

INTER-AMERICAN COURT OF HUMAN RIGHTS
CASE OF CASIERRA QUIÑONEZ ET AL. vs. ECUADOR
JUDGMENT OF MAY 11, 2022
(Preliminary Objection, Merits, and Reparations)

In the Case of *Casierra Quiñonez et al. v. Ecuador*,

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

Ricardo C. Pérez Manrique, President;
Eduardo Ferrer Mac-Gregor Poisot, Judge;
Nancy Hernández López, Judge;
Veronica Gomez, Judge;
Patricia Pérez Goldberg, Judge, and
Rodrigo de Bittencourt Mudrovitsch, Judge,

also present,

Pablo Saavedra Alessandri, Secretary, and
Romina I. Sijniensky, Deputy Secretary,

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) and Articles 31, 32, 42, 65 and 67 of the Rules of Procedure of the Court (hereinafter “the Rules of Procedure” or “the Court’s Rules of Procedure”), delivers this judgment structured as follows:

* Judge Humberto Antonio Sierra Porto did not participate in the deliberation and signing of this Judgment, for reasons of force majeure accepted by the Plenary of the Court.

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I
INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE

1. *The case submitted to the Court.* – On June 19, 2020, the Inter-American Commission on Human Rights (hereinafter, also “the Commission” or “the Inter-American Commission”) submitted to the jurisdiction of the Court the case of “Casierra Brothers and family” against the Republic of Ecuador (hereinafter also “the State,” “the Ecuadorian State,” or “Ecuador”). According to the Commission, the case is related to the alleged international responsibility of the Ecuadorian State for the death of Luis Eduardo Casierra Quiñonez and the injuries caused to Andrés Alejandro Casierra Quiñonez as a result of the use of lethal force by agents of the Ecuadorian Navy in December 1999, as well as the impunity for what occurred.

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

a) *Petition.* – On June 27, 2000, Alejandro Ponce Villacís filed the initial petition with the Commission.

b) *Admissibility Report.* – On March 19, 2009, the Commission adopted Admissibility Report No. 16/09, which was notified to the parties on April 1, 2009.

c) *Merits Report.* – On February 12, 2019, the Commission approved Merits Report No. 14/19 (hereinafter also “Merits Report” or “Report No. 14/19”) in which it reached a series of conclusions and made several recommendations to the State.

3. *Notification to the State.* – The Merits Report was notified to the State on March 19, 2019, granting it two months to report on compliance with the recommendations. The Commission granted four extensions of three months each. On June 5, 2020, Ecuador requested a fifth extension. Upon evaluating said request, the Commission responded that “although the State ha[d] expressed its willingness to comply with [...] the recommendations, one year and three months after notification of the [R]eport on Merits ,] it had not yet submitted a proposal for material and non-pecuniary reparations.” Likewise, the Commission mentioned that there was a dispute between the parties regarding health and psychological care, and that “although in recent months the Prosecutor’s Office ha[d] carried out several proceedings in the investigation [...], it was still in the preliminary stage.”

4. *Submission to the Court.* – On June 19, 2020, the Commission submitted this case to the Court, “taking into account the will of the petitioning party and the need to obtain justice and reparation for the [alleged] victims.”¹ This Court notes, with concern, that approximately twenty years elapsed between lodging the initial petition to the Commission and submitting the case to the Court.

5. *The Commission’s requests.* – Based on the foregoing, the Commission asked the Court to declare the international responsibility of the Ecuadorian State for the violation of the rights to life, humane treatment, judicial guarantees and judicial protection, enshrined in articles 4(1), 5(1), 8(1) and 25(1) of the American Convention, in relation to articles 1(1) and 2 of said international instrument, to the detriment, respectively, of Luis Eduardo Casierra Quiñonez, Andrés Alejandro Casierra Quiñonez and the following relatives of both: their mother, María Quiñonez Bone; their father, Cipriano Casierra, and their brothers and sister,

¹ The Commission appointed as its delegates before the Court the then Commissioner Antonia Urrejola Noguera and the then Executive Secretary Paulo Abrão, and appointed as counsel and legal advisers, respectively, Marisol Blanchard Vera, Deputy Executive Secretary, Jorge Humberto Meza Flores, and Erick Acuña Pereda, attorneys for the Executive Secretariat.

Jonny Jacinto Casierra Quiñonez, Sebastián Darlin Casierra Quiñonez, and Shirley Lourdes Quiñonez Bone. In addition, the Commission asked the Court to order that the State grant several measures of reparation.

II PROCEEDINGS BEFORE THE COURT

6. *Appointment of Inter-American Public Defenders.* – Through communications dated October 5 and 12, 2020, and in accordance with Article 37 of the Court's Rules of Procedure, the alleged victims requested that the Court appoint an inter-American public defender since they had no legal representation during the case's processing. Accordingly, in response to the request made in a note from the Secretariat dated October 7, 2020, the General Coordination of the Inter-American Association of Public Defenders (AIDEF), based on article two of the Memorandum of Understanding between the Inter-American Court and said Association, on October 15 of the same year, said Association appointed Inter-American public defenders Javier Mogrovejo and Carlos Benjamín Flores Vázquez as principals, and Sandra Lorena Haro Colomé as alternate (hereinafter “the representatives” or “the Inter-American Public Defenders”).²

7. *Notification to the State and to the representatives.* – The submission of the case was notified to the State³ and to the representatives in communications dated October 20, 2020.

8. *Brief with pleadings, motions, and evidence.* – The representatives of the alleged victims filed their brief with pleadings, motions, and evidence (hereinafter “pleadings and motions brief”) on December 20, 2020. In said brief, they said they were “share[ing], support[ing] and [...] adhere[ing]” to the content of the Merits Report and, additionally, requested that the international responsibility of the State be declared for violation of Articles 11(1) , 11(2), 11(3), 17(1), 21(1), 21(2) and 24 of the American Convention, in relation to articles 1(1) and 2 of said instrument. They also requested various measures of reparation.

9. *Answering brief with preliminary objections.* – The State submitted its brief answering the submission and Merits Report of the Commission and the pleadings and motions brief on March 29, 2021 (hereinafter, “the answering brief”). In said brief, Ecuador raised a preliminary objection. It requested that the Court declare that it is not internationally responsible for the alleged violations and, consequently, that it “[a]bstain from ordering” reparation measures.

10. *Observations on the preliminary exception.* –In briefs dated July 19, 2021, the Commission and the representatives, respectively, submitted their observations on the preliminary objection raised by the State.

11. *Public Hearing.* – Through an Order of December 8, 2021, the Court President summoned the parties and the Commission to a public hearing on the preliminary objection, and eventual merits, reparations, and costs.⁴ Due to the exceptional circumstances caused by the COVID-19 pandemic, the public hearing was held via videoconference, as provided in the Court's Rules of Procedure, on February 11, 2022, during the 146th Regular Period of Court Sessions.⁵

² On March 21, 2022, AIDEF reported that Sandra Lorena Haro Colomé would replace Carlos Benjamín Flores Vázquez, given that the latter had resigned from the position of public defender.

³ In a communication dated November 11, 2020, the State appointed María Fernanda Álvarez as its Agent, and Carlos Espín Arias and Magda Aspirot as Deputy Agents.

⁴ Cf. *Case of Casierra Quiñonez et al. Ecuador. Convocation of hearing.* Order from the President of the Inter-American Court of Human Rights of December 8, 2021. Available at: https://www.corteidh.or.cr/docs/asuntos/casierra_quinonez_08_12_2021.pdf.

⁵ The following parties appeared at the hearing: a) for the Commission: Marisol Blanchard, Deputy Executive Secretary of the IACHR; Jorge Meza Flores, Counsel, and Erick Acuña Pereda, Counsel; b) in representation of the alleged victims: Javier Mogrovejo Mata, and c) for the Ecuadorean State: María Fernanda Álvarez, National Director

12. *Helpful evidence and information.* – On February 16, 2022, based on Article 58(b) of the Rules of Procedure and as required by the judges during the public hearing, the State was asked to present helpful documents and information.⁶ The State responded to the request by presenting its final written arguments.

13. *Final written arguments and observations.* – On March 11, 2022, the Commission, the State, and the representatives, respectively, submitted their final written observations and their final written arguments. Likewise, the State sent on various annexes, including certain documents, in response to the request dated February 16, 2022.⁷

14. *Observations on the annexes to the final arguments and on the request for helpful evidence and information.* – On March 24, 2022, the Commission mentioned that it had no observations in this regard. The representative did not comment on the matter.

15. The Court deliberated on this Judgment on May 11, 2022.

III JURISDICTION

16. The Court has jurisdiction to hear this case pursuant to Article 62(3) of the American Convention, because Ecuador has been a State Party to said Convention since December 28, 1977 and accepted the contentious jurisdiction of the Court on July 24, 1984.

IV PRELIMINARY OBJECTION

17. In instant case, the State filed a preliminary objection that it called “lack of jurisdiction regarding property-related claims, based on the factual framework determined by the C[omission].”

a. Arguments of the parties and the Commission

18. The **State** argued that, in their pleadings and motions brief, the representatives invoked claims related to the destruction of the property of Ms. Shirley Lourdes Quiñonez Bone, specifically, the boat “known as R[odach].” It pointed out that these claims constitute “new

of Human Rights; Carlos Espín Arias, National Deputy Director of Human Rights, and Juan Carlos Álvarez, Human Rights Litigation Lawyer.

⁶ Here, the State was requested to provide the following: a) the Constitution of Ecuador and applicable legislation in matters of military criminal jurisdiction that was in force at the time of the facts; b) if applicable, the text of regulations that were in force to replace the regulations referred to in the previous paragraph, indicating the effective date; c) information on the existence, in any of the criminal proceedings processed before the military jurisdiction or before the ordinary jurisdiction, of the plan or map showing the specific place where the shots hit the boat in which they were sailing had been identified the Casierra Quiñonez brothers on the day of the events, requesting that, if applicable, the respective document be provided, and d) the complete files of cases No. 3-99, in charge of the Military Criminal Court of the Third Naval Zone, and 7-2000, by the Fifth Criminal Court of Atacames and Muisne.

⁷ The State submitted the following documents: a) in response to the request made on February 16, 2022: i) preliminary investigation file No. 080101816100361, by the Human Rights and Citizen Participation Directorate of the State Attorney General's Office; ii) Political Constitution of the Republic of Ecuador, published on August 11, 1998, and repealed by the Constitution of the Republic of Ecuador of 2008; iii) text of the Organic Law of the Armed Forces, published on September 28, 1990, and repealed by Law No. 74, published on January 19, 2007; iv) text of the Organic Law of the Justice Service of the Armed Forces, published on November 0, 1961 and repealed by Law No. 0, published on March 9, 2009; v) text of the Military Criminal Code, published on November 6, 1961, and repealed by Law No. 0, published on May 19, 2010, and vi) text of the Military Criminal Procedure Code, published on November 6, 1961 and repealed by Law No. 0, published on March 9, 2009, and b) other than the aforementioned requirement: report on health care provided to Andrés Alejandro Casierra Quiñonez, Sebastián Darlín Casierra Quiñonez and María Ingracia Quiñonez Bone, “in the establishments of the public health network m of District 08D03 from 2016 to the present date,” signed by the respective Health District authorities on February 25, 2022.

allegations that were never analyzed in the proceedings before the Commission," since, in addition to the fact that the allegation of the violation of Article 21 of the American Convention "was not declared to be admissible [...], [...] those claims were not invoked" in said proceeding.

19. It indicated that, in accordance with Article 35(3) of the Court's Rules of Procedure and the latter's consistent case law, the aforementioned claim is not part of the factual framework of the case, and that the pleadings and motions brief does not correspond to the procedural stage for "submitting new claims." It requested application of the procedural principle whereby the start of one stage in a lawsuit terminates the prior stage and precludes its being raised again, and, consequently, that the representatives' claim be dismissed as inadmissible.

20. The **representatives** argued that, contrary to Ecuador's statements, "the damage caused to the boat owned by Mrs. Shirley Lourdes Quiñonez Bone, has been reliably established in two paragraphs of the factual framework," included in the Merits Report, added to the fact that, during the procedure before the Commission, the pertinent documents were attached to prove the boat's ownership.

21. The **Commission** stated that, although in the Merits Report it did not carry out a legal analysis of the right to property, the arguments that the representatives made to this regard "are within the factual framework," while in Report No. 14/ 19 found that "the boat in which the death of Luis Eduardo and Alejandro's injuries occurred, was [...] owned by Shirley Quiñonez," and that "the boat was in the possession of the State for the purpose of conducting a judicial inspection where it was found that it had at least [forty-nine] holes caused by the use of firearms." He added that it will correspond to the Court, by virtue of the principle *iura novit curia*, to determine whether it analyzes the arguments presented by the representatives.

B. Considerations of the Court

22. The Court has indicated that in this case, the State invoked a preliminary objection of "lack of jurisdiction" of the Court as to the representatives' argument of violation of the right to property, given that this was not analyzed during the proceedings before the Commission and, as indicated, would go beyond the case's factual framework. Furthermore, case law has affirmed that the presumed victims and their representatives may invoke the violation of rights other than those expressly analyzed in the Merits Report, provided that their allegations remain within the factual framework defined by the Commission, inasmuch as the presumed victims enjoy all the rights enshrined in the American Convention. In such cases, it is up to the Court to decide on the admissibility of arguments related to the factual framework, safeguarding the procedural balance of the parties.⁸

23. In instant case, it is noted that the Inter-American Public Defenders, in the pleadings and motions brief, alleged the violation of the right to property, recognized in Article 21 of the Convention. The State's preliminary objection refers both to the questioning of the allegation of a right that was not invoked or analyzed during the proceedings before the Commission, and to the non-observance of the factual framework by the representatives.

24. To this effect, in accordance with the case law cited, it is concluded that the representatives are empowered to formulate said claim and that this Court has the jurisdiction to analyze it. Therefore, the allegations about the violation of the right to property are based on the alleged damage caused to the boat owned by Mrs. Shirley Lourdes Quiñonez Bone resulting from the actions of state agents on the day of the events, which adjusts to the factual

⁸ Cf. *Case of "Five Pensioners" v. Peru. Merits, Reparations and Costs*. Judgment of February 28, 2003. Series C No. 98, para. 155; *Case of the Pacheco Tineo Family v. Bolivia. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 25, 2013. Series C No. 272, para. 22, and *Case Digna Ochoa and Family Members v. Mexico Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 25, 2021. Series C No. 447, para. 33.

framework defined in the Merits Report, which makes reference to the verification of different "holes" in the boat in which the Casierra Quiñonez brothers and their companions were onboard, which were allegedly caused by projectile impacts from firearms, resulting from the actions of military personnel on the day of the events.⁹ Consequently, the preliminary objection raised is dismissed.

V PRELIMINARY CONSIDERATIONS

A. Alleged acknowledgment of international responsibility by the State

A.1. Arguments of the Parties

25. The **representatives** indicated that the State has recognized on several occasions its "full responsibility" for the violation of the rights of the alleged victims, since during the proceedings before the Commission, on at least three occasions, between December 2019 and June 2020, it reported on its intention to comply with the recommendations contained in the Merits Report. Similarly, by including the acts committed against the alleged victims, they argued that the Truth Commission report constitutes "a clear acceptance of responsibility," which "continued to be strengthened through the adoption of the Law for reparation of victims and judicialization [sic]." They requested that the principle of *estoppel* be applied to the instant case.

26. The **State** indicated that the Truth Commission in Ecuador, which was created in 2007, had the purpose of "investigating and clarifying [...] the events [...] that violated human rights between 1984 and 1988 and other periods." As a result, the "Law for the reparation of victims and the prosecution of serious human rights violations and crimes against humanity that occurred in Ecuador between October 4, 1983 and December 31, 2008," enacted in 2013, included the acknowledgment of the State's responsibility with specific effects on the "institutionality of the national reparation mechanism," which is not equivalent to an acknowledgment of international responsibility for the events.

27. It indicated that the representatives' argument is wrong insofar as they intend that "the State's position be identified as a kind of *estoppel* [...]." Likewise, the reports presented during the proceedings before the Commission "do not constitute anything other than the expression of the State's will to comply with its international obligations."

28. The **Commission** did not comment on this.

A.2. Considerations of the Court

29. The Court recalls that Article 62 of its Rules of Procedure regulates the "acceptance of the facts or its total or partial acquiescence" made before the Court.¹⁰ The foregoing does not

⁹ Cf. IACHR. Report No. 14/19. Case No. 12,302. Merits. Casierra brothers and family. Ecuador. February 12, 2019, paras. 34 and 39:

34. 34. On December 13, 1999, a visual inspection was conducted in which it was concluded that: (i) the vessel used by the Ecuadorian Navy had "two holes in the upper part of the bow and another in the lower part of the kennel hatch next to the seat;" (ii) in the boat that the Casierra brothers were on "one could see a large number of holes caused by firearms projectiles" [...].

39. On February 10, 2000, the Esmeraldas Fifth Lower Criminal Court conducted an examination in which it found that the launch used by the Casierra brothers had 49 holes in it. [...].

¹⁰ Article 62 of the Court's Rules of Procedure:

If the respondent informs the Court of its acceptance of the facts or its total or partial acquiescence to the claims stated in the presentation of the case or the brief submitted by the alleged victims or their representatives, the Court shall decide, having heard the opinions of all those participating in the

preclude other types of acts of the State, including its internal acts or those carried out in other international forums, from having international effects in this sense. Furthermore, it has been considered that the acts of recognition carried out during the proceedings before the Commission are necessarily relevant for determining the application of the principle of *estoppel* as to opposing positions alleged during the proceedings of the case before the Court.¹¹

30. In that order of ideas, case law has required that, in order to consider an act of the State to be a forced entry or acknowledgment of responsibility, its intention to that effect must be clear; therefore, analysis of the acts of acknowledgment of responsibility is carried out on a case-by-case basis.¹² Additionally, it is necessary to examine the nature and characteristics of the State's declarations, as well as the circumstances in which they were made.¹³

31. In response to the representatives' arguments, the Court indicates that in May 2007, the Office of the President of Ecuador created the Truth Commission to "investigate, clarify, and prevent impunity of violent acts and human rights violations that occurred between 1984 and 1988 and other periods." The aforementioned Truth Commission, whose objectives included "[p]romoting recognition of the victims of said violations and designing reparation policies," presented its final report in June 2010, in which it included what was called the "Casierra Case," referring to the facts that gave rise to the instant case¹⁴ (*infra* paras. 89, 90, and 91).

32. Subsequently, in 2013, the Law for the reparation of victims and the prosecution of serious human rights violations and crimes against humanity that occurred in Ecuador between October 4, 1983, and December 31, 2008, was passed (hereinafter, also "Law for the Reparation of Victims"), providing as follows in article 2:

Acknowledgment of the State's responsibility. The Ecuadorian State recognizes its objective responsibility for the human rights violations documented by the Truth Commission and recognizes that the victims suffered unjustifiable violations against their life, liberty, integrity, and dignity. As a result, both such victims and Ecuadorian society must immediately be granted the right to know the truth of the facts, along with access to justice, reparations, and a guarantee that such events will not be repeated.

The Ecuadorian State will be responsible for any judicial error, unjustified delay, or inadequate administration of justice, violation of the right to effective judicial protection, and for violations of the principles and rules of due process documented by the Truth Commission, and will make comprehensive reparations to people who have suffered violations of human rights¹⁵.

33. Furthermore, as this Court pointed out in the case *Vasquez Durand et al. v. Ecuador*, the first thing that stands out from the cited law is that its regulation does not expressly mention the intention that the acknowledgment of responsibility binds the State internationally. Second, among other issues, the regulations are aimed at "recognizing [...] the right [...] [to]

proceedings and at the appropriate procedural moment, whether to accept that acquiescence, and shall rule upon its juridical effects.

¹¹ Cf. *Case of Acevedo-Buendía et al. ("Discharged and Retired Employees of the Office of the Comptroller") v. Peru. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 24, 2009. Series C No. 198, para. 59; *Case of Vásquez Durand et al. v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of February 15, 2017. Series C No. 332, para. 46, and *Case of Munárriz Escobar et al. v. Peru Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 20, 2018. Series C No. 355. para. 23.

¹² Cf. *Case of Gelman v. Uruguay. Merits and Reparations*. Judgment of February 24, 2011. Series C No. 221, para. 28, and *Case of Munárriz Escobar et al. v. Ecuador, supra*, para. 24.

¹³ Cf. *Case of Vásquez Durand et al. v. Ecuador, supra*, para. 48.

¹⁴ Cf. Truth Commission Report. Volume I: Human Rights Violations. Ecuador, 2010, pg. 13 (evidence file, volume IV, annex 7 to the pleadings and motions brief, folio 2273).

¹⁵ Law for the reparation of victims and the prosecution of serious human rights violations and crimes against humanity that occurred in Ecuador between October 4, 1983, and December 31, 2008, published on December 13, 2013. Cf. Brief with pleadings and motions (merits file, volume III, folio 711), and answering brief (merits file, volume IV, folios 888 and 889).

reparation” of the victims, for which it created the administrative Reparations Program.¹⁶ Therefore, the acknowledgment of “strict responsibility” provided for in article 2 of the Law for the Reparation of Victims aims that the administrative reparations program does not have to demonstrate state responsibility, but directly agree on the pertinent reparations.¹⁷

34. Consequently, from the general content of the final report by the Truth Commission and the text of article 2 of the Law for the Reparation of Victims from 2013, there is no acknowledgment of the international responsibility of the State with the scope provided for in article 62 of the Court's Rules of Procedure. Moreover, for the Court, the content of said final report did not correspond to the objective of granting it the nature of an acknowledgment of international responsibility. Notwithstanding, said report will be taken into account when it comes to including the facts that determine the subject matter of this case.

35. Meanwhile, as to the actions of the State during the proceedings before the Commission, the Court recalls that the Inter-American System is designed such that, after issuing the Merits Report, the State has the opportunity to comply with the recommendations made before the case be submitted to the Court's jurisdiction¹⁸. Said opportunity, like friendly settlement agreements, contributes to the goals of the Inter-American Human Rights System, especially as to finding fair solutions to the particular and structural problems of a case.¹⁹ Furthermore, the measures aimed at implementing the Commission's recommendations must be understood as good faith compliance with the purposes of the American Convention and not as an acknowledgment of the jurisdiction or the admissibility of the case before the Court, nor an acknowledgment or acquiescence to the substantive violations alleged. Construing otherwise would imply discouraging the States from participating in the dispute resolution processes prior to appearing before this Court.²⁰

36. A review of the specific actions identified by the representatives, which were carried out by the State after the Commission notified the Merits Report,²¹ does not show a clear intention of Ecuador to acquiesce to the claims of the Commission and the petitioning party. Instead, the State asked the Commission to suspend the “deadline for submitting the case to the Court,” as set out in its last two communications. In other words, the State sought to prevent the case from ultimately being submitted to this Court's jurisdiction, with the intention that, within the framework of Articles 50 and 51 of the Convention, the Commission consider the matter to be resolved through domestic measures adopted.

