

REPORT NO. 85/13
CASE 12.251
ADMISSIBILITY AND MERITS
VEREDA LA ESPERANZA
COLOMBIA
November 4, 2013

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I. SUMMARY

1. On July 1, 1999, the Inter-American Commission on Human Rights (hereinafter “the Commission” or the “IACHR”) received a petition lodged by Corporación Jurídica Libertad (hereinafter “the petitioners”), alleging international responsibility of the Republic of Colombia (hereinafter “the State,” “the Colombian State” or “Colombia”) for the forced disappearance of 16 individuals² - including three children – and the execution of another,³ in the village of Vereda La Esperanza, municipality of El Carmen de Viboral, Department of Antioquia, from June 21 to December 27, 1996.

2. According to the petition, officials of the National Army coordinated with members of the paramilitary group called Self-Defense Forces of Magdalena Medio the various incursions into the village of La Esperanza because the alleged victims were perceived as sympathizers or collaborators of guerrilla groups operating in the area. In that sense, the petitioners indicated that most of these acts were committed by the paramilitary group, which acted with the support or acquiescence of the Colombian Armed Forces. One incursion would have been directly and exclusively perpetrated by the Colombian Armed Forces. They also contended that there is a situation of impunity because not a single person has been declared responsible for these acts. As for the admissibility requirements, they invoked the exception for unwarranted delay set forth under Article 46.2.c) of the American Convention.

3. The State argued that the petition is inadmissible because, in its view, it does not state facts tending to establish violations of the American Convention. Specifically, it claimed that the acts alleged by the petitioners were committed by non-State actors. The State denied the claims of the petitioners implicating members of the public security forces, namely the members of the Aquila Task Force (hereinafter “FTA” for its Spanish initials “Fuerza de Tarea Águila) in the incidents, inasmuch as that the investigations conducted thus far have failed to establish the identity of the perpetrators. The State also alleged failure to exhaust domestic remedies, specifically failure to file for a writ of habeas corpus and that the criminal proceeding is ongoing. It contended that the domestic proceedings have not yet shed light on the crimes because of the high degree of complexity involved in the case. Lastly, it dismissed the claim that there is an institutional policy of support for paramilitary activities and a practice of forced disappearance fostered and tolerated by the State.

¹ Pursuant to Article 17.2 of the IACHR Rules, Commissioner Rodrigo Escobar Gil, of Colombian nationality, did not participate in the deliberation and decision of the present case.

² i) Aníbal de Jesús Castaño Gallego; ii) Óscar Hemel Zuluaga Marulanda; iii) Juan Crisóstomo Cardona Quintero; iv) Miguel Ancízar Cardona Quintero; v) María Irene Gallego Hernández; vi) Juan Carlos Gallego Hernández; vii) Jaime Alonso Mejía Quintero; viii) Hernando de Jesús Castaño Castaño, ix) Andrés Suárez Cordero; x) Octavio de Jesús Gallego Hernández; xi) Orlando de Jesús Muños Castaño; xii) Leonidas Cardona Giraldo; and xiii) Andrés Gallego Castaño. The petitioners also named three individuals as alleged victims, who have not yet been fully identified.

³ Javier Giraldo Giraldo.

4. After examining the available information, the Commission verified that the admissibility requirements set forth in Articles 46 and 47 of the American Convention have been met and it concluded that the State is responsible for violation of the rights enshrined in Articles 3, 4, 5, 7, 8, 19 and 25 of the American Convention, in connection with the obligations set forth in Articles 1.1 and 2 of the same international instrument; as well as articles I.a) and I.b) of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of the individuals listed in each section of the instant report.

II. PROCEEDINGS BEFORE THE COMMISSION

5. On July 1, 1999, Corporación Jurídica Libertad lodged the initial petition. On March 7, 1999, the IACHR informed the petitioners that the case was assigned the number 12.251. The petitioners submitted a communication, dated March 23, 2000. In a communication of June 7, 2000, the State provided its response. The petitioners submitted additional observations on June 27, 2000; October 6, 2000; January 20 and May 21, 2001; July 2, 2002; August 25, 2003; September 1, 2004 and March 2006. The State submitted additional observations on June 7, 2000; September 11, 2000; December 14, 2000 and April 19, 2006. These submissions were duly forwarded to the opposing parties.

6. On September 6, 2006, the petitioners requested the Commission to defer addressing admissibility until the decision on the merits and arrange for a hearing. On October 11, 2006, the Commission informed the Colombian State and the petitioners that it had decided to apply Article 37.3 of the Rules of Procedure in effect at the time and defer addressing admissibility until the discussion and decision on the merits of the matter.

7. After that procedural decision was made, the petitioners submitted additional observations on February 1, 2007, May 7, 2007 and August 27 and October 3, 2008. In response, the State submitted additional observations on November 27, 2006, April 20 and September 5, 2007, and January 23, May 13 and September 25, 2008. These submissions were duly forwarded to the opposing parties.

8. On October 23, 2008, a hearing on admissibility and the merits of the matter was held. The petitioners submitted additional observations on November 21, 2008 and November 30, 2009. While the State submitted additional observations on September 11 and 25, November 9 and December 31, 2009.

9. On April 21, 2010, the IACHR sent a communication to the parties placing itself at their disposal to help to reach a friendly settlement. In a communication of May 20, 2010, the petitioners expressed that it is not possible to engage in the friendly settlement process. The petitioners also submitted additional information in briefs dated June 24, July 12 and August 27, 2010. Whereas the State submitted additional observations on May 21, June 25, July 12, August 19, September 8 and October 25, 2010.

III. POSITION OF THE PARTIES

A. Position of the Petitioners

10. The petitioners described the forced disappearance of 16 individuals, including three children of two months, 12 and 15 years respectively; as well as an extrajudicial execution of one

individual. They indicated that these events occurred in the course of two weeks in June and July 1996, and later in December 1996, specifically on i) June 21 (disappearances of Aníbal de Jesús Castaño Gallego and the child Oscar Zuluaga Marulanda; ii) June 22 (disappearances of Juan Crisóstomo Cardona Quintero, Miguel Ancízar Cardona Quintero, alias Fredy, his wife and an unidentified person); iii) June 26 (disappearance of María Irene Gallego Quintero); iv) July 7 (disappearances of Juan Carlos Gallego Hernández and Jaime Alonso Mejía Quintero; and death of Javier Giraldo Giraldo); v) July 9 (disappearances of Jesús Castaño Castaño, the child Andrés Suárez Cordero, Octavio de Jesús Gallego Hernández and Orlando de Jesús Muñoz Castaño; and vi) December 27 (disappearances of Andrés Gallego Castaño y Leonidas Cardona Giraldo).

11. According to the petitioners, these acts took place with the collaboration between different units and battalions of the Armed Forces and the paramilitary group the Self-Defense Forces of Magdalena Medio (Autodefensas del Magdalena Medio) due to the perception that the alleged victims were guerrillas or guerrilla collaborators.

12. In order to put these acts into context, they asserted that the State played a significant role in the emergence, creation, training and arming of this paramilitary group, and that the link between the State and the group has been corroborated by reports of the Office of the Attorney General and Armed Forces intelligence, statements provided by members of the military forces, paramilitary groups and the civilian population, as well as the Inter-American Court itself.

13. A detailed account of the facts and domestic proceedings will be provided in the Commission's analysis of the facts, based on the information provided by both parties. In this section, the main arguments on admissibility and the law outlined by the petitioners are summarized.

14. As to admissibility of the case, the petitioners invoked the exception of unwarranted delay provided for in Article 46.2.c) of the American Convention, because even though the family members of the alleged victims immediately reported each incident to the municipal, prosecutorial and judicial authorities, criminal proceeding were brought only against two individuals allegedly responsible for the crimes: the leader of the Magdalena Medio Self-Defense Forces, Ramón Isaza, and Army Major Guzmán Lombana. They indicated that after 17 years since they reported the incidents, not a single person has been punished.

15. The petitioners contended that it is not acceptable to justify judicial delay with the argument of complexity of the case, inasmuch as the proceedings have been characterized by a lack of procedural and evidentiary momentum, as well as a lack of diligence in the investigation into the link of agents of the State to the paramilitary groups in the commission of the crimes.

16. The petitioners claimed that the other proceedings were not effective either. As to the investigation in the military criminal courts, they contended that on September 8, 1997, the case was archived when "it was established that the members of the military were uninvolved in the crimes charged." They argued that the military criminal courts are not allowed to investigate cases of human rights violations. With regard to the disciplinary investigation, they asserted that on September 11, 2000, the Office of the Inspector General failed to open an investigation of public officials, lost evidence that linked the Armed Forces to the crimes and failed to conduct a serious investigation. As for the administrative proceeding, they contended that the two proceedings are pending final decisions. They also alleged that, in any case, exhaustion of disciplinary and administrative proceedings is not required in cases such as this one.

17. As to the State's argument about filing for a writ of *habeas corpus* in the case of the disappearances, the petitioners claimed that the family members reported the incidents to the Public Ministry, the bodies of the judiciary and even the municipal offices of the people's ombudsman. In this regard, they argued that to file separately for a writ of *habeas corpus* places an excessive burden upon them, particularly in light of the risk they were facing at the time. The petitioners contended that because the State was aware of the complaints, it should have taken the necessary measures to investigate the incidents and ascertain *ex officio* the whereabouts of the missing individuals. They argued that the State, in any case, should have informed the family members that they must pursue the *habeas corpus* remedy, being that these families were unfamiliar with the law. Lastly, they alleged that the *habeas corpus* remedy was not effective for cases of disappearances of individuals at the time.

18. With regard to the merits of the matter, the petitioners alleged that the forced disappearances constitute violations of Articles 4, 5 and 7 of the American Convention. On this score, they contended that the State not only tolerated the Self-Defense Forces of Magdalena Medio freely operating to perpetrate the disappearances and the murder, but that several members of the Armed Forces played an active role in the crimes.

19. Regarding the right to life, the petitioners claimed that the missing persons were murdered and their bodies dumped in different rivers of the area. In this regard, they contended that the State also violated its obligation to ensure the right to life for failing to prevent the forced disappearance and death of the victims. They further argued that two of the missing victims were valuable witnesses to prior crimes, which are also part of the instant case. As to the right to personal liberty, the petitioners asserted that illegal and arbitrary detentions were made, inasmuch as no arrest warrants had been issued nor had any situation *in flagrante delicto* arisen. On the contrary, they contended that "their whereabouts" remain "anonymous." They specifically claimed that in the case of María Irene Gallego Quintero, she was illegally and arbitrarily detained by FTA troops. They noted that even though she was remanded to the custody of the Office of the Prosecutor of the Municipality of El Santuario, she is still missing and was last seen with army troops on July 15, 1996. In the case of the individual known by the alias Fredy, the petitioners claimed that there is a video recording in which he appears in a paramilitary camp in Magdalena Medio, forced to join that group as way of saving his own life. With regard to the right to humane treatment, the petitioners alleged that the missing persons were subjected to disgraceful and inhuman treatment as a consequence of the terror they experienced when they were deprived of liberty and taken to an unknown location.

20. Additionally, the petitioners argued that the State violated the obligation to provide special protection to children, as set forth in Article 19 of the American Convention, for the forced disappearances of Óscar Zuluaga and Juan and Miguel Cardona. They also contended that the child Andrés Suárez Cordero was stolen from his parents and forced to live out his childhood with the members of the paramilitary group the Self-Defense Forces of Magdalena Medio. In this regard, they asserted that no mechanism for the psychosocial recovery and treatment of Andrés Suárez Cordero, who lives with a daughter of a paramilitary leader, has been provided for.

21. Petitioners also alleged that the State violated the right to humane treatment of the next-of-kin of the victims of the disappearances, inasmuch as "the terror and fear that this type of criminal practices entails for their family members becomes interminable while they do not know the whereabouts." They further contended that such a situation precludes the family from holding a burial in keeping with their traditions, values or beliefs. They argued that the disappearances affected a

considerable number of families, tearing apart the fabric of the community and caring bonds that had been forged across the rural setting of the village. The petitioners maintained that the victims' and family members' right to humane treatment was infringed as a result of the overt involvement of the State in criminal actions along side the paramilitary structures, the ineffectiveness of criminal investigations and the failure to punish those responsible. They also claimed that accusing the victims of being members of the guerrilla forces as justification of the actions of paramilitary by chief Ramón Isaza, causes pain and suffering for the family members of the victims.

22. As for the right to a fair trial and judicial protection, the petitioners alleged that the State has breached its duty to establish the truth about these incidents by investigating the violations committed, identifying and punishing all those responsible and providing reparation to the family members of the victims. They contended that the criminal proceeding fails to abide by the due process guarantee of a reasonable period of time, arguing that even though the crimes were reported in a timely fashion, the investigation was not formally opened until May 2, 2000. They also noted that only two individuals have been tried and, as yet, have not been criminally punished. They claimed that despite evidence proving involvement of the Magdalena Medio Self-Defense Forces in these crimes and collusion of members of the Armed Forces in the planning and execution thereof, no serious and thorough investigation into these schemes of collusion between the Self-Defense Forces of Magdalena Medio and the Armed Forces have been conducted.

23. The petitioners further contended that in the instant case there has been a string of shortcomings, failures and irregularities, such as the fact that much of the evidence collected linking members of the military forces to the crimes was not handed over to the Office of the Attorney General; many pieces of evidence requested by the attorneys for the victims' families, as civil third parties to the case, and ordered by the Office of the Prosecuting Attorney aimed at proving the link between the Military Forces and the members of the paramilitary group in Magdalena Medio, were not collected; the criminal case was reassigned to four different prosecutors, thus disrupting continuity in the investigation; there were long periods of inactivity; and an investigation was opened into the crimes of simple abduction and homicide instead of the crime of forced disappearance.

24. With regard to the investigation of paramilitary leader Ramón Isaza, the petitioners noted that an arrest warrant was issued for him in May 2000, almost four years after the events took place. They contended that even though statements had been made to the media prior to that date, the State did not take any measures to apprehend him and that as of the present time, the proceedings have not reached the trial stage. The petitioners asserted that Ramón Isaza demobilized on February 7, 2006, under the State-instituted peace process and, consequently, the criminal investigation was transferred from the ordinary civilian justice system to the special jurisdiction known as the "Justice and Peace" courts. They claimed that sentences in this jurisdiction are very lenient. They also contended that even though the statements of Ramón Isaza implicate members of the Self-Defense Forces of Magdalena Medio for colluding with agents of the Armed Forces, including an Army commanding officer handing over an alleged list to a member of the Self-Defense Forces of Magdalena Medio, none of these statements, which were given in the context of the Justice and Peace Law have been accurately and fully clarified. Consequently, the petitioners argued that in the absence of a clear, serious and complete confession, it is unacceptable that Ramón Isaza is enjoying legal benefits under Law 975 of 2005.

25. As to the investigation of Major Guzmán, the petitioners argued that it was established during the first stages of the investigation that he is criminally responsible inasmuch as he was the Commanding Officer of the FTA at the time of the events at issue. Nonetheless, they contended, he

was called solely as a witness in the course of the preliminary investigation on two opportunities. They asserted that he was subsequently implicated in the criminal case but a preventive detention order against him was quashed and, thus far, the case has not moved forward.

26. Lastly, the petitioners also contended that another violation committed in this case was the failure to protect the family members of the victims and witnesses Juan Carlos Gallego Hernández and Andrés Antonio Gallego Quintero, who after filing complaints and providing statements linking agents of the State to some of the crimes related to the instant case, were eventually arrested and have gone missing.

B. Position of the State

27. With regard to admissibility of the case, the State argued that domestic remedies have not been exhausted because the family members of the alleged victims failed to pursue the remedy of *habeas corpus*⁴ as soon as they became aware of the disappearances. It claimed that both the Commission and the Court have mentioned in their legal precedents that in cases of disappearances, the adequate and effective remedy is *habeas corpus* and, as such, the duty to exhaust said remedy cannot be exhausted by resorting to other remedies, even though these may be of a judicial nature. The State alleged that the argument put forward by the petitioners that the authorities hearing the criminal proceedings should have opened *habeas corpus* proceedings *ex officio* or told the family members about their obligation to file for the *habeas corpus* remedy, is invalid, because this remedy is regulated in the Constitution and the law, and has been disseminated.

28. The State further contended that the exception to the rule of prior exhaustion of domestic remedies is not applicable, inasmuch as the criminal proceeding has not gone on for an unreasonable period of time. It claimed that examination of this issue must be conducted during the merits stage and that “the mere passage of time without criminal convictions being handed down does not make it possible to come to the conclusion of an unreasonable period of time.” In this regard, it argued that the Commission must examine the period of time in light of the legal precedents of the Commission and the Court. With regard to the activity of the judicial authorities, the State contended that the investigations were conducted diligently and that evidence-gathering has been conducted with urgency and proactively; it argued that the petitioners did not file for any special constitutional relief (*tutela*) or motions to move the proceedings forward (*memoriales de impulso*). The State also claimed that five of the alleged victims did not resort to the contentious administrative procedure and, consequently, they did not exhaust domestic remedies in the area of reparation.

29. The State also addressed the failure to identify by name three of the alleged victims and moved that these individuals be left out of the deliberations. With regard to the situation of the next-of-kin of the alleged victims raised by the petitioners, the State argued that many of them were not parties either to the domestic proceedings or to the Inter-American proceedings at the beginning. Consequently, it claimed that they are disqualified from being regarded as alleged victims, particularly when these individuals are unable to prove that they are truly family members of the victims.

30. The State argued that the facts of the case do not tend to establish violations of the Convention and that, in its view, examination on colorable claims encompasses not only potential

⁴ The State clarified that this remedy is provided for in the Constitution and must be decided within 36 hours.

disregard for a right, but also potentially ascribing liability to the State. In this regard, it stressed that the facts were committed by private individuals and not by agents of the State. It also contended that “the petitioners are trying to get the organs of the Inter-American system to act as a fourth instance to local courts.” The State further claimed that the IACHR cannot adjudicate facts that have not been proven in the domestic jurisdiction and that the IACHR could only act in cases of flagrant violation of due process, which is not the situation in this particular case.

31. The State argued that the IACHR’s decision to join analysis of admissibility and merits is out of order. It contended that said decision is unwarranted and that it has precluded it from exercising its right of defense.

32. As to the merits of the matter, the State recognized that “the paramilitary groups enticed some of the members of the public security forces with whom they conducted isolated joint military operations (...) mistakenly calling themselves self-defense forces.” It contended that, nonetheless, the existence of paramilitary forces cannot be attributed to the State and the “unfortunate and isolated collusion of some of the members of the security forces” cannot be regarded as a State policy.

33. The State asserted that when acts involving paramilitary groups occur, “the participation, collaboration, acquiescence or collusion of agents of the State” must be proven “concretely and directly in each act alleged to be a violation.” It argued that the alleged acts in this case were executed exclusively by the Self-Defense Forces of Magdalena Medio as retaliation for the abduction of a paramilitary leader and that no link to agents of the State has been proven in a court of law. It also contended that, since such a link has not been proven, the elements of authorization, support or acquiescence, as set forth in the Inter-American Convention on Forced Disappearance of Persons (IACFDP), are not present.

34. The State also alleged that the petitioners made general claims without individually examining each disappearance case separately. It contended, therefore, that the State cannot be held responsible for violations of Articles 4, 5 and 7 of American Convention. The State provided greater detail about one of the incidents that was part of the subject matter in the instant case. It noted that on June 26, 1996, the FTA carried out *Operation Lightning Bolt* (Operación Rayo) “in order to arrest or take out terrorists of the EPL (People’s Liberation Army) gang,”⁵ and not one single person was even injured in the operation. It argued that there is stark contradiction between sworn statements. As to the validity of statements provided by Ramón Isaza, the State held two positions. On the one hand, it regarded statements that the acts were carried out exclusively by members of the paramilitary forces as valid evidence, while statements linking members of the military to the acts were stripped of their evidentiary value and it noted that judicial verification of such claims was pending. It also asserted that should the statement that bodies were dumped into different rivers prove to be true, “recovery of the mortal remains of these persons would be impossible.”

35. As for the analysis of the duty of prevention, the State asserted that the responsibility of the State is contingent upon knowledge of a real and imminent danger and a reasonable chance to prevent or help to avoid said danger. It contended that the petitioners did not make the State aware of a real and imminent danger of each individual. On the contrary, the State claimed that it involved

⁵ The People’s Liberation Army (EPL) is a Colombian guerrilla group which began operating in the late seventies, mainly in the region of Antioquia.

“unexpected events.” It asserted that “it acted within the existing legal framework” and “in keeping with its ability to prevent the crimes of the case” from happening.” The State justified that it was impossible for it to prevent the crimes “taking into account not only the modus operandi of the outlawed armed groups (...) but also that the public authorities had not been informed about the potential existence of a particular and known danger in advance with respect to these persons.” It also contended that the presence of the Army was sporadic because its assets in the area were limited and, therefore, “the army patrolled by day and never at night, when most of the abductions took place.”

36. Regarding the rights of the child, the State claimed that “it is necessary to prove that the violation was committed based on the status as a minor of the person affected by the violation.” According to the State, it has not been proven in the particular circumstances of the case, that the State was obligated to grant special protection. It also contended that it is plausible that non-state actors committed the acts that infringed the rights of the children, based on their condition as such.

37. As for humane treatment of the next-of-kin, it alleged that infringements of particular individuals’ rights have not been proven and that such a violation cannot be presumed, not even in cases of forced disappearance.

38. The State argued that there was no violation of the right to a fair trial and judicial protection. It contended that the military criminal court found it did not have jurisdiction to hear the case, inasmuch as it established that military personnel were not involved in the crimes charged in the complaint and that there was clear evidence establishing that the perpetrators of the crimes were members of the paramilitary group. Regarding the criminal proceedings, the State recognized that “it is aware that in this case there has not been an adequate result in the criminal proceeding” and that “the failure to identify all of those responsible is due to the complexity of the crime.” It argued that should the issue of State responsibility be considered, it could only be with regard to Article 8.1 of the Convention and not with regard to the rights relating to forced disappearance. It further contended that the failure to investigate the actions of third parties does not mean that the State is responsible for acts committed by third parties. It stressed that no concrete infringements of due process of the law have been proven and that the duty to investigate involves an obligation of means or to put forth best efforts, which cannot be regarded as a breach in the absence of a desired result.

39. The State reported that an investigation was opened of the leader of the Self-Defense Forces of Magdalena Medio, Ramón Isaza; and Army Major Carlos Guzmán. It noted that a preventive detention order was issued for the former as alleged perpetrator of the crime of abduction and that it refrained from issuing any custody order for Carlos Guzmán, because the witnesses who charged him “made indefinite assessments and inferences without any evidentiary support.”

40. In response to the point raised by the petitioners regarding the legal assessment of the offenses under investigation in the cases, it noted that the criminal proceeding conducted by the National Human Rights and International Humanitarian Law Unit (hereinafter “UNDH,” based on its Spanish initials) was for the crimes of forced disappearance and homicide. Notwithstanding, the State asserted that the obligation to investigate, prosecute and punish does not necessarily mean that criminal prosecution must be for the specific crime of forced disappearance.

41. The State claimed that the proceedings against Ramón Isaza are taking place under Justice and Peace Law No. 975 of 2005. It noted that, in its opinion, the Court held in the case of *La Rochela Massacre* that said law conforms to international standards. It further contended that his

statement will be submitted to judicial assessment and, therefore, “if the judge finds that he has not told the whole truth, he may not continue to receive the benefits of justice and peace.” The State also argued that the family members of the victims became a civil third party to the case and have been able to request evidence and challenge rulings.

42. The State also addressed the alleged victims’ family members’ right to reparation. It asserted that suits were brought independently by each family group for direct reparation before the Administrative Court of Antioquia and were processed with due process of the law. It stressed that the petitioners did not appeal the judgment of June 15, 2010, which consolidated the proceedings and granted reparation. Accordingly, the State requested the IACHR to refrain from ordering further reparation.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence of the Commission *ratione personae, ratione loci, ratione temporis, and ratione materiae*

43. The petitioners are entitled, under Article 44 of the American Convention, to file complaints with the Commission. The alleged victims are also natural persons, who were under the jurisdiction of the Colombian State when the facts alleged in petition are said to have occurred. Accordingly, the Commission is competent *ratione personae* to examine the petition. The Commission is competent *ratione loci* to entertain the petition, inasmuch as it alleges violations of the American Convention that are said to have taken place within the territory of a state party to said instrument. Likewise, the IACHR has *ratione materiae* jurisdiction because the petition alleges violations of the American Convention. The Commission is also competent *ratione temporis* being that Colombia ratified the American Convention on May 28, 1973 and, therefore, the obligation to respect and ensure the rights enshrined in the American Convention were already in force on the State when the facts alleged in the petition are said to have occurred.

44. Lastly, the IACHR is competent to rule on the basis of the Inter-American Convention on the Forced Disappearance of Persons (IACFDP), which the State is a party since April 12, 2005. In accordance with Article XII of the IACFDP, the Commission is materially competent to decide on alleged violations of this treaty. Furthermore, in keeping with the legal precedents of the Inter-American system, the effects of an alleged forced disappearance and the obligation to investigate such an offense is of an ongoing nature. As such, and in light of the fact that the petitioners allege that the State has still not determined the whereabouts of the alleged victims, the IACHR has time-based jurisdiction to examine the potential breach of the obligations set forth in the IACFDP.

B. Exhaustion of Domestic Remedies

45. Article 46.1.a) of the American Convention provides that in order for a petition lodged before the Inter-American Commission to be admissible in accordance with Article 44 of the same instrument, the requirement that remedies under domestic law have been pursued and exhausted must be met in keeping with generally recognized principles of international law. This requirement is designed to enable national authorities to hear cases on an alleged violation of a protected right and, when appropriate, settle it before it is heard by an international body.

46. However, the prior exhaustion requirement is applicable when adequate and effective remedies are actually available in the domestic legal system to remedy the alleged human rights violation. In this regard, Article 46.2 provides that the prior exhaustion rule is not applicable when (i) the domestic legislation of the State concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated; (ii) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or, (iii) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

47. Based on legal precedent established by the Commission, in cases of alleged forced disappearances and violent deaths, investigation and criminal proceedings through ordinary legal procedures constitutes the suitable remedy to clarify the facts, prosecute those responsible and establish the appropriate criminal punishment, in addition to providing for other means of reparation. This investigation and criminal proceeding must be instituted *ex officio* by the State.

48. The Commission also notes that the criminal investigation in the ordinary justice system was opened on July 17, 1996 and February 11, 1997 respectively. After decisions were handed down on April 22 and July 12, 2009, a motion was filed to suspend the investigation of one of the defendants so it could proceed under Justice and Peace Law 975 of 2005. There have still been no final decisions issued in this case as at the present time. In light of this situation, the petitioners argued unwarranted delay in ruling on the case and, therefore, invoked the exception to the rule set forth under Article 46.2.c of the Convention. The State responded to this argument by claiming that the matter was complex because of the many facts and allegedly responsible persons involved.

49. The Commission recalls that when petitioners argue in favor of applying one of the exceptions established under Article 46.2 of the Convention, the burden is on the State to prove that said exception is not applicable in the particular instance. The Commission notes that the State only cited the complexity of the matter in general terms without stating the particular elements that would lead to the delay in the investigation, identification and punishment of those responsible and the direct link of such elements to the passage of time in this particular instance.

50. The Commission also notes that based on the information appearing in the case file as well as information available to the public, more than 17 years have elapsed since the time the alleged events occurred and, as yet, only two individuals have been identified as possibly responsible for the crimes. The investigation of one of these individuals was halted, while the investigation of the other individual has not proceeded to trial 8 years after being transferred to the procedure established under the Justice and Peace Law.

51. Consequently, and without prejudice to the merits of the matter, the Commission finds *prima facie* that the State has caused unwarranted delay and, therefore, the exception provided for in Article 46.2.c of the American Convention is applicable.

52. As for legal action brought before contentious administrative courts, the Commission has held that said procedure does not constitute a suitable remedy to examine admissibility of a petition in which facts are alleged such as those alleged in the instant case. Concretely, the Commission has said that administrative proceedings are a mechanism aimed at overseeing the administrative activity of the State, whereby it is only possible to obtain compensation for damages and losses caused by actions or

omissions of the State.⁶ In any case, even if administrative procedures could include other types of reparation than pecuniary reparation, they do not constitute a means to uncover the truth, obtain justice and punish those responsible, which are the quintessential elements of reparation in cases of human rights violations such as those involved in the instant case.

53. The Inter-American Court has noted that:

(...) recourse such as the action for direct reparation or the action for annulment and re-establishment of a right have a very limited scope and include some conditions of access that are not appropriate with regard to the reparation objectives established in the American Convention. The Court has indicated that the judgment of a judicial authority in a contentious administrative court rules on the fact that an unlawful damage has been produced, and not on the State's responsibility for failing to comply with human rights standards and obligations.⁷

54. Based on the foregoing, the Commission reiterates that in cases such as this one, it is not necessary to exhaust actions before the administrative jurisdiction.

55. Lastly, regarding the State's argument on the failure to file for *habeas corpus* relief, the Commission recognizes that this remedy may be a mechanism whereby the disappearance of a person is formally brought to the attention of the State so that the necessary immediate measures can be taken to ascertain the whereabouts thereof. Nonetheless, the Commission recalls that the aim of the exhaustion of domestic remedies requirement is to enable the State to have the opportunity to remedy the situation alleged in the complaint. Consequently, in a case such as this one, wherein the family members resorted to different bodies of the State, including the Public Ministry to report the disappearance, and after more than 17 years, the necessary measures have not been taken to determine the whereabouts of the missing persons, the Commission finds that exhaustion of the remedy of *habeas corpus* cannot be required.

C. Timeliness of the Petition

56. Pursuant to Article 46.1.b) of the American Convention, in order for a petition to be admitted by the Commission, it must be lodged within a period of six months from the date on which the alleged victim was notified of the final judgment exhausting domestic remedies. This rule is not applicable, when the Commission finds that any exception to the requirement of prior exhaustion of domestic remedies has been met, as provided for in Article 46.2 of the Convention. In such instances, the Commission must determine whether the petition was lodged within a reasonable period of time in accordance with Article 32 of its Rules of Procedure.

57. As was indicated above (see *supra* pars. 48-51), the Commission concluded that in the instant case the requirements have been met for unwarranted delay, as provided for in Article 46.2.c) of the American Convention. The IACHR finds that submission of the petition in 1999 is reasonable, taking into account that the crimes alleged in the case were under investigation by domestic authorities and the next-of-kin of the alleged victims had the expectation of obtaining a response. The ongoing nature

⁶ IACHR, Report No. 43/02, Petition 12.009, Admissibility, Leydi Dayán Sánchez, Colombia, October 9, 2002, par. 22; Report No. 74/07, Petition 1136/03, Admissibility, José Antonio Romero Cruz et al, Colombia, October 15, 2007, par. 34.

⁷ IA Court of HR, *Case of the Massacre of la Rochela v. Colombia. Merits, Reparations and Costs*. Judgment May 11, 2007. Series C No. 163, par 221.

of most of the facts alleged in the petition of the instant case must also be noted. In this regard, the IACHR finds that the requirement set forth under Article 46.1.b) of the Convention has been met.

D. Duplication of International Proceedings and *Res Judicata*

58. Article 46.1.c) of the Convention provides that in order for petitions to be admissible they must meet the requirement that the subject “is not pending in another international proceeding for settlement.” Additionally, Article 47.d) of the Convention establishes that the Commission shall not admit any petition that is substantially the same as one previously studied by the Commission or by another international organization. In the instant case, the parties have not put forward any arguments for either of these two circumstances, nor can either of them be surmised from the information in the case file.

E. Colorable Claim

59. For purposes of admissibility, the Commission must decide whether the petition states facts that could tend to establish a violation, as provided by Article 47.b) of the American Convention, whether the petition is “manifestly groundless” or whether it is “obviously out of order,” as provided in subparagraph (c) of the same Article. The standard for evaluating these factual requirements is different from the requirement for deciding on the merits of a petition. The Commission must conduct a *prima facie* evaluation to determine whether the petition establishes grounds for the apparent or potential violation of a right guaranteed by the Convention, but not to establish the existence of a violation. This evaluation should perform a summary analysis that does not involve any prejudgment or advance opinion on the merits.

60. Neither the American Convention nor the IACHR Rules of Procedure require the petitioner to identify the specific rights that are allegedly violated by the State in the matter submitted to the Commission, even though the petitioners may do so. It is the job of the Commission, based on the legal precedents of the system, to determine in its admissibility reports, what provision of the relevant Inter-American instruments is applicable and could tend to establish a violation thereof if the alleged facts are proven by means of sufficient evidence.

61. The IACHR considers that, if the alleged forced disappearance and extrajudicial execution of the alleged victims and the presumed impunity surrounding the facts is proven true, these acts could constitute violations of the rights enshrined in Articles 3, 4, 5, 7, 8, 19 and 25 of the American Convention in connection with Articles 1.1 and 2 of the same instrument. The Commission shall also examine in the merits section of this report any applicable provisions of the IACFDP.

62. Additionally, the Commission notes the issue raised by the State regarding the lack of identity of three of the alleged victims. In relation to the identification of alias Fredy and his wife, who would have been held on June 22, 1996, the Commission refers to the considerations expressed *infra* paras. 183-186. With respect to the person who would have been held on June 22, 1996 at the home of Dioscelina Quintero, the Commission considers that *prima facie* the elements to make a minimum individualization in order to consider him in the analysis on the merits have not been met.

V. ANALYSIS ON THE MERITS OF THE MATTER

A. Preliminary Matters for Consideration

63. Prior to examining the merits of the matter, the Commission deems it necessary to address the objection made by the Colombian State regarding jointly ruling on admissibility and the merits, as provided for in Article 37.3 of the Rules of Procedure of the Commission in force at that time. In this regard, the Commission would bring to the attention of the State that the Convention does not contain any provision requiring that separate reports on admissibility and the merits be issued. Accordingly, in exercising its wide-ranging discretion and autonomy, the Commission has explored a variety of alternatives to rule on the different aspects of a case. The Commission began to clearly separate the admissibility stage from the merits stage as recently as 2001 by introducing a rule providing for two separate reports. In that same vein of thought, the Commission also deemed it important to provide in the Rules for the possibility of examining admissibility and the merits together in cases involving extensive processing or particular circumstances warranting such an approach. This was the aim and purpose of then Article 37.3 (now Article 36.3) of the Rules of Procedure of the Commission. As can be surmised from the text itself of this provision and its application to the processing of the instant case, this practice in no way affects State's right of defense and to confront evidence, to the extent that ample opportunity is granted to the parties to submit their arguments on both admissibility and the merits.

64. Accordingly, the decision to issue a joint report on admissibility and the merits in the instant case was made on February 15, 2008, based on the passage of time and, as indicated to the parties, taking into account "the ample opportunity that the parties had to provide information regarding the petition lodged."

B. Proven Facts

1. Context

1.1. Creation and Operations of the Self-Defense Forces of Magdalena Medio

65. In the early 1980s, several different armed groups were operating in the region of Magdalena Medio.⁸ For this reason, the military forces began to establish 'self-defense groups' in order to counteract their operations.⁹ One of these groups called itself the Self-Defense Forces of Magdalena Medio (Autodefensas del Magdalena Medio), was led by Ramón María Isaza Arango and was made up of peasant farmers, who owned small or medium size tracts of land.¹⁰ According to statements of Ramón Isaza, the Self-Defense Forces of Magdalena Medio were created on February 22, 1978, in order to combat the guerrilla forces because these forces "ran the area."¹¹ In order to achieve this end, as is

⁸ Magdalena Medio is a region located in northern Colombia, mainly in the Department of Antioquia, though it also encompasses parts of the Departments of Bolívar, Boyaca, Cesar and Santander.

⁹ Annex 1. Report No. 032. Sectional Directorate of the Technical Investigation Corps of the Office of the Attorney General of the Republic. Intelligence Report on the self-defense groups, dated June 28, 1996. Annex to the communication of the petitioners of October 5, 2000.

¹⁰ Annex 2. General Report of the Historical Memory Group *¡Basta ya! Colombia: Memorias de guerra y dignidad*. [Enough Already! Colombia: Memories of War and Dignity.] Imprenta Nacional [Government Printing Office]. 2013, pg. 134.

