

**INTER-AMERICAN COURT OF HUMAN RIGHTS**  
**CASE OF OMEARA CARRASCAL ET AL. V. COLOMBIA**  
**JUDGMENT OF NOVEMBER 21, 2018**  
**(Merits, Reparations and Costs)**

In the Case of *Omeara Carrascal et al.*,

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

Eduardo Ferrer Mac-Gregor Poisot, President  
Eduardo Vio Grossi, Judge, Vice President  
Elizabeth Odio Benito, Judge,  
Eugenio Raúl Zaffaroni, Judge  
Patricio Pazmiño Freire, Judge.

Also present,

Pablo Saavedra Alessandri, Registrar  
Emilia Segares Rodríguez, Deputy Registrar

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 Court's Rules of Procedure (hereinafter "the Rules of Procedure"), delivers this judgment, structured as follows:

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\* Judge Humberto Antonio Sierra Porto did not participate in the deliberation of this judgment due to his Colombian nationality, pursuant to Articles 19.2 of the Statutes and 19.1 of the Court's rules of procedure.

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## I

**INTRODUCTION OF THE CASE AND CAUSE OF THE DISPUTE**

1. *The case submitted to the Court.* On May 21, 2016, in accordance with the provisions of Articles 51 and 61 of the American Convention and Article 35 of the Rules of Procedure, the Inter-American Commission on Human Rights (hereinafter also "the Inter-American Commission" or "the Commission") submitted to the jurisdiction of the Inter-American Court the case called *Omeara Carrascal set al. v. Colombia* (hereinafter "the State" or "Colombia"). The Commission stated that the case is related to the attack suffered by Noel Emiro Omeara Carrascal (hereinafter also "Noel Emiro Omeara" or "Mr. Omeara Carrascal") on January 28, 1994 and his subsequent death; the disappearance and execution of Manuel Guillermo Omeara Miraval (hereinafter also "Manuel Guillermo Omeara" or "Mr. Omeara Miraval"), son of the former, from August 27 to September 23, 1994, and the attack and subsequent death of Héctor Álvarez Sánchez (hereinafter also "Héctor Álvarez" or "Mr. Álvarez Sánchez"), father-in-law of the second, on October 21, 1994.

2. Regarding the events relating to Noel Emiro Omeara Carrascal, the Commission determined that there is sufficient evidence to conclude that, in addition to the breach of the duty to prevent, there was collaboration among state agents in order for the attack to occur. Regarding the disappearance and subsequent execution of Manuel Guillermo Omeara Miraval, the Commission determined that he was detained by persons belonging to a paramilitary group that operated in the area and found multiple indications of state participation in the events. The Commission also argued that events occurring between his disappearance and execution were of a degree that could be regarded as torture. Regarding the attack and subsequent death of Héctor Álvarez Sánchez, the Commission indicated that the State did not provide him with the protection he required, which allowed members of a paramilitary group to shoot him several times from a motorcycle, as a result of which he became paraplegic and unable to speak, subsequently dying. The Commission also determined a lack of due diligence on investigating the facts. It also argued that this caused suffering to his family members<sup>1</sup> due to the events themselves as well as due to the lack of clarification and the constant anguish and fear of new retaliation in the search for justice, and threats and intimidation. In addition, some family members, including three minors, were displaced due to the risk they faced due to the attacks and death of their loved ones.

3. *Proceedings before the Commission.* The proceedings before the Commission were as follows:

a) *Petition.* On May 4, 1995, the Colombian Commission of Jurists (hereinafter also "the representatives of the alleged victims" or "representatives" or "CCJ")<sup>2</sup> presented the petition to the Commission, which was assigned the number P-11482.

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<sup>1</sup> The next of kin are: Luis Enrique Omeara Miraval, Aura Isabel Omeara Miraval, Noel Emiro Omeara Miraval, Araminta Omeara Miraval, Ricaurte Omeara Miraval, Eduardo Omeara Miraval, Zoila Rosa Omeara Miraval, Lilibian Patricia Omeara Miraval, María Omeara Miraval, Carmen Teresa Omeara Miraval, Jaime Antonio Omeara Miraval, Manuel Guillermo Omeara Álvarez, Elba Katherine Omeara Álvarez, Claudia Marcela Omeara Álvarez, Fabiola Álvarez Solano, Elva María Solano de Álvarez, Judith Álvarez Solano, Miguel Ángel Álvarez Solano, Héctor Manuel Álvarez Solano, Clemencia Patricia Álvarez Solano, Juan Carlos Álvarez Solano, and Ana Edith Álvarez de García. This Court notes that in various documents provided in the proceedings in this case, the name "Elva María Solano de Álvarez" or "Elba María Solano de Álvarez" is mentioned. For the purposes of this judgment, she will be identified with the first name indicated. In addition, this Court notes that in different documents the name "Ana Edith Álvarez de García" or "Ana Edith Álvarez Solano" is used indistinctly. For the purposes of this judgment, he will be identified with the first name indicated.

<sup>2</sup> The Centre for Justice and International Law (hereinafter also "CEJIL") joined as a co-petitioner on March 27, 2000.

b) *Admissibility Report.* On February 27, 2002, the Commission accepted Admissibility Report No. 8/02<sup>3</sup>.

c) *Merits Report.* On July 28, 2015, the Commission issued Merits Report No. 40/15 (hereinafter also "Merits Report" or "the Report"), pursuant to Article 50 of the Convention, in which it concluded that the State was responsible for the violation of various human rights enshrined in the Convention<sup>4</sup> and made several recommendations to the State.<sup>5</sup>

d) *Notification to the State.* The Commission notified the State of the Merits Report on August 21, 2015, granting it a period of two months to report on compliance with the recommendations.

4. *Submission to the Court.* On May 21, 2016, the Commission<sup>6</sup> submitted to the jurisdiction of the Inter-American Court all the facts and alleged human rights violations

<sup>3</sup> In said report, the Commission declared the petition for the alleged violation of the rights established in Articles 4, 5, 7, 8, and 25, in accordance with Article 1(1) of the Convention, as admissible.

<sup>4</sup> Pursuant to:

a) Articles 4 and 5 of the American Convention, in relation to its Article 1(1)[,] to the detriment of Noel Emiro Omeara Carrascal and Héctor Álvarez Sánchez;

b) Articles 3, 4, 5 and 7 of the American Convention, in relation to Article 1(1)[,] to the detriment of Manuel Guillermo Omeara Miraval;

c) Articles 5 and 17 of the American Convention[, ] to the detriment of Carmen Teresa Omeara Miraval; Jaime [Antonio] Omeara Miraval; Luis Enrique Omeara Miraval; Aura Isabel Omeara Miraval; Noel Emiro Omeara Miraval; Araminta Omeara Miraval; Ricaurte Omeara Miraval; Eduardo Omeara Miraval[;] Zoila Rosa Omeara Miraval[;] Liliana Patricia Omeara Miraval and María Omeara Miraval; He[v]a María Solano de Álvarez; Judith Alvarez Solano; Miguel Angel Alvarez Solano; Hector Manuel Alvarez Solano; Clemencia Patricia Alvarez Solano; Juan Carlos Álvarez Solano and Ana Edith Álvarez [de García]; Fabiola Alvarez Solano; [and] Elba [K]atherine, Manuel Guillermo and Claudia Marcela all with the surname Omeara Álvarez[;]

d) Article 22 of the American Convention [, ] to the detriment of Carmen Teresa Omeara Miraval, Fabiola Álvarez Solano, Elba [K]atherine, Manuel Guillermo and Claudia Marcela [, ] all with the surname Omeara Álvarez.

e) Article 19 of the American Convention [, ] to the detriment of Elba [K]atherine, Manuel Guillermo and Claudia Marcela [, ] all with the surname Omeara Álvarez[;]

f) Articles 8 and 25 of the American Convention, in relation to its Article 1(1)[,] to the detriment of Carmen Teresa Omeara Miraval; Jaime [Antonio] Omeara Miraval; Luis Enrique Omeara Miraval; Aura Isabel Omeara Miraval; Noel Emiro Omeara Miraval; Araminta Omeara Miraval; Ricaurte Omeara Miraval; Eduardo Omeara Miraval[;] Zoila Rosa Omeara Miraval[;] Liliana Patricia Omeara Miraval and María Omeara Miraval; He[v]a María Solano de Álvarez; Judith Alvarez Solano; Miguel Angel Alvarez Solano; Hector Manuel Alvarez Solano; Clemencia Patricia Alvarez Solano; Juan Carlos Álvarez Solano and Ana Edith Álvarez [de García]; Fabiola Alvarez Solano; [and] Elba [K]atherine, Manuel Guillermo and Claudia Marcela[, ] all with the surname Omeara Álvarez.

g) Articles 1, 6 and 8 of the ICPPT and Article 1(b) CIDFP, to the detriment of Carmen Teresa Omeara Miraval; Jaime [Antonio] Omeara Miraval; Luis Enrique Omeara Miraval; Aura Isabel Omeara Miraval; Noel Emiro Omeara Miraval; Araminta Omeara Miraval; Ricaurte Omeara Miraval; Eduardo Omeara Miraval; Zoila Rosa Omeara Miraval; Liliana Patricia Omeara Miraval and Maria Omeara Miraval; Fabiola Álvarez Solano [, and] Elba [K]atherine, Manuel Guillermo and Claudia Marcela[, ] all with the surname Omeara Álvarez.

<sup>5</sup>The recommendations are:

1. Make full reparations to the next of kin of Noel Emiro Omeara Carrascal, Manuel Guillermo Omeara Miraval and Héctor Álvarez Sánchez identified in the report for both pecuniary and non-pecuniary damages suffered as a result of the events, including the relevant compensation, satisfaction and rehabilitation measures.

2. Carry out a complete, impartial, effective and prompt investigation of the events in order to clarify the facts to establish and, if applicable, punish those with the intellectual and material responsibility and who participated in the events that caused the attack on and subsequent death of Noel Emiro Omeara Carrascal, the disappearance, torture and execution of Manuel Guillermo Omeara Miraval and the attack against Héctor Álvarez Sánchez.

3. Adopt the corresponding administrative, disciplinary, or criminal measures to investigate and, where appropriate, punish the actions or omissions of state officials that contributed to the denial of justice and ongoing impunity surrounding the facts of the case.

4. Adopt the necessary measures to avoid a repetition of events such as those in this case, including strengthening the mechanisms for the protection of family members and witnesses in investigations into human rights violations; and the strengthening of the investigative capacity of contexts and patterns of joint action between state agents and illegal armed groups.

<sup>6</sup> The Commission appointed Commissioner José de Jesús Orozco Henríquez and Executive Secretary Emilio Álvarez Icaza L. as its delegates; Elizabeth Abi-Mershed, Deputy Executive Secretary, the lawyer Silvia Serrano Guzmán and the lawyer Jorge Humberto Meza Flores.

described in the Merits Report “due to the need to obtain justice for the victims and their relatives.”

5. *Requests of the Inter-American Commission.* Based on the foregoing, the Commission asked the Court to conclude and declare the international responsibility of Colombia for the alleged violation of the rights previously indicated in the conclusions of the Merits Report. Additionally, the Commission asked the Court to order the State to provide certain measures of reparation, which will be detailed and analyzed in the corresponding chapter.

## II PROCEEDINGS BEFORE THE COURT

6. *Notification to the State and the Representatives.* The submission of the case was notified to the representatives of the alleged victims on August 18 and 19, 2016 and to the State on August 18, 2016, respectively.

7. *Brief with pleadings, motions and evidence.* On October 18, 2016, the Colombian Commission of Jurists and the Center for Justice and International Law presented their brief with pleadings, motions and evidence. (hereinafter also “brief of pleadings and motions”), pursuant to Articles 25 and 40 of the Court’s Rules of Procedure. The representatives substantially agreed with the Commission’s arguments and asked the Court to declare the international responsibility of the State for the violation of the same Articles alleged by the Commission. Additionally, they alleged the violation of the right to privacy enshrined in Article 11(2) of the American Convention, to the detriment of the members of the Omeara Miraval and Álvarez Sánchez families. They also alleged the violation of the rights to life, humane treatment, freedom of thought and expression, freedom of association, and political rights, enshrined in Articles 4, 5, 13(1), 16, and 23 of the American Convention, to the detriment of José Erminso Sepúlveda Saravia (hereinafter also “José Erminso Sepúlveda” or “Mr. Sepúlveda Saravia”), as well as the rights to humane treatment, of the family, protection of privacy, rights of the child, movement and residence, a fair trial and judicial protection, enshrined in Articles 5, 17, 11(2), 19, 22, 8 and 25, to the detriment of their families. Finally, the representatives requested various measures of reparation and reimbursement of costs and expenses.

8. *Answering Brief.* On February 9, 2017, the State submitted to the Court its brief filing preliminary objections and answering the Commission’s submission of the case and its observations on the pleadings and motions brief (hereinafter “answering brief”).<sup>7</sup> In addition, in said brief the State presented a partial acknowledgment of international responsibility for the alleged violations.

9. *Observations on the preliminary objections and the partial acknowledgment of international responsibility.* On April 17, 2017, the Commission and the representatives presented, respectively, their observations on the preliminary objections and referred to the scope of the acknowledgment of responsibility made by the State.

10. *Public Hearing.* On April 21, 2017, the President issued an order<sup>8</sup> summoning the State, the representatives and the Inter-American Commission to a public hearing, regarding the preliminary objections and possible merits

<sup>7</sup> On August 31, 2016, the State appointed Mr. Roberto Molina Palacios as its agent. Subsequently, on May 5, 2017, the State reported that he had been replaced by Ángela María Ramírez and appointed Milena González Román and María del Pilar Gutiérrez Perilla as advisers, and Jonathan Duván Riveros as adviser.

<sup>8</sup> Cf. *Case of Omeara Carrascal et al.* Order of the President of the Court, April 21, 2017. Available: [http://www.corteidh.or.cr/docs/asuntos/omeara\\_21\\_04\\_17.pdf](http://www.corteidh.or.cr/docs/asuntos/omeara_21_04_17.pdf). On April 25, 2017, the State filed an appeal for reconsideration against said order. Said appeal was dismissed by Order of the Court of May 15, 2017 and the Court ratified the Order of the President of April 21, 2017. Available at:

reparations and costs, to hear the final oral arguments of the parties, and the final oral observations of the Commission regarding these. Similarly, by means of said order, it was ordered to receive statements given before notary public (affidavit) from 11 declarants, all proposed by the representatives, two witnesses proposed by the State and eight expert witnesses, as required, proposed by the Commission, the representatives and the State, which were presented on May 15, 2017 by the Commission, and on May 19, 2017<sup>9</sup> by the State and the representatives. On May 22, 2017, the representatives forwarded the affidavit of a declarant, in accordance with the order of May 15, 2017. Additionally, in accordance with the orders of April 21 and May 15, 2017, an alleged victim proposed by the representatives and a witness proposed by the State were summoned to testify at the hearing. The public hearing was held on May 25 and 26, 2017 during the Court's 118<sup>th</sup> Regular Session, held at the Court's headquarters.<sup>10</sup>

11. *Final written arguments and observations.* On June 26, 2017, the parties and the Commission presented their final written arguments and observations, respectively. Along with the final written arguments, the representatives attached several documents. In addition, the representatives and the State indicated several documents accessible through online links. On August 3, 2017, the Secretariat of the Court, following instructions from the President, granted the parties and the Commission a period until August 14, 2017 to present their observations on said annexes, which were presented by the State and the representatives on the indicated day and the Commission reported that it had no observations.

12. *Evidence to facilitate adjudication of the case.* On February 7 and 22, 2018, the State and the representatives were requested, pursuant to Article 58(b) of the Rules of Procedure, to provide certain documents as evidence to facilitate adjudication of the case, which were presented on February 15 and March 1 and 7, 2018. On March 20, 2018, the parties and the Commission were asked for their observations regarding said documents, which were presented on April 2 and 3, 2018.<sup>11</sup>

13. *Deliberation of the case.* The Court began the deliberation of this judgment on November 21, 2018.

### **III JURISDICTION**

14. The Court is competent to hear this case, pursuant to Article 62(3) of the American Convention, as Colombia has been a State Party to the Convention since July 31, 1973 and recognized the contentious jurisdiction of the Court on June 21, 1985.

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[http://www.corteidh.or.cr/docs/asuntos/omeara\\_15\\_05\\_17.pdf](http://www.corteidh.or.cr/docs/asuntos/omeara_15_05_17.pdf).

Additionally, In the last order issued there was a modification, on request from the representatives, to the method of declaration for one declarant, who presented their declaration via affidavit as it was not possible for them to attend for health reasons. Therefore only one alleged victim appeared before the Court.

<sup>9</sup> Pursuant to an extension requested by the Commission, on April 25, 2017, the parties and the Commission were granted a non-extendable term until May 19, 2017 to submit the affidavits.

<sup>10</sup> The following appeared at this hearing: (a) for the Inter-American Commission: Silvia Serrano Guzmán and Selene Soto Rodríguez, lawyers from the Executive Secretariat of the Commission; (b) for the representatives: Gustavo Gallón Giraldo, Fredy Alejandro Malambo Ospina and Carolina Solano Gutiérrez of the CCJ, and Viviana Krsticevic of CEJIL, and (c) for the State: Ángela María Ramírez Rincón, agent of the State; and Ana Milena González Román and María del Pilar Gutiérrez Perilla, advisers.

<sup>11</sup> The representatives presented their observations on April 9, 2018, because due to a material error, in the brief presented on April 3, they presented a brief from another case.

#### IV PARTIAL ACKNOWLEDGEMENT OF RESPONSIBILITY

##### A. Partial acknowledgment of responsibility by the State and observations by the Commission and the representatives.

15. The Court will examine the State's partial acknowledgment of international responsibility in the following sections: a) regarding Noel Emiro Omeara Carrascal; b) regarding Manuel Guillermo Omeara Miraval; c) regarding Héctor Álvarez Sánchez, and d) regarding the Omeara Miraval, Omeara Álvarez and Álvarez Solano families.

##### A.1. Regarding Noel Emiro Omeara Carrascal

16. In relation to the attack on and subsequent death of *Noel Emiro Omeara Carrascal*, the **State** partially acknowledged its international responsibility in the following terms:

a) by action, for the violation of the rights to life (Article 4) and humane treatment (Article 5) of the American Convention, in relation to 1(1) of the Convention; for the actions of state agents in conjunction with illegal armed groups that acted jointly in the attack and subsequent death of Noel Emiro Omeara Carrascal, and

b) by omission, for the violation of the rights to a fair trial (Article 8) and judicial protection (Article 25) of the American Convention, in relation to 1(1) of the Convention, to the detriment of the next of kin of Noel Emiro Omeara Carrascal; by omission by failing to comply with the duty of due diligence in the investigation of the attack against Mr. Omeara Carrascal, as it was delayed in incorporating this fact, on July 31, 1998, into the investigation of the homicide of José Erminso Sepúlveda Saravia, which it initiated on January 31, 1994.

17. The **representatives** indicated that the acknowledgment of responsibility made by the State includes "without misunderstanding the violation of the right to life (Article 4) and to humane treatment (Article 5), due to the actions carried out jointly by state agents and paramilitaries groups in the crime of January 28, 1994". In other words, the State did not assume "things in their real dimension and true name: only calling the structure that participated in the crime an illegal armed group when speaking of a paramilitary group, 'Los Prada'." In addition, it does not contain all the facts outlined in the factual framework of the Merits Report. Regarding a fair trial and judicial protection, the recognition does not cover the lack of coordination between the three criminal proceedings and the absence of fundamental investigative procedures. They requested that the acknowledgment be dismissed.

18. The **Commission** stated that the acknowledgment of responsibility does not cover facts relating to the breach of the duty to prevent, that is, the State's failure to adopt adequate measures to address the situation of risk in which José Erminso Sepúlveda Saravia found himself, despite having full knowledge of it and having a direct causal link with the attack that occurred on January 28, 1994 and the international responsibility of the State for these events. Nor does it cover the lack of duty to investigate the facts with due diligence, nor the lack of connection between the investigations.

##### A.2. Regarding Manuel Guillermo Omeara Miraval

19. In relation to the forced disappearance and subsequent execution of *Manuel Guillermo Omeara Miraval*, the **State** partially acknowledged its international responsibility, in the following terms:



- a) by action, for the violation of the rights to recognition of juridical personality (Article 3), life (Article 4), humane treatment (Article 5(1)) and personal liberty (Article 7) of the American Convention, all in relation with Article 1(1) of the Convention, to the detriment of Manuel Guillermo Omeara Miraval; for the actions of state agents in conjunction with illegal armed groups that acted together in his forced disappearance and execution, and
- b) by omission, due to the violation of the rights to humane treatment (Article 5), a fair trial (Article 8) and judicial protection (Article 25) of the American Convention, in relation to Article 1(1) of the Convention; and the obligation to investigate with due diligence alleged acts of torture and other cruel, inhuman and degrading treatment or punishment, established in the Inter-American Convention against Torture (Article 8), in relation to the general obligation established in Article 1 of the same Convention, to the detriment of the next of kin of Mr. Omeara Miraval; by omission, due to the breach of the duty of due diligence in the investigation of the alleged acts of torture of which Mr. Omeara Miraval was a victim.

20. The **representatives** stated that the State's responsibility for its action is fully proven, and therefore the violation of the obligation to respect the crime, since "[with] this it intended to frustrate and stop the investigations by [Mr. Omeara Miraval] for the attack on his father." They considered that "members of State security were involved [in the event], specifically, from UNASE, which was made up of the army, the [p]olice and the DAS [and that the latter institution was the cause of his disappearance and murder by pointing him out as a guerrilla to the [RP] paramilitary group, so that they could kill him." Consequently, the violation of his rights to juridical personality (Article 3), life (Article 4), humane treatment (Article 5) and personal liberty (Article 7) of the American Convention is recognized.

21. The **Commission** maintained that the State recognized its responsibility for the forced disappearance and execution, as well as for the violations of the duty to guarantee Mr. Omeara Miraval's rights, but that this does not cover the conclusion made in the Merits Report on the violation of the right to humane treatment, taking into account the extreme suffering he must have endured before his death and while he was disappeared. However, the State recognized by omission the breach of the duty of due diligence in the investigation of the alleged acts of torture, to the detriment of Mr. Omeara Miraval, since the State referred to the violation of Articles 5(1), 8 and 25 of the American Convention and Articles 1 and 8 of the ICPPT, but it did not cover Article 6 of said instrument. In relation to the rights to judicial guarantees of a fair trial and protection regarding what happened to Mr. Omeara Miraval, it did not acknowledge the failure to link the investigations or the duration of the proceedings. Nor did it include the violation of Article 1(b) of the Inter-American Convention on the Forced Disappearance of Persons [CIDFP].

### **A.3. Regarding Héctor Álvarez Sánchez**

22. In relation to the attack on Héctor Álvarez Sánchez, the State partially acknowledged its international responsibility, by omission, for the violation of the rights to life (Article 4), humane treatment (Article 5), a fair trial (Article 8) and judicial protection (Article 25) of the American Convention, in relation to Article 1(1) of the Convention; for the omission in the guarantee of the duty to investigate the violation of the right to life and humane treatment of Mr. Álvarez Sánchez for the events that occurred on October 21, 1994, from the beginning of the investigation until March 2003.

23. The **representatives** indicated that the State did not acknowledge its responsibility for the action or omission of the crime for the "breach of the duties of respect and guarantee in the attack [...] due to the lack of protection despite the risk to his life and personal integrity for the direct accusations he made against the RP paramilitary group as the perpetrators of the disappearance of his son-in-law [...], as well as for being killed [...] by a member of said paramilitary structure who had the full support and acquiescence of the security forces stationed in the south of Cesar".<sup>12</sup>

24. The **Commission** maintained that the substantive violations that occurred to the detriment of Mr. Álvarez Sánchez and his next of kin were not covered by the state recognition. According to the Commission, the different components of State responsibility cover: (a) the facts of the attack and the resulting physical and mental effects he suffered while he was alive; (b) that the State was aware of his situation of risk and therefore it concluded the violation of the duty of prevention in relation to the violation of Article 5 of the Convention; (c) regarding the violation of the right to life, due to the omissions in protecting the life of Mr. Álvarez Sánchez, as well as the indications of joint action with an illegal armed group, and (d) the ongoing impunity in the case due to the lack of investigation of the facts in relation to the claims relating to the rights to a fair trial and judicial protection with respect to said victim and his next of kin as of March 2003.

#### **A.4. Regarding the Omeara Miraval, Omeara Álvarez and Álvarez Solano families**

25. In relation to the events that occurred against the Omeara Miraval, Omeara Álvarez and Álvarez Solano families, the **State** acknowledged its international responsibility, in the following terms:

a) for the violation of the rights to humane treatment (Article 5) and to protection of the family (Article 17) of the American Convention, in relation to Article 1(1) of the Convention, for the damage caused to life plans both individually and at the family level, and the suffering caused by the violent acts perpetrated against the members of the Omeara Miraval, Omeara Álvarez and Álvarez Solano families, made up of: Carmen Teresa, Jaime Antonio, Luis Enrique, Aura Isabel; Noel Emiro; Araminta, Ricaurte, Eduardo, Zoila Rosa, Liliana Patricia and María, all with the surnames Omeara Miraval; Elva María Solano de Álvarez; Judith, Miguel Ángel, Héctor Manuel, Clemencia Patricia, Ana Edith, Fabiola and Juan Carlos, all with the surnames Álvarez Solano, and Elba Katherine; Manuel Guillermo and Claudia Marcela, all three with the surnames Omeara Álvarez;

b) by omission, for the violation of the right to humane treatment (Article 5(1)), the right to a fair trial (Article 8) and the right to judicial protection (Article 25) of the American Convention, in relation to Article 1(1) of the Convention; for omission in the investigation of the alleged acts of threats against personal integrity, to the detriment of Carmen Teresa Omeara Miraval (hereinafter also "Carmen Teresa Omeara" or "Carmen Omeara");

c) by omission, for the violation of the right of movement and residence (Article 22(1)), the right to a fair trial (Article 8) and the right to judicial protection (Article 25) of the American Convention, in relation to the Article 1(1) of the Convention; for the omission of the State in the investigation of the alleged acts of forced displacement of

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<sup>12</sup> The State argued that there is no proof of the active or passive participation of state agents in the event, and that there has been on verification that it was aware of the situation of risk for Héctor Álvarez Sánchez in the testimony he gave before the Barranquilla Prosecutor's Office.

persons, to the detriment of Carmen Teresa Omeara Miraval and Fabiola Álvarez Solano, as well as the girls Elba Katherine Omeara Álvarez and Claudia Marcela Omeara Álvarez and the boy Manuel Guillermo Omeara Alvarez, and

d) for the violation of the rights of the child (Article 19) of the American Convention, in relation to Article 1(1) of the Convention, for the harm and suffering caused by the violent acts perpetrated against the three members of the Omeara Miraval, Omeara Álvarez and Álvarez Solano families, who at the time of the events were children Elba Katherine, Claudia Marcela and Manuel Guillermo, with the surnames Omeara Álvarez.

26. The **representatives** indicated that the State plainly recognizes the violation of the rights of the direct next of kin of the three main victims, without further consideration. Therefore, the representatives requested that the acknowledgment made by the State regarding the next of kin of Messrs. Omeara Carrascal, Omeara Miraval and Álvarez Sánchez be dismissed and that the merits of the matter be continued, examining all the factual assumptions and legal grounds, ordering the responsibility of the State and indicating the pertinent reparations.

27. The **Commission** argued that the acknowledgment covers all the victims mentioned by the Commission in the Merits Report, which constitutes an important step towards full reparation for the victims in this case. Although the dispute persists regarding the fact that the State created the conditions of risk for the victims and that it was aware of said situation, which at the same time generated the forced displacement and it did not adopt the measures for their protection, particularly, with respect to the children of the Mr. Omeara Miraval, taking into account the fact they were children. Nor did the State consider, in the acknowledgment, the threats against Mrs. Carmen Omeara, which occurred in a context of threats and intimidation against witnesses and relatives of the victims.

## B. Considerations of the Court

28. Pursuant to Articles 62 and 64 of the Rules of Procedure<sup>13</sup>, and in the 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 the acts of acknowledgment of responsibility are acceptable for the purposes the inter-American system seeks to fulfill. This task is not limited to verifying, registering or taking note of the acknowledgment made, or its formal conditions, but must confront them with the nature and seriousness of the alleged violations, the demands and interests of justice, the particular circumstances of the specific case, and the attitude and position of the parties,<sup>14</sup> in such a way that it can specify, as far as possible and in the exercise of its jurisdiction, the legal truth of what happened.<sup>15</sup>

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<sup>13</sup> Articles 62 and 64 of the Court's Rules of Procedure establish: "Article 62. Acknowledgment: If the defendant communicates to the Court their acceptance of the facts or their total or partial acceptance of the claims that appear in the submission of the case or in the brief from the presumed victims or their representatives, the Court, having heard the opinion of the other parties involved in the proceeding, will decide, at the appropriate procedural moment, on its origin and its legal effects." "Article 64. Continuation of the examination of the case: The Court, taking into account the responsibilities incumbent on it to protect human rights, may decide to continue the examination of the case, even in the presence of the assumptions indicated in the preceding articles."

<sup>14</sup> Cf. *Case of Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 2, 2008. Series C No. 177, para. 24, and *Case of Ramírez Escobar et al. v. Guatemala. Merits, Reparations and Costs*. Judgment of March 9, 2018. Series C No. 351, para. 27.

<sup>15</sup> Cf. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Exceptions, Merits, Reparations and Costs*. Judgment of May 26, 2010. Series C No. 213, para. 17, and *Case of Escaleras Mejía et al. v. Honduras*. Judgment of September 26, 2018. Series C No. 361, para. 17.

The Court warns that the recognition of detailed and specific facts and violations may have effects and consequences in the analysis that this Court makes of the other alleged facts and violations, to the extent that they all form part of the same set of circumstances.<sup>16</sup>

29. This Court considers that the partial acknowledgment of international responsibility constitutes a positive contribution to the development of this process and to the validity of the principles that inspire the Convention,<sup>17</sup> as well as to the reparation needs of the victims.<sup>18</sup> In general, the State did not make an express acknowledgment of responsibility for the facts alleged by the Commission and the representatives. Notwithstanding the foregoing, the Court understands that the acknowledgment of responsibility also covers the facts related to the violations of the rights that were recognized to the detriment of the presumed victims, except for those regarding which it made a particular ruling.

30. The Court will not consider the argument of the Commission and the representatives as the existence of a duty to prevent damages to the rights of Mr. Sepúlveda Saravia, based on the fact that the State was aware that he could be the victim of an attack and did not take measures to protect him and prevent the violent acts in which Mr. Omeara Carrascal was a victim. It is not up to this Court to analyze Mr. Sepúlveda Saravia's situation of risk or the possible consequences, since he is not a victim in the case (*infra* para. 56). Furthermore, according to the facts, Mr. Omeara Carrascal did not have any connection with the Community Action Movement (hereinafter also "MAC" due to its acronym in Spanish) and was in the location where the attack against Mr. Sepúlveda Saravia occurred by chance; and with respect to Mr. Omeara Carrascal, no real risk has been evidenced as known by the State resulting in the alleged lack of the duty of prevention.<sup>19</sup>

31. Colombia did not expressly acknowledge the facts, however, taking into account the violations acknowledged by the State (*supra* paras. 16, 19, 22 and 25) as well as the observations of the representatives and the Commission (*supra* paras. 17, 18, 20, 21, 23, 24, 26 and 27), the Court considers that the dispute has ceased with respect to the facts that support the aforementioned recognition and the rights that are detailed below:

32. Regarding *Noel Emiro Omeara Carrascal*: (a) for the violation of the rights to life and humane treatment (Articles 4 and 5) of the American Convention, in relation to 1(1) of the

<sup>16</sup> Cf. *Case of Rodríguez Vera et al. (Disappeared from the Palace of Justice) v. Colombia. Preliminary Exceptions, Merits, Reparations and Costs*. Judgment of November 14, 2014. Series C No. 287, para. 27, and *Case of Ramírez Escobar et al. v. Guatemala, supra*, para. 35.

<sup>17</sup> 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 López Soto et al. v. Venezuela. Merits, Reparations and Costs*. Judgment of September 26, 2018. Series C No. 362, para. 34.

<sup>18</sup> Cf. *Case of Manuel Cepeda Vargas v. Colombia, supra*, para. 18, and *Case of López Soto et al. v. Venezuela, supra*, para. 34.

<sup>19</sup> It should be remembered that the Court has indicated in its case law that "in order to determine State responsibility in a specific case, it is necessary to prove, first of all, the State's knowledge of the specific situation of risk. In this sense, it should be remembered that the treaty-based guarantee obligations of the States does not imply their unlimited responsibility for all acts or deeds of individuals, because its obligations to adopt prevention and protection measures for individuals in their relationships with each other are conditioned by the awareness of a situation of real and imminent danger for a specific individual or group of individuals and to the reasonable possibilities of preventing or avoiding that danger." *Case of the Pueblo Bello Massacre v. Colombia. Merits, Reparations and Costs*. Judgment of January 31, 2006. Series C No. 140, para. 123, and *Case of Pacheco León et al. v. Honduras. Merits, Reparations and Costs*. Judgment of November 15, 2017. Series C No. 342, para. 159. In addition, this Court has indicated that "in order to establish a breach of the duty to prevent violations of the rights to life and personal integrity, it must be verified that: (i) the state authorities knew, or should have known, of the existence of a real and immediate risk to the life and/or personal integrity of a determined individual or group of individuals, and that (ii) such authorities did not adopt the necessary measures within the scope of their powers that, reasonably judged, could be expected to prevent or avoid that risk. Cf. *Case of the Pueblo Bello Massacre v. Colombia, supra*, para. 123, 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. 140.

Convention, for the attack and subsequent death of the Mr. Omeara Carrascal, and (b) for the violation of judicial guarantees of a fair trial and judicial protection (Articles 8 and 25) of the American Convention, in relation to 1(1) of the same instrument, to the detriment of his next of kin, in the terms indicated in paragraph 16).

33. Regarding *Manuel Guillermo Omeara Miraval*: (a) for the forced disappearance and execution (Articles 3, 4, 5 and 7) of the American Convention, in relation to Article 1(1) of the same instrument, and (b) for the violation of the rights to humane treatment, a fair trial and judicial protection (Articles 5, 8 and 25) of the American Convention, all in relation to Article 1(1) of the Convention; and the obligation to investigate with due diligence alleged acts of torture and other cruel, inhuman and degrading treatment or punishment, established in the ICPPT (Article 8), in relation to the general obligation established in Article 1(1) of the same Convention, to the detriment of the next of kin of Mr. Omeara Miraval.

34. Regarding *Héctor Álvarez Sánchez*: (a) for the failure to investigate the violation of the rights to life and humane treatment (Articles 4 and 5) of the American Convention, and (b) a fair trial and judicial protection (Articles 8 and 25) of the American Convention, in relation to Article 1(1) of the Convention, pursuant to paragraph 22.

35. Regarding the members of the Omeara Miraval, Omeara Álvarez and Álvarez Solano families: (a) for the violation of the rights to humane treatment and protection of the family (Articles 5 and 17) of the American Convention, in relation to Article 1(1) of the Convention, to the detriment of the members of the families of Messrs. Omeara Miraval, Omeara Álvarez and Álvarez Solano (*supra* para. 25(a)); (b) for the failure to investigate the alleged threats suffered by Carmen Omeara (*supra* para. 25(b)); (c) for the failure to investigate the alleged forced displacement of some family members (*supra* para. 25(c)), and (d) for the violation of the rights of the child (Article 19) of the American Convention, in relation to Article 1(1) of the Convention, to the detriment of the girls Elba Katherine and Claudia Marcela, and the boy Manuel Guillermo, surnamed Omeara Álvarez, who at the time of the events were minors (*supra* para. 25(d)).

36. In addition, regarding the attack suffered by Noel Emiro Omeara Carrascal and the forced disappearance and execution of Manuel Guillermo Omeara Miraval, the State acknowledged its responsibility for "actions by state agents in conjunction with illegal armed groups," the Court understood that said acknowledgment includes the direct participation, collaboration or acquiescence of state agents in the facts of the case. Therefore, this Court considered that it is not necessary to rule on the alleged direct responsibility of the State for the actions of illegal armed groups.

37. However, considering the State's partial acknowledgment of international responsibility and the observations of the representatives and the Commission, the Court considers that the dispute remains in the aspects indicated below.

38. Regarding *Noel Emiro Omeara Carrascal*<sup>20</sup> on the alleged actions of members of the National Anti-Kidnapping Unit (hereinafter also "UNASE") in the attack he suffered.<sup>21</sup>

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<sup>20</sup> Regarding the alleged attribution of State responsibility for the breach of its obligation to prevent the attack on Mr. Omeara Carrascal, it should be noted that according to the facts, Mr. Omeara Carrascal had no connection with the Community Action Movement and by chance was in the place where the attack against Mr. Sepúlveda Saravia took place and with respect to Mr. Omeara Carrascal, no real risk known to the State has been evidenced that derives from the alleged lack of duty of prevention on his part (*supra* para. 30).

<sup>21</sup> According to the State, internal investigations revealed the participation of State agents, but even today, it has not been possible to establish that they were members of the UNASE special group.

39. Regarding *Manuel Guillermo Omeara Miraval*: (a) for the acts of torture that he suffered before his death and while he was disappeared; (b) regarding the lack of due diligence in the investigation to search for Mr. Omeara Miraval alive, in light of the report of his kidnapping and subsequent disappearance; (c) for the violation of Article 6 of the ICPPT; (d) for the violation of Article 1(b) of the CIDFP, to the detriment of Mr. Omeara Miraval's relatives,<sup>22</sup> and (e) for the alleged participation of the "Los Prada" paramilitary group in the events.

40. Regarding *Héctor Álvarez Sánchez*: (a) for the attribution of responsibility to the State for failing to comply with its obligation to prevent the violation of Article 5 of the American Convention, in relation to Article 1(1) of the treaty; (b) for the violation of Article 4 of the Convention, in relation to the obligations of respect and guarantee established in Article 1(1) of said instrument, for the omissions of the State to protect Mr. Álvarez Sánchez's life and for the evidence of the joint action of state agents and an illegal armed group.

41. Regarding the relatives of Messrs. Omeara Carrascal, Omeara Miraval and Álvarez Sánchez: (a) for the violation of the right to freedom of movement and residence (Article 22(1)) of the American Convention, in relation to Article 1(1) of the Convention, for the forced displacement of persons, to the detriment of Carmen Teresa Omeara Miraval, Fabiola Álvarez Solano and Elba Katherine, Claudia Marcela and Manuel Guillermo, all with the surnames Omeara Álvarez, for failing to comply with their obligation to protect the immediate family and prevent forced displacement; (b) for the breach of the duty to investigate the facts with due diligence, in relation to investigation of Mr. Omeara Carrascal due to the lack of diligence in the criminal proceedings, except on his late inclusion in the criminal proceedings, and regarding the Mr. Omeara Miraval in relation to the complaint of his kidnapping and subsequent disappearance. Regarding Mr. Álvarez Sánchez, the State only recognized its responsibility in the period from October 21, 1994, to March 2003; c) for failure to comply with the reasonable timeframe, considering the undue delays in criminal investigations. Also, with regard to the investigation in the military criminal justice system and the disciplinary investigation related to Mr. Omeara Miraval; (d) for the violation of the rights to a fair trial and judicial protection due to the lack of connection and coordination between the investigations, and that the facts of the three victims were causally related; (e) for the alleged violation of the right to honor and dignity (Article 11(2)) of the Convention.