¹⁶ Article 4, Law for the Reparation of Victims and the Prosecution of Serious Human Rights Violations and Crimes against Humanity that occurred in Ecuador between October 4, 1983, and December 31, 2008, published on December 13, 2013. Cf. Answer brief (merits file, volume IV, folios 911 and 912).

¹⁷ Cf. *Case of Vásquez Durand et al. v. Ecuador*, *supra*, para. 48.

¹⁸ Article 50.3 of the American Convention provides that “[i]n transmitting the report, the Commission may make such proposals and recommendations as it sees fit.” In line with this, article 51 provides:

1. If, within a period of three months from the date of the transmittal of the report [...] the matter has not either been settled or submitted [...] to the Court [...] the Commission may, by the vote of an absolute majority of its members, set forth its opinion and conclusions concerning the question submitted for its consideration.

2. The Commission shall make pertinent recommendations and shall prescribe a period within which the State is to take the measures that are incumbent upon it to remedy the situation examined.

3. When the prescribed period has expired, the Commission shall decide by the vote of an absolute majority of its members whether the state has taken adequate measures and whether to publish its report.

¹⁹ Cf. *Case of Pacheco Teruel et al. v. Honduras. Merits, Reparations and Costs*. Judgment of April 27, 2012. Series C No. 241, para. 18 and 19, and *Case of Flor Freire v. Ecuador. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2016. Series C No. 315, para. 43.

²⁰ Cf. *Case of Argüelles et al. vs. Argentina. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 20, 2014. Series C No. 288, para. 56, and *Case of Flor Freire v. Ecuador, supra*, para. 43.

²¹ Cf. Briefs of December 3, 2019, March 4, 2020, and June 4, 2020. On each occasion, the State presented the corresponding “compliance report” (evidence file, volume II, file of proceedings before the Commission, folios 1716 to 1719, 2077 to 2082, and 2089 to 2095).

37. Based on the foregoing, the Court considers that the acts mentioned by the representatives cannot be determined to be the consequences of an acknowledgment of international responsibility by the State. As a result, the Court finds that it must rule on the controversy and study the matter of the alleged violations.

B. Factual framework of the case

B.1. State's arguments

38. The **State** argued that in their pleadings and motions brief, the representatives referred to "a supposed historical context that bears no relation to the facts" of the case, since "they tried to connect" what happened "to an alleged pattern of ' State terrorism,' and [a] a 'systematic and repressive plan to combat insurgency, promoted by the entire state apparatus and with the support of the economic and political elites,'" with which they would have "intended to give the facts [...] the legal qualification of 'crimes against humanity.'"

39. It pointed out that what was indicated by the Inter-American Public Defenders corresponds to a "context completely unrelated to the factual and situation of the case at that moment in time," in which "there was no political persecution, nor [was] it alleged." It requested that "the arguments based on [said] assertions be dismissed" by the Court.

B.2. Considerations of the Court

40. This Court has reiterated that the factual framework of the proceeding is constituted by the facts contained in the Report on the Merits submitted for its consideration, for which it is not admissible to allege facts other than those stated in said brief. That said, the Court does accept that facts may be presented that facilitate explaining, clarifying, or dismissing those that were mentioned in the Merits Report or to respond to the Commission's claims (also called "complementary facts"). The exception to this principle are the facts that qualify as supervening, which may be referred to the Court at any stage of the process before issuing its Judgment.²²

41. When analyzing the proceedings, the Court indicates that in their pleadings and motions brief, the representatives referred to a "context" in which they included, among other issues, certain elements indicated by the State, while at the same time referring to other historical circumstances that occurred before the Truth Commission was created.

42. In this regard, without prejudging the reasons for which such facts were alluded to in the representatives' brief, it should be noted that the content of the Merits Report omits any reference to them. On that account, as requested by the State, the Court will not include in its analysis the facts referring to the "context" described by the Inter-American Public Defenders. Without prejudice to determining the scope of the final report of the Truth Commission, the above, with regard to the inclusion of the acts that were allegedly perpetrated against the Casierra Quiñonez brothers and their family members, is part of the factual framework of the case (*infra* paras. 89 , 90, and 91). In any case, the Court indicates that the use of said report does not exempt it from evaluating the body of evidence as a whole, in accordance with the rules of logic and based on experience.²³

VI

²² Cf. *Case of Vera Vera et al. v. Ecuador. Preliminary Objection, Merits, Reparations and Costs*. Judgment of May 19, 2011. Series C No. 226, para. 32, and *Case of Teachers of Chañaral and other municipalities v. Chile. Preliminary Objection, Merits, Reparations, and Costs*. Judgment of November 10, 2021. Series C No. 443, para. 31.

²³ Cf. *Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of January 28, 2009. Series C No. 194, para. 101, and *Case of Grijalva Bueno v. Ecuador. Preliminary Objection, Merits, Reparations and Costs*. Judgment of June 03, 2021. Series C No. 426, para. 129.

EVIDENCE

A. Admissibility of documentary evidence

43. The Court received numerous documents presented as evidence by the Commission and the parties together with their main briefs (*supra* paras. 4, 8, and 9). As in other cases, the documents that were submitted by the parties and the Commission in a timely manner and whose admissibility was not disputed or objected, nor whose authenticity was questioned are admitted (Article 57 of the Regulations).^{24 25}

44. Meanwhile, the State submitted numerous documents in response to the requests made based on Article 58(b) of the Rules of Procedure (*supra* para 12), which are admitted.²⁶ Likewise, when presenting its final arguments, on March 11, 2022, the State submitted another document that includes information on health care provided to three of the alleged victims on dates subsequent to submitting the answering brief.²⁷ On this account, the document submitted is admitted in that specifically relating to the facts arising after said procedural stage and information that responds to the specific requirements formulated by the Court.

B. Admissibility of testimonial and expert evidence

45. The Court considers it appropriate to admit the statements made before a notary public²⁸ and in a public hearing²⁹ to the extent that they are in keeping with the purpose defined by the Court President in the document ordering them to be received, in following with the purpose of this case.³⁰

VII FACTS

46. The facts of this case will be determined by the Court based on the factual framework presented by the Commission, the arguments of the parties, and the evidence provided. Therefore, for better understanding, the facts will be established in the following order: a) the Casierra Quiñonez brothers and their family; b) the order of December 7, 1999, issued by the Port of Esmeraldas Harbormaster; c) the events that occurred on December 8, 1999; d) the subsequent events and the investigation of what happened; e) the criminal proceedings instituted before the military jurisdiction and before the ordinary jurisdiction, and f) the inclusion of the "Case of Casierra" in the Truth Commission's report.

²⁴ In accordance with article 57(2) of the Rules of Procedure, documentary evidence in general may be presented together with the briefs, requests, and arguments or answers the case, as appropriate, and evidence submitted outside of these procedural opportunities is not admissible except in the exceptions set out in said article 57(2) of the Rules of Procedure (namely, force majeure, serious impediment) or except in the case of a supervening event, meaning one that occurred after the aforementioned procedural moments.

²⁵ Cf. *Case of Velásquez-Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 140, and *Case of Garzón Guzmán et al. v. Ecuador. Merits, Reparations and Costs. Judgment of September 01, 2021. Series C No. 434, para. 33*, and *Case of Palacio Urrutia et al. v. Ecuador. Merits, Reparations and Costs. Judgment of November 24, 2021. Series C No. 446, para. 31*.

²⁶ Annexes submitted by the State in a brief dated March 11, 2022 (evidence file, volume XIII, folios 5328 to 11269).

²⁷ This is a report on the health care provided to Andrés Alejandro Casierra Quiñonez, Sebastián Darlin Casierra Quiñonez, and María Ingracia Quiñonez Bone, "in the establishments of the public health network m of District 08D03 MAS from 2016 to the present date," signed by authorities of the respective Health District on February 25, 2022 (evidence file, volume XIII, folios 11097 to 11100).

²⁸ The Court received the testimony given before notary public by Sebastián Darlin Casierra Quiñonez, Jonny Jacinto Casierra Quiñonez, Shirley Lourdes Quiñonez Bone, Jorge Olgin Ortiz Bone, and Freddy Eloy Zambrano Quiñonez (evidence file, volume XII, *affidavits*, folios 5278 to 5327). Likewise, it received the expert opinion rendered before notary public Rodrigo Bustos Bottai (evidence file, volume XI, *affidavits*, folios 5247 to 5275).

²⁹ In a public hearing, the Court heard the testimony of Andrés Alejandro Casierra Quiñonez.

³⁰ The subject matter of said testimony is set out in the Order of the Court's President of December 8, 2021.

A. The Casierra Quiñonez brothers and their family

47. At the time of the events, the brothers: Sebastián Darlin, who was born on July 3, 1967;³¹ Luis Eduardo, born on November 27, 1975;³² Andres Alejandro, born on June 26, 1978,³³ and Jonny Jacinto, who was born on August 18, 1980,³⁴ all with the surnames Casierra Quiñonez, children of Ms. María Ingracia Quiñonez Bone³⁵ and Mr. Cipriano Casierra Panezo,³⁶ all lived in Atacames, Esmeraldas Province, Ecuador.

48. The Casierra Quiñonez brothers were fishermen, and to perform their fishing activities, they used the boat owned by their sister, Shirley Lourdes Quiñonez Bone.³⁷

B. The order of December 7, 1999, issued by the Port of Esmeraldas Harbormaster

49. On December 7, 1999, in response to information provided by the "Association of the Fishermen's Committee" regarding "a fiberglass boat equipped with [two] motors [...] [and nine] pirates [on board] [...] [who] commit[ed] robberies [of] fishing boats", ordered an "[anti-crime operation]", for which, the Port of Esmeraldas Harbormaster, corresponding to the Third Naval Zone of the Ecuadorian Navy,³⁸ by official letter with reference number RAD-DIGMER-DOP-P-222000ZNOV-99, ordered, *inter alia*:

S[ituation]: [i]n order to have a [n]aval presence and counteract the continuous assaults and robberies in the [s]ea and [fishing] [p]ort by pirates[,] this [o]peration [will] be carried out to identify possible pirate vessels and stop the rise in crime as much as possible.

M[ission]: [c]onduct riverine operations in the area of Esmeraldas's [c]oasts and in the [f]ishing [p]ort.

T[uesday] 07-[December]-99 [from] 22:00 [to] 02:00 [hours.] [...]

G[goals]: [have a naval presence, collect information, and stop two-engine fiberglass boats] [...] [that do not have their documentation in order]. [...]

³¹ Cf. Citizenship card corresponding to Sebastián Darlin Casierra Quiñonez (merits file, volume I, annex to the brief of October 5, 2020, folio 149), and testimony of Sebastián Darlin Casierra Quiñonez, rendered before a notary public (evidence file, volume XII, *affidavits*, folios 5280 and 5281).

³² Cf. Citizenship card corresponding to Luis Eduardo Casierra Quiñonez (evidence file, volume I, annex 1.a to the Merits Report, folio 6).

³³ Cf. Citizenship card corresponding to Andrés Alejandro Casierra Quiñonez (merits file, volume I, annex to the brief of October 5, 2020, folio 88).

³⁴ Cf. Citizenship card corresponding to Jonny Jacinto Casierra Quiñonez (merits file, volume I, annex to the brief of October 5, 2020, folio 177), and testimony of Jonny Jacinto Casierra Quiñonez, rendered before notary public (evidence file, volume XII, *affidavits*, folios 5291 and 5292).

³⁵ Cf. Citizenship card of María Ingracia Quiñonez Bone (merits file, volume I, annex to the brief of October 5, 2020, folio 154)

³⁶ Cf. Criminal record certificate of Cipriano Casierra Panezo (merits file, volume I, annex to the brief of October 5, 2020, folio 156)

³⁷ Cf. Complaint filed by Shirley Lourdes Quiñonez Bone before the Fifth Criminal Judge of Atacames and Muisne on December 13, 1999 (evidence file, volume X, annex 8 to the answering brief, folios 4714 to 4716); testimony of Shirley Lourdes Quiñonez Bone, rendered before the National Police on December 14, 1999, file No. 3098-PJ (evidence file, volume I, annex 1.e to the Merits Report, folios 14 and 15), and statement by Eddy René Montaña Jijon, rendered before the National Police on December 15, 1999, file No. 3098-PJ (evidence file, volume I, annex 1.d to the Merits Report, folios 11 and 12).

³⁸ Organic Law of the Armed Forces, published on September 28, 1990, and repealed by Law No. 74, published on January 19, 2007 (evidence file, volume XIII, folios 11164 to 11185):

Article 6: The branches of the Armed Forces are: [...] c) Forces: Land, Naval and Air; [...].

Article 89: For administrative purposes and for the exercise of military criminal jurisdiction, the territory of the Republic will be divided into the following Military Zones: Land, Naval and Air.

P[rocedures]: [sound the siren;] [turn on the police light;] [identify oneself as a maritime police officer;] [in case of any issue, shout loudly;] [in case of imminent threat shoot into the air, and] [in case of attack, repel the attack].³⁹

50. To this effect, three marines were commissioned, members of the Ecuadorian Navy (hereinafter also "military personnel" or "marines"), who were provided with, among other things, a "Civil Defense" vessel," rifles, bulletproof vests, and a communication device. They were also accompanied by a "civilian helmsman," who manned the boat.⁴⁰

C. The events that occurred on December 8, 1999

51. On December 7, 1999, at approximately 6:00 p.m., the brothers Sebastián Darlin, Luis Eduardo, Andrés Alejandro and Jonny Jacinto, with the last names Casierra Quiñonez, left Puerto Prado, on the Atacames River, aboard the boat by the name of "Rodach," owned by their sister, Shirley Lourdes Quiñonez Bone, with the intention of going fishing. The Casierra Quiñonez brothers were accompanied on the same boat by Orlando Olaya Sosa, Freddy Eloy Zambrano Quiñonez, Cristian Jesús Sosa Quiñonez, Jorge Olgin Ortiz Bone, and Eguberto Padilla Caicedo.⁴¹

52. On December 8, 1999, at approximately 1:30 a.m., an incident occurred as part of the "anti-crime operation" carried out by the marines of the Ecuadorian Navy, resulting in the death of Luis Eduardo Casierra Quiñonez and injury of his brothers, Andrés Alejandro and Sebastián Darlin. The circumstances under which said incident allegedly occurred are in dispute, as detailed below.

C.1. Testimony by the Casierra Quiñonez brothers and their companions as to what occurred

53. Brothers Sebastián Darlin and Jonny Jacinto, with the last names Casierra Quiñonez, as well as Messrs. Orlando Olaya Sosa, Freddy Eloy Zambrano Quiñonez, Cristian Jesús Sosa Quiñonez, and Jorge Olgin Ortiz Bone, during the investigation, provided statements to the National Police about what happened.⁴²

54. In general terms, the declarants all stated that while they were traveling "on the high seas," off the coast of Atacames, after more than seven hours of travel, Luis Eduardo Casierra Quiñonez, who was driving the boat, requested that his companions, some of whom were

³⁹ Cf. Note No. RAD-DIGMER-DOP-P-222000ZNOV-99 of December 7, 1999 issued by the Port of Esmeraldas Harbormaster (evidence file, volume I, annex 1.h to the Merits Report, folios 29 and 30).

⁴⁰ Cf. Letter No. CAPESM-1116-O of December 8, 1999 issued by the Port of Esmeraldas Harbormaster (evidence file, volume X, annex 1 to the answering brief, folios 4687 and 4688); Order issued by the Judge of the Third Naval Zone on May 24, 2000 (evidence file, volume I, annex 4 to the Merits Report, folio 88), and J.A.C. testimony, given before the National Police on May 15, December 1999, file No. 3098-P.J. (evidence file, volume I, annex 1.q to the Merits Report, folio 61).

⁴¹ Cf. Complaint filed by Shirley Lourdes Quiñonez Bone before the Fifth Criminal Judge of Atacames and Muisne on December 13, 1999 (evidence file, volume X, annex 8 to the answering brief, folios 4714 to 4716), and testimony of Shirley Lourdes Quiñonez Bone, rendered before the National Police on December 14, 1999, file No. 3098-P.J. (evidence file, volume I, annex 1.e to the Merits Report, folios 14 and 15).

⁴² Cf. Statement by Sebastián Darlin Casierra Quiñonez, rendered before the National Police on December 13, 1999, file No. 3098-99-PJE (evidence file, volume I, annex 1.j to the Merits Report, folios 32 and 33); statement of Jonny Jacinto Casierra Quiñonez, rendered before the National Police on December 13, 1999, file No. 3098-PJ-E (evidence file, volume I, annex 1.g to the Merits Report, folios 26 and 27); statement of Orlando Olaya Sosa, rendered before the National Police on December 14, 1999, file No. 3098-P.J. (evidence file, volume I, annex 1.g to the Merits Report, folios 22 and 23); statement of Freddy Eloy Zambrano Quiñonez, given before the National Police on December 13, 1999, file No. 3098-P.J.-E (evidence file, volume I, annex 1.g to the Merits Report, folios 24 and 25); statement of Cristian Jesús Sosa Quiñonez, given before the National Police on December 13, 1999, file No. 3098-P.J. (evidence file, volume I, annex 1.j to the Merits Report, folio 36), and statement by Jorge Olgin Ortiz Bone, rendered before the National Police on December 13, 1999, file No. 3098-PJ-E (evidence file, volume I, annex 1.j to the Merits Report, folios 34 and 35).

asleep,⁴³ provide him with a fuel container (a "poma") that they carried on board, in order to fuel the boat. They stopped and, finding the lights on, another boat approached at high speed, without identifying itself, the one that had no "signals," loudspeaker, or lights.⁴⁴

55. According to Andrés Alejandro Casierra Quiñonez during the public hearing before this Court, at the time of the events "the night was very dark, because [...] they fished in the waning moon [...] [and] the waves were strong."⁴⁵

56. Thinking that they were "pirates," they turned off the lights, started the engine and tried to flee. In response, the occupants of the other boat fired at them repeatedly⁴⁶ ("in a flurry"⁴⁷). One of the shells hit the engine, causing the boat to stop.⁴⁸ Next, the occupants of the other boat told them that they were members of "the [N]avy," and asked them to transfer onto their boat. The bullets hit Andrés Alejandro in the leg, Sebastián Darlin in one of his hands, and Luis Eduardo died as a result of the shots.⁴⁹ Cristian Jesús Sosa Quiñonez was injured in the knees when he hit the propeller of the boat's engine in his attempt to jump into the water. In such circumstances, they asked the soldiers to take them to Atacames, because it was closer than Esmeraldas. However, the navy personnel did not agree and took them to Esmeraldas, transferring the wounded men into a boat and asking for support from another boat to tow the boat on which the Casierra Quiñonez brothers and their companions had been traveling.

57. Upon arrival in Esmeraldas, the soldiers took the wounded to the hospital, where one of the doctors who treated them confirmed that Luis Eduardo Casierra Quiñonez had died, so the marines took the body to the morgue. Andrés Alejandro and Sebastián Darlin, with the last name Casierra Quiñonez, as well as Cristian Jesús Sosa Quiñonez, remained in the hospital. The military personnel arrested Orlando Olaya Sosa, Jorge Olgin Ortiz Bone, and Eguberto Padilla Caicedo, while Jonny Jacinto Casierra Quiñonez and Freddy Eloy Zambrano Quiñonez were released.

58. According to Jonny Jacinto Casierra Quiñonez, Orlando Olaya Sosa, Freddy Eloy Zambrano Quiñonez, and Jorge Olgin Ortiz Bone, the military personnel identified Luis Eduardo Casierra Quiñonez, remembering him from the time he did "the conscription" (military service), and they called him by the nickname "Asprilla."⁵⁰

59. Meanwhile, Sebastián Darlin Casierra Quiñonez, Freddy Eloy Zambrano Quiñonez, Orlando Olaya Sosa, and Jorge Olgin Ortiz Bone stated that on the day of the events they were carrying no firearms, only knives to repair the fishing nets, and, when asked, the first three said that the number of people in the boat on the day of the events was due to the size of the "loop" used for fishing.

⁴³ According to Andrés Alejandro Casierra Quiñonez's testimony at the public hearing, at that time, Freddy Eloy Zambrano Quiñonez, Cristian Jesús Sosa Quiñonez, and Eguberto Padilla Caicedo were asleep.

⁴⁴ According to Sebastián Darlin Casierra Quiñonez, the crew members of the other boat had their faces "covered with ski masks."

⁴⁵ Cf. Testimony by Andrés Alejandro Casierra Quiñonez, given at a public hearing before this Court.

⁴⁶ According to Sebastián Darlin and Jonny Jacinto, with the last names Casierra Quiñonez, and Cristian Jesús Sosa Quiñonez, the crew members of the other boat fired shots as soon as they approached the boat they were on

⁴⁷ Cf. Statement of Jorge Olgin Ortiz Bone, rendered before the National Police on December 13, 1999, file No. 3098-PJ-E (evidence file, volume I, annex 1.j to the Merits Report, folios 34 and 35).

⁴⁸ According to Sebastián Darlin Casierra Quiñonez, Freddy Eloy Zambrano Quiñonez, and Jorge Olgin Ortiz Bone, the marines' boat collided with the boat in which they were traveling. Andrés Alejandro Casierra Quiñonez made a statement to that same effect. Cf. Testimony by Andrés Alejandro Casierra Quiñonez, given at a public hearing before this Court.

⁴⁹ Cf. Truth Commission Report. Volume IV: case reports, period 1989-2008. Ecuador, 2010, pp. 122 to 125 (evidence file, volume VII, annex 7 to the pleadings and motions brief, folios 3942 to 3945).

⁵⁰ According to Andrés Alejandro Casierra Quiñonez, they were wearing military clothing on the boat "because [his] brother Luis [...] [had performed] military service in the Navy." Cf. Testimony by Andrés Alejandro Casierra Quiñonez, given at a public hearing before this Court.