¹¹ Annex 3. Initial statement on the facts of Ramón Isaza Arango to the Office of the Special Prosecutor attached to the National Human Rights and International Humanitarian Law Unit, dated April 23, 2007. Annex to the submission of the petitioners of May 7, 2007.

explained in the General Report of Memory and Conflict (*Informe General de Memoria y Conflicto*), this group was aided by the Army, which provided it with firearms, ammunition, training and support for its operations.¹² Even so, during this time period, said group was of a “marginal nature (...) within the counterinsurgency strategy of the Military Forces.”¹³ In the late 1980s, the self-defense groups, including the Self-Defense Forces of Magdalena Medio, “mutated swiftly into paramilitary groups.”¹⁴ It is noted that they were financially supported by groups with vested economic interests in the areas where the subversive groups operated, such as drug traffickers, ranchers, large landowners, trucking business owners and merchants.¹⁵

66. The paramilitary project of the Self-Defense Forces of Magdalena Medio encompassed a theater of operations of more than 4,000 square kilometers and covered, among other municipalities, Cocorná and El Carmen de Viboral, where the village of Vereda La Esperanza is located.¹⁶ Its members were equipped with short and long range firearms, communication systems¹⁷ and a wide-ranging transportation infrastructure.¹⁸ Based on intelligence reports, said group operated under a hierarchical command structure and was allegedly made up of “former soldiers, former policemen, former guerrillas, paid mercenaries and active-duty guides of the National Army,” who received compensation in the form of money and were “paid a bonus for each guerrilla member they killed.”¹⁹ In an interview of Ramón Isaza in September 1997, he stated that his group operated under the following order: “if it’s a guerrilla member take him out, if it’s a collaborator take him out.”²⁰ He also claimed that “in places where the guerrillas were in control (...) all of them (...) are enemies (...) of the Army, they are enemies of the self-defense forces.” He added that consequently “you have to (...) go in and mow them down all the same

¹² Annex 2. General Report of the Historical Memory Group *¡Basta ya! Colombia: Memorias de guerra y dignidad*. [‘Enough already! Colombia: Memories of war and dignity.’] Imprenta Nacional [Government Printing Office]. 2013, pg. 134.

¹³ Annex 1. Report No. 032. Sectional Directorate of the Technical Investigation Corps of the Office of the Attorney General of the Republic. Intelligence Report on self-defense groups, dated June 28, 1996. Annex to petitioners’ communication dated October 5, 2000.

¹⁴ Annex 2. General Report of the Historical Memory Group *¡Basta ya! Colombia: Memorias de guerra y dignidad*. [‘Enough already! Colombia: Memories of war and dignity.’] 2013, pg. 139.

¹⁵ Annex 1. Report No. 032. Sectional Directorate of the Technical Investigation Corps of the Office of the Attorney General of the Republic. Intelligence Report on self-defense groups, dated June 28, 1996. Annex to petitioners’ communication dated October 5, 2000.

¹⁶ Annex 1. Report No. 032. Sectional Directorate of the Technical Investigation Corps of the Office of the Attorney General of the Republic. Intelligence Report on self-defense groups, dated June 28, 1996. Annex to petitioners’ communication dated October 5, 2000.

¹⁷ Annex 4. Official Letter No. 5399/DAS.DGI.DIEX.GPB.FP of the Administrative Department of Security (DAS), General Directorate of Intelligence, Internal and External Intelligence Division, dated December 19, 1995. Annex to petitioners’ submission received by the IACHR on February 1, 2007.

¹⁸ Annex 1. Report No. 032. Sectional Directorate of the Technical Investigation Corps of the Office of the Attorney General of the Republic. Intelligence Report on self-defense groups, dated June 28, 1996. Annex to petitioners’ communication dated October 5, 2000.

¹⁹ Annex 1. Report No. 032. Sectional Directorate of the Technical Investigation Corps of the Office of the Attorney General of the Republic. Intelligence Report on self-defense groups, dated June 28, 1996. Annex to petitioners’ communication dated October 5, 2000.

²⁰ Annex 5. Public confession hearing of Ramón Isaza’s under Justice and Peace Law, dated October 16, 2008. Compact disk attached to State’s communication of September 28, 2009.

way because (...) there's no other solution (...) if you don't mow them down, they'll mow you down."²¹ This group also engaged in the practice of recruiting children and adolescents.²²

67. Both the Office of the Prosecutor and the municipal ombudsman of Cocorná indicated that the Self-Defense Forces of Magdalena Medio had lists of individuals when the acts were committed, who they charged with being members of or collaborators with the guerrilla groups.²³ It was further noted that once someone appeared on their lists, "they take the victims into custody, they get all the information out of them they can and then they murder them." It was reported that members of the civilian population, who had no relationship with the guerrilla's, went missing and were murdered.²⁴ They were also accused of "uncountable selective homicides of peasants, left-wing political leaders and union leaders, as well as kidnappings and disappearances."²⁵

1.2. Aquila Task Force (FTA) created by the Army Command and the Presence of the National Army

68. The FTA was created on August 1, 1994, under Directive No. 0061 of the Army Command.²⁶ It was organized on August 6, 1994, by bringing together Counter Guerrilla Battalion No. 42 Héroes de Barbacoas, with a unit of the Ingeniero Pedro Nel Ospina Battalion of the 4th Brigade and a unit of the Bárbula Infantry Battalion of the 14th Brigade, and had jurisdiction over the municipalities of San Luis, San Francisco and Cocorná in the Department of Antioquia.²⁷ One officer from each brigade

²¹ Annex 6. Transcript of interview of Ramón Izasa of September 1997 by the Office of the Attorney General of the Republic, dated June 10, 1998. Annex to petitioners' communication of September 1, 2004.

²² Annex 1. Report No. 032. Sectional Directorate of the Technical Investigation Corps of the Office of the Attorney General of the Republic. Intelligence Report on self-defense groups, dated June 28, 1996. Annex to petitioners' communication dated October 5, 2000. Also see. Annex 7. Complaint filed by Arley de Jesús Arango with the 27th Military Criminal Investigative Magistrate's Court, dated April 30, 2010; Annex 7. Statement of Arley de Jesús Arango to the Administrative Department of Security, dated September 10, 1996. Case File No. 233 UNDH. Book No. 4. Compact Disk attached to the petitioners' communication of June 24, 2010.

²³ Annex 1. Report No. 032. Sectional Directorate of the Technical Investigation Corps of the Office of the Attorney General of the Republic. Intelligence Report on self-defense groups, dated June 28, 1996. Annex to petitioners' communication dated October 5, 2000. Annex 8. Letter of the Municipal Ombudsman of Cocorná to the Regional People's Ombudsman of Medellín, dated July 21, 1996. SIFUJ No. 752.065. Office of Special Prosecutor 53 assigned to the Rural Gaula [Anti-abduction and anti-extortion group] East Antioquia. Page 26. Compact Disk attached to the petitioners' communication dated June 24, 2010; Annex 9. Official Letter from the Municipal Human Rights Ombudsman of Cocorná, Edgar Alzate García, to the Regional People's Ombudsman of Medellín, dated October 21, 1996. Case File No. 233 UNDH [National Human Rights Unit]. Book No. 12. Pages 313-314. Compact disk attached to the petitioners' communication of June 24, 2010.

²⁴ Annex 1. Report No. 032. Sectional Directorate of the Technical Investigation Corps of the Office of the Attorney General of the Republic. Intelligence Report on self-defense groups, dated June 28, 1996. Annex to petitioners' communication dated October 5, 2000.

²⁵ Annex 1. Report No. 032. Sectional Directorate of the Technical Investigation Corps of the Office of the Attorney General of the Republic. Intelligence Report on self-defense groups, dated June 28, 1996. Annex to petitioners' communication dated October 5, 2000.

²⁶ Annex 14. Report No. FGN CTI SI GDH C4-C13 of the Technical Investigation Corps of the Office of the Attorney General of the Republic, dated February 1, 1999. Case File No. 233 UNDH. Book No. 3. Compact disk attached to the petitioners' communication of June 24, 2010.

²⁷ Annex 10. On-site judicial inspection visit to the National Army First Division conducted by the Office of the Attorney General, dated September 7, 1999. Case File No. 233 UNDH. Book No. 3A. Page 73. Compact disk attached to the petitioners' communication of June 24, 2010; Annex 11. On-site judicial inspection visit to the guard unit of the 14th Brigade as requested by the Human Rights Unit, dated February 26, 2001; Annex 11. Tactical Case No. BR14-BIBAR-S3-326 of the National

would rotate every three months in the task force command position. According to the statement of one of the FTA commanders, his position involved exerting “control directly” over the soldiers in that area,²⁸ and he was responsible staying up-to-date on all incidents and keeping a record of troop operations.²⁹ Its territorial jurisdiction covered the area between kilometer marker 59 and 137 of the Medellín-Bogotá highway,³⁰ including 5 kilometers in either direction off-highway.³¹

69. The objective of said group, the command post of which operated out of La Piñuela military base, municipality of Cocorná,³² was to design a strategic plan of control and security over the area as well as set up “an offensive combat detail” against the guerrilla forces.³³ With respect to the method of transportation used by the FTA, one of the military officers who had been an FTA commander claimed that “people would just come forward (...) and would offer to take the troops to the area where they could locate members of the subversive (...) gangs.”³⁴ Likewise, Major Carlos Guzmán, former FTA commander noted that the group did not have vehicles assigned to them and therefore they would travel in private vehicles with “the motorist’s prior consent.”³⁵

Army, signed by Coronel Carlos Suárez, dated June 10, 1996. Pages 26-34. Book No. 8. Compact disk attached to the petitioners’ communication of June 24, 2010.

²⁸ Annex 12. Statement of Carlos Alberto Guzmán Lombana to the Regional Office of Prosecutors, Investigation In-Take Section, dated March 26, 1998. Case File No. 233 UNDH [National Human Rights Unit]. Book No. 2. Pages 118-131. Compact disk attached to the petitioners’ communication of June 24, 2010.

²⁹ Annex 13. Statement of Carlos Arturo Suárez Bustamante to the National Human Rights Unit of the Office of the Attorney General of the Nation, dated September 27, 2002. Case File No. 233 UNDH. Book No. 9. Pages 125-130. Compact disk attached to the petitioners’ communication of June 24, 2010.

³⁰ Annex 14. Report: Term Situation Report of the Command of the Águila Task Force, which secures the Medellín-Bogotá highway, signed by the departing Commander of the Águila Task Force, Major Jairo Hurtado Olaya, dated October 31, 2005. Case File No. 233 UNDH. Book No. 3. Compact disk attached to the petitioners’ communication of June 24, 2010.

³¹ Annex 15. Initial statement on the facts in response to charges, given by Carlos Alberto Guzmán Lombana, File 233 UNDH, dated February 13, 2001. Annex to the petitioners’ submission received in the IACHR on February 1, 2007; Annex 11. Continuation of initial statement on facts of Carlos Guzmán Lombana, to the National Human Rights Unit, dated February 20, 2001. Case File No. 233 UNDH. Book No. 8. Compact disk attached to the petitioners’ communication of June 24, 2010.

³² Annex 16. Statement of Staff Sergeant Luis Fernando Guerrero Burbano to the National Office of Special Investigations of the Office of the Inspector General of the Nation, Antioquia Section, dated November 16, 1995. Preliminary investigation No. 009-151553. Annex to petitioners’ communication of October 5, 2000.

³³ Annex 17. Plan No. 000969/BR4-BIOSP-S3-375, which is issued by the Ingeniero Pedro Nel Ospina Battalion Command for control over the Medellín-Bogotá highway under the responsibility of the Águila Task Force for February 1 to April 30, 1995, dated February 1, 1995. Annex to petitioners’ communication of September 1, 2004; Annex 14. Official Letter No. BR4 from the Commander of the Fourth Brigade, Brigadier General Jorge Mora Rangel, of February 1995. Case File No. 233 UNDH. Book No. 3. Compact disk attached to the petitioners’ communication of June 24, 2010.

³⁴ Annex 13. Statement of Carlos Arturo Suárez Bustamante to the National Human Rights Unit of the Office of the Attorney General of the Nation, dated September 27, 2002. Case File No. 233 UNDH. Book No. 9. Pages 125-130. Compact disk attached to the petitioners’ communication of June 24, 2010.

³⁵ Annex 15. Carlos Alberto Guzmán Lombana’s initial statement on the facts in response to the charges, File 233 UNDH, dated February 13, 2001. Annex to the petitioners’ submission received in the IACHR on February 1, 2007; Annex 11. Continuation of initial statement on the facts of Carlos Guzmán Lombana, to the National Human Rights Unit, dated February 20, 2001. Case File No. 233 UNDH. Book No. 8. Compact disk attached to petitioners’ communication of June 24, 2010.

70. According to statements of some of its former commanders, tasks performed by the FTA included setting up fixed and roving check points along different parts of the highway,³⁶ as well as conducting and keeping up-to-date a census of the entire area under the jurisdiction of the FTA along the highway.³⁷ One former commander reported that the civilian population census began in late 1995. He claimed that it included a map with “the name of the inhabitants, the house they lived in [and] how many [people] were living in each house.”³⁸ Major Carlos Guzmán, former FTA commander, stated that the function of the census “was to exert control” over the inhabitants and their residences as well as to “control the great majority of critical areas.”³⁹

71. Several statements are on record citing FTA operations against the civilian population of the area. In this regard, in an official letter addressed to the Regional People’s Ombudsman of Medellín in October 1996, the municipal ombudsman of Cocorná reported that “in our municipality (...) no assaults have occurred by illegal armed groups.”⁴⁰ He also stated that the most serious aspect of the confrontations between the army and the guerrilla groups are the “acts of retaliation that the members of the military take out on the peasants of the region, with the justification that they provide support to the guerrillas.”⁴¹ The municipal ombudsman of Cocorná indicated that army operations “have been confined to the militarization of different areas with raids on peasant residences and threats to their residents by the members of the military.”⁴² Both this ombudsman and witnesses mentioned acts of torture, rape, illegal check points, among other abuses committed by the army against members of the civilian population, who were perceived as aiding the guerrillas.⁴³ One inhabitant of the region stated

³⁶ Annex 12. Statement of Carlos Alberto Guzmán Lombana to the Regional Office of Prosecutors, Investigation In-Take Section, dated March 26, 1998. Case File No. 233 UNDH [National Human Rights Unit]. Book No. 2. Pages 118-131. Compact disk attached to petitioners’ communication of June 24, 2010.

³⁷ Annex 18. Quarterly report No. 005003/BR4/BIOSP-S3-375 on the activities of the Águila Task Force, signed by the commander Coronel Gustavo Porras, dated October 31, 1995. Case File No. 233 UNDH. Book No. 6. Compact disk attached to petitioners’ communication of June 24, 2010.

³⁸ Annex 14. Statement of Jairo Hurtado Olaya to the Regional Prosecutor’s Office of the National Unit, dated July 17, 1998. Case File No. 233 UNDH. Book No. 3. Compact disk attached to petitioners’ communication of June 24, 2010; Annex 14. Statement of Hugo Alonso del Milagro Abondano Mican to the National Human Rights Unit, dated July 31, 1998. Case File No. 233 UNDH. Book No. 3. Compact disk attached to petitioners’ communication of June 24, 2010; Annex 14. Statement of Hugo Alonso del Milagro Abondano Mican to the National Human Rights Unit, dated August 4, 1998. Case File No. 233 UNDH. Book No. 3. Compact disk attached to petitioners’ communication of June 24, 2010.

³⁹ Annex 15. Initial Statement on the facts of Carlos Alberto Guzmán Lombana, File 233 UDH, dated February 13, 2001. Annex to petitioners’ submission received in the IACHR on February 1, 2007; Annex 11. Continuation of initial statement on the facts of Carlos Guzmán Lombana, to the National Human Rights Unit, dated February 20, 2001. Case File No. 233 UNDH. Book No. 8. Compact disk attached to petitioners’ communication of June 24, 2010.

⁴⁰ Annex 9. Official Letter from the Municipal Ombudsman of Cocorná, Edgar Alzate García, to the Regional People’s Ombudsman of Medellín, dated October 21, 1996. Case File No. 233 UNDH. Book No. 12. Pages 313-314. Compact disk attached to petitioners’ communication of June 24, 2010.

⁴¹ Annex 9. Official Letter from the Municipal Ombudsman of Cocorná, Edgar Alzate García, to the Regional People’s Ombudsman of Medellín, dated October 21, 1996. Case File No. 233 UNDH. Book No. 12. Pages 313-314. Compact disk attached to petitioners’ communication of June 24, 2010.

⁴² Annex 9. Official Letter from the Municipal Ombudsman of Cocorná, Edgar Alzate García, to the Regional People’s Ombudsman of Medellín, dated October 21, 1996. Case File No. 233 UNDH. Book No. 12. Pages 313-314. Compact disk attached to petitioners’ communication of June 24, 2010.

⁴³ Annex 19. Submission of Corporación Jurídica Libertad to the National Human Rights Unit of the Office of the Attorney General of the Nation, filed on April 2, 2007. Annex to petitioners’ communication of July 1, 1999; Annex 20. Statement of Luis Eleazar Gallego Castaño to the Municipal Ombudsman of El Carmen de Viboral, dated June 27, 1996. Annex

that the military would set up checkpoints and detain and beat civilians, including children, to get information from them about the location of the guerrilla members.⁴⁴ Another witness said that the army would hold people in custody accusing them of being members of the guerrilla forces.⁴⁵ According to the municipal ombudsman of El Carmen de Viboral, in 1996, members of the military forces would force peasants to retract their complaints of these incidents.⁴⁶

72. Major Carlos Guzmán Lombana took over the command post of the FTA on May 1, 1996.⁴⁷

73. Based on information gathered during a judicial inspection visit to a military brigade, the FTA was decommissioned in July 1996 “because the units making it up took on responsibilities in other sectors.”⁴⁸ A former FTA commander noted that the IV Brigade performed its task force duties up until December 1996 “even though the personnel patrolling the highways continued to be called the FTA.”⁴⁹

1.3. Link between Self-Defense Forces of Magdalena Medio and the National Army

74. According to an investigation of the Office of the Attorney General, the operations of the Self-Defense Forces of Magdalena Medio were conducted “with the support of members of the

to petitioners’ communication of July 1, 1999; Annex 21. Intelligence Report No. 164 of the Office of Information Analysis and Operational Support, Sectional Directorate of the Technical Investigation Corps of the Office of the Attorney General of the Nation, dated November 13, 2006. Case File No. 233 UNDH. Book No. 1. Compact disk attached to petitioners’ communication of June 24, 2010; Annex 7. Decision of the Commander of the 4th Brigade, Brigadier General Eduardo Herrera Verbel, dated May 19, 1999. Case File No. 233 UNDH. Book No. 4. Compact disk attached to petitioners’ communication of June 24, 2010; Annex 22. Official Letter PM-044 from the Municipal Ombudsman of El Carmen de Viboral, Heli Gómez Osorio, of June 5, 1996. Case File No. 008-10799-98. Office of the Disciplinary Matters Deputy Inspector for Human Rights. Public Ministry for Judicial Oversight. Page 14. Compact disk attached to petitioners’ communication of July 12, 2010; Annex 22. Official Letter PM-043 from the Municipal Ombudsman of El Carmen de Viboral, Heli Gómez Osorio, of May 28, 1996. Case File No. 008-10799-98. Office of the Disciplinary Matters Deputy Inspector for Human Rights. Public Ministry for Judicial Oversight. Page 16. Compact disk attached to petitioners’ communication of July 12, 2010.

⁴⁴ Annex 23. Statement of a woman resident of the village Vereda La Esperanza. Compact Disk of the Corporación Jurídica Libertad attached to petitioners’ submission of March 23, 2010.

⁴⁵ Annex 24. Statement of María de la Cruz Hernández de Gallego to the National Human Rights Unit of the Office of the Attorney General of the Nation, dated November 10, 2004. Case File No. 233 UNDH. Book No. 10. Pages 71-72. Compact disk attached to petitioners’ communication of June 24, 2010.

⁴⁶ Annex 22. Official Letter PM-045 from the Municipal Ombudsman of El Carmen de Viboral, Heli Gómez Osorio, of June 12, 1996. Office of the Disciplinary Matters Deputy Inspector for Human Rights. Public Ministry for Judicial Oversight. Page 3. Compact disk attached to petitioners’ communication of July 12, 2010.

⁴⁷ Annex 11. Confidential form No. 4 of the Curriculum Vitae Section of the Army Command in Bogotá. Page 169. Book No. 8. Compact disk attached to petitioners’ communication of June 24, 2010.

⁴⁸ Annex 18. Report on judicial inspection visit to the 4th Brigade of the Army based in Medellín, conducted by the National Human Rights Unit, dated November 21, 2000. Case File No. 233 UNDH. Book No. 6. Compact disk attached to petitioners’ communication of June 24, 2010.

⁴⁹ Annex 14. Statement of Hugo Alonso del Milagro Abondano Mican to the National Human Rights Unit, dated July 31, 1998; Case File No. 233 UNDH. Book No. 3. Compact disk attached to petitioners’ communication of June 24, 2010; Annex 14. Statement of Hugo Alonso del Milagro Abondano Mican to the National Human Rights Unit, dated August 4, 1998. Case File No. 233 UNDH. Book No. 3. Compact disk attached to petitioners’ communication of June 24, 2010.

public security forces.”⁵⁰ It was noted that “the paramilitary groups receive logistical support and acquiescence for their operations from some members of the National Army, National Police and, in some instances, from the DAS.”⁵¹ In fact, there accounts that they would wear police and army uniforms. It was also reported that members of the National Army “in some instances, directly participated with the paramilitary forces in committing atrocities and, in other instances, acted as accomplices or accessories.”⁵²

75. This information indicated that, in 1996, the Self-Defense Forces of Magdalena Medio “would freely circulate” along the Medellín-Bogotá highway and in contiguous rural areas “where the presence of the military forces and of the police corps is permanent and conspicuous.”⁵³ It was reported that said group would travel in trucks together with the military troops, flaunting their guns right in front of the local population.⁵⁴ One witness stated that the military forces also collaborated with the paramilitary group in the recruitment of children.⁵⁵ The IACHR notes that in one of his statements to the court, Ramón Isaza said that his son Omar and members of the Self-Defense Forces of Magdalena Medio “most of the time would always go around accompanied by the army.”⁵⁶ In fact, he stated that “he used to send Omar to spoke with the army.”⁵⁷

76. According to the statement of Sargent Luis Fernando Guerrero of Héroes del Barbacoas Battalion No. 42, who was assigned to La Piñuela military base, he witnessed on several occasions in 1995 the link between the National Army and the Self-Defense Forces of Magdalena Medio. As

⁵⁰ Annex 1. Report No. 032. Sectional Directorate Technical Investigation Corps. Office of Information Analysis and Technical Support of the Office of the Attorney General of the Republic. Intelligence Report on the self-defense groups, dated June 28, 1996. Annex to petitioners’ communication of October 5, 2000.

⁵¹ Annex 1. Report No. 032. Sectional Directorate Technical Investigation Corps. Office of Information Analysis and Technical Support of the Office of the Attorney General of the Republic. Intelligence Report on the self-defense groups, dated June 28, 1996. Annex to petitioners’ communication of October 5, 2000.

⁵² Annex 1. Report No. 032. Sectional Directorate Technical Investigation Corps. Office of Information Analysis and Technical Support of the Office of the Attorney General of the Republic. Intelligence Report on the self-defense groups, dated June 28, 1996. Annex to petitioners’ communication of October 5, 2000.

⁵³ Annex 1. Report No. 032. Sectional Directorate Technical Investigation Corps. Office of Information Analysis and Technical Support of the Office of the Attorney General of the Republic. Intelligence Report on the self-defense groups, dated June 28, 1996. Annex to petitioners’ communication of October 5, 2000.

⁵⁴ Annex 1. Report No. 032. Sectional Directorate Technical Investigation Corps. Office of Information Analysis and Technical Support of the Office of the Attorney General of the Republic. Intelligence Report on the self-defense groups, dated June 28, 1996. Annex to petitioners’ communication of October 5, 2000; Annex 21. Addendum to the complaint of Andrés Gallego Castaño to the Office of the Attorney General of the Nation, Cocorná, dated October 25, 1996. Case File No. 233 UNDH. Book No. 1. Compact disk attached to petitioners’ communication of June 24, 2010; Annex 12. Statement of Florinda de Jesús Gallego Hernández to the National Unit of Human Rights Prosecutors Offices, dated April 14, 1998. Case File No. 233 UNDH. Book No. 2. Pages 210-213. Compact disk attached to petitioners’ communication of June 24, 2010.

⁵⁵ Annex 22. Statement of Uriel Antonio Hernández Hernández to the Municipal Ombudsman of El Carmen de Viboral, dated July 31, 1996. Case File No. 008-10799-98. Office of the Disciplinary Matters Deputy Inspector for Human Rights. Public Ministry for Judicial Oversight. Pages 97-98. Compact disk attached to petitioners’ communication of July 12, 2010.

⁵⁶ Annex 3. Initial statement on the facts given by Ramón Isaza Arango, to the Office of the Special Prosecutor attached to the National Human Rights and International Humanitarian Law Unit, dated April 23, 2007. Annex to petitioners’ submission of May 7, 2007.

⁵⁷ Annex 3. Initial statement on the facts given by Ramón Isaza Arango, to the Office of the Special Prosecutor attached to the National Human Rights and International Humanitarian Law Unit, dated April 23, 2007. Annex to petitioners’ submission of May 7, 2007.

examples, he cited: i) conversations between members of the Magdalena Medio Self-Defense Forces and the military officer in charge of the FTA, known as “Major Hernández,” at La Piñuela military base; ii) the free access that the members of the Magdalena Medio Self-Defense Forces had between military checkpoints; iii) shared use of trucks to travel and conduct operations. He also stated that after meetings, his superior officer would give orders to conduct operations with them, specifically, “to make disappear or take out or capture guerilla members or informants.” He said that the military officers gave orders to the paramilitary members via radio and that at times the paramilitary forces acted as their escort. He claimed that the military troops “conducted ambushes” and would then move out to let the paramilitary forces move in.⁵⁸

77. The Commission has also heard the statement of Alonso Jesús Baquero Agudelo, who was one of the senior officers of the Self-Defense Forces of Magdalena Medio. He stated that “all of the paramilitary commanders have to coordinate with the Army or the Police, any association that they make in the area[,] the duty of each one (...) of them is to work in coordination with the Army, on military operations and exchange intelligence and information.” He claimed that “no paramilitary member can move or do operations without coordinating with the public security forces.” He also stated that “it was our job to do what the Army was not able to do, in other words the facility to do quicker operations than the Army, and that we could do massacres, which the Army could not.”⁵⁹

2. Situation of Vereda La Esperanza

78. The village Vereda La Esperanza is located along the Medellín-Bogotá highway and is one of the 54 villages of the municipality of El Carmen de Viboral, Antioquia.⁶⁰ La Esperanza abuts the municipality of Cocorná⁶¹ and is located a few meters from La Piñuela military base.⁶²

2.1 Military Presence in Vereda La Esperanza

79. According to the plan creating the FTA, different “hot spots” were identified, which are “areas where the enemy has an effect on accomplishing the mission.”⁶³ In this context, Vereda La

⁵⁸ Annex 16. Statement of Staff Sergeant Luis Fernando Guerrero Burbano to the National Directorate of Special Investigations of the Office of the Inspector General of the Nation, Antioquia Section, dated November 16, 1995. Initial statement No. 009-151553. Annex to petitioners’ communication of October 5, 2000.

⁵⁹ Annex 25. Statement of Alonso de Jesús Baquero Agudelo to the National Unit of Human Rights Prosecutor’s Offices, dated December 11, 1997. Annex to petitioners’ submission received by the IACHR on February 1, 2007.

⁶⁰ Annex 19. Submission of the Corporación Jurídica Libertad to the National Human Rights Unit of the Office of the Attorney General of the Nation, filed on April 2, 2007. Annex to petitioners’ communication of July 1, 1999; Annex 20. Statement of Luis Eleazar Gallego Castaño to the Office of the Municipal Ombudsman of El Carmen de Viboral, dated June 27, 1996. Annex to petitioners’ communication of July 1, 1999.

⁶¹ Annex 26. Report No. 047-2551-2560-032-FGN-DR-CTI-SIE, dated August 15, 1996. Annex to petitioners’ communication of October 5, 2000; Annex 27. Evaluation report on the visit to El Carmen de Viboral, conducted by the National Directorate of Special Investigations of the Office of the Inspector General of the Nation, Antioquia Section, dated July 17, 1996. Annex to petitioners’ communication of October 5, 2000.

⁶² Annex 21. Report No. 093 of the Office of information and Analysis of the Sectional Directorate of the Technical Investigation Corps of the Office of the Attorney General of the Nation, dated August 19, 1996. Book No. 1. Compact disk attached to petitioners’ communication of June 24, 2010.

⁶³ Annex 17. Plan No. 000969/BR4-BIOSP-S3-375, which is issued by the Ingeniero Pedro Nel Ospina Battalion Command for control over the Medellín-Bogotá highway under the responsibility of the Águila Task Force for February 1 to April 30, 1995, dated February 1, 1995. Annex to petitioners’ communication of September 1, 2004.

Esperanza was identified as a “hot spot” because it was “a sector where the Elkin Vásquez gang of the ELN has settled.”⁶⁴ Additionally, a military patrol report of February 3, 1995 concluded that Vereda La Esperanza was a “strategic spot” for operations that are carried out by the ELN, where active members and collaborators of the group “live on the farms that are used as look out points and caches.”⁶⁵ One FTA member said that Vereda La Esperanza “is a transit sector of FARC, ELN and illegal self-defense force bandits.”⁶⁶

80. According to a report of June 25, 1996, from General Alfonso Manosalva Flores, Commanding Officer of the 4th Brigade, during May and June of that year “the situation of public order along the Medellín-Bogotá highway was seriously disrupted by the increase of criminal activities of the Carlos Alirio Buitrago and Elkin González Narco-Terrorist gangs of the UC-ELN and the EPL,” and therefore as of June 27, 1996, the 4th Brigade was moved under the command of the FTA in order to conduct intelligence operations, combat offensives and “psychological operations” along the Medellín-Bogotá highway. He stated that two platoons were added to the FTA in order to “increase the unit’s combat power.”⁶⁷

81. Regarding the work of the FTA along the Bogotá-Medellín highway, army documents show that combat intelligence was gathered “with the few informants that we have” and with the intelligence work of the troops themselves.⁶⁸ A captain, who belonged to the FTA recounted that intelligence work was conducted “by gathering information through peasants who were on the highway.”⁶⁹ FTA operations in the area included: i) patrol offensives for searches and area military control in the jurisdiction of each platoon; ii) regional census updates; and iii) check points along the Bogotá-Medellín highway and alternate routs.⁷⁰

2.2. Paramilitary Presence in Vereda La Esperanza and Information on Links to the Army

82. A report of the Office of the Attorney General noted that the community in the area questioned the effectiveness of the public security forces, because the paramilitary forces would move about without any problem, despite the military base being right there and the presence of the National

⁶⁴ Annex 17. Plan No. 000969/BR4-BIOSP-S3-375, which is issued by the Ingeniero Pedro Nel Ospina Battalion Command for control over the Medellín-Bogotá highway under the responsibility of the Águila Task Force for February 1 to April 30, 1995, dated February 1, 1995. Annex to petitioners’ communication of September 1, 2004.

⁶⁵ Annex 28. Patrol report of Lieutenant Jaime Hernández Carrillo to the Ospina Battalion Commander, dated February 3, 1995. Annex to petitioners’ communication of September 1, 2004.

⁶⁶ Annex 12. Statement of National Army Major Carlos Mario Jaramillo Vargas, to the National Human Rights and International Humanitarian Law Unit, dated January 27, 2003. Case File No. 233 UNDH. Book No. 2. Compact disk attached to petitioners’ communication of June 24, 2010.

⁶⁷ Annex 7. Report No. DIV1-BR4-B3-PO-375 of the 4th Brigade Commander, Brigadier General Alfonso Manosalva Flores, dated June 25, 1996. Case File No. 233 UNDH. Book No. 4. Compact disk attached to petitioners’ communication of June 24, 2010.

⁶⁸ Annex 11. Tactical Case No. BR14-BIBAR-S3-326 of the National Army, signed by Coronel Carlos Suárez, dated June 10, 1996. Pages 26-34. Book No. 8. Compact disk attached to petitioners’ communication of June 24, 2010.

⁶⁹ Annex 11. Statement of César Augusto Cárdenas González to the Office of the Special Prosecutor, Bogotá, dated February 19, 2001. Book No. 8. Compact disk attached to petitioners’ communication of June 24, 2010.

⁷⁰ Annex 11. Tactical Case No. BR14-BIBAR-S3-326 of the National Army, signed by Coronel Carlos Suárez, dated June 10, 1996. Pages 26-34. Book No. 8. Compact disk attached to petitioners’ communication of June 24, 2010.

Army on the highway.⁷¹ The Attorney General's Office also noted that the Self-Defense Forces of Magdalena Medio "have dominated the region of Magdalena Medio for a long time and the collaboration that they have had with the army units and ranchers is no secret."⁷²

83. Additionally, several witness and family members of the alleged victims have mentioned the links between the Armed Forces and the Self-Defense Forces of Magdalena Medio. It was noted that despite permanent military control, the paramilitary group "comes in without much difficulty"⁷³ and "passes by as if they were brothers." It was reported that usually where there is a group of soldiers, there are three to four paramilitary members⁷⁴ and they share the same trucks.⁷⁵ In fact, according to another witness, in a conversation he had with two military members, they confessed to him that the paramilitary forces were on La Piñuela military base and that "they went around with them."⁷⁶ One witness claimed that a FTA soldier told him that sometimes they were commanded to vacate the base and when they would do so "the paramilitary forces "would enter immediately."⁷⁷ Another witness asserted that when the army patrolled the village, "we would be treated very badly telling us all that we were guerrillas, that that the paramilitary forces were coming then to finish off the whole area."⁷⁸

84. Lastly, Ramón Isaza indicated in his initial statement on the facts in response to the charges that his son Omar, who was one of the persons in charge of a group of the Self-Defense Forces of Magdalena Medio, had close ties to the military troops, who at the time of the facts of the instant case were located on La Piñuela military base, especially to "Commander Manosalva and Major Hernández."⁷⁹

3. Events occurring from June to December 1996 in Vereda La Esperanza

⁷¹ Annex 1. Report No. 032. Sectional Directorate, Technical Investigation Corps. Office of Information Analysis and Technical Support of the Office of the Attorney General of the Republic. Intelligence Report on the self-defense groups, dated June 28, 1996. Annex to petitioners' communication of October 5, 2000.

⁷² Annex 21. Report No. 093 of the Office of Information and Analysis of the Sectional Directorate of the Technical Investigation Corps of the Office of the Attorney General of the Nation, dated August 19, 1996. Book No. 1. Compact disk attached to petitioners' communication of June 24, 2010.

⁷³ Annex 29. Statement of Florinda de Jesús Gallego Hernández to the Office of the Attorney General of the Nation, dated November 28, 2000. Annex to petitioners' communication of September 1, 2004.

⁷⁴ Annex 30. Statement of José Eliseo Gallego Quintero to the Office of the Municipal Ombudsman of El Carmen de Viboral, dated July 19, 1996. Annex to petitioners' communication of July 1, 1999.

⁷⁵ Annex 31. Complaint filed by Florinda de Jesús Gallego Hernández with the Office of the Municipal Ombudsman of the Municipality of Cocorná, dated July 11, 1996. Annex to petitioners' communication of July 1, 1999.

⁷⁶ Annex 23. Statement of a woman resident of Vereda La Esperanza. Compact disk of Corporación Jurídica Libertad attached to petitioners' submission of March 23, 2010.

⁷⁷ Annex 12. Statement of María Rocío Cardona to the National Human Rights Unit of the Regional Office of the Attorney General, dated April 14, 1998. Case File No. 233 UNDH. Book No. 2. Pages 192-194. Compact disk attached to petitioners' communication of June 24, 2010.

⁷⁸ Annex 24. Statement of Jhon Fredy Castaño Gallego to the National Human Rights Unit of the Office of the Attorney General of the Nation, dated November 8, 2004. Case File No. 233 UNDH. Book No. 10. Pages 81-85. Compact disk attached to petitioners' communication of June 24, 2010.