42. Additionally, Colombia indicated that it "acknowledged its responsibility, and that as a consequence of the international responsibility of the States, since they are involved in an internationally unlawful act, the victims must be compensated" for the violations committed to their rights and carried out various considerations on the different measures requested by the Commission and the representatives, related to the determination of possible reparations, costs and expenses, some of which remain in dispute. Therefore, the Court will examine and rule on these in the corresponding chapter.

43. Finally, considering the seriousness of the facts and alleged violations, as well as taking into account the powers incumbent on this Court as an international body for the protection of human rights, the Court will proceed to establish both the broad and specific events that occurred, since this contributes to the reparation for the victims, to preventing the repetition of similar events and to satisfying the purposes of the inter-American jurisdiction on human rights.<sup>23</sup> The Court will also open the corresponding chapters to analyze and specify, as

<sup>22</sup> The State considered that the disappearance and death was diligently investigated from the beginning and that after the date of the events the State deposited the ratification of said instrument.

<sup>23</sup> *Case of Tiu Tojín v. Guatemala. Merits, Reparations and Costs*. Judgment of November 26, 2008. Series C No. 190, para. 24, and *Case of Escaleras Mejía et al. v. Honduras, supra*, para. 25.

appropriate, the scope of the violations alleged by the Commission or the representatives, as well as the consequences that may arise in terms of reparations.

## V PRELIMINARY CONSIDERATIONS

44. The Court notes that the **State** presented three preliminary objections, designated as follows: (a) "lack of jurisdiction of the Court [...] with respect to José Erminso Sepúlveda Saravia and his next of kin, as he was not identified in the Article 50 of the [Commission's] report, pursuant to Article 35(1) of the Rules of Procedure of the Inter-American Court"; (b) "lack of jurisdiction over the instances of threats and persecution against the Community Action Movement and other alleged facts generated by the violations of the rights contained in Articles 13, 16 and 23 of the [American Convention], as well as [Articles] 4 and 5 therein, to the detriment of José Erminso Sepúlveda", and (c) "lack of jurisdiction of the Court [...] with respect to Zoila Miraval de Omeara and José Miguel Omeara Miraval, as they were not identified in Article 50 of the [Commission's] report, pursuant to Article 35(1) of the Court's Rules of Procedure."

45. The **Court** recalls that preliminary objections are objections that are prior in nature and tend to hinder the analysis of the merits of a matter being questioned, by objecting to the admissibility of a case or the jurisdiction of the Court to hear a particular case or any of its aspects, whether due to the person, matter, time or place; as long as said statements are preliminary in nature.<sup>24</sup>

46. This Court notes that the State's questions are aimed at determining the alleged victims and determining the factual framework in this case. For this reason, the Court considers that the State's arguments are not considered as a preliminary objections, without prejudice to which the State's proposal is resolved in this section, for which it will rename said arguments as follows.

47. For the sake of procedural economy, the Court will jointly analyze the approach indicated in points (a) and (c), regarding the failure to establish certain presumed victims in the terms of Article 35(1) of the Rules of Procedure, since they examine of allegations of similar nature.

### **A. Regarding José Erminso Sepúlveda Saravia and his next of kin, as well as Zoila Miraval de Omeara and José Miguel Omeara Miraval due to lack of identification in the Article 50 report of the Commission, pursuant to Article 35(1) of the Court's Rules of Procedure.**

#### **A.1. Arguments of the Commission and the parties**

##### A.1.a. Regarding José Erminso Sepúlveda Saravia and his next of kin

48. The **State** argued that the representatives extemporaneously included José Erminso Sepúlveda Saravia and six of his next of kin as victims in their pleadings and motions brief, "contrary to the regulations and case law of this Court," without justifying their exclusion before the Commission and addition at this instance. It added that this case is not part of one of the assumptions contained in Article 35(2) of the Rules of Procedure that could have prevented his identification at the appropriate procedural moment, so this exception does not apply. It

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<sup>24</sup> Cf. *Case of Las Palmeras v. Colombia. Preliminary Exceptions*. Judgment of February 4, 2000. Series C No. 67, para. 34, and *Case of Herzog et al. v. Brazil. Preliminary Exceptions, Merits, Reparations and Costs*. Judgment of March 15, 2018. Series C No. 353, para. 97.

requested that the Court reaffirm its case law and exclude said persons as presumed victims of the case, who will also not be able to benefit from any type of reparation as part of this case.

49. The **Commission** stated that neither José Erminso Sepúlveda nor his next of kin were included in Merits Report No. 40/15. However, it considered that, taking into account the particular characteristics of the violations committed in this case, the consideration of the situation of Mr. Sepúlveda Saravia is not limited to his identification as a victim or not, rather the relevant issue is the background information related to said person, which is part of the legal debate in this case for as long as the procedure has been before the Commission. In this regard, and without prejudice to whether or not said person is considered a victim in the case, the Commission reiterated that his situation of risk and the State's knowledge of it is not merely a contextual issue, but rather has a direct causal link with the attribution of State responsibility, for the breach of the duty of respect and of guarantee regarding the fate of Mr. Omeara Carrascal.

50. The **representatives** stated that the inclusion of Mr. Sepúlveda Saravia and his next of kin as victims in this case is made in accordance with the factual framework presented in the Merits Report. They argued that the fact that the murder of Mr. Sepúlveda Saravia was declared a crime against humanity by the First Delegate Prosecutor before the Superior Court of Bucaramanga on April 21, 2014, should imply knowledge of what happened to said victim by the Court. They added that as of such declaration, the relatives of Mr. Sepúlveda Saravia began to contemplate the possibility of participating in the inter-American system, despite the persistent fears of accusations or negative effects against them, which still exist.

A.1.b. Regarding Zoila Miraval de Omeara and José Miguel Omeara Miraval

51. The **State** requested that Zoila Miraval de Omeara and José Miguel Omeara Miraval be excluded as alleged victims of the case based on: (a) they were extemporaneously included in the brief with pleadings and motions, without offering an explanation to justify their non-inclusion before the Commission and its addition at this instance; (b) this case is not characterized as constituting one of the assumptions contained in Article 35(2) of the Rules of Procedure, which would prevent the identification of said persons at the appropriate procedural stage. Therefore, the exception to the identification of the victims in this case is not applicable; (c) that the representatives did not forward a power of attorney granted prior to the death of said persons, since according to the death certificates, Mrs. Zoila Miraval de Omeara died on April 12, 2002, and Mr. José Miguel Omeara Miraval died on August 16, 2005, and (d) that these two persons are not identified in the Merits Report, nor in the submission brief. Consequently, the State asked that this Court "in order to guarantee due process, equality of the parties and legal certainty, [continue] to uphold the rules of the Court according to which the representatives cannot include in their brief with pleadings, motions and evidence, either facts or victims other than those included in the Report issued in accordance with Article 50."

52. The **Commission** indicated that Zoila Miraval de Omeara and José Miguel Omeara Miraval were not included in the Merits Report. However, at the public hearing and in its final written observations, it considered it important to mention that the jurisprudential change, insofar as the next of kin should be included in the Merits Report, took place in 2007, under the auspices of a regulatory framework in the Commission that did not require presentation of such information before it. In this sense, for cases such as this one with lengthy proceedings, pre-dating this change in jurisprudence and under a different regulatory regime of the Commission, it considers it pertinent to have some flexibility regarding the incorporation of family members.

53. The representatives argued that Zoila Miraval de Omeara and José Miguel Omeara Miraval died 15 and 12 years ago, respectively, and that, considering the duration of the



proceedings and the date the events occurred, the lack of powers of attorney of their immediate family (children and siblings, respectively) must be more flexible in order to make reparations to victims whose direct relatives were extrajudicially executed or disappeared and in application of the principle of equal treatment before the law. In addition, they argued that the omission of the inclusion of said persons is due to the procedural changes that occurred after litigation of the case began before the inter-American system, in which there was a tradition of listing the next of kin of the victims in the reparations processes and not in the merits of the case.

## **A.2. Considerations of the Court**

54. The Court notes that during the proceedings before the Commission, the representatives, in their brief of May 27, 2015, mentioned the next of kin of Noel Emiro Omeara Carrascal, Manuel Guillermo Omeara Miraval, Héctor Álvarez Sánchez, without making reference to Zoila Miraval de Omeara nor José Miguel Omeara Miraval.<sup>25</sup> Although these last persons are relatives of Messrs. Omeara Carrascal and Omeara Miraval, they were not identified in the Merits Report. Nor was José Erminso Sepúlveda Saravia mentioned in the Merits Report, nor his next of kin, who were included by the representatives, for the first time, as presumed victims in the proceedings before the Court, in their pleadings and motions brief.

55. In this regard, Article 35(1) of the Court's Rules of Procedure provides that the case will be presented through submission of the Merits Report, which must "identify the alleged victims." It is therefore up to the Commission to accurately identify the presumed victims in a case before the Court at the due procedural opportunity,<sup>26</sup> such that after the Merits Report it is not possible to add new alleged victims, except in the exceptional circumstances considered under Article 35(2) of the Rules of Procedure,<sup>27</sup> which are not applicable in this case, since it refers to situations in which it is not possible to "identify one or more of the alleged victims who figure in the facts of the case because it concerns massive or collective violations". Therefore, in application of Article 35, the content of which is unequivocal, it is the consistent case law of this Court that the alleged victims must be indicated in the Merits Report provided for in Article 50 of the Convention.

56. Based on the foregoing considerations, this Court does not deem it pertinent to deviate from the text of the Rules of Procedure and from the criteria established in its consistent case law. Therefore, the alleged victims are the people who were mentioned by the Commission in the Merits Report (*supra* footnote reference of page 1), and José Erminso Sepúlveda Saravia and his next of kin cannot be considered as alleged victims, nor can Zoila Miraval de Omeara and José Miguel Omeara Miraval.

## **B. Regarding the incidences of threats and persecution against the Community Action Movement and other alleged facts that generated the violations of the rights contained in Articles 13, 16 and 23 of the Convention, as well as 4 and 5 thereof, to the detriment of José Erminso Sepúlveda**

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

<sup>25</sup> The representatives' Brief of May 27, 2015 (file of proceedings before the Commission, page 1535).

<sup>26</sup> *Case of the Ituango Massacres v. Colombia. Preliminary Objections, Merits, Reparations and Costs.* Judgment of July 1, 2006. Series C No. 148, para. 98, and *Case of Coc Max et al. (Xamán Massacre) v. Guatemala. Merits, Reparations and Costs.* Judgment of August 22, 2018. Series C No. 356, para. 16.

<sup>27</sup> *Mutatis mutandis*, under the previous Rules of the Court, *Case of Radilla Pacheco v. Mexico. Preliminary Exceptions, Merits, Reparations and Costs.* Judgment of November 23, 2009. Series C No. 209, para. 110, and *Case V.R.P., V.P.C. et al. v. Nicaragua. Preliminary Exceptions, Merits, Reparations and Costs.* Judgment of March 8, 2018. Series C No. 350, para. 47.

57. The **State** warned that the representatives, by including Mr. Sepúlveda Saravia and his next of kin as alleged victims, "intend to add new facts and arguments not presented by the representatives [...] before the Commission or in the submission brief and Merits Report before the Court". It argued that the representatives "have exceeded the facts – both in the context chapter, as well as in the facts and legal grounds" – submitted to the Court, "contrary to the provisions of Article 40(2) of its [R]ules of Procedure", as follows:

(i) in chapter VI-CONTEXT, include the title named: "3. The Community Action Movement or MAC"; (ii) in chapter VII-FACTS- include the following titles: (a) "2. The persecution of the Community Action Movement, MAC" and (b) "3.i The threats and persecution against MAC and José Erminso Sepúlveda", and (iii) in chapter VIII – LEGAL GROUNDS, the following sections are listed: a first title denominated (a) "2. Violation of the rights to life and humane treatment of José Erminso Sepúlveda and Noel Emiro Omeara Carrascal as a result of the attacks that claimed lives" and "3. Violation of the rights to freedom of expression, freedom of association and political rights of José Erminso Sepúlveda as a result of the constant threats against him and MAC and the extrajudicial execution of which he was a victim". (capitalisation and bold type in the original)

58. The State specified that in the factual framework defined by the Commission in the Merits Report, the facts were developed clearly and without making any reference to the alleged violations of the rights contained in Articles 13, 16 and 23 of the Convention, to the detriment of José Erminso Sepúlveda, since his attack was merely contextual and the characteristics of the facts related to him are not of supervening facts. Consequently, it requested that the Court preliminarily exclude the context of threats against the MAC and José Erminso Sepúlveda Saravia.

59. The **Commission** indicated that the contextual elements regarding paramilitarism in Colombia, the situation in the municipality of Aguachica at the time of the events, the actions of illegal armed groups in collaboration with State agents, as well as the persecution against the Community Action Movement (MAC) and the situation of lack of protection in which Mr. Sepúlveda Saravia found himself, are clearly analyzed in the Merits Report and form part of the factual framework of the case, and referred to paragraphs 42, 43 and 47 of the Report. It added that in the title related to the facts about Mr. Omeara Carrascal, the Merits Report makes a clear reference to the fact that Mr. Sepúlveda Saravia belongs to the MAC, and to his risk status, for which it referred to paragraphs 52, 54, 55, 124, 135 and 136. It highlighted that the circumstances in which the attack of January 28, 1994 took place, show an evident relationship of cause and effect between the existing context in Aguachica and the injuries and death of Mr. Omeara Carrascal, as well as the subsequent sequence of violations committed to the detriment of the other two victims. That is, they constitute a direct source of attribution of responsibility. During the public hearing, the Commission noted that the State declared that Mr. Sepúlveda Saravia's death "is the starting point and should influence the legal analysis made by the Court when determining the international responsibility of the State."

60. The **representatives** considered that regarding the facts of this case: (a) they cannot be separated from the context of the armed conflict; (b) that it is proven that by 1994 there was an intense joint action by the security forces stationed in the south of Cesar and the paramilitary group "Los Prada", under the premise of combating the insurgent groups present, and (c) the facts concerning the extermination of the MAC and that Mr. Sepúlveda Saravia was one of its leaders cannot be excluded from the analysis of this matter. All of the above was fully known by the State, which failed to comply with its duty to prevent subsequent events and led to the attack perpetrated at the San Roque restaurant on January 28, 1994. The events that happened to both Mr. Sepúlveda Saravia and the Omeara and Álvarez families, originates from the syndication of subversion within a scenario of collaboration and acquiescence between the security forces and paramilitary groups in the persecution and harassment of the MAC.

## **B.2. Considerations of the Court**

61. This Court recalls that according to its established case law, the factual framework of the proceedings before the Court consists of the facts contained in the Merits Report, with the exception of the facts that are classified as supervening, provided that they are linked to the facts of the proceedings. This is without prejudice to the fact that the representatives may state the facts that make it possible to explain, clarify or reject those that have been mentioned in the Merits Report and have been submitted to the consideration of the Court.<sup>28</sup>

62. In this case, the Court notes that the facts questioned by the State are linked to the determinations of the factual framework made by the Commission in its Report, in the sections entitled "1. On the phenomenon of paramilitarism in Colombia" and "2. The situation in the Municipality of Aguachica; the actions of illegal armed groups and the link between some of these groups and State agents." Therefore, this Court considers that these facts, as they are referred to in the Merits Report, form a relevant part of the factual framework as background and contextual elements to the attack on Mr. Noel Emiro Omeara Carrascal, are admissible and will be considered in relevant section of the merits.

63. However, it has already been determined that José Erminso Sepúlveda and his next of kin are not presumed victims in this case (*supra* para. 56). Therefore, it is relevant to clarify that the situation related to the attack on Mr. Sepúlveda Saravia will be considered whenever it refers to the background and the context in which the attack against Mr. Omeara Carrascal took place. The Court will not carry out analyzes or legal determinations regarding persons who are not considered alleged victims.

## **VI EVIDENCE**

### **A. Admissibility of documentary evidence**

64. In this case, as in others, the Court admits the probative value of those documents presented at the due procedural opportunity by the parties and the Commission, as well as the information presented by the State and the representatives at the request of the Court, as evidence to facilitate adjudication, in accordance with Article 58(b), which were not disputed or objected, and whose authenticity was not questioned.<sup>29</sup> Notwithstanding, some pertinent considerations are made.

65. Regarding the documents related to costs and expenses, the Court will only consider those receipts that refer to the new costs and expenses that have been incurred during the proceedings before this Court, that is, those made after the presentation of the pleadings and motions brief and will take into account the observations of the State in this regard. Therefore, they are admissible under the terms of Article 57(2) of the Rules of Procedure.

### **B. Admissibility of testimonial and expert evidence**

66. The Court deems it pertinent to admit the statements and opinions given at a public hearing and through statements before notary public, insofar as they meet the purpose defined by the President in the order requesting their receipt (*supra* para. 10) and the purpose

<sup>28</sup> 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 Herzog et al. v. Brazil, supra, para. 92.*

<sup>29</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits. Judgment of July 29, 1988. Series C No. 4, para. 140, and Case of Amrhein et al. v. Costa Rica. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of April 25, 2018. Series C No. 354, para. 137.*

of this case.

67. The State presented various observations regarding the following expert opinions rendered by:

(a) Fernando Ruiz Acosta, regarding whom it considered that in his opinion various inconsistencies occurred that affect the amount of compensation, namely: (i) the purposes of pecuniary responsibility, specifically the responsibility of the State, (ii) the concept of damage, and (iii) the notion of material damage;

(b) Alejandro Valencia Villa, regarding whom it made a series of questions related to: (i) the attribution of international responsibility; (ii) the content of the duty to prevent and its difference with the duty to investigate; (iii) factual references made in the expert opinion that the State does not share, and (iv) the affirmations made in the expert opinion about the lack of diligence in the investigations. The State asked the Court to take into account its observations, which are based on the standards developed by this Court.

(c) Liz Arévalo, regarding whom it considered that the document sent by her does not constitute an expert opinion, it is "a preconceived opinion, openly subjective and with verifiable scientific deficiencies from a technical and professional perspective." It considered that the opinions and questions about the PAPSIVI (acronym for the Program for Psychosocial Care and Comprehensive Health for Victims of Conflict) that were offered in the affidavit were made about a version that is not currently in force or that cannot be linked to the program.

68. This **Court** notes that the State, in its observations on the expert reports, questions their content. The Court understands that the State does not challenge its admissibility, but rather questions its probative value. Consequently, it admits the expert opinions of Fernando Ruiz Acosta, Alejandro Valencia Villa, and Liz Arévalo, which will be considered as relevant as long as they are in accordance with the purpose ordered and taking into account the observations of the State.

69. Regarding the statement of Jaime Antonio Omeara Miraval, the **State** considered that his statement was given as a "hearsay witness –on many of the points that remain in dispute –, it is noteworthy that they are not directly recorded by the declarant". According to the State, "at various times his statement proves a third-party account, but not its veracity." It asked the Court to assess the evidence as a whole with the body of evidence available, in particular with the statement made by said person on August 17, 2010 before Prosecutor 66 of the UNDH (National Unit for Human Rights) of the Office of the National Attorney General. The **Court** considers that the observations of the State question the probative weight of the statement, which does not create a problem as to its admissibility. This Court admits the statement of Jaime Antonio Omeara Miraval, and for its assessment it will take into account his status as alleged victim, the relevant observations of the State, as well as the body of evidence as a whole.

## VII FACTS

70. The Court will present, first, the contextual framework and, second, the personal and family circumstances of the alleged victims, as well as the events that occurred to each one of them. Finally, it will refer to the investigations of the attacks against Messrs. Omeara Carrascal, Omeara Miraval and Álvarez Sánchez. The statement that follows takes into consideration the points of clarification made by the State and the representatives, as well as those that arise

from the evidence submitted to the Inter-American Court. Relevant facts that arise from said evidence are also related.

## **A. Context**

### **A.1. The general context of collaboration between paramilitary groups and the Colombian Security Forces**

71. It is a public and well-known fact that, at the time of the facts of this case, there was an internal armed conflict in Colombia.<sup>30</sup> The Inter-American Court has verified, in different periods and geographical contexts, the existence of links between members of the Colombian Armed Forces and paramilitary groups. A joint analysis of the cases decided by the Commission, and subsequently by the Inter-American Court, indicates the existence of a link between paramilitary groups and members of the security forces in relation to human rights violations, including violations such as judicial executions, forced disappearances, torture and cruel, inhuman or degrading treatment, and forced displacement. This link is evident through direct actions of support, collaboration and coordination, or through omissions by members of the security forces who have favored the actions of paramilitary groups by acquiescence or tolerance.<sup>31</sup>

### **A.2. The situation in the south of the Department of Cesar**

72. The Department of Cesar is located on the north coast of Colombia, has an area of 22,905 km<sup>2</sup> and its capital is Valledupar. The southern area of the department is made up of the municipalities of Aguachica, Curumaní, González, Pailitas, Pelaya, Río de Oro, San Alberto, San Martín, Gamarra, Tamalameque and La Gloria, which border the Magdalena River and represent a strategic area for land and river communication between nearby departments. This and the fact that the lands are fertile and suitable for agricultural activities, represents great interest and confluence of armed actors in the area.<sup>32</sup> The events in this case occurred in the municipalities of Aguachica and San Martín.

73. In 1994, in the municipalities of Aguachica, San Alberto, San Martín, Gamarra and La Gloria in the southern subregion of Cesar, Middle Magdalena Region, there was a presence of

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<sup>30</sup> *Case of the "Mapiripán Massacre" v. Colombia*. Judgment of September 15, 2005. Series C. N. 134, 31 para. 196 and, *Case of Carvajal Carvajal et al. v. Colombia. Merits, Reparations and Costs*. Judgment of March 13, 2018. Series C No. 352.para. 27.

<sup>31</sup> *Case of Cepeda Vargas v. Colombia, supra; Case of the Ituango Massacres v. Colombia, supra, and Case of Vereda La Esperanza v. Colombia. Preliminary Exceptions, Merits, Reparations and Costs*. Judgment of August 31, 2017. Series C No. 341, para. 68.

<sup>32</sup> Expert opinion of Santiago Alberto Camargo Camargo rendered by affidavit presented before the Court (evidence file, affidavits and expert opinions, fs. 12322 to 12376); Statement by Iván Augusto Gómez Celis presented by affidavit submitted to the Court (evidence file, affidavits, and expert opinions, fs. 11920 to 11955), and *Colombia Nunca Más* Project [Colombia Never Again Project]. Zone V report. South of Cesar: between the accumulation of land and the monoculture of the palm, (evidence file, annexes to the brief with pleadings and motions and evidence, volume I, annex 11, fs. 2033 to 2151).

paramilitary groups,<sup>33</sup> among which the "Los Prada"<sup>34</sup> (hereinafter "Los Prada" or "Los Prada group"), led by RP and his brothers, JP and MP.<sup>35</sup>

74. In addition, there was a State security body called the National Anti-kidnapping and Extortion Unit (hereinafter also "UNASE"), made up of members of the National Army, National Police and the Administrative Department of Security (hereinafter also "DAS"). The headquarters of the latter in Aguachica was located in the main San Roque park, near the Municipal Mayor's Office and was a body dependent on the Unit in Bucaramanga.<sup>36</sup> The Commission alleges that said Unit was known to participate in acts of violence and extortion, and according to different statements from relatives and witnesses, the group of "Los Prada" coordinated with members of the Police and the Army, and DAS had knowledge of their actions.<sup>37</sup>

75. In 1991, the Community Action Movement<sup>38</sup> was organized in Aguachica, and achieved the election of three council members. The MAC was perceived as a group whose leaders allegedly came from the former guerrilla group M-19. After a series of murders and attacks against members of the MAC, in 1994 a public statement was released by the survivors in which they indicated that they had resigned from the movement and that some of its members had traveled to other parts of the country to protect their lives.<sup>39</sup>

## B. Facts regarding Noel Emiro Omeara Carrascal

<sup>33</sup> The Court uses the expression "paramilitary" given that it has already used it before (*Cf. Case of Vereda La Esperanza v. Colombia, supra*). Additionally, regarding the circumstances of the case, the witness Iván Augusto Gómez Celis, Prosecutor 34, Delegate before the Superior Judicial District Court, proposed by the State, has referred to the phenomenon of "paramilitarism", including references to the "Prada family" and the "Héctor Julio Peinado Front" (*Cf. Statement of Iván Augusto Gómez Celis, supra*).

<sup>34</sup> Various groups were present in this area, including "Los Macetos", "Autodefensas Campesinas del Sur del Cesar ACSUC" and "Frente Héctor Julio Peinado Becerra". *Cf. Colombia Nunca Más Project. Zone V Report, supra*; Statement of Iván Augusto Gómez Celis, *supra*, and Statement of FR, and Statement of RR, both given before the 66th Specialized Prosecutor of the Human Rights Unit on July 13, 2010 (evidence file, annex 6 to the brief with pleadings, motions and evidence, fs. 1927 to 1936).

and Statement of FP rendered before the 66th Specialized Prosecutor of the Human Rights Unit on July 13, 2010 (evidence file, annex 6 to the brief with pleadings, motions and evidence, fs. 1927 to 1930).

<sup>35</sup> *Colombia Nunca Más Project. Zone V Report, supra*; Complaint presented by a member of the JM Police to the Delegate Attorney for the Defense of Human Rights on February 23, 1995 (evidence file, annex 3 to the Merits Report, fs. 40 to 44), and Statement by Iván Augusto Gomez, *supra*.

<sup>36</sup> *Cf. Statement of Iván Augusto Gómez Celis, supra*; Map of the San Roque main park of the municipality of Aguachica for 1994, prepared by Jaime Antonio Omeara Miraval (evidence file, annex 42 to brief with pleadings, motions and evidence, f. 2352); Statement by Carmen Teresa Omeara Miraval before Prosecutor 44 of February 18, 2008 (evidence file, annex 45 to brief with pleadings, motions and evidence, fs. 2361 to 2364), and Statement of Jaime Antonio Omeara Miraval before Prosecutor 66 of August 17, 2010 (evidence file, annex 48 to the brief with pleadings, motions and evidence, fs. 2374 to 2382).

<sup>37</sup> *Colombia Nunca Más Project. Zone V Report, supra*; RP statement given before Prosecutor 44 on April 8, 2011 (evidence file, annex 60 to the brief with pleadings, motions and evidence, fs. 2432 to 2435); Investigation procedure of MR of May 7, 2015 (evidence file, annex 59 to the brief with pleadings, motions and evidence, fs. 2420 to 2430); Appeal filed by the representative of the civil party on April 21, 2014 (evidence file, annex 83 to the brief with pleadings, motions and evidence, fs. 2548 to 2564); Statement of Fabiola Álvarez Solano on September 7, 1994 (evidence file, annex 53 to the brief with pleadings, motions and evidence, fs. 2398 to 2400); Statement of Carmen Teresa Omeara Miraval before Prosecutor 44, *supra*; Statement of Jaime Antonio Omeara Miraval before Prosecutor 66 of August 17, 2010, *supra*, and Report No. 279 of August 12, 2002 of the General Operations Directorate-Special Operations Sub-Directorate-Judicial Police Coordination of the DAS, file No. 397 of the Bucaramanga UNDH (evidence file, annex 15 to the brief with pleadings, motions and evidence, fs. 135 to 139).

<sup>38</sup> *Colombia Nunca Más Project. Zone V Report, supra*. The Community Action Movement (MAC) emerged in 1991 with the idea of expanding throughout the region and responding to community problems without resorting to political parties. The MAC brings together all the Community Action organizations in the region. Since its creation, the MAC was perceived by authorities as linked to guerrilla or subversive groups.

<sup>39</sup> Public press release on the MAC (evidence file, annex 24 to the brief with pleadings, motions and evidence, f. 2265).

### **B.1. Personal circumstances and next of kin of Noel Emiro Omeara Carrascal**

76. Noel Emiro Omeara Carrascal, was born on July 30, 1926<sup>40</sup>, in Teorama, Northern Santander, and was a rancher. His life was spent between his cattle farms and his house in Aguachica. Although he did not exercise any active political affiliation, he identified with the conservative party.

77. He had a family with Zoila Miraval de Omeara (deceased), made up of thirteen children: Luis Enrique, Aura Isabel, Noel Emiro, Araminta, Ricaurte, Eduardo, Zoila Rosa, Liliana Patricia, María (deceased), Carmen Teresa, Jaime Antonio, José Miguel (deceased), Manuel Guillermo (deceased), all surnames Omeara Miraval, and their three grandchildren, children of Manuel Guillermo Omeara Miraval and Fabiola Álvarez Solano, namely: Manuel Guillermo, Elba Katherine and Claudia Marcela, surnames Omeara Álvarez.<sup>41</sup>

### **B.2. Attack and subsequent death of Noel Emiro Omeara Carrascal**

78. On January 28, 1994, Noel Omeara Carrascal went to have lunch at the "San Roque" restaurant, located near the municipal mayor's office. José Erminso Sepúlveda Saravia, Private Secretary of the Mayor's Office and member of the MAC was at the same place at the same time.<sup>42</sup>

79. During lunch, around four men entered the restaurant dressed as civilians carrying firearms, fired shots and later left the location.<sup>43</sup> José Erminso Sepúlveda Saravia died that same day as a result of the shots fired, while Mr. Omeara Carrascal, who was hit by a projectile, was transferred to the Aguachica hospital, from which he was urgently transferred Bucaramanga<sup>44</sup>.

80. According to statements by AQ, a witness to the events, and Jaime Antonio Omeara Miraval, son of Noel Emiro Omeara Carrascal, after the attack members of the "UNASE group [...] came to the park and collected [José Erminso Sepúlveda] and [Mr. Omeara], and they took

<sup>40</sup> Baptism certificate of Noel Emiro Omeara Carrascal dated August 20, 1927 (merits file, f. 1503).

<sup>41</sup> Birth registration records of Carmen Teresa Omeara Miraval; Jaime Antonio Omeara Miraval; Luis Enrique Omeara Miraval; Aura Isabel Omeara Miraval; Noel Emiro Omeara Miraval; Araminta Omeara Miraval; Ricaurte Omeara Miraval; Eduardo Omeara Miraval; Zoila Rosa Omeara Miraval, and Liliana Patricia Omeara Miraval, and the death certificate of María Omeara Miraval (evidence file, proceeding before the IACHR, fs. 1571, 1574, 1576, 1578, 1580, 1582, 1584, 1586 and 1589, 1592 and 1594). Registration records of the children of Manuel Guillermo Omeara Miraval (evidence file, Annex 118 to the brief with pleadings, motions and evidence, fs. 2866 to 2868). Registration records of Manuel Guillermo Omeara Miraval (evidence file, Annex 130 to the brief with pleadings, motions and evidence, f. 3502). Registration of the marriage of Fabiola Álvarez Solano and Manuel Guillermo Omeara Miraval on July 11, 1985 (evidence file, annex 131 to brief with pleadings, motions and evidence, f. 3504). Zoila Miraval de Omeara and José Miguel Omeara Álvarez are not considered victims in this case (*supra* para. 56).

<sup>42</sup> Mr. Sepúlveda Saravia had previously denounced (October 7, 1993 and January 25, 1994) a series of attacks and threats against him, as well as against members of the MAC. Cf. Testimony of José Erminso Sepúlveda Saravia on October 7, 1993 before the Office of Special Investigations of the Office of the Attorney General of the Nation (evidence file, annex 34 to the brief with pleadings, motions and evidence, fs. 2308 to 2310); Complaint filed by José Erminso Sepúlveda Saravia on January 25, 1994, before the Municipal Ombudsman of Aguachica (evidence file, annex 35 to the brief with pleadings, motions and evidence, fs. 2312 to 2316); Statement of MS of February 22, 2008 (evidence file, annex 22 to the Merits Report, fs.179 to 188), and Statement of AQ of August 20, 2008 (evidence file, Annex 29(a) to the Merits Report, fs. 231 to 238). This Court notes that in the various documents provided by the parties, his name is used indistinctly as "José Hermison Sepúlveda Sarabia", or "José Erminson Sepúlveda Saravia" or as "José Erminso Sepúlveda Saravia". For the purposes of this Judgment, said person will be identified by the last name indicated.

<sup>43</sup> Statement of MS of February 22, 2008, *supra*, and Statement of AQ of August 20, 2008, *supra*.

<sup>44</sup> Statement given by Jaime Antonio Omeara Miraval on August 25, 1998 (evidence file, annex 18 to the Merits Report, fs. 151 and 152), and medical records of Noel Emiro Omeara Carrascal at the Santa Teresa and Bucaramanga Clinics from 1994 (evidence file, annex 119 to the brief with pleadings, motions and evidence, fs. 2870 to 2904).

them to the hospital, from which [the latter] was sent to Bucaramanga as an emergency at two or three in the afternoon."<sup>45</sup>.

81. Mr. Omeara Carrascal underwent several operations and acquired a physical disability that prevented him from walking. He died on July 26, 1994, about six months after the attack. According to opinion No. 017-2004 of February 12, 2004 of the Institute of Legal Medicine and Forensic Sciences, a cause-effect relationship can be inferred between the injuries suffered by Noel Emiro Omeara Carrascal and his death.<sup>46</sup>

82. In relation to the perpetrators firing the shots, there are several testimonies in the file that link both paramilitary groups and State agents, in particular members of UNASE<sup>47</sup>.

83. The events related to the attack against Mr. Omeara Carrascal took place very close to the premises of the Security Forces, specifically the UNASE headquarters. In particular, Carmen Teresa Omeara Miraval indicated that the UNASE facilities were "a few steps away, it was not far, diagonally, that is, UNASE, it was diagonal to the restaurant",<sup>48</sup> and Jaime Antonio Omeara Miraval also stated that it was "strange that while both the DAS and the UNASE group remained in the same park, next to the mayor's office, they, despite being authorities, did nothing".<sup>49</sup>

## **C. Facts regarding Manuel Guillermo Omeara Miraval**

### **C.1. Personal and family circumstances of Manuel Guillermo Omeara Miraval**

<sup>45</sup> Statement of AQ of August 20, 2008, *supra*, and Testimony of Jaime Antonio Omeara Miraval of August 25, 1998, *supra*.

<sup>46</sup> Comprehensive report No. 017-2004 of the National Institute of Legal Medicine and Forensic Sciences of February 12, 2004 (evidence file, annex 43 to the brief with pleadings, motions and evidence, fs. 2354 to 2356).

<sup>47</sup> Carmen Teresa Omeara Miraval indicated that her father told her that he was injured by "persons belonging to the law". He indicated that he found out that "they belonged to UNASE because [his] father [he] gave her the description of the one he remembered best" and according to a visit to "Parque San Roque, which was where the headquarters of that group was" she identified a person with the characteristics that her father told her, he was [CV]. She added that she made "inquiries" and the other person who participated in the murder of her father. Statement of Carmen Teresa Omeara Miraval before Prosecutor 44, *supra*. Landis Sepúlveda Saravia indicated that "it was known in the town that some UNASE lads had killed them." Statement of Landis Sepúlveda Saravia of April 17, 2003 (evidence file, annex 49 to the brief with pleadings, motions and evidence, fs. 2384 to 2387). Alba Luz Sepúlveda, sister of Mr. José Erminso Sepúlveda, indicated that "the people who murdered [her] brother in the restaurant [...] were members of UNASE, they traveled (sic) on motorcycles, in a red car and one (blue) and they walked through all the streets". She added that the person "who shot [her] brother of hers was thin, ugly, his face was thin, with a long nose, short, light-colored eyes, he was a member of UNASE." Statement of Alba Luz Sepúlveda Saravia on April 14, 2003 (evidence file, annex 37 to the brief with pleadings, motions and evidence, fs. 2321 to 2326). Damaris Lanziano Lemus, widow of Mr. José Erminso Sepúlveda, pointed out regarding those responsible for her husband's death that "according to people's comments [...] UNASE had a lot to do with it because precisely in the days before the death of [Mr. Sepúlveda] you could see a lot of the army and police at all times, but the day they killed him there was no one." Statement of Damaris Lanziano Lemus of May 31, 2003 (evidence file, annex 36 to the brief with pleadings, motions and evidence, fs. 2318 to 2319). Jaime Antonio Omeara Miraval indicated that "in the town there was a person [CV], he was from the UNASE group, that person was very feared [...] and had the reputation of being a hitman. They say that he [he] was in the truck where the hit men arrived who killed [Mr. Sepúlveda] and shot [his] father. It is also said that the UNASE group had another person [GM] but this was not a UNASE official". Statement of Jaime Antonio Omeara Miraval of August 25, 1998, *supra*. When Mr. JP, a paramilitary nominated under the Justice and Peace Law, was asked about the incident, he indicated that "this was ordered by the group of [RP] and it must be [RP] who ordered it." Statement of JP before the Human Rights and IHL Prosecutor's Office, on October 6, 2010 (evidence file, annex 108 to the brief with pleadings, motions and evidence, fs. 2777 to 2780). AQ indicated that they were also intimidated by some men who went to the restaurant to ask if they knew them. Statement of AQ of August 20, 2008, *supra*.

<sup>48</sup> Statement of testimony by Carmen Teresa Omeara Miraval rendered before Prosecutor 44 on June 28, 2011 (evidence file, annex 38 to the Merits Report, fs. 281 to 284).

<sup>49</sup> Witness statement of Jaime Antonio Omeara Miraval of August 25, 1998, *supra*.



84. Manuel Guillermo Omeara Miraval, son of Noel Emiro Omeara Carrascal, was born on April 22, 1961,<sup>50</sup> had a family with Fabiola Álvarez Solano<sup>51</sup> and was the father of three children: Manuel Guillermo, Elba Katherine and Claudia Marcela, all with surnames Omeara Álvarez<sup>52</sup>. Mr. Omeara Miraval, who was close to his father, helped him with his livestock and farm business. Mr. Omeara Miraval lived with his father-in-law, Héctor Álvarez Sánchez, who also managed the San Miguel farm, located in La Huila, jurisdiction of San Martín.<sup>53</sup>

## **C.2. Disappearance and execution of Manuel Guillermo Omeara Miraval**

85. As a result of the attack that injured and subsequently caused the death of his father, Manuel Guillermo Omeara Miraval decided to initiate investigations on his own in order to discover the truth of the events.<sup>54</sup>

86. On August 27, 1994, Manuel Guillermo Omeara Miraval was on his way to Aguachica from the San Miguel farm, which was owned by his father-in-law, Héctor Álvarez Sánchez, where he worked as administrator. Along the way, he was detained by several armed men, who forced him to board a blue van in which they were traveling.<sup>55</sup>

87. On August 28, 1994, Fabiola Álvarez Solano, wife of Manuel Guillermo Omeara Miraval, filed a complaint for kidnapping with UNASE, in Aguachica.<sup>56</sup>

88. On September 6, 1994, Héctor Álvarez Sánchez declared that in the town of San Martín they indicated that the truck in which they took Manuel Guillermo Omeara Miraval is the one that carries paramilitary people commanded by RP and JP, and that it was probable that he was kidnapped because he was investigating the facts related to the attack against his father, Noel Emiro Omeara.<sup>57</sup> Similarly, on September 7, 1994, Fabiola Álvarez Solano stated that the van in which Manuel Guillermo Omeara Miraval was transported was the property of RP.<sup>58</sup>

89. On September 23, 1994, Clemencia Patricia Álvarez Solano, sister of Fabiola Álvarez Solano, accompanied by members of the Andean Commission of Jurists, Colombian Section, went to the office of the Director of the DAS in Bogotá to ask him to carry out the corresponding investigations to find Mr. Omeara Miraval. Consequently, the Director of the DAS delegated a prosecutor's office in Barranquilla to take the relevant statements and carry out the necessary procedures to find him.<sup>59</sup>

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<sup>50</sup> Civil registration of the birth of Manuel Guillermo Omeara Miraval, *supra*.