60. Finally, in response to a question posed to Freddy Eloy Zambrano Quiñonez, he said that on the day of the events they had not brought food on board the boat, because the permit "was only for [forty-eight] hours," added to the fact that "they did not [go] far from the coast" and that they had left at 6:00 p.m. the previous day "after eating dinner."⁵¹

C.2. Declarations by the marines who participated in the military operation as to what occurred

61. The three marines who participated in the anti-crime operation also testified before the National Police in the context of the investigations carried out.⁵² To this effect, they coincided in indicating, in general terms, that on December 7, 1999, at approximately 8:00 p.m., members of the "Fishermen's Defense Committee" had reported that nine people aboard a boat were robbing fishermen. They received an order to run a sting operation, so they left on board a boat, with a helmsman appointed by the Committee. This happened at approximately 10:30 p.m. While patrolling in the sector known as "[L]a [Ho]bonera", they spotted a boat with nine people on board and with a red light. They approached up to a distance of two hundred meters, proceeding to identify themselves as a Navy patrol. When they turned on the light and the siren, the other boat took off at high speed and its occupants opened fire, so the military repelled the attack. However, the boat managed to escape.

62. Later, after continuing with the patrolling, they went to another sector in which there were approximately thirty boats. One of the occupants of the boats told them that moments before, they had been chased by another boat, but had managed to escape. In response, the marines went to the place where the incident apparently occurred, known as "Tonsupa," and at approximately 1:30 a.m. they spotted two boats. When they were a hundred meters away, they managed to notice that one of the boats had nine occupants. After turning on the light and the siren and identifying themselves as members of the Navy, they were attacked with gunfire. The two boats left in different directions. The military fired shots into the air and ordered the boats to stop. They then chased the boat with nine occupants and fired shots at the engine, injuring the helmsman. When said boat stopped, due to the impacts to the engine, the agents boarded it and found that three people were wounded.

63. Immediately afterwards, they took off for Esmeraldas, towing the detained boat and asked for the collaboration of other boats to transfer the people who were injured. During the return trip, an unidentified boat chased them until they entered the port. Once there, at approximately 2:55 a.m., they took the injured persons to the hospital, where one of the doctors said that the helmsman had died, so they took the body to the municipal cemetery morgue. Three of the occupants of the boat were arrested and, together with the boat, taken to the Port Harbormaster. The marines described that visibility was difficult on the day of the events and they agreed that they did not recognize the crew members of the other boat.

64. One of the Marines stated that they fired "approximately [six] shots into the air," while another stated that they fired "between [six] or [five] [shots] each into the air" and "[five] [shots] each one" towards the engine of the boat named "Rodach." The third marine reported that they fired "about [six] shots at the engine."

⁵¹ In his statement, Andrés Alejandro Casierra Quiñonez said that they did not bring food "because [they were going] from one day to the next." Cf. Testimony by Andrés Alejandro Casierra Quiñonez, given at a public hearing before this Court.

⁵² Cf. Statement by G.F.E., rendered before the National Police on December 15, 1999, file No. 3098-PJ (evidence file, volume I, annex 1.p to the Merits Report, folios 53 to 55); FEEZ statement, rendered before the National Police on December 15, 1999, file No. 3098-PJ (evidence file, volume I, annex 1.q to the Merits Report, folios 57 to 59), and J.A.C. statement, rendered before the National Police on December 15, 1999, file No. 3098-PJ (evidence file, volume I, annex 1.q to the Merits Report, folios 60 to 63).

65. As to the shots that were allegedly fired at the soldiers, one of the deponents indicated that the crew members of the "Rodach" boat fired three shots at them when they identified themselves, and another three "when they left hastily." Another of the marines indicated that he "hear[d] about [four] or [five] shots."

66. When asked specific questions, one of the marines stated that they found a "green commando" cap and two or three "green ski masks" on the detained boat, but found no weapons.

67. In giving his statement, the helmsman who accompanied the marines narrated aspects similar to those indicated by the others. He added that the soldiers fired "some [ten] shots into the air [and] then [the crew members of the other boat] fired two shots at them."

D. Subsequent events and the investigation into what happened

68. On December 8, 1999, at 7:50 a.m., the Second Criminal Judge of Esmeraldas made a note in the report of the removal of the body of Luis Eduardo Casierra Quiñonez and ordered that a forensic "autopsy" be carried out.⁵³ To this effect, the autopsy report performed the same day concluded that the cause of death was "acute internal hemorrhage, caused by the bursting of large vessels and injuries to internal organs, caused by the action of a firearm projectile."⁵⁴

69. On December 9, 1999, Andrés Alejandro Casierra Quiñonez was transferred to the Eugenio Espejo Hospital in the city of Quito,⁵⁵ where it was determined that he had suffered "[f]racture of the greater trochanter and fracture of the left femoral neck bone."⁵⁶

70. On December 10, 1999, in a *habeas corpus* action, Orlando Olaya Sosa, Jorge Olgin Ortiz Bone, and Eguberto Padilla Caicedo were released from custody.⁵⁷

71. The Judicial Police, which is a dependency of the National Police, performed numerous activities as part of an investigation into what happened. On December 13, 1999, an inspection was made of the vessels "involved in the incident." This was performed in the facilities of the Port of Esmeraldas Harbormaster. In said procedure, the authorities verified the following: a) as to the boat used by the marines, "in the upper part of the bow [...] they observed two holes" and another "in the door of the kennel in the lower part," and b) as to the boat used by the Casierra Quiñonez brothers, they noted that there were different items inside, including "a tramme[l] [...], [two] cans [...], [a] drawer [...], a rusty machete, white cable, [a] buoy, [two] rain ponchos [...] with blood stains[,] a sack with blood stains, [five] pairs of rubber boots [and] [a] battery." Likewise, "they observed a large number of holes due to the passage of firearm projectiles, both in the rear, front and side of the boat."⁵⁸

72. In the following days, the Police heard statements from Sebastián Darlin Casierra

⁵³ Cf. Report of the removal of the body of Luis Eduardo Casierra Quiñonez, signed by the Second Criminal Judge of Esmeraldas on December 8, 1999 (evidence file, volume I, annex 1.m to the Merits Report, folio 39).

⁵⁴ Cf. Forensic medical autopsy report of the body of Luis Eduardo Casierra Quiñonez of December 8, 1999 (evidence file, volume I, annex 1.m to the Merits Report, folio 38).

⁵⁵ Cf. Statement of Jonny Jacinto Casierra Quiñonez, rendered before the National Police on December 13, 1999, file No. 3098-PJ-E (evidence file, volume I, annex 1.g to the Merits Report, folios 26 and 27), and testimony by Andrés Alejandro Casierra Quiñonez, given in a public hearing before this Court.

⁵⁶ Cf. Medical certificate issued by the Head of the Orthopedics and Traumatology Service of the Eugenio Espejo Hospital on December 14, 1999 (evidence file, volume I, annex 1.n to the Merits Report, folio 41).

⁵⁷ Cf. Police report No. 1385-PJ-E of December 17, 1999, file No. 3098-PJ-E (evidence file, volume I, annex 1 to the Merits Report, folios 43 to 51).

⁵⁸ Cf. Police report No. 1385-PJ-E of December 17, 1999, file No. 3098-PJ-E (evidence file, volume I, annex 1 to the Merits Report, folios 43 to 51).

Quiñonez, Jonny Jacinto Casierra Quiñonez, Orlando Olaya Sosa, Freddy Eloy Zambrano Quiñonez, Cristian Jesús Sosa Quiñonez, and Jorge Olgin Ortiz Bone (*supra* paras. 53 to 60), as well as the three soldiers who participated in the operation and the helmsman who accompanied them on the day of the events (*supra* paras. 61 to 67). The statements were also received from Shirley Lourdes Quiñonez Bone⁵⁹ and Carlos Enrique Escobar Triviño, Calixto Saldarriaga Corral and Eddy Rene Montaña Jijon, who, in general terms, referred to the fishing activities in which the Casierra Quiñonez brothers were engaged, and that on December 7, 1999, they had seen them leave to go out fishing on a boat.⁶⁰

73. On December 13, 1999, Ms. Shirley Lourdes Quiñonez Bone filed a complaint about the facts before the Fifth Criminal Court of Atacames and Muisne (hereinafter, "the Fifth Criminal Court"), referring both to the death of her brother Luis Eduardo, as well as to the injuries caused to Andrés Alejandro and Sebastián Darlin, with the last names Casierra Quiñonez, and to Cristian Jesús Sosa Quiñonez.⁶¹

E. Criminal proceedings initiated under the military and ordinary jurisdiction

74. Based on what happened, the Military Criminal Judge of the Third Naval Zone (hereinafter, "the Military Criminal Judge") ordered that criminal proceedings be initiated against the marines involved, requesting information from a variety of agencies⁶² and ordering a series of procedures to be undertaken.⁶³

75. On December 22, 1999, in accordance with the Military Criminal Judge's orders, an "expert examination" was performed on the vessel used by the military, finding that it had received "three projectile impacts [...] located in the right side at the top of the bow. In the same proceeding, when asked by the military judicial authority, two of the marines stated that "they did not find any weapons" in the boat in which the Casierra Quiñonez brothers and their companions were riding.⁶⁴ Similarly, weeks later, an "expert examination of the military clothing found on the [R]odach vessel" was carried out, finding "three items of clothing [...]"

⁵⁹ Cf. Statement by Shirley Lourdes Quiñonez Bone, rendered before the National Police on December 14, 1999, file No. 3098-PJ (evidence file, volume I, annex 1.e to the Merits Report, folios 14 and 15).

⁶⁰ Cf. Statement by Eddy René Montaña Jijon, rendered before the National Police on December 15, 1999, file No. 3098-PJ (evidence file, volume I, annex 1.d to the Merits Report, folios 11 and 12), statement by Calixto Saldarriaga Corral, rendered before the National Police on December 15, 1999, file No. 3098-PJ (evidence file, volume I, annex 1.f to the Merits Report, folios 19 and 20), and statement by Carlos Enrique Escobar Triviño, rendered before the National Police on December 15, 1999, file No. 3098-PJ (evidence file, volume X, annex 14 to the answering brief, folios 4732 and 4733).

⁶¹ Cf. Complaint filed by Shirley Lourdes Quiñonez Bone before the Fifth Criminal Judge of Atacames and Muisne on December 13, 1999 (evidence file, volume X, annex 8 to the answering brief, folios 4714 to 4716).

⁶² Cf. Note No. TERZON-JUZ-993-0, dated December 16, 1999, signed by the Military Criminal Judge of the Third Naval Zone, file No. 003/99 (evidence file, volume X, annex 25 to the answering brief, folio 4764); official letter No. TERZON-JUZ-988-0 of December 16, 1999, signed by the Military Criminal Judge of the Third Naval Zone, file No. 003/99 (evidence file, volume X, annex 26 to the answering brief, folio 4766); official letter No. TERZON-JUZ-989-0 of December 17, 1999, signed by the Military Criminal Judge of the Third Naval Zone, file No. 003/99 (evidence file, volume X, annex 28 to the answering brief, folio 4770); official letter No. TERZON-JUZ-990-0 of December 17, 1999, signed by the Military Criminal Judge of the Third Naval Zone, file No. 003/99 (evidence file, volume X, annex 29 to the answering brief, folio 4772), and official letter No. TERZON-JUZ-998-0 of December 17, 1999, signed by the Military Criminal Judge of the Third Naval Zone, file No. 003/99 (evidence file, volume X, annex 27 to the answering brief, folio 4768).

⁶³ Cf. Resolution issued by the Military Criminal Judge of the Third Naval Zone on December 20, 1999 (evidence file, volume X, annex 30 to the answering brief, folios 4774 and 4775); decision issued by the Military Criminal Judge of the Third Naval Zone on January 17, 2000 (evidence file, volume X, annex 32 to the answering brief, folios 4780 to 4782), and certificate of expert examination of the scene of the events of the January 25, 2000, ordered by the Military Criminal Court of the Third Naval Zone (evidence file, volume X, annex 34 to the answering brief, folios 4786 and 4787).

⁶⁴ Cf. Certificate of expert examination dated December 22, 1999 (evidence file, volume X, annex 31 to the answering brief, folios 4777 and 4778).

used exclusively by Armed Forces personnel.”⁶⁵

76. On January 18, 2000, the Military Criminal Judge sent an official letter to the Fifth Criminal Judge “so that [,] if a criminal case had been initiated, he [would] forward all proceedings [...], [re]lating to the death of Luis C[asierra] Quiñ[o]nez and [the] injuries to [...] Andrés C[asierra] Quiñ[o]nez.”⁶⁶

77. Meanwhile, the Fifth Criminal Judge, by virtue of the complaint and a private accusation filed by Shirley Lourdes Quiñonez Bone, as well as the investigation procedures carried out regarding the facts (*supra* paras. 68, 71 and 72), on January 20, 2000, he issued the “[order to begin the criminal proceedings and ordered the investigative phase against]” the three marines and the helmsman who accompanied them on the day of the events. To that effect, the judge ordered a number of procedures to be performed.⁶⁷

78. On February 10, 2000, as ordered by the Fifth Criminal Judge, the "physical evidence examination" was carried out, finding that the vessel called "Rodach," located in the Port of Esmeraldas Harbormaster's facilities, presented the following:

in the bow [four] holes, above the cabin [four] holes, inside the cabin [seven] holes, blood stains, [...] [i]n the net board one hole, [...] [e] n the second board of the same loop [five] holes, on the engine mirror [seven] holes, on the engine mirror [twelve] holes, on the engine hood [four] holes[,] [in] the engine automatic [one] hole, inside the engine [t]ray [one] hole, in the carburetor [two] holes [and] in the motor arm one hole [...].⁶⁸

79. As to the request of January 18, 2000, made by the Military Criminal Judge (*supra* para 76), the Fifth Criminal Judge ordered that the Chief of the Third Naval Zone of Esmeraldas inform him about the functions that the three marines were performing on December 7 and 8, 1999.⁶⁹ In view of this, on February 10, 2000, the Port of Esmeraldas Harbormaster responded, informing that said soldiers "were performing acts of service, carrying out an [anti-crime] operation," forwarding on a copy of the respective order.⁷⁰

80. Subsequently, the Fifth Criminal Judge sent an official letter to the Port of Esmeraldas Harbormaster, requesting that the three marines involved in the events come to "give their investigative testimony" as part of the criminal process instructed by the ordinary jurisdiction. In light of this, the Port Harbormaster sent an official letter dated February 22, 2000, reporting that the marines were "active service members of the [National] Navy" and that, by virtue of this, the Military Criminal Judge had established the respective process "because of the military jurisdiction that applied to [them]," so said persons "would come forward only within [said] case before their specific [j]udge." In turn, the Port of Esmeraldas Harbormaster reminded the Fifth Criminal Judge that the Military Criminal Judge had required him to "asbt[ain] from processing the [criminal] trial" and that he "send all the proceedings," "demanding that this order be fulfilled."⁷¹

⁶⁵ Cf. Certificate of expert examination of garments dated January 21, 2000 (evidence file, volume X, annex 33 to the answering brief, folio 4784).

⁶⁶ Cf. Note No. TERZON-JUZ-043-0 of January 18, 2000, signed by the Military Criminal Judge of the Third Naval Zone (evidence file, volume X, annex 17 to the answering brief, folio 4741).

⁶⁷ Cf. Decision issued by the Fifth Criminal Judge of Atacames and Muisne on January 20, 2000 (evidence file, volume X, annex 18 to the answering brief, folios 4743 to 4745).

⁶⁸ Cf. Certificate of recognition of physical evidence of February 10, 2000 (evidence file, volume I, annex 1.s to the Merits Report, folios 67 and 68). In the same procedure, it was recorded that there was another boat in the area that had "[two] holes in the [top]" and "one hole in the hold door."

⁶⁹ Cf. Resolution issued by the Fifth Criminal Judge of Atacames and Muisne on February 8, 2000 (evidence file, volume X, annex 19 to the answering brief, folio 4747).

⁷⁰ Cf. Note No. CAPESM-JUR-123-O of February 10, 2000 issued by the Port of Esmeraldas Harbormaster (evidence file, volume X, annex 21 to the answering brief, folio 4752).

⁷¹ Cf. Note No. CAPESM-JUR-144-O of February 22, 2000 issued by the Port of Esmeraldas Harbormaster (evidence file, volume I, annex 1.u to the Merits Report, folios 70 and 71).

81. On the same day, February 22, 2000, the Fifth Criminal Judge refrained from hearing the criminal proceeding and ordered the proceedings to be referred to the Military Criminal Judge.⁷²

82. In an Order dated February 29, 2000, the Military Criminal Judge "ratified the legality of recusal by" the Fifth Criminal Judge, "because he did not have jurisdiction, due to the military jurisdiction of the defendants," and ordered that the military criminal process continue.⁷³ To this effect, among other regulations, he cited articles 183 and 187 of the Constitution,⁷⁴ 1 and 2 of the Code of Military Criminal Procedure,⁷⁵ both regulations that were in force at the time of the events.

83. On March 1, 2000, the Military Criminal Judge expanded upon the Resolution of February 29 of the same year (*supra* para 82), recusing himself from continuing to hear the case regarding the helmsman who accompanied the soldiers on the day of the events, because said person "was not an active duty member of the Armed Forces." Consequently, he ordered that the proceedings be forwarded to the Fifth Criminal Judge "so that he [would] prosecute [the criminal case before the ordinary jurisdiction] only against," said person.⁷⁶

84. On March 4, 2000, considering that "the procedural acts ordered in the preliminary stage had been complied with," the Military Criminal Judge ordered "the process be elevated" to the Judge of the Third Naval Zone to "continue processing the case."⁷⁷

85. On March 29, 2000, Ms. Narcisa de Jesús Casierra Quiñonez filed a "private accusation" brief against the soldiers, indicating that she was acting "as a sister" of Luis Eduardo and Andrés Alejandro, and requested that various procedures be performed.⁷⁸ The Judge of the Third Naval Zone denied the request, a decision which was challenged by Ms. Casierra Quiñonez.⁷⁹ In view of this, the aforementioned military judicial authority issued an Order on April 10, 2000, where it "reiterated that, in accordance with the regulations applicable to military criminal proceedings," the request "[was] not appropriate."⁸⁰

⁷² Cf. Resolution issued by the Fifth Criminal Judge of Atacames and Muisne on February 22, 2000 (evidence file, volume I, annex 1.v to the Merits Report, folio 73).

⁷³ Cf. Resolution issued by the Military Criminal Judge of the Third Naval Zone on February 29, 2000 (evidence file, volume X, annex 23 to the answering brief, folios 4756 and 4757).

⁷⁴ Political Constitution of the Republic of Ecuador, published on August 11, 1998, and repealed by the Constitution of the Republic of Ecuador of 2008 (evidence file, volume XIII, folios 11102 to 11162):

Article 183: The public forces will be made up of the Armed Forces and the National Police. [...]

Article 187: Members of the public forces will be subject to special jurisdiction when it comes to judging infractions committed in the exercise of their professional duties. Common offenses will be subject to ordinary justice.

⁷⁵ Code of Military Criminal Procedure, published on November 6, 1961 and repealed by Law No. 0, published on March 9, 2009 (evidence file, volume XIII, folios 11243 to 11269):

Article 1: The military criminal jurisdiction is established by Law, and is implemented by military courts.

Article 2: This jurisdiction includes: a) The power to investigate offenses committed by members of the Armed Forces, sanctioned by the Military Penal Code and by other laws on the matter, provided that these infractions are of a military nature. Those of a common nature correspond to the judges and common courts; and, b) To judge them and enforce the rulings.

⁷⁶ Cf. Order issued by the Military Criminal Judge of the Third Naval Zone on March 1, 2000 (evidence file, volume I, annex 1.w to the Merits Report, folios 75 and 76).

⁷⁷ Cf. Resolution issued by the Military Criminal Judge of the Third Naval Zone on March 04, 2000 (evidence file, volume X, annex 36 to the answering brief, folio 4791).

⁷⁸ Cf. Brief presented on March 29, 2000 by Narcisa de Jesús Casierra Quiñonez, before the Military Criminal Judge of the Third Naval Zone (evidence file, volume X, annex 37 to the answering brief, folios 4793 to 4796).

⁷⁹ Cf. Brief presented on April 7, 2000 by Narcisa de Jesús Casierra Quiñonez, before the Military Criminal Judge of the Third Naval Zone (evidence file, volume X, annex 38 to the answering brief, folios 4798 and 4799).

⁸⁰ Cf. Resolution issued by the Judge of the Third Naval Zone on April 10, 2000 (evidence file, volume X, annex 39 to the answering brief, folios 4801 and 4801).

86. The Judge of the Third Naval Zone, in an Order of May 24, 2000, issued “[definitive dismissal order of the process and acquittal of the defendants]”, finding, *inter alia*, the following:

[T]he operation order constitutes the official military document that is essential to the military patrol operation, which granted legal authority for the military to use the weapons in case of attack, and even proceed to repel it, which ended up being necessary due to the circumstances of the events of [D]ecember 08, 1999. [...] All the evidence legally filed in the process serves to make the [j]udge certain that the crew [...] members of the military patrol and the [...] helmsman of the boat that carried out the military operation, when giving their testimonies in this case, they have recounted the truth of the events that occurred on December 7 and 8, 1999. [...] The military patrol in the anti-crime military operation of [December 07 and 08, 1999, rigorously complied with the [o]peration [o]rder, complying with the rules of confrontation, by first identifying themselves as a military patrol and in the face of the unexpected attack with firearms to which they were subjected, they used the weaponry with a dissuasive purpose by firing shots into the air, and facing persistent disobedience by the crew members of the [R]odach boat, which did not stop, the soldiers used the weapons to neutralize the means of propulsion of said vessel, which rules out the intention of the members of the military patrol to intentionally victimize or injure the fugitive crew [...]; consequently determining that those accused of the injuries caused have not committed any crime and have no responsibility [...].⁸¹

87. The Judge of the Third Naval Zone referred the proceedings, in consultation, to the Court of Military Justice, a body that on June 21, 2001, confirmed the acquittal that had been issued.⁸²

88. The Inter-American Court does not have information on the processing and resolution of the criminal proceeding against the helmsman who was accompanying the marines on the day of the events.