⁷⁹ Annex 32. Addendum to the initial statement on the facts of Ramón Isaza Arango to the National Human Rights and International Humanitarian Law Unit, dated October 15, 2008. Annex to petitioners' submission received on November 21, 2008.

85. In his initial statement on the facts in response to the charges, Ramón Isaza noted that members of the military forces asked his son Omar to conduct joint operations against EPL members and collaborators. He claimed that a meeting was held in Medellín, where his son Omar received a list of at least 78 persons, who lived along the Medellín-Bogotá highway. Ramón Isaza indicated that he had seen this list and that, even though he felt it was not sufficient to launch the operation, his son Omar said to him that “he was going to execute it because [he knew] with whom he was going to be working.” He testified that “from that point on, Omar and *el costeño* [aka Fredy] and Omar’s boys and Army people worked together.” He added that Omar, along with members of the Self-Defense Forces of Magdalena Medio, were lodged at the La Piñuela military base at least twenty days prior to conducting the operations. He stated that the paramilitary forces received “government issue camouflage” and at least fifteen military men were used to provide support to the operations.⁸⁰

86. A witness testified that in early June 1996 “the army had gone from house to house finding out a lot of stuff before these incidents began to happen (...); they would find out who collaborates with the guerrilla forces (...); and they would ask why [the guerrillas] come here a lot.”⁸¹ One witness also noted that at the time of the facts of the case, FTA members “spent a lot of time in the company of the paramilitary members.”⁸² Witnesses and family members of the alleged victims stated that at the time when the disappearances were committed “the military troops were (...) watching everything.”⁸³

3.1 Disappearance of Aníbal de Jesús Castaño Gallego and the child Oscar Zuluaga Marulanda on June 21, 1996

87. Aníbal Castaño Gallego was the owner of a community store in Vereda La Esperanza. One witness testified that because of his line of business, the military forces would accuse him of selling supplies to the members of the guerrilla forces.⁸⁴ According to the testimony, on June 21, 1996, members of the National Army went to the community store where Aníbal de Jesús Castaño Gallego was present.⁸⁵ It was noted that they said to him that “they were going to finish off all stores so that the guerrilla forces would not have anywhere to purchase anything” and that “he would have to leave it all

⁸⁰ Annex 3. Initial Statement on the facts of Ramón Isaza Arango responding to the charges, given to the Office of the Special Prosecutor assigned to the National Human Rights and International Humanitarian Law Unit, dated April 23, 2007. Annex to petitioners’ submission of May 7, 2007.

⁸¹ Annex 21. Complaint filed by Andrés Antonio Gallego Castaño with the Municipal Criminal Court of Cocorná, dated July 11, 1996. Case File No. 233 UNDH. Book No. 1. Compact disk attached to petitioners’ communication of June 24, 2010.

⁸² Annex 24. Statement of Jhon Fredy Castaño Gallego to the National Human Rights Unit of the Office of the Attorney General of the Nation, dated November 8, 2004. Case File No. 233 UNDH. Book No. 10. Pages 81-85. Compact disk attached to petitioners’ communication of June 24, 2010.

⁸³ Annex 33. Statement of Juan Carlos Gallego Hernández to the Office of the Municipal Ombudsman of Cocorná, dated June 30, 1996. Annex to petitioners’ communication of July 1, 1999.

⁸⁴ Annex 24. Statement of Diosdado Quintero Giraldo to the National Human Rights Unit of the Office of the Attorney General of the Republic, dated November 8, 2004. Case File No. 233 UNDH. Book No. 10. Pages 64-70. Compact disk attached to petitioners’ communication of June 24, 2010.

⁸⁵ Annex 22. Statement of Florinda de Jesús Gallego Hernández to the Office of the Municipal Ombudsman of El Carmen de Viboral, dated July 19, 1996. Case File No. 008-10799-98. Office of the Disciplinary Matters Deputy Inspector for Human Rights. Public Ministry for Judicial Oversight (Ministerio Público). Pages 50-54. Compact Disk attached to petitioners’ communication of July 12, 2010.

behind.”⁸⁶ He also stated that a member of the National Army even told him: “[if you continue] with the guerrillas (...) the next time we come and if we find something, we will not be leaving anything, we will finish it all off and with everyone equally.”⁸⁷

88. According to statements, that same day at 7:30 p.m., armed men dressed as civilians arrived in Vereda La Esperanza,⁸⁸ entered the store and took into custody Aníbal Castaño and Oscar Hemel Zuluaga Marulanda, who was 15 years old at the time⁸⁹ and had just arrived from Barranquilla that same day.⁹⁰ One statement indicated that the armed men left with these two individuals in SUVs.⁹¹ One witness stated that when these incidents took place “members of the military were around watching everything.”⁹²

89. Some witnesses claimed that Aníbal Castaño and Oscar Zuluaga were taken to La Piñuela military base.⁹³ Mr. Castaño’s wife stated that the SUVs used by these people “we have seen go up with soldiers [riding in them].”⁹⁴ According to one statement, the wife and brother of Mr. Castaño went twice to the military base, but they were prevented from entering.⁹⁵

⁸⁶ Annex 22. Statement of Florinda de Jesús Gallego Hernández to the Office of the Municipal Ombudsman of El Carmen de Viboral, dated July 19, 1996. Case File No. 008-10799-98. Office of the Disciplinary Matters Deputy Inspector for Human Rights. Public Ministry for Judicial Oversight (Ministerio Público). Pages 50-54. Compact Disk attached to petitioners’ communication of July 12, 2010.

⁸⁷ Annex 33. Statement of Juan Carlos Gallego Hernández to the Office of the Municipal Ombudsman of Cocorná, dated June 30, 1996. Annex to petitioners’ communication of July 1, 1999.

⁸⁸ Annex 19. Submission of the Corporación Jurídica Libertad to the National Human Rights Unit of the Office of the Attorney General of the Nation, filed on April 2, 2007. Annex to petitioners’ communication of July 1, 1999; Annex 24. Statement of María de la Cruz Hernández de Gallego to the National Human Rights Unit of the Office of the Attorney General of the Nation, dated November 8, 2004. Case File No. 233 UNDH. Book No. 10. Pages 71-72. Compact Disk attached to petitioners’ communication of June 24, 2010.

⁸⁹ Annex 19. Submission of the Corporación Jurídica Libertad to the National Human Rights Unit of the Office of the Attorney General of the Nation, filed on April 2, 2007. Annex to petitioners’ communication of July 1, 1999; Annex 24. Statement of María de la Cruz Hernández de Gallego to the National Human Rights Unit of the Office of the Attorney General of the Nation, dated November 8, 2004. Case File No. 233 UNDH. Book No. 10. Pages 71-72. Compact Disk attached to petitioners’ communication of June 24, 2010.

⁹⁰ Annex 23. Statement of a woman resident of Vereda La Esperanza. Compact disk of Corporación Jurídica Libertad attached to petitioners’ submission of March 23, 2010.

⁹¹ Annex 24. Statement of María de la Cruz Hernández de Gallego to the National Human Rights Unit of the Office of the Attorney General of the Nation, dated November 8, 2004. Case File No. 233 UNDH. Book No. 10. Pages 71-72. Compact Disk attached to petitioners’ communication of June 24, 2010.

⁹² Annex 33. Statement of Juan Carlos Gallego Hernández to the Office of the Municipal Ombudsman of Cocorná, dated June 30, 1996. Annex to petitioners’ communication of July 1, 1999.

⁹³ Annex 29. Statement of Florinda de Jesús Gallego Hernández to the Office of the Attorney General of the Nation, dated November 28, 2000. Annex to petitioners’ communication of September 1, 2004; Annex 33. Statement of Juan Carlos Gallego Hernández to the Office of the Municipal Ombudsman of Cocorná, dated June 30, 1996. Annex to petitioners’ communication of July 1, 1999.

⁹⁴ Annex 22. Statement of María Obeyda Gallego Castaño to the Office of the Municipal Ombudsman of El Carmen de Viboral, dated July 31, 1996. Case File No. 008-10799-98. Office of the Disciplinary Matters Deputy Inspector for Human Rights. Public Ministry for Judicial Oversight (Ministerio Público). Pages 88-90. Compact Disk attached to petitioners’ communication of July 12, 2010.

⁹⁵ Annex 29. Statement of Florinda de Jesús Gallego Hernández to the Office of the Attorney General of the Nation, dated November 28, 2000. Annex to petitioners’ communication of September 1, 2004.

90. As yet, the fate and whereabouts of Aníbal Castaño and Oscar Zuluaga are unknown.

3.2 Disappearance of children Juan Crisóstomo Cardona Quintero and Miguel Ancízar Cardona Quintero, and of alias Fredy and his wife on June 22, 1996

91. According to testimony, on June 22, 1996, at 5:00 a.m., a group of armed civilians entered the home of Dioscelina Quintero, who was sleeping at the time.⁹⁶ This group took into custody her children, 12-year-old Juan Crisóstomo Cardona Quintero and 15-year-old Miguel Ancízar Cardona Quintero⁹⁷. A testimony indicates that while they were being taken away, the Cardona Quintero brothers began to cry and were tied up.⁹⁸

92. The witnesses mentioned that the group of armed civilians entered an adjoining home and took into custody a person identified as Fredy along with his wife, leaving his two-month-old baby son Andrés Suarez Cordero behind.⁹⁹ According to several witness statements, alias Fredy, his wife and child, had arrived in the village two weeks earlier.¹⁰⁰

93. Several witnesses noticed it when these individuals were put into SUVs¹⁰¹ which, according to accounts, headed toward the La Piñuela military base.¹⁰² One woman witness claimed that a few days later, she recognized a police officer and a military man, who had participated in these

⁹⁶ Annex 24. Statement of María de la Cruz Hernández de Gallego to the National Human Rights Unit of the Office of the Attorney General of the Nation, dated November 8, 2004. Case File No. 233 UNDH. Book No. 10. Pages 71-72. Compact Disk attached to petitioners' communication of June 24, 2010; Annex 24. Statement of Elvia Rosa Fernández de Cardona to the National Human Rights Unit of the Office of the Attorney General of the Nation, dated October 12, 2004. Case File No. 233 UNDH. Book No. 10. Compact Disk attached to petitioners' communication of June 24, 2010.

⁹⁷ Annex 19. Submission of the Corporación Jurídica Libertad to the National Human Rights Unit of the Office of the Attorney General of the Nation, filed on April 2, 2007. Annex to petitioners' communication of July 1, 1999.

⁹⁸ Annex 23. Statement of a woman resident of Vereda La Esperanza. Compact disk of Corporación Jurídica Libertad attached to petitioners' submission of March 23, 2010.

⁹⁹ Annex 34. Statement with identity withheld, code VB-1, to the National Human Rights Unit of the Office of the Attorney General of the Nation, dated April 14, 1998. Annex to petitioners' submission of September 1, 2004; Annex 24. Statement of Elvia Rosa Fernández de Cardona to the National Human Rights Unit of the Office of the Attorney General of the Nation, dated October 12, 2004. Case File No. 233 UNDH. Book No. 10. Compact Disk attached to petitioners' communication of June 24, 2010.

¹⁰⁰ Annex 33. Statement of Juan Carlos Gallego Hernández to the Office of the Municipal Ombudsman of Cocorná, dated June 30, 1996. Annex to petitioners' communication of July 1, 1999; Annex 24. Statement of Diosdado Quintero Giraldo to the National Human Rights Unit of the Office of the Attorney General of the Republic, dated November 8, 2004. Case File No. 233 UNDH. Book No. 10. Pages 64-70. Compact disk attached to petitioners' communication of June 24, 2010; Annex 35. Statement of Elvia Rosa Fernández Cardona to the Municipal Civil Court of El Carmen de Viboral, dated October 12, 2004. Annex to petitioners' submission of March 2006.

¹⁰¹ Annex 35. Statement of Elvia Rosa Fernández Cardona to the Municipal Civil Court of El Carmen de Viboral, dated October 12, 2004. Annex to petitioners' submission of March 2006; Annex 34. Statement with identity withheld, code VB-1, to the National Human Rights Unit of the Office of the Attorney General of the Nation, dated April 14, 1998. Annex to petitioners' submission of September 1, 2004.

¹⁰² Annex 34. Statement with identity withheld, code VB-1, to the National Human Rights Unit of the Office of the Attorney General of the Nation, dated April 14, 1998. Annex to petitioners' submission of September 1, 2004.

incidents.¹⁰³ Another witness stated that a soldier, “who was standing at the entryway to Cocorná,” was with the paramilitary members when the alleged victims were taken into custody.¹⁰⁴

94. As yet, the fate or whereabouts of Juan Crisóstomo Cardona Quintero and Miguel Ancízar Cardona Quintero.

95. With respect to the man known by the alias Fredy, the IACHR case file contains the record of an interview conducted in September 1997 of said individual, wherein he stated that when he moved to Vereda La Esperanza “they took him [because] he told them that he would collaborate with them in anything and he started to work with them.”¹⁰⁵ In a statement of April 2007, Ramón Isaza testified that alias Fredy acted as a guide for the Self-Defense Forces of Magdalena Medio and the National Army in order to identify and make the alleged victims disappear. He noted that said individual and his wife were members of the EPL and settled in Vereda La Esperanza a few weeks prior to the beginning of the military operations. He claimed that both of them were taken into custody by members of the National Army and Major Hernández “handed them over to Omar to operate with him, because they knew who was who (...). The Major did not want to take them so he could hand them over to the law.” He added that Major Hernández told Omar to not kill alias Fredy because he would show him the houses and the people linked to the guerrilla forces while he “promised to turn over the entire structure that there was of the guerrillas provided that they did not do anything to him or his wife.”¹⁰⁶ He further testified that he continued working in the Self-Defense Forces of Magdalena Medio until mid or late 2005 and that after that time “he never appeared” when he was accused of rustling some head of cattle.¹⁰⁷

96. As of the present date, his fate or whereabouts are unknown.

97. With regard to the wife of the man know by the alias Fredy, Ramón Isaza testified that she would have been murdered by members of the EPL while trying to get her son back, who was left behind in Vereda La Esperanza.

98. As of the present date, her fate or whereabouts are unknown.

3.3. Disappearance of María Irene Gallego Quintero on June 26, 1996

¹⁰³ Annex 23. Statement of a woman resident of Vereda La Esperanza. Compact disk of Corporación Jurídica Libertad attached to petitioners’ submission of March 23, 2010.

¹⁰⁴ Annex 35. Statement of Elvia Rosa Fernández Cardona to the Municipal Civil Court of El Carmen de Viboral, dated October 12, 2004. Annex to petitioners’ submission of March 2006.

¹⁰⁵ Annex 36. Statement of alias Fredy. Compact disk of Corporación Jurídica Libertad attached to petitioners’ submission of March 23, 2010.

¹⁰⁶ Annex 3. Initial statement of Ramón Isaza Arango, to the Office of the Special Prosecutor assigned to the National Human Rights and International Humanitarian Law Unit, dated April 23, 2007. Annex to petitioners’ submission of May 7, 2007.

¹⁰⁷ Annex 3. Initial statement on the facts in response to charges given by of Ramón Isaza Arango, to the Office of the Special Prosecutor assigned to the National Human Rights and International Humanitarian Law Unit, dated April 23, 2007. Annex to petitioners’ submission of May 7, 2007.

99. On June 25, 1996, Operation Lightening Bolt was launched by the FTA, under the command of Major Carlos Guzmán Lombana.¹⁰⁸ Major Carlos Guzmán Lombana decided to initiate an operation due to the alleged eight kidnappings committed by the Carlos Alirio Buitrago gang of ELN that took place in the area days ago.¹⁰⁹ According to the operation orders, the objective was to conduct search and military control operations in the municipality of El Carmen de Viboral in order to “capture and/or take out the bandits of the Carlos Alirio Buitrago gang of the ELN.”¹¹⁰ In said document, the order was given that “in the event of armed resistance legitimate self-defense would be used.” According to the account of Major Guzmán, the operation was launched on June 25, 1996 at 9:00 p.m, when two platoons of 23 soldiers each departed from La Piñuela military base.¹¹¹ Based on the testimony of Capitain César Cárdenas, a member of the FTA in charge of ground operations, the platoons departed at 10 or 11:00 p.m.¹¹²

100. According to testimony of the inhabitants of Vereda La Esperanza, on June 26, 1996, at 2:00 a.m, FTA soldiers arrived in the residence of Mr. José Eliseo Gallego Quintero, who was with his wife María Engracia Hernández Quintero and their son Juan Carlos Gallego Hernández.¹¹³ It was noted that the soldiers, who identified themselves as “counter-guerrilla soldiers,” knocked at the door, ordered them to open and began to shoot into the house and, therefore, they dropped to the floor.¹¹⁴ Mr. Gallego Quintero claimed that one of the soldiers said “don’t shoot any more whatever is there is

¹⁰⁸ Annex 11. Radio messages of Major Carlos Guzmán Lombana, dated June 24, 1996. Book No. 8. Compact disk attached to petitioners’ communication of June 24, 2010; Annex 37. Document from Major Carlos Guzmán Lombana, Commanding Officer of the Águila Task Force. Operation Order No. 005 “Rayo” [‘Lightening Bolt’]. Copy No. 002, of June 1996. Annex to petitioners’ submission of September 1, 2004.

¹⁰⁹ Annex 11. Radio messages of Major Carlos Guzmán Lombana, dated June 24, 1996. Book No. 8. Compact disk attached to petitioners’ communication of June 24, 2010.

¹¹⁰ Annex 37. Document from Major Carlos Guzmán Lombana, Commanding Officer of the Águila Task Force. Operation Order No. 005 “Rayo” [‘Lightening Bolt’]. Copy No. 002, of June 1996. Annex to petitioners’ submission of September 1, 2004.

¹¹¹ Annex 15. Initial statement on the facts given by Carlos Alberto Guzmán Lombana in response to charges, File 233 UDH, dated February 13, 2001. Annex to petitioners’ submission received at the IACHR on February 1, 2007; Annex 11. Continuation of initial statement of Carlos Guzmán Lombana, to the National Human Rights Unit, dated February 20, 2001. Case File No. 233 UNDH. Book No. 8. Compact disk attached to petitioners’ communication of June 24, 2010.

¹¹² Annex 11. Statement of César Augusto Cárdenas Gonzáles to the Office of the Special Prosecutor, Bogotá, dated February 19, 2001. Case File No. 233 UNDH. Book No. 8. Compact disk attached to petitioners’ communication of June 24, 2010.

¹¹³ Annex 33. Statement of Juan Carlos Gallego Hernández to the Office of the Municipal Ombudsman of Cocorná, dated June 30, 1996. Annex to petitioners’ communication of July 1, 1999; Annex 30. Statement of José Eliseo Gallego Quintero to the Office of the Municipal Ombudsman of El Carmen de Viboral, dated July 19, 1996. Annex to petitioners’ communication of July 1, 1999; Annex 38. Statement of Jhon Fredy Castaño Gallego to the National Human Rights Unit of the Office of the Attorney General of the Nation, dated April 15, 1998. Annex to petitioners’ submission received in the IACHR on February 1, 2007.

¹¹⁴ Annex 30. Statement of José Eliseo Gallego Quintero to the Office of the Municipal Ombudsman of El Carmen de Viboral, dated July 19, 1996. Annex to petitioners’ communication of July 1, 1999; Annex 33. Statement of Juan Carlos Gallego Hernández to the Office of the Municipal Ombudsman of Cocorná, dated June 30, 1996. Annex to petitioners’ communication of July 1, 1999; Annex 12. Statement of María Engracia Hernández Quintero to the National Human Rights Unit of the Regional Office of the Attorney General, dated April 15, 1998. Case File No. 233 UNDH. Book No. 2. Compact disk attached to petitioners’ communication of June 24, 2010; Annex 39. Statement of Florinda de Jesús Gallego Hernández to the National Human Rights Unit, dated April 14, 1998. Case File No. 233 UNDH. Book No. 5. Pages 210-213. Compact disk attached to petitioners’ communication of June 24, 2010.

dead.”¹¹⁵ He added that the soldiers entered the residence and said to them: “we thought that there was a camp in here”¹¹⁶ and “thank ‘em (sic) for not being killed, this is a miracle.”¹¹⁷ Witnesses testified that the military men accused them of being collaborators with the insurgency.¹¹⁸ According to their account, when Juan Carlos Gallego complained to the military officers, he was kicked in the head.¹¹⁹ The noted that when he said he was going to file a suit against them, they responded: “go right ahead (...) because you are going to lose.”¹²⁰ It was also claimed that the soldiers told Juan Carlos Gallego that “he was in their sight,” that they have to “give him a thrashing” and “to not be shocked if he popped up dead.”¹²¹ As is described below (see *infra* paras. 108-111), Juan Carlos Gallego disappeared 10 days after these incidents took place.

101. The witnesses testified that an individual was accompanying the members of the military forces, wearing a hood tied with a piece of rope and an army uniform.¹²² They recounted that the military took the hood off him and they recognized that it was alias Fredy, who the soldiers called “three-hooves” [*tres patas*], whose disappearance was described above (see *supra* paras. 92-93).¹²³ According to the statements, in the morning the soldiers took out canned food marked with the name of

¹¹⁵ Annex 21. Complaint filed by Eliseo Gallego Quintero with the Office of the Attorney General of the Nation, Local Unit of Cocorná, dated July 8, 1996. Case File No. 233 UNDH. Book No. 1. Compact disk attached to petitioners’ communication of June 24, 2010.

¹¹⁶ Annex 30. Statement of José Eliseo Gallego Quintero to the Office of the Municipal Ombudsman of El Carmen de Viboral, dated July 19, 1996. Annex to petitioners’ communication of July 1, 1999.

¹¹⁷ Annex 21. Complaint filed by Eliseo Gallego Quintero with the Office of the Attorney General of the Nation, Local Unit of Cocorná, dated July 8, 1996. Case File No. 233 UNDH. Book No. 1. Compact disk attached to petitioners’ communication of June 24, 2010.

¹¹⁸ Annex 30. Statement of José Eliseo Gallego Quintero to the Office of the Municipal Ombudsman of El Carmen de Viboral, dated July 19, 1996. Annex to petitioners’ communication of July 1, 1999; Annex 33. Statement of Juan Carlos Gallego Hernández to the Office of the Municipal Ombudsman of Cocorná, dated June 30, 1996. Annex to petitioners’ communication of July 1, 1999.

¹¹⁹ Annex 30. Statement of José Eliseo Gallego Quintero to the Office of the Municipal Ombudsman of El Carmen de Viboral, dated July 19, 1996. Annex to petitioners’ communication of July 1, 1999; Annex 33. Statement of Juan Carlos Gallego Hernández to the Office of the Municipal Ombudsman of Cocorná, dated June 30, 1996. Annex to petitioners’ communication of July 1, 1999.

¹²⁰ Annex 21. Statement of Florinda de Jesús Gallego Hernández to the Office of the Attorney General of the Nation, dated October 25, 1996. Case File No. 233 UNDH. Book No. 1. Pages 90-92. Compact disk attached to petitioners’ communication of June 24, 2010.

¹²¹ Annex 24. Statement of Jhon Fredy Castaño Gallego to the National Human Rights Unit of the Office of the Attorney General of the Nation, dated November 10, 2004. Case File No. 233 UNDH. Book No. 10. Pages 81-85. Compact disk attached to petitioners’ communication of June 24, 2010; Annex 40. Statement of the sister of Juan Carlos Gallego Hernández. Compact disk of Corporación Jurídica Libertad attached to petitioners’ submission of March 23, 2010.

¹²² Annex 19. Submission of the Corporación Jurídica Libertad to the National Human Rights Unit of the Office of the Attorney General of the Nation, filed on April 2, 2007. Annex to petitioners’ communication of July 1, 1999; Annex 33. Statement of Juan Carlos Gallego Hernández to the Office of the Municipal Ombudsman of Cocorná, dated June 30, 1996. Annex to petitioners’ communication of July 1, 1999.

¹²³ Annex 19. Submission of the Corporación Jurídica Libertad to the National Human Rights Unit of the Office of the Attorney General of the Nation, filed on April 2, 2007. Annex to petitioners’ communication of July 1, 1999; Annex 33. Statement of Juan Carlos Gallego Hernández to the Office of the Municipal Ombudsman of Cocorná, dated June 30, 1996. Annex to petitioners’ communication of July 1, 1999.

the National Army and the Aquila Group of the 4th Brigade.¹²⁴ They also noted that at around 7:00 a.m. four soldiers left the residence of the Gallego Hernández family and headed to Mr. Pedro Pablo Muñoz's house,¹²⁵ where they found María Irene Gallego Quintero.¹²⁶ They claimed that the soldiers found a shot gun at that location¹²⁷ and that they used the weapon to fire shots close to María Irene in order to scare her,¹²⁸ while telling her she was "a Goddamn guerrilla member."¹²⁹ They also testified that a soldier said "don't kill her, this gal is still very useful to us, let's take her away."¹³⁰ According to testimony, the soldiers returned to the home of Mr. Eliseo Gallego Quintero, but now with María Irene,¹³¹ ordering the family to remain inside.¹³² The witnesses stated that they could see – through the bullet holes – how they undressed María and put an army uniform, boots and a green ammo bag on her.¹³³ The testimonial account is that at about 4:00 p.m., the soldiers left with María Irene,¹³⁴ who was shouting "don't take me, I don't have anything."¹³⁵ They indicated that the soldiers told them to not file

¹²⁴ Annex 39. Statement of Florinda de Jesús Gallego Hernández to the Office of the Attorney General of the Nation, dated April 14, 1998. Case File No. 233 UNDH. Book No. 5. Pages 210-213. Compact disk attached to petitioners' communication of June 24, 2010; Annex 38. Statement of Jhon Fredy Castaño Gallego to the National Human Rights Unit of the Office of the Attorney General of the Nation, dated April 15, 1998. Annex to petitioners' submission received at IACHR on February 1, 2007.

¹²⁵ Annex 29. Statement of Florinda de Jesús Gallego Hernández to the Office of the Attorney General of the Nation, dated November 28, 2000. Annex to petitioners' communication of September 1, 2004.

¹²⁶ Annex 19. Submission of the Corporación Jurídica Libertad to the National Human Rights Unit of the Office of the Attorney General of the Nation, filed on April 2, 2007. Annex to petitioners' communication of July 1, 1999; Annex 30. Statement of José Eliseo Gallego Quintero to the Office of the Municipal Ombudsman of El Carmen de Viboral, dated July 19, 1996. Annex to petitioners' communication of July 1, 1999.

¹²⁷ Annex 41. Statement of Carmen Muñoz Castaño to Municipal Police and Traffic Inspectors of Cocorná, dated August 4, 1996. Annex to petitioners' communication of July 1, 1999.

¹²⁸ Annex 41. Statement of Carmen Muñoz Castaño to Municipal Police and Traffic Inspectors of Cocorná, dated August 4, 1996. Annex to petitioners' communication of July 1, 1999; Annex 30. Statement of José Eliseo Gallego Quintero to the Office of the Municipal Ombudsman of El Carmen de Viboral, dated July 19, 1996. Annex to petitioners' communication of July 1, 1999.

¹²⁹ Annex 29. Statement of Florinda de Jesús Gallego Hernández to the Office of the Attorney General of the Nation, dated November 28, 2000. Annex to petitioners' communication of September 1, 2004.

¹³⁰ Annex 29. Statement of Florinda de Jesús Gallego Hernández to the Office of the Attorney General of the Nation, dated November 28, 2000. Annex to petitioners' communication of September 1, 2004.

¹³¹ Annex 30. Statement of José Eliseo Gallego Quintero to the Office of the Municipal Ombudsman of El Carmen de Viboral, dated July 19, 1996. Annex to petitioners' communication of July 1, 1999.

¹³² Annex 24. Statement of Jhon Fredy Castaño Gallego to the National Human Rights Unit of the Office of the Attorney General of the Nation, dated November 10, 2004. Case File No. 233 UNDH. Book No. 10. Pages 81-85. Compact disk attached to petitioners' communication of June 24, 2010.

¹³³ Annex 29. Statement of Florinda de Jesús Gallego Hernández to the Office of the Attorney General of the Nation, dated November 28, 2000. Annex to petitioners' communication of September 1, 2004.

¹³⁴ Annex 12. Statement of María Engracia Hernández Quintero to the National Human Rights Unit of the Regional Office of the Attorney General, dated April 15, 1998. Case File No. 233 UNDH. Book No. 2. Compact disk attached to petitioners' communication of June 24, 2010; Annex 29. Statement of Florinda de Jesús Gallego Hernández to the Office of the Attorney General of the Nation, dated November 28, 2000. Annex to petitioners' communication of September 1, 2004.

¹³⁵ Annex 29. Statement of Florinda de Jesús Gallego Hernández to the Office of the Attorney General of the Nation, dated November 28, 2000. Annex to petitioners' communication of September 1, 2004.

any complaints and to keep “their mouths nice and shut because whoever opened their mouth is a goner.”¹³⁶

102. Next, the IACHR summarizes the account of Major Guzmán and other members of the military forces regarding these incidents. Mayor Guzmán testified that “in the early morning hours” they arrived in an area that “they couldn’t say or determine,” where there was a house.¹³⁷ Captain Cárdenas indicated that it was located in “the general area of Cocorná [and] he does not remember the site.”¹³⁸ In a military report, it is stated that the troops “arrived in a residence where the order was given to surround it so it could then be searched.”¹³⁹ It is claimed that unidentified individuals at said premises began to shoot and therefore a confrontation ensued. Captain Cárdenas noted that “visibility was very poor because of the fog” and that he was wounded as a result of the gun fight and therefore he had to leave and walk down the Medellín-Bogotá highway and he arrived in the hospital of El Santuario to be treated.¹⁴⁰ It must be mentioned that a military report indicates that there is no record of these wounds¹⁴¹ and that the San Juan de Dios del Santuario Hospital has said that after reviewing its files, it found no record of medical treatment provided to this individual.¹⁴² When Major Guzmán was asked about the events which took place at the residence of José Gallego Quintero, he replied that “the army did not go to this house” and that “perhaps the people or family members give this information under threat or bribes from the guerrillas.”¹⁴³

103. Regarding the situation of María Irene Gallego Quintero, Major Guzmán admitted that she was found in a house located along the upper leg of the highway and was taken from there by

¹³⁶ Annex 30. Statement of José Eliseo Gallego Quintero to the Office of the Municipal Ombudsman of El Carmen de Viboral, dated July 19, 1996. Annex to petitioners’ communication of July 1, 1999; Annex 21. Statement of María Florinda Gallego Hernández to the Office of the Attorney General of the Nation, Cocorná, dated October 25, 1996. Case File No. 233 UNDH. Book No. 1. Pages 90-92. Compact disk attached to petitioners’ communication of June 24, 2010.

¹³⁷ Annex 15. Initial statement on the facts of Carlos Alberto Guzmán Lombana in response to charges, File 233 UDH, dated February 13, 2001. Annex to petitioners’ submission received at the IACHR on February 1, 2007; Annex 11. Continuation of initial statement on the facts given by Carlos Guzmán Lombana, to the National Human Rights Unit, dated February 20, 2001. Case File No. 233 UNDH. Book No. 8. Compact disk attached to petitioners’ communication of June 24, 2010.

¹³⁸ Annex 11. Statement of César Augusto Cárdenas Gonzáles to the Office of the Special Prosecutor, Bogotá, dated February 19, 2001. Case File No. 233 UNDH. Book No. 8. Compact disk attached to petitioners’ communication of June 24, 2010.

¹³⁹ Annex 7. Administrative report on injuries, No. 051, signed by Major Hugo Abondano Mikan, dated November 1, 2006. Case File No. 233 UNDH. Book No. 4. Compact disk attached to petitioners’ communication of June 24, 2010.

¹⁴⁰ Annex 11. Statement of César Augusto Cárdenas Gonzáles to the Office of the Special Prosecutor, Bogotá, dated February 19, 2001. Case File No. 233 UNDH. Book No. 8. Compact disk attached to petitioners’ communication of June 24, 2010.

¹⁴¹ Annex 14. Report No. FGN CTI SI GDH C4-C13 of the Technical Investigation Corps of the Office of the Attorney General of the Nation, dated February 1, 1999. Case File No. 233 UNDH. Book No. 3. Compact disk attached to petitioners’ communication of June 24, 2010.

¹⁴² Annex 70. Submission of the medical coordinator of San Juan de Dios Hospital, Luis Henry Baquero, addressed to Liliana Uribe Tirado, dated November 14, 2008. Annex to petitioners’ submission of November 30, 2009.

¹⁴³ Annex 15. Initial statement on the facts in response to the charges, given by Carlos Alberto Guzmán Lombana, File 233 UDH, dated February 13, 2001. Annex to petitioners’ submission received at the IACHR on February 1, 2007; Annex 11. Continuation of initial statement on the facts, by Carlos Guzmán Lombana, to the National Human Rights Unit, dated February 20, 2001. Case File No. 233 UNDH. Book No. 8. Compact disk attached to petitioners’ communication of June 24, 2010.

members of the military.¹⁴⁴ The Commission notes that a military report indicates that during said operation “an alleged subversive woman of the Carlos Alirio Buitrago gang of the ELN was captured.”¹⁴⁵ Major Guzmán said that in the afternoon of June 26 and [June] 27 “she stayed with the troops.”¹⁴⁶ He stated that on June 28, between noon and 3:00 p.m., he went with María Irene Gallego Quintero to the Office of the Attorney General. Major Guzmán rationalized delaying for more than two days to take María Irene to the Attorney General’s Office claiming that “the operation could not [...] be concluded immediately in order to take her down from the area where the subversion was;” because “there was no way to get helicopter support in because the weather did not allow it;” and because “the troops were not ever going to split up.”¹⁴⁷ The record shows that when he was asked about the documents to corroborate his statements, he first answered that “it happened two years ago and I do not know where those documents may have gone to.”¹⁴⁸ Subsequently, he stated that all FTA documents were archived at the Bárbula Battalion.¹⁴⁹

104. According to a statement made by Deputy Prosecuting Attorney No. 29, on June 28, 1996, at 5 p.m. Major Guzmán appeared at the Prosecutorial Office Unit of El Santuario, Antioquia, accompanied by María Irene Gallego Quintero.¹⁵⁰ The Deputy Prosecutors reported that Major Guzmán explained to her what had happened but did not submit “a report in support of the procedure he followed, or any specific charges and it was not clear why he was appearing in the Office of the Attorney General and why he was bringing in the young woman accompanying him.” Major Guzmán admitted that he did not submit any document because “he thought that turning her over to the Office of the

¹⁴⁴ Annex 15. Initial statement on the facts in response to the charges, given by Carlos Alberto Guzmán Lombana, File 233 UDH, dated February 13, 2001. Annex to petitioners’ submission received at the IACHR on February 1, 2007; Annex 11. Continuation of initial statement on the facts, given by Carlos Guzmán Lombana, to the National Human Rights Unit, dated February 20, 2001. Case File No. 233 UNDH. Book No. 8. Compact disk attached to petitioners’ communication of June 24, 2010.

¹⁴⁵ Annex 11. Report No. 2095/BR14-BIBAR-S3-375 addressed to the Commanding Officer of Infantry Battalion No. 3 Bárbula, dated June 28, 1996. Case File No. 233 UNDH. Book No. 8. Compact disk attached to petitioners’ communication of June 24, 2010.

¹⁴⁶ Annex 15. Initial statement on the facts in response to the charges, given by Carlos Alberto Guzmán Lombana, File 233 UDH, dated February 13, 2001. Annex to petitioners’ submission received at the IACHR on February 1, 2007; Annex 11. Continuation of initial statement on the facts, given by Carlos Guzmán Lombana, to the National Human Rights Unit, dated February 20, 2001. Case File No. 233 UNDH. Book No. 8. Compact disk attached to petitioners’ communication of June 24, 2010.

¹⁴⁷ Annex 15. Initial statement on the facts in response to the charges, given by Carlos Alberto Guzmán Lombana, File 233 UDH, dated February 13, 2001. Annex to petitioners’ submission received at the IACHR on February 1, 2007; Annex 11. Continuation of initial statement on the facts, given by Carlos Guzmán Lombana, to the National Human Rights Unit, dated February 20, 2001. Case File No. 233 UNDH. Book No. 8. Compact disk attached to petitioners’ communication of June 24, 2010.

