community of Punta Piedra its Members v. Honduras. Preliminary objections, merits, reparations and costs*. Judgment of October 8, 2015. Series C No. 304, para. 43.

¹⁰ Cf. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of May 26, 2010. Series C No. 213, para. 17, and *Case of the Garífuna Community of Punta Piedra and its Members v. Honduras*, para. 43.

¹¹ Cf. *Case of Rodríguez Vera et al. (Disappeared of the Palace of Justice) v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of November 14, 2014. Series C No. 287, para. 27, and *Case of Gonzales Lluy et al. v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of September 1, 2015. Series C No. 298, para. 49.

¹² Cf. *Case of Benavides Cevallos v. Ecuador. Merits, reparations and costs*. Judgment of June 19, 1998. Series C No. 38, para. 57, and *Case of Gómez Murillo et al. v. Costa Rica*. Judgment of November 29, 2016. Series C No. 326, para. 46.

¹³ Cf. *Case of Manuel Cepeda Vargas v. Colombia*, para. 18, and *Case of Ortiz Hernández et al. v. Venezuela. Merits, reparations and costs*. Judgment of August 22, 2017. Series C No. 338, para. 36.

- a. The violation of judicial guarantees (Article 8(1)) and judicial protection (Article 25), of the family members of the alleged victims of forced disappearance and execution,¹⁴ specifically with regard to the reasonable time of the proceedings in the ordinary courts, the omissions in the initial stages of the investigation, delays in the implementation of certain procedures, and the periods of inactivity that have hindered the clarification of the facts;
- b. The violation of the personal integrity (Article 5) of the family members of the alleged victims of disappearance and execution, for the anguish and pain they have suffered owing to the loss of their loved ones, and for the lack of information on the specific circumstances in which these events took place, and
- c. The violation of the right to judicial guarantees (Article 8(1)) judicial protection (Article 25) and property (Article 21), for the failure to investigate the facts related to the damage caused to the home of José Eliseo Gallego Quintero and of his wife María Engracia Hernández.

23. The Court also notes that the State acknowledged its failure to guarantee the exercise of the rights recognized in Articles 3, 4, 5, and 7 of the Convention, in relation to Article 1(1) of that instrument, to the detriment of nine alleged victims;¹⁵ of Articles 3, 4, 5, 7 and 19 of the Convention in relation to Article 1(1) thereof, to the detriment of three alleged child victims;¹⁶ and in Articles 4 and 5 of the Convention, in relation to Article 1(1) of the same instrument, to the detriment of one alleged victim of execution.¹⁷ Such manifestations by the State do not constitute an acknowledgment of the claims made by the Commission and the representatives, since they are based on a version of the facts and an assessment of the evidence that differs from theirs. Therefore, the Court finds that the dispute continues regarding the alleged facts and violations to the detriment of the victims of forced disappearance and execution. Furthermore, the dispute continues with respect to the alleged violations against alias "Fredy," "his wife", and their son ("A."). Likewise, the Court considers that the dispute continues regarding the State's alleged responsibility for the violation of Article 21 of the Convention, specifically in relation to whether military agents were responsible for the shots fired against the home of José Gallego Quintero and his wife María Engracia Hernández.

24. Furthermore, although the State acknowledged its responsibility for the violation of judicial guarantees (Article 8(1)) and judicial protection (Article 25), to the detriment of the families of the alleged victims, with regard to the reasonable time of the proceedings before the ordinary courts, and regarding the omissions in the initial stages of the investigation, the delay in implementing certain procedures, and the periods of inactivity that have hindered the investigation of the facts, the dispute remains with respect to the other alleged violations of those rights, in particular those related to the special Justice and Peace process, and the measures of protection for those involved in the ordinary proceedings. In addition, the dispute continues in relation to the determination of possible reparations, costs and expenses, which will be decided in the corresponding chapter (*infra* Chapter IX), together with the measures of reparation that may be appropriate in this case, bearing in mind the requests of the

¹⁴ Aníbal de Jesús Castaño Gallego, Óscar Hemel Zuluaga Marulanda, Juan Crisóstomo Cardona Quintero, Miguel Ancízar Cardona Quintero, Irene de Jesús Gallego Quintero, Juan Carlos Gallego Hernández, Octavio de Jesús Gallego Hernández, Jaime Alonso Mejía Quintero, Hernando de Jesús Castaño Castaño, Orlando de Jesús Muñoz Castaño, Andrés Antonio Gallego Castaño, Leonidas Cardona Giraldo, and Javier de Jesús Giraldo Giraldo.

¹⁵ Aníbal de Jesús Castaño Gallego, Juan Carlos Gallego Hernández, Octavio de Jesús Gallego Hernández, Jaime Alonso Mejía Quintero, Hernando de Jesús Castaño Castaño, Orlando de Jesús Muñoz Castaño, Andrés Antonio Gallego Castaño, Leonidas Cardona Giraldo, and Irene de Jesús Gallego Quintero.

¹⁶ Óscar Hemel Zuluaga Marulanda, Juan Crisóstomo Cardona Quintero, and Miguel Ancízar Cardona Quintero.

¹⁷ Javier de Jesús Giraldo Giraldo.

representatives and the Commission, the Court's case law on that subject, the reparations already granted at the domestic level, and the State's observations in that regard.

V PRELIMINARY OBJECTION

A. Arguments of the parties and of the Commission

25. The *State* argued that the Court lacks jurisdiction owing to the complete lack of representation (*locus standi*) of three alleged victims, namely alias "Fredy," "his wife" and their son ("A.") in the contentious case. It held that the total lack of representation and action in those proceedings meant that it was impossible to consider them as victims. In this regard, it recalled that in the [pleadings and motions brief, the representatives indicated "expressly that the [CJL] and [CEJIL] do not represent 'the person identified as alias Freddy, [or] his wife, or their son [A.]." It held that it was not merely a matter of an absence of legal representation - a situation that would not affect the Court's jurisdiction to hear a case, since the alleged victims could request the assignation of an inter-American defender- but rather the absence of *locus standi* to intervene in the procedure, since they did not attend this proceeding personally, or through an intermediary.

26. Furthermore, the State considered that "[b]earing in mind that the [persons] mentioned [...] or their relatives have not been notified of these proceedings, it is not possible to claim their failure to appear or to act before the Court [and] consequently, Article 29 of the Court's Rules of Procedure is not applicable [in this case],"¹⁸ since "it is not possible to refrain from participating in something in which one is not aware of having the right to participate." It requested that the Court declare admissible the preliminary objection and refrain from examining the facts concerning the alleged victims alias "Fredy," "his wife" and their son "A" in this case.

27. The *Commission* argued that "according to Article 44 of the Convention and its own Rules, the procedure before [the Commission] does not require the petitioners to act as legal representatives of the alleged victims." Thus, it held that "the petition was presented by the [...] [CJL] on behalf of all the victims, including alias Freddy, his wife and their son [A., and therefore] [...] the Commission analyzed and ruled on the violations against them." It indicated that "it was only after the brief of pleadings [and] motions [...] was submitted by the representatives [...] that the debate regarding the representation of alias "Fredy," "his wife" and their son "A" emerged.

28. Based on the foregoing, the Commission interpreted that, since there are at least two alleged victims of forced disappearance who cannot claim their rights, it was appropriate to apply Article 29 of the Rules regarding the possibility of pursuing the case *ex officio* given their inability to appear. Consequently, it requested that the Court move forward with the proceeding and examine the entire case such as it was presented, dismissing the preliminary objection.

29. The *representatives* held that "[t]he relevant information on the disappearance of "Fredy and his wife," and the situation of [their son "A.], was provided to the [Commission] at the time, because it belonged to the same set of facts, and arguments were put forward in relation to those persons who, in accordance with the Rules [...], did not require formal representation." The representatives reiterated that "we do not represent the three persons

¹⁸ Article 29. Default Procedure. 1. When the Commission, the victims or alleged victims, or their representatives; the respondent State; or, if applicable, the petitioning State fail to appear in or pursue a matter, the Court shall, on its own motion, take the measures necessary to conduct the proceedings to their completion [...].

mentioned [but indicated that] [...] this situation does not preclude the Court's analysis of any relevant facts in which these individuals may have participated and that are connected with the [alleged] forced disappearances or violations of other rights of the [alleged] victims in this process who are actively represented."

30. They further argued that the preliminary objection must be rejected because it is not appropriate to interrupt the proceedings at this advanced stage, noting that the Court has the power to assess the representation of the victims and assign them an inter-American Defender, if it considers it pertinent and, if it does not have the active participation of the parties, to promote the process until its completion, which is particularly important in cases of forced disappearance. They argued that those alleged victims cannot be excluded from the factual framework, since they form part of the events described by the Commission in its Merits Report, and have major relevance to the other alleged violations. They also asked that "when ruling on the preliminary objection [...] the Court does not exclude the facts in which any of the persons mentioned therein may have participated, and which are related to the violations [perpetrated] against other victims in this case."

B. Considerations of the Court

31. The Court notes that the preliminary objection presented refers to three alleged victims who lack representation. Moreover, two of them have not been fully identified by the Commission in its Merits Report or in subsequent proceedings before the Court, and are merely referred to as "alias Fredy and his wife."

32. With regard to the identification of the alleged victims, the Court recalls that Article 35(1) of its Rules of Procedure requires that a case be submitted through the presentation of the Merits Report, which must contain the identification of the alleged victims. Thus, it is for the Commission to identify precisely and at the proper procedural opportunity the alleged victims in a case before the Court,¹⁹ except in the exceptional circumstances contemplated in Article 35(2) of the Court's Rules of Procedure, according to which, when it has not been possible to identify one or more of the alleged victims affected by the facts of the case because it involves mass or collective violations, the Court shall decide in due course whether to consider those individuals as victims based on the nature of the violation.²⁰

33. The Court has considered the application of Article 35(2) of the Rules based on the specific characteristics of each matter,²¹ in cases of mass or collective violations in which there

¹⁹ Cf. *Case of the Ituango Massacres v. Colombia. Preliminary objection, merits, reparations and costs*. Judgment of July 1, 2006. Series C No. 148, para. 98, and *Case of Favela Nova Brasília v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of February 16, 2017. Series C No. 333, para. 36.

²⁰ Cf. *Case of the Río Negro Massacres v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of September 4, 2012. Series C No. 250, para. 48, and *Case of Favela Nova Brasília v. Brazil*, para. 36.

²¹ It should be emphasized that the Court has applied Article 35(2) of its Rules of Procedure in the following cases: *Case of the Río Negro Massacres v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of September 4, 2012 Series C No. 250; *Case of Nadege Dorzema et al. v. Dominican Republic. Merits, reparations and costs*. Judgment of October 24, 2012. Series C No. 251; *Case of the Massacres of El Mozote and nearby places v. El Salvador. Merits, reparations and costs*. Judgment of October 25, 2012. Series C No. 252; *Case of the Displaced Afrodescendant Communities of the Cacarica River Basin (Operation Genesis) v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of November 20, 2013. Series C No. 270; *Case of the Peasant Community of Santa Bárbara v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of September 1, 2015. Series C No. 299; *Case of the Workers of Hacienda Brazil Verde v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of October 20, 2016. Series C No. 318, and *Case of Members of the Village of Chichupac and Neighboring Communities of the Municipality of Rabinal v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of November 30, 2016. Series C No. 328. The Court has also rejected its application in the following cases: *Case of Barbani Duarte et al. v. Uruguay. Merits, reparations and costs*. Judgment of October 13, 2011. Series C No. 234; *Case of a Human Rights Defender et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of August 28, 2014. Series C No. 283; *Case of García and Family Members v. Guatemala. Merits,*

are difficulties in identifying or contacting all the alleged victims, for example, in situations of armed conflict,²² displacement²³ or the burning of the bodies of the alleged victims,²⁴ or in cases in which entire families have disappeared, so that there is nobody who can speak for them.²⁵ The Court has also taken into account the difficulties in accessing the area where the events took place,²⁶ the absence of records related to the local inhabitants²⁷ and the time elapsed,²⁸ as well as the particular characteristics of the alleged victims, for example, in cases involving family clans with similar names and surnames,²⁹ or migrants.³⁰ Likewise, the Court has considered the State's conduct, for example, when it is argued that the lack of an investigation contributed to the incomplete identification of the alleged victims,³¹ and also in a case of slavery.³²

34. In this case, the Court notes that the Commission admitted that it had been unable to fully identify all the victims, and referred to two of them using the term alias "Fredy" and his "wife." The Court also notes that the Commission did not provide any explanation for its inability to identify two of the alleged victims and, in its observations to the objection submitted, merely presented arguments regarding their lack of representation and not on their lack of identification or regarding the possible application of Article 35(2) of the Rules. For all these reasons, the Court finds that in this case it is not appropriate to apply the exception contemplated in Article 35(2) of the Rules and decides to admit the State's preliminary objection in relation to alias "Fredy" and his "wife."

35. As to their son, "A.", the Court confirms that he has been fully identified, and that, in principle, it is pertinent to request that the representatives present a power of attorney for

reparations and costs. Judgment of November 29, 2012. Series C No. 258; *Case of Suárez Peralta v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of May 21, 2013. Series C No. 261; *Case of J. v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of November 27, 2013. Series C No. 275; *Case of Rochac Hernández et al. v. El Salvador. Merits, reparations and costs.* Judgment of October 14, 2014. Series C No. 285; *Case of Argüelles et al. v. Argentina. Preliminary objections, merits, reparations and costs.* Judgment of November 20, 2014. Series C No. 288; *Case of Canales Huapaya et al. v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of June 24, 2015. Series C No. 296; *Case of Flor Freire v. Ecuador. Preliminary objection, merits, reparations and costs.* Judgment of August 31, 2016. Series C No. 315; *Case of I.V. v. Bolivia. Preliminary objections, merits, reparations and costs.* Judgment of November 30, 2016. Series C No. 329, and *Case of Favela Nova Brasília v. Brazil*, para. 39.

²² Cf. *Case of the Río Negro Massacres v. Guatemala*, para. 48, and *Case of Favela Nova Brasília v. Brazil*, para. 37.

²³ Cf. *Case of the Río Negro Massacres v. Guatemala*, para. 48, and *Case of Favela Nova Brasília v. Brazil*, para. 37.

²⁴ Cf. *Case of the Massacres of El Mozote and Nearby Places v. El Salvador*, para. 50.

²⁵ Cf. *Case of the Río Negro Massacres v. Guatemala*, para. 48, and *Case of Favela Nova Brasília v. Brazil*, para. 37.

²⁶ Cf. *Case of the Displaced Afrodescendant Communities of the Cacarica River Basin (Operation Genesis) v. Colombia*, para. 41, and *Case of Favela Nova Brasília v. Brazil*, para. 37.

²⁷ Cf. *Case of the Río Negro Massacres v. Guatemala*, para. 48, and *Case of Favela Nova Brasília v. Brazil*, para. 37.

²⁸ Cf. *Case of the Río Negro Massacres v. Guatemala*, para. 51, and *Case of Favela Nova Brasília v. Brazil*, para. 37.

²⁹ Cf. *Case of the Río Negro Massacres v. Guatemala*, para. 48, and *Case of Favela Nova Brasília v. Brazil*, para. 37.

³⁰ Cf. *Case of Nadege Dorzema et al. v. Dominican Republic*, para. 30, and *Case of Favela Nova Brasília v. Brazil*, para. 37.

³¹ Cf. *Case of the Río Negro Massacres v. Guatemala*, para. 48, and *Case of Favela Nova Brasília v. Brazil*, para. 37.

³² Cf. *Case of Workers of Hacienda Brazil Verde*, para. 48, and *Case of Favela Nova Brasília v. Brazil*, para. 37.

the proceedings before the Court. However, as mentioned previously, the representatives of the alleged victims stated on several occasions that they did not represent him.³³

36. It is pertinent to note that in other cases, this Court has established that the absence of a power of attorney refers to the legal representation of the named persons, and not to their status as presumed victims, and that “the consistent practice of this Court with regard to the rules of representation has been flexible” and that “it is not essential that the powers of attorney granted by the presumed victims in order to be represented in the proceedings before the Court meet the same formalities as those required by the domestic law of the respondent State.”³⁴ The Court added that “this conclusion is supported” in cases where, throughout the proceedings before the Commission and the Court, the representatives have consistently and continuously asserted that they represented certain alleged victims.³⁵ In other cases involving multiple victims in which the representatives did not have full powers of representation or the consent of all the alleged victims, the Court considered that “it is to be expected that the representative organization will take into account in their pleadings and motions the general interests of all the alleged victims identified” and, therefore, asked the representatives to “report to the Court opportunely if they represent other persons during this process.”³⁶

37. The Court has made several efforts to make contact with “A.” in order to inform him of the existence of an international proceeding concerning his interests and to determine whether he wishes to participate in it.³⁷ However, these efforts have been unsuccessful, since it has not been possible to contact him and to date there is no information to indicate his interest in participating in the case. Therefore, the aforementioned precedents cannot be applied to these proceedings.

³³ Thus, when required by this Court to submit documentation accrediting them as representatives of the alleged victims, they stated, with respect to alias Fredy and his wife that “[t]he State has not yet fully identified the victim and consequently it does not know the identity of their next of kin or how to locate them,” and regarding their son, they indicated that “from an early age the minor has been in the custody of the [...] daughter of the paramilitary chief of the Magdalena Medio, who detained his parents and subsequently the minor.” Accreditation of the representation of the victims (Merits file, folio 134). Subsequently, in their brief of pleadings, motions and evidence they indicated that “[t]his representation does not have power of attorney, nor will [it] exercise it [...] in relation to the person identified as alias Fredy, his wife and their son [...]” and again insisted, “we reiterate that the litigating organizations do not represent the person identified as alias ‘Fredy’, his ‘wife’ or their son [...]” Brief of pleadings, motions and evidence (Merits file, folios 276 and 280). Furthermore, in its brief of Observations to the Preliminary Objection filed by the State they stated that “as indicated in the brief, neither CJL nor CEJIL has power to represent the next of kin of ‘Fredy’ or his ‘wife’, or their son]”. Observations to the Acknowledgment of Responsibility and Preliminary Objections (Merits file, folio 1009). Also, during the public hearing, the representatives stated that they did not have express authority since they did “not have contact with the next of kin and we stated this in our brief and do not represent them.” Finally, in their brief of final written arguments they stated that “as we have indicated throughout these proceedings before the Inter-American Court, neither CJL nor CEJIL has power of attorney for the next of kin of ‘Fredy’ or his ‘wife’, or their [son].” Final written arguments (Merits file, folio 1877).

³⁴ Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary objections*. Judgment of June 26, 1987. Series C No. 1, para. 33; *Case of Loayza Tamayo v. Peru. Reparations and costs*. Judgment of November 27, 1998. Series C No. 42, para. 98; *Case of Castillo Páez v. Peru. Reparations and costs*. Judgment of November 27, 1998. Series C No. 43, paras. 65 and 66; *Case of Yatama v. Nicaragua. Preliminary objections, merits, reparations and costs*. Judgment of June 23, 2005. Series C No. 127, para. 94; *Case of Acevedo Jaramillo et al. v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of February 7, 2006. Series C No. 144, para. 145; *Case of Vélez Lóor v. Panama. Preliminary objections, merits, reparations and costs*. Judgment of November 23, 2010. Series C No. 218, para. 54, and *Case of Expelled Dominicans and Haitians v. Dominican Republic. Preliminary objections, merits, reparations and costs*. Judgment of August 28, 2014. Series C No. 282, para. 88.

³⁵ Cf. *Case of Expelled Dominicans and Haitians v. Dominican Republic*, para. 88.

³⁶ Cf. *Case of Pacheco Teruel et al. v. Honduras. Merits, reparations and costs*. Judgment of April 27, 2012. Series C No. 241, para. 4.

³⁷ Cf. Communications of the Secretariat of the Court of June 29, July 8, August 9 and 18, October 3 and 21, 2016, January 26, March 16 and 29, April 26, and May 2, 2017.

38. In sum, until now, the person known as "A.": a) does not figure as an alleged victim in the initial petition submitted in this case; b) at no time in the course of the public proceedings before the Commission or the Court, has he himself, or someone who represents him, stated his wish to participate in the proceedings; c) on several occasions, the representatives of the alleged victims indicated that they do not represent him, and d) it has not been possible to make contact with him.

39. Taking into account the foregoing, and the fact that a clear expression of the will of "A.", or of his legal representative, is required so that he can effectively participate in the process - which has not been presented - in application of its Rules of Procedure, as well as its case law, this Court concludes that it is appropriate to admit the objection filed by the State in relation to "A."

40. Finally, in order to protect the right to identity, privacy and personal integrity of "A.", this Court considers it pertinent to require the parties and the Commission to take all necessary steps to ensure that the relevant parts of the documents and procedural actions that refer to his identity, to the *de facto* circumstances, and to legal considerations related to him, are not made public, unless expressly authorized by "A" or by his legal representative.

VI EVIDENCE

A. Documentary, testimonial and expert evidence

41. The Court received various documents presented by the State, the Commission and the representatives attached to their main briefs and final arguments (*supra* paras. 6 to 8, and 12). The Court also received several statements provided by affidavit.³⁸ As to the evidence provided during the public hearing, the Court received the statements of Florinda de Jesús Gallego Hernández, an alleged victim, of Liliana Calle, a witness proposed by the State, and of the expert witnesses David Martínez Osorio and Juanita Maria Goebertus proposed by the representatives and the State, respectively.

42. The parties also submitted documents requested by the Court as helpful evidence (*supra* para. 11), pursuant to Article 58 of the Rules. Finally, the Court received various documents presented by the State and the representatives together with their final written arguments.

B. Admission of the evidence

43. The Court admits the documents submitted by the parties and the Commission at the proper procedural opportunity (Article 57 of the Rules) that were not contested or challenged,

³⁸ These were presented by: Iris Marín Ortiz, Lina Patricia Rodríguez Carlos Eduardo Valdés Moreno, Uldy Teresa Jiménez, Carlos Villamil Ruíz, proposed by the State, Michael Reed proposed by the Commission, and Vilma Liliana Franco Restrepo, Luz García Méndez, Yeny Carolina Torres Bocachica, Alberto Yepes Palacio, Gabriella Citroni, Carlos Rodríguez Mejía, Hollman Felipe Morris Rincón, Héctor Manuel González Ramírez, Jessica Natalia Cardona Quintero, Diana Marcela Quintero, Sandra Liliana Zuluaga Marulanda, Arbey Esteban Zuluaga Marulanda, María Oveida Gallego Castaño, Santiago Castaño Gallego, Bernabé Castaño Gallego, José Iván Gallego Quintero, Blanca Estella López Ramírez, Claudia Yaneth Castaño Gallego, María Aurora Gallego Hernández, Jhon Fredy Castaño Gallego, María Florinda Gallego Hernández, Yanet Gallego, José Octavio Mejía Quintero, Ana Oveida Mejía Quintero, Héctor Manuel González Ramírez, Nelly Soto de Castaño, Cruz Verónica Giraldo Soto, Carlos Amador Muñoz Muñoz, María Aurora Muñoz Muñoz, María del Recio Cardona Fernández, María Cernida Cardona Giralda, Omaira Gallego Hernández, and Ricaurte Gallego Hernández, proposed by the representatives.

and the authenticity of which was not questioned.³⁹ The Court also finds it pertinent to admit the statements provided at the public hearing and by affidavit, insofar as they are in keeping with the object and purpose defined by the Order that required them.⁴⁰

44. Regarding the procedural opportunity for submitting documentary evidence, under Article 57(2) of the Rules, this must be presented, in general, together with the briefs submitting the case, of pleadings and motions or answering briefs, as appropriate. The Court recalls that evidence forwarded outside of the proper procedural opportunities is not admissible, save in the exceptions established in Article 57(2) of the Rules, namely, force majeure, serious impediment or if it refers to an event that occurred after the procedural moments indicated.⁴¹ The Court also admits those documents submitted as helpful evidence in accordance with Article 58(b) of the Rules.⁴²

45. In the course of the public hearing, the State presented a document that complements the expert opinion of Juanita Goebertus Estrada, a copy of which was provided to the Commission and to the representatives. This was included in the procedure and is pertinent for the resolution of this case.⁴³

46. As to the documents presented by the State with its final arguments,⁴⁴ the Court notes that these provide helpful evidence, as requested under Article 58(b) of the Rules during the public hearing, and are therefore admitted.

47. In relation to the documents concerning costs and expenses forwarded by the representatives and submitted with their final written arguments, the Court will only consider those related to new costs and expenses incurred during the proceedings before this Court, that is, those incurred after the presentation of the pleadings and motions brief. Therefore, the Court will not include invoices dated prior to the submission of the pleadings and motions brief, since those should have been presented at the appropriate procedural opportunity.⁴⁵

48. Finally, the Court admits the documentary annex provided by the representatives with their final written arguments,⁴⁶ since it is a supervening document whose publication date is subsequent to the date on which the briefs were submitted. The State had the procedural opportunity to present its observations in this regard.

C. Assessment of the Evidence

³⁹ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 140, and *Case of Acosta et al. v. Nicaragua. Preliminary objections, merits, reparations and costs*. Judgment of March 25, 2017. Series C No. 334, para. 21.

⁴⁰ The purpose of the statements was established in the Order of the President of the Court of May 10, 2016.

⁴¹ Cf. *Case of Barbani Duarte et al. v. Uruguay. Merits, reparations and costs*. Judgment of October 13, 2011. Series C No. 234, para. 22, and *Case of Vásquez Durand et al. v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of February 15, 2017. Series C No. 332, para. 52.

⁴² On May 23 and 24, and June 2 and 10, 2016, the State submitted the helpful evidence requested in the Order of the President of the Court of May 10, 2016.

⁴³ Cf. *Case of Galindo Cárdenas et al. v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of October 2, 2015. Series C No. 301, para. 70.

⁴⁴ Those documents included: i) Information related to the investigations initiated with the certification of copies from the Justice and Peace jurisdiction to the ordinary jurisdiction, and ii) Matrix for the identification of patterns of macro-criminality used by the Directorate of Transitional Justice of the Attorney General's Office.

⁴⁵ Cf. *Case of Tenorio Roca et al. v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of June 22, 2016. Series C No. 314. para. 41, and *Case of Favela Nova Brasília v. Brazil*, para. 96.

⁴⁶ The annex refers to the document: National Center for Historical Memory, "Right to justice as a guarantee of non-repetition," May 18, 2016.

49. Based on the provisions of Articles 46, 47, 48, 50, 51, 52, 57 of the Rules of Procedure, and on its constant case law in matters of evidence and its assessment, the Court will now examine and assess the documentary evidence forwarded by the parties and the Commission at the proper procedural opportunities, as well as the statements and opinions provided by affidavit and at the public hearing. In doing so, the Court will adhere to the principles of sound judgment, within the relevant legal framework, taking into account the entire body of evidence and the arguments put forward in this case.⁴⁷

VII FACTS

50. In this chapter the Court will establish the facts considered proven in this case, based on the body of evidence that has been admitted and the factual framework established in the Merits Report, including the arguments presented by the parties that help to explain, clarify or reject,⁴⁸ where pertinent, the facts in dispute. Accordingly, the facts will be presented in the following order: a) context and background, b) facts that occurred between June and December of 1996 in Vereda La Esperanza, and c) judicial proceedings.

A. Context and background

A.1. Geographical location of Vereda La Esperanza

51. The facts of this case took place in Vereda La Esperanza, a village situated in the Magdalena Medio region of the Municipality of Carmen de Viboral, in the southeastern part of the Department of Antioquia. The Magdalena Medio region is the name given to the central region located along the banks of the River Magdalena. It encompasses territories in eight departments (Magdalena, Cesar, Bolívar, Santander, Boyacá, Cundinamarca, Caldas and Antioquia) and includes 63 Colombian municipalities,⁴⁹ one of these being El Carmen de Viboral, in Eastern Antioquia. The local economy is mainly based on agriculture, extensive cattle ranching, the extraction of timber and other forest products and the exploitation of mineral resources such as gold, limestone and marble.⁵⁰ La Esperanza is one of numerous villages in the municipality of Carmen de Viboral and is located near the municipal capital of Cocorná. The village is approximately 45 kilometers from the city of Medellín and is situated along the highway that links that city with Bogotá.⁵¹

A.2. Public order situation in the region

⁴⁷ Cf. *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits*. Judgment of March 8, 1998. Series C No. 37 para. 76, and *Case of Favela Nova Brasília v. Brazil*, para. 98.

⁴⁸ Cf. *Case of "Five Pensioners" v. Peru. Merits, reparations and costs*. Judgment of February 28, 2003. Series C No. 98, para. 153, and *Case of Pollo Rivera et al. v. Peru. Merits, reparations and costs*. Judgment of October 21, 2016, Series C No. 319, para. 26.

⁴⁹ Cf. Human Rights Observatory, Presidential Human Rights and International Humanitarian Law Program. "Current situation in the Magdalena Medio. Introduction", cited in footnote 104 of the State's answering brief (Merits file, folio 600).

⁵⁰ Cf. Superior Court of the Judicial District of Bogotá, Justice and Peace Chamber, Judgment of February 26, 2016 (Evidence file, folio 43361).

⁵¹ Cf. El Carmen de Viboral (2014). *El Carmen de Viboral. La perla azulina del Oriente Antioqueño*, cited in footnote 140 of the answering brief of the State (Merits file, folio 620).

52. The Magdalena Medio region is of great strategic and economic importance primarily because of its geographical position.⁵² It contains two oil pipelines, La Sierra Thermoelectric power plant, the Sebastopol–Medellin gas pipeline, and the *Refinare* refinery. The region also has numerous access routes that connect it with the rest of the country, such as the Bogotá – Medellin highway, the Magdalena Medio trunk road, and the road linking Medellin – Chiquinquirá and Páez – Puerto Boyacá.⁵³ These major infrastructure works and the area's strategic geographical position played an important role in prompting the arrival, more than four decades ago, of illegal armed groups and situations of violence against the civilian population living in the different municipalities near those facilities.⁵⁴

53. Despite this situation, the Magdalena Medio has remained a marginal region, where “the State is weak in exercising its essential functions owing to the absence of government institutions,” and as a result much of the “space” left by the State has been filled by the armed actors, turning the region into a highly conflictive area. It was therefore no “coincidence that in the mid-1960s, the National Liberation Army (*Ejército de Liberación Nacional* - ELN) emerged in the area, followed at the end of the 1970s decade by the so-called *Autodefensas* or Self-Defense Forces. Subsequently, at the beginning of the 1980s, there was an “incursion by the Revolutionary Armed Forces of Colombia – People's Army (FARC-EP), the Popular Liberation Army (EPL) and six battalions of the National Army.”⁵⁵

54. With respect to the emergence of the paramilitary groups in the region, the Office of Information, Analysis and Operational Support of the Attorney General's Office (FGN) indicated that during the 1970s, “the military forces, particularly those in the Magdalena Medio and the Department of Huila, began to establish so-called ‘*grupos de autodefensa*’ (self-defense groups) with the same philosophy as the counter-guerilla groups [...]”.⁵⁶ According to the Justice and Peace Chamber attached to the Superior Court of the Judicial District of Bogotá, this first phase of the paramilitary period emerged from a context characterized by: (i) the weakness of the State in the territory, (ii) the advances achieved by the FARC in the Magdalena Medio region, (iii) the activation of the *Autodefensas* at national level and their promotion by the National Army, (iv) the organization of cattle ranchers through the ACDEGAM, and (vi) the formation of a political directorate, all this within a context of converging circumstances such as demand for land in exchange for private security.⁵⁷

55. One of the armed groups that operated in the region was known as the *Autodefensas Campesinas del Magdalena Medio* (“ACMM”), led by R.I.A. and primarily made up of peasant

⁵² Cf. Superior Court of the Judicial District of Bogotá, Justice and Peace Chamber, Judgment of February 26, 2016 (Evidence file, folio 43361). See also: CINEP. “*Conflictos, poderes e identidades en el Magdalena Medio, 1990 – 2001*,” cited in footnote 106 of the answering brief of the State (Merits file, folio 601).

⁵³ Cf. Superior Court of the Judicial District of Bogotá, Justice and Peace Chamber, Judgment of February 26, 2016 (Evidence file, folios 43312 and 43360).

⁵⁴ Cf. Superior Court of the Judicial District of Bogotá, Justice and Peace Chamber, Judgment of February 26, 2016 (Evidence file, folio 43312). See also: CINEP. “*Conflictos, poderes e identidades en el Magdalena Medio, 1990 – 2001*,” cited in footnote 106 of the State's answering brief (Merits file, folio 601).

⁵⁵ Cf. Superior Court of the Judicial District of Bogotá, Justice and Peace Chamber, Judgment of February 26, 2016 (Evidence file, folios 43312 and 43313). See also: CINEP. “*Conflictos, poderes e identidades en el Magdalena Medio, 1990 – 2001*,” cited in footnote 106 of the State's answering brief (Merits file, folio 601).

⁵⁶ Sectional Directorate, Technical Investigation Corps. Office of Information, Analysis and Operational Support of the Attorney General's Office. Report on the self-defense groups, Report No. 032 of June 28, 1996 (Evidence file, folios 8 and 9).

⁵⁷ Cf. Superior Court of the Judicial District of Bogotá, Justice and Peace Chamber, Judgment of February 26, 2016 (Merits file, folios 43313 to 43316).

farmers who owned small or medium-sized tracts of land.⁵⁸ The group was reportedly created on February 22, 1978, to combat the guerrilla forces that “ran the area.”⁵⁹ In order to accomplish that objective, the group was aided by the Army, which provided it with firearms, ammunition, training and operational support.⁶⁰ In the late 1980s, the ACMM gradually began to exert influence over some sectors, in order to counter the attacks launched against the Army by Fronts 9 and 47 of the FARC guerrillas in rural areas of the municipalities of San Rafael, San Carlos, San Luis, Cocorná, Concepción, Alejandría, Nariño, Sonsón and San Francisco, and, the guerillas’ incursions along the Bogotá-Medellin highway, by setting up armed blockades.⁶¹ Around that time, the *Autodefensas*, including the ACMM, “swiftly mutated into paramilitary groups.”⁶²

56. In an intelligence report on the *Autodefensas* of that region, the FGN noted that these new armed groups which had gained a foothold not only in rural areas but also in some urban zones, had stated that their aim was to eliminate the subversive groups and “cleanse” the countryside of guerrillas. The report adds that in 1982, the ACMM began their incursions into several villages located in the municipality of Puerto Boyacá, an area where the guerillas had engaged in extortion using threats and intimidation (the so-called “vaccine”) against several local farmers and cattle ranchers.⁶³ According to the Superior Court of the Judicial District of Bogotá, during this period, the paramilitary presence in the region was characterized, *inter alia*, by the mass entry of drug traffickers, either as financiers (the war became increasingly costly, and could not be paid for only with extensive cattle ranching) or as competitors.⁶⁴

57. According to the Justice and Peace Court, during the period between 1994 and 2006, “various paramilitary projects developed with clear leadership structures and a plan to divide up the territory; this was essentially accepted by all the actors involved, and a profound transformation of paramilitarism occurred.” In particular, it noted that “the hierarchical and organizational structure that connected all the links in the chain of power in the territory shifted toward a more flexible, but complex coordination of converging but partially contradictory interests.” The same court also affirmed that “this [...] stage was characterized by the territorial domination of armed groups that enjoyed a wide margin of autonomy, but that by tradition, ideology, and also for pragmatic reasons of survival, cultivated a series of ‘special relationships’ with actors within the world of legality. Among these, the State security agencies played a fundamental role.”⁶⁵

⁵⁸ Cf. General Report of the Historical Memory Group. *iBasta ya! Colombia: Memorias de guerra y dignidad*. (‘Enough Already! Colombia: Memories of War and Dignity.’) Imprenta Nacional (Government Printing Office). 2013, page 134 (Evidence file, folio 156).

⁵⁹ Cf. Initial statement of R.I.A, to the Special Prosecutor assigned to the National Unit of Human Rights and International Humanitarian Law, of April 23, 2007 (Evidence file, folios 454 of 456).

⁶⁰ Cf. General Report of the Historical Memory Group. *iBasta ya! Colombia: Memorias de Guerra y dignidad* (Evidence file, folio 156).

⁶¹ Cf. Superior Court of the Judicial District of Bogotá, Justice and Peace Chamber, Judgment of February 26, 2016 (Evidence file, folio 43362).

⁶² General Report of the Historical Memory Group. *iBasta ya! Colombia: Memorias de guerra y dignidad* (Evidence file, folio 161).

⁶³ Cf. Sectional Directorate Technical Investigation Corps. Office of Information, Analysis and Operational Support of the Attorney General’s Office. Intelligence Report on self-defense groups, Report No. 032 of June 28, 1996 (Evidence file, folio 9).

⁶⁴ Cf. Superior Court of the Judicial District of Bogotá, Justice and Peace Chamber, Judgment of February 26, 2016 (Merits file, folio 43314).

⁶⁵ Superior Court of the Judicial District of Bogotá, Justice and Peace Court, Judgment of February 26, 2016 (Merits file, folios 43314 and 4315).

58. According to reports, different acts of violence “show that the actions and deployment of the ACMM in these areas during this period [...] occurred owing to several factors, such as efforts to support the security forces in weakening the subversive presence in territories where the State was institutionally fragile or where it had lost the monopoly in the use of violence, the development of patronage networks in their areas of influence, the need to obtain income to sustain themselves and the process to legitimize their presence in the territory, [...] [which was characterized by] patterns of violence against civilians.”⁶⁶

59. The paramilitary project of the ACMM encompassed a large area of operations of more than 4,000 square kilometers that included the municipalities of Puerto Berrío, Puerto Nare, Puerto Triunfo, Puerto Boyacá, La Dorada and part of San Luis and Cocorná.⁶⁷ Its members were equipped with short and long range firearms, communication systems⁶⁸ and an extensive transportation infrastructure. Based on intelligence reports, the group operated under a hierarchical command structure and was made up of “former soldiers, former policemen, former guerrillas, paid mercenaries and active-duty guides of the National Army,” who allegedly received compensation in the form of money and were “paid a bonus for each guerrilla that they killed.”⁶⁹

60. In order to achieve domination and control over the territory, “the ACMM [...] used a number of methods of control and regulation to subjugate the population and foster behavior change that was favorable to the armed group.” Those strategies included mechanisms “aimed at conditioning people’s behavior,” such as reiterative forms of coercion, for example, through tactics such as informing individuals or communities of the obligation to leave their territory within a specific period. Another method involved the preparation of lists containing the names of those suspected of belonging to subversive groups, who were pursued and, once found, were displaced, their property seized, their rights violated, and they were kidnapped, murdered or disappeared.⁷⁰ Both the FGN and the Municipal Ombudsman of Cocorná indicated that, at the time of the events, the ACMM had lists of people accused or suspected of being members or collaborators of the guerrilla groups⁷¹ and it is understood that the ACMM were responsible for “innumerable selective homicides of peasants, left-wing political leaders and

⁶⁶ Superior Court of the Judicial District of Bogotá, Justice and Peace Chamber, Judgment of February 26, 2016 (Merits file, folio 43339).

⁶⁷ Cf. Sectional Directorate of the Technical Investigation Corps. Office of Information Analysis, and Operational Support of the Attorney General’s Office. Report on self-defense groups, Report No. 032 of June 28, 1996 (Evidence file, folio 9).

⁶⁸ Cf. Official Letter No. 5399/DAS.DGI.DIIEX.GPB.FP of the Administrative Department of Security, General Directorate of Intelligence, Internal and External Intelligence Division, dated December 19, 1995 (Evidence file, folio 473).

⁶⁹ Cf. Sectional Directorate of the Technical Investigation Corps. Office of Information, Analysis and Operational Support of the Attorney General’s Office. Report on self-defense groups, Report No. 032 of June 28, 1996 (Evidence file, folio 10).

⁷⁰ Cf. It was also reported that as a consequence of this situation, thousands of people were forcibly displaced from their homes, added to which a humanitarian crisis ensued in the area because the few local residents who stayed behind were prevented from having access to supplies and were warned to change their attitude toward the subversive groups, under threat of death. Cf. Superior Court of the Judicial District of Bogotá, Justice and Peace Court, Judgment of February 26, 2016 (Merits file, folios 43377 to 43380).

⁷¹ Cf. Sectional Directorate of the Technical Investigation Corps. Office of Information, Analysis and Operational Support of the Attorney General’s Office. Intelligence Report on self-defense groups, Report No. 032 of June 28, 1996. (Evidence file, folios 9 and 10) and Letter from the Municipal Ombudsman of Cocorná to the Regional Ombudsman of Medellín, dated October 21, 1996 (Evidence file, folio 12990). According to the report, once they find someone on their lists, “they detain the victims, extract all the information possible from them and then kill them.” The body of evidence confirms that civilians who had no relationship with the guerrillas were disappeared and murdered.

union leaders, as well as kidnappings and disappearances.”⁷² The paramilitaries would also set up checkpoints on the roads linking the municipal capitals with rural areas, as a recurring practice. This form of coercion, using previously prepared lists of suspects, was used to detain alleged collaborators or members of the subversive groups, interrogate them and kill them.⁷³ Other forms of coercion were designed to impose a particular form of social order, known as “social cleansing” which involved acts of violence directed at drug users, people with disabilities or sex workers.⁷⁴

61. Finally, the repertoire of violence “with a global dimension” employed by the ACMM to achieve its objectives included forced disappearances, homicides, and forced displacements through the implementation of coercion and control mechanisms.⁷⁵

A.3. Presence of the National Army in the region: the Águila Task Force (FTA)

62. The FTA was created on August 1, 1994, through a directive of the Army Command.⁷⁶ According to a statement by one of the FTA commanders, his task was to exert “control directly” over the soldiers in that area⁷⁷ and he was responsible for staying up-to-date on all incidents and keeping a record of troop operations.⁷⁸ The FTA’s territorial jurisdiction covered the area between kilometer marker 59 and 137 of the Bogotá-Medellín highway⁷⁹ including five kilometers on either side of the highway.⁸⁰ The objective of this group - whose command post operated out of La Piñuela military base, in the municipality of Cocorná, around a dozen kilometers from Vereda La Esperanza -⁸¹ was to design a strategic plan to ensure control and security in the area and to set up “an offensive combat detail” to counter the guerrilla forces.⁸²

⁷² Cf. Sectional Directorate of the Technical Investigation Corps. Office of Information, Analysis and Operational Support of the Attorney General’s Office. Intelligence Report on self-defense groups, Report No. 032 of June 28, 1996 (Evidence file, folio 14).

⁷³ Cf. Superior Court of the Judicial District of Bogotá, Justice and Peace Chamber, Judgment of February 26, 2016 (Merits file, folio 43380).

⁷⁴ Cf. This mechanism was targeted at certain observers who identified with the victims. The idea was to instill extreme fear in them, so that they would perceive themselves as probable future victims, in order to dismantle the network of adversaries, implant their own networks and induce a change of loyalties. Superior Court of the Judicial District of Bogotá, Justice and Peace Chamber, Judgment of February 26, 2016 (Evidence file, folios 43381 and 43383).

⁷⁵ Superior Court of the Judicial District of Bogotá, Justice and Peace Court, Judgment of February 26, 2016 (Evidence file, folios 43388 to 43391).

⁷⁶ Cf. Report No. FGN CTI SI GDH C4-C13 of the Technical Investigation Corps of the Attorney General’s Office, dated 1 February 1999. Case File No. 233 UNDH. Book No. 3. (Evidence file, folio 1260), and Judicial Inspection conducted by the Attorney General’s Office of the First Division of the National Army, on September 7, 1999. Case File No. 233 UNDH. Book No. 3A (Evidence file, folio 10027).

⁷⁷ Cf. Statement of C.A.G to the Regional Prosecutors’ Office, Investigation Intake Section, dated March 26, 1998. Case File No. 233 UNDH. Book No. 2. Folios 118-131 (Evidence file, folios 9459 to 9461).

⁷⁸ Cf. Statement of C.A.S. to the National Human Rights and International Humanitarian Law Unit of the Attorney General’s Office, on September 27, 2002. Case File No. 233 UNDH. Book No. 9. Folios 125 to 130 (Evidence file, folios 11885 and 11886).

⁷⁹ Cf. Report: Term Situation Report of the Command of the Águila Task Force, which secures the Medellín-Bogotá highway, signed by the outgoing Commander of the Águila Task Force on October 31, 1995 (Evidence file, folio 9850).

⁸⁰ Cf. Initial statement of C.A.G, Proceeding 233 UNDH, on February 13, 2001 (Evidence file, folio 4626).

⁸¹ Cf. Statement of Staff Sergeant L.F.G to the National Office of Special Investigations of the Office of the Inspector General of the Nation, Antioquia Section, on November 16, 1995. Preliminary inquiry No. 009-151553 (Evidence file, folios 4632 to 4635).

⁸² Cf. Plan No. 000969/BR4-BIOSP-S3-375 issued by the Command of the Engineers Battalion for control of the Medellín-Bogotá highway under the responsibility of the Águila Task Force, for February 1 to April 30, 1995,

63. According to statements by former FTA commanders, the tasks performed by that unit included setting up fixed and mobile checkpoints along different parts of the Bogotá-Medellin highway and alternate routes.⁸³ Other tasks involved preparing and updating a census of the entire area under the FTA's jurisdiction adjacent to the highway⁸⁴ and conducting offensive patrols for the purpose of area reconnaissance and military control of the jurisdiction assigned to each platoon.⁸⁵ FTA members did not have assigned vehicles and therefore would travel in private vehicles with "the driver's prior consent."⁸⁶

64. Regarding the work of the FTA along the Bogotá-Medellin highway, army documents show that combat intelligence was gathered "using the few informants that we have" and through the intelligence work of the troops themselves,⁸⁷ which included "gathering information from peasants who were on the highway."⁸⁸

65. In addition, a military patrol report of February 3, 1995, concluded that Vereda La Esperanza was a "strategic point" for operations carried out by the ELN guerrillas, where active members and collaborators of that group "live on the farms that are used as look out points and caches."⁸⁹ According to a report of June 25, 1996, from the Commander of the Fourth Brigade, during May and June of that year "the public order situation along the Medellin-Bogotá highway was seriously disrupted by the increase in criminal activities by the Carlos Alirio Buitrago and Elkin Gonzáles Narco-Terrorist gangs of the UC-ELN and the EPL." Therefore, as of June 27, 1996, the Fourth Brigade was placed in charge of controlling the FTA in order to conduct intelligence operations, combat offensives and "psychological operations" on that highway. The report stated that two platoons were added to the FTA in order to "increase the unit's combat power."⁹⁰

66. Regarding the anti-subversive actions carried out by the FTA, in a letter addressed to the Regional Ombudsman of Medellin, in October 1996, the municipal ombudsman of Cocorná reported that the most serious aspect of the confrontation between the army and the guerrilla groups are the "acts of retaliation carried out by members of the military against the peasants

dated February 1, 1995 (Evidence file, folio 4637), and Official Letter No. BR4-B3-375 of the Commander of the Fourth Brigade, of February 1995. Case File No. 233 UNDH. Book No. 3 (Evidence file, folio 9826).

⁸³ Cf. Statement of C.A.G to the Regional Prosecutors' Office, Investigation Intake Section, of March 26, 1998. Case File No. 233 UNDH. Book No. 2 (Evidence file, folio 9470).

⁸⁴ Cf. Quarterly Report No. 005003/BR4/BIOSP-S3-375 on the activities of the Águila Task Force, signed by Colonel G.P., dated October 31, 1995. Case File No. 233 UNDH. Book No. 6 (Evidence file, folio 10905). This former FTA commander explained that the purpose of the census was "to exert control" over the local inhabitants and their homes and "control the great majority of critical points." Initial statement of C.A.G, Case File No. 233 UNDH, of February 13, 2001 and continuation of initial statement of C.A.G, before the National Human Rights Unit, dated February 20, 2001. Case File No. 233 UNDH. Book No. 8 (Evidence file, folios 3104 and 3105).

⁸⁵ Cf. Tactical Report, Case No. BR14-BIBAR-S3-326 of the National Army, signed by Coronel C.S., on June 10, 1996. Case File No. 233 UNDH. Book No. 8 (Evidence file, folio 11449).

⁸⁶ Initial statement of C.A.G, Case File No. UNDH, dated February 13, 2001 and continuation of initial statement of C.A.G. to the National Human Rights Unit, dated February 20, 2001. Case File No. 233 UNDH. Book No. 8 (Evidence file, folio 3112).

⁸⁷ Cf. Tactical Report, Case No. BR14-BIBAR-S3-326 of the National Army, signed by Coronel C.S., dated June 10, 1996. Case File No. 233 UNDH. Book No. 8 (Evidence file, folio 11683).

⁸⁸ Statement of C.A.C. to the Special Prosecutor's Office, Bogotá, dated February 19, 2001. Case File No. 233 UNDH. Book No. 8 (Evidence file, folio 3097).

⁸⁹ Patrol Report by Lieutenant J.H. to the Commander of the Nel Ospina Engineers' Battalion, dated February 3, 1995 (Evidence file, folios 5821 and 5822). An FTA member stated that Vereda la Esperanza "[i]s a transit sector for bandits of the FARC, the ELN and the illegal *Autodefensas*." Statement of Army Major C.M. to the National Human Rights and International Humanitarian Law Unit, on January 27, 2003 (Evidence file, folio 3431).

⁹⁰ Report No. DIV1-BR4-B3-PO-375 of the Commander of the Army's Fourth Brigade, dated June 25, 1996. Case File No. 233 UNDH. Book No. 4 (Evidence file, folios 10368 and 10369).

of the region, with the justification that they provide support to the guerrillas.”⁹¹ He also stated that army operations “have been confined to the militarization of different areas with raids on peasant homes and threats to their residents by soldiers.”⁹² Both this ombudsman and other witnesses mentioned acts of torture, rape and illegal arrests, among other abuses committed by the army against members of the civilian population, who were perceived as aiding the guerrillas.⁹³ According to the municipal ombudsman of El Carmen de Viboral, in 1996, members of the military forced the peasants to retract their complaints of these incidents.⁹⁴

67. The FTA was disbanded in July 1996 “because the [u]nits that comprised it took on responsibilities in other sectors.”⁹⁵ A former FTA commander stated that the Fourth Brigade took over its functions until December 1996, although it continued to refer to personnel deployed on the highway as the FTA.⁹⁶

A.4. Alleged links between the ACMM and the National Army

i) The general context of collaboration or coordination between paramilitary groups and the Colombian Armed Forces

68. In several of its judgments, this Court has determined the existence of links between members of the Colombian Armed Forces and paramilitary groups during various periods and in different geographical contexts. In those cases, the following links were confirmed: a) specific actions of support or collaboration,⁹⁷ or b) omissions that allowed or facilitated the commission of serious crimes by non-State actors.⁹⁸ In addition, as noted by this Court in the

⁹¹ Cf. Official Letter from the Municipal Ombudsman of Cocorná, to the Regional Ombudsman of Medellín, dated October 21, 1996. Case File No. 233 UNDH. Book No. 12. Folios 313-314 (Evidence file, folio 12989).

⁹² Official Letter from the Municipal Ombudsman of Cocorná to the Regional Ombudsman of Medellín, dated October 21, 1996. Case File No. 233 UNDH. Book No. 12 (Evidence file, folio 12989).

⁹³ Statement of Luis Eleazar Gallego Castaño before the Office of the Municipal Ombudsman of El Carmen de Viboral, dated 27 June 1996; Intelligence Report No. 164 of the Office of Information Analysis and Operational Support, Sectional Directorate, Technical Investigation Corps of the Attorney General’s Office, dated November 13, 2006. Case File No. 233 UNDH. Book No. 1; Decision of the Commander of the Fourth Brigade, Brigadier General E.H., dated May 19, 1999. Case File No. 233 UNDH. Book No. 4; Official letter PM-044 from the Municipal Ombudsman of El Carmen de Viboral, of June 5, 1996. File No. 008-10799-98. Office of the Inspector for Disciplinary Matters for Human Rights of the Attorney General’s Office, and Official Letter PM-043 of the Municipal Ombudsman of El Carmen de Viboral, of May 28, 1996. File No. 008-10799-98 Office of the Inspector for Disciplinary Matters for Human Rights of the Attorney General’s Office (Evidence file, folios 4665, 4646 to 4647, 4656, 9251 and 4434).

⁹⁴ Cf. Official Letter PM-045 from the Municipal Ombudsman of El Carmen de Viboral, June 12, 1996. File No. 008-10799-98. Office of the Inspector for Disciplinary Matters for Human Rights of the Attorney General’s Office (Evidence file, folio 4666).

⁹⁵ Judicial inspection of the Fourth Army Brigade based in Medellín, carried out by the National Human Rights Unit, on November 21, 2000. Case File No. 233 UNDH (Evidence file, folio 10864).

⁹⁶ Cf. Statement of H.A.A to the National Human Rights Unit, dated July 31, 1998. Case File No. 233 UNDH and Statement of H.A.A before the National Human Rights Unit, dated 4 August 1998. Case File No. 233 UNDH. Book No. 3 (Evidence file, folios 9714, 9720 and 9721).

⁹⁷ Cf. *Case of the Mapiripán Massacre v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 123; *Case of La Rochela Massacre v. Colombia. Merits, reparations and costs*. Judgment of May 11, 2007. Series C No. 163, paras. 82, 93 and 101.a; *Case of the Ituango Massacres v. Colombia*, paras. 125.57, 125.86 and 132, *Case Manuel Cepeda Vargas v. Colombia*, paras. 114 and 124, and *Case of the Displaced Afro-descendant Communities of the Cacarica River Basin (Operation Genesis) v. Colombia*, paras. 250 and 280.