F. Inclusion of the “Casierra Case” in the Truth Commission's report

89. On May 3, 2007, through Presidential Decree No. 305, the Truth Commission was created to “investigate and clarify and prevent impunity as to violent acts and human rights violations that occurred between 1984 and 1988 and other periods.” The Truth Commission's objectives included the following: “[P]erform an in-depth and independent investigation into the human rights violations that occurred between 1984 and 1988, and other special cases [...],” and “[f]oster recognition of the victims of said violations and design policies for reparations.”⁸³

90. On June 6, 2010, the Truth Commission presented its final report, entitled: “Without truth there is no justice.”⁸⁴ Said report “presented and analyzed the general results established by the Truth Commission regarding the human rights violations that took place in Ecuador in the period from 1984 to 2008.”⁸⁵

91. The report included, with the reference “C 94” the “Casierra Case,” where it documented what happened to the Casierra Quiñonez brothers in the following terms:

Executed fisherman and others arrested by members of the Navy of Atacames, province of Esmeraldas

⁸¹ Cf. Decision issued by the Judge of the Third Naval Zone on May 24, 2000 (evidence file, volume I, annex 4 to the Merits Report, folios 87 to 99).

⁸² Cf. Resolution issued by the Court of Military Justice on June 21, 2000 (evidence file, volume X, annex 42 to the answering brief, folios 4823 to 4826).

⁸³ Cf. Truth Commission Report. Volume I: Human Rights Violations. Ecuador, 2010, pg. 13 (evidence file, volume IV, annex 7 to the pleadings and motions brief, folio 2273).

⁸⁴ Cf. *Case of Garzón Guzmán et al. Ecuador, supra*, para. 52.

⁸⁵ Cf. Truth Commission Report. Volume I: Human Rights Violations. Ecuador, 2010, pg. 19 (evidence file, volume IV, annex 7 to the pleadings and motions brief, folio 2279).

On December 8, 1999, in Atacames, province of Esmeraldas, at approximately 1:30 a.m., a group of fishermen was on the coast, carrying out their usual fishing tasks aboard the Rodach boat, owned by the Casierra family. Among the crew members were the brothers Luis Eduardo, Andrés Alejandro, and Sebastián Darlin Casierra Quiñónez, accompanied by five other people: Freddy Zambrano, Orlando Olaya, Jorge Ortiz, Eguberto Padilla, and Cristian Sosa. At a place called La Hobonera, they stopped to refuel.

According to Juan Casierra Quiñónez, "...suddenly they heard a boat arriving at high speed without any identification (...). They heard some shots (...), they tried (...) to save his life. (...). Then, when they couldn't do anything but hold the boat, they found [that] it was [members of the Navy], who never took the [precaution] of saying: 'Stop[!] Stop!, we are from the Navy' before attacking." [...]

As a result of the attack against the fishermen, Luis Eduardo Casierra Quiñónez died from a bullet wound to the abdomen, Andrés Casierra Quiñónez was wounded in one of his legs, Sebastián Casierra Quiñónez was wounded in the hand and together with the other crew members they were arrested and taken to the city of Esmeraldas, accused of piracy. [...]

The Casierra Quiñónez family filed a private accusation before the Fifth Criminal [Judge] of Esmeraldas, who recused himself, and through an order forwarded all the proceedings to the Military Criminal Court of the Third Naval Zone of Esmeraldas. Subsequently, another private accusation was presented to the Military Criminal Judge of the Esmeraldas Naval Zone, who denied its origin, as it was unrelated to the military criminal process, for which no responsibilities or sanctions have been established. [...]

With this background, on June 26, 2000, the Casierra family filed a complaint with the Inter-American Commission on Human Rights for the violation to which they were victims. [...].⁸⁶

VIII MERITS

92. The instant case concerns the alleged international responsibility of the Ecuadorian State for the death and injuries caused to the Casierra Quiñónez brothers as part of an "anti-crime operation" carried out by agents of the National Navy, and due to the lack of an adequate investigation, sanction, and reparation for such acts. To analyze the merits, the Court will proceed in the following order: a) rights to life and humane treatment, in relation to the obligations to respect and guarantee rights and to adopt provisions of domestic law, and alleged violation of the right to private property; b) rights to judicial guarantees and judicial protection, in relation to the obligations to respect and guarantee the rights, and c) right to humane treatment of the next of kin of Luis Eduardo Casierra Quiñónez, in relation to the obligations to respect and guarantee the rights.

93. Before making this analysis, the Court notes that Ecuador argued, based on the "principle of subsidiarity," that no international crime is present here, given the "effort" that it has made in the "investigation, documentation, recognition, and comprehensive reparations to the alleged victims," through the work carried out by the Truth Commission and other domestic mechanisms. In relation to the State's argument, this Court has indicated that the complementary nature of international jurisdiction means that the system of protection established under the American Convention does not replace national jurisdictions, but rather complements them.⁸⁷ This means that the State is the main guarantor of people's human rights, and therefore, if there is an act that violates said rights, it is the State that must resolve the matter domestically and, if applicable, make reparations, before having to respond to international bodies.⁸⁸ In this regard, first of all, the Court confirms that the alleged victims have not received reparations at the domestic level. Secondly, the State does not present

⁸⁶ Cf. Truth Commission Report. Volume IV: case reports, period 1989-2008. Ecuador, 2010, pp. 122 to 125 (evidence file, volume VII, annex 7 to the pleadings and motions brief, folios 3942 to 3945).

⁸⁷ Cf. Case of Tarazona Arrieta et al. v. Peru Preliminary Objection, Merits, Reparations and Costs. Judgment of October 15, 2014. Series C No. 286, para. 137, and Case of Rojas et al. v. Chile. Preliminary Objections, Merits, Reparations, and Costs. Judgment of October 01, 2021. Series C No. 439, para. 138.

⁸⁸ Cf. Case of Tarazona Arrieta et al. v. Peru, supra, para. 137, and Case of Vera Rojas et al. v. Chile, supra, para. 138.

arguments aimed at demonstrating that there was an investigation, trial, and punishment of those allegedly responsible for the international crime, so it is inadmissible to claim the application of the principle of complementarity in order to prevent the Court from ruling on the merits of the alleged offenses. In any case, the arguments put forth by the State will be studied when deciding what is pertinent with respect to the claims of the Commission and the representatives regarding reparations.

VIII.1
RIGHTS TO LIFE AND HUMANE TREATMENT, IN RELATION TO THE OBLIGATIONS TO RESPECT AND GUARANTEE RIGHTS AND TO ADOPT DOMESTIC LAW PROVISIONS⁸⁹ AND ALLEGED VIOLATION OF THE RIGHT TO PROPERTY⁹⁰

94. The Court will proceed to study the various issues raised by the Commission and the parties in relation to the specific rights that were allegedly violated on occasion of the events that occurred on December 8, 1999.

A. Arguments of the parties and the Commission

A.1. Rights to life and humane treatment

95. The **Commission** argued that the State "did not provide a satisfactory explanation" for the death of Luis Eduardo Casierra Quiñonez and the injuries caused to his brother Andrés Alejandro, "that would have resulted from an independent, impartial, and due diligence investigation." However, elements can be identified in the file that confirm that the use of lethal force was incompatible with the international obligations of the State. This is given that the weapons that the alleged victims allegedly used to attack the boat in which the marines were traveling were neither seized nor located. Given this, the only basis to maintain that an attack was first perpetrated were the statements of the military personnel and the helmsman, as well as the existence of holes in the boat they used, without an assessment of the type of weapon or the age of the impacts.

96. As to the legitimate purpose and absolute necessity, it argued that, although the State maintained that the agents fired shots at the engine of the boat of the alleged victims while they were fleeing, the shots were directed towards the upper part of the boat, "impacting the people who were inside." In any case, escape "can never be considered a basis for the legitimate purpose and strict necessity for the use of lethal force, unless [...] the life of someone is in danger." As to proportionality, based on the visual inspection of the boat of the alleged victims, it was found that "it had a total of [forty-nine] holes [...] due to the use of firearms," which "indicates a disproportionate use of lethal force." It concluded that Ecuador is internationally responsible for violation of articles 4(1) and 5(1) of the American Convention, in relation to the obligations established in article 1(1) of the same instrument.

97. The **representatives** indicated that the violation of the right to life to the detriment of Luis Eduardo Casierra Quiñonez derived from the lack of "minimum conditions necessary to prevent the National Navy, through its marines, from being the perpetrators of an unnecessary, disproportionate and therefore arbitrary abuse of lethal force." They added that, in addition to the "extrajudicial execution" of Luis Eduardo, his brothers Sebastián Darlin and Andrés Alejandro suffered "severe injuries" as a result of the events.

98. The **State** indicated that it "recognizes that state agents caused the death of Luis Casierra and affected the integrity of Andrés and Sebastián Casierra." However, it argued that "no international responsibility is established," because "at the time of the events [...], as it is

⁸⁹ Articles 4 and 5 of the American Convention, in relation to articles 1.1 and 2 of the same instrument.

⁹⁰ Article 21 of the American Convention.

also today, [...] it had and continues to have an adequate regulatory framework to prevent or punish the arbitrary deprivation of life. It argued that in the instant case, international standards regarding the use of lethal force by state agents were observed. Thus, regarding the legitimate purpose, it indicated that the action of the military was framed in the context of an anti-crime operation on the "high seas," carried out in the face of recurring robberies that were reported by the community.

99. Regarding the absolute necessity, it pointed out that "the use by the military of their firearms occurred at the moment in which they were shot." It also stressed that, based on the investigations carried out, it was found that the boat used by the agents had holes in the upper and lower part of the bow, so the use of force corresponded "to the need to protect their own lives and integrity." As to proportionality, it stated that, based on the testimonies taken, it was determined that "the use of force corresponded to the will of the members of the Naval Force to stop the boat, firing at the engine," which "coincid[ed] with the seat where Luis Eduardo Casierra [Quiñonez] was located, given that he was the helmsman."

100. The State indicated that the circumstances of the case and the evidentiary elements "did not make it possible [to] establish whether the shots came from the boat" of the alleged victims, and that "no weapons were found in their possession," added to the fact that no criminal proceedings were initiated against them for piracy; however, it must be taken into account that the facts of the case "are the product of an operation that took place in difficult circumstances, on the high seas, in total darkness, on a moving vessel."

A.2. Right to property

101. The **representatives** indicated that, as a result of military personnel's actions, the boat owned by Ms. Shirley Lourdes Quiñonez Bone "was rendered unusable after more than [forty] shots." The above meant "a real limitation" to her right to property, especially when the State, to date, has not paid "just compensation," in the terms of Article 21(2) of the Convention. The **State** indicated that the argument of the representatives lies outside the factual framework of the case. The **Commission** did not rule on this alleged violation.

B. Considerations of the Court

102. The Court notes that, based on that stated by the parties and the Commission, in this case there is no dispute that the activities of the members of the Ecuadorian Navy during the "anti-crime operation" carried out on December 8, 1999, resulted in the death of Luis Eduardo and the injuries caused to his brothers Andrés Alejandro and Sebastián Darlin,⁹¹ all with the surnames Casierra Quiñonez (*supra* paras. 51 and 52).

103. From this account, the controversy resides in the analysis about the observance of inter-American standards, by military personnel when using lethal force in the framework of the aforementioned operation and in the alleged violation of the right to property in relation to the boat owned by Ms. Shirley Lourdes Quiñonez Bone. Based on this, the Court will make the respective analysis.

⁹¹ As to the injuries caused to Sebastián Darlin Casierra Quiñonez, although Merits Report, when referring to the fact, mentioned that it had been reported to the authorities "as a result of the shots [...] he was injured in his left hand," the State acknowledged that the actions of military personnel "caused [...] the [...] effects [on his] [personal] integrity." Cf. Answer brief (merits file, volume IV, folio 894).

B.1. The use of lethal force by State security forces

104. The case law of this Court has recognized that, although States have the obligation to guarantee security and maintain public order in their territory, the use of force by official security forces must be applied in exceptional circumstances, and must be planned and limited proportionately by the authorities. The Court has considered that force or coercive instruments may only be used when all other means of control have been exhausted and, consequently, have failed.⁹²

105. Consistent with the foregoing, in cases where the use of force is imperative, it must satisfy the principles of legality, legitimate purpose, absolute necessity, and proportionality, which have been defined by the Court as follows:

a) *Legality*: the exceptional use of force must be formulated by law and there must be a regulatory framework for its use.⁹³

b) *Legitimate purpose*: the use of force must be directed to achieve a legitimate purpose.⁹⁴

c) *Absolute necessity*: it must be verified whether there are other less harmful means available to protect the life and integrity of the person or the situation that is intended to be protected, in accordance with the circumstances of the case.⁹⁵ In a higher degree of exceptionality stands the use of lethal force and firearms by state security agents against people, something that should be prohibited as a general rule. Its exceptional use must be interpreted restrictively so that it is minimized in all circumstances, not applying any more than is "absolutely necessary" in relation to the force or threat that it is intended to repel.⁹⁶

d) *Proportionality*: the level of force used should be commensurate with the level of resistance offered,⁹⁷ which implies a balance between the situation faced by the official and his response, considering the potential damage that could be caused. To this effect, the agents must apply a criterion of differentiated use of force, determining the degree of cooperation, resistance or aggression on the part of the criminal subject and, with

⁹² Cf. *Case of Montero-Aranguren et al. (Detention Center of Catia) v. Venezuela. Preliminary Objection, Merits, Reparations, and Costs*. Judgment of July 05, 2006. Series C No. 150, para. 67, and *Case of Roche Azaña et al. v. Nicaragua. Merits and Reparations*. Judgment of June 3, 2020. Series C No. 403, para. 53.

⁹³ Cf. *Case of Nadege Dorzema et al. v. Dominican Republic. Merits, Reparations, and Costs*. Judgment of October 24, 2012. Series C No. 251, para. 85, and *Case of Roche Azaña et al. v. Nicaragua, supra*, para. 53, and *Case of Muñoz et al. v. Venezuela. Merits, Reparations, and Costs*. Judgment of November 10, 2020. Series C No. 415, para. 92.

⁹⁴ Cf. *Case of Nadege Dorzema et al. v. Dominican Republic, 1999 . supra*, para. 85; *Case of the Landaeta Mejías Brothers et al. v. Venezuela. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of August 27, 2014. Series C No. 281, para. 134, and *Case of Roche Azaña et al. v. Nicaragua, supra*, para. 53, and *Case of Muñoz et al. v. Venezuela, supra*, para. 92.

⁹⁵ Cf. *Case of Montero-Aranguren et al. (Detention Center of Catia) v. Venezuela, supra*, paras. 67 y 68; *Case of Nadege Dorzema et al. v. Dominican Republic, supra*, para. 85, and *Case of Roche Azaña et al. v. Nicaragua, supra*, para. 53, and *Case of Muñoz et al. v. Venezuela, supra*, para. 92.

⁹⁶ Cf. *Case of Montero-Aranguren et al. (Detention Center of Catia) v. Venezuela, supra*, para. 68, and *Case of Roche Azaña et al. v. Nicaragua, supra*, para. 53, and *Case of Muñoz et al. v. Venezuela, supra*, para. 92. See also, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (hereinafter also "Basic Principles on the Use of Force"), adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana, Cuba, from August 27 to September 7, 1990, Principle No. 4. Available at: <https://www.ohchr.org/sp/professionalinterest/pages/useofforceandfirearms.aspx>.

⁹⁷ Cf. *Case of Zambrano Vélez et al. v. Ecuador. Merits, Reparations and Costs*. Judgment of July 04, 2007. Series C No. 166, para. 85; *Case of Nadege Dorzema et al. v. Dominican Republic, supra*, para. 85, and *Case of Roche Azaña et al. v. Nicaragua, supra*, para. 53, and *Case of Muñoz et al. v. Venezuela, supra*, para. 92. See also, Basic Principles on the Use of Force, *supra*, Principles No. 5 and 8.

this, employ tactics of negotiation, control, or use of force, as best corresponds.⁹⁸ To determine the proportionality of the use of force, the seriousness of the situation faced by the official must be evaluated. To do this, among other circumstances, the following must be considered: the intensity and dangerousness of the threat; the individual's way of proceeding; the environmental conditions, and the means available to the official to deal with a specific situation.⁹⁹

106. Case law has also indicated that law enforcement officials must identify themselves as such and, where appropriate, give a clear warning of their intention to use firearms. This is particularly necessary during such operations and, especially, in situations that by their nature endanger the fundamental rights of people.¹⁰⁰

B.1.1. Analysis of the instant case

107. In the instant case, the Court highlights the disparity of existing versions regarding what happened on December 8, 1999. The Casierra Quiñonez brothers and their companions have maintained that on that day they were not carrying weapons and that the boat in which the agents who carried out the military operation were driving approached at high speed, without identifying themselves, flashing lights or any sign that would make it possible to determine that they were authorities of the public force. As they stated, thinking that they were "pirates," they chose to flee, before which the marines fired and ended up hitting the engine, causing the boat to stop, resulting in death and injuries caused to the alleged victims (*supra* paras. 54 to 56).

108. Meanwhile, the soldiers and the helmsman who accompanied them have indicated that, as part of the operation carried out, at first they were attacked with firearms by people who were driving in a boat. In response, they repelled the attack, but they failed to arrest the boat. At a second moment in time, approximately three hours later, they identified two boats, the crews of which had also allegedly used firearms against them, and when chasing one of such boats, to arrest its occupants, the soldiers fired in the direction of the boat's engine. As a consequence, one of the fishermen died and two others were injured. The marines indicated that in their actions, they first identified themselves as members of the National Navy, turned on the lights and the siren, and fired shots into the air (*supra* paras. 61 and 62).

109. In addition to the above, according to both versions, the events occurred on the "high seas" or open waters, at night, and in precarious visibility conditions (*supra* paras. 55 and 62).

110. Notwithstanding the specific contradictions and omissions that could be noted in the different statements and in the accounts pertaining to both versions, the Court notes the serious existing evidentiary limitations, which was admitted by the State, which stated, *inter alia*, that it was not possible to establish that shots had been fired from the boat in which the alleged victims were traveling and that no firearms were found in the possession of the latter (*supra* para 100). Added to this is the fact that, from the investigations carried out in the

⁹⁸ Cf. *Case of Nadege Dorzema et al. v. Dominican Republic*, *supra*, para. 85, and *Case of Roche Azaña et al. v. Nicaragua*, *supra*, para. 53, and *Case of Muñoz et al. v. Venezuela*, *supra*, para. 92. See also, Basic Principles on the Use of Force, *supra*, Principles No. 2, 4, 5 and 9.

⁹⁹ Cf. *Case of the Landaeta Mejías Brothers et al. Venezuela*, *supra*, para. 136, and *Case of Roche Azaña et al. v. Nicaragua*, *supra*, para. 53, and *Case of Muñoz et al. v. Venezuela*, *supra*, para. 92.

¹⁰⁰ Cf. *Case of the Landaeta Mejías Brothers et al. Venezuela*, *supra*, para. 135. Principle 10 of Basic principles on the use of force, *supra*, indicates:

[L], law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.

framework of the criminal proceedings initiated before the military jurisdiction and before the ordinary jurisdiction, it was not possible to clarify what happened, an issue that will be analyzed below (*infra* para 150).

111. Given these circumstances, the Court recalls that its actions are not those of a criminal court in which the criminal responsibility of individuals can be determined,¹⁰¹ given that such matter corresponds to domestic authorities. Likewise, the Court has indicated that, under Article 1(1) of the Convention, in order to establish that there has been a violation of the rights recognized in said instrument, and unlike in domestic criminal law, it is not necessary to prove the responsibility of the State beyond all reasonable doubt, nor that the agents to whom the violating acts are attributed be individually identified, or to establish the guilt of the perpetrators or their intention.¹⁰² This Court only needs to have the conviction that actions or omissions have been verified that are attributable to the State, and that there is an international obligation that the State has breached.¹⁰³

112. For its part, as inter-American case law has also reiterated, in cases such as the one here under analysis, in which the use of force by state agents has caused the death or injury of one or more persons, the State is required to provide a satisfactory and convincing explanation of what happened and refute the allegations of its responsibility by providing adequate evidence.¹⁰⁴ The above will be taken into account by the Court as appropriate.

113. Upon analyzing whether the parameters that should govern the use of force by security forces in the instant case, it is noted that, as to the requirement of legality, the State indicated that the regulatory framework adopted to "guarantee and protect the right to life" was included in article 23 of the Political Constitution of 1998,¹⁰⁵ which was in force at the time of the facts, and the following ordinary legislation, also in force at that time: a) the Criminal Code of 1971, which "codified crimes against the right to life," and b) the Military Criminal Code, whose articles 170 and 171 "provided for the concepts of homicide and murder."¹⁰⁶ Ecuador also mentioned the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (*supra* footnote 96), and the Code of Conduct for Law Enforcement Officials,¹⁰⁷ which it stated

¹⁰¹ Cf. *Case of Suárez Rosero v. Ecuador. Merits*. Judgment of November 12, 1997. Series C No. 35, para. 37, and *Case of Mota Abarullo et al. v. Venezuela. Merits, Reparations and Costs*. Judgment of November 18, 2020. Series C No. 417, para. 69.

¹⁰² Cf. *Case of the "White Van" (Paniagua-Morales et al.) v. Guatemala. Merits*. Judgment of March 08, 1998. Series C No. 37, para. 91; *Case of Rodríguez Vera et al. (The Disappeared from the Palace of Justice) v. Colombia Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 14, 2014. Series C No. 287, para. 81, and *Case of Díaz Loreto et al. v. Venezuela. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 19, 2019. Series C No. 392, para. 69.

¹⁰³ Cf. *Case of Velásquez-Rodríguez v. Honduras Fund, supra*, para. 173, and *Case of Díaz Loreto et al. v. Venezuela, supra*, para. 69.

¹⁰⁴ Cf. *Case of Montero-Aranguren et al. (Detention Center of Catia) v. Venezuela, supra*, para. 80, and *Case of Roche Azaña et al. v. Nicaragua, supra*, para. 69. Even in the case of *Cruz Sánchez et al. v. Peru*, the Court highlighted that in this matter "the burden of proof is reversed." Cf. *Case of Cruz Sánchez et al. v. Peru Preliminary Objections, Merits, Reparations, and Costs*. Judgment of April 17, 2015. Series C No. 292, para. 291.