¹⁴⁸ Annex 12. Statement on the facts in response to the charges, given by Carlos Alberto Guzmán Lombana to the Regional Directorate of Prosecutor’s Offices, Investigation Intake Section, dated March 26, 1998. Book No. 2. Pages 118-134. Compact disk attached to petitioners’ communication of June 24, 2010.

¹⁴⁹ Annex 15. Initial statement on the facts in response to the charges, given by Carlos Alberto Guzmán Lombana, File 233 UDH, dated February 13, 2001. Annex to petitioners’ submission received at the IACHR on February 1, 2007; Annex 11. Continuation of initial statement on the facts, given by Carlos Guzmán Lombana, to the National Human Rights Unit, dated February 20, 2001. Case File No. 233 UNDH. Book No. 8. Compact disk attached to petitioners’ communication of June 24, 2010.

¹⁵⁰ Annex 42. Official Letter No. 812-29 from Assistant State’s Attorney 29, Olga María Ruiz Angarita, to the National Human Rights Unit, dated April 1, 1997. Annex to petitioners’ submission received at the IACHR on February 1, 2007.

Attorney General was sufficient.”¹⁵¹ The Prosecuting Attorney stated that she made a record of the person taken into custody and a report was drawn up with the accounts of both individuals. This document was not made available to the Commission. She said that “at that time the minimum requirements established under the rules of criminal procedure to bring a criminal charge against her were not met” and that “there were no grounds to hold her in custody.” She also stated that she was unaware of “the direction in which she headed and by whom she was accompanied.”¹⁵²

105. One witness claimed that members of the military forces told him that María Irene was taken to La Piñuela military base to be interrogated by the Army Major and was then handed over to the paramilitary forces, who would have killed her.¹⁵³ Another person stated that he saw María Irene on July 15, 1996 in the company of soldiers on the Medellín-Bogotá highway.¹⁵⁴ One witness testified that a few days after the incidents, she saw Irene with soldiers in a store, who had her as a “beggar.”¹⁵⁵

106. According to the statement of Florinda de Jesús Gallego Hernández, on January 29, 1997, soldiers of the FTA came to her house with a photograph of María Irene Gallego dressed in civilian clothes and asked her if she was a member of the guerrilla forces, to which she responded that the army had taken her away and that she had not belonged to any guerrilla group. She claimed that they told her that they would investigate the situation. She also stated that she berated them for the “very serious mistakes that they had committed with the paramilitary forces.”¹⁵⁶

107. As of the present date, the fate or the whereabouts of María Irene Gallego Quintero are still unknown.

3.4. Disappearance of Juan Carlos Gallego Hernández and Jaime Alonso Mejía Quintero; and the death of Javier Giraldo Giraldo on July, 1996

3.4.1. Case of Juan Carlos Gallego

108. Mr. Juan Carlos Gallego was a public health care worker of Vereda La Esperanza.¹⁵⁷ The Commission has testimonies indicating that Juan Carlos Gallego was the target of threats, harassment

¹⁵¹ Annex 15. Initial statement on the facts in response to the charges, given by Carlos Alberto Guzmán Lombana, File 233 UDH, dated February 13, 2001. Annex to petitioners’ submission received at the IACHR on February 1, 2007.

¹⁵² Annex 42. Official Letter No. 812-29 from Assistant State’s Attorney 29, Olga María Ruiz Angarita, to the National Human Rights Unit, dated April 1, 1997. Annex to petitioners’ submission received at the IACHR on February 1, 2007.

¹⁵³ Annex 43. Statement of Gabriel de Jesús Cardona Fernández to the Office of the Municipal Ombudsman of El Carmen de Viboral, dated December 30, 1996. Annex to petitioners’ communication of September 1, 2004.

¹⁵⁴ Annex 24. Statement of Jhon Fredy Castaño Gallego to the National Human Rights Unit of the Office of the Attorney General of the Nation, dated November 8, 2004. Case File No. 233 UNDH. Book No. 10. Pages 81-85. Compact disk attached to petitioners’ communication of June 24, 2010.

¹⁵⁵ Annex 23. Statement of a woman resident of Vereda La Esperanza. Compact disk of Corporación Jurídica Libertad attached to petitioners’ submission of March 23, 2010.

¹⁵⁶ Annex 29. Statement of Florinda de Jesús Gallego Hernández to the Office of the Attorney General of the Nation, dated November 28, 2000. Annex to petitioners’ communication of September 1, 2004.

¹⁵⁷ Annex 33. Statement of Juan Carlos Gallego Hernández to the Office of the Municipal Ombudsman of Cocorná, dated June 30, 1996. Annex to petitioners’ communication of July 1, 1999; Annex 44. Complaint filed by Florinda de Jesús Gallego Hernández with the municipal criminal court of Cocorná, dated July 11, 1996. Annex to petitioners’ communication of

and intimidation by the National Army the days prior to his disappearance. On June 25, 1996, while he was walking along the Medellín-Bogotá highway, after attending a baby delivering training course, FTA members approached him and asked for his identity papers.¹⁵⁸ It was noted that after showing them his papers and being identified as a health care worker of the village, they said to each other “that son of a bitch is a guerrilla collaborator.” According to the testimony, Juan Carlos Gallego denied these accusations and, in response, the members of this group said to him “don’t worry you big son of a bitch, when we conduct a good sweep you son of a bitch and you all just might be going down,”¹⁵⁹ as well as saying to him: “wait and you’ll see one of these days we’ll do a round up.”¹⁶⁰ Another witness stated that a few days later, members of the army arrived during a festival that was being held in the village, that Juan Carlos Gallego was attending and that, because he was wearing a black shirt, the soldiers called him “guerrilla.”¹⁶¹ In addition to the above-cited incidents, on June 26, 1996, witnesses testified that Juan Carlos Gallego received death threats from the FTA at his and his parent’s residence (see *supra* para. 100).

109. According to residents of the village, on July 7, 1996, a community meeting was held in Vereda La Esperanza¹⁶² and at the end of the meeting, at approximately 3:30 p.m, SUVs arrived and a group of armed men got out and said: “if you move you’re dead.”¹⁶³ Witness testified that two armed hooded men approached Juan Carlos Gallego, they asked him if he was a member of the guerrilla forces and they said: “this son of a bitch is the one we need,”¹⁶⁴ they grabbed him by the neck and the shirt

July 1, 1999; Annex 45. Statement of Javier Enrique Fox Quintana to the Office of the Municipal Ombudsman of El Carmen de Viboral, dated July 8, 1996. Annex to petitioners’ communication of June 27, 2000.

¹⁵⁸ Annex 29. Statement of Florinda de Jesús Gallego Hernández to the Office of the Attorney General of the Nation, dated November 28, 2000. Annex to petitioners’ communication of September 1, 2004.

¹⁵⁹ Annex 29. Statement of Florinda de Jesús Gallego Hernández to the Office of the Attorney General of the Nation, dated November 28, 2000. Annex to petitioners’ communication of September 1, 2004.

¹⁶⁰ Annex 12. Statement of Héctor Manuel González Ramírez to the National Human Rights Unit of the Regional Office of the Attorney General, dated April 15, 1998. Case File No. 233 UNDH. Book No. 2. Compact disk attached to petitioners’ communication of June 24, 2010; Annex 40. Statement of the sister of Juan Carlos Gallego Hernández. Compact disk of Corporación Jurídica Libertad attached to petitioners’ submission of March 23, 2010.

¹⁶¹ Annex 12. Statement of María Engracia Hernández Quintero to the National Human Rights Unit of the Regional Office of the Attorney General, dated April 15, 1998. Case File No. 233 UNDH. Book No. 2. Compact disk attached to petitioners’ communication of June 24, 2010.

¹⁶² Annex 19. Submission of the Corporación Jurídica Libertad to the National Human Rights Unit of the Office of the Attorney General of the Nation, filed on April 2, 2007. Annex to petitioners’ communication of July 1, 1999; Annex 30. Statement of José Eliseo Gallego Quintero to the Office of the Municipal Ombudsman of El Carmen de Viboral, dated July 19, 1996. Annex to petitioners’ communication of July 1, 1999.

¹⁶³ Annex 46. Complaint filed by Florinda de Jesús Gallego Hernández with the municipal criminal court of Cocorná, dated July 11, 1996. Annex to petitioners’ communication of July 1, 1999; Annex 12. Statement of María Engracia Hernández Quintero to the National Human Rights Unit of the Regional Office of the Attorney General, dated April 15, 1998. Case File No. 233 UNDH. Book No. 2. Compact disk attached to petitioners’ communication of June 24, 2010; Annex 24. Statement of Pablo Antonio Quintero to the National Human Rights Unit of the Office of the Attorney General of the Nation, dated April 5, 2005. Case File No. 233 UNDH. Book No. 10. Pages 190-193. Compact disk attached to petitioners’ communication of June 24, 2010.

¹⁶⁴ Annex 24. Statement of Pablo Antonio Quintero to the National Human Rights Unit of the Office of the Attorney General of the Nation, dated April 5, 2005. Case File No. 233 UNDH. Book No. 10. Pages 190-193. Compact disk attached to petitioners’ communication of June 24, 2010; Annex 40. Statement of the sister of Juan Carlos Gallego Hernández. Compact disk of Corporación Jurídica Libertad attached to petitioners’ submission of March 23, 2010.

and shoved him into the SUV.¹⁶⁵ It was noted that Juan Carlos asked what to do with his bicycle and they responded: “you won’t be needing it any more.”¹⁶⁶

110. On July 9, 1996 – in the context of the incident described below (see *infra* para. 117) - Florinda de Jesús Gallego Hernández asked the armed individuals about her brother Juan Carlos Gallego, to which they responded that: “relax, he would be coming back.”¹⁶⁷ Subsequently, on January 29, 1997, FTA soldiers went to her house and she confronted them on this score. On that occasion, they told her that “they were keeping an eye on that case because there had been an error.”¹⁶⁸

111. Thus far, the fate or whereabouts of Juan Carlos Gallego are still unknown.

3.4.2. Case of Jaime Alonso Mejía Quintero

112. Witnesses testified that on July 7, 1996, Jaime Alonso Mejía Quintero was at a billiards parlor, next to the Medellín-Bogotá highway¹⁶⁹ and that the same group of individuals who had taken Juan Carlos Gallego away brought him out of said premises and put him into one of their SUVs.¹⁷⁰ His sister stated that the army members would usually approached him, call him a guerrilla member and tell him that they would take him away.¹⁷¹

113. As of the present date, the fate or whereabouts of Jaime Alonso Mejía Quintero is unknown.

3.4.3. Case of Javier Giraldo Giraldo

¹⁶⁵ Annex 24. Statement of Pablo Antonio Quintero to the National Human Rights Unit of the Office of the Attorney General of the Nation, dated April 5, 2005. Case File No. 233 UNDH. Book No. 10. Pages 190-193. Compact disk attached to petitioners’ communication of June 24, 2010.

¹⁶⁶ Annex 24. Statement of Pablo Antonio Quintero to the National Human Rights Unit of the Office of the Attorney General of the Nation, dated April 5, 2005. Case File No. 233 UNDH. Book No. 10. Pages 190-193. Compact disk attached to petitioners’ communication of June 24, 2010.

¹⁶⁷ Annex 44. Complaint filed by Florinda de Jesús Gallego Hernández with the municipal criminal court of Cocorná, dated July 11, 1996. Annex to petitioners’ communication of July 1, 1999.

¹⁶⁸ Annex 29. Statement of Florinda de Jesús Gallego Hernández to the Office of the Attorney General of the Nation, dated November 28, 2000. Annex to petitioners’ communication of September 1, 2004.

¹⁶⁹ Annex 19. Submission of the Corporación Jurídica Libertad to the National Human Rights Unit of the Office of the Attorney General of the Nation, filed on April 2, 2007. Annex to petitioners’ communication of July 1, 1999; Annex 30. Statement of José Eliseo Gallego Quintero to the Office of the Municipal Ombudsman of El Carmen de Viboral, dated July 19, 1996. Annex to petitioners’ communication of July 1, 1999.

¹⁷⁰ Annex 24. Statement of Diosdado Quintero Giraldo to the National Human Rights Unit of the Office of the Attorney General of the Republic, dated November 8, 2004. Case File No. 233 UNDH. Book No. 10. Pages 64-70. Compact disk attached to petitioners’ communication of June 24, 2010; Annex 24. Statement of María de la Cruz Hernández de Gallego to the National Human Rights Unit of the Office of the Attorney General of the Nation, dated November 8, 2004. Case File No. 233 UNDH. Book No. 10. Pages 71-72. Compact disk attached to petitioners’ communication of June 24, 2010; Annex 24. Statement of Pablo Antonio Quintero to the National Human Rights Unit of the Office of the Attorney General of the Nation, dated April 5, 2005. Case File No. 233 UNDH. Book No. 10. Pages 190-193. Compact disk attached to petitioners’ communication of June 24, 2010.

¹⁷¹ Annex 24. Statement of Olivia del Socorro Mejía to the National Human Rights Unit of the Office of the Attorney General of the Nation, dated November 10, 2004. Case File No. 233 UNDH. Book No. 10. Pages 88-90. Compact disk attached to petitioners’ communication of June 24, 2010.

114. According to his wife, on July 7, 1996 in the afternoon, Javier Giraldo was on the side of the Medellín-Bogotá highway teaching a friend to drive a motorcycle.¹⁷² Witnesses said that the same SUVs in which Juan Carlos Gallego and Jaime Alonso Mejía were taken away, pulled up next to him, they asked his name and told him to get in, which he refused to do.¹⁷³ According to the testimony, Javier Giraldo attempted to get away but one of the vehicles ran over the tire of his motorcycle and his foot¹⁷⁴, they said to him: “running a lot, you son of a bitch”, and they made him get into one of the vehicles.¹⁷⁵ Another witness claimed that once he was in the SUV, he tried to get away and was beaten.¹⁷⁶ Witnesses said that he was shot and his body was left along the highway.¹⁷⁷ One woman witness said that “everyone saw when they killed him on the highway but nobody did anything out of fear that the same thing would happen to them.”¹⁷⁸ Yet another witness saw “like four holes” in Javier Giraldo’s back.¹⁷⁹ Another witness said that around 17 individuals took part in these events and that Juan Carlos Gallego and Jaime Alonso Mejía were taken away in the SUVs.¹⁸⁰

¹⁷² Annex 47. Statement of Nelly Soto de Castaño to the Office of the Attorney General of the Nation, dated August 12, 1996. Annex to petitioners’ submission received at the IACHR on February 1, 2007.

¹⁷³ Annex 47. Statement of Nelly Soto de Castaño to the Office of the Attorney General of the Nation, dated August 12, 1996. Annex to petitioners’ submission received at the IACHR on February 1, 2007; Annex 24. Statement of Pablo Antonio Quintero to the National Human Rights Unit of the Office of the Attorney General of the Nation, dated April 5, 2005. Case File No. 233 UNDH. Book No. 10. Pages 190-193. Compact disk attached to petitioners’ communication of June 24, 2010.

¹⁷⁴ Annex 47. Statement of Nelly Soto de Castaño to the Office of the Attorney General of the Nation, dated August 12, 1996. Annex to petitioners’ submission received at the IACHR on February 1, 2007; Annex 24. Statement of Pablo Antonio Quintero to the National Human Rights Unit of the Office of the Attorney General of the Nation, dated April 5, 2005. Case File No. 233 UNDH. Book No. 10. Pages 190-193. Compact disk attached to petitioners’ communication of June 24, 2010.

¹⁷⁵ Annex 48. Statement of Carlos Arturo Estrada Ramírez to the National Human Rights Unit of the Office of the Attorney General of the Nation, dated April 15, 1998. Annex to petitioners’ submission received at the IACHR on February 1, 2007.

¹⁷⁶ Annex 24. Statement of María de la Cruz Hernández de Gallego to the National Human Rights Unit of the Office of the Attorney General of the Nation, dated November 8, 2004. Case File No. 233 UNDH. Book No. 10. Pages 71-72. Compact disk attached to petitioners’ communication of June 24, 2010.

¹⁷⁷ Annex 24. Statement of María de la Cruz Hernández de Gallego to the National Human Rights Unit of the Office of the Attorney General of the Nation, dated November 8, 2004. Case File No. 233 UNDH. Book No. 10. Pages 71-72. Compact disk attached to petitioners’ communication of June 24, 2010.

¹⁷⁸ Annex 24. Statement of María de la Cruz Hernández de Gallego to the National Human Rights Unit of the Office of the Attorney General of the Nation, dated November 8, 2004. Case File No. 233 UNDH. Book No. 10. Pages 71-72. Compact disk attached to petitioners’ communication of June 24, 2010; Annex 19. Submission of the Corporación Jurídica Libertad to the National Human Rights Unit of the Office of the Attorney General of the Nation, filed on April 2, 2007. Annex to petitioners’ communication of July 1, 1999; Annex 30. Statement of José Eliseo Gallego Quintero to the Office of the Municipal Ombudsman of El Carmen de Viboral, dated July 19, 1996. Annex to petitioners’ communication of July 1, 1999.

¹⁷⁹ Annex 24. Statement of Jhon Fredy Castaño Gallego to the National Human Rights Unit of the Office of the Attorney General of the Nation, dated November 10, 2004. Case File No. 233 UNDH. Book No. 10. Pages 81-85. Compact disk attached to petitioners’ communication of June 24, 2010.

¹⁸⁰ Annex 48. Statement of Carlos Arturo Estrada Ramírez to the National Human Rights Unit of the Office of the Attorney General of the Nation, dated April 15, 1998. Annex to petitioners’ submission received at the IACHR on February 1, 2007.

115. The same day as these acts, the police inspector of the municipality of Cocorná issued a report on the removal of the body of Mr. Giraldo.¹⁸¹ It noted that the body was found in the village of San Vicente on the left side of the Medellín-Bogotá highway. The autopsy performed on the body indicated that it presented injuries and holes in the back, shoulder, chest, neck, lip, chin and right ribs.¹⁸² Later, the Sole Notary of Cocorná issued an official certificate of death.¹⁸³

3.5. Disappearances of Hernando de Jesús Castaño Castaño, child Andrés Suárez Cordero – son of alias Fredy, Octavio de Jesús Gallego Hernández and Orlando de Jesús Muñoz Castaño on July 9, 1996

3.5.1. Case of Jesús Castaño Castaño and child Andrés Suarez Cordero

116. Witnesses stated that after the disappearance of the man known by the alias Fredy and his wife on June 22, 1996 (see *supra* paras. 92-93), their son Andrés Suárez Cordero was first cared for by several different people of Vereda La Esperanza, and then ended up being cared for by Florinda Gallego Hernández because “nobody else wanted to take responsibility for him.”¹⁸⁴ One witness claimed that the army soldiers were asking about the child.¹⁸⁵

117. According to testimonies, on July 9, 1996, at 3:30 p.m, a group of about five to nine armed individuals dressed as civilians entered the residence of Mrs. Florinda Gallego Hernández.¹⁸⁶ She said they asked her, as well as her husband Jesús Castaño Castaño, about Andrés Suárez Cordero.¹⁸⁷ Additionally, she testified that they told her “guerrilla members live” at said house and that “all guerrilla collaborators have to be done away with.” She claimed that after telling them that the baby was with

¹⁸¹ Annex 49. Report No. 084, File No. 21.005 of the Regional Directorate of the Technical Investigation Corps of the Office of the Attorney General of the Nation, dated November 27, 1996. Annex to petitioners’ submission received at the IACHR on February 1, 2007.

¹⁸² Annex 49. Report No. 084, File No. 21.005 of the Regional Directorate of the Technical Investigation Corps of the Office of the Attorney General of the Nation, dated November 27, 1996. Annex to petitioners’ submission received at the IACHR on February 1, 2007; Annex 13. Judicial decision of the National Human Rights and International Humanitarian Law Unit of the Office of the Attorney General of the Nation, signed by Special Prosecutor Lilia Hernández Ramírez, dated April 30, 2003. Case File No. 233 UNDH. Book No. 9. Pages 251-302. Compact disk attached to petitioners’ communication of June 24, 2010.

¹⁸³ Annex 13. Judicial decision of the National Human Rights and International Humanitarian Law Unit of the Office of the Attorney General of the Nation, signed by Special Prosecutor Lilia Hernández Ramírez, dated April 30, 2003. Case File No. 233 UNDH. Book No. 9. Pages 251-302. Compact disk attached to petitioners’ communication of June 24, 2010.

¹⁸⁴ Annex 33. Statement of Juan Carlos Gallego Hernández to the Office of the Municipal Ombudsman of Cocorná, dated June 30, 1996. Annex to petitioners’ communication of July 1, 1999; Annex 44. Complaint filed by Florinda de Jesús Gallego Hernández with the municipal criminal court of Cocorná, dated July 11, 1996. Annex to petitioners’ communication of July 1, 1999; Annex 40. Statement of the sister of Juan Carlos Gallego Hernández. Compact disk of Corporación Jurídica Libertad attached to petitioners’ submission of March 23, 2010.

¹⁸⁵ Annex 21. Addendum to the complaint of Andrés Gallego Castaño filed with the Office of the Attorney General of the Nation, Cocorná, dated October 25, 1996. Case File No. 233 UNDH. Book No. 1. Compact disk attached to petitioners’ communication of June 24, 2010.

¹⁸⁶ Annex 19. Submission of the Corporación Jurídica Libertad to the National Human Rights Unit of the Office of the Attorney General of the Nation, filed on April 2, 2007. Annex to petitioners’ communication of July 1, 1999; Annex 44. Statement of José Eliseo Gallego Quintero to the Office of the Municipal Ombudsman of El Carmen de Viboral, dated July 19, 1996. Annex to petitioners’ communication of July 1, 1999.

¹⁸⁷ Annex 44. Complaint filed by Florinda de Jesús Gallego Hernández with the municipal criminal court of Cocorná, dated July 11, 1996. Annex to petitioners’ communication of July 1, 1999.

them, the individuals communicated by radio-telephone and said “we now have the target.” Mrs. Gallego Hernández testified that one of these individuals told her that they were holding the father of Andrés Suárez Cordero.¹⁸⁸ Independently, in his initial statement on the facts in response to the charges, Ramón Isaza testified that his son Omar and a group of members of the Self-Defense Forces of Magdalena Medio went to the village to recover the son of alias Fredy.¹⁸⁹ Mrs. Gallego Hernández said that they asked her to pack baby clothes, grabbed the baby and ordered Mr. Hernando de Jesús Castaño Castaño to come with them.¹⁹⁰ One witness testified that he saw a group of men take Mr. Castaño Castaño away, who was tied up by the waist.¹⁹¹

118. As of the present date, the fate or whereabouts of Jesús Castaño Castaño are unknown.

119. The IACHR has information on Andrés Suárez Cordero provided at the public confession hearing of Ramón Isaza Rosero on October 16, 2008 under the Justice and Peace Law. At said hearing, Ramón Isaza stated that Andrés Suárez Cordero was taken to live with his daughter, Idelfa Isaza. He announced that he would continue living with her and that proceedings had begun for the adoption of the child, who would now be named Bryan Andrés Balbuena Isaza, as processed before the family court defender of Puerto Berrío. He also claimed that workers of Family Welfare had visited Idelfa Isaza and that, after speaking with the principal and teaches of the school that the child was attending, had drafted a document for Andrés Suarez to remain under the custody of Mrs. Isaza.¹⁹²

3.5.2. Case of Orlando de Jesús Muñoz Castaño

120. Based on testimony, on July 9, 1996, Orlando de Jesús Muñoz was on his way to a farm that he managed.¹⁹³ It was said that the same SUVs that took Jesús Castaño Castaño and Andrés Suárez Cordero approached him and had him get into one of the vehicles.¹⁹⁴

¹⁸⁸ Annex 44. Complaint filed by Florinda de Jesús Gallego Hernández with the municipal criminal court of Cocorná, dated July 11, 1996. Annex to petitioners’ communication of July 1, 1999.

¹⁸⁹ Annex 3. Initial statement on the facts in response to the charges, given by Ramón Isaza Arango to the Office of the Special Prosecutor attached to the National Human Rights and International Humanitarian Law Unit, dated April 23, 2007. Annex to the submission of the petitioners of May 7, 2007.

¹⁹⁰ Annex 44. Complaint filed by Florinda de Jesús Gallego Hernández with the municipal criminal court of Cocorná, dated July 11, 1996. Annex to petitioners’ communication of July 1, 1999.

¹⁹¹ Annex 24. Statement of Pablo Antonio Quintero to the National Human Rights Unit of the Office of the Attorney General of the Nation, dated April 5, 2005. Case File No. 233 UNDH. Book No. 10. Pages 190-193. Compact disk attached to petitioners’ communication of June 24, 2010.

¹⁹² Annex 5. Public Confession Hearing [under the Justice and Peace Law] of Ramón Isaza, dated October 16, 2008. Compact disk attached to State’s communication of September 25, 2009.

¹⁹³ Annex 24. Statement of Carlos Muños Muñoz to the National Human Rights Unit of the Office of the Attorney General of the Nation, dated November 10, 2004. Case File No. 233 UNDH. Book No. 10. Pages 94-98. Compact disk attached to petitioners’ communication of June 24, 2010.

¹⁹⁴ Annex 24. Statement of Carlos Muños Muñoz to the National Human Rights Unit of the Office of the Attorney General of the Nation, dated November 10, 2004. Case File No. 233 UNDH. Book No. 10. Pages 94-98. Compact disk attached to petitioners’ communication of June 24, 2010; Annex 19. Submission of the Corporación Jurídica Libertad to the National Human Rights Unit of the Office of the Attorney General of the Nation, filed on April 2, 2007. Annex to petitioners’ communication of July 1, 1999.

121. As of the present date, the fate or whereabouts of Orlando de Jesús Muñoz are unknown.

3.5.3. Case of Octavio de Jesús Gallego Hernández

122. According to the testimony of Héctor Manuel González Ramírez, at around 4:00 p.m, he was with Octavio Gallego on the side of the Medellín-Bogotá highway trying to locate the bodies of Juan Carlos Gallego and Jaime Mejía.¹⁹⁵ He testified that four vehicles arrived, and two men dressed in civilian clothing got out, who “were carrying the long range firearms used by the military forces.”¹⁹⁶ He stated that said individuals called over Octavio de Jesús and told him to “come over because they needed him.” He said that he was overpowered and forced to get into the car. He stated that the army soldiers were “two blocks down the road,” and didn’t do anything to prevent these acts.

123. The witness testified that a few days later, he saw the two individuals, who had taken Octavio Jesús Gallego away, wearing military uniforms, insignias and were part of a military platoon of fifteen troops.¹⁹⁷ Another witness angrily confronted a member of the paramilitary forces for the disappearances and he responded that they were taken away “to torture them so they would tell the truth.”¹⁹⁸

124. As of the present date, the fate or whereabouts of Octavio de Jesús Gallego Hernández is unknown.

3.6. Disappearance of Andrés Gallego Castaño and Leonidas Cardona Giraldo on December 27, 1996

125. Witnesses stated that on December 27, 1996 at 8:30 p.m, approximately ten armed men dressed as civilians came to the residence of Leonidas Cardona Giraldo in two SUVs.¹⁹⁹ According to the account of his wife, these individuals identified themselves as members of the paramilitary forces, asked Leonidas Cardona for his ID and told him that there was a member of the guerrilla forces by that

¹⁹⁵ Annex 12. Statement of Héctor Manuel González Ramírez to the National Human Rights Unit of the Regional Office of the Attorney General, dated April 15, 1998. Case File No. 233 UNDH. Book No. 2. Compact disk attached to petitioners’ communication of June 24, 2010.

¹⁹⁶ Annex 50. Statement of Héctor Manuel González Ramírez to the National Human Rights Unit of the Office of the Attorney General of the Nation, dated November, 2004. Annex to petitioners’ submission received at the IACHR on February 1, 2007.

¹⁹⁷ Annex 50. Statement of Héctor Manuel González Ramírez to the National Human Rights Unit of the Office of the Attorney General of the Nation, dated November, 2004. Annex to petitioners’ submission received at the IACHR on February 1, 2007.

¹⁹⁸ Annex 12. Statement of María Engracia Hernández Quintero to the National Human Rights Unit of the Regional Office of the Attorney General, dated April 15, 1998. Case File No. 233 UNDH. Book No. 2. Compact disk attached to petitioners’ communication of June 24, 2010.

¹⁹⁹ Annex 43. Statement of Gabriel de Jesús Cardona Fernández to the Office of the Municipal Ombudsman of El Carmen de Viboral, dated December 30, 1996. Annex to petitioners’ communication of September 1, 2004; Annex 9. Statement of María del Rocío Cardona Fernández to the Office of the Attorney General of the Nation, dated December 30, 1996. Case File No. 233 UNDH. Book No. 12. Pages 303-304. Compact disk attached to petitioners’ communication of June 24, 2010.

name.²⁰⁰ They testified that the armed men were told that “there are many Leonidas” and one of them answered him that “all of them would pay for it.”²⁰¹ His wife stated that after thirty minutes, other armed men arrived with one masked individual.²⁰² She noted that after removing the mask, they realized that it was alias Fredy who told them to “hand a guerrilla over to him,”²⁰³ and accused them of collaborating with the guerrilla forces.²⁰⁴ She stated that Leonidas Cardona told them that they were not [guerrillas] and he angrily shouted back at them saying: “all of these bastards of this village are guerrilla members.”²⁰⁵

126. The same witness testified that the armed men asked about her sister-in-law Inés Muñoz. She claimed that they told Leonidas Cardona that “since the person they were asking about was not there then he was going to pay”²⁰⁶ and they told him to come with them because “on La Piñuela military base they would work out the problem.”²⁰⁷ She stated that alias Fredy let them know that they should just resign themselves because other missing persons “had already been murdered.”²⁰⁸

127. According to the account of Andrés Gallego’s wife, on this same day he was at his residence and witnesses saw three armed men break the door down and they took him away claiming that they were taking him to La Piñuela military base.²⁰⁹ Leonidas Cardona’s sister stated that she saw

²⁰⁰ Annex 9. Statement of María del Rocío Cardona Fernández to the Office of the Attorney General of the Nation, dated December 30, 1996. Case File No. 233 UNDH. Book No. 12. Pages 303-304. Compact disk attached to petitioners’ communication of June 24, 2010; Annex 51. Press clipping “La Esperanza anhela saber dónde están sus muertos” [‘La Esperanza yearning to know where their dead are’], published in the newspaper El Colombiano, dated February 7, 2008. Annex to petitioners’ submission of March 2006.

²⁰¹ Annex 51. Press clipping “La Esperanza anhela saber dónde están sus muertos” [‘La Esperanza yearning to know where their dead are’], published in the newspaper El Colombiano, dated February 7, 2008. Annex to petitioners’ submission of March 2006.

²⁰² Annex 9. Statement of María del Rocío Cardona Fernández to the Office of the Attorney General of the Nation, dated December 30, 1996. Case File No. 233 UNDH. Book No. 12. Pages 303-304. Compact disk attached to petitioners’ communication of June 24, 2010.

²⁰³ Annex 9. Statement of María del Rocío Cardona Fernández to the Office of Special Prosecutor 53 Delegate to the Rural Gaula Eastern Antioquia, dated February 26, 2009. Case File No. 233 UNDH. Book No. 12. Pages 329-334. Compact disk attached to petitioners’ communication of June 24, 2010.

²⁰⁴ Annex 8. Complaint of María del Rocío Cardona Fernández filed with the Office of the Attorney General of the Nation, dated December 30, 1996. SIFUJ No. 752.065. Office of Special Prosecutor 53 Delegate to the Rural Gaula Eastern Antioquia. Pages 1-2. Compact disk attached to petitioners’ communication of June 24, 2010.

²⁰⁵ Annex 12. Statement of María Rocío Cardona to the National Human Rights Unit of the Regional Office of the Attorney General, dated April 14, 1998. Case File No. 233 UNDH. Book No. 2. Pages 192-194. Compact disk attached to petitioners’ communication of June 24, 2010.

²⁰⁶ Annex 9. Statement of María del Rocío Cardona Fernández to the Office of Special Prosecutor 53 assigned to the Rural Gaula Eastern Antioquia, dated February 26, 2009. Case File No. 233 UNDH. Book No. 12. Pages 329-334. Compact disk attached to petitioners’ communication of June 24, 2010.

²⁰⁷ Annex 9. Statement of María del Rocío Cardona Fernández to the Office of Special Prosecutor 53 assigned to the Rural Gaula Eastern Antioquia, dated February 26, 2009. Case File No. 233 UNDH. Book No. 12. Pages 329-334. Compact disk attached to petitioners’ communication of June 24, 2010.

²⁰⁸ Annex 12. Statement of María Rocío Cardona to the National Human Rights Unit of the Regional Office of the Attorney General, dated April 14, 1998. Case File No. 233 UNDH. Book No. 2. Pages 192-194. Compact disk attached to petitioners’ communication of June 24, 2010.

²⁰⁹ Annex 24. Statement of María de la Cruz Hernández de Gallego to the Office of the Attorney General of the Nation, dated December 30, 1996. Case File No. 233 UNDH. Book No. 10. Page 305. Compact disk attached to petitioners’

the two of them being taken away in the SUVs. She claimed that one of the armed men told her not to worry because “they would send them back”²¹⁰ and that “they couldn’t do anything, because they had been ordered to do that.”²¹¹ Leonidas Cardona’s wife testified that when the men left in the SUVs she ran out of the house and saw “two dump trucks full of Army soldiers behind the SUVs.”²¹² After this incident, she reported that an FTA soldier told her “that whatever Ramón Isaza picked up was not seen again.”²¹³

128. As yet, the fate or whereabouts of Andrés Gallego Castaño and Leonidas Cardona Giraldo are unknown.

3.7. Available information on family members of alleged victims

129. On August 27, 2010, the petitioners submitted a list of the family members of the alleged victims. The Commission notes that this document is disaggregated according to the relatives of each victim. The Commission also notes that the relatives of each victim are comprised of spouses, brothers, sisters, sons, daughters or parents; that is the nuclear family. The Commission also notes that each family member, except two relatives, is registered with their identity card or civil registration number. Finally, the Commission notes that during the proceedings before the IACHR the State did not provide any evidence tending to object to the quality of the relatives of the alleged victims.

130. Given the above considerations, the Commission will take into account in its merits analysis the list of family members presented by the petitioners which is detailed in its only annex to the instant report.

4. Judicial Proceedings

4.1. Criminal Proceeding No. 233

131. On July 8, 1996 José Eliseo Gallego Quintero filed a complaint with the Cocorna’s local unit of the Office of the Attorney General of the Nation for violations committed by members of the

communication of June 24, 2010; Annex 8. Complaint of María de la Cruz Hernández Gallego filed with the Office of the Attorney General of the Nation, dated December 30, 1996. SIFUJ No. 752.065. Office of Special Prosecutor 53 assigned to the Rural Gaula Eastern Antioquia. Pages 3. Compact disk attached to petitioners’ communication of June 24, 2010.

²¹⁰ Annex 24. Statement of María de la Cruz Hernández de Gallego to the National Human Rights Unit of the Office of the Attorney General of the Nation, dated November 8, 2004. Case File No. 233 UNDH. Book No. 10. Pages 71-72. Compact disk attached to petitioners’ communication of June 24, 2010.

²¹¹ Annex 8. Addendum to complaint of María de la Cruz Hernández de Gallego filed with the Office of the Attorney General of the Nation, dated July 8, 2009. SIFUJ No. 752.065. Office of Special Prosecutor 53 assigned to the Rural Gaula Eastern Antioquia. Pages 86-96. Compact disk attached to petitioners’ communication of June 24, 2010.

²¹² Annex 9. Statement of María del Rocío Cardona Fernández to the Office of Special Prosecutor 53 assigned to the Rural Gaula Eastern Antioquia, dated February 26, 2009. Case File No. 233 UNDH. Book No. 12. Pages 329-334. Compact disk attached to petitioners’ communication of June 24, 2010.