⁹⁸ Cf. *Case of 19 Tradesmen v. Colombia. Merits, reparations and costs*. Judgment of July 5, 2004. Series C No. 109, para. 86. c; *Case of the Pueblo Bello Massacre v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of January 31, 2006. Series C No. 140, paras. 126 and 140; *Case of Valle Jaramillo et al. v. Colombia. Merits, reparations and costs*. Judgment of November 27, 2008. Series C No. 192, para. 92; *Case of Yarce et al. v.*

case of the *Displaced Afrodescendent Communities of the Cacarica River Basin (Operation Genesis)*, several rulings by Colombia's high courts contain references to links between paramilitary groups and members of the security forces,⁹⁹ as do various reports of the Ombudsman's Office.¹⁰⁰ In its case law, this Court has also taken into account reports and decisions of the Attorney General's Office which confirm that such links existed between members of the Army and paramilitary groups in the Department of Antioquia.¹⁰¹

69. In the case of the *Displaced Afro-descendant Communities of the Cacarica River Basin (Operation Genesis)*, The Court mentions that several reports by State institutions and different United Nations bodies and agencies (the Commission on Human Rights, the Office of the High Commissioner for Human Rights, Human Rights Committee and the ILO) have referred to the connections between the Colombian Armed Forces and the paramilitaries. In addition, some expert opinions provided in these proceedings¹⁰² and in others¹⁰³ before the Court confirm those links.

70. Finally, in other cases this Court has referred to the Fourth Report of the Ombudsman's Office to the Colombian Congress, of 1997, which states that "the paramilitary groups have become the illegal arm of the Armed Forces and the Police, for whom they carry out the dirty work that the Armed Forces and Police cannot do, as authorities subject to the rule of law." Thus, according to the Ombudsman, the paramilitary activities represented "a new form of illegal repression with no strings attached."¹⁰⁴

Colombia. *Preliminary objection, merits, reparations and costs*. Judgment of November 22, 2016. Series C No. 325, paras. 20. a), 24, 25 and 35.

⁹⁹ Cf. *Case of the Displaced Afro-descendant Communities of the Cacarica River Basin (Operation Genesis) v. Colombia*, para. 249. See also Supreme Court of Justice of Colombia, Criminal Cassation Chamber: Review Judgment N° 30516, March 11, 2009, Cassation Judgment No. 24448, September 12, 2007 cited in Memorandum No. 0035 of the Regional Director of Prosecutors' Offices, of April 28, 2009 pp. 106 to 118. See also Colombian Constitutional Court, Decision 005 of January 26, 2009, and Council of State, Third Section, Action for direct reparation, Judgment No. 68001-23-15-000-1996-01698-01, Counselor Rapporteur: Olga Melida Valle De La Oz of February 27, 2013, p. 13.

¹⁰⁰ Cf. *Case of the Displaced Afro-descendant Communities of the Cacarica River Basin (Operation Genesis) v. Colombia*, para. 249. See also Ombudsman's Office, Fourth Report to the Colombian Congress, Santafé de Bogotá, 1997, pp. 59 and 60, cited by the United Nations Commission on Human Rights, in the Report of the Representative of the Secretary-General on internally displaced persons submitted in accordance with Commission Resolution 1999/47, E/CN.4/2000/83/Add.1, of January 11, 2000, para. 25; Ombudsman's Office, Twelfth Report of the Ombudsman to the Colombian Congress, of January -December 2004, pp. 66, 67, 172 and 173; Ombudsman's Office. Ombudsman's Report on Forced Displacement owing to the Violence in Colombia, April 2002, points 4 and 9; and Ombudsman's Office. Report on monitoring compliance with Judgment T-1025 of 2007, pp. 16, 17, 21 and 35.

¹⁰¹ Cf. *Case of the Displaced Afro-descendant Communities of the Cacarica River Basin (Operation Genesis) v. Colombia*, para. 249. See also: Office of the Attorney General, Delegate Prosecutor for Human Rights, Ruling issued by the Office of the Inspector for Human Rights on September 30, 2002. Ruling cited in the *Case of the Ituango Massacres v. Colombia* para. 125.100.

¹⁰² Cf. Expert opinion of Alberto Yepes Palacio, regarding the coordination by the Fourth Army Brigade and the ACMM of paramilitary activity in the Magdalena Medio region and Eastern Antioquia (Evidence file, folios 35223 to 35232).

¹⁰³ Cf. Sworn statement provided by Federico Andreu-Guzmán in the *Cases of the Mapiripán Massacre v. Colombia*, para. 76. g), and *La Rochela Massacre v. Colombia*, para. 57. a). In different parts of his statement, Mr. Andreu mentions the links existing between paramilitary groups and the army. Also, in the *Case of the Displaced Afro-descendant Communities of the Cacarica River Basin (Operation Genesis) v. Colombia*, paras. 249 and 289. Expert opinion provided by Javier Ciurlizza, expert witness proposed by the Commission, before the Inter-American Court of Human Rights during the public hearing on February 12, 2013.

¹⁰⁴ Cf. *Case of the Displaced Afro-descendant Communities of the Cacarica River Basin (Operation Genesis) v. Colombia*, para. 252. See also: Ombudsman's Office, Fourth Report to the Colombian Congress, Santafé de Bogotá, 1997, pages 59 and 60, cited by the United Nations Human Rights Commission, Report of the Representative of the Secretary General on the Human Rights of Internally Displaced Persons, submitted under Resolution 1999/47 of the Commission, E/CN.4/2000/83/Add.1, para. 25.

ii) The alleged links between the ACMM and the Security Forces

71. According to the Justice and Peace Chamber, “members of the ACMM had links of cooperation and coordination with various agencies responsible for public security and protection, the investigation of crimes—including those of the municipal governments” as well as with the political class which considered that the ACMM provided an important opportunity to obtain electoral advantage. It also indicated that “[t]he contextual aspects show that the functionality and survival of the structure over time occurred thanks to the complex patronage networks that developed in the territory, constituted by social leaders, merchants, cattle ranchers, businessmen, rice producers, landowners, etc.” and that it was no coincidence that “one of the main sources of funding were the contributions provided by business owners in exchange for security or that the groups’ territorial expansion was supported at the request of cattle ranchers.”¹⁰⁵

72. The same court also indicated that the relationship between the ACMM and the public agencies responsible for security, protection and the investigation of crimes was based on: a) a practical reason, based on the premise that the paramilitaries could substitute the security forces, in other words, the paramilitaries “did what the security forces or the police could not do,” and that was the deeper reason behind the relations of cooperation, and b) a “positive” aspect that involved the division of labor which translated into collaborative tasks with the police, including joint actions and exchange of information. This also meant that some members of the police or the army often passed on lists of suspects to the *Autodefensas* so that they would kill them. Moreover, this relationship was characterized by strategic omissions, whereby the police would simply not provide security to opponents of the *Autodefensas* or would allow them a wide margin of manoeuvre to carry out their violent actions without being “seen” by the State.¹⁰⁶

73. Furthermore, according to information from the FGN, the ACMM’s operations were conducted “with support from members of the public security forces.” In addition, the paramilitary groups in the Magdalena Medio “receive[d] logistical support and acquiescence for their operations from some members of the National Army, the National Police and in some cases from the D.A.S.” This information indicated that members of the security forces “in some instances, directly participated with the paramilitaries in committing atrocities and, in other cases, acted as accomplices or accessories.” Also, in 1996, the ACMM would “freely circulate” along the Medellín-Bogotá highway and the surrounding rural areas “where the presence of the military forces and the police is permanent and conspicuous.” The paramilitaries would travel around in trucks with the military troops, flaunting their weapons in front of the population.¹⁰⁷ The ACMM Commander at the time of the events admitted that his members “most of the time went around [...] accompanied by the army.”¹⁰⁸ For its part, the Justice and Peace Chamber mentioned that those relationships also had a “negative” side, which involved disputes between the police and the ACMM over conflicting interests and

¹⁰⁵ Superior Court of the Judicial District of Bogotá, Justice and Peace Chamber, Judgment of February 26, 2016 (Evidence file, folios 43391, 43392 and 43399).

¹⁰⁶ Cf. Superior Court of the Judicial District of Bogotá, Justice and Peace Chamber, Judgment of February 26, 2016 (Evidence file, folios 43439, 43440, and 43441).

¹⁰⁷ Cf. Sectional Directorate of the Technical Investigation Corps. Office Information, Analysis and Operational Support of the Attorney General’s Office. Intelligence Report on self-defense groups, Report No. 032 of June 28, 1996 (Evidence file, folio 13); expanded statement of A.G.C. before the Office of the Attorney General, Cocorná Unit, dated October 25, 1996. Case File No. 233 UNDH. Book No. 1, and Statement of F.G.H. to prosecutors of the National Human Rights Unit, of April 14, 1998. Case File No. 233 UNDH. Book No. 2 (Evidence file, folios 13, 9148 and 1006).

¹⁰⁸ Initial statement of R.I.A. to the Office of the Special Prosecutor attached to the National Human Rights and International Humanitarian Law Unit, dated April 23, 2007 (Evidence file, folio 461).

practices and that those tensions led to “fatal outcomes” that influenced the patterns of violence that characterized the ACMM.¹⁰⁹

74. Similarly, A.J.B., a senior commander of the ACMM, stated that “all paramilitary commanders have to coordinate any action they take in the area with the Army or the Police, because their task is to work in coordination with the Army, in military operations and exchange intelligence and information.” He stressed that “no paramilitary member can move or carry out operations without coordinating with the public security forces.” He added that “it was our job to do what the Army was not able to do, in other words, [we had] the facility to do quicker operations than the Army, and [we could] carry out massacres which the Army could not.”¹¹⁰

75. A report by the Attorney General’s Office noted that “the community in that area question[ed] the efficacy of the police, because the paramilitaries move around without any problem, despite the military base being right there [...] and the presence of the Army on the highway.”¹¹¹ The FGN also noted that the ACMM “have dominated the Magdalena Medio region for a long time and their collaboration with the military units and ranchers is no secret.”¹¹²

76. Finally, as consistently mentioned by several paramilitaries and by a sergeant of the Colombian Armed Forces, the paramilitaries received training and weapons from members of the Army, and on some occasions paramilitaries were even seen inside the military base of La Piñuela. They also stated that the Army “lent them weapons, and for each rifle they provided five bullets, four in cartridge boxes and one inside the rifle, plus a type IM26 grenade for each one; the major would directly hand the weapon over to a lieutenant and it was returned when the operation ended.”¹¹³ On several occasions, the paramilitaries received “re-training at La Piñuela [Army] base” where they were given “military instruction on how to handle certain weapons and on basic tactics to defend themselves in case they [ran into] a confrontation [...]”.¹¹⁴

B. Events that occurred between June and December 1996 in Vereda La Esperanza

77. With regard to the disappearances and the execution that occurred between June and December of 1996 in Vereda La Esperanza, the State did not deny that these events had taken place. The matter in dispute concerns the participation of State agents in those acts.

B.1. The disappearance of Aníbal de Jesús Castaño and Óscar Zuluaga Marulanda

78. On June 21, 1996, a group of heavily armed men dressed as civilians arrived in Vereda La Esperanza and went to the local community store which was owned by Aníbal de Jesús

¹⁰⁹ Cf. Superior Court of the Judicial District of Bogotá, Justice and Peace Chamber, Judgment of February 26, 2016 (Evidence file, folio 43442).

¹¹⁰ Statement of A.J.B to prosecutor of the National Human Rights Unit, on December 11, 1997 (Evidence file, folios 5808 and 5809).

¹¹¹ Sectional Directorate of the Technical Investigation Corps. Office of Information, Analysis and Operational Support of the Attorney General’s Office. Intelligence Report on self-defense groups, Report No. 032 of June 28, 1996 (Evidence file, folio 13).

¹¹² Report No. 093 of the Office of Information and Analysis of the Sectional Directorate of the Technical Investigation Corps of the Attorney General’s Office, dated August 19, 1996. Case File No. 233 UNDH. Book No. 1 (Evidence file, folio 9145).

¹¹³ Interview with O.S., No. 82262 of October 2, 2014 (Evidence file, folio 25699).

¹¹⁴ Voluntary confession of L.E.Z of December 4, 2015 (Evidence file, folio 26093).

Castaño Gallego, where they detained him and Óscar Hemel Zuluaga.¹¹⁵ According to several testimonies, the Army accused him of selling supplies to the guerrillas.¹¹⁶ To date, his whereabouts are unknown.

B.2. The disappearance of the minors Juan Crisóstomo Cardona Quintero and Miguel Ancízar Cardona Quintero

79. In the early hours of June 22, 1996, a group of hooded men entered a house where the minors Juan Crisóstomo and Miguel Ancízar Cardona Quintero were and started asking where the weapons were kept. According to the testimony of their mother, the men first detained one of her sons, 15 year-old Miguel Ancízar Cardona, and tied his hands behind his back, and then Juan Crisóstomo, who was 12 years of age. She added that they began to cry as they were led out to the patio, and that later they were taken away.¹¹⁷

80. According to a statement, the men who took the boys away were paramilitaries, who were with the Army at that time in the area around Vereda La Esperanza.¹¹⁸ A local resident also recounted that several days later, she recognized a police officer and a soldier who had participated in these incidents.¹¹⁹ Finally, another witness indicated that at the time of the disappearance of Juan Crisóstomo and Miguel Ancízar, the Army was in Vereda La Esperanza and that a soldier was present when the boys were taken away.¹²⁰ To date, the fate or whereabouts of Juan Crisóstomo and Miguel Ancízar Cardona Quintero remain unknown.

B.3. The disappearance of Irene de Jesús Gallego Quintero on June 26, 1996

81. On June 25, 1996, the FTA launched an operation under the command of Major C.A.G. which involved "search and control operations in the areas around the villages [...] in order to secure the movement of cargo and passenger vehicles."¹²¹ Major C.A.G decided to launch that operation in response to the alleged mass kidnapping of eight persons.¹²² According to the Major, "the operation [...] was launched on June 25, at 9:00 pm from La Piñuela military

¹¹⁵ Cf. National Human Rights Unit of the Attorney General's Office, Statement of M.C.H on November 8, 2004, Case File No. 233 UNDH, Book No. 10 (Evidence file, folio 3610). See also: Judgment No.159 of the Third Chamber of the Contentious Administrative Court of Antioquia of June 15, 2010 (Evidence file, folios 5984 to 6106).

¹¹⁶ Cf. National Human Rights Unit of the Attorney General's Office, Statement of D.Q.G. of November 8, 2004, Case File No. 233 UNDH, Book No. 10 (Evidence file, folio 3604). See also: Office of the Municipal Ombudsman of El Carmen de Viboral, Office of the Inspector for Disciplinary Matters for Human Rights, Attorney General's Office, Statement of F.G.H. of July 19, 1996, File No. 008-10799-98 (Evidence file, folio 4715), and Office of the Municipal Ombudsman of Cocorná, Statement of J.G.C.H. of June 30, 1996 (Evidence file, folio 5854).

¹¹⁷ Cf. First Prosecutor's Office of the National Human Rights Unit, statement of M.Q., dated November 11, 2004 (Evidence file, folios 3638 and 3639).

¹¹⁸ Cf. Municipal Civil Court, hearing to receive testimony of E.F., on October 12, 2004 (Evidence file, folio 3839).

¹¹⁹ Cf. Statement of resident of Vereda La Esperanza, video provided by the representatives, minute 16:30 (Evidence file, folio 5804).

¹²⁰ Cf. Municipal Civil Court, hearing to receive testimony of E.F., of October 12, 2004 (Evidence file, folio 5861).

¹²¹ Document of Major C.A.G, Commander of the Águila Task Force. Operations Order No. 005 "Operation Lightning Bolt." Copy No. 002, June 1996 (Evidence file, folios 5866 a 5867).

¹²² Cf. Initial statement of Major C.A.G, Proceeding 233 UNDH, dated February 13, 2001 (Evidence file, folio 4623).

base.”¹²³ According to the testimony of Captain C.A.C, an FTA member in charge of ground operations, the platoons departed at around 10:00 or 11:00 p.m.¹²⁴

82. According to the testimonies of various residents of Vereda La Esperanza, in the early hours of June 26, 1996, soldiers arrived at the house of José Eliseo Gallego Quintero who was with his wife and their son, Juan Carlos Gallego. The soldiers, who identified themselves as “counter-guerrilla soldiers,” knocked at the door, ordered them to open and began to shoot into the house.¹²⁵ The soldiers entered the house and said: “we thought [...] there was a [guerrilla] camp here.”¹²⁶ In his testimony P.P.M. recalled that on that night his brother, wife and children, who were at another house in the village, “fled” to his house, because there had been shooting at the house of the deceased Eliseo Gallego.¹²⁷ In this regard, C.M.C. recounted that “[...] at three in the morning they came to our house [...] and ordered us to take them in [...] because there was [shooting] and they might be killed [...]”¹²⁸

83. In the morning the soldiers took out canned food marked with the logo of the National Army.¹²⁹ Around 7:00 a.m., members of the same military unit left the house of the Gallego Hernández family and headed over to the house of Mr. P.P.M. where they found Irene de Jesús Gallego Quintero.¹³⁰ One witness reported that the soldiers took her away at around 4:00 p.m.¹³¹ The soldiers also told them not to file a complaint “if they wanted to live another day.”¹³²

84. Major C.A.G admitted that the troops told him that Irene de Jesús was found in a house located along the upper part of the highway and that on the afternoon of June 26 and [June] 27 “she remained with the troops.” He stated that on June 28, between noon and 3:00 p.m., he accompanied her to the Prosecutor’s Office.¹³³ According to a statement by the Delegate Prosecutor, on June 28, 1996, at 5:00 p.m. Major C.A.G. appeared at the Prosecutor’s Office

¹²³ Continuation de initial statement of C.A.G, of February 20, 2001. Case File No. 233 UNDH. Book No. 8 (Evidence file, folio 3110).

¹²⁴ Cf. Office of the Special Prosecutor, Bogotá, Statement of C.A.C of February 19, 2001. Case File No. 233 UNDH. Book No. 8 (Evidence file, folio 3097).

¹²⁵ Cf. Municipal Ombudsman of Cocorná, Statement of J.C.G. of June 30, 1996 (Evidence file, folio 5853); sworn statement made by P.P.M. of April 6, 2005, Book No. 10, Proceeding 233 UNDH – DIH (Evidence file, folios 12260 to 12261), and Municipal Ombudsman of El Carmen de Viboral, Statement of J.E.G. dated July 19, 1996 (Evidence file, folio 5834).

¹²⁶ Municipal Ombudsman of El Carmen de Viboral, Statement of J.E.G. dated July 19, 1996 (Evidence file, folio 5834).

¹²⁷ Sworn statement of P.P.M. on April 6, 2005, Book No. 10, Proceeding 233 UNDH – DIH (Evidence file, folio 12261).

¹²⁸ Municipal Inspectorate of Police and Transit of Cocorná, Statement of C.M.C. of August 4, 1996 (Evidence file, folio 5878).

¹²⁹ Cf. National Human Rights Unit of the Attorney General’s Office, Statement of J.F.C. of April 15, 1998 (Evidence file, folio 5875).

¹³⁰ Cf. Sworn statement of P.P.M. of April 6, 2005, Book No. 10, Proceeding 233 UNDH – DIH (Evidence file, folio 12261); Brief of the *Corporación Jurídica Libertad* to the National Human Rights Unit of the Office of the Attorney General, presented on April 2, 2007 (Evidence file, folio 4647), and Statement of F.G.H. before the Office of the Attorney General, dated November 28, 2000 (Evidence file, folio 5824).

¹³¹ Cf. National Human Rights Unit of the Regional Prosecutor’s Office, Statement of M.E.H. of April 15, 1998. Case File No. 233 UNDH. Book No. 2 (Evidence file, folio 996).

¹³² Municipal Ombudsman of El Carmen de Viboral, Statement of J.E.G. dated July 19, 1996 (Evidence file, folio 5835).

¹³³ Cf. Prosecutor assigned to the UNDH, Continuation of investigation of Major C.A.G. of February 20, 2001 (Evidence file, folios 11630 to 11632).

of El Santuario, Antioquia, accompanied by Irene de Jesús Gallego Quintero.¹³⁴ The prosecutor recalled that Major C.A.G. arrived with the young woman, "but did not submit a report in support of the procedure he followed, or any specific charges and it was not clear why he was present at the prosecutor's office." The prosecutor added that she did not know the reason why Irene de Jesús was brought there, but proceeded to prepare a record of a detained person, in order to legalize the matter.¹³⁵ Major C.A.G. admitted that he did not submit any document because he "thought that turning her over to the Prosecutor's Office was sufficient."¹³⁶ The prosecutor explained that "at that time, the minimum requirements established under the rules of criminal procedure to bring a criminal charge against her were not met" and that "there was no reason to detain her." She added that she did not know "the direction in which she [Irene] headed or by whom she was accompanied."¹³⁷

85. According to the statement of Florinda de Jesús Gallego Hernández, on January 29, 1997, soldiers of the FTA came to her house with a photograph of Irene de Jesús Gallego dressed in civilian clothes and asked her if Irene was a member of the guerrilla forces, to which she replied that the Army had taken her away and that she had not belonged to any guerrilla group. She also claimed that they told that they would investigate the situation.¹³⁸ According to the testimony of E.M.A., after being taken to the Prosecutor's Office, Irene was "[...] left once again in the hands of the soldiers [...]."¹³⁹ According to the statements of G.C.F. and another local resident, Irene de Jesús was "[...] taken to La Piñuela military base, [where] the Army major interrogated her and then handed her over to the paramilitary forces [...]"¹⁴⁰ who would have "[...] killed her [...]."¹⁴¹

B.4. The disappearance of Juan Carlos Gallego Hernández and Jaime Alonso Mejía Quintero, and the death of Javier Giraldo Giraldo

a) Case of Juan Carlos Gallego Hernández

86. Mrs. Florinda de Jesús Gallego Hernández stated that on June 25, 1996, members of the FTA intercepted her brother Juan Carlos Gallego, a health care worker in Vereda La Esperanza,¹⁴² as he walked along the Bogotá-Medellin highway and asked him for his identity papers.¹⁴³ She said that after being identified as the village health worker, they called him a

¹³⁴ Cf. Official Letter No. 812-29 from Olga María Ruiz Angarita, 29th Prosecutor assigned to the National Human Rights Unit, of April 1, 1997 (Evidence file, folio 5882).

¹³⁵ Cf. Official Letter No. 812-29 from Olga María Ruiz Angarita, 29th Prosecutor assigned to the National Human Rights Unit, dated 1 April 1997 (Evidence file, folio 5882).

¹³⁶ Continuation of the initial statement of Major C.A.G., Proceeding 233 UNDH, dated February 20, 2001. (Evidence file, folio 11641).

¹³⁷ Official Letter No. 812-29 of the 29th Prosecutor assigned to the National Human Rights Unit, dated April 1, 1997 (Evidence file, folios 5883 and 5884), and certificate issued by the Prosecutor's Office of the Municipality of El Santuario, of June 28, 1996 (Evidence file, folio 956).

¹³⁸ Cf. Office of the Attorney General, Statement of F.G.H. dated November 28, 2000 (Evidence file, folios 5824 to 5825).

¹³⁹ Statement of E.M.A. to the Regional Directorate of Prosecutors' Offices, of May 13, 1997 (Evidence file, folio 9275).

¹⁴⁰ Statement of G.C.F. to the Municipal Ombudsman of El Carmen de Viboral of December 30, 1996 (Evidence file, folio 5888).

¹⁴¹ Statement of a resident of Vereda La Esperanza, video provided by the representatives, minute 16:53 (Evidence file, folio 5804).

¹⁴² Cf. National Human Rights Unit, statement of F.G.H., of November 28, 2000 (Evidence file, folio 5825).

¹⁴³ Cf. National Human Rights Unit, statement provided by Florinda de Jesús Gallego Hernández, on November 28, 2000 (Evidence file, folio 5825).

guerilla collaborator. She said that her brother denied these accusations, after which the soldiers threatened him.¹⁴⁴

87. Another witness recalled that a few days earlier soldiers had arrived in the village during a local festival, which Juan Carlos Gallego was attending and that, because he was wearing a black shirt, the soldiers called him "guerrilla."¹⁴⁵ Also, as mentioned previously (*supra* para. 82), on June 26, 1996, counter-insurgency soldiers entered the home of José Eliseo Gallego, where Juan Carlos was with his parents, and one of the soldiers threatened him saying: "you continue with the guerrillas and the next time we come here and find something, we won't leave anything behind, we'll eliminate everything and everyone."¹⁴⁶

88. On the afternoon of July 7, 1996, a community meeting was held in Vereda La Esperanza and, at the end of the meeting, Juan Carlos Gallego was taken away by some men who arrived in a car. A witness testified that as they were leaving the village church, where the meeting had taken place, they were approached by a group of hooded armed men who got out of a gray pickup truck and threatened them saying: "if you move, you're dead." He said that two of the armed men approached Juan Carlos Gallego, asked him if he was a member of the guerrilla forces and then said he was the person they "needed," and pushed him into the truck. When Juan Carlos asked them what to do with his bicycle, they answered "you won't be needing it anymore."¹⁴⁷

89. On July 9, 1996, Florinda de Jesús Gallego asked the armed men dressed as civilians who entered her home about her brother Juan Carlos, to which they replied, "relax, he will be coming back."¹⁴⁸ Subsequently, on January 29, 1997, some FTA soldiers came to her house, and when she confronted them about the matter, they said that they were "keeping an eye on that case because there ha[d] been a mistake."¹⁴⁹ To date, the fate or whereabouts of Juan Carlos Gallego remain unknown.

b) Case of Jaime Alonso Mejía Quintero

90. Witnesses testified that on July 7, 1996, the same individuals who had earlier seized Juan Carlos Gallego Hernández, headed toward a billiard parlor located near the bridge of "La Cadavid." Here, they detained Jaime Alonso Mejía Quintero, who was a lottery seller, and forced him into one of their cars.¹⁵⁰ His sister stated that the Army accused him of being a guerrilla member. She added that he had told her that they would "constantly harass him

¹⁴⁴ Cf. National Human Rights Unit, statement provided by Florinda de Jesús Gallego Hernández, on November 28, 2000 (Evidence file, folio 5825).

¹⁴⁵ Cf. Regional Prosecutor's Office of the National Human Rights Unit, sworn statement of María Engracia Hernández Quintero, of April 15, 1998 (Evidence file, folio 995).

¹⁴⁶ Municipal Ombudsman of Cocorná, Department of Antioquia, statement of J.C.G., dated June 30, 1996 (Evidence file, folio 9202).

¹⁴⁷ First Prosecutor's Office of the National Human Rights and International Humanitarian Law Unit, sworn statement made by P.A.Q., on April 5, 2005 (Evidence file, folios 3730 and 3731).

¹⁴⁸ Municipal Ombudsman of Cocorná, Department of Antioquia, statement of Florinda de Jesús Gallego Hernández, of July 11, 1996 (Evidence file, folio 2068).

¹⁴⁹ National Human Rights Unit, statement of Florinda de Jesús Gallego Hernández, of November 28, 2000 (Evidence file, folio 5825).

¹⁵⁰ Cf. First Prosecutor's Office of the National Human Rights and International Humanitarian Law Unit, statement of L.D.C., of November 8, 2004 (Evidence file, folio 3614); Special Prosecutor's Office in Commission in the Municipality of El Carmen de Viboral, statement of D.Q.G., of November 8, 2004 (Evidence file, folios 3607 and 3608); National Human Rights and International Humanitarian Law Unit of Bogotá, statement of O.S.M., of November 10, 2004 (Evidence file, folio 3627), and Prosecutor's Office for Human Rights and International Humanitarian Law Unit, statement of J.F.C., of November 10, 2004 (Evidence file, folio 3623).

[...], stop him and threaten to take [him] away.”¹⁵¹ To date, his fate and whereabouts are unknown.

c) Case of Javier Giraldo Giraldo

91. On the afternoon of July 7, 1996, Javier Giraldo Giraldo was teaching a friend to drive a motorcycle.¹⁵² As they headed toward the area of “Estanquillo” they were intercepted by a group of men who told Javier Giraldo to get into one of the trucks in which they were traveling.¹⁵³ A witness reported that this happened soon after the incident involving Juan Carlos Gallego and Jaime Alonso Mejía, and that Javier Giraldo attempted to escape but one of the trucks ran over the tire of his motorcycle, making him fall off. He added that five minutes later, after he had been loaded into the vehicle, they heard shots and saw his dead body being thrown onto the highway.¹⁵⁴ A witness reported that some people who were on the side of the highway saw when he was killed, “but nobody did anything out of fear that the same thing would happen to them.”¹⁵⁵

92. The official report on the removal of Mr. Giraldo’s corpse stated that his body was found in the village of San Vicente on the left side of the Bogotá-Medellin highway and that it presented injuries and orifices in the back, left shoulder, chest, neck, right ear, upper lip, chin, right ribs, and left hand.¹⁵⁶

B.5. The disappearances of Hernando de Jesús Castaño Castaño, Orlando de Jesús Muñoz Castaño and Octavio de Jesús Gallego Hernández on July 9, 1996

a) Case of Hernando de Jesús Castaño Castaño

93. According to Mrs. Florinda Gallego Hernández, on the afternoon of July 9, 1996, a group of about five to nine armed individuals dressed as civilians entered her house and asked about a young man. She said they told her that “guerrillas lived there” and that they “ha[d] to eliminate all [the] collaborators.” Then they ordered her husband, Hernando de Jesús Castaño Castaño, to go with them.¹⁵⁷ A witness reported that he watched as a group of men took Mr. Castaño away on foot, with a rope tied to his waist.¹⁵⁸ Another witness, who also observed the incident, said that the Army must have known something because the “they ha[d] gone

¹⁵¹ National Human Rights and International Humanitarian Law Unit of Bogotá, statement of O.S.M., of November 10, 2004 (Evidence file, folio 3628).

¹⁵² Cf. Prosecutor’s Office of Cocorná, sworn statement rendered by N.S.C., of August 12, 1996 (Evidence file, folio 5894).

¹⁵³ Cf. Regional Prosecutor’s Office of the National Human Rights Unit, statement of C.A.E., of April 15, 1998 (Evidence file, folio 9545).

¹⁵⁴ Cf. First Prosecutor’s Office of the National Human Rights and International Humanitarian Law Unit, statement of P.A.Q., of April 5, 2005 (Evidence file, folio 3731).

¹⁵⁵ Cf. First Prosecutor’s Office of the National Human Rights and International Humanitarian Law Unit, statement of L.D.C., de 8 November 2004 (Evidence file, folio 3614).

¹⁵⁶ Cf. Regional Directorate, Technical Investigation Corps of the Attorney General’s Office, Investigations Section, Report N°084, of November 27, 1996 (Evidence file, folio 9170).

¹⁵⁷ Cf. Municipal Ombudsman of Cocorná, Department of Antioquia, statement of Florinda de Jesús Gallego Hernández, of July 11, 1996 (Evidence file, folios 10585 and 10586), and statement of the alleged victim Florinda de Jesús Gallego Hernández at the public hearing in this case.

¹⁵⁸ Cf. First Prosecutor’s Office of the National Human Rights and International Humanitarian Law Unit, statement of P.A.Q., of April 5, 2005 (Evidence file, folio 12258).

around the houses finding out many things before these events began to happen [...] about those who collaborated with the guerrillas.”¹⁵⁹ To date, his whereabouts remain unknown.

b) Case of Orlando de Jesús Muñoz Castaño

94. On July 9, 1996, Orlando de Jesús Muñoz Castaño went to visit his brother at his house in Vereda La Esperanza. According to his brother, that day Orlando left in a hurry in search of two young calves that he kept in a nearby field. He reported that very early the following day, when he met up with the father of Orlando’s partner, the latter told him that “he had been taken away, supposedly by the paramilitaries, [...] near the Río Picacho Bridge.” He said that he heard that “when [Orlando] was walking down from [his] house [...] on his way to the farm that he managed [...] several men arrived and took him away [...] in pickup trucks that [...] had turned off [...] the main road next to the bridge over the Picacho river.”¹⁶⁰ To date, his whereabouts remain unknown.

c) Case of Octavio de Jesús Gallego Hernández

95. According to the testimony of H.M.G., on the afternoon of July 9, 1996, he was in the company of Octavio Gallego in the village of San Vicente on the side of the Bogotá-Medellin highway. He recounted that Octavio had heard about the discovery of bodies in Cocorná and wanted to find out whether the body of his brother, Juan Carlos Gallego Hernández, was among them, as he had disappeared some days earlier, so they were waiting for a car to take them to Cocorná for that purpose. He testified that four vehicles arrived and two men dressed in civilian clothing and carrying long-range firearms got out of one of the cars, seized Octavio and forced him into their vehicle and then headed toward Medellín. He stated that “on that day, there were soldiers two blocks further down the road, in El Estanco [...] [and] the Army was also at the entrance to Cocorná.” He added that the following Sunday, as he made his way to “El Estanco,” he saw a group of around 15 soldiers and among them he recognized two of the individuals who had taken Octavio away and who were now wearing military uniforms and insignia.¹⁶¹

96. Another witness reported that he heard that a neighbor who had angrily confronted a member of the paramilitaries about the disappearances, was told that they were taken away “to torture them so that they would tell the truth.”¹⁶² To date, there is no information regarding the fate or whereabouts of Octavio de Jesús Gallego Hernández.

B.6. The disappearance of Andrés Antonio Gallego Castaño and Leonidas Cardona Giraldo on December 27, 1996

97. According to G.C.F., on December 27, 1996, around 7:00 p.m., a group of armed men dressed as civilians arrived at the home of Andrés Gallego Castaño, located in Vereda La

¹⁵⁹ Municipal Criminal Court of Cocorná, statement of A.A.G. of July 11, 1996 (Evidence file, folio 9042).

¹⁶⁰ Special Prosecutor’s Office of the Municipality of El Carmen de Viboral, statement of C.M.M., of November 10, 2004 (Evidence file, folio 3634).

¹⁶¹ Cf. Regional Prosecutor’s Office of the National Human Rights Unit, sworn statement of H.M.G., of April 15, 1998 (Evidence file, folios 991 and 992), and National Human Rights Unit, statement of H.M.G., of November 10, 2004 (Evidence file, folio 5913).

¹⁶² Regional Prosecutor’s Office of the National Human Rights Unit, statement of M.E.H., of April 15, 1998 (Evidence file, folio 997).

Esperanza and, after forcing him into a truck, headed towards the home of Leonidas Cardona Giraldo.¹⁶³

98. According to M.C.F., wife of Leonidas, on that day, at about quarter to seven in the evening, armed men who identified themselves as paramilitaries of the Magdalena Medio, arrived at her house in two trucks and inquired about a woman who had lived there previously and asked them whether they knew the guerrillas. They also asked her husband Leonidas for his identity papers.¹⁶⁴ She stated that while this was happening, around ten men went in search of Andrés Gallego who lived nearby and returned with him.¹⁶⁵ She added that thirty minutes later, more armed men arrived with a hooded individual.¹⁶⁶ After that, they ordered her husband to change his clothes and "they took him to the military base of La Piñuela where they told him everything would be resolved."¹⁶⁷

99. The witness reported that this happened at around 8:00 or 8:30 p.m. and that when she heard the engines of the trucks start up, she went to the door and could see two Army dumper trucks behind them.¹⁶⁸ She said that after this incident, an FTA soldier who was helping her to find her husband told her that anyone who was captured by R.I.A. was never seen again.¹⁶⁹ Finally, she said that among the men who had taken her husband away were some soldiers whom she had seen a few days earlier and that there had been an Army presence in the area where they lived, that is, on the highway from La Piñuela to the entrance of Cocorná.¹⁷⁰

100. For her part, the wife of Andrés Gallego stated that witnesses saw three armed men break down the front door of her house and take her husband away.¹⁷¹ To date, there is no

¹⁶³ Cf. Municipal Ombudsman of El Carmen de Viboral, statement of G.C.F., of December 30, 1996 (Evidence file, folio 5887).

¹⁶⁴ Cf. Office of the Special Prosecutor of the Municipality of Cocorná, statement of M.C.F., of November 11, 2004 (Evidence file, folios 12176 and 12177); Local Unit of the Prosecutor's Office of Cocorná, complaint filed by M.C.F. on December 30, 1996 (Evidence file, folios 13043 and 13045); Office of Special Prosecutor 53 assigned to the Rural Gaula of Eastern Antioquia, expanded statement of M.C.F., of February 26, 2009 (Evidence file, folios 13072 to 13074), and Regional Prosecutor's Office of the National Human Rights Unit, sworn statement of M.C.F. of April 14, 1998 (Evidence file, folios 9533 to 9534).

¹⁶⁵ Cf. Office of the Special Prosecutor of the Municipality of Cocorná, statement of M.C.F., of November 11, 2004 (Evidence file, folios 12176 to 12177); Office of Special Prosecutor 53 assigned to the Rural Gaula of Eastern Antioquia, expanded statement of M.C.F., of February 26, 2009 (Evidence file, folios 13074 to 13075), Regional Prosecutor's Office of the National Human Rights Unit, sworn statement of M.C.F., of April 14, 1998 (Evidence file, folios 9533 to 9534).

¹⁶⁶ Cf. Local Prosecutor's Unit of Cocorná, complaint filed by M.C.F. on December 30, 1996 (Evidence file, folios 13044 to 13045), and Office of Special Prosecutor 53 assigned to the Rural Gaula of Eastern Antioquia, extension of the complaint filed by M.C.F. on February 26, 2009 (Evidence file, folios 13076 to 13077).

¹⁶⁷ Office of Special Prosecutor 53 assigned to the Rural Gaula of Eastern Antioquia, expanded statement of M.C.F., of February 26, 2009 (Evidence file, folio 13075); Regional Prosecutor's Office of the National Human Rights Unit, sworn statement of M.C.F., of April 14, 1998 (Evidence file, folio 9534), and Prosecutor's Office of Cocorná, complaint filed by M.C.F. on December 30, 1996 (Evidence file, folio 13046).

¹⁶⁸ Cf. Office of the Special Prosecutor in the Municipality of Cocorná, statement of M.C.F., of November 11, 2004 (Evidence file, folios 12176 and 12179); Local Prosecution Unit of Cocorná, complaint filed by M.C.F. on December 30, 1996 (Evidence file, folio 13044), and Office of Special Prosecutor 53 assigned to the Rural Gaula of Eastern Antioquia, expanded statement of M.C.F., of February 26, 2009 (Evidence file, folio 13075).

¹⁶⁹ Cf. Regional Prosecutor's Office of the National Human Rights Unit, sworn statement of M.C.F., of April 14, 1998 (Evidence file, folio 9534).

¹⁷⁰ Cf. Office of the Special Prosecutor of the Municipality of Cocorná, statement of M.C.F., of November 11, 2004 (Evidence file, folios 12176 and 12178).

¹⁷¹ Cf. Local Unit of the Prosecutor's Office of Cocorná, statement of M.H.G., of December 30, 1996 (Evidence file, folio 4515).

information regarding the fate or whereabouts of Andrés Gallego Castaño and Leonidas Cardona Giraldo.

C. Judicial proceedings

C.1. Ordinary criminal jurisdiction

101. The body of evidence shows that two criminal cases were filed in the ordinary criminal courts for the events that occurred in Vereda La Esperanza between June and December of 1996: i) Criminal Proceeding N° 233, initiated as a result of complaints filed between the end of June and beginning of July 1996, and ii) Criminal Proceeding N° 752065 initiated following a complaint filed on December 30, 1996. Both cases are still under investigation by the 80th Special Prosecutor for Human Rights and International Humanitarian Law. In the course of those proceedings, various evidentiary procedures and procedural actions were carried out.

102. In view of the State's acknowledgment of responsibility, accepted by this Court (*supra* para. 23) regarding the investigations undertaken in the context of the proceedings before the ordinary criminal jurisdiction, this Court will not examine the details of the facts related to each one.

C.2. Proceedings in the Justice and Peace jurisdiction

103. *Demobilization of R.I.A.* In a resolution dated July 8, 2005, the Presidency of the Republic recognized R.I.A. as "a representative member of the [AUC]" as of December 31, 2005, for the purposes of initiating the process of concentration and demobilization of that group.¹⁷² R.I.A. was demobilized on February 7, 2006.

104. *Voluntary confession of R.I.A.* On October 16, 2008, R.I.A. provided "a partial voluntary confession" to the Second Prosecutor of the National Unit for Justice and Peace regarding the events at Vereda La Esperanza.¹⁷³

105. *Partial indictment and charges against R.I.A.* On January 21, 2009, a partial indictment was filed against R.I.A. as a key participant in crimes associated with the "multiple homicide (massacre)" at Vereda La Esperanza, which were classified as aggravated kidnapping with extortion and aggravated homicide.¹⁷⁴ Subsequently, in an indictment filed on April 1, 2009, R.I.A. was accused of being a co-perpetrator of the crimes of aggravated kidnapping with extortion, aggravated forced disappearance and aggravated homicide in relation to the same events that took place in Vereda La Esperanza.¹⁷⁵

106. *Hearing for the formulation of charges.* On July 13, 2009, the Delegate Prosecutor of the National Unit for Justice and Peace assigned to the District Court informed Deputy 53rd Prosecutor that a hearing was held on April 2, 2009, before the Supervising Judge of the

¹⁷² Cf. Decision No. 172 of the Office of the President of the Republic "whereby an individual is recognized as a member representing the *Autodefensas Unidas de Colombia*, AUC," dated July 8, 2005 (Evidence file, folio 5955). On December 19, 2005, this decision was extended by six months in order to begin the process of demobilization, and the arrest warrant against him was suspended, and Cf. Resolution No. 313 of the Office of the President of the Republic "whereby several persons are recognized as members representing the *Autodefensas Unidas de Colombia*, AUC" of December 19, 2005 (Evidence file, folio 12313).

¹⁷³ Cf. Video of partial confession of R.I.A., rendered on October 16, 2008, before the Second Prosecutor of the National Unit for Justice and Peace (Evidence file, folio 478).

¹⁷⁴ Cf. Partial indictment filed against applicant R.I.A. on January 21, 2009 for the crime of "multiple homicide (massacre) at 'Vereda La Esperanza'" (Evidence file, folios 16439 and 16479).

¹⁷⁵ Cf. Indictment in Case N° 557, filed against Applicant R.I.A. on April 1, 2009, Massacre of La Esperanza (Evidence file, folios 16636, 16641 and 16642).

Superior Court of Bogotá for Justice and Peace. The official letter stated that during the hearing, R.I.A. "accepted the charges for the events of this massacre."¹⁷⁶

107. *Incorporation of evidence.* During the proceedings on June 26, 2009, the attorney of the alleged victims provided a video of the interview granted by R.I.A. to the *Teleantioquia* TV channel, on February 7, 2006, in which he gave details of the events that took place in Vereda La Esperanza.¹⁷⁷ On December 5, 2011, the expanded statement made by Major C.A.G. in Proceeding N° 233 (*supra* para. 64) was included in the case file.¹⁷⁸

108. *Hearing to formulate charges against R.I.A.* On November 29, 2011, a hearing to present charges against R.I.A. was held before the Supervising Judge. On that occasion the Prosecutor's Office accused him of the crimes of aggravated forced disappearance, aggravated kidnapping with extortion, homicide of a protected person in conjunction with torture of a protected person, and destruction and appropriation of protected property.¹⁷⁹

109. *Joint voluntary confession of R.I.A., L.E.Z.A., W.O. and C.Z.* On December 19, 2011, a joint voluntary confession was received from R.I.A., L.E.Z.A., W.O. and C.Z., in which they referred to the events at Vereda La Esperanza and the relationship that existed between the ACMM and the military forces present in the region at that time.¹⁸⁰

110. The Office of the Second Prosecutor of Justice and Peace asked the 80th Prosecutor of the UNDH – DIH to forward the information gathered during the ordinary proceedings in relation to the forced disappearances in Vereda La Esperanza. On December 17, 2013, the 80th Prosecutor of the UNDH – DIH forwarded the information requested.¹⁸¹

111. On May 6, 2014, the representatives of the alleged victims provided the information included in the Case File No. 233 of the UNDH, based upon which they questioned the continuation of R.I.A.'s proceedings in the Justice and Peace jurisdiction.¹⁸² Their query was answered immediately. Subsequently, the Office of the 80th Prosecutor was asked to clarify whether the accused (applicants to the Justice and Peace Law) in their respective statements, had directly accused R.I.A. of being a co-perpetrator or direct participant in the facts, or in some of these, and, if so, whether that judicial office had procedurally linked Mr. R.I.A. to the case, and inquired about the current status of the proceedings.¹⁸³

112. In an interview on September 2, 2014, the applicant O.S. referred to the relationship between the ACMM and members of the Army at La Piñuela military base.¹⁸⁴

113. On September 12, 2014, the 47th Prosecutor for Justice and Peace asked the 80th

¹⁷⁶ Official letter No. 003383 D.2JYP of July 13, 2009. Prosecutor assigned to the District Court of the National Unit of Justice and Peace Prosecutors (Evidence file, folios 13033 and 13034).

¹⁷⁷ Cf. Interview on *Teleantioquia* with R.I.A. on February 7, 2006 (Evidence file, folio 16522).

¹⁷⁸ Cf. Expanded statement of C.A.G., dated December 5, 2011 (Evidence file, folios 16593 to 16608).

¹⁷⁹ Cf. Brief of charges in Case N° 557, against applicant R.I.A. on April 1, 2009, Massacre of La Esperanza (Evidence file, folio 16642).

¹⁸⁰ Cf. Voluntary confessions of R.I.A., W.O., L.Z. and C.Z. before the Second Prosecutor of the National Unit for Justice and Peace of December 19, 2011 (Evidence file, folios 16619 to 16635).

¹⁸¹ Cf. Official Letter No. 113 F-080 UNDH-DIH of December 17, 2013. 80th Special Prosecutor of the National Human Rights and International Humanitarian Law Unit (Evidence file, folio 25325).

¹⁸² Cf. Information submitted in proceeding 2006-80005, *Corporacion Jurídica Libertad* (Evidence file, folios 25434 and 25435).

¹⁸³ Cf. Official Letter No. 1094 of May 7, 2014. 47th Special Prosecutor, Transitional Justice (Evidence file, folio 25436) and Official Letter No. 1098 of May 7, 2014. 47th Special Prosecutor, Transitional Justice (Evidence file, folio 25437).

¹⁸⁴ Cf. Interview with O.S., file 82262 of October 2, 2014 (Evidence file, folios 25695 to 25701).

Prosecutor of the UNDH – DIH to suspend the investigation in the ordinary justice system with respect to the applicants L.E.Z.A., W.O. and C.Z., given that the facts linking them to the proceedings had been addressed in the context of the Justice and Peace Law, and were being processed according to the parameters established therein.¹⁸⁵

114. *Joint voluntary confession of R.I.A., L.E.Z.A., W.O., O.S. and C.Z.* On December 4, 2014, a joint hearing took place to receive the voluntary confessions of the aforementioned applicants, who had previously admitted their participation in the facts.¹⁸⁶

115. In December 2014, the information forwarded by the Justice and Peace Prosecutor's Office on Major D.H. (Northern Bloc) was included in the file.¹⁸⁷

116. On January 15, 2015, the 47th Prosecutor of the Office of the National Directorate of Special Prosecutors for Transitional Justice attached to the Superior Court of Bogotá requested the intervention of the Exhumations Group in order "to conduct a comprehensive effort of prospection and exhumation of skeletal remains in that place."¹⁸⁸

117. On February 26, 2015, the Genetics Group of the FGN reported that "having reviewed the database, no family member was found related to the list of persons referenced."¹⁸⁹ On February 27, 2015, the Coordinator of the Exhumations Group reported that "having consulted the databases kept by the Exhumations Group," no records were found of exhumations aimed at recovering the victims mentioned.¹⁹⁰ On the previous date, the 47th Prosecutor forwarded information on various voluntary confessions made on December 4 and 5, 2014.¹⁹¹ On June 1, 2015, biological samples (DNA) were collected in order to identify the family members of the disappeared.¹⁹²

118. On August 20, 2015, the Prosecutor's Office held a hearing to formalize the charges, before the Examining Judge of the Justice and Peace Chamber of the Superior Court of Cundinamarca, regarding all the applicants who had confessed their participation in the events of Vereda La Esperanza.¹⁹³

¹⁸⁵ Cf. Official Letter No. 1878 of the 47th Prosecutor, Transitional Justice, September 12, 2014 (Evidence file, folio 25787).

¹⁸⁶ In that voluntary confession none of the applicants admitted having links with the incident involving Irene de Jesús Gallego Quintero, who was detained by the Army and was with the soldiers for a few days before being brought to the Prosecutor's Office. However, the applicant W.O. suggested the possibility that it might have been alias "Cocuyo" who was involved in those acts, in the company of a Self-Defense group from Córdoba and Urabá, in Antioquia, to which he also attributed the murder of the municipal ombudsman. Voluntary confession case 20068005, Massacre of La Esperanza, December 4, 2014 (Evidence file, folios 26093 to 26110).

¹⁸⁷ Cf. Information on Major D.H., Office of the Justice and Peace Prosecutor of Valledupar, December 2014 (Evidence file, folios 25803 to 25809).

¹⁸⁸ DFNEJT – Official Letter N° 02362 of January 15, 2015, of the 47th Prosecutor assigned to the Superior Court of Bogotá (Evidence file, folios 15232 to 15234).

¹⁸⁹ Official Letter from the Identification Division of the Genetics Group of the Forensic Department of the Attorney General's Office, of February 26, 2015 (Evidence file, folio 32911).

¹⁹⁰ Official Letter G.E-D.F.N.J.T. of the Prosecutor-Coordinator of the Exhumations Group of February 27, 2015 (Evidence file, folios 32918 and 32919).

¹⁹¹ Cf. DFNEJT – Official Letter N° 0217 of February 27, 2015 of the 47th Prosecutor assigned to the Superior Court of Bogotá (Evidence file, folios 15161 to 15231).

¹⁹² Cf. Judicial Police Report No. 11-40798GE (Evidence file, folios 33516 to 33519).

¹⁹³ Cf. Transcript of the hearing in Case 557, Massacre of La Esperanza, August 20, 2015 (Evidence file, folios 42720 to 42767). In the proceedings for the formal presentation of charges, the Prosecutor's Office confirmed the charges against the applicant R.I.A. for the following crimes: with respect to Aníbal de Jesús Gallego, for aggravated forced disappearance, homicide of a protected person and aggravated theft; with respect to Óscar Hemel Zuluaga, Juan Crisóstomo and Miguel Ancízar, all minors, charges of homicide of a protected person and aggravated forced disappearance, among others, with the aggravating circumstance of being minors and for the torture of a protected

119. Through Official Letter N° 1017 of August 27, 2015, the Prosecutor's Office for Justice and Peace requested an executive report on the current status of Proceeding No. 233 of the UNDH – DIH.¹⁹⁴ Subsequently, through Official Letter N° 1103 of September 9, 2015, the National Directorate of Special Prosecutors for Justice and Peace was informed of the statements made at the hearing (*supra* para. 119) regarding the hydroelectric megaprojects in the area of Vereda La Esperanza and the repercussions it could have on the search for the alleged victims, and ultimately, on uncovering the truth.¹⁹⁵ On this matter, the prosecutor received in response a request to explain the office's position on the matter and how it would support it."¹⁹⁶

120. *Evidentiary procedures.* Between August 30 and September 10, 2015, survey work (prospecting) was carried out at the San Juan base or Finca Los Patios, but no skeletal remains were found.¹⁹⁷ During the month of October 2015, various evidence gathering actions were carried out.¹⁹⁸ On October 27, an order was issued to gather information on members of the Army and the Police who were based in Vereda La Esperanza at the time of the events. In addition, information was gathered on the circumstances, time and place of the FTA operation, together with the full names, identity documents and military ranks of the group's members.¹⁹⁹ On October 27, 2015, a response was provided, clarifying the jurisdiction of the Juan Del Corral battalion.²⁰⁰ For its part, the Command of the Fourth Brigade responded to the request for information on events at Vereda La Esperanza and at the entrance to the municipality of Cocorná, forwarding it to the Juan Del Corral Battalion.²⁰¹ On November 9, 2015, a report was issued on the judicial inspections carried out in cemeteries, hospitals and

person; with respect to L.A.S., for the torture of a protected person, illegal detention, and deprivation of due process; the charge for the forced disappearance of Irene Gallego Quintero was withdrawn; with regard to Juan Carlos Gallego, charges were filed for aggravated forced disappearance, torture of a protected person and homicide of a protected person; with respect to Jaime Alonso Mejía, for aggravated forced disappearance and homicide of a protected person; with respect to Javier de Jesús Giraldo, for homicide of a protected person; regarding Hernando de Jesús Castaño, Octavio de Jesús Gallego and Orlando de Jesús Muñoz, for aggravated forced disappearance and homicide of a protected person; and with respect to Leonidas Cardona and Andrés Antonio Gallego, for aggravated forced disappearance and torture of a protected person.

¹⁹⁴ Cf. Official Letter No. 1017 of August 27, 2015 of the 47th Special Prosecutor for Transitional Justice (Evidence file, folio 42824).

¹⁹⁵ Cf. Official Letter No. 1103 of September 9, 2015 of the 47th Special Prosecutor for Transitional Justice (Evidence file, folios 42825 and 42826).

¹⁹⁶ Official Letter No. 010993 of October 13, 2015, from the Directorate of the National Office of Special Prosecutors for Transitional Justice (Evidence file, folio 42828).

¹⁹⁷ Cf. Judicial Police Report N° 11 – 50472 of September 21, 2015 (Evidence file, folios 72778 to 72837).