¹⁰⁵ Article 23 of the Political Constitution of the Republic of Ecuador, published on August 11, 1998, and repealed by the Constitution of the Republic of Ecuador of 2008 (evidence file, volume XIII, folios 11102 to 11162): Notwithstanding the rights established in this Constitution and in the international instruments in force, the State will recognize and guarantee the following to people: 1. The inviolability of life. [...] 2. Humane treatment [...]."

¹⁰⁶ Military Criminal Code, published on November 6, 1961, and repealed by Law No. 0, published on May 19, 2010 (evidence file, volume XIII, folios 11243 to 11269):

Article 170: Those who cause the death of a person, with any of the aggravating circumstances determined in Article 27, will be responsible for murder and will be punished with extraordinary imprisonment and expulsion from the Armed Forces.

Article 171: Those who cause death without any of these aggravating circumstances will be responsible for simple homicide and will be punished with extraordinary minor imprisonment.

¹⁰⁷ Cf. Code of Conduct for Law Enforcement Officials, adopted by the General Assembly of the United Nations in its Resolution 34/169, of December 17, 1979. Available at: <https://www.ohchr.org/sp/professionalinterest/pages/lawenforcementofficials.aspx>.

would be of “compulsory and for general compliance by all Ecuadorian Navy personnel.”

114. The Court recalls that the States must create an adequate regulatory framework that deters any threat to the right to life. Hence, domestic legislation must establish sufficiently clear guidelines for the use of lethal force and firearms by state agents.¹⁰⁸ It is noted that the provisions of the National Constitution in force at the time of the events did not include a specific regulation regarding the use of force by the security forces. The same should be noted regarding the content of the Criminal Code and the Military Criminal Code, also in force at that time. Meanwhile, although the State referred to other legal bodies, these are regulations that went into force after the facts of the case occurred (namely, the 2008 Constitution and certain regulations approved in 2014), so they cannot be taken into account for this analysis. Regarding the State's argument regarding the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the Code of Conduct for Law Enforcement Officials, Ecuador has not shown that at the time of the facts such regulations had been incorporated into its domestic law and were applied regularly by the domestic authorities.

115. One last question that must be addressed here is the requirement of legality. According to the established events, on December 7, 1999, the Port of Esmeraldas Harbormaster issued a letter with reference number RAD-DIGMER-DOP-P-222000ZNOV-99, which is the order to perform the “anti-crime operation” during which the events of the instant case were consummated. Although the order mentioned, in very general terms, the “[procedures]” that the agents had to follow in the framework of the operation (*supra* para 49), the nature and scope of the provision issued do not satisfy the principle of legality required by inter-American case law, and the guidelines on the use of force, in addition to being precise and clear, must be provided for by “law,”¹⁰⁹ understood in a formal sense, that is, a “legal norm adopted by the legislative body and promulgated by the Executive Branch, according to the procedure required by the internal law of each State,” as “a requirement of the necessary limitation to the interference of public power in the sphere of the rights and freedoms of human persons.”¹¹⁰

116. Consequently, at the time of the events, the State did not meet the legality requirement regarding the parameters for the use of force by agents of the security forces. This Court reached the same conclusion in the case of *Valencia Hinojosa et al. v. Ecuador*, the facts of which occurred in 1992, where the corresponding analysis was carried out in relation to

¹⁰⁸ Cf. *Case of Montero-Aranguren et al. (Detention Center of Catia) v. Venezuela*, *supra*, para. 75, and *Case of Roche Azaña et al. v. Nicaragua*, *supra*, para. 55. In this regard, the Human Rights Committee has indicated the following:

The legal duty to protect the right to life requires that any substantive grounds invoked to justify the deprivation of life be prescribed by law and defined with sufficient precision to avoid excessively broad or arbitrary interpretation or application. [...] [T]he law must strictly control and limit the circumstances in which a person may be deprived of his or her life by those authorities, and States [...] must ensure full compliance with all of the relevant legal provisions.

Cf. Human Rights Committee, General Comment No. 36, Article 6: right to life, September 3, 2019, UN Doc. CCPR/C/GC/36, par. 12. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/261/18/PDF/G1926118.pdf?OpenElement>.

¹⁰⁹ Cf. *Case of Montero-Aranguren et al. (Detention Center of Catia) v. Venezuela*, *supra*, para. 68; *Case of Valencia Hinojosa et al. v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 29, 2016. Series C No. 327, para. 137, and *Case of Muñoz et al. v. Venezuela*, *supra*, para. 92.

¹¹⁰ Cf. *The expression "Laws" in Article 30 of the American Convention on Human Rights*. Advisory Opinion OC-6/86 of May 9, 1986. Series A No. 6, para. 27, and *Case of Baena Ricardo et al. v. Panama. Merits, Reparations and Costs*. Judgment of February 02, 2001. Series C No. 72, para. 169. Similar comments were made by expert witness Rodrigo Bustos Bottai, who, in reference to the case of Ecuador, indicated the following:

[N]or it would comply with the principle of legality in accordance with international standards [...], since there is no law that contains specific provisions aimed at regulating the actions of police officers, military personnel, or other State agents empowered to use force. Here, we must remember that, as to the principle of legality, [...] [there] has been an insistence on the obligation of the States to sanction norms with the hierarchy of law and in compliance with international standards on the matter.

Cf. Written expert opinion rendered by Rodrigo Bustos Bottai (evidence file, volume XI, written expert opinion, folio 5253).

domestic regulations of a similar nature and content to that mentioned by the State in the process at hand.¹¹¹

117. The lack of adequate regulations on the use of force¹¹² at the time of the facts determines, in turn, a violation of Article 2 of the American Convention, in relation to Articles 4 and 5 of the same international instrument. Although the Commission and the representatives did not make a specific claim to this effect, the Court considers it pertinent to rule in application of the principle *iura novit curia*, as it has done on other occasions.¹¹³

118. Given the various arguments made by the parties and the Commission, the Court finds it necessary to continue analyzing compliance, in the specific case, with the requirements established for the use of force. Similarly, regarding the principle of legitimate purpose, the court reiterates the disparity between the statements provided by the alleged victims and the military personnel who participated in the operation.

119. According to the State, actions by the military personnel were taken to meet the objectives of the "anti-crime operation," undertaken at the request of the fishermen's organization, which would thereby prove the legitimate purpose. The Court finds that this requirement cannot be understood as having been fulfilled in the general context of the operation carried out and the causes that led to its deployment; rather, it must be analyzed in accordance with the particular circumstances of the events that occurred, since that vision, in addition to endorsing *a priori* any use of force in order to "counteract the continuous assaults and robberies" (as provided for in the order issued by the Port of Esmeraldas Harbormaster¹¹⁴), makes it possible to specifically examine (*supra* para 105) the situation and eventual risk or threat faced by the agents and the response that they would have offered to it.

120. The Court recalls that, as to the legitimate purpose pursued with the use of force, not all use of force necessarily implies the use of firearms, since State agents and security forces may resort to the use of force in multiple situations in which the use of firearms is not necessary. This may occur, for example, when arresting a person to comply with a judicial order to prevent the commission of a crime or to maintain public order in acts of a public nature where there is a congregation of people and it is necessary to guarantee their safety.¹¹⁵ In the instant case, Ecuador argued that the shots were fired by the agents in an attempt to repel the attack by the fishermen and to stop the boat.¹¹⁶ Regarding the first point, it was the

¹¹¹ Cf. *Case of Valencia Hinojosa et al. v. Ecuador, supra*, para. 137.

¹¹² The Special Rapporteur on extrajudicial, summary or arbitrary executions has stated:

[T]he first step to safeguard the right to life consists in establishing an adequate legal framework for the use of force by the police, in which the conditions that justify the use of force on behalf of the State are established and foresee a system for refining responsibilities for cases in which these limits are crossed. [...] The relevance of domestic legislation in this context lies specifically in the fact that the laws of each State constitute the first line of defense for the protection of the right to life and, in many cases, in practice also the last, given the irreversible nature of the violation of that right.

Cf. Human Rights Council, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Christoff Heyns, A Doc. A/HRC/26/36, April 1, 2014, paras. 26 and 29. See also, ECHR, *Case Makaratzis v. Greece* [GS], No. 56385/99, Judgment of December 20, 2004, paras. 57 and 58.

¹¹³ Cf. *inter alia*, *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 163, and *Case of Cuva Lavy et al. v. Peru Preliminary Objections, Merits, Reparations, and Costs*. Judgment of September 28, 2021. Series C No. 438, para. 149.

¹¹⁴ Cf. Note No. RAD-DIGMER-DOP-P-222000ZNOV-99 of December 7, 1999 issued by the Port of Esmeraldas Harbormaster (evidence file, volume I, annex 1.h to the Merits Report, folios 29 and 30).

¹¹⁵ Cf. *Case of Roche Azaña et al. v. Nicaragua, supra*, para. 60.

¹¹⁶ According to statements by the military personnel "in command [of] the operation," the use of firearms in the particular event that resulted in the death and injuries of the alleged victims occurred when they began pursuit of the boat, with the aim of impacting the engine in order to "neutralize [it]" and, thereby, achieve the arrest of its occupants. In other words, at the time the shots were fired, the intended objective of the marines was to stop the boat and apprehend its occupants.

State itself that concluded that no weapons were found in the possession of the Casierra Quiñonez brothers and their companions, nor was it possible to prove that shots had been fired from the boat in which they were traveling, since it was impossible to establish whether the three bullet impacts to hull of the boat used by the Naval officers had the caliber or whether they were old or recent. Given that there were no seized weapons, it cannot be proven that the military personnel were under attack and that the use of lethal force was necessary in these circumstances. Taking into account the existing evidentiary limitations and in the absence of a satisfactory and convincing explanation by the domestic authorities about what happened, the Court takes into account the statements of the marines, rendered in the context of the investigation started based on the facts. It is noteworthy that none of the soldiers reported having found weapons on the fishermen's boat and that one of them, when specifically questioned on the matter, confirmed that they were not found. As a result, it cannot be proven that the physical integrity of the Marines was in danger. Notwithstanding analysis that will be carried out regarding the intervention of the military criminal jurisdiction, it should be noted that the military judicial authority reached the same conclusion within the framework of the process initiated for this purpose.¹¹⁷ (*supra* para 86).

121. As to the objective of "neutralizing," the Court finds that, although it is a legitimate aim to try to stop the vessel to apprehend its occupants on the suspicion that it could have been the pirate boat they were looking for (as proven by the documents and testimonies rendered), the use of lethal weapons by agents of the State security forces is disproportionate in circumstances that may unnecessarily put the life and physical integrity of people at risk. Thus, when the objective is to neutralize or stop, it is appropriate to use less grievous mechanisms, including issuing a warning and trying to persuade the occupants of the other vessel to stop, continuing the pursuit until catching up with them, or requesting the support of other public forces units. To perform such actions, a communication device was included among the equipment provided to carry out the operation (*supra* para 50). Likewise, regarding the element of absolute necessity that requires verifying whether there are other less harmful means available to protect the life and integrity of the person or the situation that is intended to be protected, in accordance with the circumstances of the case, the use of firearms was unnecessary and disproportionate. Meanwhile, the use of other available, less grievous means were justified to protect the rights at stake, especially taking into account the parameter that requires a greater degree of exceptionality in the use of lethal force and firearms by state security agents against people, particularly military personnel, against civilians, something that should be prohibited as a general rule.

122. This has been the Court's logic in its analysis of the requirement of absolute necessity and proportionality in the use of force, indicating that it is also the duty of the State to "provide less extreme measures" to achieve the objectives outlined in the field of security and public order, which requires, for the implementation of operations such as the one carried out in this case, that there be prior planning, training, and organization, precisely in order to avoid disproportionate actions by its agents.¹¹⁸

¹¹⁷ The Law Judge of the Third Naval Zone concluded, *inter alia*:

[D]ue to the persistent disobedience by the crew members of the [R]odach vessel, which did not stop, the military used weapons to neutralize the means of propulsion of said vessel, which rules out the members of the military patrol to having any motivation to intentionally victimize or injure the escaping crew members [...].

Cf. Decision issued by the Law Judge of the Third Naval Zone on May 24, 2000 (evidence file, volume I, annex 4 to the Merits Report, folio 98).

¹¹⁸ *Cf. Case of Montero-Aranguren et al. (Detention Center of Catia) v. Venezuela, supra*, para. 89, and *Case of Roche Azaña et al. v. Nicaragua, supra*, para. 68. On this matter, the Human Rights Committee has noted the following:

States [...] are expected to take all necessary measures to prevent the arbitrary deprivation of life by law enforcement officials, including soldiers on law enforcement missions. These measures include [...] procedures designed to ensure that the actions of law enforcement are properly planned in accordance with the need to minimize the risk they pose to human life [...].

123. Consequently, in this case, given to the comparison between the situation faced by the agents and the extent of the response required, the Court notes that the elements of absolute necessity and proportionality of the test mentioned *supra* are not satisfied, meaning that there was an unnecessary and disproportionate use of lethal force. Indeed, the domestic investigations carried out reveal that at least forty-nine impacts from firearm projectiles had been verified in the boat occupied by the alleged victims and that, while it is true that a considerable number of bullets that impacted the boat are located in the engine area (twenty-six), what can be inferred from that evidence and from the testimonies given by the marines and the civilian helmsman of the boat, is that the intention was to stop the boat and not cause the death of its occupants, the truth is that, in conditions of absolute darkness (approximately 1:30 a.m. in "waning moon") and adverse weather conditions (extremely choppy seas), a boat moving in pursuit, at maximum speed and at a certain distance between the moving boats, it was foreseeable that several of the bullets would hit other areas of the boat creating a danger of injury and death for its occupants, which was exactly what happened. Such a high number of bullet impacts (forty-nine) is not justified to "neutralize" the vessel being persecuted, nor to shoot in the indicated conditions, without unnecessarily putting the physical integrity and life of its occupants at risk. Also, the number of bullet impacts does not coincide with the testimonies of the naval officers and the civilian helmsman who was driving the boat, since the former said that they had fired between five and six shots, while the helmsman indicated that approximately ten shots were fired, establishing a significant difference between what was said and the physical evidence of the bullet impacts on the boat, which add up to at least forty-nine. At the same time, the version of the fishermen from the "Rodach" boat is consistent and does not reflect substantial differences between the versions of the testimonies given.

124. That said, the Court emphasizes that, according to declarations by the Casierra Quiñonez brothers and their companions, the boat in which the marines were traveling lacked identification, lights, or any sign that would make it possible to understand that they were armed forces of the military. To that effect, it is an established fact that the marines traveled in a boat that did not belong to the military institution,¹¹⁹ but rather to the "Civil Defense" (*supra* para 50), which reflects a lack of appropriate planning and organization in order to effectively achieve the objectives of the operation without the associated risks (*supra* para 122) and that would make it possible to adequately identify the boat as belonging to government authorities.

125. The number of shots fired by the agents, under the conditions indicated, the lack of visibility due to the weather conditions that day, including rough seas, movement, and for purposes of arrest, as well as the possibility of having used less grievous means to the rights at stake, makes the use of firearms disproportionate in the circumstances indicated.

126. In short, in this case the legality, absolute necessity, and proportionality in the use of lethal force by the marines were not proven, without the State having provided a satisfactory and convincing explanation of what happened. The resulting situation was the outcome of the excessive use of lethal force by state agents. To this effect, as the Court has pointed out, when excessive force is used, any resulting deprivation of life is arbitrary,¹²⁰ which is equally applicable in the case of violations of the right to personal integrity due to injuries caused in the same context.

Cf. Human Rights Committee, General Comment No. 36, Article 6: right to life, September 3, 2019, UN Doc. CCPR/C/GC/36, par. 13. See also, ECHR, *Case of McCann et al. v. United Kingdom* [GS], No. 18984/91, Judgment of September 27, 1995, paras. 202 et seq.

¹¹⁹ Mr. Andrés Alejandro Casierra Quiñonez agreed on this fact. *Cf.* Testimony by Andrés Alejandro Casierra Quiñonez, given at a public hearing before this Court.

¹²⁰ *Cf. Case of Montero-Aranguren et al. (Detention Center of Catia) v. Venezuela, supra*, para. 68, and *Case of Olivares Muñoz et al. v. Venezuela, supra*, para. 109.

B.2. Alleged violation of the right to property

127. Regarding the allegations made by the Inter-American Public Defenders in relation to the violation of the right to property of Ms. Shirley Lourdes Quiñonez Bone due to the damage suffered by the Rodach vessel as a consequence of the operation carried out by the Marines, the Court finds that it does not have the necessary elements to rule on the matter.

128. This is said without ruling out the possibility that the allegation could be understood to be consistent with the factual framework of the case (*supra* paras. 51 and 78), it is noted that the argument, rather than substantiating an autonomous violation of the right to property, is aimed at supporting a specific claim in terms of reparations, subordinate to the damage that the intervention of the agents on the day of the facts could have caused the boat owned by Ms. Quiñonez Bone. Indeed, the representatives of the alleged victims point out that the aforementioned boat was allegedly rendered unusable as a result of the shots that hit it during the operation. Nevertheless, the Court lacks evidence that would allow it to verify such affirmation.

129. Based on the above, it is not appropriate to issue a statement regarding the above allegation, both due to a lack of specific substantiation of the subject and the absence of evidence on the alleged affectation of the right to property. Given the foregoing, the Court will address the damage to the Rodach boat in relation to reparations.

B.3. Conclusion

130. Based on the above, the Court concludes that the State is internationally responsible for the violation of the rights to life and humane treatment, recognized in Articles 4(1) and 5(1) of the American Convention, in relation to Articles 1(1) and 2 of the same international instrument, to the detriment, respectively, of Luis Eduardo Casierra Quiñonez, and his brothers Andrés Alejandro and Sebastián Darlin, with the surnames Casierra Quiñonez.

VIII.2

RIGHTS TO JUDICIAL GUARANTEES AND JUDICIAL PROTECTION, IN RELATION TO THE OBLIGATIONS TO RESPECT AND GUARANTEE RIGHTS,¹²¹ AND ALLEGED VIOLATIONS OF THE RIGHTS TO THE PROTECTION OF HONOR AND DIGNITY, TO THE PROTECTION OF THE FAMILY AND TO EQUAL PROTECTION BEFORE THE LAW¹²²

a. Arguments of the parties and the Commission

A.1. Rights to judicial guarantees and judicial protection

131. The **Commission** argued that, since they were violations of the rights to life and humane treatment, the facts of the instant case could not be considered "crimes of duty," which explains why the investigation should have been carried out in the ordinary jurisdiction. It indicated that the intervention of the military justice in the specific case was due to Article 187 of the Constitution in force at the time of the events and Article 2 of the Code of Military Criminal Procedure, which did not clearly delimit the scope of applicable subject matter jurisdiction.

132. It concluded that the State failed to observe the rights to judicial guarantees and judicial protection, specifically the right to have a competent, independent and impartial authority, as well as to have an adequate and effective judicial remedy, thereby violating Articles 8(1) and 25(1) of the American Convention, in relation to articles 1(1) and 2 of the same international

¹²¹ Articles 8 and 25 of the American Convention, in relation to article 1(1) of the same instrument.

¹²² Articles 11, 17 and 24 of the American Convention.

instrument.

133. The **representatives** pointed out that the State violated the right of access to justice of the alleged victims, given the normative design in force at the time of the facts, insofar as the victims were not allowed to participate in the process before the military criminal justice system, which caused procedural imbalance. They requested declaration of violation of Articles 8(1) and 25(1) of the Convention in relation to Article 24 of the same instrument.

134. The **State** indicated that it "recognizes that investigation [of the facts] and the subsequent criminal proceedings in [the] military jurisdiction [...] were not in accordance with the inter-American standards," in particular because the military jurisdiction "is not the competent jurisdiction to investigate and, where appropriate, prosecute and punish the perpetrators of alleged human rights violations." It argued that, notwithstanding the foregoing, "the international responsibility" of the state was not established, because since issuing the final report of the Truth Commission, the competent authorities "took the necessary measures to investigate the crime with the order to punish those responsible."

135. It indicated that the domestic legal system in force at the time of the events "allowed for effective protection of judicial guarantees," such that any allegation regarding an alleged violation of Article 2 of the Convention in this matter must be dismissed. It added that, at present, the regulations related to the Military Criminal Code have been repealed, so that "practices connected to military jurisdiction have also been eliminated from the Ecuadorian judicial system."

136. It indicated that, despite an unsatisfactory response by the military criminal jurisdiction, the investigation undertaken since the Truth Commission report was issued "satisfied the State's obligations to guarantee the rights of [the] next of kin of access to justice and to know the truth about the facts." Thus, the Truth Commission "documented eight victims and concluded that four alleged perpetrators were involved." It indicated that the Office of the Prosecutor General has carried out various procedures, including collecting information and exhuming the body of Luis Eduardo Casierra Quiñonez. Said institution is carrying out the necessary actions aimed at determining the responsibilities derived from the facts of the case. It added that the alleged victims and their representatives have access to the investigation file and are informed of the progress made.

137. It indicated that the mere fact that the investigation has not made it possible to identify the criminal responsibility of the perpetrator or perpetrators of the crimes committed does not constitute, *per se*, a violation of human rights.

A.2. Right to the protection of honor and dignity

138. The **representatives** argued that the public accusation made by the State of the Casierra Quiñonez brothers, insofar as "they carried firearms and used them against the National Navy, significantly detract[ed] from their honor and good name; not only theirs, but that of their whole family." Such accusations, regarding which the state authorities did not present irrefutable evidence, classified the alleged victims as "criminals and bandits," which seriously damaged their personal life, public reputation, and their family environment.

139. The **State** indicated that the alleged victims were not prosecuted or arrested for any crime, nor was any judicial proceeding initiated against them, so there is no basis for affirming that they suffered "accusations" by the domestic authorities. It indicated that the representatives did not argue what precisely consisted of the effects on the honor or private life of the alleged victims, thereby failing to provide evidence of damage to that effect. On the contrary, the testimony of the alleged victims and witnesses to the events show that they have not suffered any harm to their honor and dignity.

A.3. Rights of the family

140. The **representatives** alleged that the violation of the rights of the Casierra Quiñonez brothers and their next of kin is related to “the restriction on their full development” and the impact on the life plan “of the entire unit that constitutes the family,” derived from the action of the military agents and the subsequent denial of justice and reparations. They indicated that the foregoing made it impossible for those responsible for the events to be punished, which constituted “an obstruction to the full development of this family.”