<sup>51</sup> Civil registration of marriage between Fabiola Álvarez Solano and Manuel Guillermo Omeara Miraval, *supra*.

<sup>52</sup> Birth records of Manuel Guillermo Omeara Álvarez; Elba Katherine Omeara Álvarez, and Claudia Marcela Omeara Álvarez, *supra*.

<sup>53</sup> Statement made by Héctor Álvarez Sánchez before the Barranquilla Regional Prosecutor's Office on September 6, 1994 (evidence file, annex 50 to the brief with pleadings, motions and evidence, fs. 2389 to 2391).

<sup>54</sup> Testimonial statement of Carmen Teresa Omeara Miraval of August 17, 2010 (evidence file, annex 46 to the brief with pleadings, motions and evidence, fs. 2366 to 2369), and Statement of Héctor Álvarez Sánchez, *supra*.

<sup>55</sup> Statement by Héctor Álvarez Sánchez, *supra*; Testimonial statement of Fabiola Álvarez Solano of September 7, 1994, *supra*; Procedure to amend the statement of Elva María Solano de Álvarez on April 3, 2013 (evidence file, annex 59 to the Merits Report, fs. 205 to 408); Testimonial statement of FP of July 13, 2010, *supra*, and Investigation of MR of May 7, 2015, *supra*.

<sup>56</sup> Complaint filed by Fabiola Álvarez Solano before UNASE for the kidnapping of Manuel Guillermo Omeara Miraval on August 28, 1994 (evidence file, annex 47 to the Merits Report, f. 351); Report of the Military Forces-National Army-Group UNASE Aguachica BR5 of October 13, 1994, file No. 015 of the Human Rights Unit, National Office of the Attorney General, Bucaramanga, (evidence file, annex 48 to the Merits Report, fs. 353 to 354), and Statement of Fabiola Álvarez Solano before the National Office of the Attorney General on September 7, 1994, *supra*.

<sup>57</sup> Witness statement of Héctor Álvarez Sánchez, *supra*.

<sup>58</sup> Witness statement of Fabiola Álvarez Solano on September 7, 1994, *supra*.

<sup>59</sup> Statement of Clemencia Patricia Álvarez before the Prosecutor's Office of the case file 1663 on the attack on Héctor Álvarez Sánchez on February 15, 2013 (evidence file, annex 66 to brief with pleadings, motions and evidence, fs. 2463 to 2467).

90. On September 22, 1994, the Administrative Department for Security headquartered in Aguachica received an anonymous phone call detailing the location of the body of Manuel Guillermo Omeara Miraval<sup>60</sup>.

91. On September 23, 1994, personnel from the Nineteenth Delegate Prosecutor's Office, a medical examiner from the Institute of Forensic Medicine, and DAS officials, went to the location on the "La Granja" farm and found the lifeless body of Manuel Guillermo Omeara Miraval. The body was found in a "dorsal decubitus" position, with the hands tied behind (his back) with thin black nylon, also a black scarf was found next to the corpse that had the initials 'ACG ', the Colombian flag and two crossed rifles. It was recorded that the body had been buried for more than eight days. Later, his body was transferred to the pavilion of the Aguachica Municipal Cemetery so that the relatives could identify him, and his wife Fabiola Álvarez Solano, his uncle José Miguel Miraval, and his aunt Maria Omeara Carrascal attended. That same day, the autopsy of the body of Mr. Omeara Miraval was carried out, in which it was indicated that the mechanism of death was a "cerebral laceration" and that the cause of death was a "firearm projectile wound."<sup>61</sup> Additionally, according to his own statement, Manuel Guillermo Omeara's brother, Jaime Antonio Omeara Miraval, attended the exhumation of the body.<sup>62</sup>

92. Manuel Guillermo Omeara's body was transferred to the Aguachica Central Cemetery and was buried that same day. In this regard, Jaime Antonio Omeara Miraval stated that he was able to verify that the body of Manuel Guillermo presented "signs of torture", he was without nails, "without teeth", with traces of torture on the testicles and with acid.<sup>63</sup> The above findings were not reflected in the autopsy protocol.<sup>64</sup>

93. On October 22, 1994, a lawyer reported to the Attorney General's Office, the Ombudsman, and the DAS that on September 23, 1994, Manuel Guillermo Omeara was found "dead and with signs of torture. His face was burned by acid, his toenails were pulled out, and his genitalia was mutilated."<sup>65</sup> This was indicated by Mr. Omeara Miraval's next of kin on several occasions.<sup>66</sup>

#### **D. Facts regarding Héctor Álvarez Sánchez**

<sup>60</sup> Report of the Santander Sectional Security Administrative Department- DAS Aguachica Operations Post of September 22, 1994 (evidence file, annex 55 to brief with pleadings, motions and evidence, f. 2408).

<sup>61</sup> Record of exhumation of the body of Manuel Guillermo Omeara Miraval of September 23, 1994, (evidence file, annex 52 to the Merits Report, fs. 379 and 380); Additional Report to No. 066 of September 23, 1994 related to the investigation into the kidnapping and disappearance of Manuel Guillermo Omeara Miraval of the Administrative Department of Security. Santander Section. DAS Aguachica operational post (evidence file, annex 53 to the Merits Report, fs. 383 to 384), and Autopsy Protocol of the National Institute of Legal Medicine and Forensic Sciences. Local Unit of Aguachica of September 23, 1994 (evidence file, annex 54 to the Merits Report, fs. 386 and 389).

<sup>62</sup> Record of exhumation of the body of Manuel Guillermo Omeara Miraval, *supra*, and statement of Jaime Antonio Omeara Miraval of August 17, 2010, *supra*.

<sup>63</sup> Witness statement of Jaime Antonio Omeara Miraval of August 17, 2010, *supra*.

<sup>64</sup> Autopsy Protocol, *supra*.

<sup>65</sup> Communications from Tatiana Rincón Covelli to the FGN, DAS and the Ombudsman, dated October 22, 1994. (evidence file, annex 55 to the Merits Report, fs. 391 to 396).

<sup>66</sup> Statement of Fabiola Álvarez Solano rendered by affidavit presented before the Court (evidence file, affidavits and expert opinions, fs.12377.1 to 12377.5); Statement of Carmen Teresa Omeara Miraval rendered by affidavit presented before the Court (evidence file, affidavits and expert opinions, pages 11993 to 12002); Statement of Clemencia Patricia Álvarez Solano rendered by affidavit presented before the Court (evidence file, affidavits and expert opinions, fs. 12003 to 12010); Statement of Noel Emiro Omeara Miraval rendered by affidavit submitted to the Court (evidence file, affidavits and expert opinions, fs. 12043 to 12044); Statement of Ricaurte Omeara Miraval rendered by affidavit presented before the Court (evidence file, affidavits and expert opinions, fs. 12045 to 12054), and Statement of Araminta Omeara Miraval rendered by affidavit presented before the Court (evidence file, affidavits and expert opinions, fs.11989 to 11992).

### D.1. Background regarding Héctor Álvarez Sánchez

94. Héctor Álvarez Sánchez, father-in-law of Manuel Guillermo Omeara Miraval, was born on March 22, 1930<sup>67</sup> in Ocaña, Northern Santander, he was a rancher and merchant from Aguachica and known in the municipality for his business dealings and owned several farms. At the time of the facts, Mr. Álvarez Sánchez was married to Elva María Solano and was the father of seven children, Judith, Miguel Ángel, Héctor Manuel, Clemencia Patricia, Fabiola, Ana Edith and Juan Carlos, all with the surnames Álvarez Solano<sup>68</sup>. He was the grandfather of Manuel Guillermo, Elba Katherine and Claudia Marcela, all with the surnames Omeara Álvarez.

95. His wife, Elva María Solano de Álvarez, indicated as a background to the death of Héctor Álvarez that at the farm where they lived “the [...] paramilitaries arrived” and they had “several confrontations”.<sup>69</sup> Regarding this aspect, her daughter, Clemencia Patricia Álvarez Solano, also declared that the paramilitaries extorted the ranchers, but her father did not want to collaborate with any group.<sup>70</sup>

### D.2. Attack and subsequent death of Héctor Álvarez Sánchez

96. On October 21, 1994, when he was entering his house in the presence of his five-year-old granddaughter, Claudia Marcela Omeara Álvarez, Héctor Álvarez Sánchez was shot several times by two men dressed in civilian clothes, from a motorcycle. Mr. Álvarez Sánchez was taken from the scene of the attack to the Aguachica hospital and was later transferred to a clinic located in Bucaramanga<sup>71</sup>. As a result of the attack, Mr. Álvarez Sánchez was seriously injured, quadriplegic and unable to speak.<sup>72</sup> For these reasons, on June 29, 1995, he was transferred to the Military Hospital in Bogotá, where he was discharged in September 1995. Nearly six years after the events, on May 11, 2000, Mr. Héctor Álvarez died in his residence in Bucaramanga.<sup>73</sup>

97. Elva María Solano de Álvarez indicated that she had been informed that “the attack on her husband had been carried out by [GM] and [JPa], who acted as hit men for the paramilitaries.” She also stated that the reasons for the attack of which her husband was the victim was due to a statement that he gave to some officials of the Barranquilla Prosecutor's Office, who arrived at his residence and who were carrying out the investigation into the kidnapping of his son-in-law Manuel Guillermo Omeara Miraval, because that day, at the end of said procedure, he told the officials “[i]ve signed my death sentence.” She added that her husband informed the officials of the Prosecutor's Office of the color and license plates of the

<sup>67</sup> Death certificate of Héctor Álvarez Sánchez of May 12, 2000 (evidence file, annex 7 to the answer, page 10437).

<sup>68</sup> Marriage certificate of October 30, 1954 (evidence file, proceedings before the IACHR, file 4, f. 1551); Civil birth registration of Judith Álvarez Solano; Miguel Angel Alvarez Solano; Hector Manuel Alvarez Solano; Clemencia Patricia Alvarez Solano; Fabiola Alvarez Solano; Ana Edith Álvarez Solano, and Juan Carlos Álvarez Solano (evidence file, proceedings before the IACHR, fs. 1552 to 1558).

<sup>69</sup> Proceedings to amend the statement of Elva María Solano de Álvarez of April 3, 2013, *supra*.

<sup>70</sup> Proceedings to amend the statement of Clemencia Patricia Álvarez of February 15, 2013 (evidence file, annex 69 to the Merits Report, fs. 444 to 448).

<sup>71</sup> UA SACE Report No. 008 of February 10, 2003 of the Human Rights Unit, Office of the Attorney General of the Bucaramanga Nation, file No. 015 of the National Human Rights Unit of the National Office of the Attorney General, log No. 9 (evidence file, annex 58 to the Merits Report, fs. 401 to 403).

<sup>72</sup> UA SACE Report No. 008 of February 10, 2003, *supra*; Testimonial statement of Elva María Solano de Álvarez before the Special Prosecutor of the National Human Rights Unit for Santander and Cesar on July 28, 2003 (evidence file, annex 7 to the answering brief, fs. 10417 to 10421), and Testimonial statement of Miguel Ángel Álvarez Solano before the National Office of the Attorney General on August 6, 2003 (evidence file, annex 7 to the answering brief, fs. 10422 to 10428).

<sup>73</sup> UA SACE Report No. 008 of February 10, 2003, *supra*, and Testimonial statement of Miguel Ángel Álvarez Solano of August 6, 2003, *supra*, and Death certificate of Héctor Álvarez Sánchez, *supra*.

vehicle in which her son-in-law was kidnapped, pointing out that the paramilitary group of RP was responsible for what happened.<sup>74</sup>

98. Regarding the motives and identity of the alleged perpetrators of the attack, Héctor Manuel Álvarez Solano, son of Héctor Álvarez Sánchez, stated that he was aware of who they were, while he had a personal conversation with JP in which he stated that Manuel Guillermo Omeara, according to the paramilitaries, was a guerrilla and for that reason his death had taken place. Similarly, JP affirmed that the death of Héctor Álvarez Sánchez occurred as he was aware of such facts in relation to his brother-in-law.<sup>75</sup>

### **E. Displacement of the members of the Omeara and Álvarez families**

99. On the morning of October 22, 1994, after the attack against Héctor Álvarez Sánchez and during his transfer to the Bucaramanga hospital, his daughter, Fabiola Álvarez Solano accompanied him and was forced to leave the municipality of Aguachica.<sup>76</sup>

100. Carmen Teresa Omeara Miraval, sister of Manuel Guillermo Omeara, also traveled from Aguachica that same day along with her nieces and nephews Elba Katherine, Manuel Guillermo and Claudia Marcela, all with the surnames Omeara Álvarez, children of Manuel Guillermo Omeara Miraval and Fabiola Álvarez Solano. They left for the city of Bucaramanga as a result of the constant threats after the attacks against their relatives and for fear of being victims of new violent episodes. In this regard, Carmen Omeara stated:

when they attacked HÉCTOR ÁLVAREZ [...] we had to leave the house at dawn because I don't know who told my mother [referring to Mrs. Zoila Miraval de Omeara], that someone came and told them that GUILLERMO's three children and I had to leave Aguachica immediately and we had to come to Bucaramanga, I don't know who it was, but my mother packed my suitcase at once and I had to leave that same night for Bucaramanga with my brother's children, I never knew where that threat came from, but I had to run away from there and I stayed here [referring to the city of Bucaramanga] for about 6 months or so.<sup>77</sup>

### **F. Investigations into the attacks on Messrs. Omeara Carrascal, Omeara Miraval and Álvarez Solano<sup>78</sup>**

101. This section describes, first, the relevant facts about the investigation of what happened to Noel Emiro Omeara Carrascal. Next, the relevant facts about the investigations of what happened to Manuel Guillermo Omeara Miraval are described, which involve different instances, namely: the ordinary criminal jurisdiction and the military criminal jurisdiction, as well as the disciplinary investigation. The relevant facts of the investigation regarding Héctor Álvarez Sánchez are then described. Finally, reference is made to the jurisdiction of Justice and Peace

<sup>74</sup> Proceedings to amend the statement of Elva María Solano de Álvarez of April 3, 2013, *supra*; Testimonial statement of Héctor Álvarez Sánchez, *supra*, and Report of the National Office of the Prosecutor General of February 10, 2003 (evidence file, annex 6 to the answering brief, fs. 9220 and 9221).

<sup>75</sup> Testimonial statement of Héctor Manuel Álvarez Solano of October 31, 2012 (evidence file, annex 63 to the brief with pleadings, motions and evidence, fs. 2450 to 2452). In that same statement regarding Manuel Guillermo Omeara's assessment of being a "guerrilla", Mr. Álvarez Solano explained that "all of this has been unleashed as a consequence of [his] father's cattle being stolen and as a result, they came to the farm to say that they were collaborating in the recovery of the cattle, but that they had to give them money and [his] brother-in-law Manuel Guillermo insulted them and said that he was not going to give them any money", and Statement by JP before the Delegate Prosecutor for Human Rights and IHL, of October 6, 2010, *supra*.

<sup>76</sup> Statement by Fabiola Álvarez Solano rendered by affidavit presented before the Court, *supra*.

<sup>77</sup> Witness statement of Carmen Teresa Omeara Miraval of August 17, 2010, *supra*.

<sup>78</sup> A comprehensive detailed review of each investigation will not be undertaken, but rather, in each case, a review of the relevant central aspects regarding disputed points will be made; then, when this Court presents its considerations, other relevant facts will be pointed out.

(hereinafter "Justice and Peace"). The investigations are examined in Chapter VIII-3 of this Judgment. Some references to pertinent facts are made in that section.

### **F.1. Investigation of Omeara Carrascal**

102. On January 31, 1994, the 25th Prosecutor's Office of the Aguachica Local Unit (hereinafter also "25th Prosecutor's Office") opened a preliminary criminal investigation into the murder of José Erminso Sepúlveda Saravia<sup>79</sup>.

103. On August 31, 1998, the 25th Prosecutor's Office ordered the registration of the name of the victim Noel Emiro Omeara Carrascal to the previous investigation ongoing into the death of Mr. Sepúlveda Saravia, so that the investigation is into the death of both persons.<sup>80</sup>

104. On October 2, 1998, the investigation was reassigned to the National Human Rights Prosecutor's Office in Bogotá.<sup>81</sup>

105. On January 29, 1999, the 44th Specialized Prosecutor's Office of the UNDH (hereinafter also the 44th Prosecutor's Office) ordered proceedings to be carried out, including locating witnesses, examination of evidence, requesting information from the National Police and the Santander Battalion on officials of these institutions.<sup>82</sup>

106. On November 14, 2001, the 44th Prosecutor's Office commissioned the DAS Human Rights Group to carry out various proceedings,<sup>83</sup> locate and identify witnesses to the events, identify members of the Aguachica Municipal Council, an official from the Mayor's Office, and determine if at the time of the same the UNASE had headquarters in Aguachica or what its headquarters and members were.<sup>84</sup>

<sup>79</sup> Official letter from the Prosecutor's Office dated January 31, 1994 (Cf. evidence file, annex 5 to the answering brief, f. 4418). On April 4, 1994, the investigation was taken over by the Aguachica 20th Sectional Prosecutor's Office (evidence file, annex 5 to the answering brief, f. 4455). On May 25, 1994, the proceedings were sent to the Valledupar Preliminary and Permanent Unit, which decided to return them to Aguachica, corresponding to the 25th Sectional Prosecutor of Aguachica (evidence file, annex 5 to the answering brief, f. 4480). On November 3, 1994, the investigation was sent by the 25th Sectional Prosecutor to the Regional Prosecutor of the city of Valledupar, who took over the investigation on November 16, 1994 (evidence file, annex 5 to the answering brief, f. 4486). On March 10, 1997, the proceedings were received at the Barranquilla Regional Office of Prosecutors, and the investigation was taken up on September 17, 1997; Note of November 26, 1997 from the Barranquilla Regional Director of Public Prosecutions (evidence file, annex 5 to the answering brief, fs. 4497 to 4499).

<sup>80</sup> Cf. Official Order of Internal Regulation No. 460 of August 31, 1998 from the Barranquilla Regional Director of Public Prosecutions (evidence file, annex 62 to the Merits Report, fs. 419 to 421). According to official letters of November 26, 1997 and July 31, 1998, according to the investigation being conducted, the prosecutor had news that Noel Emiro Omeara Carrascal was injured on the day of the events. Note of November 26, 1997 from the Barranquilla Regional Director of Prosecutors (evidence file, annex 5 to the answering brief, fs. 4497 to 4499, and Note of the Barranquilla Regional Director of Prosecutors of July 31, 1998 (file evidence, annex 5 to the answering brief, fs. 4537 to 4540).

<sup>81</sup> Cf. Order No. 154 of the National Director of Public Prosecutions (evidence file, annex 5 to the answering brief, fs. 4615 to 4616).

<sup>82</sup> Cf. Official letter of the National Office of the Attorney General. National Prosecutors' Office. National Human Rights Unit of January 29, 1999 (evidence file, annex 5 to the answering brief, File 397, fs. 4622 to 4626), and Official Letter No. 000720/BR5-BISAN-CDO-746 of the Infantry Battalion No. 15 Santander of February 25, 1999 (evidence file, annex 5 to the answering brief, page 4630). In said official letter, it is indicated that it is unknown who was the Commander of the troops of the municipality of Aguachica on January 28, 1994, since the municipality is not under the jurisdiction of that Tactical Unit.

<sup>83</sup> Cf. Official letter from the National Prosecutors' Office. National Human Rights Unit of December 14, 2001 (evidence file, annex 5 to the answering brief, fs. 4631 to 4632).

<sup>84</sup> On December 27, 2001, the DAS submitted a report regarding the procedures ordered, indicating that at that time, January 1994, "[UNASE] operated on Calle 5 #7-90 in Aguachica, [...] This group depended on the Department of Santander with headquarters in the facilities of the Fifth Brigade of the City of Bucaramanga". [S]ubsequently, they went to [the] facilities [and were told] by [a] lieutenant that there were no personnel or intelligence files for the year 92" (Cf. Official letter DAS.DGO-SIES-GPJU.5013 of the Administrative Department of Security, General Operations Directorate, Judicial Police Investigation Directorate of December 27, 2001 (evidence

107. On April 8, 2002, the 44th Prosecutor's Office ordered the taking of new evidence to determine whether the death of Mr. Omeara Carrascal was caused by the injuries suffered on January 28, 1994 in the attack that occurred at the "San Roque" restaurant. An inspection was also ordered at UNASE headquarters.<sup>85</sup>

108. On February 12, 2004, the National Institute of Legal Medicine and Forensic Sciences informed the Prosecutor's Office that it can be inferred that the basic cause of death is directly related to the gunshot wound.<sup>86</sup>

109. On February 16, 2004, the DAS issued a report describing the steps taken.<sup>87</sup> Among others, on February 3, 2004, it examined the process against Major JL at the Office of the Attorney General of the Nation. As a result of these proceedings, a copy of the statements of JM of February 23, 1995 and of FRa of February 6, 1995 was received.<sup>88</sup>

110. On several occasions, during 2004, 2005 and 2006, various procedural actions were carried out.<sup>89</sup>

111. On May 4, 2006, the 44th Prosecutor's Office was appointed to investigate the facts of the case.<sup>90</sup>

112. On November 9, 2007, the 44th Prosecutor's Office ordered the performance of procedures, including a ballistics test, the location of members of the Investigative Unit of the Judicial Police, the location of people who were at the scene of the events and the location of Mr. Omeara Carrascal's family members to obtain their statements on the facts.<sup>91</sup>

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file, Annex 5 to the answering brief, fs. 4637 to 4642). Official letter of the Municipal Council of Aguachica dated December 14, 2001 with a list of the Councilors in the period 1992-1944; statements made on December 19 and 20, 2001 by AQ, EA and NP, all of them direct witnesses to the events, investigations into other homicides, subpoenas (evidence file, annex 5 to the answering brief, fs. 4644 to 4669) Regarding the presence of UNASE in Aguachica, Prosecutor Iván Augusto Gómez Celis acknowledged that in 1994 it did have headquarters in Aguachica Cf. Statement of Iván Augusto Gómez Celis, *supra*.

<sup>85</sup> The purpose of the inspection was to establish the personnel that operated at UNASE during 1994, as well as information on their operations. Official letter of the Prosecutor 44 of April 8, 2002 (evidence file, annex 5 to the answer, fs. 4680, 4681); Inspection record that is carried out within file 015 of May 8, 2002. The file of the preliminary investigation with file 015 was analyzed and some information was indicated on the events that occurred to the detriment of Manuel Guillermo Omeara Miraval and Noel Emiro Omeara Carrascal (evidence file, annex 5 to the answering brief, fs. 4683 to 4683). The list of UNASE members in 1994 and 1995 appears in the UNASE Report of January 6, 1996 before the Barranquilla Regional Prosecutor's Office (evidence file, annex 6 to the answering brief, fs. 6754 to 6755).

<sup>86</sup> Institute of Legal Medicine and Forensic Sciences. Supplement No. 007-2004 of February 12, 2004 (evidence file, annex 43 to the brief with pleadings, motions and evidence, fs. 2354 to 2356).

<sup>87</sup> Some of the procedures carried out were: search for the file of the copy of the Extraordinary Security Council in Aguachica of January 1995, with negative results; locate the priest who practiced in Aguachica between 1994 and 1995; he was located and identified as JR; carry out a judicial inspection of the disciplinary process related to these facts; locate the medical history, inquiring about the Alto Prado Clinic finding that the property was unoccupied and obtaining the death certificate of Noel Emiro Omeara Carrascal. DAS report of February 16, 2004 (evidence file, annex 5 to the answering brief, fs. 4943 to 4950).

<sup>88</sup> Judicial inspection procedure carried out in the office of the Human Rights Coordination Unit of the National Office of the Attorney General and statements by Major JL and JM (evidence file, annex 5 to the answering brief, File 397, log 2, f. 4955 to 4976).

<sup>89</sup> Specifically, the investigation was reassigned, and some proceedings were ordered.

<sup>90</sup> Order 01360 of the National Office of the Attorney General of May 4, 2006 (evidence file, annex 85 to the brief with pleadings, motions and evidence, fs. 2569 to 2581).

<sup>91</sup> The results of these proceedings were the following: regarding the ballistics report, on December 26, 2007, it was concluded that the bullet was fired from a semiautomatic pistol-class weapon, which includes the makes of Browning, Beretta, Walther -Mod.p38, Heckler & Koch, Mod. MP5, etc. Ballistic report of the Scientific Research Laboratory of the C.T.I. of December 26, 2007 (evidence file, annex 5 to the answering brief, fs. 5167 to 5170); In front of the location of members of the Investigative Unit of the Judicial Police, on December 18, 2007, the head of the police resumé administration group reported that Major JL and FRa had retired from the institution and that JG

113. In a statement on February 18, 2008, Mrs. Carmen Teresa Omeara Miraval mentioned that members of the security forces were the material authors of the attack suffered by her father and specifically pointed to CV and members of ÚNASE.<sup>92</sup>

114. On March 27, 2008, March 19, 2009, March 26, and May 4, 2010, Prosecutor 44 again ordered the taking of evidence. Mrs. Carmen Omeara testified again on August 17, 2010<sup>93</sup>.

115. On April 8, 2011, the 44th Prosecutor's Office received the statement from RPr, who gave an account of the relations that his father had with the DAS and the army. He also pointed to MR as the commander of at the time of the events.<sup>94</sup>

116. On December 20, 2013, the claimants requested that the crime under investigation be declared a crime against humanity and, therefore, outside application of the statute of limitations.<sup>95</sup> On February 3, 2014, the 44th Prosecutor's Office issued an inhibitory resolution, arguing that the facts denounced regarding Messrs. Sepúlveda Saravia and Omeara Carrascal were already outside the statute of limitations and that, for this reason, the investigation was archived.<sup>96</sup> The resolution of February 3, 2014 was appealed on February 10, 2014, and on April 21, 2014, the First Delegate Prosecutor's Office before the Superior Court of Bucaramanga determined that the murder of José Erminso Sepúlveda Saravia and the attempted murder of Noel Emiro Omeara Carrascal constituted crimes against humanity.<sup>97</sup> After said decision, the case returned to the 44th Prosecutor's Office. On March 7, 2016, file No. 397 was reassigned to the 66th Prosecutor's Office of the National Directorate of Human Rights and IHL Prosecutors (hereinafter also "66th Prosecutor's Office"), which also has files No. 015A and No. 1663 corresponding to the cases of Manuel Guillermo Omeara Miraval and Héctor Álvarez Sánchez.<sup>98</sup>

117. On July 18, 2016, the 66th Prosecutor received a report from the Judicial Police indicating the persons related to the investigation carried out into the murder of José Erminso Sepúlveda Saravia and Noel Emiro Omeara Carrascal, the murdered members of the MAC, the members of the UNASE group, the National Police, the DAS, as well as a list of the statements received during the processing of the investigation.<sup>99</sup>

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was listed as a policeman in Quindío. The next of kin and witnesses to the events were also located and their statements were taken (evidence file, annex 5 to the answering brief, fs. 5171 to 5184).

<sup>92</sup> Statement of Carmen Teresa Omeara Miraval before Prosecutor 44, *supra*.

<sup>93</sup> Statement of Carmen Teresa Omeara Miraval of August 17, 2010, *supra*.

<sup>94</sup> Statement given by RPr before Prosecutor 44 on April 8, 2011 (evidence file, annex 5 to the answering brief, fs. 5781 to 5784).

<sup>95</sup> Request to declare the murder of José Erminso Sepúlveda and the attempted murder of Noel Emiro Omeara Carrascal as crimes against humanity, and therefore their exemption from the statute of limitations, issued by the civil party before the 44th Prosecutor's Office on December 20, 2013 (file of evidence, annex 5 to the answering brief, fs.6109 to 6122).

<sup>96</sup> Order of the Prosecutor's Office 44 of February 3, 2014 (evidence file, annex 5 to the answering brief, fs. 6149 to 6175). In the same act, it dismissed the request of the civil party to declare the crime as a crime against humanity and to decree its exemption from the statute of limitations, alleging that there was insufficient evidence to determine the existence of a specific actor responsible, while multiple legal and illegal armed actors were acting in Aguachica and the alleged participation of UNASE or the security force in illegal activities had not been proven, being merely rumors or hearsay.

<sup>97</sup> Appeal of the decision of February 3, 2014 was made on February 10, 2014 [sic] by the 44th Prosecutor's Office, of the civil party and sustained on March 4, 2014 (evidence file, annex 5 to the answering brief, fs. 6181 to 6193), and Order to revoke the decision of February 3, 2014, issued by the First Acting Prosecutor before the Superior Court of Bucaramanga, on April 21, 2014 (evidence file, annex 5 to the answering brief, file 397 , pages 6177 to 6212).

<sup>98</sup> Assignment of File 397 to Prosecutor 66 of the National Directorate of Human Rights and IHL Prosecutors (evidence file, annex 129 to the brief with pleadings, motions and evidence, fs. 3499 to 3500).

<sup>99</sup> Cf. Report of the Judicial Police addressed to Prosecutor 66 of July 18, 2016 (evidence file, annex 5 to the answering brief, fs. 6324 to 6328).

118. According to the latest communications received by the Court, the proceeding continued as a preliminary investigation.

## **F.2. Investigation on Manuel Guillermo Omeara Miraval**

119. In relation to the facts of which Mr. Manuel Guillermo Omeara Miraval was a victim, the investigations involved two different instances, namely: (a) ordinary criminal justice, and (b) military criminal jurisdiction, and (c) a disciplinary investigation.

### F.2.1. Ordinary criminal justice

120. On August 28, 1994, Mrs. Fabiola Álvarez Solano, wife of Manuel Guillermo Omeara Miraval, filed a complaint with UNASE for the kidnapping or disappearance of her husband around two in the afternoon of August 27, 1994, when he was at the San Miguel farm, La Huila district, municipality of San Martín (*supra* para. 87).

121. On September 6, 1994, the Regional Prosecutor of Barranquilla, at the request of the Director of the DAS, opened a preliminary investigation and agreed to take the first evidence. The same day, the statement of Mr. Héctor Álvarez Sánchez was received, in which he pointed to RP as possibly responsible for the crime of his son-in-law.<sup>100</sup> On September 7, 1994, the sworn statements of Fabiola Álvarez Solano, AC and RT were received.<sup>101</sup>

122. On September 8, 1994, the Barranquilla Regional Prosecutor carried out raids on the San Bernardo and La Unión farms, located in the municipality of San Martín, to search for the victim, but without obtaining any results.<sup>102</sup>

123. On September 20, 1994, the Barranquilla Regional Prosecutor's Office ordered the transfer of proceedings to the Sectional Prosecutor's Unit in Aguachica, for reasons of jurisdiction.<sup>103</sup>

124. On September 22, 1994, the DAS reported that it had received an anonymous call informing that the body of Manuel Guillermo Omeara Miraval was at the La Granja farm.<sup>104</sup> That same day, the Prosecutor's Office ordered an inspection of the location, where the body of Mr. Omeara Miraval was found.<sup>105</sup>

125. On September 23, 1994, the body of Manuel Guillermo Omeara Miraval was exhumed, and a statement was received from a person who was present at the "La Granja" farm, which mentions that "an external examination was carried out on the body and it was possible to see the high degree of decomposition and the lack of papillary ridges of the fingers of the hands". The autopsy was performed the same day and the body of Mr. Omeara Miraval was

<sup>100</sup> In his statement, he indicated that those responsible for the disappearance of his son-in-law were members of the RP and JP paramilitary group, and provided data to identify and locate the vehicle in which the victim was detained and transported. Cf. Testimonial statement of Héctor Álvarez Sánchez, *supra*.

<sup>101</sup> Cf. Testimonial statement of Fabiola Álvarez Solano of September 7, 1994, *supra*; Statement of AC of September 7, 1994 (evidence file, annex 6 to the answering brief, fs. 6352 to 6354), and Statement of RT of September 7, 1994 (evidence file, annex 6 to the answering brief, fs. 6355).

<sup>102</sup> Record of search of the Barranquilla Regional Prosecutor of September 8, 1994 (evidence file, annex 6 to the answering brief, fs. 6357 to 6358).

<sup>103</sup> Cf. Note from the Barranquilla Regional Prosecutor of September 20, 1994 (evidence file, annex 6 to the answering brief, f. 6362).

<sup>104</sup> Cf. Report No. 065 issued by the Administrative Department of Security-Santander Section, Operational Post of Aguachica, of September 22, 1994 (evidence file, annex 65 to the Merits Report, f.436).

<sup>105</sup> Inspection letter of the location within the jurisdiction of San Martín from the Prosecutor's Office dated September 22, 1994 (evidence file, annex 6 to the answering brief, f. 6366).



exhumed.<sup>106</sup>

126. On October 21, 1994, the Director of the DAS reported that it was established that, apparently, those responsible for the act were members of a "private justice" group that operated in the region.<sup>107</sup>

127. On July 6, 1995, the Barranquilla Regional Prosecutor's Office took transfer of jurisdiction for the proceedings and ordered the taking of new evidence before ordering an investigation against RP, by establishing that the evidentiary material regarding his intellectual authorship of the events regarding Manuel Guillermo Omeara Miraval had not been verified.<sup>108</sup> On August 9, 1995, the Regional Prosecutor of Barranquilla agreed to open an investigation against RP, for his membership of a paramilitary group and for the alleged commission of a crime of kidnapping, additionally ordering the protection of the physical integrity of the Omeara and Alvarez families. In the same act, the exhumation of the corpse of Mr. Omeara Miraval was ordered to determine the existence of injuries on his face, on his genitals, and if his toenails had been pulled out. In addition, among other measures, it was decided to "hear a statement" from a commander of the National Police of San Martín, so that he "provided more information about the members of the gang that [RP] commands."<sup>109</sup> This statement took place on September 11, 1997 and was made by [LFS], who was the Commander of the San Martín Police Station and indicated in his statement that RP was one of the best-known members of a paramilitary group.<sup>110</sup>

128. On August 23, 1995, the Barranquilla Regional Prosecutor's Office issued an arrest warrant against RP, as allegedly responsible for the death of Manuel Guillermo Omeara Miraval.

129. On February 27, 1996, the UNDH Regional Prosecutor's Office received a report from the Barranquilla Regional Prosecutor's Office containing the results of the proceedings and investigations carried out. It included the statements of several key witnesses. On the other hand, there is an annex from the National Office of the Attorney General, with statements by FR, Commander of the National Police, dated February 6, 1995 and April 18, 1995, and an intelligence report from the National Police of 13 February 1995. There are also statements made by JF on February 23, 1995 and February 29, 1995. The report and the statements indicate the participation of the army, in particular Major JL, and UNASE with the "Los Pradas" paramilitary group.<sup>111</sup>

130. Based on various pieces of evidence, on May 20, 1998, the Head of the National Human Rights Unit, a unit to which the case had been transferred from the Barranquilla Regional Prosecutor's Office, ordered Major JL to be linked to the investigation for "kidnapping and

<sup>106</sup> Autopsy Protocol, *supra*, and Additional Report to No. 065 of September 1994 related to the investigation into the kidnapping and disappearance of Manuel Guillermo Omeara Miraval of September 23, 1994 (evidence file, annex 6 to the answering brief, fs 6378 6379).

<sup>107</sup> Response from DAS to Tatiana Rincón Covelli of October 21, 1994 (evidence file, annex 66 to the Merits Report, fs. 438 and 439), and Report of the Military Forces-National Army-UNASE Aguachica BRS Group of October 1994 (evidence file, annex 48 to the Merits Report, f. 354).

<sup>108</sup> Letter No. 3511-ISP of the Regional Directorate of Prosecutors, Barranquilla Common Registrar, of July 6, 1995 (evidence file, annex 6 to the answering brief, f. 6449).

<sup>109</sup> Order to open the investigation, Regional Prosecutor of Barranquilla on August 9, 1995 (evidence file, annex 61 to the Merits Report, fs. 414 to 417). To date there are no results from the exhumation ordered. The only document that shows any type of action is the report of the Judicial Police of August 8, 2016, in which it is mentioned that the body of Manuel Guillermo Omeara Miraval is buried in the Aguachica central cemetery and that he is buried in the same grave as his parents (Zoila Miraval de Omeara and Noel Emiro Omeara Carrascal), and Judicial police report No. 976654 of August 8, 2016 (evidence file, annex 3 to the answer, fs. 4366 to 4373).

<sup>110</sup> Proceedings of statement given by [LFA] on September 11, 2018 (evidence file, annexes to the answering brief, fs. 7577 to 7579).

<sup>111</sup> Referral of proceedings carried out by the Barranquilla Regional Prosecutor's Office on February 19, 1996 (evidence file, annex 6 to the answering brief, fs. 7001 to 7093), and Complaint filed by JEM on February 23, 1995 (evidence file, annex 6 to the answering brief, pages 7748 to 7752).

homicide" and issued an arrest warrant.<sup>112</sup> On June 4, 1998, the National Army captured him<sup>113</sup> and on June 5 of the same year, Major JL gave a statement.<sup>114</sup> On July 10, 1998, he was put in "preventive detention for aggravated homicide".<sup>115</sup>

131. On June 16, 1998, once he had been captured, RP made a preliminary statement.<sup>116</sup> On June 19 of the same year, a custodial measure was issued against RP for the crime of homicide.<sup>117</sup>

132. On June 18, 1998, the Prosecutor's Office charged JP with homicide and conspiracy to commit a crime and ordered his capture.<sup>118</sup> However, he was not apprehended and he was declared an absent person on September 4, 1998.<sup>119</sup> On March 4, 1999, JP's legal situation was decided, reiterating the order for his arrest and imposing preventive detention for aggravated homicide and conspiracy to commit a crime.<sup>120</sup>

133. On February 15, 1999, Major JL was released "due to the expiration of term limits" to qualify the investigation, since more than 240 days had elapsed without having qualified the legal proceedings.<sup>121</sup>

134. On August 14, 2000, the UNDH Regional Prosecutor's Office decided to preclude the investigation into the murder of Manuel Guillermo Omeara in favor of Major JL and JP, clearing them of all charges.<sup>122</sup> On October 17, 2000, the UNDH Regional Prosecutor's Office decided to preclude the investigation against RP, due to his death in La Picota Prison.<sup>123</sup>

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<sup>112</sup> Letter issued by the Regional Prosecutor linking Major JL in the proceeding, dated May 20, 1998 (evidence file, annex 6 to the answering brief, log 4, f.7711).

<sup>113</sup> Note of preventive detention of Major JL issued by the Regional Prosecutor's Office on June 5, 1998 (evidence file, annex 6 to the answering brief, f. 7800).

<sup>114</sup> Investigation procedure of Major JL of June 15, 1998 through which he was linked to the investigation into the forced disappearance and subsequent homicide of Manuel Guillermo Omeara Miraval (evidence file, annex 88 to the brief with pleadings, motions and evidence, fs. 2592 a 2601).

<sup>115</sup> Order of the Regional Prosecutor of June 10, 1998 (evidence file, annex 6 to the answering brief, fs. 7843 to 7857).

<sup>116</sup> Cf. Investigation statement of RP of June 16, 1998 (evidence file, annex 6 to the answering brief on fs. 7872 to 7880).

<sup>117</sup> Cf. Decision of the Regional Prosecutor of June 19, 1998 (evidence file, annex 6 to the answering brief, fs. 7883 to 7898).

<sup>118</sup> Arrest warrant against JP, File 015A. Santafé de Bogotá, of June 18, 1995 (evidence file, annex 6 to the answering brief, page 7882). Summons notice was also issued on three occasions (July 21, 1998, August 12, 1998 and August 24, 1998).

<sup>119</sup> Cf. Declaration of absence of JP on September 4, 1998, issued by the Regional Prosecutor of the UNDH (evidence file, annex 6 to the answering brief, fs. 8354 to 8355).