¹⁹⁸ Cf. Official Letter of the Head of the Office of Legal Affairs of the Police Department of Antioquia, dated October 6, 2015 (Evidence file, folios 72886 to 72920); Report of Judicial Police No 9-62076/9-62075 of December 29, 2015. Central Directorate of the Judicial Police, DH-DIH (Evidence file, folio 74238 to 74246); Citations to render a sworn statement, dated December 2 and 3, 2015. Special Office, Judicial Police of Human Rights and DIH (Evidence file, folios 74268, 74270, 74273, 74274, 74292 and 74295); Report of the Judicial Police No. 9-58485/9-58486/9-58487 of November 9, 2015. Central Directorate Judicial Police, DH-DIH (72956 to 72969), Judicial interviews with former members of the EPL carried out on August 25 and 26 and November 12, 2015 (73161 to 73166 and 73170 to 73172), and Judicial Police, requests for technical investigative support of November 9, 2015 (folios 72970 to 72979).

¹⁹⁹ Cf. Report of the Judicial Police No. 9-57514 of October 27, 2015. Central Directorate Judicial Police, DH-DIH (Evidence file, folio 72852).

²⁰⁰ Cf. Response to Official Letter, Proceeding No. 233, Law 606/200, OT.22615 of October 27, 2015. Commander of the "Juan Del Corral" Mechanized Cavalry Group No. 4 (Evidence file, folio 74585).

²⁰¹ Cf. Reply to Official Letter 233 of November 12, 2015. Second Commander and Chief of the Fourth Army Brigade (Evidence file, folio 74586).

parishes, in which no skeletal remains were found.²⁰²

121. The 220th Prosecutor of the Exhumation Group of the Transitional Justice system presented a plan to search the cemeteries of the municipalities of El Santuario, Puerto Triunfo, Puerto Berrio and Puerto Nare in order to conduct the search, exhumation, identification and dignified handover of the bodies of the victims of Vereda La Esperanza, El Carmen de Viboral.²⁰³ In addition, information was requested for the identification of some skeletal remains that had been exhumed at the San Juan paramilitary base, or Finca Los Mangos.²⁰⁴ In response, it was stated that there was no compatibility between the remains found with the identities of the individuals for whom the search was conducted.²⁰⁵

122. At the request of the applicants, another voluntary confession hearing was held in November 2015, during which they were again questioned about the relationship between the Army and the ACMM.²⁰⁶

C.3. Military criminal jurisdiction

123. The 108th Military Court of Criminal Investigation opened an investigation in response to the complaint filed by the Ombudsman of the Municipality of El Carmen de Viboral for the forced disappearances in Vereda La Esperanza. On September 8, 1997, the judge issued a writ of prohibition regarding the responsibility of military personnel in the facts. On May 19, 1999, the Commander of the Fourth Army Brigade began an investigation against members of the Army for alleged breaches of military honor arising from accusations made against local peasants of collaborating with the insurgents. Likewise, the 20th Military Court of Criminal Investigation opened an inquiry into other actions by the FTA troops. However, in both cases, the military command declined to open a formal disciplinary inquiry for those facts.²⁰⁷

C.4. Disciplinary proceeding

²⁰² Cf. Proceeding No. 233, Office of the Attorney General (Evidence file, folios 72966 to 73034); Proceeding No. 233, Law 600/2000 OT. 22148, 22149 and 22150. Case and Merits Report before the Inter-American Commission on Human Rights – IACHR (Evidence file, folios 73036 to 73037); Documents in response of the previous official letter (Evidence file, folios 73038 to 73159); Reply to Official Letter No. 03/11/2015. Proceeding No. 201578108721 of November 11, 2015. Diocese of La Dorada - Guaduas, Parish of San Pedro Claver (Evidence file, folios 73176 to 73181); Response to Proceeding 233 OT. 22148, 22149 and 22150 of November 12, 2015. Parish of Nuestra Señora de los Dolores (Evidence file, folios 73190 and 73191); Process of investigation and judicialization, consultation in public and private databases. Request for death records (Evidence file, folio 73192), and Certificates from the Civil Registry of Deaths (Evidence file, folios 73193 to 73214).

²⁰³ Cf. Project for survey of cemeteries at Puerto Triunfo, Puerto Berrio, Puerto Boyacá and Puerto Nare. Search, exhumation, identification and dignified handover of bodies. Victims in the Case of Vereda La Esperanza, El Carmen de Viboral. Prosecutor 220 Directorate of the Special Prosecutor's Office for Transitional Justice (Evidence file, folios 42831 to 42833).

²⁰⁴ Cf. Official letter No. 312 of October 14, 2015, Prosecutor 220 Directorate of the National Office of Special Prosecutors for Transitional Justice (Evidence file, folios 42835 and 42836).

²⁰⁵ Cf. Official letter No. 015 of January 28, 2016, Exhumations Group, Medellín (Evidence file, folios 42837 to 42839).

²⁰⁶ Cf. Transcript of confession, Massacre of La Esperanza, November 26, 2015 (Evidence file, folios 42788 and 42821). The applicants denied acting in collaboration with the Army and reiterated that the events at Vereda La Esperanza began as a result of the kidnapping of a member of the ACMM. However, they indicated that the supposed list or any other type of interaction with the armed forces may have occurred through a paramilitary leader known as alias "Cocuyo." As a result of this procedure, they admitted the participation of the ACMM, but not their own, in all the events that occurred in Vereda La Esperanza, including some forced disappearances that had not yet been acknowledged, such as those of Aníbal de Jesús Castaño and Óscar Hemel Zuluaga Marulanda, on June 21, 1996.

²⁰⁷ Cf. Brief of the General Directorate of Special Affairs of the Ministry of Foreign Relations (Evidence file, folios 6259 and 6262).

124. On June 21, 1996, the Municipal Ombudsman of El Carmen de Viboral filed a complaint with the Office of the Inspector General for "alleged violations of human rights and irregularities by members of the Army."²⁰⁸ As a result of that complaint, investigations and disciplinary proceedings were initiated regarding the facts of this case, in the course of which various evidentiary and procedural actions were carried out. On September 11, 2000, the Deputy Inspector for Human Rights declined jurisdiction "to open a disciplinary inquiry against any government official or civil servant, regarding the facts," and consequently issued an "order for the matter to be provisionally archived."²⁰⁹

C.5. Proceedings in the contentious administrative courts

a) Proceeding N° 2002-00527 regarding Miguel Ancízar and Juan Crisóstomo Cardona Quintero

125. On January 24, 2002, María Diocelina Quintero and other family members filed a claim for direct reparation against the Nation-Ministry of Defense-National Army, for their responsibility in the forced disappearance of Miguel Ancízar and Juan Crisóstomo Cardona Quintero.²¹⁰ In a judgment of first instance, on March 2, 2007, the Administrative Court of Antioquia rejected the claims of the petitioners.²¹¹ On April 20, 2007, the petitioners filed an appeal against that judgment.²¹²

126. On July 9, 2007, the Counselor Rapporteur of the Council of State, Third Section, admitted the petition.²¹³ On November 23, 2007, the Counselor Rapporteur denied the subsidiary request to order *ex officio* evidence to be presented in support of the appeal.²¹⁴

127. On October 19, 2011, the petitioner forwarded to the Counselor Rapporteur of the Council of State, Third Section, a copy of the judgment of June 15, 2010, issued by the Contentious Administrative Court of Antioquia (*infra* para. 131).²¹⁵

128. In a resolution of November 18, 2014, the Committee of Ministers decided to "issue a favorable opinion regarding compliance with the [Merits] Report [...], in the terms and for the purposes of Law 288 of 1996, in relation to the victims mentioned in the single annex to the [aforementioned] Report [...]" that have not been awarded compensation in the contentious

²⁰⁸ Complaint No. 3282 filed on June 2, 1996, before the Registry of Disciplinary Inquiries (Evidence file, folio 4663). In a communication dated June 12, 1996, and addressed to the PGN, the Ombudsman reported the existence of an unidentified armed group that had allegedly executed several people, together with alleged acts of torture committed in Vereda La Honda and the discovery of explosives in another village near the municipal capital. He also reported that "on Friday, May 24, [1996] a unit of professional soldiers known as the 'Barbacoas', belonging to the Fourth Brigade, [arrived] beating, torturing and abusing some local peasants in the area." Cf. Official letter PM-045 of the Municipal Ombudsman of El Carmen de Viboral of June 12, 1996 (Evidence file, folios 4665 to 4666).

²⁰⁹ Order for the provisional archive of the matter, issued by the Deputy Inspector for Human Rights of September 11, 2000 (Evidence file, folios 4978 to 4982).

²¹⁰ Petition for direct reparation filed on January 24, 2002 for the disappearance of Miguel Ancízar and Juan Crisóstomo Cardona Quintero, Proceeding N° 2002-00527 (Evidence file, folios 24648 to 24656).

²¹¹ Judgment of First Instance issued by the Eighth Chamber of the Administrative Court of Antioquia, Proceeding 020527, of March 2, 2007 (Evidence file, folios 24322 to 24329).

²¹² Appeal filed by the plaintiffs on April 20, 2007 (Evidence file, folios 24332 to 24346).

²¹³ Record of July 9, 2007, issued by the Counselor Rapporteur of the Council of State, Third Section (Evidence file, folio 24356).

²¹⁴ Order of November 23, 2007, issued by the Counselor Rapporteur of the Council of State, Third Section (Evidence file, folios 24359 and 24360).

²¹⁵ Communication of October 19, 2011, from the attorney of the petitioners (Evidence file, folios 24378 and 24379).

administrative jurisdiction. [This] compensation [...] will be provided by the Ministry of National Defense. [...] the reparation will be made under the parameters recognized by the contentious administrative jurisdiction.”²¹⁶ This resolution was forwarded to the Counselor Rapporteur on December 11, 2014, by the State’s National Legal Defense Agency.²¹⁷ A second instance ruling is pending in this process.²¹⁸

b) Proceeding N° 2002-00528 (Consolidated)

129. On January 24, 2002, the family members of Irene de Jesús Gallego Quintero, Jaime Alonso Mejía Quintero, Hernando de Jesús Castaño Castaño, Octavio de Jesús Gallego Hernández, Juan Carlos Gallego, Óscar Hemel Zuluaga Marulanda, Aníbal de Jesús Castaño Gallego, Andrés Antonio Gallego Castaño and Orlando de Jesús Muñoz Castaño each filed separate claims for direct reparation against the State - Ministry of Defense – National Army, for the forced disappearance of their loved ones.²¹⁹ On June 4, 2003, the family of Leonidas Cardona Giraldo also filed suit against the State - Ministry of Defense – National Army for his forced disappearance.²²⁰

130. On May 16, 2007, the Third Chamber of the Contentious Administrative Court of Antioquia decided to include these claims in the main proceeding, 2002-0528. Thus, the proceedings filed under numbers 2003-02084, 2002-0500, 2002-0488, 2002-0487 were consolidated with numbers 2002-0483, 2002-0484, 2002-0485, 2002-0486, and 2002-00529” and their joint processing was ordered.²²¹

131. On June 15, 2010, the Third Chamber of the Contentious Administrative Court of Antioquia declared the Nation, Ministry of Defense and National Army responsible “for the disappearance of Irene de Jesús Gallego Quintero, Leonidas Cardona Giraldo, Jaime Alonso Mejía Quintero, Hernando Castaño, Octavio de Jesús Gallego Hernández, Juan Carlos Gallego Hernández, Óscar Hemel Zuluaga Marulanda, Aníbal de Jesús Castaño Gallego, Andrés Antonio Gallego Castaño and Orlando de Jesús Muñoz Castaño in Vereda [L]a Esperanza [...], between June 21 and December 27, 1996.” The court also ordered the Nation- Ministry of

²¹⁶ Decision N° 7735 issued on November 18, 2014, by the Committee of Ministers (Evidence file, folio 24535).

²¹⁷ Communication of December 11, 2014, of the National Legal Defense Agency of the State (Evidence file, folio 24532).

²¹⁸ This was indicated by the representatives of the victims when they stated that the Ministry of Defense made a request for reconciliation with the next of kin of those victims who had not received compensation, and that, until that moment “the Council of State ha[d] not issued a second instance ruling in this process and [had not] decided on the application [for conciliation] [...] of the Ministry of Defense” (Merits file, folio 1964).

²¹⁹ Claim filed on January 24, 2002, for the disappearance of Irene de Jesús Gallego Quintero, Proceeding N° 2002-00528 (Evidence file, folios 23036 to 23043); Claim filed on January 24, 2002, for the disappearance of Jaime Alonso Mejía Quintero, Proceeding N° 2002-00500 (Evidence file, folios 23531 to 23540); Claim filed on January 24, 2002, for the disappearance of Hernando de Jesús Castaño Castaño, Proceeding N° 2002-00488 (Evidence file, folios 23604 to 23612); Claim filed on January 24, 2002, for the disappearance of Octavio de Jesús Gallego Hernández, Proceeding N° 2002-00487 (Evidence file, folios 23742 to 23750); Claim filed on January 24, 2002, for the disappearance of Juan Carlos Gallego Hernández, Proceeding N° 2002-00483 (Evidence file, folios 23904 to 23912); Claim filed on January 24, 2002, for the disappearance of Óscar Hemel Zuluaga Marulanda, Proceeding N° 2002-00484 (Evidence file, folios 24081 to 24088); Claim filed on January 24, 2002, for the disappearance of Aníbal de Jesús Castaño Gallego, Proceeding N° 2002-00485 (Evidence file, folios 22882 to 22891); Judgment No. 159 of the Third Chamber of the Contentious Administrative Court of Antioquia, Proceedings N° 2002-00528 consolidated with the case numbers 2003-02084, 2002-0500, 2002-0488, 2002-0487 (Evidence file, folios 23289 to 23413).

²²⁰ Claim filed on June 4, 2003 for the disappearance of Leonidas Cardona Giraldo, Proceeding N° 2003-02084 (Evidence file, folios 23194 to 23202 and 23206).

²²¹ Procedural Order of May 16, 2007 issued by the Third Chamber of the Contentious Administrative Court of Antioquia (Evidence file, folios 23171 to 23175).

Defense-National Army to pay compensation for moral damages and loss of income.²²²

132. On July 15, 2010, both the petitioners and the respondent party filed appeals against the judgment of First Instance.²²³ On July 29, 2010, the Third Chamber of Decision granted both appeals "with a suspensive effect and before the [...] Council of State."²²⁴ On February 4, 2011, the Reporting Judge of the Council of State, Third Section, decided not to hear the appeal filed and return the case file to the original court, given that the appeals had not been substantiated and there had not been a conciliation hearing as required under Article 70 of Law 1395 of 2010.²²⁵ On September 6, 2011, the parties were notified of the decision of the Reporting Judge of the Third Chamber of the Contentious Administrative Court of Antioquia to annul the order issued on July 29, declare null and void the appeals that were not substantiated opportunistically and uphold the judgment of June 15, 2010.²²⁶

133. In response to the decision of the Administrative Court of Antioquia, on April 23, 2012, the Director of Legal Affairs of the Ministry of National Defense decided to recognize, order and authorize the payment of compensation to the next of kin of the disappeared.²²⁷

VIII MERITS

134. The Court will now consider and rule on the merits of the dispute. To this end, the Court will analyze: a) the alleged violations of the rights to recognition of juridical personality, and to life, physical integrity and personal liberty in relation to Javier Giraldo Giraldo; b) judicial guarantees and judicial protection in the context of the ordinary criminal proceedings and in the special Justice and Peace proceedings in relation to the disappeared persons, the victim executed, and their next of kin; c) the rights to property and the inviolability of the home to the detriment of José Eliseo Gallego Quintero and his wife María Engracia Hernández, and d) the right to personal integrity to the detriment of the family members of the disappeared and executed persons.

²²² Cf. Judgment of First Instance No. 159 issued by the Third Chamber of the Contentious Administrative Court of Antioquia, on June 15, 2010 (Evidence file, folios 6071, 6099 and 6100 to 6106).

²²³ Cf. Appeal filed by the attorney of the petitioners (Evidence file, folio 23421), and appeal filed by the special representative of the Nation-Ministry of National Defense (Evidence file, folios 23422 and 23441).

²²⁴ Procedural Order of July 29, 2010, issued by the Reporting Judge of the Third Chamber of the Contentious Administrative Court of Antioquia (Evidence file, folio 23423).

²²⁵ Cf. Decision of February 4, 2011, issued by the Reporting Judge of the Council of State, Third Section (Evidence file, folios 23442 and 23443).

²²⁶ Cf. Procedural Order issued by the Reporting Judge of the Third Chamber of the Contentious Administrative Court of Antioquia (Evidence file, folios 23448 to 23451).

²²⁷ Cf. Ministry of National Defense, Decision N° 2265 of April 23, 2012, Payment Order made in the Judgment issued in the contentious administrative proceedings (Evidence file, folios 21408 to 21420).

VIII.1
RIGHTS TO RECOGNITION OF JURIDICAL PERSONALITY,²²⁸ LIFE,²²⁹ PHYSICAL
INTEGRITY²³⁰ AND TO PERSONAL LIBERTY²³¹ OF THE DISAPPEARED PERSONS
(ARTICLES 3, 4, 5 AND 7 OF THE AMERICAN CONVENTION, AND I.A) and I.B) OF
THE INTER-AMERICAN CONVENTION ON FORCED DISAPPEARANCE OF PERSONS)²³²
AND THE RIGHT TO LIFE AND PERSONAL INTEGRITY OF JAVIER GIRALDO
GIRALDO

A. Arguments of the Commission and of the parties

135. The *Commission* referred to six events that took place in Vereda La Esperanza between June 21 and December 27, 1996, which resulted in the disappearance of 15 persons and the death of another. It indicated that these events occurred within a limited geographical area, where the security forces were present and that threats were allegedly made against members of the civilian population because of their supposed collaboration with guerrilla groups. The Commission argued that the sequence of events involving the ACMM took place with the acquiescence and collaboration of the Public Security Forces with the aim of dismantling the guerrillas' support networks.

136. The Commission referred to the cases of Aníbal de Jesús Castaño Gallego, Óscar Hemel Zuluaga Marulanda, Juan Crisóstomo Cardona Quintero, Miguel Ancízar Cardona Quintero, Juan Carlos Gallego, Jaime Alonso Mejía Quintero, Hernando de Jesús Castaño Castaño, Octavio de Jesús Gallego Hernández, Orlando de Jesús Muñoz Castaño, Andrés Gallego Castaño, and Leonidas Cardona Giraldo. In this regard, it indicated that military personnel collaborated with the ACMM to carry out forced disappearances and concluded that the State violated the rights to personal liberty, personal integrity, life and recognition of juridical personality enshrined in Articles 3, 4, 5 and 7 of the Convention, in connection with the obligations set forth in Article 1(1) thereof; as well as Article I. a) of the Inter-American Convention on the Forced Disappearance of Persons, to their detriment. In addition, it noted that "Óscar [Hemel] Zuluaga was 15 years of age when he disappeared," and that "the brothers [Juan Crisóstomo and Miguel Ancízar] Cardona Quintero were 12 and 15 years of age, respectively, at the time of the events." It further considered that the State failed in "its obligation to provide special protection to children, especially in a context of armed conflict," and therefore violated Article 19 of the Convention to their detriment.

137. The Commission also stated that "military personnel of the FTA participated directly in the arrest and subsequent forced disappearance" of Irene de Jesús Gallego Quintero, and

²²⁸ Article 3 of the American Convention establishes that: "Every person has the right to recognition as a person before the law."

²²⁹ Article 4(1) of the American Convention establishes that: "Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life."

²³⁰ Article 5(1) of the American Convention establishes that: "Every person has the right to have his physical, mental, and moral integrity respected."

²³¹ Article 7 of the American Convention establishes that: "1. Every person has the right to personal liberty and security. [...] 2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the Constitution of the State Party concerned or by a law established pursuant thereto. [...] 3. No one shall be subject to arbitrary arrest or imprisonment. [...]"

²³² Article I. a) and I. b) of the Inter-American Convention on the Forced Disappearance of Persons establishes that: "The States Parties to this Convention undertake: a) Not to practice, permit, or tolerate the forced disappearance of persons, even in states of emergency or suspension of individual guarantees; b) To punish within their jurisdictions, those persons who commit or attempt to commit the crime of forced disappearance of persons and their accomplices and accessories."

concluded that “the State violated the rights to personal liberty, personal integrity, life and recognition of juridical personality, enshrined in Articles 3, 4, 5 and 7 of the Convention [...]; as well as Article I. a) of the [ICFDP] [...] to the detriment of [...] Irene Gallego.” Finally, it held that Javier Giraldo “was murdered in the context of a joint action by military agents and the [...] [ACMM]”. Consequently, it held “that the State violated his to life, recognized in Article 4 of the Convention.”

138. The *representatives* agreed with the Commission and referred to various common aspects of the six events that took place between June 21 and December 27, 1996.²³³ They also considered proven “the links and collaboration between the [ACMM] and the Army [...] in the area and at the time of the facts.” They noted that “[this] case encompasses a sequence of events related to one another, aimed at dismantling the alleged support networks of the guerrillas in Vereda La Esperanza.” Consequently, they considered that “the State is responsible for the forced disappearance of [their] [...] clients in violation of Articles 3, 4, 5 and 7 of the [Convention] [...], and of Article 1.a and 1.b of the [ICFDP].”

139. With respect to the minors, they pointed out that the State should have provided them with special protection, given the serious possibility of illegal recruitment of children and adolescents, a situation that warranted diligent action on the part of the State to prevent and investigate these facts. Thus, they concluded that “the State [...] is internationally responsible for failing in its obligation to adopt special measures of protection for children in a context of internal armed conflict, in breach of Article 19 of the Convention [...], to the detriment of the three adolescents [...] disappeared by the paramilitary group [...] with the acquiescence of military officials [...].”

140. With respect to Irene de Jesús Gallego Quintero, they indicated that “[it is clear] that in the days prior to her disappearance, [...] she was arrested by military agents and detained under the authority of officials of the Prosecutors’ Office, to then be released and seen once again in the company of military personnel, [...] [and subsequently] Irene disappeared and remains disappeared to this day.” Therefore, they concluded that “State agents participated directly in the forced disappearance of Irene de Jesús Gallego.”

141. As to Javier Giraldo, the representatives noted that his execution occurred “in the context of a joint action by military agents and the [ACMM].” Therefore, they argued that the State “is internationally responsible for violating [his] right to life and to personal integrity [...] and for failure to conduct an adequate investigation into these facts, in violation of the rights [recognized] in Articles 4 and 5 of the Convention [...].”

142. The *State* “acknowledg[ed] responsibility for its failure to ensure the rights to recognition of juridical personality, life, personal integrity and personal liberty” of eleven individuals,²³⁴ since “the specific circumstances surrounding the disappearance of each of

²³³ Specifically, they indicated that : i) most of the incidents occurred between June and July; ii) these resulted in the disappearance of 15 people and the death of another; iii) the events took place within a limited geographical area, in which, owing to the proximity of the highway, there was a presence of the Colombian Army; iv) the victims were perceived as supposed collaborators of the insurgent groups that operated in the area, precisely because one of those groups had allegedly kidnapped members of the security forces, for which, on that date, a military operation was under way in the area; v) several of the disappeared persons had been threatened previously and were accused of being guerrillas or collaborators by members of the army; in some cases, the threats occurred in the context of, or as follow-up to, other facts related to this case; and, vi) there is no information regarding clashes between paramilitary groups and the security forces, or regarding actions to protect the civilian population by the security forces from the operations carried out by the paramilitaries; these occurred precisely in the context of the links between those groups and the security forces, according to the main person accused of the acts denounced, the former paramilitary chief, R.I.A.”

²³⁴ Aníbal de Jesús Castaño Gallego, Juan Carlos Gallego Hernández, Octavio de Jesús Gallego, Jaime Alonso Mejía Quintero, Hernando de Jesús Castaño Castaño, Orlando de Jesús Muñoz Castaño, Andrés Antonio Gallego Castaño, Leonidas Cardona Giraldo, Óscar Hemel Zuluaga Marulanda, Juan Crisóstomo Cardona Quintero and Miguel Ancízar Cardona Quintero.

these persons are not known and there is no information regarding their whereabouts or their remains." The State emphasized that its acknowledgment of responsibility "does not imply acceptance of the international wrongful act of forced disappearance in this specific case, since there is not sufficient evidence to conclude that State agents participated in these actions." In this regard, it did "not acknowledge responsibility for the alleged violation of the guarantees contained in Articles 1.a and 1.b of the [ICFDP]." The State argued that the attempt to "extrapolate" to the facts of this case "the effects of the 'links' found in past cases" between illegal self-defense groups and the State, "without any prior analysis to demonstrate, or better still, justify the reasons why this is appropriate," would amount to "an accusation of objective responsibility, contrary to the standards of international public law, and in contravention of the international system of State responsibility."

143. In relation to Irene de Jesús Gallego Quintero, the *State* emphasized that its acknowledgment "does not include the events that occurred between June 26 and 28 of 1996, during the time Irene [Gallego] [...] was with State agents" who respected her life and integrity. It held that this was not "a matter of an illegal arrest or detention" but of "a special circumstance, which arose in the context of the Army's compliance with its constitutional duties [...], for which reason it was necessary to take [her] away [...] along with the personnel who were in the area." It emphasized that she was the one "who expressly requested the protection of the Army [...], justified by her situation as a deserter of the EPL guerrillas," which may be inferred from her statement to the prosecutor of El Santuario.

144. Regarding the events of June 28, 1996, when Irene de Jesús was brought before the said prosecutor, the State considered that "the officials who held a position as guarantors of [her] life [and] integrity [...], acted [...] with full observance of the powers assigned to them by the Colombian legal system," and that when she left the prosecutor's office "on her own account and without the company of a State agent, [...] she left the State's sphere of control, thereby end[ing] its role as guarantor." The State indicated that "the duty of Major C.A.G. ended with Irene being brought to the prosecutor's office" where he reported "on the circumstances, time and place in which [he] found her." It added that, based on the information provided by the major and by María Irene, "the prosecutor determined that there was no merit in ordering [her] detention." Finally the State mentioned "inconsistencies and contradictions in the statements provided by the Commission [...] and others contained in the criminal case file" and concluded that these "do not provide accurate information about the events that occurred [...] on June 26 [...]" and should be dismissed because they lack credibility "at least in relation to [her] disappearance." Therefore, it requested that the Court "declare the absence of State responsibility [...], for the facts that occurred between June 26 and 28, 1996."

145. With respect to the death of Javier Giraldo, the State "acknowledg[ed] its responsibility for failure to ensure the rights to life and personal integrity of [...] Javier Giraldo, bearing in mind that the specific circumstances in which his death occurred remain unknown."

B. Considerations of the Court

146. The Court recalls that the State acknowledged its international responsibility in this case for failing in its obligation to ensure the exercise of the rights to recognition of juridical personality and to life, personal integrity and personal liberty of eleven victims, three of whom were minors, and regarding whom it recognized its failure to protect the rights of the child (*supra* para. 16, point b). It also acknowledged its responsibility for failure to guarantee the rights to life and personal integrity of Javier de Jesús Giraldo Giraldo. With respect to Irene de Jesús Gallego, the State emphasized that its acknowledgment of responsibility does not cover the time during which she was with State agents. Furthermore, it denied the notion "that State agents ha[d] participated in the actions perpetrated by members of illegal self-

defense groups” and therefore did not accept that those acts could be classified as forced disappearances. Consequently, it denied responsibility for the violation of the guarantees contained in Articles 1.a and 1.b of the ICFDP.

147. Based on the foregoing, the Court is in no doubt that the victims in this case were disappeared and, in the case of Javier de Jesús Giraldo Giraldo, deprived of life. Nor is there any doubt that the State is internationally responsible for those facts, given that it admitted having failed in its duty to prevent them. However, the Court observes that the dispute regarding the disappearance and execution of the victims in this case focuses on the attribution of responsibility to the State for these facts and, in particular, the alleged degree of participation by members of the security forces. Thus, on the one hand the representatives and the Commission allege that members of the security forces participated directly in the events, while the State considers that they are attributable to it solely by omission, as recognized by the contentious administrative jurisdiction in decisions related to the facts of the case (*supra* para. 131).

148. Accordingly, in this chapter the Court will analyze whether the State can be held responsible for the facts, based on the behavior of its agents or of individuals or groups of persons acting with the authorization, support or acquiescence of the State. That determination will allow the Court to establish whether the State is responsible for the internationally wrongful act of forced disappearance, as defined in Article II of the ICFDP, and in the case law of this Court. Subsequently, the Court will refer to the arguments related to the death of Mr. Javier de Jesús Giraldo Giraldo.

B.1. Forced disappearance as a multiple and permanent human rights violation

149. The Court has confirmed the international consensus in its analysis of forced disappearance, which constitutes a serious human rights violation, given the particular impact of the offenses involved and the nature of the rights impaired.²³⁵ It should be emphasized that in its constant case law the Court has established that the forced disappearance of persons is a crime of a continuous or permanent nature, comprising multiple interrelated aspects, which can be deduced not only from the definition of Article II of the ICFDP, to which Colombia is a party, and from the *travaux préparatoires* for this instrument, its preamble and set of rules, but also from other definitions contained in different international instruments.²³⁶

150. The Court has identified the following as concurrent and constituent elements of forced disappearance: a) deprivation of liberty; b) direct involvement of State agents or of individuals or groups acting with the authorization, support or acquiescence of the State, and c) refusal to acknowledge the deprivation of liberty or to disclose the fate and whereabouts of the person concerned.²³⁷ Indeed, the Court has indicated that an act of disappearance and its execution begins with the deprivation of liberty of the person and the subsequent lack of information on their whereabouts, and continues until the whereabouts of the disappeared person is known or their remains are identified with certainty.²³⁸

²³⁵ Cf. *Case of Goiburú et al. v. Paraguay. Merits, reparations and costs*. Judgment of September 22, 2006. Series C No. 153, para. 84, and *Case of Tenorio Roca et al. v. Peru*, para. 140.

²³⁶ Cf. *Case of Anzualdo Castro v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of September 22, 2009. Series C No. 202, para. 60, and *Case of Tenorio Roca et al. v. Peru*, para. 141.

²³⁷ Cf. *Case of Gómez Palomino v. Peru. Merits, reparations and costs*. Judgment of November 22, 2005. Series C No. 136, para. 97, and *Case of Tenorio Roca et al. v. Peru*, para. 141.

²³⁸ Cf. *inter alia*, *Case of Velásquez Rodríguez v. Honduras. Merits*, paras. 155 to 157, and *Case of Vásquez Durand et al. v. Ecuador*, para. 105.

*B.2. The alleged forced disappearance of eleven persons in this case*²³⁹

i) The context of violence and collaboration between the security forces and the ACMM in the Magdalena Medio region

151. First of all, in its observations in the chapter concerning the public order situation in the Magdalena Medio region, the Court concluded that the ACMM paramilitary forces had links of collaboration and acquiescence with various public agencies responsible for security and protection, as well as the investigation of crimes (*supra* paras. 52 to 76). As noted previously, these links were evident in their activities in support of, or connected to, the functions of the armed forces given that: i) the ACMM paramilitaries were able to circulate freely “in rural areas [...] where the presence of the military forces is permanent and conspicuous;”²⁴⁰ ii) they received training, weapons and ammunition from the Army (*supra* para. 55); iii) they were used as guides by the Army (*supra* para. 59); iv) the paramilitaries provided means of transport to members of the Army who did not have their own vehicles (*supra* para. 63), and v) meetings were held between senior military commanders and the paramilitaries, several of which took place inside the military base of La Piñuela (*supra* para. 76).

152. However, with regard to the general situation existing in this region and in other parts of Colombia, it is important to recall that according to this Court’s case law, in order to establish the State’s responsibility for violating its duty of respect in relation to actions committed by third parties, it is not sufficient for a general context of collaboration and acquiescence to exist; rather, the State’s acquiescence or collaboration must be evident in the actions or circumstances of that specific case.²⁴¹ This Court will now examine the body of evidence to determine whether the facts in this case are consistent with the characteristics of such a context of collaboration.

ii) The arrests and subsequent disappearances that occurred between June 21 and July 9, 1996

153. According to the chapter entitled “Facts,” the victims in this case were detained within a limited time span in the same geographical area:

a. The detentions began on June 21, 1996, when Aníbal de Jesús Castaño Gallego and Óscar Hemel Zuluaga Marulanda, aged 15, were detained at the community store

²³⁹ With respect to Aníbal de Jesús Castaño Gallego, Juan Carlos Gallego Hernández, Jaime Alonso Mejía Quintero, Hernando de Jesús Castaño Castaño, Orlando de Jesús Muñoz Castaño, Octavio de Jesús Gallego Hernández, Andrés Gallego Castaño and Leonidas Cardona Giraldo, and the minors Óscar Hemel Zuluaga Marulanda, Miguel Ancízar Cardona Quintero and Juan Crisóstomo Cardona Quintero.

²⁴⁰ Sectional Directorate, Technical Investigation Corps. Office of Information, Analysis and Operational Support of the Attorney General’s Office. Intelligence Report on Self-defense groups, Report No. 032 of June 28, 1996 (Evidence file, folio 13).

²⁴¹ Cf. *Case of Yarce et al. v. Colombia*, para. 180. In the *Case of 19 Tradesmen v. Colombia*, the Court found the State responsible based on its collaboration in acts that preceded the crimes committed by “paramilitary personnel,” its acquiescence to the meeting in which they planned the crime and the State’s active collaboration in the execution of the crimes by “paramilitary personnel” (*Case of 19 Tradesmen v. Colombia*, para. 135). In the *Case of the Mapiripán Massacre v. Colombia*, the Court declared the responsibility of Colombia owing to coordinated actions and omissions between State and private agents, which resulted in the massacre. The Court held that even though the massacre was perpetrated by paramilitaries, it could not have been carried out without assistance from the Colombian Armed Forces (*Case of the Mapiripán Massacre v. Colombia*, para. 123). In the case of the *Ituango Massacres v. Colombia*, the Court found the State responsible owing to the army’s acquiescence or tolerance of acts perpetrated by the paramilitaries (*Case of the Ituango Massacres v. Colombia*, paras. 132, 150, 153, 166, 197 and 219). In the *Case of Operation Genesis v. Colombia* the Court determined the State’s acquiescence in relation to the unlawful acts committed, based on a “test of causality” by virtue of which it considered implausible the hypothesis that the illegal act could have been carried out without the State’s assistance (*Case of the Displaced Afrodescendant Communities of the Cacarica River Basin (Operation Genesis) v. Colombia*, para. 280).

managed by the former, by “a group of heavily armed men [...] dressed as civilians” (*supra* para. 78);

- b. The following day, the Cardona Quintero brothers, aged 15 and 12 years respectively, were removed from their home, while they were with their mother. According to the mother’s testimony, the boys were seized by a group of hooded men who took them away (*supra* para. 79);
- c. On July 7, 1996, Juan Carlos Gallego Hernández was approached by a group of hooded and armed individuals who forced him into a truck and took him away (*supra* para. 88);
- d. That same day Jaime Alonso Mejía Quintero was detained by the individuals who had previously taken Juan Carlos Gallego Hernández (*supra* para. 90);
- e. On July 9, 1996, “a group of around five to nine armed men dressed as civilians entered the home” of Hernando de Jesús Castaño Castaño and ordered him to go with them (*supra* para. 93). That same day several men intercepted Orlando de Jesús Muñoz Castaño and took him away in one of their trucks (*supra* para. 94);
- f. On July 9, 1996, Octavio de Jesús Gallego Hernández was forced into a vehicle by two men dressed as civilians carrying long-range weapons (*supra* paras. 95 and 96), and
- g. On December 27, 1996, a group of armed men dressed as civilians went to the homes of Andrés Gallego Castaño and Leonidas Cardona Giraldo, respectively, and took them away in a truck (*supra* paras. 97 to 100).

154. Based on the evidence gathered, the Court notes that a very similar method was used to deprive the alleged victims of their liberty: all were initially identified as members or collaborators of the guerrillas and were subsequently taken away by armed men²⁴² who traveled in trucks or private cars.²⁴³ The whereabouts of these victims remains unknown to this day.

155. The Court also confirms that several testimonies mention the threats received by some of the alleged victims from members of the Army, who accused them of being collaborators of the guerrillas. In this regard, A.A.G. affirmed that “the Army has taken them away, saying that they’re guerrillas or that they collaborate with the guerrillas.” He added, “that’s what they believe [...] the [soldiers] go from house to house thinking that they will find guerrillas there and taking people away from their homes.”²⁴⁴ Likewise, J.F.C. mentioned that the Army had made threats against him and his uncle, Juan Carlos Gallego, a few days before the

²⁴² Statement of G.C.F. of December 30, 1996, to the Municipal Ombudsman of El Carmen de Viboral (Evidence file, folios 10759 10761); Statement of F.G.H. of July 11, 1996 to the Municipal Ombudsman of Cocorná (Evidence file, folios 9268 and 9269); Complaint filed by A.A.G. on July 11, 1996, before the Municipal Criminal Court of Cocorná (Evidence file, folios 9041 to 9043); Statement of F.G.H. of July 19, 1996, to the Municipal Ombudsman of El Carmen de Viboral (Evidence file, folio 9088); Statement of F.G.H. of July 19, 1996 to the Municipal Ombudsman of El Carmen de Viboral (Evidence file, folio 9093).

²⁴³ Statement of G.C.F. of December 30, 1996 to the Municipal Ombudsman of El Carmen de Viboral (Evidence file, folios 10759 10761); Statement of M.R.C. to the UNDH of April 14, 1998 (Evidence file, folios 9533 to 9535) who referred to the disappearance of her husband, Leonidas Cardona Giraldo and of Andrés Gallego on December 27, 1996; Statement of F.G.H. of July 19, 1996, to the Municipal Ombudsman of El Carmen de Viboral (Evidence file, folio 9093); Statement of F.G.H. of July 11, 1996, to the Municipal Ombudsman of Cocorná (Evidence file, folios 9047 to 9055, 9057 and 9058, 9268 and 9269); Statement of A.G.Q. of July 12, 1996, to the Municipal Ombudsman of Cocorná (Evidence file, folio 9270); Statement of P.A.Q. before the First Prosecutor’s Office of the National Human Rights International Humanitarian Law Unit and, on April 5, 2005 (Evidence file, folios 12255 to 12258).

²⁴⁴ In his statement, A.A.G. referred to the disappearance of Aníbal Castaño, Octavio Gallego Hernández and Juan Carlos Gallego Hernández, and of the minors Miguel Ancízar Cardona Quintero and Juan Crisóstomo Cardona Quintero as well as the deaths of several people, including Javier Giraldo. Cf. Complaint filed on July 11, 1996, by A.A.G. before the Municipal Criminal Court of Cocorná (Evidence file, folios 9041 to 9043).

latter's disappearance, accusing them both of being guerrilla collaborators.²⁴⁵ Similarly, members of the army threatened Aníbal Castaño for supposedly selling supplies from his store to the guerrillas.²⁴⁶

156. The Court further notes that three of the alleged victims had already filed complaints with different authorities in relation to different incidents, including the disappearance of other residents of Vereda La Esperanza:

- a. Juan Carlos Gallego Hernández stated that on June 26, 1996, he was at home with his parents when counter-insurgency soldiers, who were supposedly searching for guerrillas, fired shots at the house indiscriminately;²⁴⁷
- b. Florinda de Jesús Gallego Hernández also referred to the events of June 26 at her parents' home, which she attributed to Army soldiers. She specifically mentioned that "they were all dressed in uniforms and carried bags that said 'Army of Colombia';"²⁴⁸
- c. Hernando de Jesús Castaño filed a complaint before the Municipal Ombudsman of Cocorná stating that Juan Carlos Gallego had been forced into a car and taken away. When asked who had taken him, he replied, "people always say it was the paramilitaries, but the counter-guerrillas are also around over there,"²⁴⁹ and
- d. Prior to his disappearance, Andrés Antonio Gallego Castaño had reported the disappearance of other local residents.²⁵⁰

157. The Court also confirms that, in the days following these events, the relatives and friends of the alleged victims reported their detentions - and the fact that they did not know where they had been taken - to various authorities such as the Municipal Criminal Court of Cocorná, the local unit of the Attorney General's Office in Cocorná, the offices of the municipal ombudsmen of Cocorná and El Carmen de Viboral and the National Directorate of Special Investigations of the Prosecutor General's Office, Antioquia Branch.²⁵¹

158. According to the evidence in the case file, the Court confirms that several testimonies

²⁴⁵ Statement of J.F.C. to the UNDH on April 15, 1998 (Evidence file, folios 9603 to 9605).

²⁴⁶ Municipal Ombudsman of El Carmen de Viboral, Office of the Inspector for Disciplinary Matters regarding Human Rights, Public Prosecutor's Office, statement of F.G.H. dated July 19, 1996, File No. 008-10799-98 (Evidence file, folio 4715).

²⁴⁷ Statement of Juan Carlos Gallego Hernández of June 30, 1996, before the Municipal Ombudsman of Cocorná (Evidence file, folios 9201 and 9202). Cf. Complaint filed on July 8, 1996, by Eliseo Gallego Quintero before the Local Unit of the Attorney General's Office in Cocorná (Evidence file, folio 9061).

²⁴⁸ Cf. Complaint filed on July 11, 1996 by Florinda de Jesús Gallego Hernández to the Municipal Criminal Court of Cocorná (Evidence file, folios 9047 to 9055, 9057 and 9058).

²⁴⁹ Statement of Hernando de Jesús Castaño of July 8, 1996, to the Municipal Ombudsman of Cocorná (Evidence file, folio 9203).

²⁵⁰ Municipal Criminal Court of Cocorná, statement of Andrés Antonio Gallego Castaño, of July 11, 1996 (Evidence file, folio 9040 to 9044).

²⁵¹ Complaint filed on July 8, 1996, by E.G.Q. before the Local Unit of the Attorney General's Office in Cocorná (Evidence file, folio 9061); Statement of F.G.H. of July 11, 1996, to the Municipal Ombudsman of Cocorná (Evidence file, folios 9268 and 9269); Complaint filed by A.A.G. on July 11, 1996, before the Municipal Criminal Court of Cocorná (Evidence file, folios 9041 to 9043); Statement of A.G.Q. of July 12, 1996, to the Municipal Ombudsman of Cocorná (Evidence file, folio 9270); Statement of G.C.F. of December 30, 1996, to the Municipal Ombudsman of El Carmen de Viboral (Evidence file, folios 10759 to 10761); Statement of M.E.G. of July 19, 1996, to the Prosecutor's Unit of El Carmen de Viboral, Sectional Directorate of the Prosecutors' Office of Antioquia, Office of the Attorney General (Evidence file, folios 9070 to 9072); Statement of F.G.H. of July 19, 1996, to the Municipal Ombudsman of El Carmen de Viboral (Evidence file, folios 9088 and 9093); Statement of J.E.G. of July 19, 1996, to the Municipal Ombudsman of El Carmen de Viboral (Evidence file, folios 9095 and 9096), and Statement of M.O.G. of July 31, 1996, to the National Directorate of Special Investigations of the Attorney General's Office, Antioquia branch (Evidence file, folios 26747 to 26749).

mention the fact that the individuals who abducted the alleged victims were paramilitaries acting in collaboration with the Army:

- a. Some of the testimonies indicated that "the Army and the paramilitaries are united, some are strong and others are [...] being trained"²⁵² and that those who were taking people away were "the same people [...] because [there were] already 14 people who [had been] taken away in the same conditions;"
- b. Those who abducted Juan Carlos Gallego Hernández and Hernando de Jesús Castaño, "were civilians with the complicity of the Army, and although [they had] haircuts like the Army [they were] more expert [,] stronger, braver;"²⁵³
- c. It was reported that Hernando de Jesús Castaño was taken away by armed men dressed as civilians and that "they didn't say anything and did not identify themselves [but] they were from the Army because they've been seen with soldiers around here, and they walk around with them [the soldiers]."²⁵⁴ It was also reported that when Hernando de Jesús Castaño told those men that no guerrillas lived in his house, they had replied that in the village "everyone collaborates with the guerrillas," who "attack the soldiers and attack us and nobody says anything;"²⁵⁵
- d. As to the disappearance of Juan Carlos Gallego, Octavio Gallego and Aníbal Castaño Gallego, witnesses stated that usually, "where there's a group of soldiers, there are three or four paramilitary members, but of course, with weapons, and when they meet the Army they pass by as if they were brothers;"²⁵⁶
- e. It was reported that "soldiers from La Piñuela military base" were responsible for the incidents involving Andrés Gallego Castaño and Leonidas Cardona Giraldo,²⁵⁷ and
- f. Regarding the brothers Octavio and Juan Carlos Gallego, it was reported that they had spoken to soldiers about the events of June 26, 1996, at their parents' house and that when they told them "that they would file suit to make them pay for the damage, [...]" the soldiers replied [not to] do it, because [they would be] the ones to lose out."²⁵⁸

159. Several testimonies indicated that the alleged victims would be found at La Piñuela military base:

- a. The father of Juan Carlos Gallego Hernández blamed the paramilitaries for his son's disappearance and claimed that his son would be found at the military base of La

²⁵² Complaint filed on July 8, 1996, by E.G.Q. before the Local Unit of the Attorney General's Office in Cocorná (Evidence file, folio 9061).

²⁵³ Statement of F.G.H. of July 11, 1996, to the Municipal Ombudsman of Cocorná (Evidence file, folios 9047 to 9055, 9057, 9058, 9268 and 9269).

²⁵⁴ Statement of F.G.H. of July 19, 1996, to the Municipal Ombudsman of El Carmen de Viboral (Evidence file, folio 9088). Cf. Statement of F.G.H. of July 11, 1996, to the Municipal Ombudsman of Cocorná (Evidence file, folios 9268 and 9269); Complaint filed on July 11, 1996, by A.A.G. before the Municipal Criminal Court of Cocorná (Evidence file, folios 9041 to 9043), and expanded statement of A.A.G. of October 25, 1996, to the Technical Investigation Corps of Medellín of the Regional Directorate of the Attorney General's Office, Investigative Section (Evidence file, folio 9148 to 9150).

²⁵⁵ Cf. Complaint filed on July 11, 1996, by Mrs. F.G.H. before the Municipal Criminal Court of Cocorná (Evidence file, folios 9047 to 9055, 9057 and 9058).

²⁵⁶ Statement of J.E.G. of July 19, 1996, to the Municipal Ombudsman of El Carmen de Viboral (Evidence file, folios 9095 and 9096).

²⁵⁷ Statement of G.C.F. of December 30, 1996, to the Municipal Ombudsman of El Carmen de Viboral (Evidence file, folios 10759 to 10761).

²⁵⁸ Expanded statement of F.G.H. of October 25, 1996, to the Technical Investigation Corps, of the Regional Directorate for Medellín of the Attorney General's Office, Investigative Section (Evidence file, folios 9152 and 9153).

Piñuela;²⁵⁹

- b. It was also reported that “the Army [was] all over the village” and that “all the people [...]ha[d] been taken [to] their base at La Piñuela,”²⁶⁰ and
- c. The wife of Leonidas Cardona Giraldo reported that when the paramilitaries took her husband away they asked him if he collaborated with the guerrillas and when he said no, they replied “don’t play the fool, all these people [...] are guerrillas [...]we will settle the matter in La Piñuela; let’s go, he’ll be back later.”²⁶¹

160. Likewise, the conclusions of the Municipal Ombudsman of El Carmen de Viboral mention the public order situation in the region, the presence of guerrilla groups, the movements of troops, the participation of military officers in paramilitary activities in Vereda La Esperanza and, in particular, the disappearances in this case. With regard to the events in Vereda La Esperanza, the ombudsman reported that “from the information provided by the community, we presume that members of the Army participated in these operations.”²⁶² Shortly after these denunciations, the Ombudsman was murdered.²⁶³

161. The Court also confirms that at least two witnesses indicated that, after the alleged victims were detained, some of the perpetrators were seen dressed in military uniform.²⁶⁴

162. Equally relevant are the statements made by Sergeant L.F.G, some months before the events took place, in which he mentioned that members of the *Autodefensas* regularly visited La Piñuela military base and held talks with Major D.H. He added that Colonel B. “would take those paramilitary guys around in his car,” and that on “several occasions when he visited La Piñuela to do an inspection [...] he would give us the order to withdraw, in other words, the paramilitaries were going to do some work. I don’t know if that work was to disappear or kill or capture guerrillas or informants.” He added that “sometimes we would set up ambushes to prevent the burning of cars, and then he would order us to dismantle the operations and leave, to let the paramilitary forces come in the following day. I heard that the paramilitaries

²⁵⁹ Complaint filed on July 8, 1996, by Eliseo Gallego Quintero before the Local Unit of the Attorney General’s Office in Cocorná (Evidence file, folio 9061).

²⁶⁰ Complaint filed on July 11, 1996 by Florinda de Jesús Gallego Hernández before the Municipal Criminal Court of Cocorná (Evidence file, folios 9047 to 9055, 9057 and 9058).

²⁶¹ Statement of M.R.C. to the UNDH of April 14, 1998 (Evidence file, folios 9533 to 9535). Cf. Statement of G.C.F. of December 30, 1996, to the Municipal Ombudsman of El Carmen de Viboral (Evidence file, folios 10759 to 10761).

²⁶² Cf. Evaluation report of the visit to the Municipality of El Carmen de Viboral, of the Attorney General’s Office, National Directorate of Special Investigations, Antioquia Branch, July 17, 1996 (Evidence file, folios 9193 and 9192).

²⁶³ On July 26, “three individuals traveling on foot” allegedly fired three shots at the Municipal Ombudsman of El Carmen de Viboral. According to the report in his statements the Ombudsman had “directly accused paramilitary groups and National Army personnel for being responsible for the disappearances in the municipality.” Cf. Report No. 084, Proceeding No. 21.005 of the Regional Directorate of the CTI of the Attorney General’s Office, of November 27, 1996 (Evidence file, folio 9175).

²⁶⁴ H.M.G. indicated that Army soldiers were two blocks away from the place where some men dressed as civilians had seized Octavio Gallego Hernández. He also indicated that “the following Sunday, I left Cocorná [and saw that] in El Estanco, the soldiers were there, and [saw] that two who had taken Octavio were in uniform.” He concluded that “the Army does those things with the paramilitaries.” Statement made by Héctor Manuel González Ramírez to the UNDH of April 15, 1998 (Evidence file, folios 9538 to 9540). Also, Florinda de Jesús Gallego Hernández stated that “20 days after the disappearance of [her] husband” she was walking “near the command post when [she] was surprised to see [one of the men who took her husband away and with whom she had argued that day] dressed in police uniform, armed, [and that] he was [also] surprised to see [her].” Statement of Florinda de Jesús Gallego Hernández at the public hearing before the Court. For her part, a local resident whose testimony in video format is included in the case file, stated that a few days after the first disappearances she “[saw] a policeman, one of those [who] had dragged those people away, going along the highway on a motorcycle and with the same soldier that I had seen before, the pale one [...]”. Statement of a resident of Vereda La Esperanza, video provided by the representatives, minute 16:30 (Evidence file, folio 5804).

carried people in the trunks of their cars, and dumped them into the River Samana [...].”²⁶⁵

163. This *modus operandi* is consistent with the actions described in the voluntary confessions made by R.I.A. who mentioned that the paramilitaries “[...] had been at the base of La Piñuela twenty days earlier” and that “during the time when the operations were carried out, when people from La Esperanza disappeared [the Army] was not there²⁶⁶ [...]”. He added that his “son was the one who was involved in this action, at the request of an Army General and of Major [D.H.]²⁶⁷” and that “to [execute it] he received a list from Army Intelligence,”²⁶⁸ with the order “to kill everyone on the list.”²⁶⁹

164. In addition, there are consistent reports from the alleged victims referring to possible Army participation, as well as claims of having subsequently seen and identified some of the perpetrators dressed in military uniforms.

165. For its part, the Justice and Peace Chamber of the Superior Court of the Judicial District of Bogotá affirmed that “during this period, the action and territorial deployment of the ACMM occurred thanks to several factors, such as helping the security forces to weaken the subversive presence in those territories where the State was institutionally fragile or where it had lost the monopoly in the use of violence [...]”.²⁷⁰ In this regard, the Chamber indicated that “an important event that proves this relationship was the massacre carried out between April and December of 1996 in Vereda La Esperanza, in El Carmen de Viboral, Antioquia, led by O.I., who commanded the special group known as *Los Halcones*.” The Court notes that the in its judgment, the Chamber used as a supporting argument the voluntary confession of R.I.A. in which he stated that this massacre was not perpetrated directly by his paramilitary bloc, but was ordered by the Commander of the Army’s Fourth Brigade, based in Medellín, General A.M. and Major D.H., both deceased.”²⁷¹

iii) Conclusion

166. Bearing in mind the foregoing considerations, and based on the information provided by the parties, particularly the testimonies of some of the alleged victims themselves and their relatives; the testimonies of a military officer and several members of the paramilitary forces; the complaints filed by alleged victims and their family members and the Ombudsman of El Carmen de Viboral; as well as an intelligence report of the Office of Information, Analysis and Operational Support of the Sectional Directorate of the Technical Investigation Corps, the

²⁶⁵ Statement of Sergeant L.F.G., to the National Directorate of Special Investigations of Antioquia, November 16, 1995 (Evidence file, folio 9944-9947).

²⁶⁶ Expanded statement of R.I.A. to the National Human Rights and International Humanitarian Law Unit, of October 15, 2008. (Evidence file, folio 5849).

²⁶⁷ Press report published in the newspaper “El Colombiano” on February 8, 2006 (Evidence file, folio 5960).