141. The **State** indicated that “there is [...] a misunderstanding on the part of the representatives [...] as to the scope of Article 17 of the C[onvention], given that they [carried out] an analysis of the violation of judicial protection and jurisdictional guarantees, situation which corresponds to the argumentation of articles 8 and 25” of said international instrument.

A.4. Right to equal protection

142. The **representatives** argued that discrimination due to the precarious economic condition of the Casierra Quiñonez family was one of the causes that led to the denial of justice they suffered. They pointed out that the alleged victims “were never called, much less heard” by the military justice system. They indicated that this “lack of procedural equality hurt [...] the dignity” of the alleged victims, which is incompatible with the protection provided under Article 24 of the Convention.

143. The **State** alleged that “passing the case from ordinary to military jurisdiction” “did not respond to a 'distinction, exclusion, restriction, or preference,' but to strict compliance with the law in force, without distinction based on the identity or conditions” of the alleged victims. It added that, since no unequal or discriminatory treatment was observed, no violation of the right to equality before the law can be inferred.

B. Considerations of the Court

144. The Court will proceed to analyze the different arguments formulated in relation to the alleged violations of the rights to judicial guarantees and judicial protection, which also requires responding to the State's allegations related to the actions that would have been taken based on the report of the Truth Commission and the regulatory reforms approved in Ecuador in matters of military criminal jurisdiction.

145. In this sense, as to the allegations of the Inter-American Public Defenders referring to the violation of the right to protection of honor and dignity, the Court will not issue a ruling since the arguments put forward were based on facts that go beyond the factual framework of the case. In effect, everything related to the alleged “accusations” made against the presumed victims and the damage to their “public reputation” is alien to the content of the Commission's Merits Report, for which the Court is unable to make any analysis, safeguarding the procedural balance and the rights of the parties.

146. Turning to the allegation referring to the violation of the rights of the family, the Court points out that the arguments raised do not materially differ from the study carried out in relation to the violation of the rights to life and to humane treatment, as well as judicial guarantees and judicial protection, so it is not appropriate to issue a statement in this regard due to a lack of specific justification for the issue. In any case, upon deciding on the claims for reparations, the Court will examine the damages that the alleged victims could have suffered based on the facts related to those offenses.

147. Lastly, regarding the alleged violation of the right to equal protection, the Court

emphasizes that it was not part of the factual framework nor was it proven that the violation of due process and the lack of access to justice was derived from any factor that entailed unequal treatment of the alleged victims. To this effect, as the State affirmed, the regulations in force at the time of the facts were those that determined the actions of the ordinary jurisdiction and the military jurisdiction be taken in the manner in which they were, all of which was analyzed at the appropriate time. As a result, no decision can be taken in relation to said allegation.

B.1. Intervention of the military criminal jurisdiction in this case

148. The first element to be analyzed concerns the actions of the military criminal jurisdiction, excluding the ordinary jurisdiction, in the investigation of the facts related to the death of Luis Eduardo and the injuries caused to his brothers, Andrés Alejandro and Sebastián Darlin, all with the surnames Casierra Quiñonez.

149. In that regard, The Court recalls its consistent case law regarding the limits of the military jurisdiction of the military jurisdiction to hear facts that constitute violations of human rights, in the sense that, in a democratic State of Law, the military criminal jurisdiction must have a restrictive and exceptional scope, and must be aimed at protecting special legal interests connected to the functions of the armed forces. For this reason, the Court has indicated that in the military jurisdiction, only active military personnel may be judged for the commission of crimes or misdemeanors that by their very nature violate legal rights of the military order.¹²³ The fact that the subjects involved belong to the armed forces or that the events occurred within a military establishment does not mean, *per se*, that military justice should intervene. This is the case because, considering the nature of the crime and the legal right that has been violated, the military criminal jurisdiction is not the competent subject matter jurisdiction to investigate and, where appropriate, prosecute and punish the perpetrators of human rights violations; rather, the prosecution of those responsible always corresponds to ordinary or common justice.¹²⁴ In the case of *Grijalva Bueno v. Ecuador*, the Court pointed out that officials from the military criminal jurisdiction "were hierarchically subordinate to the Executive Branch and, therefore, were not independent judges."¹²⁵

150. In the instant case, the investigation proceedings regarding the facts began immediately. At the same time, the military jurisdiction and the ordinary jurisdiction ordered their respective processes, until the latter, in February 2000 and in accordance with the constitutional and legal regulations in force at the time of the events, refrained from continuing hearing the case and sent the proceedings on to the first. In the end, the Judge of the Third Naval Zone issued a Resolution of May 24, 2000, ordering the definitive dismissal of the process in favor of the three marines involved in the events, a decision that was upheld by the Court of Military Justice (*supra* paras. 86 and 87).

151. Along these lines, the Court has indicated that when the military justice assumes jurisdiction over a matter that should be heard by the ordinary justice system, the right to a natural judge is affected and, *a fortiori*, due process, which is closely linked to the very right

¹²³ Cf. *Case of Durand and Ugarte v. Peru. Merits*. Judgment of August 16, 2000. Series C No. 68, para. 117, and *Case of Herzog et al. v. Brazil. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of March 15, 2018. Series C No. 353, para. 247.

¹²⁴ Cf. *Case of the Rochela Massacre v. Colombia. Merits, Reparations and Costs*. Judgment of May 11, 2007. Series C No. 163, para. 200, and *Case of Herzog et al. v. Brazil, supra*, para. 247, 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. 84. See also written expert opinion rendered by Rodrigo Bustos Bottai (evidence file, volume XI, written expert opinion, folios 5267 to 5270).

¹²⁵ Cf. *Case of Grijalva Bueno v. Ecuador, supra*, para. 97.

of access to justice.¹²⁶ The judge in charge of hearing a case must have jurisdiction, as well as be independent and impartial.¹²⁷ In this sense, the victims of human rights violations and their families have the right to have such violations heard and resolved by a court having jurisdiction, in accordance with due process and access to justice,¹²⁸ which, ultimately, was not guaranteed to the alleged victims in the instant case.

152. The Court emphasizes that the State recognized that both the investigation and the process brought before the military criminal jurisdiction were not in accordance with inter-American standards, given that said court lacked subject matter jurisdiction to hear facts related to human rights violations. Thus, the Court finds that the ordinary judge's recusal from hearing the case, the period during which the case was heard by the military jurisdiction, and the dismissal decision issued by the latter, which was then confirmed and, to date, has determined that the facts have not been clarified and that the pertinent responsibilities have not been deduced, constituted violations of the guarantee of the natural judge and, with it, the rights to due process and access to justice of the alleged victims.¹²⁹ In the Court's opinion, the foregoing makes no further examination necessary as to compliance with other judicial guarantees in the framework of the criminal proceeding processed before the military justice system.

153. Ecuador also indicated that, based on the final report of the Truth Commission, which "documented" the alleged victims and "determined" the participation of the alleged perpetrators, the necessary measures have been taken to investigate the facts. In this regard, the State Attorney General's Office, in accordance with the legal reform on issues of military justice, has carried out the necessary steps to clarify what happened.

154. Given the argument made, the Court recalls that States can establish truth commissions, which contribute to the construction and preservation of historical memory, the clarification of facts, and the determination of institutional, social, and political responsibilities in certain historical periods of a society.¹³⁰ However, this neither completes nor replaces the obligation of the State to determine the truth through judicial proceedings.¹³¹

155. Meanwhile, Ecuador provided documentary evidence proving that, based on the content of the final report of the Truth Commission and since 2011, the Office of the Prosecutor General initiated the investigation aimed at clarifying what had happened. Among other proceedings, in November 2018, it performed exhumation and expert examination of "[i]ntraorganic and [c]omprehensive [b]alistics" on the body of Luis Eduardo Casierra Quiñonez; different information has been compiled, statements have been received from different people, and other types of investigative actions have been ordered, including various expert opinions.¹³²

¹²⁶ Cf. *Case of Castillo Petruzzi et al. v. Peru. Merits, Reparations and Costs*. Judgment of May 30, 1999. Series C No. 52, para. 128, and *Case of Alvarado Espinoza et al. v. Mexico Merits, Reparations and Costs*. Judgment of November 28, 2018. Series C No. 370, para. 232.

¹²⁷ Cf. *Case of Castillo Petruzzi et al. v. Peru, supra*, para. 130, and *Case of Tenorio Roca et al. v. Peru Preliminary Objections, Merits, Reparations, and Costs*. Judgment of June 22, 2016. Series C No. 314, para. 195.

¹²⁸ Cf. *Case of Radilla-Pacheco v. Mexico. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 23, 2009. Series C No. 209, para. 275, and *Case of Tenorio Roca et al. v. Peru, supra*, para. 195.

¹²⁹ Cf. *Mutatis mutandis, Case of Tenorio Roca et al. v. Peru, supra*, para. 201.

¹³⁰ Cf. *Case of Zambrano Vélez et al. v. Ecuador, supra*, para. 128, and *Case of Grijalva Bueno v. Ecuador, supra*, para. 129.

¹³¹ Cf. *Case of Zambrano Vélez et al. v. Ecuador, supra*, para. 128, and *Case of Garzón Guzmán et al. v. Ecuador, supra*, para. 87.

¹³² Cf. Updated report on progress in the investigation of the "Case of the Casierra Brothers," letter No. FGE-GCVDH-2019-002357-0 of May 6, 2019, signed by the head of the Directorate of the Truth and Human Rights Commission of the Office of the Prosecutor General (evidence file, volume IV, annex 67 to the answering brief, folios 5183 to 5203); memorandum No. FGE-CGAJP-DDHPC-2019-00410-M of December 4, 2019, "Casiera Case Information", signed by the Prosecutor from the Human Rights and Citizen Participation Directorate of the Office of the Prosecutor General (evidence file, volume IV, annex 68 to the answering brief, folios 5205 and 5206), and memorandum No. FGE-CGAJP-DDHPC-2021-00400-M, of March 25, 2021, "Supplement the report related to the Case

In any case, the "opening" of the investigation by the State Attorney General's Office was made possible by the regulatory reforms approved at the constitutional level.¹³³

156. In this sense, it is the Court's opinion that while the ongoing investigation does not remedy the violation of the rights to the natural judge, due process, and access to justice, as indicated above (*supra* para 152), it does indicate that the regulatory changes made in the domestic legal system to limit the scope of the military criminal jurisdiction had an impact on the instant case, insofar as they made it possible for the Office of the Prosecutor General to undertake the respective investigation with a view to clarifying the facts and, eventually, punishing those responsible, as indicated in the previous paragraph.¹³⁴ As a result, the Court considers that in this case, it is not appropriate to rule on the violation of the duty set forth in Article 2 of the American Convention.¹³⁵

157. In conclusion, the State is internationally responsible for the violation of Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) of the same international instrument, to the detriment of Andrés Alejandro Casierra Quiñonez, Sebastián Darlin Casierra Quiñonez, Jonny Jacinto Casierra Quiñonez, María Ingracia Quiñonez Bone, Cipriano Casierra Panezo, and Shirley Lourdes Quiñonez Bone.

VIII.3 RIGHT TO PERSONAL INTEGRITY OF THE FAMILY MEMBERS OF LUIS EDUARDO CASIERRA QUIÑONEZ, IN RELATION TO THE OBLIGATIONS TO RESPECT AND GUARANTEE RIGHTS¹³⁶

A. Arguments of the parties and the Commission

158. The **Commission** indicated that the loss of a loved one and the injuries caused to another, in circumstances such as those that occurred in this case, added to the absence of truth and justice, caused suffering and anguish to the next of kin of the Casierra Quiñonez brothers, in violation of their right to mental and moral integrity. Consequently, the State violated Article 5(1) of the American Convention, in relation to Article 1(1) of the same international instrument.

159. The **representatives** argued that, in addition to the emotional effects caused to the Casierra Quiñonez family by the death of their loved one, "the frustration of not obtaining justice and reparations due to the indifference of the State" must be included.

of the Casierra Brothers," signed by the Prosecutor for the Human Rights and Citizen Participation Directorate of the Office of the Prosecutor General (evidence file, volume IV, annex 69 to the answering brief, folios 5208 to 5213).

¹³³ Article 160 of the Constitution of the Republic of Ecuador, published on October 20, 2008 (available at: <https://www.corteconstitucional.gob.ec/index.php/quienes-somos/normativa/2020-2/4014-constitucion-de-la-republica-del-ecuador-1/file.html>), whose fourth paragraph provides:

The members of the Armed Forces and the National Police Force shall be judged by the bodies of the Judicial Branch of Government; in the case of crimes committed in the framework of their specific mission, they shall be judged by specialized military and police courts, belonging to the same above-mentioned Judicial Branch. Breach of the rules of discipline shall be judged by the competent organizations provided for by law.

¹³⁴ Cf. Resolution of March 9, 2011, issued by the Specialized Unit of the Truth Commission, Office of the Prosecutor General, file identified as preliminary inquiry No. 94, case No. 94 (evidence file, volume XIII, folios 5555 to 5560). In said Resolution, the Prosecutor ordered, *inter alia*:

Article 195 of the Constitution of the Republic of Ecuador determines that the prosecutor's office will direct, whether ex officio or at the request of a party, pre-trial and criminal procedural investigations [...]. [...] Once presented, [...] it is appropriate to hear the present case related to Messrs. [Luis Eduardo Casierra Quiñonez], [Andrés Alejandro Casierra Quiñonez], [Sebastián Darlin Casierra Quiñonez], [...]. [...] With this background and on this date [I declare the beginning of the preliminary investigation] to investigate the alleged [extrajudicial execution, attacks on life, illegal deprivation of liberty, and torture].

¹³⁵ Cf. *Mutatis mutandis*, *Case of Tenorio Roca et al. v. Peru*, *supra*, para. 204.

¹³⁶ Article 5 of the American Convention, in relation to article 1(1) of the same instrument.

160. The **State** indicated that, in the context of what happened on December 8, 1999, the authorities acted in accordance with the principles of due diligence and humanity, since immediately after the deployment of force, they requested assistance from nearby fishing boats to properly transfer the injured to the nearest hospital. Due to the foregoing, added to the fact that the state authorities undertook the necessary measures to repair the damage caused, "there was no illicit international act regarding the alleged violation of Article 5 [of the Convention] to the detriment of the next of kin of Luis Casierra."

B. Considerations of the Court

161. The Court has affirmed, on repeated occasions, that the next of kin of the victims of human rights violations can be, in turn, victims. In this regard, this Court has considered that the right to mental and moral integrity of "direct family members" of victims and other persons with close ties to such victims may be declared to have been violated, due to the additional suffering to which they have been subjected as a result of the particular circumstances of the violations perpetrated against their loved ones, and because of the subsequent actions or omissions of the state authorities in response to these facts,¹³⁷ taking into account, among others, the steps taken to obtain justice and the existence of a close family bond.¹³⁸

162. In the instant case, in his statement, provided as evidence in the procedure, Sebastián Darlin Casierra Quiñonez said that the death of Luis Eduardo "greatly affected the life of [his] family," and that "[e]veryone suffered greatly [...], for [his] mother and [his] father, it was irreversible." He indicated that "it was not only the fact [of his brother's death] that caused [them] great pain, but also the State's lack of response," since "so many years have passed without justice." He added that what happened "changed [the] life [of the family] forever."¹³⁹

163. For his part, Jonny Jacinto Casierra Quiñonez stated that "the events [...] [h]ave affected him greatly," and that his family "keeps his brother's memory alive." He indicated that "it has caused great pain for everyone" and that what happened "is something that they have not yet been able to overcome." He indicated that "[his] mother's health was greatly affected as a result of the suffering." He also recounted that "[his] family experienced a turning point following [the] [...] event."¹⁴⁰ Likewise, Shirley Lourdes Quiñonez Bone indicated that "[her] life changed forever after the loss of [her] brother," which "[caused] great pain for the entire family." He added that "his absence affected them and the pain was greater because there is no justice."¹⁴¹

164. Lastly, Andrés Alejandro Casierra Quiñonez, when giving his statement, indicated that the death of his brother Luis Eduardo meant "[a] very great loss for [his] entire family," which "shattered [their] souls."¹⁴²

165. Based on the foregoing, the Court confirms that the immediate family relatives (father,

¹³⁷ Cf. *Case of Blake v. Guatemala. Merits*. Judgment of January 24, 1998. Series C No. 36, para. 114, and *Case of Maidanik et al. v. Uruguay Merits and Reparations*. Judgment of November 15, 2021. Series C No. 444, para. 185.

¹³⁸ Cf. *Case of Bámaca Velásquez v. Guatemala. Merits*. Judgment of November 25, 2000. Series C No. 70, para. 163, and *Case of Manuel et al. v. El Salvador Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 02, 2021. Series C No. 441, para. 262, and *Case of the Los Josefinos Village Massacre v. Guatemala. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 03, 2021. Series C No. 442, para. 120.

¹³⁹ Cf. Declaration of Sebastián Darlin Casierra Quiñonez, rendered before notary public (evidence file, volume XII, *affidavits*, folio 5283).

¹⁴⁰ Cf. Statement of Jonny Jacinto Casierra Quiñonez, rendered before notary public (evidence file, volume XII, *affidavits*, folio 5294).

¹⁴¹ Cf. Statement of Shirley Lourdes Quiñonez Bone, rendered before notary public (evidence file, volume XII, *affidavits*, folios 5304 and 5305).

¹⁴² Cf. Testimony by Andrés Alejandro Casierra Quiñonez, given at a public hearing before this Court.

mother, brothers, and sister) of Luis Eduardo Casierra Quiñonez have been subject to profound suffering and anguish, harming their mental and moral integrity, as a consequence of the death of their loved one, to which is added the lack of clarification of what happened, extending over more than two decades.

166. It should be noted that the State's allegations, which were centered on the actions of the military to transfer the wounded to a hospital on the day of the events and on the alleged efforts to "repair the damage," do not rule out or undermine, in any way, the effects caused to the next of kin of Luis Eduardo Casierra Quiñonez as a result of his death in the context of the excessive use of lethal force by agents of security forces and the lack of an adequate response by the justice system since the day of the events and up to the present day.

167. Consequently, the Court finds that the State violated the right to humane treatment recognized in Article 5(1) of the American Convention, in relation to Article 1(1) of the same instrument, to the detriment of the following next of kin of Luis Eduardo Casierra Quiñones: a) María Ingracia Quiñonez Bone, mother; b) Cipriano Casierra Panezo, father; c) Sebastián Darlin, Andrés Alejandro and Jonny Jacinto, surnamed Casierra Quiñones, brothers, and d) Shirley Lourdes Quiñonez Bone, sister.

IX REPARATIONS

168. Based on Article 63(1) of the American Convention, the Court has indicated that any violation of an international obligation that has caused damage entails the duty to adequately remedy it, and that this provision includes a customary norm that constitutes one of the principles of contemporary International Law in relation to a State's responsibility.¹⁴³

169. In this regard, repairing the damage caused by the breach of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists of reestablishing the previously existing situation. If this is not feasible, the Court will determine measures to guarantee the violated rights and repair the consequences that the offenses produced.¹⁴⁴ To this effect, the Court finds it necessary to grant various measures of reparation, in order to comprehensively compensate the damage. As a result, in addition to pecuniary compensation, the measures of restitution, rehabilitation, satisfaction, and guarantees of non-repetition are especially relevant for the damage caused.¹⁴⁵ Likewise, this Court has established that the reparations must have a causal link with the facts of the case, the declared violations, the proven damages, as well as the measures requested to repair the respective damages.¹⁴⁶

170. Consequently, based on the violations declared in this Judgment, the Court will proceed to analyze the claims presented by the Commission and the representatives, as well as the State's arguments.

A. Injured party

171. Pursuant to Article 63(1) of the American Convention, this Court considers the injured party to be anyone who has been declared a victim of the violation of any right in this

¹⁴³ Cf. *Case of Velásquez-Rodríguez v. Honduras Reparations and Costs*. Judgment of July 21, 1989. Series C No. 7, para. 25, and *Case of Digna Ochoa and Family Members v. Mexico*, *supra*, para. 150.

¹⁴⁴ Cf. *Case of Velásquez-Rodríguez v. Honduras Reparations and Costs*, 1999 . *supra*, para. 65, and *Case of Digna Ochoa and Family Members v. Mexico*, *supra*, para. 151.

¹⁴⁵ Cf. *Case of the "Las Dos Erres" Massacre v. Guatemala. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 24, 2009. Series C No. 211, para. 226, and *Case of Digna Ochoa and Family Members v. Mexico*, *supra*, para. 151.

¹⁴⁶ Cf. *Case of Ticona Estrada et al. v. Bolivia. Merits, Reparations and Costs*. Judgment of November 27, 2008. Series C No. 191, and the *Case of Digna Ochoa and Family Members v. Mexico*, *supra*, para. 152.

Judgment. Therefore, the Court considers the injured parties to be Luis Eduardo Casierra Quiñones, Andrés Alejandro Casierra Quiñonez, Sebastián Darlin Casierra Quiñonez, María Ingracia Quiñonez Bone, Cipriano Casierra Panezo, Jonny Jacinto Casierra Quiñones, and Shirley Lourdes Quiñonez Bone.

172. The Court notes that, as it was informed during this proceedings, Cipriano Casierra Panezo died on March 30, 2013.¹⁴⁷

E. Obligation to investigate

173. The **Commission** requested that the State be ordered to initiate an investigation in the ordinary criminal jurisdiction diligently, effectively, and within a reasonable time, in order to fully clarify the facts, identify all possible responsibilities, and impose the corresponding sanctions for the human rights violations committed. It indicated that, due to the seriousness of the violations declared and the applicable inter-American standards, the State could not oppose the guarantee of *ne bis in idem*, *res judicata*, or statute of limitations to justify its breach of duty.

174. The **representatives** requested that, within a reasonable time, the State carry out "a complete, exhaustive, diligent, and effective investigation to identify, prosecute, and punish those responsible for the human rights violations" that occurred.

175. The **State** indicated that the investigation undertaken after the Truth Commission issued its final report "constitutes an adequate means to allow for a genuine search for the truth about what happened." To this effect, it added that the domestic authorities "are fulfilling their conventional obligations in order to guarantee the rights of access to justice, and to discover the truth of the facts."