²¹³ Annex 12. Statement of María Rocío Cardona to the National Human Rights Unit of the Regional Office of the Attorney General, dated April 14, 1998. Case File No. 233 UNDH. Book No. 2. Pages 192-194. Compact disk attached to petitioners’ communication of June 24, 2010.

military forces in his residence on June 26, 1996.²¹⁴ On July 11, 1996 Andrés Antonio Gallego Castaño and Florinda de Jesús Gallego Hernández filed two complaints with the municipal criminal court of Cocorná for a string of acts taking place in the village up until that time, with an emphasis on joint involvement of the armed forces with paramilitary groups. Reference was also made to the acts of June 26, 1996 being committed exclusively by members of the military forces.²¹⁵ On that same day, the municipal criminal court of Cocorná forwarded both complaints to the Sectional Office of the Attorney General of the Municipality of El Carmen de Viboral.²¹⁶

132. Complaints for the disappearances were also filed by the municipal offices of the ombudsman of Cocorná and El Carmen de Viboral²¹⁷ and were subsequently forwarded to the Office of Special Investigations of the Office of the Inspector General of the Nation, Sectional Office of Antioquia, and to the Regional Office of the People's Ombudsman of Medellín.²¹⁸ On July 12, 1996, the Office of Special Investigations of the Office of the Inspector General of the Nation conducted an on-site visit,²¹⁹ holding a meeting with the mayor, municipal ombudsman, the secretary of the government and three inspectors who reported disappearances and violations committed by the National Army in the Municipality.²²⁰ It was put on the record that several troop movements were taking place in the area, "which cause confrontations with the guerrilla groups and endanger the lives of the civilian

²¹⁴ Annex 21. Complaint filed by Eliseo Gallego Quintero with the Office of the Attorney General of the Nation, Local Unit of Cocorná, dated July 8, 1996. Case File No. 233 UNDH. Book No. 1. Compact disk attached to petitioners' communication of June 24, 2010.

²¹⁵ Annex 21. Complaint filed by Andrés Antonio Gallego Castaño with the Municipal Criminal Court of Cocorná, dated July 11, 1996. Case File No. 233 UNDH. Book No. 1. Pages 1-3. Compact disk attached to petitioners' communication of June 24, 2010; Annex 46. Complaint filed by Florinda de Jesús Gallego Hernández with the Municipal Criminal Court of Cocorná, dated July 11, 1996. Annex to petitioners' communication of July 1, 1999.

²¹⁶ Annex 21. Official Letter of the Municipal Criminal Court of Cocorná, dated July 11, 1996. Case File No. 233 UNDH. Book No. 1. Page 4. Compact disk attached to petitioners' communication of June 24, 2010.

²¹⁷ Annex 21. Letter written by Helí Gómez, Municipal Ombudsman of Carmen de Viboral, published in the newspaper El Carmeliano, July-August issue 1996. Case File No. 233 UNDH. Book No. 1. Compact disk attached to petitioners' communication of June 24, 2010; Annex 21. Official Letter No. 069 of the Local Unit of Office of the Attorney General assigned to the Municipal Criminal Court of Cocorná, dated April 17, 1997. Case File No. 233 UNDH. Book No. 1. Page 204. Compact disk attached to petitioners' communication of June 24, 2010.

²¹⁸ Annex 19. Submission of the Corporación Jurídica Libertad to the National Human Rights Unit of the Office of the Attorney General of the Nation, filed on April 2, 2007. Annex to petitioners' communication of July 1, 1999; Annex 52. Submission of Municipal Ombudsman of El Carmen de Viboral, Heli Gómez Osorio, to the Prosecutor assigned to the Circuit of the Sectional Unit of the Office of the Attorney General, Fabiola Bermúdez Roa, dated July 18, 1996. Annex to petitioners' communication of July 1, 1999.

²¹⁹ Annex 21. Letter written by Helí Gómez, Municipal Ombudsman of Carmen de Viboral, published in the newspaper El Carmeliano, July-August issue 1996. Case File No. 233 UNDH. Book No. 1. Compact disk attached to petitioners' communication of June 24, 2010.

²²⁰ Annex 52. Submission of Municipal Ombudsman of El Carmen de Viboral, Heli Gómez Osorio, to the Prosecutor assigned to the Circuit of the Sectional Unit of the Office of the Attorney General, Fabiola Bermúdez Roa, dated July 18, 1996. Annex to petitioners' communication of July 1, 1999.

population,”²²¹ mentioning as the most serious instance, the incident of the village of La Esperanza because “the alleged involvement of members of the army can be deduced” in the disappearances.²²²

133. On July 17, 1996, the Sectional Unit of the Office of the Attorney General of El Carmen de Viboral was delegated to conduct the investigation.²²³ On August 1 and 2, 1996, the special investigation section of the Attorney General’s Office went to the area. The following excerpts appeared in its August 15, 1996 report: i) “apparently there was involvement in one way or another of the national army;” ii) the witnesses recognized the makes of the vehicles that those responsible for the crimes were traveling in; iii) there was evidence of “destroying the house of Eliseo Gallego, theft of several items and injury to Juan Carlos” and, consequently, they noted that “photographs of the state in which the residence was left would be forwarded in due time;” and iv) it was suggested to commission a group of investigators which, under the direction of a prosecutor, could conduct any investigatory work aimed at clarifying the facts.²²⁴

134. On September 4, 1996, the family members requested the UNDH [National Human Rights Unit] to take over the investigation,²²⁵ but on October 9, 1996 the UNDH delegated the investigation to a Prosecuting Attorney assigned to the Regional Courts of Medellín.²²⁶

135. On November 27, 1996, the Technical Investigation Corps issued a report stating that: i) a crime scene search was conducted on the residence of Eliseo Gallego, where bullet shells and bags used by the army marked with their logos were gathered, and this evidence remained in the custody of the Office of the Inspector General of the Nation;²²⁷ and ii) municipal ombudsman of El Carmen de Viboral, Heli Gómez Osorio, was murdered on July 26, 1996.”²²⁸ Regarding this crime, the Commission has an official letter from the Human Rights Delegate of the Office of the Inspector General of the

²²¹ Annex 53. Evaluation Report. Visit to the Municipality of El Carmen de Viboral, by the Directorate of Special Investigations – Sectional Office of Antioquia, dated July 17, 1996. Annex to petitioners’ submission received at the IACHR on February 1, 2007.

²²² Annex 53. Evaluation Report. Visit to the Municipality of El Carmen de Viboral, by the Directorate of Special Investigations – Sectional Office of Antioquia, dated July 17, 1996. Annex to petitioners’ submission received at the IACHR on February 1, 2007.

²²³ Annex 10. Official Letter of the National Human Rights Unit of the Office of the Attorney General of the Republic, dated August 23, 2000. Case File No. 233 UNDH. Book No. 3A. Pages 136-140. Annex to petitioners’ communication of July 1, 1999.

²²⁴ Annex 26. Report No. 047-2551-2560-032-FGN-DR-CTI-SIE, dated August 15, 1996. Annex to petitioners’ communication of October 5, 2000.

²²⁵ Annex 54. Letter of Corporación Jurídica Libertad to the National Director of Offices of the Attorney General, dated April 4, 1997. Annex to petitioners’ submission received in the IACHR on February 1, 2007.

²²⁶ Annex 10. Official Letter of the National Human Rights Unit of the Office of the Attorney General of the Republic, dated August 23, 2000. Case File No. 233 UNDH. Book No. 3A. Pages 136-140. Annex to petitioners’ communication of July 1, 1999.

²²⁷ Annex 49. Report No. 084, File No. 21.005 of the Regional Directorate of the Technical Investigation Corps of the Office of the Attorney General of the Nation, dated November 27, 1996. Annex to petitioners’ submission received at the IACHR on February 1, 2007. The conclusions of this crime scene search and the evidence collected therein were corroborated by several different witnesses, including María Engracia Hernández Quintero and Florinda de Jesús Gallego Hernández.

²²⁸ Annex 49. Report No. 084, File No. 21.005 of the Regional Directorate of the Technical Investigation Corps of the Office of the Attorney General of the Nation, dated November 27, 1996. Annex to petitioners’ submission received at the IACHR on February 1, 2007.

Nation in which it is stated that the situation “is so grave” that said ombudsman was murdered because he requested the pertinent inquiry and “for imploring that [the acts] not go unpunished.”²²⁹

136. On December 19, 1996, the Office of the Inspector General of the Nation issued a new report indicating that statements were taken and concluding that “the deep-seated fear of the inhabitants of the village of being victims of acts of violence for reporting members of the public security forces that participated in the disappearances with the paramilitary group is evident.” Special on-site visits were also conducted to the Fourth Brigade, the Ingenieros Pedro Nel Ospina Battalion and La Piñuela military base, but no relevant information could be gathered.²³⁰

137. At the request of the family members made on April 2, 1997,²³¹ the investigation was reassigned to the UNDH on July 4, 1997.²³²

138. On March 26, 1998 Major Carlos Guzmán Lombana gave testimony. He testified that he periodically assumed the commanding officer position of the FTA until “July 5 or 10, 1996,” and that the intelligence tasks were focused on identifying “abettors, sympathizers or members of the groups.” Regarding the village of La Esperanza, even though he mentioned combat fights, he denied the presence of paramilitary forces in the jurisdiction of the FTA.²³³ On July 31 and August 4, 1998, Hugo Alonso del Milagro Abondano, former FTA commander during 1995, indicated that, in addition to La Piñuela military base, there were other bases at the bridge over the Calderas and the Samaná Rivers.²³⁴

139. On January 15, 1999, the UNDH asked the different institutions whether they had any “criminal history or records linking” the alleged victims “to subversive groups,”²³⁵ and the Army and the

²²⁹ Annex 22. Official Letter of Advisor Attorney Grade 19, Assigned to Human Rights, Edgar Pinilla Rueda, dated March 25, 1999. Case File No. 008-10799-98. Office of the Disciplinary Matter Deputy Inspector for Human Rights. Public Ministry for Judicial Oversight. Pages 299-300. Compact disk attached to petitioners’ communication of July 12, 2010.

²³⁰ Annex 55. Evaluation Report of case record filed under number 3282, by the National Directorate of Special Investigations of the Office of the Inspector General, Sectional Office of Antioquia, dated December 19, 1996. Annex to petitioners’ communication of October 5, 2000.

²³¹ Annex 19. Submission of the Corporación Jurídica Libertad to the National Human Rights Unit of the Office of the Attorney General of the Nation, filed on April 2, 2007. Annex to petitioners’ communication of July 1, 1999.

²³² Annex 56. Official Letter DNF/AMP/No. 4473 from the National Directorate of Attorney General’s Offices, dated August 4, 1997. Annex to petitioners’ submission received at the IACHR on February 1, 2007.

²³³ Annex 12. Statement of Carlos Alberto Guzmán Lombana to the Regional Directorate, Investigation Intake Section, dated 26, 1998. Book No. 2. Pages 118-131.

²³⁴ Annex 14. Statement of Hugo Alonso del Milagro Abondano Mican to the National Human Rights Unit, dated July 31, 1998; Case File No. 233 UNDH. Book No. 3. Compact disk attached to petitioners’ communication of June 24, 2010; Annex 14. Statement of Hugo Alonso del Milagro Abondano Mican to the National Human Rights Unit, dated August 4, 1998. Case File No. 233 UNDH. Book No. 3. Compact disk attached to petitioners’ communication of June 24, 2010.

²³⁵ Annex 10. Official Letter No. 01 from the Office of the Attorney General to Director of the DAS, Emiro Rojas, dated January 15, 1999. Case File No. 233 UNDH. Book No. 3A. Page 1. Compact disk attached to petitioners’ communication of June 24, 2010; Annex 10. Official Letter No. BR-4-CIAN-ARCH-258 from the Chief of Central Intelligence of Antioquia, Guillermo Chinome, dated January 21, 1999. Case File No. 233 UNDH. Book No. 3A. Page 6. Compact disk attached to petitioners’ communication of June 24, 2010.

DAS replied that they did not.²³⁶ On September 3, 1999, the UNDH requested information on several different generals, majors and sergeants of the FTA.²³⁷

140. On May 2, 2000, the UNDH issued a decision to open an investigation into the disappearances of Aníbal de Jesús Castaño Gallego, Óscar Hemel Zuluaga Marulanda, Juan Crisóstomo Cardona Quintero, Miguel Ancízar Cardona Quintero, María Irene Gallego Hernández, Juan Carlos Gallego Hernández, Jaime Alonso Mejía Quintero, Hernando de Jesús Castaño Castaño, Andrés Suárez Cordero, Octavio de Jesús Gallego Hernández and Orlando de Jesús Muños Castaño. This decision indicated that evidence points to “paramilitary groups allegedly sponsored by members of the military forces who were operating in that area of the country.” Ramón Isaza, leader of the Self-Defense Forces of Magdalena Medio and Major Carlos Guzmán Lombana were also implicated in the investigation. Requests were also made to: i) conduct on-site judicial inspections in order to obtain information on the FTA; and ii) identify and locate the members of the military who were stationed at La Piñuela military base in June and July 1996.²³⁸

141. In May and June 2000, Major Carlos Guzmán was summoned to provide an initial statement on the facts in response to the charges²³⁹ but he failed to appear. On May 9, 2000, the UNDH requested an arrest warrant for Ramón Isaza²⁴⁰ which could not be done effectively.²⁴¹

142. On August 15, 2000, the UNDH granted the motion of the family members of the victims to become a civil party to the proceedings.²⁴²

143. On August 23, 2000 investigators of the Office of the Prosecutor issued an official letter concluding that the FTA “had jurisdiction over the Medellín-Bogotá highway at the time of the events.” They also reported that with regard to the alleged victims in the domestic process, “the inquiries have pointed to paramilitary groups allegedly sponsored by members of the military forces who were

²³⁶ Annex 10. Official Letter No. 046/DAS.ANT.CI from the DAS, dated January 21, 1999. Case File No. 233 UNDH. Book No. 3A. Folio 2. Compact disk attached to petitioners’ communication of June 24, 2010.

²³⁷ Annex 10. Official Letter from the Special Prosecutor of the Human Rights Unit, dated September 3, 1999. Case File No. 233 UNDH. Book No. 3A. Folio 61. Compact disk attached to petitioners’ communication of June 24, 2010.

²³⁸ Annex 10. Decision of the National Human Rights Unit of the Office of the Attorney General of the Nation to open investigation, dated May 2, 2000. Case File No. 233 UNDH. Book No. 3A. Pages 79-87. Compact disk attached to petitioners’ communication of June 24, 2010.

²³⁹ Annex 10. Clerk’s Report of the National Human Rights Unit, signed by Judicial Clerk Esperanza Uribe, dated May 8, 2000. Case File No. 233 UNDH. Book No. 3A. Page 88. Compact disk attached to petitioners’ communication of June 24, 2010.

²⁴⁰ Annex 57. Arrest warrant No. 093 from Judicial Investigator II, Aura Navia Zúñiga, of the National Human Rights Unit of the Office of the Attorney General of the Nation, dated May 9, 2000. Annex to petitioners’ submission received in the IACHR on February 1, 2007.

²⁴¹ Annex 10. Official Notice No. 158 of the National Human Rights Unit of the Office of the Attorney General of the Republic, dated June 23, 2000. Case File No. 233 UNDH. Book No. 3A. Page 111. Compact disk attached to petitioners’ communication of June 24, 2010.

²⁴² Annex 10. Decision of the National Human Rights Unit of the Office of the Attorney General of the Republic, dated August 15, 2000. Case File No. 233 UNDH. Book No. 3A. Pages 132-134. Compact disk attached to petitioners’ communication of June 24, 2010.

operating in that area of the country, which was one criterion among others that was considered by the National Directorate of Prosecutor's Offices to assign the National Human Rights Unit."²⁴³

144. On September 6, 2000, Ramón Isaza was declared *in absentia*.²⁴⁴

145. In August and November 2000, several on-site judicial inspection visits were conducted. On September 4, 2000, an on-site visit was made to the general archive of the Ministry of National Defense in order to obtain FTA documents, though not a single document from said group was found there. However, information was obtained from soldiers who were in the Pedro Nel Ospina Battalion from June to July, 1996 on La Piñuela military base.²⁴⁵ On August 11 and then on November 21 and 22, 2000, on-site judicial inspection visits were conducted at the general archives of the Ministry of National Defense, 4th Brigade of the Army, headquartered in Medellín, the Ingenieros No. 4 Pedro Nel Ospina Battalion command, headquarters and the No. 4 Mechanized Juan de Corral Group,²⁴⁶ though no relevant information on the case was found in the archives."²⁴⁷ The record shows that an on-site judicial inspection visit was made to Barbacoas Counter-Guerrilla Battalion No. 42, where it had been stated that the census was kept of the entire area under FTA jurisdiction contiguous to the highway.²⁴⁸ An on-site inspection visit was also made to the 4th Brigade, where documents were found corroborating that in June and July of 1996, the FTA was commanded by Major Guzmán and conducted activities in the area of El Carmen de Viboral.²⁴⁹

²⁴³ Annex 10. Official Letter of the National Human Rights Unit of the Office of the Attorney General of the Republic, dated August 23, 2000. Case File No. 233 UNDH. Book No. 3A. Pages 136-140. Compact disk attached to petitioners' communication of June 24, 2010.

²⁴⁴ Annex 10. Decision of the National Human Rights Unit of the Office of the Attorney General of the Republic, dated September 6, 2000. Case File No. 233 UNDH. Book No. 3A. Pages 155-156. Compact disk attached to petitioners' communication of June 24, 2010.

²⁴⁵ Annex 58. Report No. FGN-DI-GDH-0488C4 of Judicial Investigator of the CTI Human Rights Group, Danilo Henao Alzate, dated September 4, 2000. Annex to petitioners' submission received in the IACHR on February 1, 2007.

²⁴⁶ Annex 59. Judicial inspection visit conducted by the human rights group of the Division of Investigation of the Office of the Attorney General of the Nation, signed by Danilo Henao, at the facilities of the general archives of the Ministry of National Defense, dated August 11, 2000. Case File No. 233 UNDH. Book No. 5A. Pages 1-2. Compact disk attached to petitioners' communication of June 24, 2010; Annex 60. Judicial Inspection visit of the 4th Brigade of the Army headquartered in Medellín, conducted by the National Human Rights Unit, dated November 21, 2000. Case File No. 233 UNDH. Book No. 7. Compact disk attached to petitioners' communication of June 24, 2010; Annex 60. Judicial inspection visit to the command headquarters of Ingenieros No. 4 Pedro Nel Ospina Battalion, conducted by the National Human Rights Unit, dated November 22, 2000. Case File No. 233 UNDH. Book No. 7. Compact disk attached to petitioners' communication of June 24, 2010; Annex 18. Official Letter No. 2408/DIJIN.GRUHO.D.H. of the Homicide Group of the Crimes against the Life and Integrity of Persons of the Central Directorate of the Judicial Police, dated November 27, 2000. Case File No. 233 UNDH. Book No. 6. Compact disk attached to petitioners' communication of June 24, 2010.

²⁴⁷ Annex 18. Official Letter No. 2408/DIJIN.GRUHO.D.H. of the Homicide Group of the Crimes against the Life and Integrity of Persons of the Central Directorate of the Judicial Police, dated November 27, 2000. Case File No. 233 UNDH. Book No. 6. Compact disk attached to petitioners' communication of June 24, 2010.

²⁴⁸ Annex 60. Judicial inspection visit to the command headquarters of Ingenieros No. 4 Pedro Nel Ospina Battalion, conducted by the National Human Rights Unit, dated November 22, 2000. Case File No. 233 UNDH. Book No. 7. Compact disk attached to petitioners' communication of June 24, 2010.

²⁴⁹ Annex 60. Judicial inspection visit of the headquarters of the 14th Brigade, conducted by the Sectional Unit of Prosecuting Attorney's Offices, dated November 22, 2000. Case File No. 233 UNDH. Book No. 7. Compact disk attached to petitioners' communication of June 24, 2010.

146. On November 28, 2000, the attorney for the victims' families informed the Office of the Attorney General that the village residents provided the license plate numbers of the SUVs used in the disappearances.²⁵⁰ In December 2000, communications were sent to the UNDH requesting that certain evidence be gathered, such as the material recovered at the residence of Mr. Gallego.²⁵¹

147. On February 13 and 20, 2001, the initial statement on the facts in the proceedings of Major Carlos Alberto was taken in response to the charges. Unlike on the occasion cited above, on this opportunity he claimed that he was the commanding officer of the FTA until June 27, 1996. He testified that he had assigned troops to the village of La Esperanza, that he is unaware of the facts stated in the complaints, that there was no evidence that the residents were linked to the guerrilla forces and that it is not possible to control every meter or centimeter of the area."²⁵²

148. On February 26, 2001, the judicial investigators were kept from performing an on-site inspection visit as part of their investigation, which was scheduled at the 14th Brigade. It was put on record that the human rights offices of said premises were closed and it was noted that "such an attitude may be intended to hamper the job of the prosecutor's office, to keep the military members involved in human rights violations from being investigated." The investigators also put on the record that the many requests for information have not been heeded and that the files that exist are stored away "in cardboard boxes with out any systematic order to them, in torn (...) or half destroyed folders."²⁵³ On July 26, 2001, the UNDH noted that the verification of whether or not Carlos Guzmán was the commanding officer of the FTA at the time of the sequence of events has been "fruitless, because of the absence of files from that time period and the almost no cooperation by the National Army, which on some occasions has impeded performing the on-site judicial inspections aimed at establishing this time reference."²⁵⁴

149. On April 30, 2003, the UNDH issued a decision ordering the preventive detention of Ramón Isaza, denying the motion for preclusion of the investigation with respect to Major Carlos Guzmán and ordering that this person not be taken into preventive custody.²⁵⁵ In the case of both individuals, they were prosecuted for the crimes abduction and homicide instead of forced

²⁵⁰ Annex 61. Statement of Liliana Uribe Tirado to the Office of the Attorney General of the Nation, dated November 28, 2000. Annex to petitioners' communication of September 1, 2004.

²⁵¹ Annex 60. Official letters from Liliana Uribe Tirado to Ivonnes Rodríguez of the National Human Rights Unit of the Office of the Attorney General of the Nation, dated December 7, 2000. Case File No. 233 UNDH. Book No. 7. Pages 62-69. Compact disk attached to petitioners' communication of June 24, 2010.

²⁵² Annex 15. Initial statement on the facts in response to the charges, given by Carlos Alberto Guzmán Lombana, File 233 UDH, dated February 13, 2001. Annex to petitioners' submission received in the IACHR on February 1, 2007; Annex 11. Continuation of initial statement on the facts of Carlos Guzmán Lombana, to the National Human Rights Unit, dated February 20, 2001. Case File No. 233 UNDH. Book No. 8. Compact disk attached to petitioners' communication of June 24, 2010.

²⁵³ Annex 11. Judicial inspection visit of the headquarters of the 14th Brigade, requested by National Human Rights Unit, dated February 26, 2001. Case File No. 233 UNDH. Book No. 8. Compact disk attached to petitioners' communication of June 24, 2010.

²⁵⁴ Annex 13. Official Letter No. 96 from the National Human Rights Unit of the Office of the Attorney General of the Nation, signed by Unit Chief Pedro Díaz, dated July 26, 2001. Case File No. 233 UNDH. Book No. 9. Page 64. Compact disk attached to petitioners' communication of June 24, 2010.

²⁵⁵ Annex 13. Judicial decision of the National Human Rights and International Humanitarian Law Unit of the Office of the Attorney General of the Nation, signed by Special Prosecutor Lilia Hernández Ramírez, dated April 30, 2003. Case file No. 233 UNDH. Book No. 9. Folios 251-302. Compact disk attached to petitioners' communication of June 24, 2010.

disappearance.²⁵⁶ Regarding Major Guzmán, the decision noted that “no administrative act or reason was found during the on-site judicial inspection visits conducted (...) that terminated the Águila Task Force” and therefore “his liability would go up to the incidents occurring on June 27, 1996.” It was noted that “based on the examination of the testimony received (...) serious indications that involve his responsibility cannot be deduced, inasmuch as circumstances of time, mode and place in which said member of the National Army participated in the commission of even one of the abductions cannot be inferred from them [the indications] (...) much less is there (...) any evidence that seriously, concretely and directly implicates him either by action or omission in the commission of the disappearances.” With regard to Ramón Isaza, it was determined that “there is evidence inferring his criminal liability” and that he would be “one of the master minds” of the abductions of the alleged victims and of the homicide of Javier Giraldo.²⁵⁷

150. On December 18, 2003, the attorney for the victims in the proceedings requested the UNDH to gather several different pieces of evidence.²⁵⁸

151. On April 19, 2004, the UNDH issued a decision ordering that several pieces of evidence be gathered, some of which had been requested by the legal representative of the victims’ families.²⁵⁹ The motion filed by Major Carlos Guzmán’s defense attorney to close the investigation was also denied. In said decision to deny the motion, the need to gather the remaining evidence and the complexity of the investigation were noted.²⁶⁰

152. On November 18, 2004, the judicial investigators mentioned reports from the village to the effect that the municipal ombudsman of Cocorná at that time had sought refuge in Australia “out of fear of being murdered as had happened to (...) the ombudsman of El Carmen de Viboral”. The reports

²⁵⁶ Charges were brought for the following crimes against the following victims: i) Aggravated simple abduction of Óscar Zuluaga, Miguel Cardona and Juan Cardona; ii) Simple abduction of Aníbal Castaño, alias Fredy, María Irene Gallego, Juan Carlos Gallego, Jaime Mejía, Hernando de Jesús Castaño and Octavio Gallego; and aggravated homicide of Javier de Jesús Giraldo.

²⁵⁷ Annex 13. Judicial decision of the National Human Rights and International Humanitarian Law Unit of the Office of the Attorney General of the Nation, signed by Special Prosecutor Lilia Hernández Ramírez, dated April 30, 2003. Case file No. 233 UNDH. Book No. 9. Folios 251-302. Compact disk attached to petitioners’ communication of June 24, 2010.

²⁵⁸ Annex 62. Submission Rdo. 233 from Liliana Uribe, court appointed representative of the victims’ families as a civil party, National Civil Rights Unit of the Office of the Attorney General of the Nation, dated December 18, 2003. Annex to petitioners’ submission received in the IACHR on February 1, 2007. The evidence requested by them was: i) approving the report of the Office of the Attorney General of August 10, 1996, which posits the existence of a paramilitary group led by Ramón Isaza and which refers to the collaboration that there has been between units of the army and persons linked to the national police; ii) summoning to testify Arley de Jesús Arango, soldier who admitted being an escort of Ramón Isaza; iii) summoning to testify Ilga Ruiz Angarita, sectional prosecutor in charge of the municipality of El Santuario, who processed Irene Gallego on June 28, 1996 and subsequently handed her over to the FTA; and iv) summoning to testify family members of the victims.

²⁵⁹ Annex 24. Decision of the National Human Rights Unit of the Office of the Attorney General of the Nation, signed by Special Prosecutor Lilia Hernández, dated April 19, 2004. Case File No. 233 UNDH. Book No. 10. Pages 41-45. Compact disk attached to petitioners’ communication of June 24, 2010.

²⁶⁰ Annex 24. Decision of the National Human Rights Unit of the Office of the Attorney General of the Nation, signed by Special Prosecutor Lilia Hernández, dated April 19, 2004. Case File No. 233 UNDH. Book No. 10. Pages 41-45. Compact disk attached to petitioners’ communication of June 24, 2010.

were that “unconfirmed rumors were heard that apparently the police agent, whom it was claimed was present at some of the disappearances (...) his last name is Viañe.”²⁶¹

153. On November 19, 2004 and March 29, 2005, Carlos Guzmán’s defense attorney filed a motion to close the investigation.²⁶² On that same day, the UNDH requested further evidence and indicated: “it is necessary (...) to gather the evidence (...) in view of the fact that some of it was ordered [to be gathered] in an order on April 19, 2004 and it was not possible to gather it.” As part of this evidence [to be gathered], reference is made to a statement given by the police agent with the last name Viañe.²⁶³

154. In a decision of July 8, 2005, the Office of the President of the Republic recognized Mr. Ramón Isaza Arango’s “status as a member representing the Self-Defense Forces of Colombia” up to December 31, 2005.²⁶⁴ On December 19, 2005, this recognition was extended by six months in order to be able to set the process of his demobilization into motion.²⁶⁵

155. On February 7, 2006, Ramón Isaza was formally demobilized along with another 990 members of the Self-Defense Forces of Magdalena Medio. Ramón Isaza decided to take advantage of the benefits of the Justice and Peace Law 975 of 2005. According to an interview published in a daily newspaper on February 8, 2006, Ramón Isaza made a statement on a video recorded in 1996 in which he took responsibility for the crimes of Vereda La Esperanza. In this regard, he claimed that the interview was improperly edited and he stated that he did not take responsibility for “the deaths of La Esperanza (...). He only was responsible for the deaths in combat.”²⁶⁶

156. On February 13, 2006, the UNDH quashed the arrest order for Ramón Isaza, given that he had demobilized.²⁶⁷ Accordingly, a request was made to the office of the High Commissioner for

²⁶¹ Annex 24. Report No. 202148 signed by judicial investigators Danilo Henao and Nelson Galeano, addressed to Special Prosecutor of the National Human Rights Unit Lilia Hernández, dated November 18, 2004. Case File No. 233 UNDH. Book No. 10. Pages 128-132. Compact disk attached to petitioners’ communication of June 24, 2010.

²⁶² Annex 24. Official Letter signed by Henry Suanca, addressed to Special Prosecutor of the National Human Rights Unit of the Office of the Attorney General of the Nation, dated November 19, 2004. Case File No. 233 UNDH. Book No. 10. Page 174. Compact disk attached to petitioners’ communication of June 24, 2010; Annex 24. Official Letter signed by Henry Suanca, addressed to the Special Prosecutor of the National Human Rights Unit of the Office of the Attorney General of the Nation, dated March 29, 2005. Case File No. 233 UNDH. Book No. 10. Page 184. Compact disk attached to petitioners’ communication of June 24, 2010.

²⁶³ Annex 24. Decision of the National Human Rights Unit of the Office of the Attorney General of the Nation, dated March 29, 2005. Case File No. 233 UNDH. Book No. 10. Pages 185-186. Compact disk attached to petitioners’ communication of June 24, 2010.

²⁶⁴ Annex 63. Decision No. 172 of the Office of the President of the Republic “whereby an individual is recognized as a member representing the United Self-Defense Forces of Colombia, AUC,” dated July 8, 2005. Annex to petitioners’ submission received in the IACHR on February 1, 2007.

²⁶⁵ Annex 63. Decision No. 172 of the Office of the President of the Republic “whereby an individual is recognized as a member representing the United Self-Defense Forces of Colombia, AUC,” dated July 8, 2005. Annex to petitioners’ submission received in the IACHR on February 1, 2007.

²⁶⁶ Annex 64. Press clipping “Ramón Isaza se confiesa” [‘Ramón Isaza confesses’], published in *El Colombiano*, dated February 8, 2006. Annex to petitioners’ submission of March 2006.

²⁶⁷ Annex 24. Decision of the National Human Rights and International Humanitarian Law Unit of the Office of the Attorney General of the Nation, signed by Special Prosecutor Lilia Hernández Ramírez, dated February 13, 2006. Case File No. 233 UNDH. Book No. 10. Page 251. Compact disk attached to petitioners’ communication of June 24, 2010.

Peace to set a time and date to hear his confession hearing on the facts.²⁶⁸ On April 7, 2006, the UNDH called Ramón Isaza to testify, but the hearing was postponed several times.²⁶⁹

157. On July 14, 2006, the legal representative of the victims' families moved to lift the suspension of the arrest warrant for Ramón Isaza on the grounds that "he has not cooperated with the administration of justice."²⁷⁰ This motion was denied by the UNDH on July 19, 2006, on the grounds that "power belongs to the national government under the peace process under way."²⁷¹ In a decision of October 2, 2006, the UNDH lifted the suspension of the arrest warrant for Ramón Isaza,²⁷² who was detained ten days later on October 12 when he was at the special holding center for the peace process La Ceja, Antioquia.²⁷³ The next day, the UNDH asked the director of the center to hold him in custody depriving him of his liberty.²⁷⁴

158. On December 22, 2006, the UNDH prosecuting attorney issued a decision to not grant the suspension of deprivation of liberty and to not grant house arrest, as requested by Ramón Isaza's defense attorney.²⁷⁵

159. On April 23, 2007 and again on October 15, 2008, Ramón Isaza finally gave his initial statement on the facts and addressed the events of the village of La Esperanza, providing some details linking members of the paramilitary force with members of the army in the planning and execution of the disappearances. The specifics of Ramón Isaza's statement are described in the available account of

²⁶⁸ Annex 24. Official Letter signed by Ramón Isaza to the Special Prosecutor of Bogotá, dated February 22, 2006. Case File No. 233 UNDH. Book No. 10. Page 253. Compact disk attached to petitioners' communication of June 24, 2010.

²⁶⁹ Annex 24. Decision of the National Human Rights Unit of the Office of the Attorney General of the Nation, signed by Special Prosecutor Lilia Hernández, dated April 11, 2006. Case File No. 233 UNDH. Book No. 10. Page 265. Compact disk attached to petitioners' communication of June 24, 2010; Annex 24. Decision of the National Human Rights Unit of the Office of the Attorney General of the Nation, signed by Special Prosecutor Lilia Hernández, dated April 24, 2006. Case File No. 233 UNDH. Book No. 10. Page 271. Compact disk attached to petitioners' communication of June 24, 2010; Annex 24. Decision of the National Human Rights Unit of the Office of the Attorney General of the Nation, signed by Special Prosecutor Lilia Hernández, dated May 19, 2006. Case File No. 233 UNDH. Book No. 10. Page 278. Compact disk attached to petitioners' communication of June 24, 2010.

²⁷⁰ Annex 24. Decision of the National Human Rights and International Humanitarian Law Unit of the Office of the Attorney General of the Nation, signed by Special Prosecutor Lilia Hernández Ramírez, dated July 14, 2006. Case File No. 233 UNDH. Book No. 10. Pages 285-288. Compact disk attached to petitioners' communication of June 24, 2010.

²⁷¹ Annex 65. Official Letter No. 2527 – File 233 of Judicial Assistant IV UNDH & DIH, to Liliana Uribe Tirado, dated July 19, 2006. Annex to petitioners' submission received in the IACHR on February 1, 2007.

²⁷² Annex 66. Official Letter No. 5801/DIJIN from the Central Directorate of the Judicial Police, signed by official Luis Acosta, dated October 12, 2006. Case File No. 233 UNDH. Book No. 11. Page 9. Compact disk attached to petitioners' communication of June 24, 2010.

²⁷³ Annex 66. Official Letter No. 5801/DIJIN from the Central Directorate of the Judicial Police, signed by official Luis Acosta, dated October 12, 2006. Case File No. 233 UNDH. Book No. 11. Page 9. Compact disk attached to petitioners' communication of June 24, 2010.

²⁷⁴ Annex 66. Arrest form from the National Human Rights Unit of the Office of the Attorney General of the Nation, signed by Special Prosecutor Lilia Hernández, dated October 13, 2006. Case File No. 233 UNDH. Book No. 11. Page 12. Compact disk attached to petitioners' communication of June 24, 2010.

²⁷⁵ Annex 66. Decision of the National Human Rights and International Humanitarian Law Unit of the Office of the Attorney General of the Nation, signed by Special Prosecutor Lilia Hernández Ramírez, dated December 22, 2006. Case File No. 233 UNDH. Book No. 11. Pages 161-163. Compact disk attached to petitioners' communication of June 24, 2010.

the facts (see *supra* para. 85).²⁷⁶ He also indicated that his son Omar told him that the missing persons from La Esperanza village “were guerrilla collaborators and others [were] full guerrilla members” and that their bodies were dumped into the Calder, Magdalena and Samaná rivers.²⁷⁷

160. On May 8, 2007 the Superior Court of Bogotá ruled on an appeal filed by the defense attorney of Ramón Isaza denying the motion to suspend deprivation of liberty and indicating that “based on the evidence gathered in the investigation, it has been established that the disappearances (...) were committed by paramilitary (...) groups (...) commanded by Ramón María Isaza (...), [and the] organization appears to have received the collaboration of the military forces.”²⁷⁸

161. On January 21, 2008, judicial investigators reported that Omar de Jesús Isaza, son of Ramón Isaza Arango, died; that one of the military officers named by Ramón Isaza - Alfonso Manosalva Flores – was the commander of the 4th Brigade at the time of the events and that he died in 1997;²⁷⁹ and that there were three majors in the area with the last name mentioned by Ramón Isaza, that is, the last name Hernández, one of whom died in 2004; another one worked in the administrative section; and another one was the chief of operations of the Pedro Nel Ospina Battalion and he was retired.²⁸⁰

162. The date set for the public confession hearing of Ramón Isaza was postponed several times for alleged health problems and finally took place on October 16, 2008. Mr. Isaza restated the events narrated in his prior statements and provided information about the child Andrés Suárez Cordero as described above (see *supra* para. 119).²⁸¹ With regard to the alleged victims, he said that “they were guerrilla collaborators.” He also stated that he ordered all of the notebooks and books of the Self-Defense Forces of Magdalena Medio to be burned. At this hearing, the attorney for the victims’ families contended that he has not accepted responsibility for being the intellectual author behind the crimes and, consequently, should not receive the benefits under the Justice and Peace Law. The attorney voiced his disagreement with this hearing because the right to the truth has not been satisfied. The Inspector General also asserted that “there is a responsibility of the State” for the participation of a coronel and a major.²⁸²

²⁷⁶ Annex 3. Initial statement on the facts of Ramón Isaza Arango to the Office of the Special Prosecutor attached to the National Human Rights and International Humanitarian Law Unit, dated April 23, 2007. Annex to the submission of the petitioners of May 7, 2007; Annex 32. Addendum to the initial statement on the facts of Ramón Isaza Arango to the National Human Rights and International Humanitarian Law Unit, dated October 15, 2008. Annex to petitioners’ submission received on November 21, 2008.