<sup>120</sup> Decision of the National Office of the Prosecutor General of March 4, 1999 (evidence file, annex 6 to the answering brief, fs. 8499 to 8516). Said ruling was challenged by the Public Prosecutor's Office on March 23, 1999. The appeal was resolved on April 7, 1999 by the Prosecutor's Office, which decided not to replace the ruling of March 4, therefore it was finalized (Cf. Appeal filed by the Criminal Judicial Prosecutor II, on March 23, 1999, filed in criminal investigation 015 of the UNDH-IHL (evidence file, annex 6 to the answering brief, fs. 8544 to 8549).

<sup>121</sup> According to the internal legislation mentioned in the Official Letter, the person investigated will have the right to request conditional release, after 120 days of effective detention have elapsed without the qualification of indictment being given, extending the term to 180 days in the case of three or more defendants against whom the pre-trial detention was ordered. In this case, the situation of Major JL was studied, the official letter indicates that two detention orders were in force, including that of Major JL, therefore the term to apply the benefit corresponded to 240 days. Note from the UNDH Regional Prosecutor of February 15, 1999, resolving the appeal on expiration of terms in the proceedings against Major JL (evidence file, annex 6 to the answering brief, fs. 8456 to 8459).

<sup>122</sup> Decision of the UNDH Special Prosecutor of August 14, 2000 (evidence file, annex 6 to the answering brief, fs. 9031 to 9053).

<sup>123</sup> Decision of the UNDH - IHL Special Prosecutor of October 17, 2000 (evidence file, annex 6 to the answering brief, log 8, fs. 9094 to 9096), and Official Letter from INPEC of April 3, 2000 (evidence file, annex 6 to the answering brief, page 8946)

135. On March 6, 2002, a Criminal Court of the Valledupar Specialized Circuit ruled on the events suffered by Mr. Omeara Miraval, acquitting JP of the crime of conspiracy to commit a crime, it did not refer to the homicide of Manuel Guillermo Omeara Miraval, having terminated the investigation.<sup>124</sup>

136. On October 23, 2002, the UNDH Regional Prosecutor's Office ordered the taking of evidence related to the identification of other participants in the events and of the truck in which the victim was kidnapped. In the report of the Central Directorate of the Judicial Police of January 14, 2003, negative results were found when carrying out said procedures, except for the identification of the car's license plates, which had been transferred to a third person.<sup>125</sup>

137. On February 5, 2003, given what had happened to Héctor Álvarez Sánchez, the Regional Prosecutor's Office of the UNDH ordered an inspection of hospital centers to determine where he was treated after the attack.<sup>126</sup>

138. On March 28, 2003, the National Police informed the Prosecutor's Office of the results of some investigations, among which are the statements of people who lived in the area near the farm where Manuel Guillermo Omeara Miraval was kidnapped. Reference was also made to the statement of a person who indicated that the murder of Mr. Omeara Miraval occurred due to the inquiries he was making about the attack against Noel Emiro Omeara Carrascal, as well as for challenging the group "Los Prada", refusing to pay a fee that they requested, and provided a copy of a check that had Héctor Álvarez Sánchez as its payee and that had not been cashed due to lack of funds. He pointed out that the attack against Mr. Álvarez Sánchez was due to JC's interest in not paying him the sum of money that he owed him, as well as to access more work of "Los Prada".<sup>127</sup>

139. On May 8, 2002, the UNDH Regional Prosecutor's Office ordered the preliminary investigation to continue, within which a series of proceedings were carried out.<sup>128</sup>

140. In May 2007, JP and the paramilitary group he commanded in the southern region of the Department of Cesar demobilized. Both he and his section applied for the procedure established in Law No. 975 of 2005. This was sent to the Prosecutor's Office in August 2007, upon request sent to the High Commissioner for Peace, together with a list of all the members from the front who demobilized.<sup>129</sup>

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<sup>124</sup> Cf. JP acquittal, issued by the Single Court of the Special Circuit of Valledupar on March 6, 2002 (evidence file, annex 6 to the answering brief, fs. 9342 to 9394).

<sup>125</sup> Report of the Central Directorate of the Judicial Police of January 14, 2003 (evidence file, annex 6 to the answering brief, fs. 9202 to 9203).

<sup>126</sup> Decision of the UNDH Regional Prosecutor of February 5, 2003 (evidence file, annex 6 to the answer, File 015, log 9, f. 9216).

<sup>127</sup> National Police report of March 28, 2003 (evidence file, annex 6 to the answering brief, File 015, log 9, fs. 9473 to 9478).

<sup>128</sup> The main procedure was to authorize the inspection of process 015, at the request of the Prosecutor in charge of the process with File 397, which was carried out the same day, and copies of the exhumation records and the autopsy protocol were made.

<sup>129</sup> On July 10, 2007, the Prosecutor's Office requested certification from the High Commissioner for Peace regarding the demobilization of JP, and on August 14, 2007, a response was given to said request, informing that indeed, JP was listed as a representative member on the list of collective demobilized members of the former Julio Peinado Becerra Front of the United Self-Defense Forces of Colombia. On September 3, 2007, a copy of the list of demobilized members of the Julio Peinado Becerra Section was submitted; Letter of September 3, 2007 issued by the National Justice and Peace Unit (evidence file, annex 6 to the answering brief, fs. 9585 to 9590), and Letter of the Ministry for Peace of August 14, 2007 (file evidence, annex 6 to the answering brief, page 9582).

141. On August 17, 2010, Jaime Antonio Omeara Miraval testified before the Prosecutor's Office that "the three deaths [...] are linked".<sup>130</sup>

142. On June 25, 2012, the National Unit for Justice and Peace forwarded to the UNDH a copy of the account given by JP on June 24, 2010. It states that the author of the murder of Manuel Guillermo Omeara was GM by order of RP.<sup>131</sup>

143. On May 7, 2015, he gave a preliminary statement to MR, in which he acknowledged having participated in the crime of Mr. Omeara Miraval and stated that it was the DAS that "handed" RP the name of the victim and the motivations for his attack, and it was he who was entrusted with recovering the body of Mr. Omeara Miraval and handing it over to the DAS.<sup>132</sup>

144. On July 11, 2016, Prosecutor 66 ordered the performance of proceedings in order to complete the investigation.<sup>133</sup> MR, is linked to process 015 A, still pending definition of its legal status.

#### F.2.2. Military criminal jurisdiction

145. On October 24, 1994, the State opened an investigation under Military Criminal Court 109 (hereinafter also "Court 109") with the aim of establishing whether there were military personnel linked to the events that occurred to Manuel Guillermo Omeara Miraval.<sup>134</sup>

146. On July 24, 1996, Court 109 asked the Director of the Barranquilla Regional Prosecutor's Office for the legal proceedings to be carried out due to the disappearance and death of Manuel Guillermo Omeara Miraval. On October 18, 1996, said request was denied by the Prosecutor's Office, since no member of the security forces was linked to the investigation.<sup>135</sup>

147. On December 26, 1996, Court 109 decided to refrain from opening a criminal investigation, a decision that was revoked on April 3, 1997, ordering the practice of photographic recognition of UNASE personnel.<sup>136</sup>

148. There is no evidence that the investigation has been closed.

#### F.2.3. Disciplinary Investigation

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<sup>130</sup> In particular, he indicated "first there is the issue of [his] father who, unfortunately, was caught up in the attack made against the secretary of the Mayor's Office and months later [his] father died, then [his] brother began to investigate who had shot [his] father and [his] brother [Manuel] Guillermo was killed for that too and then, about a month after [his body] was found, they attacked Mr. Héctor Álvarez, who was the father-in-law of [his] brother [Manuel] Guillermo, in that attack he became a quadriplegic and died about 4 or 5 years after the attack, I think." Statement by Jaime Antonio Omeara Miraval before Prosecutor 66, *supra*.

<sup>131</sup> Format for certified copies of the free statement of JP of June 25, 2012, issued by the National Justice and Peace Unit (evidence file, annex 62 to the brief with pleadings, motions and evidence, fs. 2444 to 2448).

<sup>132</sup> Cf. Investigation of MR before the 66th Prosecutor for Human Rights and IHL – Bucaramanga. File 015A. Valledupar, of May 7, 2015 (evidence file, annex 59 brief with pleadings, motions and evidence, fs. 2420 to 2430).

<sup>133</sup> The procedures are: to request information from the Justice and Peace jurisdiction on statements regarding Omeara Miraval; obtain information on the demobilization of MR and JP; locate and exhume the body of Omeara Miraval to establish whether there was torture; verify where JMr is being held and take his statement; investigate the two DAS members that MR pointed out. Cf. Official letter of the Prosecutor's Office 66 of July 11, 2016 (evidence file, annex 6 to the answering brief, f. 10301).

<sup>134</sup> State's brief of August 8, 2014, received by the Commission on August 11, 2014 (evidence file, proceeding before the IACHR, fs. 1044 to 1091).

<sup>135</sup> Letter from the UNDH Regional Prosecutor of October 18, 1996 (evidence file, annex 6 to the answer, fs. 7415 to 7416).

<sup>136</sup> Decision of Military Investigation Court 109 of December 26, 1996 and April 3, 1996 (evidence file, annex 6 to the answering brief, fs. 8774 to 8781 and 8785 to 8786).

149. On September 28, 1994, the Office of the Deputy Attorney General for Human Rights (hereinafter also "Office of the Deputy Attorney General") ordered the opening of a formal disciplinary investigation to establish the circumstances of time, manner, and place surrounding the detention and death of Mr. Omeara. Miraval, as well as to determine if there was any public official involved.<sup>137</sup> On January 31, 1997, the Deputy Attorney's Office filed charges against Major JL for sponsoring and promoting private justice groups.<sup>138</sup> On June 25, 1999, the Deputy Attorney General's Office decided to definitively archive the preliminary investigation.<sup>139</sup>

### **F.3. Investigation on Héctor Álvarez Sánchez**

150. On July 24, 1995, Miguel Ángel Álvarez Solano, son of Héctor Álvarez Sánchez presented to the Aguachica Ombudsman<sup>140</sup>, to report the attack on his father.<sup>141</sup> As a result of the complaint, on August 22, 1995, the Aguachica Sectional Prosecutor's Office 19 (hereinafter, "Prosecutor's Office 19") took over the investigation.<sup>142</sup> On the same day, said Prosecutor's Office ordered Héctor Álvarez Sánchez and Fabiola Álvarez Solano to be summoned to testify, as well as a copy of Mr. Álvarez Sánchez's medical record. The 19th Sectional Prosecutor's Office also commissioned the Aguachica DAS in order to establish the events that occurred to Héctor Álvarez Sánchez. On December 18, 1995, the DAS Aguachica-Cesar issued a report "with negative results" of the investigation carried out to determine the current address of Mr. Alvarez Sanchez.<sup>143</sup>

151. On February 20, 1996, the investigation was reassigned to the Aguachica Sectional Prosecutor's Office 25.<sup>144</sup>

152. On September 5, 1996, the 25th Sectional Prosecutor asked his superior to suspend the investigation because more than 180 days had elapsed without it being possible to formally

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<sup>137</sup> Opening of the preliminary inquiry of September 28, 1994 by the Delegate Attorney's Office (evidence file, annex 96 to the brief with pleadings, motions and evidence, fs. 2721 to 2724).

<sup>138</sup> Despite the fact that it does not appear in the evidence file, it is an undisputed fact.

<sup>139</sup> The decision is based on the fact that, although Major JL was being criminally prosecuted in file 015, and his preventive detention had been ordered as a security measure, the evidence was essentially based on the reports of the DIJIN on the massacre in Puerto Patiño and the statements of Captain FR and the Mayor of Aguachica, LR about the officer's belonging to paramilitary groups. Such evidence, despite serving as the basis for ordering the dismissal of Major JL in the first instance, by means of a resolution of March 6, 1998, was completely dismissed in the second instance by the National Attorney General, alleging that it was not sufficient to prove the disciplinary responsibility of the military in that crime. For these reasons, the Attorney General's Office understood that the situation was identical in relation to the process of Manuel Guillermo Omeara Miraval and, therefore, since there was not enough supporting evidence, the appropriate thing was to end the investigation. (Cf. File 008-152218. Office of the Delegate Attorney for the Defense of Human Rights. Resolution ordering the filing of a preliminary inquiry. Santafé de Bogotá, June 25, 1999 (evidence file, annex 102 to the brief with pleadings, motions and evidence, pages 2748 to 2753).

<sup>140</sup> The Aguachica Ombudsman is a body attached to the Municipal Mayor's Office and, in compliance with its functions as a Public Office, is responsible for the protection and promotion of human rights, the protection of public interest and the monitoring of the conduct of those who hold public office. Cf. <http://www.aquachica-cesar.gov.co/Personeria.shtml>

<sup>141</sup> Complaint filed by Miguel Ángel Álvarez Solano before the Aguachica Ombudsman on July 24, 1995 (evidence file, annex 103 to the brief with pleadings, motions and evidence, fs. 2755 to 2756). In said complaint, Miguel Ángel Álvarez Solano indicated the cause of the attack committed against his father to be the statement that the latter gave to the Barranquilla Regional Prosecutor for the disappearance of his son-in-law, Manuel Guillermo Omeara Miraval.

<sup>142</sup> Order of hearing and decree of evidence by the Aguachica 19th Sectional Prosecutor's Office, August 22, 1995 (evidence file, annex 104 to brief with pleadings, motions and evidence f. 2758).

<sup>143</sup> Report No. 359 of the DAS of December 18, 1995 (evidence file, annex 7 to the answering brief, f. 10322).

<sup>144</sup> Letter from the Head of the Criminal Judges Unit of the Aguachica Circuit of February 20, 1996 (evidence file, annex 7 to the answering brief, f. 10323).

open the investigation as it had not been possible to identify those responsible. On October 2, 1996, the Aguachica Prosecutor's Office agreed to suspend the investigation by resolution.<sup>145</sup>

153. On March 10, 2003, the National Director of Prosecutors reassigned the investigation to the Specialized Prosecutor's Office 22 of the Human Rights Unit (hereinafter also "Prosecutor's Office 22").<sup>146</sup>

154. On April 30, 2003, the 22nd Prosecutor took over the investigation and ordered the continuation of the preliminary investigation. That same day, it ordered the location of Héctor Álvarez Sánchez, through his son Miguel Ángel Álvarez Solano. In addition, the Technical Investigation Corps (hereinafter also "C.T.I."), and the Barranquilla Prosecutor's Office were required to locate the investigation of the proceedings for the disappearance or kidnapping of Manuel Guillermo Omeara Miraval.<sup>147</sup> On May 30, 2003, the C.T.I of Aguachica issued a report in this regard indicating that it was not possible to establish the identity of those responsible for the act.<sup>148</sup>

155. On June 2, 2003, the 22nd Prosecutor's Office ordered a series of tests, among which was locating through the C.T.I. the autopsy procedures, survey certificate, death certificate and the clinical history of Mr. Alvarez Sanchez.<sup>149</sup> Alvarez Sanchez. On July 25, 2003, the C.T.I sent a report to the 22nd Prosecutor's Office in which it indicated that no autopsy was carried out, nor was the removal of the body recorded because he died at home and it was assumed to be a natural death, certified by the doctor who took care of him.<sup>150</sup>

156. On August 6, 2003, the 22nd Prosecutor again received the statement of Miguel Ángel Álvarez Solano, who named GM and JPa as material authors of the attack against his father.<sup>151</sup> In turn, on July 28, 2003, Elva María Solano de Álvarez, widow of Héctor Álvarez Sánchez, gave a statement before the Special Prosecutor of the Human Rights Unit of Bucaramanga, and pointed out that the paramilitaries were responsible for the events, adding that her husband, after having declared before the Regional Prosecutor of Barranquilla about what happened to his son-in-law Manuel Guillermo Omeara Miraval, asserted that he had signed his death sentence. In this regard, she indicated that her husband maintained that "as a result of that

<sup>145</sup> Order of the Aguachica Prosecutor's Office of October 2, 1996, ordering the provisional suspension of an investigation (evidence file, annex 105 to brief with pleadings, motions and evidence, fs. 2760 to 2761).

<sup>146</sup> Resolution 000346 of the National Director of Prosecutors of March 10, 2003 (evidence file, annex 7 to the answering brief, fs. 10327 to 10328).

<sup>147</sup> Among the steps ordered were: locate Héctor Álvarez Sánchez through his son; free the C.T.I. to see if the neighbors knew them; go to the municipal treasury to request information on the properties owned by Héctor Álvarez Sánchez in that jurisdiction; go to the José Padilla regional hospital to establish whether he was treated there as an emergency and obtain his medical history, and locate the office where the proceedings of Manuel Guillermo Omeara Miraval are located, where Héctor Álvarez Sánchez made a declaration (evidence file, annex 7 to the answering brief, fs. 10330 and 10332).

<sup>148</sup> Report of the C.T.I. of May 30, 2003 (evidence file, annex 7 to the answering brief, file 1663, f. 10339). The following reports were also issued or the following procedures were carried out: On June 2, 2003, an order for taking of evidence was issued (evidence file, annex 7 to the answering brief, fs. 10348 to 10352). On June 16, 2003, the C.T.I. of Aguachica issued a report (evidence file, annex 7 to the answering brief, f. 10336). On October 15, 2003, evidence was ordered for which the C.T.I. of Aguachica and the receipt of statements was ordered (evidence file, annex 7 to the answer, fs. 10534 to 10537).

<sup>149</sup> Letter of Prosecutor 22 of June 2, 2003 (evidence file, annex 7 to the answering brief, file 1663, f. 10348).

<sup>150</sup> Report of the C.T.I. forwarded to the 22nd Prosecutor's Office on July 25, 2003 (evidence file, annex 7 to the answering brief, f. 10346).

<sup>151</sup> He also commented on another possible hypothesis related to retaliation by a rancher who also supported the RP paramilitaries, named JC, who, faced with his father's claim because he found out that he was involved in what happened with Manuel Guillermo Omeara Miraval, he ordered an attempt on his life. He stated that both his father and his brother-in-law refused to pay the paramilitaries inoculations (extortion), but after what happened to them, his family had to do so and in the end they preferred to sell their 183-hectare farm to avoid further problems. Statement of Miguel Ángel Álvarez Solano of August 6, 2003 (evidence file, annex 106 to the brief with pleadings, motions and evidence, fs. 2763 to 2739).

statement, his life was in danger because he stated the names of who they were and gave the color and license plate of the car that took Manuel Guillermo Omeara Miraval". In addition, she pointed out that it did not provide guards to escort her husband when he went to testify.<sup>152</sup>

157. On January 30, 2008, the Chief of the C.T.I. of the Human Rights Unit, was asked to designate an investigator in order to achieve a detailed analysis of the case.<sup>153</sup> In addition, on October 31, 2008, it ordered the C.T.I.-UNDH be commissioned to appoint an investigator and to find out before the Justice and Peace Unit whether demobilized persons from the Santander and South Cesar Self-Defense Group could be located and could provide information about the events of which Héctor Álvarez Sánchez was a victim. With respect to the demobilized combatants who were able to be identified, interviews were arranged to be heard by the Prosecutor's Office 22.<sup>154</sup> Similarly, on October 31, 2018, the Prosecutor's Office commissioned the C.T.I to find out if in free statements in the Justice and Peace Unit, any demobilized person mentioned the facts under investigation and ordered the receipt of statements from several demobilized persons.<sup>155</sup>

158. On November 18, 2008, JP made a statement before the Support Prosecutor's Office.<sup>156</sup>

159. On March 17, 2009, the C.T.I. presented a report regarding the information obtained on the mention of the facts in the free statements obtained in the framework of the Justice and Peace proceedings. Based on the information provided by the C.T.I. and the list of demobilized self-defense groups, the Prosecutor's Office ordered interviews.<sup>157</sup>

160. According to the State's information to the Commission, on November 20, 2013, Prosecutor 22 ordered JPa's "preliminary account". On February 19, 2014, his free statement was received.<sup>158</sup> The State explained that the investigation was aimed at determining who was responsible for the attack of the group commanded by RP,<sup>159</sup> and indicated that "there is evidence that allows us to demonstrate that one of the alleged perpetrators was [GM]," who was murdered on January 14, 1996, and the other person who was identified as a participant

<sup>152</sup> Testimony of Elva María Solano de Álvarez before the Barranquilla Regional Prosecutor's Office on July 28, 2003 (evidence file, annex 107 to the brief with pleadings, motions and evidence, fs. 2771 to 2775), and proceedings to amend the statement of Elva María Solano de Álvarez de April 3, 2013, *supra*.

<sup>153</sup> Letter from the Assistant Prosecutor of the National Human Rights and International Humanitarian Law Unit of the Office of the Attorney General of the Nation of January 30, 2008 (evidence file, annex 6 to the answering brief, File 1663, f. 10766).

<sup>154</sup> Letter from the 22nd Special Prosecutor UNDH – IHL of October 31, 2008 (evidence file, annex 6 to the answering brief, File 1663, f. 10767).

<sup>155</sup> State's Answering Brief of February 8, 2017 (merits file, f. 561).

On May 8, 2009, the designated investigators submitted a report in which they attached a list of demobilized persons. However, they indicate that they did not carry out the respective interviews (evidence file, annex 7 to the answering brief, page 10801). On August 24, October 4 and 24, 2009, reports were received from the C.T.I. (evidence file, annex 7 to the answering brief, File 1663, fs. 10818, 10889, 10893 to 10894). On September 30, 2010, the investigation of those responsible was ordered (evidence file, annex 7 to the answering brief, File 1663, fs. 10949 to 10950). On November 16, 2010, the photocopy of the Clinical Record No. 015004 was sent in the name of Héctor Álvarez Sánchez (evidence file, annex 7 to the answering brief, fs. 10989 to 11221). On December 3, 2010, the taking of evidence was ordered (evidence file, annex 7 to the answering brief, file 1663, log 3, f. 11222). On June 12, 2011, the investigation records against the defendants in this case were reported (evidence file, annex 7 to the answering brief, fs. 11239 to 11240).

<sup>156</sup> JP's statement of November 18, 2008 (evidence file, annex 7 to the answering brief, fs. 10771 to 10774).

<sup>157</sup> Report of the C.T.I. of March 17, 2009 (evidence file, annex 7 to the answering brief, fs. 10778 to 10780).

<sup>158</sup> Free account given by JPa on February 19, 2014 before Prosecutor 22 (evidence file, annex 7 to the answering brief, file 1663, fs. 11696 to 11701).

<sup>159</sup> The State indicated that "two hypotheses were handled in the investigation", the first [related] to the attack [against] [Mr.] Héctor Álvarez Sánchez [as] a consequence of [his] statement within the investigation for the homicide [of] his son-in-law Manuel Guillermo Omeara Miraval, and the second, [related] to JC, "who frequented the paramilitaries" and was the one who raised [GM], in addition to the fact that he owed a sum of money to Mr. Héctor Álvarez and days before the attack they had had an altercation in [the] Aguachica market. The State indicated that "the investigation records were oriented towards the first hypothesis." Brief of the State of August 8, 2014, *supra*.

is JPa, who was a good friend of GM. Regarding this last person, the State indicated that in a free statement he acknowledged that he was a member of RP's self-defense group in 1996, but that he did not participate in the events.<sup>160</sup>

161. The last action in file No. 1663 was its reassignment to Prosecutor 66, based in Bucaramanga. In accordance with resolution No. 0053 of March 7, 2016 of the National Director of Human Rights and IHL Prosecutors, in April 2016 the corresponding referral was made.

162. The State reported that the criminal proceedings are pending before the 66th Prosecutor for the crime of attempted homicide of which Héctor Álvarez Sánchez was the victim, due to reassignment carried out by the Office of the Attorney General of the Nation in 2016. On July 8, the work assignment was released in order to analyze the file, determine the hypotheses and lines of investigation.

#### **F.4. Proceedings in the jurisdiction of "Justice and Peace"**

163. The demobilization process of the paramilitaries in Colombia entailed a specific regime derived from the Justice and Peace Law. Within this investigative process and the determination of particular responsibilities, several members of the Héctor Julio Peinado front act as candidates: JP, RPr, FRa, among others.<sup>161</sup>

164. On November 25, 2016, an investigator from the C.T.I. issued a report addressed to the office of the 34th Delegate Prosecutor's Office before the District Court of the National Directorate of the Specialized Transitional Justice Prosecutor's Office on the steps taken to verify the events of which José Erminso Sepúlveda Saravia, Noel Emiro Omeara Carrascal, Manuel Guillermo Omeara Miraval, and Héctor Álvarez Sánchez were victims.<sup>162</sup>

165. On January 19, 2017, the Unit of Prosecutors for Justice and Peace conducted an interview<sup>163</sup> with MR, regarding the murder of José Erminso Sepúlveda Saravia, the attempted murder of Noel Emiro Omeara Carrascal, the kidnapping and murder of Manuel Guillermo Omeara Miraval and the attempted murder of Héctor Álvarez Sánchez.

166. On January 26, 2017, an investigator from the C.T.I. presented a report to the 34th Delegate Prosecutor's Office before the District Court of the National Directorate of the Specialized Prosecutor's Office for Transitional Justice about the activities carried out in order to review and analyze procedural pieces within file 015 carried out by the 66th Prosecutor's Office for Human Rights and IHL Bucaramanga.<sup>164</sup>

167. On January 17, 2017, RPr, JP and FRa gave free statements declaring and accepting the facts; JP had already done the same on June 24, 2010. They mentioned that the facts related to Omeara Carrascal, Omeara Miraval and Álvarez Sánchez were ordered by RP.<sup>165</sup>

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<sup>160</sup> State Brief of August 8, 2014, *supra*.

<sup>161</sup> Decision of December 11, 2014 issued by the Superior Court of the Judicial District of Bogotá, Chamber of Justice and Peace (evidence file, annex 121 of the brief with pleadings, motions and evidence, fs. 2913 to 3466).

<sup>162</sup> Report of the C.T.I. addressed to Prosecutor 34 of the National Directorate of the Specialized Prosecutor for Transitional Justice on November 25, 2016 (evidence file, annex 3 to the answering brief, fs. 4326 to 4333).

<sup>163</sup> Interview with MR before the Unit of Prosecutors for Justice and Peace on January 19, 2017 (evidence file, annex 3 to the answering brief, fs. 4350 to 4357).

<sup>164</sup> Report of January 26, 2017 of the C.T.I. addressed to Prosecutor 34 of the National Office of the Specialized Prosecutor for Transitional Justice (evidence file, annex 3 to the answering brief, fs. 4333 to 4338).

<sup>165</sup> Statement of Iván Augusto Gómez Celis, *supra*. The aforementioned Prosecutor incorporated in his affidavit "the transliteration" of the hearings corresponding to the proceedings of free statements carried out on June 24, 2010 to JP, and on January 17, 2017 to RPr, JP and FRa.



168. On February 9, 2017, the State reported in its final version of the answering brief that, within the framework of the “Justice and Peace” jurisdiction, actions continue to be taken to “clarify” the “responsibility of paramilitary groups related to the facts of this case.” Prosecutor 34 asserted that the facts of this case will be presented in an indictment hearing on attacks on left-wing groups, without the Court having further information on the progress of the process.<sup>166</sup>

## **VIII MERITS**

169. Prior to examining the merits, the Court recalls that this case is related to the attack on Noel Emiro Omeara Carrascal on January 28, 1994 and his subsequent death; the forced disappearance and execution of Manuel Guillermo Omeara Miraval, son of the former, from August 27 to September 23, 1994; and the attack and subsequent death of Héctor Álvarez Sánchez, father-in-law of the latter, on October 21, 1994. Based on the facts, the Commission argued that there are sufficient elements to conclude that there was collaboration between state agents and persons belonging to a paramilitary group that operated in the area so that the attack on Mr. Omeara Carrascal could take place, as well as the forced disappearance and subsequent execution of his son Omeara Miraval. He also alleged that what happened to the latter between his disappearance and execution reached the level of torture. In addition, it was argued that the attack suffered by Mr. Álvarez Sánchez and his subsequent death was due to the fact that the State did not provide him with the protection he required, allowing the attack to occur. All the events that occurred caused his next of kin suffering due to the facts themselves, as well as due to the lack of clarification and the constant fear and anguish due to renewed retaliation in the search for justice and incidences of threats and intimidation. Some family members, including three minors, moved because of the risk they faced due to the attacks and death of their loved ones. Finally, the Commission established a lack of due diligence to investigate the facts.

170. In this chapter, the Court will examine the merits of the case, taking into account the aforementioned partial acknowledgment of State responsibility in order to establish the scope of Colombia's international responsibility for the alleged violations regarding the aspects in which the dispute is ongoing, as follows: (1) the rights to life and humane treatment established in Articles 4(1) and 5(1) of the Convention, with respect to Mr. Álvarez Sánchez; (2) the right to humane treatment, established in Article 5(2) of the American Convention, regarding Mr. Omeara Miraval; (3) the judicial guarantees to a fair trial and judicial protection provided for in Articles 8(1) and 25(1) of the Convention with respect to some aspects related to the investigations of the events that occurred to Messrs. Omeara Carrascal, Omeara Miraval and Álvarez Sánchez, and (4) the rights of movement and residence and protection of privacy established in Articles 22(1) and 11(2) of the Convention, with respect to some family members of Omeara Carrascal, Omeara Miraval and Álvarez Sánchez.

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<sup>166</sup> Statement of Iván Augusto Gómez Celis, *supra*.

**VIII.1.**  
**RIGHTS TO LIFE AND TO HUMANE TREATMENT**  
**(Articles 4<sup>167</sup> AND 5<sup>168</sup> of the American Convention**  
**on Human Rights, regarding Article 1(1)<sup>169</sup>)**

171. The Court recalls that the State recognized its international responsibility for the violation of the rights to life and humane treatment enshrined in Articles 4 and 5 of the American Convention, in relation to 1(1) of the Convention, with respect to Noel Emiro Omeara Carrascal for the actions of state agents in conjunction with illegal armed groups in his attack and subsequent death. It also recognized its responsibility in the forced disappearance and execution of Manuel Guillermo Omeara Miraval due to the actions of state agents in conjunction with illegal armed groups. In accordance with the above, the dispute continues in relation to the form of attribution of responsibility to the State for the alleged violations of the rights to life and humane treatment of Héctor Álvarez Sánchez, a matter that will be addressed in this chapter.

**A. Arguments of the Commission and the parties**

172. The **Commission** observed that the attack on Héctor Álvarez Sánchez, on October 21, 1994, was carried out by a group characterized by acting in a context of collaboration with state agents, and that there is evidence of interest in silencing his investigations. The Commission considered that the State had not been able to refute the evidence of its responsibility and, therefore, concluded that it is internationally responsible for the attack against Mr. Álvarez Sánchez, the injuries sustained, and the impairment in his physical and mental health. Additionally, the Commission argued that the State did not offer him adequate protection, even though it was aware of the risk situation in which he found himself. It argued that the fact that Mr. Álvarez Sánchez survived was merely fortuitous, since the attack was carried out by shots from a firearm aimed at him and in a situation of absolute defenselessness, derived from the lack of protection measures by the State. Consequently, it argued that the State is responsible for the violation of the rights to humane treatment and life, in relation to the obligations enshrined in Article 1(1) of the Convention.

173. The **representatives** argued that the attack against Mr. Álvarez Sánchez is attributable to the State based on having allowed, through the participation or acquiescence of State agents, the attack on the victim's integrity and life, which was perpetrated by GM, a member of the "Los Prada" paramilitary group. Consequently, the representatives argued that the State is responsible for the violation of the duty to respect the victim's life and integrity. They also stated that the State is responsible for failing to comply with the obligation to guarantee these rights, both due to the lack of prevention of events and the absence of a prompt and effective investigation into the facts. In this regard, they specified that, even though the attack was perpetrated by members of the Prada family, it was committed with the tolerance and acquiescence of state agents. Consequently, they argued that the State is

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<sup>167</sup> Article 4(1) of the Convention establishes the following: "1. Every person has the right to have his physical, mental, and moral integrity respected. 2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person."

<sup>168</sup> Articles 5.1 and 5.2 of the Convention establish the following: "1. Every person has the right to have his physical, mental, and moral integrity respected. 2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person."

<sup>169</sup> Article 1(1) of the Convention establishes the following: "1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition."

responsible for impairment to the right to life and humane treatment of Héctor Álvarez Sánchez.

174. The **State** clarified that its acknowledgment of responsibility did not imply acceptance of the omission of the duty to protect to the detriment of Héctor Álvarez Sánchez. It argued that it is not true that the State was aware of a special risk or of the existence of previous threats against the life of Mr. Álvarez Sánchez, in order to assess whether he required protection measures. It argued that it is not possible to conclusively infer that the attack, in which GM directly participated, had been planned by paramilitaries, and that even in that case it is not possible to attribute responsibility for his actions to the State.

## **B. Considerations of the Court**

175. This Court has established that the right to life plays a fundamental role in the American Convention, as it is the essential assumption for the exercise of its other rights. The observance of Article 4, related to Article 1(1) of the American Convention, not only presupposes that no person is arbitrarily deprived of his life (negative obligation), but also requires that the States adopt all appropriate measures to protect and preserve the right to life (positive obligation), in accordance with the duty to guarantee the full and free exercise of the rights of all persons under its jurisdiction.<sup>170</sup> Consequently, States have the obligation to guarantee the conditions required so that this inalienable right is not violated and, in particular, the duty to prevent their agents from undermining it. This active protection of the right to life by the State involves not only its legislators, but all state institutions and those who must enforce/protect safety, be it their police forces or their armed forces.<sup>171</sup>

176. The American Convention also expressly recognizes the right to personal, physical, and psychological integrity, the violation of which "is a category of violation that has several gradations connotations of degree and [...] with varying degrees of physical and psychological effects caused by endogenous and exogenous factors [...] which must be proven in each specific situation".<sup>172</sup>

177. According to the facts of this case, on October 21, 1994, Héctor Álvarez Sánchez was shot several times by two men dressed in civilian clothes riding a motorcycle, when he entered his house in the presence of his five-year-old granddaughter. Mr. Álvarez Sánchez was seriously injured, left quadriplegic and unable to speak as a result of the attack. Nearly six years later, on May 11, 2000, he died at his residence in Bucaramanga (*supra* para. 96). It is up to the Court to determine whether the State complied with its duty to respect and guarantee Articles 4(1) and 5(1) of the American Convention, in relation to Article 1(1) of the same instrument, due to the attack on Mr. Álvarez Sánchez.

178. In this regard, the Court recalls that, on various occasions, it has considered as proven the existence of links between the armed forces and paramilitary groups in Colombia at the time of the events of this case, leading to the existence of a relationship, manifested through actions and omissions, between paramilitary groups and members of the security forces relating to human rights violations, such as extrajudicial executions and forced disappearances

<sup>170</sup> Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits, supra*, para. 144, and *Case of Pacheco León et al. v. Honduras*, para. 144.

<sup>171</sup> Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits. Judgment of November 19, 1999. Series C No. 63*, para. 144 and 145, and *Case of Ortiz Hernández et al. v. Venezuela. Merits, Reparations and Costs. Judgment of August 22, 2017. Series C No. 338*, para. 101.

<sup>172</sup> *Case of Loayza Tamayo v. Peru. Merits. Judgment of September 17, 1997. Series C No. 33*, para. 57, and *Case of San Miguel Sosa et al. v. Venezuela. Merits, Reparations and Costs. Judgment of February 8, 2018. Series C No. 348*, para 169.

(*supra* para. 71).<sup>173</sup> The subregion of southern Cesar, where Aguachica is located, saw great interest and confluence of armed actors, and there was a presence of paramilitary groups in the area, among which the "Los Prada" group stood out. According to various statements from family members and witnesses, said group coordinated with members of the Police and the Army, and the actions carried out by the latter were known to the Administrative Department of Security (*supra* paras. 72, 73 and 74).

179. This Court recalls that according to its case law, in order to establish state responsibility for violation of the duty of respect in relation to the actions of third parties, a general situation of context is not enough, and it is necessary that in this specific case, its specific circumstances are seen to produce state acquiescence or collaboration.<sup>174</sup> Next, the Court will analyze the body of evidence to determine whether the facts make it possible to establish acquiescence or collaboration in this specific case.

180. Firstly, the Court verifies that three members of the "Los Prada" group testified in Prosecutor's Office 34: (a) that RP had ordered the attack against Mr. Álvarez Sánchez; (b) that members of the "Los Prada" group participated in these acts, and (c) that at the time the attack occurred there was collusion between the security forces and the paramilitary group.

181. Specifically, in relation to the attack perpetrated against Mr. Álvarez Sánchez that occurred on October 21, 1994, in a statement rendered by JP on June 24, 2010, he said: "that was also him [GM] by order of RP. That rumor spread through San Alberto because that man was a very good person and didn't mess with anyone, it was rumor[ed] that because they had messed with him. I found out because [RP] himself told me. What he didn't tell me was why he did it [,] but I know that [RP] did it. That gentleman, Don Héctor, did not mess with anyone [,] the one who owed something was the son-in-law." Similarly, in a joint free account of January 17, 2017, JP stated: "I accept all those events by line of command, because they were events ordered by [RP] and they were done by that organization. And I was a founding member of that group. I found out about that after I came from over from Yopal and they told me that they had killed Mr. Omeara, son-in-law of the owner of the La Buila [(sic)] ranch. That's why I found out about it. I had no knowledge of how the events unfolded. But I want to apologize to the victims for those serious events that happened. I accept all these facts, the murder of José Herminson [(sic)] Sepúlveda Saravia and the attempted murder of Noel Emiro Omeara Carrascal, which occurred on January 28, 1994 at the [S]an [R]oque restaurant in Aguachica. – Homicide and forced disappearance of Manuel Guillermo Omeara Miraval who was kidnapped on August 27, 1994 and found dead on September 23, 1994. And attempted murder of Héctor Álvarez Sánchez that occurred on October 21, 1994 in Aguachica [, ] César. All that's left is to ask forgiveness with all my heart". In another statement, RP declared the following: "I did hear mention of the attack, I did not participate, and it was said that it had been people from [LO] in coordination with my father [RP], and my father's military commander was [...] [MR]. And many times these orders were given directly to [GM] from my dad."

182. Secondly, it is a proven fact that Mr. Álvarez Sánchez gave a statement on September 6, 1994 before officials of the Barranquilla Regional Prosecutor's Office on facts related to the disappearance of his son-in-law Manuel Guillermo Omeara Miraval (*supra* para. 88). In that statement, Mr. Álvarez Sánchez stated that Mr. Omeara Miraval had told him that the

<sup>173</sup> Cf. *Case of 19 Tradesmen v. Colombia. Merits, Reparations and Costs*. Judgment of July 5, 2004. Series C No. 109, para. 86, and *Case of Vereda La Esperanza v. Colombia. Preliminary Exceptions, Merits, Reparations and Costs*. Judgment of August 31, 2017. Series C No. 341, para. 68.