176. The Court places a positive value on the efforts of Ecuador, which were taken through the Office of the Prosecutor General, to resume and undertake the investigation under ordinary jurisdiction to fully clarify what occurred. Consistent with the above, the Court orders that, within a reasonable time and with due diligence, the State promote, continue, and conclude the investigations that are necessary to determine the circumstances of the death of Mr. Luis Eduardo Casierra Quiñonez and the injuries caused to his brothers Andrés Alejandro and Sebastián Darlin, with surnames Casierra Quiñonez, and, if applicable, prosecute and eventually punish the person or persons responsible. For this purpose, the State must guarantee the full access and capacity of the victims to participate at all stages of the investigations, in accordance with domestic law and the American Convention.¹⁴⁸

177. Finally, the Court notes that the investigation undertaken by the Office of the Prosecutor General was resumed for the possible commission of the crime of extrajudicial execution,¹⁴⁹ which, in theory, determines that the State must refrain from resorting to figures such as the *ne bis in idem* principle or any similar release of liability to excuse itself from its obligation.¹⁵⁰ In any case, the actions undertaken denote the will of the state authorities to fulfill their duty to investigate

¹⁴⁷ Cf. Brief of October 5, 2020 (merits file, volume I, folio 74), and pleadings and motions brief (merits file, volume III, folio 818).

¹⁴⁸ Cf. *Case of the Caracazo v. Venezuela. Reparations and Costs*. Judgment of August 29, 2002. Series C No. 95, para. 118, and *Case of González et al. v. Venezuela. Merits and Reparations*. Judgment of September 20, 2021. Series C No. 436, para. 201.

¹⁴⁹ Cf. Updated report on the progress of the "Case of the Casierra Brothers" investigation, official letter No. FGE-GCVDH-2019-002357-0 of May 6, 2019, signed by the head of the Directorate of the Truth and Human Rights Commission of the Office of the Prosecutor General (evidence file, volume IV, annex 67 to the answering brief, folio 5184), and Resolution of March 9, 2011, issued by the Specialized Unit of the Truth Commission, State Attorney General's Office, file identified as preliminary inquiry No. 94, case No. 94 (evidence file, volume XIII, folios 5555 to 5560).

¹⁵⁰ Cf. *Case of Barrios Altos v. Peru. Merits*. Judgment of March 14, 2001. Series C No. 75, para. 41, and *Case of Olivares Muñoz et al. v. Venezuela, supra*, para. 150.

the facts, which would rule out the application of such defenses.

C. Measures of restitution

178. The **Commission** requested “[o]rdering the necessary physical and mental health care measures for the restitution” of the victims, “if they so wished and in a concerted manner.”

179. The **representatives** indicated that the offenses committed have required the Casierra Quiñonez brothers and their mother to attend psychological therapy, “estimating the amount of [USD]\$20,000.00 (twenty thousand [U.S. dollars]) one time only for each one of them.” They indicated that the physical and psychological effects caused to the family required them to incur in numerous expenses for medical care, medications, and rehabilitation.

180. They also requested that the State be ordered to “guarantee free and ongoing medical and psychological treatment” for the victims. They required specialized medical attention be provided to Andrés Alejandro and Sebastián Darlin Casierra Quiñonez, who have suffered a number of ailments derived from the acts perpetrated against them.

181. The **State** alleged that the national authorities “have been providing medical and psychological care” to Andrés Alejandro and Sebastián Darlin Casierra Quiñonez and their mother as part of the program providing priority care to victims, implemented under the “administrative [p]rogram of [r]eparations under Law for the [r]eparations of [v]ictims,” which is verified through the respective “follow-up reports.” As part of said efforts, a wheelchair was provided to Mrs. María Ingracia Quiñonez Bone.

182. It indicated that the representatives did not provide information on the type of pathologies for which the presumed victims would require medical attention, nor the treatments such ailments would require. It added that Mr. Andrés Alejandro Casierra Quiñonez “rejected the psychological care offered by public institutions,” meaning that such request has no grounds. Turning to the claim to order payment of an amount for psychological care of the victims, the State argued that the exceptional circumstances for which the Court has ordered this type of reparation do not exist, given that domestic authorities are able to offer such treatment free of charge.

183. Based on the documentary evidence provided by the State, the Court considers it to have been proven that, as part of the “non-pecuniary reparation agreement,” signed on August 16, 2016, by Andrés Alejandro Casierra Quiñonez, as “beneficiary of the Program of administration [r]eparations for the [v]ictims of [v]iolations of [h]uman [r]ights [d]ocumented by the Truth Commission,” and the Ombudsman of Ecuador,¹⁵¹ the following reparation measures were agreed upon, among others: a) “psychological assessment” of the victim and, where appropriate, the corresponding care by the Ministry of Public Health, and b) “medical evaluation” of said person by the Ministry of Public Health, “in order to [...] provide him with the corresponding care and, as applicable, the respective treatment.”¹⁵²

184. Similar agreements with the same measures were signed with María Ingracia Quiñonez Bone¹⁵³ and Sebastián Darlin Casierra Quiñonez.¹⁵⁴ These “non-pecuniary reparation”

¹⁵¹ In accordance with article 4 of the Law for the reparation of victims and the prosecution of serious human rights violations and crimes against humanity that occurred in Ecuador between October 4, 1983 and December 31, 2008, published on 13 December 2013, the Ombudsman's Office is “in charge” of the administrative Reparations Program. *Cf.* Answer brief (merits file, volume IV, folio 912).

¹⁵² *Cf.* Non-pecuniary reparation agreement for Andrés Alejandro Casierra Quiñonez, signed on August 16, 2016 (evidence file, volume X, annex 51 to the answering brief, folios 5046 to 5049).

¹⁵³ *Cf.* Immaterial reparation agreement for María Ingracia Quiñonez Bone, signed on February 1, 2017 (evidence file, volume X, annex 51 to the answering brief, folios 5050 to 5054).

¹⁵⁴ *Cf.* Immaterial reparation agreement for Sebastián Darlin Casierra Quiñonez, signed on August 16, 2016 (evidence file, volume X, annex 51 to the answering brief, folios 5056 to 5059).

agreements, as can be deduced from their content, were arranged under the administrative Reparation Program implemented based on the Law for the reparation of victims (*supra* para 32).

185. Doing follow-up on the agreements reached, on November 25, 2015, a psychological evaluation was carried out on Mr. Andrés Alejandro Casierra Quiñonez, who, on March 31, 2016, at the meeting to "return" the respective report, in response to the recommendation to start psychological treatment, stated that it was not his wish to make use of the psychological care provided by the Ministry of Public Health.¹⁵⁵ While a psychological evaluation was made on Sebastián Darlin Casierra Quiñonez on the same date, there is no evidence that the recommended treatment was initiated.¹⁵⁶

186. As far as medical care, it was also proven that an evaluation was carried out and services have been provided to Mr. Andrés Alejandro Casierra Quiñonez. Similarly, information reflects that the Ombudsman's Office forwarded the corresponding information to the Ministry of Public Health to provide care to Sebastián Darlin Casierra Quiñonez. Information was provided that Ms. María Ingracia Casierra Quiñonez has received medical care that has included cross consultations with psychology and dentistry professionals,¹⁵⁷ and a wheelchair was provided "to aid in [her] mobilization," given her health conditions.¹⁵⁸

187. Facing this reality, the Court was not informed by the representatives of any reason that would show why the services offered by the Administrative Reparation Program and, in particular, by the Ministry of Public Health, would be inadequate to satisfy the claimed rehabilitation measures. In any case, the Court confirmed that the aforementioned victims have recently received medical services.¹⁵⁹

188. To this effect, the Court positively values the efforts undertaken by Ecuador within the framework of the administrative reparations program. On this account, due to the declared violations, should the victims require it, the State is ordered to provide or continue to provide medical, psychological, and/or psychiatric treatment to Andrés Alejandro Casierra Quiñonez, Sebastián Darlin Casierra Quiñonez, and María Ingracia Quiñonez Bone. Likewise, if required and necessary, to provide psychological and/or psychiatric treatment to Jonny Jacinto Casierra Quiñones and Shirley Lourdes Quiñonez Bone. Such treatments must be provided free of charge and on a priority basis, and must include the provision of any medications that may be required and, where appropriate, transportation and other directly related and necessary expenses. Likewise, and insomuch as possible, the treatments must be provided in health centers located closest to the beneficiaries' places of residence, for as long as necessary. When providing the treatments, the particular circumstances and needs of each victim must be considered, based on what is agreed with them and following an individual evaluation.¹⁶⁰

¹⁵⁵ Cf. Follow-up report on measures in favor of Andrés Alejandro Casierra Quiñonez, issued by the Ombudsman on March 21, 2021 (evidence file, volume X, annex 54 to the answering brief, folio 5067).

¹⁵⁶ Cf. Follow-up report on measures in favor of Sebastián Darlin Casierra Quiñonez, issued by the Ombudsman on March 21, 2021 (evidence file, volume X, annex 55 to the answering brief, folio 5084).

¹⁵⁷ Cf. Follow-up reports exist on measures provided to Andrés Alejandro Casierra Quiñonez, Sebastián Darlin Casierra Quiñonez, and María Ingracia Quiñonez Bone, issued by the Ombudsman on March 21, 2021 (evidence file, volume X, annexes 54, 55 and 56 to the answering brief, folios 5068, 5087, 5087 and 5096 to 5098), and a report on the health care provided to Andrés Alejandro Casierra Quiñonez, Sebastián Darlin Casierra Quiñonez, and María Ingracia Quiñonez Bone, signed by authorities of the 08D03 MAS Health District on February 25, 2022 (evidence file, volume XIII, folios 11097 to 11100).

¹⁵⁸ Cf. Compliance report presented to the Inter-American Commission on Human Rights, signed by the Director of Protection, Comprehensive Reparation and Central Authority of the Secretariat for Human Rights on December 4, 2019 (evidence file, volume X, annex 57 to the answering brief, folio 5115).

¹⁵⁹ Cf. Report on health care provided to Andrés Alejandro Casierra Quiñonez, Sebastián Darlin Casierra Quiñonez, and María Ingracia Quiñonez Bone, signed by authorities of the 08D03 MAS Health District on February 25, 2022 (evidence file, volume XIII, folios 11097 to 11100).

¹⁶⁰ Cf. *Case of the "Las Dos Erres" Massacre v. Guatemala*, 1999 . *supra*, para. 270, and *Case of Maidanik et al. v. Uruguay*, *supra*, para. 227.

189. The beneficiaries have a period of six months, counted from the notification of this Judgment, to confirm with the State that they intend to receive psychological and/or psychiatric care.¹⁶¹ In turn, the State will have a maximum period of six months, counted from the receipt of said request, to effectively provide the requested care. Regardless, and without prejudice to the established deadlines, the State must comply with the ordered measure as quickly as possible.¹⁶²

190. Based on the above, the Court finds that it is not appropriate to grant the representatives' request to order the payment of a sum of money for rehabilitation measures. Finally, it is noted that the claim referring to the payment of the expenses incurred for medical care and treatment derived from the damages suffered was also formulated with regard to compensation for consequential damages, for which the Court will analyze said matter when deciding what is pertinent as to this last issue.

D. Measures of satisfaction

191. The **Commission** requested that the comprehensive reparation of the alleged victims include measures of satisfaction.

192. The **representatives** requested that the State be ordered to take the following measures of satisfaction: a) publish the Judgment "in all the newspapers with [n]ational circulation [...], as well as [...] widely on radio and television system with [n]ational coverage, in primetime slots and times, as well as on internet portals," and b) build a monument in the center of the City of Atacames for the preservation of memory.

193. The **State** argued that the Ombudsman's Office "unveiled a memorial plaque for the victims of the Casierra case," so it is unnecessary to order additional measures in this regard.

D.1. Publication of the Judgment

194. As it has done in other cases,¹⁶³ the Court orders that within a period of six months counted from the notification of this Judgment, the State publish in a legible and adequate font size, the following: a) the official summary of this Judgment, prepared by the Court, one time only in the Official Gazette; b) the official summary of the Judgment prepared by the Court, one time only, in a newspaper with wide national circulation, in a legible and adequate font size, and c) this Judgment in its entirety, available for a period of one year on an official website, in a manner accessible to the public and from the home page of the website. The State must inform this Court immediately once it proceeds to make each of the publications ordered, regardless of the one-year term it has to present its first report, as indicated in operative paragraph 12 of this Judgment.

D.2. Commemorative plaque for the preservation of memory

195. The Court takes note that the State indicated that a "plaque was discovered in memory of Luis Eduardo Casierra [Quiñonez] and the other victims in the case." In this regard, the documentation provided reflects that said plaque was installed in Atacames and discovered on November 19, 2017, as part of the follow-up of the non-pecuniary reparation agreements signed (*supra* paras. 183 and 184), meaning that there was apparently consensus and coordination between the victims, the Ombudsman, the Ministry of Culture, the municipal government of

¹⁶¹ Cf. *Case of Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010. Series C No. 216, para. 253, and *Case of Maidanik et al. v. Uruguay, supra*, para. 229.

¹⁶² Cf. *Case of Maidanik et al. v. Uruguay, supra*, para. 229.

¹⁶³ Cf. *Case of Cantoral Benavides v. Peru. Reparations and Costs*. Judgment of December 03, 2001. Series C No. 88, para. 79, and *Case Digna Ochoa and Family Members v. Mexico, supra*, para. 167.

Atacames and the community.¹⁶⁴ However, when giving his statement, Mr. Andrés Alejandro Casierra Quiñonez indicated that said plaque "is deteriorated," and that "the letters are no longer visible."¹⁶⁵

196. In this regard, given the value that the commemorative plaque entails for the dignity of the victims, as part of the efforts undertaken by Ecuador to guarantee comprehensive reparations, the Court orders the State to proceed to refurbish said plaque to include a reference to the case in the final report of the Truth Commission and information relating to the violations of rights declared in this Judgment. The State has one year from the notification of the Judgment to comply with the order.

E. Guarantees of non-repetition

197. The **Commission** requested that the State be ordered to establish adequate accountability mechanisms for abuses committed by members of the security forces.

198. The **representatives** requested that the State be ordered to promulgate a "[l]aw that regulates the use of force throughout its territory [...] applicable to any corporation authorized to use firearms."

199. The **State** argued that, currently, military personnel are subject to the Manual of Law in military operations, which was approved by Agreement of the Ministry of National Defense and has been in force since 2014, "which details the procedures applicable to the progressive use of force." Although in 2020 said Ministry issued the Regulation for the progressive, rational, and differentiated use of force by members of the Armed Forces, this was declared to be unconstitutional by the Constitutional Court in 2021. It added that currently "the National Assembly is processing a draft [o]rganic Law for the [l]egal, [p]roportional, [a]ppropriate, and [ne]cessary use of force and a draft [o]rganic law [on] the [p]rogressive, [a]ppropriate, and [p]roportional use of [f]orce," adding that the President of the Republic presented the draft "[o]rganic Law of [comprehensive] security and [strengthening of the [p]ublic [forces]," which would regulate "the use of force by the State and the agents that make up the public force."

200. The Inter-American Court takes note of the information provided by the State and the efforts undertaken to regulate the parameters that should govern the use of force by agents of the security forces. Here, the Court's analysis cannot include the "Law Manual on Military Operations" issued by the Ministry of National Defense, given that because of its date of validity, it was not applied to the instant case. However, it is noted that the ministerial authority itself did mention the need to regulate, in precise terms and through additional regulations, issues relating to the "progressive, rational, and differentiated use of force" by military personnel. This explains why efforts were made for said regulation to be included in infralegal regulations,¹⁶⁶ though it ended up being declared unconstitutional in 2021. According to the State, three draft "Organic Laws" are currently being processed within the legislature. Such laws are aimed at regulating such parameters within the framework of the actions of the different agents of the public forces so that such parameters are not limited to members of the military. Given the information provided, the Court has inferred that Ecuador currently lacks legal regulations with the scope and nature

¹⁶⁴ Cf. Follow-up report on measures in favor of Andrés Alejandro Casierra Quiñonez, issued by the Ombudsman on March 21, 2021 (evidence file, volume X, annex 54 to the answering brief, folio 5075); follow-up report on measures in favor of Sebastián Darlin Casierra Quiñonez, issued by the Ombudsman on March 21, 2021 (evidence file, volume X, annex 55 to the answering brief, folio 5092), and follow-up report on measures in favor of María Ingracia Quiñonez Bone, issued by the Ombudsman on March 21, 2021 (evidence file, volume X, annex 56 to the answering brief, folio 5100).

¹⁶⁵ Cf. Testimony by Andrés Alejandro Casierra Quiñonez, given at a public hearing before this Court.

¹⁶⁶ Cf. Regulations for the progressive, rational and differentiated use of force by members of the Armed Forces, Ministerial Agreement No. 179, issued by the Ministry of National Defense and published on May 29, 2020 (evidence file, volume X, annex 47 to the answering brief, folios 4995 to 5003).

specified above.

201. By virtue of the declared violations, and as a guarantee of non-repetition, this Court orders that, in accordance with its constitutional procedures, the State adopt the pertinent legal provisions that regulate the precise parameters for the use of force by security force agents, which would include the applicable limitations and adequate control and accountability mechanisms, all in accordance with international human rights standards, which requires satisfying the principles of legality, legitimate purpose, absolute necessity, and proportionality (*supra* paras. 105 , 114 to 126). The State must comply with said order within a maximum period of three years following notification of this Judgment.

202. To this effect, the Court mentions that the various national authorities, including those involved in the process of adopting the laws being processed, have an obligation to make an ex officio review of the laws for compliance within the scope of their respective authorities and corresponding procedural regulations. To effectively comply with what has been ordered, said authorities should keep in mind not only the content of the cited treaty, but also the interpretation that the Inter-American Court has made in its case law, and more specifically, the standards included in this Judgment.¹⁶⁷

F. Other measures requested

203. The **Commission** requested that the Court order the following measures: a) train the agents of the National Navy on international standards relating to the use of force; b) strengthening investigative capacities in cases of the use of lethal force, and c) ensuring that internal regulations and their interpretation are compatible with international standards regarding the application of military criminal justice.

204. The **representatives**, meanwhile, requested that the State be ordered to hold a public act of acknowledgment of international responsibility, "apologies and reparations," with the presence of the President of the Republic, as supreme head of the Armed Forces, and the Defense Minister. Similarly, they required that "a serious, broad, objective, professional, and exhaustive training program" be available to the "agents in charge of performing security tasks." They also requested that the State be ordered to implement a permanent "[p]rosecutor's office specializing in crimes related to the excessive, excessive, arbitrary, and negligent use of force by any State body," with autonomy and jurisdiction throughout the nation's territory.

205. They also requested that a "[l]aw for the comprehensive reparation of victims of crimes and human rights violations" be adopted, which should be for general application, without limiting itself to the violations documented by the Truth Commission and without any restriction on time. They also required the implementation of a "[state body that provides legal advice and sponsorship to victims of crimes and human rights violations]," as well as the creation of a "[financial fund for legal and technical assistance to victims of crimes and of human rights violations]," to be included in the national budget.

206. Lastly, they indicated that "full school scholarships through higher education" be granted to the daughters of Andrés Alejandro Casierra Quiñonez, given that the acts perpetrated against him, in addition to causing him various expenses, have prevented him from generating sufficient income. Likewise, they requested that a "Luis Eduardo Casierra Quiñonez annual scholarship be created," with a symbolic scope and granted to children of fishermen from Atacames.

207. The **State** argued that the Ombudsman's Office, in accordance with the powers determined by the Constitution and its respective organic law, provides advice and legal sponsorship to victims

¹⁶⁷ Cf. *Case of Almonacid Arellano et al. v. Chile. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of September 26, 2006. Series C No. 154, and *Case of Palacio Urrutia et al. v. Ecuador, supra*, para. 180.

of crimes and human rights violations. It pointed out that the temporary scope of application of the Law for the reparation of victims responds to a transitional justice process. Regardless, any person who alleges that their rights have been violated can initiate a domestic judicial process "to assert their rights," meaning that any measure having to do with a modification of domestic law to that effect is not applicable.

208. It said that both the National Police and the Armed Forces have implemented continuous training processes in the area of human rights, making measures in this area unnecessary. It added that the only identified victims are those included in the Merits Report, so the requests for reparations for other people, such as the daughters of Andrés Alejandro Casierra Quiñonez, should be dismissed.

209. On this matter, the Court finds that the above measures, which were requested by the Commission and the representatives, are not appropriate, for the reasons set out below.

210. As to the specific regulations that limit the application of military criminal justice, the Court recalls that, based on the regulatory reform implemented, such a measure has been fulfilled, which allegedly affected the instant case, while the Office of the Prosecutor General apparently resumed the investigation to clarify what happened (*supra* para 155). This means that additional measures are not necessary relating to the investigative capacities in the field of the use of lethal force by state agents, or the corresponding agencies, since what is analyzed in this Judgment neither denotes nor allows questioning of the capacity of the Office of the Prosecutor General to exercise such functions.

211. As to training of the members of the National Navy on international standards on the use of force, despite the Court's recognition of the causal link of the measure with the facts of the case and the declared violations, the Court takes note of the efforts made by Ecuador in this matter, as it has been reported that the members of the Naval Forces, as well as members of other components of the Armed Forces, have been specifically trained in this matter, as part of their regular training curriculum. The foregoing is included in the framework of the training programs developed as part of the Human Rights and International Humanitarian Law System implemented by the respective authorities of the Joint Command of the Armed Forces.¹⁶⁸ Consequently, the Court finds no need for additional measures in this regard.

212. Turning to the request to hold a public act of acknowledgment of international responsibility in relation to the facts of the case, the Court warns that this, too, is inadmissible, given that what happened to the victims is documented in the Truth Commission's final report, with the magnitude that said incorporation entails (*supra* paras. 89, 90, and 91).

213. As to the implementation of regulations, institutions, or economic mechanisms aimed at reparations or advising for victims of crimes and human rights violations, the Court notes the efforts implemented by the State in this area, which is evident in the content of the Law for the reparation of victims of 2013. Although said regulations are subject to the cases documented by the Truth Commission, the Court recalls that the facts analyzed in this Judgment respond, precisely, to a case included in the final report of the aforementioned Truth Commission.

214. Lastly, as the State pointed out, the only victims considered to be beneficiaries of reparations are those identified as the injured party (*supra* para 171), making it inadmissible to order measures for other people.

¹⁶⁸ Cf. Report on training in Human Rights for Armed Forces personnel, signed by the Director of Human Rights and International Humanitarian Law of the Joint Command of the Armed Forces on February 4, 2020 (evidence file, volume X, annex 72 of the answering brief, folios 5234 to 5245).