²⁷⁷ Annex 3. Initial statement on the facts of Ramón Isaza Arango to the Office of the Special Prosecutor attached to the National Human Rights and International Humanitarian Law Unit, dated April 23, 2007. Annex to the submission of the petitioners of May 7, 2007.

²⁷⁸ Annex 66. Decision on appeal of the Unit of the Office of the Attorney General Delegate to the Superior Court of Bogotá, dated May 8, 2007. Case File No. 233 UNDH. Book No. 11. Pages 258-267. Compact disk attached to petitioners’ communication of June 24, 2010.

²⁷⁹ Annex 67. Report No. 380494 DI. UNDH-DIH.CTI of the Human Rights and International Humanitarian Law Unit, dated January 21, 2008. Annex to petitioners’ submission received on November 30, 2009.

²⁸⁰ Annex 67. Report No. 380494 DI. UNDH-DIH.CTI of the Human Rights and International Humanitarian Law Unit, dated January 21, 2008. Annex to petitioners’ submission received on November 30, 2009.

²⁸¹ Annex 5. Public confession hearing on statement of facts of Ramón Isaza, dated October 16, 2008. Compact disk attached to State’s communication of September 25, 2009.

²⁸² Annex 5. Public confession hearing on statement of facts of Ramón Isaza, dated October 16, 2008. Compact disk attached to State’s communication of September 25, 2009.

163. On April 2, 2009, an arraignment hearing was held before the Magistrate with duties to Oversee and Guarantee [constitutional enforcement] of the Superior Court of Bogotá for Justice and Peace.²⁸³ Ramón Isaza accepted the charges stemming from the crimes in the instant case and on April 22 that year, the Justice and Peace Chamber of the Superior Court of the Judicial District requested the UNDH to suspend the investigation of Ramón Isaza into the crimes of abduction and homicide.²⁸⁴ In September 2009, the attorney for the victims' families requested that the punishable conduct with which Ramón Isaza was charged, be changed as well for other individuals who may have been actual perpetrators and intellectual authors to the crime of forced disappearance.²⁸⁵

164. Based on information available to the public, the case of Ramón Isaza under the Justice and Peace Law is ongoing.²⁸⁶

4.2. Criminal Case No. 752.065

165. On December 30, María del Rocío Cardona Fernández and María de la Cruz Hernández Gallego filed one complaint each with the Unit of Cocorná of the Office of the Attorney General of the Nation for crimes occurring on December 27, 1996 against Leonidas Cardona Giraldo and Andrés Antonio Gallego Castaño.²⁸⁷ Both complaints, as well as the statement of one witness, recount the aforementioned events (see *supra* paras. 125-128) and concur in claiming that the Self-Defense Forces of Magdalena Medio, as well as the members of the military forces of La Piñuela military base were responsible.²⁸⁸ On February 11, 1997, the Regional Office of the Attorney General Assigned to the Gaula of Antioquia took over the investigation of the crime of abduction.²⁸⁹ On April 2, 1997, the Regional Gaula Investigative Unit of Antioquia requested that the complainants add further detail to their

²⁸³ Annex 5. Official Letter No. 003383 D.2JYP of the National Unit of Prosecutor's Offices for Justice and Peace, signed by the Prosecutor Assigned to the district court Carlos Gordillo Lombana, addressed to Prosecutor 53 Assigned to the Criminal Circuit Court Judges, dated July 13, 2009. Case File No. 233 UNDH. Book No. 12. Pages 353-354. Compact disk attached to petitioners' communication of June 24, 2010.

²⁸⁴ Annex 9. Official Letter No. 1642 from the Justice and Peace Chamber of the Superior Court of the Judicial District, signed by clerk Jorge Cruz Rojas, addressed to the First Office of the Prosecutor of the National Human Rights and International Humanitarian Law Unit, dated April 22, 2009. Case File No. 233 UNDH. Book No. 12. Page 206. Compact disk attached to petitioners' communication of June 24, 2010.

²⁸⁵ Annex 9. Letter signed by Liliana Uribe Tirado addressed to the National Human Rights and International Humanitarian Law Unit of the Office of the Attorney General of the Nation, dated September 2009. Case File No. 233 UNDH. Book No. 12. Pages 233-254. Compact disk attached to petitioners' communication of June 24, 2010.

²⁸⁶ See: http://www.fiscalia.gov.co/jyp/definicion/programacion_audiencias/

²⁸⁷ Annex 8. Complaint of María del Rocío Cardona Fernández filed with the Office of the Attorney General of the Nation, dated December 30, 1996. SIFUJ No. 752.065. Office of Special Prosecutor 53 assigned to the Rural Gaula Eastern Antioquia. Pages 1-2. Compact disk attached to petitioners' communication of June 24, 2010; Annex 8. Complaint of María de la Cruz Hernández Gallego filed with the Office of the Attorney General of the Nation, dated December 30, 1996. SIFUJ No. 752.065. Office of Special Prosecutor 53 assigned to the Rural Gaula Eastern Antioquia. Pages 3. Compact disk attached to petitioners' communication of June 24, 2010.

²⁸⁸ Annex 43. Statement of Gabriel de Jesús Cardona Fernández to the Office of the Municipal Ombudsman of El Carmen de Viboral, dated December 30, 1996. Annex to petitioners' communication of September 1, 2004.

²⁸⁹ Annex 8. Official Letter signed by regional deputy prosecutor Néstor Niño López, dated February 11, 1997. SIFUJ No. 752.065. Office of Special Prosecutor 53 assigned to the Rural Gaula Eastern Antioquia. Page 8. Compact disk attached to petitioners' communication of June 24, 2010.

statements. The Commission notes that the requested addendum to the statements does not appear in the case file of the criminal proceeding.²⁹⁰

166. On March 27, 2003, the preliminary investigation was suspended on the grounds that “elapsed time considerably surpassed the deadline set forth in the rule (...), and even though judicial action was taken in an attempt to individually identify the alleged perpetrators and participants in the punishable conduct that is under investigation, no positive results have been obtained.”²⁹¹

167. On February 24, 2009, Deputy Prosecutor 53 assigned to the East Antioquia Rural Gaula issued a decision to reopen the case noting that it was not clear “why the decision to suspend the preliminary investigation was handed down, without the Office of the Prosecutor Attached to the East Antioquia Rural Gaula having taken any action.” She also noted that there was information potentially identifying the individuals responsible and requested that several different steps be taken in the investigation in order to obtain information, including with regard to i) the major of the national army who was in charge of La Piñuela military base in December 1996; ii) access to the records of the investigation into the disappearances of the other alleged victims in order to link relevant evidence to the case; and iii) identification of alias Fredy, who was alleged to have acted as a guide and singled out for the paramilitary group the persons who were abducted.²⁹² On July 13, 2009, the Prosecutor No. 2 of the National Unit for Justice and Peace forwarded a transcript of the confession statement requested by Deputy Prosecutor 53 assigned to the East Antioquia Rural Gaula.²⁹³

168. He also informed her that suspension of the investigation in the ordinary jurisdiction was ordered in order for the case to be investigated under Law 975 of 2005. Accordingly, he informed her: “the case that her office was handling for the same events must be suspended with regard to applicant Ramón María Isaza, and continued with regard to the other persons linked to it.”²⁹⁴

169. On July 27, 2009, the Deputy Prosecutor 53 assigned to the East Antioquia Rural Gaula sent a communication to the Office of the Coordinator of the UNDH in which she stressed “the absence of adequate preliminary investigation activity” in the ongoing proceedings, as well as the existence of information about alleged perpetrators, including members of the public security forces “that was not

²⁹⁰ Annex 8. Criminal Investigation Request (Exhorto Penal) No. 16 of the Technical Investigation Corps of Antioquia of the Office of the Attorney General of the Nation, Regional Gaula Investigative Unit of Antioquia, dated April 2, 1997. SIFUJ No. 752.065. Office of Special Prosecutor 53 assigned to the Rural “Gaula” Eastern Antioquia. Page 21. Compact disk attached to petitioners’ communication of June 24, 2010.

²⁹¹ Annex 8. Decision of the Chief Prosecuting Attorney of the Special Prosecutors Unit of Medellín, dated March 27, 2003. SIFUJ No. 752.065. Office of Special Prosecutor 53 assigned to the Rural “Gaula” Eastern Antioquia. Pages 41-42. Compact disk attached to petitioners’ communication of June 24, 2010.

²⁹² Annex 8. Decision to reopen preliminary investigation, made by Nancy Posada Ramírez, Deputy Prosecutor 53, dated February 24, 2009. SIFUJ No. 752.065. Office of Special Prosecutor 53 assigned to the Rural “Gaula” Eastern Antioquia. Page 59. Compact disk attached to petitioners’ communication of June 24, 2010.

²⁹³ Annex 8. Official Letter No. 003383D.2.JYP of the Deputy Prosecutor assigned to the District Court – National Prosecutors Office Unit for Justice and Peace addressed to Prosecutor 53, dated July 13, 2009. SIFUJ No. 752.065. Office of Special Prosecutor 53 assigned to the Rural “Gaula” Eastern Antioquia. Pages 104-105. Compact disk attached to petitioners’ communication of June 24, 2010.

²⁹⁴ Annex 8. Official Letter No. 003383D.2.JYP of the Deputy Prosecutor assigned to the District Court – National Prosecutors Office Unit for Justice and Peace addressed to Prosecutor 53, dated July 13, 2009. SIFUJ No. 752.065. Office of Special Prosecutor 53 assigned to the Rural “Gaula” Eastern Antioquia. Pages 104-105. Compact disk attached to petitioners’ communication of June 24, 2010.

explored and verified opportunely.”²⁹⁵ The prosecutor requested that, since it involved the same incidents, “the pertinence, appropriateness, as well as the constitutionality and legality of our request to join the investigations be considered and [for him to] issue, order or authorize the procedure” [to be followed] in order to be able to forward to him the case file which is being handled in his office.²⁹⁶ This request was made again on November 5, 2009.²⁹⁷

4.3. Disciplinary Proceeding. Case File No. 008-10799-98

170. On June 21, 1996, the municipal ombudsman of El Carmen de Viboral brought a complaint in the register of disciplinary investigations of the Office of the Inspector General of the Nation for “alleged violations (...) regarding human rights and irregularities by members of the army.”²⁹⁸ On June 24, 1996, the director of the Human Rights Unit of the Directorate of Special Investigations ordered a preliminary inquiry to be opened.²⁹⁹ On July 18, 1996, the municipal ombudsman of El Carmen de Viboral reported the disappearances from Vereda La Esperanza of the alleged victims. With regard to the incidents of June 26, 1996, he contended that “properly uniformed soldiers bearing their respective rifles” took part.³⁰⁰

171. On August 14, 1996, the director of the Human Rights Unit of the Directorate of Special Investigations ordered “a preliminary inquiry to be opened into the incidents of public order that have been taking place in the Municipality of El Carmen de Viboral.”³⁰¹ Additionally, on August 27 he stated

²⁹⁵ Annex 8. Official Letter No. 322 from the Office of Prosecutor 53 Delegated to the Criminal Chamber of Special the Circuit assigned to the Rural Gaula Eastern Antioquia, addressed to the Office of the Coordinator of the National Human Rights and International Humanitarian Law Unit of the Office of the Attorney General of the Nation, dated July 27, 2009. SIFUJ No. 752.065. Office of Special Prosecutor 53 assigned to the Rural Gaula Eastern Antioquia. Pages 106-108. Compact disk attached to petitioners’ communication of June 24, 2010.

²⁹⁶ Annex 8. Official Letter No. 322 from the Office of Prosecutor 53 Delegated to the Criminal Chamber of Special the Circuit assigned to the Rural Gaula Eastern Antioquia, addressed to the Office of the Coordinator of the National Human Rights and International Humanitarian Law Unit of the Office of the Attorney General of the Nation, dated July 27, 2009. SIFUJ No. 752.065. Office of Special Prosecutor 53 assigned to the Rural Gaula Eastern Antioquia. Pages 106-109. Compact disk attached to petitioners’ communication of June 24, 2010.

²⁹⁷ Annex 8. Official Letter No. 443-53 from the Office of the Prosecutor 53 Delegate to the Criminal Chamber of the Special Circuit assigned to the Rural “Gaula” Eastern Antioquia, addressed to the Office of the Coordinator of the National Human Rights and International Humanitarian Law Unit of the Office of the Attorney General of the nation, dated November 5, 2009. SIFUJ No. 752.065. Office of Special Prosecutor 53 assigned to the Rural Gaula Eastern Antioquia. Page 110. Compact disk attached to petitioners’ communication of June 24, 2010.

²⁹⁸ Annex 22. Register of Disciplinary Investigations of the Office of the Inspector General of the Nation, dated June 21, 1996. Case File No. 008-10799-98. Office of the Disciplinary Matters Deputy Inspector for Human Rights. Public Ministry for Judicial Oversight (Ministerio Público). Page 1. Compact disk attached to petitioners’ communication of July 12, 2010.

²⁹⁹ Annex 22. Official Letter No. 0503 from the National Directorate of Special Investigations – Human Rights Unit of the Office of the Inspector General of the Nation, dated June 24, 1996. Pages 5-6. Case File No. 008-10799-98. Office of the Disciplinary Matters Deputy Inspector for Human Rights. Public Ministry for Judicial Oversight (Ministerio Público). Page 1. Compact disk attached to petitioners’ communication of July 12, 2010.

³⁰⁰ Annex 22. Official Letter No. 060 from the Municipal Ombudsman of El Carmen de Viboral, Heli Gómez Osorio, dated August 5, 1996. Case File No. 008-10799-98. Office of the Disciplinary Matters Deputy Inspector for Human Rights. Public Ministry for Judicial Oversight (Ministerio Público). Page 103. Compact disk attached to petitioners’ communication of July 12, 2010.

³⁰¹ Annex 22. Official Letter from the Director of the Sectional Office of Special Investigations of Medellín of the Office of the Inspector General of the Nation, Ramón Puentes Torres, dated August 14, 1996. Case File No. 008-10799-98. Office of the

that after the statements taken and on-site inspection visits conducted, “it is concluded that there are indications in the body of evidence gathered that implicates members of the National Army, which constitutes a very grave offense against International Humanitarian Law, as well as a violation of internal disciplinary rules.”³⁰²

172. On June 19, 1998, the Deputy Inspector for Human Rights said that “there is no direct or indirect evidence in the case file record of disciplinary responsibility of the Public Security Forces.” He noted that the testimonial evidence introduced “is timid if not general and confusing with regard to responsibility for the acts and it is understandable out of fear of retaliation and social panic.” He noted that the case file must be closed but that first it was necessary to conduct a search to locate “the exact site where the military troops were at the time when the disappearances occurred.” He also requested information from the office of the Attorney General of the Nation about the status of the criminal investigations under way with regard to the facts.³⁰³

173. On July 22, 1998 the National Coordinator of the National Directorate of Special Investigations of the Sectional Office of Antioquia of the Office of the Inspector General of the Nation noted that “it was impossible to comply with the order.”³⁰⁴

174. On September 11, 2000, the Deputy Inspector for Human Rights issued an order to close [the case] without prejudice noting that “it cannot be solved in a disciplinary matter if there is no legally produced evidence that leads to the certainty of the offense (...) and responsibility of the disciplined individual (...).” On this score, he asserted with regard to the alleged victims that since the time of the incidents “these persons where ‘missing,’ and it was unknown whether it was because of an abduction, a forced disappearance or a voluntary or involuntary civil disappearance.” He noted that because “no further evidence exists” and because of the “professionalism (...) of its perpetrator or perpetrators” so that “nobody would ever again learn or know of their existence and whereabouts,” he ordered that a disciplinary proceeding should not be brought.³⁰⁵

Disciplinary Matters Deputy Inspector for Human Rights. Public Ministry for Judicial Oversight (Ministerio Público). Pages 105-106. Compact disk attached to petitioners’ communication of July 12, 2010.

³⁰² Annex 22. Order from the National Directorate of Special Investigations – Human Rights Unit, signed by its director Alberto Morales Tamara, dated August 27, 1997. Case File No. 008-10799-98. Office of the Disciplinary Matters Deputy Inspector for Human Rights. Public Ministry for Judicial Oversight (Ministerio Público). Pages 257-258. Compact disk attached to petitioners’ communication of July 12, 2010.

³⁰³ Annex 22. Official Letter from the Deputy Inspector for the defense of human rights, Jesús Gómez López, dated June 19, 1998. Case File No. 008-10799-98. Office of the Disciplinary Matters Deputy Inspector for Human Rights. Public Ministry for Judicial Oversight (Ministerio Público). Pages 262-264. Compact disk attached to petitioners’ communication of July 12, 2010.

³⁰⁴ Annex 22. Official Letter No. DNIE 908-1 from the National Coordinator of the National Directorate of Special Investigations, Sectional Office of Antioquia of the Office of the Inspector General of the Nation, José de Jesús Díaz Moncada, dated July 22, 1998. Case File No. 008-10799-98. Office of the Disciplinary Matters Deputy Inspector for Human Rights. Public Ministry for Judicial Oversight (Ministerio Público). Page 276. Compact disk attached to petitioners’ communication of July 12, 2010.

³⁰⁵ Annex 22. Order to archive without prejudice, issued by the Disciplinary Matters Deputy Inspector for Human Rights, Jesús Gómez López, dated September 11, 2000. Case File No. 008-10799-98. Office of the Disciplinary Matters Deputy Inspector for Human Rights. Public Ministry for Judicial Oversight (Ministerio Público). Pages 318-322. Compact disk attached to petitioners’ communication of July 12, 2010.

175. On November 29, 2000, the Office of the Disciplinary Matters Deputy Inspector for the Defense of Human Rights decided to reassign the investigation to the Deputy Inspector for Human Rights on the grounds of: i) the serious objections to the work conducted by the Office of the Inspector General raised by the Ministry of Foreign Relations; and ii) the decision to open investigation proceedings on August 23, 2000, linking Major Carlos Guzmán Lombana and Ramón Isaza Arango³⁰⁶ to the case. Notwithstanding, on September 2, 2003, the closing of the disciplinary investigation was confirmed.³⁰⁷

4.4. Actions before Contentious Administrative Courts

4.4.1. File No. 05001-23-31-20002-052700

176. María Diocelina Quintero and other family members filed suit against the Ministry of Defense and the National Army for the forced disappearance of Miguel Ancizar and Juan Crisóstomo Cardona Quintero on June 22, 1996.³⁰⁸ The State claimed that “the perpetrators of the acts were persons unattached to the institution, for which there is no reason of failure in performance of duty.”

177. The Eighth Chamber of Contentious Administrative Court of Antioquia issued its judgment on March 2, 2007 finding that “the Nation-Ministry of Defense, National Army is not responsible for damages caused to the plaintiffs, in view of the fact that the elements constituting failure in performance of duty were not proven.”³⁰⁹ Consequently, it dismissed the plaintiffs’ claims.

178. The information provided by both parties to the IACHR shows that the family members appealed this decision. The Commission does not have any information as to the status of this appeal.

4.4.2. File No. 2002-00528 (Consolidated)

179. In early 2000, the family members of Irene Gallego, Leonidas Cardona, Jaime Mejía, Hernando Castaño, Octavio Gallego, Juan Carlos Gallego, Óscar Zuluaga, Aníbal Castaño, Andrés Gallego and Orlando Muñoz, each filed separate claims for reparation against the Nation-Ministry of Defense and the National Army for the incidents that took place in Vereda La Esperanza.³¹⁰

³⁰⁶ Annex 22. Clerk’s Report of the Office of the Disciplinary Matters Deputy Inspector for the Defense of Human Rights, dated November 29, 2000. Case File No. 008-10799-98. Office of the Disciplinary Matters Deputy Inspector for Human Rights. Public Ministry for Judicial Oversight (Ministerio Público). Page 398. Compact disk attached to petitioners’ communication of July 12, 2010.

³⁰⁷ Annex 22. Official Letter from the Office of the Disciplinary Matters Deputy Inspector for the Defense of Human Rights, signed by Inspector Edgar Escobar López, dated September 2, 2003. Case File No. 008-10799-98. Office of the Disciplinary Matters Deputy Inspector for Human Rights. Public Ministry for Judicial Oversight (Ministerio Público). Compact disk attached to petitioners’ communication of July 12, 2010.

³⁰⁸ Annex 68. Judgment No. 50 of the Eighth Chamber of the Administrative Court of Antioquia, March 2, 2007. Compact disk attached to petitioners’ communication of August 2010.

³⁰⁹ Annex 22. Official Letter from the Office of the Disciplinary Matters Deputy Inspector for the Defense of Human Rights, signed by Inspector Edgar Escobar López, dated September 2, 2003. Case File No. 008-10799-98. Office of the Disciplinary Matters Deputy Inspector for Human Rights. Public Ministry for Judicial Oversight (Ministerio Público). Compact disk attached to petitioners’ communication of July 12, 2010.

³¹⁰ All of the claims were filed on January 24, 2002, except for the one involving Leonidas Cardona, which was filed on June 4, 2003. Annex 69. Judgment No.159 of the Third Chamber for Judgments of the Administrative Court of Antioquia of June 15, 2010. Compact disk attached to petitioners’ communication of August 2010.

180. On May 16, 2007, the claims were consolidated. The State noted that the acts were executed by a third party and that there was no nexus of causality.³¹¹

181. On June 15, 2010, the Third Chamber for Judgment of the Contentious Administrative Court of Antioquia found that, based on the statement of the witnesses, as well as the on-site judicial inspection visits, at the time of the incidents “the National Army was present in the area.” In particular, it held that the FTA had jurisdiction of over the Medellín-Bogotá highway. Additionally, it found that “there was no doubt” that at the time the paramilitary groups were operating in Vereda La Esperanza. It further held that “there was no proof offered by the National Army in the instant case of any efforts to prevent the disappearances of these individuals, nor any subsequent acts to ascertain their whereabouts.” It noted that “if there had been adequate efforts of the Public Security Forces, the damage caused to the inhabitants of Vereda La Esperanza would have been prevented or at least lessened.” In this regard, responsibility was found for failure in the performance of duty of the Nation-Ministry of Defense/National Army in the disappearance of the alleged victims and the Court ordered payment of indemnity compensation for moral damages (in statutory monthly salary payments) and material damages (lost wages).³¹²

182. Information made available by both parties to the IACHR indicates that the Ministry of Defense-National Army appealed this decision. The Commission does not have any information as to the status of the decision on this appeal.

C. Analysis of Law

1. Prior question about on the identification of the victims

183. In the framework of the system of petitions and individual cases, all alleged victims in a concrete case must be identified to the greatest extent possible. Nevertheless, there are certain situations in which this determination is challenging. It is because of this that, in these cases, it is necessary to taken into account various elements to examine the alleged victims with certain standards of reasonableness and flexibility.

184. In first place, the present case took place in a situation of widespread violence emerging from a domestic armed conflict that Colombia has suffered from for various decades. Second, it is important to consider the nature of the alleged violations, in particular forced disappearance which, as a distinctive element, entails cover-up and uncertainty about the person’s whereabouts. Third, because of the *modus operandi* itself of forced disappearance in Colombia used by paramilitary groups with the acquiescence, collaboration or support of the military means that it is difficult and in some cases unlikely that the whereabouts of the victims of their bodily remains can be located. Finally, it is necessary to take into account that the facts of the present case took place more than 17 years ago and that, to date, it has been impossible to ascertain what had occurred to the alleged victims of the case.

³¹¹ Annex 69. Judgment No.159 of the Third Chamber for Judgments of the Administrative Court of Antioquia of June 15, 2010. Compact disk attached to petitioners’ communication of August 2010.

³¹² Annex 69. Judgment No.159 of the Third Chamber for Judgments of the Administrative Court of Antioquia of June 15, 2010. Compact disk attached to petitioners’ communication of August 2010.

185. The Commission, on the basis of the information submitted by the parties, has made all possible efforts to fully identify all the alleged victims, either by their full name or by ties with their next of kin. Regarding this, the IACHR observes that the identity of three of the alleged victims had not been fully ascertained: i) the person known by the alias ‘Fredy,’ whom Ramón Isaza, leader of the Self-Defense Forces of Magdalena Medio, had supposedly called Alfonso Guizao Suárez; and ii) the spouse of alias ‘Fredy’. Nevertheless, the IACHR stresses that, according to proven facts, there were various witnesses who saw these persons detained, even when the person known by the alias ‘Fredy’ was with the persons who participated in two of the disappearances. Likewise, the Commission has a video where the person known by the alias ‘Fredy’ himself acknowledged that he was controlled by the Self-Defense Forces of Magdalena Medio.

186. The Commission notes that the State confined itself to objecting, in terms of the proceedings and admissibility, to the inclusion of these persons as alleged victims. Regarding this, taking into account “the nature of the facts and the time that has passed,” the Court itself finds it “reasonable that the identification and individualization of each presumed victim is difficult.”³¹³ In view of the above considerations, the Commission incorporates the two above-mentioned persons in the review conducted below.

2. General considerations about attributing responsibility

187. The Commission deems it is relevant, beyond the evidence of direct involvement of state agents reflected in the section on proven facts, to present certain considerations about the phenomenon of paramilitarism in Colombia, as well as the consequences of said situation regarding the international responsibility that the State has incurred in the present case.

2.1. Relationship between the State and the establishment of paramilitary groups

188. Both the IACHR and the Court have issued rulings about the relationship between the State of Colombia and the establishment of paramilitary groups. Regarding this, the IACHR indicated that the State played an important role in the development of paramilitary or self-defense groups, which were permitted to act with legal protection and legitimacy in the decades of the seventies and eighties, and was responsible for their existence and strength.³¹⁴ These groups, whether sponsored or accepted by the National Army, were largely established to combat groups of armed dissidents.³¹⁵ The IACHR also contended that, as a result of their counterinsurgent motivation, paramilitary groups established ties with the armed forces which became increasingly consolidated for more than two decades.³¹⁶

³¹³ I/A Court H.R., *Case of the Río Negro Massacres v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 4, 2012. Series C No. 250, paragraph 51.

³¹⁴ IACHR, *Third Report on the Human Rights Situation in Colombia*, OEA/Ser.L/V/III.102 Doc. 9 rev. 1, February 26, 1999, Chapter I, paragraphs 7-19; IACHR, Report No. 64/11, Case 12.573, Merits, Marino López and others (Operation Genesis), Colombia, March 31, 2011, paragraph 225.

³¹⁵ IACHR, *Third Report on the Human Rights Situation in Colombia*. OEA/Ser.L/V/II.102 Doc. 9 rev. 1, February 26, 1999, Cap. I, paragraphs 7-19.

³¹⁶ IACHR, *Third Report on the Human Rights Situation in Colombia*. OEA/Ser.L/V/II.102 Doc. 9 rev. 1, February 26, 1999, Chapter I, paragraphs 7-19; IACHR Report No. 75/06. *Jesús María Valle Jaramillo* of October 16, 2006, paragraph 62.

189. As for the Court, it referred, in the *Case of Valle Jaramillo and others*, to the “domestic armed conflict in Colombia and the illegal armed groups called paramilitary groups” and pointed out that:

(...) Various guerrilla groups began to operate in Colombia since the 1960s, and due to their activities the State declared that there was a “disturbance of public order and established a state of siege in the territory of the country.” In face of this situation, [the State] provided the legal basis for the establishment of the “self-defense groups” [and] provided that “[a]ll Colombians (...) c[ould] be used by the Government in activities and work that contributes to reestablishment of normality.” And (...) it was provided that “[t]he Ministry of National Defense, through authorized command structures, may authorize the private use of weapons whose use is restricted to the Armed Forces.” The “self-defense groups” were legally established under said provisions, for which reason they had the support of State authorities (...).

In the framework of the struggle against the guerrilla groups, the State fostered the creation of said “self-defense groups” among the civilian population, and their main aims were to assist the security forces in counterinsurgency operations and to defend themselves from the guerrilla groups. The State granted them permits to bear and possess weapons, as well as logistic support (...).

During the 1980s, (...) it became obvious that many “self-defense groups” had changed their objectives and had become criminal groups, commonly called “paramilitary.” (...)³¹⁷

190. The Court also considered that, although the State has adopted in previous years certain legislative measures to forbid, prevent, and punish activities by self-defense or paramilitary groups, these measures have not led to the concrete and effective dismantling of the risk that the State itself has contributed to creating.³¹⁸ On the contrary, the Court contended that the ties with the forces of law and order “have historically remained at various levels, in some cases requesting or allowing paramilitary groups to carry out certain illegal actions in the understanding that they would not be the target of any investigation, trial or sanction.”³¹⁹

2.2. Ties between paramilitary groups and the Colombian Army with regard to humans rights violations

191. In its Third Report on the Human Rights Situation in Colombia of 1999, the IACHR indicated that it has “received concrete, consistent and reliable information from numerous sources that the army in certain cases acted jointly with paramilitary groups to carry out direct and indiscriminate attacks against the civilian population and to provoke the forced displacement of the population.”³²⁰ As

³¹⁷ I/A Court H.R., *Case of Valle Jaramillo and others v. Colombia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, paragraph 75.

³¹⁸ I/A Court H.R., *Case of Valle Jaramillo and others v. Colombia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, paragraph 80.

³¹⁹ IACHR, *Third Report on the Human Rights Situation in Colombia*. OEA/Ser.L/V/II.102 Doc. 9 rev. 1, February 26, 1999. Chapter I, paragraph 17-19; IACHR, Report No. 75/06, Case 12.415, Merits, *Jesús María Valle Jaramillo v. Colombia*, October 16, 2006, paragraph 62. See also: *Report of the United Nations High Commissioner for Human Rights on the Activities of her Office in Colombia*. April 2000, paragraph 30.

³²⁰ IACHR, *Third Report on the Human Rights Situation in Colombia*. OEA/Ser.L/V/II.102 Doc. 9 rev. 1, February 26, 1999. Annex I, paragraph 23.

a result of the Court's case law, it was possible to establish that there were ties between paramilitary groups and the Colombian Army in human rights violations such as forced disappearances, extrajudicial executions, cruel, inhumane or degrading treatment, among others. Thus, these ties and the State's resulting responsibility have been evident in: i) direct actions of support, collaboration and coordination; or ii) omissions by members of the forces of law and order that have been favorable to the actions of paramilitary groups.

192. In the judgment of *Case of the 19 Tradesmen v. Colombia* of 2004, the Court declared that the State had incurred international responsibility for the forced disappearance of victims at the hands of paramilitary groups in the region of Magdalena Medio with support from the Forces of Law and Order in 1987.³²¹ The following year, in the *Case of the Mapiripán Massacre v. Colombia*, the Court considered that the State had incurred international responsibility for preparing and executing the massacre by paramilitary groups because of the collaboration, acquiescence and tolerance of members of the military in 1997.³²² The Court considered that this led to a series of coordinated, parallel or concatenated actions and omissions by state agents with paramilitary groups to massacre the victims.³²³

193. In 2006, the Court issued a judgment in the *Case of the Pueblo Bello Massacre v. Colombia*. The Court concluded that, although the Pueblo Bello Massacre was organized and perpetrated by members of paramilitary groups in 1990, it would not have been possible to execute without the effective protection of the civilian population in a situation of risk that was reasonably predictable by members of the National Army. In this regard, it stated that the State had incurred international responsibility for the actions of the members of the paramilitary group as it did not diligently adopt the necessary measures to protect the civilian population.³²⁴

194. Also in 2006, in the *Case of the Ituango Massacres v. Colombia*, the Court indicated that the chain of selective executions perpetrated by a paramilitary grouping 1996 and 1997 was carried out with the acquiescence, tolerance or support of members of the Forces of Law and Order.³²⁵ Because of that, the Court declared that the State had incurred international responsibility because agents of the armed forces not only lent their acquiescence to the acts perpetrated by the paramilitary groups, but there were also cases where they participated and collaborated directly in these acts.³²⁶ In 2007, the Court issued its judgment in the *Case of the Rochela Massacre v. Colombia* where it declared that the State had incurred in international responsibility for not having adopted effective measures of

³²¹ I/A Court H.R., *Case of 19 Tradesmen v. Colombia*. Merits, Reparations and Costs. Judgment of July 5, 2004. Series C No. 109, paragraph 135.

³²² I/A Court H.R., *Case of the Mapiripán Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of September 15, 2005. Series C No. 134, paragraph 120.

³²³ I/A Court H.R., *Case of the Mapiripán Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of September 15, 2005. Series C No. 134, paragraph 123.

³²⁴ I/A Court H.R., *Case of the Pueblo Bello Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of January 31, 2006. Series C No. 140, paragraph 140.

³²⁵ I/A Court H.R., *Case of the Ituango Massacres v. Colombia*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2006. Series C No. 148, paragraph 125.57.

³²⁶ I/A Court H.R., *Case of the Ituango Massacres v. Colombia*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2006. Series C No. 148, paragraphs 125.86 and 132.

prevention and protection for the civilian population in 1989 that was in a situation of risk that was reasonably predictable regarding paramilitary groups.³²⁷

195. In the 2008 judgment of the *Case of Valle Jaramillo and others v. Colombia*, the Court considered that the State had incurred international responsibility for the extrajudicial killing of the victim in 1998, who had actively denounced the collaboration and acquiescence between paramilitary groups and members of the National Army. It contended that this incident was attributable to the State, although it was perpetrated by paramilitary groups, because the State had not effectively suppressed or settled the situation of risk created by the existence of paramilitary groups and because it had continued to promote their actions thanks to the impunity they benefited from.³²⁸ The last judgment issued by the Court on this situation was in the *Case of Cepeda Vargas v. Colombia*. The Court concluded that the State had incurred international responsibility because of the joint participation of members of the Army and members of one or various paramilitary groups in planning and perpetrating the killing of the victim in 1994.³²⁹

196. In the present case, the Commission has been able to prove that there are ties and a joint working relationship between the Self-Defense Forces of Magdalena Medio and the National Army in the area. In this regard, the effects of these ties in terms of attributing responsibility are applicable in the present case.

3. General considerations about forced disappearance

197. The Court has repeated that forced disappearance, whose prohibition has the character of *ius cogens*, is of a continuous or permanent nature and constitutes a multiple violation of various rights protected by the American Convention.³³⁰ Regarding this, the Commission and the Court contends that the offense of forced disappearance places the victim in a situation of complete defenselessness, which is especially severe when it is part of a systematic pattern or practice that is applied or tolerated by the State.³³¹

³²⁷ I/A Court H.R., *Case of the Rochela Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 165, paragraph 78.

³²⁸ I/A Court H.R., *Valle Jaramillo and others v. Colombia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, paragraph 92.

³²⁹ I/A Court H.R., *Case of Cepeda Vargas v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 26, 2010. Series C No. 213, paragraph 114.

³³⁰ I/A Court H.R., *Case of Radilla Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, paragraph 139; *Case of Goiburú and others v. Paraguay*. Merits, Reparations and Costs. Judgment of September 22, 2006. Series C No. 153, paragraph 84; and *Case of Tiu Tojín v. Guatemala*. Merits, Reparations and Costs. Judgment of November 26, 2008. Series C No. 190, paragraph 91.