²⁶⁸ Cf. Initial statement of R.I.A., to the Office of the Special Prosecutor attached to the National Human Rights and International Humanitarian Law Unit of April 23, 2007 (Evidence file, folios 12599 and 12602).

²⁶⁹ Initial statement of R.I.A., before the Office of the Special Prosecutor attached to the National Human Rights and International Humanitarian Law Unit of April 23, 2007 (Evidence file, folios 12592 to 12608); and expanded statement of R.I.A. before the UNDH-DIH of October 15, 2008 (Evidence file, folios 5841 to 5851). In this regard, during the public hearing in this case, the prosecutor stated that “from the moment that the events began, the applicant mentioned the existence of a list, which was shown by the prosecutor assigned to the investigation; this reference by the applicant exists and it must be determined whether or not it is a concomitant fact - or at which moment that list exists- with the actions that triggered the events in La Esperanza. It has not been proven during the proceeding that the victims formed part of that list.”

²⁷⁰ Superior Court of the Judicial District of Bogotá, Justice and Peace Chamber, Judgment of February 26, 2016 (Evidence file, folio 43339).

²⁷¹ Superior Court of the Judicial District of Bogotá Justice and Peace Chamber. Proceeding no: 110016000253201300146, para. 1468 and footnote 588 (Evidence file, folio 43339).

Court considers that the events took place within the context of a collaborative relationship between the military forces deployed in the area, directed from La Piñuela military base, and the ACMM.

167. In addition, other significant facts include: i) the threats allegedly received by some villagers from the Army a few days prior to the events; ii) the disappearance of some alleged victims and the murder of the Municipal Ombudsman of El Carmen de Viboral, which occurred after he held the Army responsible for the events that were occurring in Vereda La Esperanza; iii) the absence of reports describing hostilities between the Army and the paramilitary forces operating in the area, and iv) the paramilitary forces' movements along the Bogotá-Medellín highway without being intercepted at the numerous army checkpoints along that route.²⁷²

168. Consequently, the Court concludes that the forced disappearances that took place in Vereda La Esperanza are attributable to the State, given the support and acquiescence provided by members of the security forces for the actions of the paramilitary forces. This facilitated their incursions into Vereda La Esperanza and propitiated or allowed these acts, in breach of an international obligation, thereby constituting the internationally wrongful act of forced disappearance. Therefore, the Court considers that the State is responsible for the violation of Articles 7, 5(1), 5(2), 4(1) and 3 of the American Convention in relation to Article 1(1) of the same instrument, together with Article I. a of the ICFDP, from the date of its ratification by the State, on December 4, 2005, and until the present date, to the detriment of Aníbal de Jesús Castaño Gallego, Juan Carlos Gallego Hernández, Jaime Alonso Mejía Quintero, Hernando de Jesús Castaño Castaño, Orlando de Jesús Muñoz Castaño, Octavio de Jesús Gallego Hernández, Andrés Gallego Castaño and Leonidas Cardona Giraldo, and the children Óscar Hemel Zuluaga Marulanda, Miguel Ancízar Cardona Quintero and Juan Crisóstomo Cardona Quintero. Furthermore, the State is responsible for the violation of those articles in relation to Article 19 of the Convention to the detriment of the minors Óscar Hemel Zuluaga Marulanda, Miguel Ancízar Cardona Quintero and Juan Crisóstomo Cardona Quintero, given its failure to implement special measures of protection as required by their status as minors.

B.3. The alleged forced disappearance of Irene Gallego Quintero

169. On June 28, Irene Gallego Quintero was brought to the office of the prosecutor of the municipality of El Santuario, Antioquia, by Army Major C.G.²⁷³ During that procedure, Major C.G. told the prosecutor that Irene had confessed to being a former guerrilla of the EPL and had requested the protection of the Army because she feared for her life, and for this reason the Army had decided to remove her from the area and bring her before the competent authorities. For her part, Irene had confirmed the veracity of the Major's statement.²⁷⁴ After these events, the 29th prosecutor attached to the Prosecutor's Office of El Santuario testified in a sworn certification that she "[was] emphatic that [she did not] not hand the young woman Irene Gallego over to the soldiers" and that once the paperwork had been signed, Irene left and that she did not know "the direction in which she headed or by whom she was

²⁷² The Report of the Technical Investigation Corps of the Prosecutor's Office stated that "[t]he community questions the effectiveness of the public security forces, because the paramilitary forces move around without any problem, despite the military base being right there and the operations and presence of the National Army on the Medellín – Bogotá highway." Sectional Directorate, Technical Investigation Corps. Office of Information, Analysis and Operational Support of the Attorney General's Office. Intelligence Report on self-defense groups, Report No. 032 of June 28, 1996 (Evidence file, folio 13).

²⁷³ Record of arrest, dated June 28, 1996, Prosecutor's Office of El Santuario (Evidence file, folios 33574 to 33576).

²⁷⁴ When asked about the truth of the Major's statement, Irene Gallego stated that: "all that is true, I came because I handed myself in so that they could protect me, so that I could go home." Record of arrest, of June 28, 1996, Prosecutor's Office of El Santuario (Evidence file, folio 33575).

accompanied.”²⁷⁵

170. The body of evidence includes testimonies stating that, after leaving the Prosecutor’s Office, Irene allegedly remained in the custody of the soldiers who kept her with them for a time and then handed her over to the paramilitaries. According to E.M.A. “the last [he] knew is that after being brought to the prosecutor’s office she was left once again in the custody of the soldiers, and that to date her family knows nothing about her [...].”²⁷⁶ Furthermore, in a video provided by the representatives of the alleged victims, a resident of Vereda La Esperanza recalls the events in that village and, when referring to Irene, states: “ I saw her with some soldiers in the store [...] they had [...] dressed her like a beggar [...] those same soldiers came over to [my] house and [I] said to them: why did you have that girl there, what did you do to her, why isn’t she seen around here?... ah, she was taken by the paramilitaries, she’s already been killed ... and [she added], why would the paramilitaries have taken her if you were the ones who had her, if you are soldiers?... and then [the soldiers reportedly said] ah, but there were two paramilitaries with us.”²⁷⁷ Regarding Irene’s alleged handover to the paramilitaries, another witness stated that “she was captured by the Army in the village, taken to La Piñuela military base where the Major interrogated her and then she was handed over to the paramilitaries [...].”²⁷⁸

171. For its part, the State insisted that Irene Gallegos was with the Army until June 28 for her own protection, given the situation of risk in which she found herself because she had belonged to the EPL guerrilla group that operated in the area of Vereda La Esperanza. However, although that version of the facts may be plausible in light of the situation in the region, the State did not provide any evidence to corroborate it and did not challenge the testimonies that reported having seen Irene in the company of members of the Army after June 28.

172. To summarize, according to the evidence in the case file: a) Irene Gallegos was detained by the Army until June 28, 1996; b) it is not known whether, following the procedure at the Prosecutor’s Office of El Santuario, on June 28, she remained in the custody of the Army. It has only been confirmed that the prosecutor did not hand her over to the soldiers although she admits not knowing where Irene went or with whom; c) she was seen in the company of members of the National Army after those events; d) these testimonies were not challenged by the State; e) Irene Gallegos remains disappeared to this day, and f) her disappearance occurred during the same period as the rest of the disappearances in Vereda La Esperanza and is consistent with those perpetrated by members of the ACMM with the acquiescence of State agents.

173. Based on the foregoing considerations, the Court finds that the State is responsible for the forced disappearance of Irene Gallegos Quintero and that it has failed in its duty of respect in relation to Articles 3, 4, 5 and 7 of the American Convention, in connection with Article 1(1) of the same instrument, together with Article I. a of the ICFDP, from the date of its ratification by the State, on December 4, 2005, and until the present date, to her detriment.

B.4. The right to life of Javier Giraldo Giraldo

²⁷⁵ Official Letter 812-29, reference: 233 of April 1, 1997. 29th Delegate Prosecutor (Evidence file, folio 5881).

²⁷⁶ Statement made by E.M.A. before the Office of the Regional Directorate of Prosecutions of May 13, 1997 (Evidence file, folio 9275).

²⁷⁷ Statement by resident of Vereda La Esperanza, video provided by the representatives, minute 16:53 (Evidence file, folio 5804).

²⁷⁸ Statement of G.C.F. to the Municipal Ombudsman of El Carmen de Viboral of December 30, 1996 (Evidence file, folio 5888).

174. Based on the proven facts, the Court confirms that Javier Giraldo Giraldo was executed by persons who, minutes earlier, had detained him and forced him into a pickup truck. After he was killed, his body was left along the Bogotá-Medellin highway from where it was subsequently removed (*supra* paras. 91 and 92). It is clear that this incident took place a short time after the detention of Juan Carlos Gallego and Jaime Alonso Mejía Quintero who were also forced into a truck (*supra* paras. 88 and 90). The Court observes that the acts perpetrated against Javier Giraldo were closely connected with other events regarding which the Court has already determined the State's responsibility, and which also form part of the same operation and *modus operandi* described previously in which twelve people were forcibly disappeared.

175. Consequently, bearing in mind the foregoing, the Court considers that the violations perpetrated against Javier Giraldo are also directly attributable to the State, through the actions of its security forces, which enabled the actions of the paramilitary group. Thus, the Court finds that the State is responsible for the violation of Article 4 of the American Convention in relation to Article 1(1) thereof, for the arbitrary deprivation of the right to life to the detriment of Javier Giraldo.

VIII.2 RIGHT TO JUDICIAL GUARANTEES²⁷⁹ AND JUDICIAL PROTECTION²⁸⁰ OF THE DISAPPEARED AND EXECUTED PERSONS AND THEIR NEXT OF KIN

A. Arguments of the parties and of the Commission

176. The *Commission* argued that in the two criminal proceedings in the ordinary courts in relation to this case: a) the "State bodies did not act with minimum diligence to preserve the evidence that directly implicated members of the [Armed Forces] in these events"; b) there was a lack of due diligence with respect to logical lines of inquiry and the investigation of the perpetrators' responsibility; c) a situation of risk existed for the persons who testified in the proceedings, yet no specific steps were taken to protect them. The Commission also pointed out that both criminal proceedings were filed for the crime of kidnapping, not for the crime of forced disappearance, which may have been an additional factor that prevented an investigation of the ties existing between the ACMM and the security forces and, consequently, the determination of responsibility at all levels. It argued that the State failed to investigate members of the Army, despite the evidence provided in the context of the Justice and Peace process. Furthermore, it noted that "the delay of more than 17 years in the domestic justice

²⁷⁹ Article 8 of the Convention establishes: "Judicial Guarantees. 1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, prosecutor, or any other nature." Article I.b of the ICFDP indicates that: "The States Parties to this Convention undertake: [...] b) To punish within their jurisdictions, those persons who commit or attempt to commit the crime of forced disappearance of persons and their accomplices and accessories." Article III of the same instrument stipulates: "The States Parties undertake to adopt, in accordance with their constitutional procedures, the legislative measures that may be needed to define the forced disappearance of persons as an offense and to impose an appropriate punishment commensurate with its extreme gravity. This offense shall be deemed continuous or permanent as long as the fate or whereabouts of the victim has not been determined. [...]".

²⁸⁰ Article 25 of the Convention states: "Judicial protection: 1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties. 2. The States Parties undertake: a) to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state; b) to develop the possibilities of judicial remedy; and c) to ensure that the competent authorities shall enforce such remedies when granted."

system exceeds what could be considered a reasonable time" to carry out the corresponding investigative actions.²⁸¹ Therefore, it considered that the State had violated Articles 8(1) and 25 of the Convention, as well as Article I.b) of the ICFDP, to the detriment of the disappeared and executed persons and their next of kin.

177. The Commission also referred to other proceedings. It argued that "the disciplinary jurisdiction is not an adequate mechanism to prosecute, punish and repair the consequences of human rights violations." As to the contentious administrative jurisdiction, it noted that this "is a mechanism that aims to oversee the State's administrative activities, and only allows for compensation for damages caused by the action or omission of State agents." It added that in the instant case it would not have been an effective means to compensate the victims, in a manner complementary to the criminal proceedings.

178. The *representatives*, like the Commission, referred to the alleged lack of due diligence in the initial stages of the investigations, omissions in the lines of investigation, the alleged absence of protection measures for victims and witnesses, the excessive duration of the proceedings and, finally, the alleged absence of efforts to identify and implicate the military agents who allegedly participated in or tolerated the acts denounced. They also referred to: a) the "failure to investigate using a differentiated approach regarding minors and women;" b) an excessive delay by the prosecutor's office in adequately classifying the crime of forced disappearance, and c) the lack of a "coherent plan to search for the disappeared persons."

179. As to the proceedings in the special Justice and Peace jurisdiction, the *representatives* made the following arguments: a) the "information provided in the voluntary confessions of applicant R.I.A. or by the applicants W.O., L.E.Z.A. and [C.Z.] has not been corroborated; therefore, the judiciary at the hearing for the formal presentation and acceptance of the charges has been presented with a context and version of the facts that is based solely on the statements of the applicants"; b) failure to determine "patterns of macro-criminality that would facilitate the investigation of senior economic and political leaders, and of leaders of the security forces;"²⁸² c) a "lack of consistency between the special Justice and Peace jurisdiction and the ordinary jurisdiction" which allegedly "facilitated impunity"; d) the victims' limited participation in the proceedings; e) an unjustified delay in the proceedings and the procedural actions by the authorities, f) the State violated the victims' right to the truth because it failed to provide the procedures and mechanisms required to elucidate the truth of what happened; g) in general terms and in this specific case, "the power or authority to request the termination of the proceedings and the exclusion of applicants from the Justice and Peace process was held exclusively by the Attorney General' Office," and h) given that R.I.A. and the other applicants did not contribute "significantly to establishing the truth as required under the Justice and Peace Law or [...] to determining the location of the bodies or skeletal remains of the [alleged] victims, [they] should not enjoy the benefit of alternative penalties under the Justice and Peace process. Thus, given this situation, "[...] in the case of Vereda La Esperanza, the applicants would not receive a penalty proportional to the serious

²⁸¹ On this point, it also held that "the delay in conducting the investigation cannot be justified by the complexity of the matter when i) the possible perpetrators have been individualized; ii) there were witnesses, and iii) possible lines of investigation existed."

²⁸² In particular, the representatives indicated that "i) the contexts prepared by the Prosecutor's Office are very poor and are limited to very generic assertions, and it is the judiciary that has completed preparation of those contexts in its judgments; ii) there is insufficient characterization of the structure of the paramilitary groups, - understood as the paramilitary project- which encompasses the political and economic dimensions and cooperation with the public security forces; in this case, the construction of contexts is limited to the preparation of a chart of the military chain of command, based on information provided by demobilized applicants, but with little verification from other sources; and iii) the identification of criminal patterns has been equated with the identification of the most characteristic crimes and the Prosecutor's Office disregards the fact that different types of criminal behavior may converge in a criminal plan."

nature of the facts.”

180. The *representatives* also noted that Law 1592 of 2012, which established prioritization criteria for the investigation and prosecution of such actions, was applied to the facts of this case without indicating “the criteria and parameters used by the investigating body to make that prioritization, or the mechanisms and procedures used to develop the hypothesis of the criminal investigation and explain the patterns of criminality.” Therefore, they concluded that “Colombia violated the rights to due process and judicial protection of the victims and their next of kin, in breach of Articles 8(1) and 25 of the [Convention] [...] and in connection with Articles I (b) and III of the ICFDP.” Regarding the procedures in the contentious administrative jurisdiction, the representatives indicated that “this does not guarantee that the victims in this case will receive adequate reparation, commensurate with the seriousness of the offenses committed, the responsibility of the State, and the parameters established by the organs of the inter-American system on integral reparation.”²⁸³

181. The *State* acknowledged its responsibility for: a) the prolonged delay in the investigations undertaken in the ordinary jurisdiction, related to the cases of the victims; b) inconsistencies related to omissions in the initial stages of the investigations conducted in the ordinary jurisdiction; c) delays in the execution of various procedures and periods of inactivity, which have hindered efforts to clarify the facts and to punish those responsible, and c) the failure to investigate the facts related to the damage caused to the home of Mr. Eliseo Gallego.

182. The *State* also reported on the numerous procedures and actions carried out with the aim of finding the disappeared persons, which were ordered “immediately after the events occurred.” It added that “even more recently, procedures have been carried out for the same purpose.” As to the ordinary criminal proceedings, the *State* indicated that it “has ensured that logical lines of investigation are followed in the context of the ordinary criminal proceedings.”²⁸⁴ With respect to the alleged inadequate legal classification of the crime of forced disappearance, it argued that the Attorney General’s Office “investigated the facts in accordance with the criminal laws in force at the time, also adhering to the criteria and standards of international law.”²⁸⁵ In 2011, at the request of the petitioners, the prosecutor decided to reclassify the offense, changing it from the crime of kidnapping to the crime of forced disappearance. The *State* also held that “from the outset, the investigation contemplated the possibility of a likely participation by State agents” and that “[t]he investigation reveals that, regardless of the *nomen iuris* of the conduct investigated, the facts have always been investigated in light of the crime of forced disappearance”.

183. As to the proceedings in the Justice and Peace jurisdiction, the *State* affirmed that it was “not responsible for the alleged violation of the rights to judicial guarantees and judicial protection” and stated the following:

- a. Regarding due diligence in confirming R.I.A.’s continuation as an applicant to the benefits of Law 975, it argued that “although the applicant ha[d] made some statements that do not coincide with those made by other applicants, there is not sufficient evidence

²⁸³ They also pointed out that a group of victims received compensation “through the administrative courts, in application of Decree 1290, for crimes such as forced displacement, homicides and forced disappearance. However, those indemnities were not awarded as a consequence of the facts of this case. [...] Therefore, the compensation for damages offered by the State would leave without any reparation a number of victims in this case, who also have a right to receive adequate compensation like the rest of the victims identified.”

²⁸⁴ It also emphasized that the case file “includes numerous procedures showing that one of the lines of investigation has been the possible participation of State agents in the lamentable events.”

²⁸⁵ In this regard, it argued that “[t]he investigation initiated in 1996, as a result of the events in Vereda La Esperanza, was conducted within the regulatory framework of Decree 100 of 1980, and therefore the offenses denounced were redefined as a crime of kidnapping”.

to categorically affirm [his] intention [...] to conceal the truth, or lie [...].”²⁸⁶

b. Regarding the power of the Attorney General’s Office to request the termination of the Justice and Peace process and the exclusion of applicants, the State indicated that the latter “is not arbitrary and is based on the Constitution and on domestic legislation through which it has sought to guarantee the victims access to justice, and [...] shed light on the serious human rights violations that occurred [...] in the context of the armed conflict, promote reconciliation and seek the reinsertion in civilian life of members of the GAOML [Organized Armed Groups Operating Outside the Law] who have expressed their willingness to contribute to the transitional process and who meet all the requirements established by law.” Finally, it stressed that “in the context [...] of the Justice and Peace process, victims have numerous procedural opportunities to participate and express their positions;”

c. Regarding due diligence in corroborating the information obtained through the voluntary confessions, the State affirmed that many investigative measures have been carried out to verify the statements made by the applicants and that prosecutors have taken into account various statements rendered by the victims in this case to determine the lines of investigation to follow.²⁸⁷ It concluded that adequate measures have been implemented to establish the context in which the events occurred, identify patterns of criminality that may have given rise to them, and establish the specific circumstances in which each of the alleged violations occurred. It added that its investigative efforts have not been limited to obtaining voluntary confessions but have also included different sources of information, which it cited;

d. As to the methodology developed by the Attorney General’s Office to investigate the criminal plans that underlie the human rights violations committed, the State indicated that it has been implementing “since 2012, [a strategy of prioritization that encompasses] the ‘policies’ of the respective GAOML (Organized Armed Groups Operating outside the Law) as one of its components [...],” and based on categories derived from the case law of the Inter-American Court and of other international courts, including their “practices” and “*modus operandi*.” Regarding the background information and patterns of macro criminality related to the specific case, it argued that “the Prosecutor’s Office presented to the judges of the [...] Justice and Peace Chamber, the context in which the actions of the so-called ACMM took place, based on different sources of information obtained in the course of the investigation.” It added that “[t]his context continues to be documented and expanded, based on information obtained through the [FGN’s] verification efforts;”

e. Regarding the contribution of the Justice and Peace proceedings to the elucidation of the truth regarding the responsibility of political, economic and military actors in the matters under investigation, the State indicated that although the “special Justice and Peace jurisdiction cannot [take] criminal action against individuals who have not demobilized from the GAOML and are not applicants under the Justice and Peace Law, the prosecutors and judges who form part of that jurisdiction are obliged to require certified copies from the regular justice system when they find that third parties not subject to the special jurisdiction, must be investigated for the possible commission of criminal acts.” The

²⁸⁶ Similarly, it argued that the representatives “question, without clear elements, the fact that [...R.I.A.] has not been excluded from the Justice and Peace process, and at the same time they use [his] statements [...] as grounds to prove the [...] international responsibility [of the] State [...] for the joint actions between paramilitaries and the army.”

²⁸⁷ Based on the foregoing, the State added that, “the Prosecutor’s Office has been careful in conducting the investigations in order to clarify various factual hypothesis such as the existence of lists prepared by the army and handed over to paramilitary groups, the participation of members of the army in the facts of this case, the existence of links between business people and ranchers with the paramilitary groups that operated in the area and their participation in the facts of this case, and the location of the remains of the disappeared persons.”

State argued that the confessions and investigations under the Justice and Peace Law have had an impact, for example, on the issue of “parapolitics;”

f. Regarding the obligation to guarantee the right to truth, the State argued that this may be realized through a diligent investigation that seeks consistency between the procedural truth and the real truth, and that international standards in this matter highlight the intrinsic relationship that exists between the right to truth and the right of access to justice. It added that this same vision is recognized within the regulatory framework of the Transitional Justice system implemented by the State. It added that, bearing in mind that the obligation to investigate is one of means and not of result, “it is necessary to assess all efforts made by the State to uncover the truth and, in that measure, the diligence with which it has conducted the investigations:”

g. The State indicated that “within the Directorate of the National Office of Special Prosecutors for Transitional Justice, and under the ‘Comprehensive Plan for Prioritized Investigations’ of 2013 and 2014, 16 leaders responsible for crimes were prioritized, among them R.I.A., in application of the subjective criterion of prioritization, based on his status as a leader responsible for the commission systemic crimes.” It held that “in light of objective criteria, the crimes of forced disappearance, forced displacement, kidnapping, illegal recruitment and gender-based violence were prioritized, as well as certain facts [...] considered notable.” It added that the investigation has maintained a comprehensive view of the facts, bearing in mind their causes, the context, the structures and apparatus of macro criminality that they generated, and the related patterns of joint action and diverse forms of participation. It affirmed that the prioritization criteria applied in criminal investigations as a tool to rationalize criminal prosecutions, comply with international standards on access to justice and are consistent with the specific duties that must be fulfilled in light of international obligations in contexts of serious and systematic human rights violations, regarding which the State seeks to reach political accords in order to achieve peace and the non-repetition of hostilities;

h. As to the issue of reasonable time within the Justice and Peace process, the State pointed out that the voluntary confessions provided by R.I.A. “expose a large number of criminal acts, involving not only his own direct actions, but also thousands of crimes committed by members of [GAOMIL], which he commanded.” It explained that “in order to clarify [the] phenomenon of macro criminality [...], the Prosecutor’s Office [has] obtained numerous voluntary statements and confessions, both individual and collective, and has conducted prospection efforts and exhumations” among “numerous investigative activities.” The State added that “this complex investigative activity has enabled [...] numerous crimes to be attributed [to R.I.A.] and he has even been condemned for some of them in a judgment; similarly, the investigation has been valuable in establishing the context of macro-criminality and the criminal patterns that gave rise to these actions, and in identifying the leaders responsible [...].” It concluded that “the period of time taken by the investigation [...] [does not] constitute [...] an unjustified delay for which responsibility can be attributed [...] to the State [...]”.

B. Considerations of the Court

184. Article 8(1) of the Convention recognizes the right of every person to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial court, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations, all this within the State’s general obligation to ensure to all persons subject to its jurisdiction the free and

full exercise of the rights recognized by the Convention (Article 1(1)).²⁸⁸

185. This Court has consistently indicated that the duty to investigate is an obligation of means and not of results, which must be fulfilled in a serious manner, and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof.²⁸⁹ In addition, the State must conduct a serious, impartial and effective investigation in order to determine the truth of what happened, and to identify, capture, and eventually prosecute and punish the perpetrators.²⁹⁰ Likewise, due diligence requires the investigating body to carry out all measures and investigations necessary to try and obtain the required result.²⁹¹

186. That said, within its subsidiary and complementary sphere of competence, the Court may examine domestic investigation procedures,²⁹² in order to determine any failures of due diligence therein.²⁹³ However, this will be appropriate only insofar as there is evidence that the failings adduced could have affected the investigation as a whole, so that "with the passage of time, the possibility of collecting and presenting evidence in order to shed light on the facts and determine the corresponding responsibilities is unduly limited."²⁹⁴ Thus, it should not be assumed that failings in specific investigative measures have a negative impact on the overall process if, despite these, the investigation has produced effective results in clarifying the facts.²⁹⁵

187. This Court also recalls that "the steps carried out to investigate the facts must be assessed as a whole and that it is not up to the Court to determine the appropriateness or utility of specific investigative actions."²⁹⁶ Indeed, "it is not the responsibility of this Court to replace the domestic jurisdiction by ordering concrete methods or forms for investigating and judging a specific case in order to obtain a better or more effective outcome; instead, its role is to find out whether or not, in the steps actually taken domestically, the State's international obligations embodied in [...] the American Convention have been violated."²⁹⁷

188. In this case, the Commission and the representatives alleged that the State violated Articles 8(1) and 25 of the Convention, essentially in relation to: a) lack of due diligence in the domestic proceedings; b) failure to observe the guarantee of reasonable time; c) failure

²⁸⁸ Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary objections*, para. 91, and *Case of Favela Nova Brasília v. Brazil*, para. 174.

²⁸⁹ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, para. 177, and *Case of Gutiérrez Hernández et al. v. Guatemala. Preliminary objections, merits, reparations and costs. Judgment of August 24, 2017. Series C No. 339*, para. 148.

²⁹⁰ Cf. *Case of Juan Humberto Sánchez v. Honduras. Preliminary objection, merits, reparations and costs. Judgment of June 7, 2003. Series C No. 99*, para. 127, and *Case of Gutiérrez Hernández et al. v. Guatemala*, para. 148.

²⁹¹ Cf. *Case of the Serrano Cruz Sisters v. El Salvador. Merits, reparations and costs. Judgment of March 1, 2005. Series C No. 120*, para. 83, and *Case of Yarce et al. v. Colombia*, para. 280.

²⁹² Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits. Judgment of November 19, 1999. Series C No. 63*, para. 222, and *Case of Yarce et al. v. Colombia*, para. 282.

²⁹³ Cf. *Case of Yarce et al. v. Colombia*, para. 282.

²⁹⁴ Cf. *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, reparations and costs. Judgment of September 1, 2010. Series C No. 217*, para. 172, and *Case of Yarce et al. v. Colombia*, para. 282.

²⁹⁵ Cf. *Case of Luna López v. Honduras. Merits, reparations and costs. Judgment of October 10, 2013. Series C No. 269*, para. 167, and *Case of Yarce et al. v. Colombia*, para. 282.

²⁹⁶ Cf. *Case of Castillo González et al. v. Venezuela. Merits. Judgment of November 27, 2012. Series C No. 256*, para. 153, and *Case of Yarce et al. v. Colombia*, para. 282.

²⁹⁷ Cf. *Case of Nogueira de Carvalho et al. v. Brazil. Preliminary objections and merits. Judgment of November 28, 2006. Series C No. 161*, para. 80, and *Case of Yarce et al. v. Colombia*, para. 282.

to investigate the events that took place at the home of Mr. José Eliseo Gallego Quintero; d) failure to adequately classify the crime of forced disappearance; e) failure to investigate using a differentiated approach with regard to child victims or women; f) failure to adopt measures to protect the participants in the proceedings; g) the lack of participation by the victims; h) the harm caused through the alleged violation of the right to the truth; i) the mechanism of prioritization and patterns of macro-criminality applied in this case; j) the proportionality of the penalty and, k) the lack of consistency between the ordinary jurisdiction and the special Justice and Peace jurisdiction.

189. As noted in this judgment (*supra* para. 16), the Court recalls that the State partially acknowledged its responsibility for the violation of Articles 8(1) and 25 of the Convention. In particular, it acknowledged its responsibility for: a) the prolonged delay in the investigations conducted in the ordinary jurisdiction; b) the fact that there were certain inconsistencies and omissions in the initial stages of the investigation, delays in the implementation of various procedures and periods of inactivity, which have hindered efforts to clarify the facts and sanction those responsible for the investigations carried out in the ordinary jurisdiction, and c) failure to investigate the facts related to the damage caused to the home of José Eliseo Gallego Quintero and María Engracia Hernández.

190. Consequently, the Court considers that the dispute concerning those points has ceased, and therefore will not refer to them in its considerations (*supra* para. 22). Accordingly, this Court finds the Colombian State responsible for the violation of Articles 8(1) and 25 of the American Convention to the detriment of the direct victims and their next of kin (*infra* para. 237).

191. The Court will now examine other arguments related to the violation of the right to judicial guarantees, in the following order: B.1) the guarantee of reasonable time in the Justice and Peace process; B.2) the alleged lack of an adequate legal classification of forced disappearance; B.3) the alleged failure to investigate using a differentiated approach; B.4) the alleged lack of measures to protect the participants in the proceedings; B.5) the alleged lack of participation by the victims in the Justice and Peace process; B.6) the alleged violation of the right to the truth; B.7) the mechanism of prioritization and patterns of macro-criminality applied in the case; B.8) the alleged lack of due diligence at the start of the investigation in the ordinary justice system, and B.9) conclusion.

B.1. Reasonable time in the Justice and Peace process

192. Both the Commission and the representatives argued that the State is responsible for the prolonged delay in the investigations conducted in the ordinary jurisdiction and in the special Justice and Peace jurisdiction.²⁹⁸ In particular, they emphasized that more than twelve years have elapsed since the case was submitted to the Justice and Peace jurisdiction, with no judgment having been delivered in relation to any of the applicants seeking benefits under Law 975, who have confessed their participation in the facts under examination, in violation of the judicial guarantee of reasonable time.

193. The Court recalls that Article 8(1) of the Convention requires that the investigation of the facts in a criminal proceeding be resolved within a reasonable time, since in certain cases

²⁹⁸ Law 975 of 2005, also known as the "Justice and Peace Law," "is a set of provisions intended to facilitate individual or collective reinsertion into civilian life of former members of illegal armed groups with the aim of contributing to the effective achievement of national peace and [...] humanitarian accords." It seeks to "facilitate the peace processes and the individual or collective reinsertion of members of illegal armed groups into civilian life, guaranteeing the victims' rights to the truth, justice and reparation" (Article 1) and regulates "matters concerning the judicial investigation, prosecution, punishment and benefits for persons linked to organized illegal armed groups, either as masterminds or perpetrators of criminal acts committed during their membership of such groups, who have decided to demobilize and contribute decisively to national reconciliation." (Article 2).

a prolonged delay, in itself, may constitute a violation of judicial guarantees.²⁹⁹ Furthermore, in its case law, the Court has considered that four elements must be taken into account in determining whether the guarantee of reasonable time is met, namely: a) the complexity of the matter; b) the procedural activity of the interested parties; c) the conduct of the judicial authorities, and d) the effects on the legal situation of the person involved in the process. Also, based on those criteria, it is for the State to justify the reason why the case has required more than a reasonable time to be processed.³⁰⁰

194. While it is true that when analyzing a reasonable time the Court must consider the overall duration of the proceeding until the final judgment is delivered,³⁰¹ in certain situations it may be pertinent to conduct a specific assessment of the different stages.³⁰² The Court will now analyze the period during which this dispute has continued, that is, between 2004 and the present date, in the context of the special Justice and Peace process,³⁰³ and in light of the aforementioned elements of reasonable time. For each of these components, the Court will take into account the special nature of the Justice and Peace process and, in particular, the fact that the confession of the accused is a central element for reconstructing and verifying the commission of a crime.

i. The complexity of the matter

195. In its case law, this Court has taken into account different criteria to determine the complexity of a matter, including: i) the complexity of the evidence³⁰⁴; ii) the number of procedural subjects³⁰⁵ or the number of victims³⁰⁶; iii) the time elapsed since the violation was committed;³⁰⁷ iv) the characteristics of the remedies available under domestic law,³⁰⁸ and v) the context in which the facts occurred.³⁰⁹ On other occasions, the Court has also recognized the difficulties experienced by the State in ensuring an adequate and effective response to its international commitments when faced with the actions of members of

²⁹⁹ Cf. *Case of Hilaire Constantine and Benjamin et al. v. Trinidad and Tobago. Merits, reparations and costs.* Judgment of June 21, 2002. Series C No. 94, para. 145, and *Case of Favela Nova Brasília v. Brazil*, para. 217.

³⁰⁰ Cf. *Case of Anzualdo Castro v. Peru*, para. 156, and *Case of Favela Nova Brasília v. Brazil*, para. 218.

³⁰¹ Cf. *Case of Suárez Rosero v. Ecuador. Merits.* Judgment of November 12, 1997. Series C No. 35, para. 71, and *Case Vásquez Durand et al. v. Ecuador*, para. 159.

³⁰² Cf. *Case of the Displaced Afro-descendant Communities of the Cacarica River Basin (Operation Genesis) v. Colombia*, para. 403, and *Case of Tenorio Roca et al. v. Peru*, para. 239. See also: ECHR. *Case of Bunkate v. Holland* (N° 13645/88). Judgment of May 26, 1993, paras. 20 to 23, and *Case Pugliese v. Italy (N. 2)* (N° 11.671/85). Judgment of May 24, 1991, para. 19.

³⁰³ Cf. *Case of the Displaced Afro-descendant Communities of the Cacarica River Basin (Operation Genesis) v. Colombia*, para. 403.

³⁰⁴ Cf. *Case of Genie Lacayo v. Nicaragua. Merits, reparations and costs.* Judgment of January 29, 1997. Series C No. 30, para. 78, and *Case of Favela Nova Brasília v. Brazil*, para. 220.

³⁰⁵ Cf. *Case of Acosta Calderón v. Ecuador. Merits, reparations and costs.* Judgment of June 24, 2005. Series C No. 129, para. 106, and *Case of Favela Nova Brasília v. Brazil*, para. 220.

³⁰⁶ Cf. *Case of Furlan and Family v. Argentina. Preliminary objections, merits, reparations and costs.* Judgment of August 31, 2012. Series C No. 246, para. 156, and *Case of Favela Nova Brasília v. Brazil*, para. 220.

³⁰⁷ Cf. *Case of Heliodoro Portugal v. Panama. Preliminary objections, merits, reparations and costs.* Judgment of August 12, 2008. Series C No. 186, para. 150, and *Case of Favela Nova Brasília v. Brazil*, para. 220.

³⁰⁸ Cf. *Case of Salvador Chiriboga v. Ecuador. Preliminary objection and merits.* Judgment of May 6, 2008. Series C No. 179, para. 83, and *Case of Favela Nova Brasília v. Brazil*, para. 220.

³⁰⁹ Cf. *Case of Genie Lacayo v. Nicaragua. Preliminary objections.* Judgment of January 27, 1995. Series C No. 21, para. 78, and *Case of Favela Nova Brasília v. Brazil*, para. 220.

insurgent groups.³¹⁰

196. In the instant case, the Court notes that a) the events that occurred in Vereda La Esperanza involve a large number of direct victims – thirteen, in total - together with more than one hundred family members; b) the facts are attributed to members of an armed insurgent group, namely the ACMM, which allegedly acted in collaboration with members of the security forces, and possibly with high-ranking officers; c) some of the perpetrators of these acts may have died; d) the events at Vereda La Esperanza occurred in the context of the activities carried out by the ACMM, which are being investigated by the Prosecutor's Office and presumably encompass a universe of more than 7,300 criminal actions, with a total number of victims that exceeds 12,100.³¹¹ This information has been uncovered essentially as a result of 176 voluntary confessions made during hearings, which must then be investigated and verified by the Prosecutor's Office for Justice and Peace,³¹² and e) the context of generalized violence in the country - and more specifically in the Magdalena Medio region - at the time of the events, hinders the investigation work undertaken in the context of Justice and Peace, especially considering that this process began several years after the events took place. All these factors are reflected in the progress and development of the investigation in the Justice and Peace jurisdiction, a conclusion that was also reached by the victims' representatives.³¹³

197. Based on the foregoing, this Court finds that several of the criteria mentioned previously are present in this case, namely: 1) the complexity of the evidence, 2) the large number of procedural subjects, 3) the large number of victims, 4) the time elapsed since the violations occurred and 5) the difficult context in which the events took place. Therefore, the Court considers that in this case there are sufficient elements to conclude that the investigation of the facts presents a high degree of complexity.

ii. The procedural activity of the interested parties

198. In relation to this second element, the Court must assess whether the interested parties took all the measures that could reasonably be expected at the different procedural stages.³¹⁴

199. The Court finds that in this case the interested parties actively promoted the proceedings and participated in the actions required of them. In accordance with the available procedural opportunities, they also expressed their views and arguments in the Justice and Peace process and were able to attend the hearings, question the applicants³¹⁵ (indirectly) and participate in the request to have the crime of aggravated homicide—initially attributed to the alleged perpetrators in this case— reclassified as one of forced disappearance.³¹⁶ They also submitted evidence during the proceedings in the ordinary justice system. To that extent, their actions

³¹⁰ Cf. *Case of the Mapiripán Massacre v. Colombia*, para. 238; *Case of the Ituango Massacres v. Colombia*, para. 300, and *Case of Yarce et al. v. Colombia*, para. 289.

³¹¹ Cf. DFNEJT of July 29, 2015, Proceeding No. 20155800013323, Directorate of the National Office of Special Prosecutors for Transitional Justice, page 25 (Evidence file, folio 26336).

³¹² Cf. Transcript of confession, Massacre of La Esperanza, November 27, 2015 (Evidence file, folio 42770 to 42821).

³¹³ The representatives recognized the complexity of the case given the nature of the events and the large number of people involved. Pleadings and motions brief (Merits file, folio 433).

³¹⁴ Cf. *Case of Fornerón and Daughter v. Argentina. Merits, reparations and costs*. Judgment of April 27, 2012. Series C No. 242, para. 69, and *Case of Andrade Salmón v. Bolivia. Merits, reparations and costs*. Judgment of December 1, 2016, para. 158.

³¹⁵ Cf. Final arguments of the representatives (Merits file, folio 2029).

³¹⁶ Request for reclassification of the offences investigated within the proceedings and measure of detention, *Corporación Jurídica Libertad* (Evidence file, folios 12908 to 12929).

were not aimed at producing an unjustified delay in the proceedings, but rather at protecting their right to obtain the procedural truth and their right of access to justice, all these being interventions that could reasonably be expected on their part.

iii. The conduct of the judicial authorities

200. With regard to the conduct of the judicial authorities, the Court has considered that since they are in charge of the judicial proceedings, they have a duty to manage and direct these, so as not to sacrifice justice and due legal process in favor of formalism and impunity.³¹⁷

201. In this case the Court notes that, since the first voluntary confession was obtained, the judicial authorities have conducted numerous investigations based on the confessions of the ACMM applicants provided through the special Justice and Peace process. These procedures have included voluntary confessions and hearings and the applicants' participation in the exploration, search and exhumation of skeletal remains; in total, 176 voluntary confessions were obtained (42 individual and 134 collective). The hearings have focused on information related to 2,419 criminal acts, involving 5,567 direct and indirect victims. In addition, the "applicant" R.I.A. has participated directly in four explorations or searches and in four exhumations of skeletal remains that led to the identification of three persons. This Court confirms that to date he has been accused of 1,246 offenses for which he has been subject to security measures.³¹⁸ In addition, the authorities have carried out searches for bodies in cemeteries³¹⁹ and paramilitary bases,³²⁰ and have investigated the identity of soldiers who were members of the Águila Task Force at the time of the events³²¹ and who operated in the jurisdiction of the Juan Del Corral battalion.³²²

202. Based on the foregoing considerations, it is clear that, in the context of the Justice and Peace process, the Colombian authorities have continuously conducted the relevant procedures. The Court finds that the Commission and the representatives have not presented sufficient evidence to demonstrate that the conduct of the authorities could have caused an unwarranted delay in the proceedings or that if they had acted differently, the process would have been more expeditious.

iv. The effects on the legal situation of the person involved in the process

203. In relation to this element, the Court has held that in order to determine the matter of reasonable time, it is necessary to take into account the adverse effects of the duration of the proceedings on the judicial situation of the person(s) involved, considering among other elements, the matter in dispute. In this regard, this Court has established that if the passage

³¹⁷ Cf. *Case of Myrna Mack Chang v. Guatemala. Merits, reparations and costs*. Judgment of November 25, 2003, para. 211. Series C No. 101, and *Case of Andrade Salmón v. Bolivia. Merits, reparations and costs*. Judgment of December 1, 2016, para. 158.

³¹⁸ Cf. DFNEJT of July 29, 2015, Proceeding No. 20155800013323, Directorate of the National Office of Special Prosecutors for Transitional Justice, page 25. (Evidence file, folio 26337 and 26338).

³¹⁹ Cf. Survey project in the cemeteries of Puerto Triunfo, Puerto Berrio, Puerto Boyacá and Puerto Nare. Search, exhumation, identification and dignified handover of the bodies of victims of Vereda La Esperanza, El Carmen de Viboral. Prosecutor 220, Directorate of the National Office of Special Prosecutors for Transitional Justice (Evidence file, folios 42831 to 42833).

³²⁰ Cf. Official letter No. 312 of October 14, 2015, Special Prosecutor for Transitional Justice (Evidence file, folios 42835 and 42836).

³²¹ Cf. Report of the Judicial Police No. 9-57514 of October 27, 2015. Prosecutor's Office (Evidence file, folio 72852).

³²² Cf. Official response to proceeding No. 233, Law 606/200, ot.22615 of October 27, 2015. Commander of the "Juan Del Corral" Mechanized Cavalry Group No.4 (Evidence file, folio 74585).

of time has a significant impact on a person's legal situation, the proceedings must be carried out more promptly so that the case is settled as soon as possible.³²³ As to the effects caused by the duration of the proceedings on the legal situation of the persons involved, this Court considers that the Commission and the representatives did not provide arguments or reasons to suggest that the authorities should have addressed this process with special promptness, or in a different manner from other similar proceedings. Therefore, the Court considers that it does not have sufficient elements to rule on this last point.

v. Conclusion

204. In conclusion, the Court finds that the duration of the proceedings in the special Justice and Peace jurisdiction is due to its extreme complexity and considers that the case *sub examine* is framed within the context of a massive demobilization process of members of armed groups. This translates into a large number of judicial actions related to thousands of criminal acts and victims that must be investigated simultaneously by the judicial authorities. Therefore, the Court finds no grounds to conclude that the judicial guarantee of reasonable time was violated in the context of the special Justice and Peace process, pursuant to Article 8(1) of the Convention, to the detriment of the direct victims in this case and their next of kin.

B.2. Alleged failure to adequately classify the crime of forced disappearance

205. With respect to the alleged violation of judicial guarantees and judicial protection based on the incorrect classification of the crime of forced disappearance in the domestic proceedings, the representatives considered that an inadequate investigation of the facts could hinder the process because it would prevent an exhaustive investigation encompassing all elements of the crime.

206. In relation to the facts of this case, the Court confirms, first of all, that the crime of forced disappearance was defined in the Colombian legal system through Law 589 of 2000.³²⁴ Prior to this law, the country had no regulatory framework for investigating these types of offenses under this criminal definition and, as a result, the investigation was carried out under the legal definition of homicide.³²⁵ However, the Court notes that in 2009 the Chamber of Criminal Cassation of the Supreme Court of Justice redefined the parameters of the principle of legality,³²⁶ introducing the concept of "flexible legality" into the Colombian legal system,

³²³ Cf. *Case of Valle Jaramillo et al. v. Colombia*, para. 155, and *Case of Workers of Hacienda Brazil Verde v. Brazil*, para. 380.

³²⁴ Law 589 of 2000 establishes the characterization of the crime of Forced Disappearance: Article 1- The Criminal Code shall have new articles of the following tenor: Article 268A. Forced Disappearance. A person who, as a member of an illegal armed group, deprives another individual of his/her liberty, conceals them and refuses to acknowledge such deprivation of liberty or give information on the whereabouts of the person, thus removing that person from the protection of the law, shall be punished with a prison term of twenty-five (25) to forty (40) years, a fine of five hundred (500) to two thousand (2.000) current minimum legal salaries and prohibition to hold public rights or office for five (5) to ten (10) years. Law 589 of 2000, Republic of Colombia. (Evidence file, folio 21518).

³²⁵ Cf. Article 29. Due process shall be applied to all classes of judicial and administrative actions. No one may be tried except in conformity with laws enacted prior to the commission which he is charged, by courts having competent jurisdiction, and in accordance with all formalities proper to each case. In criminal matters, a permissive law or law favorable to the defendant, even if enacted after the commission of the alleged offense, shall be applied in preference to a restrictive or unfavorable law. Every person is presumed innocent until he has been declared legally culpable. Any person accused has the right to a defense and to the assistance of an attorney chosen by him, or *ex officio*, during the investigation and the trial; to a public process without unjustified delays; to present evidence and to rebut the charges made against him; to challenge a conviction and not to be tried twice for the same offense. Any evidence obtained through a violation of due process is null and void.

³²⁶ Cf. Supreme Court of Justice. Criminal Cassation Chamber. Auto Rad. No. 33039, page 34: "It must be emphasized that such flexibility in the principle of legality is applicable exclusively to the four categories of so-called

enabling the Prosecutor's Office to legally reclassify the crimes attributed to some of the accused in this case as crimes of forced disappearance.³²⁷

207. At the same time, the Court notes that in the context of the investigations conducted in the domestic jurisdiction, steps were taken to reveal the participation of members of the armed forces in these events³²⁸ and to determine the whereabouts of the victims.³²⁹ This shows that, regardless of the *nomen iuris*, the investigation was conducted to determine the factual circumstances and examined elements related to the crime of forced disappearance. Also, as mentioned previously, the Prosecutor's Office proceeded to reclassify the crimes, which were subsequently investigated under the legal definition of forced disappearance. Consequently, with regard to the legal classification of the crime committed, this Court considers that the State is not responsible for the violation of Article 8(1) of the American Convention or Article III of the ICFDP.

B.3. Alleged failure to investigate using a differentiated approach

208. The representatives alleged that in the ordinary criminal jurisdiction no special or differentiated approach was used in the investigation related to the minors Juan Crisóstomo Cardona Quintero, Miguel Ancízar Cardona Quintero, Óscar Hemel Zuluaga Marulanda. They argued that in the case of Irene Gallego Quintero, as an alleged victim of gender-based violence, the investigation should have taken this aspect into account, and yet it did not.

209. With regard to this argument, the Court notes that the representatives did not explain which specific measures should have been taken in this case, or how the alleged failure to investigate using a differentiated approach translated into a violation of rights. Moreover, the Court finds that the parties and the Commission did not provide evidence to prove that Irene Gallego Quintero was indeed a victim of gender-based violence. In this regard, it should be recalled that the Court has established that not every violation of human rights committed against a woman systematically implies that the violation is related to her gender.³³⁰

international crimes, that is, the crimes of genocide, aggression, crimes against humanity, and crimes against International Humanitarian Law."

³²⁷ Cf. Proceeding No 233, 21 June 2011, 80th Prosecutor's delegated to the National Human Rights and International Humanitarian Law Unit (Evidence file, folio 13257).

³²⁸ The main actions include: a) special investigative visit to the Fourth Brigade; b) special investigative visit to the Pedro Nel Ospina Battalion of Engineers; c) special investigative visit to the Command Post of the *Héroes de Barbacoas* Battalion; d) special investigative visit to La Piñuela Military Base; e) localization and interrogation of Major C.A.G.; f) statement of Major C.M.J; g) Judicial inspection of the base of the National Army's Ninth Brigade; h) investigation of the identity of the soldiers belonging to the FTA at the time of the events, and i) clarification of the jurisdiction of the Juan del Corral Battalion. Cf. Record of special visit to the Fourth Brigade, National Directorate of Special Investigations, PGN; Record of special visit to the Pedro Nel Ospina Battalion of Engineers, National Directorate of Special Investigations PGN; Record of special visit made to the Command Post of the *Héroes de Barbacoas* Battalion, National Directorate of Special Investigations, PGN; Record of special visit to La Piñuela Military Base, National Directorate of Special Investigations, HR Unit; Proceeding 21005, Code No. 110, FGN; Proceeding No.233, National Directorate of Prosecutions, HR and IHL Unit; Report of the Judicial Police No 9-36172, FGN; Report of the Judicial Police No. 9-57514 of October 27, 2015. Prosecutor's Office, and Response to Official Letter, Case File No. 233 Law 606/200, ot. 22615 of October 27, 2015. Commander of the "Juan Del Corral" Mechanized Cavalry Group No.4 (Evidence file, folios 26819, 26894 to 26896, 26906, 29504, 31743, 72852, and 74585).

³²⁹ In particular: a) Exhumation of bodies in the municipal cemetery of Cocorná; b) Judicial inspection at the paramilitary base of Los Mangos or San Juan; c) Judicial inspection at Finca Los Patios in the Municipality of Sónson; d) neighborhood inquiries from Vereda La Esperanza to Puerto Triunfo – Antioquia and e) genetic comparison with DNA samples of family members. Cf. Record of Exhumation of Bodies, Office of the Attorney General (Evidence file, folio 27464); Report of the Judicial Police 9-4824, Office of the Attorney General (Evidence file, folio 33510); Report of the Judicial Police 9-44048/9-44052, Office of the Attorney General (Evidence file, folio 32880), and Official Letter No. 312 of October 14, 2015, Special Prosecutor 220 Transitional Justice (Evidence file, folios 42835 and 42836).

³³⁰ Cf. *Mutatis mutandis*, Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs. Judgment of May 19, 2014. Series C No. 277, footnote 254; Case of González et al. ("Cotton Field") v.

Therefore, in the case under examination, the Court considers that it does not have sufficient elements to conclude that the State is responsible for a violation of Article 8(1) owing to the lack of a differentiated approach to the investigations based on gender and in respect of the child victims.

B.4. Alleged failure to adopt measures of protection for the participants in the process.

210. The representatives and the Commission alleged that Juan Carlos Gallego and Andrés Gallego reported the events that had been occurring in Vereda La Esperanza and that a few days later, both were detained and disappeared. However, the Court finds no evidence to indicate that their claims were investigated, or the possible connection between those reports and their subsequent disappearance.

211. The Court recalls that in order to guarantee due process the State must facilitate all the means necessary to protect the legal operators, investigators, witnesses and next of kin of the victims from harassment and threats aimed at obstructing the proceeding and avoiding elucidation of the facts, and covering up those responsible for said facts; otherwise, this would have a threatening and intimidating effect on those who investigate and on potential witnesses, seriously affecting the effectiveness of the investigation.³³¹

212. This Court considers it proven that the victims Juan Carlos Gallego Hernández³³² and Andrés Antonio Gallego³³³ had filed complaints with the authorities regarding the events that were occurring in Vereda La Esperanza, and that they subsequently disappeared, one week and five months later, respectively, in circumstances similar to those of the incidents they had reported (*supra* para. 86 to 89, and 100). Furthermore, this Court has already referred to the context of violence in the region and, in particular, to the disappearance of persons who denounced members of the armed groups and those perceived as being members or collaborators of the guerrilla groups. This situation was known to the Colombian authorities and yet, despite this, as the State has acknowledged, they did not implement the necessary measures of protection to prevent the disappearance of these two persons.

213. Therefore, this Court finds that the State did not apply measures of protection for the participants in the proceedings, which translates into a violation of the guarantees established in Article 8(1) of the Convention to the detriment of the direct victims of the events at Vereda La Esperanza and their family members (*infra* para. 236).

B.5. Alleged lack of participation by the victims in the Justice and Peace process

214. Regarding the alleged lack of participation by the victims in the Justice and Peace process, the Court notes that this is based on two arguments, namely: a) that the Prosecutor's Office did not take into account the contributions made by the victims of the events in Vereda La Esperanza, and b) that the regulatory provision does not allow victims to directly request that the judiciary exclude applicants from the Justice and Peace process.

215. In this regard, the Court recalls that victims must have ample opportunities to be heard

México. *Preliminary objection, merits, reparations and costs*. Judgment of November 16, 2009. Series C No. 205, para. 227, and *Case Ríos et al. v. Venezuela. Preliminary objections, merits, reparations and costs*. Judgment of January 28, 2009, Series C No. 194, para. 279.

³³¹ Cf. *Case of Myrna Mack Chang v. Guatemala*, para. 199, and *Case Members of the Village of Chichupac and Neighboring Communities of the Municipality of Rabinal v. Guatemala*, para. 224.

³³² Cf. Statement of Juan Carlos Gallego Hernández of June 30, 1996, Municipal Ombudsman of Cocorná (Evidence file, folio 5853).