G. Compensation

215. The **Commission** requested that the State make full reparations for the declared human rights violations, both pecuniary and non-pecuniary, which should include financial compensation.

216. The **State** it argued that "all the other crew members of the Rodach vessel who were present during the events [...] have already obtained full reparations for the damages suffered." It noted that after the Merits Report was issued, the victims expressed their willingness to reach a compensation agreement, and to this effect, meetings were held in 2019. However, "the representatives at the time [...] stated that they did not wish to avail themselves of the compensation provided for by the administrative [r]eparation Program." It pointed out that "for reasons beyond the State's control, the circumstances made it impossible to reach an agreement," derived from "dissimilar interests and perceptions" between the victims and their representative.

217. It indicated that internally, it has a comprehensive reparation mechanism that is "suitable, simple, fast, and free," which is available to the victims in order to obtain the corresponding compensation. It added that it "rejects the attempt to turn the I[nter-American] Court into the main avenue for reparations," since "[a] decision in this regard would discourage victims from using domestic avenues and would put at risk the institutions that have been designed for comprehensive reparations."

G.1. Pecuniary damages

G.1.1. Consequential damages

218. The **representatives** indicated that the Casierra Quiñonez family had to incur in various expenses resulting from the events that occurred. First, they requested the amount of USD\$17,000.00 (seventeen thousand U.S. dollars) for Ms. Shirley Lourdes Quiñonez Bone to repair her boat, which was damaged by more than forty bullet impacts. They indicated that she spent approximately USD\$10,000.00 (ten thousand United States dollars) to "fix the fiber chassis," and another USD\$7,000.00 (seven thousand United States dollars) to purchase a new engine. They added that, because of the time passed, it was not possible to provide proof of expenses.

219. They added that the Casierra Quiñonez family has been struggling for more than twenty-one years to obtain justice, which has generated numerous expenses related to lawyers' fees to go before national and international authorities, the drafting of documents, the rendering of statements, transportation, phone calls, lodging, and other items. Consequently, they requested the amount of USD\$30,000.00 (thirty thousand United States dollars) to be delivered, in equal parts, to Andrés Alejandro Casierra Quiñonez, Sebastián Darlin Casierra Quiñonez, Shirley Lourdes Quiñonez Bone, and María Ingracia Quiñonez Bone, as the mother of Luis Eduardo Casierra Quiñonez.

220. They also requested the amount of USD\$2,000.00 (two thousand United States dollars), which was spent on funeral expenses to bury the body of Luis Eduardo Casierra Quiñonez. They requested that this amount be paid to his mother. Lastly, for the expenses incurred to obtain medical care, medication, and rehabilitation for Andrés Alejandro and Sebastián Darlin Casierra Quiñonez, they requested that each be paid the amount of USD\$5,000.00 (five thousand U.S. dollars).

221. The **State** it alleged that the representatives failed to present any document justifying the disbursement of expenses for the victims' medical care. It pointed out that the amount claimed for the domestic judicial process is excessive and was not supported by any evidence, so it should be dismissed.

222. In its case law, this Court has established that pecuniary damages involve the loss or impairment of the victims' income, expenses made resulting from the events, and pecuniary consequences that have a causal link to the facts of the case.¹⁶⁹ Likewise, case law has reiterated the compensatory nature of the indemnities, whose nature and amount depend on the damage caused. This means that they cannot reflect enrichment or impoverishment for the victims or their successors.¹⁷⁰

223. In light of the State's arguments, the Court recalls that in its consistent case law, it has held that any violation of a human right "that has caused damage entails the duty to adequately repair it,"¹⁷¹ which entails an inexcusable obligation for the State. Consistent with what has been indicated and from the perspective of the victims, the right to reparations is then configured as an essential principle of International Human Rights Law.¹⁷²

224. Thus, the Court positively values the efforts undertaken by the Ecuadorian State to provide comprehensive reparations to the victims in this case. At the same time, it recalls that, if there are national mechanisms to determine forms of reparation, such procedures and their results must be assessed,¹⁷³ provided that they meet the criteria of objectivity, reasonableness, and effectiveness to adequately repair the violations of rights declared by the Court.¹⁷⁴ However, after a case has been submitted to its jurisdiction, and finding that at the national level and for whatever reasons, the State has not complied with its duty to fully repair the damages caused by the violations committed, the Court cannot deny the victims the right to reparations.

225. In this sense, although the State did not specifically report the amounts that were allegedly proposed as reparations at the national level, it did indicate that they considered "the parameters and amounts established in the [Inter-American] Court's case law [...], by identifying analogous cases." In turn, the evidence provided makes it possible to identify the amounts that were apparently granted to the five companions of the Casierra Quiñonez brothers on the day of the events.¹⁷⁵ In what is pertinent and taking into account the specific violations declared in this Judgment to the detriment of the victims, the Court will take into account the foregoing.

¹⁶⁹ Cf. *Case of Bámaca Velásquez v. Guatemala. Reparations and Costs*. Judgment of February 22, 2002. Series C No. 91, para. 43, and *Case of Digna Ochoa and Family Members v. Mexico, supra*, para. 181.

¹⁷⁰ Cf. *Case of the "White Van" (Paniagua-Morales et al.) v. Guatemala. Reparations and Costs*. Judgment of May 25, 2001. Series C No. 76, para. 79, and *Case of Former Employees of the Judiciary v. Guatemala. Preliminary Objections, Merits and Reparations*. Judgment of November 17, 2021. Series C No. 445, para. 154.

¹⁷¹ Cf. *Case of Velásquez-Rodríguez v. Honduras. Reparations and Costs, supra*, paras. 24 and 25, and *Case of the Julien Grisonas Family v. Argentina. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of September 23, 2021. Series C No. 437, para. 301.

¹⁷² Cf. *Case of the Julien Grisonas Family v. Argentina, supra*, para. 241. See also, United Nations General Assembly, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Resolution 40/34 of November 29, 1985 (available at: https://legal.un.org/avl/pdf/ha/dbpivcap/dbpivcap_ph_s.pdf); United Nations General Assembly, Basic Principles and Guidelines on the Right of Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law to File Remedies and Obtain Reparations, A/RES/60/147, March 21, 2006 (available at: https://legal.un.org/avl/pdf/ha/ga_60-147/ga_60-147_s.pdf), and Human Rights Council, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-repetition, Mr. Fabián Salvioli, UN Doc. A/HRC/42/45, July 11, 2019, para. 25 (available at: <https://digitallibrary.un.org/record/3823887>).

¹⁷³ Cf. *In the Case of Cepeda Vargas v. Colombia. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of May 26, 2010. Series C No. 213, para. 246, and *Case of the Julien Grisonas Family v. Argentina, supra*, para. 301.

¹⁷⁴ Cf. *Case of Cepeda Vargas v. Colombia, supra*, para. 246, and *Case of the Julien Grisonas Family v. Argentina, supra*, para. 301.

¹⁷⁵ Cf. Report on the actions carried out in relation to the victims documented by the report of the Truth Commission, Case of Casierra C 94, issued by the Directorate for Protection, Comprehensive Reparation and the Central Authority of the Human Rights Secretariat (evidence file, volume X, annex 60 to the answering brief, folio 5164).

226. Given the circumstances of the case, the Court deems it reasonable to order the payment of compensation for consequential damages. Although no proof was provided of the expenses incurred, it can be presumed that the victims incurred in expenses derived from the death of Luis Eduardo and the injuries caused to Andrés Alejandro and Sebastián Darlin Casierra Quiñonez, referring to the burial of the former and medical care of the last two mentioned, as well as for the efforts initiated before the domestic and international instances in the search for justice over the course of more than two decades.

227. As a result, the Court orders, in equity, the payment of USD\$5,000.00 (five thousand U.S. dollars) as consequential damages for each of the following victims: María Ingracia Quiñonez Bone and Cipriano Casierra Panezo, mother and father of Luis Eduardo Casierra Quiñonez. Because Mr. Casierra Panezo passed away, the corresponding amount must be distributed in the following manner: a) fifty percent (50%) to Ms. María Ingracia Quiñonez Bone, and if she is already deceased, her corresponding portion will increase the amounts to be paid to the sons and daughters of Mr. Casierra Panezo, as indicated in the subsection below, and b) the remaining fifty percent (50%) will be distributed in equal parts among the daughters and sons of Mr. Casierra Panezo, and if one or several of said persons have already died, the part that corresponds to such person will increase that corresponding to the other sons and daughters. Likewise, the Court ordered the State pay Andrés Alejandro Casierra Quiñonez the amount of USD\$7,000.00 (seven thousand U.S. dollars) and Sebastián Darlin Casierra Quiñonez the amount of USD\$4,000.00 (four thousand U.S. dollars) as consequential damages.

228. As for Ms. Shirley Lourdes Quiñonez Bone, the Court recalls that it did not declare the autonomous violation of her right to property (*supra* para 129). However, it is an established fact that the boat she owned was damaged as a result of the intervention of military agents on the day of the events. Accordingly, although the representatives did not provide evidence to substantiate the claim for compensation, it is clear that the aforementioned vessel, at least during the period that the investigation of the facts lasted, was kept in the custody of state authorities (*supra* para 78). In addition to this, it is a proven fact that the aforementioned victim tried to take action before the courts of ordinary jurisdiction to persecute the persons who allegedly perpetrated the acts against her brothers (*supra* para 73). Consequently, the Court orders, in equity, that the State pay Shirley Lourdes Quiñonez Bone the amount of USD\$17,000.00 (seventeen thousand U.S. dollars).

229. If it considers pertinent and as long as the amount, term, and other established conditions are met (*infra* paras. 245 to 248), the State may make the payment effective through the implemented administrative reparation mechanisms.

G.1.2. Loss of profit

230. The **representatives** indicated that at the time of his death, Luis Eduardo Casierra Quiñonez was twenty-four years old. They pointed out that, taking into account life expectancy in Ecuador and the "current unified monthly minimum wage," and applying the formula that the Court has established in case law, the value comes out to USD\$220,800.00 (two hundred and twenty thousand eight hundred U.S. Dollars). This is the amount they are claiming for loss of profits to the victim's mother.

231. They indicated that, as a result of the events, Andrés Alejandro Casierra Quiñonez suffered permanent disability in his left leg, which has affected his performance as an artisanal fisherman. In this regard, they have requested the amount of USD\$176,400.00 (one hundred and seventy-six thousand four hundred U.S. Dollars) for said victim "or whatever [the] [...] Court decrees in equity." As for Sebastián Darlin Casierra Quiñonez, they indicated that his left hand was injured, for which they requested the sum of USD\$133,200.00 (one hundred and thirty-three thousand two hundred U.S. dollars) for said victim.

232. Lastly, they indicated that Ms. Shirley Lourdes Quiñonez Bone lost the motorboat she owned, since it was seized by the National Navy. They indicated that said property was returned to her in the year 2000, at which time repairs had to be made; however, in 2016, the National Navy seized the boat again. The victim generated approximately USD\$21,000.00 (twenty-one thousand U.S. dollars) in profit per year. Therefore, they indicated that it is possible to calculate that over the course of four years she failed to receive USD\$84,000.00 (eighty-four thousand U.S. dollars), an amount that they claim as loss of profits in her favor.

233. The **State** it argued that to make this calculation, the evolution of wages since 2000 must be taken into account, as well as the real amounts that the victim "actually received" and based on "official national sources." It added that no document was presented proving that the injuries suffered by Andrés Alejandro and Sebastián Darlin Casierra Quiñonez limited their income. As to the compensation for Ms. Shirley Lourdes Quiñonez Bone, they argued that this claim was not mentioned during the proceedings before the Commission, so it should be dismissed.

234. As to the claim for compensation for loss of profits or loss of income for Luis Eduardo Casierra Quiñonez, the Court notes that it does not have sufficient information to determine the income that he actually received from his work as a fisherman and the income that he would have received during the years following his death. Consequently, the Court orders, in equity, the payment of USD\$50,000.00 (fifty thousand U.S. dollars of the United States of America) for loss of earnings for Luis Eduardo Casierra Quiñonez, to be paid to María Ingracia Quiñonez Bone and Cipriano Casierra Panezo. Because Mr. Casierra Panezo passed away, the corresponding amount must be distributed in the following manner: a) fifty percent (50%) to Ms. María Ingracia Quiñonez Bone, and if she is already deceased, her corresponding portion will increase the amounts to be paid to the sons and daughters of Mr. Casierra Panezo, as indicated in the subsection below, and b) the remaining fifty percent (50%) will be distributed in equal parts among the daughters and sons of Mr. Casierra Panezo, and if one or several of said persons have already died, the part that corresponds to such person will increase that corresponding to the other sons and daughters.

235. Regarding the claim for loss of earnings for Andrés Alejandro and Sebastián Darlin Casierra Quiñonez, the Court finds that it is not appropriate to grant the request, given that, as the State mentions, there is no evidence to establish that the injuries produced would have affected their income over the years. It should be added, in the specific case of Mr. Andrés Alejandro Casierra Quiñonez, that although the representatives argued that he suffered from a "permanent disability," added to the fact that no evidence was provided to corroborate it, the State reported that, according to the records of the national authorities in the health field, the victim has not initiated the "Disability Qualification Procedure," and that, despite having been informed about it, apparently indicated that said procedure "is not of his interest."¹⁷⁶ This determines the inadmissibility of a reparation in this sense.

236. Turning to the claim made in favor of Mrs. Shirley Lourdes Quiñonez Bone, there is also no information to corroborate what was alleged by the representatives and, in this case, to support the determination of the income that was allegedly lost as a result of the damages caused to the boat owned by her. In any case, the Court understands that this claim was satisfied through consequential damages, as resolved above (*supra* para 228).

G.2. Non-pecuniary damages

237. The **representatives** have said that the damage suffered as a result of the death of

¹⁷⁶ Cf. Report on the health care provided to Andrés Alejandro Casierra Quiñonez, signed by authorities of the 08D03 MAS Health District on February 25, 2022 (evidence file, volume XIII, folios 11097 to 11100).

Luis Eduardo Casierra Quiñonez "gives the right to compensation." They indicated that said victim did not have children or a wife, so the direct beneficiary is his mother, María Quiñonez Bone. They added that Andrés Alejandro and Sebastián Darlin Casierra Quiñonez "were emotionally devastated." Similarly, it is necessary to consider the non-pecuniary damage suffered by the entire family. They requested the amount of USD\$30,000.00 (thirty thousand U.S. dollars) for each of the victims.

238. They stated that the human rights violations committed by state agents affected the entire family, which is related to the personal fulfillment of each of its members, clearly affecting their life project. They requested that the Court estimate in equity the amount of the reparations for that item.

239. The **State** indicated that, if compensation for non-pecuniary damage is granted, the amount must be adjusted to international standards in analogous cases. It requested that the claim of the representatives for compensation for damages to the life project not be granted, given that it lacks grounds.

240. Regarding non-pecuniary damage, the Court has established that it can include both the pain and suffering caused to a direct victim and his or her relatives, as well as the impairment of very significant values for people, as well as non-pecuniary alterations to the conditions of existence of the victim or their family.¹⁷⁷

241. Given the circumstances of this case, the violations committed, the suffering caused, the time that has elapsed, and the impact on the life project of each of the victims, the Court establishes, in equity, compensation for non-pecuniary damages. As for Luis Eduardo Casierra Quiñonez, an amount of USD \$50,000.00 (fifty thousand United States dollars) is set, which must be paid to his mother, María Ingracia Quiñonez Bone. Similarly, payment of USD\$30,000.00 (thirty thousand U.S. dollars) is ordered for Andrés Alejandro Casierra Quiñonez, and USD\$20,000.00 (twenty thousand U.S. dollars), to Sebastian Darlin Casierra Quiñonez.

242. Lastly, in view of the proven violations as a result of the death of Luis Eduardo Casierra Quiñonez, the Court establishes, in equity, the sum of USD\$15,000.00 (fifteen thousand U.S. dollars) to each of the following people: María Ingracia Quiñonez Bone, Cipriano Casierra Panezo, Jonny Jacinto Casierra Quiñones, and Shirley Lourdes Quiñonez Bone. Because Mr. Casierra Panezo passed away, the corresponding amount must be distributed in the following manner: a) fifty percent (50%) to Ms. María Ingracia Quiñonez Bone, and if she is already deceased, her corresponding portion will increase the amounts to be paid to the sons and daughters of Mr. Casierra Panezo, as indicated in the subsection below, and b) the remaining fifty percent (50) will be distributed in equal parts among the daughters and sons of Mr. Casierra Panezo, and if one or several of said persons have already died, the part that corresponds to such person will increase that corresponding to the other sons and daughters.

H. Victims' Legal Assistance Fund

243. Through an Order of December 8, 2021, the Court's president declared application of the Legal Assistance Fund for Victims of the Court (hereinafter, "the Fund"), in accordance with article four of the Memorandum of Understanding between the Inter-American Court and the Inter-American Association of Public Defenders.

244. Despite the fact that the aforementioned Resolution by the Court's President of December 8, 2021 established that the Inter-American Public Defenders should send, at the latest date,

¹⁷⁷ 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 Palacio Urrutia et al. v. Ecuador, supra*, para. 198.

together with their final written arguments, receipts accrediting the expenses incurred to reimburse said disbursements, the respective documents were never submitted. By virtue of the foregoing, the State is not ordered to reimburse any amount for disbursements charged to the Fund.

I. Method of compliance with the ordered payments

245. The State must pay the amounts established as compensation for pecuniary and non-pecuniary damages established in this Judgment directly to the persons identified, within a period of one year after this Judgment is notified. Except as already considered in this Judgment, in the event that any of the beneficiaries die before the respective compensation is paid, such payments will be made directly to their heirs, in accordance with the applicable domestic law.

246. The State must comply with its monetary obligations by paying in U.S. dollars.

247. 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 shall deposit said amounts to them in an account or certificate of deposit in a solvent Ecuadorian financial institution, in U.S. dollars, and under 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.

248. The respective amounts corresponding to compensation for pecuniary and non-pecuniary damage must be paid to said persons in full, in accordance with this Judgment, without any reductions derived from eventual fiscal charges.

249. In the event that the State incurs in arrears, it must pay interest on the amount owed corresponding to the default bank interest in Ecuador.

**X
OPERATIVE PARAGRAPHS**

250. Therefore,

THE COURT

DECIDES,

Unanimously:

1. To dismiss the preliminary objection for lack of jurisdiction as to the claims related to property, due to the factual framework determined by the Commission, in the terms of paragraphs 22 to 24 of this Judgment.

DECLARES,

Unanimously, that:

2. The State is internationally responsible for the violation of the rights to life and humane treatment, recognized in Articles 4(1) and 5(1) of the American Convention on Human Rights, in relation to the obligations to respect and guarantee the rights and to adopt provisions of domestic law established in articles 1(1) and 2 of the same international instrument, to the detriment of Luis Eduardo Casierra Quiñonez, and his brothers Andrés Alejandro and Sebastián Darlin, with the surnames Casierra Quiñonez, under the terms of paragraphs 102 to 126 and

130 of this Judgment.

3. The State is internationally responsible for the violation of articles 8(1) and 25(1) of the American Convention on Human Rights, in relation to the obligations to respect and guarantee the rights established in article 1(1) of the same international instrument, to the detriment of Andrés Alejandro Casierra Quiñonez , Sebastián Darlin Casierra Quiñonez, Jonny Jacinto Casierra Quiñonez, María Ingracia Quiñonez Bone, Cipriano Casierra Panezo, and Shirley Lourdes Quiñonez Bone, under the terms of paragraphs 144 to 157 of this Judgment.

4. The State is internationally responsible for the violation of article 5(1) of the American Convention on Human Rights, in relation to the obligations to respect and guarantee the rights established in article 1(1) of the same international instrument, to the detriment of María Ingracia Quiñonez Bone, Cipriano Casierra Panezo, Sebastián Darlin Casierra Quiñonez, Andrés Alejandro Casierra Quiñonez, Jonny Jacinto Casierra Quiñones, and Shirley Lourdes Quiñonez Bone, in the terms of paragraphs 161 to 167 of this Judgment.

AND ESTABLISHES:

Unanimously, that:

5. This Judgment constitutes, in and of itself, a form of reparation.

6. The State will continue and carry out, within a reasonable time and with due diligence, the investigations that are necessary to determine the circumstances of the death of Mr. Luis Eduardo Casierra Quiñonez and the injuries caused to his brothers Andrés Alejandro and Sebastián Darlin, with surnames Casierra Quiñonez and, if applicable, try and eventually punish the person or persons responsible, in the terms of paragraphs 176 and 177 of this Judgment.

7. The State will provide the medical, psychological and/or psychiatric treatment required by the victims, in the terms established in paragraphs 188 and 189 of this Judgment.

8. The State will make the publications indicated in paragraph 194 of this Judgment.

9. The State will refurbish the commemorative plaque for the preservation of the memory of the facts of the case in the terms of paragraph 196 of this Judgment.

10. The State will adopt, in accordance with its constitutional procedures, the pertinent legal provisions that regulate the precise parameters for the use of force by the members of the security forces, in accordance with international standards on human rights, which requires compliance with the principles of legality, legitimate purpose, absolute necessity, and proportionality, in the terms of paragraphs 201 and 202 of this Judgment.

11. The State will pay the amounts established in paragraphs 227, 228, 234, 241, and 242 of this Judgment as compensation for pecuniary and non-pecuniary damages, respectively, under the terms of paragraphs 245 to 248 of this Judgment.

12. The State, within one year from notification of this Judgment, will submit a report to the Court on the measures adopted to comply with it, without prejudice to paragraph 194 of this Judgment.

13. The Court will monitor full compliance with this Judgment, in the exercise of its powers and in compliance with its duties under the American Convention on Human Rights, and will consider this case closed once the State has fully complied with the provisions hereof.

Written in Spanish in San José, Costa Rica, on May 11, 2022.

Corte IACHR. Case of Casierra Quiñonez et al v. Ecuador. Preliminary Objection, Merits, and Reparations. Judgment of May 11, 2022. Judgment passed in San José, Costa Rica.

Ricardo C. Pérez Manrique
President

Eduardo Ferrer Mac-Gregor Poisot

Nancy Hernández López

Verónica Gómez

Patricia Pérez Goldberg

Rodrigo de Bittencourt Mudrovitsch

Pablo Saavedra Alessandri
Secretario

Comuníquese y ejecútese,

Ricardo C. Pérez Manrique
Presidente

Pablo Saavedra Alessandri
Secretario