³³¹ IACHR, Application before the Inter-American Court, Case No. 11.324, Narciso González et al, Dominican Republic, June 2, 2010, para. 103; Application before the Inter-American Court, Case No. 12.517, Gregoria Herminia Contreras et al, El Salvador, June 28, 2010, para. 131. I/A Court H.R., *Case of Radilla Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, paragraph 114; *Case of the Serrano Cruz Brothers v. El Salvador*. Merits, Reparations and Costs. Series C No. 120, paragraphs 100-106; *Case of Heliodoro Portugal v. Panama*. Preliminary Objections, Merits, Reparations and Costs. Series C No. 186, paragraph 118; and *Case of Anzualdo Castro v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, paragraph 59; I/A Court H.R., *Valle Jaramillo and others v. Colombia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, paragraph 76.

198. Thus, forced disappearance has the following concurrent and constituent elements: i) detention; ii) direct intervention of state agents or their acquiescence; and iii) refusal to recognize the detention or to reveal the fate or whereabouts of the person involved.³³² This characterization has emerged from the context of the Inter-American System of the Inter-American Convention on Forced Disappearance of Persons (IACFDP), to which the State of Colombia is a party since April 12, 2005.³³³ Furthermore, various international instruments, as well as case law of international agencies and domestic courts, agree with the above-mentioned definition.³³⁴

199. That is how States have the obligation of not practicing or tolerating, under any circumstance, the forced disappearance of persons. They must also reasonably prevent the perpetration of this crime, seriously investigate what has happened in order to identify those responsible and to impose the relevant sanctions, as well as make sure the victim receives adequate redress.³³⁵ These obligations are set out expressly in articles I.a) and I.b) of the Inter-American Convention on The Forced Disappearance of Persons.

200. Regarding the rights that were breached, forced disappearance undermines the right to personal liberty and places victims in a grave situation of risk of suffering irreparable damage to their rights to personal integrity and to life. The Court has indicated that forced disappearance violates the right to personal integrity because “[p]rolonged isolation and being held incommunicado constitute, in themselves, forms of cruel and inhuman treatment.”³³⁶ The Court has also indicated that, even if incidents of torture or killing of the person who is a victim of forced disappearance cannot be proven in

³³² I/A Court H.R., *Case of Gómez Palomino v. Peru*. Merits, Reparations and Costs. Judgment of November 22, 2005. Series C No. 136, paragraph 97; *Case of Ticona Estrada v. Bolivia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 191, paragraph 55; and *Case of Anzualdo Castro v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, paragraph 60.

³³³ Regarding this, it should be mentioned that the Court has contended that the characteristics of forced disappearance stem from the definition itself in Article III of the Inter-American Convention on the Forced Disappearance of Persons, the *travaux préparatoires* for the latter, and its preamble and statutes. See: I/A Court H.R., *Case of Radilla Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, paragraph 140, quoting the Annual Report of the Inter-American Commission on Human Rights 1987-1988, Chapter V.II. This crime “is permanent as it is not perpetrated instantly but permanently and lasts throughout the time that the person continues to be a disappeared person” (OEA/CP-CAJP, Report of the Chair of the Working Group in Charge of Reviewing the Draft IACFDP, doc. OEA/Ser.G/CP/CAJP-925/93 rev.1, de 25.01.1994, p. 10).

³³⁴ In the context of the Inter-American System, see: I/A Court H.R., *Case of Gómez Palomino v. Peru*. Merits, Reparations and Costs. Judgment of November 22, 2005. Series C No. 136, paragraph 97; *Case of Ticona Estrada v. Bolivia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 191, paragraph 55; and *Case of Anzualdo Castro v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, paragraph 60. In the context of the European system, see: ECHR *Case of Kurt v. Turkey*. Application No. 15/1997/799/1002. Judgment of 25 May 1998, paragraphs 124-128; *Case of Çakici v. Turkey*, Application No. 23657/94. Judgment of 8 July 1999, paragraphs 104-106. In the context of domestic courts, see: *Case of Marco Antonio Monasterios Pérez*, Supreme Court of Justice of the Bolivarian Republic of Venezuela, judgment of August 10, 2007; *Case of desafiado [removal of immunity] of Pinochet*, Plenary of the Supreme Court of Chile, judgment of August 8, 2000; *Case of Castillo Páez*, Constitutional Court of Peru, judgment of March 18, 2004, among others.

³³⁵ I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, paragraph 174; *Case of Anzualdo Castro v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, paragraph 62; and *Case of Radilla Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, paragraph 142.

³³⁶ I/A Court H.R., *Case of Chaparro Álvarez and Lapo Iñiguez v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170, paragraph 171; and *Case of Anzualdo Castro v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, paragraph 85.

a concrete case, the subjection of detained persons to state agents or individuals who act with their acquiescence or tolerance that with impunity and practice torture and killing represents, in itself, an infringement of the duty to prevent violations of the rights to personal integrity and to life.³³⁷

201. Furthermore, the Court has considered that, in cases of forced disappearance, in response to the multiple and complex nature of this severe violation of human rights, this crime leads to the specific violation of the right to recognition as a person before the law.³³⁸ This is because, in addition to the fact that the disappeared person cannot continue to enjoy and exercise the rights of which she/he is a bearer, forced disappearance is “not only one of the most serious forms of placing the person outside the protection of the law but it also entails to deny that person's existence and to place him or her in a kind of limbo or uncertain legal situation before the society [and] the State.”³³⁹

4. General considerations about the rights of children in an armed conflict

202. Article 19 of the American Convention indicates that: “Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.” As provided for by the Court, this provision must be construed as an additional and complementary right, which the treaty has established for human beings which, because of their physical and emotional development, require special protection.³⁴⁰ As a result, children are bearers not only of the human rights that pertain to all persons, but also of those special rights stemming from their status.

203. Regarding this, the Court contended that “the adoption of special measures for the protection of the child pertains to both the State and the family, community and society to which the child belongs.”³⁴¹ These measures must be based on the principle of the higher interest of children, which is founded on: i) their own specific characteristics; ii) the need to promote their development with the full utilization of their potential; and iii) a human being’s own dignity.³⁴² The Court has also been

³³⁷ I/A Court H.R., *Case of Ticona Estrada v. Bolivia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 191, paragraph 59; *Case of Anzualdo Castro v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, paragraph 85; and *Case of Radilla Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, 154.

³³⁸ I/A Court H.R., *Case of Anzualdo Castro v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, paragraphs 91-92; *Case of Radilla Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, paragraph 157.

³³⁹ I/A Court H.R., *Case of Anzualdo Castro v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, paragraph 90.

³⁴⁰ I/A Court H.R., *Case of the Ituango Massacres v. Colombia*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2006. Series C No. 148, paragraph 106; *Case of Baldeón García v. Peru*. Merits, Reparations and Costs. Judgment of April 6, 2005. Series C No. 147, paragraph 244; *Case of the Mapiripán Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of September 15, 2005. Series C No. 134, paragraph 152; *Case of the “Juvenile Reeducation Institute” v. Paraguay*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 2, 2004. Series C No. 112, paragraph 147; and *Case of Servellón García and others v. Honduras*. Merits, Reparations and Costs. Judgment of September 21, 2006, paragraph 113.

³⁴¹ I/A Court H.R., *Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/02 of August 28, 2002*. Series A No. 17, paragraph 62.

³⁴² I/A Court H.R., *Case of the Ituango Massacres v. Colombia*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2006. Series C No. 148, paragraph 244; *Case of the Mapiripán Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of September 15, 2005. Series C No. 134, paragraph 134; *Case of the Girls Yean and Bosico v. Dominican*

emphatic in pointing out that these special measures must be considered specifiable on the basis of the needs of the child as a subject of law.³⁴³

204. For the purposes of establishing the contents and scope of the general provision set forth in Article 19 of the American Convention, the Court has established that both the American Convention and the Convention on the Rights of the Child comprise an international *corpus iuris* for the protection of the rights of the child.³⁴⁴

205. In the present case, the Commission deems it is relevant to refer to the specific obligations set forth in Articles 6 and 38 of the Convention on the Rights of the Child³⁴⁵, as well as article 4.3 of the Additional Protocol II to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts³⁴⁶, as part of said *corpus iuris* that call for respect and guarantee for the right to life by adopting all possible measures to ensure their protection and the care of children affected by an armed conflict.

5. General considerations about the right to life and extrajudicial executions

206. The Commission draws attention to the fact that the right to life is a prerequisite for enjoying all other human rights and without which all the others have no meaning.³⁴⁷ In that regard, compliance with Article 4 in connection with Article 1.1 of the American Convention does not only presuppose that no person shall be arbitrarily deprived of his/her life (negative obligation), but in addition requires that States taken all appropriate measures to protect and safeguard the right to life (positive obligation), under their duty to guarantee the full and free exercise of the rights of all persons under their jurisdiction.³⁴⁸

207. As part of these measures, it should be stressed that the obligation of States to: i) draw up an adequate regulatory framework that deters any threat to the right to life; ii) ensure that their

Republic. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 8, 2005. Series C No. 130, paragraph 134; and *Case of the Yakye Axa Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment of June 17, 2005. Series C No. 125, paragraph 172.

³⁴³ I/A Court H.R., *Case of the Sawhoyamaya Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment of March 29, 2006, paragraph 154.

³⁴⁴ Ratified by the State of Colombia on January 28, 1991.

³⁴⁵ Article 6: 1. States Parties recognize that every child has the inherent right to life. 2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 38: 1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child. [...] 4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

³⁴⁶ Colombia is a State party of the Additional Protocol II to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts since August 14, 1995. Article 4.3: Children shall be provided with the care and aid they require [...].

³⁴⁷ I/A Court H.R., *Case of the Street Children (Villagrán-Morales and others) v. Guatemala*. Merits. Judgment of November 19, 1999. Series C No. 63, paragraph 144.

³⁴⁸ I/A Court H.R., *Case of Zambrano Vélez and others v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, paragraph 80; *Case of the Street Children (Villagrán-Morales and others)*. Merits. Judgment of November 19, 1999. Series C No. 63, paragraph 144.

security corps, which have been empowered to legitimately use force, respect the right to life of those who are under their jurisdiction; iii) set up an effective system of justice that is capable of investigating, punishing and providing redress for the deprivation of life by state agents or individuals; and iv) safeguard the right to not having any obstruction to having access to conditions that guarantee a life of dignity.³⁴⁹

208. Regarding the practice of extrajudicial executions, the Court has indicated the following:

(...) States must take such steps as may be necessary, not only to prevent and punish those responsible for the deprivation of life as a consequence of criminal acts, but also to prevent arbitrary executions by their own security forces (...)³⁵⁰.

209. The Commission has also contended that:

(...) extrajudicial or summary executions involve the deliberate, illegitimate deprivation of life on the part of State agents, usually acting on orders or at least with the consent and acceptance of the authorities. Therefore, extrajudicial executions are illegal acts committed by precisely those persons who have been vested with the power originally conceived to protect and guarantee people's security and lives.³⁵¹

6. Analysis of the instant case

210. In the section on proven facts, six events occurring between June 21 and December 27, 1996 were described. These events, most of which occurred between June and July, resulted in the disappearance of 15 persons and the death of another, within a limited geographical area where, because of its proximity to the highway, there was the Colombian Army. As observed in the review of each one of the events, there are common elements and a common thread that clearly links these events.

211. Among these common elements, there is the perception of an alleged collaboration with guerrilla groups that operated in the area, precisely in the context in which one of these guerrilla groups would have kidnapped members of public law and order. Indeed, there is enough proof that it was known that there was a military raid in the area at the end of June 1996 because of these incidents.

212. Furthermore, there are various ties between the events. Thus, as indicated below, various missing persons had already been threatened before and labeled as guerrilleros or collaborators of the guerrilla by members of the Army. In some of the cases, the prior threats even took place in the framework of other incidents that are part of this same case. In other cases, it is evident that it involves a follow-up on previous incidents, as occurred in the search of the son of the person known by the alias Freddy.

³⁴⁹ I/A Court H.R., *Case of Zambrano Vélez and others v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, paragraph 81; *Case of Montero Aranguren and others (Retén de Catia)*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 5, 2006. Series C No. 150, paragraph 66.

³⁵⁰ I/A Court H.R., *Case of the Penal Miguel Castro Castro v. Peru*. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, paragraph 237; *Case of the Mapiripán Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of September 15, 2005. Series C No. 134, paragraph 231; and *Case of Huilca Tecse v. Peru*. Merits, Reparations and Costs. Judgment of March 3, 2005. Series C No. 121, paragraph 66.

³⁵¹ IACHR, Report No. 25/02, Case 11.763, *Plan de Sánchez Massacre v. Guatemala*, February 28, 2002, paragraph 114.

213. Another common element has to do with the complete lack of information indicating that there was some kind of fighting between paramilitary groups and law enforcement entities or any type of response from these law enforcement entities to protect the civilian population against the sequence of incidents that were being perpetrated by paramilitary groups. This sequence of violent events takes place precisely in the context described above of ties between the Self-Defense Forces of Magdalena Medio and law enforcement entities working in the area.

214. To all of the above must be added the voluntary confessions provided by Ramón Isaza, where it is evident there were not only ties in the area at the time of the incidents, but also widespread coordination between law enforcement entities and the Self-Defense Forces of Magdalena Medio when perpetrating the sequence of events that are part of the present case.. That is how Isaza mentioned that there was a list of persons who were supposedly collaborating with the guerrilla that had been drawn up by the National Army, and he linked that list with the events of the present case.

215. With all of these elements, the Commission deems it is not possible to consider each one of the facts separately as proposed by the State of Colombia. The entire information appearing in the case file makes it possible for the Commission to reach the conviction that it involved a sequence of events aimed at dismantling networks allegedly supporting the guerrilla in Vereda La Esperanza and that there are many elements that make it possible to conclude that these events took place with the acquiescence and collaboration of law enforcement entities, except for the incident of June 26, 1996, where the Army is directly involved.

216. On the basis of these considerations linking the incidents together, the Commission shall refer to each one and their consequences under the American Convention.

6.1. Jesús Castaño Gallego and Óscar Hemel Zuluaga Marulanda

217. According to proven facts, Jesus Castaño and Oscar Zuluaga were taken into custody on June 21, 1996 and, to date, their whereabouts are unknown. The Commission has several statements indicating that Mr. Castaño had been accused by the military of selling groceries to the guerrilleros, who had even threatened Mr. Gallego shortly before his disappearance. Furthermore, the IACHR notes that the motor vehicles used by the persons responsible for the events had been used by the military on previous occasions.

218. On the basis of a joint review of these elements, as well as of the context in which the incidents occurred in Vereda La Esperanza, the Commission deems that military personnel collaborated with the Self-Defense Forces of Magdalena Medio to execute the forced disappearance of Aníbal de Jesús Castaño Gallego and Oscar Zuluaga Marulanda. As a result, the IACHR concludes that the State of Colombia violated the rights to personal liberty, personal integrity, life and recognition as a person before the law enshrined in Articles 3, 4, 5 and 7 of the American Convention in connection with the obligations set forth in Article 1.1 of the same instrument; as well as article I.a) of the Inter-American Convention on The Forced Disappearance of Persons, to the detriment of Aníbal de Jesús Castaño Gallego and Oscar Zuluaga.

219. Furthermore, the IACHR notes that Óscar Zuluaga was 15 years old when he went missing. Thus, the Commission deems that, in the present case, the State of Colombia disregarded its obligation to provide special protection to children, especially in a context of armed conflict. Because

of this, the State violated Article 19 of the American Convention in connection with the obligations enshrined in Article 1.1 of the same instrument to the detriment of Óscar Zuluaga.

6.2. Juan and Miguel Cardona Quintero

220. On the basis of proven facts, the Cardona Quintero brothers were taken into custody on June 22, 1996 and to date their whereabouts are unknown. According to the statements given by witnesses and Ramón Isaza himself, the IACHR observes that members of the National Army would have been in the group of persons who participated in arresting them.

221. On the basis of a joint review of these elements, as well as the context in which the incidents occurred in Vereda La Esperanza, the Commission deems that military personnel collaborated with the Self-Defense Forces of Magdalena Medio to execute the forced disappearance of the Cardona Quintero brothers. In this regard, the Commission concludes that the State violated the rights to personal liberty, personal integrity, life and recognition as persons before the law, as enshrined in Articles 3, 4, 5 and 7 of the American Convention in connection with the obligations enshrined in Article 1.1 of the same instrument; as well as article I.a) of the Inter-American Convention on The Forced Disappearance of Persons, to the detriment of the Cardona Quintero brothers.

222. Furthermore, the IACHR notes that the Cardona Quintero brothers were 12 and 15 years old, respectively, at the time of the incidents. Thus, the Commission deems that, in the present case, the State of Colombia disregarded its obligation to provide special protection to children, especially in a context of armed conflict. Because of this, the State violated Article 19 of the American Convention in connection with its obligations as enshrined in Article 1.1 of the same instrument to the detriment of the Cardona Quintero brothers.

6.3. Person known by the alias 'Fredy' and his spouse

223. According to proven facts, the person known by the alias 'Fredy' and his spouse were taken into custody on June 22, 1996 and to date their whereabouts are unknown. As for the events of the Cardona Quintero brothers that same day, the Commission has statements from witnesses and Ramón Isaza himself indicating that members of the National Army had been in the group of persons who participated in this event. Furthermore, in one of his statements, Ramón Isaza indicated that the National Army had arrested these persons and had handed them over to the Self-Defense Forces of Magdalena Medio.

224. On the basis of the joint review of these elements, as well as the context in which the incidents occurred in Vereda La Esperanza, the Commission deems that military personnel collaborated with the Self-Defense Forces of Magdalena Medio to execute the forced disappearance of the person known by the alias Fredy and his wife. As a result, the IACHR concludes that the State of Colombia violated the rights to personal liberty, personal integrity, life and recognition as a person before the law, as enshrined in Articles 3, 4, 5 and 7 of the American Convention in connection with the obligations set forth in Article 1.1 of the same instrument; as well as article I.a) of the Inter-American Convention on The Forced Disappearance of Persons, to the detriment of the person known by the alias Fredy and his spouse.

6.4. María Irene Gallego Quintero

225. According to proven facts and as was recognized by Major Carlos Guzmán, who was commander of the FTA at the time, María Irene Gallego was detained by military personnel of said group on June 26, 1996. The IACHR notes that Major Guzmán alleged that María Irene Gallego was left in the local Prosecution Service. Nevertheless, the Commission observes that at least two witnesses saw María Gallego two weeks after the incidents with a platoon of soldiers and to date her whereabouts are unknown. Likewise, the IACHR notes that the military personnel themselves acknowledged that they handed her over to paramilitary group members and that the latter had killed her.

226. On the basis of a joint review of these elements, as well as of context in which the incidents in Vereda La Esperanza occurred, the Commission deems that military personnel of the FTA directly participated in the arrest and subsequent forced disappearance of María Irene Gallego. In this regard, the Commission concludes that the State violated the rights to personal liberty, personal integrity, life, and recognition as a person before the law, as enshrined in Articles 3, 4, 5 and 7 of the American Convention in connection with the obligations set forth in Article 1.1 of the same instrument; as well as article I.a) of the Inter-American Convention on The Forced Disappearance of Persons, to the detriment of María Irene Gallego.

6.5. Juan Carlos Gallego and Jaime Alonso Mejía Quintero

227. According to proven facts, Juan Carlos Gallego and Jaime Mejía were taken into custody on July 7, 1996 and to date their whereabouts are unknown. The IACHR has statements mentioning that, on various occasions, military personal had threatened to kill both these persons and had accused them of being guerrilleros.

228. On the basis of a joint review of these elements, as well as the context in which the events in Vereda La Esperanza occurred, the Commission deems that military personnel collaborated with the Self-Defense Forces of Magdalena Medio to execute the forced disappearance of Juan Carlos Gallego and Jaime Mejía. As a result, the IACHR concludes that the State of Colombia violated their rights to personal liberty, personal integrity, life and recognition as a person before the law, as enshrined in Articles 3, 4, 5 and 7 of the American Convention in connection with the obligations set forth in Article 1.1 of the same instrument; as well as article I.a) of the Inter-American Convention on The Forced Disappearance of Persons, to the detriment of Juan Carlos Gallego and Jaime Mejía.

6.6. Javier Giraldo Giraldo

229. According to proven facts, Javier Giraldo was killed on July 7, 1996 by the same persons that moments prior had taken into custody Juan Carlos Gallego and Jaime Mejía.

230. In the present case, on the basis of a joint review of the specific elements of the death of Mr. Giraldo Giraldo, as well as the context in which the incidents of Vereda La Esperanza took place, the Commission deems that he was killed in the framework of a joint participation of military agents with Self-Defense Forces of Magdalena Medio. As a result, the Commission deems that it has been proven that the State violated his right to life, as enshrined in Article 4 of the American Convention in connection with the obligations set forth in Article 1.1 of the same instrument.

6.7. Hernando de Jesús Castaño Castaño, Octavio de Jesús Gallego Hernández and Orlando de Jesús Muñoz Castaño

231. According to proven facts, Hernando Castaño, Octavio Gallego and Orlando Muñoz were taken into custody on July 9, 1996 and to date their whereabouts are unknown. Regarding Mr. Castaño, the Commission has statements mentioning that, before this incident, various members of the army were asking where they could locate the child Andrés Suárez Cordero, who was living at home. Regarding the identity of the individuals that took into custody Messrs. Gallego and Muñoz, the IACHR has statements pointing out that military personnel were very close to the place where the incidents took place. The IACHR also observes that a witness identified the persons who took into custody Mr. Gallego as soldiers because they subsequently saw them dressed as soldiers and wearing insignia in an army platoon.

232. On the basis of a joint review of these elements, as well as the context in which the incidents in Vereda La Esperanza took place, the Commission deems that military agents collaborated with the Self-Defense Forces of Magdalena Medio to execute the forced disappearance of Hernando Castaño, Octavio Gallego and Orlando Muñoz. As a result, the IACHR concludes that the State of Colombia violated the rights to personal liberty, personal integrity, life, and recognition as a person before the law, as enshrined in Articles 3, 4, 5 and 7 of the American Convention in connect with the obligations set forth in Article 1.1 of the same instrument; as well as article I.a) of the Inter-American Convention on The Forced Disappearance of Persons, to the detriment of Hernando Castaño, Octavio Gallego and Orlando Muñoz.

6.8. Andrés Suárez Cordero

233. According to proven facts, after the disappearance of his parents on June 22, 1996, Andrés Suárez stayed home alone in the place they were renting and afterwards lived two weeks and a half in the residence of Hernando Castaño. Afterwards, on July 9, he was abducted and arrested. The Commission deems that these incidents entailed separation and removal from the custody of his parents, which, as indicated by the Court, involves undermining his right to personal liberty, in the broadest sense of Article 7.1 of the American Convention.³⁵² The illegal abduction of the biological parents of a child jeopardizes the child's life, survival and development,³⁵³ the latter interpreted in its broadest sense, embracing the child's physical, mental, spiritual, moral, psychological and social development.³⁵⁴

234. Furthermore, the Commission observes that the child was taken to the Self-Defense Forces of Magdalena Medio and grew up with the daughter of Ramón Isaza, Idelfa Isaza. The IACHR observes that the last available information refers to the adoption proceedings that Idelfa Isaza had filed and that at the public hearing, according to the voluntary confession made by Ramón Isaza in October 2008, he had been called by the name of Bryan Andrés Balbuena Isaza.

³⁵² I/A Court H.R., *Case of Contreras and others v. El Salvador*. Merits, Reparations and Costs. Judgment of August 31, 2011. Series C No. 232, paragraph 84.

³⁵³ I/A Court H.R., *Case of Gelman v. Uruguay*. Merits and Reparations. Judgment of February 24, 2011. Series C No. 221, paragraph 131; *Case of Contreras and others v. El Salvador*. Merits, Reparations and Costs. Judgment of August 31, 2011. Series C No. 232, paragraph 90.

³⁵⁴ Committee on the Rights of the Child, General Comment No. 5, General measures of implementation for the Convention on the Rights of the Child (Articles 4 and 42 and paragraph 6 of Article 44). November 27, 2003, paragraph 12.

235. The Court has indicated that, in the framework of an armed conflict, oftentimes the appropriation of children and their consequent separation from their parents, for various reasons, are viewed as a consequence of the armed conflict or, at least, inherent to that conflict.³⁵⁵ This situation undermines the personal dignity and integrity of children, as the State should ensure their protection and survival, as well as adopt priority measures aimed at facilitating the reunion of families.³⁵⁶

236. Thus, the Commission concludes that the State violated the right to personal liberty of Andrés Suárez, as enshrined in Article 7 of the American Convention, in connection with the obligations set forth in Article 1.1 of the same instrument, because of his arbitrary and illegal detention. Furthermore, the IACHR deems that, in the present case, the State of Colombia disregarded its obligation to provide special protection to children, especially in a context of armed conflict. Because of this, the State violated Article 19 of the American Convention with respect to the obligations set forth in Article 1.1 of the same instrument.

6.9. Andrés Gallego and Leonidas Cardona Giraldo

237. According to proven facts, Andrés Gallego and Leonidas Cardona were taken into custody on December 27, 1996 and to date their whereabouts are unknown. The IACHR has statements from witnesses indicating that paramilitary members who participated in the incidents had told them that they would be taken to the La Piñuela army base, command post of the FTA. The Commission also has a statement from a witness who claimed to have seen Army dump trucks behind the pickup trucks used by the persons who perpetrated the incidents described above.

238. On the basis of a joint review of these elements, as well as the context in which the incidents in Vereda La Esperanza took place, the Commission deems that military agents collaborated with the Self-Defense Forces of Magdalena Medio to execute the forced disappearance of Andrés Gallego and Leonidas Cardona. As a result, the IACHR concludes that the State of Colombia violated the rights to personal liberty, personal integrity, life and recognition as a person before the law as enshrined in Articles 3, 4, 5 and 7 of the American Convention in connection with the obligations set forth in Article 1.1 of the same instrument; as well as article I.a) of the Inter-American Convention on The Forced Disappearance of Persons, to the detriment of Andrés Gallego and Leonidas Cardona.

7. Right to a fair trial and judicial protection (Articles 8.1 and 25 of the American Convention in connection with Articles 1.1 and 2 of the same instrument)

239. Article 8.1 of the American Convention provides the following:

Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

240. Furthermore, Article 25.1 of the Convention provides the following:

³⁵⁵ I/A Court H.R., *Case of Contreras and others v. El Salvador*. Merits, Reparations and Costs. Judgment of August 31, 2011. Series C No. 232, paragraph 86.

³⁵⁶ Article 4.3 of the Protocol Additional to the Geneva Conventions of 1949 and relating to the protection of victims of non-international armed conflicts (Protocol II).

Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

241. According to the Court, the right to fair trial means that everyone suffering from a violation of his/her human rights has “the right to (...) to obtain clarification of the events that violated human rights and the corresponding responsibilities from the competent organs of the State, through investigation and prosecution.”³⁵⁷ Regarding the right to judicial protection, the Court has established that the American Convention:

(...) obliges the State to guarantee to every individual access to the administration of justice and, in particular, to simple and prompt recourse, so that, inter alia, those responsible for human rights violations may be prosecuted and reparations obtained for the damages suffered. (...) [A]rticle 25 is one of the fundamental pillars not only of the American Convention, but of the very rule of law in a democratic society (...).³⁵⁸

242. As a result, the State has the following obligation: “[E]ach State act that composes the investigation proceeding, and the entire investigation in itself, should be oriented at a specific purpose: the determination of the truth and the investigation, finding, arrest, prosecution and, if applicable, punishment of those responsible for the events.”³⁵⁹ Regarding cases of forced disappearance, the Court has pointed out that the right to access to justice includes, in the investigation of the facts, finding out the fate or whereabouts of the victim and, if applicable, where his/her mortal remains are located.³⁶⁰ In that regard, the Court has indicated that the right to truth is subsumed in the right of the victim or his/her next of kin to obtain from the State bodies having jurisdiction clarification of the events violating his/her rights and establishment of those responsible by investigation and sentencing as provided for by Articles 8 and 25 of the Convention.³⁶¹

243. It is understood that the obligation to investigate is an obligation of means, not of results, which must be taken up by the State as a legal obligation pertaining to it and not undertaken as

³⁵⁷ I/A Court H.R., *Case of Barrios Altos v. Peru*. Merits. Judgment of March 14, 2001. Series C No. 75, paragraph 48.

³⁵⁸ I/A Court H.R., *Case of Loayza Tamayo*. Reparations and Costs. Judgment of November 27, 1998. Series C No. 42, paragraph 169; *Case of Fairén Garbí and Solís Corrales*. Preliminary Objections. Judgment of June 26, 1987. Series C No. 2, paragraph 90.

³⁵⁹ I/A Court H.R., *Case of Kawas Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196, paragraph 101.

³⁶⁰ I/A Court H.R., *Case of Radilla Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, paragraph 192; *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, paragraph 181; *Case of La Cantuta v. Peru*. Merits, Reparations and Costs. Judgment of November 30, 2007. Series C No. 173, paragraph 231; and *Case of Anzualdo Castro v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, paragraph 118.

³⁶¹ I/A Court H.R., *Case of Gómez Palomino v. Peru*. Merits, Reparations and Costs. Judgment of November 22, 2005. Series C No. 136, paragraph 78; *Case of Almonacid Arellano and others v. Chile*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 26, 2006. Series C No. 154, paragraph 150; and *Case of the Rochela Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C. No. 163, paragraph 147.

a mere formality condemned in advance to be fruitless.³⁶² In that regard, the investigation must be conducted with due diligence, effectively, seriously and impartially,³⁶³ and within a reasonable period of time.³⁶⁴ Because of this the presence of acts obstructing justice, impediments or problems involving the authorities' unwillingness to collaborate that prevented or are preventing clarification of the case constitutes a violation of the right to a fair trial. The IACHR also draws attention to the fact that the obligation to investigate and punish all incidents involving the violation of rights protected by the Convention requires punishing not only the material perpetrators of the incidents violating human rights, but also the intellectual authors of said violations.³⁶⁵

244. The Commission, as the Court has done in the cases against Colombia that have already been mentioned, cannot but draw attention to the fact that the events of the present case are part of a situation where there is a high rate of impunity for crimes perpetrated by paramilitary groups.³⁶⁶ Regarding this, the Court has contended that the actions of the paramilitary groups have not found in the judiciary an adequate and faithful response to the international commitments made by the State, which led to the establishment of fertile ground for these groups to operate on the fringes of the law and to commit acts as those in the present case.³⁶⁷ In the *Case of Cepeda Vargas v. Colombia*, the Court stated that the right to a fair trial and judicial protection had been violated because "the absence of a thorough investigation fosters the impunity of severe violations of human rights perpetrated jointly by members of paramilitary groups and law enforcement agents."³⁶⁸

245. In that regard, bearing in mind the above-mentioned precedents that establish that the State's obligations to investigate in this type of case are all the more pressing, due to a joint action between the army and a paramilitary group,³⁶⁹ the Commission shall examine whether, in the present case, the State of Colombia conducted a sound and diligent investigation within a reasonable period of time: Regarding this, the IACHR shall rule on the various domestic proceedings that were filed and processed in the State of Colombia.

³⁶² I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, paragraph 177; I/A Court H.R., *Case of Cantoral Huamaní and García Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, paragraph 131.

³⁶³ I/A Court H.R., *Case of García Prieto and others v. El Salvador*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 168, paragraph 101; *Case of the Gómez Paquiyauri Brothers v. Peru*. Judgment of July 8, 2004. Series C No. 110, paragraph 146; I/A Court H.R., *Case of Cantoral Huamaní and García Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, paragraph 130.

³⁶⁴ I/A Court H.R., *Case of Bulacio v. Argentina*. Judgment of September 18, 2003. Series C No. 100, paragraph 114; I/A Court H.R., *Case of the Rochela Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C. No. 163, paragraph 146; I/A Court H.R., *Case of the Penal Miguel Castro Castro v. Peru*. Judgment of November 25, 2006. Series C No. 160, paragraph 382.

³⁶⁵ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124. Doc. 5 rev.1, March 7, 2006, paragraph 109.

³⁶⁶ I/A Court H.R., *Case of the Pueblo Bello Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of January 31, 2006. Series C No. 140. paragraph 149.

³⁶⁷ I/A Court H.R., *Case of the Pueblo Bello Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of January 31, 2006. Series C No. 140. paragraph 149.

³⁶⁸ I/A Court H.R., *Case of Cepeda Vargas v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 26, 2010. Series C No. 213, paragraph 215.

³⁶⁹ I/A Court H.R., *Case of the Pueblo Bello Massacre*. Merits, Reparations and Costs. Judgment of January 31, 2006. Series C No. 140, paragraph 126.

7.1. Ordinary Criminal Proceedings

246. The Commission has proven that two criminal proceedings had been filed and processed because the next of kin of the victims had filed complaints: i) one referred to the disappearances of Leonidas Cardona Giraldo and Andrés Gallego Castaño; and ii) the other alleged victims. In the case file, it is also observed that these proceedings were suspended when they continued in one proceeding under the Law for Justice and Peace.

7.1.1. Due diligence in the initial proceedings

247. The Court has provided that, every time the State conducts an investigation because of the alleged perpetration of a crime, it must make sure that it is “oriented at a specific purpose: the determination of the truth and the investigation, finding, arrest, prosecution and, if applicable, punishment of those responsible for the events.”³⁷⁰ To ensure this, the investigation must be conducted by all legal means available³⁷¹ and must be conducted with due diligence, effectively, soundly and impartially.³⁷²

248. In that respect, the IACHR draws attention to the fact that, from the beginning of the proceedings, the States are required to act diligently.³⁷³ That is because the first inquiries of the investigation are key components “for an appropriate development of the judicial investigation, especially in face of a fact that has cost a person’s life.”³⁷⁴

249. Thus, in the present case, it must be examined whether the State conducted investigations with due diligence to identify those responsible for events by gathering evidence and other persuasive elements. Regarding this, it must be stressed that this duty of due diligence extends to other investigative activities prior to court proceedings, because it is not possible to conduct proceedings efficiently and effectively if the investigative phase has not been carried out with the characteristics mentioned in the preceding paragraphs. Thus, the Court indicated that: “All these requirements, together with criteria of independence and impartiality also extend to the non-judicial bodies responsible for the investigation prior to the judicial.”³⁷⁵

³⁷⁰ I/A Court H.R., *Case of Kawas Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196, paragraph 101.

³⁷¹ I/A Court H.R., *Case of García Prieto and others v. El Salvador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 168, paragraph 101.

³⁷² I/A Court H.R., *Case of the Gómez Paquiyauri Brothers v. Peru*. Judgment of July 8, 2004. Series C No. 110, paragraph 146; and I/A Court H.R., *Case of Cantoral Huamaní and García Santa Cruz v. Peru*. Judgment of July 10, 2007. Series C No. 167, paragraph 130.

³⁷³ Corte IDH. *Case of Zambrano Vélez and others v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, paragraph 121.

³⁷⁴ I/A Court H.R., *Case of Myrna Mack Chang v. Guatemala*. Judgment of November 25, 2003. Series C No. 101, paragraph 167. IACHR, Report No. 37/00, Case 11.481, Merits, *Monsignor Oscar Arnulfo Romero y Galdámez v. El Salvador*, April 13, 2000, paragraph 85.

³⁷⁵ I/A Court H.R., *Case of Cantoral Huamaní and García Santa Cruz v. Peru*. Judgment of July 10, 2007. Series C No. 167, paragraph 133.

250. In the present case, the IACHR observes that, once the complaints were lodged, inspections were carried out in Vereda on July 12 and on August 1 and 2, 1996 by the Office of the Attorney General of the Nation, the Office of the Human Rights Ombudsman and the Prosecution Service of the Nation. The Commission takes note that, in the last inspection, it was evident “that the house of the Eliseo Gallego had been destroyed, various articles had been stolen and Juan Carlos wounded” as a result of which photographs were taken and ammunition cartridges and bags used by the Army marked with its logos were gathered.

251. Nevertheless, in the case file of the criminal proceedings, there is no indication that said evidence had been submitted during the proceedings. The IACHR also observes that the petitioners reported that they sent the license plate numbers of the motor vehicles that were used to the Office of the Human Rights Ombudsman. Nevertheless, there is nothing in the file that indicates that said information had been sought, investigated or submitted during the proceedings.