³³³ Cf. Complaint filed by Andrés Antonio Gallego Castaño of July 11, 1996, Municipal Criminal Court of Cocorná (Evidence file, folio 26562).

and to act in their respective proceedings, in clarifying the facts, in the determination of those responsible, or in seeking due reparation.³³⁴

216. In this case, and in relation to the first point, although the representatives did not provide additional elements of information and analysis other than their arguments, it is clear from the body of evidence that the victims participated actively in the Justice and Peace process,³³⁵ to the point where they managed to achieve the reclassification of the crime under investigation, through their request. Moreover, despite their assertions, both the Commission and the representatives indicated that the next of kin have been able to participate actively in the process.³³⁶

217. As to the supposed lack of participation owing to a lack of competence to directly request the judiciary to exclude applicants, the Court notes that the representatives did not explain why this constitutes a violation of the right to judicial guarantees established in the American Convention. Based on the information provided on the Justice and Peace proceedings, the Court confirms that victims have the possibility of requesting that the Prosecutor's Office exclude applicants, and that in this case they effectively proceeded to do so.³³⁷ In relation to that point, Colombia's Supreme Court of Justice indicated that this is based on the fact that the prosecutors are the ones who must demonstrate to the judges that the applicant did not fulfil his commitments and should therefore be excluded. The Supreme Court also indicated that the exclusion of an "applicant" is a sanction that should be governed by the principle of culpability; therefore, it must be proved that the individual is culpable for the behavior that warrants the sanction.³³⁸

218. Thus, the Court finds that in this process the State acted in accordance with its own case law regarding the State's duty to ensure that victims can make their claims and present evidentiary elements in their respective proceedings, and that these will be analyzed completely and thoroughly by the authorities before a decision is taken on the facts, responsibilities, punishments and reparations.³³⁹ Therefore, on this matter, the Court considers that the Colombian State is not responsible for violating the judicial guarantees established in Article 8(1) of the Convention to the detriment of the direct victims and their next of kin.

B.6. Alleged violation of the right to the truth

219. The Court notes that the representatives and the Commission presented several arguments alleging the violation of the right to know the truth, considering that this right was violated owing to: a) the delay in opening an effective investigation to clarify the facts, which resulted in the State failing in its duty to develop the mechanisms necessary to uncover the truth of what happened and to take steps to determine the whereabouts of the bodies of the

³³⁴ Cf. *Case of Baldeón García v. Peru. Merits, reparations and costs*. Judgment of April 6, 2006. Series C No. 147, para. 146, and *Case of Wong Ho Wing v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of June 30, 2015. Series C No. 297, para. 228.

³³⁵ Cf. Transcript of hearing, Case No. 557, Massacre of La Esperanza, August 20, 2015 (Evidence file, folios 42720 to 42767) and Transcript of voluntary confession, Massacre of La Esperanza, November 27, 2015 (Evidence file, folios 42770 to 42821).

³³⁶ Merits Report N° 85/13 of November 4, 2013 (Merits file, folio 88), and final written arguments of the representatives (Merits file, folio 2029).

³³⁷ Cf. Information submitted by *Corporación Jurídica Libertad* (Evidence file, folio 25434 and 25435) and Official Letter No. 1094, of May 7, 2014, Office of the Attorney General (Evidence file, folio 25436).

³³⁸ Cf. Supreme Court of Justice, Criminal Cassation Chamber. Judgment Rad. No. 45455, 20 May 2015.

³³⁹ Cf. *Case of Ximenes Lopes v. Brazil. Merits, reparations and costs*. Judgment of July 4, 2006. Series C No. 149, para. 193, and *Case of Wong Ho Wing v. Peru*, para. 228.

disappeared victims; b) failure to verify the voluntary confessions made by applicants in the context of the Justice and Peace process, and c) failure to exclude R.I.A. from the Justice and Peace process given the alleged falsehoods in his testimonies.

220. Regarding the right to the truth, the Court recalls that everyone - including the next of kin of the victims of serious human rights violations - has the right to know the truth. Consequently, the victims' families and society must be informed of everything that happened and the identity of those responsible for those violations.³⁴⁰ Although the right to know the truth has basically been framed within the right of access to justice,³⁴¹ the right to truth is autonomous, since it is of a broad nature and its violation may affect other rights enshrined in the American Convention,³⁴² depending on the particular context and circumstances of the case. In its case law, and particularly in cases of forced disappearance, the Court has considered that the right to know the whereabouts of disappeared victims is an essential component of the right to know the truth. As to the State's alleged refusal to conduct an effective investigation, the Court refers to its comments in this judgment on this point, and emphasizes that with regard to the search for those involved it was confirmed that since 1996, a number of exhumations have been carried out in municipal cemeteries, as well as interviews, judicial inspections and searches on the banks of a river in the area.³⁴³

221. Although this Court positively assesses all the actions and efforts made by the Colombian State to establish the whereabouts of the disappeared victims, the fact is that more than 20 years have elapsed without their whereabouts being determined. As this Court has recognized in its case law on forced disappearance of persons, one of the essential components of the right to know the truth is the right of families to know the whereabouts of their disappeared loved ones. Therefore, until the whereabouts of the victims in this case is determined, the Colombian State is responsible for the violation of the right to the truth, since the victims' family members are unable to enjoy this right while such uncertainty persists. Indeed, uncertainty regarding the whereabouts of their loved ones is one of the main sources of mental and moral anguish suffered by the family members of disappeared victims.

222. Regarding the failure to verify the "voluntary confessions" made by the applicants, as this Court has noted previously, the authorities carried out numerous procedures to prove and investigate the assertions made in the confessions provided by the demobilized combatants who applied for the benefits of the Justice and Peace Law, including the search

³⁴⁰ Cf. *Case of Trujillo Oroza v. Bolivia. Reparations and costs*. Judgment of February 27, 2002. Series C No. 92, para. 100, and *Case Members of the Village of Chichupac and Neighboring Communities of the Municipality of Rabinal v. Guatemala*, para. 260.

³⁴¹ Cf., *inter alia*, *Case of Velásquez Rodríguez v. Honduras. Merits*, para. 181; *Case of Bámaca Velásquez v. Guatemala. Merits*. Judgment of November 25, 2000. Series C No. 70, para. 201; *Case Barrios Altos v. Peru. Merits*. Judgment of March 14, 2001. Series C No. 75, para. 48; *Case of Almonacid Arellano et al. v. Chile. Preliminary objections, merits, reparations and costs*. Judgment of September 26, 2006. Series C No. 154, para. 148; *Case of La Cantuta v. Peru. Merits, reparations and costs*. Judgment of November 29, 2006. Series C No. 162, para. 222; *Case Heliodoro Portugal v. Panama*, paras. 243 and 244; *Case of Kawas Fernández v. Honduras. Merits, reparations and costs*. Judgment of April 3, 2009. Series C No. 196, para. 117, and *Case of Members of the Village of Chichupac and Neighboring Communities of the Municipality of Rabinal v. Guatemala*, para. 260.

³⁴² In its study on the right to know the truth, the United Nations High Commissioner for Human Rights notes that different statements and international instruments have recognized that the right to know the truth is linked to the right to seek and obtain information, the right to justice, the duty to combat impunity in relation to human rights violations, the right to an effective judicial remedy and the right to privacy and family life. Also, in relation to the next of kin of the victims, it has been linked with the right to integrity (mental health) of the victim's next of kin, the right to obtain reparation in cases of serious human rights violations, the right to not be subject to torture or mistreatment and, in certain circumstances, the right of children to receive special protection. Cf. Report of the Office of the United Nations High Commissioner for Human Rights. *Study on the Right to the Truth*, U.N. Doc. E/CN.4/2006/91, February 8, 2006.

³⁴³ Cf. Office of the Attorney General, Proceeding No. 233. Books 3 and 20 (Evidence file, folios 27464 and 32847).

for and exhumation of skeletal remains in areas where paramilitary operations were carried out. The Court also recalls that both the Commission and the representatives based many of their *de facto and de jure* arguments on statements made during the voluntary confessions of the applicants, especially that of R.I.A. Finally, the Court reiterates that it is not its task to establish the manner in which the voluntary confessions are to be verified, or how they should be assessed in the domestic jurisdiction, since the State's competent organs have already established criteria in this regard, which have been positively assessed by this Court in other cases involving Colombia.³⁴⁴ In addition, some of the proceedings are still ongoing and the judicial truth is being developed. Consequently, this assessment must be made in due course by Colombia's domestic courts.

223. As to the alleged failure to comply with Law 975 on Justice and Peace with respect to the applicants who do not meet its requirements, this refers to a factual aspect that depends on the evidence provided to the Court, which is not substantiated in this specific case, given that the mere presence of contradictions in the voluntary confessions does not necessarily imply an infringement of the legal requirements. Thus, the Court does not find it pertinent to assess any contradictions that may arise in the voluntary confessions, given that the Colombian jurisdictional bodies have established clear criteria in this regard, which have been recognized as reasonable and sufficient by this Court.³⁴⁵ Therefore, this Court reiterates that it cannot act as a court of fourth instance and that it is not responsible for reviewing the legality of domestic judicial proceedings. Such an analysis would only be appropriate in the event of an obvious or flagrant deviation from the provisions of the domestic laws. In this specific case, there is insufficient evidence to conclude that this occurred.

224. The representatives of the victims also argued that in this case the State should be considered internationally responsible for the failure to ensure a proportional sanction, given that the applicants have not contributed significantly to the construction of the truth and, consequently should not be granted the benefit of the alternative penalties established in the Justice and Peace process.³⁴⁶ First of all, the Court notes that the representatives' argument is specifically limited to the application of the rules established in the Justice and Peace process to the specific case. Neither the Commission nor the representatives question, *in abstracto*, the proportionality of the benefit of the alternative punishment applied to convicted applicants who meet the requirements of Law 975. In second place, the Court finds that this argument is related to effective compliance with the requirements of the Justice and Peace Law, a matter that was already addressed in this section without finding sufficient elements

³⁴⁴ Cf. *Case of the Displaced Afro-descendant Communities of the Cacarica River Basin (Operation Genesis) v. Colombia*, paras. 74 and 75. See: Supreme Court of Justice of Colombia, Criminal Cassation Chamber, proceeding 31539, Judgment of July 31, proceeding 32022, September 21, 2009, and proceeding 34423, Judgment of August 23, 2011. See, also: proceeding 30775, Judgment of February 18, 2009, proceeding 29992, Judgment of July 28, 2008, and proceeding 32022, Judgment of September 21, 2009.

³⁴⁵ In this regard, in the *Case of the Displaced Afro-descendant Communities of the Cacarica River Basin (Operation Genesis) v. Colombia* the Court stated that "Regarding the validity of the contradictory statements and confessions, the Court considers that the different versions of these deponents must be analyzed taking into consideration whether any measures have been taken to verify to what extent they are true. In addition, the said statements must be compared with the whole body of evidence, the description of the events and, in particular, in the case of confessions by paramilitaries, the *modus operandi* and elements of context relating to the paramilitary group to which the individual in question belonged must be taken into consideration." Cf. *Case of the Displaced Afro-descendant Communities of the Cacarica River Basin (Operation Genesis) v. Colombia*, para. 71. As to the special Justice and Peace process, the Supreme Court of Colombia stated that "the simple retraction of a deponent for the prosecution cannot inexorably lead to the rejection of his previous statements." Similarly, the Supreme Court indicated that the members of illegal organized groups are involved in criminal acts that, since they are perpetrated repeatedly, cease to be extraordinary acts and become routine events that can easily be confused, forgotten or mixed up with other events with similar characteristics, and require a much more flexible analysis of the testimony. Cf. Supreme Court of Justice of Colombia, Criminal Cassation Chamber, proceedings 32672 and 32805, Judgments of December 3, 2009, and February 23, 2010.

³⁴⁶ Cf. Final written arguments of the representatives (Merits file, folios 2033 and 2034).

to determine that the Colombian authorities failed to ensure judicial guarantees by not excluding certain applicants from the Justice and Peace process.

225. Finally, as it has stated in other cases related to the Justice and Peace process, this Court recalls that the right to judicial truth cannot depend solely on the voluntary confession of the applicants; that version of events constitutes only one of the elements upon which the judicial truth of what happened may be determined. In this regard, it is pertinent to mention the observations of the Justice and Peace Chamber of the Superior Court of the Judicial District of Bogotá, which indicated that “attempts to reconstruct the truth of what took place with the paramilitary blocs in various regions of the country are unfinished documents, subject to improvement, reworking and refinement. The truth and constructions of the past will never be absolute and declared truths; they will be reconstructions that can be enriched with additional sources and perspectives or analyses, so that the history and its investigation will always be perfectible.”³⁴⁷ In this regard, the Court recalls that the judicial truth must also be constructed through the analysis carried out by the domestic courts using this and other evidentiary means that may be available.³⁴⁸

226. Based on the foregoing considerations, the Court finds that the State is responsible for the violation of the right to the judicial truth, pursuant to Articles 8(1) and 25 of the American Convention, to the detriment of the disappeared victims and their next of kin, given that more than 20 years have elapsed without their whereabouts being determined.

B.7. Mechanism of prioritization and patterns of macro-criminality

227. The *representatives* stated that the investigation of the forced disappearances in Vereda La Esperanza was prioritized by decision of the Attorney General’s Office, both in the ordinary justice system, and in the Justice and Peace process. However, they indicated that they did not know which criteria and parameters were used by the investigating agency to establish the priorities or the mechanisms and proceedings used to develop the hypotheses for the criminal investigation and to explain the patterns of crime.

228. The Court notes, in the first place, that the need to use the “prioritization” mechanism to rationalize criminal prosecution is not a matter of dispute between the parties and the Commission. Moreover, it is consistent with the views of different international bodies, such as the U.N. Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees

³⁴⁷ Cf. Superior Court of the Judicial District of Bogotá, Justice and Peace Chamber, Judgment of February 26, 2016 (Evidence file, folio 43310). The Court stated that it hoped that “from the perspective of Transitional Justice,” it may “contribute to the different ways of making historical memory, and, in particular, strengthen the implementation of the non-judicial mechanism to contribute to the truth [...] so that in a more integral manner, the State can ensure the right to the truth and guarantees of non-repetition as mechanisms that ensure a process of national reconciliation.”

³⁴⁸ Cf. *Case of the Displaced Afro-descendant Communities of the Cacarica River Basin (Operation Genesis) v. Colombia*, para. 78.

of Non-recurrence;³⁴⁹ the MAPP-OAS,³⁵⁰ and the Inter-American Commission itself.³⁵¹

229. In addition, the Court notes that the criteria used to prioritize the ACMM's criminal activities, which include the facts of this case, are consistent with those established in Directive N° 0001 of October 4, 2012, of the Attorney General's Office.³⁵² Consequently, this Court is in no doubt that the criteria used to investigate the crimes attributed to the ACMM, which include those committed in Vereda La Esperanza, were clear.

230. As to the argument regarding the alleged failure to assess the patterns of macro-criminality in this specific case, the representatives argued that the identification of criminal patterns has been equated with the identification of the most characteristic crimes. They argued that this erroneous construction of the context has prevented the Prosecutor's Office from establishing the links between members of the security forces and the economic and political sectors that supported and benefited from the actions of the ACMM. For its part, the State indicated that since 2012, the year in which the prioritization policy for the investigation of cases was implemented, it has identified four policies or objectives of the paramilitary organization, namely: (i) wage an anti-subversive struggle; (ii) exercise territorial control; (iii) achieve social control over the population in whose territories they operate, and (iv) establish control over local resources for its own use, or for the use of its support networks, mainly in the regional or local sphere.

231. In relation to this point, the Court reiterates that it cannot act as a court of fourth instance and that it is not responsible for ruling on the efficacy of a particular prioritization mechanism established at national level in relation to another. Such an analysis would only be appropriate in the event of an obvious or flagrant deviation from a domestic provision that is in breach of the obligation of due diligence or of the judicial guarantees protected under the American Convention, a situation that is not clearly apparent in this case.

232. Lastly, with respect to the investigation of possible links between the actions of demobilized combatants and those carried out with the security forces, as indicated by several expert witnesses during the hearing, the Justice and Peace process is solely concerned with members of illegal armed groups who were demobilized. Nevertheless, as recognized in the

³⁴⁹ In this regard, the United Nations Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence, has stated that: "Countries in transition, whether post-authoritarian, post-conflict or which combine features of both, are characterized by a large number of crimes committed with the involvement of possibly several thousands of individuals, leaving behind a massive number of victims. Prosecuting and judging all of those responsible at the outset of a transition might be simply impossible, especially considering the credibility, capability and resource constraints faced almost inevitably by judiciaries in the aftermath of repression and/or conflict, particularly in weakly institutionalized contexts." United Nations Report A/HRC/27/56, August 27, 2014.

³⁵⁰ The Mission to Support the Peace Process in Colombia recommended that the Attorney General's Office focus its efforts and those of its teams of prosecutors on investigating patterns of macro-criminality, based on legally established criteria of prioritization and selection, and, from that very moment, based on its own investigative criteria, direct its efforts on examining those cases that meet the aforementioned guidelines. Among the cases that should be prioritized are, obviously, those involving the leaders responsible, and the investigation of the paramilitary blocs for the massacres committed. Although the law is made to favor those who submit to it, it is necessary to address any aspect that favors impunity. The manner in which society perceives each decision and the reaction of the victims are key to the success of a Transitional Justice process. Diagnostic Study of Justice and Peace in the context of Transitional Justice in Colombia, 2011. MAPP-OAS.

³⁵¹ In Chapter IV of its 2011 Annual Report concerning Colombia, the Commission, citing the MAPP-OAS, indicated that "a radical change is needed in the strategy for investigating international crimes based on the adoption of criteria for selection and prioritization." In addition, in the Fourth Report on the Human Rights Situation in Colombia of 2013 it stated that "the concept of prioritization would, in principle, be consistent with the importance and necessity of judicially establishing the responsibility of the most important leaders." Annual Report 2011, Chapter IV, Colombia, para. 91 and Annual Report of the IACHR 2013: Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia, para. 45.

³⁵² Cf. Superior Court of the Judicial District of Bogotá, Justice and Peace Chamber, Judgment of February 26, 2016 (Evidence file, folio 43419 *et seq.*).

case law of the Justice and Peace courts, in the context of those investigations valuable information was collected related to the support structures provided by the paramilitary groups to the security forces.³⁵³ Based on information contained in the file, which was not disputed by any of the parties, the Court finds that in general, the investigations conducted in the context of the Justice and Peace process have facilitated the start of investigations and trials in the ordinary justice system through the mechanism of certification of copies. Out of a total of 15,743 certifications of copies (as of 2016), 378 judgements have been handed down, 8,483 cases are ongoing and of these, 2,793 are in the investigation stage. This means that 13,108 persons are currently being investigated including public servants, tradesmen, members of the armed forces and private citizens.³⁵⁴

233. Based on the foregoing considerations, the Court concludes that it does not have sufficient elements to conclude that the State is responsible for violating the judicial guarantees contained in Article 8(1) of the Convention, and in Article I.b of the ICFDP, to the detriment of the direct victims and their next of kin, through the application by the Prosecutor's Office of the prioritization mechanism to this specific case, or the investigation of patterns of macro-criminality through that same mechanism.

B.8. Alleged lack of due diligence in the initial investigation in the ordinary justice system

234. The *representatives* alleged a lack of consistency between the ordinary jurisdiction and the transitional justice system because the latter can only examine cases in which the accused is a demobilized combatant seeking to benefit from Law 975 of 2005. They added that the system of certification of copies by the Justice and Peace jurisdiction for the ordinary jurisdiction is problematic because it does not allow for progress in the investigations.

235. With respect to this matter, the Court has referred in general terms to the system of certification of copies based on the findings in the special Justice and Peace jurisdiction forwarded to the ordinary justice system (*supra* para. 232). Nevertheless, the Court notes it has no information to indicate that in this case the certification of copies ordered through Official Letter N° 783 of February 27, 2009,³⁵⁵ to investigate the participation of members of the armed forces in the events related to the case under examination, would have delayed the investigations until June 26, 2016, that is, more than seven years after being ordered. Therefore, the Court considers that the State is responsible for failure to initiate those investigations, in violation of the judicial guarantees established in Article 8(1) of the Convention, and in Article I. b of the ICFDP, to the detriment of the direct victims and their next of kin (*infra* para. 236).

³⁵³ The Justice and Peace Chamber noted that "the Prosecution's reconstruction of the events that affected the population has revealed the crimes committed most frequently and their direct effects, not only on the structure and culture of the communities, but on the social and economic control of the territories. These include different types of actions carried out under specific policies and strategies in the different regions, with a structured and planned *modus operandi*, through which the paramilitary groups achieved their objectives. In this case, in regions under the influence of the *Autodefensas Campesinas de Córdoba and Urabá*, the strategy included the systematic and/or widespread commission of the following crimes: massacres, indiscriminate and selective homicides, forced disappearances; indiscriminate and selective torture, forced displacements, land grabs and illegal recruitment." Judgment of First Instance – Justice and Peace, Proceeding No. 2006-82611, M.P. Rubén Darío Pinilla Cogollo.

³⁵⁴ Cf. Affidavit rendered by Carlos Fidel Villamil Ruíz, an expert witness proposed by the State, on June 8, 2016 (Evidence file, folios 41920 to 41925).

³⁵⁵ Cf. Official Letter no. UNFJYP-D47-2306 of December 31, 2013 of the 47th Prosecutor assigned to the National Justice and Peace Unit, referring to Official Letter 783 of February 27, 2009, which ordered the certification of copies of the confession of R.A.I. in order to investigate the possible participation of General A.M. and Major D.H. in the events of Vereda La Esperanza (Evidence file, folio 25324).

B.9. Conclusion

236. Based on the foregoing, the Court considers that the State did not fulfill its obligation to ensure the protection of the participants in this proceeding, or to ensure the right of the victims' families to know the truth regarding the forced disappearances. Moreover, it has not fulfilled its obligation to initiate investigations in the ordinary justice system following the certification of copies from the special Justice and Peace jurisdiction. Consequently, the State is responsible for the violation of the right to judicial guarantees and judicial protection established in Articles 8(1) and 25 of the American Convention in relation to Article 1(1) of that instrument, and in Article I. b of the ICFDP, to the detriment of the direct victims³⁵⁶ and their next of kin.³⁵⁷

VIII.3. RIGHT TO PROPERTY³⁵⁸ AND INVIOABILITY OF THE HOME³⁵⁹

A. Arguments of the parties

237. The *Commission* and the *representatives* recalled that on June 26, 1996, military agents of the FTA fired shots at the residence of José Gallego Quintero, and subsequently entered and destroyed the house as well as the possessions inside. The *representatives* also recalled that it was proven that during the "military attack of June 26, 1996, by the National Army, his home was totally destroyed, including the household furniture and appliances" and that as a result of "this situation, the family was forced to leave their home and move away to live with [Mr. Gallego's] daughters." Therefore, they concluded that the State violated the right to property established in Article 21 of the Convention, to the detriment of José Gallego Quintero and his wife María Engracia Hernández.

238. The *State* acknowledged its responsibility for the violation of that right, owing to the failure to investigate the facts related to the alleged damage caused to the property of José Eliseo Gallego Quintero.

239. Furthermore, despite the fact that neither the Commission nor the representatives expressly alleged a breach of Article 11(2) of the Convention for the violation of the right to the inviolability of the home in this case, that does not preclude the Court from examining it, by virtue of a general principle of law, *iura novit curia*, on which international jurisprudence has repeatedly relied and under which a court has the power and the duty to apply the juridical provisions relevant to a proceeding, even when the parties do not expressly invoke them.³⁶⁰

³⁵⁶ These persons are: 1) Aníbal de Jesús Castaño; 2) Óscar Zuluaga Marulanda; 3) Juan Crisóstomo Cardona Quintero; 4) Miguel Ancizar Cardona Quintero; 5) Juan Carlos Gallego Hernández; 6) Jaime Alonso Mejía Quintero; 7) Octavio de Jesús Gallego Hernández; 8) Hernando de Jesús Castaño Castaño; 9) Orlando de Jesús Muñoz Castaño; 10) Andrés Antonio Gallego; 11) Irene de Jesús Gallego Quintero; 12) Leonidas Cardona Giraldo and 13) Javier Giraldo Giraldo, as well as their next of kin.

³⁵⁷ These persons are listed in Footnote 1.

³⁵⁸ Article 21 of the Convention establishes: "Right to Property. 1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society. 2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law. [...]".

³⁵⁹ Article 11(2) of the Convention establishes: "No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation."

³⁶⁰ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, para. 163, and *Case of I.V. v. Bolivia*, para. 151.

B. Considerations of the Court

240. In its case law the Court has developed a broad concept of private property, including the use and enjoyment of “property” defined as those material objects that may be appropriated, and also any right that may form part of a person’s assets; this concept includes all movable and immovable property, corporal and incorporeal elements, and any other intangible object of any value.³⁶¹ The Court has also considered it necessary to take into account the circumstances in which the events took place and, in particular, the socioeconomic situation and vulnerability of the victims, and the fact that the damage caused to their property might have a greater effect and impact than it would have had for other persons or groups in other conditions. In that regard, the States should be mindful that groups of people who live in adverse circumstances and with fewer resources, such as those living in conditions of poverty, face an increased degree of impairment of their rights precisely because of their situation of increased vulnerability.³⁶²

241. Furthermore, the Court has considered that the destruction of homes whose inhabitants live in basic conditions, in addition to constituting a major financial loss, causes them to lose their most basic living conditions, which means that the violation of the right to property in this case was particularly serious.³⁶³ Accordingly, this Court finds it pertinent to make some additional observations on the inviolability of the home and private life from the perspective of Article 11(2) of the Convention,³⁶⁴ and on the right to housing, taking into consideration that although every home is subject to protection under the right to property, not all property is necessarily a home.³⁶⁵

242. In other cases, the Court has considered that the sphere of privacy is characterized by being exempt from and immune to abusive and arbitrary invasion or attack by third parties or the public authorities.³⁶⁶ In this regard, an individual’s home and private life are intrinsically connected, because the home is the space in which private life can evolve freely.³⁶⁷

243. Thus, in cases involving similar situations, this Court has considered that the illegal intrusion of armed forces into a home constitutes an abusive and arbitrary interference in the private life and home of the persons affected.³⁶⁸

244. In this case, the Court notes that José Eliseo Gallego Quintero lived in Vereda La

³⁶¹ Cf. *Case of Ivcher Bronstein v. Peru. Reparations and costs*. Judgment of February 6, 2001. Series C No. 74, paras. 120-122, and *Case of Yarce et al. v. Colombia*, para. 257.

³⁶² Cf. *Case of the Santo Domingo Massacre v. Colombia*, para. 273, and *Case of the Displaced Afro-descendant Communities of the Cacarica River Basin (Operation Genesis) v. Colombia*, paras. 55 and 350.

³⁶³ Cf. *Case of the Ituango Massacres v. Colombia* para. 182, and *Case of the Displaced Afro-descendant Communities of the Cacarica River Basin (Operation Genesis) v. Colombia*, para. 352.

³⁶⁴ Cf. *Case of the Ituango Massacres v. Colombia*, para. 192.

³⁶⁵ Cf. *Mutatis mutandi Case of the Ituango Massacres v. Colombia*, paras. 182 and 183; *Case of the Barrios Family v. Venezuela. Merits, reparations and costs*. Judgment of November 24, 2011. Series C No. 237, paras. 148 to 150; *Case of Uzcátegui et al. v. Venezuela. Merits and reparations*. Judgment of September 3, 2012. Series C No. 249, para. 206; *Case of the Massacres of El Mozote and Nearby Places v. El Salvador*, para. 202; *Case of the Santo Domingo Massacre v. Colombia*, para. 274; *Case of the Displaced Afro-descendant Communities of the Cacarica River Basin (Operation Genesis) v. Colombia* para. 352; *Case of the Peasant Community of Santa Bárbara v. Peru*, para. 352, and *Case of Yarce et al. v. Colombia*, para. 262.

³⁶⁶ Cf. *Case of the Ituango Massacres v. Colombia*, para. 194, and *Case of Yarce et al. v. Colombia*, para. 255.

³⁶⁷ Cf. *Case of the Ituango Massacres v. Colombia*, paras. 193 and 194, and *Case of the Peasant Community of Santa Bárbara v. Peru*, para. 200.

³⁶⁸ Cf. *Case of the Massacres of El Mozote and Nearby Places v. El Salvador*, para. 182, and *Case of Escué Zapata v. Colombia. Merits, reparations and costs*. Judgment of July 4, 2007. Series C No. 165, para. 96.

Esperanza, that his main activity was farming and that he owned a house in this village.³⁶⁹ The Court also considers it proven that members of the Colombian armed forces arrived at his home on June 26, 1996, ordered him and his family to open the door and began to shoot into the house, causing damage not only to the building but also to the possessions inside.³⁷⁰ According to statements contained in the body of evidence "all that dust and smoke nearly choked [us], there were bursts of gunfire from their rifles and from M 60s; we were shouting, help, please don't shoot anymore, we're a family; then they began throwing grenades but in another direction. The bullets went into the closet and went through everything inside, crockery, books, clothes; there were splinters in the chiffonier, they almost knocked the wall down, the roof was turned into a sieve [...], a sheet of glass was left in pieces, the bags of salt and supplies were destroyed and their contents spilt everywhere, the lamps were all shattered, the glass vases, mirrors, paintings, diplomas, everything was destroyed, everything in the kitchen was smashed, the brand new pressure cooker was pierced (by bullets), a guitar that I had borrowed worth 100,000 pesos was destroyed ... even the holy bible has a bullet embedded in it."³⁷¹ According to the testimony of P.P.M., "that little house was wiped out, those bullets [hit] with such force, that they left holes in all the roof tiles [*eternit*]."³⁷²

245. In addition, the Court notes that the evidence file includes several reports issued by a commission comprised of the Attorney General's Office, the Office of the Human Rights Ombudsman and the Office of the Municipal Ombudsman confirming the presence of cans, bags, and ammunition pouches for rifles used by the Army and marked with their logos³⁷³ and that a further report prepared by the Regional Directorate of the Technical Investigation Corps stated that "all these items were left in the hands of the [PGN], Office of Special Investigations."³⁷⁴ The State did not present arguments or evidence to refute these allegations and, to the contrary, acknowledged its responsibility for those facts (*supra* para. 16, point f).

246. In relation to the all foregoing, it is clear that the forced entry and the damage caused to the home of Mr. José Eliseo Gallego Quintero and his wife María Engracia Hernández are attributable to the National Army. Therefore, the Court considers that the State is responsible for the violation of Articles 11(2) and 21 of the Convention in relation to Article 1(1) of the same instrument, to the detriment of José Gallego Quintero and his wife María Engracia Hernández, who were the owners of the property that was affected.

³⁶⁹ Cf. Municipal Ombudsman of El Carmen de Viboral, statement of J.E.G. dated July 19, 1996 (Evidence file, folio 5834), and Contract of Sale and transfer of Property Rights, dated October 22, 1986 (Evidence file, folios 20971 and 20972).

³⁷⁰ Cf. Municipal Ombudsman of El Carmen de Viboral, statement of José Eliseo Gallego Quintero, of July 19, 1996 (Evidence file, folio 5834), and Municipal Ombudsman of Cocorná, Statement of J.C.G. of June 30, 1996 (Evidence file, folio 5853).

³⁷¹ Municipal Ombudsman of Cocorná, statement of J.C.G. dated June 30, 1996 (Evidence file, folio 5853).

³⁷² Sworn statement of P.P.M. of April 6, 2005. Folios 192-199, Book No. 10, Proceeding 233 UNDH – DIH (Evidence file, folio 12261)

³⁷³ Cf. Office of the Attorney General, Report of the Judicial Police N° 530 dated October 25, 1996 (Evidence file, folio 9157); Regional Directorate, Technical Investigation Corps, Report N° 084 addressed to the Head of Special Investigations, dated November 27, 1996 (Evidence file, folio 9171), and Municipal Ombudsman of Cocorná, Official Letter N° 060 dated August 5, 1996 (Evidence file, folio 9229).

³⁷⁴ Regional Directorate, Technical Investigation Corps, Report N° 084 addressed to the Head of Special Investigations on November 27, 1996 (Evidence file, folio 9171).

VIII.4 RIGHT TO PERSONAL INTEGRITY OF THE NEXT OF KIN OF THE DISAPPEARED AND EXECUTED VICTIMS

A. Arguments of the parties and of the Commission

247. The *Commission* argued that the State violated the right to mental and moral integrity enshrined in Article 5(1) of the Convention to the detriment of the family members of the victims in this case,³⁷⁵ owing to the anguish they have suffered in their search for justice for the forced disappearance of their loved ones, the absence of effective protection and the deep suffering and radical change in their lives. The *representatives* added that “[t]he next of kin of the victims in this case have experienced deep suffering as a result of the forced disappearance of their loved ones, which is greatly increased in the case of the disappearance of the three children [Óscar Zuluaga Marulanda, Juan Crisóstomo Cardona Quintero and Miguel Ancízar Cardona Quintero].” They stressed that the forced disappearance of the victims caused a rupture within these families, which continues today. Therefore, they concluded that the Colombian State is responsible for the violation of the right to personal integrity, under Article 5 of the Convention, to the detriment of the family members of the victims in this case.

248. The *State* acknowledged its “international responsibility for the violation of the rights of the direct next of kin of the victims.” In this regard, it “recogniz[ed] the violations stemming from the feelings of anguish, pain and uncertainty suffered by these individuals, as a result of the absence of information on the specific circumstances in which the events took place.”

B. Considerations of the Court

249. The Court has established that the families of victims of human rights violations may, in turn, be victims.³⁷⁶ The Court has indicated that in cases involving the forced disappearance of persons, it is possible to consider that the violation of the right to integrity of the victims’ next of kin is a direct consequence of that situation, which causes them severe suffering. This suffering is exacerbated, among other factors, by the authorities’ constant refusal to provide information regarding the whereabouts of the victims or to conduct an effective investigation to clarify the facts.³⁷⁷ The Court has also indicated that the violation of the right to mental and moral integrity of the direct next of kin of victims of certain human rights violations can be declared by applying a presumption *iuris tantum* with regard to mothers and fathers, daughters and sons, husbands and wives and permanent companions, provided that this responds to the specific circumstances of a case. With regard to these direct next of kin, it is for the State to disprove their claim.³⁷⁸ That same presumption may also be applied to the sisters and brothers of disappeared victims, unless the contrary is demonstrated in the specific circumstances of the case.³⁷⁹

250. These situations and their effects, which form an integral part of the complex

³⁷⁵ The Court considered that the relatives of the victims in this case are the persons listed in paragraph 1 of this judgment.

³⁷⁶ Cf. *Case of Castillo Páez v. Peru. Merits*. Judgment of November 3, 1997. Series C No. 34, fourth operative paragraph, and *Case of Favela Nova Brasília v. Brazil*, para. 269.

³⁷⁷ Cf. *Case of Blake v. Guatemala. Merits*. Judgment of January 24, 1998. Series C No. 36, para. 114, and *Case of Tenorio Roca v. Peru*, para. 256.

³⁷⁸ Cf. *Case of Valle Jaramillo et al. v. Colombia*, para. 119, and *Case of Quispialaya Vilcapoma v. Peru*, para. 244.

³⁷⁹ Cf. *Case of Gudiel Álvarez et al. (“Diario Militar”) v. Guatemala. Merits, reparations and costs*. Judgment of November 20, 2012. Series C No. 253, para. 253, and *Case of Tenorio Roca v. Peru*, para. 254.

phenomenon of forced disappearance, persist over time as long as the lack of information regarding the final whereabouts of the disappeared victims continues.³⁸⁰

251. In this specific case, the Court finds that the physical and emotional exhaustion resulting from the events and the search for justice, has had a negative impact on the personal integrity of the victims' family members. Also, given the State's acknowledgment of responsibility (*supra* para. 16), the Court considers that the violation of the right to integrity of the victims' next of kin may be presumed. Furthermore, based on the statements and testimonies, as well as on reports concerning the collective psychosocial impact on the victims' families, it is clear that their personal integrity was affected.³⁸¹

252. Therefore, the Court considers that, as a direct consequence of the forced disappearance of the twelve victims in this case, and of the execution of Javier Giraldo Giraldo, their next of kin³⁸² have experienced profound suffering and anguish to the detriment of their mental and moral integrity. Accordingly, the Court concludes that the State is responsible for the violation of Article 5(1) of the American Convention, in relation to Article 1(1) of the same instrument, to the detriment of the next of kin of the victims in this case.

IX REPARATIONS (Application of Article 63(1) of the American Convention)

253. Based on the provisions of Article 63(1) of the Convention,³⁸³ the Court has indicated that any violation of an international obligation that has caused harm entails the duty to

³⁸⁰ Cf. *Case of Goiburú et al. v. Paraguay* para. 103, and *Case of Tenorio Roca v. Peru*, para. 257.

³⁸¹ Cf. Expert assessment of psychosocial damage at the collective level carried out by Yeiny Carolina Torres Bocachica and Hada Luz García Méndez with relatives of the victims in this case, on June 10, 2016 (Evidence file folios 35140 to 35194). See also, *inter alia*: affidavit rendered by Jessica Natalia Cardona Quintero on June 4, 2016 (Evidence file, folios 34994 and 34995); affidavit rendered by Diana Marcela Quintero on June 7, 2016 (Evidence file, folio 35001); affidavit rendered by Sandra Liliana Zuluaga Marulanda on June 3, 2016 (Evidence file, folios 35009 and 35010); affidavit rendered by Arbey Esteban Zuluaga Marulanda on June 4, 2016 (Evidence file, folios 35014 to 35016); affidavit rendered by María Oveida Gallego Castaño on June 4, 2016 (Evidence file, folios 35020); affidavit rendered by Santiago Castaño Gallego on June 4, 2016 (Evidence file, folios 35023); affidavit rendered by Bernabé Castaño Gallego on June 4, 2016 (Evidence file, folios 35026 and 35027); affidavit rendered by José Iván Gallego Quintero on June 4, 2016 (Evidence file, folios 35030 and 35031); affidavit rendered by Blanca Estela López Ramírez on June 4, 2016 (Evidence file, folio 35034); affidavit rendered by Claudia Yaneth Castaño Gallego on June 4, 2016 (Evidence file, folio 35037 and 35031); affidavit rendered by María Aurora Gallego Quintero on June 4, 2016 (Evidence file, folio 35042); affidavit rendered by John Fredy Castaño Gallego on June 4, 2016 (Evidence file, folio 35046); affidavit rendered by María Florinda Gallego Hernández on June 4, 2016 (Evidence file, folios 35050 and 35051); affidavit rendered by Yanet Gallego on June 4, 2016 (Evidence file, folios 35054 and 35055); affidavit rendered by José Octavio Mejía Quintero on June 4, 2016 (Evidence file, folio 35058); affidavit rendered by Ana Oveida Mejía Quintero on June 4, 2016 (Evidence file, folio 35061); affidavit rendered by Nelly Soto de Castaño on June 4, 2016 (Evidence file, folio 35064); affidavit rendered by Cruz Verónica Giraldo Soto on June 4, 2016 (Evidence file, folio 35068); affidavit rendered by Carlos Amador Muñoz on June 4, 2016 (Evidence file, folio 35072); statement of María Aurora Muñoz Castaño on June 4, 2016 (Evidence file, folio 35075); affidavit rendered by María del Rocío Cardona Fernández on June 4, 2016 (Evidence file, folios 35078 and 35079); affidavit rendered by María Cémida Cardona Giraldo on June 4, 2016 (Evidence file, folio 35082); affidavit rendered by Omaira Gallego Hernández on June 4, 2016 (Evidence file, folio 35085), and affidavit rendered by Ricaurte Antonio Gallego Hernández on June 4, 2016 (Evidence file, folios 35088).

³⁸² These individuals are mentioned in footnote 1.

³⁸³ Article 63(1) of the American Convention establishes that: "If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party."

provide adequate reparation³⁸⁴ and that this provision reflects a customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility.³⁸⁵ This Court has also established that reparations must have a causal link to the facts of the case, the violations declared, the harm proved, and the measures requested to redress the respective harm. Therefore, the Court must analyze the concurrence of these factors to rule appropriately and in accordance with the law.³⁸⁶

254. Consequently, and without detriment to any form of reparation that may be agreed subsequently between the State and the victims, and considering the merits and the violations of the American Convention declared in this judgment, the Court will examine the claims presented by the Commission and the representatives of the victims, in light of the criteria established in its case law on the nature and scope of the obligation to make reparation, for the purpose of ordering measures to repair the harm caused.³⁸⁷

A. Injured party

255. Pursuant to Article 63(1) of the American Convention, the injured party is considered to be anyone who has been declared a victim of the violation of any right recognized therein. Therefore, this Court finds that the "injured party" in this case are the direct victims³⁸⁸ and their family members³⁸⁹ who, as victims of the violations declared in this judgment, shall be considered as beneficiaries of the reparations ordered by the Court.

B. Prior considerations on the issue of reparations

B.1. Arguments of the parties and of the Commission

256. The *Commission* requested various measures of reparation, including integral reparation, both in material and moral terms, for the human rights violations declared in the Merits Report. It also requested that the Court take into account the compensation already received by some of the victims in this case through the administrative reparation programs at the domestic level, and that it verify whether these are consistent with inter-American standards of compensation in similar cases. However, it argued that these programs cannot replace the reparations ordered by the Court, since the nature of an individual case before the Court has different sources and mechanisms. In this regard, it considered that reparations ordered by the Court have a specific scope and content, determined by the particular circumstances of the case. Therefore, it is not for the organs of the inter-American system to subject such reparation for a victim whose conventional rights have been violated to a State's domestic instruments, which may suffer from defects, imperfections or inadequacies.

³⁸⁴ Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*. Judgment of July 21, 1989. Series C No. 7, para. 25, and *Case of Ortiz Hernández et al. v. Venezuela*, para. 183.

³⁸⁵ Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*, para. 24, and *Case of Ortiz Hernández et al. v. Venezuela*, para. 183.

³⁸⁶ Cf. *Case of Ticona Estrada et al. v. Bolivia. Merits, reparations and costs*. Judgment of November 27, 2008. Series C No. 191, para. 110, and *Case of Ortiz Hernández et al. v. Venezuela*, para. 185.

³⁸⁷ Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*, paras. 25 and 26, and *Case of Ortiz Hernández et al. v. Venezuela*, para. 186.

³⁸⁸ These persons are: 1) Aníbal de Jesús Castaño; 2) Óscar Zuluaga Marulanda; 3) Juan Crisóstomo Cardona Quintero; 4) Miguel Ancízar Cardona Quintero; 5) Juan Carlos Gallego Hernández; 6) Jaime Alonso Mejía Quintero; 7) Octavio de Jesús Gallego Hernández; 8) Hernando de Jesús Castaño Castaño; 9) Orlando de Jesús Muñoz Castaño; 10) Andrés Antonio Gallego; 11) Irene de Jesús Gallego Quintero; 12) Leonidas Cardona Giraldo and 13) Javier Giraldo Giraldo, as well as the next of kin of each of the victims.

³⁸⁹ These individuals are mentioned in footnote 1.

Consequently, it considered that substituting the reparations of the inter-American judicial proceedings with domestic mechanisms could imply an additional burden for the victims, and could jeopardize the material efficacy of the Court's decisions.

257. The *representatives* argued that the rationale of international protection, and the effectiveness of that protection for victims of human rights violations, requires that the Court's rulings on reparations should not depend on, or be limited by, domestic mechanisms or parameters of reparation, or by the decisions of national bodies. They further argued that the subsidiary nature of the inter-American system relies precisely on the empowerment of an international jurisdiction with its own procedures and criteria, and not on adopting the criteria of the domestic jurisdiction. Consequently, they considered that the Court should determine an adequate and proportional reparation in this case, bearing in mind the reparation already granted at the domestic level, which could be discounted from that set by the Court.

258. The *State* argued that within the Colombian legal system³⁹⁰ there are different ways to obtain reparation, and that the victims had - and still have - the following options available: (i) applying for compensation through the ordinary courts, and (ii) accessing the comprehensive reparation mechanisms offered under Law 1448 of 2011, the "Victims' Law." It also held that, under the principle of complementarity, the Court should take into account the resources available and the reparations already granted at the domestic level when ordering specific reparations. In this regard, it recalled that in its case law the Court has recognized the contentious administrative jurisdiction as a mechanism that contributes to the integral reparation of the victims of human rights violations. It added that the Court should assess the adequacy and effectiveness of the Victims' Law in providing integral reparation for the alleged violations, as it has done in previous cases. Finally, it argued that direct reparation has been, and continues to be available to the victims of forced disappearance who did not exhaust administrative remedies. Consequently, the State asked the Court: (i) not to order additional compensation, as this may be granted in the domestic sphere, and (ii) if the Court should decide to order pecuniary or non-pecuniary compensation, it should take into consideration the reparations already granted in the domestic jurisdiction when assessing the compensation due.

B.2. Considerations of the Court

259. The Court recalls that each State has the obligation to ensure the rights and freedoms established in the Convention and to punish any infractions committed, and that if a specific case is not settled at the domestic or national level, the Convention contemplates an international level, in which the principal organs are the Commission and the Court. Likewise, it has indicated that when a matter has been settled within the domestic system, according to the provisions of the Convention, it is not necessary to bring it before this Court for approval or confirmation. This is based on the principle of complementarity that permeates the inter-American system of human rights and which, as stated in the Preamble of the American

³⁹⁰ In particular, it referred to Judgment SU-254 of Colombia's Constitutional Court, which states the following: (i) reparation in the courts focuses on granting justice to persons individually, on a case by case basis, and (ii) reparation through the administrative system is of a comparative nature a) because the reparations are of a massive nature; b) although the reparation is comprehensive inasmuch as it includes different components or measures of reparation, it is fundamentally guided by the principle of equity, and c) because it is an expeditious mechanism that facilitates victims' access to reparation, since the procedures are expeditious and inexpensive and more flexible in terms of evidence. Both systems must be articulated institutionally and be guided by the principle of mutual complementarity, and together they must guarantee integral, adequate and proportional reparation to the victims. Reparation may be provided through the courts via ordinary criminal proceedings, through a petition for reparation, and through the criminal proceedings contemplated in the Transitional Justice system, under Law 975 of 2005. The administrative mechanism for redress of victims is regulated by Law 1448 of 2011 (Merits file, folios 819 and 820).

Convention, “reinforces or complements the [protection] provided under the domestic law of the American States.”³⁹¹

260. The aforementioned complementary nature of the international jurisdiction means that the system of protection established by the American Convention does not replace the national jurisdiction, but rather complements it.³⁹² Therefore, the State is the principal guarantor of the people’s human rights and, if any violation of those rights occurs, the State must resolve the matter in the domestic system and, if applicable, provide reparation, before resorting to international bodies.³⁹³

261. From the foregoing considerations it is clear that, in the inter-American system, a dynamic and complementary oversight of the States’ treaty-based obligations to respect and ensure human rights has been established between the domestic authorities (who have the primary obligation) and the international organs (complementarily), so that their decision criteria can be established and harmonized.³⁹⁴ Thus, the Court’s case law includes cases in which the decisions of domestic courts have been examined in order to substantiate and conceptualize a violation of the Convention in the specific case.³⁹⁵ In other cases, it has recognized that, in keeping with their international obligations, the State’s domestic organs and courts have adopted adequate measures to remedy the situation that gave rise to the case,³⁹⁶ and have settled the alleged violation, ordered reasonable reparations,³⁹⁷ or exercised an adequate control of conformity with the Convention.³⁹⁸ In this regard, the Court has indicated that the State’s responsibility under the Convention can only be required at the international level after the State has had the opportunity to declare the violation and to repair the damage caused by its own means.³⁹⁹

262. In accordance with the foregoing considerations, the Court has also indicated that the fact that the State acknowledges its international responsibility, and affirms that it has repaired the internationally wrongful act, does not prevent the Court from determining the legal consequences arising from an act that violates the Convention, even though the State claims to have ceased that act and provided reparation.⁴⁰⁰ Indeed, in such cases, the Court retains its competence to refer to the legal effects of that acknowledgment of responsibility

³⁹¹ Cf. *Case of Acevedo Jaramillo et al. v. Peru. Interpretation of Judgment on preliminary objections, merits, reparations and costs*. Judgment of November 24, 2006. Series C No. 157, para. 66, and *Case of Andrade Salmón v. Bolivia*, para. 92.

³⁹² Cf. *Case of Tarazona Arrieta et al. v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of October 15, 2014. Series C No. 286, para. 137, and *Case of Andrade Salmón v. Bolivia*, para. 93.

³⁹³ Cf. *Case of Acevedo Jaramillo et al. v. Peru*, para. 66, and *Case of Andrade Salmón v. Bolivia*, para. 94.

³⁹⁴ Cf. *Case of the Santo Domingo Massacre v. Colombia*, para. 143, and *Case of Andrade Salmón v. Bolivia*, para. 94.

³⁹⁵ Cf. *Case of the Mapiripán Massacre v. Colombia*, para. 167 et seq., and *Case of Andrade Salmón v. Bolivia*, para. 94.

³⁹⁶ Cf. *Case of the Santo Domingo Massacre v. Colombia*, para. 144, and *Case of Andrade Salmón v. Bolivia*, para. 94.

³⁹⁷ Cf. *Case of the Santo Domingo Massacre v. Colombia*, para. 143, and *Case of Andrade Salmón v. Bolivia*, para. 94.

³⁹⁸ Cf. *Case of Gelman v. Uruguay. Merits and reparations*. Judgment of February 24, 2011. Series C No. 221, para. 239, and *Case of Tenorio Roca et al. v. Peru*, paras. 230 and ss.

³⁹⁹ Cf. *Case of the Santo Domingo Massacre v. Colombia*, para. 142, and *Case of Andrade Salmón v. Bolivia*, para. 163.

⁴⁰⁰ Cf. *Case of García Ibarra et al. v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of November 17, 2015. Series C No. 306, para. 102, and *Case of Andrade Salmón v. Bolivia*, para. 95.

and the reparation granted by the State, which may lead it to refrain from ruling on certain facts or their consequences.⁴⁰¹

263. Therefore, based on the above and on this Court's case law, in considering the State's argument that it is not appropriate to order reparations in addition to those already granted in the domestic jurisdiction, it is not sufficient to consider the State's claim that these have already been granted, or may be granted, through the administrative or judicial remedies available at the domestic level; the Court must also assess whether these have effectively repaired the consequences of the measure or situation that gave rise to the human rights violation in a specific case, whether the reparations are adequate, or if any there are any guarantees that the domestic mechanisms of reparation are sufficient.⁴⁰²

264. Consequently, it is not sufficient for the State to argue that the Victims' Law of June 10, 2011, is adequate, *in abstracto*, in providing reparation for human rights violations that occurred in the context of the Colombian armed conflict. The State must also specify whether that mechanism of reparation has been effectively used by the victims and, furthermore, if the use of that mechanism necessarily implies renouncing other means of reparation, such as judicial proceedings (at national level or, subsidiarily, at the international level). In the instant case, the Court is unable to confirm whether that mechanism was used by the victims declared in this judgment. However, the Court finds that the Victims' Law establishes that "individual reparations, whether administrative or judicial, as well as collective or group reparations, must be complementary to achieve comprehensiveness"⁴⁰³ since these are not mutually exclusive.⁴⁰⁴

265. Therefore, although the Court acknowledges and appreciates the efforts made by the State in providing reparation for victims of the armed conflict through the mechanism of the Victims' Law,⁴⁰⁵ it considers that in this case, by virtue of the principle of complementarity, the Court is not prevented from ruling autonomously on the measures of reparation because: a) the victims in this case have not effectively received the benefits of Law 1448, and b) the

⁴⁰¹ Cf. *Case of Tarazona Arrieta et al. v. Peru*, paras. 140, 141, 193, 194 and 334 to 336. In this regard, the Court will consider it unnecessary to analyze the merits of certain violations alleged in a specific case, when it finds that these have been adequately repaired at the domestic level, or will take into account the actions of the domestic organs, institutions or courts when these have ordered, or may order, reasonable reparations Cf. *Case of the Santo Domingo Massacre v. Colombia*, para. 171, and *Case of Andrade Salmón v. Bolivia*, para. 95.

⁴⁰² Cf. *Case of Duque v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of February 26, 2016. Series C No. 310, para. 126, and *Case of Andrade Salmón v. Bolivia*, para. 96. In relation to the appropriateness of domestic mechanisms of reparation, the Court has previously indicated (*Case of the Displaced Afro-descendant Communities of the Cacarica River Basin (Operation Genesis) v. Colombia*, para. 465) that in the context of Transitional Justice, domestic measures and mechanisms of reparation must meet a series of related requirements, including their legitimacy – especially, based on the consultation with and participation of the victims; their adoption in good faith; the degree of social inclusion they allow; the reasonableness and proportionality of the pecuniary measures; the type of reasons given to provide reparations by family group and not individually; the distribution criteria among members of a family (succession order or percentages); parameters for a fair distribution that take into account the position of the women among the family members or other differentiated aspects, such as whether the land and other means of production are owned collectively.

⁴⁰³ Law 1448 of June 10, 2011, containing "Measures of attention, assistance and integral reparation for victims of the internal armed conflict and other provisions," Article 21. Principle of Complementarity.

⁴⁰⁴ In this regard, the Constitutional Court of Colombia indicated in Judgment SU 254/13 of April 25, 2013, that "there are different mechanisms for obtaining comprehensive reparation: through judicial proceedings in the criminal courts or in the contentious administrative jurisdiction regulated by Law 1448 of 2011," and that those "legal frameworks are complementary, but not exclusive." However, it should be noted that Article 20 of Law 1448 establishes the prohibition of double reparation and compensation, and stipulates that "the compensation received through administrative channels will be deducted from the reparation defined through judicial channels. No one may receive double reparation for the same concept."

⁴⁰⁵ It also recalls that, in the context of its powers and autonomy to determine reparations in cases brought before it, in the *Case of the Displaced Afro-descendant Communities of the Cacarica River Basin (Operation Genesis) v. Colombia*, the Court ruled on that Law and on the measures of pecuniary reparation therein.

benefits of the reparation program established in Law 1448 does not exclude access to complementary judicial reparation.