<sup>174</sup> Cf. *Case of the Afro-descendant Communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia. Preliminary Exceptions, Merits, Reparations and Costs*. Judgment of November 20, 2013. Series C No. 270, para. 280, and *Case of Vereda La Esperanza v. Colombia, supra*, para. 151.

perpetrators of his father's death were "the paramilitaries or UNASE"; also, that he had heard from various people: (a) that the van into which they forced his son-in-law when he disappeared belonged to Mr. RP, and (b) that Mr. RP had the intention of "taking" Mr. Omeara Miraval due to his investigations in connection with his father's death. Specifically, Mr. Álvarez Sánchez stated the following:

ASKED: State if OMEARA MIRAVAL had done any important research on the perpetrators of his father's death and if he told you or someone else. ANSWER: [He] had told me that it was the Paramilitaries or the UNASE, but he told me that it seemed that they were the paramilitaries [...] a lady confirmed that a blue truck was parked early in the day in a very bad spot there on a bridge [passed] that way but surely they took him [Mr. Omeara Miraval] in the car, because it was the motorcycle that another man was driving, she gave a version that it was a blue 350 car with a black top [...] in the town of San Martín they say that the Toyota truck [...] is the one carries the people there who say they are paramilitaries and are commanded by a RP and a brother of his who they say is [JP,] at [the last minute] went on [and] told me that Mr. RP wanted to take GUILLERMO the other day, because he was investigating what happened to his father, but that they had persuaded him because they had told him that he was a good kid.<sup>175</sup>

183. Thirdly, this Court verifies the testimony of Elva María Solano de Álvarez, who indicated that the phrase that Mr. Álvarez Sánchez said when he signed the statement was "that he had signed his death sentence."<sup>176</sup> Her version was corroborated before this Court by Miguel Ángel Álvarez Solano, who stated on the matter that Mr. Álvarez Sánchez, at the moment of giving the statement "with tears and a broken voice, said [to Mrs. Solano] 'I know that I am signing my death sentence'<sup>177</sup>; Similarly, Clemencia Patricia Álvarez Solano stated that "[o]n signing his statement [her] father comment[ed] in the presence of the prosecutors that he hoped he had not signed his death sentence and the prosecutor kept silent and did not say anything".<sup>178</sup> Héctor Manuel Héctor Manuel Álvarez Solano and Fabiola Álvarez Solano gave similar statements.<sup>179</sup>

184. The Court notes that there is no dispute that Mr. Álvarez Sánchez was left quadriplegic as a result of the attack he suffered, and that as a result of this condition "all movement and everything was frozen." It is also a proven fact that Mr. Álvarez Sánchez died on May 11, 2000, that is, five years and seven months after the attack. From which it is evident that the personal integrity of Mr. Álvarez Sánchez was affected as a result of the attack of which he was a victim.

185. In relation to the argument as to whether the attack against Mr. Álvarez Sánchez constituted a violation of the right to life, the Court considers that although it is elementary that the result of death attributable to a State violates the duty to respect the human right to life, it also understands that the death of the victim is not the only form of violation of this right. Indeed, all comparative law recognizes that the right to life is also affected by danger. In international human rights law, not every possible or presumptive danger is relevant as a

<sup>175</sup> Statement of Héctor Álvarez Sánchez, *supra*.

<sup>176</sup> Proceedings to amend the statement of Elva María Solano de Álvarez of April 3, 2013, *supra*.

<sup>177</sup> Statement by Miguel Ángel Álvarez Solano given by affidavit submitted to the Court (evidence file, affidavits and expert opinions, fs. 1238 to 1241).

<sup>178</sup> Statement of Clemencia Patricia Álvarez Solano rendered by affidavit, *supra*.

<sup>179</sup> In this regard, Héctor Manuel Álvarez Solano stated the following: "In the presence of the prosecutor who took the case, [his] father told him: I am signing my death sentence." Statement by Héctor Manuel Álvarez Solano given by affidavit presented to the Court (evidence file, affidavits and expert opinions, fs. 12028 to 12032). Similarly, Fabiola Álvarez Solano stated that "[a]fter the disappearance of [her] husband[,] [her] father Héctor Álvarez Sánchez was summoned [...] to make a statement of what he knew of the facts, and at the end of the statement in the dining room of the house, he told the prosecutor that he was signing his death sentence and agreed with them to continue making inquiries about the atrocities that the paramilitaries were committing in the south of Cesar and despite this they did not provide him the protection that was required at that time." Statement by Fabiola Álvarez Solano given by affidavit, *supra*.

violation of this right, nor is it in comparative law in general. However, when the actor's conduct generating the international responsibility of the State is aimed at killing the victim by a suitable means as to produce this result, that is, when domestic law configures an attempted murder that puts his life in concrete danger, it is clearly also violating the duty to respect the victim's life. This specific danger and the suitability of the means is verified in the case with the mere account of the facts, since it was a qualified attempt that resulted in a very serious disabling injury, which is covered or undermined by the very serious degree of the attempt. Consequently, regardless of whether or not the subsequent death of the victim can be causally attributed to the conduct of the agent, the malicious conduct of those who carried out the (attempted) attack and acted with the support and acquiescence of the State, alone constitutes the violation of the duty to respect the life of the victim by the State.

186. In this case, although the attack did not lead to Héctor Álvarez Sánchez's immediate death, the force used, its intention and objective were clearly aimed at executing the alleged victim, who was in a state of total defenselessness.<sup>180</sup> For these reasons, the Court considers that Articles 4(1) and 5(1) of the American Convention were also violated by the State, to the detriment of Héctor Álvarez Sánchez.

### **C. Conclusion**

187. Due to the State's partial acknowledgment of its international responsibility for the death and violation of integrity, this Court concludes that the State violated the rights to life and humane treatment enshrined in Articles 4(1) and 5(1) of the American Convention, in relation to Article 1(1) of the Convention, to the detriment of Noel Emiro Omeara Carrascal.

188. In addition, in accordance with the specific circumstances of the case, the Court considers that the State violated the duty to respect the rights to life and humane treatment of Héctor Álvarez Sánchez, since collaboration between state agents and members of the Prada family who allowed the attack against him has been proven. Therefore, this Court concludes that the State violated Articles 4(1) and 5(1) of the American Convention, in relation to Article 1(1) of the Convention, to the detriment of Héctor Álvarez Sánchez.

## **VIII.2. RIGHT TO HUMANE TREATMENT, and FORCED DISAPPEARANCE (Articles 3<sup>181</sup>, 4, 5 AND 7<sup>182</sup> of the American Convention on Human Rights, regarding Article 1(1))**

<sup>180</sup> Cf. *Case of the La Rochela Massacre v. Colombia. Merits, Reparations and Costs*. Judgment of May 11, 2007. Series C No. 163, para. 127.

<sup>181</sup> Article 3 of the American Convention establishes the following: "Every person has the right to recognition as a person before the law."

<sup>182</sup> Article 7 of the Convention establishes the following: "1. Every person has the right to personal liberty and security. 2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto. 3. No one shall be subject to arbitrary arrest or imprisonment. 4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him. 5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial. 6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies. 7. No one shall be detained for debt. This principle shall not limit the orders of a competent judicial authority issued for nonfulfillment of duties of support."

189. The Court will now address the arguments of the Commission and the representatives related to the alleged acts of torture suffered by Mr. Omeara Miraval while he was disappeared. In this regard, the Court reiterates that the State recognized its international responsibility, for action, for the violation of the rights to recognition of juridical personality, life, humane treatment and personal liberty (Articles 3, 4, 5 and 7) of the American Convention, in relation to the obligation to respect the rights (Article 1(1)) of the Convention, for the actions of state agents in collaboration with illegal armed groups that together led to the forced disappearance and execution of Manuel Guillermo Omeara Miraval (*supra* paras. 19. a) and 33). However, the Court notes that the dispute continues regarding whether the conditions of Mr. Omeara Miraval's detention can be considered acts of torture, and whether said acts are attributable to the State. Consequently, the Court will proceed to assess this issue.

#### **A. The alleged acts of torture against Mr. Omeara Miraval**

190. The **Commission** warned that the State's acknowledgment of responsibility does not cover the determination made in the Merits Report on the violation of the right to humane treatment, to the detriment of Mr. Omeara Miraval, for the events suffered before his death and while he was disappeared, which, according to the Commission, are sufficient to be considered acts of torture, taking into account the extreme suffering he must have endured before his death. Consequently, the Commission argued that the dispute persists on this point. The **representatives** pointed out that although the acts of torture do not appear in the autopsy protocol, their existence has not been disproved in the investigation, given that the State did not carry out the necessary steps to determine these elements, including failing to exhume the body, even though it was ordered by the Prosecutor's Office on August 9, 1995.

191. The **State** did not recognize that the conditions in which Mr. Omeara Miraval was detained constitute acts of torture, but rather that they constituted a violation of humane treatment.

#### **B. Considerations of the Court**

192. The Court recalls that the American Convention expressly recognizes the right to humane treatment, which is a legal right whose protection encompasses the main purpose of the mandatory prohibition of torture and cruel, inhuman or degrading treatment or punishment.<sup>183</sup> This Court has consistently considered in its case law that said prohibition today belongs to the domain of *ius cogens*<sup>184</sup> and that the right to humane treatment cannot be suspended under any circumstance.<sup>185</sup> In this way, in the case law of this Court, an international legal regime has been formed of absolute prohibition of all forms of torture, both physical and psychological, and with respect to the latter, it has been recognized that the threats and the real danger of subjecting a person to serious physical injury produces, under certain circumstances, such a degree of moral anguish that it can be considered "psychological torture".<sup>186</sup>

<sup>183</sup> Cf. *Case of Ximenes Lopes v. Brazil. Merits, Reparations and Costs*. Judgment of July 4, 2006. Series C No. 149, para. 126, and *Case of the Massacres of El Mozote and Nearby Places v. El Salvador. Merits, Reparations and Costs*. Judgment of October 25, 2012, para. 147.

<sup>184</sup> Cf. *Case of Cantoral Benavides v. Peru. Merits*. Judgment of August 18, 2000. Series C No. 69, para. 95, and *Case of the Massacres of El Mozote and Nearby Places v. El Salvador, supra*, para. 147.

<sup>185</sup> Cf. *Case of the "Juvenile Reeducation Institute" v. Paraguay. Preliminary Exceptions, Merits, Reparations and Costs*. Judgment of September 2, 2004. Series C No. 112, para. 157, and *Case of the Barrios Family v. Venezuela. Merits, Reparations and Costs*. Judgment of November 24, 2011. Series C No. 237, para. 50.

<sup>186</sup> Cf. *Case of Cantoral Benavides v. Peru. Merits, supra*, para. 102 and *Case of López Soto et al. v. Venezuela, supra*, para. 183.

193. The Court also recalls that the violation of the right to physical and psychological integrity of persons is a type of violation that has different connotations of degree and that ranges from torture to other types of abuse such as cruel, inhuman or degrading treatment, with varying degrees of physical and psychological effects caused by endogenous and exogenous factors [...] which must be proven in each specific situation.<sup>187</sup> In other words, the personal characteristics of an alleged victim of torture or cruel, inhuman or degrading treatment must be taken into account when determining a violation humane treatment, consequently increasing the suffering and sense of humiliation when they are subjected to certain treatments.<sup>188</sup> The Court has also indicated that any use of force that is not strictly necessary due to the detainee's own behavior constitutes an attack on human dignity in violation of Article 5 of the American Convention.<sup>189</sup>

194. In the context of a forced disappearance, the Court has established that the victims of this practice have their personal integrity violated in all its dimensions, and that the submission of detainees to repressive official forces, state agents or private individuals who act with their acquiescence or tolerance, that practice torture and murder with impunity represents a violation of the duty to prevent violations of the rights to humane treatment and to life, even in the event that the acts of torture or deprivation of the person's life cannot be proven in the specific case.<sup>190</sup> In addition, this Court has held that forced disappearance violates the right to humane treatment because the mere fact of prolonged isolation and coercive solitary confinement represents cruel and inhuman treatment.<sup>191</sup>

195. In this case, the State acknowledged its international responsibility for the violation of Article 5(1) of the Convention as a constitutive part of the forced disappearance to the detriment of Mr. Omeara Miraval but argued that such recognition does not include its responsibility for the violation of Article 5(2) of the Convention for the alleged acts of torture to which he was allegedly subjected while he was disappeared. The Commission argued that the events that occurred during the time that Mr. Omeara Miraval was disappeared constituted acts of torture attributable to the State. The Court will now analyze the arguments regarding the responsibility of the State for the violation of Article 5(2) of the Convention, in relation to Article 1(1) of the same instrument, for the alleged acts of torture to which Mr. Omeara Miraval was allegedly subjected.

196. The Court notes that on September 23, 1994, the 19th Prosecutor's Office, together with a medical examiner, carried out an exhumation at the location where the body of Mr. Omeara Miraval was buried. The medical examiner reported that the body was found in "dorsal decubitus position, with the hands tied behind (his back) with thin black nylon" and that "[a]n external [e]xamination of the body revealed the high degree of decomposition and the lack of papillary ridges on the fingers" (*supra* para. 91). Similarly, the DAS officials who accompanied the exhumation of the alleged victim's body essentially concurred with the information from the 19th Prosecutor's Office.

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<sup>187</sup> Cf. *Case of Loayza Tamayo v. Peru. Merits, supra*, para. 57, and *Case of Coc Max et al. (Xamán Massacre) v. Guatemala, supra*, para. 108.

<sup>188</sup> Cf. *Case of Ximenes Lopes v. Brazil, supra*, para. 127, and *Case of López Soto et al. v. Venezuela, supra*, para. 185.

<sup>189</sup> Cf. *Case of Loayza Tamayo v. Peru supra*, para. 57, and *Case of Favela Nova Brasília v. Brazil. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of February 16, 2017. Series C No. 333, para. 251.*

<sup>190</sup> Cf. *Case of Velásquez Rodríguez v. Honduras, supra*, para. 175, and *Case of Members of the Chichupac Village and neighboring communities of the Municipality of Rabinal v. Guatemala. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of November 30, 2016. Series C No. 328. para. 158.*

<sup>191</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, paras. 156 and 187, and *Case of Terrones Silva et al. v. Peru. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of September 26, 2018. Series C No. 360. para. 172.*



197. On the same date, on September 23, 1994, the autopsy of the body of Mr. Omeara Miraval was performed, in which it was determined that the mechanism of death was a "cerebral laceration," and that the cause of death was a "firearm projectile wound" (*supra* para. 91). The description of the body made in the report indicated that Mr. Omeara Miraval's body did not show lesions in the mouth, nose and ears, neck, vertebral column, spinal cord, thoracic cavity and abdominal cavity, and that in the eyes there was a "bilateral enucleation", and the wrists presented "grooves at the level of the hands". No mention of other injuries was made in that report.

198. The Court also notes that relatives of the alleged victim declared that Mr. Omeara Miraval's body had clear signs of torture. Jaime Antonio Omeara Miraval, brother of the alleged victim, stated that "[Mr. Omeara Miraval] appeared with his nails removed, he appeared without some teeth and he had all his teeth according to the autopsy performed on him, they also tortured his testicles and poured acids on him, we knew that because the one who was doing the lifting was telling us that." Similarly, Fabiola Álvarez Solano testified before this Court that the body of her husband "had many obvious signs of torture."<sup>192</sup>

199. Accordingly, the Court considers that the reports related to the exhumation and autopsy of Mr. Omeara Miraval's body are not conclusive as evidence of physical mistreatment that would allow it to prove that, during the time he was disappeared, he was subjected to deliberate mistreatment, which caused severe physical and mental suffering, and which was committed with a certain aim or purpose.<sup>193</sup> This Court also notes that neither the Commission nor the representatives contested the authenticity of said reports, and the evidence to the contrary is the statement of the alleged victim's brother, Jaime Antonio Omeara Miraval, who was present at the exhumation.

200. Thus, the Court concludes that the evidence submitted to it is not sufficient to prove that Mr. Omeara Miraval, while he was detained before his execution, suffered mistreatment that can be classified as acts of torture. The Court notes, however, that this conclusion is independent of the one the State may reach in the corresponding investigation (*infra* para. 294).

### **C. Conclusion**

201. Due to the partial acknowledgment by the State of its international responsibility for the forced disappearance and subsequent execution of Manuel Guillermo Omeara Miraval, this Court concludes that the State violated the rights to recognition of juridical personality, life, humane treatment, and personal liberty enshrined in Articles 3, 4, 5 and 7 of the American Convention, in relation to Article 1(1) of the Convention, to his detriment.

202. The Court additionally concludes that the State is not responsible for the violation of Article 5(2) of the American Convention, in relation to Article 1(1) of the same instrument, for the alleged acts of torture to which Mr. Omeara Miraval was allegedly subjected. while he was disappeared.

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<sup>192</sup> Witness statement of Jaime Antonio Omeara Miraval of August 17, 2010, *supra*, and Statements of Fabiola Álvarez Solano, Carmen Teresa Omeara Miraval, Noel Emiro Omeara Miraval, Ricaurte Omeara Miraval and Araminta Omeara Miraval given by affidavit, *supra*.

<sup>193</sup> Cf. *Case of Bueno Alves v. Argentina. Merits, Reparations and Costs*. Judgment of May 11, 2007. Series C No. 164, para. 79, and *Case of Herrera Espinoza et al. v. Ecuador. Preliminary Exceptions, Merits, Reparations and Costs*. Judgment of September 1, 2016. Series C No. 316, para. 87.

**VIII.3**  
**RIGHTS TO A FAIR TRIAL AND JUDICIAL PROTECTION**  
**(Articles 8(1)<sup>194</sup> and 25(1)<sup>195</sup> of the American Convention on Human Rights,**  
**regarding Article 1(1) of the Convention and Articles 1<sup>196</sup>, 6<sup>197</sup> and 8<sup>198</sup> of the**  
**Inter-American Convention to Prevent and Punish Torture and Article I(b)<sup>199</sup> of the**  
**Inter-American Convention on Forced Disappearance of Persons)**

203. Pursuant to the American Convention, the States Parties are obliged to provide effective judicial remedies to the victims of human rights violations (Article 25), which must be substantiated in accordance with the rules of due process of law (Article 8(1)); all within the general obligation, responsibility of the States themselves, to guarantee the free and full exercise of the rights recognized by the Convention to every person within their jurisdiction (Article 1(1))<sup>200</sup>. The right of access to justice must ensure, in a reasonable time, the right of the presumed victims or their next of kin to have everything necessary done to find out the truth of what happened and to investigate, prosecute and, where appropriate, punish the possible perpetrators.<sup>201</sup> The obligation to investigate is one of means and not of result and must be taken on by the State as its own legal duty.<sup>202</sup> The investigation must be serious, impartial and effective, and be aimed at determining the truth and the pursuit, capture, trial and eventual punishment of the perpetrators of the acts.<sup>203</sup>

204. In this case, internal proceedings were carried out to investigate the facts of the case. Accordingly, the **Commission** observed that “[23] years after the events occurred [...] they

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<sup>194</sup> Article 8 of the American Convention says, as relevant, “1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.”

<sup>195</sup> Article 25 of the Convention, where relevant, expresses “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.”

<sup>196</sup> Article 1 of the IACPPT states: “The State Parties undertake to prevent and punish torture in accordance with the terms of this Convention.”

<sup>197</sup> The text of article 6 of the ICPPT reads: “In accordance with the terms of Article 1, the States Parties shall take effective measures to prevent and punish torture within their jurisdiction. The States Parties shall ensure that all acts of torture and attempts to commit torture are offenses under their criminal law and shall make such acts punishable by severe penalties that take into account their serious nature. The States Parties likewise shall take effective measures to prevent and punish other cruel, inhuman, or degrading treatment or punishment within their jurisdiction.”

<sup>198</sup> Article 8 of the ICPPT, states: “The States Parties shall guarantee that any person making an accusation of having been subjected to torture within their jurisdiction shall have the right to an impartial examination of his case. Likewise, if there is an accusation or well-grounded reason to believe that an act of torture has been committed within their jurisdiction, the States Parties shall guarantee that their respective authorities will proceed properly and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal process. After all the domestic legal procedures of the respective State and the corresponding appeals have been exhausted, the case may be submitted to the international fora whose competence has been recognized by that State.”

<sup>199</sup> Article I(b) of the CIDFP states: “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;”.

<sup>200</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary Exceptions*. Judgment of June 26, 1987. Series C No. 1, para. 91, and *Case of López Soto et al. v. Venezuela, supra*, para. 217.

<sup>201</sup> Cf. *Case of Bulacio v. Argentina. Merits, Reparations and Costs*. Judgment of September 18, 2003. Series C No. 100, para. 114, and *Case of López Soto et al. v. Venezuela, supra*, para. 217.

<sup>202</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 177, and *Case of Terrones Silva et al. v. Peru, supra*, para. 182.

<sup>203</sup> 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 Amrhein et al. v. Costa Rica, supra*, para. 461.

remain unpunished." The **representatives**<sup>204</sup> maintained that "the [S]tate has totally failed to comply with the duty of due diligence in the investigations."<sup>205</sup> Both argued that Colombia violated Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) therein. Also, that in the investigation of the facts related to Manuel Guillermo Omeara Miraval (hereinafter also "investigation into Omeara Miraval"), it violated Articles 1, 6 and 8 of the Inter-American Convention against Torture and Article I(b) of the Inter-American Convention on Forced Disappearance. The **State** affirmed that "the lack of diligence during some periods in the progress of the internal investigations has resulted in the denial of justice." However, as already indicated, it acknowledged its responsibility in a "partial" way. It asked the Court to accept its acknowledgement in such terms.

205. The **Court** will examine the arguments of the Commission and the parties.<sup>206</sup> To this end, it will proceed in the following order: (A) Clarifications on the scope of the partial acknowledgment of responsibility; (B) Disputed aspects regarding the investigation of the facts; (C) Right to the Truth in relation to the fate of Mr. Omeara Miraval, and (D) Conclusion.

#### **A. Clarifications on the scope of the partial acknowledgement of responsibility**

206. As previously indicated, the dispute has ceased regarding the State, as it acknowledged:

(a) Regarding the investigation of what happened to Noel Emiro Omeara Carrascal (hereinafter, "investigation into Omeara Carrascal"), "[it] failed to comply with the duty of due diligence [...] for having delayed incorporation of the fact [against him], because it was not until July 31, 1998 that this investigation was linked to the murder of [...] Sepúlveda, which began on January 31, 1994"<sup>207</sup>;

(b) Regarding the investigation of what happened to Omeara Miraval (hereinafter, "investigation into Omeara Miraval"), Colombia "breach[ed] the duty of due diligence in the investigation of the alleged acts of torture";

(c) Regarding the investigation into what happened to Héctor Álvarez Sánchez (hereinafter also "investigation into Álvarez Sánchez"), it is "responsible" for "not having diligently investigated in the period between October 21, 1994 [ and] March

<sup>204</sup> The representatives included in their arguments, regarding the investigation of the facts indicated, the alleged lack of investigation regarding "prior complaints" in regard to José Erminso Sepúlveda Saravia, as well as the lack of protection for said person. According to what has already been established about said person, as well as regarding the duty of prevention in relation to the right to life, these arguments will not be considered. In addition, they made further remarks about the lack of protection of individuals, linking this to the lack of diligence in the investigation that will be explained later. However, when presenting their arguments regarding the investigations, they also pointed out that the alleged lack of protection implied a breach of the State's duty to "reasonably prevent human rights violations." This section only analyzes the arguments regarding diligence in investigations. The matter related to the duty of prevention has already been resolved (*supra* paras. 30 and 56).

<sup>205</sup> They stated that "the innumerable references that the government makes in its answering brief to the proceedings, the vast majority of them [are] only procedural."

<sup>206</sup> It will do so with respect to all persons considered alleged victims. The clarification is pertinent because while the representatives affirmed that the violations of rights that they alleged in connection with the investigation of the facts harmed "the victims and their next of kin." The Commission argued that it was only to the next of kin of Messrs. Omeara Carrascal, Omeara Miraval and Álvarez Sánchez. However, the Court does not find reasons to exclude any presumed victim from the evaluation that must be carried out and, in particular, notes that at least two of the newly named persons remained alive for some time after the acts which led to the investigations committed against them or against their next of kin. A review of the enforcement/compliance/implementation, where relevant, of the Inter-American Convention against Torture and the Inter-American Convention on Forced Disappearance, will refer to the period after the entry into force of said treaties for the State, that is, respectively, after the January 19, 1999 and April 12, 2005.

<sup>207</sup> The State clarified that the "late inclusion [of Mr. Omeara Carrascal] as a victim [...] does not imply that the circumstances of the attack against him were not investigated, since in any case all the acts related to the clarification from the crime scene, were carried out under the investigation carried out for the homicide of [Mr.] [...] Sepúlveda."

2003"<sup>208</sup>, and

(d) "[is] responsible, due to omission in the investigation of: (i) the alleged threatening acts [...] to the detriment of Carmen Teresa Omeara Miraval," and (ii) "the alleged acts of forced displacement [...] to the detriment of Carmen Teresa Omeara Miraval; Fabiola Álvarez Solano, and [...] Elba [K]atherine Omeara Álvarez, Manuel Guillermo Omeara Álvarez and Claudia Marcela Omeara Álvarez."

207. Given the State's acknowledgment of responsibility for the aforementioned aspects, the Court does not consider it necessary to examine them. It is relevant, however, to make two clarifications: one regarding the time elapsed in the investigations into Omeara Carrascal and Álvarez Sánchez and another regarding the violation of the Inter-American Convention against Torture in relation to the investigation into Omeara Miraval.

208. Regarding the time elapsed in the investigations into Omeara Carrascal and Álvarez Sánchez, taking into account the State's acknowledgment of responsibility and the fact that nearly 24 years have passed since the events occurred, the Court considers it unnecessary to review and examine the arguments regarding the violation of the reasonable time, since the unjustified delay is evident.<sup>209</sup>

209. In regards to the violation of the Inter-American Convention against Torture, regarding the investigation of Omeara Miraval, it should be noted that the State acknowledged having violated Article 8 in relation to the general obligation established in Article 1, but not Article 6 of said Convention, pointing out that it follows the obligation of Article 1 of the same treaty and that it did not breach that duty.<sup>210</sup> In this regard, the Court recalls that in the first case in which it determined non-compliance with the aforementioned Convention,<sup>211</sup> and subsequently on multiple occasions,<sup>212</sup> it has carried out a joint examination of the three

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<sup>208</sup> It should be clarified that the State's acknowledgment regarding the investigation on Omeara Carrascal does not include a consideration of the time of the investigation. Indeed, it is clear from the terms of said acknowledgment that when Colombia refers to the fact that only on July 31, 1998, the investigation was "connected" with another in progress, it accepts, in the State's understanding, a lack of diligence, but not an undue delay. The opposite is true with respect to the state's recognition of responsibility for the investigation into Álvarez Sánchez. This is because Colombia "acknowledge[d] its responsibility for not having initiated the investigation ex officio, and for the judicial inactivity that lasted from October 1994 to March 2003", all "while the first steps to clarify the facts [...] took 9 years."

<sup>209</sup> Indeed, in the first case, from the State's recognition it can be deduced that Colombia, for nearly 4 years, did not actively investigate the events that occurred on January 28, 1994. In the second case, no relevant actions were carried out before of 2003. Similarly, in other cases the Court has not carried out a thorough examination of the reasonableness of the time elapsed in the investigations, when an unjustified delay in the initiation of the leading actions was evident (*Cf. Case of Rodríguez Vera et al. (Disappeared from the Palace of Justice) v. Colombia, supra*, paragraph 506, and *Case of Terrones Silva et al. v. Peru, supra*, paragraph 185).

<sup>210</sup> In this regard, the State specified that "its acknowledgment of responsibility under Article 8 of the Inter-American Convention to Prevent and Punish Torture should not be understood as an acknowledgment of its responsibility under Article 6 of that same instrument." It explained that it understands that "Article 6 of the Inter-American Convention to Prevent and Punish Torture develops the general obligation set forth in Article 1, establishing a specific obligation for the States Parties to classify the crime of torture in the domestic law, as well as the establishment of severe penalties proportional to severity, in accordance with the notion of torture enshrined in the treaty. In this way, since Article 6 contributes in a special and specific way to the development of the general obligation, an interpretation in accordance with which, any violation of the obligation to investigate automatically supposes a violation of the obligation to classify is not admissible." It added that neither the representatives nor the Commission "develop[d] a specific charge for the violation of Article 6," and that the State has also complied with this norm, since at the time of the facts there was a constitutional prohibition of torture and this crime was classified in the Criminal Code, as well as "in Article 24 of Decree 180 of 1988, statute against terrorism, incorporated into permanent legislation by Extraordinary Decree 2266 of 1991." It added that "[t]he current Criminal Code, Law 599 of 2000" also classifies the crime and "that in the Colombian domestic sphere, torture is also a serious disciplinary offense. This is established in numeral 9 of article 48 of Law 734 of 2002".

<sup>211</sup> *Cf. Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits.* Judgment of March 8, 1998. Series C No. 37, para. 136.

<sup>212</sup> *Cf., among others, Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala, supra*, para. 252, and *Case of Favela Nova Brasília v. Brazil, supra*, para. 258.

provisions indicated. Even in some specific records in which it declared a violation of Article 8 and not the others,<sup>213</sup> it indicated that the duty established in Article 6 is not restricted to classifying the crime of torture. Thus, it has indicated that “failing to effectively investigate acts of torture [...] means [...] omitting to take effective measures to prevent acts of this nature from occurring again [...], ignoring the provisions of Article 6”.<sup>214</sup> The Court has indicated that “the obligation to investigate is reinforced by the provisions of Articles 1, 6 and 8 of the Convention [against] Torture”.<sup>215</sup> Therefore, it does not consider the State's arguments convincing and sees no reason to deviate from its most recent and consistent precedents. Consequently, the Court determines that as of February 18, 1999,<sup>216</sup> the State violated Articles 1, 6 and 8 of the aforementioned ICPPT.

210. Based on the foregoing, the Court finds the State responsible for the violation of Articles 8(1) and 25(1) of the American Convention, in relation to its Article 1(1), to the detriment of Messrs. Omeara Carrascal, Omeara Miraval and Álvarez Sánchez, as well as their families.<sup>217</sup> Furthermore, regarding the lack of investigation of alleged acts of torture, Colombia is responsible, to the detriment of Mr. Omeara Miraval's next of kin<sup>218</sup>, for the violation of Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) thereof and with Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture. The names of the persons referred to are indicated later, in section D of this chapter (*infra* paras. 258 and 259).

<sup>213</sup> Cf. *Case of Maritza Urrutia v. Guatemala. Merits, Reparations and Costs*. Judgment of November 27, 2003. Series C No. 103, paras. 128 to 130, and *Case of the Gómez Paquiyauri Brothers v. Peru. Merits, Reparations and Costs*. Judgment of July 8, 2004. Series C No. 110, paras. 154 to 156.

<sup>214</sup> Cf. *Case of Maritza Urrutia v. Guatemala, supra*, para. 129, and *Case of the Gómez Paquiyauri Brothers v. Peru, supra*, para. 155. In addition, in paragraph 114 of the last decision, it also indicated that “[a]rticles 1 [and] 6[, as well as 9] of [the Convention against Torture] oblige [...] taking all effective measures to prevent and punish all acts of torture”.

<sup>215</sup> Cf. *Case of Bueno Alvez v. Argentina, supra*, para. 88, and *Case of Amrhein et al. v. Costa Rica, supra*, para. 462.

<sup>216</sup> The Court has indicated that the obligations arising from the Inter-American Convention against Torture are enforceable as of its ratification, even if they were not in force at the time of the [event].” (Cf. *Case of the Dos Erres Massacre v. Guatemala. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 24, 2009. Series C No. 211, para. 137, and *Case of the Rural Community of Santa Bárbara Vs. Peru, Preliminary Objections, Merits, Reparations and Costs*, Judgment of September 1, 2015. Series C No. 299, paragraph 219). Colombia deposited the instrument of ratification on January 19, 1999. Article 22 of the aforementioned Convention states that it, [for each State that ratifies [it] [...] after the second instrument of ratification has been deposited, [...] shall enter into force on the thirtieth day from the date on which such State deposits its instrument of ratification”.

<sup>217</sup> Thus, the Court accepts the State's acknowledgment that, with respect to the investigation of the respective facts, it violated rights to the detriment of the next of kin of Omeara Carrascal and Omeara Miraval (*supra* paras. 16 and 32 and 19 and 33). It should be clarified that, based on what has been established based on the State's acknowledgment of responsibility, Omeara Miraval is not a victim due to the failure to investigate possible torture to his detriment but, as the son of Mr. Omeara Carrascal, of the failure to investigate what happened to the latter. As for Mr. Omeara Carrascal, who remained alive for some time after the attack against him, he is a victim in regard to the lack of investigative action around what happened to him in the first stages of the investigation. Finally, the State's acknowledgment regarding the investigation into what happened to Mr. Álvarez Sánchez covers the period between October 21, 1994 and March 10, 2003, and Mr. Álvarez Sánchez died on May 11, 2000. Therefore, the Court understands that, based on such acknowledgment, the State's responsibility covers damages both with respect to Mr. Álvarez Sánchez and his next of kin. Regarding the investigation of threats against Mrs. Carmen Omeara, the recognition of the State included the violation of Articles 5(1), 8 and 25 of the Convention, and the omission to investigate the facts related to forced displacement, to the detriment of Carmen Teresa Omeara Miraval, Fabiola Álvarez Solano and Elba Katherine and Claudia Marcela and Manuel Guillermo, all with the surnames Omeara Álvarez, the recognition by the State included the violation of Articles 22(1), 8, and 25 of the Convention, respectively (*supra* paras. 25 and 35). In addition, in relation to the investigation of the facts related to Mr. Álvarez Sánchez, Colombia acknowledged its responsibility for the violation of Articles 4 and 5 of the Convention for the omission in guaranteeing the duty to investigate the violation of the right to life and personal integrity (*supra* paras. 22 and 34).

<sup>218</sup> It was after the discovery of the body of Mr. Omeara Miraval that the State had “well-founded reason to believe that an act of torture ha[d] been committed,” in the terms of Article 8 of the Inter-American Convention against Torture. Therefore, it was once Mr. Omeara Miraval was dead that the obligation to investigate the possible torture arose. Therefore, he cannot be held as a victim of the breach of that duty.

## B. Disputed aspects regarding the investigation of the facts

211. In order to examine the points of the dispute regarding the investigation of the facts, the Court considers it necessary to recall that due diligence in the investigation requires that all actions and investigations necessary to obtain the desired result be carried out.<sup>219</sup> However, “the proceedings [...] must be assessed as a whole and it is not up to the Court, in principle, to decide whether the investigative measures are appropriate.”<sup>220</sup> It is up to the Court to evaluate whether, in the specific case, the shortcomings or omissions that are proven, considered in relation to the set of procedures carried out by the State, harmed the clarification of the circumstances of the facts or affected the final result of the investigations undertaken.<sup>221</sup> For this evaluation, objective or reasonable criteria must be taken into account, based on the particular circumstances of the case and the arguments of the parties and the Commission, and taking into account elements such as the evidence produced, the guidelines set forth by the case law of this Court, or the considerations of domestic authorities on measures that, in the specific case, they had indicated as necessary.<sup>222</sup>

212. The Court has indicated that the investigating body must use all available means to carry out all those actions and investigations that are necessary in order to try to obtain the desired result.<sup>223</sup> It is also necessary to avoid omissions in following-up logical lines of investigation.<sup>224</sup> If relevant, “[t]he due diligence investigation requires taking into account what happened in other [events] and establishing some type of relationship between them. This must be promoted ex officio, without the victims and their relatives having the burden of assuming such an initiative”.<sup>225</sup> Notwithstanding, the Court is not responsible for “substituting the domestic jurisdiction by establishing the specific modalities of investigation and trial [...], but rather to verify whether or not international obligations were violated in the steps actually taken at the domestic level.”<sup>226</sup> Therefore, the examination that the Court must carry out is independent of the investigations’ formal connection, the origin of which should be determined by the domestic authorities.<sup>227</sup>

<sup>219</sup> 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 Coc Max et al. (Xamán Massacre) v. Guatemala, supra*, para. 81.

<sup>220</sup> Cf. *Case of Castillo González et al. v. Venezuela. Merits*. Judgment of November 27, 2012. Series C No. 256, para. 153, and *Case of Carvajal Carvajal et al. v. Colombia, supra*, para. 118.

<sup>221</sup> 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 Coc Max et al. (Xamán Massacre) v. Guatemala, supra*, para. 81.

<sup>222</sup> Cf. *Case of Castillo González et al. v. Venezuela, supra*, para. 153, and *Case of Coc Max et al. (Xamán Massacre) v. Guatemala, supra*, para. 81.

<sup>223</sup> Cf. *Case of Gómez Palomino v. Peru. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 136, para. 80, and *Case of V.R.P., V.P.C. et al. v. Nicaragua, supra*, para. 151.

<sup>224</sup> Cf. *Case of the Serrano Cruz Sisters v. El Salvador*, paras. 88 and 105, and *Case of Coc Max et al. (Xamán Massacre) v. Guatemala, supra*, para. 85. Similarly, the expert witness Iván González Amado indicated the importance of exploring logical lines of investigation, stressing that, in facts such as those of the case, it is necessary that the investigations take into account the true nature and dimension of the violations, their possible origins, contexts and relationship with the participation of the authorities and the exercise of local powers. Cf. Expert Opinion of Iván González Amado rendered by affidavit presented before the Court (evidence file, affidavits and expert opinions, fs. 12143 to 12195).

<sup>225</sup> Cf. *Case of González et al. (“Cotton Field”), Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 16, 2009, para. 368 and *Case of the Garifuna Community of Punta Piedra and its members v. Honduras. Preliminary Exceptions, Merits, Reparations and Costs*. Judgment of October 8, 2015. Series C No. 304, para. 298. Similarly, the expert witness Valencia Villa indicated, regarding the case, that it was necessary to integrate the different lines of investigation between the three events, since they are interdependent, and that investigating them individually implies that there is fragmentation, which increases the risk of losing evidence”. Expert Opinion Alejandro Valencia Villa rendered by affidavit presented before the Court (evidence file, affidavits and expert opinions, fs. 11868 to 11880).

<sup>226</sup> Cf. *Case of Nogueira de Carvalho et al. v. Brazil. Preliminary Exceptions and Merits*. Judgment of November 28, 2006. Series C No. 161 para. 80, and *Case of Coc Max et al. (Xamán Massacre) v. Guatemala, supra*, para. 81.

<sup>227</sup> In this regard, the expert witness González Amado indicated that the relationship in the investigations depends on the regulations and the organization of the investigation structure, and that in some cases the exchange

213. Based on the above criteria, the Court will now rule on relevant controversial aspects regarding the investigations of the facts of the case. It will present the relevant arguments and then the considerations of this Court. The Court will not refer to facts or arguments whose examination is not necessary because they have been included in the analysis of the violations already determined with respect to the investigation of the facts.<sup>228</sup>

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

214. The **Commission** "warn[ed] that the investigations [...] have been carried out separately," and that this has been "an obstacle in clarifying the relationship between state agents and members of a paramilitary group that allegedly participated in the events."<sup>229</sup>

215. Regarding the investigation into Omeara Carrascal, the Commission argued that in the proceedings before it "the State ha[d] not proved that essential steps had been taken," and that there was a delay in carrying out others. The details of the arguments made by the Commission are referred to below (*infra* para. 231). The Commission also argued that Colombia has not "thoroughly exhausted the logical lines of investigation."

216. As regards the investigation into Omeara Miraval, the Commission referred to actions "carried out in the ordinary criminal, disciplinary, and military criminal jurisdiction," noting that the intervention of the former violated rights, and that the latter "does not constitute a satisfactory route. Alternatively, it considered "important that the Court analyze [...] that some of the procedures were carried out by officials presumably linked [...] to the body presumably [involved] in the commission of [the] events." The Commission noted that in the framework of the jurisdiction of Justice and Peace, JP had provided information indicating that RP had "commanded the disappearance and execution" of Omeara Miraval. Despite this, the Commission argued that it did not have state information on "proceedings to determine the responsibility of the members" of the "illegal armed group" or the participation of state agents. It also understood that the proceedings have exceeded a reasonable period.