252. Furthermore, the Commission observes that about ten inspections and visits were carried out at the headquarters of brigades and platoons, including La Piñuela army base and the general archives of the Ministry of National Defense, mainly conducted between August 2000 and February 2001. Nevertheless, the IACHR observes that no information concerning the FTA was found but that, on the contrary, in some of them investigators were prevented from having access to the files. In particular it is worth noting the inspection on February 26, 2001 at the XIV Brigade which showed that i) the human rights offices of that place were closed; ii) they did not respond to numerous requests for information; and iii) existing files were partially destroyed and saved without any order or systematization. The Commission deems that impeding civil servants from conducting their investigative activities in criminal proceedings involving human rights violations constitutes a severe impediment to identifying and punishing those responsible, especially when State agents were involved. In the face of this obstruction, there is no indication that steps were taken for follow-up or the use of coercive mechanisms to ensure timely access to information relevant to clarify the facts.

253. Thus, the Commission draws attention to the fact that the Court has declared that there was a violation of the right to a fair trial in allegations where the steps to gather evidence or obtain proof have not been appropriately taken.³⁷⁶ In the present case, the Commission notes that these state bodies did not act with a minimum diligence to keep the evidence that directly tied the participation of members of the Armed Forces to the events of the present case. In short, the Commission deems that, from the first inquiries, the State incurred in omissions and obstruction that made it difficult to know the truth about the facts and punish those responsible.

7.1.2. Due diligence with respect to logical lines and the investigation of the responsibility of the authors

254. In addition to the evidence tied to the participation of military agents in the events of June 26, 1996 (see *supra* paras. 100, 101, 133 and 135), the Commission notes that, in the case file No. 233, there are various reports from bodies of the Office of the Attorney General of the Nation and the Prosecution Service of the Nation referring to the collaboration and participation of members of the military along with Self-Defense Forces of Magdalena Medio in the events of the present case.

³⁷⁶ I/A Court H.R., *Case of Uzcátegui v. Venezuela*. Merits and Reparations. Judgment of September 3, 2010. Series C No. 249, paragraph 218.

255. Furthermore, the Commission highlights at least five reports from bodies of the Office of the Attorney General of the Nation and the Prosecution Service of the Nation underscoring the alleged participation of members of the army in the events of the present case. Second, there are about 20 statements made by next of kin and witnesses included in the proceedings. The Commission notes that, in the majority of these, reference is made to the participation of military agents in the disappearances or extrajudicial execution of the victims, either because i) they witnessed the various incidents that occurred in Vereda; ii) subsequently identified the military agents who participated in the events; or iii) held a direct dialogue with members of the military or paramilitary groups who confirmed what had happened.

256. Third, the IACHR observes the resolutions of the UNHR and the Superior Court of Bogotá where it was indicated that there were various elements of evidence that linked members of the National Army to the events. Fourth, there are the statements made by Ramón Isaza, leader of the Self-Defense Forces of Magdalena Medio, where he acknowledges the participation of the National Army in the planning and execution of the events in Vereda La Esperanza.

257. The Commission draws attention to the fact that the Court has stressed the importance of establishing logical lines of investigation on the basis of the proof and evidence gathered during the proceedings.³⁷⁷ In that regard, the IACHR deems that, despite these elements, during the investigation no effective line of investigation was followed to link all persons responsible, including the members of the Armed Forces.

258. Regarding this, the IACHR draws attention to the fact that, in cases of extrajudicial executions and forced disappearance, the Court has contended that:

(...) the State authorities must determine, by due process of law, the patterns of collaborative action and all the individuals who took part in the said violations in different ways, together with their corresponding responsibilities.³⁷⁸ (...) [I]t is essential to analyze the awareness of the power structures that allowed, designed and executed it, both intellectually and directly, as well as the interested persons or groups and those who benefited from the crime (beneficiaries). This, in turn, can lead to the generation of theories and lines of investigation, the examination of classified or confidential documents (...) and other probative elements.³⁷⁹

259. The Commission observes that recently, almost four years after the events took place, the UNHR issued the resolution to file an investigation against Ramón Isaza, leader of the Self-Defense Forces of Magdalena Medio, and Army Major Carlos Guzmán Lombana. Regarding the latter, the IACHR notes that the authorities in charge of the investigation did not take basic steps to seriously and effectively investigate their alleged responsibility, such as appraising the photographs and material of the National Army seized at the residence of Mr. Gallego referring to the events of June 26, 1996, as well as assessing the certificate from the director of the Hospital del Santuario where it was indicated

³⁷⁷ I/A Court H.R., *Case of González Medina and next of kin v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 27, 2012 Series C No. 240, paragraph 115.

³⁷⁸ I/A Court H.R., *Case of the Mapiripán Massacre v. Colombia*. Judgment of September 15, 2005. Series C No. 134, paragraph 219; *Case of Valle Jaramillo and others v. Colombia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, paragraph 101.

³⁷⁹ I/A Court H.R., *Case of Manuel Cepeda Vargas v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 26, 2010. Series C No. 213, paragraph 119.

that, in the archives, there was no record of any medical services provided to Captain González on June 26, 1996, as he had stated.

260. The Commission also deems that, despite existing evidence previously indicated, no action was taken to identify the criminal responsibility of the other military players or to inquire about the participation of the high command of the security bodies and other state agents in the events of forced disappearance and extrajudicial execution. The IACHR draws attention to the fact that, in the case file, there is information on the identification of at least one police officer who would have participated in the events of the case, as well as the names of various military who had been stationed at La Piñuela army base in 1996. Nevertheless, the Commission observes that they had not been required to make statements.

261. The IACHR also deems that there was unwarranted delay in taking various steps, as well as periods of time when hardly any investigation was being conducted. First of all, the Commission notes that, during the first year when the first complaints were filed, various prosecution units were designated to be in charge of the investigation, a situation that affected the continuity of the processing of the case. Second, the Commission observes that, four years after the events took place, and despite the information that already existed in the case file about the participation of the members of the National Army and the Self-Defense Forces of Magdalena Medio, an order instructing that an investigation be opened was issued.

262. Third, the Commission notes that, between 2001 and 2003, there were no actions taken in the proceedings. Fourth, there was a delay in conducting the judicial investigations in the army base and archives to gather crucial information on the FTA and their ties to the events of the case. Fifth, the IACHR notes that there was also delay in taking the statements of the persons being processed, which could otherwise have contributed to greater speed in the investigation. The Commission notes that, on various occasions, the UNHR granted extensions so that the steps that were requested could be taken. Finally, the Commission observes that the UNHR recognized on at least three occasions, from 2001 to 2008, the need to give impetus to the investigation.

263. In this regard, the Commission observes that, during the conduct of the investigation, the State had neglected to submit evidence and promote investigation theories seriously and exhaustively that emerged from the gathering of the first clues and others that appeared at that time.

264. Now, regarding criminal proceedings No. 752.065, the Commission observes various omissions in the course of these proceedings. The IACHR notes that, from February 11, 1997, when the Regional Prosecution Service Delegated to Gaula de Antioquia took over the preliminary investigation, up to March 26, 2003, when the Head of the Specialized Prosecution Unit of Medellín decided to suspend it, more than six years had elapsed with hardly any steps being taken.

265. The Commission notes that, from the start of the proceedings, it was requested that statements from the complainants be broadened, which was never done. Likewise, in the case file there is only one additional statement and general communications about the situation of Vereda La Esperanza in the second semester of 1997.

266. Furthermore, the IACHR notes that, almost six years after the investigation was suspended, a new prosecutor decided to disinter the case file. The Commission observes that this prosecutor, in resolutions of February 24, July 27, and November 5, 2009, also underscored the various

flaws and omissions during the investigation. Regarding this, he stressed his concern about “(...) the issuance of a resolution of suspension in the previous investigation without any activity by the Prosecution Service Assigned to Gaula Rural Oriente Antioqueño.” He also indicated “the absence of an adequate prior investigative activity” in the proceedings. Despite the identification of a wide range of deficiencies in the investigation, the Prosecution Office did not adopt the necessary measures to remedy the situation and ensure a proper investigation.

267. Without detriment to examining, in the following section, the investigation in the special framework of the Justice and Peace Law, with respect to the ordinary proceedings from a general perspective, the Commission observes that the results of the ordinary courts more than 17 years after events took place have led to a situation of impunity as there is no judgment of conviction against anyone.

268. In view of all of the above, the Commission concludes that there is a clear absence of due diligence in the investigation of the facts, as a result of which the State has perpetuated the situation of impunity in which the events of Vereda La Esperanza have been left.

7.1.3. Situation of risk for the persons who have testified in the proceedings

269. In its case law the Court has established the State’s obligation to “adopt *ex officio* and immediately sufficient investigation and overall protection measures regarding any act of coercion, intimidation and threat towards witnesses and investigators.”³⁸⁰ The IACHR deems that said duty constitutes one of the elements to duly fulfill the obligation of investigating.

270. In the present case, the Commission observes that, on June 30, 1996, Juan Carlos Gallego testified regarding the events taking place on June 26 of that year at the Municipal Ombudsman’s Office of Cocorná. A week later, on July 7, 1996 Juan Carlos Gallego was taken into custody and disappeared. Furthermore, Andrés Gallego also filed a complaint on July 11 and then added to that complaint on October 25, 1996, where he referred to various events that took place in Vereda La Esperanza. On December 27, 1996, Andrés Gallego was taken into custody and disappeared. In both allegations, the two alleged victims claimed that the Armed Forces had participated and that they had collaborated with paramilitary groups to perpetrate the events that were mentioned.

271. In addition, the Commission took note of the active participation of Helí Gómez and Edgar Mario Alzate, municipal ombudsmen of Carmen de Viboral and Cocorná, respectively. The IACHR notes that both denounced and promoted the investigation with various authorities regarding the planning and execution by military groups and the Self-Defense Forces of Magdalena Medio of the incidents subject of the present case. As indicated in the case file, due to their participation in the domestic proceeding of the instant case, Mr. Gómez was killed on July 26, 1996, whereas Mr. Alzate took refuge in Australia for fear of being killed.

272. The Commission deems that the participation of the four above-mentioned persons, two of them considered to be victims in the present case, was broadly relevant to incriminate the authors of the crime and to continue and promote the investigation. Nevertheless, the IACHR observes

³⁸⁰ I/A Court H.R., *Case of Kawas Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009 Series C No. 196, paragraph 107.

that, in the case file, there is no specific protection measure granted to protect said persons. In that respect, the Commission concludes that the State of Colombia did not fulfill this obligation.

7.1.4. Legal qualification

273. The Commission observes that both criminal proceedings were filed for the crime of kidnapping. Likewise, regarding the criminal proceedings No. 233, the crime of homicide was added because of the death of Javier Giraldo Giraldo.

274. Regarding the effectiveness of the investigation in the cases of forced disappearance, the Court has pointed out that the States must establish an adequate regulatory framework to conduct it. In the words of the Court, this entails, first of all, establishing the forced disappearance of persons as an autonomous crime in their domestic legislation “because criminal prosecution is an adequate instrument to prevent future human rights violations.”³⁸¹ It also indicated that classification of this offense must be in line with the minimum elements set forth in specific international instruments, both universal and inter-American, for the protection of persons against forced disappearances.³⁸²

275. In the present case, although forced disappearance has been classified as a crime in domestic law, it has not been used as such in domestic investigations despite the request of the legal representative of the victims’ relatives. Bearing in mind that one of the elements that differentiates kidnapping from the forced disappearance of persons is precisely the direct participation or acquiescence of state authorities, the Commission deems that the inadequate qualification of the events has become yet another factor which, as indicated above (see *supra* paras. 247-268), has hindered investigation of the ties between the Self-Defense Forces of Magdalena Medio and law enforcement entities and, as result, determination of all levels of responsibility.

7.1.5. Special jurisdiction of the Justice and Peace Law

276. The IACHR observes that, after requesting the suspension of ordinary court proceedings, the leader of the Self-Defense Forces Magdalena Medio, Ramón Isaza, filed proceedings in line with Law No. 975, known as the Justice and Peace Law. According to the Justice and Peace Law, persons demobilized from guerrilla or self-defense groups who meet the requirements set forth in said law may be convicted for five to eight years imprisonment for their crimes.³⁸³

³⁸¹ I/A Court H.R., *Case of Radilla Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, paragraph 145; *Case of Gómez Palomino v. Peru*. Merits, Reparations and Costs. Judgment of November 22, 2005. Series C No. 136, paragraphs 96 and 97; *Case of Heliodoro Portugal v. Panama*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 12, 2008. Series C No. 186, paragraphs 188-189; and *Case of Anzaldo Castro v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, paragraph 66.

³⁸² I/A Court H.R., *Case of Gómez Palomino v. Peru*, Merits, Reparations and Costs. Judgment of November 22, 2005. Series C No. 136, paragraph 96 and 97; *Case of Heliodoro Portugal v. Panama*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 12, 2008. Series C No. 186, paragraph 188-189, and *Case of Goiburú and others v. Paraguay*. Merits, Reparations and Costs. Judgment of September 22, 2006. Series C No. 153, paragraph 92.

³⁸³ Law 975 of 2005. Official Gazette No. 45.980 of July 25, 2005. Article 29.

277. In that respect, they must cooperate with the judiciary in securing the full effectiveness of the victims' rights to the truth, justice, reparations and non-repetition.³⁸⁴ The Commission shall rule on two aspects involving application of the Justice and Peace Law in the present case.

278. First of all, the Commission notes that Ramón Isaza demobilized on February 7, 2006 and decided to resort to the Justice and Peace Law. In that regard, in conformity with the Resolutions of April 22 and July 13, 2009, the Prosecution Unit for Justice and Peace requested suspension of the two criminal proceedings concerning the events of the present case in connection with Ramón Isaza. Regarding this, the Commission notes that, according to the Justice and Peace Law, the proceedings being heard in ordinary courts can be suspended and brought together in the proceedings heard in the framework of the Justice and Peace Law.³⁸⁵

279. Regarding this, the Inter-American Court has established that “in decisions on the application of various proceedings against an individual, priority must be given to charges of grave violations of human rights.”³⁸⁶ Thus it has underscored that no statute or provision of domestic law can prevent a State from fulfilling its obligation to investigate and punish those responsible for human rights violations.³⁸⁷

280. The Commission observes that, in all of his voluntary statements, Ramón Isaza indicated that the events of the present case were planned and executed by military agents and members of the Self-Defense Forces of Magdalena Medio. In that respect, the Commission contended that, although he did not participate directly in the events, he knew about the operation that would take place, as a result of which he could be held responsible for what happened because of his status as leader of the Self-Defense Forces of Magdalena Medio.

281. The IACHR also noted that, from the date of Ramón Isaza's demobilization up to his first statement, i) more than 14 months elapsed until his first statement to a judicial authority; ii) one year eight months elapsed until a public hearing was held for his voluntary confession; and iii) almost two years elapsed until the hearing where imputation charges were brought. According to information accessible to the public, the Commission observes that to date there is no final judgment against Ramón Isaza.

³⁸⁴ IACHR, *Statement by the Inter-American Commission on Human Rights on the Application and Scope of the Justice and Peace Law in Colombia*, 2006, paragraph 11; IACHR, *Annual Report of the Inter-American Commission on Human Rights 2010*, OEA/Ser.L/V/II., Doc. 5 corr. 1, March 7, 2011, Chapter IV. Colombia, paragraph 48, with quote from the Constitution Court, Case File D-6032 - Judgment C-370/06, arguments made public on July 13, 2006.

³⁸⁵ Law 975 of 2005. Article 16. For the procedural effects of the present law, proceedings that are under way for crimes perpetrated during and on the occasion of the demobilized person's belonging to an organized armed group outside the law shall be brought to together for processing. In no case, shall conducts punishable by law committed prior to the demobilized person's belonging to the organized armed group outside the law be acceptable for accumulation [...]

³⁸⁶ I/A Court H.R., *Case of the Mapiripán Massacre v. Colombia*. Order on Monitoring Compliance of the Judgment. Resolution of the Inter-American Court of Human Rights of July 8, 2009, paragraph 41.

³⁸⁷ I/A Court H.R., *Case of the Mapiripán Massacre v. Colombia*. Judgment of September 15, 2005. Series C No. 134, paragraph 304; *Case of Molina Theissen v. Guatemala. Reparations*. Judgment of July 3, 2004. Series C No. 108, paragraphs 83 to 84; *Case of Myrna Mack Chang v. Guatemala*. Judgment of November 25, 2003. Series C No. 101, paragraphs 276 to 277; *Case of Bulacio v. Argentina*. Judgment of September 18, 2003. Series C No. 100, paragraph 116; *Case of Barrios Altos v. Peru. Interpretation of the Judgment on the Merits*. Judgment of September 3, 2001. Series C No. 83, paragraph 15; *Case of Castillo Páez v. Peru. Reparations*. Judgment of November 27, 1998. Series C No. 43, paragraph 105, and *Case of Loayza Tamayo v. Peru. Reparations*. Judgment of November 27, 1998. Series C No. 42, paragraph 168.

282. The Commission deems that there has been an excessive and unjustified delay in the proceedings. It also deems that the defendants' confession does not relieve the authorities of a State of their duty to diligently investigate the events. As established by the IACHR, in the context of the Justice and Peace Law, a confession is not enough for a full clarification of the events, and therefore the State will need to exhaust all investigative mechanisms within its power to ensure achieving the truth.³⁸⁸ These investigative activities must be conducted with due diligence and within a reasonable period of time. That is because a complete and diligent investigation of the events is also the foundation for effective verification of eligibility for lenient sentencing as provided for by the Justice and Peace Law and for keeping that benefit in the future.

283. In the present case, the Commission deems that the State has not fulfilled this obligation. The IACHR observes that the case file provides no information regarding the steps taken in the framework of Justice and Peace Law to corroborate the information provided by Ramón Isaza, as well as to clarify what happened to the victims. Likewise, the Commission stresses that the information provided by Ramón Isaza regarding the rivers where the bodies of the victims had supposedly been dumped requires the State to undertake a search for their remains, which never did occur.

284. Second, the Commission stresses that, in criminal proceedings No. 233, Army Major Carlos Guzmán Lombana was found to be involved as one of those charged. The IACHR also observes that, in the framework of criminal proceedings No. 752.065, on the last page of the case file there is a request from the prosecutor in charge of the investigation addressed to the UNHR Coordinator requesting that both "proceedings" be merged "because they deal with the same events (...) (and) the same perpetrators: former militants of the Rural Workers Self-Defense Forces of Magdalena Medio (...) and agents (...) of the National Army."

285. Thus, the Commission notes that, in the resolutions of April 22 and July 13, 2009, the Prosecution Unit for Justice and Peace requested that both proceedings be suspended with respect to Ramón Isaza "to continue focusing on the other persons involved in the case." Nevertheless, the IACHR observes that, according to the information that was received, the investigation against Army Major Carlos Guzmán Lombana or any other member of the National Army was discontinued in ordinary court proceedings.

286. The Commission considers that the State, as a result of its treaty obligation to investigate severe human rights violations, must continue and promote in ordinary courts of justice the investigation that is required regarding other stakeholders who have not been demobilized on the basis of the information disclosed as a result of the Justice and Peace proceedings. The IACHR stresses that said obligation is aimed at guaranteeing an integral reconstruction of the truth, as well as a complete investigation of the power structures involved in the present events of the case.

287. Thus, the Commission considers that, by not continuing the investigation in ordinary court proceedings, despite the evidence that was gathered and the confession made by Ramón Isaza in the Justice and Peace proceedings with regard to the participation of the National Army in the events, the State failed to fulfill its obligation to diligently investigate the events.

³⁸⁸ IACHR, *Statement by the Inter-American Commission on Human Rights on the Application and Scope of the Justice and Peace Law in Colombia*, 2006, paragraph 27.

7.1.6. Reasonable period of time

288. Article 8.1 of the American Convention establishes that one of the elements of due process of law is that courts must decide the cases submitted to their cognizance within a reasonable period of time. In this regard, a prolonged delay may be viewed, in itself, as a violation of the right to a fair trial,³⁸⁹ as a result of which the State must indicate and substantiate the reason for which it has required more time than is reasonable to issue a final judgment in a particular case.³⁹⁰

289. In that regard, a reasonable period of time must be calculated on the basis of the total duration of the criminal proceedings.³⁹¹ According to the terms of Article 8.1 of the American Convention, the Commission shall take into consideration, in the light of the concrete circumstances of the case, three elements that the Court has used in its jurisprudence, namely: i) the complexity of the case; ii) the proceedings activities of the interested party; iii) the conduct of the judicial authorities; and iv) matters affecting the legal situation of the person involved in the proceedings.³⁹²

290. As for the complexity of the case, the State alleged that there was delay in the proceedings because there were various events that involved many persons. The State of Colombia, however, did not claim how said features of the case had led to delays in the proceedings.

291. The Commission deems that, as indicated by the Court, the delay in conducting the investigation cannot be justified by claiming the case was complex when i) the alleged authors were individualized; ii) there are witnesses; and iii) and there are possible lines of investigation.³⁹³ In any case, so that an argument substantiating complexity can be viewed as admissible, the State must submit specific information establishing a linkage between its complexity and the delay in the proceedings. In the present case, the Commission has already proven that there were long periods of inertia, which is not consistent with the State's claim that the case was complex.

292. As for the participation of interested parties, the Commission observes that the next of kin and witnesses have actively contributed to the case by making statements in the proceedings. Likewise, their legal representatives were appointed as civil parties to the proceedings, and therefore they ensured follow-up and promotion of the investigation, complaining on repeated occasions about the delay in processing the proceedings, as well as long periods of inertia in the proceedings.

³⁸⁹ I/A Court H.R., *Case of García Asto and Ramírez Rojas v. Peru*. Judgment of November 25, 2005. Series C No. 137, paragraph 166; *Case of Gómez Palomino v. Peru*. Merits, Reparations and Costs. Judgment of November 22, 2005. Series C No. 136, paragraph 85; and I/A Court H.R., *Case of the Moiwana Community v. Suriname*. Judgment of June 15, 2005. Series C No. 124, paragraph 160.

³⁹⁰ I/A Court H.R., *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Series C No. 111, paragraph 142.

³⁹¹ I/A Court H.R., *Case of López Álvarez v. Honduras*. Judgment of February 1, 2006. Series C No. 141, paragraph 129; I/A Court H.R., *Case of Acosta Calderón v. Ecuador*. Judgment of June 24, 2005. Series C No. 129, paragraph 104; and I/A Court H.R., *Case of Tibi v. Ecuador*. Judgment of September 7, 2004. Series C No. 114, paragraph 168; IACHR, Report No. 77/02, Case of 11.506, Merits, *Waldemar Gerónimo Pinheiro and José Víctor dos Santos v. Paraguay*, December 27, 2002, paragraph 76.

³⁹² I/A Court H.R., *Case of the Santo Domingo Massacre v. Colombia*. Preliminary Objections, Merits and Reparations. Judgment of November 30, 2012. Series C No. 259, paragraph 164.

³⁹³ I/A Court H.R., *Case of the Barrios Family v. Venezuela*. Merits, Reparations and Costs. Judgment of November 24, 2011. Series C No. 237, paragraph 275.

293. As for the conduct of judicial authorities, the Commission has already indicated (see *supra* paras. 259-268) the delay in taking the various steps. Furthermore, the State's delays in the investigation also had severe repercussions on the possibility of punishing those who were responsible for the crime. The Commission observes that, according to information available in the course of the investigation, persons who might have participated in the events have died; two of the alleged victims who were witnesses to some of the incidents of the case and who made their depositions are now disappeared persons; and the municipal ombudsman of Cocorná was killed, whereas the one from Carmen del Viboral has supposedly taken refuge abroad.

294. With regard to the fourth element, the Court has held that in determining the reasonableness of the time it should be considered the adverse effect of the length of proceedings in the legal status of the person involved in it and the interests at stake³⁹⁴. The Commission considers that the delay in a process where state officials are involved in accusations of serious human rights violations is an element that needs to be taken into account. In this regard, if the passage of time has a relevant impact on the legal status of the individual, it is necessary for the advancement of the procedure with greater diligence in order to ensure that the case is resolved swiftly and efficiently.

295. In short, the Commission deems that a delay of 17 years for justice to be administered exceeds what could be viewed as reasonable for the State to diligently carry out its investigative activities and constitutes a denial of justice to the detriment of the next of kin of the victims.

7.1.7. Conclusion

296. On the basis of all that was indicated, the Commission concludes that the domestic investigations and proceedings have not been effective remedies to guarantee access to justice, discover the truth about the events, investigate and punish those responsible, or provide redress for the consequences of the violations. Therefore, the IACHR deems that the State has violated Articles 8.1 and 25 of the American Convention, in connection with its duty to ensure respect as set forth in Article 1.1 of the same instrument; as well as article I.b) of the Inter-American Convention on The Forced Disappearance of Persons, to the detriment of victims that have been disappeared³⁹⁵ and the next of kin of the victims of the case that are listed in the only annex of the instant report.

³⁹⁴ I/A Court H.R., *Caso of Garibaldi v. Brasil*. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of September 23, 2009. Series C No. 203, paragraph 138; *Case of Valle Jaramillo and others v. Colombia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, paragraph 155; *Case of Kawas Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009 Series C No. 196, paragraph 115.

³⁹⁵ Aníbal de Jesús Castaño Gallego; Óscar Hemel Zuluaga Marulanda; Juan Crisóstomo Cardona Quintero; Miguel Ancízar Cardona Quintero; María Irene Gallego Hernández; Juan Carlos Gallego Hernández; Jaime Alonso Mejía Quintero; Hernando de Jesús Castaño Castaño; Octavio de Jesús Gallego Hernández; Orlando de Jesús Muñoz Castaño; Leonidas Cardona Giraldo; and Andrés Gallego Castaño.

7.2. Other proceedings

297. As for military criminal justice, the Inter-American Court has already ruled that military criminal courts are not appropriate forums to hear, try and punish cases that involve the violations of human rights. In that regard the Court has already established that:

in a democratic State under the rule of law said jurisdiction must have a restrictive and exceptional scope and must be geared to protection of special legal interests, linked to the functions assigned to the military forces by the Law. For this reason, the military must only be tried there for crimes or offenses that by their very nature affect legal interests that pertain directly to the military.³⁹⁶

298. The Commission notes that the case file was archived on September 8, 1997, and therefore it will not issue any rulings on this matter.

299. As for the disciplinary proceedings, the Commission has indicated, on repeated occasions through its different mechanisms, that the disciplinary jurisdiction does not constitute a sufficient forum to hear, sanction, and redress the consequences of human rights violations.³⁹⁷

300. Likewise, the Court has also pointed out that the investigation in the disciplinary jurisdiction “tends to protect the administrative function and the correction and control of public officials, so that, in cases of grave human rights violations, it can complement but not substitute completely the function of the criminal jurisdiction.”³⁹⁸ In the present case, this situation did not arise because, on September 2, 2003, the Attorney Assigned to Human Rights confirmed the decision to archive the disciplinary verification pointing out that UNHR “filed proceedings (...) against the leader of the Self-Defense Forces Ramón María Isaza Arango, as the person allegedly responsible for the incidents.”

301. As for the contentious-administrative jurisdiction, the Commission has pointed out that it is a mechanism aimed at supervising the State’s administrative activities and that it only makes it possible to secure compensation for damages caused by the deed or omission of agents of the State.³⁹⁹ The Court has also deemed that:

When establishing the international responsibility of the State for the violation of the human rights embodied in Articles 8(1) and 25 of the American Convention, a substantial aspect of the

³⁹⁶ I/A Court H.R., *Case of the Pueblo Bello Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of January 31, 2006. Series C No. 140, paragraph 189; *Case of Palamara Iribarne v. Chile*. Merits, Reparations and Costs. Judgment of November 25, 2005. Series C No. 137, paragraph 124; *Case of the Mapiripán Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of September 15, 2005. Series C No. 134, paragraph 202; and *Case of Lori Berenson Mejía v. Peru*. Merits, Reparations and Costs. Judgment of November 25, 2004, Series C No. 119, 142.

³⁹⁷ IACHR, Report No. 74/07, Petition 1136-03, Admissibility, *José Antonio Romero Cruz and others, v. Colombia*, October 15, 2007, paragraph 34; Report No. 31/11, Case No. 12.416, Merits, Santo Domingo Massacre, Colombia, March 24, 2011, paragraph 157; *Third Report on the Human Rights Situation in Colombia*, OEA/Ser/L/V/III.102 Doc. 9 rev. 1, February 26, 1999, Chapter V, paragraph 3.

³⁹⁸ I/A Court H.R., *Case of the Pueblo Bello Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of January 31, 2006. Series C No. 140, paragraph 204.

³⁹⁹ IACHR, Report No. 74/07, Petition 1136-03, Admissibility, *José Antonio Romero Cruz and others v. Colombia*, October 15, 2007, paragraph 34.

dispute before the Court is not whether judgments were delivered at the national level or whether settlements were reached on the civil or administrative responsibility of a State body with regard to the violations committed to the detriment of the next of kin of the persons disappeared or deprived of life, but whether the domestic proceedings allowed real access to justice to be ensured, according to the standards established in the American Convention.⁴⁰⁰

302. The Commission observes that, in the present case, there were two proceedings filed with the contentious-administrative courts. Whereas in one of them the National Army was held liable for the failure of its service by omission, in the other the State was exonerated of all responsibility. According to information appearing in the case file, both judgments were appealed and it is not known whether they have been judged. In this regard, at present, the contentious-administrative courts did not constitute either an effective remedy to provide redress for the victims of the case, in addition to the criminal proceedings.

8. Right to private property (Article 21 of the American Convention in connection with Article 1.1 of the same instrument)

303. Case law of the Court has developed a broad concept of property that encompasses, among others, the use and enjoyment of goods, defined as material things that can be appropriated, including movable and immovable property, as well as any right that can become part of the assets of a person.⁴⁰¹ In that regard, the Court has ruled that there is a violation of the right to private property in allegations where the State has been responsible for destroying housing.⁴⁰²

304. In the present case, the Commission deems that, on the basis of the evidence that has accumulated, including statements taken from witnesses, inspection reports of the Prosecution Service and the gathering of evidence, on June 26, 1996, military agents of the FTA shot at the residence of José Gallego Quintero, and then entered his domicile and destroyed his personal belongings. The IACHR also notes that, although these facts were reported by Mr. Gallego Quintero on July 8, 1996, more than 17 years have elapsed without any investigation having been conducted or any of the persons responsible punished. The Commission also notes that the evidence, including photographs of the destroyed housing, as well as bags and cans bearing the logo of the National Army, had supposedly been lost, as a result of which it was never included or taken into account in domestic proceedings.

305. Because of this situation, the Commission concludes that the State violated the right to property to the detriment of José Gallego Quintero, as established in Article 21 of the American Convention in connection with the duty to ensure respect established in Article 1.1 of the same instrument.

⁴⁰⁰ I/A Court H.R., *Case of the Pueblo Bello Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of January 31, 2006. Series C No. 140, paragraph 206; and *Case of the Mapiripán Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of September 15, 2005. Series C No. 134, paragraph 211.

⁴⁰¹ I/A Court H.R., *Case of Ivcher Bronstein v. Peru*. Merits, Reparations and Costs. Judgment of February 6, 2001. Series C No. No. 74, paragraph 122; *Case of the Barrios Family v. Venezuela*. Merits, Reparations and Costs. Judgment of November 24, 2011. Series C No. 237, paragraph 148.

⁴⁰² See: *Case of the Ituango Massacres v. Colombia*. Preliminary Objection, Merits, Reparations and Costs. Judgment of 1 July, 2006. Series C No. 148; *Case of the Massacres at El Mozote and Nearby Places v. El Salvador*. Merits, Reparations and Costs. Judgment of October 25, 2012. Series C No. 252.

9. Right to personal integrity (Article 5.1 of the American Convention in connection with Article 1.1 of the same instrument) of the next of kin of the victims

306. Article 5.1 of the American Convention establishes that: “Every person has the right to have his physical, mental, and moral integrity respected.” With respect to the next of kin of the victims of certain human rights violations, the Court has indicated that they can also be viewed as victims.⁴⁰³ In this regard, the Court has provided that their mental and moral integrity can be affected as a consequence of the specific situations that the victims underwent and the subsequent deeds or omissions by domestic authorities in the face of these events.⁴⁰⁴

307. Specifically, regarding cases where there was no complete or effective investigation, as in the present case, the Court has indicated that:

(...) [T]he absence of a complete and effective investigation into the facts constitutes a source of additional suffering and anguish for victims and their next of kin, who have the right to know the truth of what happened. This right to the truth requires a procedural determination of the most complete historical truth possible, including the determination of patterns of collective action and of all those who, in different ways, took part in the said violations, as well as their corresponding responsibilities.⁴⁰⁵

308. According to the above, the Commission deems that the loss of a loved one in a context as the one described in the present case, as well as the absence of a complete and effective investigation, which in turn leads to suffering and anguish for not knowing the truth, constitutes in itself an adverse impact on the mental and moral integrity of the next of kin of the alleged victims.

309. By virtue of the above, to the Commission it is evident that the anguish suffered by the next of kin of the victims in their search for justice as a result of the forced disappearance of their loved ones, the absence of effective protection, and the deep suffering and radical change in their lives has affected their personal integrity. As a result, the Commission concludes that the State violated the right to mental and moral integrity enshrined in Article 5.1 of the American Convention in connection with the duty to ensure respect as set forth in Article 1.1 of the same instrument, to the detriment of the next of kin of the victims of the case that are listed in the only annex of the instant report.

⁴⁰³ I/A Court H.R., *Case of Cantoral Huamani and García Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, paragraph 112; and *Case of Bueno Alves v. Argentina*. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 164, paragraph 102.

⁴⁰⁴ I/A Court H.R., *Case of Cantoral Huamani and García Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, paragraph 112; and *Case of Vargas Areco v. Paraguay*. Judgment of September 26, 2006. Series C No. 155, paragraph 96.

⁴⁰⁵ I/A Court H.R., *Case of Valle Jaramillo and others v. Colombia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, paragraph 102; *Case of the Rochela Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of May 11, 2007, Series C No. 163, paragraph 195; *Case of Heliodoro Portugal v. Panama*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 12, 2008. Series C No. 186, paragraph 146; and *Case of García Prieto and others v. El Salvador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 168, paragraph 102.

VI. CONCLUSIONS

310. On the basis of arguments of fact and law set forth, the Inter-American Commission concludes that the State of Colombia is responsible for violating the rights established in Articles 3, 4, 5, 7, 8, 19, 21, and 25 of the American Convention, in connection with the obligations set forth in Article 1.1 of the same international instrument; as well as articles I.a) and I.b) of the Inter-American Convention on The Forced Disappearance of Persons to the detriment of the persons specified in each one of the sections of the present report.

VII. RECOMMENDATIONS

311. By virtue of the conclusions above,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THAT THE STATE OF COLOMBIA

1. Provide integral reparation, both in material and moral terms, for the violations of the human rights declared in the present report. In this regard, the IACHR recommends to take into account the "Principal Guidelines for a Comprehensive Reparations Policy".⁴⁰⁶

2. Establish a mechanism that would make it possible, to the greatest extent possible, to completely identify the two persons whose identification has been established partially, so that their next of kin can receive the reparations provided for in the preceding paragraph.

3. Undertake to find out, by all means possible, the fate or whereabouts of the disappeared victims or their mortal remains.

4. To continue to conduct an impartial and effective investigation within a reasonable period of time to fully clarify the facts, identify the intellectual and material authors of the crime, and administer the relevant punishments, bearing in mind the ties and patterns of joint action identified in the present report.

5. Issue the relevant administrative, disciplinary or criminal measures to address the deeds or omissions of state civil servants who contributed to denying justice and fostering the impunity in which the incidents of the case now lie or who participated in the measures taken to hamper the proceedings filed to identify and punish those responsible.

6. To establish, with the participation of the community of Vereda La Esperanza, a measure for community reparation that acknowledges the impact that the sequence of violent events had on the civilian population in the present case.

7. To adopt the measures needed to prevent patterns of violence against the civilian population from being repeated, in line with the duty to protect and guarantee the basic rights enshrined in the American Convention. In particular, to implement human rights and international

⁴⁰⁶ IACHR, Principal Guidelines for a Comprehensive Reparations Policy, OEA/Ser/L/V/II.131 Doc. 1, 19 February 2008. Available in: <http://www.cidh.org/pdf%20files/Lineamientos%20Reparacion%20Administrativa%2014%20mar%202008%20ENG%20final.pdf>

humanitarian law programs in the training academies of the Armed Forces.

Signed in the original

Emilio Álvarez Icaza L.

Secretario Ejecutivo