C. Obligation to investigate the facts, identify and, if appropriate, prosecute and punish all those responsible

C.1. Investigation and, if appropriate, prosecution and punishment of those responsible

266. The *Commission* and the *representatives* asked the Court to order the State to continue with an impartial and effective investigation within a reasonable time in order to fully clarify the facts, identify the intellectual and material authors of the crimes, and apply the relevant punishments, bearing in mind the links and patterns of collaborative action identified in the Merits Report. They also requested that the Court order the State to determine the appropriate administrative, disciplinary or criminal measures in response to the actions or omissions of State officials who contributed to the denial of justice and the impunity surrounding the facts of this case, or who engaged in actions to obstruct the proceedings.⁴⁰⁶

267. The *State* acknowledged its international responsibility for the failure to investigate the facts related to the damage caused to the home of Mr. José Eliseo Gallego Quintero (*supra* para. 16, point f); for the prolonged delay in the investigations carried out in the ordinary jurisdiction to the detriment of the relatives of the disappeared persons (*supra* para. 16, point d); and for the inconsistencies in the investigations (*supra* para. 16, point d). In addition, it indicated that “despite the major efforts made to obtain justice, the whereabouts of those who have disappeared remain unknown to this day, and there is no absolute clarity regarding the circumstances in which these events occurred.” However, the State also emphasized that in this specific case it has fulfilled the obligations stemming from the duty to investigate, and that the proceedings have been conducted in accordance with the rules of transitional justice, which have been created and implemented in Colombia to facilitate the peace processes, promote the individual or collective reinsertion into civilian life of members of illegal armed groups, and ensure the victims’ rights to the truth, justice and reparation. In this sense, it indicated that all necessary and adequate measures have been implemented to shed light on the events that took place in Vereda La Esperanza.

268. This Court appreciates the progress made so far by the State to elucidate the facts. However, bearing in mind the conclusions of Chapter VIII.2 of this judgment, the Court decides that the State must conduct comprehensive, systematic and thorough investigations to determine and, where applicable, prosecute and punish all those responsible for: (i) the forced disappearance of Aníbal de Jesús Castaño Gallego, Juan Carlos Gallego Hernández, Octavio de Jesús Gallego Hernández, Jaime Alonso Mejía Quintero, Hernando de Jesús Castaño Castaño, Orlando de Jesús Muñoz Castaño, Andrés Antonio Gallego Castaño, Leonidas Cardona Giraldo, Irene de Jesús Gallego Quintero, Óscar Hemel Zuluaga Marulanda, Juan Crisóstomo Cardona Quintero, and Miguel Ancízar Cardona Quintero, and (ii) the

⁴⁰⁶ The representatives emphasized that the investigation should explore different aspects, including the joint actions of members of the armed forces and paramilitary groups in the forced disappearances of Vereda La Esperanza and the paramilitaries’ actions in the Magdalena Medio in Eastern Antioquia. It should also contextualize the facts of the case and identify common patterns in the practice of forced disappearance in Eastern Antioquia in order to interpret the case of Vereda La Esperanza as a mass and systematic practice of forced disappearance. They added that the State must punish those responsible for the human rights violations in a proportional and effective manner, taking into account the serious nature of the violations. They emphasized the need for the State to ensure that the criminal trial is conducted in a manner that guarantees the victims’ right to the truth, and consequently that the judicial authorities request the termination of the Justice and Peace process, and the exclusion from the list of applicants, in accordance with Article 5 of Law 1592 of 2012. In their final arguments, the representatives requested that the Court order: (i) a serious and thorough verification of the voluntary confessions; (ii) coordination between the Justice and Peace processes and the ordinary criminal justice jurisdiction, and (iii) an adequate construction of the contexts and patterns of macro criminality that proves the existence of a criminal plan behind these events.

execution of Javier de Jesús Giraldo Giraldo. This obligation must be fulfilled within a reasonable time in order to establish the truth of the facts of this case, bearing in mind that more than 20 years have passed since these events occurred.

269. Furthermore, in accordance with the obligation established in Article 1(1) of the Convention, the State must continue with the investigations and judicial proceedings that are already under way, as well as any others that may be required in order to determine the facts and the responsibilities.

C.2. Determination of the whereabouts of the disappeared victims and their identification

270. The *Commission* asked the Court order the State to conduct a search, using all available means, to determine the fate or whereabouts of the disappeared victims or to locate their mortal remains. It also called for the States to set up a mechanism to identify the two persons whose identification had not been fully established as of the date on which the Merits Report was issued.

271. With regard to that request, the *representatives* asked that the State present to the victims' families, as soon as possible, a plan to search for, recover and hand over the bodies of their loved ones. They added that this process must include psychosocial support, and must be carried out with the consent and participation of the victims' families and legal representatives. They requested that, in the event that the remains are found, they be handed over to the families with prior proof of kinship, as soon as possible and at no cost. They added that State should also cover the funeral expenses, by mutual agreement with the families and according to their beliefs. Finally, they requested that an adequate space be made available to bury the remains of the victims at a place agreed with their families.

272. The *State* argued that, from the beginning of the investigation, and based on the information provided at the time, it proceeded to search for the disappeared persons in areas in which they could have been illegally buried. It indicated that a search was conducted at the San Juan Base, taking into account the information obtained from interviews, and that the search for the bodies has been extended to places corresponding to the ACMM's area of influence. With regard to psychosocial support, it mentioned that the Victims' Unit has made available to the victims' families in the case the tools established in Law 1448 of 2011 in order to provide support and alleviate the continuous suffering which they have endured.

273. In the instant case, it has been established that the whereabouts of the twelve victims of forced disappearance remains unknown. This Court emphasizes that more than 20 years have passed since these victims disappeared; for their family members, the determination of their whereabouts is a reasonable expectation that requires a measure of reparation, which the State has a correlative duty to satisfy.⁴⁰⁷ Receiving the bodies of their loved ones is of the utmost importance for the families of the victims; it allows them to bury their loved ones according to their beliefs, and provides closure for the grieving process they have experienced throughout these years.⁴⁰⁸ The Court also emphasizes that the remains of a deceased person and the place in which they are found, may provide valuable information about the events that took place, the identity of the perpetrators of the violations or the institution to which they belonged,⁴⁰⁹

⁴⁰⁷ Cf. *Case of Neira Alegría et al. v. Peru. Reparations and costs*. Judgment of September 19, 1996. Series C No. 29, para. 69, and *Case of Vásquez Durand et al. v. Ecuador*, para. 208.

⁴⁰⁸ Cf. *Case of the Dos Erres Massacre v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of November 24, 2009. Series C No. 211, para. 245, and *Case of Vásquez Durand et al. v. Ecuador*, paras. 154 and 209.

⁴⁰⁹ Cf. *Case of the Dos Erres Massacre v. Guatemala*, para. 245, and *Case of Vásquez Durand et al. v. Ecuador*, para. 154.

particularly when State agents were involved.⁴¹⁰

274. The Court considers that the willingness expressed by the State of Colombia regarding the search for disappeared victims, together with the investigations and inquiries aimed at establishing the whereabouts of the disappeared persons in his case, are important steps toward providing reparation for the victims. Furthermore, the Court has confirmed that in the context of the domestic investigations, steps have been taken to determine the whereabouts of the victims (*supra* para. 207), and among the different actions that have been mentioned, we may highlight the following: a) exhumation of bodies in the municipal cemetery of Cocorná; b) judicial inspection at the paramilitary base of Los Mangos or San Juan; c) judicial inspection at Finca Los Patios in the municipality of Sonsón; d) 'neighborhood inquiries' in the area from Vereda La Esperanza to Puerto Triunfo – Antioquia, and e) genetic comparison with DNA samples from relatives.⁴¹¹

275. Nevertheless, in this judgment the Court has also noted that, although 20 years have passed since the events occurred, the whereabouts of the victims of forced disappearance remain unknown. Therefore, the State must continue to search for these victims, using all appropriate channels and make every effort to determine, as soon as possible, the whereabouts of the twelve victims whose fate remains unknown. This search must be carried out systematically, with sufficient and adequate human resources, technicians and scientists. It will also be necessary to establish a communications strategy with the family members and agree on a framework for coordinated action to enlist their participation, knowledge and presence, in accordance with the relevant guidelines and protocols.⁴¹² If any of the victims is found to be deceased, their mortal remains must be delivered to their families, with prior proof of kinship, as soon as possible and without cost. The State must also cover the funeral expenses, by mutual agreement with the next of kin, and according to their beliefs.⁴¹³

D. Measures of rehabilitation and satisfaction

D.1. Measures of rehabilitation

276. The *representatives* requested that the State provide medical and psychological assistance free of charge to the next of kin of the victims. This assistance must ensure their access to a medical center in Vereda La Esperanza, staffed by permanent medical personnel who can provide appropriate and personalized care. This measure must include the costs of any medicines that may be prescribed, and the center must be equipped with a laboratory to carry out routine tests.

277. The *State* mentioned that, under the principle of subsidiarity, the inter-American justice system must take into account the available resources and the reparations granted, when ordering specific reparations. With regard to the measures of rehabilitation, it indicated that it is able to provide the measure of reparation requested through the programs established

⁴¹⁰ Cf. *Case of Río Negro Massacres v. Guatemala*, para. 266, and *Case of Rodríguez Vera et al. (Disappeared of the Palace of Justice) v. Colombia*, para. 563.

⁴¹¹ Cf. Record of Exhumation of Bodies, Office of the Attorney General (Evidence file, folio 27464); Report of the Judicial Police 9-4824, Office of the Attorney General (Evidence file, folio 33510); Report of the Judicial Police 9-44048/9-44052, Office of the Attorney General (Evidence file, folio 32880), and Official Letter No. 312 of October 14, 2015, Special Prosecutor 220 of Transitional Justice (Evidence file, folios 42835 and 42836).

⁴¹² Cf. *Case of Contreras et al. v. El Salvador. Merits, reparations and costs*. Judgment of August 31, 2011. Series C No. 232, para. 191, and *Case of Vásquez Durand et al. v. Ecuador*, para. 210.

⁴¹³ Cf. *Case of Anzualdo Castro v. Peru*, para. 185, and *Case of Vásquez Durand et al. v. Ecuador*, para. 210.

in the Victims' Law.⁴¹⁴

278. The Court finds it necessary to order a measure of reparation to provide adequate care for the physical and psychological ailments suffered by the victims of the violations established in this judgment.⁴¹⁵ Nevertheless, the Court also recognizes and appreciates the progress achieved by Colombia's State authorities with regard to the increased provision of health care services for the victims of armed conflict. Therefore, the Court orders the State to provide free of charge, and as a priority, appropriate health care and psychological treatment to any victims who so wish, with their prior consent. This must be provided within six months from notification of this judgment, and for as long as is necessary, to address the effects derived from the violations declared in this judgment. Insofar as it is appropriate to this order, the Court considers, as it has done in other cases,⁴¹⁶ that the State may provide such treatment through the national health services, including PAPSIVI (*supra* footnote 414). The victims must have immediate and priority access, free of charge, to these health benefits, regardless of the time frames established in domestic legislation for this purpose, avoiding obstacles of any kind.

279. Furthermore, the respective treatments must be provided for as long as is necessary, and at a place accessible to the victims. In providing medical, psychological or psychiatric treatment, the State must also consider the particular circumstances and needs of each victim, so that they receive collective, family and individual treatment, according to their needs and with a prior individual evaluation by a health professional.⁴¹⁷ The victims that request this measure of reparation, or their legal representatives, have six months from notification of this judgment, to inform the State of their intention to receive medical, psychological or psychiatric treatment.⁴¹⁸

D.2. Measures of satisfaction

a) Publication and dissemination of this Judgment

280. The *representatives* requested that the State be required to publish the pertinent parts of this judgment in a newspaper with national circulation, in agreement with the victims and their representatives. They also requested that the judgment be published in the Official Gazette at least once and on the Web pages of the armed forces.

281. The Court decides, as it has done in other cases⁴¹⁹, that the State must publish, within six months of notification of this judgment: a) the official summary of this judgment prepared by the Court, once, in the Official Gazette in a legible font of appropriate size, and b) this judgment in its entirety, which must be made available for at least one year, on the official

⁴¹⁴ In its answering brief, the State indicated that to implement the measures of rehabilitation it "has developed the Psychosocial and Integral Health Care Program for Victims –PAPSIVI- consisting of a set of interdisciplinary activities, procedures and interventions designed by the Ministry of Health and Social Protection to provide comprehensive health care and psychosocial services to victims. These may be provided on an individual or collective basis and are aimed at overcoming the health and psychosocial effects related to the violations."

⁴¹⁵ Cf. *Case of Barrios Altos v. Peru. Reparations and costs*. Judgment of November 30, 2001. Series C No. 87, paras. 42 and 45, and *Case of Vásquez Durand et al. v. Ecuador*, para. 216.

⁴¹⁶ Cf. *Case of Yarce et al. v. Colombia*, para. 340.

⁴¹⁷ Cf. *Case of 19 Tradesmen v. Colombia*, para. 278, and *Case of I.V. v. Bolivia*, para. 332.

⁴¹⁸ Cf. *Case of Rosendo Cantú et al. v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of August 31, 2010 Series C No. 216, para. 253, and *Case of Members of the Village of Chichupac and Neighboring Communities of the Municipality of Rabinal v. Guatemala*, para. 303.

⁴¹⁹ Cf. *Case of Cantoral Benavides v. Peru. Reparations and costs*. Judgment of December 3, 2001. Series C No. 88, para. 79, and *Case of Ortiz Hernández et al. v. Venezuela*, para. 203.

Web site of the Judiciary.

282. The State must inform this Court immediately when it has implemented each of the publications ordered, regardless of the one-year time frame to present its first report, as established in the eleventh operative paragraph of this judgment.

b) Public act to acknowledge international responsibility, construction of a monument and scholarships

283. The *representatives* requested that the State organize a public act to acknowledge its responsibility and apologize to the victims. They asked that this event be attended by high-ranking authorities of the State institutions involved in the human rights violations, and that it be publicized in the national and international media. They also requested that the Court order the State to: (i) erect a monument and a memorial museum in the community of Vereda La Esperanza, with a plaque displaying the names of the victims, in order to preserve the historical memory and commemorate the events that occurred there, and (ii) grant scholarships for university studies to the sons and daughters of the victims, if they so wish. The scholarships should cover the cost of books, school supplies and any other materials required for those studies.

284. The Court positively assesses the State's partial acknowledgment of responsibility, which may provide partial satisfaction for the victims of the violations declared in this judgment. However, as it has done in other cases,⁴²⁰ and in consideration of the representatives' request, the Court considers it necessary to order the State to hold a public act of acknowledgment of international responsibility in Colombia, in relation to the facts of this case, in order to repair the harm caused to the victims and to prevent a repetition of those events.

285. In this public act, reference must be made to the human rights violations declared in this judgment. The act should take the form of a public ceremony and must be publicized. The State must ensure the participation of the victims declared in this judgment, if they so wish, and invite to the event the organizations that represented them before national and international bodies. It must also consult the victims and their representatives in advance regarding the organization and other details of the public ceremony. The State authorities who attend or participate in the ceremony must be senior government officials. The State has one year from notification of this judgment to fulfill this obligation.

286. Finally, this Court considers it pertinent to order the State to erect a monument in memory of the disappeared persons and of the person who was executed. This monument must include a plaque with the names of the victims, in order to keep their memory alive and as a guarantee of non-repetition. The design and site chosen for the construction of the monument must be agreed with the victims or their representatives. In addition, the State must grant scholarships to the sons and daughters of the victims of forced disappearance and execution to study at a public university in Colombia, if they so wish. The scholarships must cover the costs of all the materials necessary for their studies. Both measures of reparation must be implemented within one year of notification of this judgment.

E. Other measures of reparation

287. The *Commission* asked the State to adopt the measures necessary to prevent a repetition of the patterns of violence against the civilian population, in line with its duty to protect and guarantee the basic rights enshrined in the American Convention. In particular, it requested the implementation of human rights and international humanitarian law programs in the training academies of the Armed Forces. It also asked the Court to require the State to

⁴²⁰ Cf. *Case of Cantoral Benavides v. Peru*, para. 81, and *Case of Favela Nova Brasília v. Brazil*, para. 305.

establish, with the participation of the community of Vereda La Esperanza, a measure of community reparation in acknowledgement of the impact that the sequence of violent events had on the civilian population in the present case.

288. The *representatives* asked the Court to recognize the importance of guarantees of non-repetition in the transition process from armed conflict toward peace, and that it order the State to cease the application of the doctrine of the enemy within. They also requested that the Court order the State to implement a measure of reparation for the community, in order to redress the harm and impact caused by the acts of violence that have disrupted the local customs and forms of production.

289. The *State* argued that the Colombian legal system has established a Collective Reparation Program, known as “the route toward collective reparation,” consisting of several stages, as set forth in Decree 4800 of 2011, which has achieved the following advances: (i) formation of the Territorial Committee on Transitional Justice-CTJT, which has been advised of the importance of prioritizing this case in the context of collective reparations in the region of Antioquia. The Committee includes various authorities of the municipality of El Carmen de Viboral, to which Vereda La Esperanza belongs; (ii) there have been contacts between the community and the Promotion Committee, which was formed on September 1, 2014, and is comprised of residents of Vereda La Esperanza; (iii) on September 30, 2014, a second meeting was held, and on October 1, 2014, various activities were organized to define the collective reparations.

290. With respect to the measure of reparation requested by the representatives regarding the non-application of the doctrine of the enemy within, the Court finds that it has not been proven that this doctrine was applied in this case. Consequently, it is not pertinent to analyze that measure of reparation.

291. At the same time, the Court highlights the efforts made by the State to implement a measure of collective reparation for the community of Vereda La Esperanza, through the Collective Reparation Program established in Decree 4800 of 2011, which has made progress in providing redress to the victims of this case. In this regard, the Court urges the State to continue its efforts to reach agreement on an adequate measure of community reparation, and on the mechanism for its implementation. Also, since there is no clarity regarding the content of the measures requested by the Commission and the representatives, and since the negotiation process between the State and the victims is already under way, the Court deems it inappropriate to order the measure requested. With respect to the other measures of reparation requested, this Court considers that this Judgment and the reparations ordered therein are sufficient and adequate.

F. Compensation

F.1. Arguments regarding pecuniary damage

292. The *Commission* asked the Court to order the State to provide comprehensive reparation for the material aspects of the human rights violations. The *representatives* requested that the Court order, for consequential damages, in equity, the sum of USD \$3,000 for each family group, for their efforts to obtain justice over the past 19 years. They emphasized that the attack carried out by a platoon of 54 soldiers on the home of José Eliseo Gallego Quintero deserves special attention, given that as a result of this attack the family was unable to return to live on their farm and suffered financial hardship. They also asked

the Court to grant compensation for loss of income, and that this amount be awarded to the appropriate individual(s), according to the line of succession.⁴²¹

293. With regard to the compensation already awarded at the domestic level, the *representatives* indicated that most of the indemnities were granted as reparation for violations not related to this case. They also argued that there is a discrepancy between the amounts awarded at the domestic level and inter-American standards regarding reparation for serious human rights violations. In this sense, they asked the Court to consider whether the amounts awarded by the domestic courts are in line with inter-American standards.

294. The *State* indicated that, in the context of the consolidated proceedings before the Contentious Administrative Court of Antioquia, a judgment was issued declaring the State's responsibility for failure to perform a duty of service, by omission, for the forced disappearance of 10 persons.⁴²² It added that in the same judgment, the Administrative Court ordered the following amounts as financial compensation for pecuniary damage:

Name of the alleged victim	Compensation awarded for loss of income in the Judgment in Colombian pesos ⁴²³
Andrés Antonio Gallego Castaño	For his wife: \$58,869.207. For his son: \$46,607.541 Total: \$105,476.748
Aníbal de Jesús Castaño Gallego	For his children: 1). \$69,260.155. 2). \$65,322.227. Total: \$134,582.382
Hernando De Jesús Castaño Castaño	For his children: 1). \$26,808.685. 2). \$25,814.650. 3). \$24,795.891 4). \$23,048.432 5). \$24,192.594. Total: \$124,660.252
Irene De Jesús Gallego Quintero	For each of her parents: \$16,332.214. Total: 32,664.428
Juan Carlos Gallego Hernández	For his mother: \$12,802.303
Leonidas Cardona Giraldo	For his son: \$134,238.213
Octavio De Jesús Gallego Hernández	For his wife: \$81,549.051 For his children: 1). 19,853.410 2). 20,540.288 3). 20,943.365 Total: \$ 142,886.014
Oscar Hemel Zuluaga Marulanda	For each of his parents: \$26,065.585. Total: \$52,131.170

⁴²¹ They indicated that the following amounts should be allocated (calculated by the representatives in Colombian pesos): Andrés Antonio Gallego Castaño COP \$57,025.371, Aníbal De Jesús Castaño Gallego COP \$59,703.819, Hernando De Jesús Castaño Castaño COP \$59,445.184, Irene De Jesús Gallego Quintero COP \$59,631.901, Jaime Alonso Mejía Quintero COP \$59,473.884, Javier De Jesús Giraldo Giraldo COP \$59,473.884, Juan Carlos Gallego Hernández COP \$59,473.884, Juan Crisóstomo Cardona Quintero, COP \$72.645.281, Leonidas Cardona Giraldo COP \$ 57,025.371, Miguel Ancizar Cardona Quintero COP \$70,628.706, Octavio De Jesús Gallego Hernández COP \$59,445.184, Orlando De Jesús Muñoz Castaño COP \$59,445.184, Óscar Hemel Zuluaga Marulanda COP \$73,823.477.

⁴²² These persons are: 1. Irene de Jesús Gallego Quintero, 2. Leonidas Cardona Giraldo, 3. Jaime Alonso Mejía Quintero, 4. Hernando Castaño, 5. Octavio de Jesús Gallego Hernández, 6. Juan Carlos Gallego Hernández, 7. Óscar Hemel Zuluaga Marulanda, 8. Aníbal de Jesús Castaño Gallego, 9. Andrés Antonio Gallego Castaño, and 10. Orlando de Jesús Muñoz Castaño.

⁴²³ In addition, through Decision No. 2265 of April 23, 2012, of the Ministry of National Defense granted default interest, which was not contemplated in the judgment of the Administrative Court of Antioquia (Evidence file, folios 21407 to 21420).

295. The State also indicated that no amount of compensation was awarded to the claimants of the family of Jaime Alonso Mejía Quintero, as no evidence was provided to prove their financial dependence, or to the siblings of Orlando de Jesús Muñoz Castaño, because no evidence was provided to show that they depended financially on him. The State held that the payments made by the administrative court were adequate and consistent with the guidelines established by the Council of State, and therefore asked the Court to not order additional compensation for those victims who have already received reparations through the contentious administrative system.

296. As to the representatives' argument concerning the inadequate nature of the reparations granted at the domestic level, given that the responsibility in these procedures was declared by omission, the *State* pointed out that under the Colombian legal system, the amount awarded in compensation is based on the magnitude of the damage and not on the nature of the conduct, which is also consistent with the principle of integral reparation developed by this Court.

F.2. Arguments regarding moral damage

297. The *Commission* asked the Inter-American Court to order the State to provide comprehensive reparation for the moral aspects of the human rights violations declared. The *representatives* requested the sum of USD \$80,000 as non-pecuniary damage for each of the 12 victims of forced disappearance and for the alleged victim of execution. They also requested an additional USD \$5,000.00 for the families of the three minors who were victims of forced disappearance, in consideration of their special situation. They indicated that "in this case, the violations had an enormous emotional and mental impact on the next of kin [...]." Consequently, as non-pecuniary damage for the direct next of kin of the victims of forced disappearance, the representatives requested the sum of USD \$45,000 for each one; and for the indirect family members, they requested the sum of USD \$15,000 for each one. Finally, they requested the sum of USD \$45,000 as compensation for non-pecuniary damage, for the direct next of kin of Javier Giraldo Giraldo, the victim of execution.

298. The *State* referred to the amounts awarded in the judgment of the Administrative Court of Antioquia for moral damages:

Name of the presumed victim	Moral damages awarded ⁴²⁴
María Oveida Gallego Castaño	USD \$30,352 [100 SMLMV] ⁴²⁵
Leidy Yohana Castaño Gallego	USD \$30,352 [100 SMLMV]
Santiago Castaño Gallego	USD \$30,352 [100 SMLMV]
Hernando Castaño Gallego	USD \$15,176 [50 SMLMV] ⁴²⁶

⁴²⁴ Amount calculated in United States dollars on the date of payment, as indicated by the State in its answering brief. However, these values were updated in Decision No. 2265 of April 23, 2012, of the Ministry of National Defense, taking into account default interest (evidence file, folios 21407 to 21420).

⁴²⁵ According to the State's answering brief, on the date of payment 100 SMLMV were equivalent to USD \$30,352 (evidence file, folio 841). However, having consulted the body of evidence, it appears that the order for payment was issued on April 23, 2012. According to the Historical MER base of the *Banco de la República de Colombia*, on that date 100 SMLMV were equivalent to USD \$35,303.10

⁴²⁶ According to the State's answering brief, on the date of payment 50 SMLMV were equivalent to USD \$15,176 (Evidence file, folio 841). However, having consulted the body of evidence, it appears that the order for payment

Abelino Castaño Gallego	USD \$15,176 [50 SMLMV]
Bernabé Castaño Gallego	USD \$15,176 [50 SMLMV]
Rubén Antonio Castaño Gallego	USD \$15,176 [50 SMLMV]
María Romelia Marulanda de Zuluaga	USD \$30,352 [100 SMLMV]
José Bernardo Zuluaga Aristizábal	USD \$30,352 [100 SMLMV]
Arbey Esteban Zuluaga Marulanda	USD \$15,176 [50 SMLMV]
Sandra Liliana Zuluaga Marulanda	USD \$15,176 [50 SMLMV]
Luz Marina Zuluaga Marulanda	USD \$15,176 [50 SMLMV]
Blanca Orfilia Zuluaga Marulanda	USD \$15,176 [50 SMLMV]
Bernardo Efrén Zuluaga Marulanda	USD \$15,176 [50 SMLMV]
Daniel Antonio Zuluaga Marulanda	USD \$15,176 [50 SMLMV]
Adolfo de Jesús Zuluaga Marulanda	USD \$15,176 [50 SMLMV]
Gladis Elena Zuluaga Marulanda	USD \$15,176 [50 SMLMV]
María Noelia Zuluaga Marulanda	USD \$15,176 [50 SMLMV]
Ester Julia Quintero de Gallego	USD \$30,352 [100 SMLMV]
José Apolinar Gallego Quintero	USD \$30,352 [100 SMLMV]
María Lucely Gallego Quintero	USD \$15,176 [50 SMLMV]
Eladio Gallego Quintero	USD \$15,176 [50 SMLMV]
Maria Engracia Hernández de Gallego	USD \$30,352 [100 SMLMV]
Florinda de Jesús Gallego Hernández	USD \$30,352 [100 SMLMV]
María Aurora Gallego Hernández	USD \$30,352 [100 SMLMV]
María de los Ángeles Gallego Hernández	USD \$30,352 [100 SMLMV]
María Florinda Gallego Hernández	USD \$30,352 [100 SMLMV]
Yanet Gallego Gallego	USD \$30,352 [100 SMLMV]
Deicy Gallego Gallego	USD \$30,352 [100 SMLMV]
Johana Gallego Gallego	USD \$30,352 [100 SMLMV]
Alba Rosa Mejía Quintero	USD \$15,176 [50 SMLMV]
Oliva del Socorro Mejía Quintero	USD \$15,176 [50 SMLMV]
Luz Dary Mejía Quintero	USD \$15,176 [50 SMLMV]
Marta Edilma Mejía Quintero	USD \$15,176 [50 SMLMV]
Elda Emilsen Mejía Quintero	USD \$15,176 [50 SMLMV]
Jhon Fredy Castaño Gallego	USD \$30,352 [100 SMLMV]
Claudia Yaneth Castaño Gallego	USD \$30,352 [100 SMLMV]
Wilder Castaño Gallego	USD \$30,352 [100 SMLMV]
Juan Diego Castaño Gallego	USD \$30,352 [100 SMLMV]
Celeni Castaño Gallego	USD \$30,352 [100 SMLMV]
Jasmin Lorena Castaño Gallego	USD \$30,352 [100 SMLMV]
Rubén Darío Muñoz Castaño	USD \$15,176 [50 SMLMV]
Abelardo Muñoz Castaño	USD \$15,176 [50 SMLMV]
Carlos Amador Muñoz Castaño	USD \$15,176 [50 SMLMV]
María de la Cruz Hernández de Gallego	USD \$30,352 [100 SMLMV]
Ricaurte Antonio Gallego Hernández	USD \$30,352 [100 SMLMV]
Eusebio Gallego Hernández	USD \$30,352 [100 SMLMV]
María Nubia Gallego Hernández	USD \$30,352 [100 SMLMV]

was issued on April 23, 2012. According to the Historical MER base of the *Banco de la República de Colombia* on that date 50 SMLMV were equivalent to USD \$17,651

Lucelly Gallego Hernández	USD \$30,352 [100 SMLMV]
Omaira Gallego Hernández	USD \$30,352 [100 SMLMV]
Rosa Linda Gallego Hernández	USD \$30,352 [100 SMLMV]
Belarmina Gallego Hernández	USD \$30,352 [100 SMLMV]
María del Rocío Cardona Fernández	USD \$30,352 [100 SMLMV]
Yormarti Cardona Cardona	USD \$30,352 [100 SMLMV]
Luz Dary Cardona Giraldo	USD \$15,176 [50 SMLMV]
María Cemida Cardona Giraldo	USD \$15,176 [50 SMLMV]
Aura Luz Cardona Giraldo	USD \$15,176 [50 SMLMV]
Cándida Rosa Giraldo Gallego	USD \$30,352 [100 SMLMV]

299. The *State* pointed out that, through Decision 2265 of April 23, 2012, the Ministry of National Defense authorized the payment of COP \$4,083,339,702.23 Colombian pesos, and that this amount was paid via electronic transfer on April 27, 2012. Furthermore, it stressed that a broad regulatory and operational framework exists to provide comprehensive reparation to complement the aforementioned measures and ensure integral reparation. Finally, it added that in a ruling issued on July 15, 2010, the Administrative Court of Antioquia indicated, in the chapter on compensation for damages, that the amount of compensation corresponded to the maximum granted by the Council of State, taking into account its case law and the depth of the victims' suffering.

F.3. Considerations of the Court

a) Pecuniary damage

300. In its case law, the Court has developed the concept of pecuniary damage and the situations in which it must be compensated. The Court has established that pecuniary damage involves loss of or detriment to the income of the victims, the expenses incurred as a result of the facts and the consequences of a pecuniary nature that have a causal nexus with the facts of the case.⁴²⁷

301. With regard to pecuniary damage for consequential damage related to the efforts made by the victims' families in their search for justice during 20 years, this Court decides to set, in equity, the sum of USD\$ 3,000.00 (three thousand United States dollars), as compensation for pecuniary damage in favor of each family group of the direct victims recognized in this case.⁴²⁸ This amount must be paid to each family group within the period established in paragraph 319 of this judgment. To this end, the representatives must provide the Court with the names of the members of each family group to whom those amounts must be paid, within three months of notification of this judgment.

302. In relation to loss of income, the Court notes that the family members of all the direct victims have had recourse to the contentious administrative jurisdiction, which has issued the

⁴²⁷ Cf. *Case of Bámaca Velásquez v. Guatemala. Reparations and costs*. Judgment of February 22, 2002. Series C No. 91, para. 43, and *Case of Ortiz Hernández et al. v. Venezuela*, para. 229.

⁴²⁸ Refers to the cases of (1) Aníbal de Jesús Castaño Gallego, (2) Oscar Hemel Zuluaga Marulanda, (3) Juan Crisóstomo Cardona Quintero, (4) Miguel Ancízar Cardona Quintero, (5) Irene de Jesús Gallego Quintero, (6) Juan Carlos Gallego Hernández, (7) Jaime Alonso Mejía Quintero, (8) Hernando de Jesús Castaño Castaño, (9) Octavio de Jesús Muñoz Castaño, (10) Leonidas Cardona Giraldo, (11) Andrés Antonio Gallego Castaño, and (12) Javier de Jesús Giraldo Giraldo.

respective decisions.⁴²⁹ As a result of those proceedings, and in accordance with the criteria established in its domestic jurisdiction, the State has granted compensation for loss of income in some cases. From the information contained in the file, the Court confirms that the State has awarded the following compensation for loss of income to the relatives of eight victims:

Victim	Year of the final domestic decision	Amount awarded at the domestic level for pecuniary damage⁴³⁰
Aníbal de Jesús Castaño Gallego and his family	2010	USD \$88,707.54 distributed between his daughter and his son.
Óscar Hemel Zuluaga Marulanda and his family	2010	USD \$34,361.32 distributed between his mother and his father
Irene de Jesús Gallego Quintero and her family	2010	USD \$21,530.16 distributed between her mother and her father
Juan Carlos Gallego Hernández	2010	USD \$8,438.40 for his mother
Hernando de Jesús Castaño Castaño	2010	USD \$82,167.54 distributed among his two daughters and his three sons
Octavio de Jesús Gallego Hernández	2010	USD \$94,180.72 distributed between his wife and his three daughters
Leonidas Cardona Giraldo	2010	USD \$88,480.70 for his son
Andrés Antonio Gallego Castaño	2010	USD \$69,523.09 distributed between his wife and his son

303. This Court acknowledges and positively assesses the efforts made by Colombia in relation to its duty to provide reparation in this case. The Court also recalls that, under the principle of

⁴²⁹ Specifically, the contentious administrative jurisdiction has issued rulings with respect to: (1) the daughter and son of Aníbal de Jesús Castaño Gallego, Judgment of the Contentious Administrative Court of Antioquia (Evidence file, folio 6096); (2) the mother and father of Oscar Hemel Zuluaga Marulanda, Judgment of the Contentious Administrative Court of Antioquia (Evidence file, folio 6095); (3) the mother and father of Irene de Jesús Gallego Quintero, Judgment of the Contentious Administrative Court of Antioquia (Evidence file, folio 6082); (4) the mother of Juan Carlos Gallego Hernández, Judgment of the Contentious Administrative Court of Antioquia (Evidence file, folio 6092); (5) two daughters and three sons of Hernando de Jesús Castaño Castaño, Judgment of the Contentious Administrative Court of Antioquia (Evidence file, folio 6104); (6) the wife and three daughters of Octavio de Jesús Gallego Hernández, Judgment of the Contentious Administrative Court of Antioquia (Evidence file, folio 6090 and 6092); (7) the son of Leonidas Cardona Giraldo, Judgment of the Contentious Administrative Court of Antioquia (Evidence file, folio 6085); and (8) the wife and son of Andrés Antonio Gallego Castaño, Judgment of the Contentious Administrative Court of Antioquia (Evidence file, folio 6098 and 6099).

⁴³⁰ The equivalence to US dollars of the amounts granted at the domestic level was calculated based on data from the historical series of the representative market exchange rate of the Central Bank of Colombia. The calculation was based on the date of issue of the court orders granting compensation, in those cases in which they were provided or, otherwise, on the date of the final domestic decision. Information available at: <http://www.banrep.org/es/trm>.

complementarity established in the inter-American jurisdiction,⁴³¹ where national mechanisms to determine forms of reparation exist, those proceedings and results must be taken into account.⁴³² In this regard, the Court emphasizes that the compensation for pecuniary damage granted in the contentious administrative jurisdiction was based on objective and reasonable criteria. Therefore, this Court considers that it is not appropriate to order additional compensation for pecuniary damage in those cases in which such compensation has already been awarded by the contentious administrative jurisdiction.

304. However, with regard to the family members of victims who were not awarded any compensation for pecuniary damage, in light of the violations established in this judgment, and according to its constant case law, the Court finds it pertinent to set in equity, the following amounts: US\$ 10,000 (ten thousand United States dollars) in favor of Juan Crisóstomo Cardona Quintero; US\$ 10,000 (ten thousand United States dollars) in favor of Miguel Ancízar Cardona Quintero; US\$ 10,000 (ten thousand United States dollars) in favor of Jaime Alonso Mejía Quintero,⁴³³ US\$ 10,000 (ten thousand United States dollars) in favor of Orlando de Jesús Muñoz Castaño,⁴³⁴ and US\$ 10,000 (ten thousand United States dollars) in favor of Javier de Jesús Giraldo Giraldo,⁴³⁵ as compensation for pecuniary damage. The amounts ordered in favor of the aforementioned persons must be paid to their next of kin, within the time frame established in paragraph 319 of this judgment, according to the following criteria:

- a) fifty percent (50%) of the compensation corresponding to each victim shall be distributed, in equal parts, among their children. If one or several of the children are already deceased, the part that corresponds to said individual(s) shall be credited to the rest of the children of that victim;
- b) the other fifty per cent (50%) of the compensation shall be paid to the person who was the victim's spouse or permanent companion or partner, at the time of the disappearance or at moment of the victim's death, as applicable;
- c) if the victim does not have any children or a spouse or permanent partner, the amount that would have been allocated to relatives in that category shall be credited to the corresponding party in another category;
- d) in the case of a victim who did not have children or a spouse or permanent partner, compensation for pecuniary damage shall be paid to his/her parents or, otherwise, to the siblings in equal parts, and
- e) in the case of a victim who did not have children, or a spouse, or partner, or parents, or siblings, the compensation shall be paid to their heirs according to domestic inheritance law.

305. Finally, the Court finds it pertinent to set in equity, the sum of US\$ 20,000 (twenty thousand United States dollars) as compensation for damage to the private property of José Eliseo Gallego Quintero and his wife María Engracia Hernández (*supra* paras. 240 to 246).

⁴³¹ Cf. *Case of Cepeda Vargas v. Colombia*, para. 246, and *Case of Tenorio Roca et al. v. Peru*, para. 332.

⁴³² Cf. *Case of Cepeda Vargas v. Colombia*, paras. 139 and 140, *Case of García Ibarra et al. v. Ecuador*, para. 186.

⁴³³ The family of Jaime Alonso Mejía Quintero was denied compensation for pecuniary damage for loss of income in the contentious administrative jurisdiction, because no evidence was provided to confirm their financial dependence on him (Merits file, folio 839).

⁴³⁴ The family of Jaime Alonso Mejía Quintero and the siblings of Orlando de Jesús Muñoz were denied pecuniary damage for loss of income in the contentious administrative jurisdiction, because no evidence was provided to prove their financial dependence (Merits file, folio 839).

⁴³⁵ His family has not had access to reparations in the contentious administrative jurisdiction (Merits file, folio 836).

b) Non-pecuniary damage

306. International case law has established that the judgment constitutes *per se* a form of reparation.⁴³⁶ Nevertheless, in its case law, the Court has developed the concept of non-pecuniary damage, and has established that this may include both the suffering and distress caused to the direct victim and his family, and also the impairment of values of great significance to them, as well as the changes of a non-pecuniary nature in the living conditions of the victim or his family.⁴³⁷

307. The Court notes that certain family members of the victims received non-pecuniary compensation through Colombia's contentious administrative jurisdiction. Specifically, sixty-one family members of nine of the victims⁴³⁸ have received compensation for "moral damage" in this jurisdiction. From the evidence provided, it appears that these family members were awarded compensation for moral damage equivalent to US\$ 35,310.10 for spouses and children, and US\$ 17,651.55 for siblings. The Court also observes that no compensation was awarded to fifty-four family members, since they did not file an application in the domestic courts, and that reparation was denied to twelve family members of Juan Crisóstomo Cardona Quintero and Miguel Ancízar Cardona. Moreover, in the cases of Cruz Verónica Giraldo Soto and Nelly Soto Castaño, the payment of compensation for the sum of US\$ 9,938.00 is pending.

308. The Court finds that the compensation awarded for moral damage in the domestic jurisdiction was based on objective and reasonable criteria. Therefore, having regard to the principle of complementarity and the specific circumstances of this case, the Court does not consider it appropriate to order additional compensation to that already granted by the domestic jurisdiction.

309. Nevertheless, considering the circumstances of this case, the nature and seriousness of the violations committed, the suffering caused to the victims and their families, and the time that has elapsed since the events took place, the Court deems it appropriate to order compensation for non-pecuniary damage in those cases in which the domestic jurisdiction did not grant compensation for moral damage to the relatives of the victims, either because they did not file any petitions in the domestic jurisdiction, or because their petition was denied. These indemnities must be paid under the same criteria as those granted to family members who did

⁴³⁶ Cf. *Case of El Amparo v. Venezuela. Reparations and costs*. Judgment of September 14, 1996. Series C No. 28, para. 35, and *Case of Favela Nova Brasília v. Brazil*, para. 297.

⁴³⁷ Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and costs*. Judgment of May 26, 2001. Series C No. 77, para. 84, and *Case of Ortiz Hernández et al. v. Venezuela*, para. 244.

⁴³⁸ The relatives who have received compensation for non-pecuniary damage at the domestic level are: (1) María Oveida Gallego Castaño, (2) Leidy Yohana Castaño Gallego, (3) Santiago Castaño Gallego, (4) Hernando Castaño Gallego, (5) Abelino Castaño Gallego, (6) Bernabé Castaño Gallego, (7) Rubén Antonio Castaño Gallego, (8) María Romelia Marulanda de Zuluaga, (9) José Bernardo Zuluaga Aristizabal, (10) Daniel Antonio Zuluaga Marulanda, (11) Blanca Orfilia Zuluaga Marulanda, (12) Bernardo Efren Zuluaga Marulanda, (13) Arbey Esteban Zuluaga Marulanda, (14) Sandra Liliana Zuluaga Marulanda, (15) María Noelia Zuluaga Marulanda, (16) Gladis Elena Zuluaga Marulanda, (17) Adolfo de Jesús Zuluaga Marulanda, (18) Ester Julia Quintero de Gallego, (19) José Apolinar Gallego Quintero, (20) María Lucely Gallego Quintero, (21) Eladio Gallego Quintero, (22) María Engracia Hernández de Gallego, (23) María Aurora Gallego Hernández, (24) María de los Ángeles Gallego Hernández, (25) Alba Rosa Mejía Quintero, (26) Oliva del Socorro Mejía Quintero, (27) Luz Dary Mejía Quintero, (28) María Edilma Mejía Quintero, (29) Elda Emilsen Mejía Quintero, (30) Florinda de Jesús Gallego Hernández, (31) Jasmin Lorena Castaño Gallego, (32) Celini Castaño Gallego, (33) Juan Diego Castaño Gallego, (34) Claudia Yaneth Castaño Gallego, (35) Wilder Castaño Gallego, (36) Jhon Fredy Castaño Gallego, (37) María Florinda Gallego Hernández, (38) Yaneth Gallego Gallego, (39) Deicy Gallego, (40) Johana Gallego Gallego, (41) María Aurora Gallego Hernández, (42) María de los Ángeles Gallego Hernández, (43) Florinda de Jesús Gallego Hernández, (44) Carlos Amador Muñoz Castaño, (45) Rubén Darío Muñoz Castaño, (46) Abelardo Muñoz Castaño, (47) María del Rocío Cardona Fernández, (48) Yor Martí Cardona Cardona, (49) Candida Rosa Giraldo de Cardona, (50) Luz Dary Cardona Giraldo, (51) Aura Luz Cardona Giraldo, (52) María de la Cruz Hernández de Gallego, (53) Ricaurte Antonio Gallego Hernández, (54) Eusebio Gallego Hernández, (55) María Nubia Gallego Hernández, (56) Lucelly Gallego Hernández, (57) Omaira Gallego Hernández, (58) Rosa Linda Gallego Hernández, (59) María Cemida Cardona Giraldo, (60) Belarmina Gallego Hernández, (61) María Florinda Gallego Hernández.

receive compensation. Consequently, the Court orders the State to award compensation of US\$ 35,310.10 for those relatives who are parents, spouses, or children,⁴³⁹ and compensation of US\$ 17,651.55 to those who are brothers or sisters.⁴⁴⁰ The amounts stipulated in favor of these individuals must be paid within the time limit established in paragraph 319 of this judgment, according to the criteria defined previously (*supra* para. 304).

310. In addition, the Court sets in equity the sum of US\$ 9,938 (nine thousand nine hundred and thirty-eight United States dollars) in favor of Cruz Verónica Giraldo Soto and Nelly Soto de Castaño, as non-pecuniary damage for each one, for the execution of Javier Giraldo. This amount shall be paid separately from the compensation that has already been established at the domestic level. Both sums awarded as compensation for non-pecuniary damage – that is, the amount established at the domestic level and the amount ordered in this paragraph- shall be paid within the period stipulated in paragraph 319 of this judgment.

311. Bearing in mind the compensation ordered by the Inter-American Court of Human Rights in other cases of forced disappearance of persons and of arbitrary deprivation of life, as well as the circumstances of this case, the nature and seriousness of the violations committed, the suffering caused to the victims and their next of kin throughout the period since the events took place and their continued impunity, the Court finds it pertinent to set, in equity, the amount of US\$ 5,000 (five thousand United States dollars) in favor of mothers, fathers, sons and daughters, and spouses of the victims of forced disappearance and execution; and US\$ 3,000 (three thousand United States dollars) in favor of the brothers and sisters of those victims, in light of the proven impact on their personal integrity as a consequence of the facts of this case, and on their efforts to search for the whereabouts of their loved ones and for justice.

312. At the same time, this Court notes that the direct victims of forced disappearance and arbitrary deprivation of life in this case have not been compensated at the domestic level. Therefore, although certain family members of the victims have received compensation for moral damages in Colombia's contentious administrative jurisdiction (comparable to the compensation for non-pecuniary damage in the inter-American jurisdiction), the Court considers it appropriate to order the payment of additional compensation for non-pecuniary damage. Taking into account the reparations ordered by the Inter-American Court in other cases of forced disappearance, together with the circumstances of this case and the nature and seriousness of the violations committed, the Court deems it pertinent to set, in equity, the sum of US\$ 100,000.00 (one hundred thousand United States dollars) in favor of the twelve direct victims of forced disappearance declared in this case (*supra* para. 168), and US\$ 80,000.00 (eighty thousand United States dollars) in favor of Javier Giraldo Giraldo. The amounts ordered in favor

⁴³⁹ Mrs. María Docelina Quintero (deceased) is the only family member with the status of mother.

⁴⁴⁰ The next of kin who are siblings of the victims are the following: (1) María Brígida Castaño Gallego; (2) Ester Julia Castaño Gallego; (3) Heriberto Antonio Castaño Gallego; (4) María Elvira Castaño Gallego; (5) Omaira Lucia Zuluaga Marulanda; (6) Jhon Arnilson Zuluaga Marulanda; (7) Aníbal Alonso Zuluaga Marulanda; (8) Héctor Hugo Quintero; (9) Jessica Natalia Cardona Quintero; (10) Diana Marcela Quintero; (11) Clara Rosa Cardona Quintero; (12) Jorge Enrique Cardona Quintero; (13) Pedro Claver Quintero; (14) Luis Alberto Quintero; (15) Martha Lucia Quintero; (16) Luz Marina Quintero; (17) Duván Alexander Quintero; (18) Leonidas Cardona Quintero; (19) María Luz Mery Gallego Quintero; (20) Luz Mary del Socorro Gallego Quintero; (21) Marleny Gallego Quintero; (22) José Iván Gallego Quintero; (23) Eliseo de Jesús Gallego Quintero; (24) José Octavio Mejía Quintero; (25) Pedro Nel Mejía Quintero; (26) Ana Oveida Mejía Quintero; (27) Consuelo de Jesús Mejía Quintero; (28) Rubén de Jesús Mejía Quintero; (29) Dolly Amanda Mejía Quintero; (30) Luz Mery Mejía Quintero; (31) Luis Albeiro Mejía Quintero; (32) Edgar de Jesús Mejía Quintero; (33) Héctor de Jesús Castaño Castaño; (34) Bernardo de Jesús Castaño Castaño; (35) María Sofía Castaño Castaño; (36) Josefina Castaño Castaño; (37) Blanca Inés Castaño Castaño; (38) Edilma de Jesús Castaño Castaño; (39) Arcesio Muñoz García; (40) Rosa María Muñoz Muñoz; (41) María Aurora Muñoz Muñoz; (42) Marco Aurelio Muñoz Muñoz; (43) María Rubiela Muñoz Castaño; (44) Cruz Elena Muñoz Castaño; (45) Bertha Inés Muñoz Castaño; (46) Óscar Santiago Muñoz Giraldo; (47) María Florinda Muñoz Castaño; (48) María Isabel Giraldo Gallego; (49) Bernardo de Jesús Giraldo Gallego; (50) Elda Nury Giraldo Gallego; (51) Luz Marcela Giraldo Gallego; (52) Juan de Jesús Gallego Castaño; (53) Juan Cristóbal Gallego Castaño; (54) Miguel Antonio Gallego Castaño.

of the aforementioned persons must be paid to their families within the period stipulated in paragraph 319 of the judgment, pursuant to paragraph 304 of this judgment.

G. Costs and expenses

313. The *representatives* requested the sum of USD \$154,094.00 for costs and expenses for CJL and USD \$39,603.00 for CEJIL. This amount includes the expenses incurred in the proceedings before the Commission, as well as fees and disbursements made during the proceedings before the Court. The *State* requested that the Court, "in accordance with its case law, limit the payment of costs and expenses to the amounts proven by the representatives of the victims, provided these are strictly related to the efforts made with regard to this case and that their *quantum* is reasonable."

314. The Court reiterates that, in accordance with its case law,⁴⁴¹ costs and expenses form part of the concept of reparation, because the efforts made by the victims to obtain justice, both at national and international level, entail expenses that must be compensated when the State's international responsibility is declared in a judgment. Similarly, the Court reiterates that it is not sufficient to merely submit probative documents; rather the parties are required to include arguments that relate the evidence to the facts under examination, and, in the case of alleged financial disbursements, the items and their justification must be clearly established.⁴⁴² Thus, it is not enough to merely forward receipts for expenses, issued by the representative organizations themselves, since these do not provide sufficient evidence of the expenses incurred.

315. Therefore, based on the foregoing, and considering the evidence provided by the representatives, the Court deems it appropriate to order the payment of the total sum of US\$ 85,000 (eighty-five thousand United States dollars) for costs and expenses incurred by the representatives of the victims in the domestic proceedings, and also in the international proceedings before the inter-American system of protection of human rights. This amount shall be distributed as follows: for the *Corporación Jurídica Libertad*, a total of US\$ 60,000 (sixty thousand United States dollars), and for CEJIL the sum of US\$ 25,000 (twenty-five thousand United States dollars). These amounts shall be paid directly to the said organizations within the time frame established in paragraph 319 of this judgment. At the stage of monitoring compliance with this judgment, the Court may require the State to reimburse the victims or their representatives for any reasonable expenses incurred at that procedural stage.

H. Reimbursement of expenses to the Victims' Legal Assistance Fund

316. The *representatives* of the victims requested the support of the Victim's Legal Assistance Fund to cover the participation in the proceedings of the persons summoned to testify by this Court. In that regard, they requested that the Fund cover certain expenses, including air fares, accommodation, food and notarial services, incurred to obtain the statements of victims, expert witnesses and witnesses. In an order of December 1, 2015, the President of the Court granted the request submitted by the victims, through their representatives, and authorized the necessary financial assistance for the presentation of six statements, either at a hearing or by affidavit.

317. On August 22, 2016, the State received a report on the disbursements made, pursuant to Article 5 of the Rules of the Court on the operation of the Fund. The State had an

⁴⁴¹ Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and costs*. Judgment of August 27, 1998. Series C No. 39, para. 79, and *Case of Acosta et al. v. Nicaragua*, para. 241.

⁴⁴² Cf. *Case of Chaparro Álvarez and Lapo Íñiguez. Preliminary objections, merits, reparations and costs*. Judgment of November 21, 2007. Series C No. 170, para. 277 and *Case of Vásquez Durand et al. v. Ecuador*, para. 237.

opportunity to present its observations on the disbursements made, which totaled US\$ 2,892.94 (two thousand, nine hundred and ninety-two United States dollars and ninety-four cents) for the expenses incurred. Colombia did not present any observations.

318. Based on the violations declared in this judgment and compliance with the requirements to access the Fund, the Court orders the State to reimburse the said Fund in the amount of US\$ 2,892.94 (two thousand eight hundred and ninety-two United States dollars and ninety-four cents) for the expenses incurred. This amount must be reimbursed to the Inter-American Court within six months of notification of this judgment.

I. Method of compliance with the payments ordered

319. The State shall pay compensation for pecuniary and non-pecuniary damage and shall reimburse the costs and expenses established in this judgment directly to the persons and organizations indicated herein, within one year of notification of this judgment, or it may bring forward the full payment. If the beneficiaries (other than the victims of forced disappearance) are deceased or die before they receive the respective compensation, this shall be paid directly to their heirs in accordance with the applicable domestic law. The compensation ordered in favor of the victims of forced disappearance and arbitrary deprivation of life shall be distributed as indicated in paragraphs 300 to 312 of this judgment.

320. The State shall comply with its monetary obligations through payment in United States dollars or the equivalent in national currency, based on the exchange rate in force on the New York Stock Exchange (United States of America) on the day prior to payment.

321. If, for reasons that can be attributed to the beneficiaries of the compensation or their heirs, it is not possible to pay the amounts established within the time frame indicated, the State shall deposit these amounts in a deposit account or certificate in their favor, in a solvent Colombian financial institution, in United States dollars, and on the most favorable financial terms permitted by banking law and practice. If the corresponding compensation is not claimed after ten years, the amounts shall be returned to the State with the accrued interest.