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of information between prosecutors may be sufficient, as long as there are formal channels of communication, in order to adequately integrate the evidence. Cf. Expert Opinion of Iván González Amado rendered by affidavit, *supra*.<sup>228</sup> Regarding the *investigation into Omeara Carrascal*, Colombia, given the terms of its acknowledgment of responsibility, understood that "the analysis of the [S]tate's diligence [...] must [...] start from July 31, 1998." However, it pointed out that the first investigative acts were adequate. The Court understands that the State's arguments regarding the first proceedings are contradictory and inconsistent with its acknowledgment of responsibility. Taking this recognition into consideration, the Court concludes that the actions adopted before July 31, 1998 could not be diligent for the purposes of the investigation in question. Therefore, regardless of the way in which they were carried out, they were not aimed at clarifying what happened to Mr. Omeara Carrascal. In this regard, the Court recalls that it has indicated that "due diligence with respect to an investigation is not limited to the mechanical performance of procedures, but it is necessary that this investigative activity be duly oriented, in accordance with the relevant hypotheses about the facts and its authorship" (Cf. *Case of Pacheco León et al. v. Honduras, supra*, para. 89). Due to the foregoing, it is not necessary to examine the arguments of the Commission or the representatives on the manner in which acts of investigation were carried out with regard to actions prior to the indicated date. This includes the statements made by the representatives regarding "irregularities in the taking of the first testimonies" and their "intimidating" nature. It also covers arguments about the omission of certain actions whose performance, by their very nature or in the circumstances of the case, would be effective or relevant in the early stages of the investigation or before July 31, 1998. This includes the indications of the Commission and the representatives on the collection of evidence at the crime scene or the adoption of protection measures for Omeara Carrascal, as well as for his relatives or other persons before the aforementioned date. Regarding the *investigation into Omeara Miraval*, it is not necessary to examine the arguments regarding the lack of investigation of acts of torture, as it linked to the indication of the representatives regarding the omission of an autopsy and exhumation of the corpse. Regarding the *investigation into Alvarez Sánchez*, it is not necessary to address the arguments of the representatives regarding the failure to initiate the investigation ex officio, or the lack of "procedural progress" until March 2003.

<sup>229</sup> The Commission explained that in the three investigations there are various accusations "of the next of kin" about the same paramilitary group and, furthermore, "some of the names of the alleged perpetrators, such as [GM] and CV coincide in some investigations." "[I]t not[ed] that [...] there is still a lack of analysis of the findings made in [the three investigations] and of investigative hypotheses that fully link them."

217. Regarding the investigation into Álvarez Sánchez, the Commission considered that from the "detailed list of procedures carried out in the investigation beginning in 2003", presented by the State in its answering brief, "it is clear that in general, it undertook little evidentiary activity in relation to the hypotheses that point to the involvement of state agents in the events".<sup>230</sup>

218. The **representatives** stated that "no effective measures were taken to connect the investigations."<sup>231</sup> They added that it took several years "until [...] [the] investigations cross[ed] seriously, by assigning the same prosecutor."<sup>232</sup> They pointed out that in the jurisdiction of Justice and Peace "since [...] 2010, there were already [...] elements to consider who the people who participated in these events had been," but that "two years later" the "account"<sup>233</sup> was sent to "ordinary" jurisdiction, and "absolutely nothing" happened.

219. Regarding the investigation on Omeara Carrascal, the **representatives** indicated that "from an analysis of the file [...] there is no indication of [...] how the evidence was collected from the crime scene, if ballistic analysis were carried out [or] reconstruction of the facts. They also argued that "despite [...] information in the file regarding [...] collaboration between [...] the security forces and paramilitary groups at the time of the events, [...] there has been no significant progress [...] allowing the identification of [...] state agents who were involved."

220. The representatives made observations equivalent to those of the Commission regarding the investigation of Omeara Miraval. In addition, they stated that: (a) after the complaint was filed, there were no immediate measures to find Omeara Miraval; (b) there is no information on the steps taken, after the body was found, "to analyze the crime scene [or] the existence of traces on the items found with the body," and (c) the investigation "has not advanced since the first procedural stage, and currently only one person is linked to the process."<sup>234</sup> In addition, they affirmed that although the State from "the first moment" had elements that "indicated the participation of [RP]'s paramilitary group" and, in turn, had information that related this group to state institutions, "there was no indication in the file that [...] it had acted

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<sup>230</sup> "Notwithstanding the foregoing, the Commission advise[d] that the State [during the processing of the case before the Commission] reported that there is evidence establishing that one of the alleged perpetrators was [GM] who was assassinated on January 14, 1996". Regarding "other possible perpetrators," the Commission highlighted in the Merits Report that "in a free testimony" Mr. "[JPa]" admitted "having been a member of the self-defense group of [RP], [but] indicated that he did not participate in the events nor had information about the possible perpetrators." In this regard, the Commission indicated that "there is no record" that the State had "attempted to gather further evidence regarding Mr. [JPa] or investigated the possible participation of other members of the paramilitary group or State agents in the events."

<sup>231</sup> They indicated that it was pertinent to link the investigations because "there is a real common thread between the crimes, which was to guarantee impunity, trying to silence and punish those who wanted to investigate serious crimes committed with complicity between the State and paramilitary groups, such as the attempt against the life of Erminso Sepúlveda for being a member of the MAC". "[F]urthermore, there are many people in common linked to all of them. There are various statements in the three proceedings in which the paramilitary group led by [RP], as well as different State agents from UNASE and the DAS, are identified as responsible for the events. [CV] appears linked to the case of José Erminso Sepúlveda and Noel Emiro Omeara and then again in the case of Manuel Guillermo, [GM] appears linked to the disappearance of Manuel Guillermo Omeara Miraval and later to the attack against [...] Alvarez [Sanchez]".

<sup>232</sup> They stated that "[t]he last measure adopted" in the investigation into what happened to Álvarez Sánchez was "the assignment of the case to Prosecutor 66 of the Directorate of Human Rights and IHL Prosecutors based in Bucaramanga, which also pursued the other two related investigations. However, this, added to the Prosecutor's Office existing case load, has not had an impact on a greater procedural momentum of the case or on a contextual and exhaustive investigation.

<sup>233</sup> They indicated that they were referring to the fact that "[JP] [had] declar[ed] that [...] [GM] had participated" in the events relating to Messrs. Omeara Miraval and Álvarez Sánchez.

<sup>234</sup> The representatives refer to MR and refer, in this regard, to the decision to open an investigation against him issued by Prosecutor 66 on March 16, 2015 (evidence file, annex 93 to brief with pleadings, motions and evidence, fs. 2640 to 2542).



promptly and diligently to investigate the possible direct and/or indirect participation of state agents."<sup>235</sup>

221. Regarding the investigation into Álvarez Sánchez, the **representatives** stated that despite the fact that the connection between the incident and the disappearance of Manuel Guillermo Omeara Miraval arose from the complaint, "there is no action [...] appearing to incorporate this [...] in the analysis of possible culprits"<sup>236</sup>, and that "the possible state participation does not appear to have been taken seriously as an investigation hypothesis", as "[n]either the relationship [...] with the context [...] of the persecution of the MAC and the extrajudicial execution of José Erminso Sepúlveda".

222. Finally, the representatives indicated that "the State [did] not make any effort to protect" "[the]" Omeara Carrascal "family", in particular, Mr. Omeara Miraval, who was a "victim and witness" of the events.<sup>237</sup> In addition, they explained that Mr. Álvarez Sánchez and his next of kin were not protected, even though the former had "given a statement before the Prosecutor's Office in which he accused the [RP] group of being [...] responsible [...] for the disappearance of his son-in-law.

223. The **State** indicated that "taking into account the advances in the criminal investigations at the domestic level, it is not possible to establish, without a doubt, that the alleged violations have the causal link alleged by the representatives and the [Commission]." The fact that the State has not recognized it "does not imply that it denies that this could eventually be the case" and this "remains a line of investigation." He asserted that the investigations have been carried out "in an articulated manner",<sup>238</sup> and also clarified that "in the domestic legal system, the general rule is that each criminal act is investigated separately, and only exceptionally if the established requirements established by law are met, their connection can be ordered". It stated that the existence of "three different processes and offices"<sup>239</sup> [...] until March 2016, did not constitute per se a breach of the duty to investigate."<sup>240</sup>

<sup>235</sup> The representatives explained in this regard that: (a) "only" on August 9, 1995, was the "investigation of the paramilitary chief [RP]" ordered; (b) that "despite the belated efforts to link Major [JL], who was later acquitted of all responsibility, the file does not show that the State had acted promptly and diligently to investigate the possible direct and/or mediated participation of state agents in the events", and (c) there is evidence in the investigation that indicates "that the Prada family group coordinated all the actions with the Police, the Administrative Department of Security (DAS) and the Army. Furthermore, they indicated that there is no information on "an investigation into the anonymous call that the DAS allegedly received and that led to the location of the body" of Mr. Omeara Miraval.

<sup>236</sup> In particular, they stated that: a) they did not even "seek documentation on the criminal proceeding in which [...] Álvarez [Sánchez] had testified before the attempt on his life"; and b) "[what] should have been the core evidence of the investigation – the statement of [...] Álvarez [Sánchez] regarding what happened to Manuel Guillermo Omeara in which he accused the paramilitary group of the Prada family – was only obtained by the Prosecutor's Office nine years after the events".

<sup>237</sup> In the public hearing, they also stated that "the perpetrators" of the events "remain in Aguachica."

<sup>238</sup> Notwithstanding the foregoing, it acknowledged that there was a "late articulation" of the investigations into the events that occurred with respect to the Omeara Carrascal and Álvarez Sánchez, "due to the late inclusion of Noel Emiro [Omeara Carrascal] in the investigation -until July 1998-, and [as regards Mr. Álvarez Sánchez,] [...] for the period of inactivity from [the] beginning [of the proceedings] until March 2003."

<sup>239</sup> The State clarified that it was referring to "Prosecutor 44, [to] Prosecutor 66 and [to] Prosecutor 22, respectively in the case of Noel Emiro [Omeara Carrascal], Manuel Guillermo [Omeara Miraval] and Héctor Álvarez [Sánchez], all from the Directorate of the National Special Prosecutor for Human Rights and IHL".

<sup>240</sup> It maintained that the investigations "were carried out in a coordinated manner, taking into account the results obtained and the lines of investigation developed in each one," that "the three prosecutors in charge [...] kept themselves informed of the progress made in all the processes", and that from the first proceedings, to the present, "the three processes fed and fed back through multiple investigative proceedings, especially judicial inspections. Also, in the three cases and during the practice of statements to relatives, neighbors and demobilized persons; Prosecutors have permanently inquired about the possible interrelationship between the events." Regarding the foregoing, Colombia detailed a series of actions that, in its opinion, "demonstrate the aforementioned articulation." They are referred to later. It also said that most of the statements by demobilized members of the Héctor Julio Peinado Front, used to investigate paramilitary participation in the events involving Mr. Omeara Carrascal, "come [...] from the investigations into the attack against Héctor Álvarez and the disappearance and execution of Manuel Guillermo

Colombia also warned that the investigations have been "join[ed] with [...] [a process] that is currently underway [...] [in the jurisdiction of Justice and Peace]," <sup>241</sup>, and that in this area "the investigation [...] was undertaken in compliance with the guarantees of due process."<sup>242</sup>

224. The State asserted that the investigation into Omeara Carrascal has met "the parameters established for the investigation of violent acts against life."<sup>243</sup> It also argued that: (a) "from the first moment of the investigation" the "hypothesis" of a "political motive" for the attack was assumed, and (b) the possible responsibility of state and paramilitary agents was duly investigated, in terms of: (i) state agents who are members of UNASE<sup>244</sup>; (ii) a police

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Omeara [Miraval]", which shows "the collaboration between the investigating prosecutors of the three cases". In turn, it stated that "the investigation into [what happened to] Manuel Guillermo Omeara [Miraval] contributed substantially to the investigation into [what happened with respect to] Héctor Álvarez [Sánchez] once the latter was reopened."

<sup>241</sup> In this regard, the State expressed that said jurisdiction is based on Law No. 975 of 2005, whose Article 2 (modified by Law No. 1592 of 2012) "establishes the scope of application of the law [...] indicating that [...] it regulates events concerning the investigation, prosecution, punishment and judicial benefits of persons linked to armed groups organized outside the law, as perpetrators or part[i]cipants of criminal acts committed during and while belonging to those groups that have decided to demobilize and contribute decisively to national reconciliation, applying prioritization criteria in the investigation and prosecution of this behavior". Based on this, Colombia affirmed that "it is clear" that the application of the law "is reserved for the investigation and trial of the demobilized members of the armed groups organized outside the law who applied and expressed their willingness to accept the process and benefits established in this regulatory framework". The State indicated investigative actions on the facts of the case based on proceedings in the framework of Justice and Peace.

<sup>242</sup> Delving into its considerations, it indicated that in 2010, "the proposed [JP] made reference to the events" of the case, but that "his statements [do not] constitute [...] sufficient elements" to "determine [...] individual criminal responsibilities", given the need for "corroboration" provided by law for "the information indicated by the aforementioned in the free statements". It affirmed that, "in addition to [JP], commander of the Héctor Julio Peinado Front, other proposed members of the Prada paramilitary group at the time of the events, have referred to them and have even accepted their responsibility." At the public hearing, Colombia said that "there will soon be charges made for this conduct" against "three demobilized individuals" who "have accepted their participation in the events of this case." In the final written arguments, it specified that "[a]ccording to the statement by Prosecutor 34, the facts of the present case will be presented shortly in a hearing on thematic charges regarding attacks on leftist groups, and [JP, [FP] and [JP] will be charged. They will also be presented at the first hearing of structural closure, projected for the years 2017 and 2018". On the other hand, Colombia also asserted that "it has been clarified that the armed structure responsible for the events under study is the Héctor Julio Peinado Front" of the AUC, and indicated that since 2014 "the prosecution of crimes committed by [the] members" of that group "has been prioritized".

<sup>243</sup> In this regard, it emphasized that the victim was fully identified. Probative material related to the death was recovered, such as the ballistic opinion on the projectiles recovered and the photographic album of the scene of the event. It added that a statement was obtained from "all eyewitnesses to the event," as well as from "Mr. Sepúlveda's companions" and "those who were in the vicinity." He added that on December 4, 2001, the medical records of Omeara Carrascal were submitted, and pointed to a "ballistics report of December 26, 2007." It said that the moment in which these two procedures were carried out "does not imply significant damage", since the task of "identifying those responsible for the events, [...] is not affected by the allegedly delayed inclusion in the clinical history", and given that "the ballistic study [...] is delimited in a similar way". It clarified that "it is not required that this type of evidence be carried out as soon as possible in the procedure, under threat of losing its precision," and that "[t]he process focused on establishing the unit and the responsible persons, and only when this task was accomplished, would these other tests have been decisive." It affirmed that as time goes by "victims have more and more confidence to testify" and that there are no records of criminal complaints by witnesses who would have testified. Therefore, it understood that "there is no basis" to maintain that the alleged presence of the perpetrators of the events in Aguachica would produce a situation of intimidation.

<sup>244</sup> The State indicated that "although it has provided proof of [the] participation [by members of UNASE] in the attack against Noel Emiro Omeara, their individual identification has been particularly difficult." It explained that "the news of their participation in the act must have been known through multiple statements and reports from the judicial police, which did not specifically identify them and that referred, on many occasions, to other criminal acts." Subsequently, lists of its members for the years 1994 and 1995 had to be requested, along with acquisition of their resumes, their identification cards from the National Registry Office, in some cases photographs, multiple photographic albums had to be prepared, to complete judicial procedures of recognition". Notwithstanding the foregoing, it stated that "a very large percentage of the investigation has been aimed at identifying the State agents who participated in the events."

agent,<sup>245</sup> and (iii) paramilitaries.<sup>246</sup>

225. The **State** considered "that the disappearance and [the] death" of Mr. Omeara Miraval "were diligently investigated from the beginning." It asserted that UNASE's intervention did not breach the guarantee of impartiality, since it did not prevent the follow-up of a "line of investigation related to the participation of state agents and even members of UNASE."<sup>247</sup> It indicated that for this "it has deployed [various] measures".<sup>248</sup>

226. In relation to the investigation into Álvarez Sánchez, the State affirmed that: (a) regarding the possible participation of state agents, that "the material reviewed and collected during the first proceedings gave rise to the consideration of three lines of investigation",<sup>249</sup> which do not rule out the participation of state agents, although "there are no elements that prove their participation",<sup>250</sup> (b) regarding the participation of paramilitaries, that "it has been proven" that [GM] was one of the material authors" and that "[JC], [...] would also be the presumed author of the events", but they died, respectively, in October 1994 and January 1996, for which reason "it has not been possible to determine with certainty the motive of the attack".<sup>251</sup>

227. Lastly, the State clarified that "its acknowledgment of responsibility does not cover the obligation to protect in relation to any of the next of kin of the direct victims."

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<sup>245</sup> It explained that "[although] there had been news of [CV] since 2003, the true information about his presumed participation in the events dates back to 2008, so it is not true that he was recognized from the beginning, since his full name was not known and it was said that he was a member of the UNASE group, only due to judicial police activities was he fully identified in October 2010 and was it established that he belonged to the SIJIN of Aguachica and the necessary information has been provided to identify him as a material author of the act in the course of the investigation".

<sup>246</sup> Colombia argued that this was achieved through "various procedures" and, in particular, "taking into account the statements of various demobilized members of the Héctor Julio Peinado Front, who have referred to the events."

<sup>247</sup> In this regard, the State highlighted that "the investigation commission appointed during the initial stages of the procedure to investigate the facts under analysis, made up of agents belonging to the Department of National Security (DAS), reached conclusions about the perpetrators of the events, most of which involve the responsibility of members of the Security Forces, even belonging to the same entity."

<sup>248</sup> It should be noted that, among the aspects that it indicated, it argued that "intelligence work carried out" led to the accusation of Army Major JL, and on March 13, 1995, his involvement in the process and his capture were ordered, and that after he was apprehended. In the same month he made two investigative statements and his preventive detention was ordered. It added that various statements were received indicating the joint actions of the Army and paramilitary groups, and therefore on November 3, 1995 the Attorney General's Office issued a work order to "collect information on the UNASE personnel assigned to Aguachica [...], accused of acting in coordination with the paramilitaries in some of the statements." The State indicated that during 1996 and 1998 other statements were obtained in the same vein. In addition, it argued, among other actions, that "on October 18, 1996, the Office of the National Attorney General gave an order to locate the San Martín police commander (Cesar) at the time of the events." The State, with respect to the preventive detention measure that, according to its statements, was ordered in 1995 for Major JL, did not indicate if it ceased, and if so, when, but it indicated that in 1998 Major JL was linked to the process and investigated, and an order for preventive detention was issued against him. Colombia indicated that in 2000 it "decided[ed] to terminate the investigation due to [lack of] [...] evidence" against Major JL, but that in 2010, 2012 and 2013 statements were taken indicating the participation of UNASE officers in the events, and its link to the paramilitaries.

<sup>249</sup> These lines of investigation are, according to the State, that the "attack" was motivated by: (a) "the statement made by [...] Álvarez [Sánchez] before the FGN on September 6, 1994"; (b) "[the] non-payment of extortion and/or protection payments collected by paramilitaries", and (c) a "personal retaliation". The State listed the "material" that, in its opinion, supports each hypothesis.

<sup>250</sup> It added that, since "all the hypotheses have supporting evidence", there is "lack of certainty in the motives that motivated the occurrence of the events."

<sup>251</sup> The State argued that the deaths already indicated, as well as that of RP, prevented the linking of the deceased persons to the proceedings. The State added that, despite the indications, the investigation continued and a person [JPa] in a "free statement" even when he accepted "that he joined the self-defense group of [RP] in 1994", did not acknowledge having participated in the act against Álvarez Sánchez nor did he provide information on other possible perpetrators. Colombia also mentioned the statement of another person, which indicated the participation of GM.

## B.2. Considerations of the Court

228. The Court notes that Colombia articulated a series of actions carried out based on information obtained in the Justice and Peace process.<sup>252</sup> It also arose from the facts that on January 17, 2017, three paramilitaries declared and accepted the facts, indicating that what happened to Messrs. Omeara Carrascal, Omeara Miraval and Álvarez Sánchez was ordered by RP, and pointing to relations between the paramilitary group and the State (*supra* para. 167). In this regard, in his affidavit presented to the Court, the witness Iván Augusto Gómez Celis, Prosecutor of the 34th Prosecutor's Office, currently assigned to the case in the Justice and Peace process, on May 18, 2017, indicated that based on the foregoing, they carried out a series of actions,<sup>253</sup> and that "soon" an "accusation hearing" will be held, and that "[t]his fact" (referring, apparently, to what happened to Messrs. Omeara Carrascal, Omeara Miraval and Álvarez Sánchez) "will be presented at an accusation hearing for structural closure, projected for the years 2017 and 2018."

229. This Court assesses the actions carried out by the State<sup>254</sup> and the foregoing information and considers that it implies progress in actions aimed at determining what happened and the corresponding responsibilities in the investigations. Notwithstanding, it notes that it refers to occurrences that happened nearly 24 years after the events. Therefore, the Court must examine the State's prior conduct to determine whether, during the indicated time, the State carried out diligent and timely actions. In this regard, although the Court appreciates that there have been joint actions,<sup>255</sup> the expert evidence, as well as

<sup>252</sup> The State explained that "[k]eeping in mind the statements provided by the applicants", various "investigative activities" were carried out, "receipt of statements by witnesses to the facts and family members, interviews with members of the Héctor Julio Peinado Front, and judicial inspections of the ordinary proceedings carried out on the facts, among others." The State specified that: (1) On December 22, 2016, investigators from the Judicial Police reported on the following activities: (a) "[c]onsulting the free statements in proceedings given by the proposed members of the Héctor Julio Peinado Front"; (b) "[c]onsultation of the dossier of the Héctor Julio Peinado Front"; (c) "[l]ocation of the proceedings in ordinary jurisdiction"; (d) "information verification work"; (e) "[s]earch for information in databases"; (f) "[o]btaining photographs and maps of the scene of the events"; (g) "[i]nterview with indirect victims," and (h) "[e]laboration of profiles of direct victims"; (2) "[o]n January 24, 2017, the Judicial Police presented a report on the hearing of the collective statements carried out with respect to former members of the Héctor Julio Peinado Front, in relation to the facts of the case," in which six people testified. As the State appreciated, "the questions put to the deponents were aimed at clarifying not only the facts of the specific case and the responsibility of the paramilitary group, but also, to reveal the macro-criminal structures that could be related to them," and (3) "[o]n January 26, 2017, the judicial investigator submitted a report on the analysis of the procedural pieces belonging to the basis of the framework within which the facts are being investigated within the ordinary jurisdiction."

<sup>253</sup> It stated that the following were completed: "verification, review reports, and analysis of the procedural pieces of interest within file No. 15 that is being filed in Prosecutor's Office 66 [...] for the murder of [...] [Omeara Miraval]; report review and analysis of the procedural pieces of [the] events[s] in [which] [Sepúlveda, Omeara Carrascal, Omeara Miraval and Álvarez Sánchez] were victims; Documentation of the events that occurred between January 28 and October 21, 1994, in the municipalities of A[guachica and San Martín, Cesar] where [the indicated persons] were direct victims [...] and judicial inspections of other prosecutor's offices ". It affirmed that "[t]hese tasks were carried out jointly, in common and through feedback with the 66th Prosecutor's Office." Statement of Iván Augusto Gómez Celis, *supra*.

<sup>254</sup> Notwithstanding the assessment of other circumstances, the Court notes the indication by the witness Gómez Celis, insofar as the jurisdiction of Justice and Peace contributed to the reconstruction of the phenomenon of paramilitarism based on a georeferencing of the departments, cities and municipalities where it was developed; a description of the actors involved and the time in which they carried out their activities; as well as a description of the Héctor Julio Peinado paramilitary front, its members, modus operandi, its structure and military, financial and political organization. Statement of Iván Augusto Gómez Celis, *supra*.

<sup>255</sup> The witness Diego Fernando Rosas Carreño, Prosecutor of Prosecutor's Office 66, affirmed that there is intercommunication between all the investigations, which translates into common evidence and proceedings in some that refer to the others. He pointed out that there is also a relationship with the corresponding process in Justice and Peace, due to the need to know the statements of the members of the illegal armed group. He mentioned that there were never formal meetings between the prosecutors, but that they talked about the subject and drew up investigative strategies. The witness also pointed out that he was assigned the case of Omeara Miraval in 2008, while the case of Álvarez Sánchez was received in 2016. Statement by Diego Fernando Rosas Carreño given to the Court at the public hearing held on the 25th and 26th of May 2017.

considerations made later (*infra* paras. 232 to 235 and 238 to 251) indicate that they were insufficient<sup>256</sup> or delayed.

230. Given the foregoing, particular aspects of the investigations of the various facts and the protection of family members must be examined.

#### B.2.1. Investigation into Omeara Carrascal

231. The Court notes that, regarding the *investigation into Omeara Carrascal*, the Commission argued that the State has not carried out the following steps: planimetry, reconstruction of events and "identification of projectiles fired". However, it did not explain how, in the specific case, such omissions would have harmed the investigation. The same can be said about the statements made by the representatives (*supra* para. 220). In addition, the Commission argued that the State delayed a medical report on the causes of death and a ballistics report. These acts, respectively, took place on February 12, 2004 and December 26, 2007.<sup>257</sup> Although the Commission affirmed that the delay in carrying out these actions has a "direct impact" on the possible effectiveness, it did not indicate how such an "impact" would have affected the case. In view of this, the Court notes the State's considerations that the timing of these actions does not affect the identification of those responsible for the facts<sup>258</sup> (*supra* footnote 243). This Court does not have evidence that allows it to conclude that, in the circumstances of the case, the omissions or delays alleged by the Commission and the representatives had a negative impact on the investigation.

232. However, in addition, in the *investigation into Omeara Carrascal* there were actions that were delayed.

233. Thus, although on January 29, 1999, the Prosecutor's Office requested information about police and military officials, in their communication of February of that year, the military authorities did not provide the requested information (*supra* para. 105), with no record that at that time they had taken further action to obtain it.<sup>259</sup> Two years later, a group from the

<sup>256</sup> Expert witness González Amado pointed out that coordination must be real and effective, exchanging findings and results, determining the structure of responsible power; but he considered that in this case only simple inspections were shared, without data exchange or the reconstruction of a context. *Cf.* Expert opinion of Iván González Amado, *supra*. Regarding such inspections, it should be noted that said measure was highlighted by Colombia as the way in which "especially" the relationship between the different actions occurred. On the other hand, without prejudice to this Court's assessment of the actions referred to by the witness Rosas Carreño. Statement of Diego Fernando Rosas Carreño, *supra*. Regarding the conversations between prosecutors, this Court notes that the expert witness González Amado indicated that a sufficient connection between the investigations requires that the exchange of information between prosecutors take place through "formal channels" of communication. Expert opinion of Iván González Amado, *supra*.

<sup>257</sup> On the first date, the legal medical opinion was made on the clinical history of Omeara Carrascal, which establishes the causes of his death (*Cf.* File No. 397, Institute of Legal Medicine and Forensic Sciences, Bogotá Regional Office, Grupo of Forensic Thanatology, Extension No. 017-2004, Consecutive 123-03 of February 12, 2004, evidence file, answering brief, pages 5095 to 5097). On the second date, a ballistic opinion was given, which corresponds to the projectile found in the body of Mr. José Erminso Sepúlveda (*Cf.* File No. 397, Sectional Directorate of the Technical Investigation Corps, Scientific Research Laboratory, Ballistics Group, Investigative Report Laboratory FPJ-13 of December 26, 2007, evidence file, answering brief, pages 5167 to 5170).

<sup>258</sup> The State explained that the moment these two procedures were carried out "does not imply [...] significant damage to the results of the investigations", since the task of "identifying those responsible for the events, [...] was not affected by the presumably late inclusion of the clinical history", and given that "the ballistic study [...] is delimited in a similar manner." It clarified that "it is not required that this type of evidence be carried out as soon as possible in the procedure, under threat of losing its precision," and that "[t]he process focused on establishing the unit and the responsible persons, and only when this task was accomplished, would these other tests have been decisive."

<sup>259</sup> In this regard, it emerges from the facts that when on February 25, 1999, the Commander of Infantry No. 15 replied that he did not know who were members of the troops in Aguachica, he requested that the request for information be forwarded to the Counter guerrilla Battalion No. 27, but there is no evidence that this action, or any other, was carried out in order to obtain the information (*supra* footnote on page 82).

DAS was commissioned to locate witnesses and determine whether UNASE existed in the municipality of Aguachica (*supra* para. 106), and after April 2002 an inspection of UNASE headquarters was ordered, to determine its personnel in 1994 (*supra* para. 107). In May 2002 an inspection of the investigation into Omeara Miraval was ordered (*supra* para. 139). Regarding all of the above, it should be noted that the information on UNASE personnel had been incorporated into the investigation into Omeara Miraval since 1996. Therefore, there was an unnecessary delay, in the investigation on Omeara Carrascal, in obtaining the information, which was in the power of the state. Therefore, considering the possibility of the intervention of members of the UNASE in the events, this resulted in negligent action in the follow-up of lines of investigation.

234. Regarding the above, it should be noted that the May 2002 inspection mentioned in the preceding paragraph was the first to be carried out. According to expert evidence rendered before the Court, the judicial inspections were delayed.<sup>260</sup>

235. Furthermore, although in the investigation into Omeara Miraval in 1995 statements had been received indicating Major JL's links with paramilitary groups in Aguachica (*supra* footnote 248), that information was only incorporated into the investigation into Omeara Carrascal in 2004 (*supra* para. 109). In addition, there is no resulting evidence that, after 2004, in the investigation on Omeara Carrascal, actions were taken to follow up on said information, such as ordering the statement of Major JL or of the declarants who had stated his link to the paramilitary groups.

#### B.2.2. Investigation into Omeara Miraval

236. Regarding the investigation in the events that occurred to Mr. Omeara Miraval, it should be established, first of all, that the respective duty of the State arises not only from the American Convention, but also, from the dates of its entry into force, of the Inter-American Convention against Torture, whose violation in the case has already been determined based on State recognition (*supra* para. 19) and of the Inter-American Convention on Forced Disappearance.<sup>261</sup> The Commission and the representatives argued the violation of these treaties.

237. The Court also recalls that military justice "is not the appropriate jurisdiction to investigate [...] human rights violations."<sup>262</sup> However, it does not appear that in this case said intervention has replaced, prevented, delayed, suspended or detrimentally affected in any way the actions of other jurisdictions. Although the disciplinary investigation is not suitable to replace the criminal jurisdiction<sup>263</sup> and, furthermore, in this case, it did not lead to effective sanctions, nor did it undermine other actions. Therefore, the Court does not consider it necessary to examine the actions referred to, but rather proceeds to analyze actions in the ordinary jurisdiction.

238. In this regard, it should be remembered that in cases in which it can be assumed that a person is missing as a result of an illegal act, the States must act promptly in the first hours and days after the report of disappearance or kidnapping.<sup>264</sup> This Court also warns, as the

<sup>260</sup> This was indicated by the expert Iván González Amado. Expert opinion of Iván González Amado, *supra*.

<sup>261</sup> Regarding the Inter-American Convention against Torture, it has already been indicated that the date from which Colombia's responsibility can be examined is February 18, 1999 (*supra* para. 209). The Inter-American Convention on Forced Disappearance entered into force for the State on April 12, 2005.

<sup>262</sup> Cf. *Case of La Cantuta v. Peru. Merits, Reparations and Costs*. Judgment of November 29, 2006. Series C No. 162, para. 142, and *Case of Coc Max et al. (Xamán Massacre) v. Guatemala, supra*, para. 84.

<sup>263</sup> Cf. *Case of the Pueblo Bello Massacre v. Colombia, supra*, para. 204.

<sup>264</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 174, and *Case of Terrones Silva et al. v. Peru, supra*, para. 203.

State has done in its response, that "the guarantee of impartiality is required [...] before the authorities that carry out investigative tasks".<sup>265</sup>

239. However, it emerges from the facts that after the complaint was filed with UNASE on August 28, 1994 (*supra* para. 87):

- (a) on August 29, 1994, UNASE personnel went to the location where the events occurred;
- (b) on August 31, 1994, UNASE arranged for an in-person visit to verify information provided in an anonymous call received that day, about the "sighting of a vehicle";
- (c) on September 6, 1994, the statement of Mr. Álvarez Sánchez was taken;
- (d) on September 7, 1994, the statements of Fabiola Álvarez Solano, AC and RT were taken;
- (e) On the same day, the Prosecutor's Office ordered the search of two properties indicated by Mr. Álvarez Sánchez. The next day the raids were carried out;
- (f) on September 14, 1994, the Prosecutor's Office ordered UNASE to request support from members of the security forces in order to find the whereabouts of Omeara Miraval;
- (g) on the following September 20, the referral of proceedings to the Sectional Prosecution Unit in Aguachica was ordered, for reasons of jurisdiction;<sup>266</sup>
- (h) on the 22<sup>nd</sup> of the same month, the DAS reported that it had received an anonymous call indicating that the body of Mr. Manuel Guillermo Omeara was at the La Granja farm;<sup>267</sup>
- (i) that same day, the Office of the Attorney General of the Nation ordered an inspection of the place, where the body of Mr. Omeara Miraval was found, and
- (j) On November 23, 1994, the autopsy was carried out and the body of Omeara Miraval was identified by his next of kin (*supra* para. 91).

240. The context of the case indicates the relationship that UNASE or the DAS maintained at that time, at least in the area of the events, with paramilitary groups.<sup>268</sup> In this context, it is reasonable to assume that the actions of these entities in the events do not meet the guarantee of impartiality. The violation of this guarantee is in itself an infringement of due process and prevents the conclusion that the actions examined were effectively carried out with the required diligence. In particular, in this context, the information on the "posting" of UNASE personnel on August 29 and 31, 1994 is not sufficient to prove substantive search actions during the first hours and days. The same applies to the actions carried out on September 1 and 5, 1994.<sup>269</sup> Regarding such actions, as well as the rest of the actions prior

<sup>265</sup> As was said by the State, the Court has ruled, indicating that "[a]ll the requirements of due process set forth in Article 8(1) of the Convention, as well as criteria of independence and impartiality, also extend to the non-judicial bodies responsible for the investigation prior to the judicial proceeding" (*Cf. Case of Cantoral Huamani and García Santa Cruz*, para. 133, and *Case of Favela Nova Brasília v. Brazil*, *supra*, para. 185).

<sup>266</sup> Brief of the State of August 8, 2014, *supra*.

<sup>267</sup> Report of the Santander Sectional Security Administrative Department Operational Post DAS Aguachica, *supra*.

<sup>268</sup> For example, in the statement given by MR on May 7, 2015, he indicated that he belonged to the "L[os] P[rada] armed self-defense group", and pointed out, referring to a time after 1992, that "they carried out joint operations between the Army and [the Prada group] where the guerrillas were. The police in San Martín also knew everything, the DAS too, the DAS [they] kept the lists, they handed over to L[os] P[rada], the list of all the guerrilla militiamen and so on, we carried out operations every time with the Army (evidence file, annex 66 to the brief with pleadings, motions and evidence, f. 2422).

<sup>269</sup> In addition, the Court notes that Carmen Teresa Omeara Miraval recounted, in her affidavit before the Court, investigations that she undertook on her own, and indicated that "DAS said that if they went looking for [Omeara Miraval] but it was lie". In addition, in her affidavit before this Court, Clemencia Patricia Álvarez Solano indicated that "in the first days of September 1994" she had an interview with the then Director of the DAS in Bogotá, and he had a "report" that "had been sent by the fifth brigade of the army, in which it clearly documented information on the members of the paramilitary group that operated in the San Martín area[,] it gave information on how many men were part of it and additionally described the cars they used to mobilize with plates and everything ". She indicated

to the discovery of the body, the indications regarding the relationship of the DAS and UNASE with paramilitary groups must be considered. From these, it must be concluded that these actions, as well as the rest of the actions prior to the discovery of the body, were carried out without observing the guarantee of impartiality. Therefore, the Court cannot determine the existence of diligent actions.<sup>270</sup> Therefore, this Court determines that the State, in the actions prior to the discovery of the body of Omeara Miraval, did not take appropriate action.

241. Having already determined that the State failed to take proper action during the first stages of the investigation, the Court deems it unnecessary to examine the allusions made by the representatives regarding the lack of analysis of the crime scene or of elements found on the body.<sup>271</sup>

242. Alternatively, it emerges from the examination of the facts that no diligent action was taken in terms of following the logical lines of investigation. The reasons for this are outlined below.

243. Although on August 9, 1995, when it was agreed to open an investigation against the RP, the statement was ordered of a commander of the San Martín National Police, who was not heard until September 1997 (*supra* para. 127). It was a significant statement, since said police commander had information about the actions of the paramilitary group in the area.

244. In addition, at least since 1995, there were signs of the influence of the Prada family paramilitary group in the area of the events, indicating its "leaders", and there is no evidence that the persons indicated as leaders of the group gave a statement until 1998 (*supra* paras. 130 to 132).<sup>272</sup>

245. In addition, since 1995, information was received, in the disciplinary sphere, about the possible relationship between the army, in particular Major JL, with the "Los Prada" paramilitary group, and it was received in the investigation into Omeara Miraval in 1996, it was only in 1998 that Major JL gave a statement, in the context of the investigation into Omeara Miraval, on relevant facts (*supra* para. 130).<sup>273</sup> The Court considers that given the context in which the events took place, it was relevant that before that date, military and police personnel made statements.

246. The Court also notes that on June 18, 1998, the authorities deemed it necessary to

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that she "[r]emembers that the [Director of the DAS] commented[ed] that if they had all that information why had they not done anything about it." She added that he "called two investigators who had been ordered to travel to the area to find the whereabouts of [Omeara Miraval] and additionally give a detailed report on the group that was operating in the area." Statement of Clemencia Patricia Álvarez Solano, *supra*.

<sup>270</sup> Note of statement by the expert González Amado, in the sense that the collusion between state authorities and paramilitaries influenced the fact that at the beginning of the proceedings the activities were purely formal. Expert opinion of Iván González Amado given by affidavit, *supra*.

<sup>271</sup> For the same reasons, as well as the State's recognition of the lack of investigation into the commission of acts of torture, it is not necessary to analyze the aforementioned allusions regarding the investigation of such acts.

<sup>272</sup> Regarding knowledge of the intervention of paramilitaries, it is relevant to note the statement by Héctor Álvarez Solano, son of Mr. Álvarez Sánchez, in his affidavit before the Court, that "on several occasions he [had] conversations with the paramilitary [JP], in one of them [he] wanted to make him see, that according to them, [his] brother-in-law [Omeara Miraval] was a guerrilla and that [his father, Héctor Álvarez Solano] was aware of this and that is why they committed the crimes. Likewise, [JP] told him that SQ, a member of his organization, [...] wanted [Mr. Héctor Álvarez Solano] dead." He indicated to the Court that the statement "was known to the authorities of the Prosecutor's Office and the DAS, through [his] father, and personally [he (Héctor Álvarez Solano)] made a statement to the Prosecutor's Office on several occasions, the last one being on October 31, 2012, before Prosecutor's Office 66".

<sup>273</sup> Although the State indicated that before, in 1995, Major JL had given an investigative statement, the Court appreciates that on that occasion he was investigated in relation to another event related to the massacre of Puerto Patiño that occurred on January 15, 1995.



capture JP, but there are no records of actions to investigate his whereabouts and take such a measure, beyond three “orders of summons”, which are equivalent to mere subpoenas. As a consequence, in September of the same year he was declared absent (*supra* para. 132).

247. In 2010 a statement before the Prosecutor's Office 44 indicated that MR was the main collaborator with RP. However, the former was only linked to the investigation into Omeara Miraval in 2015, and when testifying he pointed out that Omeara Miraval's body appeared because he had handed it over to the DAS. Only in July 2016 was there an order to carry out all the actions leading to verification of the participation of DAS officials in the events (*supra* para. 144). Therefore, the Court advises that this could have been done earlier, which could have had a beneficial effect on the effectiveness of the proceedings.