322. The amounts allocated in this judgment as compensation for pecuniary and non-pecuniary damage and to reimburse costs and expenses shall be delivered in full to the persons and organizations indicated, as established in this judgment, without any deductions arising from possible charges or taxes.

323. If the State should fall into arrears, it shall pay interest on the amount owed corresponding to banking interest on arrears in Colombia.

OPERATIVE PARAGRAPHS

324. Therefore,

THE COURT

DECIDES,

Unanimously,

1. To declare admissible the preliminary objection filed by the State regarding *alias* "Fredy," his "wife" and their son "A.," in the terms of paragraphs 31 to 40 of this Judgment.

DECLARES,

Unanimously, that:

2. The State is responsible for the violation of the rights to the recognition of juridical personality, to life, to physical integrity and to personal liberty, established in Articles 3, 4(1), 5(1), 5(2) and 7 of the American Convention, and Article I. a of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Aníbal de Jesús Castaño Gallego, Juan Carlos Gallego Hernández, Jaime Alonso Mejía Quintero, Hernando de Jesús Castaño Castaño, Orlando de Jesús Muñoz Castaño, Octavio de Jesús Gallego Hernández, Andrés Gallego Castaño and Leonidas Cardona Giraldo, Irene de Jesús Gallego Quintero; and also of these rights in relation to Article 19 to the detriment of the minors Óscar Hemel Zuluaga Marulanda, Miguel Ancízar Cardona Quintero, Juan Crisóstomo Cardona Quintero in the terms of paragraphs 149 to 173 of this judgment.

3. The State is responsible for the violation of the right to life, enshrined in Article 4 of the American Convention, in relation to Article 1(1) thereof, to the detriment of Javier Giraldo Giraldo, in the terms of paragraphs 174 and 175 of this judgment.

4. The State is responsible for the violation of the right to judicial guarantees and judicial protection recognized in Articles 8(1) and 25 of the American Convention, in relation to Article 1(1) thereof. Moreover, Colombia violated the right to know the truth of the next of kin of the disappeared victims in the terms of paragraphs 210 to 213, 219 to 226, and 234 to 236.

5. The State is responsible for the violation of the right to the inviolability of the home and to private property, enshrined in Articles 11(2) and 21 of the Convention, to the detriment of José Gallego Quintero and his wife María Engracia Hernández, pursuant to paragraphs 240 and 246 of this judgment.

6. The State is responsible for the violation of the right to personal integrity, recognized in Article 5(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of the next of kin of the victims, in the terms of paragraphs 249 to 252 of this judgment.

7. The State is not responsible for the violation of the principle of reasonable time in the Justice and Peace proceedings; for the failure to adequately classify the crime of forced disappearance; for the failure to investigate using a differentiated approach; for the victims' lack of participation in the Justice and Peace proceedings; and for the failure to investigate patterns of macro-criminality, based on the reasons set forth in paragraphs 184 to 209, 214 to 218, and 227 to 233 of this judgment.

AND ESTABLISHES:

Unanimously, that:

8. This judgment constitutes, *per se*, a form of reparation.

9. The State shall continue the investigations and judicial proceedings under way in order to clarify the facts and determine the corresponding responsibilities, pursuant to paragraphs 268 and 269 of this Judgment.

10. The State shall conduct a rigorous search using appropriate means, and shall make every effort to determine, as soon as possible, the whereabouts of the twelve victims whose fate remains unknown, in accordance with paragraphs 273 to 275 of this judgment.

11. The State shall issue the publications indicated in paragraphs 281 and 282 of this judgment.

12. The State shall hold a public act of acknowledgment of international responsibility in Colombia, in relation to the facts of this case, pursuant to paragraphs 284 and 285 of this judgment.

13. The State shall provide medical, psychological or psychiatric treatment, to those victims who request it, in the terms of paragraphs 278 and 279 of this judgment.
14. The State shall erect a monument in memory of the disappeared and executed persons, in the terms of paragraph 286 of this judgment.
15. The State shall award scholarships to study at a public university to the children of the victims who request it, pursuant to paragraph 286 of this judgment.
16. The State shall pay the amounts established in paragraphs 300 to 312 of this judgment as compensation for pecuniary and non-pecuniary damage and to reimburse costs and expenses, pursuant to paragraphs 314 and 315 of this judgment.
17. The State shall reimburse the Victims' Legal Assistance Fund of the Inter-American Court of Human Rights for the sum disbursed during the processing of this case, pursuant to paragraphs 316 to 318 of this judgment.
18. Within one year of notification of this judgment, the State shall provide the Court with a report on the measures adopted to comply with it.
19. The Court will monitor full compliance with this judgment, in exercise of its authority and in compliance with its duties under the American Convention on Human Rights, and will consider this case closed once the State has fully complied with all its provisions.

Judge Eduardo Ferrer Mac-Gregor Poisot advised the Court of his individual concurring opinion, which accompanies this judgment.

DONE, at San José, Costa Rica, on August 31, 2017, in the Spanish language.

Judgment of the Inter-American Court of Human Rights. Case of Vereda La Esperanza v. Colombia. Preliminary objection, merits, reparations and costs.

Roberto F. Caldas
President

Eduardo Ferrer Mac-Gregor Poisot

Eduardo Vio Grossi

Elizabeth Odio Benito

Eugenio Raúl Zaffaroni

L. Patricio Pazmiño Freire

Pablo Saavedra Alessandri
Secretary

So ordered,

Roberto F. Caldas
President

Pablo Saavedra Alessandri
Secretary

**CONCURRING OPINION OF
JUDGE EDUARDO FERRER MAC-GREGOR POISOT**

CASE OF VEREDA LA ESPERANZA V. COLOMBIA

**JUDGMENT OF AUGUST 31, 2017
(PRELIMINARY OBJECTION, MERITS, REPARATIONS AND COSTS)**

INTRODUCTION:

*THE DIRECT JUSTICIABILITY OF THE "RIGHT TO HOUSING"
AND ITS AUTONOMY WITH RESPECT TO OTHER RIGHTS*

1. In essence, I concur with the decision reached in this Judgment. However, I issue this concurring opinion to outline the reasons why I consider that the Inter-American Court of Human Rights (hereinafter the "Inter-American Court" or "the Court") could have addressed the violation of the right to housing from another perspective: that is, through Article 26 of the American Convention on Human Rights (hereinafter "American Convention" or "Pact of San José"). Thus, the Court could have declared an autonomous violation of the right to housing, instead of which it decided to declare a violation thorough its connection with civil and political rights in this Judgment.

2. Traditionally, international courts have not addressed the right to housing separately or autonomously. On the one hand, the European Court of Human Rights has ensured the right to housing through the right to integrity, private and family life, or through private property.¹ On the other hand, the Inter-American Court, when referring to the destruction of houses, has declared the *violation of the right to private property through Article 21 of the American Convention*.² The Inter-American Court has also indicated that the destruction of houses or homes by State agents or forces constitutes, in addition to a major financial loss for the victims, a loss of their basic means of

¹ Cf. ECHR, *Case of Dulas v. Turkey*, No. 25801/94. Judgment of January 30, 2001, paras. 49 to 56; *Case of Osman v. Bulgaria*, No. 43233/98. Judgment of February 16, 2006, paras. 99 to 101; *Case of Cosic v. Bulgaria*, No. 28261/06. Judgment of January 15, 2009, paras. 21 to 23; *Case of Olaru et al. v. Moldavia*, Nos. 476/07, 22539/05, and 17911/08. Judgment of July 28, 2009, paras. 53 to 61.

² Cf. *Case of the Ituango Massacres v. Colombia*. Judgment of July 1, 2006. Series C No. 148, paras. 182 and 183; *Case of the Barrios Family v. Venezuela. Merits, reparations costs*. Judgment of November 24, 2011. Series C No. 237, paras. 148 to 150; *Case of Uzcátegui et al. v. Venezuela. Merits and reparations*. Judgment of September 3, 2012. Series C No. 249, para. 206; *Case of the Massacres of El Mozote and Nearby Places v. El Salvador. Merits, reparations costs*. Judgment of October 25, 2012. Series C No. 252, para. 202; *Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits and reparations*. Judgment of November 30, 2012. Series C No. 259, paras. 274 and 282; *Case of the Displaced Afrodescendant Communities of the Cacarica River Basin (Operation Genesis) v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of November 20, 2013. Series C No. 270, paras. 352 and 353; *Case of the Peasant Community of Santa Bárbara v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of September 1, 2015. Series C No. 299, para. 204 and *Case of Yarce et al. v. Colombia. Preliminary objection, merits, reparations and costs*. Judgment of November 22, 2016. Series C No. 325, para. 266.

subsistence.³ Therefore, the violation of the right to property has been considered especially serious,⁴ as was reiterated in this case.⁵

3. In the instant case, the representatives of the victims expressly stated that owing to the “military attack of June 26, 1996, by the National Army, [the victim’s home] was totally destroyed [...], including his household furniture and appliances.”⁶ The representatives added that, as a result of this serious situation the family was forced to “leave their home and to move away to live with [their] daughters.”⁷ At the same time, the State acknowledged its responsibility for the violation of the right to private property, owing to the failure to investigate the facts related to the damage caused to the property of José Eliseo Gallego Quintero.⁸

4. Thus, the Inter-American Court declared the violation of Articles 11 and 21 of the Pact of San José and, in section VIII.3 of the Judgment, in relation to the “Right to the Property and Inviolability of the Home” it concluded the following:

246. In relation to all the foregoing, it is clear that the forced entry and the damage caused to the home of Mr. José Eliseo Gallego Quintero [...] are attributable to the National Army. Therefore, the Court considers that the State is responsible for the violation of Articles 11(2) and 21 of the Convention in relation to Article 1(1) of the same instrument, to the detriment of José Gallego Quintero and his wife María Engracia Hernández, who were the owners of the property affected.⁹ [Underlining added].

5. Similarly, in the judgment,¹⁰ the Inter-American Court finds it pertinent to make some “additional observations on the inviolability of the home and private life, from the perspective of Article 11(2) of the Convention¹¹ and on the right to housing, the latter, taking into consideration that although every home is subject to protection under the right to property, not all property is necessarily a home.”¹² In that sense, although there is clearly an intrinsic relationship between the concepts of property and housing, there are specificities that must be addressed on a case by case basis. This is because the

³ Cf. *Case of the Santo Domingo Massacre v. Colombia*, *supra*, para. 274, and *Case of the Displaced Afrodescendant Communities of the Cacarica River Basin (Operation Genesis) v. Colombia*, *supra*, para. 352.

⁴ Cf. *Case of the Ituango Massacres v. Colombia*, *supra*, para. 182, and *Case of the Displaced Afrodescendant Communities of the Cacarica River Basin (Operation Genesis) v. Colombia*, *supra*, para. 352.

⁵ See: *Case of Vereda La Esperanza v. Colombia*, *supra*, para. 241. It should be emphasized that the impairment of the right to housing has a disproportionate impact on persons who are in a situation of vulnerability or who face different forms of discrimination in an intersecting manner, which could leave the victims in a situation of exclusion or marginalization of a structural nature. See: Clérico, Laura, “*Sobre la insuficiencia desde el prisma de la igualdad real. Pistas para evaluar una violación al derecho a la vivienda en Argentina*”, in García Jaramillo, Leonardo (ed.), *Nuevas perspectivas sobre la relación/tensión entre la democracia y el constitucionalismo*, Ed. Grijal, Lima, 2013, p. 485 to 508; and UN, Report of the Special Rapporteur, Miloon Khotari, on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context. Women and their right to adequate housing. E/CN.4/2006/118, February 27, 2006, paras. 47 to 54.

⁶ Cf. *Case of Vereda La Esperanza v. Colombia*, *supra*, para. 237.

⁷ *Ibid.* Underlining added.

⁸ Cf. *Case of Vereda La Esperanza v. Colombia*, *supra*, paras. 18 and 238.

⁹ *Case of Vereda La Esperanza v. Colombia*, *supra*, para. 246.

¹⁰ *Case of Vereda La Esperanza v. Colombia*, *supra*, para. 241.

¹¹ Cf. *Case of the Ituango Massacres v. Colombia*, *supra*, para. 192.

¹² *Case of Vereda La Esperanza v. Colombia*, *supra*, para. 241. Underlining added.

right to housing has autonomous features that cannot necessarily be subsumed in the right to property.

6. Indeed, I consider that there may be multiple effects on the right to property that in no way relate to housing. Conversely, there may be effects on housing that are not related to property. Thus, the notion of “housing” and the right to it, are separate from the notion of property, and may arise even in the absence of patrimonial ties.¹³ In this particular case, it was fully proven that substantial damage was caused to the homes of two of the victims by members of the Army. Consequently, having regard to their socioeconomic conditions, the Court could have examined the violation of this right from another perspective, that is, not only from the right to private property and the inviolability of the home, established in Articles 21 and 11(2) of the Pact of San José, respectively, but autonomously, from the perspective of the *right to housing*. This is because the aforementioned right may be derived from the social norms contained in Article 34(k) of the Charter of the Organization of American States (hereinafter “OAS Charter”), as established in Article 26 of the American Convention.

7. In this regard, the Court should have taken into consideration the fact that the *Case of Lagos del Campo v. Peru* — decided on the same day as the instant case— opened up a new horizon in the Court’s case law when it declared the violation of the victim’s labor rights through Article 26 of the American Convention. Indeed, in that historic judgment, the Inter-American Court stated:¹⁴

154. Lastly, it should be pointed out that the Court has established previously that it has jurisdiction to examine and decide disputes relating to Article 26 of the American Convention, as an integral part of the rights named in it and, regarding which, Article 1(1) establishes the general obligations of the States to respect and to ensure rights [...] The Court has also developed important case law on this matter, in light of different articles of the Convention. On this basis, the present judgment develops and substantiates a specific condemnation for the violation of Article 26 of the American Convention on Human Rights, established in Chapter III of this treaty, entitled Economic, Social and Cultural Rights. [Underlining added].

8. Thus, the Inter-American Court granted a new regulatory content to Article 26 of the Pact of San José, and observed that “the wording [of the provision] indicates that these are rights derived from the economic, social, educational, scientific, and cultural standards contained in the OAS Charter.”¹⁵ There is no doubt, then, that Article 26 of the Pact of San José is not merely a programmatic standard for the States Parties to the American Convention, but rather a provision that imposes on this Court the obligation to *derive rights from the economic, social, educational, scientific and cultural standards set forth in the OAS Charter*. In the *Case of Lagos del Campo v. Peru*, the Court considered as specific labor rights protected under Article 26 of the American

¹³ Cf. Concurring Opinion in the *Case of Yarce et al. v. Colombia*. Preliminary objection, merits, reparations and costs. Judgment of November 22, 2016. Series C No. 325, para. 65.

¹⁴ Cf. *Case of Lagos del Campo v. Peru*. Preliminary objections, merits, reparations and costs. Judgment of August 31, 2017, Series C No. 340, para. 154.

¹⁵ Cf. *Case of Lagos del Campo v. Peru*, *supra*, para. 143.

Convention, those derived from Articles 34(g),¹⁶ 45(b) and (c),¹⁷ and 46¹⁸ of the OAS Charter.

9. Hence, in the instant case, regarding which I offer this concurring opinion, the Court should have followed the same line of argument used in the *Case of Lagos del Campo v. Peru*. This would have been more consistent with the aforementioned judgment, and more appropriate to protect the right to housing through Article 26 of the Pact of San José, derived from Article 34(k)¹⁹ of the OAS Charter, which expressly refers to “adequate housing.” From the perspective of Inter-American social rights, I consider that this new interpretative approach is necessary and crucial for any future cases in which a violation of the right to housing may arise. The aim here is to clarify the content of that right and of other rights, avoiding unnecessary overlaps, in order to define the State’s obligations more clearly and in a differentiated manner. Furthermore, this would have a favorable impact on ensuring comprehensive reparation for the victims whose compensation, in the present case, was limited to payment of a specific amount.²⁰

10. For a better understanding of the subject, I have divided this opinion into the following sections: **I.** The direct justiciability of the “right to housing” via Article 26 of the Pact of San José (*paras. 11-21*). **II.** The autonomy of the “right to housing” in relation to other rights —particularly the right to property and the right to the inviolability of the home (*paras. 22-26*). **III.** The “right to housing” in the instant case: the *iura novit curia* principle (*paras. 27-41*); and **IV.** Conclusion (*paras. 42-50*).

I. THE DIRECT JUSTICIABILITY OF THE “RIGHT TO HOUSING” VIA ARTICLE 26 OF THE PACT OF SAN JOSÉ

¹⁶ According to Article 34(g) of the OAS Charter: “The Member States agree that equality of opportunity, the elimination of extreme poverty, equitable distribution of wealth and income and the full participation of their peoples in decisions relating to their own development are, among others, basic objectives of integral development. To achieve them, they likewise agree to devote their utmost efforts to accomplishing the following basic goals: [...] g) Fair wages, employment opportunities, and acceptable working conditions for all [...]”.

¹⁷ Article 45 of the OAS Charter establishes: “The Member States, convinced that man can only achieve the full realization of his aspirations within a just social order, along with economic development and true peace, agree to dedicate every effort to the application of the following principles and mechanisms: [...] b) Work is a right and a social duty, it gives dignity to the one who performs it, and it should be performed under conditions, including a system of fair wages, that ensure life, health, and a decent standard of living for the worker and his family, both during his working years and in his old age, or when any circumstance deprives him of the possibility of working; c) Employers and workers, both rural and urban, have the right to associate themselves freely for the defense and promotion of their interests, including the right to collective bargaining and the workers’ right to strike, and recognition of the juridical personality of associations and the protection of their freedom and independence, all in accordance with applicable laws; [...]” [Underlining added]

¹⁸ Article 46 of the OAS Charter: “The Member States recognize that, in order to facilitate the process of Latin American regional integration, it is necessary to harmonize the social legislation of the developing countries, especially in the labor and social security fields, so that the rights of the workers shall be equally protected, and they agree to make the greatest efforts possible to achieve this goal:” [Underlining added].

¹⁹ Article 34 of the OAS Charter: “The Member States agree that equality of opportunity, the elimination of extreme poverty, equitable distribution of wealth and income and the full participation of their peoples in decisions relating to their own development are, among others, basic objectives of integral development. To achieve them, they likewise agree to devote their utmost efforts to accomplishing the following basic goals: [...] k) Adequate housing for all sectors of the population [...]” [Underlining added].

²⁰ See *infra*, paras. 36 and 40; and footnotes 131 and 132 of this Concurring Opinion.

11. The Inter-American Court has previously ruled on the direct justiciability of economic, social, cultural and environmental rights in its historical judgment in the *Case of Lagos del Campo v. Peru*. In that case, labor rights were protected through Article 26 of the American Convention,²¹ and it was demonstrated that a State's compliance with the duty to respect and ensure a "social" right, does not depend on considerations of progressivity or availability of resources, but is required in the same way as with other human rights.

12. That said, as regards the "right to housing," I have previously stated that this is protected under Article 26 of the Pact of San José. Indeed, in the *Case Yarce et al. v. Colombia*, I stressed the importance that the Inter-American Court recognize the existence and direct justiciability of that right through Article 26 of said international treaty. This, bearing in mind that the "right to housing" is not contemplated in any of the provisions of the Protocol of San Salvador, making it an "apparently" forgotten right in the Inter-American System. I refer, where pertinent, to the views expressed in Section III of my Concurring Opinion in the aforementioned *Case of Yarce et al. v. Colombia*:²²

III. THE POSSIBILITY OF ADDRESSING THE *RIGHT TO HOUSING* AUTONOMOUSLY IN THE JURISPRUDENCE OF THE INTER-AMERICAN COURT

47. Out of the economic, social, cultural and environmental rights enshrined in the international instruments, the *right to housing* is of special interest, since it is a right that has been overlooked— to different degrees— in international human rights law, including in the Inter-American System.

[...]

A. Regulatory recognition

49. The following paragraphs refer to different universal and inter-American provisions related to the right to housing, with the aim of providing a general overview of the relevant international rules for the countries of America, and not assuming that all these are relevant to the judgment in the case of *Yarce et al. v. Colombia* with which this opinion concurs.

50. In the universal sphere, it is important to highlight the recognition of the right to housing in Article 25(1) of the Universal Declaration of Human Rights²³ and in Article 11(1) of the International Covenant on Economic, Social and Cultural Rights.²⁴ In addition, various international provisions have referred to housing as a "right," including Article 5(e)(iii) of the International Convention on the Elimination of All Forms of Racial Discrimination;²⁵ Article

²¹ Cf. *Case of Lagos del Campo v. Peru*, *supra*, paras. 140, 142, 143, 153, 154, 158 and 163, and operative paragraphs 5 and 6.

²² Cf. Concurring Opinion in the *Case of Yarce et al. v. Colombia*. *Preliminary objection, merits, reparations and costs*. Judgment of November 22, 2016. Series C No. 325, paras. 47, 49 to 54, 73 to 93 and 98 to 104.

²³ Proclaimed by the United Nations General Assembly in Paris, on December 10, 1948. The text states: "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."

²⁴ Adopted on December 16, 1966, entered into force on January 3, 1976. The cited provision states: "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent."

²⁵ Adopted on December 21, 1965, entered into force on January 4, 1969. The article states: "In compliance with the fundamental obligations laid down in Article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without

14(2)(h) of the Convention on the Elimination of All Forms of Discrimination against Women;²⁶ Article 27 of the Convention on the Rights of Child;²⁷ and Articles 9(1)(a),²⁸ 28(1),²⁹ and 28(2)(d)³⁰ of the Convention on the Rights of Persons with Disabilities.³¹

51. Furthermore, the Refugee Convention³² and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families also refer to housing³³ Similarly, provisions related to housing are included in the instruments on the rights of indigenous or native peoples, in which this issue is closely associated with land or territory;³⁴ and, in other

distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:... (e) ... (iii) The right to housing."

²⁶ Adopted in 1979, entered into force in 1981. This instrument affirms: "States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right: (...) (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications."

²⁷ Adopted on 20 November 1989, entered into force on September 2, 1990. The text states the following: "1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. [...] 3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing."

²⁸ "To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, (...). These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, *inter alia*: a) Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces."

²⁹ "States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability."

³⁰ "States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures: (...) d) To ensure access by persons with disabilities to public housing programmes."

³¹ Open to signature on March 30, 2007, entered into force on May 3, 2008.

³² Adopted on July 28, 1951, entered into force on April 22, 1954. Article 21 states: "As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to refugees lawfully staying in their territory treatment as favorable as possible and, in any event, not less favorable than that accorded to aliens generally in the same circumstances."

³³ Adopted on December 18, 1990, entered into force on July 1, 2003. Article 43(1): "Migrant workers shall enjoy equality of treatment with nationals of the State of employment in relation to: [...] (d) access to housing, including social housing schemes, and protection against exploitation in respect of rents."

³⁴ Therefore, we should not only take into account the express mention of housing in provisions such as Article 20 of the International Labor Organization on Indigenous and Tribal Peoples, Convention 169 (adopted on 27 June 1989, entered into force on September 5, 1991), or Articles 21(1) or 23 of the Declaration on the Rights of Indigenous Peoples (adopted in 2007) but also Articles 7, 13, 14, 15, 16, 17, 18 and 19 of that Convention and Articles 10, 26, 27, 28 and 32 of that Declaration. As to Articles 20 of the Convention and Articles 21(1) and 23 of the Declaration, these texts state the following: Article 20: "1. Governments shall, within the framework of national laws and regulations, and in co-operation with the peoples concerned, adopt special measures to ensure the effective protection with regard to recruitment and conditions of employment of workers belonging to these peoples, to the extent that they are not effectively protected by laws applicable to workers in general. 2. Governments shall do everything possible to prevent any discrimination between workers belonging to the peoples concerned and other workers, in particular as regards: a) admission to employment, including skilled employment, as well as measures for promotion and advancement; b) equal remuneration for work of equal value; c) medical and social assistance, occupational safety and health, all social security benefits and any other occupationally related benefits, and housing; [...]"; Article 21(1): "Indigenous peoples have the right, without discrimination, to the improvement of their economic and social

types of agreements adopted in the context of the International Labor Organization,³⁵ as well as in the rules of international humanitarian law.³⁶

52. In the inter-American sphere, Article 26 of the American Convention and Article XI of the American Declaration of the Rights and Duties of Man [...] are particularly relevant. Likewise, there are other provisions related to the protection of human rights that include provisions on housing, such as Article III(1)(a) of the Inter-American Convention for the Elimination of All Forms of Discrimination against Persons with Disabilities³⁷ and various articles of the American

conditions, including, *inter alia*, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security," and Article 23: "Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

³⁵ Among these, we can cite the following: Occupational Health Services Convention (No. 161, adopted on June 25, 1985, entered into force on February 17, 1988): Article 5: "Without prejudice to the responsibility of each employer for the health and safety of the workers in his employment, and with due regard to the necessity for the workers to participate in matters of occupational health and safety, occupational health services shall have such of the following functions as are adequate and appropriate to the occupational risks of the undertaking: (...) (b) surveillance of the factors in the working environment and working practices which may affect workers' health, including sanitary installations, canteens and housing where these facilities are provided by the employer;" Social Policy (Basic Aims and Standards) Convention, No. 117 (adopted on June 22, 1962, entered into force on April 23, 1964): Article 2: "The improvement of standards of living shall be regarded as the principal objective in the planning of economic development." Article 5(2): "In ascertaining the minimum standards of living, account shall be taken of such essential family needs of the workers as food and its nutritive value, housing, clothing, medical care and education," and The Plantations Convention (No. 110, adopted on June 24, 1958, entered into force on January 22, 1960): Article 88(1): "Where housing is provided by the employer the conditions under which plantation workers are entitled to occupancy shall be not less favorable than those established by national custom or national legislation."

³⁶ Geneva Convention Relative to the Protection Civilian Persons in Time of War (approved on August 12, 1949, entered into force on October 21, 1950): Article 49: "Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive. Nevertheless, the Occupying Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand. [...]" Article 53: "Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or co-operative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations." Article 85: "The Detaining Power is bound to take all necessary and possible measures to ensure that protected persons shall, from the outset of their internment, be accommodated in buildings or quarters which afford every possible safeguard as regards hygiene and health, and provide efficient protection against the rigours of the climate and the effects of the war. In no case shall permanent places of internment be situated in unhealthy areas or in districts the climate of which is injurious to the internees. In all cases where the district, in which a protected person is temporarily interned, is in an unhealthy area or has a climate which is harmful to his health, he shall be removed to a more suitable place of internment as rapidly as circumstances permit. The premises shall be fully protected from dampness, adequately heated and lighted, in particular between dusk and lights out. The sleeping quarters shall be sufficiently spacious and well ventilated, and the internees shall have suitable bedding and sufficient blankets, account being taken of the climate, and the age, sex, and state of health of the internees. Internees shall have for their use, day and night, sanitary conveniences which conform to the rules of hygiene and are constantly maintained in a state of cleanliness. They shall be provided with sufficient water and soap for their daily personal toilet and for washing their personal laundry; installations and facilities necessary for this purpose shall be granted to them. Showers or baths shall also be available. The necessary time shall be set aside for washing and for cleaning. Whenever it is necessary, as an exceptional and temporary measure, to accommodate women internees who are not members of a family unit in the same place of internment as men, the provision of separate sleeping quarters and sanitary conveniences for the use of such women internees shall be obligatory." Article 134: "The High Contracting Parties shall endeavour, upon the close of hostilities or occupation, to ensure the return of all internees to their last place of residence, or to facilitate their repatriation."

³⁷ Adopted on June 7, 1999, entered into force on September 14, 2001. The article cited states: "To achieve the objectives of this Convention, the States parties undertake: 1. To adopt the legislative, social, educational, labor-related, or any other measures needed to eliminate discrimination against persons with disabilities and to promote their full integration into society, including, but not limited to: a. Measures to eliminate discrimination gradually and to promote integration by government authorities and/or private entities in providing or making available goods, services, facilities, programs, and activities such as employment,

Declaration on the Rights of Indigenous Peoples.³⁸

53. Furthermore, it should be noted that the *right to housing* is explicitly recognized in the Inter-American Convention on Protecting the Human Rights of Older Persons,³⁹ Article 24 of which is entitled "Right to Housing,"⁴⁰ including also other provisions that make explicit mention of housing.⁴¹ The Inter-American System also contains references to this issue in other treaties that have not yet entered into force.⁴²

transportation, communications, housing, recreation, education, sports, law enforcement and administration of justice, and political and administrative activities; [...]."

³⁸ Approved on June 14, 2016. As indicated [...], in relation to Indigenous or Native Peoples, the question of housing must be associated with the rights related to the protection of their lands or territories. Therefore, Articles VI, XXV, XXVI, XXIX and XXX of that Declaration should be taken into account.

³⁹ Adopted on June 15, 2015, in Washington, D.C. the Convention entered into force on January 11, 2017, with the deposit of the second instrument of ratification. Costa Rica ratified that Convention on December 10, 2016, while Uruguay did so on November 18, 2016. Recently, three other countries have deposited the instrument of ratification of this Convention: Bolivia, May 17, 2017; Chile, on August 15, 2017; and Argentina, on October 23, 2017.

⁴⁰ The text states: "Older persons have the right to decent and adequate housing and to live in safe, healthy, and accessible environments that can be adapted to their preferences and needs. States Parties shall adopt appropriate measures to promote the full enjoyment of this right and facilitate access for older persons to integrated social and health care services and to home care services that enable them to reside in their own home, should they wish. States Parties shall ensure the right of older persons to decent and adequate housing and shall adopt policies to promote the right to housing and access to land, recognizing the needs of older persons and the priority of allocating to those in situations of vulnerability. Likewise, States Parties shall progressively foster access to home loans and other forms of financing without discrimination, promoting, inter alia, collaboration with the private sector, civil society and other social actors. Such policies should pay particular attention to: a) The need to build or progressively adapt housing solutions, so that they are architecturally suitable and accessible for older persons with disabilities and restricted mobility; b) The specific needs of older persons, particularly those who live alone, by means of rent subsidies, support for housing renovations, and other pertinent measures, within the capacities of States Parties. States Parties shall promote the adoption of expedited procedures for complaints and redress in the event of evictions of older persons and shall adopt the necessary measures to protect them against illegal forced evictions. States Parties shall promote programs to prevent accidents inside and in the vicinity of older persons' homes."

⁴¹ These are as follows: Article 2, entitled "Definitions:" "For the purposes of this Convention the following definitions shall apply: [...] 'Household unit or home': A group of individuals who live in the same dwelling, share the main meals, and address the common basic needs together, without necessarily being relatives. [...]" ; Article 12, entitled "Rights of older persons receiving long-term care:" "Older persons have the right to a comprehensive system of care that protects and promotes their health, provides social services coverage, food and nutrition security, water, clothing, and housing, and promotes the ability of older persons to stay in their own home and maintain their independence and autonomy, should they so decide. [...]" , and Article 26 on "Right to accessibility and personal mobility:" "Older persons have the right to accessibility to the physical, social, economic, and cultural environment, as well as to personal mobility. In order to ensure accessibility and personal mobility for older persons, so that they may live independently and participate fully in all aspects of life, States Parties shall progressively adopt appropriate measures to ensure for older persons access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia: a) buildings, roads, transportation, and other indoor and outdoor facilities, including centers of education, housing, medical facilities, and workplaces; [...]."

⁴² Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance (adopted on June 5, 2013): Article 7: "The States Parties undertake to adopt legislation that clearly defines and prohibits racism, racial discrimination, and related forms of intolerance, applicable to all public authorities as well as to all individuals or natural and legal persons, both in the public and in the private sectors, particularly in the areas of employment; participation in professional organizations; education; training; housing; health; social protection; exercise of economic activity; access to public services and other areas; and to repeal or amend any legislation that constitutes or produces racism, racial discrimination, and related forms of intolerance." Inter-American Convention against All Forms of Discrimination and Intolerance (adopted on June 5, 2013): Article 7: "The States Parties undertake to adopt legislation that clearly defines and prohibits discrimination and intolerance, applicable to all public authorities as well as to all individuals or natural and

54. It should be noted that, as indicated [...], the articles of the Protocol of San Salvador do not include provisions directly related to the right to housing.⁴³

[...]

C. Obligations to respect and guarantee

C.1. General aspects

73. As I have indicated in the fourth paragraph of my concurring opinion on the Court's Judgment in the *Case of Suárez Peralta v. Ecuador*:⁴⁴

the general obligations of "respect" and "guarantee" that are established in this article of the Convention [Article 1(1)] – together with the obligation to "adapt domestic legislation" of Article 2 of the American Convention – *apply to all rights*, whether civil, political, economic, social or cultural. On that occasion I also noted that "Article 26 is included in Part I (State Obligations and Rights Protected) of the American Convention and, therefore, the general obligations of the States established in Articles 1(1) and 2 of the Convention are applicable to it, as recognized by the Inter-American Court itself in the *Case of Acevedo Buendía v. Peru*."⁴⁵

74. In order to avoid reiteration, I refer to the aforementioned concurring opinion. I also include some additional considerations below.

75. Article 26 of the American Convention, establishes the commitment of the States Parties to "adopt measures [...] with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights [established in the provision]."

76. The text is similar to Article 2(1) of the International Covenant on Economic, Social and Cultural Rights, which states that "Each State Party to the present Covenant undertakes to take steps [...] to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures." Given the aforementioned similarity, I consider pertinent the views of the ESCR Committee on obligational regime regarding economic, social and cultural rights, including the right to housing.

77. In General Comment No. 3, the ESCR Committee has stated the following:

legal persons, both in the public and in the private sectors, particularly in the areas of employment; participation in professional organizations; education; training; housing; health; social protection; exercise of economic activity; access to public services and other areas; and to repeal or amend any legislation that constitutes or produces discrimination and intolerance."

⁴³ This does not exclude the possibility that, having carried out the corresponding hermeneutical analysis, one could conclude that the text of certain provisions of the San Salvador Protocol includes references that, without specifically using the word "housing", substantively refer to the right to housing, or to elements thereof, associated with a right that is explicitly established. Such an interpretation could be made, for example, of Article 17, entitled "Protection of the Elderly," which states that "Everyone has the right to special protection in old age. With this in view, the States Parties agree to take progressively the necessary steps to make this right a reality and, particularly, to: a. Provide suitable facilities, as well as food and specialized medical care, for elderly individuals who lack them and are unable to provide them for themselves [...]"

⁴⁴ Concurring Opinion in the *Case of Suárez Peralta v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of May 21, 2013, Series C No. 261.

⁴⁵ Concurring Opinion regarding the Court's Judgment in the *Case of Suárez Peralta v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of May 21, 2013. Series C No. 261, paras. 4 and 35. In the Judgment in the *Case of Acevedo Buendía et al.*, the Court said that "it is pertinent to note that even though Article 26 is embodied in Chapter III of the Convention, entitled "Economic, Social and Cultural Rights", it is also positioned in Part I of the said instrument, entitled "State Obligations and Rights Protected" and, therefore, is subject to the general obligations contained in Articles 1(1) and 2 mentioned in chapter I (entitled "General Obligations"), as well as Articles 3 to 25 mentioned in Chapter II (entitled "Civil and Political Rights")." *Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Office of the Comptroller") v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of July 1, 2009. Series C No. 198, para. 100.

[W]hile the Covenant provides progressive realization and acknowledges the constraints due to the limits of available resources, it also imposes various obligations which are of immediate effect. [...] One of these [...] is the 'undertaking to guarantee' that the relevant rights 'will be exercised without discrimination'. [...] the other] is the undertaking [...] to 'take steps', [...] which in itself, is not qualified or limited by other considerations. [...] Thus, while the full realization of the relevant rights may be achieved progressively, steps toward that goal must be taken within a reasonably short time after the Covenant's entry into force. Such steps should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant. [...] the concept of progressive realization constitutes a recognition of the fact that full realization of all economic, social and cultural rights will generally not be able to be achieved in a short period of time. In this sense, the obligation differs significantly from that contained in Article 2 of the International Covenant on Civil and Political Rights which embodies an immediate obligation to respect and ensure all of the relevant rights. Nevertheless, the fact that realization over time, or in other words progressively, is foreseen under the Covenant, should not be misinterpreted as depriving the obligation of all meaningful content. [...] The phrase must be read in the light of the overall objective [...] the *raison d'être*, of the Covenant, which is to establish clear obligations [...] with respect to the full realization of the rights in question. This imposes an obligation to move as expeditiously and effectively as possible toward that goal. Moreover, any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources. [...] It is incumbent upon every State party to ensure the satisfaction of at the very least, minimum essential levels of each of the rights. Thus, for example, a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, *prima facie*, failing to discharge its obligations under the Covenant. [...] Even where the available resources are demonstrably inadequate, the obligation remains for a State party to strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances. Moreover, the obligations to monitor the extent of the realization, or more especially of the non-realization, of economic, social and cultural rights, and to devise strategies and programmes for their promotion, are not in any way eliminated as a result of resource constraints. Even in times of severe resource constraints, [...] the vulnerable members of society can and indeed must be protected [...].⁴⁶

78. In General Comment No. 12, regarding the Right to Adequate Food, the ESCR Committee indicated the obligations that apply in relation to "any human right."⁴⁷ Subsequently, it reiterated this point more precisely. Thus, in General Comment No. 14, regarding the Right to the Highest Attainable Standard of Health, the Committee states:

The right to health, like all human rights, imposes three types or levels of obligations on States parties: the obligations to *respect, protect and fulfil*. In turn, the obligation to *fulfil* contains obligations to facilitate, provide and promote. The obligation to *respect* requires States to refrain from interfering

⁴⁶ ESCR Committee. General Comment No. 3. The Nature of States Parties' Obligations (Article 2, para. 1, of the Covenant). Fifth Session (1990), paras. 1, 2, 9, 10, 11 and 12.

⁴⁷ In General Comment 12, the ESCR Committee states that: "Like any other human right, it imposes three types or levels of obligations on States parties: the obligations to respect, to protect and to fulfil. In turn, the obligation to fulfil incorporates both an obligation to facilitate and an obligation to provide. The obligation to respect [...] requires States parties not to take any measures that result in preventing such access. The obligation to protect requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food. The obligation to fulfil (facilitate) means the State must proactively engage in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood, including food security. Finally, whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to fulfil (provide) that right directly." Cf. ESCR Committee. General Comment No. 12. The Right to Adequate Food (Article 11). 20th Session (1999), para. 15.

directly or indirectly with the enjoyment of that right [...]. The obligation to *protect* requires States to take measures that prevent third parties from interfering with [...] such guarantees. Finally, the obligation to *fulfil* requires States to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards the full realization of the right [...]. The obligation to *fulfil (facilitate)* requires States *inter alia* to take positive measures that enable and assist individuals and communities to enjoy the right [...]. States parties are also obliged to *fulfil (facilitate)* a specific right contained in the Covenant when individuals or a group are unable, for reasons beyond their control, to realize that right themselves by the means at their disposal. The obligation to *fulfil (promote)* the right [...] requires States to undertake actions that create, maintain and restore the health of the population.⁴⁸

79. On that occasion, the ESCR Committee reiterated the observation expressed in General Comment No. 3. "that a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party," and considered that "the core obligations arising from Article 12 [of the Covenant, regarding the right of everyone to the enjoyment of the highest attainable standard [physical and mental health] include, at least, [*inter alia*] ensuring access to basic shelter, housing and sanitation, and an adequate supply of safe and potable water."⁴⁹

80. In the same General Comment, the ESCR Committee stated that non-compliance with the obligations cited produces "violations" of the right.⁵⁰ In particular, since these observations are pertinent to the case at hand, it is useful to emphasize that "[v]iolations of the obligation to protect follow from the failure of a State to take all necessary measures to safeguard persons within their jurisdiction from infringements of the right to health by third parties."⁵¹ I understand that this assertion is relevant, by analogy, to other rights.

81. That said, if we consider the set of obligations mentioned by the ESCR Committee, this does not differ, beyond terminological aspects and differences, from that instituted by Articles 1(1) and 2 of the Convention, which establish the duties to "respect," "guarantee" and to "adopt [...] legislative or other measures [...] to realize" the rights.

82. As to Article 1(1), the Court has indicated that it "is a general norm, the content of which *extends to all the provisions of this treaty*, and establishes the obligation of the States Parties to respect and to ensure the free and full exercise of the rights and freedoms recognized therein 'without any discrimination.'"⁵² (Emphasis added). The Court stated that:

"In application of Article 1(1) of the Convention, States have the obligation *erga omnes* to respect and ensure the norms of protection, and to ensure the effectiveness of human rights. Consequently, States undertake not only to respect the rights and freedoms recognized in the Convention (passive obligation), but also to adopt all the appropriate measures to ensure them (active obligation). In this regard, the Court has established that it is not sufficient that States abstain from violating rights; rather it is essential that they adopt positive measures, to be determined based on the specific needs for

⁴⁸ ESCR Committee. General Comment No. 14. The Right to the Highest Attainable Standard of Health (Article 12). 22nd Session (2000), paras. 33 and 37.

⁴⁹ ESCR Committee. General Comment No. 14. The Right to the Highest Attainable Standard of Health (Article 12). 22nd Session (2000), para. 43.

⁵⁰ Cf. ESCR Committee. General Comment No. 14. The Right to the Highest Attainable Standard of Health (Article 12). 22nd Session (2000), para. 46 to 52.

⁵¹ ESCR Committee. General Comment No. 14. The Right to the Highest Attainable Standard of Health (Article 12). 22nd Session (2000), para. 51.

⁵² Based on its own precedents, the Court added that "whatever its origin or form, any treatment that may be considered discriminatory in relation to the exercise of any of the rights guaranteed in the Convention is *per se* incompatible with it. Non-compliance by the State with the general obligation to respect and to ensure the human rights owing to any discriminatory treatment entails its international responsibility. This is why there is an indissoluble connection between the obligation to respect and to ensure human rights and the principle of equality and non-discrimination." *Case of Flor Freire v. Ecuador. Preliminary objection, merits, reparations and costs*. Judgment of August 31, 2016. Series C No. 315, para. 111.

protection of the subjects of law, due either to their personal situation, or to the specific situation in which they find themselves.”⁵³

83. From the above it follows that the meaning of “respect” is assimilated in that which the ESCR Committee has given to the same expression, and also that an aspect of the obligation of guarantee is the State’s obligation to “prevent” violations of rights by private individuals, which has points of contact with the duty to “protect” mentioned by the ESCR Committee. It should be noted that in relation to the duty of prevention, paragraph 181 of the Judgment regarding which I issue this opinion states, based on precedents of the Court, that “special obligations are derived from Article 1(1) of the Convention, which are determined according to the particular needs for protection of the subject of law, either owing to his personal situation or to the specific situation in which he finds himself. Thus, the obligation to guarantee is a duty of means or conduct, not of result, to prevent private individuals from violating property protected by the rights established in the treaty.”⁵⁴

84. Regarding Article 2 of the American Convention, the Court has indicated that this “obliges States Parties to adopt, in accordance with their constitutional processes and the provisions of the Convention, such legislative or other measures as may be necessary to give effect to the rights and freedoms protected by the Convention,”⁵⁵ and that

“this provision imposes on the States Parties the general obligation to adapt their domestic law to the provisions of the Convention in order to ensure and make effective the exercise of the rights and freedoms recognized therein. The Court has affirmed that this entails the adoption of two types of measures, namely: (a) the enactment of laws and the implementation of practices leading to the effective observance of these guarantees, and (b) the elimination of laws and practices of any kind that result in a violation of the guarantees established in the Convention, either because they fail to recognize those rights and freedoms or they prevent their exercise. [...] As this Court has indicated on other occasions, the provisions of domestic law that are adopted to this end must be effective (principle of the practical effects or *effet utile*), which means that States are obliged to adopt and to establish in their domestic laws all the measures required to ensure that the provisions of the Convention are truly complied with and implemented.”⁵⁶

85. From the foregoing it follows that there is no substantial difference between the system of obligations contemplated in the American Convention, as understood by the Court, and that indicated by the ESCR Committee, in relation to the economic, social and cultural rights recognized in the International Covenant on Economic, Social and Cultural Rights. I understand that, given that Articles 1(1) and 2 of the American Convention apply to all the rights mentioned in the treaty, that system of obligations is likewise applicable to the rights set forth in Article 26 of the Pact of San José, among them the right to housing.

86. That said, it is pertinent to ask what effects the provisions of Article 26 (similar to Article 2(1) of the Covenant) have regarding the obligation to “adopt measures” to “progressively” achieve the “full realization” of the corresponding rights.

⁵³ *Case of Gonzales Lluy et al. v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of September 1, 2015. Series C No. 298, para. 168. It is worth noting that from its first rulings the Court interpreted the duty to guarantee rights in a broad sense as an “obligation [that] implies the duty of States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of legally ensuring the free and full enjoyment of human rights. [...] The obligation to ensure the free and full exercise of human rights is not fulfilled by the existence of a legal system designed to make it possible to comply with this obligation --it also requires the government to conduct itself so as to effectively ensure the free and full exercise of human rights.” *Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, paras. 166 and 167.

⁵⁴ *Cf. Case of Yarce et al. v. Colombia. Preliminary objection, merits, reparations and costs.* Judgment of 22 November 2016, Series C No. 325, para. 181.

⁵⁵ *Cf. Case of Flor Freire v. Ecuador. Preliminary objection, merits, reparations and costs.* Judgment of August 31, 2016. Series C No. 315, para. 139.

⁵⁶ *Case of Expelled Dominicans and Haitians v. Dominican Republic. Preliminary objections, merits, reparations and costs.* Judgment of 28 August 2014. Series C No. 282, paras. 270 and 271. [...].

87. I understand that the difference between the rights listed as “civil and political” and those classified as “economic, social and cultural” does not lie in the nature of the relevant obligations, in their justiciability or in relation to the Court’s jurisdiction.⁵⁷ The difference lies in the fact that, in certain aspects and circumstances, achieving the “full realization” of economic, social and cultural rights is not enforceable for the States immediately, from the entry into force of the treaty, and may validly be subject to being achieved “progressively.” To the contrary, the “full realization” of the rights established in Articles 3 to 25 of the American Convention is immediately enforceable.⁵⁸

88. It is worth recalling the observation made by the ESCR Committee in General Comment No. 3 [...]: “[t]he concept of progressive realization constitutes a recognition of the fact that full realization of all economic, social and cultural rights will generally not be able to be achieved in a short period of time.” Therefore there is a difference in relation to the rest of the rights, whereby, despite the fact that a State may not be able to satisfy these in full, it has an “*immediate* obligation to respect and guarantee [them] fully.” (emphasis added).

89. Thus, with regard to economic, social and cultural rights, which are also governed by the same obligations as the so-called civil and political rights, a State could validly argue, at a given moment, that certain aspects of the content of those rights are not yet fully realized and, depending on the circumstances of the case, avoid being declared responsible. The opposite is true of civil and political rights, in respect of which, regardless of the factual situation existing in a country at a given time, the State may definitely not evade its responsibility by arguing that it has not yet been able to achieve their full realization.⁵⁹

90. That said, this in no way precludes a judicial analysis of the observance of economic, social and cultural rights. Thus, based on its competence and on the obligations established in Articles 1(1), 2 and 26, the Inter-American Court may examine their observance.

91. In such a case, and based on the circumstances, it will be up to the Court to examine the evidence and the arguments submitted to it, determine whether it is valid to excuse a State from this responsibility, considering that certain aspects pertaining to the “full realization” of that right cannot be achieved at a given moment. However, the distinction mentioned between the different rights, exclusively limited to the achievement of their “full realization,” in no way results in any

⁵⁷ In that regard, I have mentioned previously that “it is important to stress that all the rights include some aspects that relate to social benefits and others that do not. In other words, establishing the characteristic of rights requiring social services only for the social rights does not appear to be a viable answer in our times and would seem to be a mistake or a “categorical error,” as the Constitutional Court of Colombia itself indicated in Judgment T-760 of 2008. Cf. Constitutional Court of Colombia, Judgment T-760 of 2008 (Reporting Judge: Manuel José Cepeda Espinosa), para. 3.3.5. See: Concurring Opinion regarding the Inter-American Court’s Judgment in the *Case of Suárez Peralta v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of May 21, 2013. Series C No. 261, para. 78 and footnote 141.

⁵⁸ This affirmation does not disregard the fact that both classes of rights have, to a greater or lesser degree, active obligations (to guarantee) and passive obligations (to respect) in terms of their implementation.

⁵⁹ For example, in the *Case of Véliz Franco et al. v. Guatemala*, in response to the State’s argument concerning the rights to judicial guarantees and judicial protection, claiming that it could not be held responsible for omissions at the time of the facts, and that it corrected these years later, the Court affirmed that “regarding the alleged impediments to the correct implementation of certain procedures at the time of the events [...] the State cannot excuse its failure to comply with its obligation to investigate with the due diligence by affirming that, at the time of the events, there were no laws, procedures or measures for conducting the initial investigative measures properly in keeping with the standards of international law that are evident in the applicable treaties in force at the time of the events.” Specifically, as noted in paragraph 171 of the respective Judgment, the State had pointed out that “at the time of the events, the examinations carried out on the corpses of both men and women were performed in accordance with the procedures requested by the prosecutors and judges at that time and, according to [the] possibilities’, [and that] “with the passage of time, the State has been overcoming these shortcomings over the last 10 years, adopting a series of measures that, today, make the procedure for recovering a corpse and the way in which evidence is collected more uniform and methodical’ and therefore it could not be held internationally responsible for “failing to collect evidence that can only be obtained since the creation of the National Institute of Forensic Science” in 2007. The State also explained that “at the time of the facts [of the case, in December 2001,] there were no specific laws or procedures for cases of violence against women, but [by December 2012] these had been established.” *Case of Véliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of May 19, 2014. Series C No. 277, paras. 171 and 180.

of the rights or obligations regulated in the Convention being excluded *a priori* from the possibility of being examined by the Court in the context of its contentious jurisdiction.

92. As I have indicated on a previous occasion, “the elements of ‘progressiveness’ and of ‘available resources’ to which [Article 26 of the Convention] refers [may] constitute conditioning normative elements for the justiciability of the said rights.”⁶⁰ As I also noted on that occasion, such elements are, in any case, “aspects relating to the implementation” of rights. These may be relevant in relation to the determination of the State’s responsibility.⁶¹

93. Therefore, I consider that a State’s obligations are essentially the same with respect to any right recognized in Articles 3 to 26 of the American Convention. Accordingly, as noted previously, since the Court has jurisdiction in relation to Article 26, all the rights are justiciable and any violations thereof may be determined by the Inter-American Court in the context of its contentious jurisdiction.

[...]

D. Corollary: the *right to housing* contained in Article 26 of the Pact of San José

1. 98. As stated previously, the *right to housing* is not established in the Protocol of San Salvador [...]. This would seem to create a lack of protection, given that this right appears to be *absent* from the inter-American instruments.

99. This lack of protection is merely apparent. In fact, the OAS Charter, amended by the Protocol of Buenos Aires, *does* contain a provision from which the *right to adequate housing* may be derived. Indeed, Article 34(k) establishes that:

The Member States agree that equality of opportunity, the elimination of extreme poverty, equitable distribution of wealth and income and the full participation of their peoples in decisions relating to their own development are, among others, basic objectives of integral development. To achieve them, they likewise agree to devote their utmost efforts to accomplishing the following basic goals:

[...]

k) Adequate housing for all sectors of the population

100. This provision should not be read in isolation, but in connection with Article 26 of the Pact of San José in the terms that I have attempted to explain in this opinion. As I have indicated [...] the said provision refers to “rights” that are “derived” from the “economic, social, educational, scientific, and cultural standards set forth in the OAS Charter.” Hence the need for the Court to analyze, on a case by case basis, which rights are derived from the OAS Charter.

⁶⁰ Concurring Opinion regarding the judgment of the Inter-American Court in the *Case of Suárez Peralta v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of May 21, 2013. Series C No. 261, para. 7.

⁶¹ This does not preclude the observation that, even if a State does not achieve the “full realization” of any right – be it economic, political, cultural, civil or social, it must take action to achieve that objective. Indeed, this is contemplated in the Convention itself: Article 41, without distinguishing between types of rights, states as a “principal function” of the Inter-American Commission, “to make recommendations to the governments of the member states, when it considers such action advisable, for the *adoption of progressive measures* in favor of human rights” (emphasis added). However, this does not affect the statutory regulatory regime regarding States’ obligations and responsibilities. It is true that the Convention itself assumes that it may be necessary to make progress in the adoption of measures regarding the observance of all human rights, since the contrary would imply a fiction: it is a fact that the “full realization” of those rights is not an *a priori* situation, and that State actions will always be required to advance toward that goal. However, Article 26 is included in Part I of the treaty, concerning “States Obligations and Rights Protected” and Article 41 is included in Part II, entitled “Means of Protection,” and refers to the functions of the Inter-American Commission to “promote the observance and the defense of human rights,” not to its functions to process petitions or communications, which are regulated in Articles 44 to 51. Thus, the implicit recognition in the Convention that it could be necessary to adopt measures for the advancement of all rights does not affect the mandatory regime or responsibility regarding the rights set forth in Articles 3 to 25 of the Treaty; their full realization is enforceable, including legally, immediately after the entry into force of the treaty. It should also be noted that the term “progressive” in Article 41 of the Convention refers to the “measures” to be adopted and that, in Article 26, it refers to “achieving” the “full realization” of the rights.