248. In addition, in the investigation of Omeara Miraval in February 2003, the authorities deemed it necessary to carry out investigative actions regarding what happened to Mr. Álvarez Sánchez (*supra* paras. 137 and 138). However, information on the event had been in the possession of the State since July 1995 (*supra* para. 127).

249. Furthermore, the file contains evidence that proves the inadequacy due to the lack of investigation of the participation of state officers in the events. Specifically, in 2015 MR stated that members of the DAS gave RP a list with the name of Mr. Omeara Miraval to kill him, and that RP ordered MR to bury him and a few days later the same DAS officials requested that he be dug up and the body handed over to them.<sup>274</sup> Notwithstanding the foregoing, when Prosecutor 34 interviewed JP in January 2017, he did not request information on the indicated participation of members of the DAS in the events.<sup>275</sup> There are also no other actions to follow up on the information indicated by MR.

250. Finally, with respect to the time elapsed, it is not necessary to carry out an exhaustive analysis.<sup>276</sup> Indeed, the Court considers that a prolonged delay, such as the one that has occurred in this case, in which nearly 24 years have passed since the report of the forced disappearance of Omeara Miraval, constitutes, in principle, in and of itself, a violation of guarantee of a fair trial.<sup>277</sup> In addition, the Court has verified shortcomings in the observance of due diligence, regarding the follow-up of lines of investigation and other aspects. For this reason, without prejudice to understanding that there are elements of complexity,<sup>278</sup> it is evident that the time elapsed exceeds what could be considered reasonable.

251. It remains to establish that, while what happened to Mr. Omeara Miraval was a forced disappearance, the lack of diligence in the investigation occurred after the Inter-American Convention on Forced Disappearance by Colombia entered into force on April 12, 2005, produced the breach of Article I(b) of that treaty.<sup>279</sup> This also harmed Mr. Omeara Miraval's next of kin who were alive at that time.

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<sup>274</sup> MR Investigation Procedure of May 7, 2015, *supra*.

<sup>275</sup> Statement of Iván Augusto Gómez Celis, *supra*.

<sup>276</sup> This would imply, in order to determine if there was reasonableness in the time elapsed in the proceedings, carefully examining different elements of the case: (a) complexity of the matter; (b) procedural activity of the interested party; (c) conduct of the judicial authorities, and (d) the impact on the legal situation of the person involved in the process (Cf. *Case of Valle Jaramillo et al. v. Colombia. Merits, Reparations and Costs*. Judgment of November 27, 2008. Series C No. 192, paragraph 155, and *Case of Terrones Silva et al. v. Peru, supra*, paragraph 193.

<sup>277</sup> Cf. *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*, para. 145, and *Case of Terrones Silva et al. v. Peru, supra*, para. 193.

<sup>278</sup> The Court understands that the inquiry into the participation of paramilitary groups in the events, in connection with state agents, indicates the complexity of the investigation, since this implies a degree of organization in the commission of illegal acts. It also indicates the complexity, the possible connection of an illegal act with others, and the need to consider the elements and circumstances of all of them.

<sup>279</sup> As the Court has indicated, the forced disappearance of a person ceases to be committed when his whereabouts are discovered or his remains are identified with certainty (Cf. *Case of Velásquez Rodríguez v. Honduras*.

### B.2.3. Investigation into Álvarez Sánchez

252. Regarding the investigation into Álvarez Sánchez, it is relevant to note that Colombia has indicated the intervention of paramilitaries in the three events<sup>280</sup> and that, given the context of the case (*supra* para. 71), the proven intervention of paramilitaries led to an assumption of the possibility of action by state officers.<sup>281</sup> However, even when the State accepts that the three facts may be connected, in relation to the investigation into Álvarez Sánchez, the Court notes that there is no evidence that it has taken any action to investigate the possible responsibility of state officers.

### B.2.4. Protection of family members

253. Finally, matters related to the protection of family members must be examined within the framework of the investigation processes. In this regard, this Court has stated that “in order to guarantee due process, it must provide all the necessary means to protect judicial officers, investigators, witnesses and relatives of the victims from harassment and threats whose purpose is to hinder the process, prevent the clarification of the facts and cover up those responsible for them,<sup>282</sup> because otherwise it would frighten and intimidate those investigating and on those who could be witnesses, seriously affecting the effectiveness of the investigation”.<sup>283</sup> The Court has heard cases in which, due to the circumstances, this duty had to be fulfilled *ex officio* by the State.<sup>284</sup>

254. In this case, there is no evidence that, during the time that the investigation has lasted, protection has been offered or provided to relatives of Mr. Omeara Carrascal.<sup>285</sup> It should be

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*Merits, supra*, paras. 155 to 157, and *Case Vereda La Esperanza v. Colombia supra*, paragraph 150). However, the cessation of forced disappearance does not affect the fact that the events that shaped it are qualified in this way (*Cf. Case of Rodríguez Vera et al. (Disappeared from the Palace of Justice) v. Colombia, supra*, para. 368). The obligations established by the Inter-American Convention on Forced Disappearance are enforceable as of its ratification, even if the start of its execution was earlier (*Cf. Case of the Dos Erres Massacre v. Guatemala, supra*, para. 137, and *Case of Rodríguez Vera et al. (Disappeared from the Palace of Justice) v. Colombia, supra*, paragraph 438). Furthermore, even when the forced disappearance ceases prior to the indicated ratification, the lack of investigation of the forced disappearance violates the Inter-American Convention on Forced Disappearance, to the detriment of the relatives of the person who had been forcibly disappeared (*Cf. Case of Rodríguez Vera et al. (Disappeared from the Palace of Justice) v. Colombia, supra*, paragraphs 368 and 513).

<sup>280</sup> The State has indicated that State agents intervened in the events relating to Omeara Carrascal and Omeara Miraval and has recognized the possibility that paramilitaries also did so (*supra* paras. 16 and 19). In turn, it indicated that the material participation of a member of a paramilitary group has been “proven” regarding what happened to Mr. Álvarez Sánchez (*supra* para. 226), without ruling out the possible participation of state agents in that event.

<sup>281</sup> The expert witness González Amado stated that, in contexts such as those of this case, the investigation hypotheses would require a clear understanding of the systemic crimes, registering the conduct within a more general framework, and that the link between the events and local or regional power structures should be considered. Expert Opinion of Iván González Amado given by affidavit, *supra*.

<sup>282</sup> *Cf. Case of Myrna Mack Chang v. Guatemala, Merits, Reparations and Costs*. Judgment of November 25, 2003. Series C No. 101, para. 199, and *Case of Carvajal Carvajal et al. v. Colombia, supra*, para. 126.

<sup>283</sup> *Cf. Case of Kawas Fernández v. Honduras. Merits, Reparations and Costs*. Judgment of April 3, 2009. Series C No. 196 para. 106, and *Case of Carvajal Carvajal et al. v. Colombia, supra*, para. 126.

<sup>284</sup> *Cf. Case of Kawas Fernández v. Honduras, supra*, para. 107.

<sup>285</sup> In addition to the fact that no protection has been provided, there are statements to that effect. Thus, Araminta Omeara Miraval declared before the Court that, after the death of Mr. Omeara Carrascal, his family did not receive any help from the authorities and that the threats and extortions increased. (Affidavit statement of Araminta Omeara Miraval, *supra*. Additionally, Ricaurte Omeara Miraval indicated before the Court that when their family requested protection, it was denied. (Ricurte Omeara Miraval affidavit statement, *supra*). Furthermore, Jaime Antonio Omeara Miraval indicated that he inquired into what happened to his father on his own, and that he could not file a complaint in Aguachica, because that meant “sentencing oneself to death.” He affirmed that the State did not provide the family with minimum security measures. (Statement by Jaime Antonio Omeara Miraval rendered before the Court at the public hearing held on May 25 and 26, 2017) Fabiola Álvarez Solano highlighted, in her statement, the circumstance that after her father, Héctor Álvarez Sánchez, testified before the Regional Prosecutor no protection measure was assigned (Statement of Fabiola Álvarez Solano, *supra*).

remembered that on August 27, 1994, Mr. Omeara Carrascal's son, Manuel Guillermo Omeara Miraval, disappeared, and on September 23 his lifeless body was found (*supra* paras. 86 and 91). Similarly, after he gave a statement about the disappearance of his son-in-law, on October 21, 1994, Mr. Álvarez Sánchez was shot by firearm (*supra* para. 96). The following day, Carmen Teresa Omeara Miraval, daughter of Mr. Omeara Carrascal, and Fabiola Álvarez Solano, daughter of Mr. Álvarez Sánchez and wife of Mr. Omeara Miraval, along with their three children, left the town of Aguachica (*supra* paras. 99 and 100). According to Clemencia Patricia Álvarez Solano, since her father, as a result of the attack against him, "entered [a] clinic [in] Bucaramanga, during the time he was hospitalized [...] and then in [his ] residence a DAS escort stayed all day."<sup>286</sup> With the exception of the measure just mentioned, carried out after the attack against Mr. Álvarez Sánchez, there are no other acts of protection recorded. On August 9, 1995, the protection of the Omeara and Álvarez families was ordered, but there is no evidence that the respective measures were taken.

#### B.2.5. Conclusion regarding the points in dispute

255. Based on the foregoing, the Court concludes that the State, in the investigations of the events in the case, did not act with due diligence to follow up on logical lines of investigation. In addition, even though it must have known that the next of kin of Omeara and Álvarez were at risk, it did not provide or offer them protection. It is reasonable to assume that this omission undermined the participation of the victims in the investigative proceedings. In addition, the State did not observe the guarantee of impartiality in the first actions related to the investigation into Omeara Miraval, and did not follow a reasonable timeframe.

#### C. Right to the truth in relation to what happened to Omeara Miraval

256. The Court recalls that every person, including the next of kin of the victims of serious human rights violations, has the right to know the truth.<sup>287</sup> Consequently, the next of kin of the victims and society must be informed of all events in relation to said violations.<sup>288</sup> Although the right to know the truth has been framed fundamentally in the right of access to justice,<sup>289</sup> the truth is that this right to the truth is autonomous since it is broad in nature and its violation can affect different rights contained in the American Convention, depending on the context and particular circumstances of the case.<sup>290</sup> The Court has also advised of the relevance of the right to the truth regarding forced disappearances.<sup>291</sup> In addition, although it has been noted that the right to the truth implies the right of the victim's next of kin to know the victim's fate,<sup>292</sup> the right also encompasses other aspects, insofar as it is related, in a general way, to the right of the next of kin that the State carry out the necessary actions aimed at achieving "the clarification of the violations and the corresponding responsibilities".<sup>293</sup>

<sup>286</sup> Statement of Clemencia Patricia Álvarez Solano, *supra*. The declarant did not indicate how long the protection was extended. She indicated that "by 1995" Mr. Álvarez Sánchez was transferred to Bogotá.

<sup>287</sup> Cf. *Case of Gelman v. Uruguay. Merits and Reparations*. Judgment of February 24, 2011 Series C No. 221, para. 243, and *Case of Terrones Silva et al. v. Peru, supra*, para. 215.

<sup>288</sup> Cf. *Case of Trujillo Oroza v. Bolivia. Reparations and Costs*. Judgment of February 27, 2002. Series C No. 92, para. 100, and *Case of Terrones Silva et al. v. Peru, supra*, para. 215.

<sup>289</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 181, and *Case of Terrones Silva et al. v. Peru, supra*, para. 215.

<sup>290</sup> *Case of Vereda La Esperanza v. Colombia, supra*, para. 220, and *Case of Terrones Silva et al. v. Peru, supra*, para. 215.

<sup>291</sup> Cf., among others, *Case of the Rural Community of Santa Bárbara v. Peru, supra*, para. 262, and *Case of Terrones Silva et al. v. Peru, supra*, para. 215.

<sup>292</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 181, and *Case of Terrones Silva et al. v. Peru, supra*, para. 215.

<sup>293</sup> Cf. *Case of Barrios Altos v. Peru. Reparations and Costs*. Judgment of November 30, 2001. Series C No. 87, paras. 48 and *Case of Terrones Silva et al. v. Peru, supra*, para. 215.

257. In this case, the State has failed to comply with its obligation to adequately investigate the forced disappearance of Mr. Omeara Miraval, and nearly 24 years have passed since the events occurred, and there has been no clarification about the corresponding responsibilities or the events that occurred. Therefore, the Court considers that the State violated the right to truth to the detriment of Mr. Omeara Miraval's next of kin. In this case, as in others, said violation is part of the right of access to justice.

#### **D. Conclusion**

258. The Inter-American Court considers that the State violated Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) of the same treaty, to the detriment of Noel Emiro Omeara Carrascal, Manuel Guillermo Omeara Miraval<sup>294</sup>, Héctor Álvarez Sánchez, Luis Enrique Omeara Miraval, Aura Isabel Omeara Miraval, Noel Emiro Omeara Miraval, Araminta Omeara Miraval, Ricaurte Omeara Miraval, Eduardo Omeara Miraval, Zoila Rosa Omeara Miraval, Liliana Patricia Omeara Miraval, María Omeara Miraval, Carmen Teresa Omeara Miraval, Jaime Antonio Omeara Miraval, Elva María Solano de Álvarez, Judith Álvarez Solano, Miguel Ángel Álvarez Solano, Héctor Manuel Álvarez Solano, Clemencia Patricia Álvarez Solano, Ana Edith Álvarez de García, Fabiola Álvarez Solano, Manuel Guillermo Omeara Álvarez, Elba Katherine Omeara Álvarez, and Claudia Marcela Omeara Álvarez for the lack of a diligent investigation of the events that occurred to Noel Emiro Omeara Carrascal and Héctor Álvarez Sánchez.

259. The Court also considers that the State violated Articles 8(1) and 25(1) of the American Convention, in relation to Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture and I(b) of the Inter-American Convention on Disappearance Forced Persons, to the detriment of Luis Enrique Omeara Miraval, Aura Isabel Omeara Miraval, Noel Emiro Omeara Miraval, Araminta Omeara Miraval, Ricaurte Omeara Miraval, Eduardo Omeara Miraval, Zoila Rosa Omeara Miraval, Liliana Patricia Omeara Miraval, María Omeara Miraval, Carmen Teresa Omeara Miraval, Jaime Antonio Omeara Miraval, Fabiola Álvarez Solano, Manuel Guillermo Omeara Álvarez, Elba Katherine Omeara Álvarez, and Claudia Marcela Omeara Álvarez, for the lack of a diligent investigation of the events that occurred to Manuel Guillermo Omeara Miraval.

260. In addition, this Court considers that the State is responsible for the violation of the right of the relatives of the disappeared victim to know the truth.

261. The Court considers that according to the partial acknowledgment of responsibility, the State is responsible for the violation of the judicial guarantees and judicial protection enshrined in Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) of the same instrument, to the detriment of Carmen Teresa Omeara Miraval, for not having diligently investigated the alleged threats she suffered.

262. Similarly, according to said partial acknowledgment of responsibility, the State is responsible for the violation of the right of movement and residence enshrined in Article 22(1) of the American Convention and the guarantee of a fair trial and judicial protection enshrined in Articles 8(1) and 25(1) therein, in relation to Article 1(1) of the same instrument, to the detriment of Carmen Teresa Omeara Miraval and Fabiola Álvarez Solano, and Elba Katherine Omeara Álvarez, Manuel Guillermo Omeara Álvarez and Claudia Marcela Omeara Álvarez, for not having diligently investigated the alleged displacement they suffered.

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<sup>294</sup> Manuel Guillermo Omeara Miraval is a victim due to the State's failure to comply with its duties, while he was alive, regarding the investigation of what happened to his father.

263. Lastly, the Court emphasizes that in this case, more than 24 years after the events, the State has not yet finished clarifying what happened or determined the corresponding responsibility. The State is obliged to combat this situation of impunity by all available legal means, since it fosters the chronic repetition of human rights violations and the defenselessness of the victims.<sup>295</sup>

**VIII.4**  
**RIGHTS TO MOVEMENT AND RESIDENCE**  
**(Article 22(1)<sup>296</sup> of the American Convention on Human**  
**Rights, in relation to Article 1(1))**

264. In this chapter, relevant reference will be made to the arguments put forward by the Commission and the parties, as well as the arguments related to the alleged violation of Article 22(1) of the Convention, in relation to Article 1(1) of the American Convention, for the forced displacement of some of the next of kin of Messrs. Omeara Carrascal, Omeara Miraval and Álvarez Sánchez. It will also refer to the alleged threats suffered by Carmen Omeara, in violation of Article 5 of the American Convention, and finally, to the alleged violation of Article 11(2)<sup>297</sup> of the Convention, to the detriment of the members of the aforementioned families.

**A. Arguments of the Commission and the parties**

265. The **Commission** noted that since the first act of violence, a series of threats and acts of intimidation were unleashed against witnesses and next of kin<sup>298</sup> of the alleged victims, and as a result they were forced to protect themselves against the continuation of such acts due to the "serious risk, the lack of protection measures and the lack of progress in the investigation", which led to the forced displacement of some relatives to the city of Bucaramanga. All of this occurred in the face of the lack of response from the State, even to express requests from State authorities such as the Ombudsman and the Regional Prosecutor, which is why the Commission warned that: "(i) the State created the conditions of risk for the victims; (ii) it was aware of said situation of risk that in turn generated the forced displacement; and (iii) it did not adopt measures for their protection, particularly with respect to the children of [Manuel] Guillermo Omeara [Miraval]."

266. The Commission considered that the State violated the right of movement and residence, considered in Article 22(1) of the Convention, to the detriment of Carmen Teresa Omeara Miraval, Fabiola Álvarez Solano, their three children, Elba Katherine, Manuel

<sup>295</sup> Cf. *Velásquez Rodríguez v. Honduras. Merits, supra*, para. 174; and *Case of Anzaldo Castro v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202*, para. 179.

<sup>296</sup> Article 22 of the Convention establishes, as pertinent, the following: "1. Every person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law. 2. Everyone has the right to leave any country freely, including his own. [...]"

<sup>297</sup> Article 11 of the Convention establishes the following: "1. Everyone has the right to have his honor respected and his dignity recognized. 2. 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. 3. Everyone has the right to the protection of the law against such interference or attacks."

<sup>298</sup> The Commission alleged the violation of Articles 5 and 17, to the detriment of the children of Noel Emiro Omeara Carrascal, who in turn were brothers of Manuel Guillermo Omeara Miraval, namely: Carmen Teresa Omeara Miraval; Jaime Antonio Omeara Miraval; Luis Enrique Omeara Miraval; Aura Isabel Omeara Miraval; Noel Emiro Omeara Miraval; Araminta Omeara Miraval; Ricaurte Omeara Miraval; Eduardo Omeara Miraval, Zoila Rosa Omeara Miraval, Lilibian Patricia Omeara Miraval and María Omeara Miraval; as well as with respect to the wife of Héctor Álvarez, El[v]a María Solano de Álvarez, and her children Judith Álvarez Solano; Miguel Angel Alvarez Solano; Hector Manuel Alvarez Solano; Clemencia Patricia Alvarez Solano; Juan Carlos Álvarez Solano and Ana Edith Álvarez de García; as well as the wife of Manuel Guillermo Omeara Miraval, Fabiola Álvarez Solano, and her three children, Elba Katherine, Manuel Guillermo and Claudia Marcela with the surnames Omeara Álvarez.

Guillermo and Claudia Marcela, all with surnames Omeara Álvarez. It indicated that it also violated Article 19 of the Convention, to the detriment of the latter three, who were minors at the time of the events. It also indicated that the State did not analyze that the threats to Carmen Omeara Miraval occurred against a background of threats and intimidation against witnesses and relatives of the victims. Based on the foregoing, the Commission argued that the dispute in this case remains.

267. The **representatives** argued that the facts indicate that the members of the Omeara and Álvarez families suffered multiple incidences of threats and intimidation, that in light of the violent episodes and the deaths of their loved ones, each and every one of these threats represented a credible and imminent risk to all members of these families. They pointed out that despite "the risk they faced, and that the State was aware of and helped create, the lack of protection for the members of these families was absolute. [...] In this sense, the fear and desolation caused by the attacks, threats and intimidation were accentuated, deepening the situation of vulnerability, which lasted for a year and forced [...] the forced displacement of several members of the families".

268. In addition, the representatives noted that "there is no dispute of the fact that, in the early hours of October 22, 1994, the day after the attempt on the life of Héctor Álvarez [Sánchez], Fabiola Álvarez [and] her three minor children, Elba Katherine, Manuel Guillermo and Claudia Marcela Omeara Álvarez and Carmen Teresa Omeara Miraval, daughter of Noel Emiro Omeara Carrascal and sister of Manuel Guillermo Omeara Miraval, forcibly left the city of Aguachica to move to Bucaramanga as a means of to protect their lives." They pointed out that the State contributed decisively to creating the risk faced by the families, by collaborating with paramilitary groups in the commission of crimes in Aguachica, as it had the opportunity to learn that these people were in a situation of risk and it did not adopt measures that could prevent the feeling of desolation and helplessness that led to the families' displacement. Based on the foregoing, they concluded "that the breach of the state obligation to guarantee the rights of the victims through the adoption of measures to prevent forced displacement, [due to the real situation of risk in which they found themselves,] resulted in violations of their rights contained in Articles 22 and 11 of the American Convention."

269. In relation to Article 22(1) of the Convention, the **State** acknowledged its international responsibility "for [the] omission in the investigation of the alleged acts of forced displacement of persons", to the detriment of some relatives of the direct victims in this case. Regarding the violation of Article 11(2) of the American Convention, the State did not make any allegations. The State clarified that "its acknowledgment of responsibility does not cover the obligation to protect in relation to any of the next of kin of the direct victims."

## **B. Considerations of the Court**

270. First, this Court considers it necessary, in light of the partial acknowledgment of international responsibility made by the State, to establish that Colombia violated: (a) the right to personal integrity and protection of the family (Articles 5 and 17<sup>299</sup> of the Convention), in relation to Article 1(1) of the Convention, to the detriment of the next of kin of the victims of violent acts in the case, and (b) the rights of the child (Article 19<sup>300</sup>) in relation to Article

<sup>299</sup> Article 17 of the Convention establishes, as pertinent, the following: "1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the state. 2. The right of men and women of marriageable age to marry and to raise a family shall be recognized, if they meet the conditions required by domestic laws, insofar as such conditions do not affect the principle of nondiscrimination established in this Convention.

<sup>300</sup> Article 19 of the Convention establishes, "Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state."

1(1) of the Convention, to the detriment of the three children of Mr. Omeara Miraval. In this chapter, the Court will make considerations as relevant to said acknowledgment.

271. Secondly, it should be noted that the Commission and the representatives also alleged the violation of Article 22(1) of the American Convention, in relation to Article 1(1) of the Convention, to the detriment of Carmen Teresa Omeara Miraval, Fabiola Álvarez Solano and their three children, Elba Katherine, Manuel Guillermo and Claudia Marcela, all three with surnames Omeara Álvarez. In this regard, the State acknowledged its international responsibility for its omission in the investigation of the alleged acts of forced displacement (*supra* paras. 25(c) and 35(c)). However, this Court considers that the dispute remains regarding the alleged responsibility of the State for the violation of Article 22(1) of the Convention.

272. The Court has indicated that freedom of movement is an essential condition for the free development of the individual.<sup>301</sup> In this sense, it has established that the right of movement and residence consists of: (a) the right of those who are legally within a State to move freely in that State and choose their place of residence, and (b) the right of a person to enter their country and stay there. The enjoyment of this right does not depend on any particular purpose or motive of the person who wishes to move or remain in a place.<sup>302</sup> Similarly, it protects the right not to be forcibly displaced within a State Party and not to have to forcibly leave the territory of the State in which they legally find themselves.<sup>303</sup> This Court has also stated that the right to movement and residence can be violated formally or by *de facto* restrictions if the State has not established the conditions or provided the means to exercise it.<sup>304</sup>

273. In this sense, the Court will analyze whether the displacement is directly attributable to State actions and whether, after the State became aware of the acts of displacement, within the framework of its obligations, it adopted actions aimed at enabling a safe return or whether it provided assistance to displaced persons. In this regard, both the Commission and the representatives argued that the risk that forced them to move was created by the State due to three factors: (a) collaboration with paramilitary groups to commit crimes in Aguachica; (b) the lack of progress in the investigations, and (c) the lack of protection measures once family members, including minors, were aware of the risk.

274. It is proven that in a period of eight months, the next of kin of the three victims of violent acts suffered the loss of their father, grandfather and brother, including a direct impact on their lives due to the consequences of the events suffered by their loved ones. Furthermore, the impunity that persists in this case is proven due to the lack of due diligence in the investigations of the events that occurred against Noel Emiro Omeara Carrascal, Manuel Guillermo Omeara Miraval and Héctor Álvarez Sánchez. In addition, as recognized by the State, the alleged threats received by Carmen Teresa Omeara Miraval have not been investigated (*supra* paras. 25(b) and 35(b)).

275. These facts caused an environment of mistrust, anguish and reasonable fear for the displaced relatives. It should be noted that it is an undisputed fact that on August 9, 1995, the Regional Prosecutor of Barranquilla, in charge of the criminal investigation of the case of

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<sup>301</sup> Cf. *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111, para. 115, and *Case of Carvajal Carvajal et al. v. Colombia, supra*, para. 189.

<sup>302</sup> Cf. *Case of Ricardo Canese v. Paraguay, supra*, para. 115, and *Case of Yarce et al. v. Colombia, supra*, para. 214.

<sup>303</sup> Cf. *Case of the "Mapiripán Massacre" v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 188, and *Case of V.R.P., V.P.C. et al. v. Nicaragua, supra*, para. 308.

<sup>304</sup> Cf. *Case of the Moiwana Community v. Suriname. Preliminary Exceptions, Merits, Reparations and Costs*. Judgment of June 15, 2005. Series C No. 124, paras. 119 and 120, and *Case of Carvajal Carvajal et al. v. Colombia, supra*, para. 189.

Mr. Omeara Miraval, ordered after the attacks and nearly a year after the displacement, measures of protection for the members of the Omeara and Álvarez families (*supra* para. 127), who were also witnesses to the attacks on the three victims. The foregoing demonstrates that the displaced family members did not receive any protection from the State in view of the risk they were running and the body of evidence in the case does not show that the measures ordered were, in fact, adopted. The Court understands that the causes that led certain family members to be displaced are complex, since the displacement was not caused by multiple circumstances rather than a single event.

276. It is clear that the State did not adopt protection measures for the members of the Omeara and Álvarez families and, in particular, for those who were displaced.

277. The failure to adopt measures, the actions of state agents in collaboration with illegal armed groups for the commission of the three attacks against their relatives and the lack of due diligence and progress in the investigations, leading to ongoing impunity surrounding the events, have all been fundamental factors in creating the risk that led to the displacement of some of the victims' relatives.

278. Consequently, the Court considers that Colombia is responsible for the violation of Article 22(1) of the American Convention, in relation to Article 1(1) of the Convention, for the failure of duty to respect the right of movement and residence, to the detriment of Carmen Teresa Omeara Miraval, Fabiola Álvarez Solano and their three children, Elba Katherine Omeara Álvarez, Manuel Guillermo Omeara Álvarez and Claudia Marcela Omeara Álvarez, as well as in relation to the rights of the child, enshrined in Article 19 of the Convention, to the detriment of the victims who were children at the time the events occurred.

279. Regarding the alleged violation of Article 5 of the Convention due to the alleged threats suffered by Carmen Teresa Omeara Miraval, this Court notes that although it is clear from the facts that the victims' next of kin were generally subjected to different incidences of intimidation and threats, regarding the specific situation of Mrs. Carmen Omeara, there is only her statement given on August 17, 2010, in which she stated that one day she "was walking in front of church and a guy approached [her] who touched her shoulder from behind and [...] [I]old her 'quietly, you look prettier,' [he] said if [ Noel Emiro Omeara Miraval, her father], [t]old her something she shouldn't say anything,"<sup>305</sup> and that her mother was told that she had to leave Aguachica, along with other relatives, on the day of the attack on Mr. Héctor Sánchez (*supra* paragraph 100). In this regard, the State only acknowledged that it had not conducted any investigation (*supra* para. 25(b)). Apart from said statements, this Court does not have additional information or evidence that would allow it to conclude the violation of Article 5 of the Convention to her detriment for the aforementioned threats.

280. The representatives alleged the violation of the right to privacy. The Court notes that the representatives may allege violations other than those indicated by the Commission.<sup>306</sup> This Court also notes that in this case, beyond the generic references to the violation of the protection of privacy of the next of kin due to the consequences for their private life due to their displacement, the representatives did not express specific grounds that could be distinguished from their allegations regarding the non-observance of Articles 22(1) and 5(1) of the Convention. In addition, the Court finds no reason in the case to examine the facts of the case in relation to Article 11(2) of the treaty. Therefore, the Court considers that the State is not responsible for the alleged violation.

<sup>305</sup> Testimonial statement given by Carmen Teresa Omeara Miraval on August 17, 2010, *supra*.

<sup>306</sup> Cf. *Case of Five Pensioners v. Peru. Merits, Reparations and Costs*. Judgment of February 28, 2003. Series C No. 98, para. 155, and *Case of Pacheco León et al. v. Honduras, supra*, para. 184.



### C. Conclusion

281. In consideration of the State's partial acknowledgment of its international responsibility, the Court considers that the State is responsible for the violation of the rights to personal integrity and protection of the family enshrined in Articles 5 and 17 of the American Convention, in relation to Article 1(1) thereof, to the detriment of the next of kin of Messrs. Omeara Carrascal, Omeara Miraval and Álvarez Sánchez, namely: Luis Enrique Omeara Miraval, Aura Isabel Omeara Miraval, Noel Emiro Omeara Miraval, Araminta Omeara Miraval, Ricaurte Omeara Miraval, Eduardo Omeara Miraval, Zoila Rosa Omeara Miraval, Liliana Patricia Omeara Miraval, María Omeara Miraval, Carmen Teresa Omeara Miraval, Jaime Antonio Omeara Miraval, Elva María Solano de Álvarez, Judith Álvarez Solano, Miguel Ángel Álvarez Solano, Héctor Manuel Álvarez Solano, Clemencia Patricia Álvarez Solano, Juan Carlos Álvarez Solano, Ana Edith Álvarez de García, and Fabiola Álvarez Solano, as well as the violation of the rights of the child enshrined in Article 19 of the Convention, to the detriment of the then minors, Elba Katherine Omeara Álvarez, Manuel Guillermo Omeara Álvarez and Claudia Marcela Omeara Álvarez.

282. The Court also considers that Colombia is responsible for the violation of the right of movement and residence enshrined in Article 22(1) of the American Convention, in relation to Article 1(1) of the Convention, to the detriment of Carmen Teresa Omeara Miraval, Fabiola Álvarez Solano and her three children, Elba Katherine Omeara Álvarez, Manuel Guillermo Omeara Álvarez and Claudia Marcela Omeara Álvarez, as well as in relation to the rights of the child, protected in Article 19 of the Convention, to the detriment of the victims who were children at the time events occurred.

283. In addition, this Court considers that the State is not responsible for the violation of personal integrity enshrined in Article 5 of the Convention, in relation to Article 1(1) of the same instrument, to the detriment of Carmen Teresa Omeara Miraval, due to alleged threats she suffered.

284. Finally, the State is not responsible for the violation of the right to protection of privacy enshrined in Article 11(2) of the treaty, in relation to Article 1(1) of the same instrument, to the detriment of the victims' next of kin.

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

285. Pursuant to the provisions of Article 63(1) of the American Convention<sup>307</sup>, the Court holds that every violation of an international obligation which results in harm creates a duty to make adequate reparation, and that this provision reflects a customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility.<sup>308</sup> Reparation of the harm caused by the violation of an international obligation requires, insofar as possible, full restitution (*restitutio in integrum*), which consists in the restoration of the previous situation. If this is not possible, as in most cases of human rights violations, the Court

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<sup>307</sup> Article 63(1) of the American Convention establishes that: "[i]f 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."

<sup>308</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and Costs*. Judgment of July 21, 1989. Series C No. 7, para. 25, and *Case of López Soto et al. v. Venezuela, supra*, para. 268.

will determine measures to guarantee the rights that have been violated and to redress the consequences of those violations.<sup>309</sup>

286. This Court has also established that reparations must have a causal link with the facts of the case, the alleged violations, the proven damages, as well as the measures requested to repair the resulting damages. Therefore, the Court must observe such coincidence in order to adjudge and declare according to law.<sup>310</sup>

287. Considering the violations declared in chapters VIII-1 to VIII-4 and the acknowledgements of the State itself, the Court will proceed to examine the petitions presented by the Commission and the representatives, as well as the arguments of the State, to in light of the criteria established in the Court's case law in relation to the nature and scope of the obligation to make reparations, in order to establish measures aimed at repairing the harm caused to the victims.<sup>311</sup>

288. International case law, and in particular that of the Court, has repeatedly established that the judgment constitutes in itself a form of reparation.<sup>312</sup> However, considering the circumstances of this case and the suffering that the violations committed caused the victims, the Court deems it pertinent to establish other measures.

#### A. Injured Party<sup>313</sup>

289. This Court reiterates that it considers the injured party, pursuant to Article 63(1) of the Convention, to be the victim of the violation of any right recognized therein. Therefore, this Court considers as "injured party" Noel Emiro Omeara Carrascal, Manuel Guillermo Omeara Miraval, Héctor Álvarez Sánchez, Carmen Teresa Omeara Miraval, Jaime Antonio Omeara Miraval, Luis Enrique Omeara Miraval, Aura Isabel Omeara Miraval, Noel Emiro Omeara Miraval, Araminta Omeara Miraval, Ricaurte Omeara Miraval, Eduardo Omeara Miraval, Zoila Rosa Omeara Miraval, Liliana Patricia Omeara Miraval, María Omeara Miraval, Elva María Solano de Álvarez, Judith Álvarez Solano, Miguel Ángel Álvarez Solano, Héctor Manuel Álvarez Solano, Clemencia Patricia Álvarez Solano, Juan Carlos Álvarez Solano, Ana Edith Álvarez de García, Fabiola Álvarez Solano, Elba Katherine Omeara Álvarez, Manuel Guillermo Omeara Álvarez, and Claudia Marcela Omeara Álvarez, identified in paragraph 1 and the quote at the bottom of page 1, of this Judgment, who as victims of the violations declared in chapters VIII-1 to VIII-4 will be beneficiaries of the following reparations ordered by the Court.

#### B. Obligation to investigate

290. The **Commission** requested that the State be ordered to "[c]onduct a complete, impartial, effective, and prompt investigation of the facts," in order to clarify them and, "where appropriate, punish the masterminds and perpetrators who took part in the events that led to" the violations in this case. It also requested that the appropriate "administrative, disciplinary

<sup>309</sup> Cf. *Case of Velásquez Rodríguez v. Honduras*, *supra*, paras. 25 and 26, and *Case of López Soto et al. v. Venezuela*, *supra*, para. 269.

<sup>310</sup> 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 López Soto et al. v. Venezuela*, *supra*, para. 270.

<sup>311</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and Costs*, *supra*, paras. 25 to 27, and *Case of López Soto et al. v. Venezuela*, *supra*, para. 271.

<sup>312</sup> Cf. *Case of Neira Alegría et al. v. Peru. Reparations and Costs*. Judgment of September 19, 1996. Series C No. 29, para. 56, and *Case of Terrones Silva et al. v. Peru*, *supra*, para. 238.

<sup>313</sup> The representatives also requested the inclusion of the following persons: José Miguel Omeara Miraval, Zoila Miraval de Omeara, José Erminso Sepúlveda Saravia, Damaris Lanziano Lemus, Maryeny Sepúlveda Chinchilla, Erminso Sepúlveda Lanziano, Jorge Mario Sepúlveda Lanziano, Carlos Alberto Sepúlveda Lanziano and Landi Fabiana Sepúlveda Lanziano, who, as determined by the Court, were not considered victims in this case (*supra* para. 56). Therefore, in this section the Court will not include the allusions made by the parties regarding these persons and the related facts.

or criminal” measures be adopted to investigate and, if applicable, punish the actions of state officials who contributed to the denial of justice and impunity.

291. The **representatives** made a similar request, requesting that “a group from the Office of the National Attorney General’s Office be assigned, made up of a Specialized Prosecutor in the investigation of cases of serious human rights violations, and two investigators with the same capacity” to dedicate itself exclusively to drive the criminal proceedings N<sup>os.</sup> 397, 015A and 1663.<sup>314</sup>

292. The **State** indicated that “the investigations [...] today all reassigned to Prosecutor 66, have been diligent and have complied with inter-American standards on the matter,” and that an order of this type “would disregard the progress made by the State and its internal mechanisms to provide justice to people under its jurisdiction.” It requested that the adoption of administrative, disciplinary, and/or criminal measures be declared inadmissible, because state agents have respected due process and that “the recognized shortcomings do not imply the criminal, disciplinary, or administrative responsibility of any official.” It also argued that the representatives’ request “involves differentiated treatment [...] among victims, without an objective basis.”

293. The **Court** concluded in this judgment that the State is responsible for the violation of Articles 8(1) and 25(1) of the Convention to the detriment of Messrs. Omeara Carrascal, Omeara Miraval and Álvarez Sánchez and their next of kin, given that it failed to comply with its obligation to investigate the events that occurred to the detriment of Noel Emiro Omeara Carrascal, Héctor Álvarez Sánchez, Manuel Guillermo Omeara Miraval, as well as the threats suffered by Carmen Teresa Omeara Miraval and the displacement suffered by Carmen Teresa Omeara Miraval, Fabiola Álvarez Solano, Elba Katherine Omeara Álvarez, Manuel Guillermo Omeara Álvarez and Claudia Marcela Omeara Álvarez with due diligence within a reasonable time, in order to establish the truth of the facts of this case, taking into account that nearly 24 years have passed since they occurred and impunity persists. Based on the foregoing, the State must use the necessary means, in accordance with its domestic law, to: (a) effectively continue the open investigations, pursuing them with due diligence and within a reasonable time, in order to identify, judge and, where appropriate, punish those responsible for the events, analyzing, among others, the logical lines of investigation, regarding: (i) the events that took place relating to Noel Emiro Omeara Carrascal; (ii) the events that took place relating to Manuel Guillermo Omeara Miraval, and (iii) the events that took place relating to Héctor Álvarez Sánchez; (b)

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<sup>314</sup> They also requested specific measures to carry out the investigations, including: (a) initiate, continue and conclude the investigations of the case taking into account the pattern of human rights violations existing at that time, taking into consideration the complexity of the facts and the context in which they occurred and following the logical lines of investigation; (b) identify and individualize all material and intellectual authors; (c) that it be determined that the State may not apply any law of amnesty, pardon, or any other similar provision to benefit the perpetrators; (d) carry out ex officio investigations and, for this purpose, have at their disposal and use all the logistical and scientific resources necessary to collect and process the evidence and, in particular, have powers to fully access the relevant documentation and information to investigate the facts denounced and promptly carry out those essential actions and inquiries to clarify the events in this case; (e) ensure that the bodies of the justice system involved have the economic, human, logistic, scientific or any other type of resources to carry out their tasks adequately, independently, and impartially; (f) adopt the necessary measures to ensure that judicial officials, prosecutors, investigators, and other judicial officers have an adequate security and protection system that allows them to perform their duties with due diligence, and ensure the protection of witnesses, victims, and family members and judicial representatives; (g) guarantee that the investigations continue in the ordinary jurisdiction; (h) guarantee that all authorities collaborate with the investigation, providing access to the necessary information and evidence, as well as refraining from carrying out acts that obstruct the investigation or access to information on the facts of this case; (i) initiate disciplinary, administrative, criminal actions against the authorities that have hindered or are hindering the investigation of the facts, or that have contributed to prolonging impunity, (j) guarantee effective compliance with the sentences of those convicted, and (k) ensure the full access and capacity to act for the victims or their next of kin at all stages of the investigation and prosecution of those responsible, and guarantee the publication of judicial progress.

Articulate the coordination mechanisms between the different state bodies and institutions with investigative powers and other schemes , whether existing or to be created, in order to achieve the most coherent and effective investigations, so that the protection of the victims' human rights is one of the ends of the proceedings; (c) enable the participation of the persons declared victims in this case in the investigation, as well as that they, by themselves or through their legal representatives, access information on the actions that are carried out, and (d) ensure that the various organs of the judicial system involved in the case have the necessary human and material resources to carry out their tasks adequately, independently and impartially and that the persons participating in the investigation, including victims, witnesses and judicial officers, have the due security guarantees.

294. It should also be noted that the State acknowledged, by omission, the failure to investigate the alleged torture that Mr. Omeara Miraval suffered while he was disappeared and before his death. In this regard, in accordance with the provisions of domestic law, the Court considers that the State must initiate, within a reasonable time and with due diligence, the aforementioned investigation to clarify the alleged facts, and enable the participation of the victims involved in the events or through their representatives and enable access to the proceedings that are carried out.

### **C. Measures of restitution**

295. The **representatives** requested that the State be ordered to establish a trust that covers psychological care with a psychosocial perspective in favor of the next of kin. They added that its amount and administration "will be managed through an organization with expertise in the matter chosen by the next of kin, taking into consideration their transport or that of the therapists, as agreed upon, if the headquarters of the organizations is not close to their residence. They also requested that physical and mental health care be provided to family members "regardless of their affiliation scheme [and] that it be completely free, differential, preferential and for as long as necessary." They added that the care provided in the Program for Psychosocial Care and Comprehensive Health for Victims of Conflict (PAPSIVI) is not free for victims of the conflict, or of serious human rights violations, but only for people with limited resources in Colombia. This is why the lack of free access for people who have resources means that the provision of health services aimed at the entire population is confused with the rehabilitation measures to which the victims are entitled. Additionally, they questioned the duration of the program, since it has suffered multiple budget cuts since its creation. Lastly, they added that the expert opinion presented by Yeiny Carolina Torres Bocachica makes it possible to establish that the effects on the victims in this case require specific interventions that are not considered by the PAPSIVI. Consequently, they requested "to dismiss the request presented by the [...] State to order care for the victims in this case through the PAPSIVI as a rehabilitation measure."

296. The **Commission** asked the Court to order the relevant rehabilitation measures in favor of the next of kin of Noel Emiro Omeara Carrascal, Manuel Guillermo Omeara Miraval and Héctor Álvarez Sánchez.

297. The **State** expressed "that it agrees that said measures be ordered in favor of the next of kin," but requests that they be ordered through the mechanism that the State already has, the PAPSIVI, which has already been recognized by this Court as suitable in the Yarce case.

298. The **Court** finds that the victims who have suffered violations of humane treatment are Carmen Teresa Omeara Miraval, Jaime Antonio Omeara Miraval, Luis Enrique Omeara Miraval, Aura Isabel Omeara Miraval, Noel Emiro Omeara Miraval, Araminta Omeara Miraval, Ricaurte Omeara Miraval, Eduardo Omeara Miraval, Zoila Rosa Omeara Miraval, Lilibian Patricia Omeara

Miraval, María Omeara Miraval (deceased), Elva María Solano de Álvarez, Judith Álvarez Solano, Miguel Ángel Álvarez Solano, Héctor Manuel Álvarez Solano, Clemencia Patricia Álvarez Solano, Juan Carlos Álvarez Solano, Ana Edith Álvarez de García, Fabiola Álvarez Solano, Elba Katherine Omeara Álvarez, Manuel Guillermo Omeara Álvarez, and Claudia Marcela Omeara Álvarez (*supra* para. 281).

299. In this regard, it is worth mentioning that in the expert opinion given before this Court on psychosocial and moral harm caused to the next of kin, and particularly, "the collective damage caused" to the family unit, rendered by Ángela Cristina Tapias Saldaña and Yeiny Carolina Torres Bocachica, It is established that "the psychosocial damage suffered by the victims' families is profound and evident," and that "the emotional suffering that persists after 23 years due to the absence of truth and justice is evident," and it was also noted that the victims suffered psychological harm at an individual level. The Court understands that there was indeed a psychological impact caused to each of the members of the three groups of affected family members. Therefore, the Court considers it relevant to order a reparation that provides adequate attention to the psychological suffering of the victims of the violations established in this judgment.<sup>315</sup>

300. The Court orders the State to provide, free of charge, at no cost or charge, as a priority, appropriate psychological treatment to victims who require it, following their consent. Said expression of consent must be expressed within a period of six months from the notification of this judgment. As long as it is appropriate to the orders, this Court considers, as it has done in other cases,<sup>316</sup> that the State may grant said treatment through the national health services, including through the PAPSIVI. When providing psychological treatment, the particular circumstances and needs of each victim must also be considered, so that they are offered collective, family and individual treatment, according to agreement with each one of them and after an individual evaluation. Similarly, the respective psychiatric or psychological treatments must be provided for as long as necessary, and as far as possible in the centers closest to the victims' places of residence and at a location accessible to them.<sup>317</sup>

#### **D. Measures of satisfaction: publication and dissemination of the judgment and a public act of acknowledgement**

301. The **representatives** asked the Court to order the State to publish, within six months after the date of notification of the judgment, in the Official Gazette the relevant parts of the judgment, "including the names of each chapter and the section –without the footnotes–, as well as the operative paragraphs of this judgment [...] in another newspaper with wide national circulation, the official summary of the judgment prepared by the Court." They also required that the publication be immediately available on the official website of the President of the Republic, the Government of the Department of Cesar, and the Municipal Mayor's Offices of Aguachica and San Martín. They also requested that a public act of acknowledgment of responsibility be carried out, within one year of the publication of the judgment, in which the memory of each of the victims in the case and their relatives are honored. They required that it be held in the San Roque Park in the municipality of Aguachica (Cesar) and have the widest possible dissemination and the corresponding costs be covered. They requested that the

<sup>315</sup> 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 López Soto et al. v. Venezuela, supra*, para. 291.

<sup>316</sup> Cf. *Case of Yarce et al. v. Colombia, supra*, para. 340, and *Case of Terrones Silva et al. v. Peru, supra*, para. 252.

<sup>317</sup> Cf. *Case of 19 Tradesmen v. Colombia, supra*, para. 278, and *Case of Coc Max et al. (Xamán Massacre) v. Guatemala, supra*, para. 155.

acknowledgment be agreed with the victims and their representatives, with participation of the highest State authorities participate in it.

302. The **Commission** requested that the relevant satisfaction measures be ordered.

303. The **State** considers sufficient, taking into account its acknowledgment of responsibility, the issuance of a conviction, as well as its proper publication. For this reason, it stated that there was no place to carry out the public act of acknowledgment of responsibility, because the Court has recognized that the issuance of the judgment and its adequate publication is sufficient, even in cases of forced disappearance.

304. The **Court** orders, as it has done in other cases,<sup>318</sup> that the State publish, within six months from the notification of this judgment: (a) the official summary of this judgment prepared by the Court, once only, in a newspaper with wide national circulation and in the official gazette in a legible and adequate font size, and (b) this judgment in its entirety, available for at least one year, on the official website of the President of the Republic. The State must inform this Court immediately once it proceeds to make each of the publications ordered, regardless of the one-year term to present its first report ordered in operative paragraph 21 of this judgment.

305. The Court assesses positively the partial acknowledgment of responsibility by the State, which could represent partial satisfaction for the victims in the face of the violations declared in this judgment. Notwithstanding the foregoing, as it has done in other cases,<sup>319</sup> the Court deems it necessary, in order to repair the harm caused to the victims, to prevent events such as those in this case from being repeated, and in consideration of the request by the representatives, order that the State carry out a public act of acknowledgment of international responsibility in Colombia, in relation to the facts of this case.

306. In said act, the State must refer to the facts and human rights violations declared in this judgment. The act must be carried out through a public ceremony that must be disclosed. The State will have to ensure the participation of the victims declared in this judgment, if they so wish, and invite the organizations that represented them in national and international instances to the event. The realization and other details of said public ceremony must be previously and duly consulted with the victims and their representatives. The state authorities that must be present or participate in said act must be high-ranking state officials. To comply with this obligation, the State has a period of one year from the notification of this judgment.

## E. Other measures requested

307. The **representatives** requested that a memorial document be drawn up and published, honoring the name and life of the victims, describing the context and political reality of Aguachica, and giving an account of the three crimes. Its publication should be carried out in national and regional written media, as well as its web pages. They also requested that a commemorative plaque be erected in the San Roque park in the municipality of Aguachica, in which the State acknowledges its responsibility for what happened to Noel Emiro Omeara Carrascal, Manuel Guillermo Omeara Miraval, and Héctor Álvarez Sánchez. Its content should be agreed with the victims and the State must guarantee its care and maintenance. Finally, they requested that the State grant educational scholarships to the children of Manuel Guillermo Omeara Miraval, Manuel Guillermo, Elba Katherine, and Claudia Marcela, all with the surnames Omeara Álvarez, to pursue postgraduate studies until they complete their professional training.

<sup>318</sup> Cf. *Case of Cantoral Benavides v. Peru. Reparations and Costs*. Judgment of December 3, 2001. Series C No. 88, para. 79, and *Case of López Soto et al. v. Venezuela, supra*, para. 299.

<sup>319</sup> Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and Costs, supra*, para. 209, and *Case of López Soto et al. v. Venezuela, supra*, para. 303.

308. The **Commission** asked the Court to order the State to adopt measures to prevent the repetition of these events, and specifically “the strengthening of the mechanisms for the protection for family members and witnesses in investigations of human rights violations, and the strengthening of the investigative capacity of contexts and patterns of joint action between state agents and illegal armed groups.”

309. The **State** asked the Court not to consider the request of the representatives regarding the preparation of a memorial document and the raising of a plaque, since it considered, in its case, the issuance of a conviction and its proper publication were sufficient. Regarding the educational scholarships, it asked the Court to dispense with this measure, because these three people have already completed their university studies and this shows that their academic training has not been interrupted. The State argued that the other measures requested already exist at the domestic level and, therefore, there is no room for the Court to order them. He referred to the existence of the Program for the Protection of Witnesses, Victims, Participants in Criminal Proceedings and Officials of the Office of the National Attorney General, which is attached to the National Office of Protection and Assistance of the Office of the Attorney General. He also pointed out that with regard to measures aimed at investigating contexts, there is the National Directorate for Analysis and Contexts (DINAC) and the Justice and Peace Law provides for an investigative approach based on context analysis.

310. The **Court** finds the measure related to the educational scholarships inadmissible, since the need for them has not been proven, nor has the interruption of the studies of the people for whom they have been requested. With respect to the other measures of reparation requested, this Court considers that the issuance of this judgment and the reparations ordered therein are sufficient and appropriate.

## F. Compensation

311. The **representatives** requested that the State be ordered to compensate the victims, covering both pecuniary and non-pecuniary damage. They also requested that the amounts not be included in the sentence, due to the fear that the relatives of the victims have of being extorted.

312. The **Commission** asked the Court to order the State to “fully compensate the next of kin of Noel Emiro Omeara Carrascal, Manuel Guillermo Omeara Miraval, and Héctor Álvarez Sánchez,” including the compensation measures.

313. The **State** accepted, in accordance with its acknowledgment of responsibility, that the victims in this case must be compensated and provided an expert opinion to calculate the compensation that may be appropriate.

### F.2. Pecuniary Damages

#### F.2.1. Consequential Damage

314. The **representatives** indicated the components of certain material damages suffered. As consequential damage,<sup>320</sup> the relatives of Omeara Carrascal and Álvarez Sánchez incurred

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<sup>320</sup> The *representatives* also requested that the costs of proceedings before judicial authorities to denounce and start the search for Mr. Omeara Miraval be included as consequential damages. However, the Court finds that this item falls within the analysis of costs and expenses. The Court also considers that there are no specific receipts on the specific expenses incurred by Carmen Teresa Omeara Miraval, Fabiola Álvarez Solano, Manuel Guillermo Omeara

medical expenses for hospitalization. Clemencia Patricia Álvarez, sister-in-law of Manuel Guillermo Omeara Miraval, travelled to contact people who would help with managing the search. They added that, although there is no documentary evidence showing the consequential damage, they requested that the payment of a sum of money be ordered in accordance with equity, according to Article 43(1) of the Court's Rules of Procedure.

315. The **Commission** did not express a position on these arguments.

316. The **State** argued that there is no evidence regarding consequential damage and therefore said request should be dismissed.

317. According to the report from the representatives, the next of kin of Messrs. Omeara Carrascal and Álvarez Sánchez have incurred a series of expenses related to their hospitalization as a result of the attacks they suffered, as well as the search for the whereabouts of Manuel Guillermo Omeara Miraval. Although they have not presented receipts for said disbursements, the **Court** considers that they have a direct causal link with the violations in this case, and finds it reasonable to presume that their next of kin effectively incurred various expenses.

318. Consequently, this Court establishes, in fairness, the sum of USD\$10,000.00 (ten thousand United States dollars) for consequential damages in favor of each family group, which the State must pay in accordance with the criteria established in paragraph 328 of this judgment.

#### F.2.2. Loss of income

319. The **representatives** pointed out for loss of earnings, since there is no specific evidence, its calculation must take into account the labor, social, educational circumstances and professional qualifications of the victim to determine their presumptive income. For this, they provided the expertise of Fernando Ruiz to calculate the corresponding amounts.

320. In this regard, they indicated that in the case of Noel Emiro Omeara Carrascal, as he worked in agriculture and livestock, his income had to be established based on presumptive income, that is, 7% of the value of his properties. The estimated value of these was 88,187,165.00 Colombian pesos for the year 1994, so it is possible to establish that he had an annual income of at least 5,753,102.00 Colombian pesos. According to said value and his life expectancy, which would end in 2008, the amount corresponding to loss of earnings was calculated. Noel Emiro Omeara Carrascal would receive 297,881,368.00 Colombian pesos for this item, equivalent to USD\$98,963.91 (ninety-eight thousand, nine hundred and sixty-three United States dollars, and 91 cents). In the case of Manuel Guillermo Omeara Miraval, it was not possible to establish his income, because undertook the administration of his father-in-law's farm; Therefore, the minimum wage was used as a base and his loss of income was calculated taking into account his life expectancy. In this way, he would be entitled to the sum of 330,952,355.00 Colombian pesos, equivalent to USD \$109,950.95 (One hundred and nine thousand, nine hundred and fifty United States dollars and ninety-five cents). Finally, in the case of Héctor Álvarez Sánchez, they requested the sum of 435,827,178.00 Colombian pesos, equivalent to USD\$144,793.08 (One hundred and forty-four thousand, seven hundred and ninety-three United States dollars and eight cents), according to the calculation of the value of his properties, because he had a presumptive income of 6,260,327.00 Colombian pesos, and taking into account his life expectancy.

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Álvarez, Elba Katherine Omeara Álvarez and Claudia Marcela Omeara Álvarez due to their displacement, and therefore it will take them into account when considering non-pecuniary damage.



321. Similarly, they requested that the amounts not be included in the judgment, due to the fear that the victims' next of kin have of being extorted. Finally, the representatives made some observations on the values alleged by the State and supported by the expert opinion carried out by Héctor Eduardo Patiño. They pointed out that this test is not applicable to this case since it seeks to limit compensation to the standards of the State Council of Colombia, in the case of an inter-American proceeding. Additionally, they considered that the compensation should correspond to a joint assessment of the evidence provided in the process and the arguments put forward, taking into account issues such as the employment, social and educational circumstances of each individual to calculate his or her presumptive income.

322. The **Commission** did not present specific arguments regarding these requests made by the representatives.

323. The **State** indicated that the amounts presented by the representatives should have been calculated in accordance with the standards of contentious-administrative case law. The amounts were based on the expert opinion presented by the representatives, and furthermore, they did not provide proof of the registration of Noel Emiro Omeara's birth, nor mortality tables to calculate life expectancy<sup>321</sup> and there is no document that proves the status of cattle rancher and farmer in the cases of Messrs. Omeara Carrascal and Álvarez Sánchez. It also mentioned that the deeds of the demonstrated properties do not show that Noel Emiro Omeara Carrascal was their owner. The State referred to the expert opinion it presented, according to which the amounts of compensation for lost earnings should be 487,391,186.00 Colombian pesos, equivalent to USD \$169,632.00 (One hundred and sixty-nine thousand, six hundred and thirty-two United States dollars) for the family group of Manuel Guillermo Omeara Miraval; 5,600,635.00 Colombian pesos equivalent to USD \$1,949.00 (One thousand nine hundred and forty-nine United States dollars) for the family group of Noel Emiro Omeara; 71,569,620.00 Colombian pesos equivalent to USD \$24,909.20 (Twenty-four thousand, nine hundred and nine United States dollars and twenty cents) for the family group of Héctor Álvarez Sánchez. With this, taking into account that the calculations regarding Noel Emiro Omeara Carrascal and Héctor Álvarez Sánchez should only be based on the duration of their disability, and their presumed income, that is, the current legal monthly minimum wage. Finally, it requested that the expert opinion carried out by Fernando Ruiz not be taken into account due to the errors he made regarding the value assigned to the economic and labor activities of the victims, their assets and the probable life expectancy in Colombia.

324. The Court has developed in its case law the concept of pecuniary damage and the cases in which it should be compensated. In addition to the foregoing, it has established that said damage supposes "the loss of or detriment to the victims' income, the expenses incurred as a result of the facts, and the monetary consequences that have a causal nexus with the facts of the ... case."<sup>322</sup>

325. With regard to the request made by the representatives to keep the amounts recognized in this judgment confidential, the Court does not consider it pertinent to grant it.

326. Regarding the expert opinion reports provided by the representatives and the State to justify the calculation of the loss of income of the three victims, both have discrepancies regarding the basis for calculating it for each one. On the one hand, the representatives requested that the presumptive income be used to establish the income of Messrs. Omeara Carrascal and Álvarez Sánchez; on the other hand, the State expert opinion was based on the minimum wage and did not take into account the life expectancy of each victim, but only the

<sup>321</sup> These documents were requested as further evidence.

<sup>322</sup> *Case of Bámaca Velásquez v. Guatemala. Reparations and Costs.* Judgment of February 22, 2002. Series C No. 91, para. 43, and *Case of López Soto et al. v. Venezuela, supra*, para. 359.

period of incapacity of Messrs. Omeara Carrascal and Álvarez Sánchez. In the case of Mr. Omeara Miraval, despite the calculation by the State and by the representatives based on the minimum wage, the amount varies substantially. In consideration of the foregoing and given the personal circumstances of each of the victims, the Court sets the following amounts for each: the sum of USD \$50,000.00 (fifty thousand United States dollars) for Noel Emiro Omeara Carrascal; the sum of USD \$100,000.00 (one hundred thousand United States dollars) for Manuel Guillermo Omeara Miraval, and the sum of USD \$25,000.00 (twenty-five thousand United States dollars) for Héctor Álvarez Sánchez, for compensation for loss of income.

327. The amounts must be delivered according to the following criteria:

- (a) Fifty percent (50%) of the compensation corresponding to each victim will be distributed, in equal parts, among the children of the victim. If one or more of the children have already died, the part that corresponds to him or them will increase that of the other children of the same victim;
- (b) the other fifty percent (50%) of the compensation must be delivered to the person who was the spouse, partner or permanent partner of the victim, at the beginning of the disappearance or at the time of the victim's death, as appropriate;
- (c) in the event that the victim does not have children or a spouse, partner or permanent partner, what would have corresponded to the next of kin located in that category will be added to the part that corresponds to the other category;
- (d) in the event that the victim does not have children or a spouse or permanent partner, compensation for material damage will be delivered to his parents or, failing that, to his siblings in equal parts, and
- (e) in the event that the victim had no children, no spouse or partner, no parents, no siblings, the compensation must be paid to the heirs in accordance with domestic inheritance law.

### F.3. Non-Pecuniary Damages

328. Regarding the amounts for non-pecuniary damage, the **representatives** requested that the sum of USD \$100,000.00 (one hundred thousand United States dollars) be awarded to each of the victims for this item, as a consequence of the violations and damages suffered, to: Noel Emiro Omeara Carrascal, Manuel Guillermo Omeara Miraval and Héctor Álvarez Sánchez.

329. In addition, they requested that each of the members of the three families namely Omeara Miraval, Omeara Álvarez and Álvarez Solano, whose family unit was violated three times in less than ten months, be granted compensation of USD \$80,000.00 (eighty thousand United States dollars) for the loss of their loved ones; the impact on the rights of the child of minors at the time of the events; the ongoing impunity 24 years after the occurrence of the events, and the ignorance of the reasons for the human rights violations to their detriment.

330. The **Commission** did not present specific arguments regarding this measure.

331. The **State** did not comment specifically on this request by the representatives.

332. The **Court** has established that non-pecuniary damage "may include both the suffering and afflictions caused by the violations, and also the impairment of values of great significance to the individual and any alteration, of a non-pecuniary nature, in the living conditions of the victims."<sup>323</sup> Alternatively, given that it is not possible to assign a precise monetary equivalent

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<sup>323</sup> 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 López Soto et al. v. Venezuela, supra*, para. 372.

to non-pecuniary damage, it can only be compensated, for the purpose of full reparation to the victim, by paying an amount of money or delivering goods or services measurable in money, that the Court determines in reasonable application of judicial arbitration and in terms of equity.<sup>324</sup>

333. Considering that Noel Emiro Omeara Carrascal, as a result of the attack that occurred, suffered a series of damages related to the injuries caused and his subsequent death, as well as considering the violations declared in this judgment, the Court establishes, in equity, the amount of USD \$80,000.00 (eighty thousand United States dollars) for non-pecuniary damage.

334. Regarding Manuel Guillermo Omeara Miraval, as he suffered specific attacks on his rights to legal personality, life, humane treatment and personal liberty, being a victim of forced disappearance and extrajudicial execution, the Court estimates the amount, in fairness, of USD \$100,000 .00 (one hundred thousand United States dollars) for non-pecuniary damage.

335. With regard to Héctor Álvarez Sánchez, as a result of the attack he suffered a series of damages related to the injuries caused, as well as in consideration of the violations declared in this judgment, the Court sets, in equity, the amount of USD \$70,000.00 (seventy thousand United States dollars) for non-pecuniary damage.

336. The amounts established for non-pecuniary damage in favor of the three aforementioned victims must be delivered to their next of kin following the criteria established in paragraph 327 of this judgment.

337. The analysis of the damages caused to the next of kin of Messrs. Omeara Carrascal, Omeara Miraval and Álvarez Sánchez must take into account the violations declared in this case related to violations of the rights to a fair trial and judicial protection resulting from the way in which the State has carried out the investigation of the facts, as well as the right to humane treatment and protection of the family on suffering the loss of their next of kin. The Court determines, in fairness, the sum of USD \$20,000.00 (twenty thousand United States dollars) for each of the following victims: Jaime Antonio Omeara Miraval, Luis Enrique Omeara Miraval, Aura Isabel Omeara Miraval, Noel Emiro Omeara Miraval, Araminta Omeara Miraval, Ricaurte Omeara Miraval, Eduardo Omeara Miraval, Zoila Rosa Omeara Miraval, Liliana Patricia Omeara Miraval, María Omeara Miraval, Elva María Solano de Álvarez, Judith Álvarez Solano, Miguel Ángel Álvarez Solano, Héctor Manuel Álvarez Solano, Clemencia Patricia Álvarez Solano, Juan Carlos Álvarez Solano, and Ana Edith Álvarez de García. In the event of the death of any of the named persons, the amounts established for non-pecuniary damage in favor of the aforementioned persons must be delivered to their next of kin following the criteria established in paragraph 327 of this judgment.

338. The damage caused to Fabiola Álvarez Solano and Carmen Teresa Omeara Miraval is due to the violations of their rights to a fair trial and judicial protection, to humane treatment, to the protection of the family and to freedom of movement and residence, due to the suffering for the loss of their loved ones, in addition, the State has not carried out the investigation of the facts of the forced displacement. Therefore, the Court determines, in fairness, for each of them the sum of USD \$25,000.00 (twenty-five thousand United States dollars) for non-pecuniary damage. In the event of the death of any of the named persons, the amounts established for non-pecuniary damage in favor of the aforementioned persons must be delivered to their next of kin following the criteria established in paragraph 327 of this judgment.

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<sup>324</sup> Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and Costs*, para. 84, and *Case of López Soto et al. v. Venezuela*, *supra*, para. 372.

339. Finally, in the case of Elba Katherine, Manuel Guillermo and Claudia Marcela, all with the surnames Omeara Álvarez, it must be taken into account that at the time of the events they were children, and the events they suffered affected their rights to humane treatment, family, free movement and residence, children's rights, a fair trial and judicial protection. Due to this, the Court sets, in fairness, for each of the three, the sum of USD \$25,000.00 (twenty-five thousand United States dollars) for non-pecuniary damage. In the event of the death of any of the named persons, the amounts established for non-pecuniary damage in favor of the aforementioned persons must be delivered to their next of kin following the criteria established in paragraph 327 of this judgment.

## G. Costs and Expenses

340. The **representatives** requested as costs and expenses, the sum of USD \$22,868.75 (twenty-two thousand eight hundred and sixty-eight United States dollars and seventy-five cents) in favor of the CCJ and USD \$3,365.00 (three thousand three hundred and sixty-five United States dollars) for CEJIL; amounts that include the procedure before the Commission, fees, expenses made during the process before the Court, communications expenses, a trip to Colombia to document the case, and travel related to the investigation work, collection, presentation of evidence and preparation of written. Subsequently, the representatives attached a table with the costs incurred by the CCJ, for an amount of USD \$4,796.33 (four thousand seven hundred and ninety-six United States dollars and thirty-three cents) with its supporting documents, for the travel of its officials and Mr. Jaime Antonio Omeara Miraval, as well as his travel from Valledupar to Bogotá, and his support evidence for the expenses of a passport and visa to attend the public hearing in this case. Finally, they requested that the Court establish the relevant amount in fairness and that said amount be reimbursed directly from the State to the representatives.

341. The **State** indicated that it has duly accredited the costs and expenses presented by the representatives of the victims in the pleadings and motions brief. Notwithstanding the foregoing, with respect to the additional amount requested for costs and expenses for expenses incurred subsequently, to attend the public hearing, the State argued that the representatives did not support their request, since there is no relationship between some expenses and representation work. They indicated that there are repeated or unjustified supporting documents, and illegible documents.

342. The **Court** reiterates that, in accordance with its case law,<sup>325</sup> the costs and expenses are part of the concept of reparation, since the activity carried out by the victims in order to obtain justice, both at the national and international levels, implies expenses that must be compensated when the international responsibility of the State is declared through a conviction. Regarding the reimbursement of costs and expenses, it is up to the Court to prudently assess its scope, which includes the expenses generated before the authorities of the domestic jurisdiction, as well as those generated in the course of the process before the inter-American system, taking into account the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. This assessment can be made based on the principle of equity and taking into account the expenses indicated by the parties, provided that their *quantum* is reasonable.<sup>326</sup>

343. In consideration of the statements by the State regarding the accreditation of the additional amount requested by the representatives for costs and expenses, this Court has verified that

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<sup>325</sup> 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 López Soto et al. v. Venezuela*, *supra*, para. 281.

<sup>326</sup> Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and Costs*, *supra*, para. 82, and *Case of López Soto et al. v. Venezuela*, *supra*, para. 281.

indeed some of the receipts are not subject to reimbursement, since, as mentioned by the State there are repeated, illegible or unjustified receipts.

344. Taking all of the above into account, the Court sets, in fairness, the amount of USD 30,000.00 (thirty thousand United States dollars) for the expenses incurred in processing the proceedings before the inter-American human rights system. Said amount must be delivered, within a period of one year from the notification of this judgment, in the following manner: to the Center for Justice and International Law the sum of USD \$4,000.00 (four thousand United States dollars) and the Colombian Commission of Jurists the sum of USD \$26,000.00 (twenty-six thousand United States dollars). In the stage of monitoring compliance with this judgment, the Court may order the State to reimburse the victims or their representatives for reasonable expenses incurred in said procedural stage.

#### **H. Method of compliance with the payments ordered**

345. The State must pay the compensation for pecuniary and non-pecuniary damage and the reimbursement of costs and expenses established in this judgment directly to the persons and organizations indicated therein, within a period of one year, counted from the notification of this judgment, in the terms of the following paragraphs.

346. In the case of those whose beneficiaries have died or die before the respective compensation is delivered, it will be paid directly to their heirs, in accordance with the applicable domestic law, without prejudice to the provisions in paragraph 327 of this judgment.

347. The State must meet its monetary obligations by paying in United States dollars or its equivalent in national currency, using the current exchange rate on the New York Stock Exchange, United States of America, for the respective calculation on the day before payment.

348. If, for reasons attributable to the beneficiaries of the compensation or their heirs, it is not possible to pay the amounts determined within the indicated period, the State will deposit said amounts in their favor in an account or certificate of deposit in a solvent Colombian financial institution, in US dollars, and in the most favorable financial conditions permitted by law and banking practice. If the corresponding compensation is not claimed after ten years have elapsed, the amounts will be returned to the State with accrued interest.

349. The amounts assigned in this judgment as compensation and as reimbursement of costs and expenses must be delivered to the persons and organizations indicated in full, in accordance with the provisions of this judgment, without reductions arising from possible tax charges.

350. In the event that the State incurs in arrears, it must pay interest on the amount owed corresponding to default bank interest in the Republic of Colombia.

### **X OPERATIVE PARAGRAPHS**

351. Therefore,

**THE COURT**

**DECIDES,**

unanimously,

1. To accept the partial acknowledgement of the responsibility made by the State, pursuant to paragraphs 31 to 36 of this judgment.

**DECLARES,**

unanimously, that:

2. The State is responsible for the violation of the rights to life and humane treatment enshrined in Articles 4(1) and 5(1) of the American Convention on Human Rights, in relation to Article 1(1) of the same instrument, to the detriment of Noel Emiro Omeara Carrascal, in accordance with the stipulations of paragraphs 171 and 187 of this judgment.

3. The State is responsible for the violation of the rights to life and humane treatment enshrined in Articles 4(1) and 5(1) of the American Convention on Human Rights, in relation to Article 1(1) of the same instrument, to the detriment of Héctor Álvarez Sánchez, in accordance with the stipulations of paragraphs 175 to 186 and 188 of this judgment.

4. The State is responsible for the violation of the rights to recognition of juridical personality, life and humane treatment enshrined in Articles 3, 4, 5 and 7 of the American Convention on Human Rights, in relation to Article 1(1) of the same instrument, to the detriment of Manuel Guillermo Omeara Miraval, in accordance with the stipulations of paragraphs 189 and 201 of this judgment.

5. The State is responsible for the violation of a fair trial and judicial protection enshrined in Articles 8(1) and 25(1) of the American Convention on Human Rights, in relation to Article 1(1) of the same instrument, to the detriment of Noel Emiro Omeara Carrascal, Manuel Guillermo Omeara Miraval, Héctor Álvarez Sánchez, Luis Enrique Omeara Miraval, Aura Isabel Omeara Miraval, Noel Emiro Omeara Miraval, Araminta Omeara Miraval, Ricaurte Omeara Miraval, Eduardo Omeara Miraval, Zoila Rosa Omeara Miraval, Liliana Patricia Omeara Miraval, María Omeara Miraval, Carmen Teresa Omeara Miraval, Jaime Antonio Omeara Miraval, Elva María Solano de Álvarez, Judith Álvarez Solano, Miguel Ángel Álvarez Solano, Héctor Manuel Álvarez Solano, Clemencia Patricia Álvarez Solano, Juan Carlos Álvarez Solano, Ana Edith Álvarez de García, Fabiola Álvarez Solano, Manuel Guillermo Omeara Álvarez, Elba Katherine Omeara Álvarez, and Claudia Marcela Omeara Álvarez for the lack of a diligent investigation of the events occurred to Noel Emiro Omeara Carrascal and Héctor Álvarez Sánchez, pursuant to paragraphs 206 to 208, 210, 228 to 250, 252 to 255 and 258 of this ruling.

6. The State is responsible for the violation of a fair trial and judicial protection enshrined in Articles 8(1) and 25(1) of the American Convention on Human Rights, in relation to Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture and I(b) of the Inter-American Convention on Forced Disappearance, to the detriment of Luis Enrique Omeara Miraval, Aura Isabel Omeara Miraval, Noel Emiro Omeara Miraval, Araminta Omeara Miraval, Ricaurte Omeara Miraval, Eduardo Omeara Miraval, Zoila Rosa Omeara Miraval, Liliana Patricia Omeara Miraval, María Omeara Miraval, Carmen Teresa Omeara Miraval, Jaime Antonio Omeara Miraval, Fabiola Álvarez Solano, Manuel Guillermo Omeara Álvarez, Elba Katherine Omeara Álvarez, and Claudia Marcela Omeara Álvarez, due to the lack of a diligent investigation of the events that occurred to Manuel Guillermo Omeara Miraval, in accordance with paragraphs 209 to 210, 236 to 251, 255, and 259 of this ruling.

7. The State is responsible for the violation of the right of the family members of the disappeared victim to know the truth, in accordance with paragraphs 257 and 260 of this ruling.

8. The State is responsible for the violation of judicial guarantees and judicial protection enshrined in Articles 8(1) and 25(1) of the American Convention on Human Rights, in relation to Article 1(1) of the same instrument, to the detriment of Carmen Teresa Omeara Miraval, for failing to diligently investigate the alleged facts of the threats she suffered, in accordance with the provisions of paragraph 261 of this judgment.

9. The State is responsible for the violation of the right to movement and residence, judicial guarantees and judicial protection enshrined in Articles 22(1), 8(1) and 25(1) of the American Convention on Human Rights, in relation to Article 1(1) of the Convention, to the detriment of Carmen Teresa Omeara Miraval and Fabiola Álvarez Solano, and Elba Katherine Omeara Álvarez, Manuel Guillermo Omeara Álvarez and Claudia Marcela Omeara Álvarez, for failing to diligently investigate the alleged facts of the displacement they suffered, in accordance with the provisions of paragraph 262 of this judgment.

10. The State is responsible for the violation of the rights to humane treatment, protection of the family and the rights of the child, enshrined in Articles 5 and 17 of the American Convention on Human Rights, in relation to Article 1(1) of the same instrument, to the detriment of the family members of Messrs. Omeara Carrascal, Omeara Miraval and Álvarez Sánchez, namely: Luis Enrique Omeara Miraval, Aura Isabel Omeara Miraval, Noel Emiro Omeara Miraval, Araminta Omeara Miraval, Ricaurte Omeara Miraval, Eduardo Omeara Miraval, Zoila Rosa Omeara Miraval, Liliana Patricia Omeara Miraval, María Omeara Miraval, Carmen Teresa Omeara Miraval, Jaime Antonio Omeara Miraval, Manuel Guillermo Omeara Álvarez, Elva María Solano de Álvarez, Judith Álvarez Solano, Miguel Ángel Álvarez Solano, Héctor Manuel Álvarez Solano, Clemencia Patricia Álvarez Solano, Juan Carlos Álvarez Solano, Fabiola Álvarez Solano and Ana Edith Solano de García, as well as Article 19 of Elba Katherine Omeara Álvarez, Manuel Guillermo Omeara Álvarez and Claudia Marcela Omeara Álvarez who were minors at the time of the events, in accordance with the provisions of paragraphs 270 and 281 of this judgment.

11. The State is responsible for the violation of right to movement and residence enshrined in Article 22(1) of the American Convention on Human Rights, in relation to Article 1(1) of the Convention, to the detriment of Carmen Teresa Omeara Miraval, Fabiola Álvarez Solano and their three children, Elba Katherine Omeara Álvarez, Manuel Guillermo Omeara Álvarez and Claudia Marcela Omeara Álvarez, and also in relation to the rights of the child, protected under Article 19 of the Convention, to the detriment of the victims who at the time of the events were children, in accordance with the provisions of paragraphs 270 to 280 and 282 of this judgment.

12. The State is not responsible for the violation of the right to humane treatment enshrined in Article 5(2) of the American Convention on Human Rights, in relation to Article 1(1) of the same instrument, to the detriment of Manuel Guillermo Omeara Miraval, in accordance with the provisions of paragraphs 195 to 200 and 202 of this judgment.

13. The State is not responsible for the violation of the right to humane treatment enshrined in Article 5(1) of the American Convention on Human Rights, in relation to Article 1(1) of the same instrument, to the detriment of Carmen Teresa Omeara Miraval, in accordance with the provisions of paragraphs 279 and 283 of this judgment.

14. The State is not responsible for the violation of the right to protection of privacy enshrined in Article 11(2) of the American Convention on Human Rights, to the detriment of the victims' family members, in accordance with the provisions of paragraphs 280 and 284 of this judgment.

**AND ESTABLISHES:**

unanimously, that:

15. This judgment constitutes per se a form of reparation.

16. The State must, within a reasonable timeframe, using the necessary means, in accordance with its domestic law: (a) effectively continue the open investigations, progressing them with due diligence and within a reasonable time, in order to identify, judge and, where appropriate, punish those responsible for the facts, analyzing, among others, the logical lines of investigation, regarding: (i) what happened to Noel Emiro Omeara Carrascal; (ii) what happened to Manuel Guillermo Omeara Miraval, and iii) what happened to Héctor Álvarez Sánchez. In addition, the State must initiate, within a reasonable period of time, in accordance with the provisions of domestic law, the investigation into the alleged torture suffered by Manuel Guillermo Omeara Miraval, in accordance with the provisions of paragraphs 293 and 294 of this judgment.

17. The State must provide free, without cost or charge, as a priority, adequate psychological treatment to victims who require it, following their consent, which must be given within a period of six months from notification of this judgment, for as long as necessary to address the conditions arising from the violations declared in this judgment, in accordance with the provisions of paragraphs 298 to 300 of this ruling.

18. The State must make the publications, within a period of six months from the notification thereof, in the terms of paragraph 304 of this judgment.

19. The State must carry out the public act of acknowledgment of international responsibility, in relation to the facts of this case, in the terms of paragraphs 305 and 306 of this ruling.

20. The State must pay the amounts established in paragraphs 318, 326, 327, 333 to 339 of this Judgment, for compensation for pecuniary and non-pecuniary damages, and for the reimbursement of costs and expenses in the terms of paragraph 344 of this ruling.

21. The State must submit to the Court, within a period of one year from the date of notification of this judgment, a report on the measures adopted to comply therewith.

22. The Court will monitor full compliance with this judgment, in exercise of its authority and in compliance with its obligations pursuant to the American Convention on Human Rights, and shall declare this case closed when the State has fully complied with all the measures ordered herein.

DONE San José, Costa Rica, on November 21, 2018, in the Spanish Language.



I/A Court H.R. Case of *Omeara Carrascal et al. v. Colombia*. Merits, Reparations and Costs. Judgment of November 21, 2018.

Eduardo Ferrer Mac-Gregor Poisot  
President

Eduardo Vio Grossi

Elizabeth Odio Benito

Eugenio Raúl Zaffaroni

L. Patricio Pazmiño Freire

Pablo Saavedra Alessandri  
Registrar

So ordered,

Pablo Saavedra Alessandri  
Registrar

Eduardo Ferrer Mac-Gregor Poisot  
President