101. Moreover, we cannot overlook the fact that Article XI the American Declaration of the Rights and Duties of Man,⁶² although it refers to health, establishes that: "Every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, *housing* and medical care, to the extent permitted by public and community resources" (emphasis added).⁶³

102. This interpretation should in no way be construed as a modification, by means of interpretation, of the OAS Charter. It is not a matter of making the text of the Charter say something that it does not say, but rather of understanding that the Charter itself establishes a "right." Indeed, what is being interpreted here is the text of the Pact of San José, stating that the *right to housing* is included in Article 26. It is not a matter of asserting that the rights "are" in the OAS Charter, but rather, by mandate of the provisions of Article 26 of the Convention, the Charter must be used to determine the rights that are included in the Pact of San José. The regulatory basis for these rights is the American Convention; according to the Pact of San José, the OAS Charter is the text to be used to elucidate (or "derive") the economic, social and cultural rights included in this treaty.

103. As to whether the *right to housing*, understood in this way, offers a sufficient normative basis to assess its content and determine obligations, I believe it does so in the terms previously analyzed. This is because that right, like others established in the American Convention, must be related to the general obligations set forth in Articles 1(1) and 2 of the Pact of San José. Moreover, as the Inter-American Court has done consistently, it is possible to refer to other instruments in order to interpret the content of the rights contained in the American Convention.⁶⁴

104. In any case, it is a feature of international human rights law that its provisions are succinct and do not offer a detailed regulation of their content. This feature does not deprive it in any way of operability or justiciability. Thus, the situation is no different from others that have allowed the Court to rule on rights and obligations that are not expressly established in the treaty, but which it considers are derived from its provisions.

⁶² Adopted at the Ninth International Conference of American States, in 1948. As I stated in paragraph 63 of my Concurring Opinion regarding the Judgment in the Case of *Suárez Peralta v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of May 21, 2013. Series C No. 261): "Regarding the possible integration of the OAS Charter with the American Declaration of the Rights and Duties of Man, it is pertinent to take into account Advisory Opinion OC-10/89 'Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights,' of July 14, 1989, especially paragraphs 43 and 45: '43. Hence it may be said that by means of an authoritative interpretation, the member states of the Organization have signaled their agreement that the Declaration contains and defines the fundamental human rights referred to in the Charter. Thus the Charter of the Organization cannot be interpreted and applied as far as human rights are concerned without relating its norms, consistent with the practice of the organs of the OAS, to the corresponding provisions of the Declaration. [...] 45. For the Member States of the Organization, the Declaration is the text that defines the human rights referred to in the Charter. Moreover, Articles 1(2)(b) and 20 of the Commission's Statute define the competence of that body with respect to the human rights enunciated in the Declaration, with the result that, to this extent, the American Declaration is for these States a source of international obligations related to the Charter of the Organization.'"

⁶³ It should be noted that the text of the American Declaration of the Rights and Duties of Man includes a single provision referring to housing as one of several other elements, such as food and clothing. In that sense, it is similar to paragraph 1 of Article 11 of the International Covenant on Economic Social and Cultural Rights, whereby the States Parties "recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions." This provision is mentioned by the Committee on Economic, Social and Cultural Rights in relation to the right to adequate housing - Cf. General Comment Nº 4: The right to adequate housing (paragraph 1 of Article 11 of the Covenant).

⁶⁴ For example, in the *Case of the Pacheco Tineo Family v. Bolivia*, in relation to Article 19 of the Convention concerning the "Rights of the Child," the Court has indicated that this provision should be interpreted "in light of the international *corpus juris* on the protection of children," and that "this *corpus juris* should serve to define the content and scope of the obligations assumed by the State when analyzing the rights of the child." Thus, the Court considered it pertinent to take into account the Convention on the Rights of the Child. *Case of the Pacheco Tineo Family v. Bolivia. Preliminary objections, merits, reparations and costs*. Judgment of November 25, 2013. Series C No. 272, paras. 216, 217 and 219.

105. Thus, for example, the Court has ruled on the “right to identity,” without the word “identity” being mentioned in the American Convention;⁶⁵ it has also done so with respect to the “right to the truth,” which is not expressly stated in the Convention,⁶⁶ or “the right to consultation” in the case of indigenous and tribal peoples.⁶⁷ In addition, its jurisprudence is extensive, constant and detailed regarding the “obligation to investigate,” even though the word “investigate” is not explicitly stated in any provision of the treaty.⁶⁸

13. As may be gathered from my observations in my Concurring Opinion in the *Case Yarce et al. v. Colombia*, Article 26 of the American Convention is not merely a programmatic standard for the States Parties to that treaty, but rather a provision that requires the Inter-American Court to *derive rights from the provisions of an economic, social or cultural nature contained in the OAS Charter*. In this regard, Article 26 of the American Convention imposes a mandate on the Court: to “derive” rights from the provisions of the OAS Charter. Therefore, I consider that the Court may validly follow the same line of argument used in the *Case of Lagos del Campo v. Peru*, in light of the mandate imposed by Article 26 of the American Convention, to reach the conclusion that the “right to housing” is derived from the provisions of Article 34(k)⁶⁹ of the OAS Charter (adequate housing).⁷⁰ Therefore, like any other right, the right to housing may be protected through Article 26 of the American Convention, in connection with the general obligations to respect, guarantee and adapt domestic legislation, as established in Articles 1 and 2 of the same instrument.

14. Furthermore, it should not be overlooked that in *Advisory Opinion No. 10 on the interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention*, the Court stated that:

⁶⁵ In this regard, I reiterate my comments expressed in paragraph 54 of my Concurring Opinion in the Court’s Judgment in the *Case of Suárez Peralta v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of May 21, 2013. Series C No. 261: “Similarly, in the *Case of Gelman v. Uruguay*, the Court developed the so-called right to identity (which is not expressly established in the American Convention) on the basis of the provisions of Article 8 of the Convention on the Rights of the Child, which establishes that this right includes, among other elements, the right to nationality, to a name, and to family relationships. Thus, the alleged violations of the rights recognized in Articles 3, 17, 18, 19 and 20 of the Convention were interpreted pursuant to the *corpus juris* of the law concerning children, especially articles 7, 8, 9, 11, 16 and 18 of the Convention on the Rights of the Child.” Cf. *Case of Gelman v. Uruguay. Merits and Reparations*. Judgment of February 24, 2011, Series C No. 221, paras. 121 and 122.

⁶⁶ On several occasions, the Court has declared the violation of the “right to the truth” or the “right to know the truth.” Cf. *Case of Gomes Lund et al. (“Guerrilha do Araguaia”) v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of November 24, 2010. Series C No. 219; *Case of the Peasant Community of Santa Bárbara v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of September 1, 2015. Series C No. 299; *Case of Tenorio Roca et al. v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of June 22, 2016. Series C No. 314. Regarding the necessity and viability of declaring the autonomous violation of this right, see: my Concurring Opinion in the *Case of Rodríguez Vera et al. (Disappeared of the Palace of Justice) v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of November 14, 2014. Series C No. 287.

⁶⁷ Cf. *Case of the Saramaka People v. Suriname. Preliminary objections, merits, reparations and costs*. Judgment of November 28, 2007. Series C No. 172; *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and reparations*. Judgment of June 27, 2012. Series C No. 245; *Case of the Garífuna Punta Piedra Community and its Members v. Honduras. Preliminary objections, merits, reparations and costs*. Judgment of October 8, 2015. Series C No. 304; *Case of the Garífuna Triunfo de la Cruz Community and its Members v. Honduras. Merits, reparations costs*. Judgment of October 8, 2015. Series C No. 305 and *Case of the Kaliña and Lokono Peoples v. Suriname. Merits, reparations costs*. Judgment of November 25, 2015. Series C No. 309.

⁶⁸ For reference see various decisions of the Court, from its first decision on merits. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, paras. 176 and 177; paragraphs 279 and 280 of the instant Judgment which is the subject of this concurring opinion.

⁶⁹ See *supra*, footnote 19 of this Opinion.

⁷⁰ See *supra*, footnote 19 of this Opinion.

"[i]t may be said [...], by means of an authoritative interpretation, that the Member States of the Organization have signaled their agreement that the Declaration contains and defines the fundamental human rights referred to in the Charter. Thus, the Charter of the Organization cannot be interpreted and applied as far as human rights are concerned without relating its norms, consistent with the practice of the organs of the OAS, to the corresponding provisions of the Declaration. [...]for the Member States of the Organization, the Declaration is the text that defines the human rights referred to in the Charter [...]."⁷¹

15. In this regard, Article IX of the American Declaration of the Rights and Duties of Man states that "Every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources." This should be related to the provisions of Article 29 of the American Convention, especially subparagraph d), that *no provision of the Pact of San José shall be interpreted as excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have.*

16. It should also be noted that the current Constitution of Colombia of 1991 (in force at the time of the events that gave rise to this case), explicitly contemplates the "right to decent housing,"⁷² as protected by its constant case law⁷³ and as contemplated also in various international treaties ratified by Colombia.⁷⁴ This is significant in relation to the provisions of interpretation set forth in Article 29, subparagraphs b) and c) of the Pact of San José, stating that no provision of this Convention may be interpreted as "restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said States is a party;" and "precluding other rights or guarantees that are inherent in the human personality or derived from representative democracy as a form of government."

17. The Court has previously established that it exercises jurisdiction over all the provisions of the American Convention, including Article 26 of that instrument. In fact, as expressed in the *Case of Acevedo Buendía et al. v. Peru* (2009)⁷⁵ and reiterated in the *Case of Lagos del Campo v. Peru* (2017):⁷⁶

⁷¹ *Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights*. Advisory Opinion OC-10/89 of July 14, 1989. Series A No. 10, paras. 43 and 45.

⁷² Article 51: All Colombian citizens are entitled to live in dignity. The State will determine the conditions necessary to give effect to this right and will promote plans for public housing, appropriate systems of long-term financing, and community plans for the execution of these housing programs.

⁷³ Constitutional Court of Colombia, Judgment T-269 of 1996 (Reporting Judge: Carlos Gaviria Díaz), section 3; Judgment T-626 del 2000 (Reporting Judge: Alvaro Tafur Galvis), section 3.2; Judgment T-91 del 2004 (Reporting Judge: Jaime Araújo Rentería), section 3; Judgment T-894 of 2005 (Reporting Judge: Jaime Araújo Rentería), section 6.3; Judgment T-079 del 2008 (Reporting Judge: Rodrigo Escobar Gil), section 6; Judgment T-544 del 2009 (Reporting Judge: María Victoria Calle Correa), paras. 4.4-5; Judgment T-149 del 2017 (Reporting Judge: María Victoria Calle Correa), paras. 6.3-6.3.8.

⁷⁴ By way of example, see the following international treaties: Art. 14(2)(h) of the Convention on the Elimination of All Forms of Discrimination Against Women (Ratified on January 19, 1982); Art. 27(3) of the Convention of the Rights of the Child (Ratified on January 28, 1991); and Arts. 9(1) (a), 28(1) and 28(2) (d) of the Convention on the Rights of the Persons with Disabilities (Ratified on May 10, 2011) and the Art. 5(e).iii of the International Convention on the Elimination of All Forms of Racial Discrimination (Ratified on September 2, 1981).

⁷⁵ Cf. *Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Office of the Comptroller") v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of July 1, 2009 Series C No. 198, paras. 16, 17 and 100.

⁷⁶ *Case of Lagos del Campo v. Peru, supra*, para. 142.

142. As indicated in the *Case Acevedo Buendía et al. v. Peru*, this Court has the authority to decide any dispute under its jurisdiction. Thus, the Court has previously asserted that the broad terms in which the Convention was drafted signify that the Court exercises full jurisdiction over all its articles and provisions.⁷⁷ It should also be noted that although Article 26 appears in Chapter III of the Convention, entitled "Economic, Social and Cultural rights," it is also found in Part I of that instrument, entitled "State Obligations and Rights Protected" and, consequently, it is subject to the general obligations contained in Articles 1(1) and 2 of Chapter I (entitled "General Obligations"), as are Articles 3 to 25 that appear in Chapter II (entitled "Civil and Political Rights").⁷⁸

18. In this regard, the Inter-American Court has considered that Article 1(1) of the American Convention is fundamental to determine whether a violation of the human rights recognized by that treaty may be attributed to a State party. In fact, this article entails a commitment by the States Party to the fundamental duties to respect and guarantee rights, so any impairment of the human rights recognized by the Convention that may be attributed, according to the rules of international Law, to actions or omissions by any public authority constitutes an act attributable to the State, entailing its responsibility under the terms set forth in this same Convention.⁷⁹

19. Accordingly, the first obligation assumed by the States Parties under Article 1 (1) is "to respect the rights and freedoms" recognized in the American Convention. In that sense, the exercise of public authority has certain limits stemming from the fact that human rights are inherent attributes of human dignity and are, therefore, superior to the power of the State.⁸⁰ The second obligation of the States Parties is to "ensure" the free and full exercise of the rights recognized by the Convention to every person subject to its jurisdiction. This obligation implies the duty of States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights.

20. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation of human rights.⁸¹ In other words, whereas the obligation to respect rights entails negative obligations for the State, which means that the public authorities must refrain from interfering in the enjoyment and exercise of those rights, the obligation to ensure rights implies the positive obligation to act. Both obligations apply to all rights without distinction, whether civil, political, economic, social or cultural. At the same time, the Inter-American Court has maintained that the States Parties to the Convention may not order measures that violate the rights and freedoms

⁷⁷ Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary objections*. Judgment of June 26, 1987. Series C No. 1, para. 29, and *Case of the 19 Tradersmen v. Colombia. Preliminary objection*. Judgment of June 12, 2002. Series C No. 93, para. 27.

⁷⁸ *Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Office of the Comptroller")*, *supra*, para. 100; ESCR Committee, General Comment No. 13, December 8, 1999, E/C.12/1999/10, para. 50.

⁷⁹ *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 164, and *Case of the Mapiripán Massacre v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 108.

⁸⁰ *Case of Velásquez Rodríguez v. Honduras. Merits*, *supra*, para. 165.

⁸¹ *Case of Velásquez Rodríguez v. Honduras. Merits*, *supra*, para. 166.

recognized therein,⁸² and that “neither may States fail to take legislative measures or those of any other nature that might be necessary to make such rights and freedoms effective, in the terms of Article 2 of the Convention. These measures are necessary to ensure [the] free and full exercise of these rights and freedoms, in the terms of Article 1(1) of this instrument.”⁸³ The Inter-American Court has also affirmed that “the American Convention stipulates that every State Party must adapt its domestic laws to the provisions of that Convention, so as to guarantee the rights embodied therein”⁸⁴[...], and that “[t]his obligation of the State Party implies that the domestic legal measures must be *effective*. This means that the State is to adopt all measures necessary so that the provisions contained in the Convention have full force and effect within its domestic legal system. Those measures are effective when the community, in general, adapts its conduct to conform to the principles of the Convention and when, if those principles are breached, the penalties provided for therein are effectively applied.”⁸⁵

21. In conclusion, I consider that the *right to adequate housing* is recognized and protected through the mandate established in Article 26 of the American Convention, being derived from a social provision embodied in the OAS Charter (Article 34(k)).⁸⁶ Therefore, as with all other rights, the general obligations of respect, guarantee and regulatory adaptation contained in Articles 1(1) and 2 of the Pact of San José apply.

*II. THE AUTONOMY OF THE RIGHT TO HOUSING IN RELATION TO OTHER RIGHTS
(PARTICULARLY THE RIGHT TO PRIVATE PROPERTY AND THE RIGHT TO THE
INVIOABILITY OF THE HOME)*

22. In the *Case of Lagos del Campo v. Peru*, the Inter-American Court reiterated “[...]the interdependence and indivisibility of civil and political rights and economic, social and cultural rights, because they should all be understood integrally as human rights, without any specific hierarchy, and be enforceable in all cases before the competent authorities.”⁸⁷

23. That said, unlike the *Case of Yarce et al. v. Colombia*, which considered the need to address the right to housing separately from the right to property, in the *Case of Vereda La Esperanza v. Colombia*, the Court examines an additional element that had not arisen in the former case, in which the Inter-American Court declared, under the *iura novit curia* principle, the violation of the right to the inviolability of the home contemplated in Article 11(2) of the American Convention. In that regard, and notwithstanding the interdependence and indivisibility between private property (Article

⁸² Case of *Suárez Rosero v. Ecuador. Merits*. Judgment of November 12, 1997. Series C No. 35, para. 97, and *Case of Acosta Calderón v. Ecuador. Merits, reparations costs*. Judgment of June 24, 2005. Series C No. 129, para. 132.

⁸³ *Case of Cesti Hurtado v. Peru. Merits*. Judgment of September 29, 1999. Series C No. 56, para. 166.

⁸⁴ *Case of Garrido and Baigorria v. Argentina. Reparations and costs*. Judgment of August 27, 1998. Series C No. 39, para. 68, and *Case of Workers of Hacienda Brazil Verde v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of October 20, 2016. Series C No. 318, para. 409.

⁸⁵ *Case of Garrido and Baigorria v. Argentina. Reparations and costs*, *supra*, para. 69, and *Case of Lori Berenson Mejía v. Peru. Merits, reparations costs*. Judgment of November 25, 2004. Series C No. 119, para. 220.

⁸⁶ See *supra* footnote 19 of this Concurring Opinion.

⁸⁷ Cf. *Case of Lagos del Campo v. Peru*, *supra*, para. 141.

21), the inviolability of the home (Article 11) and housing (Article 26), each has its own scope and content, which could have been defined in this specific case.⁸⁸

24. In its case law, the Inter-American Court has developed a broad concept of private property, which encompasses the use and enjoyment of “property” defined as those material objects that may be appropriated, and also any right that may form part of a person’s assets. This concept also includes all movable and immovable property, corporal and incorporeal elements, and any other intangible object of any value.⁸⁹ Although the right to housing and the right to property are indivisibly and interdependently linked, inasmuch as every home or dwelling is subject to protection under the right to property, not all property is necessarily a home, as was clearly stated in the judgment.⁹⁰

25. Accordingly, the right to housing, in general terms, implies *the right of everyone to a safe, affordable and habitable home*, a concept that does not necessarily include all property.⁹¹ Therefore, when faced with situations involving the destruction of or substantial damage to the structure of a home attributable to the State, I consider it necessary, having regard to the particular socio-economic conditions of the victims, to protect the specificity of this right autonomously. This, in light of the duty to respect the rights established in Article 1(1) of the American Convention and without seeking to subsume it within the broader concept of the right to property.

26. In general, regarding the concept and autonomy of the “right to housing” with respect to other rights embodied in the American Convention, I have already had an opportunity to reflect on this matter in the *Case of Yarce et al. v. Colombia* (2016). Given its relevance and connection to the present case, I consider it appropriate to refer to the

⁸⁸ In this regard, in my separate opinion in the *Case of Yarce et al. v. Colombia* I stated that: “66. The notion of “housing” is also distinct from that of “home,” in the sense of Article 11(2) of the American Convention. This notion, like other concepts indicated in the provision, included in the right “to the [p]rotection of honor and dignity” aimed at safeguarding “private life” from “arbitrary or abusive interference,” protecting the realm of privacy, as is evident from the Inter-American Court states in paragraph 255 of the judgment.⁸⁸ Although there will be instances in which the impairment of the right to housing may imply, in turn, an attack on the “home” in the expressed sense of the word, this will not always be the case. The latter situation is what occurred in the circumstances of the case: as the Inter-American Court indicated in paragraph 260 of the Judgment, “Mrs. Rúa, Mrs. Ospina and their family members were deprived of their homes,”⁸⁸ although the Court did not conclude that there was a violation of Article 11(2).” I also considered that: “65. The concept of “housing” refers to a place where the holder of the right can live. The notion of “property”, even in the broad sense accepted by the Inter-American Court, and set forth in paragraph 257 of the judgment, refers to any “right” that “may form part of a person’s assets,” such as any material or intangible object of any value. It is clear, therefore, that there may be multiple effects on the right to property that are in no way related to housing. Conversely, there may be effects on housing that do not relate to property. Hence, the notion of “housing” and the right to such an asset are separate from that of ownership, and may apply even in the absence of any patrimonial link. Thus, the ESCR Committee, in General Comment No. 4, in referring to “legal security of tenure” as one of the “aspects” that characterizes “adequate” of housing “in any given context,” explains that “Tenure takes a variety of forms,” among which are included “informal settlements, including occupation of land or property”, and that “notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.” [Underlining added].

⁸⁹ Cf. *Case of Ivcher Bronstein v. Peru. Reparations and costs*. Judgment of February 6, 2001. Series C No. 74, paras. 120 to 122, *Case of Salvador Chiriboga v. Ecuador*. Preliminary objection and merits. Judgment of May 6, 2008. Series C No. 179, para. 55, and *Case of Abrill Alosilla et al. v. Peru. Merits Reparations and Costs*. Judgment of March 4, 2011. Series C No. 223, para. 82.

⁹⁰ Cf. *Case of Vereda La Esperanza v. Colombia, supra*, para. 241.

⁹¹ Cf. ESCR Committee, General Comment No. 4, The right to adequate housing (paragraph 1 del Article 11 of the Covenant), (Sixth Session, 1991), U.N. Doc. E/1991/23 (1991), para. 8 clauses d) and e).

observations I made on that occasion:⁹²

B. Concept and relationship with other rights

55. The Court has frequently referred to various international instruments or rulings of other organs, including those outside of the Inter-American System, in order to complement its interpretation of the provisions over which it has jurisdiction.⁹³ It is therefore consistent with the Inter-American Court's case law to consider the observations of the ESCR Committee, as it has already done on numerous occasions.⁹⁴ I consider the comments of this body as an important guide, since it is the organ authorized to interpret a treaty of universal scope, such as the so-called "International Human Rights Charter,"⁹⁵ the content of which specifically addresses economic, social and cultural rights. The ESCR Committee has issued two General Comments on the right to housing.

56. First of all, in General Comment No. 4 on the right to adequate housing, the ESCR Committee has understood the right to housing as the right "to live somewhere in security, peace and dignity." It expressly stated that this right "should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head or views shelter exclusively as a commodity." Noting that "the right to housing is integrally linked to other human rights and to the fundamental principles upon which the Covenant [on Economic, Social and Cultural Rights] is premised," it added that that "housing" is a concept that "must be read as referring not just to housing but to adequate housing," which means having a place that provides "adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities - all at a reasonable cost."⁹⁶

57. In second place, and in similar vein, in General Comment No. 7, the ESCR Committee considered that the use of the term "forced evictions" in the context of the right to housing was, in some respects, problematic; however, it considered that, as the term is used in that General Comment, forced evictions, *is defined as the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.*⁹⁷ In the same General Comment, the ESCR Committee stressed that many cases of forced eviction are associated with violence, for example, from international armed conflicts, internal dissensions and community or ethnic violence.⁹⁸ Forced evictions may also occur in connection with forced population transfers, internal displacements, forced relocations in cases of armed conflict, etc. In all these contexts, the right to adequate housing and the right not to be subjected to forced

⁹² Cf. Concurring Opinion in the Case of *Case of Yarce et al. v. Colombia. Preliminary objection, merits, reparations and costs*. Judgment of November 22, 2016. Series C No. 325, paras. 55 a 64, 68 and 70 to 72.

⁹³ For example, in paragraph 249 (footnote 350) the Judgment [Case of *Yarce*] referred to the United Nations Guiding Principles on Internal Displacement. To include some other examples, we can mention the following: in relation to the Case of *Duque v. Colombia*, the Court referred to the Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity and to statements of the United Nations Human Rights Committee (Cf. *Case of Duque v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of February 26, 2016. Series C No. 310, paras. 110 and 111). Respect al Case of Chinchilla Sandoval v. Guatemala, the Court referred to the Convention on the Rights of Persons with Disabilities (Cf. *Case of Chinchilla Sandoval v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of February 29, 2016. Series C No. 312, para. 205).

⁹⁴ Some examples, among various others, are the following judgments: *Case of Gonzales Lluy et al. v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of September 1, 2015. Series C No. 298, para. 17, and *Case of the Kaliña and Lokono Peoples v. Suriname. Merits, reparations costs*. Judgment of 25 November 2015. Series C No. 309, para. 122.

⁹⁵ The International Human Rights Charter includes the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and its two optional protocols.

⁹⁶ U.N. ESCR Committee. General Comment No. 4. The Right to Adequate Housing (paragraph 1 of Article 11 of the Covenant. Sixth Session (1991). Document E/1992/23, para. 7.

⁹⁷ Cf. U.N. ESCR Committee. General Comment 7, The Right to Adequate Housing (paragraph 1 of Article 11 of the Covenant): forced evictions (Sixteenth Session, 1997), U.N. Doc. E/1999/22, Annex IV (1997), para. 3.

⁹⁸ Cf. UN, Committee on Economic, Social and Cultural Rights, General Comment 7, The right to adequate housing (paragraph 1 of Article 11 of the Covenant): forced evictions (Sixteenth Session, 1997), U.N. Doc. E/1999/22, Annex IV (1997), para. 6.

eviction may be violated through a wide range of acts or omissions attributable to States parties.⁹⁹ It added that, owing to the interrelation and interdependency existing among all human rights, forced evictions frequently violate other human rights, such as the right to life, the right to security of the person, the right to non-interference with privacy, family and home and the right to the peaceful enjoyment of possessions.¹⁰⁰

58. For his part, the UN Special Rapporteur has emphasized that the ESCR Committee “rejected the definitions of adequate housing that focused solely on physical shelter and instead adopted a definition linked directly to the right to life;”¹⁰¹ and has also stated that “adequate housing, dignity, security and life are so closely intertwined as to be essentially inseparable. The same is true in international human rights law. The right to life cannot be separated from the right to a secure place to live, and the right to a secure place to live only has meaning in the context of a right to live in dignity and security, free of violence.”¹⁰²

59. This foregoing affirmation is consistent with a now well-established concept, which may be found in paragraph 5 of the Vienna Declaration and Program of Action, approved by the World Conference of Human Rights the June 25, 1993, which stated categorically that: “All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.” As noted by the Special Rapporteur, “the now rejected distinction between “first” and “second” generation rights, between justiciable rights and aspirational goals,” is “a legacy of false dichotomies between the two covenants;”¹⁰³ that is, between the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

60. Therefore, I fully agree with the above affirmation. Evidence of this is the close relationship existing between different rights, which is described below in relation to the right to housing.

61. As to the Universal System of Human Rights, in Communication *I.D.G. v. Spain*— the first communication since the entry into force of the Optional Protocol to the ICESCR— the ESCR Committee stated that the *right to adequate housing* is a fundamental right central to the enjoyment of all economic, social and cultural rights and is inextricably linked to other human rights, including those set forth in the International Covenant on Civil and Political Rights.¹⁰⁴

62. For its part, the Committee on the Rights of the Child, upon examining the “[r]ights to life, to survival and to development” in relation to a State, has expressed “concern at the incidence of forced evictions of families, including children, without adequate compensation or alternative accommodation”, and “deeply regrets” that “forced evictions may be carried out, even if they lead to homelessness.”¹⁰⁵

⁹⁹ Cf. UN, Committee on Economic, Social and Cultural Rights, General Comment 7, The right to adequate housing (paragraph 1 of Article 11 of the Covenant): forced evictions (Sixteenth Session, 1997), U.N. Doc. E/1999/22, Annex IV (1997), para. 5.

¹⁰⁰ Cf. U.N. Committee on Economic, Social and Cultural Rights, General Comment 7, The right to adequate housing (paragraph 1 of Article 11 of the Covenant): Forced evictions (Sixteenth Session, 1997), U.N. Doc. E/1999/22, Annex IV (1997), para. 5.

¹⁰¹ General Comment No 4 of the ESCR Committee states that “[t]he right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one’s head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity.” United Nations General Assembly, Doc. A/71/310. August 8, 2016, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, para. 27. The reference to the ESCR Committee is from the text of General Comment No. 4 (1991), para. 7.

¹⁰² United Nations General Assembly, Doc. A/71/310. August 8, 2016, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, para. 27.

¹⁰³ United Nations General Assembly, Doc. A/71/310. August 8, 2016, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, para. 31.

¹⁰⁴ Cf. U.N. ESCR Committee, Communication No. 2/2014 regarding Spain, E/C.12/55/D/2/2014, June 17, 2015, para. 11(1).

¹⁰⁵ Committee on the Rights of the Child. Concluding Observations on the combined third and fourth periodic reports of Indonesia. July 10, 2014. Doc. CRC/C/IDN/CO/3-4, para. 23.

63. The right to housing may be linked to the right to personal integrity. For example, the Committee for the Elimination of Discrimination Against Women decided a case in which the victim suffered aggression from her former partner and was unable to move to another place, owing to lack of space in the women's shelters. Furthermore, the courts did not grant her possession of her home, because her husband owned the apartment, and did not provide a place in which the woman could shelter. The Committee recommended that the State, *inter alia*, "[e]nsure that [the victim] is given a safe place in which to live."¹⁰⁶ It should be noted that, in this case, the right to housing and, consequently, in these circumstances, the right to personal integrity, operate in tension with the aggressor's right to the property he owns.

64. However, with regard to "housing", it must be pointed out that this differs from other property protected by various rights. Here it is important to note, taking into consideration the circumstances of the case examined by the Court, the distinction between "property" and "home."

[...]

68. Of course, the interdependence between rights must be considered and is one of the grounds that, as with other rights, allows the Inter-American Court to rule on the right to housing.¹⁰⁷

[...]

70. However, each right has its own legal content, a fact that should not be overlooked or confused. It is true that some aspects of the specific content of a right may, according to the different circumstances of each case and the rights at stake, coincide with aspects of the content of other rights. This means, in fact, that in certain cases, matters materially related to one right may be protected by another or other rights.¹⁰⁸ Without prejudice to the foregoing, I consider that the most appropriate interpretation is one that tends to highlight the violation that has occurred in relation to all the rights at stake,¹⁰⁹ to the extent that the

¹⁰⁶ Cf. Committee for the Elimination of Discrimination against Women. 32nd Session. Text adopted on January 26, 2005.

¹⁰⁷ In this regard, I refer to what I have stated on previous occasions regarding the right to health, which I consider is also applicable, by analogy, to the right to housing: "The possibility for this Inter-American Court to rule on the right to health arises, first, from the "interdependence and indivisibility" that exists between civil and political rights and economic, social and cultural rights. [...] all rights should be understood integrally as human rights, without any specific hierarchy, that may be required at all times before those authorities who have the respective competence." Concurring Opinion in respect of the Judgment of the Court in the *Case of Suárez Peralta v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of May 21, 2013. Series C No. 261, para. 15 (the issue being addressed in paragraphs 16 to 27 of the same opinion) and Concurring Opinion regarding the Court's Judgment in the *Case of González Lluy et al. v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of September 1, 2015. Series C No. 298, para. 15.

¹⁰⁸ This has occurred, for example, in relation to the rights to health and integrity in the *Case of Suárez Peralta v. Ecuador*: "The Court conclud[ed] that, although the relevant Ecuadorian regulations established mechanisms of control and supervision of medical care, this supervision and control was not carried out in the instant case, as regards both control of the services provided in the State facility, the Polyclinic of the Guayas Traffic Commission, and those provided in the private institution, the Minchala Clinic. The Court finds that this resulted in a situation of risk, which the State was aware of, which materialized in adverse effects on the health of Melba Suárez Peralta. Therefore, the State of Ecuador incurred international responsibility for the absence of prevention and the failure to guarantee the right to personal integrity of Melba Suárez Peralta, in violation of Article 5(1) of the American Convention, in relation to Article 1(1) of this instrument" (Underlining added). *Case of Suárez Peralta v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of May 21, 2013. Series C No. 261, para. 154.

¹⁰⁹ This applies, of course, in cases where there is a relevant link between the different violations, as may be the case, for example, if both are a direct consequence of the same act or if the non-observance of a positive obligation breaches various norms (for example, in para. 202 of the Judgment: "The Court concludes that the State failed in its obligation to prevent the violation of the right to life to the detriment of Ana Teresa Yarce, in violation of Article 4(1) of the American Convention, in relation to Article 1(1) thereof, and the obligation to act with due diligence to prevent violence against women, pursuant to Article 7(b) of the Belém do Pará Convention. In addition, the State violated the right to personal integrity enshrined in Article 5(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of the [...] next of kin of Ana Teresa Yarce"). Also, when the violating act has the purpose of injuring different rights (for example, the Court determined: "that it had been established that at least one agent of the State had been involved in the events that ended the life of Blanca Jeannette Kawas-Fernández and that *such acts were motivated by Ms. Kawas-Fernández's work in defense of the environment* [...]"). It is the Court's view that *her death, evidently, resulted*

competence of the body making the determination allows it.¹¹⁰ The Court has stated this in paragraphs 162 to 164 of the Judgment, indicating how the actual arrest of three of the victims, given the characteristics of the case, affected not only their right to personal liberty, but also their rights to personal integrity and protection of their honor and dignity.¹¹¹ For example, in its constant case law the Court considers that forced disappearance is a violation involving multiple offenses, which undermines different rights equally.¹¹²

71. I consider that the aforementioned premise would have allowed the Inter-American Court not only to determine a violation of the right to property in this case (for the reasons stated in paragraphs 257 to 262 of the judgment¹¹³), but also to analyze the appropriateness of establishing a breach of the right to housing.

72. The above statement is based on the assumption that the State's obligations with respect to the right to property and those related to the right to housing were, as applicable to the case, the same, and that their non-observance could have been declared by the Court. Bearing in mind that the *right to housing* is a right protected under Article 26 of the American Convention, incorporated in Chapter III of the treaty entitled "Economic, Social and Cultural Rights," which is different from Chapter II, entitled "Civil and Political Rights," which includes the right to property, I consider it pertinent to clarify some aspects in this regard. Therefore, I will now refer to some considerations on the binding regime with respect to economic, social and cultural rights, and particularly the *right to housing*.

III. THE RIGHT TO HOUSING IN THIS CASE: THE *IURA NOVIT CURIA* PRINCIPLE

27. In the judgment, the Court considered it proven that Mr. Eliseo Gallego Quintero lived in Vereda La Esperanza, that his main activity was farming and that he owned a house in this village. The Court also confirmed that: [1] members of the Colombian armed forces arrived at his home on June 26, 1996, ordered him [...] to open the door, and began to shoot into the house causing damage not only to [2] the building but also [3] to the possessions inside.¹¹⁴

28. In this case, the State acknowledged its responsibility for the violation of the right to property owing to the failure to investigate the facts related to the damage caused to the house of José Eliseo Gallego Quintero.¹¹⁵ Thus, the Court concluded that:

246. In relation to all the foregoing, it is clear that [1.-] the forced entry and the damage caused to the home [2.-] of Mr. José Eliseo Gallego Quintero [...] and 3. - to the possessions inside] are attributable to the National Army. Therefore, the Court considers that the State is responsible for the violation of Articles 11(2) and 21 of the Convention in relation to Article 1(1) of the same instrument, to the detriment of José Gallego Quintero and his wife María

in the deprivation of her right to associate freely with others." (Emphasis added). *Case of Kawas Fernández v. Honduras. Merits, reparations costs*. Judgment of April 3, 2009. Series C No. 196, para. 152. A different case is that the specific violation of a right generates, only by a mere mediate causal derivation, an injury to property protected by other rights. Thus, it is evident, for example, that the death of a person makes it impossible for that person to continue enjoying or exercising any right, in addition to the right to life. This does not mean that in the event that a death can be considered a violation of the right to life, any other right can be declared violated, based solely on those circumstances.

¹¹⁰ As I have already mentioned, this occurs in relation to the Court's jurisdiction to determine violations of the right to property, contained in Article 21 of the Convention and the right to housing, established in Article 26.

¹¹¹ Cf. *Case of Yarce et al. v. Colombia. Preliminary objection, merits, reparations and costs*. Judgment of November 22, 2016, Series C No. 325, paras. 162 to 164.

¹¹² Cf. *Case of Tenorio Roca et al. v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of June 22, 2016. Series C No. 314, para. 141.

¹¹³ Cf. *Case of Yarce et al. v. Colombia. Preliminary objection, merits, reparations and costs*. Judgment of 22 November 2016, Series C No. 325, paras. 257 to 262.

¹¹⁴ Cf. *Case of Vereda La Esperanza v. Colombia, supra*, para. 244. Underlining added.

¹¹⁵ Cf. *Case of Vereda La Esperanza v. Colombia, supra*, paras. 237 and 246.

Engracia Hernández, who were the owners of the property that was affected.¹¹⁶ [Underlining added].

29. In this case, neither the *Commission* nor the *representatives* expressly alleged the violation of Article 26 of the American Convention for the autonomous violation of the right to housing. However, there was nothing to prevent this Court from applying said article by virtue of the *iura novit curia* principle, on which international jurisprudence has repeatedly relied. This principle may be applied owing to the fact that the judge has the power, and even the duty to apply the relevant legal provisions in a case, even when the parties do not expressly invoke it.¹¹⁷ This is precisely what the Court did in relation to Article 11(2) of the American Convention, considering that the right to the inviolability of the home was also violated.¹¹⁸

30. Based on paragraphs 246 and 248 of the Judgment we may reach the following conclusions. First, there were three distinct events: a) the forced entry into the house, b) the destruction of movable property (possessions) inside the home and c) the substantial damage caused to the structure of the house. In second place, from a detailed reading of the facts, and a more comprehensive understanding of the violations, it is clear that not only was there a violation of the right to the inviolability of the home and the right to property in the broad sense (encompassing movable and immovable property), but we can also disaggregate- separately - the damage caused to the structure of the house, as is evident from the testimonies and proven facts in this case.

31. In fact, during the public hearing, Florinda de Jesús Gallego Hernández (victim and sister of Mr. Gallego Quintero) stated that:

[...] the destruction of [our] house happened on June 26, 1996, the soldiers came to my father's house, shooting indiscriminately because they thought it was supposedly full of guerrillas; that same day we had all the threats against my husband, my brothers and they took María Irene away, and also the army came over to the house with Fredy.¹¹⁹ [Underlining added].

32. The case file also contains the sworn statement of Pedro Pablo Muñoz who stated that:

[...] They arrived more or less at three o'clock in the morning, fleeing because the little house of the deceased Eliseo had been torched, they destroyed that little house, those bullets [hit] with such force, that they blew holes in all the eternit.¹²⁰ they escaped by crawling along the floor [...].¹²¹ [Underlining added].

33. In his statement, José Eliseo Gallego Hernández recalled that:

[...] on Wednesday 26th of this week, at around two in the morning, we were sleeping in my house located in La Esperanza[,], my father, my mother and I [,] and some men arrived shouting [...] so I got up to get a flashlight and they continued yelling, I answered: wait a minute, I'm going to open

¹¹⁶ Cf. *Case of Vereda La Esperanza v. Colombia*, *supra*, para. 246.

¹¹⁷ *Case of Velásquez Rodríguez v. Honduras*. Merits, *supra*, para. 163, and *Case of I.V. v. Bolivia*. Preliminary objections, merits, reparations and costs. Judgment of November 30, 2016. Series C No. 329, para. 151.

¹¹⁸ Cf. *Case of Vereda La Esperanza v. Colombia*, *supra*, para. 239.

¹¹⁹ Statement of Florinda de Jesús Gallego Hernández during the public hearing.

¹²⁰ *Eternit* is a brand of "micro-cement" tiles that is normally used as roofing for houses.

¹²¹ Sworn statement of Pedro Pablo Muñoz, National Human Rights Unit, Office of the First Prosecutor, April 6, 2005 (evidence file, folios 12261 and 12262).

up, because last Monday there was a confrontation on the highway and the Army were around there; I opened [the door] by the kitchen; at that moment [there was] a burst of gunfire against the house, so I shut the door and crawled back to my room and they continued shooting at the house [...].¹²² [Underlining added].

34. From these accounts we may conclude that there were sufficient elements in the case to confirm that substantial damage was caused to the structure of the house of Mr. Gallego Hernández and his wife María Engracia Hernández. Also, according to the victims' representatives, owing to the "military attack of June 26, 1996, by the National Army, [their] home was totally destroyed" and "this situation forced the family to leave [the] house and to move away to live with his daughters."¹²³

35. This property was his home, in the broad sense of the term "housing" to which we have referred previously (see *supra* para. 25). Thus, because the structure of the house was substantially damaged, the basic content of the right was disregarded, since the States must also ensure that the persons under its jurisdiction can live somewhere with security and dignity (*supra* para. 25 and *infra* para. 40).

36. In this sense, the destruction caused by members of the National Army not only affected movable property, but also caused substantial damage to the structure of the house, particularly to the roof. Although the Inter-American Court has traditionally declared violations for the destruction of homes through Article 21 of the Convention, in all the cases in which this question has arisen it has made a distinction between movable and immovable property, the latter category corresponding to houses.

37. Making this distinction does not weaken Inter-American case law in relation to the broader concept of property (which encompasses movable and immovable property),¹²⁴ since this concept may continue to be validly applied in cases where immovable property exists, for example, in indigenous territories¹²⁵ or collective goods of a community.¹²⁶ To the contrary, I consider that making this distinction brings greater clarity to the content of each right, defines the State's specific obligations in providing adequate reparations for the victims, and ensures *restitutio in integrum* according to the particular circumstances of each case.

38. With regard to the violation of the right to housing, in the specific case of *Vereda La Esperanza v. Colombia*, Article 26 would have been breached by the State in relation to its obligation to respect rights, given that, like all human rights, the right to housing has a double aspect in terms of the obligations (see *supra* paras. 18 and 19 of this opinion).

39. Finally, the Inter-American Court has considered it necessary to take into account

¹²² Statement of Juan Carlos Gallego Hernández, July 19, 1996 (evidence file, folio 5853).

¹²³ Cf. *Case of Vereda La Esperanza v. Colombia*, *supra*, para. 237. Underlining added.

¹²⁴ In its case law the Court has developed a comprehensive concept of private property, which includes the use and enjoyment of "property" defined as those material objects that may be appropriated, and also any right that may form part of a person's assets. This concept includes all movable and immovable property, corporal and incorporeal elements, and any other intangible object of any value. Cf. *Case of Ivcher Bronstein v. Peru. Reparations and costs*, *supra*, paras. 120 to 122, *Case of Salvador Chiriboga v. Ecuador. Preliminary objection and merits*, *supra*, para. 55, and *Case of Abrill Alosilla et al. v. Peru*, *supra*, para. 82.

¹²⁵ Cf. *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua. Merits, reparations and costs*. Judgment of August 31, 2001. Series C No. 79, and *Case of the Kaliña and Lokono Peoples v. Suriname*, *supra*.

¹²⁶ *Case of the Displaced Afrodescendant Communities of the Cacarica River Basin (Operation Genesis) v. Colombia*, *supra*, footnote 598 and para. 351.

the circumstances in which the events took place and, in particular, the socio-economic condition and vulnerability of the victims, since the damage caused to their property might have a greater impact and significance for them than it would have for other persons or groups in other conditions. In that regard, the States should be mindful that those who live in conditions of poverty face an increased degree of impairment of their rights, precisely because of their situation of increased vulnerability.¹²⁷

40. This is especially significant when State agents or forces have caused destruction or substantial damage to a person's home because, in addition to constituting a major financial loss, it causes them to lose their basic means of subsistence.¹²⁸ We should also bear in mind that the concept of *decent housing* to which I have referred includes living in a *safe, accessible and habitable home* (*supra* paras. 25 and 35), as stated by the United Nations Human Rights Committee, with implications for the enjoyment of other economic, social, cultural and environmental rights.¹²⁹ Thus, many of the measures needed to promote the right to housing merely require the State and its agents to refrain from certain practices, such as destroying the structure of people's homes.¹³⁰

41. In this specific case, the foregoing considerations would have had a direct impact on the reparations that the Inter-American Court could have devised and ordered.¹³¹ In fact, it would imply assessing a more comprehensive and wide-ranging approach to reparations for the victims and not limiting these to the payment of a specific amount, as occurred in this case.¹³²

IV. CONCLUSION

42. Without denying the advances achieved in the case law of the Inter-American Court in the protection of economic, social, cultural and environmental rights, both indirectly and in connection with civil and political rights, I consider that this approach does not ensure the full efficacy and effectiveness of those rights. In fact, it dilutes their essence, does not serve to clarify the State's obligations in these matters and, indeed, provokes overlaps between rights. This leads to unnecessary confusion at a time when there is a clear trend toward the recognition and normative effectiveness of *all rights*,

¹²⁷ Cf. *Case of the Santo Domingo Massacre v. Colombia*, *supra*, para. 273, *Case of Uzcátegui et al. v. Venezuela*, *supra*, para. 204, and *Case of the Displaced Afrodescendant Communities of the Cacarica River Basin (Operation Genesis) v. Colombia*, *supra*, paras. 55 and 350.

¹²⁸ *Mutatis mutandi* *Case of the Santo Domingo Massacre v. Colombia*, *supra*, para. 274, and *Case of the Displaced Afrodescendant Communities of the Cacarica River Basin (Operation Genesis) v. Colombia*, *supra*, para. 352.

¹²⁹ Cf. ESCR Committee, General Comment No. 4, The right to adequate housing (paragraph 1 of Article 11 of the Covenant), (Sixth Session, 1991), U.N. Doc. E/1991/23 (1991), para. 1.

¹³⁰ Cf. ESCR Committee, General Comment No. 4, The right to adequate housing (paragraph 1 of Article 11 of the Covenant), (Sixth Session, 1991), U.N. Doc. E/1991/23 (1991), para. 10.

¹³¹ In fact, directly addressing the right to housing would mean that in cases in which this right is impaired, reparation would not be reduced to a specific sum of money, but might imply – when destruction of a home is involved – that the State provide housing according to the parameters identified by the CESCR, such as legal security of tenure, availability of services, affordability, habitability, accessibility, location and cultural adequacy. Cf. ESCR Committee, General Comment No. 4, The right to adequate housing (paragraph 1 of Article 11 of the Covenant), (Sixth Session, 1991), U.N. Doc. E/1991/23 (1991), para. 8.

¹³² In this case, the reparation for damage to the home and the property inside it the Court considered that: "304. Lastly, the Court deems it pertinent to set in equity the sum of US\$ 20.000 for damage to the private property of José Gallego Quintero and of his wife María Engracia Hernández." Cf. *Case of Vereda La Esperanza v. Colombia*, *supra*, para. 304.

whether civil, political, economic, social, cultural or environmental, consistent with the evident progress seen in national and international human rights law.¹³³

43. In the specific case of the impairment of the *right to housing*, this does not necessarily need to be analyzed in relation to the impairment of other rights, such as property or the inviolability of the home. That is one of the many reasons why I consider that social rights should be autonomously protected through Article 26 of the American Convention, which shows that the debate on this issue is far from being a matter without practical consequences.

44. We must not lose sight of the fact that human rights treaties are living instruments, whose interpretation must keep abreast of the passage of time and current living conditions. This evolving interpretation is consistent with the general rules of interpretation established in Article 29 of the American Convention, as well as in the Vienna Convention on the Law of Treaties.¹³⁴

45. The *right to adequate housing*, in particular, is a basic human right, central to the enjoyment of all economic, social, cultural and environmental rights, as well as being inextricably linked to civil and political rights.¹³⁵ Although this right was not contemplated in the Protocol of San Salvador, this does not mean that it is not provided for as an autonomous right in the Inter-American System and that it cannot be subject to protection by its organs of protection.

46. As I stated in a previous case in 2016,¹³⁶ and have tried to elaborate on this matter in this Concurring Opinion, I consider that the *right to adequate housing* is one of the rights protected by Article 26 of the American Convention, since it is derived from the social provisions contained in the OAS Charter, namely Article 34(k).¹³⁷ Therefore, like any other right protected by the American Convention, it requires the States to fulfil their general obligations to respect, guarantee and adapt their domestic legal provisions, in accordance with Articles 1(1) and 2 of the Pact of San José.

¹³³ As I have stated in previous cases: Concurring Opinion in the *Case of Suárez Peralta v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of May 21, 2013. Series C No. 261, para. 11. Also, Concurring Opinion, jointly with Judge Roberto F. Caldas, in the *Case of Canales Huapaya et al. v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of June 24, 2015. Series C No. 296, para. 4; Concurring Opinion in the *Case of Gonzales Lluay et al. v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of September 1, 2015. Series C No. 298, paras. 15 and 20 (with the adhesion of Judges Roberto Caldas and Manuel Ventura Robles); Concurring Opinion in the *Case of Chinchilla Sandoval et al. v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of February 29, 2016. Series C No. 312, para. 71; Concurring Opinion in the *Case of Yarce et al. v. Colombia. Preliminary objection, merits, reparations and costs*. Judgment of November 22, 2016. Series C No. 325, footnote 85, and Concurring Opinion in the *Case of I.V. v. Bolivia. Preliminary objections, merits, reparations and costs*. Judgment of November 30, 2016. Series C No. 329, para. 5.

¹³⁴ Cf. *Case of the Hacienda Brazil Verde Workers v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of October 20, 2016. Series C No. 318, para. 245. Cf. *The right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of the Law*. Advisory Opinion OC-16/99 of October 14, 1999. Series A No. 16, para. 114; and *Case of Artavia Murillo et al. ("In-vitro fertilization") v. Costa Rica. Preliminary objections, merits, reparations and costs* Judgment of November 28, 2012. Series C No. 257, para. 245.

¹³⁵ Cf. U.N. ESCR Committee, Communication No. 2/2014 regarding Spain, E/C.12/55/D/2/2014, June 17, 2015, para. 11(1).

¹³⁶ Cf. See: Concurring Opinion in the *Case of Yarce et al. v. Colombia. Preliminary objection, merits, reparations and costs*. Judgment of November 22, 2016. Series C No. 325.

¹³⁷ See *supra*, footnote 19 of this Concurring Opinion.

47. In fact, the Court could have used the same line of argument that was put forward in the *Case Lagos del Campo v. Peru* (decided on the same day that this Judgment was issued) to derive rights from the economic, social, educational, scientific and cultural standards set forth in the OAS Charter;¹³⁸ and thereby also protect the *right to housing* via Article 26 of the Convention. This would have allowed the Inter-American Court to develop, delimit and differentiate more precisely the circumstances in which each right can be protected, without subsuming the content of one into another, by way of the connection with respect to civil and political rights.

48. Although the judgment declares the violation of the right to private property, the truth is that in this case it was clearly demonstrated that the substantial damage to the structure of the house of two of the victims, caused directly by members of the National Army, forced them to abandon their home. I consider it essential to recognize that housing is not simply property (movable and immovable assets) as has been historically understood by the Inter-American Court; rather it is a space in which individuals should be able to live in peace and dignity. In that sense, it is important to understand precisely what is said in the judgment as a step forward: "although every home is subject to protection under the right to property, not all property is necessarily a home."¹³⁹ On the other hand, the right to housing cannot be subsumed within the content of the right to the inviolability of the home, since the latter right refers to the violent or unauthorized manner in which the authorities broke into the house¹⁴⁰ and not specifically to the destruction or substantial damage caused to it.

49. In conclusion, as I have tried to explain in this opinion, I consider that the right to housing is protected by Article 26 of the American Convention, since it is derived from Article 34 (k) of the OAS Charter. Furthermore, we cannot overlook the fact that this right is explicitly established in various treaties signed by Colombia as well as in Article 51 of the Colombian Constitution of 1991 ("right to decent housing"), which was in force at the time of the events in this case, and has been protected on numerous occasions by that country's Constitutional Court. Therefore, it is important to note the rules of interpretation of Article 29(b) and (c) of the Pact of San José, which state that no provision of the American Convention may be interpreted as "restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party"; or as "precluding other rights or guarantees that are inherent in the human personality or derived from representative democracy as a form of government."¹⁴¹

50. Hence, I cannot conceive of an Inter-American System without the *right to housing*. Nor can I conceive of a human rights court that does not take into account the

¹³⁸ Cf. *Case of Lagos del Campo v. Peru*, *supra*, para. 154.

¹³⁹ Cf. *Case of Vereda La Esperanza v. Colombia*, *supra*, para. 241.

¹⁴⁰ In this regard, see: *Case of the Ituango Massacres v. Colombia*, *supra*, para. 197; *Case of Escué Zapata v. Colombia*. Merits, reparations costs. Judgment of July 4, 2007. Series C No. 165, para. 96; *Case of Fernández Ortega et al. v. Mexico*. Preliminary objection, merits, reparations and costs. Judgment of 30 August 2010. Series C No. 215, para. 159; *Case of Barrios Family v. Venezuela*, *supra*, para. 147; *Case of Uzcátegui et al. v. Venezuela*. Merits and Reparations, *supra*, para. 202; *Case of the Massacres of El Mozote and Nearby Places v. El Salvador*, *supra*, para. 182; *Case of J. v. Peru*. Preliminary objection, merits, reparations and costs. Judgment of November 27, 2013. Series C No. 275, para. 147; *Case of Expelled Dominicans and Haitians v. Dominican Republic*. Preliminary objections, merits, reparations and costs. Judgment of August 28, 2014. Series C No. 282, para. 426; *Case of the Peasant Community of Santa Bárbara v. Peru*, *supra*, para. 205, and *Case of Pollo Rivera et al. v. Peru*. Merits, reparations costs. Judgment of October 21, 2016. Series C No. 319, para. 116.

¹⁴¹ See para. 16 of this Concurring Opinion.

context in which human rights violations occur, given that Latin America is the most unequal place on the planet, with high levels of inequality, social exclusion and poverty.¹⁴² The full realization of inter-American social rights is a substantial component of constitutional democracies and an imperative for achieving peace and social justice in the countries of the region.

Eduardo Ferrer Mac-Gregor Poisot
Judge

Pablo Saavedra Alessandri
Secretary

¹⁴² See the last two reports of ECLAC, *Social Panorama of Latin America 2016 and 2015*, Economic Commission for Latin American and the Caribbean. United Nations, 2016 and 2017, respectively.